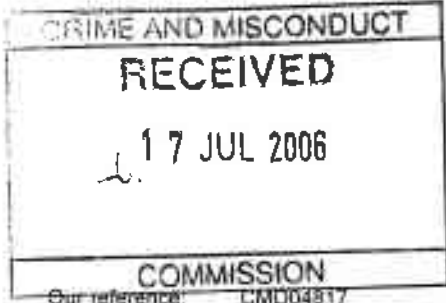


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Department of Communities  
Disability Services Queensland  
Office of the Director-General

12 JUL 2006

Mr Derran Moss  
Research and Prevention  
Crime and Misconduct Commission  
GPO Box 3123  
BRISBANE QLD 4003

CMC CLASSIFICATION	
<input type="checkbox"/>	Highly Protected
<input type="checkbox"/>	Protected
<input type="checkbox"/>	In-Confidence
<input type="checkbox"/>	Unclassified
Initials:.....	
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Reg No:...../...../.....	

Dear Mr Moss

Thank you for your letter of 30 May 2006 inviting a submission from the Department of Communities on the Crime and Misconduct Commission review of public nuisance offences in Queensland.

Please find attached some observations with respect to public nuisance from departmental field staff, and in particular public space coordinators. A response to each question posed within the Issues Paper follows. I would stress that this is anecdotal advice as the Department of Communities has not actively collected information or data specifically on this issue.

Thank you for the opportunity to participate and I trust this information will assist in the review. If you have any questions about the Department of Communities' submission, please contact Mr Paul Friedman, Director, Community Safety and Support Unit, Strategic Policy, Department of Communities on 3224 8089 or email [paul.friedman@communities.qld.gov.au](mailto:paul.friedman@communities.qld.gov.au)

Yours sincerely

Linda A Apelt  
Director-General

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Question 1

*What range of behaviour or specific behaviour has resulted in a charge of public nuisance? Also what language has resulted in a charge of public nuisance?*

Advice received by the Department of Communities (the department) suggests that a charge of public nuisance has arisen as a result of behaviour that includes:

- begging;
- consuming liquor in a public place;
- using inappropriate language;
- failing to comply with a police direction to move-on;
- participating in an argument with peers;
- loitering in a public place; and
- undertaking activity which obstructs police.

Question 2

*What proportion of public nuisance charges have been the result of a complaint by a member of the public?*

Trends with respect to complaints by members of the public have not been observed; however of the public nuisance charges that the department is aware (which have been precipitated by a complaint), an owner of a business has usually been the complainant. In such cases, it would appear that the business owner makes a complaint based on the perception that the behaviour could adversely affect business activity.

Section 6(4) of the *Summary Offences Act 2005* states that '[i]t is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.' The department understands that young people have attended court in response to a charge for public nuisance not based on a complaint from a member of the public. It has been suggested that where there is an absence of complaint, that it could be argued that the behaviour of the young person was not sufficient to interfere with the enjoyment of a public place by a member of the public, and did not therefore cause nor be considered a public nuisance offence.

Youth Justice Conferencing has advised that there have been instances whereby offences of public nuisance have been referred to a conference. In such cases the presence and contribution of an identified "physical" victim to the conference is not possible. Rather the victim comprises the wider community. This situation has implications for the conduct and usefulness of a conference.

Question 3

*Have vulnerable groups in society been disproportionately charged or otherwise disproportionately affected by public nuisance charges? If so, in what way have groups been disproportionately charged or individuals disadvantaged?*

The experience of some areas of the Department is that the age of young people who are being charged with public nuisance is declining. Given the significant negative impact that contact with the justice system can have on young people, particularly in terms of social and emotional development, this is of concern to the department.

An issue with young people and Indigenous young people is that often the behaviour that leads to a charge of public nuisance is not labelled by the young person or Indigenous person as an offence. A lack of understanding that the behaviour can constitute a public nuisance offence may lead to an escalation in the behaviour of a young person when confronted by police. The young person may subsequently be charged with more serious offences such as resisting arrest, assaulting police (either verbally or physically), public drunkenness and underage drinking.

A northern Queensland region has noted that it would appear that the number of homeless people charged with the offence of public nuisance in the area may have risen. In terms of homeless people, a complaint of public nuisance may arise not necessarily because the homeless person is engaging in behaviour that significantly interferes with the enjoyment of a public place by a member of the public but merely because the complainant objects to the mere presence of the homeless person. Although removal of the homeless person by police may appease the complainant, it should be acknowledged that such an action merely serves to displace a homeless person to another location, and take the homeless person away from familiar surroundings, which may include essential support services. Moreover, removal of the homeless person to a police facility to be charged does not address the root causes of homelessness or the personal circumstances of the homeless person.

In summary, it must be recognised that disadvantaged and vulnerable groups, may not have the ability to understand that their behaviour is an offence, challenge the offence in court, nor cope effectively with any period of incarceration or fine that may be handed out for the offence. Further, a charge and possible conviction for public nuisance does not assist a person in a disadvantage or vulnerable group, but rather serves to place additional constraints upon them.

#### Question 4

*Does the Summary Offences Act provide adequate defences for a person charged with an offence of public nuisance? If so, why? If not, why not?*

At this stage the department is not aware of any information that could reliably inform this question.

The department notes the CMC's observation in the Issues Paper that the public nuisance offence in Queensland does not contain reference to the defence of 'without reasonable excuse.' The department considers that the availability of the defence may assist disadvantaged or vulnerable groups that may unknowingly or unintentionally undertake behaviour that can be considered an offence.

#### Question 5

*What impact, if any has the public nuisance provision had upon the safety or community use of public spaces?*

At this stage, the department does not possess significant data that could significantly inform this question.

#### Question 6

*Does the current public nuisance offence overlap with other existing offences? If so, what other offences and in what way?*

It would appear that the public nuisance provisions intersect with the police move-on powers. In addition, the behaviours outlined in Question 1 could attract other charges.

Question 7

*Has a charge of public nuisance ever been used as an alternative to another offence? If so what was the alternative charge?*

The department considers that this question will be best answered with data from Queensland Police Service (QPS) information systems.

Question 8

*Have charges of public nuisance typically been accompanied by other charges? If so what charges and in what circumstances?*

The department considers that this question will be best answered with data from QPS information system.

Question 9

*Where have most charged incidents of public nuisance taken place? (e.g. mall, school, road outside licensed premises, park)*

The department understands that charged incidents have occurred in the Queen Street mall, shopping centres, and train stations.

The department is aware that young people have also been charged with the offence of public nuisance immediately outside their homes. Whilst the area outside a young person's home is public space, it is questionable whether the legislation intended to capture behaviour undertaken by a young person in the immediate vicinity of their place of residence.

At this stage, the department does not possess significant information to determine whether there has been an increase in public nuisance charges in any particular location in the review period.

Question 10

*Do police exercise discretion appropriately with respect to public nuisance incidents? If so, why? If not, why not?*

It is considered that where behaviour undertaken by a young person is not significantly interfering with the enjoyment of a public place by a member of the public, the emphasis for QPS could be upon less formal measures such as taking the young person home (if appropriate) and talking with the parents about the behaviour of a young person; helping the young person link up with youth workers and other local service providers; and exploring recreational opportunities in the community. In addition, preference could be given to cautioning, rather than charging, the young person. For Indigenous young people, the QPS could work in conjunction with services such as the Murri foot patrol or Indigenous liaison officers in order to aid the response to an Indigenous person.

The department notes that a collaborative problem solving approach to address certain behaviours has proved successful on a number of previous occasions. For example, the department's Building Safer Communities Action Teams (BSCAT) have worked in conjunction with QPS and other identified agencies and agencies to develop responses to offences that have been identified as problematic in certain areas (e.g. offences committed in the vicinity of licensed premises late at night). Through this partnership approach, the identified crimes have declined in the area of focus. A similar collaborative approach that directed at areas with a high incidence of public nuisance offences could prove effective.

Question 11

*What has been the most common police response to a public nuisance incident? (e.g. arrest, issue a notice to appear, caution)*

The department recognises that this question will be best answered with data from QPS information systems.