



CRIME AND MISCONDUCT
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Mr Robert Needham
 Crime and Misconduct Commission
 P O Box 3123
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Wednesday, 26 October 2005

Dear Bob

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 Reg No: 05/05794

Review of Summary Offences Act 2005 – s 6 - Public Nuisance

I understand from the Net that the CMC is reviewing the operation of the current public nuisance legislation and I write in respect of that review.

I see a report by Lou Robson in the Sunday Mail dated 23rd October that the police at Cooloolah have charged over 100 people with the offence of public nuisance, their actual offence being that they were bathing or sunbathing in the nude and were caught so doing in police raids.

In fact an acquaintance of mine, [REDACTED] has been charged with this offence. When he arrived at the Magistrate's Court at [REDACTED] to answer the charge he was handed a copy of the police statements. I enclose a copy of them. The officers were not present in the court at the time of the hearing and my friend asked for an adjournment to consider the statements. I am only partly concerned with the specifics of that case.

I cannot refrain from making the following observations:

- (a) there is nothing in the police statements that I enclose that indicates a breach of the public nuisance provision – no disorderly or offensive or threatening or violent conduct, no offensive language etc.
- (b) it is arguable that there were no members of the public present – see Judge O'Sullivan's decision in Darney v Fisher at the Bundaberg District Court dated 8 June 2005 confirming the decision of the local magistrate.
- (c) In any case there is a separate offence of wilful exposure in s 9 of the Summary Offences Act. This indicates that public nudity is not seen, in itself, as a public nuisance. Although I am not a criminal lawyer it seems to me that the police statements in themselves show no case to answer in public nuisance.

If over 100 persons have been charged with public nuisance merely for going nude in public in secluded locations where people have been going nude for decades – including I understand, Alexandria Bay in the Noosa National Park – it would seem to be a matter for review of the operation of the public nuisance legislation. Perhaps some of them might have committed an act of public nuisance in the context of a charge of public nudity. But the vast majority will only have been going nude.

What seems to be happening is that the local police service has been instructed to crack down on nudists and feel that the public nudity legislation does not impose a sufficient penalty. So they have decided as a matter of policy to charge all nudists with public nuisance, which not only carries a much heavier penalty but also brands the offender as a more serious offender.

Some of those charged will not realise the seriousness of the offence with which they have been charged and may plead guilty, particularly if they cannot find the \$1000 or so that they have to pay in advance of the hearing for legal representation. In practice the Duty Solicitor cannot assist and most people are not aware of the availability of legal aid. Those who can afford to challenge the charge often find that the charge is withdrawn on the steps of the court so that the Magistrate never really gets to know what is happening and of course the person charged has done his dough. If a conviction is recorded the defendant may well find that thereafter he is refused employment.

It seems to me that the policy decision of the police to charge everybody they catch in the nude with a more serious offence that they know they have not committed raises an issue of public importance. It amounts to police contempt for the very legislation that is enacted to deal with public nuisance and public nudity.

I also reflect on the damage that the police do to their image of fairness by acting in this way.

I do not know if this comes within your desire to refer to the operation of the legislation but if it does I draw your attention to what seems to be happening in many cases here [REDACTED]

Yours truly
[REDACTED]
[REDACTED]
[REDACTED]