



RIGHTS IN PUBLIC SPACE ACTION GROUP

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Rights In Public Space
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21 July 2006
Ref No. E:/Rosslyn/RIPS/ CMC Submission

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CMC CLASSIFICATION	
<input type="checkbox"/>	Highly Protected
<input type="checkbox"/>	Protected
<input type="checkbox"/>	In-Confidence
<input type="checkbox"/>	Unclassified
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Reg No: 06/04924	

Dear Derran

Rights in Public Space Submission: Public Nuisance Offence Review

Thankyou for the opportunity to respond to the issues paper, *The new public nuisance offence provision: How is the public nuisance offence provision being enforced and what is its impact on the Queensland public.*

About Rights in Public Space

The Rights in Public Space Action Group (RIPS) is a coalition of community agencies with an interest in promoting the rights of marginalised people in their use of Queensland public spaces. RIPS is broadly representative of marginalised client groups that are most affected by Queensland public space laws, including the *Summary Offences Act*. The RIPS membership consist of academics and community agencies that provide support services to people who are young, homeless, indigent, disabled, and indigenous. Since the group's inception in 2003, the work of RIPS has examined the systemic issues affected marginalised groups in public space, specifically focussing on the policing and legal aspects.

RIPS engages in both research and lobbying activities, pooling the collective expertise of the representative agencies in working on the systemic issues that impact upon marginalised groups in public space. In 2003, RIPS undertook a research project that examined the view of marginalised people who use public space. In 2004, RIPS provided the then Minister for Police and Corrective Service a comprehensive submission on the draft *Summary Offence Bill*, of which the public nuisance offence is the subject of this review. RIPS has also held a public forum on these issues and has been invited to address a range of community and government groups on these issues.

Rights in Public Space member submissions

A number of the RIPS members have forwarded to the Crime and Misconduct Commission submissions made on behalf of their own agencies. These submissions include those from:

- ◆ Youth Advocacy Centre;
- ◆ Homeless Persons' Legal Clinic, a project of the Queensland Public Interest Law Clearing House;

- ◆ Aboriginal and Torres Strait Islander Legal Service (Qld South);
- ◆ Caxton Legal Centre; and
- ◆ Dr Tamara Walsh at University of Queensland.

RIPS endorses all of these submissions, which address the specific client-base issues of concern.

Key issues supported by Rights in Public Space

Given the nature of RIPS, we are unable to specifically comment on the specific experiences of individual clients, and commend the individual member submissions to you in this regard. However, there are a number of key systemic issues that permeate all of the RIPS member submissions that are worth elucidating.

Social disadvantage should not be dealt with by the criminal justice system.

The presence of marginalised groups in public spaces can be invariably connected with the person's status and personal circumstances, whether that be lack of access to appropriate accommodation and health care, lack of access to private spaces for socialising, and/or experiences of abuse and mistreatment. A charge of public nuisance may involve vulnerable people in the criminal justice system which is ill-equipped to deal with their support needs.

Targeted policing coupled with a broad public nuisance offence invariably leads to marginalised people unnecessarily entering the criminal justice system.

Marginalised groups are subjected to targeted policing due to their visibility in public spaces. When police are particularly focussed on these groups there is a greater risk of it resulting in an adverse interaction. Given the breadth of the public nuisance provision, the offence provides a convenient "catch-all" with which police can charge marginalised people. The public nuisance offence is quite often preferred over other summary offences that are more specific to the behaviour exhibited in public space.

A member of the public must be a complainant or a witness for a charge of public nuisance.

In RIPS members' experience the police use the charge of public nuisance in many instances where the police officer is the only complainant. In RIPS' view a public nuisance charge should only be used when there is a genuine "public" nuisance rather than an altercation with a police officer. Ideally the charge of public nuisance should require a member of the public to be a complainant, or alternatively a witness to a public nuisance complaint. Such a requirement would provide a check for heavy-handed policing.

Reasonable excuse defence

It is critical that the public nuisance provision include a reasonable excuse defence. As exemplified in member submissions, the context of person's behaviour in public space is critical to how the courts treat the matter. Charges of public nuisance arise from a range of circumstances including the availability of public toilets, the role the police take in provoking certain types of behaviour, and the ongoing and systemic discriminatory treatment of vulnerable people in public spaces.

Whilst it was the intention of Parliament in passing the public nuisance provision was to "ensure the safe passage of the public in public places", underlying the submissions by RIPS members is the question of which public feels safer? In RIPS' view a broad public nuisance offence does not result in the greater safety of members of the public and at worst provides a vehicle for police to use to systematically discriminate against marginalised people.

Economic Imperatives

As RIPS predicted back in August 2004, the financial cost of prosecuting public nuisance offences is currently being realised. The stress on the court system to deal with the influx of public nuisance offences is significant and, in RIPS view, unsustainable. RIPS considers that the CMC review of public nuisance would be incomplete without a thorough cost analysis of the financial burden imposed on all key agencies of the criminal justice system in responding to charges of public nuisance, including the Magistrates Courts, Departments of Corrective Services and Justice, Community Legal Centres, Aboriginal Legal Services, Legal Aid Queensland and the Queensland Police Service.

RIPS looks forward to the CMC review findings and to continue working with the CMC to ensure the safety of all groups in public space. Please do not hesitate to contact any of our members for further feedback or clarification.

Yours faithfully



Rosslyn Monro
Director
Youth Advocacy Centre
On behalf of RIPS