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19 June 2006

Mr Derran Moss  
 Research and Prevention  
 Crime and Misconduct Commission  
 GPO Box 3123  
 BRISBANE Q 4001

Dear Mr Moss

**RE: CMC REVIEW OF PUBLIC NUISANCE IN QUEENSLAND**

Thank you for your letter dated 30 May 2006, seeking the Association's comments in regard to the use of the public nuisance offence. Specifically, you have requested the Association to turn its attention to the use of the public nuisance provision in Queensland during the period from 1 April 2004 to 1 October 2005, encompassing both section 7AA of the repealed *Vagrants Gaming and Other Offences Act 1931* and section 6 of the *Summary Offences Act 2005*.

The stated intention of the *Summary Offences Act 2005* (Qld) is to ensure the 'quality of community use of public spaces.' However, it is our concern that in enforcing this, minority groups and the disadvantaged, such as the homeless, Indigenous people, the young and people with mental illness have been unfairly targeted. It is the Association's understanding that the majority of those prosecuted for breaches of 7AA of the repealed *Vagrants Gaming and Other Offences Act 1931* and section 6 of the *Summary Offences Act 2005* have come from vulnerable groups, in particular, homeless and Indigenous people. Research conducted by Dr Tamara Walsh of the T C Beirne School of Law in April 2006 suggests a 200% increase in the number of prosecutions in the Brisbane Magistrates Court for public nuisance offences. It is worth noting that the increase in appearances in the Magistrates Court came after the introduction of the offence of public nuisance in April 2004.<sup>1</sup>

The Association notes with concern the increase in the number of people charged under the Act for trivial nuisance behavior. It would appear from our research that 'public nuisance' is being used by the Queensland Police Service as a 'catch all' offence. The trivial nature of offences being prosecuted appears to be on the increase, notwithstanding the standard of offensiveness which has been enunciated by the High Court in *Coleman v Power*.

<sup>1</sup> Walsh, Tamara "The Enforcement of Offensive Language and Behaviour Offences in Queensland." (2006).

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The current legislative provision in Queensland is, in the Association's view lacking for failing to make provision for appropriate defences to a charge brought under s 6 of the *Summary Offences Act 2005* (Qld). By contrast, the equivalent New South Wales provision contained in the *Summary Offences Act 1988* (NSW), provides a statutory defence of reasonable excuse, and is available to those who have been charged with offensive language or offensive behaviour. It is the Association's view that the incorporation of a similar defence in the Queensland Act would assist in ameliorating the impact on those people who engage in conduct that might be regarded as 'offensive' but do so because they are homeless, indigenous or because they lack mental capacity. The Association would also recommend that consideration be given to exploring the scope of sentencing options in dealing with breaches of the Act and other diversionary mechanisms to lessen the impact of the Act on vulnerable people.

The increased use of the public nuisance provision has had, in the Association's view, a disproportionate impact upon the disadvantaged and vulnerable members of our community. The legislative provisions must strike a balance between ensuring safety in public places on the one hand and the need to ensure that any provision does not adversely impact on the vulnerable members of our community. As His Honour Judge J P Shanahan observed in *Moore v Moulds*:

*It is not or should not be a criminal offence to be poor. It is not nor should it be a criminal offence per se to sleep on the river bank nor to adopt a lifestyle which differs from that of the majority ...[such persons] do not, as a rule, commit criminal offences but are regarded as "nuisances" and their appearance is an affront to the susceptibilities of those members of the public who do not suffer from their disabilities.*

The Association thanks the Crime and Misconduct Commission for seeking our views on this important matter.

Yours sincerely



**DANIEL L O'CONNOR**  
Chief Executive