FINAL REPORT

REVIEW OF THE *SUMMARY OFFENCES ACT*

August 2013
Legal Policy Division, Policy Coordination
NT Department of the Attorney-General and Justice

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This report has been prepared for the purposes of consideration by the Northern Territory Government. The views expressed in it should not be taken to represent the views of the Northern Territory Government.

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1. Release of an issues paper on *Summary Offences Act* – 2010

1.1 Background to the release of the issues paper

In 2010, an issues paper[1] was released concerning the *Summary Offences Act.* This followed debate in 2009 in the NT Parliament over proposed amendments to penalties in the *Justice Legislation (Penalties) Amendment 2009*[2].

The issues paper contained a discussion of the contents of the current legislation and set out a number of proposals concerning the possible reform of the legislation. The issues paper also considered penalty levels for the offences.

Comments were sought in 2010 from stakeholders and the general public concerning the operation of the *Summary Offences Act* and options for the reform of that Act.

Comments on the paper *Summary Offences Act* were sought by 14 January 2011.

1.2 Stakeholder consultations following the release of the issues paper and this report

For the purpose of developing a report on the matters raised in the issues paper, consultations were held with members of the Northern Territory Police, the Office of the Director of Public Prosecutions, Summary Prosecutions, Northern Territory Legal Aid Commission, Northern Australian Aboriginal Justice Agency, Central Australia Aboriginal Legal Aid Service, the Criminal Bar, and the Law Society regarding the changes to the *Summary Offences Act*.

The Northern Territory Police, Northern Australian Aboriginal Justice Agency and the Northern Territory Law Society were particularly helpful and frank in discussions with Departmental officers.

This report is being published for the purpose of providing an opportunity for further comment on the issues.

Comments are requested by 1 October 2013. They can be sent to:

Comments and feedback should be sent to

Comments and feedback should be sent to
Director Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Or by email to Policy.AGD@nt.gov.au

[1] A copy of the issues paper can be found at:
www.nt.gov.au/justice/policycoord/lawmake/reports.shtml

[2] This Act was repealed before it commenced. See *Justice Legislation Amendment (Penalties) Act 2010*

2. Executive Summary

The Executive Summary set out in the table at the end of this document contains a summary of the proposals in relation to future policy. A more detailed discussion of the provisions is set out in the rest of this paper.

3. Background to the *Summary Offences Act*

3.1 Legislative history

> *"It is often said that history is best to be found in the rubbish tips. The Police Act is an active tip within which layer upon layer of the social history of our society can be found."*[3]

The *Summary Offences Act* started life as the *Police and Police Offences Ordinance* in 1924. It was taken in a large part from the South Australian *Police Act 1869* which was in force in the Northern Territory until the repeal (for the Northern Territory) in 1924. The parts of the *Summary Offences Act* relating to police procedure and duties were excised from the *Summary Offences Act* when the *Police Administration Act* was enacted in 1979.

The Summary Offences Act has been amended 96 times, with nearly half the Act being repealed, but still retains many out-dated provisions, uses archaic language, and needs dragging into the 21st Century. It now comprises the following parts:

- Part I – sections 1,3 and 5 – preliminary matters
- Part VII – sections 46A-91AA-offences generally; and
- Part IX – section 92 -miscellaneous.

The *Justice Legislation (Penalties) Amendment Act 2009* (Act No. 41 of 2009) provided among other matters, for the review of penalties in the *Summary Offences Act* and for the conversion of fines (for the reviewed penalties) into penalty units under the *Penalty Units Act*. In the course of debate on the Bill for that Act there was considerable controversy on the proposed new penalty levels. This resulted in a change of policy such that the *Justice Legislation (Penalties) Amendment Act 2009* was repealed by the *Justice Legislation Amendment (Penalties) Act 2010* (Act No. 10 of 2010). The *Summary Offences Act* is one of the few remaining Justice legislation in which the financial penalties are expressed in dollars rather than in terms of penalty units.

The Act also needs to be amended if it is to comply with the criminal responsibility provisions of Part IIAA of the Northern Territory Criminal Code.

3.2 Main purpose of the Summary Offences Act

The *Summary Offences Act* provides a framework for lesser, non-indictable offences, dealing with largely minor anti-social behaviour and providing powers to Police to manage that behaviour. In broad terms the offences are of the kind for which there is no other, more specific, legislation (such as the *Liquor Act* and the *Misuse of Drugs Act*).

[3] Quoted from Burt CJ of the Western Australian Supreme Court.

3.3 Summary of offences prosecuted under the Summary Offences Act (period ending 2010)

Appendix A1 contains a table listing each of the current provisions and its frequency of use in terms of number of prosecutions for the period 1 July 2003-30 June 2013. The table also contains information about the numbers for indigenous and non-indigenous prosecutions for the 3 year period ending 30 June 2013.

Appendix A2 contains a table listing the number for infringement notices issued for the period 1 July 2003-30 June 2013. The table also contains information about the numbers of infringement notices issued to alleged indigenous and non-indigenous offenders for the 3 year period ending 30 June 2013.

Note: The information regarding prosecutions that is contained in Appendixes A1 and A2 and elsewhere in this document is information extracted from IJIS on 17 July 2013.

4. Issues raised in the 2010 issues paper[4]

- What framework should the Government have for these types of behaviours?
- When and in what circumstances is it appropriate to criminalise nuisance behaviour?
- What should the Government's policy be regarding public order legislation?

The *Summary Offences Act* is a home for provisions dealing with public order and like matters and we need to ask these questions;

- Which provisions should be retained?
- Which provisions should be replaced or rewritten?
- Which provisions should be removed?
- Are there any other offences which should be placed in the general Summary Offences legislation?

Once these questions are answered then we ask;

- Should the Act be merely amended, or repealed and replaced with another *Summary Offences Act*. Whether called by that name or another, such as *Public Order Offences Act* or *Summary Offences (Public Order) Act* or something similar?
- Should the entire *Summary Offences Act* be repealed and those offences worth keeping put into other more appropriate Acts, such as the Criminal Code, the *Trespass Act*, the *Liquor Act, Litter Act* and the *Traffic Act*?

[4] A copy of the issues paper can be found at: www.nt.gov.au/justice/policycoord/lawmake/reports.shtml

5. Policy problems with the *Summary Offences Act*

5.1 General approach

The following paragraphs summarise the general approach taken when considering the provisions of the *Summary Offences Act.*

5.2 Duplication

Where an offence in the *Summary Offences Act* is broadly similar to an offence in another Act, one of them can be eliminated.

For example, issues concerning 'deleterious drugs'[5] are covered in the *Misuse of Drugs Act*. The various offences of stealing such as section 54 'Stealing Domestic Animals' are generally covered by the property offences provisions contained in Part 7 of the Criminal Code.

5.3 Relevance

Some of these public order offences have their beginnings as far back as Henry VIII's Act relating to Vagabonds of 1536[6], and the *Tumultuous Petitioning Act 1661*.

Many of them seem now to have little relevance to contemporary society, for example "driving or propelling any wagon, cart, dray or coach or on any other carriage or vehicle whatsoever…"[7] or "engages in any prize fight"[8] or "leaves his wife or child chargeable, or … without any means of support other than public charity"[9], or "makes any cellar, or any opening, door or window in or beneath the surface of the footpath of any street or public place"[10].

References to "canal, navigable stream, dock or basin." and "wanders abroad"[11] do not really sit well in the Northern Territory.

These provisions, if still useful, should be rewritten in contemporary language, but if out-dated and irrelevant, should be repealed.

5.4 Status offences

Some offences are 'status' offences, punishing people for who they are and not for what their conduct is on a particular occasion.

An example of this is "being a suspected person or reputed thief," and being near various waterways such as canals, or any street[12]. This type of provision is traceable back to the Elizabethan Vagrancy Acts of 1597[13] which were used to control the poorer and 'dangerous'

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[5] s.56(1)(e)
[6] 27 Hen. 8, c. 25 (1536)
[7] s.75(1)(d)(iv)
[8] s.55(1)
[9] s.57(1)(p) This offence dates back to the Poor Laws in the 16th Century. The *Family Law Act*, and the *Care and Protection of Children Act* have overtaken this provision.
[10] s.89
[11] s.57
[12] s.57(1)(l)
[13] 39 Eliz., chapter 4 (1597) which dealt with the whipping of rogues and vagabonds, and the persecution of "outlandish people calling themselves Egyptians", among other things.

classes[14] and later during the enclosures, to force the unattached and unemployed to work in the new factories during the Mercantile and Industrial Revolutions[15].

'Status' offences are contrary to the principle that people should only be punished for what they do, not for who they are or what category they fit in to, and are generally not appropriate or acceptable today. The laws against begging and some loitering offences might be seen in this light.

5.5 Consistency with modern principles of criminal responsibility

Sometimes the provisions are inconsistent with legal principles of criminal responsibility.

For example section 57(5) (which is the offence of being a reputed thief in particular types of places) says to prove intent for that offence;

> *"it shall not be necessary to show that the person charged was guilty of any particular act or acts tending to show his intent, but he may be found guilty from the circumstances of the case and from his known character as proved to the Court".*

This flies in the face of general principles of criminal law. Nowadays a person usually cannot be held responsible for intending to do something merely by proof of "known character as proved to the court"[16]. One assumes that proof of someone's known character would be by Police telling the court of the person's prior convictions and the tendering of his antecedent criminal history. With a few exceptions that cannot happen today[17].

A suspicion that a person may be about to commit an offence because he or she has committed similar ones before is not enough[18]. The law of attempts, incitement and conspiracy cover those acts not yet committed that have the potential for harm.

5.6 Burden of proof

Generally in criminal law the burden of proof rests on the state to prove the offence beyond reasonable doubt and no burden rests on the accused[19] and an accused has a 'privilege against self-incrimination' and the associated right of silence. It is now however becoming more common to reverse the onus with the advent of regulatory offences in the current *Summary Offences Act*[20] and of strict and absolute liability offences for under Part IIAA principles of criminal responsibility) and the often associated defence of 'reasonable excuse'.

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[14] L Radzinowicz *A History of English Criminal Law and its Administration from 1750* vol 4 (1968) 1-42

[15] See William Chambliss (1964)'A Sociological Analysis of the Law of Vagrancy' *Social Problems*, Summer, 67-77

[16] Section 57(5)

[17] Some exceptions to this are; the offence against loitering by a sexual offender, where the fact of being a sexual offender is proved by tendering certificates of conviction, and driving disqualified where similarly the fact of the drivers disqualification is proved.

[18] As G Williams *Textbook of Criminal Law* (2nd ed 1983) 402 states:
"So long as a crime lies merely in the mind it is not punishable, because criminal thoughts often occur to people without any serious intention of putting them into execution."

[19] *Nemo debet prodere se ipsum*, no-one should be obliged to produce evidence against themselves. As translated and discussed by Lord Diplock in *Sang* [1980] A.C. 402

[20] Section 91AA sets out that the offences contained in sections 53A(2), 53B(3), 65AA, 74(3), 77(2), 82(3) or (4) and 89 are "regulatory offences". This means that the ordinary principles of criminal responsibility under Part II of the Criminal Code do not apply to them. See Criminal Code.

A number of provisions in the *Summary Offences Act* have reversed the onus of proof, for example the offences of being in possession of deleterious drugs or housebreaking implements[21], and being in possession of property reasonably believed to have been stolen[22].

5.7 Frequency of use

The fact that an offence is not often used in a prosecution does not of itself prove it is unnecessary. Nor conversely does the fact that one is often used prove it is necessary, but the frequency of a provision's use is a factor that should be considered.

5.8 More appropriate location in the statute book

The *Summary Offences Act* covers a wide area and has some widely disparate provisions. Some provisions could be better placed in other Acts dealing with the same subject. For example, as was noted in the Issues Paper, the liquor offences may be better placed in the *Liquor Act*[23] and the trespass offences may be better placed in the *Trespass Act*.

Many offences in the *Summary Offences Act* overlap offences in the Criminal Code that deal with the same subject. For example offences of property damage[24], and offences of violence[25] occur in both Acts. It must be decided if it is appropriate to keep separate but overlapping offences or whether to repeal one or the other.

A complicating factor is that some summary offences contain police procedural powers that might look out of place if they were to be located in the Criminal Code.

6. **Penalties**

6.1 Penalties – general principles

Punishment means the infliction by the state of consequences normally considered unpleasant, on a person in response to his or her having been convicted of an offence.[26] The traditional justifications for punishment are (general and specific) deterrence, retribution or revenge, incapacitation, and rehabilitation.[27] The varying amounts of punishment meted out to different types of aberrant behaviour shows the gravity with which that particular behaviour is regarded. This of course changes with time and place, and behaviour criminalised at some points in time or in some places, passes without comment or disapproval at others.[28] Conversely behaviour once regarded as acceptable might now be criminalised.[29]

The worse society regards an offence the more severe one would expect the punishment should be. This is not always the case, however, and there are of course inconsistencies. It

[21] Section 57(1)(e)
[22] Section 61
[23] This has now occurred – see *Liquor and Other Legislation Amendment Act 2012*
[24] Section 52 'Injuring or extinguishing Street Lamps'.
[25] Section 55 'Challenge to Fight'.
[26] Von Hirsch A. *Doing Justice : The choice of Punishments: Report of the Committee for the Study of Incarceration.* (1976) Hill & Wang, New York.
[27] For discussions on whether any or all of these principles work please read widely.
[28] For example, religious crimes, drinking in the prohibition/restricted area era, and homosexuality .
[29] Examples abound, and include domestic violence, drink driving and laws regarding duelling.

is difficult to compare, for example, the level of criminality of property crimes with the level of criminality of crimes against the person.

The punishment listed for each offence in the *Summary Offences Act* is a maximum penalty, reserved for the very worst example of that type of behaviour. The very worst example is only ever approached, rarely actually reached, so the actual punishment received for an offence is rarely the maximum prescribed. In accordance with the *Sentencing Act,* a court will punish an offender, paying due regard to the maximum penalty, while bearing in mind the objective circumstances of the particular offence and the subjective circumstances of the particular offender. No two offences or offenders are likely to be identical,[30] and such things as antecedents, prospects of rehabilitation, overall criminality and public interest dictate what the punishment will be.

Discounts on sentences are generally given for pleas of guilty. Community work orders, fines, home detention and suspended sentences are alternatives to imprisonment, although some of these options are less available in areas outside the main population centres in the Northern Territory.

6.2 Use of penalties units for fines

Fines penalties in the Northern Territory are gradually being converted to be expressed in 'penalty units'. In respect of old legislation the practice followed in the period 2010-2012 has been that the fine amount was increased by 15% and then converted into the nearest relevant penalty unit figure. For new legislation, penalties are set having regard to an informal penalties policy document prepared in 1999 (and revised since that time) by the Department of the Attorney-General and Justice (and its predecessor agencies). In the final miscellaneous *Penalty Units Amendment Act 2013* the percentage increase was 25%.

6.3 Value of penalty unit

From 1 July 2013 the value of a penalty unit has been $144. The amount of the penalty unit is adjusted on 1 July every year, according to the formula in the *Penalty Units Act*, which increases the value of the penalty unit according to the Darwin CPI. Thus the actual fines will automatically keep pace with any annual inflation greater than approximately 1%.

6.4 Default fines' level – section 38DA of the Interpretation Act

For penalties that are only expressed in terms of imprisonment, the Northern Territory has a formula under the *Interpretation Act* that provides for an equivalent fines penalty that applies where a fine is the more appropriate penalty (eg if the offender is a corporate body). Under this formula, there is a match between the length of imprisonment and a particular monetary penalty expressed in 'penalty units'. This formula will be used as a starting point in considering fines for use in all penalty provisions including the offences in the *Summary Offences Act*.

Under this default penalty, the maximum fine is worked out by multiplying 100 penalty units by the term of imprisonment expressed in years or a fraction of a year if the term is less than 12 months. Thus 12 months imprisonment is equivalent to 100 times the amount of the penalty unit, and six months is equivalent to 50 times the penalty unit. So applying the current penalty unit value a 6 months imprisonment penalty for offence means that an offender can also be fined an amount up to $7,200.

[30] "A foolish consistency is the hobgoblin of little minds" Emerson.

6.5 Corporate offenders Default fines' level – section 38DA of the Interpretation Act

Section 38DB(3) of the *Interpretation Act* operates so that in the absence of a specific body corporate penalty for an offence, a corporate is liable for a maximum penalty 5 times the amount specified for an individual.

This report proposes that all offences in the *Summary Offences Act* operate so that section 38DB(3) applies to them – meaning that, for example, if a maximum penalty of 100 penalty units is proposed then the maximum penalty for a corporate offender is 500 penalty units.

6.6 Directors' liabilities

It is not proposed that there be any specific liability imposed on directors other than which is already imposed on them in accordance with the Criminal Code as being accessories.

6.7 Penalties suggested in this Report

The penalties in the offences have been reviewed. However, no firm view can be reached until positions are finalised concerning what offences are to be retained and, if so, the content of them. In general terms, penalties of imprisonment remain the same as they exist currently. Fines penalties have been, as a general rule, adjusted as per the default formula contained in section 38DA of the *Interpretation Act*.

For the sake of comparison to a different approach, the penalties contained in the repealed *Justice Legislation (Penalties) Amendment Act 2009* are identified in respect each of the offences.

For proposed penalties for offences that go outside of these general observations, there is a more detailed explanation in the part of the paper that deals with the offence.

7. Other legislation containing offences of a summary nature

Local Government by-laws cover a lot of public order offences. So also do the *Local Government Act,* the *Public and Environmental Health Act,* the *Trespass Act*, the *Litter Act*, the *Nudity Act*, the *Places of Public Entertainment Act*, and the *Observance of the Law Act*. Sometimes these offences overlap or contain inconsistencies. The rules, regulations and laws about dogs and begging are examples of this overlapping.

Some legal practitioners have suggested that offences in the above Acts be placed in the *Summary Offences Act,* while others suggest the reverse, that various offences in the *Summary Offences Act* should be placed in the other Acts.

8. Redrafting of the legislation containing offences of a summary nature

Should the offences in some provisions be retained there will be a need to redraft them. This will be to ensure a contemporary form and consistency with the criminal responsibility provisions of Part IIAA of the Criminal Code.

Anachronisms such as references to 'servants' and 'picklock, crow, jack bit or other implement of housebreaking', should be removed or changed to a modern reference. Definitions and terminology should be standardised regarding 'premises' and 'public place', municipalities, shires and references to the Police force.

The terminology of the Act is invariably masculine and should where ever possible be gender neutral.

It should be noted in passing however that there may be opposition to making the provisions consistent with Part IIAA from both defence practitioners and Police. This is generally because of a perception by both parties that Part IIAA adds another level of complexity to otherwise simple legislation, is confusing and unnatural, and will make the legislation harder to understand. The future of Part IIAA of the Criminal Code has been the subject of recent targeted consultation between the Attorney-General and Minister for Justice and the legal profession.

9. Comparison with legislation in other jurisdictions

9.1 Jurisdictions with separate summary offences legislation

Victoria, New South Wales, South Australia, Queensland and New Zealand each have a *Summary Offences Act* and Tasmania still has its *Police Offences Act*.

9.2 Jurisdictions that include separate summary offences in general criminal code legislation

Western Australia and the Australian Capital Territory have repealed their summary offences Acts and placed the provisions they wished to keep into other Acts. The Australian Capital Territory includes most of its summary offences in its Crimes Act, as does Western Australia in its Criminal Code.

9.3 Other differences between jurisdictions

The jurisdictions have all retained very different Acts. While there are some offences common to all, such as the offences of 'Disorderly Behaviour' and 'loitering' (however named), all jurisdictions have included a number of different offences in their respective Acts, and sometimes have very different provisions for the same or similar offences.

Some jurisdictions include offences in their summary offences legislation that the Northern Territory has placed in different Acts. For example South Australia includes 'Assault Police' in its *Summary Offences Act*, whereas the Northern Territory has the offence in the Criminal Code and also in the *Police Administration Act*.

Some jurisdictions have specific parts and sections. For example New Zealand and Queensland include a separate part for graffiti offences[31] in their summary offences legislation, whereas the Northern Territory has included an offence of graffiti among other offences including 'bill posting' in section 75(1)(g)[32] .

Some jurisdictions have provisions in their summary offences legislation which do not exist at all in Northern Territory.

[31] Queensland has *Summary Offences Act2005 (QLD) ss23A* – 23E regarding selling paint cans and Part 3 'Removal of Public Graffiti' sections 27 – 45 regarding the offence of Graffitiing and the appointment of State Graffiti Removal Officers. NZ has ss11A & 11B of *Summary Offences Act 1981*.
[32] "writes upon, soils defaces or marks any building, wall or fences with chalk or paint…"

10. *Categorisation of offences in the Summary Offences Act*

At the time of the release of the Issues Paper, the *Summary Offences Act* the types of offences in the Act were broken down to seven different categories of behaviour. These were:

- liquor related offences and powers;
- public order offences;
- noise offences;
- trespass offences;
- dishonesty offences;
- indecency or obscenity offences; and
- miscellaneous offences.

This report maintains this categorisation subject that, unlike the issues paper, they are discussed in this report in the same order as they appear in the *Summary Offences Act*.

Also, legislation enacted since the release of the issues paper has dealt with most issues concerning liquor related offences and powers.

11. **Liquor offences**

The Issues Paper contained a discussion of sections 45C-45K of the *Liquor Act.* However, these sections were repealed by the *Liquor and Other Legislation Amendment Act 2012* (Act 18, 2012). Accordingly, as part of this report, there is no need to further discuss the penalties or structure of the offences.

For the replacement sections see sections 101T-101ZI of the *Liquor Act.*

12. **Trespass offences forcible entry**

12.1 Section 46A – contents

A person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters, whether or not he is so entitled to enter, land which is in the actual and peaceable possession of another is guilty of an offence.

Penalty: Imprisonment for 12 months.

This offence (along with section 46B, see below) had its origins in the *Forcible Entry Acts 1381-1623* which sought to force owners of land to go to court to get land returned rather than resort to unbridled self-help.

The offences were resurrected in the United Kingdom in the 1970s to penalise squatting and industrial occupation of premises or land by students and workers. They were introduced to

the Northern Territory Act in 1983 for the same reasons. The main purpose of the law according to the United Kingdom Law Commission is "to prevent breaches of the peace".

South Australia has combined these two offences into one.[33] The Australian Capital Territory has two almost identical provisions[34] to those in the Northern Territory.

The Northern Territory *Trespass Act* does not cover the situations this provision envisages.

This offence would be better placed in the *Trespass Act* as it is to do with ownership and occupancy of land and the rights and restrictions pertaining to that ownership or occupation.

12.2 Section 46A– prosecutions (last 10 years to 30 June 2013)

There have been 26 prosecutions for this offence since 2000 (to 30 June 2013).

12.3 Section 46A – maximum penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not propose any change to the penalty for section 46A.

The current maximum penalty of 12 months imprisonment with the default maximum fine of 100 penalty units ($14,400) appears appropriate.

Recommendation for section 46A

- Section 46A should be retained but moved to the *Trespass Act.*
- The fault element should be intent.

13. Forcible detainer

13.1 Section 46B – contents

A person who, being in actual possession of land without being entitled by law to possession, holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land is guilty of an offence.

Penalty: Imprisonment for 12 months.

This is a complimentary provision to section 46A Forcible Entry and is to prevent the squatter or occupier of premises or land from initiating a disturbance while trying to prevent him or herself from being removed. It is used for example to protect against possible violent confrontations in sit-ins and lockouts.

This offence would be better placed in the *Trespass Act* as it is to do with ownership and occupancy of land and the rights and restrictions pertaining to that ownership or occupation.

[33] Section 17D *Summary Offences Act 1953* (SA)
[34] Sections 151 & 152 *Crimes Act 1900* (ACT)

13.2 Section 46B– prosecutions (last 10 years to 30 June 2013)

There have been no prosecutions for this offence since 2000 (to 30 June 2013).

13.3 Section 46B – maximum penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not make any change to the penalty level.

Recommendation for section 46B

- Section 46B should be retained but moved to the *Trespass Act.*
- The fault element should be intent.

14. Disturbing religious worship

14.1 Section 46C contents

A person who wilfully and without authorization, justification or excuse, proof of which is on him:

(a) interrupts or disturbs a meeting of persons lawfully assembled for religious worship;

(b) assaults a person lawfully officiating or a person assembled at such a meeting,

is guilty of an offence.

Penalty: Imprisonment for six months.

Public worship in a regular fashion is the prevailing guide as to what is religious worship. Consequently an open air evangelical meeting has been held not to be religious worship.[35]

This is one of a number of quaint and sometimes historic offences that have found their way into the *Summary Offences Act* and defy other categorisation or justification.

The South Australia legislation retains the offence and includes weddings and funerals. It defines 'religion' as "any philosophy or system of belief that is generally recognised in the Australian community as being of a religious nature"[36].

NAAJA suggests that in a secular society the offence in section 46C is 'abhorrent', and should be repealed.

Consultation also highlighted that subsection (a) of this offence may covered by section 47 (Offensive, &c., Conduct), and subsection (b), the assault, may be addressed by section 188 of the Criminal Code. The primary issue is therefore whether this provision is necessary. On balance, it appears appropriate to retain this offence as a separate offence.

14.2 Section 46C – prosecutions (last 10 years to 30 June 2013)

There have been 5 prosecutions for this offence since 2000 (to 30 June 2013).

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[35] *Macrae v Joliffe* [1970] VR 61 per Starke J. See also *Gordon v MacNamara* [1907] VLR 89; *Ryan v Hircoe* [1922] VLR 504

[36] *Summary Offences Act 1953* (SA) s.7A(2)

14.3 Section 46C – penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) proposed no changes to penalties.

Not applicable (see recommendation).

Recommendation for section 46C

Section 46C should be retained with a maximum penalty of 6 months imprisonment.

15. Public order offences

15.1 General discussion about public order offences

> *"I don't care what they do as long as they don't do it in the street and frighten the horses"*[37]

'Public Order' is central to what the *Summary Offences Act* is about. Public order offences are those offences, generally of a less serious nature, that relate to conduct in, enjoyment of, and passage through public and other places. The offences include 'disorderly behaviour', 'offensive behaviour', and 'loitering', and as well as criminalising certain behaviour, these offences give Police necessary powers to direct the public or individuals for the protection of the members of the public. The offences rely to a great extent on Police perception of a situation, their use of common sense and restraint, and ultimately their use of discretion in acting on that assessment.

Arguably, the public order provisions are purposefully vague in order that the behaviour in question is subject to the discretion of the Police, and after that, the discretion of the courts. Strict enforcement is not desirable as situations differ from time to time and place to place and flexibility in interpretation is necessary. Behaviour that would constitute an offence in one situation may not in another. This of course leads to a certain amount of uncertainty but that is the price we pay for the flexibility we need from these laws.

In England, the *Public Order Act 1986,* seemingly rather circuitously but in fact realistically, defines "offensive conduct" to mean "conduct the constable reasonably suspects to constitute an offence under this section."[38] The conduct in England also requires the presence of an actual victim. This is not always the case in other jurisdictions.

Public order policing extends from policing public protests and processions[39], through to policing unruly or offensive behaviour outside night clubs or pubs and places of recreation or entertainment. There is an obvious link between alcohol and public disorder, and research

[37] Comment attributed to a Mrs Patrick Campbell by Justice Kearney in *Pregelj v Manison* (1988) 31 A Crim R 383 @ 400.
[38] Section 5(5) *Public Order Act 1986* (UK)
[39] See for example the Queensland approach to protest in the 1970s.

shows there is an over-representation of marginalised and disadvantaged groups including youths, the mentally ill, and indigenous people in public order offending[40].

Public Order Offences also include the loitering offences, begging, busking, various violence offences, consorting, and offences regulating traffic and prohibiting nuisances in public spaces and thoroughfares.

There is a high volume of public order/public nuisance offences dealt with in the Courts with most being uncontested. The vast majority of offenders receive a fine and many are dealt with ex-parte. In the NT many of these offences are dealt with by infringement notices.

These offences are at the confluence of individual rights and public security. Justice Oliver Wendell Holmes said

> *"each individual should have the maximum liberty consistent with the equal liberty of all other individuals."*

The State must balance the moral right of citizens to speak their minds in a non-provocative way on matters of public or political concern with the right of people to go about their business unmolested and unthreatened.

Public Order laws are where a citizen's liberty meets the power and authority of the State and particular care must be taken in those areas where this occurs.[41] There are, and will continue to be, many circumstances where the right to freedom of expression, or any other right for that matter, will not be in issue. There are other occasions where a person behaves in a noisy and annoying manner to the consternation of people using the footpath, park or any other public place, thereby disrupting the public order. The context in which the activity takes place must be considered in order that the countervailing interests may properly be weighed.[42]

Brennan J explained the necessity for a balance in *Alister v The Queen*:[43]

> *"It is of the essence of a free society that a balance is struck between the security that is desirable to protect society as a whole and the safeguards that are necessary to ensure individual liberty."*

Just because conduct is not 'orderly' does not mean that it is necessarily 'disorderly'. The words are not precise antonyms. A concern here is that the commission of the offence may be just in the eye of the beholder. In some circumstances, for example, behaviour will not be disorderly because the disruption is relatively minor compared to the significance of the exercise of the right to freedom of expression, or some other right. The same behaviour, however, may be properly considered disorderly in the absence of the right, or some other right, being exercised.

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[40] Cunneen C. 2001, *Conflict, politics and crime: Aboriginal Communities and the Police*, Allen & Unwin, Sydney; Cunneen C. & White, R 2007, *Juvenile Justice: youth and crime in Australia*, 3rd edn, Oxford University Press, Melbourne; see also Luke, G & Cunneen, C, 1998, *Sentencing Aboriginal People in the Northern Territory: A statistical Analysis*, Northern Territory Aboriginal Legal Aid Service.

[41] *Anderson v Attorney General (NSW)* (1987) 10 NSWLR 198; 27 A Crim R 103 @ 107 per Kirby J.

[42] *R v Lohnes* [1992] 1 SCR 167

[43] *Alister v The Queen* (1984) 154 CLR 404 @ 456

The Public Order legislation is to serve "public, not private purposes"[44], and its objective is not the protection of individuals from emotional upset, but the protection of the public from disorder calculated to interfere with the public's normal activities[45].

15.2 General discussion about language offences

Research in New South Wales[46] and Queensland[47] has shown a major contributor to indigenous over-representation in Police custody is the offensive language provision. Indigenous people are disproportionately more likely to be arrested for this offence and the number of people brought to Court solely for using offensive language has been described in New South Wales as 'most disturbing'[48]. The Royal Commission into Aboriginal Deaths in Custody considered there was a need to reduce the detention of Aboriginal people resulting from offensive language crimes in particular. They recommended[49] that;

(a) The use of offensive language in circumstances of interventions initiated by Police should not normally be occasion for arrest or charge; and

(b) Police services should examine and monitor the use of offensive language charges.

In the Northern Territory there have been 605 Obscene/indecent language[50] charges in the 10 years (to 30 June 2013) and 473 charges of 'Use objectionable words in a public place' in that period[51]. These figures do not take account of a person's Aboriginality so we can't give an accurate portrayal of how much more the offence impacts on Indigenous than non-Indigenous people in the Northern Territory. However the Queensland and New South Wales research over the last few years suggests a similar situation of massive Indigenous over-representation would similarly occur here.

This is a contentious area with a history of controversy as a great many of these offences occur when the language is used against or towards Police. There is of course a public expectation that Police need to accept that being exposed to bad language is always going to be part of their job.

Police accept this, and even when the language is solely directed at Police research has shown that officers generally accept the abuse until and unless it interferes with the job[52]. This is more likely when the behaviour is in public. In the normal course of events Police need respect for their authority to enable them to do their job in public space.

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[44] *Coleman v Power* (2004) 220 CLR 1; Gummow and Hayne JJ at para [179]. See also Gleeson CJ at para [32]; McHugh J at para [35]; Kirby J at para [224]; Callinan J at paras [296] – [297]; Heydon J at para [324].

[45] *R v Lohnes* [1992] 1 SCR 167@ para [22]

[46] 'Race and Offensive Language Charges' *Crime and Justice Statistics* NSW Bureau of Crime Statistics and Research August 1999

[47] *Policing Public Order; A Review of the Public Nuisance Offence* Crime and Misconduct Commission May 2008 Brisbane

[48] Weatherburn D 1997 'Aboriginals and Public Order Legislation in NSW ' Media Release 28 May 1997. NSW Bureau of Crime and Statistics. http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/mr_cjb34.pdf/$file/mr_cjb34.pdf#target='_blank' viewed 19 February 2010

[49] Recommendation 86 *National Report: Royal Commission into Aboriginal Deaths in Custody* AGPS Canberra

[50] Section 53(1)(a)(i)

[51] Section 53(7)(a)

[52] Queensland Crime and Misconduct Commission, *Policing Public Order: A Review of the Public Nuisance Offence*, May 2008

Abuse directed at Police entails a lack of respect for that authority. When disrespect for the authority of Police is shown and especially where that disrespect is shown in public, the authority, necessary for Police to do their job, is lessened. The Police duty to protect the public and ensure public order then becomes much more difficult. Normal situations can become tense and tense situations can escalate. It is when the disrespect is shown in public that the arrests generally happen.

Police are trained in the exercise of discretion including in relation to public order incidents. They are not expected to enforce all the laws all of the time, but a challenge to Police authority can ensure a Police intervention that might not otherwise occur.

Some jurisdictions separate the offensive language provisions from the offensive behaviour provisions, and have a lesser penalty, generally only a fine, for the offensive language offences. Having the offences separate recognises the different level of criminality of the behaviour offence from the language offence and also enables better monitoring of the use of the charges.

The New Zealand, South Australia and the New South Wales behaviour and language provisions are separated, and in 2008 the Queensland Crime and Misconduct Commissions Report on the Queensland Public Nuisance Offence (section 6 *Summary Offences Act 2005*) recommended that there be a separate offence covering offensive language only.

16. Section 47 – offensive conduct

16.1 Section 47 offences – offensive conduct, causing annoyance and disruption of privacy

Section 47 Offensive, &c., conduct

Every person who is guilty:

(a) of any riotous, offensive, disorderly or indecent behaviour, or of fighting, or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place;

(b) of disturbing the public peace;

(c) of any riotous, offensive, disorderly or indecent behaviour in any police station;

(d) of offensive behaviour in or about a dwelling house, dressing-room, training-shed or clubhouse;

(e) of unreasonably causing substantial annoyance to another person; or

(f) of unreasonably disrupting the privacy of another person,

shall be guilty of an offence.

Penalty: $2,000 or imprisonment for six months, or both.

Section 47 is an offence in respect of which an infringement notice may be issued (penalty $100)[53].

[53] See regulations 4 and 4A of the Summary Offences Regulations

16.2 Section 47(a) - offensive conduct

The words 'Offensive Behaviour' in this section are explained in *Wurramurra and Pregelj v Haymon*[54] by Asche J, and in its appeal; *Pregelj v Manison; Wurramurra v Manison*[55] by Nader, Kearney and Rice JJ.

The offending behaviour must be behaviour;

> *"such as is calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person".*[56]

The actual intention that is proscribed however is not to the intention to do the act but the intention to cause the offence or doing the act while foreseeing the possibility of causing offence. It is not necessary that anyone was actually offended by the behaviour, as long as the behaviour was of such a nature and the circumstances were such that a reasonable person would have been offended by the behaviour[57]. To be guilty of offensive behaviour a person must both intend to engage in the behaviour and also be aware of the circumstances that make it offensive[58].

> *"The gravamen of offensive behaviour is the offending of another person, and the offending must be intended. Behaviour that does not offend, at least potentially, cannot be offensive. Behaviour, offensive in other circumstances, committed in complete privacy cannot be offensive. It cannot be in the nature of any conduct to be offensive without including in the definition of the conduct the circumstances which render it offensive. Therefore, on one view of it, the offending of a person, actually or potentially, is an integral element of the prescribed conduct. On that view of it the "act" of the defendant includes the act of offending, for which he is excused from criminal responsibility unless the offending were intended or foreseen by him as a possible consequence of his conduct."*[59]

16.3 Section 47(a) – disorderly behaviour

The words 'Disorderly Behaviour' are explained in *Watson v Trennery* (1998) 122 NTR 1, where it was held that burning a flag during a peaceful demonstration was not 'disorderly behaviour'.

> *"'Disorderly behaviour' is not a legal conception fixed by judicial decision, but rather is an ordinary and rudimentary expression (like "reasonable doubt") which eludes a priori definition. It can be illustrated but not defined; it is to be applied to the circumstances of each case by the finder of fact".*

A generally accepted description of 'disorderly behaviour', (approved by the High Court in *Coleman v Power*[60]), is that of Turner J. in the New Zealand Court of Appeal in

54 (1987) 24 A Crim R 195, & (1987) 86 FLR 52
55 (1988) 31 A Crim R 383, (1987) FLR 346 & 51 NTR 1
56 *Worcester v Smith* (1951) VLR 316 approved in *Wurramurra and Pregelj v Haymon* (1987) 24 A Crim R 195
57 *Ellis v Fingleton* (1972) 3 SASR 437
58 *Pregelj v Manison* (1987) 51 NTR 1 (where an act of sexual intercourse taking place in a house which could be seen from the street was not offensive behaviour unless the defendant was aware that the act could in fact be observed)
59 *Pregelj v Manison* (1987) 51 NTR 1 per Nader J
60 (2004) 220 CLR 1

Melser v Police (1967) NZLR 437 at 444. The judgments in *Melser* emphasised the impact of the conduct on others present. In that case, Turner J said:

> *"Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and women, is also something more – it must, in my opinion, tend to annoy or insult such persons as are faced with it – and sufficiently deeply or seriously to warrant the interference of the criminal law."*

16.4 Section 47(a) – indecent behaviour

'Indecent behaviour' is explained in *Romeyko v Samuels*[61], a Full Court decision of the South Australia Supreme Court in 1971, as "offensive to the sexual modesty of the average person"

It is again explained in *Prowse v Bartlett*[62], also a South Australia Supreme Court decision in 1972, as "behaviour that offends to a substantial degree recognised standards of propriety".

The meaning of these terms; offensive, disorderly, and indecent, have of course changed through time and through the long life of the provisions. Gleeson CJ explained the changing nature of the terms in the High Court decision of *Coleman v Power*[63] in 2004;

> *"Concepts of what is disorderly, or indecent, or offensive, vary with time and place, and may be affected by the circumstances in which the relevant conduct occurs. The same is true of insulting behaviour or speech. In the context of legislation imposing criminal sanctions for breaches of public order, which potentially impairs freedom of speech and expression, it would be wrong to attribute to Parliament an intention that any words or conduct that could wound a person's feelings should involve a criminal offence. At the same time, to return to an example given earlier, a group of thugs who, in a public place, threaten, abuse or insult a weak and vulnerable person may be unlikely to provoke any retaliation, but their conduct, nevertheless, may be of a kind that Parliament intended to prohibit.([1967] NZLR 437 at 446)".*

16.5 Discussion of section 47(a)

Section 47(a) of the *Summary Offences Act* requires great deal of discretion on the part of the Police Officer. The Police Officer must be aware of the situation that exists at the time and the community standards that prevail at that time, in that situation, and in that place. There is a difference in the expected standards across the Territory and what is acceptable behaviour or language at one time and in one place may not be so in another. The behaviour that is acceptable outside a Darwin Hotel at closing time may not be appropriate a few hours earlier and 200 metres away at the Eisteddfod in the Entertainment Centre. Justice Rice said in *Pregelj v Manison*;

> *"In my opinion, it is important to bear steadily in mind the basic concept which surrounds human affairs, and that is, acceptable behavioural patterns are in no small measure influenced by time, place and circumstance."*[64]

[61] (1971) 2 S.A.S.R. 529
[62] (1972) 3 S.A.S.R. 472
[63] (2004) 220 CLR 1 @ 25
[64] *Pregelj v Manison; Wurramurra v Manison* (1988) 31 A Crim R 383, (1987) FLR 346 & 51 NTR 1

The original version of these offences in the *Vagrancy Act* (United Kingdom) proscribed using threatening, abusive or insulting words, and required an ***intent*** to provoke a breach of the peace.[65] This intention to provoke a breach of the peace was omitted from later versions of the offences in the late 1920s and early 1930s by various jurisdictions at the same time as the offence was widened to include riotous, disorderly, indecent, or offensive behaviour, and to include fighting. This behaviour might involve no threat of a breach of the peace but was regarded as contrary to good order.[66]

There might however be no threat to a breach of the peace because the fear of vulnerable members of the public might prevent them reacting to the behaviour, or they might forbear reacting due to their greater self-control, but it could still be behaviour that merited the intervention of the criminal law.

The old requirement of the offender having the intent to provoke a breach of the peace was removed from the Northern Territory legislation, but the requirement is still sometimes a feature of the legislation on the same topic in other jurisdictions.[67] Some jurisdictions still have a requirement relating to a likely breach of the peace, but that is also not required in the Northern Territory.

In New Zealand the offences of 'disorderly behaviour' and 'offensive behaviour or language' are now separated[68]. Section 4 of the *Summary Offences Act 1981* (New Zealand), the 'disorderly behaviour' provision, makes liable to imprisonment or a fine anyone who;

> *"in or within view of any public place, behaves, or incite or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue*".

Thus the proscribed behaviour requires a likelihood that it will lead to violence against persons or property.

New Zealand provisions

New Zealand's section 5, the 'offensive behaviour or language' provision however requires an intent to "threaten, alarm, insult or offend" the addressed person. This offence only carries a fine. Thus the more serious behaviour, section 4, that is likely to cause violence, carries imprisonment, and the less serious section 5 which, (including language), only threatens, alarms, insults or offends, carries only a fine.

New Zealand also has the offences of 'Disorderly Behaviour on Private Premises', and 'Disorderly Assembly', which are addressing the problem of gangs such as the mongrel mob.[69]

WA provisions

[65] If any legal expression is a work of art it is 'breach of the peace'. Courts have refined the concept to establish that it is allied to harm, actual or prospective, against persons or property.
[66] See *Coleman v Power* (2004) 220 CLR per Gleeson CJ.
[67] See for example s. 59 of the *Police Act 1892* (WA), s.17 of the *Summary Offences Act* (Vic), s22 & 23 *Summary offences Act 1953* (SA); and s.12 *Police Offences Act 1935* (Tas)
[68] Sections 3 & 4 of the *Summary Offences Act*.
[69] s.5 & s5A *Summary Offences Act* (NZ)

The corresponding West Australian 'disorderly behaviour' provision is section 74A *Criminal Code 1913* (Western Australia). The offence carries a $6000 fine and does not carry imprisonment.[70]

74A. Disorderly behaviour in public

(1) In this section —

***behave in a disorderly manner** includes —*

(a) to use insulting, offensive or threatening language; and

(b) to behave in an insulting, offensive or threatening manner.

(2) A person who behaves in a disorderly manner —

(a) in a public place or in the sight or hearing of any person who is in a public place; or

(b) in a police station or lock-up,

is guilty of an offence and is liable to a fine of $6,000.

In Western Australia in order to reduce prison numbers, there is now a policy of not allowing prison sentences of less than six months for minor offending. The offence of 'Disorderly behaviour' therefore does not provide imprisonment as an option but instead has a large maximum fine of $6000. Other public order offences however do carry imprisonment. The offence of 'Threatening Violence' (section 74) carries 12 months, 'Obscene acts in Public' (section 202) carries 12 months, and 'Indecent acts in public' (section 203) carries nine months imprisonment.

SA provisions

South Australia has perhaps the most streamlined section.

Section 7—Disorderly or offensive conduct or language

(1) A person who, in a public place or a police station—

(a) behaves in a disorderly or offensive manner; or

(b) fights with another person; or

(c) uses offensive language,

is guilty of an offence.

In the South Australia Act, 'disorderly' behaviour is defined[71] to include 'riotous' behaviour, and 'offensive' behaviour includes 'threatening abusive or insulting' behaviour. The offence carries three months imprisonment. 'Indecent behaviour and gross indecency' (section 23)

[70] WA has also removed imprisonment as a penalty for stealing or receiving goods worth less than $1000. See section 426(4) Criminal Code WA.
[71] Section 7(3)

also carries three months whereas the penalty for 'indecent language' (section 22) only carries a fine of up to $250.

NSW provisions

New South Wales has separated the offences of 'offensive conduct' and 'offensive language' and does not have a disorderly behaviour prohibition, (there is however section 11A 'Violent Disorder', which is the equivalent of the Northern Territory section 47AA.) The 'offensive conduct' provision provides that merely using offensive language does not qualify as 'offensive conduct'.

In New South Wales 'Offensive conduct' (section 4 *Summary Offences Act 1988*) carries three months imprisonment whereas ''Offensive language' (section 4A) carries a fine or up to 100 hours of community service.

Queensland provisions

Queensland, after the decision of *Coleman v Power* [72] in which a conviction for using insulting words was set aside, repealed their old *Vagrants, Gaming and Other Offences Act 1931* (Queensland) and introduced the *Summary Offences Act 2005* (Queensland). This Act includes the offence of Public Nuisance (section 6)[73].

Section 6 Public Nuisance

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

…

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

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.

The offence carries six months imprisonment and / or 10 Queensland penalty units ($1,000). Behaving in an offensive way is said to include using offensive, obscene, indecent, or abusive language. Behaving in a threatening way includes using threatening language. A complaint from the public is not required before a Police officer can start proceedings. Thus the behaviour must not only be of a certain anti-social type but it must also interfere or be likely

[72] (2004) 220 CLR 1.
[73] Section 6 *Summary Offences Act 2005* (Qld) was introduced originally as section 7AA *Vagrants, Gaming and Other Offences Act 1931* (Qld) in 2003, taking effect from April 1 2004. Then when the Vagrants Act was repealed the offence was carried over in identical terms to section 6 *Summary Offences Act 2005* (Qld)

to interfere with public enjoyment of a public space. This requirement of the likely interference of the public's enjoyment of public space reinforces the need for a potential victim to the offence and should be included in the new Northern Territory section dealing with this type of behaviour. It should not be a public nuisance if there is in fact no public to witness the nuisance.

Queensland now has the most recent version of this offence. The Queensland legislation has removed the offence of 'disturbing the public peace', and also removed any mention of Police stations, dwelling houses, dressing rooms, training sheds or clubhouses. There is also no reference to 'disrupting the privacy of another person'.

The omission of Police stations from the offence is another matter however and as a Police station is not a public place and a lot of nuisance behaviour occurs within a Police station, the new Northern Territory offence should have Police stations included.

Australian Capital Territory provisions

The Australian Capital Territory has section 392 *Crimes Act 1900* (Australian Capital Territory) 'Offensive Behaviour' which carries no imprisonment but has $1000 fine. The offence does not include 'disorderly' behaviour.

Section 392 *Offensive behaviour*

> *A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner*.

As has been shown there is a wide variety of ways the different Australasian jurisdictions have approached this behaviour.

This subsection has remained much the same since 1924 and describes a number of different types of behaviour which can be broken down to;

(i) Riotous Behaviour

(ii) Offensive Behaviour

(iii) Disorderly Behaviour,

(iv) Indecent Behaviour

(v) Fighting, and

(vi) Using obscene language, in public.

16.6 Section 47(a) – prosecutions (last 10 years to 30 June 2013)

(i) Riotous Behaviour in a Public Place has been charged 140 times in the last 10 years (to 30 June 2013). 134 infringement notices have been issued in that period.

This offence is one of the summary offences that NAAJA would prefer to be left in the Act to allow for the charging of behaviour that is not of the quality or seriousness of 'Violent Disorder' (section 47 AA).

(ii) Offensive Behaviour in a Public Place has been charged 393 times in the last 10 years. 2335 infringement notices have been issued in that period.

(iii) 'Disorderly Behaviour in view of the Public' has been charged 253 times in the last 10 years. 'Disorderly Behaviour in Public Place' has been charged 3627 times. This anomaly is explained either by the behaviour occurring on private premises but being in view of the public, or by Police using different wording in the charge while describing the same behaviour.

(iv) 'Behaving in an Indecent Manner in a Public Place' has been charged 85 times in the last 10 years. This is often the offence of urinating in public. Some jurisdictions have a separate offence of urinating in public. 6689 infringement notices have been issued in that period.

(v) The figures show 'obscene language' has not been charged in the last 10 years under this subsection but has been charged instead under section 53(1)(a)(i) for total of 605 times (see discussed below).

Police generally charge either 'disorderly behaviour' or 'offensive behaviour' when using section 47, as most of the proscribed behaviour can fit under one or other of these two headings. Most of the behaviour that has been charged under the other headings could probably also have been charged as either 'disorderly' or 'offensive' behaviour. What the Police charge as 'Indecent behaviour', for example, can be charged as 'offensive behaviour' up to the point where the objective seriousness of the offending leads to it being charged as 'Gross indecency in Public'[74] in the Criminal Code. Riotous behaviour similarly could be charged as 'disorderly behaviour' up to the point where the objective seriousness of the behaviour leads it to being charged as 'Violent disorder'[75], Unlawful Assembly[76] or Riot.[77] Fighting in public can similarly be charged as 'disorderly behaviour'.

The Queensland section, has a requirement that the behaviour;

> *"interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public",*

Apart from the obvious requirement this subsection brings that there must be a victim or potential victim of the behaviour, this also broadens the provision to include the situation of behaviour being within the hearing or view of the public, but not in a public place, and so would cover the offences, that occur for example on private land, or in a bus or the back of a Police car, that should be included but would otherwise be missed.

16.7 Section 47(b) – disturbing the public peace

Disturbing the peace does not envisage 'the peace' as in 'peace and quiet' or tranquillity. The term 'disturbing the peace' is not defined in the *Summary Offences Act* or the Criminal Code but case law has defined a breach/disturbance of the peace as:

(i) whenever harm is done or likely to be done to a person

[74] Section 133 NTCC
[75] Section 47AA *Summary Offences Act*
[76] Section 63 NTCC
[77] Section 66 NTCC

(ii) whenever harm is done or likely to be done to property in the presence of the owner

(iii) whenever a person is in fear of being harmed through an assault, affray, riot or other disturbance.[78]

16.8 Section 47(b) – prosecutions (last 10 years to 30 June 2013)

'Disturbing the Public Peace' has been charged 47 times in the last 10 years. The term is too imprecise to remain in the Act and as the behaviour the subsection is meant to control is covered by subsection (a), it is unnecessary. 939 infringement notices have been issued in that period.

16.9 Section 47(c) – disorderly behaviours - content

This deals with behaviour within a police station. There is no apparent reason in having to have a separate offence for offensive or disorderly behaviour which occurs in a Police station.

Section 47(c) should be rewritten to include being in or within the view of a public place or a Police station.

16.10 Section 47(c) – disorderly behaviours - prosecutions (last 10 years to 30 June 2013)

'Disorderly Behaviour in a Police Station' has been charged 1119 times, 'Indecent Behaviour in a Police Station' has been charged 22 times and 'Offensive Behaviour in a Police Station' has been charged 47 times for a total of 1194 charges in the last 10 years. 1984 infringement notices have been issued in that period for Disorderly Behaviour in a Police Station' and 437 infringement notices have been issued in that period for 'Offensive Behaviour in a Police Station'

16.11 Section 47(d) – offensive behaviours in a dwelling house, dressing room etc

This covers offensive behaviour that would otherwise be missed as a 'dwelling house' is not a public place. The words 'dressing room, training shed or clubhouse' have not been used in any charges in the last 10 years to 30 June 2013 and are superfluous. As the behaviour in this section happens in a dwelling house and not in public, it is not a public order offence.

16.12 Section 47(d) – offensive behaviours in a dwelling house- prosecutions (last 10 years to 30 June 2013)

'Behave Offensively in a Dwelling House' has been charged 154 times in the last 10 years. 89 infringement notices have been issued in that period.

16.13 Section 47(e) – causing annoyance to another person - content

Some people question if this should still be an offence in a democracy, even with the 'unreasonably' as a precursor. Being unreasonable or very annoying should not be a criminal offence. There was disquiet and ridicule in New South Wales during the recent visit of the

[78] *Parkin v Norman* [1983] QB 92; [1982] 3 WLR 523; [1982] 3 All ER 583; *R v Chief Constable of Devon & Cornwall; Ex parte Central Electricity Generating Board* [1982] QB 548; [1981] 3 WLR 967; [1981] 3 All ER 826 at 832–833 (All ER).

Pope for World Youth Day when being annoying was briefly made criminal behaviour. That provision was swiftly repealed.

16.14 Section 47(e) – causing annoyance to another person prosecutions (last 10 years to 30 June 2013)

'Unreasonably Cause Substantial Annoyance' has been charged 347 times in the last 10 years. 479 infringement notices have been issued in that period.

16.15 Section 47(f) – disrupting privacy - content

This is the 'Peeping Tom' offence and this behaviour is not properly covered by the other section 47 offences. Disrupting privacy is still a serious matter and should be dealt with separately with a 'Peeping Tom' provision.

16.16 Section 47(f) – disrupting privacy - prosecutions (last 10 years to 30 June 2013)

'Unreasonably Disrupt Privacy' has been charged 26 times in the last 10 years. 60 infringement notices have been issued in that period.

16.17 Penalty for breaches of section 47(a)-(f)

The offences in section 47 carry $2000 and six months imprisonment. As can be seen from the above discussion the punishment for this offence varies between the jurisdictions and ranges from just a fine to six months imprisonment.

Western Australia,[79] and the Australian Capital Territory[80] prescribe only a fine. New South Wales[81] and New Zealand[82] have no imprisonment and only a fine for the language component of the offence, but three months imprisonment for the behaviour. South Australia,[83] provides for 3 months imprisonment for behaviour and language. Victoria[84] has only a fine for disorderly conduct, but up to six months (for a third offence) imprisonment for 'obscene, indecent or threatening' language or behaviour[85]. Queensland[86] and the Northern Territory prescribe six months.

The Northern Territory is at the heavier end of punishment for this offence. As has been pointed out in discussions with Northern Australia Aboriginal Justice Agency and members of the Northern Territory Defence Bar, the offence impacts mainly on indigenous people. Although actual imprisonment is not often given for this offence, it affects indigenous offenders disproportionately in other extended areas. For example where suspended sentences are breached by section 47, which at present is an offence carrying a term of imprisonment, the fact that section 47 itself carries a term of imprisonment increases the gravity of the breach and can lead to reimposition of the outstanding suspended sentence. It would seem that if the term of imprisonment were removed from the offence it would go some way towards lessening the appalling imprisonment rates for indigenous offenders.

[79] Section 74A *Criminal Code Compilation Act 1913* (WA)
[80] Section 392 *Crimes Act 1900* (ACT)
[81] Sections 4 & 4A *Summary Offences Act 1988* (NSW)
[82] Sections 3 & 4 *Summary Offences Act 1981* (NZ)
[83] Section 7 *Summary Offences Act 1953* (SA)
[84] Section 17A *Summary Offences Act 1966* (Vic)
[85] Section 17 *Summary Offences Act 1966* (Vic)
[86] Section 6 *Summary Offences Act 2005* (Qld)

There is often the unfortunate situation where an initial apprehension for disorderly behaviour or offensive language lead to an altercation with arresting Police and consequent charges of 'resist Police' and then 'assault Police'. The vast majority of these offences are caused when alcohol is involved. A lessening of the criminality of the initial triggering offence of 'disorderly behaviour' or 'offensive language' would lead to less confrontation and consequently less escalation of the situation and the consequent further serious charges. This is especially so in the very common situations of offenders directing bad language at Police, generally in situations where alcohol is involved, and the situation deteriorating rapidly to a confrontation with Police. Police, without any malice, call these three charges when committed together "the trifecta" and call the two charges of disorderly behaviour and assault Police when committed together "the quinella".

The more extreme or serious examples of this offence are almost always accompanied by other more serious offences carrying heavier penalties, and this offence tends to be either subsumed in the other offences and becoming part of an aggregate sentence, or this particular charge gets dropped as being duplicitous.

The separation of the behaviour aspect from the language aspect in the offence would offer the opportunity for a lesser penalty where there is no violence threatened and the offence is caused solely by the language used. It has been argued that in a society such as the Northern Territory, unless violence is involved or implied, an offence that consists only of language should not carry imprisonment.

In the Northern Territory in 2009 of 317 people convicted of section 47 offences only 51 people (16%) spent time in gaol with the median time being less than a month. The majority (217) were given fines.

The proposed penalty for section 47(a)-(f) offences in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was imprisonment for 6 months and/or 50 penalty units. This appears to be the appropriately penalty.

16.18 Fault element - section 47(a)-(f)

In *Pregelj v Manison* Nader J. said, regarding a couple charged with 'offensive behaviour';

> *"By virtue of s 31 of the NT Code, the appellants would not be criminally responsible for that event unless they intended it or relevantly foresaw it. "Intended" in this context means, not that they desired it to happen, but that they did the act with knowledge, in its wide sense, that offence to someone would be an actual or possible consequence."*

Guilt then is established by either the defendant having the intent to offend by the conduct, or foreseeing the causing of offence as a possible consequence of the conduct.

Recommendations for section 47

- The offensive conduct should capture riotous, disorderly or indecent behaviour that 'disturbs the public peace' or 'unreasonably disrupt the privacy of another person'.
- Fighting should be removed from the section.
- The offence should include behaviour in a Police station as well as in a public place.
- The offence should have 'recklessness' as the fault standard.
- The offence should not include a similar requirement to Queensland's requirement of the behaviour interfering with the public's enjoyment of public space.[87]
- The provision should not follow the New South Wales and New Zealand structure of separating the language provisions from the behaviour provisions.
- There should be a separate 'Peeping Tom' offence.
- The offence should carry a maximum penalty of 6 months or a 50 penalty unit fine.

17. *Section 47AA – Violent disorder*

17.1 Content of section 47AA

(1) A person is guilty of an offence if:

(a) the person is one of two or more people engaging in conduct that involves a violent act; and

(b) the conduct would result in anyone who is in the vicinity and of reasonable firmness fearing for his or her safety; and

(c) the person:

(d) intends or knows that the conduct involves a violent act and would have the result mentioned in paragraph (b); or

(e) is reckless as to whether the conduct involves a violent act and would have that result.

Maximum penalty: Imprisonment for 12 months.

(2) To avoid doubt:

(a) to establish the offence, it is unnecessary to prove that each of the two or more people individually engaged in conduct that involves a violent act and would have the result mentioned in subsection (1)(b); and

[87] Section (6)(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'.*

(b) no person of reasonable firmness need actually be, or be likely to be, present in the vicinity for the offence to be committed; and

(c) the offence may be committed in private or public places; and

(d) subsection (1)(c) does not affect the determination of the number of people mentioned in subsection (1)(a).

(3) The offence is an offence to which Part IIAA of the Criminal Code applies.

Note for subsection (3)

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences, for example, "conduct", "intention" and "recklessness".

(4) In this section:

***conduct that involves a violent act** includes:*

(a) conduct capable of causing injury to a person or damage to property (whether or not it actually causes such injury or damage); and

(b) a threat to engage in such conduct.

This offence originally was the offence of 'Affray'. The offence in its present form was enacted in 2006 in response to the disorders in Yuendumu and Wadeye. It was written as part of the 2006 Anti-Gangs legislation so as to be compliant with Part IIAA of the Criminal Code. It has proved itself to be a useful provision covering much violent group activity that is less serious than a riot or serious assaults.

The offence requires that;

(a) the person is one of two or more people engaging in conduct that involves a violent act.

Some other jurisdictions require more people to be engaged for example New South Wales has section 11A 'Violent Disorder' requiring three or more people. Similarly Queensland has section 10A 'Unlawful Assembly', again requiring three or more people.

The Northern Territory provision requires 'recklessness' as the mental or fault element. Other jurisdictions such as Queensland require knowledge, and SA requires intent. Thus the Northern Territory has a lower level (ie easier to prove) fault element than the other jurisdictions.

17.2 Section 47AA – number of prosecutions (to 30 June 2013)

The offence has been prosecuted 883 times over the 10 years ending 30 June 2013. 3635 infringement notices have been issued in that period.

17.3 Section 47AA – penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not provide for any changes to the maximum penalty.

NAAJA submits the penalty for the offence of 12 months is too harsh a penalty for an offence that seldom causes any actual injury.

The South Australian provision carries 2 years imprisonment.[88] The New South Wales provision carries six months.[89] It is recommended the Northern Territory provision remain at 12 months (with maximum fine being 100 penalty units).

Recommendation for section 47AA

This provision and the 12 months maximum penalty should be retained.

18. *Section 47AB – Threatening violence*

18.1 Section 47AB – contents

A person who:

(a) with intent to intimidate or annoy a person, threatens to damage a dwelling-house; or

is guilty of an offence.

Penalty: Imprisonment for 12 months or, where the offence is committed at night-time, two years.

When initially enacted the offence was meant to address threatening to damage more things than just the dwelling house. It does not make grammatical sense in its present form and if the offence were to remain either the word 'or' should be removed, or perhaps there should be other things added to the things threatened.

The offence is listed in IJIS as "Alarm Person in Dwelling House" or "Threaten Damage to a Dwelling House".

18.2 Section 47AB – prosecutions (to 30 June 2013)

The offence has been charged 16 times in 10 years. The offence of 'Threats' section 200 Criminal Code also covers this conduct. It appears that section 47AB is unnecessary.

18.3 Section 47AB – penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not provide for any changes to the maximum penalty.

Recommendation for section 47AB

Section 47AB should be repealed.

[88] Section 6A *Summary Offences Act* 1953 (SA)
[89] Section 11A *Summary Offences Act 1988* (NSW)

19. **Loitering offences**

Included among the Public Order Offences are the offences dealing with loitering. The loitering offences are mainly preventative offences relying on Police observations and analysis of a person's conduct, coupled with the Police use of discretion. The Police, when anticipating an offence of any kind or a breach of the peace, have the power to request people to move away from a place in order to prevent an offence or breach of peace[90] from occurring. If the person does not move away they then commit an offence by not complying with the request. The offence is not the initial loitering but continuing to do so.

The offence does not necessarily require a complaint from the public. It may pre-empt another actual offence or attempted offence. If the offence of 'loitering' did not exist then the Police might have to wait for another actual offence endangering people or property to occur before they could do anything. It is better for all concerned to prevent an offence from occurring than punish an offence after it has happened.

The English jurist Blackstone said:

> *"...preventative justice is upon every principle, of reason, of humanity and of sound policy, preferable in all respects to justice; the execution of which, though necessary, and in its consequences a species of mercy to the Commonwealth, is always attended with many harsh and disagreeable circumstances."*[91]

The Privy Council considered the meaning of loitering in *Attorney-General of Hong Kong v Sham Chuen* [1986] 1 AC 887;

> *"Obviously a person may loiter for a great variety of reasons, some entirely innocent and others not so. It would be unreasonable to construe the subsection to the effect that there might be subjected to questioning persons loitering for plainly inoffensive purposes, such as a tourist admiring the surrounding architecture. The subsection impliedly authorises the putting of questions to the loiterer, whether by a Police officer or by any ordinary citizen. The putting of questions is intrusive, and the legislation cannot be taken to have contemplated that this would be done in the absence of some circumstances which make it appropriate in the interests of public order. So their Lordships conclude that the loitering aimed at by the subsection is loitering in circumstances which reasonably suggest that its purpose is other than innocent."*[92]

The more modern and more enlightened loitering provisions allow a Police officer, who believes the loitering to be in circumstances that suggest an offence would be committed, to request the loitering person to move and so prevent an offence or an attempt at an offence. The offence is not the suspicious behaviour as perceived by the Police, but the failure to obey the Police direction to move on. This contrasts with some jurisdictions such as New Zealand and Victoria where the suspicious behaviour itself can be enough to make out the offence.

The words "cease to loiter" however, may not be understood by many offenders and the legislation should be worded so that Police can always use words that will be understood.

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[90] A legal term of art.
[91] Chapter 18 of book IV
[92] @ 896. See also *Wynne v Lockyer* [1978] V.R. 279; *Samuel v Stokes* (1973) 130 CLR 490; *Power v Huffa* (1976) 14 SASR 337; *Rice v Daire* (1982) 30 SASR 560

The terminology in the offence perhaps should be changed to reflect that the person is to 'move on' rather than 'cease to loiter' and should in fact use that phrase.

Victoria has section 6. "Direction by Police to move on" which does the same job as the other jurisdictions loitering provisions. The addition of subsection (5) in the Victorian provision provides a safeguard for the democratic rights of protest;

(5) This section does not apply in relation to a person who, whether in the company of other persons or not, is-

(a) picketing a place of employment; or

(b) demonstrating or protesting about a particular issue; or

(c) speaking, bearing or otherwise identifying with a banner, placard; or

sign or otherwise behaving in a way that is apparently intended to

publicise the person's view about a particular issue.

This safeguards political or industrial protest which should be protected in a democracy.

20. Loitering for sexual offences

20.1 Section 47AC – loitering for sexual offences -contents

*(1) In this section, **sexual offence** means:*

(a) an offence against Division 2 of Part V of the Criminal Code;

(b) an offence against sections 188(2)(k), 192, 192B or 201 of the Criminal Code;

(c) an offence of:

(i) counselling or procuring;

(ii) aiding or abetting the commission of;

(iii) conspiring to commit;

(iv) attempting to commit; or

(v) being an accessory after the fact to,

such an offence.

(2) A person who:

(a) has been found guilty of:

(i) a sexual offence;

(ii) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or

(iii) an offence against section 50[93]; and

(b) is found, without reasonable excuse, idling or lingering about in or near:

(i) a school, kindergarten or child care centre; or

(ii) a public place regularly frequented by children and in which children are present at the time of the loitering,

is guilty of an offence.

Penalty: $5,000 or imprisonment for 12 months.

(3) If a person has at any time been convicted of an offence against a law of a State or another Territory of the Commonwealth which creates an offence substantially similar to a sexual offence, the conviction for the offence against that law shall be taken for the purposes of this section to be a conviction of a sexual offence.

This is in fact a 'status offence' and is intended to be such. The status of the person being the fact that the person has been convicted of a sexual offence.

In *DPP v Field* [2001] VSC 472, it was held it is not necessary to prove the intention of committing a further sexual offence. Other loitering offences require 'intent' whereas this offence is made out if the defendant (having the requisite prior offence or offences) is found "without reasonable excuse, idling or lingering about in or near…". This reverses the onus and the person has to have a reasonable excuse to be where he is.

It has been suggested that this offence has been overtaken by the Child Sex Offenders Legislation (the *Child Protection (Offender Reporting and Registration) Act)*. Although that Act prohibits child related employment and demands registration of "sexual offenders" among other things, it does not necessarily prohibit 'idling or lingering' around a school or similar place.

20.2 Section 47AC – prosecutions (last 10 years to 30 June 2013)

There have been 10 prosecutions for this offence since 1 July 2003.

Section 47AC – penalty

The current maximum fine (of $5,000) is less than the default penalty level of 100 penalty units (for 6 months) provided for in the *Interpretation Act.* There appears to be no good reason for this variance.

New South Wales and Tasmania have similar provisions[94] carrying up to 2 years imprisonment.

The proposed penalty for section 47AC in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units ($14,400).

[93] 'Indecent exposure' s.50 *Summary Offences Act*
[94] Section 11G *Summary Offences Act 1988* (NSW) & section 7A *Police Offences Act 1935* (Tas)

Recommendation for section 47AC

- This provision should be retained.
- The current maximum penalty should be retained at 12 months but the maximum fine of $5000 should be removed from the offence so that the default fine level of 100 penalty units ($14,400) in section 38DA of the *Interpretation Act* applies.

21. Loitering general offence

21.1 Section 47A – loitering general offence- contents

(1) A person loitering in any public place who does not give a satisfactory account of himself when requested so to do by a member of the Police Force shall, on request by a member of the Police Force to cease loitering, cease so to loiter.

Penalty: $2,000 or imprisonment for six months, or both.

(2) Where a person is loitering in a public place and a member of the Police Force believes, on reasonable grounds

(a) that an offence has been or is likely to be committed; or

(b) that the movement of pedestrian or vehicular traffic is obstructed or is about to be obstructed,

by that person or by any other person loitering in the vicinity of that person;

(c) that the safety of the person or any person in his vicinity is in danger; or

(d) that the person is interfering with the reasonable enjoyment of other persons using the public place for the purpose or purposes for which it was intended,

the member of the Police Force may require any person so loitering to cease loitering and to remove from that public place any article under his control, and a person so required shall comply with and shall not contravene the requirement.

Penalty: $2,000 or imprisonment for six months, or both.

Arguably, section 47A(1) is needlessly intrusive and is an example of a 'status offence'. It allows the Police, without the requirement to give a reason, to ask anybody they don't like the look of, to give a 'satisfactory account of themselves'. This is a hangover from the Poor Laws and the *Vagrancy Act.* It is open to the abuse and victimisation of people according to who they are and what they look like rather than what they are doing. It can be used unfairly particularly regarding Indigenous people in towns.

Section 47A(2) on the other hand requires that a member of the Police 'believes on reasonable grounds' that an offence has been or is likely to be committed, an obstruction is being caused, or that something is happening or about to happen that needs the intervention of the Police. This construction is much more reasonable than the status offence of section 47A(1).

The section requires that the Police officer 'believes on reasonable grounds' that an offence has been or is likely to have been committed. This is a high standard and places much evidentiary responsibility on the Police for what is a preventative provision. It would be preferable to have 'reasonably suspects' as the mental standard required from the Police before they request someone to move on. 'Suspects' is a lower standard of conviction than 'belief'.

'Belief' requires an element of certainty which would be unrealistic and unnecessary for the way the offence is used. The offence as it used to be expressed is "fail to cease to loiter", meaning there is no offence if the person moves on. The provision is used more as a preventative power than a criminal offence and the higher mental standard of conviction required from the Police officer to 'believe' that a criminal offence has been or is likely to be committed tends to make the power too technical and difficult to justify. It is a discretionary and preventive power that should not be made too hard to use.

The offences in the other jurisdictions have developed quite differently from each other although displaying the same roots. Tasmania[95] has a similar section carrying 6 months imprisonment. Victoria's 'Loitering with intent' by a 'reputed thief' or convicted drug offender (section 49B) carries 2 years, while disobeying the direction by police to move on' (section 6) carries a fine. South Australia's 'Order to move on or disperse' (section 18) carries 3 months. New Zealand has an intent based provision[96] carrying a fine with imprisonment for three months for a second offence.

21.2 Section 47A – prosecutions (last 10 years to 30 June 2013)

Section 47A(1) has been charged 15 times and 47A(2) has been charged 124 times.

21.3 Section 47A – penalty

The proposed penalty for section 47A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units ($7,200).

[95] Section 7 *Police Offences Act 1935* (Tas)
[96] Section 28 *Summary Offences Act* 1981 (NZ) 'Being found in public place preparing to commit crime'

Recommendation for section 47A

- Subsection 47A(1) and (2) should remain and be reworded.
- The Police when enforcing the provision should not be required to use the word "loiter", rather they should have the discretion to use expressions such as "move away", "move along" or terms with similar meaning.
- 'Reasonably suspects' should replace 'believes on reasonable grounds'.
- There should be a provision similar to section 6(5) of the Victorian *Summary Offences Act* which safeguards Political or Industrial action. (see above p35)
- The fault element should be intent.
- The maximum penalty should remain at 6 months with the default maximum monetary penalty of 50 penalty units to apply.

22. Loitering following notice

22.1 Section 47B – loitering following notice

(1) A police officer may give a written notice to a person who is loitering at a public place:

(a) requiring the person to stay away from the place or an area including the place for a specified period not exceed 72 hours from the time the notice is given; and

(b) specifying the place or area, and the period, as is reasonable in the circumstances; and

(c) specifying the consequences of contravening the notice.

(2) The officer may do so only if the officer reasonably suspects:

(a) the person has committed, or is about to commit, an offence at the place or in the area; or

(b) the person is part of a group of people at the place and one or more people in the group have committed or are about to commit an offence at the place or in the area

(4) The person is guilty of an offence if:

(a) the officer gives the person the notice; and

(b) the person contravenes the notice.

Maximum penalty: 100 penalty units or imprisonment for six months.

(5) It is a defence for an offence against subsection (4) if the defendant proves that the defendant has a reasonable excuse.

(6) The officer must ensure all reasonable steps are taken to explain to the person (in language the person can readily understand) the matters mentioned in subsection (1)(a) to (c).

(7) The notice is not invalidated by a failure to comply with subsection (6).

This legislation has been described as 'hot spots' legislation which indicates the sort of problem it was introduced to address.

Police were having difficulties with the application of this section in the places for which it was designed, such as Mitchell St. on a Friday or Saturday night. The issuing of a notice was felt to be impractical where there is a large group of people, and the Police suggested the section could be amended to provide for a verbal notice to be issued which would be formally recorded as soon as possible back at the station.

If however a verbal notice was all that is required it would seem that a time of 72 hours to stay away from the place is excessive and perhaps 12 hours would be more appropriate. This addresses the time at which the behaviour is a problem, say from midnight till 4 o'clock in the morning, and would keep the person away till the next afternoon, when the circumstances will have changed. This is more reasonable. A verbal warning to stay away for three days seems to be too much. The shorter time allows for the Police officer to monitor compliance for the duration of his or her shift, and to pass on information to those Police on the following shift. Such a provision would be, of course, only of any practical use if police officers maintain appropriate records of any verbal warnings that may be given.

Police have recently been issued with new 'loitering notice' forms to use while patrolling those particular beats and the system is being re-trialed with initial reports of success.

The *Liquor Legislation Amendment Act 2010* addressed these problems in a different way, by introducing a system of designated areas (such as Mitchell St) from which people can be banned for periods of 48 hours by police and up to a year by a Court for persistent troublemakers. This will most likely lead to a lessening of importance for this provision.

NAAJA says there have been complaints from young people about the use of these Police powers. NAAJA also suggests an on the spot fine would be appropriate. The Northern Territory Law Society is concerned at the extent of the powers.

22.2 Section 47B – prosecutions in period since 2006

There were 10 prosecutions for this offence in 2007 and 129 since that time. It was enacted in 2006. The Police initially complained that the legislation was too hard to implement, placed too many restrictions and demands on them, and was not having the effect that was intended.[97]

The offence has been charged 106 times in the last three years (to 30 June 2013).

[97] See the second reading speech by Dr Toyne on 22/08/06

22.3 Section 47B – penalties

The maximum fine for this offence is 100 penalty units. This is greater than the default level that would otherwise apply because of the operation of section 38DA of the *Interpretation Act.*

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not provide for any change to the penalty units in section 47B.

Recommendation for section 47B

- This provision should be retained.
- A verbal notice clause be inserted requiring a person to stay away from the place or area for a specified period of time not exceeding 12 hours.
- The maximum penalty should remain at 6 months and the default monetary penalty of 50 penalty units should apply.

23. Dishonesty offences

23.1 Section 49A – contents

(1) Any person who, without reasonable excuse:

(a) interferes with or tampers with any vehicle;

(b) works or uses any horse or other beast of burden; or

(c) interferes with, tampers with or goes on board a boat,

without the consent of the owner or the person in lawful charge thereof, shall be guilty of an offence.

Penalty: $1,000 or imprisonment for six months, or both.

(2) A Court which finds a person guilty of an offence against this section may order him to pay to the owner of the vehicle, horse, other beast of burden, boat, equipment, material or article in respect of which the offence was committed, a reasonable sum by way of compensation for any loss or damage caused to the owner by the defendant by reason of the commission of the offence.

(2A) Where a person is found guilty of an offence against this section, the Court may, in addition to or instead of any other penalty that may be imposed by the Court, suspend any licence to drive a motor vehicle within the meaning of the Motor Vehicles Act that is held by that person for such period as the Court thinks fit.

*(3) In this section **boat** includes canoe, dinghy, yacht, raft, pontoon, ship and any other like vessel.*

These are generally lower level dishonesty offences than the dishonesty offences in the Criminal Code. Some of them double up with the Criminal Code offences and so should be repealed. Some however have differences, with for example evidentiary rules or in the offences overall criminality, that make them worth retaining.

It would seem at first that this is covered to an extent by section 218 Criminal Code 'Unlawful Use of Vessel, Motor Vehicle, Caravan or Trailer'. The Code offence however does not include bicycles, carts or carriages whereas 49A talks of 'vehicles' not just motor vehicles.

Although the heading is 'Illegal Use' the actual offence is 'interferes with' or 'tampers', which is not the same as using or stealing the vehicle. The Criminal Code offence however is 'Unlawful Use' of a motor vehicle, which includes what would generally be called stealing.[98] The two offences are thus very different in criminality and effect.

The main practical difference between the Criminal Code offence and the *Summary Offences Act* offence are that the Summary offence, as a lesser offence, has a lesser penalty of six months as against two years. The *Summary Offences Act*, also allows for suspension of the licence of the offender pursuant to subsection 49A(2A), and compensation to the owner pursuant to subsection 49A(2).

Section 88 of the *Sentencing Act,* 'Orders for Restitution and Compensation' covers compensation to the owner anyway, so it is not necessary to have the power to order compensation in the provision itself. Therefore 49A(2) is unnecessary and should be repealed.

It is also questionable whether there should be a power to disqualify the licence of the offender in the *Summary Offences Act*. Licence disqualification should only be for traffic offences. The offence is not a traffic offence, but a dishonesty offence and should be dealt with as such and should not import a licence disqualification. Subsection 49A(2A) should also be repealed.

23.2 Section 49A– prosecutions (last 10 years to 30 June 2013)

The offence of interfering with boats has been used 5 times in the last 10 years.

Interfering with a vehicle has been used 1396 times.

23.3 Section 49A – maximum penalty

The proposed penalty for section 49A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was imprisonment for 6 months and/or 50 penalty units.

[98] The difficulty with calling unlawful use of a motor vehicle 'stealing' is the difficulty in proving an intention to permanently deprive the owner of the vehicle. This question does not arise in the Summary offence of 'interferes with' or 'tampers with' the vehicle.

Recommendation for section 49A

- It is recommended that the offence remain but subsections (2) and (2A) be repealed.
- The reference to working horses and beasts of burden should remain (albeit more modern language could be used).
- The offence should incorporate the Criminal Code definition of vehicle and continue to include boats.
- The fault element should be intent.
- The maximum penalty of 6 months should remain but the monetary penalty (of $1000) should be removed so that the default maximum penalty (50 penalty units) applies.

24. Indecent exposure of the person

24.1 Section 50 – contents

Any person who offends against decency by the exposure of his person in any street or public place, or in the view thereof, shall be guilty of an offence.

Penalty: *$2,000 or imprisonment for six months, or both*.

The language should be less archaic. The phrase 'his person' means something different now to the meaning it had when the section was first written[99].

Victoria has drafted the offence in clearer language in their section 19;

> *"A person must not wilfully and obscenely expose the genital area of his or her body in, or within view of, a public place".*

It is appropriate that the offence, as in Victoria, should make it clear that there is a mental (fault) element as to exposing a person's genital area in such as way that is obscene. Thus it is not the fact of the exposure but the intention or recklessness behind the exposure which criminalises the act.

Queensland approaches the same problem by using the term 'circumstances of aggravation', which when present, take the penalty from 2 penalty units to 40 penalty units or 12 months imprisonment. A circumstance of aggravation in the Queensland section is to "wilfully expose his or her genitals so as to offend or embarrass another person." The 'wilfully' attaches to the 'so as to offend or embarrass', and so at least recklessness as to offending or embarrassing must be present. Again, an inadvertent or non-offensive exposure is not criminalised.

[99] "…today, and indeed by 1824 the word 'person' in connection with sexual matters had acquired a meaning of its own, a meaning which made it a synonym for penis." *Evans v Ewels* [1972] 1 WLR 671; 2 All ER 22.

The Criminal Code contains the offence of 'Gross Indecency in Public' (s.133) which covers more extreme behaviour than that contemplated by this section, such as masturbating or other objectionable obscene behaviour in public. The Criminal Code provision requires an *act* of gross indecency. This section is solely concerned with exposing ones genitals in public. The fault element should be recklessness.

24.2 Section 50 – prosecutions (last 10 years to 30 June 2013)

The offence has been charged 67 times in the last 10 years.

24.3 Section 50 – maximum penalty

The current maximum penalty of six months is appropriate for a worst case breach of section 50.

The proposed penalty for section 50 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and / or 50 penalty units.

The maximum fine of $2,000 appears too low. It seems better to adopt the default level of 50 penalty units.

Recommendation for section 50

(1) This provision should be rewritten to mirror the Victorian section 19.

(2) The fault element should be recklessness.

(3) The maximum penalty should remain at 6 months with the fine to 50 penalty units.

25. Extinguishing street lamps

25.1 Section 52 – contents

Any person who wantonly or maliciously breaks or injures any pane of glass, lamp, or lamp post, or extinguishes any lamp set up for public convenience, shall be liable to a penalty not exceeding $1,000, or imprisonment for six months, or both and in addition shall defray the necessary expense of repairing the damage done, to be estimated by the Justice finding the person guilty.

To injure or extinguish a street lamp would generally require physical damage of some sort. Thus, this provision is covered by section 251 Criminal Code ('Criminal Damage in General') and is unnecessary. This is a very old offence dating back to the days of old gas lamps and we are the only jurisdiction in Australasia to retain it. The section has been repealed in the other jurisdictions.

25.2 Section 52 – prosecutions (10 years to 2013)

There have been no prosecutions for this offence since 2000.

25.3 Section 52 – penalty

The proposed penalty for section 52 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 50 penalty units.

Not applicable (see recommendation).

Recommendation for section 52

Section 52 should be repealed.

26. Obscenity – general comment

Obscenity was originally an ecclesiastical offence and now there is fortunately a large body of case law as to meaning of 'obscene'.[100] And obscenity. The authorities say that the test is objective. For example with language, it is not a question of whether or not the individual who was addressed thought the words were obscene or indecent, but whether objectively in the prevailing circumstances the words meet that description.

The more serious of these offences may be better placed in the Criminal Code[101]. There are obvious difficulties with deciding where the line is drawn as to what is indecent and what is obscene, and what the words actually mean. Miscellaneous offences

26.1 Section 53(1) and (7) contents

There are two different offences left in this section 53 (after numerous alterations and subtractions). These are;

(i) Subsection 53(1)(a)(i) The singing of an obscene song or ballad, writing or drawing something obscene, or using profane or indecent language. *See discussed in a subsequent part of this paper.*

(ii) Subsection 53(7) (and related subsections) covering threatening, abusive or objectionable words or behaviour, or noise in a public place or on licensed premises which causes 'substantial annoyance'. *See discussed in a subsequent part of this paper.*

There have been prosecutions of comedians Rodney Rude[102] and Austin Tayshus[103]under similar legislation in Western Australia. Both were charged after public performances. Austin Tayshus was unlucky and was convicted whereas Rodney Rude, at first instance convicted, was then successful in his appeal. It is doubtful whether similar prosecutions would be countenanced nowadays.

New South Wales has divided the offence into three separate offences. Section 4 'Offensive Conduct', section 4A 'Offensive Language', and section 5 'Obscene Exposure'.

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[100] *Crowe v Graham* (1968) 121 CLR 375 per Windeyer @ 390; *Phillips v Police* (1994) 75 A Crim R 480

[101] For example section 133 NTCC. 'Gross indecency in public'.

[102] *Keft v Fraser* (unreported) WASC 21 April 1986

[103] *Carroll v Gutman* (unreported) WASC 19 July 1985

Queensland's section 6 "Public Nuisance" includes offensive, obscene, indecent, abusive or threatening language as offensive behaviour.

27. **Obscenity in or near a public place**

27.1 Section 53(1)(a)(i)– contents

(1) Any person who:

(a) in a public place, or within the view or hearing of any person passing therein:

(i) sings any obscene song or ballad, or writes or draws any indecent or obscene word, figure or representation, or uses any profane, indecent or obscene language,

shall be guilty of an offence.

i. The penalty for an offence against this section is a fine not exceeding $2,000 or imprisonment for a term not exceeding six months, or both.

ii. The Court hearing a complaint for an offence against this section shall not award costs against the complainant unless the Court considers that the complaint was unreasonably made

Section 53(1)(a) is an offence in respect of which an infringement notice may be issued (penalty $100)[104].

It is doubtful whether there is a place for a separate offence of obscene language whether or not it involves singing. The offences of 'disorderly behaviour' or 'offensive behaviour' in section 47(a) '*Offensive, &c., conduct*' cover this situation. If the language is offensive enough the proper charge is 'offensive behaviour', or 'offensive language'.

There is an intention in public order legislation that people should be allowed to enjoy, and have peaceful passage through, public places. If language is going to interfere with that, then it comes within the orbit of 'Offensive behaviour'. To criminalise the use of language itself, without a commensurate causing of distress, or undue offence, or fear however, may be too restrictive.

It is very difficult, especially in a place as diverse as the Northern Territory, to draw the line that criminalises certain language as offensive or indecent. Language found to be offensive in one setting may not be so in another. Gleeson CJ in *Coleman v Power*[105] said;

> *"it is impossible to state comprehensively and precisely the circumstances in which defamatory language in a public place will involve such a disturbance of public order, or such an affront to contemporary standards of behaviour, as to constitute the offence."*

[104] See regulations 4 and 4A of the Summary Offences Regulations
[105] (2004) 220 CLR 1

Having an offence of 'sings an obscene song or ballad…or uses any profane, indecent or obscene language' is old fashioned and out of touch with modern community standards. Again the language component is subjective. Profane as an adjective means not sacred[106] or 'blasphemous' and signifies attacking Christianity or perhaps other religions. Profanity in its more commonly understood form as general swearing, is used every day in many places where people congregate such as sports events, pubs and is common in general conversation.

27.2 Section 53(1) – prosecutions (last 10 years to 30 June 2013)

'Use Obscene/Indecent Language' has been charged 605 times in the last 10 years. On four of these occasions the offence related to writing. 2410 infringement notices have been issued in the past 10 years.

27.3 Section 53(1) – penalty

The proposed penalty for section 53(1) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units.

Not applicable (see recommendation).

Recommendation for section 53(1)

Section 53(1) should be repealed.

28. Threatening words or behaviour or annoying noise in a public place or in premised licensed under the *Liquor Act*

28.1 Section 53(7)-(10) – contents

(7) A person who in a public place or in licensed premises within the meaning of the Liquor Act :

(a) by threatening, abusive or objectionable words or behaviour, offends or causes substantial annoyance to another person; or

(b) makes such a noise as might reasonably in the circumstances cause substantial annoyance to another person,

whether that other person is in the public place, those premises or elsewhere, is guilty of an offence.

(8) ,,,(see next part of this paper).

(9) The penalty for an offence against this section is a fine not exceeding $2,000 or imprisonment for a term not exceeding six months, or both.

[106] See Oxford dictionary definition.

(10) The Court hearing a complaint for an offence against this section shall not award costs against the complainant unless the Court considers that the complaint was unreasonably made.

Section 53(7) is an offence in respect of which an infringement notice may be issued (penalty $100)[107].

There is an evolving problem with people's differing and changing standards in their use of words or language. The language today is different from the language of the past and more so from the distant past when this provision was first enacted. Language varies from place to place and from time to time and the expectations of what is appropriate or acceptable language changes according to time, place and circumstance.

Should there be an offence that criminalises words or language that offends or annoys someone? If that someone is a Police officer would one expect them to be made of 'sterner stuff'[108].

There should always be a reasonable person test for this type of offence or we run the risk of the wowser or overly sensitive people ruling behaviour.

For the speaking of the 'objectionable words' to be criminal behaviour the words must be either 'obscene' (as in section 47) or the saying of them must be 'offensive, disorderly or indecent behaviour'. This again falls within the orbit of section 47.

In fact section 47 covers all the behaviour this provision attempts to cover. Behaviour that is complained of, to be that sort of behaviour that attracts the intervention of the Criminal Law, must be either 'riotous, offensive, disorderly or indecent behaviour' which is already criminalised in section 47.

If the behaviour occurs on licensed premises it is still covered by section 47 as a licensed premises is a public place. There is also a responsibility on the licensee to prevent bad behaviour already covered by the *Liquor Act*[109], although the person penalised for not evicting someone displaying 'indecent, violent quarrelsome or riotous conduct' is the licensee[110]. There are new *Liquor Act* provisions[111] which clear up any doubt on Police powers in licensed premises.

28.2 Section 53(7) – prosecutions (last 10 years to 30 June 2013)

This offence is charged as 'Use Objectionable Words in Public Place' which has been charged 473 times in the 10 years to 2013, 'Threatening Behaviour in Public Place' which has been charged 617 times, and 'Objectionable Behaviour in Public Place' which has been charged 14 times.

This gives a total of 1104.

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[107] See regulations 4 and 4A of the Summary Offences Regulations
[108] *Coleman v Power* supra
[109] *Liquor Act*, section.105 'Permitting Riotous Conduct on or at licensed premises;
A licensee shall not permit indecent, violent, quarrelsome or riotous conduct to occur on or at his licensed premises.'
[110] Section 121 of the *Liquor Act* requires the licensee to evict anyone who is "intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour".
[111] *Liquor Legislation Amendment Act 2010*

681 infringement notices have been issued in the past 10 years.

28.3 Section 53(7) – penalty

The proposed penalty for section 53(7) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units.

Not applicable (see recommendation below).

Recommendation for section 53(7)

Section 53(7) be repealed.

29. Liquor licensee responsible for threatening words or behaviour or annoying noise in a public place or in premised licensed under the *Liquor Act*

29.1 Section 53(8)-(10) – contents

(8) Where the words or behaviour or noise referred to in subsection (7) are or is made in licensed premises within the meaning of the Liquor Act and the Court is satisfied that the licensee might reasonably have taken action to prevent the commission of the offence, the licensee is also guilty of an offence.

(9) The penalty for an offence against this section is a fine not exceeding $2,000 or imprisonment for a term not exceeding six months, or both.

(10) The Court hearing a complaint for an offence against this section shall not award costs against the complainant unless the Court considers that the complaint was unreasonably made.

If the behaviour occurs on licensed premises it is still covered by section 47 as a licensed premises is a public place. There is also a responsibility on the licensee to prevent bad behaviour already covered by the *Liquor Act*[112], although the person penalised for not evicting someone displaying 'indecent, violent quarrelsome or riotous conduct' is the licensee[113]. There are new *Liquor Act* provisions[114] which clear up any doubt on Police powers in licensed premises.

There seems no particular reason for retaining section 53(8) (and related subsections (9) and (10)).. The responsibilities of a licensee under the *Liquor Act* should, in terms of basic principles, be regulated by that Act.

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[112] *Liquor Act*, section.105 'Permitting Riotous Conduct on or at licensed premises;
A licensee shall not permit indecent, violent, quarrelsome or riotous conduct to occur on or at his licensed premises.'

[113] Section 121 of the *Liquor Act* requires the licensee to evict anyone who is "intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour".

[114] *Liquor Legislation Amendment Act 2010*

29.2 Section 53(8) – prosecutions

Nil.

29.3 Section 53(8) – penalty

The proposed penalty for section 53(8) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months and/or 50 penalty units.

Not applicable (see recommendation).

Recommendation for section 53(8)

Section 53(8) (and related subsections (9) and (10) should be repealed.

30. Noise provisions (after midnight)

30.1 Section 53A – content

(1) A member of the Police Force may, in response to a complaint from a person that undue noise is coming from any premises or part of premises where a social gathering is being held, being a complaint in respect of noise made after midnight on any night and where he considers that such noise constitutes undue noise, direct:

(a) the person who is the occupier of the premises or part of the premises, as the case may be; or

(b) if that person cannot be ascertained, the person responsible for the noise or in charge of the property producing the noise,

to stop or abate the noise.

(2) Where, at any time during the period of 12 hours immediately after a person has been directed under subsection (1) to stop or abate undue noise (other than the period of 10 minutes after the direction is given), undue noise comes from the premises or part of the premises in respect of which the complaint was made, the person to whom the direction was given is guilty of an offence.

Penalty: $2,000.

Section 53A(2) is an offence in respect of which an infringement notice may be issued (penalty $400)[115].

30.2 Section 53A– prosecutions (last 10 years to 30 June 2013)

This has been charged 5 times in the last 10 years.

114 infringement notices have been issued in the past 10 years.

[115] See regulations 4 and 4A of the Summary Offences Regulations

These are necessary provisions. There are no noise provisions in the Darwin City Council by-laws or in any other by-laws made by local government bodies under the *Local Government Act.*

30.3 Section 53A– penalty

The current maximum penalty for breach of section 53A is $2000. This penalty has not been reviewed since at least 1984.

The proposed penalty for section 53A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 50 penalty units ($7,200).

The current penalty appears to be on the low side given the length of time since it was last reviewed. The appropriate penalty appears to be 50 penalty units for worst case breaches.

The issue of NT Police having the ability to seize an item they reasonable believe is causing the undue noise was also been raised. Sometimes removing the source of the noise may represent the only practical option for ending the problem. The seizure could be for a prescribed period (for example, a maximum of 24 hours). The Department of the Attorney-General and Justice will develop further proposals for consideration by the Attorney-General. There are various legal and practical issues in seizing property.

Recommendation for sections 53A

- Section 53A should remain in the *Summary Offences Act*.
- The penalty should be 50 penalty units
- The Department of the Attorney-General and Justice to develop for consideration of the Attorney-General proposals on the viability of a limited seizure power relating to items officers reasonably believe is the source of the undue noise.

31. Undue noise

31.1 Section 53B– content

(1) A member of the Police Force may, in response to a complaint from a person that undue noise is coming from any premises or part of premises and where he considers that such noise constitutes undue noise, direct:

(a) the person making or causing or permitting the noise to be made; or

(b) the person apparently at the time in charge of the premises or part of the premises, as the case may be,

to stop or abate the noise.

(2) A member of the Police Force may, in response to a complaint from a person that undue noise is coming from any unoccupied land and where he considers that such noise constitutes undue noise, direct the person making the noise or causing or permitting the noise to be made to stop or abate the noise.

(2A) A direction under subsection (1) or (2):

(a) may be given by reference to a period of hours during which, or specific times when, the noise is to be stopped or abated; and

(b) in any event, shall remain in force for not more than 48 hours.

(3) A person who has been directed under subsection (1) or (2) to stop or abate undue noise and who, other than during the period of 10 minutes immediately after being so directed:

(a) continues to make the noise or continues to cause or permit the noise to be made; or

(b) does not abate the noise,

in contravention of the direction is guilty of an offence.

Penalty: $2,000.

Section 53B(3) is a "regulatory offence"[116].

Section 53B(3) is an offence in respect of which an infringement notice may be issued (penalty $400)[117].

31.2 Section 53B – prosecutions (last 10 years to 30 June 2013)

This has been charged 16 times in the last 10 years.

210 infringement notices have been issued in the past 10 years.

31.3 Section 53B – penalty

The current maximum penalty for breach of section 53B is $2000.

The proposed penalty for section 53B in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 50 penalty units.

The appropriate level appears to be 50 penalty units for worst case breaches

Recommendation for sections 53B

- Section 53B should remain in the *Summary Offences Act*.

[116] See section 91AA of the *Summary Offences Act*
[117] See regulations 4 and 4A of the Summary Offences Regulations

- The penalty should be 50 penalty units
- The Department of the Attorney-General and Justice to brief the Attorney-General on the viability of a limited seizure power relating to items officers reasonably believe is the source of the undue noise.

32. Certificate of member of Police Force to be evidence

32.1 Section 53C– content

In a prosecution for an offence against section 53A or 53B a certificate by a member of the Police Force stating that a complaint of a kind referred to in those sections had, at a specified time and on a specified date, been made is prima facie evidence of the matters stated in the certificate.

32.2 Section 53C– discussion

As part of this review there seems no need to amend section 53C

Recommendation for section 53C

Section 53C should remain in the *Summary Offences Act*.

33. Noise abatement orders

33.1 Section 53D– content

(1) Where a person occupying premises makes a complaint to a Justice alleging that his occupation of those premises is affected by undue noise, the Justice may issue his summons for the appearance before him or any other Justice of the person who is:

(a) alleged to be making or causing or permitting the noise to be made; or

(b) the occupier or person apparently in charge of the premises or part of the premises from which the noise is alleged to be emitted.

(2) If the Court is satisfied that an alleged undue noise exists, or that although abated it is likely to recur on the same premises or part of the premises, the Court may, where it finds that such noise is not justified in the circumstances, make an order directing the person summoned under subsection (1) to stop or abate the noise or to confine the making of the noise to within such hours as the Court may fix and the Court may, in making the order, impose such other conditions as it thinks fit.

(3) A person shall not contravene or fail to comply with an order made under subsection (2).

Penalty: *$2,000.*

(4) Where:

(a) a direction has been given under section 53A or 53B; and

(b) a member is satisfied that another person requires the name and address of the person to whom the direction was given for the purposes of making a complaint under subsection (1) in respect of that person or instituting any civil suit or proceeding in respect of the noise the subject of the direction,

the member may provide the other person with the name and address of the person to whom the direction was given.

(5) Where the Court makes an order under subsection (2), the Court may order the defendant to pay to the complainant such costs as it thinks fit.

(6) Where the Court refuses to make an order under subsection (2), the Court shall not award costs against the complainant unless the Court is satisfied that the complaint made was vexatious or unreasonable.

33.2 Section 53D – prosecutions (last 10 years to 30 June 2013)

This has been charged once in the last 10 years.

33.3 Section 53D– penalty

The current maximum penalty for breach of section 53D is $2000.

The proposed penalty for section 53D in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 50 penalty units.

This appears to be the appropriate level for worst case breaches is 50 penalty units.

Recommendation for section 53D

- Section 53D should remain in the *Summary Offences Act*.
- The penalty should be 50 penalty units
- The Department of the Attorney-General and Justice to brief the Attorney-General on the viability of a limited seizure power relating to items officers reasonably believe is the source of the undue noise.

34. Powers of police

34.1 *Section 53E – content*

(1) For the purposes of giving a direction under section 53A or 53B, a member of the Police Force may enter the premises or the part of the premises from which the noise is

coming together with such assistance and using such force as the member considers reasonable for the purpose.

(2) A member of the Police Force who enters premises or a part of premises under this section may require a person in the premises or the part to answer a question asked for the purpose of identifying the occupier of the premises or the part or the person responsible for the noise or in charge of the property that is producing the noise.

(3) A person asked a question under subsection (2) shall not refuse or fail to answer the question to the best of his knowledge or belief.

Penalty: $200.

34.2 Section 53E– prosecutions (last 10 years to 30 June 2013)

Nil

34.3 Section 53E– penalty

The current maximum penalty for breach of section 53E is $200.

The proposed penalty for section 53E in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

The appropriate penalty for worst case breaches appears to be 25 penalty units.

Recommendation for section 53E

- Section 53E should remain in the *Summary Offences Act*.
- The penalty should be 25 penalty units

35. Compliance with police directions

35.1 Section 53F – content

For the purposes of a prosecution of an offence against sections 53A and 53B, it is immaterial that noise coming from the premises or the part of the premises after a direction has been given is not of the same nature or of the same level as the noise to which the direction given

Noise provisions are necessary for the peaceful enjoyment of life, and the offences are offences of a public order nature.

Recommendation for section 53F

Section 53F should remain in the *Summary Offences Act*.

36. Stealing domestic animals

36.1 Section 54 – contents

Any person who steals any dog, or any bird or animal ordinarily kept in a state of confinement and not being the subject of larceny, shall be liable to a penalty not exceeding $200, in addition to the value of the dog, bird, or animal stolen.

The stealing offences in the Criminal Code appear to be sufficient to cover this conduct,

36.2 Section 54 – prosecutions (last 10 years to 30 June 2013)

There were three prosecutions for this offence in the last 10 years, all of them in 2006 and none since.

36.3 Section 54 – maximum penalty

The proposed penalty for section 54 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was imprisonment of 6 months and/or 50 penalty units (plus the value if the dog, bird or animal).

Not applicable.

Recommendation for section 54

Section 54 should be repealed

37. Challenge to fight

37.1 Section 55 – challenge to fight - contents

(1) Any person who sends or accepts, either by word or letter, any challenge to fight for money, or engages in any prize fight, shall be liable to a penalty of $500, or to imprisonment, for any period not exceeding three months, or both.

(2) The Justice before whom any person is found guilty of an offence against this section may, if he thinks fit, in addition to imposing a penalty, also require that person to find sureties for keeping the peace.

Section 55 is an offence in respect of which an infringement notice may be issued (penalty $100)[118].

This is an old offence initially enacted to stop 'prize fighting'[119]. Section 70 of the Criminal Code "Challenge to Fight Likely to Cause Death or Serious Harm" would cover the more serious examples of this offence. The Northern Territory does not have a *Boxing Act*

[118] See regulations 4 and 4A of the Summary Offences Regulations
[119] Prize fighting is discussed in *Pallante v Stadiums Pty Ltd (no. 1)* [1976] VR 331 per McInerny J.

regulating or forbidding unlicensed or unregistered fighting, or regulating, promoting or arranging the same. The reference to money should be removed and the offence should simply be to challenge to fight.

Subsection (2) is unnecessary as a Magistrate has the power to bind someone over to keep the peace on a 'good behaviour order' in any case.

Western Australia has a similar provision carrying a fine in the summary jurisdiction

37.2 Section 55 – prosecutions (last 10 years to 30 June 2013)

There have been 47 prosecutions for this offence since 2012 which suggests it is useful provision. Recently there has been a reported growth in challenge fights or 'grudge fights' between juveniles with resultant unsavory You Tube clips being broadcast.

16 infringement notices have been issued in the past 10 years.

37.3 Section 55 – penalties

The proposed penalty for section 55 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 50 penalty units ($7,200) (whilst retaining the imprisonment penalty of 3 months).

The monetary penalty should be increased from $500 to at least the default penalty of 25 penalty units. However, there is also a case for arguing that the monetary penalty should be increased to at least 50 penalty units ($7,200) given that, for organised fights, the motivation for the fight is a profit or economic motivation. For such cases the penalty should be a monetary one designed to attack the potential profits.

Recommendation for section 55

- Section 55 should be retained but amended to remove the reference to money
- the maximum penalty of three months should be retained but with consideration the maximum penalty being changed to 50 penalty units ($7,200).

38. Consorting between known offenders

38.1 Section 55A – consorting - contents

(1) A person is guilty of an offence if:

(a) the Commissioner gives a written notice to the person under this section prohibiting the person, for a specified period not exceeding 12 months, from one or both of the following as specified in the notice:

(i) being in company with one or more specified persons;

(ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons; and

(b) the person contravenes the notice.

Maximum penalty: Imprisonment for two years.

(2) It is a defence for an offence against subsection (1) if the defendant proves that:

(a) the defendant has a reasonable excuse; or

(b) the defendant, having unintentionally associated with a person specified in the notice, terminated the association immediately.

(3) In subsection (2), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the notice.

*(4) The Commissioner may give a notice to a person (the **notified person**) under subsection (1) only if:*

*(a) the notified person and each person specified in the notice (a **specified person**) have each been found guilty of a prescribed offence; and*

(b) the Commissioner reasonably believes that giving the notice is likely to prevent the commission of a prescribed offence involving:

(i) two or more offenders; and

(ii) substantial planning and organisation.

(5) The notice must specify:

(a) the notified person's obligations under the notice; and

(b) the consequences of contravening the notice.

(6) The Commissioner must ensure all reasonable steps are taken to explain to the notified person (in language the notified person can readily understand) the matters mentioned in subsection (5)(a) and (b).

(7) In addition, the Commissioner must give each specified person a notice under subsection (1) imposing similar obligations in relation to prohibiting the specified person from one or both of the following:

(a) being in company with the notified person and each of the other specified persons;

(b) communicating with the notified person and each of the other specified persons.

(8) However, the Commissioner may disregard subsection (7) in exceptional circumstances.

(9) A notice under subsection (1) is not invalidated by a failure to comply with subsections (6) to (8).

(10) A reference to a prescribed offence in subsection (4) is a reference to an offence:

(a) prescribed by regulation; and

(b) the maximum penalty for which is imprisonment for 10 years or more.

This offence is part of the 'anti-gang' legislative package and is "designed to stop organised, high level criminal group behaviour"[120]. The offence requires a notice to be given to the person directing him or her not to communicate with or be in the company of specified people. Both the person given the notice and the specified person must each have been found guilty of a prescribed offence[121], (an offence for which the maximum penalty is 10 years or more, and includes terrorism, murder, serious drug offences, piracy, and various child sex and pornography offences, etc.), and the notice can only be given if the Commissioner thinks that giving the notice is likely to prevent the commission of a planned offence.

There is a defence of 'reasonable excuse' and it is a defence to the charge if the defendant, unintentionally having 'associated' with the specified person, immediately terminates the association.

Police are concerned that the section is limited in respect of the offences to which it applies, and would like the prescribed offence to carry five years rather than 10 years and for the subsection 55A(10)(a) be amended by substituting "and" with "or" (meaning the prescribed offence must be either prescribed by regulation *or* have a maximum penalty of five years).

This amendment desired by Police however is not consistent with the aims of the provision as indicated in the second reading speech which says the legislation is aimed at "serious criminals with a track record of highly-organised gang related activities"[122]. An offence carrying only five years would not be a serious enough offence and would unnecessarily widen the net by including relatively minor offenders.

38.2 Section 55A – prosecutions (last 10 years to 30 June 2013)

There have to date been no prosecutions under this section.

38.3 Section 55A – penalties

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) did not propose any change to section 55A.

[120] Second reading speech.
[121] Prescribed offences: An offence against any of the following provisions is prescribed for section 55A(10)(a) of the *Summary Offences Act*: Criminal Code sections; 54, 55, 66, 73, 125B, 125E, 131A, 132, 156, 160, 165, 176, 177, 202B, 202C, 202D, 211, 213, 228, 229, 231B, and 231C. *Misuse of Drugs Act* sections 5, 6, 7, 8 ,9 and 11. *Firearms Act* 61, 61A and 63A
[122] Second reading speech by Hon Dr Peter Toyne, Minister for Justice and Attorney-General

Recommendation for section 55A

This provision and the maximum penalty of 2 years (with default penalty level of 200 penalty units ($28,200) should be retained.

39. Begging.

39.1 Section 56(1)(c) contents

(1) Any person who:

(c) wanders abroad, or from house to house, or places himself in any public place, street, highway, court, or passage, to beg or gather alms, or causes or procures or encourages any child so to do;

…,

shall be guilty of an offence.

Penalty: $500 or imprisonment for three months, or both.

This section catches many various and different offences, including begging, carrying drugs, possessing disguises, and consorting with criminals.

39.2 Section 56(1)(c) prosecutions (last 10 years to 30 June 2013)

This offence has been charged 3times between 2012 and 2013.

This subsection criminalises begging or gathering alms. Begging is one of the old offences whose genesis was the *Vagrancy Act 1824*. It could be classed as a status offence, by criminalising poverty or homelessness, although the actual act prosecuted is begging. Some jurisdictions have abolished it as an offence, although Victoria after initially considering abolishing the offence, re-enacted it in 2006.

Research around the world suggests a complex relationship between poverty, begging, drug use, psychiatric and physical disability and homelessness[123]. Begging is recognised as a problem by the media, politicians, shopkeepers, Police, welfare agencies, the general public, and the actual people who beg.[124]

Some see begging as an expression of broader social problems of homelessness, unemployment or discrimination, which if addressed would mean that begging would no longer be an issue. Others see begging as being symptomatic of crime and public order problems and say begging is chosen by the beggar. Begging in the Northern Territory is

[123] Kate Driscoll and Liz Wood, *A Public Life: Disadvantage and Homelessness in the Capital City* (1998). Commissioned by the City of Melbourne on behalf of the Royal Melbourne Institute of Technology Centre for Applied Social Science Research. See also Caslon Analytics Begging @ http://www.caslon.com.au/beggingnote.htm accessed 6 January 2010

[124] Philip Lynch '*Understanding and Responding to Begging'*(2005) MULR 16. http://www.austlii.edu.au/au/journals/MULR/2005/16.html#Heading40 accessed 20 November 2009

overwhelmingly an indigenous problem and generally coincident with alcohol abuse. It is different from the southern jurisdictions where research by the Australian Institute of Criminology has shown beggars to be predominantly young, male and socially marginal.

NAAJA says the offence targets their clients and penalises those who are least able to afford fines. They suggest it should be either repealed or replaced by an offence of seeking donations under false pretences or fraud. NAAJA say the Police do not need this offence to move people on as there are other powers they can use, such as the current section 47 or whatever replaces it.[125]

Arguments for retaining the law against begging include that it is a public nuisance, is not necessary in a welfare state, and having this law discourages the practice.

Police say having an offence against begging is necessary, as even though there are very few arrests for begging, having the offence on the books enables them to move people along from public places where they may be begging and being a nuisance, and having this power has meant that begging is not seen by some as a real problem in Darwin at this time.

The Victorian provision is short. Section 49A(1) says;

> *"A person must not beg or gather alms".*

It could be argued the reference to 'gather alms' is superfluous. Victoria's subsection 49A(2) says a child must not be procured or encouraged to beg. Soliciting donations for charities and busking are implicitly excluded from this.[126]

In England (United Kingdom) the offence is 'persistent begging' or begging 'by going house to house'.[127]

In Queensland's section 8 the offence includes begging for goods;

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*.

Registered charities are excluded from the provision as is authorised busking.

In New Zealand the offence is 'Seeking donations by False Pretences'.[128]

NT Police say the addition of the words 'using false pretences' to our legislation would make more difficult their practical use of the offence, which is as a moving along power to prevent 'humbugging'.

---

[125] It is suggested that it be replaced by Queensland's section 6 'Public Nuisance'.
[126] As distinct from the Queensland Act Section 8(2) which provides explicitly for the exception of charities registered under the *Collections Act 1966*, and for buskers authorised by the local government.
[127] Home Office Report para 13-18.
[128] *Summary Offences Act 1981* (NZ) section 15

An alternative approach is to decriminalise the actual offence of begging and to have an offence instead of not moving on when asked by Police while begging. There could be a two tiered offence that says Police can move someone on who is begging, and it is an offence not to move on after being requested to by Police. The offence would be something like;

(1) A Police Officer may instruct a person who is begging to move away from the area.

(2) Failure to comply with that request is an offence.

This might have the benefit of not criminalising the begging itself, but instead dealing with the mischief of the public nuisance and confrontation associated with begging by giving the Police the power to move beggars on.

There should also however be a third subsection forbidding the procuring of children to beg.

New Zealand has the offence of 'possession of burglary tools'[129] with a maximum sentence of 3 months, the Queensland offence[130] carries 12 months. The proposed Northern Territory provision which will include possessing burglary tools, disguises, and disabling drugs should carry 6 months (fine of 100 penalty units)

Begging in Queensland[131] carries 6 months, in Victoria[132] begging carries 12 months. The proposed new Northern Territory offences of not moving on while begging should carry a maximum penalty of 3 months (fine of 25 penalty units).

39.3 Section 56(1)(c) Penalty

New Zealand has the offence of 'possession of burglary tools'[133] with a maximum sentence of 3 months, the Queensland offence[134] carries 12 months. The proposed Northern Territory provision which will include possessing burglary tools, disguises, and disabling drugs should carry 6 months (fine of 100 penalty units)

Begging in Queensland[135] carries 6 months, in Victoria[136] begging carries 12 months.

The proposed penalty for section 56(1)(c) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months and/or 50 penalty units ($7,200). In the course of debate in Parliament on that Act and afterwards this penalty was heavily criticised especially regarding its application to the offence of begging in public. The begging issue had been in the public arena when the Alice Springs Council had imposed an infringement notice regime regarding begging.

The proposed new Northern Territory offences of not moving on while begging should carry a maximum penalty of 3 months (fine of 25 penalty units).

[129] Section 14 *Summary Offences Act 1981* (NZ)
[130] Section 15 *Summary Offences Act 2005* (Qld)
[131] Section 8 *Summary Offences Act 2005* (Qld)
[132] Section 49A *Summary Offences Act 1966* (Vic)
[133] Section 14 *Summary Offences Act 1981* (NZ)
[134] Section 15 *Summary Offences Act 2005* (Qld)
[135] Section 8 *Summary Offences Act 2005* (Qld)
[136] Section 49A *Summary Offences Act 1966* (Vic)

Recommendations for section 56(1)(c)

- The offence against begging be retained.
- The fault element should be intent.
- The maximum penalty should be 3 months (with the maximum fine being 5 penalty units ($705) (ie the less than the default penalty of 25 penalty units ($3550)) and only slightly more than the current $500).

40. Possession of deleterious drugs or disguises

40.1 Section 56(1)(e) contents

(1) Any person who:

(d) …

(e) has on or about his person, without lawful excuse (proof whereof shall lie upon the person charged), any deleterious drug, or any article of disguise; or

…

shall be guilty of an offence.

Penalty: $500 or imprisonment for three months, or both.

Criminalising having an article of disguise is aimed at conduct preparatory to committing another offence such as robbery or burglary. Someone having an article of disguise for a legitimate purpose such as fancy dress or having a balaclava for skiing would have a lawful excuse. The onus of proving a lawful excuse however rests on the person charged.

Victoria has legislation introduced in 2005 criminalising 'being disguised with unlawful intent'[137]. This includes 'Being disguised or have a blackened face; or have an article of disguise in his or her custody or possession.' This offence, as with the 'Loitering with intent' still requires 'intent' to be proved, but does not enable intent to be proved by reference to the defendants priors.

There is no definition of 'deleterious drug' in the Act. It has been held in Victoria however that a deleterious drug is one which, unless used with care and with special knowledge of its propensity to do harm, may cause substantial injury to the life or health of the user.[138] The drug in that particular case was cocaine.

Having a deleterious drug would seem to be covered by the *Misuse of Drugs Act*. Other versions of this particular section however have been used to prosecute glue sniffing in other jurisdictions. In the Northern Territory the *Volatile Substance Abuse Prevention Act*

[137] Section 49C *Summary Offences Act* (Vic) 'Being disguised with unlawful intent'.
[138] *McAvoy v Gray* [1946] VLR 442

allows Police to confiscate petrol or other volatile substances and apprehend a person when the substance is being used inappropriately e.g. by being sniffed.

There has been argument for the section to use the term 'disabling substance' eg mace or chloroform or other drugs that could be used to stupefy or overpower someone to facilitate the commission of an offence.

The *Weapons Control Act* already bans:

> *"An article designed or adapted to emit or discharge an offensive, noxious or irritant liquid, powder, gas or chemical so as to cause disability, incapacity or harm to another person".*

This would of course include chloroform, capsicum spray or mace.

40.2 Section 56(1)(e) – prosecutions in the past 10 years (to 30 June 2013)

This offence has been charged as 'Articles of Disguise' 3 times in the past 10 years.

40.3 Section 56(1)(e) Penalty

The proposed penalty for section 56(1)(e) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units ($7,200).

New Zealand has the offence of 'possession of burglary tools'[139] with a maximum sentence of 3 months, the Queensland offence[140] carries 12 months. The proposed Northern Territory provision which will include possessing burglary tools, disguises, and disabling drugs should carry 6 months (fine of 50 penalty units).

The Department of the Attorney-General and Justice is developing proposals concerning the use of substances for deleterious effects or use of substances to induce psychoactive, hallucinogenic effects or to intoxicate. Queensland has recently inserted a provision as section 4BA(2) of the *Drugs Misuse Act* (Qld) relating to substances that have the same pharmacological effect as a banned substance. Issues relating to such drugs are currently being examined on a national basis by Police, Attorneys-General and Consumer Affairs agencies.

[139] Section 14 *Summary Offences Act 1981* (NZ)
[140] Section 15 *Summary Offences Act 2005* (Qld)

Recommendations for section 56(1)(e)

- There should be three separate offences of
    1. possessing an article of disguise without a lawful excuse*;*
    2. possessing housebreaking equipment; and
    3. possessing a disabling drug.
- The reference to 'deleterious drug' should be removed and replaced by one prohibiting having a 'disabling drug' or substance (but with this proposal being subject to national consideration of issues relating to substances that mimic illegal drugs).
- This offence should have a maximum penalty of 6 months.
- This should be a reverse onus provision with a defence of reasonable excuse.

41. Consorting with reputed criminals

41.1 Section 56(1)(i) contents

(1) Any person who:

(e) …

(e)

(i) habitually consorts with reputed criminals,

shall be guilty of an offence.

Penalty: $500 or imprisonment for three months, or both.

The offence of habitually consorting with reputed criminals is vague and imprecise. A reputed criminal is presumably someone with a reputation as a criminal. The behaviour this section attempts to criminalise is covered much more thoroughly by section 55A 'Consorting between known offenders', although of course this offence is aimed at a much lesser type of criminal. The phrase 'reputed criminals' is a hangover from the Vagrancy Acts. This offence should be repealed.

41.2 Section 56(1)(i) prosecutions (last 10 years to 30 June 2013)

Nil.

41.3 Section 56(1)(i) - penalty

The proposed penalty for section 56(1)(i) in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units.

Recommendation for section 56(1)(i)

Section 56(1)(i) should be repealed.

42. Offences consequential to other findings of guilt

42.1 Section 57(1) contents

(1) Any person who:

(a) having been found guilty of an offence under section 56 commits any of the offences mentioned in that section;

(b) solicits, gathers, or collects alms, subscriptions, or contributions under any false pretence, or wanders abroad and endeavours by the exposure of wounds or deformities to obtain or gather alms;

(d) pretends to tell fortunes, or uses any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose upon a person;

(e) has in his custody or possession, without lawful excuse (proof whereof shall be upon the person charged), any picklock, key, crow, jack, bit, or other implement of housebreaking;

(l) being a suspected person or reputed thief, is in, on or near, with intent to commit any offence triable on information in the Supreme Court or any indictable offence, any river, canal, navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjacent thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent; or

(p) leaves his wife or child:

(i) chargeable, or whereby either of them becomes chargeable, to the public; or

(ii) without means of support other than public charity,

shall be guilty of an offence.

Penalty: $1,000, or imprisonment for six months, or both.

(2) Where any person is found guilty under paragraph (e) of subsection (1), any picklock, key, crow, jack, bit, or other implement of housebreaking in the custody or possession of that person shall be forfeited to the Territory.

*(4) Where any person is found guilty under paragraph (j) of subsection (1) any table or instrument of gaming at or with which he has played or betted contrary to the provisions hereof shall be forfeited to the Territory***.** (NB there is no paragraph (j))

(5) In proving under paragraph (l) of subsection (1), the intent to commit any offence therein specified, it shall not be necessary to show that the person charged was guilty of any particular act or acts tending to show his intent but he may be found guilty if from the circumstances of the case and his known character as proved to the Court it appears to the Court that his intent was to commit that offence.

Apart from the antiquated language, and the incorrect cross reference to the non existent paragraph (j), there are a number of problems with this section. This is another section that includes many different offences. It includes among others:

(a) Committing a second offence against the previous section;

(b) Begging (again although this time with wounds or deformities);

(c) Telling fortunes;

(d) Having custody of housebreaking instruments;

(e) Being a suspected person or reputed thief, and with intent, being almost anywhere;

(f) leaving one's wife or child impecunious.

The key points about this section are:

- Committing a second offence should be covered by the maximum penalty for the actual offence. There should not be an offence of committing a second offence. This comes from the old Vagrancy Acts. It should be repealed.

- **Section 57(1)(b) -** Begging is discussed above in Section 56 'Offences'

- **Section 57(1)(d)** The provision criminalising anyone who 'pretends to tell fortunes'[141] can be traced as far back as the *Witchcraft Act 1735,* from where it found its way into section 6 of the *Vagrancy Act 1824,* and then to section 1 of the *Fraudulent Mediums Act 1951* (which was finally repealed in 2008).

  It seems that along with Ireland and Israel, the Northern Territory is one of a dwindling few jurisdictions not to have repealed the *Witchcraft Act 1735* and it still remains on the Statute Books by default. It should be repealed

[141] Section 57(1)(d)

The fact the defendant honestly believes they are telling fortunes and not pretending to do so is immaterial[142]. It is not however an offence to publish horoscopes in a newspaper or magazine. (*Barbanell v Taylor* [1936] 3 All ER 66 KB.)

Fortune telling per se should not be a criminal offence. Nowadays the offence is irrelevant and silly and most people do not take fortune tellers seriously. On the contrary fortune telling is popular at markets, fairs and sideshows and is a form of light entertainment. If fraud is found to be involved then fraud or criminal deception can be charged under the Criminal Code.[143] There have been no convictions for this offence since 2000 and it should be repealed.

- **Section 57(1)(e) -** This again can be traced back to the United Kingdom *Vagrancy Act 1824*. The offence is having custody of 'any picklock, key, crow, jack, bit, or other implement of housebreaking'. This requires 'possession' and naturally, knowledge of the possession. Whether knowledge of the use the crow or jack might be put to is necessary for the charge to be made out is not clear. The onus of proof for intent is reversed and once it is established that the accused has custody or possession there must be a lawful excuse for such custody or possession.

  Of course a bricklayer would have a good reason for having a screwdriver or chisel, and anybody might possess a pair of pliers, bolt cutters or a torch.(*R v Stewart* (1932) 96 JP Jo 137). See also; *R v Patterson* [1962] 1 All ER 340, *R v Ward* [1915] 3 KB 696, *R v Oldham* (1852) 169 ER 587. Possessing Housebreaking Implement' is an often used offence and has been charged 106 times in the past 10 years. This offence could be combined with the offence of carrying articles of disguise.

- **Section 57(1)(l)** The phrase "Being a suspected person or reputed thief" without any definition or explanation should not be in our legislation. The section is vague and imprecise. The supposed circumstance of being a 'suspected person' does not merit enough to warrant any action. Who suspects the person, and of what are they suspected? The suspicion could not be proved without evidence of previous offending or of bad character which is of course inadmissible. This provision prohibits such a person from being almost anywhere at all with 'intent'. This 'intent' does not have be shown by any of the person's particular acts, but may be proved by virtue of 'the circumstances of the case and his known character as proved to the Court'. This is a very old, out-dated and ludicrous offence and should be repealed.

  Police however say they use the provision as a power to get rid of 'pick pockets' and other opportunistic thieves and undesirable persons from, for example, the Darwin show, the V8 Super Cars and the Mindil Beach markets. They use it as a 'move along' power. They do not charge anyone with this offence but it gives them the power to get known thieves and troublemakers away from these public events. The Police are in a position to know who these people are, recognise them and so use the provision preventatively.

  There are however other provisions that Police can use in these places and situations as 'move along powers'. Section 120 of the *Police Administration Act* says that a member may enter a place being used for a show, exhibition, sport, racing or entertainment, and order a 'reputed thief' or someone

[142] The word used to mean professing or proclaiming, more recently it has come to mean feigning.
[143] s. 227 NTCC

who is disorderly, indecent or soliciting away from the place. A 'reputed thief' is defined in the section as someone who has been found guilty of dishonesty offences at least twice in the past five years. This section can also be used in the same way at Mindil Markets etc. and the *Summary Offences Act* subsection is therefore unnecessary.

- **Section 57(1)(p)** Leaving one's wife or child is covered by the *Family Law Act 1975* (Cth). It should not be a criminal offence. Similarly, for a wife leaving a husband or child.

42.2 Section 57(1) offences (10 years to 2013)

148 charges in the past 10 years..

42.3 Section 57(1) penalty

The proposed penalty for section 57 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units.

Recommendations for section 57

- Repeal section 57
- Consider repealing the *Witchcraft Act* 1735

43. Offences after second or subsequent offence under section 57

43.1 Section 58 contents

The penalty on being found guilty of a second or subsequent offence under section 57 is imprisonment for a term not exceeding 12 months.

The penalty for a second or subsequent breach of offences in the *Summary Offences Act* should be determined by the Courts have regarding to the principles contained in the *Sentencing Act*. Additionally, if section 57 is repealed, section 58 will have no operation.

Recommendation for section 58

Section 58 should be repealed.

44. Valueless cheques

44.1 Section 60 – contents

Any person who obtains or attempts to obtain any chattel, money, valuable security, credit, benefit or advantage or discharges or attempts to discharge any debt or liability by passing

any cheque which is not paid on presentation shall, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed, be guilty of an offence, unless he proves:

(a) that he had reasonable grounds for believing that the cheque would be paid in full on presentation; and

(b) that he had no intent to defraud.

Penalty: $2,000, or imprisonment for 12 months, or both.

This offence is covered to an extent by section 227 Criminal Code 'Criminal Deception', but in this offence the onus of proof has been reversed to cover cases where proving an intent to defraud is extremely difficult; such as where there is some money in an account but not enough to cover the amount written or presented.

Where a cheque is returned marked 'no account' the offender can be charged with fraud, but where it is returned marked 'insufficient funds' it is not possible to prove an intention to defraud as it may just be a mistake. With the reversal of onus the defendant must prove his honourable intentions.

This section was initially enacted to cover situations where a person opens an account with a little money and then wilfully draws cheques far exceeding the amount deposited.

Victoria and South Australia still have the same section. New South Wales has a similar section, but in the *Crimes Act 1900.*

There are also offences under Commonwealth law.

44.2 Section 60 – prosecutions (last 10 years to 30 June 2013)

There have been 15 charges since 2002.

44.3 Section 60 – maximum penalty

The proposed penalty for section 60 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 12 months imprisonment and/or 100 penalty units.

Recommendation for section 60

This provision and the maximum penalty of 12 months should be retained. The fault element should be recklessness.

45. Fraud other than false pretences

45.1 Section 60A – contents

A person who obtains or attempts to obtain any chattel, money, valuable security, credit, benefit or advantage or discharges or attempts to discharge any debt or liability by fraud other than false pretences shall be guilty of an offence.

Penalty: $2,000, or imprisonment for 12 months, or both.

This offence is covered by section 227 Criminal Code 'Criminal Deception' and thus is superfluous. All stakeholders submitted that this offence be repealed.

45.2 Section 60A – prosecutions (last 10 years to 30 June 2013)

There has only been one charge since 2012.

45.3 Section 60A – maximum penalty

The proposed penalty for section 60A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 12 months and/or 100 penalty units.

Not applicable.

Recommendation for section 60A

Section 60A should be repealed.

46. Persons suspected of having stolen goods

46.1 Section 61 – contents

(1) In this section:

***personal property** includes money in cash or cheque form, or deposited in an ADI account or other account.*

***premises** includes a structure, building, vehicle, vessel, aircraft, hovercraft, land or place.*

(2) A person who:

(a) has in that person's custody any personal property;

(b) has in the custody of another person any personal property;

(c) has in or on any premises any personal property; or

(d) gives any personal property to a person who is not lawfully entitled to it,

being personal property which, at any time before the making of a charge for an offence against this section in respect of the personal property, is reasonably suspected of having been stolen or otherwise unlawfully obtained, is guilty of an offence.

Penalty: $2,000 or imprisonment for 12 months.

(3) It is a defence to a charge for an offence against subsection (2) if the defendant gives to the court a satisfactory account:

(a) as to how the defendant obtained the personal property referred to in the charge; and

(b) of the custody of the personal property by the defendant after it was obtained by him or her for each period during which the defendant had custody of the personal property.

'Unlawful possession of suspected stolen property' creates an offence for a person to unlawfully possess a thing that is reasonably suspected of having been stolen or unlawfully obtained. It also reverses the onus of proof, requiring the defendant to give an explanation.

The offence derives from the *Metropolitan Police Act 1839* although the early versions did not use the word 'reasonable', which was introduced more recently. The word 'actual' in front of 'possession' was introduced in equivalent sections in 1912. All Australian jurisdictions have a similar law.

Making out stealing or unlawfully obtaining is not an element of the offence, and it is not necessary to show that the offender stole the property or is suspected of having stolen it[144]. The property in the offender's custody must bear 'the taint of illegality'[145].

This offence is complementary to the more serious offences of stealing and receiving contained in the Criminal Code. It may be used in instances where the lawful owner of property cannot be located but the circumstances in which a person has possession of property can lead to the conclusion that it has been stolen or unlawfully obtained. For example, a financially destitute person may be found in possession of thousands of dollars worth of new leather goods and be unable or reluctant to give Police an explanation as to how he or she came lawfully by the goods. Where an owner cannot be found due to the fact that the goods may, for example, have been stolen interstate, Police may charge the person under this provision.

The section is founded upon a suspicion regarding the actual goods in the possession of the person, and not the person themself. That person is then obliged to give an explanation in order to exculpate themselves from the offence. The offence should not be charged however where the prosecution has or is able to obtain, the evidence to support a charge of stealing[146].

It is a defence in the Northern Territory if the defendant gives the court a satisfactory account as to how the property was obtained. In the New South Wales *Crimes Act 1900*[147]

[144] *Edwards v Trennery*, JA 99 & JA 177 of 1997, 5 January 1998, Martin CJ
[145] *Grant v The Queen* (1981) 147 CLR 503 @ 507.
[146] *Baldwin v Samuels* (1973) 6 S.A.S.R. 144
[147] Section 527C

and the Australian Capital Territory *Criminal Code 2002*[148], however; instead of requiring the person to give a satisfactory account once possession and suspicion are proved, the legislation provides that it is a good defence if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the property was stolen or otherwise unlawfully obtained.

See; *Eupene v Hales* (2000) 10 NTLR 16, *Gorey v Winzar* [2001] NTSC 21, *McDonald v Webster* [1913] VLR 506, 19 ALR 563, *Trainer v The King* (1906) 4 CLR 126, *Grant v The Queen* (1981) 55 ALJR 490, *Nichols v Young* [1992] 2 VR 209.

46.2 Section 61 – prosecutions (last 10 years to 30 June 2013)

This offence has been charged 1085 times in the last 10 years.

46.3 Section 61 – maximum penalty

The current maximum penalty of imprisonment (12 months) appears appropriate. However, the maximum fine ($2,000) is too low.

The proposed penalty for section 61 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 12 months imprisonment and/or 100 penalty units.

It is more appropriate that it be the default level of 100 penalty units.

Recommendation for section 61

This provision and the maximum penalty of 12 months imprisonment should be retained but the monetary amount should be removed so that the default level of 100 penalty units applies.

47. Property improperly taken or stolen if found and not satisfactorily accounted for

47.1 Section 62 – contents

(1) Whenever any credible witness proves upon oath before any Justice that there is reasonable cause to suspect that any such property as mentioned in this section has been taken or stolen, and is to be found in any house or other place, it shall be lawful for the Justice to issue a warrant to search the house or place for the property, and any person in whose possession, or on whose premises, any of the property is found by virtue of any such warrant, or by any member of the Police Force when executing any general search warrant or any other warrant, or otherwise acting in the discharge of his duty, who does not satisfy the Special Magistrate or Justices before whom he is brought that he came lawfully by the same, or that the same was on his premises without his knowledge or consent, shall:

[148] Section 324

(a) if the property so found consists of any goods, merchandise, or other articles belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, be liable to a penalty not exceeding $2,000 or to imprisonment for any period not exceeding 12 months, or both;

(b) if the property so found consists of the carcass, or the head, skin, hide, fleece, feet, or other part of any cattle, be liable to a penalty not exceeding $2,000, or to imprisonment for any period not exceeding 12 months, or both; or

(c) if the property so found consists of the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, picket, rail, stile, or gate, or any part thereof (being of the value of not less than 10 cents), to be liable to a penalty not exceeding $2,000, or to imprisonment for any period not exceeding 12 months, or both, and in addition shall pay to the party aggrieved the value of the property so found.

(2) Any person who:

(a) offers or exposes for sale any goods, merchandise, or articles (whether found by virtue of a search warrant or not) which have been unlawfully taken, or are reasonably suspected of having been unlawfully taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore; and

(b) does not satisfy the Special Magistrate or Justices before whom he is brought that he came lawfully by the same, or that the same were on his premises without his knowledge or consent,

shall be liable to a penalty not exceeding $2,000, or to imprisonment, with or without hard labour, for any period not exceeding 12 months, or both and in addition shall pay such sum as the Special Magistrate or Justices fix as a reasonable reward to the person who seized the goods, merchandise, or articles.

(3) In every case to which the section applies, any person to whom any such property as is therein mentioned is offered for sale, or any officer of the Customs or member of the Police Force, may lawfully seize the same, and shall with all convenient speed cause the same to be removed to a Special Magistrate or two or more Justices, and in every such case it shall be lawful for the Special Magistrate or Justices by whom the case is heard to direct that the property be delivered over to the rightful owner, if known, or, if the rightful owner is not known, that the same be sold, and the proceeds thereof applied in the same manner as any penalties under this Ordinance.

(4) If any person charged with any offence against this section is not found guilty thereof, it shall be lawful for the Special Magistrate or Justices hearing the case, at his or their discretion, to compel the attendance before him or them of any person through whose hands any such property as mentioned in this section, or any part thereof, appears to have passed, and if the person from whom the same was first received, or any person who has had possession thereof, does not satisfy such Special Magistrate or Justices that he came lawfully by the same, he shall be liable to the appropriate punishment provided by this section.

This offence is descended from the *Indictable Offences Act 1848* (United Kingdom), when preliminary examinations were much more inquisitorial.[149] It is primarily to cover cases where the property has been given to someone as a custodian or carrier and that person has reasonable cause to believe it has been stolen or unlawfully obtained. It is potentially much more far reaching than section 61.

If "any credible witness (?!) proves upon oath before any justice that there is reasonable cause to suspect that any (… property…) has been taken or stolen" and it is found on the property of the defendant, the defendant has to;

> *"satisfy the Special Magistrate or Justices before whom he is brought that he came lawfully by the same, or that the same was on his premises without his knowledge or consent".*

The offence talks of;

> "*any ship or vessel in distress, or wrecked, stranded, or cast on shore".*
>
> and
>
> *"any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, picket, rail, stile, or gate, or any part thereof …"*

This part of the offence comes from the South Australia *Police Act 1869* which in turn was based on provisions of the United Kingdom *Larceny Act 1861.* The ancient nature of this offence is obvious and rather draconian.

It would seem that section 62 covers a broader population than section 61, and could be putting more innocent people at risk.

> *"…(I)t shall be lawful for the Special Magistrate or Justices hearing the case, at his discretion, to compel the attendance before him…of any person through whose hands any such property …appears to have passed…or any person who has had possession thereof, does not satisfy such Special Magistrate… that he came lawfully by the same…"*

It may be appropriate for someone who has possession of the property at the time in question to satisfy the court as to the lawfulness of the acquisition, however it is probably inappropriate for the same burden to be placed on someone who had the property sometime in the past or through whose hands it has passed, as it may be very difficult to assemble the necessary evidence to satisfy the court of the reasonableness of belief as to the lawful provenance of the property.

The punishment of 'hard labour' that is allowed as 'the appropriate punishment provided by this section', seems quite drastic and thankfully is not applied in our Courts any more.

[149] See Charles Dickens *The Pickwick Papers* (1836-1837) Ch 25. See also J H Langbein *Prosecuting Crime in the Renaissance* (1974) 5-125.

47.2 Section 62 – prosecutions (last 10 years to 30 June 2013)

The main mischief seems to be addressed by section 61, and the offence has not been charged in the last 10 years.

47.3 Section 62 – maximum penalty

The proposed penalty for section 62 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units.

Not applicable.

Recommendation for section 62

Section 62 should be repealed.

48. Tampering with instruments

48.1 Section 65A – contents

Any person who:

(a) with intent to deceive tampers with any instrument or device used for the recording of mileage in a motor vehicle; or

(b) with intent to deceive installs in substitution for an instrument or device used in a motor vehicle for recording the mileage of the motor vehicle a new instrument or device for recording the mileage of the motor vehicle,

shall be guilty of an offence and liable to a penalty of not more than $200.

Section 65A is an offence in respect of which an infringement notice may be issued (penalty $100)[150].

This provision is a narrower offence and of a lower order of criminality than section 227 Criminal Code 'Criminal Deception[151]'and there is still a place for this offence. The offence

[150] See regulations 4 and 4A of the Summary Offences Regulations

[151] **NT Criminal Code 227 Criminal deception**

(1) Any person who by any deception:

(a) obtains the property of another; or

(b) obtains a benefit (whether for himself or herself or for another),

is guilty of a crime and is liable to the same punishment as if he or she had stolen the property or property of equivalent value to the benefit fraudulently obtained (as the case

criminalises the changing of the odometers or the readings on odometers on motor vehicles. It is an offence of dishonesty and the intent to deceive is still required to be proved, but it is not an offence that would seem to deserve a sentence of imprisonment such as section 227 of the Criminal Code carries. It is an economic offence and the penalty should reflect that.

Additionally, section 161 of the *Consumer Affairs and Fair Trading Act* regulates motor vehicle dealers regarding odometers as follows:

161 Replacement and alteration of odometers

(1) A dealer shall not without the consent in writing of the Commissioner offer or display a motor vehicle for sale where the dealer has:

(a) replaced, or caused to be replaced, the vehicle's odometer; or

(b) altered, or caused to be altered, the distance recorded by the vehicle's odometer.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) A person other than a dealer who replaces a motor vehicle's odometer, or alters the distance recorded on a motor vehicle's odometer, shall not offer to sell the vehicle to a dealer without disclosing the replacement or alteration to the dealer.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(3) A dealer who knows that a motor vehicle's odometer has been replaced or altered shall not offer or display the vehicle for sale without disclosing the replacement or alteration to the purchaser or a prospective purchaser of the vehicle.

Maximum penalty: If the offender is a natural person – 100 penalty units.

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may be).

(1A) In subsection (1), ***benefit*** includes any advantage, right or entitlement.

(2) For the purposes of subsection (1), a person ***obtains property*** if he obtains ownership, possession or control of it and ***obtains*** includes obtaining for another and enabling another to obtain or retain.

(3) Any person who by any deception obtains credit or further credit for himself or another, whether for the performance of an obligation that is legally enforceable or for one that is not, is guilty of a crime and is liable to imprisonment for 7 years.

(4) Any person who, for the purposes of gain for himself or another, by any deception induces a person to engage in any conduct is guilty of a crime and is liable to imprisonment for 7 years.

If the offender is a body corporate – 500 penalty units.

48.2 Section 65A – prosecutions (last 10 years to 30 June 2013)

There have been no charges since 2002.

2 infringement notices have been issued in the past 10 years.

48.3 Section 65A – maximum penalty

The proposed penalty for section 65A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 6 months imprisonment and/or 50 penalty units.

Recommendation for section 65A

Section 65A should be repealed.

49. Dumping of certain containers

49.1 Section 65AA – contents

No person shall abandon a refrigerator, ice-chest, icebox, article of furniture, trunk or article of a like nature which has in it a compartment of a capacity of 40 litres or 40,000 cm ^{3} or more or any prescribed article on any vacant land or on any dump, tip, sanitary depot, public reserve or public place unless he has, before so abandoning it:

(a) removed from the compartment every door and lid thereof and the hinges or locks for those doors and lids; or

(b) otherwise rendered those doors and lids incapable of being fastened.

Penalty: $200.

Section 65AA is a "regulatory offence"[152].

Section 65AA is an offence in respect of which an infringement notice may be issued (penalty $100)[153].

There have been no charges since 2000. The provision was introduced in 1979 as a safety measure to protect children from accidentally locking themselves in discarded fridges and other similar items with doors that might lock from the outside but are unable to be opened from the inside. South Australia also penalises selling fridges manufactured after 1962 that cannot be opened easily from the inside. The Northern Territory section penalises dumping or leaving such things around. Nowadays however children can't just wander around

[152] See section 91AA of the *Summary Offences Act*
[153] See regulations 4 and 4A of the Summary Offences Regulations

rubbish dumps. Fridges are now manufactured so they can be opened from the inside and manufacturers of such items are more aware of extended safety concerns in constructing the items.

The Criminal Code has the offences of 'Recklessly endangering life'[154] and Recklessly endangering serious harm'[155] which depending on the remoteness of the injury to the action of, say, dumping a fridge, could cover leaving dangerous things around for people to injure themselves with.

This is a very specific provision. There are lots of dangerous things one could dump that are not criminalised. South Australia is the only other jurisdiction in Australasia that has a similar provision[156]. It is doubtful whether the section is necessary now.

49.2 Section 65AA – prosecutions (last 10 years to 30 June 2013)

There have been no prosecutions for this offence since 2000.

One infringement notice has been issued in the past 10 years.

49.3 Section 65AA – penalty

The proposed penalty for section 65AA in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units.

Not applicable (see recommendation).

Recommendation for section 65AA

Section 65AA should be repealed.

50. Regulation of places of public resort

50.1 Section 66 – contents

(1) Every person who has or keeps any house, shop, room, or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether the same are kept or retailed therein or procured elsewhere) who:

(a) wilfully and knowingly permits drunkenness or other disorderly conduct in the house, shop, room, or place; or

shall be guilty of an offence.

Penalty: $200.

[154] Section 174B NTCC
[155] Section 174C NTCC
[156] The NT copied the relevant parts of the SA provision word for word.

(2) The holder of a licence under the Liquor Act who has been found guilty of an offence against subsection (1) in respect of certain conduct may be prosecuted for an offence against the Liquor Act in respect of the same conduct.

Section 66(1)(a) is an offence in respect of which an infringement notice may be issued (penalty $100)[157].

The offence is covered by sections 121 and105 of the *Liquor Act.*

50.2 Section 66 – prosecutions (10 years to 2013)

There has been one prosecution for this offence since 2002.

49 infringement notices have been issued in the past 10 years.

50.3 Section 66 – penalty

The proposed penalty for section 66 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units.

Not applicable (see recommendation).

Recommendation for section 66

Section 66 should be repealed.

51. False reports to Police

51.1 Section 68A – contents

(1) Any person who falsely and with knowledge of the falsity of his statements represents to any member of the police force that any act has been done or that any circumstances have occurred, which act or circumstances as so represented are such as reasonably call for investigation by the police, shall be guilty of an offence.

Maximum penalty: $11,000 or imprisonment for two years.

(2) In addition to or without imposing a fine on any defendant found guilty under this section, the court may order that the defendant pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by any member of the police force as a result of the false statement.

(3) Any amounts received by the complainant under this section shall be paid by him into the Central Holding Authority.

[157] See regulations 4 and 4A of the Summary Offences Regulations

(4) This section shall not be held to restrict the operation of any other enactment or rule of law.

Similar legislation exists in most other Australian jurisdictions. There is of course a great nuisance and often great cost in following up false reports.

Fraudulent insurance claims are often the reason for committing this offence; see for example *R v Atamain* (unreported VSC 10 February 1989)

Other jurisdictions have widely varying penalties for this offence.[158] We should retain the current maximum penalty including the monetary penalty of $11,000 (converted into 100 penalty units) despite the fact that it is lower than the default level of 200 penalty units.

51.2 Section 68A – prosecutions (10 years to 2013)

This offence has been charged 53 times in the last 10 years.

51.3 Section 68A – penalty

The proposed penalty for section 68A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units.

Retain the current maximum imprisonment penalty (2 years) but change the fine amount from $11,000 to 200 penalty units (adopt the default fine penalty contained in the *Interpretation Act).* This is one of the offences in the Act for which the financial penalty may be the most appropriate penalty as the effect of the offence is financial rather anything particularly heinous.

Recommendation for section 68A

- This provision and the current maximum penalty of two years should be retained however the fines penalty should be increased from $11,000 to 200 penalty units (currently $28,200).
- The offence should include false reports to Police, Fire and Emergency Services
- The fault element of the representation should be intention (intentionally make the report/representation
- The fault element of the circumstance (the report is false) should be knowledge.

52. Advertising a reward for the return if stolen property

52.1 Section 68B – contents

A person who:

[158] For example NZ section 24 gives it 3 months. Victoria gives in 12 months. SA and WA give 2 years.

(a) publicly offers a reward for the return of property that has been stolen, and in the offer makes use of words purporting that no questions will be asked or that the person producing such property will not be seized or molested;

(b) publicly offers to return to a person who may have brought or advanced money by way of loan on stolen property the money so paid or advanced or any other sum of money or reward for the return of such property; or

(c) prints or publishes such an offer,

is guilty of an offence.

Penalty: $500.

The offence was introduced in 1983. The purpose of the offence is to take away the chance of a thief profiting by first stealing and then returning the stolen goods to their owner on a no questions asked basis.

The offence seems to punish the victim.

52.2 Section 68B – prosecutions (last 10 years to 30 June 2013)

There have been no prosecutions for this offence since 2000.

52.3 Section 68B – penalty

The proposed penalty for section 68B in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units.

Not applicable (see recommendation).

Recommendation for section 68B

Section 68B should be repealed.

53. Default penalty for breaches of the *Summary Offences Act*

53.1 Section 69 – contents

Every offence against this Act for which no special penalty is provided shall render the offender liable to a penalty of not more than $500, or to imprisonment for any period not exceeding three months, or both.

There should not be any offences for which no penalty is appointed. Every offence should have its particular penalty nominated in the section itself. There are no provisions in the *Summary Offences Act* to which section this applies.

Additionally, modern drafting practice is to avoid the use of these kinds of general penalty sections.

Recommendation for section 69

Section 69 should be repealed on the basis that, for each offence in the *Summary Offences Act*, a penalty is already stated.

54. Disobedience to the laws of the NT

54.1 *Section 69A Disobedience to Laws of The Territory*

A person who, without lawful excuse, proof of which is on him:

(a) does an act that he is forbidden to do; or

(b) omits to do an act that he is required to do,

by a law in force in the Territory, unless a penalty intended to be exclusive of all other punishment is expressly provided by such a law, is guilty of an offence.

Penalty: Imprisonment for three months.

This was enacted at the same time as the Criminal Code in 1983 probably to catch any mistakes or omissions in the new Code or in other legislation. There is a similar provision in Queensland legislation.

In any Act an offence provision should be clearly described as such and should have a penalty attached. The penalty for offences in other Acts should not be hidden in the *Summary Offences Act* or in any other interpretation legislation. The existence of the section can cause drafting problems when there is a desire to create an obligation or duty but with no intention of creating an offence. For an example see section 697 of the *Legal Profession Act* – which disapplied section 69A of the *Summary Offences Act* for breaches of that Act that were only intended to operate as disciplinary breaches. Similar issues may arise for legislation, such as Part 5 of the *Consumer Affairs and Fair Trading Act,* which only seek to impose civil obligations.

54.2 Section 69A – prosecutions (10 years to 2013)

To the knowledge of the Department of the Attorney-General and Justice section 69A has not been called on in the past 10 years for use for a prosecution of a section that has no penalty or for the purpose of clarifying whether or not a provision in an Act or in subordinate legislation does create a penalty. However, this does not mean that there is no such provision. It is suggested that a conservative approach be followed so that the section is retained with consideration being given to relocating it in the *Interpretation Act.*

54.3 Section 69A – penalty

The *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) proposed no changes to penalties.

There is no need to amend the penalty.

Recommendation for section 69A

Section 69A should be retained but that consideration be given to relocating it in the *Interpretation Act)*

55. Inciting the commission of offences

55.1 Section 69B contents

A person who:

(a) incites to, urges, aids or encourages; or

(b) prints or publishes any writing which incites to, urges, aids or encourages,

the commission of an offence or the carrying on of an operation for or by the commission of an offence, is guilty of an offence.

Penalty: $2,000 or imprisonment for 12 months.

"The word 'incite' means to rouse; to stimulate; to urge or spur on; to stir up; to animate" (*Young v Cassells* (1914) 33 NZLR 852) [159]

The actual offence that has been urged does not need to be committed; the person being incited does not need to form the necessary intention to commit the act. It is possible to incite even though it is impossible to commit the offence. See *R v McDonough* (1962) 47 Cr App R 37 where there were no stolen goods but a charge of incitement to receive stolen goods was still valid.

The offence is complete once the inciting or 'urging' is proved and a person may "incite" another to do an act by threatening or by pressure, as well as by persuasion; *Race Relations Board v Applin* [1973] 1 QB 813; [1973] 2 WLR 895; [1973] 2 All ER 1190, per Lord Denning.[160]

This offence is also covered by section 43BI of the Criminal Code and section 158 of the *Police Administration Act*. Thus the Northern Territory has three incitement offences. It appears that this version (section 69B) can be repealed.

55.2 Section 69B prosecutions (last 10 years to 30 June 2013)

There have been 34 prosecutions for this offence since 2002.

[159] Cited in *R v Eade* (2002) 131 A Crim R 390 (NSW CCA) by Smart AJ
[160] See also;
Walsh v Sainsbury (1925) 36 CLR 464
R v Massie [1999] 1 VR 542; (1998) 103 A Crim R 551

55.3 Section 69B penalties

The proposed penalty for section 69B in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 100 penalty units ($14,400).

Recommendation for section 69B

Section 69B should be repealed on the basis that it duplicates other offences.

56. Power to regulate traffic

56.1 Section 74 contents

(1) The Commissioner may, as occasion arises, give directions either in writing, orally, or by any agency which he thinks fit:

(a) specifying the route to be observed by motor vehicles, vehicles of any other kind, horses, and persons, and for preventing the obstruction of the streets and thoroughfares on any occasion of public procession, public rejoicings, or public illuminations;

(b) for keeping order, or for preventing any obstruction of the streets or thoroughfares in the immediate neighbourhood of any public building, public office, theatre, or place of public resort; and

(c) for keeping order, or for preventing any obstruction of the streets or thoroughfares on any occasion when the streets or thoroughfares are thronged or are liable to be obstructed.

(2) The Commissioner may delegate his powers under this section in any particular case to any Superintendent or Inspector of Police.

(3) Any person who, on being requested by any member to comply with any direction given pursuant to this section, fails to forthwith comply with such direction, shall be guilty of an offence.

Penalty: $200.

Section 74(3) is a "regulatory offence"[161].

The drafting style is archaic and is open to improvement, depending on whether the NT is ready to lose 'public rejoicings, or public illuminations'.

This again is an offence where civil rights meet public order. The section's main purpose is for keeping order and to prevent obstruction in streets and thoroughfares etc. during public processions and the like. Case law suggests that obstruction of the street or thoroughfare is the unreasonable use of the same. A procession usually does in fact cause an obstruction

[161] See section 91AA of the *Summary Offences Act*

but it is a time honoured and reasonable use of a road or street to have religious, political and other celebratory or ceremonial processions from time to time. Common sense and the use of Police discretion is what saves this offence and others like it from being oppressive.

This is a section giving Police positive powers to regulate movement through public space and that power is necessary. It needs rewriting, updating and rationalising so that it can fulfil its primary purpose.

South Australia has section 59 'Regulation of Traffic in Certain Cases'[162] which gives the power to the commissioner (and the mayor or counsel chairman) to give directions regulating traffic of all kinds in 'any street road or public place' on 'special occasions' which are defined to mean when the street or thoroughfare is likely to be particularly crowded.

Police suggested an ancillary power is needed to close off streets in siege situations. This power exists anyway so as to keep the public safe, and does not need to be repeated here.

This section gives Police a necessary power but needs work. A lot of the mischief it purports to address is already covered in the *Traffic Act* or in the *Control of Roads Act.*

The section is not, as its title suggests, directed solely at the management of traffic. It is instead directed at managing movement of the public, keeping order and preventing obstruction through public spaces including in certain circumstances, streets, thoroughfares and roads.

56.2 Section 74 – prosecutions (last 10 years to 30 June 2013)

Nil

56.3 Section 74 – penalty

The proposed penalty for section 74 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units ($2820).

The current maximum penalty for breach of section 74 is $200. This is too low to provide any meaningful deterrent for the worst case offence. A more appropriate maximum penalty is 25 penalty units.

Recommendation for section 74

- The section should be rewritten along the lines of the SA section and left in the *Summary Offences Act*.
- The maximum penalty should be 25 penalty units.

[162] Section 59 *Summary Offences Act 1953* (SA)

57. **Prohibition of nuisances in thoroughfares**

57.1 Section 75(1)(a)-(f) – content

(1) Any person who, in any street, road, thoroughfare, or public place:

(b) turns loose any horse or any cattle; or

(c) by negligence or ill-usage in driving cattle causes any mischief to be done by those cattle, or in any way misbehaves himself in the driving, care, or management of those cattle, or, not being hired or employed to drive those cattle, wantonly and unlawfully pelts, hurts, or drives any such cattle; or

(d) (i) being the driver of any wagon, cart, or dray of any kind not drawn by horses properly driven with reins, rides upon any such wagon, cart, or dray, not having some person on foot to guide the same; or

(ii) being the driver of any carriage whatsoever, is at such a distance from such carriage, or in such a situation whilst it is passing along any street, road, thoroughfare, or public place, that he cannot guide and control the horses or cattle drawing the same; or

(iii) rides upon the shafts of any wagon, cart, dray, or other vehicle whatsoever; or

(iv) riding a bicycle or on horseback, or driving or propelling any wagon, cart, dray, or coach, or any other carriage or vehicle whatsoever, on meeting any other person riding a bicycle or on horseback, or driving or propelling any wagon, cart, dray, or coach, or any other carriage or vehicle whatsoever, does not keep his bicycle, horse, wagon, cart, dray, coach, carriage, or vehicle on the left or near side of the road; or

(v) in any manner prevents any other person from passing him or any vehicle under his care, or prevents, hinders or interrupts the free passage of any vehicle or person; or

(e) (i) causes any cart or vehicle (except standing for hire in any place not forbidden by law), or any truck or barrow, with or without horses, to stand longer than is necessary for loading or unloading or for taking up or setting down passengers; or

(ii) by means of any cart or carriage, or any truck or barrow, or any horse or other animal, wilfully interrupts any public crossing, or wilfully causes any obstruction in any thoroughfare; or

(f) after notice of any regulations made under section 74, wilfully disregards any such regulation, or does not conform thereto; or

(g) without consent of the owner or occupier, affixes any posting bill or other paper against or upon any building, wall, or fence, or writes upon, soils, defaces, or marks any building, wall, or fence with chalk or paint, or in any other manner whatsoever; or

(j) flies any kite, or plays any game, to the annoyance of the inhabitants or passengers in any street, road, thoroughfare, or public place, or to the common danger of the passengers therein; or

(k) turns loose, or suffers any kind of swine or goats belonging to him or under his charge to stray or go about or to be tethered or depastured, in any street, road, thoroughfare, or public place,

shall be guilty of an offence.

Penalty: $200.

(2) It shall be lawful for any member to take into custody, without warrant, any person who commits any such offence as mentioned in this section within view of that member.

The main mischief this section addresses is obstruction of roads and other public places and if it is to be kept, the offence needs rewriting.

This is another very old section that covers a lot of ground, from negligently driving cattle or carriages, not keeping to the left, hindering traffic and obstructing a thoroughfare, to flying a kite annoyingly, letting goats or swine stray, right through to bill posting and graffiti. There is a lot of overlap between this offence and the previous section 74. They both deal with obstruction of passage through public space in one way or another.

While there is a need for prohibiting nuisances in thoroughfares there is no need for the pedantic detail gone into in this section. There is no need for the subsections on; (b) turning cattle loose, (c) driving cattle badly, (d)(i) driving a dray badly, (d)(ii) being too far away from a carriage to guide it, (d)(iii) riding on the drays shaft, (d)(iv) not keeping left, (d)(j) flying kites or playing games and annoying someone, or (d) allowing goats or pigs to wander around in public. All those subsections do is describe a multitude of different nuisances and different ways of obstructing free passage through public places.

There is value in having a provision dealing with obstructing thoroughfares, and creating nuisances which obstruct free passage through various public places.

New South Wales has a streamlined section 6 'Obstructing Traffic';

> *A person shall not, without reasonable excuse (proof of which lies on the person), wilfully prevent, in any manner, the free passage of a person, vehicle or vessel in a public place.*

The New South Wales section solves the problem without the extensive verbiage of the Northern Territory section, by simply prohibiting the wilful obstructing of free passage in a public place. The 'public place' would include thoroughfares, roads, shopping centres and parks and any other place used by the public. The reversal of onus, would seem to allow for traditional freedoms of political expression and misadventure.

57.2 Section 75(1)(b)-(f) – prosecutions (last 10 years to 30 June 2013)

There has been one prosecution for 'nuisances in thoroughfares'.

57.3 Section 75(1)(b)-(f) – maximum penalty

The current maximum penalty for breach of section 75 is $200. This is too low to provide any meaningful deterrent for the worst case offence.

The proposed penalty for section 75 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was penalty units.

A more appropriate maximum penalty is 25 penalty units.

Recommendation for section 75

- This provision should be replaced with a streamlined section similar to the NSW section 6 'Obstructing Traffic'.
- The maximum penalty should be 25 penalty units

58. Graffiti – new provision (from current section 75(1)(g))

Section 75(1)(g) says that any person who:

without consent of the owner or occupier, affixes any posting bill or other paper against or upon any building, wall, or fence, or writes upon, soils, defaces, or marks any building, wall, or fence with chalk or paint, or in any other manner whatsoever;

…is guilty of an offence

This offence carries a $200 fine.

This provision is sometimes used to prosecute graffiti producers. Bill Posting however does seem recently to have taken a back seat to the offence of graffiti with its socially confrontational aspect.

Graffiti writing or drawing, whether political, obscene, or just 'tagging', on public and private buildings and structures is regarded seriously in many quarters. The Northern Territory covers the offence with section 251 of the Northern Territory Criminal Code 'Criminal Damage in General',

(1) *Any person who unlawfully damages any property is guilty of an offence and is liable to imprisonment for two years.*

It is covered also by council by-laws, such as Darwin City Council by-laws section 98, which states;

Writing, defacing, &c.

A person who, without a permit, writes on, defaces or marks a power pole, sign, post, fixture, wall or pavement in a public place with writing or pictorial representation commits a regulatory offence.

(The council also provides assistance to clean up graffiti, by providing graffiti clean-up kits and paint vouchers to assist residents and owners in removing the graffiti from private property).

Some other jurisdictions have separate Graffiti provisions in their summary offences legislation. Queensland has prohibited selling spray cans to minors[163] and has devoted Part III of its *Summary Offences Act*, consisting of 18 sections, to graffiti, its removal and the registration of Graffiti removal officers, including their conditions, qualifications and appointment.

New Zealand has a slightly more succinct approach with 11A and 11B in its Criminal Damage section prohibiting 'Graffiti vandalism, tagging, defacing etc.[164]' and 'Possession of Graffiti implements'[165]. The offence of possessing graffiti implements carries a sentence of community work. They also prohibit selling spray-paint cans to minors[166] and prohibit shops from having spray-paint cans within easy reach[167].

Victoria and New South Wales have each devoted a whole Act to the problem.[168] Victoria's Act provides search and seizure powers without warrants to Police, and entry powers to private property for the council to clean it up. The main provision states;

> *"A person must not mark graffiti on property if the graffiti is visible from a*
>
> *public place unless the person has first obtained the express consent of the owner, or an agent of the owner, of the property to do so."*

If it were thought desirable to have an offence for graffiti this section would be adequate for the offence of making graffiti. Another section should then prohibit selling spray paint cans to minors. The rest of the Victorian Act devoted to search and seizure etc is unnecessarily draconian and intrusive, and anyway the problem is nowhere near as bad in the Northern Territory as it is in Sydney, Brisbane and Melbourne. The New South Wales Act includes provisions for 'community clean up orders' and 'graffiti prevention programs', as consequences of being found guilty.

Although the Darwin and some other town's by-laws prohibit 'Writing, defacing etc.,' as a regulatory offence there is still a need for it to be an offence in the *Summary Offences Act*. The graffiti offence should be a separate discrete section for unlawful graffiti and bill posting on public transport, structures and public and private buildings. The section should have a reverse onus for the issue of consent.[169] There should also be a corresponding prohibition on selling spray paint cans to minors.[170]

58.1 Section 75(1)(g) – prosecutions (last 10 years to 30 June 2013)

There have been 4 prosecutions for 'bill posting' in the last 10 years.

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[163] *Summary Offences Act 2005* (Qld) s.23A
[164] Section 11A *Summary Offences Act 1988* (NZ)
[165] *Section 11B Summary Offences Act 1988* (NZ)
[166] Section 14A *Summary Offences Act 1988* (NZ)
[167] Section 14B *Summary Offences Act 1988* (NZ)
[168] *Graffiti Prevention Act 2007* (Vic); *Graffiti Control Act 2008* (NSW)
[169] A building owner may like graffiti on the building.
[170] NSW has the offence of selling Spray paint cans to minors but it was not used in the first two years of its operation.

58.2 Section 75(1)(g) – maximum penalty

The current maximum penalty for breach of section 75 is $200. This is too low to provide any meaningful deterrent for the worst case offence.

The proposed penalty for section 75 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

A more appropriate maximum penalty is 25 penalty units.

Recommendations for section 75(1)(g)

- There should be a separate section prohibiting bill posting and writing or drawing graffiti without the consent of the owner of the property.
- There should be a separate offence of selling spray paint cans to minors.
- The maximum penalty should be 25 penalty units.

59. Dangerous dogs

59.1 Section 75A Dangerous Dogs - contents

(1) In this section, a reference to the owner of a dog includes:

(a) the person for the time being under whose control the dog is;

(b) the occupier of premises or a part of premises where the dog is usually kept; and

(c) where the owner has not attained the age of 17 years, a parent or guardian of the owner,

but does not include an authorised person, within the meaning of the Local Government Act , a member of the Police Force or a person at a pound controlling or keeping a dog in accordance with a by-law of a council, within the meaning of that Act.

(2) The owner of a dog that:

(a) attacks a person or animal; or

(b) menaces a person or animal,

is guilty of an offence.

Penalty: $5,000.

(3) It is a defence to a prosecution for an offence against subsection (2) if the owner of the dog proves that:

(a) a person had, without the owner's permission, enticed the dog to attack or menace the person or animal;

(b) the animal attacked or menaced was attacked or menaced on premises owned or occupied by the owner; or

(c) the person attacked or menaced was attacked or menaced on premises owned or occupied by the owner and the person:

(i) was on the premises for an illegal purpose; or

(ii) was attacked or menaced other than when proceeding by the shortest practical route from a boundary of the premises to the door of the premises closest to the boundary or from the door to the boundary.

(4) A person shall not entice or induce a dog to act in a manner that would render the owner of the dog liable to prosecution for an offence against subsection (2).

Penalty: $5,000.

(5) Where a court finds a person guilty of an offence against subsection (2), it may:

(a) order the destruction of the dog in addition to or instead of the penalty specified in that subsection; and/or

(b) order the person to pay the costs and expenses of and incidental to the impounding of the dog.

(6) Where a member of the Police Force believes, on reasonable grounds, that a dog has or may cause serious injury to a person or animal, the member may seize, impound or destroy the dog and for that purpose may enter onto any land (including land that is not open to or used by the public) with or without the consent of the occupier or owner, or a warrant.

Police suggest the Act be widened to include other animals, for example pigs, snakes and horses, and say the existing defences are enough to protect responsible owners.

In the Northern Territory the problem of dangerous dogs has recently become more contentious with the deaths of people in town camps and a series of serious attacks around Darwin and Alice Springs. Some say the owning of a dog should be more a responsibility than a right.

Various local government bodies, Darwin City Council and Tennant Creek for example, have by-laws controlling dogs and their owners, but for other local bodies, for example Litchfield Shire, it seems the associated expense in maintaining and enforcing that legislation is too great. This is an area of responsibility that, arguably, the Territory Government, rather than local shires, may need to control.

Police say the offence should be a strict liability offence (ie similar to the regulatory offence as it is in section 69 of the Darwin City Council by-laws 'Dog Attack').

59.2 Section 75A – prosecutions (10 years to 2013)

There have been 65 charges in the last 10 years.

59.3 Section 75A – penalty

The proposed penalty for section 75A in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 12 months imprisonment and/or 20 penalty units.

The penalty should remain roughly where it is, which can be rounded out to 50 penalty units.

Recommendation for section 75A

- This provision should be retained.
- The maximum penalty should be 50 penalty units.

60. Playing musical instruments so as to annoy

60.1 *Section 76* – content

(1) Every householder personally, or by his servant, or by any member, may require any street musician to depart from the neighbourhood of his house, on account of the illness of any inmate of the house or for any reasonable cause.

(2) Every person who sounds or plays upon any musical instrument in any thoroughfare near to and so as to be heard at the house, after being so required to depart, shall be guilty of an offence.

Penalty: $200.

(3) Every person who sounds or plays upon any musical instrument, and against whom an information has been laid by any inhabitant who is annoyed by the sounding or playing of the musical instrument, or by any member upon the written complaint of the inhabitant, shall be guilty of an offence.

Penalty: $200.

Section 76 is an offence in respect of which an infringement notice may be issued (penalty $100)[171].

The provision against 'the playing of a musical instrument so as to annoy' had as its source the *Metropolitan Police Act 1864* (UK). A private members bill was brought by a Mr Bass who was continually disturbed while reading 'The Times' by street bands. Sir Robert Peel also

[171] See regulations 4 and 4A of the Summary Offences Regulations

supported the Bill as it was necessary "for putting down the abominable nuisance of street organs", one of which used to play Psalm 100 every Saturday morning next to his house.

This is basically an offence against busking, and as few find busking offensive in Darwin, and indeed many find it pleasant, there is no need to make it a criminal offence. Buskers can get a permit in Darwin from Darwin City Council for a small fee. If the busking is a nuisance it can be dealt with by the nuisance provisions (see section 47).

60.2 Section 76 – convictions in the past 10 years (to 30 June 2013)

There have been no convictions since 2000.

One infringement notice has been issued in the past 10 years.

The proposed penalty for section 76 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

Recommendation for section 76

Section 76 should be repealed.

61. Keeping clean yard

61.1 Section 78 – keeping clean yards - contents

Any owner or occupier of any premises or place who neglects to keep clean all private avenues, passages, yards, and ways within such premises or place, so as by such neglect to cause a nuisance by offensive smell or otherwise, shall be liable to a penalty of not more than $200.

Section 78 is an offence in respect of which an infringement notice may be issued (penalty $100)[172].

61.2 Section 78 – prosecutions (10 years to 2013)

There have been no convictions since 2000. The *Public and Environment Health Act 2011* and Council by-laws take care of most of the mischief this provision was introduced to prevent. Accordingly, the section appears unnecessary such that it can be repealed.

6 infringement notices have been issued in the past 10 years but with the last one being issued in 2007/08.

61.3 Section 78 – penalty

The proposed penalty for section 78 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

[172] See regulations 4 and 4A of the Summary Offences Regulations

Recommendation for section 78

Section 78 should be repealed.

62. Public fountains

62.1 Section 82 – offences relating to public fountains - contents

(1) Any person who damages any public fountain, pump, cock, or water-pipe, or any part thereof, shall pay the cost of repairing the same, and, if the damage is done wilfully, shall, in addition to paying the cost, be liable to a penalty of not more than $1,000, or imprisonment for six months, or both.

(2) Any person who has in his possession any private key for the purpose of opening any cock, or who in any manner clandestinely or unlawfully appropriates to his use any water from any public fountain or pipe, shall be liable to a penalty of not more than $500, or imprisonment for three months, or both.

(3) Any person who opens, or leaves open, any cock on any public fountain or pump, so that the water runs or may run to waste, shall be liable to a penalty of not more than $200.

There does not seem to be any need for the offence. The offence of Criminal Damage (section 251 of the Criminal Code) covers this.

Section 82(3) is a "regulatory offence"[173].

The offences in section 82(1), (2) and (3) are offences in respect of which an infringement notice may be issued (penalty $100)[174].

62.2 Section 82 – prosecutions (10 years to 2013)

There have been no prosecutions since 2000.

18 infringement notices have been issued in the past 10 years.

62.3 Section 82 – penalty

The proposed penalty for section 82 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

Recommendation for section 82

Section 82 should be repealed.

[173] See section 91AA of the *Summary Offences Act*
[174] See regulations 4 and 4A of the Summary Offences Regulations

63. Leaving dead animal in various places

63.1 Section 85 – leaving dead animals - contents

Any person who:

(a) throws or leaves, or causes to be thrown or left, any dead animal, or any part thereof, upon any street, lane, road or other public place, or into any river, creek, or other stream which flows through, by, or along any such street, lane, road, or public place; or

(b) leaves, or causes to be left, any dead animal, or any part thereof, upon the shores of any such river, creek, or other stream; or

(c) leaves, of causes to be left, any dead animal, or any part thereof, on or upon any private property abutting upon any street, or on or near to any other public place,

to the annoyance of the inhabitants or of persons passing along or resorting to the street, lane, road, or public place, or of the occupiers of any dwelling-house, shall be liable to a penalty of not more than $200.

Section 85 is an offence in respect of which an infringement notice may be issued (penalty $100)[175].

Again this is a very old offence and the behaviour is covered by the *Litter Act*.[176] Section 7 of the *Litter Act* relates to offences committed in a public place or Crown Land, including areas used for vehicular or pedestrian traffic. The offence in the Litter Act has a maximum penalty of 4 penalty units)$576)

63.2 Section 85 – prosecutions (10 years to 2013)

There have been two charges in the last 10 years.

One infringement notice has been issued in the past 10 years.

63.3 Section 85 – penalty

The proposed penalty for section 85 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

Recommendation for section 85

Section 85 should be repealed.

[175] See regulations 4 and 4A of the Summary Offences Regulations
[176] Section 7 'Dead animals on street, &c.'

64. Cellars under footpaths

64.1 ***Section 89*** *–Cellars or Openings beneath the Surface of Footpaths Prohibited contents*

Any person who makes any cellar, or any opening, door, or window, in or beneath the surface of the footpath of any street or public place, shall be liable to a penalty of $200 over and above the expense of remedying or removing such cellar, opening, door, or window, such expense to be assessed and allowed by the Justice finding the person guilty.

Section 89 is a "regulatory offence"[177].

There does not seem to be a need for this provision.

64.2 ***Section 89*** *–prosecutions (10 years to 2013)*

There have been no charges since 2000.

64.3 ***Section 89*** *penalty*

The proposed penalty for section 89 in the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement) was 20 penalty units.

Recommendation for section 89

Section 89 should be repealed.

65. Regulatory offences

65.1 Section 81AA – Regulatory offences - contents

An offence of contravening or failing to comply with section 53A(2), 53B(3), 65AA, 74(3), 77(2), 82(3) or (4), or 89 is a regulatory offence.

Section 53A(2) & section 53B(3), which are offences against continuing to make noise after being warned to stop by Police, are regulatory offences. Section 74(3), Failing to obey Police traffic directions, is already an offence under the traffic act.

There is no section 77(2).

Section 82(3), is an offence of wasting water from a public fountain and will be repealed anyway.

There is no section 82(4)

Section 89 (Cellars or openings beneath the surface of footpaths prohibited) should be repealed anyway.

If the offences in the Act are redrafted so as to accord with Part IIAA of the Criminal Code the need for section 91AA will disappear as the offences will be drafted in such a way that it is clear whether they operate as strict or absolute liability offences under Part IIAA. This is

[177] See section 91AA of the *Summary Offences Act*

said noting that such classifications are akin to classifying offences as "regulatory offences" for the purposes of Part II of the Criminal Code.

It is not appropriate to classify (as section 91AA tries to) offences as having a particular nature. This kind of drafting fools readers and leads to long term cross referencing errors as has occurred with section 91AA.

Recommendation for section 91AA

Sections 53A(2) and 53B(3) should be described as strict liability offences in the actual sections of 53A and 53B.

If an offence is a strict liability offence it should describe itself as such in the section. A section wholly devoted to regulatory offences is unnecessary, and section 91AA should be repealed.

66. Regulation making power

66.1 Section 92– regulations contents

This is a standard provision in legislation allowing regulations to be made. It needs to be read with sections 65-65D of the *Interpretation Act.* These provisions expand the scope of regulations and, in the case of the Summary Offence Regulations, are the source of the power to make regulations concerning appeals under section 55A of the Act.

67. *Summary Offences Act* – should it be retained

Assuming we retain some of the offences from the *Summary Offences Act*, amend some others to bring them into the 21st Century and introduce new provisions that are deemed necessary, the question remains where should they be located. [178]

The offences we have been discussing are less serious, of a lower order of criminality, and carry a lesser penalty than most offences in the Criminal Code. The longest period of imprisonment stipulated is two years and many offences only carry a fine.

These offences are dealt with in the Court of Summary Jurisdiction and not in the Supreme Court. Most of the offences have the common feature of being 'Public Order' offences, which are often used to keep order rather than penalise the breach of order.

The offences therefore need a separate place from the more serious offences but the question remains whether that separate place is a new Part within the Criminal Code for 'summary or public order offences' or outside the Criminal Code in its own (however named) *Summary Offences Act*.

Other jurisdictions have gone both ways. Western Australia placed their old summary offences in the Criminal Code and the Australian Capital Territory has placed some in the Criminal Code and some in the Crimes Act.[179] The other jurisdictions, Queensland, Victoria, New South Wales, South Australia, Tasmania and New Zealand have kept a separate Act for their summary offences.

[178] "When prohibitory laws abound, the people grow poor! When laws are numerous there are many criminals." Lao-tse

[179] For example there is section 392 of the *Crimes Act 1900* 'Offensive Behaviour' and section 336 of the *Criminal Code 2002* 'Passing Valueless Cheques'.

It could be argued that repealing the *Summary Offences Act* and placing the offences in the Criminal Code removes a superfluous Act and leads to greater long term homogeneity between serious and less serious offences when the offences have common underling elements.[180]

There is also an argument that disparate subjects should be in separate Acts. We have a separate Act for drug offences, a separate Act for trespass offences and a separate Act for traffic offences. Most Acts carry offence provisions, and some, for example the *Prostitution Regulation Act* carry serious consequences.[181] Perhaps summary offences by their minor nature and jurisdictional differences should not be in the same Act that contains murder, rape and treason, and instead should be in a separate Act to be dealt with in the Court of Summary Jurisdiction.

The Criminal Code[182] implies, for the purpose of offences not covered by Part IIAA, there are crimes, simple offences and regulatory offences. The *Interpretation Act* says offences are simple or regulatory offences if they do not carry more than two years imprisonment.[183] These summary offences then are simple or regulatory offences.

There is an old adage, much harder to justify now, that ignorance of the law is no excuse. It would seem preferable that people know what the law is, or at least where the law is, and so have the opportunity to discover it. [184]

A 'Crimes Act' or 'Criminal Code' is where one would expect to find crimes and other offences of a general nature. Would people know what a summary offence is, or where to find it? Would people look for these offences in a Criminal Code or does the phrase 'summary offences' have enough purchase to lead them to a *Summary Offences Act*? Should there be an Act called the *Public Order (Summary Offences) Act?*

GENERAL RECOMMENDATIONS

- It is recommended that the matters at present in Part VI of the *Summary Offences Act* relating drinking in public places be placed in the *Liquor Act* and the matters to do with Trespass (section 46A & 46B) are placed in the *Trespass Act*.
- It is recommended that the remaining *Summary Offences Act* provisions be amended or repealed as suggested above.
- It is recommended that the remaining *Summary Offences Act* provisions be redrafted in modern Part IIAA style and placed in a summary offence part of Criminal Code.
- It is recommended the Summary Offences Regulations be repealed and redrafted.

[180] "A decrease in the quantity of legislation generally means an increase in the quality of life" George Will.
[181] Up to 14 years imprisonment for example for inducing an infant to take part in prostitution. (s.13)
[182] Section 3 NTCC 'Division of Offences.
[183] Section 38E Interpretation Act 'Certain offences crimes'.
[184] In the UK the government has created more than 3,500 crimes since 1997 including one for using a non-approved technique for weighing Herring. In 1975 the UK had three volumes of Acts. By 1985 there were five, according to Lord Simon of Glairdsdale speaking in 1990. http://hansard.millbanksystems.com/lords/1990/jan/31/legislatio-quantity-and-quality ;

68. Related legislation - Observance of Law Act

Observance of Law Act

The *Observance of Law Act*, which started life as the *Observance of Law Ordinance 1921*, has as its main offence a paraphrase of section 47 of the *Summary Offences Act*. The section reads;

Misbehaviour at a public meeting

Any person who, in, at or near any place where a public meeting is being held –

(a) behaves in a riotous, disorderly, indecent, offensive, threatening or insulting manner;

(b) uses any threatening, abusive or insulting words; or

(c) in any way whatsoever, except by lawful authority (proof whereof shall lie upon him) obstructs or interferes with any of the proceedings of the meeting or the Chairman in the conduct of the meeting,

shall be guilty of an offence.

Penalty: $40 or imprisonment for three months.

Section 4 says that if in the opinion of the chairman of a meeting a person nearby;

(a) behaves in a riotous, disorderly, indecent, offensive, threatening or insulting manner;

(b) uses any threatening, abusive or insulting words; or

(c) in any way whatever, except by lawful authority (proof whereof shall lie upon him) obstructs or interferes with any of the proceedings at the meeting or with the chairman in the conduct of the meeting,

the Chairman may verbally direct any officer of the Police Force, or the police generally, to remove the person from the place and the neighbourhood thereof.

(2) Upon a direction being given under subsection (1), it shall be the duty of any officer of police to whom it is addressed or who is present at, in or near the place, to remove the person in accordance with the direction.

(3) Any person who obstructs or interferes with any officer of police in the performance of his duty under this section, shall be guilty of an offence.

Penalty:$100 or imprisonment for six months.

These provisions obviously paraphrase section 47 of the *Summary Offences Act*.

The only other offence in the Act is section 11 – which provides as follows:

Victimization as to employment and delivery of goods

Any person who, by threats, intimidation, violence, force or any physical act, interferes with the right of any person –

(a) to carry on his lawful occupation;

(b) to obtain or accept or continue in employment; or

(c) to obtain any goods or services or the delivery of any goods,

shall be guilty of an offence.

Penalty: $100 or imprisonment for six months.

It seems illogical to have a whole act for what is in effect section 47 of the *Summary Offences Act* for meetings, and offences of threats, intimidation, violence, and force, which are all covered in the Criminal Code sections 187 and 188.

The Act is one of the old anti-union Acts and was enacted in 1921 around the time of the Waterfront strikes of the early 20th century. The whole Act should be repealed as any mischief the Act was designed to protect at public meetings or in the pursuance of a lawful occupation is covered adequately by the provisions of the Criminal Code and the *Summary Offences Act.*

Recommendation

The *Observance of Law Act* should be repealed.

FINAL THOUGHT

"If we tore down all the laws, where should we hide from the Devil, and the winds that would blow then?"

St Thomas More (1478 – 1535)

Appendix A1 –Summary of number of prosecutions in the period 1 July 2002/30 June 2012 and indigenous/no indigenous offending July 2009-30 June 2012

Section of the Summary Offences Act	Description of the current offence	Offences during the period 2002/2012	Offences in period 1 July 2009/30 June 2012 committed by indigenous offenders	Offences in period 1 July 2009/30 June 2012 committed by non-indigenous offenders
46A	Forcible entry	26	12	1
46B	Forcible detainer	0	0	0
46C	Disturbing religious worship	5	0	4
47(a)	Riotous behaviour	140	77	11
47(a)	Offensive behaviour in public place	393	80	34
47(a)	Disorderly behaviour in view of the public	253	58	14
47(a)	Disorderly behaviour in a public place	3627	908	341
47(a)	Behaving indecently in a public place	85	16	10
47(b)	Disturbing the public peace	30	15	3
47(c)	Disorderly behaviour in a police station	1119	289	120
47(c)	Indecent behaviour in a police station	22	7	2
47(c)	Offensive behaviour in a police station	47	12	5
47(d)	Offensive behaviour in a dwelling house, dressing shed etc	154	33	23
47(e)	Causing substantial annoyance of another person	347	82	36
47(f)	unreasonably disrupting privacy of another (peeping into a dwelling house)	26	2	4
47AA(1)	Violent act causing fear of others for safety	993	388	5
47AB	Threatening violence	49	9	5
47AC	Loitering by sexual	10	0	4

Section of the Summary Offences Act	Description of the current offence	Offences during the period 2002/2012	Offences in period 1 July 2009/30 June 2012 committed by indigenous offenders	Offences in period 1 July 2009/30 June 2012 committed by non-indigenous offenders
	offender			
47A(1)	Loitering – general offence (person loitering who fails to do so on request of police)	15	3	3
47A(2)	Loitering – (person loitering who may have committed an offence or interrupted traffic who fails to loiter and to remove articles (on request of police)	124	7	9
47B	Loitering – and order to stay away for up to 72 hours - offence following notice	139	102	4
49A(1)(a)	Illegal use of vehicle, &c.	1396	301	85
49A(1)(c)	Interfere with boat etc	5	0	0
50	Penalty for indecent exposure of the person	679	65	65
51A	Check	2		
52	Injuring or extinguishing street lamps	0	0	0
53(1)(a)(i)	Indecent or obscene language in or within view of a public place	605	1479	578
53(1)(a)(i)	Writes or draws obscene words in or within view of a public place	1	0	0O
53(7)(a)	Objectionable words in public place or on licensed premises	4734	6978	1917
53(7)(a)	Threatening behaviour in public [place including licensed premises	61723	136106	286
53(7)(a)	Objectionable behaviour in a public place	14	10	01
53(7)(b)	Noise that annoys in a public place or on	0	0	0

Section of the Summary Offences Act	Description of the current offence	Offences during the period 2002/2012	Offences in period 1 July 2009/30 June 2012 committed by indigenous offenders	Offences in period 1 July 2009/30 June 2012 committed by non-indigenous offenders
	licensed premises			
53A	Undue noise at social gathering after midnight	54	0	10
53B	Undue noise	16	0	43
53D(3)	Noise abatement orders	1??1??	0	10
53E(3)	Powers of police (failure to answer questions for purposes of sections 53A and 53B)	0	0	0
54	Stealing domestic animals	3	0O	0O
55	Challenge to fight	478	716	10
55A(1)	Consorting between known offenders	0	0	0
56(1)(c)	Begging	36	1	0
s 56(1)(e) –	Possessing elements of disguise and disabling drugs and (new) possessing house breaking equipment (merged)	167	565	10
57(1)(e)		16	5	1
57(1)(g)		7	1	1
60	Valueless cheques	158	14	38
60A	Fraud other than false pretences	12	0	0
61	Persons suspected of having stolen goods	10851126	2552390	15232
62	Possession of property that cannot be accounted for	0	0	0
65AA	Dumping of certain containers	0	0	0
65A	Tampering with instruments	0	0	0
66	Wilfully permitting	1	0	0

Section of the Summary Offences Act	Description of the current offence	Offences during the period 2002/2012	Offences in period 1 July 2009/30 June 2012 committed by indigenous offenders	Offences in period 1 July 2009/30 June 2012 committed by non-indigenous offenders
	drunkenness or disorderly conduct in any place of public report			
68A	False reports to police	5344	104	78
68B	Advertising of rewards	0	0	0
69A	Disobedience to laws of the Territory	0	0	0
69B	Inciting the commission of an offence	5334	89	24
74	Power to regulate traffic in certain cases	0	0	0
75(1)	Prohibition of nuisances in thoroughfares	1	0	0
75(1)(g)	Bill posting	45	01	0
75A	Dangerous dogs	6558	1010	89
76	Playing musical instruments so as to annoy	0	0	0
78	Keeping yards clean	0	0	0
80[185]	Damaging public property	144	74	1
82	Offences relating to public fountains	0		
85	Leaving dead animals	2	10	0
89	Cellar openings etc under footpaths	0	0	0

[185] Noting that the offence was repealed in 1996

Appendix A2 –Summary of number of infringement notice offences in the period 1 July 2002/30 June 2012 and indigenous/no indigenous offending July 2009-30 June 2012

Section of the Summary Offences Act	Description of the current offence	Notices during the period 2003/2013	Notices in period 1 July 2010/30 June 2012 issued to indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013committed by non-indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013 where the alleged offenders status is unknown
47(a)	Riotous behaviour	939	38	2	2
47(a)	Offensive behaviour in public place	2335	440	136	2
47(a)	Disorderly behaviour in view of the public	818	141	39	37
47(a)	Disorderly behaviour in a public place	6689	1545	10	19
47(a)	Behaving indecently in a public place	998	245	51	103
47(a)	Fighting in a public place				
47(b)	Disturbing the public peace	939	265	33	52
47(c)	Disorderly behaviour in a police station	1984	509	125	67
47(c)	Indecent behaviour in a police station				
47(c)	Offensive behaviour in a police station	437	70	20	12
47(d)	Offensive behaviour in a dwelling house, dressing shed etc	89	15	1	2
47(e)	Causing substantial annoyance of another person	479	114	21	22
47(f)	unreasonably disrupting privacy of another (peeping into a dwelling house)	60	18	0	5
47AB	Threatening				

Section of the Summary Offences Act	Description of the current offence	Notices during the period 2003/2013	Notices in period 1 July 2010/30 June 2012 issued to indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013committed by non-indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013 where the alleged offenders status is unknown
	violence				
53(1)(a)(i)	Indecent or obscene language in or within view of a public place	2410	558	96	101
53(1)(a)(i)	Writes or draws obscene words in or within view of a public place	86	12	6	6
53(7)(a)	Objectionable words in public place or on licensed premises	363	64	8	9
53(7)(a)	Threatening behaviour in public place including licensed premises	252	47	8	5
53(7)(a)	Objectionable behaviour in a public place	66	8	4	5
53A	Undue noise at social gathering after midnight	114	21	9	6
53B	Undue noise	210	21	10	10
55	Challenge to fight	16	10	0	2
65AA	Dumping of certain containers	1	0	0	0
65A	Tampering with instruments	2	1	0	1
66	Wilfully permitting drunkenness or disorderly conduct in any place of public report	49	4	0	0
76	Playing musical instruments so as to annoy	1	1	0	0
78	Keeping yards clean	6	0	0	0
82	Offences relating to	18	0	6	1

Section of the Summary Offences Act	Description of the current offence	Notices during the period 2003/2013	Notices in period 1 July 2010/30 June 2012 issued to indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013committed by non-indigenous alleged offenders	Notices in period 1 July 2010/30 June 2013 where the alleged offenders status is unknown
	public fountains				
85	Leaving dead animals	1	1	0	0

Appendix B

Summary of the proposals

In part 4 of this report the following issues and questions were raised

- What framework should the Government have for these types of behaviours?

  Retain most of the current framework.

- When and in what circumstances is it appropriate to criminalise nuisance behaviour?

  See discussion, Parts 14, 15, 16, 26, 27, 28, 29, 30, 31, 39, 57, 58, 60 and 61

- What should the Government's policy be regarding public order legislation?

  See discussion Parts 16, 17, 18, 19, 20, 24, 27, 28, 29, 37, 38, 40, 41 and 50

The *Summary Offences Act* is a home for provisions dealing with public order and like matters and we need to ask these questions;

- Which provisions should be retained?

  See following Appendix B

- Which provisions should be replaced or rewritten?

  See following Appendix B

- Which provisions should be removed?

  See following Appendix B.

- Are there any other offences which should be placed in the *Summary Offences Act?*

  See following table

Once these questions are answered then we ask;

- Should the Act be merely amended, or repealed and replaced with another *Summary Offences Act*. Whether called by that name or another, such as *Public Order Offences Act* or *Summary Offences (Public Order) Act* or something similar?

  No.

- Should the entire *Summary Offences Act* be repealed and those offences worth keeping put into other more appropriate Acts, such as the Criminal Code, the *Trespass Act*, the *Liquor Act* and the *Traffic Act*?

Yes.

Proposed changes to summary offence penalties

To be retained in current or modified form
To be retained but transferred to different legislation
No current provision
Proposed to be repealed

***Summary Offences Act* review.**

Section of the Summary Offences Act	Current offence	Current penalty (including any default fine)	Proposed revised penalty
46A	**Forcible entry**	**12 months / $14,000**	**12 months/100 PU ($14,400)**
46B	**Forcible detainer**	**12 months / $14,000**	**12 months/100 PU ($14,400)**
46C	**Disturbing religious worship**	**6 months imprisonment**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(a)	**Riotous, offensive, indecent behaviour and using obscene language - public place**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(b)	**Disturbing the public peace**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(c)	**Riotous etc behaviour in a police station**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(d)	**Offensive behaviour in a dwelling house, dressing shed etc**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(e)	**Causing substantial annoyance of another person**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**
47(f)	**unreasonably disrupting privacy of another (peeping into a dwelling house)**	**$2000 or imprisonment for 6 months or both**	**50 penalty units ($7,200) or imprisonment for 6 months or both.**

Section of the Summary Offences Act	Current offence	Current penalty (including any default fine)	Proposed revised penalty
New offence	**New peeping tom offence**	**NA (new offence)**	**25 penalty units ($3525) or imprisonment for 3 months or both.**
47AA	**Violent disorder**	**100 penalty units ($14,400) or imprisonment for 12 months or both**	**100 penalty units ($14,400) or imprisonment for 12 months or both**
47AB	**Threatening violence**		
47AC	**Loitering by sexual offender**	**$5000 or imprisonment for 12 months**	**100 penalty units ($14,400) or imprisonment for 12 months or both**
47A	**Loitering – general offence**	**$2000 or imprisonment for 6 months or both**	**50 penalty units (ie $7,200) or imprisonment for 6 months or both**
47B	**Loitering – offence following notice**	**100 penalty units (ie $14,400) or imprisonment for 6 months**	**50 penalty units (ie $7,200) or imprisonment for 6 months or both**
49A	**Illegal use of vehicle, boat, animals &c.**	**$1000 or imprisonment for 6 months or both**	**50 penalty units (ie $7,200) or imprisonment for 6 months or both**
50	**Penalty for indecent exposure of the person**	**$2000 or imprisonment for 6 months or both**	**50 penalty units (ie $7,200) or imprisonment for 6 months or both**
52	**Injuring or extinguishing street lamps**		
53(1)	**Indecent or obscene language in a public prayer or licensed premises (or writing of words)**		
53(7)	**Objectionable words in a public place or licensed premises**		
53A	**Undue noise at social gathering after midnight**	**$2000**	**50 penalty units ($7,200)**
53B	**Undue noise**	**$2000**	**50 penalty units**

Section of the Summary Offences Act	Current offence	Current penalty (including any default fine)	Proposed revised penalty
			($7,200)
53C	Certificate of member of police force to be evidence	NA (not an offence provision)	NA
53D	Noise abatement orders	$2000	50 penalty units ($7,200)
53E	Powers of police	$2000	25 penalty units ($3525)
53F	Compliance with direction	NA (not an offence provision)	NA
54	Stealing domestic animal		
55	Challenge to fight	3 months ($3525)	3 months ($7,200)
55A	Consorting between known offenders	200 penalty units (ie $28,200) or imprisonment for 2 years	200 penalty units (ie $28,200) or imprisonment for 2 years
56(1)(c)	Begging	$500 or imprisonment for 3 months or both	5 penalty units (ie $705) or imprisonment for 3 months or both
s 56(1)(e) –	Possessing elements of disguise and disabling drugs and (new) possessing house breaking equipment (merged)	$500 or imprisonment for 3 months or both	25 penalty units (ie $3425) or imprisonment for 3 months or both
57	Offences after finding of guilt under section 56		
60	Valueless cheques	$2000 or imprisonment for 12 months or both	100 penalty units (ie $14,400) or imprisonment for 12 months or both
60A	Fraud other than false pretences		
61	Persons suspected of having stolen goods	12 months and/or $2000	12 months / 100 penalty units ($14,400)
62	Possession of property that cannot be accounted for		
65AA	Dumping of certain containers		

Section of the Summary Offences Act	Current offence	Current penalty (including any default fine)	Proposed revised penalty
65A	Tampering with instruments		
66	Wilfully permitting drunkenness		
68A	False reports to police	$11,000 or imprisonment for 2 years	200 penalty units (ie $28,200) or imprisonment for 2 years
69A	Disobedience to laws of the Territory	3 months/$3425	Retain
69B	Advertising of rewards		
74	Power to regulate traffic in certain cases	$200	25 penalty units ($3525)
75	Prohibition of nuisances in thoroughfares	$200	25 penalty units ($3525)
75A	Dangerous dogs	$5000	50 penalty units (ie $7,200)
76	Playing musical instrument so as to annoy		
78	Keeping yards clean		
82	Offences relating to public fountains		
85	Leaving dead animals		
89	Cellar openings etc under footpaths		
New	Making graffiti	NA	25 penalty units ($3525)
New	Selling spray can to minor	NA	25 penalty units ($3525)