

QPS Response to the Crime and Misconduct Commission Review of the Public Nuisance Offence

On 1 April 2004, amendments were made to the *Vagrants, Gaming and Other Offences Act 1931* section 7AA. The offence of "Public Nuisance" was created to replace the offences of Indecent Behaviour, Language Offences and Disorderly Conduct. Many of the provisions of the *Vagrants Gaming and Other Offences Act 1931* were so outdated that they were no longer suitable for enforcement in today's society. This Act was repealed on 20 March 2005 and was replaced by the *Summary Offences Act 2005*.

Section 7 of the *Summary Offences Act 2005* provides that as soon as practicable after 1 October 2005, the Crime and Misconduct Commission (CMC) must conduct a review on the use of the public nuisance provisions.

As a result, the CMC prepared an issues paper and invited individuals and agencies to provide feedback relating to the public nuisance offence.

The QPS response to the eleven questions asked at the end of the issues paper is provided below.

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?

- a) *Is this behaviour of a character that you, your clients or your agency would consider is 'disorderly', 'offensive', 'threatening' or 'violent'? If so, why? If not, why not?*
- b) *Is this language of a character that you, your clients or your agency would consider 'offensive', obscene', indecent', 'abusive' or 'threatening'? If so, why? If not, why not?*
- c) *Since 1 April 2004 have you, your clients or your agency recognised any change in the range of behaviour or language that results in a charge of 'public nuisance'?*

The behaviour of offenders charged with Public Nuisance Offences covers the gamut of unacceptable anti-social behaviour. The majority of matters relate to intoxicated persons engaging in physical altercations or persons who are verbally aggressive and use language that is abusive and threatening. Police are often called to this behaviour or come across it during patrols. Officers take action in order to ensure the behaviour is discontinued. Generally the community and police regard offences listed under the *Summary Offences Act 2005* as being public nuisance offences as they offend the community sense of common decency and public amenity. Offenders are charged under section 6 of the *Summary Offences Act 2005* for matters such as:

- Abusive behaviour through the use of verbal abuse which is not covered under other related behaviour. Such behaviour covers verbal abuse that could not be recorded under either threatening, obscene or insulting words.
- Threatening behaviour including threats and actions which have been construed as being threatening towards police and/or other members of the public.
- Offensive behaviour which covers behaviours exhibited by offenders which can not be classified under other related behaviours. Offensive behaviour

includes verbal abuse which could also be recorded under insulting or obscene language. The language component mainly seems to be where it is used directly at police and is very insulting. Just the use of some obscene language does not appear to result in an arrest for that offence only.

- Obscene behaviour which includes behaviour which is contrary to common morality.
- Insulting behaviour which incorporates verbal taunts that complainants believe to be personally insulting them.
- Indecent behaviour, for example public urination.
- Disorderly behaviour comprises of physical contact that is seen to be contrary to common morality. This type of behaviour includes the destruction of property where there is no complaint (smashing beer bottles), assaults where there is no complaint, general harassment of the public and anti-social behaviour.

There has been no reduction in the test applied in determining whether the behaviour subject of the charge is sufficiently disorderly, indecent, offensive, violent or threatening. The test remains an objective test of contemporary standards considering the time, place and circumstance of the behaviour.

The public nuisance offence does not appear to capture those acts previously captured by section 7(1)(b) of the *Vagrants Gaming and Other Offences Act*, i.e. writing/drawing offensive or obscene words, figures or representations.

There is an added test, however, that even where behaviour that may have been considered offensive to common contemporary standards, and as such may have attracted prosecution under the *Vagrants Gaming and Other Offences Act*, must now satisfy the test that it did, or was likely to, interfere with the enjoyment of that public space at that time.

In *Ashton v Green* [supra] SJDC found at para 16:

[16] To convert behaving in an offensive way into a public nuisance offence s.7AA(2)(b) must be satisfied. It requires interference with the "peaceful passage through ... a public place" or "the enjoyment of a public place" by a member of the public, here a police officer, Constable Ashton.

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

- a) Since 1 April 2004 have you, your clients or your agency recognised a change in the proportion of public nuisance charges resulting from complaints by members of the public?*
- b) In your opinion, or that of your clients or agency, what public interest has been served where there is no complainant to a public nuisance charge?*

There has been no obvious change in relation to the proportion of public nuisance charges resulting from complaints by members of the public.

Previously, when commencing proceedings under section 7 of the *Vagrants Gaming and Other Offences Act*, there was less consideration of the manner in which members of the public reacted to the charged behaviour. The introduction of the new Act has resulted in a change in police training and procedures.

Police will attempt to obtain witness details wherever possible, and in the case of an urgent situation, make notes of persons in the vicinity, their ages, sex and reaction to the behaviour. Generally these observations will be put to the offender at the time of, or shortly after, any arrest.

Nevertheless, there are situations where it is not practicable to obtain witness details. These circumstances include behaviour that was dangerous to the offending persons or others, or where there appeared a reasonable prospect that the incident would escalate in short order to an act of violence or destruction of property. In such circumstances the priority is to remove the threat and preserve the safety of the public and the offender. In some situations the witnesses to the charged act leave the scene before there is an opportunity to obtain their details.

Furthermore, an unknown number of complaints have been reported to police by anonymous members of the public, who are not listed as complainants due to the public nuisance offence being a Regina offence.

To require a complaint prior to police action for public nuisance matters would effectively prevent police from being able to act in a large number of incidents where immediate action is required to prevent the potential of serious incident occurring; or where other members of the public feel unsafe, intimidated or anxious about another persons behaviour.

General opinion is that the policing of these offences without complainants is conducive to maintaining basic law and order and serves as a deterrent to socially unacceptable behaviour generally. Public disorder is the origin of many acts of personal violence. Offenders behaving in aggressive, disorderly, offensive or a threatening manner often create physical confrontations either becoming the victim or offender in acts of personal violence. Police are empowered to act 'immediately' to prevent such escalations from occurring.

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?

- a) *What impact has the public nuisance provision had on people identified, or identifying, as young, Indigenous, homeless and/or suffering from a mental illness?*
- b) *What impact has the public nuisance provision had on other people in the community?*

In policing public disorder, members of the QPS commence prosecutions on the basis of behaviour, not on the basis of personal characteristics.

In the case of young persons, section 11 of the *Juvenile Justice Act* requires police to consider other options prior to arrest. These include taking no action; cautioning; or community conferencing.

Both the 'public interest' and the 'sufficiency of evidence test' are required to be met prior to an officer beginning a proceeding for an offence. Police Prosecutors also consider these tests and can apply to withdraw matters that do not comply with the high standards as set out in Chapter 3 of the OPM.

During 2005-06 there were 1,143 juvenile's offenders or 6% of the total public nuisance offenders recorded in Queensland. Of these juveniles dealt with for public nuisances offences 389 (34%) were arrested, 426 (37%) were served with a notice to appear, 280 (23%) were cautioned and 48 (4%) other action were taken (such as community conference, summons served etc.).

The CRISP (Crime Recording Information System for Police) Procedures Manual requires all offenders to be recorded with an Indigenous Identifier Code. The codes are AB (identifies as Aboriginal), BO (Identifies as Aboriginal and Torres Strait Islander), TI (Identifies as Torres Strait Islander), NO (Not Aboriginal or Torres Strait Islander) or RF (Refused).

During 2005-06 there were 19,031 public nuisance offenders recorded in Queensland. Of these persons dealt with for public nuisances offences, 13,572 (71%) identified themselves as non-Indigenous, 5,377 (28%) identified themselves as Indigenous and 82 (less than 1%) refused to identified themselves as either non-Indigenous or Indigenous

During 2005-06, in the Far North Queensland Police Region there were 2,785 public nuisance offences recorded. Based on the 2001 census approximately 12% of Far North Statistical Division's population identified as Indigenous. Police statistics for 2005-06, show that 63% of persons within this area identified themselves as Indigenous when dealt with for public nuisance offences. In comparison, 12% of offenders in Metropolitan North and South Police Regions identified themselves as Indigenous when dealt with for public nuisance offences. Based on the 2001 census there were approximately 2% of Brisbane and 1% of Moreton Divisions' population are Indigenous.

Homeless and mentally ill persons are not categorized on CRISP therefore statistics are not available.

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?

a) *Since 1 April 2004 have you, your clients or your agency recognised a change in the range of available defences to a charge of 'public nuisance'?*

The normal safeguard of the prosecution having to prove the behaviour a nuisance is an adequate defence. Compared with section 7 of the repealed legislation, the prosecution not only has to prove the alleged behaviour but now has to prove its effect or likely effect on others.

If there were statutory defences in the Act it would require the questioning of a defendant at the scene to negate any defences. Many offences are committed by persons in a state of intoxication or emotion which would make questioning difficult.

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

The provisions of section 6 of the *Summary Offences Act 2005* are an invaluable tool for managing offenders and behaviour before acts of violence or property destruction occur.

All members of the public have a protected right to enjoy the use of public places without interference from acts of nuisance committed by others serves.

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

- a) *For example, what is the relationship between public nuisances arising (s. 6) from urination in public and wilful exposure (s. 9) arising from the same conduct? What is the relationship between public nuisance (s. 6) arising from a person seeking money from another person in a manner that causes that person to be intimidated or concerned, and begging (s. 8) arising from the same conduct?*
- b) *If there is an overlap between public nuisance and other offences, is this problematic? If so, in what way? If not, why not?*

It would appear that the explanatory notes include examples that would permit offences of Begging to constitute a public nuisance offence, (example 10). Similarly example 6 would seem to suggest that some instances of wilful damage may be proceeded with as a public nuisance matter. Example 8 nominates urinating in public, which may in some circumstances amount to wilful exposure under section 9 of the *Summary Offences Act*.

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

- a) *In your experience, was a charge of public nuisance used as a less severe or more severe charge?*

Generally, it is the practise of QPS officers to charge with the most specific and appropriate offence rather than broadly apply the public nuisance offence. The exception regarding the wilful exposure offence is in those circumstances that there is no evidence that any exposure of the offender's genitals has been wilful. In such circumstances a public nuisance matter may be properly made out, where a wilful exposure matter may not be.

In the case of section 164 of the *Liquor Act 1992*, behaving in a disorderly manner in licensed premises, there are circumstances where a public nuisance charge has been preferred in preference to that of the *Liquor Act* offence. This would appear to not disadvantage the offender as the elements are very similar.

Otherwise in circumstances where the offender has committed a number of other *Liquor Act* offences such as refuse eviction, resist eviction, obstructing an authorised person, or consuming liquor in a public place; general duties officers generally commence proceedings for those matters in addition to any public nuisance matter that might arise through that course of offending.

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

- a) *Are charges that accompanied public nuisance charges the result of behaviour that occurred before or after police intervention in a situation?*
- b) *In your experience, was there a change in charges accompanying public nuisance charges after 1 April 2004?*

The most regular offences accompanying a public nuisance offence are offences against police. The offences are obstructing police, assault police, contravene requirement and wilful damage. There are instances in which offenders have also been armed and charged with possession of a knife or possession of a dangerous article. Other offences include serious assault, possession of a dangerous drug, consume liquor in a public place, traffic offences, tainted property, disorderly in licensed premises, refuse eviction from a licence premises and fail to dispose of a syringe. With the introduction of the public nuisance offence, there does not appear to be any change in the additional charges against offenders.

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

- a. *Have public nuisance charges taken place in areas that were not public spaces? If so, where did they take place?*
- b. *Has there been an increase in public nuisance charges in any particular location since 1 April 2004?*

Information received from the police regions shows that the majority of incidents relating to public nuisance offences were committed in the street. A total of 13,046 (69%) of all recorded public nuisance incidents were in the street. A Street is defined in the CRISP Procedures Manual as a location where the main activity is the passage of people. Examples include a city street, Suburban Street or a telephone booth situated on a footpath. A total of 1,237 (7%) of incidents occurred in a shopping area which is defined as any location attached to a retail shopping area excluding shops, including but not limited to a car sales yard, shopping centre (the whole area not specific locations or a Mall (e.g. Queen Street Mall). There were 906 (5%) incidents recorded in a recreational area, 755 (4%) recorded in a hotel and 319 (2%) recorded as occurring in areas belonging to Queensland Rail.

The CRISP Procedures Manual defines a hotel as “any location where the primary function is that of a hotel, including but not limited to: bottle shop attached to a hotel/pub, drive through bottle shop at a hotel/pub, hotel accommodation, hotel, liquor barn at a hotel/pub, pub”. The CRISP Procedures Manual defines Queensland Rail as “any location that is in some way attached to the railway system including but not limited to: Railway station, when attached to or situated at a railway station: carpark area, freight storage area, other structures, shunting yard, surrounding land, yard”. However it excludes offences occurring on trains and at any construction site at the previously mentioned locations.

This is consistent with the situation under the repealed legislation.

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

The decision to prosecute offences, including public nuisance offences, is dictated by the requirements of section 3.4.3 of the QPS *Operational Procedures Manual*, that the prosecution satisfy both the 'public interest' and 'sufficiency of evidence' tests.

Police maintain a highly professional and appropriate response to public nuisance matters. The fact that all prosecutions for public nuisance matters are scrutinised by the arbiter of fact and law in these proceedings is a significant protection against the inappropriate application of this offence provision.

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

- a. *In your experience, have there been common factors dictating the nature of the police response? (e.g. location of offence, social identity of the offender)*
- b. *Has there been any perceived change in police response since 1 April 2004?*

The police response predominately depends on the behaviour of the offender. If the offender cooperates with police they may be issued a Notice to Appear however if the offender becomes violent or abusive, generally they will be arrested.

Of the 19,031 persons prosecuted in Queensland during 2005/2006 a total of 11,778 (62%) people were arrested, 6,841 (36%) were served with a Notice to Appear, 286 (2%) juveniles were cautioned and 126 (1%) other action was taken (such as Community Conference, summons served etc).