

# **QUEENSLAND LAW REFORM COMMISSION**

**A BILL TO MAKE PROVISION FOR THE ABATEMENT OF LITTER  
AND OTHER PURPOSES**

**REPORT NO. 5**

**8 June 1970**

***A Report of the Queensland Law Reform Commission***

**PO Box 312  
Roma Street 4003  
Telephone: 227.4544  
Fax: 227.9045**



QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

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To the Honourable P. R. Delamothe, O. B. E., M. L. A.,  
Minister for Justice and Attorney-General,  
BRISBANE.

Your letter of the 21st April, 1970, addressed to the Honourable Mr. Justice Campbell, Chairman, Law Reform Commission, states as follows:-

"re Damage to Property by Vandalism

The question of devising means of dealing with this growing social problem has been raised from time to time by Government Departments, Local Authorities and individuals concerned.

Damage to road signs, main roads and Local Authorities, and to public conveyances and places have been included in the matters of considerable public interest and greater penalties have been sought as a deterrent as well as questions raised as to the steps which may be taken to assist in the prosecution of offenders.

Provision is made for offences in relation to the subject matter by a number of statutes as well as by innumerable regulations and by-laws, resulting in the prescribing of different penalties and of different powers in dealing with offenders.

I therefore request that the Commission report on its examination of this particular branch of the law and its formulation of recommendations for reform and will appreciate if the matter could be given urgency of attention.

It is suggested that inquiries from Government Departments and the various Local Authorities will assist the Commission in this work."

Pursuant to your letter the Commission has considered the various matters referred to by you.

Although you have adverted to damage to property by vandalism only, it would seem to the Commission that you have in mind not only such damage, but also the related question of "litter", which latter subject is becoming an ever increasing social problem and one receiving considerable publicity in the press and elsewhere at the present time.

In the opinion of the Commission, offences concerning the wilful and unlawful destruction and/or damage to property are adequately provided for in existing legislation.

The Criminal Code, Chapter XLV, section 458 et. seq., not only defines unlawful damage to property, but also provides for a number of specific offences and for particular penalties in respect thereof.

Chapter XLVII of the Code furthermore provides for the summary conviction of offenders in certain instances.

Similarly, the Traffic Act 1949-1969 provides for a variety of offences concerning, inter alia, damage to public transport, damage to parking meters, the defacing of numbers on motor vehicles, the depositing or dropping of any object on the roadway likely to cause damage or injury, and the destroying of traffic signs.

In particular, we would refer you to the following sections of the Traffic Act 1949-1969:-

Section 30(1)(g), Section 44I(1)(b) and (d), Section 59(a),  
Section 61(1), (2) and (3), Section 12E(c) and Section 12H.

All such offences are punishable under "The Justices Acts, 1886 to 1968"

Apart from such general enactments, there are also a great number of statutes wherein are defined offences relating to the subject matter of the particular statute. Each statute prescribes its own particular penalty for the offence or offences referred to therein.

To instance only a few of such latter we would refer to the following:-

(a) "The Harbours Acts, 1955 to 1968"

- Section 60(1) - Harbour lights, buoys, etc. not to be placed or removed without the sanction of the Minister;
- Section 76 - Responsibility for injury to works of harbour, e. g. by floating timber;
- Section 146 - Restriction on deposit of ballast, rubbish etc.;
- Section 148 - Board may prohibit discharge of refuse into harbour;
- Section 149 - No animals to be thrown into harbour;
- Section 150 - Vessels sunk or stranded;
- Section 151 - Damaging lights, buoys, beacons, etc.;
- Section 152 - Damage to lights on harbour works;
- Section 153 - Other offences.

(b) "The Fisheries Acts, 1957 to 1962"

- Section 28(7) - Disturbing licenced area;
- Section 57 - Illegally taking oysters, etc.;
- Section 64 - Disturbing oyster beds;
- Section 65 - Cutting mangroves.

(c) "The Queensland Marine Acts, 1958 to 1967"

- Section 208(1) - Damaging lights, buoys, beacons, etc.;
- Section 209 - Trespassing on lighthouse, etc.;
- Section 210 - Prevention of pollution of water;
- Section 211(1) - Vessels sunk or stranded;
- Section 217(2) - Removal of stone, etc. from foreshore.

Whilst amongst such statutes there is a considerable divergence in the nature of the penalties prescribed, there are likewise wide differences in the nature of the offences themselves and it is the Commission's opinion that it would be neither practicable nor desirable to have uniformity in regard thereto.

Not unexpectedly, the ordinances of the Brisbane City Council contain the most comprehensive list of offences in relation to public places.

The following ordinances all contain provisions dealing with damage to public places, the defacing of public property, the posting of signs and the leaving of litter:-

- Chapter 12 - Part V - Flies - leaving rubbish;  
Part VIII - Smoke, soot and other nuisances;
- Chapter 15 - Baths and bathing - defacing, polluting etc.;
- Chapter 18 - Parks;
- Chapter 32 - Tramways;
- Chapter 33 - Signs and advertisements;
- Chapter 36 - Streets;
- Chapter 47 - Public safety and convenience;
- Chapter 45 - Jetties and pontoons;
- Chapter 54 - Distribution of handbills;
- Chapter 61 - Cemeteries - see Ordinance 27: destruction of tombstones etc.  
(Ordinance 30: Cemeteries deemed to be parks);
- Chapter 66 - Foreshore and retaining walls;
- Chapter 71 - Protection of Council property (destruction of Council property generally, also litter on Council property).

Prosecution for an offence under any of the above ordinances may be made by complaint under "The Justices Acts, 1886 to 1968".

A somewhat anomalous position has arisen in regard to the question of penalty in respect of offences prescribed by the various ordinances. Section 38 of the City of Brisbane Act 1924-1969 provides for a maximum penalty of \$100.00 as does also section 24 of the City of Brisbane Town Planning Act 1964-1969. However, under section 31(9) of the Local Government Act 1936-1970, the maximum penalty prescribed is \$200.00. Whilst the Brisbane City Council has power to make ordinances under its own Act (vide - section 36, subsections 3 and 6 of the City of Brisbane Act 1924-1969) the Local Government Act 1936-1970 applies to the Brisbane City Council in circumstances where the Council has not itself legislated.

In regard to the question of "litter", there is in Queensland no statute dealing specifically with the subject. In the United Kingdom there is "The Litter Act, 1958" and we enclose herewith a photocopy of such statute for your information. The only State in the Commonwealth which has legislated on the subject is Victoria, which enacted the "Litter Act 1964". This was subsequently amended by the "Litter Act 1967" and a copy of the Act as amended is also enclosed.

We forward herewith for your consideration, a draft Bill on the subject of "litter". This Bill has been based on the Victorian legislation. Whilst provision has been made for the imposition of penalties where required, the Commission has not indicated the nature or the amount thereof as it was considered this would be a matter of Government policy.

W. B. Campbell. Chairman

E. H. McKeown Member

Raymond Smith Member

J. H. [Signature] Member

BRISBANE  
8th June, 1970.

No. \_\_\_\_\_ of 1970

A Bill to make provision for the Abatement of Litter and other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short Title. This Act may be cited as the Litter Act 1970.
2. Commencement of Act. This Act shall come into operation on a date to be fixed by the Governor in Council by proclamation published in the Gazette, which date is herein referred to as the commencement of this Act.
3. Interpretation. In this Act unless the context otherwise requires, the following terms shall have the meanings herein respectively assigned to them, that is to say:-

"Litter" means bottle, tin, carton, box, package, metal, paper, glass, food or other refuse or rubbish.

"Public place" means -

- (a) any street, road or lane or thoroughfare as defined by the Local Government Act 1936-1970;
- (b) any park, garden, reserve or other place of public recreation;
- (c) any beach, foreshore, water frontage or any river, creek, waterway, canal, bay, lake (whether natural or artificial) or lagoon;
- (d) any place in the open air to which the public has access;
- (e) any railway station or platform, wharf, pier or jetty;
- (f) any railway carriage, tramcar or public conveyance;
- (g) any room, shelter, convenience or booth provided for use by the public;
- (h) any public building or building used for governmental, municipal or public purposes and the land or premises used in connection therewith; and
- (i) any church, chapel, hall, school, college or university and the land or premises used in connection therewith.

Subject to this Act the definitions in the Local Government Act 1936-1970 shall mutatis mutandis apply and extend to this Act.

4. Depositing litter or unwanted things. (1) Any person who throws down, drops or otherwise deposits and leaves any litter or any unwanted material or thing of any kind in or on any public place, other than in any place of amusement, sport or recreation for admission to which he has paid a fee, or in or on any other land owned or occupied by or under the control of any person or authority shall, unless the depositing and leaving was authorised by the owner or occupier or the person in authority having control of the place or land, be guilty of an offence and be liable to a penalty of not more than \$ \_\_\_\_\_.

Where the Court is satisfied that the offence was committed wilfully and that the amount of litter or the amount of unwanted material or the unwanted thing was substantial, the offender shall be liable to a penalty of not more than \$ \_\_\_\_\_ or to imprisonment for a term of not more than \_\_\_\_\_ month/s or to both such fine and imprisonment.

(2) Any person who deposits and leaves any broken glass or who breaks or causes to be broken and leaves any glass in or on any public place shall, unless the breaking or depositing and leaving was authorised by law or was done with the express consent of the person or authority owning or occupying or having control or management of the place, be guilty of an offence and liable to a penalty of not more than \$ \_\_\_\_\_ or to imprisonment for a term of not more than \_\_\_\_\_ month/s or to both such fine and imprisonment.

(3) Any person who except as part of the operation of unloading goods wilfully throws or drops any thing whatsoever from any vehicle or vessel moving or standing in any public place or (except in connection with the cleaning or repair thereof) from any railway carriage or other rolling stock or any tram, cable car or omnibus shall be guilty of an offence and liable to a penalty of not more than \$ \_\_\_\_\_ or to imprisonment for a term of not more than \_\_\_\_\_ month/s or to both such fine and imprisonment.

5. Offender may be requested to clean up. (1) Where any person is convicted of an offence under any of the preceding provisions the Court may in lieu of or in addition to imposing a penalty order the offender to clear up and remove from the area the litter, unwanted material, thing or glass the subject of the offence within a time specified and under the supervision and to the satisfaction of a person nominated by the Court and where such order is made the Court shall further order that in default in complying with the order of the Court the offender shall be liable in addition to any penalty imposed under section 5 to such fine not exceeding \$ \_\_\_\_\_ as the Court thinks fit.

(2) Where the order is complied with to the satisfaction of the person nominated by the Court that person shall give or send to the offender a statement to that effect under his hand.

(3) Where an offender fails to comply with an order of the Court any justice upon application of the person nominated by the Court to supervise the clearing and removal of the litter, unwanted material, thing or glass may issue a summons requiring the offender to show cause why the fine imposed by the order made under subsection (1) should not be enforced.

(4) On the hearing of the summons to show cause the Court may make such order as it thinks fit.

6. Proceedings for offences. (1) Without prejudice to the powers of any other person proceedings for an offence against this Act may be instituted -

- (a) by any member of the police force;
- (b) by the council of any city, town or shire within whose area the offence was committed or by any officers of the city, town or shire appointed by the council for the purpose either generally or in any particular case; or
- (c) by the owner or occupier or person or authority having the control of the land or place where the offence was committed or by a person authorised in writing by that owner, occupier, person or authority.

(2) Appropriation of penalties. All penalties for offences against this Act shall be paid -

- (a) where they are recovered in proceedings instituted by or on behalf of a city, town or shire - into the municipal fund of that city, town or shire;
- (b) where they are recovered in proceedings instituted by or on behalf of any authority constituted or appointed by or under any Act - into the fund of that authority or, if the authority has no fund but administers or uses any moneys paid to or collected by it, to the authority to be administered or used by it as part of those moneys;
- (c) where they are recovered in proceedings instituted by a member of the police force or any other person or by an authority which has no fund and does not administer or use any moneys - into the Consolidated Revenue.

7. Cost of removing rubbish, etc., recoverable. Where a Court convicts a person of an offence under section 4 the Court may, if it thinks fit, in addition to imposing any penalty, order the offender to pay by way of compensation such sum as it considers reasonable for the removal of the litter, material, thing or glass the subject of the offence to the owner or occupier or person or authority having control or management of the public place or land where the offence was committed and the amount so awarded shall be deemed to be a judgment debt due to the said owner, occupier, person, authority or municipality from the person so convicted and may be enforced in any manner in which a judgment or order of that Court for the payment of a civil debt could be enforced.

[Reprinted as at 18th June, 1969.

No. 7145.

## LITTER ACT 1964.

Reprint (No. 1) incorporating amendments up to Act No. 7608.

### An Act to make Provision for the Abatement of Litter and for other purposes.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Litter Act 1964*.\*

Short title.

2. In this Act unless inconsistent with the context or subject-matter—

Interpretation.

“Litter” means bottle tin carton package paper glass food or other refuse or rubbish.

“Litter.”

“Public place” means—

“Public place.”  
s. 2 amended  
by No. 7608  
s. 3.

(a) any street road lane or thoroughfare ;

(b) any park garden reserve or other place of public recreation ;

(c) any beach foreshore water frontage or any river creek waterway canal bay lake (whether natural or artificial) or lagoon ;

(d) any place in the open air to which the public has access ;

(e) any railway station or platform wharf pier or jetty ;

(f) any railway carriage tramcar or public conveyance ;

\* The *Litter Act 1964* was assented to on the 5th May, 1964 and came into operation on the same day (see *Government Gazette* 6th May, 1964 at page 1369).

This reprint incorporates the amendments made to the *Litter Act 1964* by the following Acts :—

Name.	Number.	Date of Assent.	Date of Commencement.
<i>Statute Law Revision Act 1965</i> .. .. .	7332	14.12.65	14.12.65
<i>Litter Act 1967</i> .. .. .	7608	5.12.67	5.12.67

1432/69.—PRICE 15 cents.

- (g) any room shelter convenience or booth provided for use by the public ;
- (h) any public building or building used for governmental municipal or public purposes and the land or premises used in connexion therewith ; and
- (i) any church chapel hall school college or university and the land or premises used in connexion therewith.

Depositing litter or unwanted things.  
 Ss. (1) substituted by No. 7608 s. 4.

3. (1) Any person who throws down drops or otherwise deposits and leaves any litter or any unwanted material or thing of any kind in or on any public place, other than in any place of amusement sport or recreation for admission to which he has paid a fee, or in or on any other land owned or occupied by or under the control of any person or authority shall, unless the depositing and leaving was authorized by the owner or occupier or the person in authority having control of the place or land, be guilty of an offence and—

- (a) where the court is satisfied—
  - (i) that the offence was committed wilfully and that the amount of litter or the amount of unwanted material or the unwanted thing was substantial ; or
  - (ii) that the litter or unwanted material or thing was wilfully dropped or thrown from a moving vehicle—

shall be liable to a penalty of not more than \$200 or to imprisonment for a term of not more than one month or to both such fine and imprisonment ; and

- (b) in any other case shall be liable to a penalty of not more than \$200.

Depositing and leaving broken glass.  
 Ss. (2) substituted by No. 7608 s. 4.

(2) any person who deposits and leaves any broken glass or who breaks or causes to be broken and leaves any glass in or on any public place shall, unless the breaking or depositing and leaving was authorized by law or was done with the express consent of the person or authority owning or occupying or having control or management of the place, be guilty of an offence and liable to a penalty of not more than \$200 or to imprisonment for a term of not more than one month or to both such fine and imprisonment.

Ss. (3) repealed by No. 7608 s. 5.

\* \* \* \* \*

Offender may be requested to clean up.  
 S. 3A inserted by No. 7608 s. 6.

3A. (1) Where any person is convicted of an offence under any of the preceding provisions the court may in lieu of or in addition to imposing a penalty order the offender to clear up and

remove from the area the litter unwanted material thing or glass the subject of the offence within a time specified and under the supervision and to the satisfaction of a person nominated by the court and where such order is made the court shall further order that in default in complying with the order of the court the offender shall be liable in addition to any penalty imposed under section 3 to such fine not exceeding \$200 as the court thinks fit.

(2) Where the order is complied with to the satisfaction of the person nominated by the court that person shall give or send to the offender a statement to that effect under his hand.

(3) Where an offender fails to comply with an order of the court any justice upon application of the person nominated by the court to supervise the clearing and removal of the litter unwanted material thing or glass may issue a summons requiring the offender to show cause why the fine imposed by the order made under sub-section (1) should not be enforced.

Penalty for not complying with s. 3A (1).

(4) On the hearing of the summons to show cause the court may make such order as it thinks fit.

4. (1) Without prejudice to the powers of any other person proceedings for an offence against this Act may be instituted—

Proceedings for offences.

(a) by any member of the police force ;

(b) by the council of any municipality within whose municipal district the offence was committed or by any officer of the municipality appointed by the council for the purpose either generally or in any particular case; or

(c) by the owner or occupier or person or authority having the control of the land or place where the offence was committed or by a person authorized in writing by that owner occupier person or authority.

(2) All penalties for offences against this Act shall be paid—

Appropriation of penalties.

(a) where they are recovered in proceedings instituted by or on behalf of a municipality—into the municipal fund of that municipality ;

(b) where they are recovered in proceedings instituted by or on behalf of any authority constituted or appointed by or under any Act—into the fund of that authority or, if the authority has no fund but administers or uses any moneys paid to or collected by it, to the authority to be administered or used by it as part of those moneys ;

(c) where they are recovered in proceedings instituted by a member of the police force or any other person or by an authority which has no fund and does not administer or use any moneys—into the Consolidated Revenue.

Cost of removing rubbish, &c., recoverable.  
 s. 5 substituted by No. 7608 s. 7.

5. Where a court convicts a person of an offence under section 3 the court may, if it thinks fit, in addition to imposing any penalty, order the offender to pay by way of compensation such sum as it considers reasonable for the removal of the litter material thing or glass the subject of the offence to the owner or occupier or person or authority having control or management of the public place or land where the offence was committed and the amount so awarded shall be deemed to be a judgment debt due to the said owner occupier person authority or municipality from the person so convicted and may be enforced in any manner in which a judgment or order of that court for the payment of a civil debt could be enforced.

s. 6 repealed by No. 7332 s. 4.

\* \* \* \* \*

# THE LITTER ACT, 1958

(6 & 7 Eliz. 2 c. 34)

## ARRANGEMENT OF SECTIONS

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1. Penalty for leaving litter . . . . .	920
2. Short title, extent and commencement . . . . .	921

*An Act to make provision for the abatement of litter.* [1015] [7th July 1958]

Northern Ireland. This Act does not apply; see s. 2 (2), *post*.

**1. Penalty for leaving litter.**—(1) If any person throws down, drops or otherwise deposits in, into or from any place in the open air to which the public are entitled or permitted to have access without payment, and leaves, any thing whatsoever in such circumstances as to cause, contribute to, or tend to lead to, the defacement by litter of any place in the open air, then, unless that depositing and leaving was authorised by law or was done with the consent of the owner, occupier or other person or authority having the control of the place in or into which that thing was deposited, he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding ten pounds; and for the purposes of this subsection any covered place open to the air on at least one side and available for public use shall be treated as being a place in the open air.

(2) In England and Wales, without prejudice to the powers of any other person, any of the following bodies shall have power to institute proceedings for an offence under this section committed within their area or on land controlled or managed by them, that is to say, the council of a county, county borough, metropolitan borough, non-county borough, urban district, rural district or rural parish, the Common Council of the City of London, a joint body constituted solely of two or more such councils as aforesaid, and a joint board such as is provided for by section eight of the National Parks and Access to the Countryside Act, 1949.

(3) (*Applies to Scotland.*) [1016]

### NOTES

**Place.** This word has no particular meaning and seems capable of covering any space; cf. *Culley v. Harrison*, [1956] 2 All E.R. 254; 3rd Digest Supp.

**Entitled or permitted to have access.** Note that it is not sufficient that the public have in fact access, although permission need not, of course, be express.

**Shall be guilty, etc.** It seems clear that the prohibition imposed by this section is absolute and that accordingly no *mens rea* is required; cf., especially, *Cundy v. Le Cocq* (1884), 13 Q.B.D. 207; 14 Digest (Repl.) 38, 88; *Chajutin v. Whitehead*, [1938] 1 All E.R. 159; 14 Digest (Repl.) 39, 94; and *Gardner v. Akeroyd*, [1952] 2 All E.R. 300;

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## LITTER ACT, 1958 (c. 34), s. 2

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3rd Digest Supp. If so, it follows that a master is liable for the acts of his servants done within the scope of their authority; cf., especially, *Mousell Brothers, Ltd. v. London and North Western Railway*, [1917] 2 K.B. 836; 14 Digest (Repl.) 47, 147, and *Gardner v. Akeroyd, supra*. This is so even though they have acted contrary to his instructions; see especially *Houghton v. Mundy* (1910), 103 L.T. 60; 14 Digest (Repl.) 48, 150, and *Elder v. Bishop Auckland Co-operative Society, Ltd.* (1917), 86 L.J.K.B. 1412; 14 Digest (Repl.) 48, 151. Yet the position is different where a servant has acted altogether outside the scope of his authority; see especially *Whittaker v. Forshaw*, [1919] 2 K.B. 419; 14 Digest (Repl.) 48, 152, and *Barker v. Levinson*, [1950] 2 All E.R. 825; [1951] 1 K.B. 342; 14 Digest (Repl.) 45, 134, as explained in *Navarro v. Moregrand, Ltd.*, [1951] 2 T.L.R. 674, C.A., at p. 681, *per* Denning, L.J.; 2nd Digest Supp.

A body corporate is a "person" within the meaning of this section; see the Interpretation Act, 1889 (c. 63), s. 2 (1), Vol. 24, p. 206.

**Summary conviction.** Summary jurisdiction and procedure are now mainly governed by the Magistrates' Courts Act, 1952 (c. 55), Vol. 32, p. 416. See also the Magistrates' Courts Act, 1957 (c. 29), Vol. 37, p. 626.

**County; county borough.** The existing counties (exclusive of London) and county boroughs in England and Wales are those named in Parts I and II, respectively, of the First Schedule to the Local Government Act, 1933 (c. 51), Vol. 14, p. 515; see s. 1 of that Act, Vol. 14, p. 361. See also the Local Government Act, 1958 (c. 55), ss. 17, 34, title Local Government, *ante*.

**Metropolitan borough.** The metropolitan boroughs are the boroughs specified in the First Schedule to the London Government Act, 1939 (c. 40), Vol. 15, p. 1171; see s. 1 (2) of that Act, Vol. 15, p. 1078.

**Non-county borough.** The non-county boroughs existing at the time of the passing of the Local Government Act, 1933 (c. 51), Vol. 14, p. 353, are named in Part III of the First Schedule to that Act, Vol. 14, p. 516 (see s. 1 (2) thereof, Vol. 14, p. 361), but others have been created since. See also the Local Government Act, 1958 (c. 55), ss. 17 *et seq.*, 28 *et seq.*, and Seventh Schedule, para. 1, title Local Government, *ante*.

**Urban district; rural district; rural parish.** See the Local Government Act, 1933 (c. 51), s. 1 (2), Vol. 14, p. 361.

**National Parks and Access to the Countryside Act, 1949 (c. 97).** See Vol. 17, p. 301.

**2. Short title, extent and commencement.**—(1) This Act may be cited as the Litter Act, 1958.

(2) This Act shall not extend to Northern Ireland.

(3) This Act shall come into force at the expiration of the period of one month beginning with the date of its passing. [1017]

### NOTE

**Passing.** The Act was passed, *i.e.*, received the Royal Assent, on 7th July 1958.