



**Submission to the Crime and Misconduct Commission
Queensland review of the offence of public nuisance
in Queensland**

Prepared by Youth Advocacy Centre

June 2006

Youth Advocacy Centre

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

Youth Advocacy Centre (YAC) is a community legal centre which offers legal and welfare assistance to young people between the ages of 10 and 17. The geographical area which the Centre services is largely the Brisbane area, with some occasional assistance to young people in other areas of the state. The nature of the Centre's work ranges from legal advice, representation, education, counselling, family mediation, and support for young people around issues such as accommodation, education and income. The Centre also participates in law and policy reform activities.

Over its 25 years of operation, YAC has regularly returned to the issue of young people's treatment in public space as an issue of concern. A recurring theme over this time has been the perception by the general public and successive governments that young people in public spaces are regarded as a threat or an annoyance. This perception of threat or annoyance causes the police to interact with a wide range of young people more frequently than other members of the public¹. The most recent changes to public nuisance laws in the *Summary Offences Act 2005* appears to provide an all-purpose offence with which police can charge young people. The data presented in this submission substantiates the ineffective and targeted policing of young people and that when young people are subjected to mistreatment by the police, the broad offence of public nuisance is a convenient catch-all provision with which to charge the young person.

In the course of developing this submission YAC examined 24 duty lawyer advice forms and 6 casework files over the period of 1 April 2004 and 1 October 2005. It should be noted that this is a sample of the total number of public nuisance matters resolved by YAC during the review period. The majority of the data was collected on Mondays on which YAC provided a duty lawyer service at the Brisbane Children Court. Specific casework examples are included in the submission to provide concrete illustrations of the main issues raised by the data.

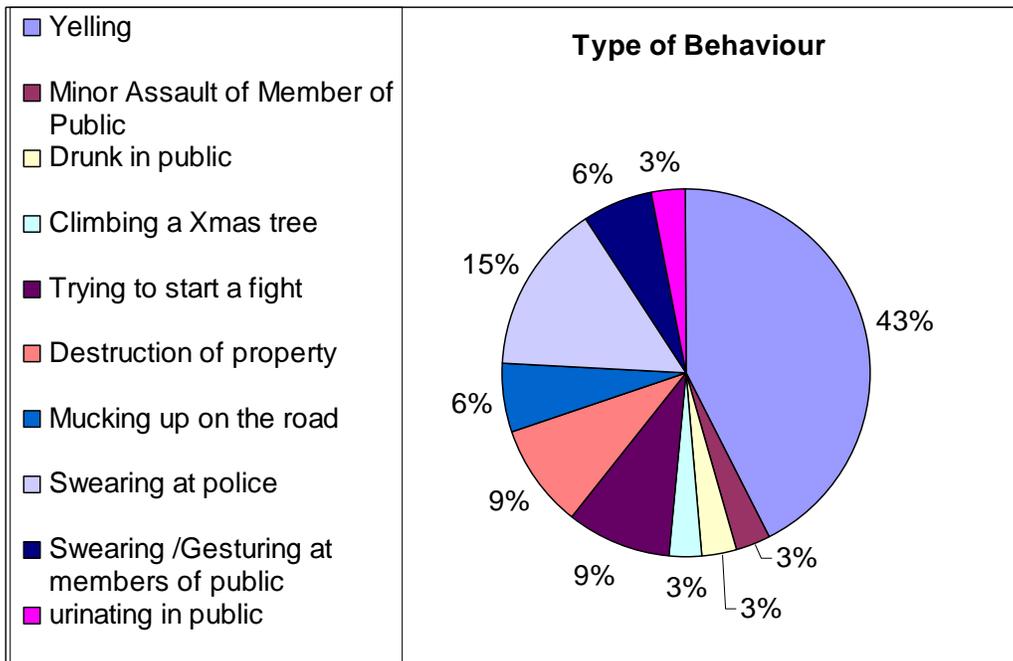
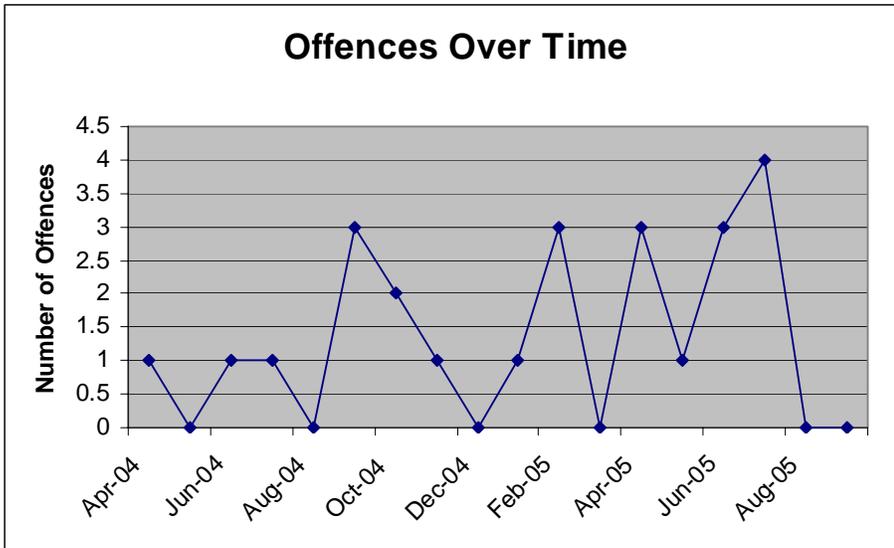
Public Nuisance Offence

It is noted that the review period between 1 April 2004 and 1 October 2005 straddles the former public nuisance provision (s7AA) under the *Vagrants, Gaming and Other Offences Act 1931* and the introduction of section 6 under the *Summary Offences Act* in March 2005. The section that this submission considers is as follows:

¹ O'Connor, Ian (1994) *Young People and Their Rights* in White, Rob and Alder, Christine (eds) The Police and Young People in Australia, Cambridge University Press.

- (1) A person must not commit a public nuisance offence.
Maximum penalty – 10 penalty units or 6 months imprisonment.*
- (2) A person commits a public nuisance offence if –*
- (a) The person behaves in –*
 - (i) A disorderly way; or*
 - (ii) An offensive way; or*
 - (iii) A threatening way; or*
 - (iv) A violent way; and*
 - (b) The person’s behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.*
- (3) Without limiting subsection (2) –*
- (a) A person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and*
 - (b) A person behaves in a threatening way if the person uses threatening language.*
- (4) It 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.*
- (5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2) (a) may be relied on to prove a single public nuisance offence.*

Whilst it is acknowledged that the section did not substantively change in the 19 month review period, it is YAC’s experience that the frequency of police charging young people with public nuisance offences has increased over time beyond the particular period of review. In addition, because of the broad drafting of the provision, police are able to capture a range of behaviours under the umbrella of public nuisance. Consequently, the offence is often used by police as a catch-all offence. In the YAC sample in the review period there was an incremental increase in the number of young people charged with the offence and the kinds of behaviours represented in the YAC sample range from potential assault to “pranks”, such as climbing a Christmas tree.



The elements of the offence are very broad in its application as the mere presence of an individual in a public space may be sufficient to trigger the provision with the section stating:

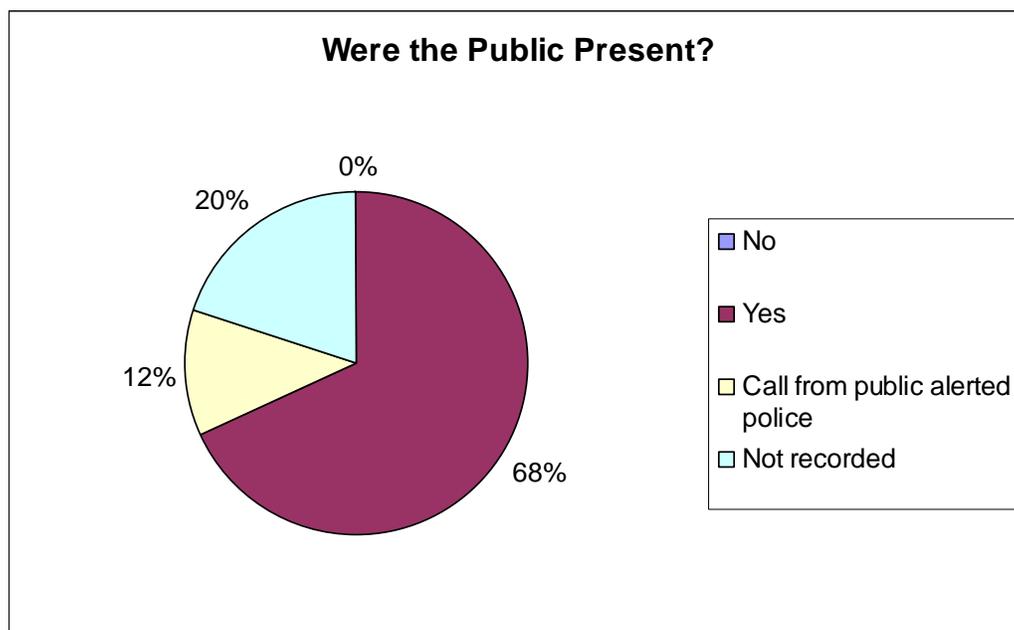
“The person’s behaviour interferes, or is likely to interfere, with the peaceful passage through.....”

In short, the provision may be triggered if a police officer simply notices a young person in a public space and forms the opinion that the

person's behaviour is likely to interfere with peaceful passage through that space.

This drafting is particularly problematic for young people as they are easily identifiable by virtue of their youth, and are likely to congregate in public spaces with other young people, thus increasing their visibility. Young people's visibility invariably attracts the attention of police. If a young person's subsequent interaction with police is unfavourable this can result in the charging of young people with public nuisance based upon behaviour that was directed at a police officer. Specific case examples of this are provided further in this submission.

The section also does not require a member of the public to be a complainant. In many situations involving young people, whilst there are members of the public in the vicinity, it is the behaviour that is directed at the police that becomes the basis for the charge of public nuisance. In the YAC sample, not all public nuisance offences resulted from the interference of the passage of the public through a public space.



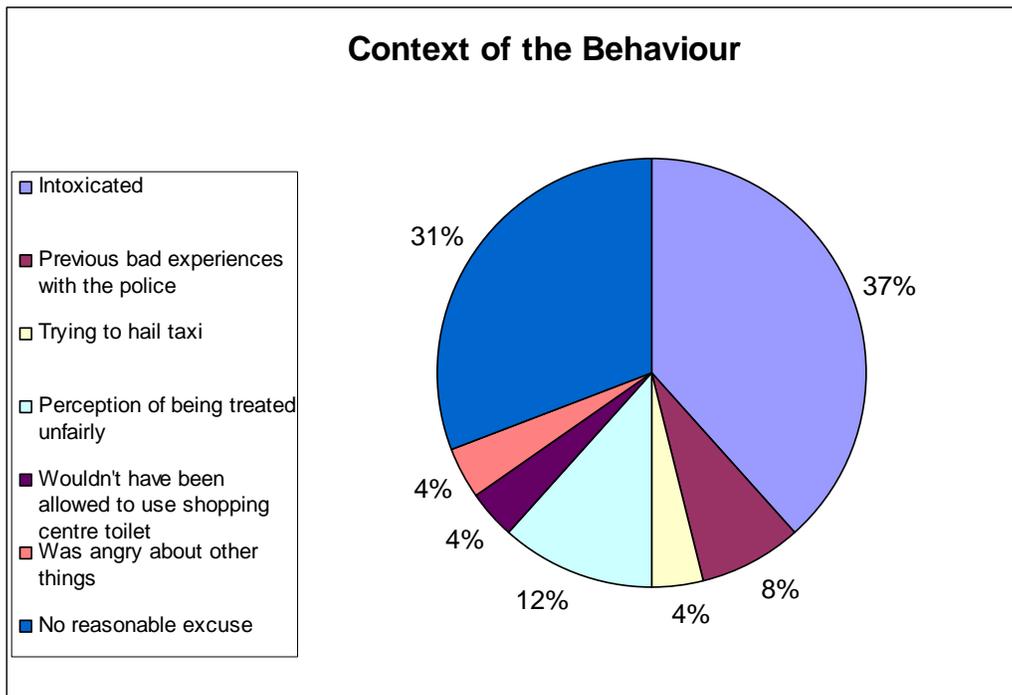
Further there is no onus on the police to prove that the behaviour occurred in a public place, as opposed to a private place. The intent of parliament was to "ensure the safe passage of the public in public places"². There must be an onus on the prosecution to ensure that the place in which the offence occurred is legitimately a public place.

There is also no scope in the section for a defence of reasonable behaviour taking into account the context of behaviour. The YAC sample seems to

² Summary Offences Bill 2004 Explanatory Notes

indicate a significant proportion of young people had a reason for the behaviour and that some of these reasons may have had a successful defence of if it was available. The following is a typical example:

A young person in a shopping centre was charged with public nuisance when found urinating in public. When later questioned by his solicitor as to the reason why he was doing this, he indicated that the shopping centre toilets were locked and it was his experience that the key to the toilets was not given out to young people in his group in the past.



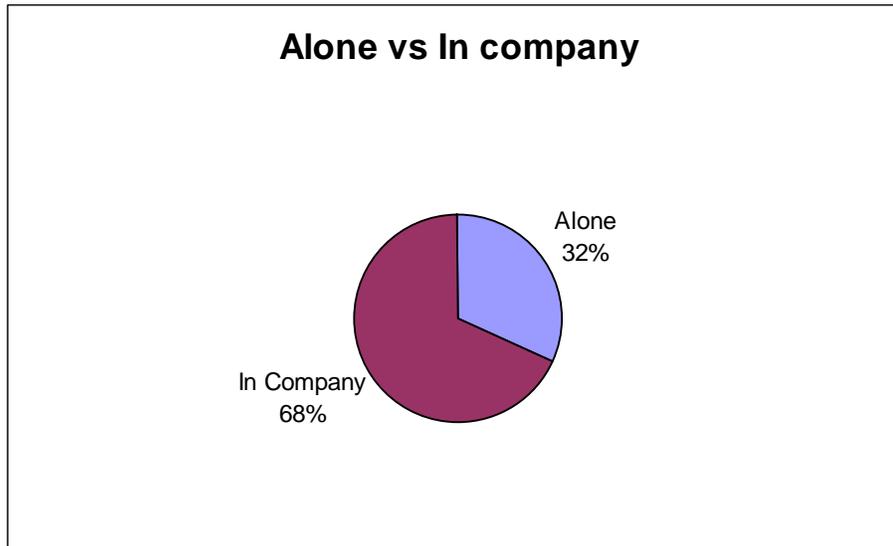
Key Issues

The YAC data sample identifies a number of key issues about the interplay between young people and police and the likelihood of a charge of public nuisance resulting. These issues include:

- ◆ Young people are more likely to be charged with public nuisance offences if they are with other young people in public spaces.
- ◆ The courts were likely to issue an unsupervised order to a young person who appeared in court on public nuisances charges.
- ◆ The young person's behaviour in public spaces was more likely to adversely escalate when approached by police.

- ◆ A significant number of young people are charged with public nuisance offences on private property rather than in public spaces.

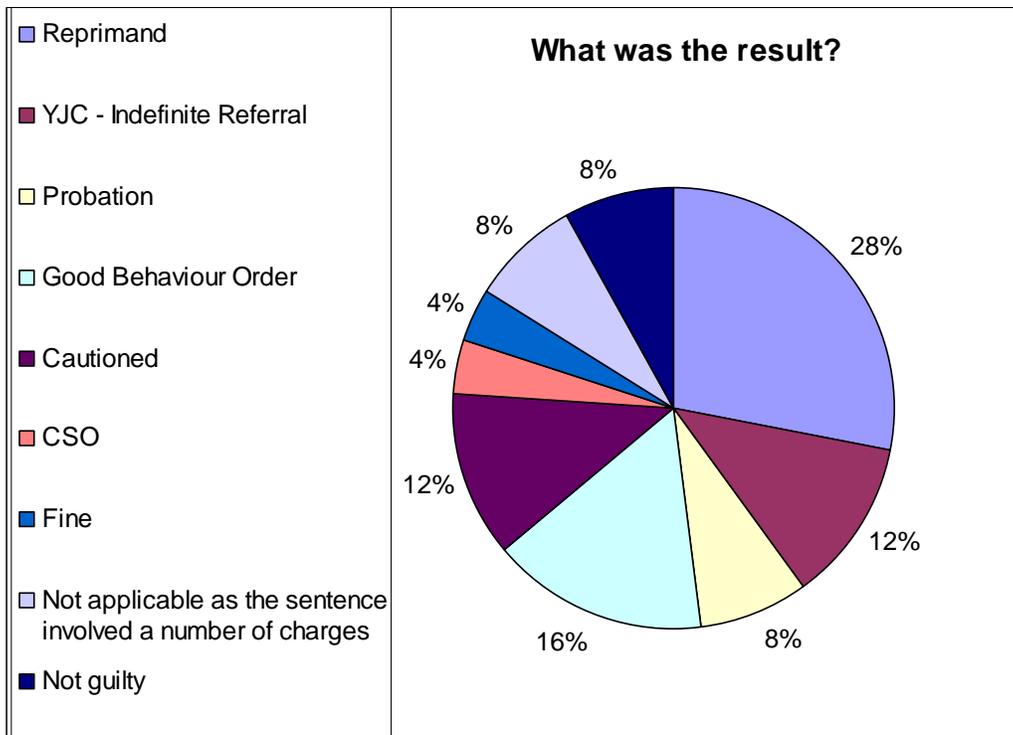
Young people are more likely to be charged with public nuisance offences if they are with other young people in public spaces.



The most generous analysis of this data is that young people are more visible when they congregate in groups. The more worrying conclusion is that young people in groups are targeted by police, and that police targeting invariably results in young people becoming involved in the criminal justice system. It appears that the visibility of groups of young people attracts more police attention and the police use the charge of public nuisance to sanitise public spaces of young people.

A 16 year old young person was in a public park at 10:30pm, drinking with a group of other young people. The police attended at the park, prompted by a call from a local private security provider patrolling the area and a phone call from a local resident. When the police officers approached the group of young people the young person swore at the police. The police arrest the young person and charge him with public nuisance. During the arrest process, which contravened the appropriate process for a juvenile, the young man was told by the arresting officer that if he hadn't sworn at him he "wouldn't be going to court". After hearing the police witnesses, the Magistrate decided the young man was not guilty.

The courts were likely to issue an unsupervised to a young person who appeared in court on public nuisances charges.

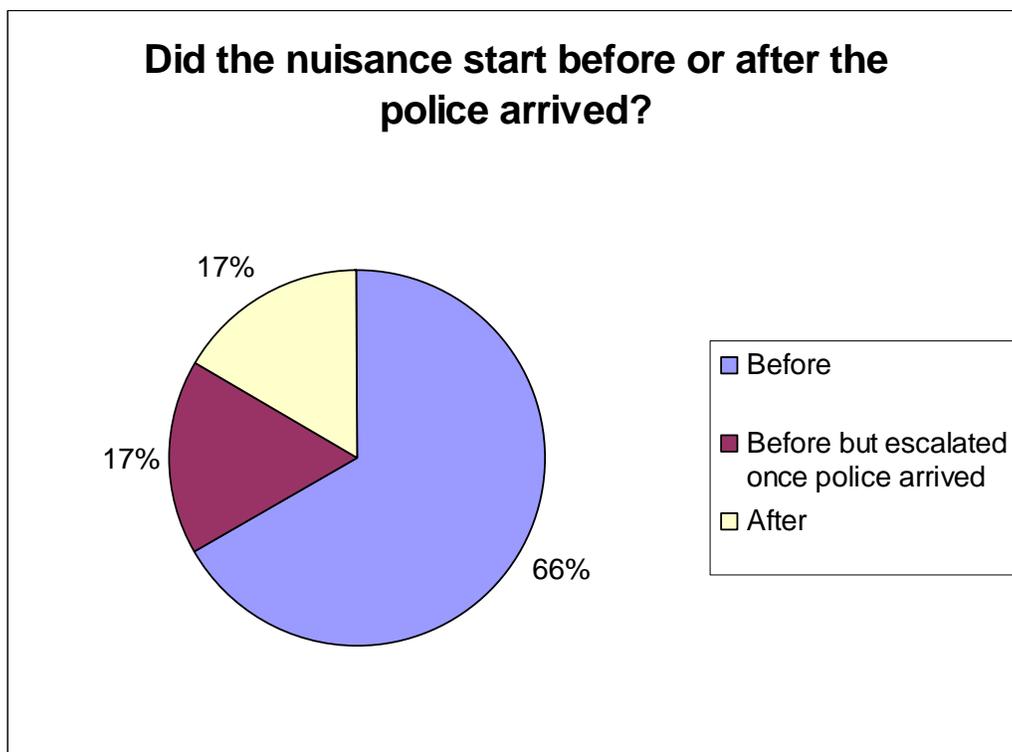


The data again reveals the deficit in the policing of young people in public spaces. Whilst the elements of the offence are sufficiently made out to warrant a finding or a plea of guilty, the court have in a large number of situations not found the behaviour to warrant no greater sanction than an unsupervised order. Despite other legislative imperatives under the *Juvenile Justice Act* 1992 to divert young people from the criminal justice system, it appears that police are not applying these when dealing with public nuisance type behaviour. There are a number of options available to police to handle these situations such as moving on, reprimands, cautions and police diverted youth justice conferences. Yet the police appear to be reluctant to use these options rather than costly court processes. Further, there are the broader consequences of unnecessarily introducing a young person into the criminal justice system, which have been well documented, which is outside the scope of this submission.

The following casework illustration is an example of police failing to use appropriate diversionary methods in public nuisance situations.

A young person was attending a party to which the police was called. The police stopped the party and facilitated the departure of the party-goers. During this process, the young person leaving the party in a vehicle swore at a police officer. The police officer gave the young person a notice to appear. When the young person asked to be cautioned the police officer refused. At court the charge was withdrawn. It was noted that in the event that the young person was re-charged, the young person would be given a caution.

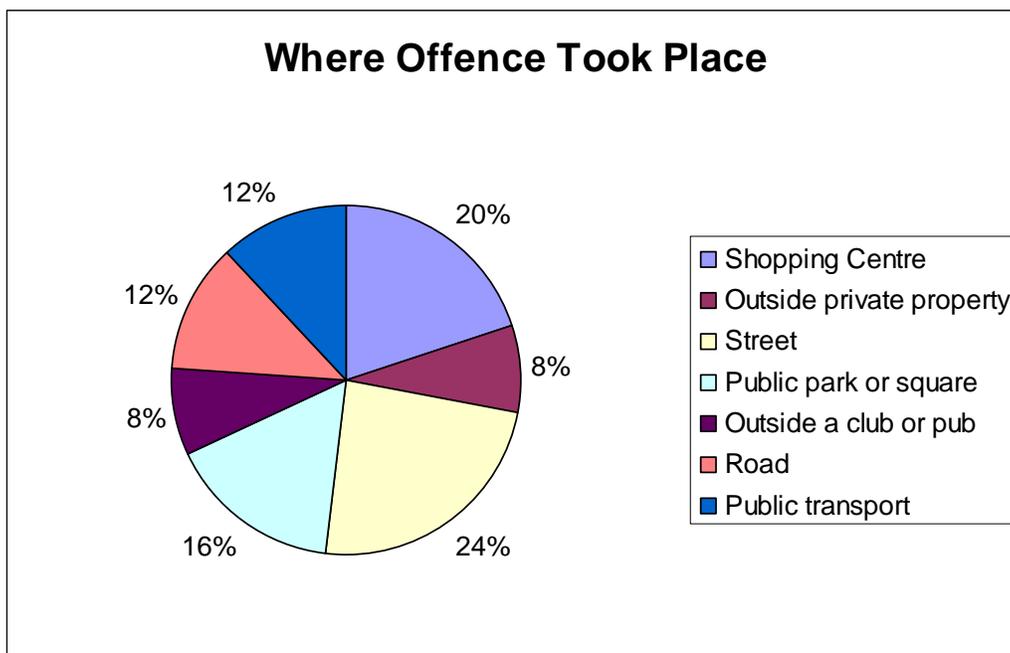
The young person's behaviour in public spaces was more likely to adversely escalate when approached by police.



The quality of policing where young people are involved has a direct impact upon the young person's behaviour. Often it is not until a young person is approached by police that more adverse behaviour is provoked. As is illustrated in a number of case examples, if young people show any resistance or question police directions, police place themselves in the shoes of a complainant and charge young people with public nuisance for behaviour that has been directed personally to them, rather than members of the public.

A 16 year old young person was attending a New Years Eve function run by the Christian Church. There was a large group of young people listening to a band. The young person was approached by 2 police officers and told the young person's friend to leave the function. The young person asked the police officer why his friend had to leave. When questioned by the young person the police officer threatened that he would have to leave the function too. The police officer swore at the young person. The young person asked the police not to swear at him. The police arrested and charged the client with public nuisance. The Magistrate found the young person not guilty of public nuisance due to the strong corroborated evidence of defence witnesses as to the quality of the police interaction.

A significant number of young people are charged with public nuisance offences on private property rather than in public spaces.



A significant number of young people were charged with public nuisance offences on or near private spaces, such as shopping centres. The object of Division 1 of the *Summary Offences Act 2005* states that it is to “ensure that members of the public should be able to lawfully use and pass through public places without interference from the unlawful acts of nuisance committed by other people”. Given the intention of Parliament to manage public spaces it is analogous for this section to be used so frequently in connection with private spaces.

In situations where shopping centres are involved, quite often young people are sanctioned by the private landholder, such as imposing bans for long periods of time, overzealous scrutiny by private security guards and unlawful detaining for questioning. The section does not require police or courts to take into account any of these other consequences that may be inflicted on young people in shopping centres. In many instances the young person is being punished twice, once by the private landholder, and once by charging by the police.

Conclusion

Article 15 of the *United Nations Convention on the Rights of the Child* (UNCROC) recognises the right of children and young people to freedom of association and freedom of assembly. Article 31 also recognises the child's right to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and arts. The systematic exclusion of young people in public spaces potentially restricts young people's right to participate in community life, connect with other young people and members of the community, and access basic services such as public transport. Young people must be recognized as rights-holders in our communities with a legitimate right to use public space and they deserve to be treated fairly. Ineffective policing of young people in public spaces, coupled with a broad public nuisance offence provision will only contribute to the exclusion of young people from the community and unnecessarily divert them into the criminal justice system.