



MZ

QUEENSLAND POLICE SERVICE

Pine Rivers District Office
Connors Street
PETRIE QLD 4502



PINE RIVERS DISTRICT OFFICE

9 JUN 2006

TEL: (07) 5523 6070

METROPOLITAN NORTH REGIONAL OFFICE

14 JUN 2006

REF. MN: 06/7726

Our Ref: MN06/ 7726
Ref. No:
Your Ref:

8 June 2006

TO: Assistant Commissioner – Metropolitan North Region
FROM: District Officer, Pine Rivers District
SUBJECT: CMC Review – Public Nuisance Offence Provision

Assistant
Commissioner
Crime &
Misconduct
Commission

Forwarded for
your information.

G A NOLAN
Assistant
Commissioner
Metropolitan
North Region

15 June 2006

1. Forwarded for your information and favour off all necessary attention, please.
2. I refer to your memorandum dated 1 June 2006, concerning the above mentioned subject matter.
3. Please find the attached report by Sergeant Nigel McBAIN, Officer in Charge, Petrie Prosecutions Office. He has read the CMC Review and made comment on issues he believes are of note.

RD MILLER
INSPECTOR
DISTRICT OFFICER
PINE RIVERS DISTRICT

CMC CLASSIFICATION

- () Highly Protected
- () Protected
- () In-Confidence
- () Unclassified

Initials:.....

Date:...../...../.....

Reg No: 06/04376.....



QUEENSLAND POLICE SERVICE

Pine Rivers District Office
Connors Street
PETRIE QLD 4502

TEL: (07) 32850222

FAX: (07)32856070



07/06/2006

Our Ref:

Your Ref:

TO: District Officer, Pine Rivers District

FROM: Nigel McBain, O.I.C. Petrie Prosecutions

SUBJECT: CMC REVIEW – PUBLIC NUISANCE OFFENCE PROVISION

1. The District Court of Queensland in the cases of Green v Ashton (2006) QDC 008 and Couchy v Birchley (2005) QDC 334 have reviewed the legislation in some depth. The cases answer many of the questions asked by the CMC in relation to this legislation.
2. The issues experienced in this district relate to the inadequacy of protection to members of the public and defences open to the offenders. They are:

(a) **Language:** does the language used interfere with the free flow of members of the public. The problem encountered with the present legislation is those using offensive, obscene language in a private yard. Members of the public using a public area may be offended but does it interfere with their passage or enjoyment? This involves investigation, statement taking and questioning of offenders. The readings of Hansards do not indicate this was the spirit of the legislation.

Under the old legislation, this was not a requirement, why is there one now? Under the old legislation, the offences only had to be in the view of hearing of a person, why the added provisions of interfere with free passage etc? Why has the view or hearing been removed under the new legislation?

(b) **Definitions:** There are no definitions under the Act to define what constitutes "interfere" "peaceful passage". These problems result in confusion to members of the public and the police officers attempting to enforce this legislation. There has been unreported cases in the Magistrate Courts where even the Judiciary are confused as to the definitions of who is a member of the public and how does the behaviour interfere with persons passage and or enjoyment. The above quoted case law appeals reveal the confusion over this badly written and confusing legislation.

- (3) Further, the Appeals Court has held the language used must perpetrate a sting to whom it was directed to constitute offensive/obscene in its nature. How does one prove this element if not directed to any person in particular? How do police enforce this part of the legislation if heard by a person in their own yard?. The proving of some of the elements in this legislation has become clouded as definitions are not included.

- (4) Evidence suggests that police are using their discretion appropriately with respect to public nuisance incidents as few charges under the new legislation are instigated in this district. It appears police warn offenders of the consequences of their actions and this generally suffices. Prosecution files reveal police are generally the persons offended by the use of language by offenders in a public place. This is probably because police can prove the behaviour interfered with their enjoyment and peaceful passage.



Nigel McBain

O.I.C. Pine Rivers District Prosecutions.

**QUEENSLAND POLICE SERVICE**

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Our Ref: MN05/

Your Ref:

1 June 2006

TO: District Officer, Brisbane Central
District Officer, North Brisbane
District Officer, Brisbane West
District Officer, Pine Rivers

FROM: Assistant Commissioner, Metropolitan North Region

SUBJECT: ISSUES PAPER – THE NEW PUBLIC NUISANCE
OFFENCE PROVISION

1. Forwarded for your information and comment please.
2. Please forward your comments to my office by 12 June 2006.

G A NOLAN
ASSISTANT COMMISSIONER
METROPOLITAN NORTH REGION

DISTRIBUTION LIST**Director, Office of the Commissioner**

Please advise if your office will be formulating any Service reply regarding the New Public Nuisance Offence Provision.

Comments received from the District Officers of this Region will be forwarded to you for your information.