Submission from the Central Australian Aboriginal Legal Aid Service Inc and the North Australian Aboriginal Justice Agency

in relation to

the Final Report on the Review of the *Summary Offences Act*

September 2013

Contents

1 Introduction and Scope of the Submission

The Central Australian Aboriginal Legal Aid Service Inc (**CAALAS**) and the North Australian Aboriginal Justice Agency (**NAAJA**) make this joint submission in response to an invitation from the Department of Attorney-General and Justice to comment on the Final Report on the Review of the *Summary Offences Act*.

The Final Report on the Review of the *Summary Offences Act* (**the Report**) deals with a number of policy issues discussed in the 2010 Review of the *Summary Offences Act* Issues Paper, including the duplication of offences, the relevance of some older offences, the appropriateness of 'status offences', consistency with modern principles of criminal responsibility, burden of proof, frequency of use and penalties for public order offences.

In this submission, we identify a number of concerns in relation to the general policy approach adopted and the excessively large proposed increases to many of the penalties. We also comment on a range of issues in relation to specific offences and respond to more general questions considered in the report, including issues relating to duplication, relevance, the principles of criminal responsibility and whether the offences under the *Summary Offences Act* should be relocated into a separate part in the Criminal Code.

We urge the government to consider retaining a *Summary Offences Act* for minor offences dealing with public order and 'anti-social behaviour'. In our view, such offences should carry only fines as penalties and where such offences currently carry imprisonment, this penalty should be removed. Imprisonment should be reserved for crimes.

1.1 CAALAS

Founded in 1973 as the first Aboriginal organisation in Alice Springs, CAALAS provides high quality, culturally appropriate legal advice and representation to Aboriginal and Torres Strait Islander people living in Central Australia in the areas of criminal, civil, family and welfare rights law. The organisation also advocates for the rights of Aboriginal peoples[1] and improved social justice outcomes. Additionally, CAALAS provides community legal education, support for youth interacting with the justice system and assistance to prisoners and their families to support reintegration into the community.

CAALAS strives to achieve its vision statement of "Justice, dignity and equal rights and treatment before the law for Aboriginal people in Central Australia" through its service provision across approximately 90,000 square kilometres of the Northern Territory (NT). CAALAS is led by a Council of elected Aboriginal representatives and funded solely by the Commonwealth Attorney-General's Department to operate two permanent offices (in Alice Springs and Tennant Creek) and to conduct a range of outreach trips and clinics, and attend bush court circuits.

[1] In this submission, 'Aboriginal peoples' refers to Aboriginal and Torres Strait Islander peoples.

1.2 NAAJA

NAAJA is a non-profit company that was established on 1 February 2006 to provide legal aid services to Aboriginal and Torres Strait Islander people in the Top End of the Northern Territory. It involved the merger of three existing Aboriginal Legal Services: the North Australian Aboriginal Legal Aid Service (founded in 1972), the Katherine Regional Aboriginal Legal Aid Service (founded in 1985) and the Miwatj Aboriginal Legal Service (founded in 1996).

NAAJA has offices in Darwin, Katherine and Nhulunbuy and services over 20 locations across the Top End. NAAJA employs over 100 staff, including 51 lawyers, making it the largest legal practice in the NT. NAAJA provides high quality and culturally competent legal assistance in criminal, civil and family law. It also delivers innovative and effective community programs, including our award-winning Indigenous Prisoner Throughcare project, that work to make practical changes to the lives of Aboriginal people and the wellbeing of their communities.

2 Public order offences: general policy issues

We are concerned that the proposed amendments to the *Summary Offences Act* will not achieve the stated policy objective of striking a careful balance between the rights of the individual and the protection of the public from nuisance, offensive or dangerous behaviour. Instead, the proposed changes have the potential to further widen the pathway into the criminal justice system for Aboriginal people. To reduce the overrepresentation of Aboriginal people in the criminal justice system, it is critical that we adopt a more nuanced and balanced approach to public order regulation. We submit that reform of the *Summary Offences Act* should aim to reduce the over-policing of Aboriginal people in public spaces and prevent the unnecessary criminalisation of Aboriginal people.

Public order laws disproportionately affect vulnerable members of society.[2] This is not surprising given that the behaviour regulated by the public order legislation is often a symptom of disadvantage. Much of the activity of groups of vulnerable people, especially Aboriginal people who are homeless or are visiting town from remote communities, can become criminalised, directly or indirectly, because of their public visibility and the need to conduct much of their daily lives in public. [3] The disproportionate impact public order laws have on Aboriginal people is starkly evident in the data compiled by the Northern Territory Department of Attorney-General and Justice and annexed to the Report.

The Northern Territory currently has an imprisonment rate that is about five times the national average.[4] Over 80% of the prison population is Aboriginal, even though Aboriginal people only comprise about 30% of the Northern Territory population.[5] Aboriginal people are vastly overrepresented at every stage of the criminal justice system, and it is imperative that we develop

[2] Phillip Lynch, 'Begging for Change: Homelessness and the Law' (2002) 26 *Melbourne University Law Review* 691, 698-9.
[3] NSW Law Reform Commission (2012), Penalty Notices, *Report 132*, 16-17; Phillip Lynch, above n 2, 698-9; Emily Muir, Jamie Alford and Grace Stubee, 'Homelessness and Fine Debt' (2012) 25(2) *Parity* 18.
[4] Australian Bureau of Statistics (2013), 'Summary of Findings', *4512.0 - Corrective Services, Australia, June Quarter 2013.*
[5] Australian Bureau of Statistics (2013), 'Table 1 Persons in corrective services, Summary', *4512.0 - Corrective Services, Australia, June Quarter 2013.*

effective criminal justice policy that reduces the amount of contact Aboriginal people have with the criminal justice system.

A more punitive public order scheme is not an effective response. It directly and indirectly contributes to the overrepresentation of Aboriginal people in our prison system, and does not address the underlying causes of public 'nuisance' or offensive behaviour. While we recognise that a balance must be struck between the rights of individuals and "the protection of the public from disorder calculated to interfere with the public's normal activities",[6] we are concerned that many of the proposed amendments, particularly the proposed increases in penalties, will result in a public order scheme that is overly punitive. By placing a strong emphasis on high penalties, expanding the scope of some offences, and by failing to repeal offences which indirectly criminalise poverty and disadvantage (such as the offence of begging), the public order scheme will continue to operate as another pathway into the criminal justice system for Aboriginal people in the Northern Territory.

3 Penalties

We strongly oppose the proposed increases to the fine penalties for the vast majority of offences under the *Summary Offences Act*. The proposed fine penalty increase for many offences is over $5000, which is a significant increase by any measure. On our calculations, the proposed increases in fine penalties come to well over $100,000 in total.

Method used to determine proposed increases

The justification provided for many of the increases in the fine penalties is the need to convert fine penalties into penalty units in the interests of consistency. Generally, the Report recommends that the current penalties of imprisonment remain the same, and that fine penalties be adjusted, as a general rule, as per the default formula contained in s. 38DA of the *Interpretation Act* (100 penalty units ($14,400) per 12 months imprisonment).

However, the significant increase in penalties units is not confined to offences carrying a term of imprisonment (although most proposed increases are linked to an imprisonment penalty). For example, the penalty for prohibition of nuisances in thoroughfares has increased from $200 to 25 penalty units ($3,525) and the penalty for the dangerous dogs offence has increased from $5000 to 50 penalty units ($7,200). The penalties are often proposed on the basis that similar penalties were specified under the *Justice Legislation (Penalties) Amendment Act 2009* (repealed prior to commencement), however, there is generally no consideration given to the nature of the offence and the appropriateness or otherwise of the proposed penalties.

The increases in the penalties appears, therefore, to be quite arbitrary, with little regard given to whether the current sentence of imprisonment is in fact appropriate, the effect of the penalty increases, and the good policy reasons for maintaining low penalties for low-level summary offences such as those contained in the *Summary Offences Act.*

[6] R v *Lohnes* [1992] 1 SCR 167 at [22] cited in Northern Territory Department of Attorney-General and Justice (2013), *Final Report: Review of the Summary Offences Act*, 25.

Fines

The starting point in setting penalties should be proportionality. In setting appropriate penalties, regard must be had to the nature of each offence and the effectiveness and consequences of any proposed penalty. The proposed approach, while seeking to achieve consistency, will result in excessive penalties for many low-level offences. There is little justification or evidence to support the sharp increases.

We note that, those most likely to receive a fine under public order legislation are those least likely to be able to afford it.[7] In our experience, many of the people who receive fines for public order offences are welfare recipient or low-income earners. Thus, even a small fine has a detrimental impact on their daily lives. A fine of $5000 can be devastating.

Further, a failure to pay fines may result in a loss of licence which further compounds the disadvantage and marginalisation experienced by many of the clients we represent, particularly clients from remote communities.[8]

Finally, large fines are unlikely to deter offending because, as discussed above, much of the behaviour most frequently criminalised under the *Summary Offences Act* is a symptom of disadvantage, and therefore individuals have limited control over many of the types of behaviours criminalised by the *Summary Offences Act* and similar legislation.

For these reasons, we strongly urge the government to refrain from increasing the fine penalties under the *Summary Offences Act*.

Imprisonment penalties

We urge that the government consider removing imprisonment as a penalty for summary offences. Such offences are, by their nature, minor. A high degree of criminalisation of 'anti-social behaviour' and public disorder has not made our communities safer. The Northern Territory's rate of imprisonment is about five times the national average and our culture of mass incarceration has not demonstrated any social benefit.

The Report states:

> 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.

While public order offences are most often dealt with by way of a fine, it is not uncommon for sentences of imprisonment to be imposed. Accordingly, the *Summary Offences Act* does, in some cases, operate as a direct pathway into prison. In other cases, the existence of sentences of imprisonment, and relatively lengthy sentences of imprisonment for these low-level offences, affects the exercise of sentencing discretion. For these reasons, the significance of imprisonment penalties should be closely considered.

[7] See generally NSW Law Reform Commission, above n 3, 16-17.
[8] See also NSW Sentencing Council (2006), *The Effectiveness of Fine as a Sentencing Option: Interim Report*, 88; NSW Law Reform Commission (2012), above n 3, 16-17.

In the event that imprisonment is to be retained, the length of the current penalties of imprisonment should be reviewed and consideration should be given on a case-by-case basis to whether imprisonment is an appropriate penalty and whether the maximum penalty reflects the seriousness of each offence under the *Summary Offences Act*.

As noted above, the existing imprisonment penalties have been used to calculate the proposed increases in the fine penalties. If the fine penalties are to be linked to the imprisonment penalties, it is critical that the appropriateness of the length of imprisonment imposed is properly considered in each case. Penalties must be proportionate to the nature of the offending.

Recommendations:

1. **Penalties**
   - (a) The maximum fine penalties should not be increased.
   - (b) The appropriateness of each maximum fine penalty should be carefully considered, having regard to the nature of each offence.
   - (c) Imprisonment penalties should not apply to offences under the *Summary Offences Act*.
   - (d) In the event that imprisonment penalties are to be retained, the appropriateness of imposing a penalty of imprisonment should be assessed in relation to each offence, having regard to the nature of the offence.

4 Problems with specific offences

4.1 Forcible entry (s. 46A)

The forcible entry offence under s. 46A has only been prosecuted 26 times between 2002-2012. While it is not possible to determine whether this is because of uncertainty in relation to the scope and application of the offence, s. 46A should be repealed or amended to make its operation clear.

In *Dureau & Anor v Trenerry* 147 FLR 397, Mildren J accepted the appellant's argument that, based on the High Court authority *Prideaux v Director of Public Prosecutions (Victoria)* (1987) 163 CLR 483, s. 46A only applies to those who go upon land *with the intention of occupying and taking possession of it*. This construction is not clear on the face of s. 46A, and if the provision is to be retained, it should be amended accordingly.

Recommendation:

1. **Forcible entry (s. 46A)**
   - (a) Section 46A should be repealed or amended to make its operation clear.

4.2 Language offences (s. 47(a))

We submit that offensive or objectionable language should no longer be an offence. The focus of any offence should be on conduct more than mere words and on more than simply causing offence.

The Report refers to research carried out in NSW and Queensland indicating that the offence of 'offensive language' is a significant pathway into the prison system for Aboriginal people, particularly given the risk of a charge of offensive language leading to the 'trifecta' of offences

against police. Our experience is consistent with the research on 'offensive language' offences carried out in other jurisdictions: Aboriginal people are disproportionately charged for offensive language, and the charge can heighten hostility towards police and significantly escalate a confrontation, leading to further and more serious charges.

Currently, offensive language may constitute an offence under s. 47(a) (offensive conduct) which provides:

> Every person who is guilty 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... is guilty of an offence.

The offence carries a penalty of $2000 and/or 6 months imprisonment.

Offensive language is also criminalised under s. 53(7(a) 'objectionable word in public or on licensed premises'. The Report recommends repealing s. 53(7) because s. 47 also covers the behaviour regulated by s. 53(7).

If an offence of offensive language is to be retained, then we are strongly of the view that the offence should be a separate offence to the general offence of "offensive conduct" and it should not carry a term of imprisonment as a penalty. We note that while the Report recommends that "the provision should not follow the NSW and New Zealand structure of separating the language provisions from the behaviour provisions", the evidence presented in the Report overwhelmingly supports the creation of a separate offence of offensive language with a lesser penalty, if the offence is retained. It is unclear why there is a recommendation to the contrary in the Report.

Recommendation:

2. Offensive language

(a) The offence of offensive language should be repealed.

(b) In the alternative, the offence of offensive language should be a separate offence with a lesser fine-only penalty.

4.3 Loitering (ss. 47A and 47B)

Offences related to loitering in the Northern Territory are not committed by the initial action of loitering, but are committed by failing to answer police questioning, failing to move on, or by loitering with intent. There are a number of problems with each of the loitering offences.

4.3.1 General loitering offence (s. 47A(1))

We recommend that the general loitering offence be repealed.

We agree with the following statement in the Report:

> 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'... 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 town.

Research carried out in other jurisdictions has also found that loitering powers have a substantial impact on some vulnerable groups, including Aboriginal people.[9]

Whilst this would appear to indicate a need to repeal the offence, the Report recommends "rewriting" the offence. It is not clear how the offence will be rewritten. Given that this offence essentially operates as a "status offence" and may, as the Report recognises, be used unfairly against Aboriginal people in public areas, we recommend that the offence be repealed.

4.3.2 Loitering with intent (s. 47A(2))

Under s. 47A(2), a police officer may require a person loitering in a public place to cease loitering if the police officer believes, on reasonable grounds that an offence has been or likely to be committed, or that the movement of pedestrian or vehicular traffic is obstructed or is about to be obstructed. A failure to comply with the cease loitering direction is an offence.

We agree that, when enforcing the provision, police should not be required to use the words "cease to loiter". Rather, they should have the discretion to use expressions such as "move away", "move along" or terms with similar meaning as the expression "cease to loiter" may not be understood.

However, we oppose the recommendation in the Report to amend the offence so that police have the power to issue a cease to loiter direction on the basis of a "reasonable suspicion", rather than on the higher standard of a "belief of reasonable grounds". The Report states that the current "belief on reasonable grounds" element is "unrealistic and unnecessary" as the offence is used "more as a preventative power than a criminal offence... that should not be made too hard to use".

While it is true that the offence of failing to comply with a cease loitering direction seems to be rarely prosecuted (the data presented in the report indicates that between 1 July 2009 and 30 June 2012, only 16 people were prosecuted for this offence), the issuing of a direction by a police officer can heighten hostility and quickly escalate a situation, which in some cases can lead to further offences, such as an offensive language offence, hinder and resist police or assault police.

Furthermore, in our experience, Aboriginal people are often unfairly targeted for loitering offences, and enhancing police powers to issue cease loitering directions will only increase this practice. Accordingly, it is realistic and necessary to require police to form a belief on reasonable grounds that a person is loitering with intent before they issue a cease to loiter direction.

The Report also recommends that the penalty of 6 months imprisonment with the default penalty of 50 penalty units should remain. A penalty of 6 months imprisonment or 50 penalty units is excessive for this relatively minor offence in response to the exercise of a "discretionary and preventative power that should not be made hard to use".[10] Given that the offence is merely one of failing to comply with a police direction, and police can use other powers (such as s. 123 of the *Police Administration Act*) to prevent any harm which might be caused by a failure to comply with the direction or to deal with abusive behaviour, it is difficult to see why an offence under s. 47A(2) should warrant a sentence of imprisonment or a fine of $7,200. This offence should not carry a sentence of imprisonment, and the fine penalty should be significantly lower than the current penalty of 50 penalty units.

[9] See, for example, Tamara Walsh and Monica Taylor, "'You're not welcome here': Police move-on powers and discrimination law" (2007) 30(1) *UNSW Law Journal* 151, 164.

[10] Northern Territory Department of Attorney-General and Justice (2013), *Final Report: Review of the Summary Offences Act*, 44.

4.3.3 Loitering – offence following notice (s. 47B)

Under s. 47B, police may give a written notice to a person who is loitering at a public place requiring the person to stay away from a place or area for up to 72 hours. The police may only exercise this power if the police officer suspects on reasonable grounds that a person, or the group the person is part of, has committed, or is about to commit, an offence at the place or in the area. A failure to comply with the notice is an offence.

We support the recommendation that the length of the banning notice be reduced to a maximum of 12 hours because 72 hours is excessive. However, we consider that, given the potential for this power to be used inappropriately and unfairly,[11] the power to issue the notice should be founded on a belief on reasonable grounds, rather than a reasonable suspicion.

In addition, we recommend that the penalty be significantly reduced and the penalty of imprisonment be removed. The offence of "Loitering – following a notice" under s. 47B currently carries a very large penalty of 100 penalty units ($14,400) or imprisonment for 6 months or both. The Report recommends reducing the penalty to 50 penalty units or imprisonment for 6 months or both, to bring the penalty in line with s. 38AD of the *Interpretation Act*. While we agree that the penalty of 100 penalty units is excessive, the penalty of 50 penalty units and/or 6 months imprisonment is still excessive, for the reasons discussed above. This offence should not carry a penalty of imprisonment and the fine should be significantly lower.

Recommendations:

(3) Loitering (s. 47A and s. 47B)

Section 47A(1) – loitering general offence

(a) Repeal s. 47A(1).

Section 47A(2) – loitering with intent

(b) Police 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.
(c) The "belief on reasonable grounds" element of s. 47A(2) should remain.
(d) The offence should not carry a term of imprisonment and the fine penalty should be significantly lower than the current penalty of 50 penalty units.

Section 47B – Loitering and breach of banning notice: recommendation

(c) The length of a banning notice should be reduced to a maximum of 12 hours.
(d) 'Belief on reasonable grounds' should replace 'reasonably suspects'
(e) The penalty of imprisonment should be removed and the fine penalty should be significantly reduced.

4.4 Illegal use of vehicle offence (s. 49A(1)(a))

Section 49A(1)(a) provides that any person who 'interferes with' or 'tampers with' a motor vehicle, without the consent of the owner or the person in lawful charge, is guilty of an offence.

Under ss. 49A(2) and (2A), the Court may, in addition to imposing a fine or a sentence of imprisonment, order the person to pay compensation for any loss or damage caused and/or

[11] See discussion above at [4.3.1] and [4.3.2].

suspend the person's licence. As is noted in the Report, the compensation power under s. 49A(2) duplicates the power under s. 88 of the *Sentencing Act* to order restitution and compensation, and is therefore unnecessary. Importantly, the Report (at p. 48) also questions whether the power under s. 49A(2A) is appropriate given that:

> Licence disqualification should only be for traffic offences. The office is not a traffic offence, but a dishonesty offence and should be dealt with as such and should not not import a licence disqualification.

The Report states that ss. 49A(2) and (2A) should be repealed, but this is not a formal recommendation in the Report. We assume that this is an oversight and we support the repeal of ss. 49A(2) and (2A) for the reasons set out in the Report.

Recommendation:
(4) Illegal use of vehicle offence (s. 49A(1)(a))
(a) Sub-sections 49A(2) and (2A) should be repealed.

4.5 Challenge to fight (s. 55)

The Report states that historically, the offence existed to stop 'prize fighting'. In its current form, any person who sends or accepts a challenge to fight for money, or engages in a prize fight, is guilty of an offence. The penalty is $500 and/or 3 months imprisonment, but this offence may also be dealt with by way of a $100 penalty infringement notice.

The Report recommends removing the reference to money so that the offence is simply the offence of a "challenge to fight". We recommend that this offence instead be repealed as more serious examples of the offence of "challenge to fight" are covered by s. 70 of the Criminal Code.

If the offence is retained and the reference to money is removed, the current penalty should not be increased. The Report states that the penalty should be increased significantly to 50 penalty units ($7,200) to cover fights organised for profit or some form of economic gain. If this is the justification for such a significant increase, organised commercial fights should be dealt with by way of a separate offence provision, with the higher penalty only applying to this special class of fights.

Recommendation:
(5) Challenge to fight (s. 55)
(a) The offence should be repealed. In the alternative, the current penalty should not be increased and the higher proposed penalty should only apply to a separate offence covering commercial fights.

4.6 Begging (s. 56(1)(c)

This offence is a 'status' offence. It essentially criminalises people for being poor. As Lynch states, "although equal on their face, the reality of anti-begging laws is that they impact on society's most marginalised, disadvantaged and vulnerable people".[12] Fining or incarcerating people for begging

[12] Phillip Lynch, above n 2, 693.

only compounds the disadvantage they are suffering. Begging must be addressed as a social and economic issues, not as a law and order issue. [13]

Accordingly, we recommend that the offence of begging be repealed.

Recommendation:
(6) Begging (s. 56(1)(c)
(1) The offence of begging should be repealed.

5 Other matters

5.1 Location in the Criminal Code

We submit that a *Summary Offences Act* should be retained, and reserved for minor public order offences that carry only a penalty of a fine. The penalty of imprisonment should be reserved for crimes.

The Report recommends that the matters at present in Part VI of the *Summary Offences Act* relating to drinking in public places be placed in the *Liquor Act* and the matters relating to trespass (ss. 46A & 46B) be placed in the *Trespass Act*. We agree that it is appropriate and useful to move offences dealing with a specific subject into Acts dealing with that subject.

However, we do not support the recommendation that the *Summary Offences Act* provisions be redrafted in modern Part IIAA style and placed in a summary offences part of the Criminal Code.

The Report also raises arguments in favour of retaining the *Summary Offences Act* which we consider to be compelling. The Report states:

> 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...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 placed in a separate Act to be dealt with in the Court of Summary Jurisdiction.

While placing the offences in a separate and new part within the Criminal Code titled “Summary Offences” would maintain, to a degree, the distinction between summary offences and the more serious offences contained in the Criminal Code, a separate Act creates a much clearer distinction between low-level summary offences and more serious criminal offences attracting the full weight of the criminal law. This conceptual distinction is important, and should be maintained.

Most jurisdictions have maintained a separate Act for summary offences. Accordingly, the Northern Territory would not be out of step with other jurisdictions, should it retain the *Summary Offences Act* as a separate Act for public order type offences.

[13] Ibid.

Recommendation:

(8) Relocation of the *Summary Offences Act*

(a) The *Summary Offences Act* should be retained. It should not be relocated into the Criminal Code.

5.2 Duplication

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

5.3 Relevance

We agree that archaic offences should be repealed or rewritten in modern language if they are no longer relevant.

5.4 Status offences

We agree that 'status offences', which punish people because of their status, rather than because of their actions, should be repealed. We consider 'begging' and 'loitering' offences to fall into this category of offences, and we have discussed the problems with these offences in greater detail above.

5.5 Consistency with modern principles of criminal responsibility

We agree that offences, such as s. 57(5), which rely on the character of the accused to prove an element of intent should be amended to bring the offences into line with modern principles of criminal responsibly.

5.6 Council by-laws

Council by-laws also regulate many of the subjects and behaviours regulated by the *Summary Offences Act*. The duplication of offences, and inconsistencies between council by-laws and offences under the *Summary Offences Act* and similar schemes, such as the *Liquor Act* and the *Litter Act*, is problematic. While this issue might be outside the scope of the review, we recommend the government review this issue.

6 List of Recommendations

1. Penalties

(e) The maximum fine penalties should not be increased.

(f) The appropriateness of each maximum fine penalty should be carefully considered, having regard to the nature of each offence.

(g) Imprisonment penalties should not apply to offences under the *Summary Offences Act*.

(h) In the event that imprisonment penalties are to be retained, the appropriateness of imposing a penalty of imprisonment should be assessed in relation to each offence, having regard to the nature of the offence.

2. Forcible entry (s. 46A)

(a) Section 46A should be repealed or amended to make its operation clear.

3. Offensive language

(a) The offence of offensive language should be repealed.
(b) In the alternative, the offence of offensive language should be a separate offence with a lesser penalty.

4. Loitering (s. 47A and s. 47B)

(a) Repeal s. 47A(1).

Section 47A(2) – loitering with intent

(b) Police 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.
(c) The "belief on reasonable grounds" element of s. 47A(2) should remain.
(d) The offence should not carry a term of imprisonment and the fine penalty should be significantly lower than the current penalty of 50 penalty units.

Section 47B – Loitering and breach of banning notice: recommendation

(e) The length of a banning notice should be reduced to a maximum of 12 hours.
(f) 'Belief on reasonable grounds' should replace 'reasonably suspects'.
(g) The penalty of imprisonment should be removed and the fine penalty should be significantly reduced.

5. Illegal use of vehicle offence (s. 49A(1)(a))

(a) Sub-sections 49A(2) and (2A) should be repealed.

6. Challenge to fight (s. 55)

(a) The offence should be repealed. In the alternative, the current penalty should not be increased and the higher proposed penalty should only apply to a separate offence covering commercial fights.

7. Begging (s. 56(1)(c)

(a) The offence of begging should be repealed.

8. Relocation of the *Summary Offences Act*

(a) The *Summary Offences Act* should be retained. It should not be relocated into the Criminal Code.