

9 March 2009

The Officer-in-Charge
CMC Review of Police Move-on Powers
GPO Box 3123
BRISBANE QLD 4001

Dear Madam/Sir

RE: Review of Queensland's Police move-on powers

Please find attached a submission from the Anti-Discrimination Commission Queensland

Should you require clarification of any information included in the submission please contact Ms Neroli Holmes on 3247 0909.

Yours sincerely



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Anti-Discrimination Commissioner
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**Submission to
Crime and Misconduct Commission
Regarding its Review of Queensland's police move-on powers**

**by
Anti-Discrimination Commission Queensland**

March 2009

1. Introduction

The Anti-Discrimination Commission Queensland (ADCQ) administers the Queensland *Anti-Discrimination Act 1991* (the ADA). The Commission has a responsibility for monitoring human rights issues across Queensland.

The preamble to the ADA states, it is:

An Act to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.

The Commission's functions are set out in section 235 of the ADA. Those functions fall into two broad categories, the investigation and conciliation of complaints and the monitoring and promotion of human rights in Queensland, including research and intervention.

The following comments are provided with above functions in mind.

In June 2006, the *Police Powers and Responsibilities Act* was amended to make move on powers available to the police in all public places state wide. The legislation also required the Crime and Misconduct Commission (CMC) to review these powers after an initial period of implementation.

The ADCQ welcomes the opportunity to provide comments to the CMC on the police move on powers.

2. Previous submissions of the ADCQ relating to police move-on powers

The ADCQ has previously made submissions with respect to the introduction and gazettal of areas for the purpose of police move-on orders.

In 2004 the ADCQ made a submission to the Townsville City Council in relation to the Townsville City Council's Application for proposal to increase the number of "Notified Areas" under the *Police Powers and Responsibilities Act 2000*.

In 2005 the ADCQ made a submission to the Brisbane City Council in relation to Brisbane City Council's (BCC) Application of notified areas at Kurilpa Point, King George Square and New Farm Park pursuant to section 40 of the *Police Powers and Responsibilities Act*.

Both submissions addressed the ADCQ's concerns about the potential for discrimination against marginalised groups particularly Aboriginal and Torres Strait Islander people; young homeless people and people with mental health issues.

3. Aboriginal and Torres Strait Islander People who use open areas as meeting places

In Brisbane Kurilpa Point or the "place of giant water rats" which includes West End, South Brisbane and Highgate Hill has been well documented as a meeting place for Aboriginal people since the time the first convict settlement was established in Queensland. Industrial and urban development in the area has over the years dispossessed and displaced Aboriginal people from the Kurilpa area. The lack of affordable housing has pushed Indigenous people who once resided in the area, to the outer suburbs, or some have become homeless. Some, who are residents of

boarding houses and remain in the area, may gather in public space to drink alcohol (which is not permitted in their rooms) and to meet with friends and family.

Over the years the amount of public space in South Brisbane has been reduced or gentrified, and with the development of the South Bank, the extensions to the Queensland Museum, State Library and the development of a new art gallery. Aboriginal people who have always gathered (and lived) in the area are now confined to a few small public areas of South Brisbane, where they may be noticed as a visible minority group by the greater public and by the police.

Any overuse of move on powers on Aboriginal people who congregate in the Kurilpa Point Area, fails to recognise the cultural and social significance of this area to Indigenous people.

Similarly, over the years the amount of public space in Townsville has been reduced or gentrified, with parkland being sold off to developers or made into a car park. Aboriginal and Torres Strait Islander peoples who have always gathered (and lived) in the area are now confined to fewer public areas of Townsville, where they may be noticed as a visible minority group by the greater public and by the police.

Indigenous people have met in open areas in Townsville City well before they were given the vote. Before 1967, their freedom of movement was restricted under the various Acts (*Restriction of the Sale of Opium and Protection of Aborigines Act 1897*, *Aboriginal Protection and Preservation Act 1939* and *Aborigines and Torres Strait Islander Affairs Act 1965*). Elders remember meeting in the City at Railway Oval and Garbutt in the fifties. Those "under the Act" gathered for short periods before being required to report back to work. Any long term resident of Townsville will confirm this. Restrictions on movement are very sensitive issues for Aboriginal and Torres Strait Islander peoples and present generations can readily recall past injustices.

The issue is not solely confined to Brisbane or Townsville. Across Queensland due to development, tourism and the selling off of public land, competition for use of public space has increased. As traditional Indigenous users have been forced out of usual meeting places, they have become more visible. The right of use of public space is a social justice issue. Tourists, unit dwellers and businesses do not have a greater right to use public places than the traditional land owners of land or any other Aboriginal and Torres Strait Islander people. All people have a right to gather and use public space including Indigenous people who may gather in groups for social, cultural or spiritual reasons.

The ADCQ does not seek to ignore the problem of unlawful behaviour in public. Existing laws (other than move on powers) are available to deal with unlawful behaviour on an individual basis as appropriate and as it occurs.

The BCC and Townsville City Councils stated one of the reasons they were seeking move on powers in certain public areas was in response to members of the public expressing concern over the level of crime and disorderly conduct in some areas adversely affecting the use and enjoyment of public space.

However, due to negative and sometimes racist stereotypes that exist in our society about Aboriginal and Torres Strait Islander peoples, it is a sad fact that in many circumstances certain people will feel threatened by an Aboriginal person, not because of their behaviour but by the very fact that they are Indigenous. It is of significant concern to the ADCQ, that in regulated places including public places under section 48 of the *Police Powers and Responsibilities Act 2000* a police officer

is permitted to direct a person or group of persons to leave the area, if a police officer reasonably suspects a person's behaviour is causing **anxiety** to a person entering or leaving the regulated area. Because section 48 can be applied broadly to a group of persons, it is easy to imagine that a whole group of Indigenous people may be asked to move on, when in fact, there has been no unlawful behaviour or where only one or two members of a the group may have behaved unlawfully.

4. Young People and Homeless People

Young people and people who are homeless are frequent users of inner city public spaces. A significant number of homeless people who experience mental illness are already a marginalized and vulnerable group of people. Young people who are homeless are also a vulnerable group, who find a degree of safety in being with a group of people in the same situation. Like all other members of the community these people have a right to be in and use our public spaces.

In recent years a great deal of effort has been put in by various agencies including BCC, the State Government and non government organisations to attempt to respond to the needs of homeless people. These responses have included mobile outreach services that provide support and enable connections to be made to assist homeless people to move towards safer and more stable accommodation. These services have operated from King George Square, New Farm Park and Kurilpa Point. The ADCQ has concerns that the operation of these services may be undermined if young and homeless people who are using these public places are constantly subjected to move on powers.

Another vulnerable group the ADCQ has particular concerns about with regard to move on powers is young African migrants and refugees. Many of the young men from these communities are frequent users of public places, and because of their very different physical features from the majority of the population, they are highly visible when they are using public space. There may be a number of reasons for young men from this cohort congregating in and using public places more frequently than other young people, including issues of cultural norms; poverty and overcrowding in their homes; and possibly their more limited employment and educational opportunities. A young man from this group recently related to the ADCQ his experience of being in a public place near to a group of non African young people who had been involved in a dispute with each other. He was directed by a policeman that he could not use public transport for the next 24 hours. He abided by this direction, but he was inconvenienced and upset and was of the view that he had been targeted by the police when he had done nothing wrong. The question also arises as to whether this direction was reasonable in the circumstances.

The ADCQ is also concerned that that the policing and enforcement of move on powers against some regular users of these public spaces will inevitably result in many more negative interactions between persons being requested to move on and the police. This is very likely to result in increased rates of arrest and incarceration of people who are already over-represented in the justice and prison system, in particular Indigenous people and people with mental health issues. Police officers using and enforcing move on powers need to be highly sensitive to the negative impacts of arrest and incarceration, and need to have at the forefront of their actions the recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody, and the Queensland State Governments 10 Year Partnership with Indigenous people which aims to reduce Indigenous incarceration rates by half.

The ADCQ notes the findings in the CMC's May 2008 report on *Policing Public Order: A Review of the Public Nuisance Offence* "that marginalised groups were over-represented in categories of people detained for public nuisance". This would appear to confirm the categories of people being charged with public nuisance are in fact Aboriginal and Torres Strait Islander people; young homeless people and people with a mental illness, the same groups that are also likely to be subjected to move-on powers.

5. *Anti-Discrimination Act 1991 Queensland*

The *Anti-Discrimination Act* (the ADA) prohibits both direct and indirect discrimination on the basis of race, disability and age (see sections 7, 9, 10 and 11 of the (ADA). Discrimination is prohibited in administration of State government laws and programs (see section 101 of the ADA), which would include the policing and enforcement of move on powers.

The inappropriate use of move on powers increases the potential for unlawful direct and indirect discrimination to occur.

The utilisation and enforcement of move on powers has the potential to discriminate, either directly or indirectly, against young Indigenous people, people with mental health issues and young people. If the laws are utilised and enforced with absolutely no difference between park users with different attributes, direct discrimination is unlikely to occur. For instance, if the consumption of alcohol in a public park is prohibited, providing police treat in the same manner all park users who are consuming alcohol in the area, with no differentiation based on race, or other attribute covered by the ADA, there can be no complaint of **direct** discrimination. However, if people are required to move on substantially because of their race, this is likely to be unlawful direct discrimination.

The situation is different for **indirect** discrimination. Indirect discrimination on the basis of race, impairment or age, occurs when a person imposes a term, which a person with the attribute of race, disability, or age is not able to comply, with which a higher proportion of people without the attribute are able to comply, where the term is not reasonable.

Depending upon how the move on powers are policed and enforced (this will be the 'term' for indirect discrimination), there is a strong possibility that Indigenous park users (who may or may not be homeless), homeless people with mental health issues, and young people who are homeless or from the African community will be the groups most frequently subjected to being required by police to move on. This conduct by the police could amount to indirect discrimination, as these groups may have much more difficulty complying with the term (of permissible public space use that will not subject them to being moved on) than park users who are not Indigenous, or who are not young and homeless, or who are not a homeless person with a mental health issue. The critical question is whether the requirement being imposed upon them is reasonable. Whether a term is reasonable depends on all the relevant circumstances of the case, including the consequences of failure to comply with the term, the cost of alternative terms and the financial circumstances of the person who imposes the term (see section 11 of the ADA).

The ADCQ would suggest that relevant circumstances would also include the following:

- whether the person has or has not committed a serious public order offence before being told to move on;
- whether effective strategies are in place to ensure the person/s has an appropriate place to move on to, including appropriate housing and accommodation if the person is homeless;
- the reason for the person being in this particular public space at the time they are asked to move on.

6. Conclusion

The ADCQ believes that the over or inappropriate use of police move-on powers poses a potential for unlawful direct and indirect discrimination on the basis of race, age and impairment.

The move on power is the power to deal with certain behaviour without arresting or charging the person with an offence. It is in essence the power to deal with a person summarily because the person does not have the right to answer a charge or complaint. Where there is very little transparency in the use of these powers, there is a potential for the power to be abused.

Although move-on power may be regarded as a preventative power, it can impact on the fundamental rights and freedoms of a person to use and enjoy public places, including the right of assembly.

The ADCQ notes the lack of data to fully respond to the CMC's invitation for public comment raises the issue of transparency in the keeping of records and data regarding move-on directions. It is essential that there is a transparent keeping of records by the QPS of both the number of move on directions that are made each year, and also the numbers of persons charged with an offence following a move-on direction. These ought to be a matter of public record by the QPS.

The use of move-on powers does not deal with the complex social issues of poverty and homelessness, and long term solutions to address these issues needs the leadership of the Local Councils, the State Government and greater Queensland community.