

Crime and Misconduct Commission Review of Police Move-on Powers

Department of Communities Response

The Department of Communities funds and/or directly provides services to a number of groups within the community who are likely to be affected by the operation of police move-on powers. These groups include homeless people; young people; Indigenous Queenslanders; people from other cultural groups; and people with substance abuse issues. These groups are affected due to their higher levels of use of public spaces for what are perceived to be both legitimate and non-legitimate reasons.

The department, in collating its response, has consulted with service providers, including departmental employees and funded non-government organisations. The information that constitutes the department's response is primarily anecdotal in nature, and does not propose any formal recommendations.

With particular regard to the overall impact of the move-on powers on the Indigenous population, the Office for Aboriginal and Torres Strait Islander Partnerships (OATSIP) notes the following:

“All people have a right to gather and use public space peacefully, including Indigenous people who may gather in groups for social, cultural or spiritual reasons.

Due to negative and sometimes racist stereotypes that exist in our society about Aboriginal and Torres Strait Islander peoples, some people may feel threatened by an Aboriginal person, not necessarily because of their behaviour but because of their race. The broad application of police move on powers can therefore impact negatively on Indigenous people where their use of public space is deemed to be causing anxiety to other people.

Recent research in Queensland shows that 30 per cent of all Indigenous adult local court appearances were for public order-related offences compared to 12 per cent of non-Indigenous appearances¹ (Cunneen 2005:55).

In 2007, Indigenous people made up 27.9 per cent of all offenders under the move on direction offence. In 2008, 402 Indigenous people offended under the move on direction offence representing 23.5 per cent of all people moved on². These figures are high considering the fact that Indigenous Queenslanders make up only 3.6 per cent of all people in Queensland.

The disproportionate number of Indigenous people being impacted by the police move on powers is of significant concern. OATSIP would recommend that police be encouraged to only charge Indigenous people under police move on powers offences where other alternatives

¹ Crime, Justice and Indigenous People, Chris Cunneen in: Barclay, E., Donnermeyer, J., Scott, J. and R. Hogg (eds) Crime in Rural Australia, The Federation Press, Leichhardt, pp142-153,

² Data received from the Queensland Police Service Statistics Office on 6 February 2009.

are exhausted, such as use of police liaison officers, diversionary centres and sobering up facilities.

The police move on powers can result in an increase in the level of contact that Indigenous people have with the justice system. This is contrary to the aim of the Queensland Aboriginal and Torres Straits Islander Justice Agreement to reduce the over-representation of Indigenous people in the criminal justice system.

Response to Consultation Question 1: What has been your experience, or the experience of your clients, customers, staff or friends, of police move-on powers in Queensland?

The Department's client groups report a range of experiences relating to the use of police move-on powers. Many groups have reported the powers being used appropriately, with police using discretion and providing ample opportunities for individuals or groups to explain/justify their presence. Other groups have raised concerns regarding the targeting of particular individuals within groups, or groups in general; and individuals being arrested may not understand why they have been asked to move on.

Multicultural Affairs Queensland: Consultations with Non-Government Providers

a) Multicultural Development Association

This provider noted that young people who are their clients do not understand the legal use of the powers, compounding confusion and distress around their use. This lack of understanding also limits their ability to safely report any abuses of the powers. Reporting is complicated by the fact that the onus of proof lies with the individual to justify their right to remain in a public place, rather than the police justifying their use of the powers. In some cases, attempts to complain about the use of the powers on-the-spot have led to arrests.

b) ACCES Services Inc.

This provider noted that many of their clients had contact with the police with regards to the use of the move-on powers. These encounters frequently happen in the evening or on weekends, and occasionally (usually during the school holidays) on weekdays at busy train and bus stations. The general feedback from refugee communities has been that while they have experienced police using the powers, not many have been fined. The widespread message from the African community is that they encourage their young people to obey the police so when requested to move or act in a specific way the young people do so.

Department of Communities Service Delivery Regional Consultations

Department of Communities regions consulted with non-government service providers in their local areas. Responses to this consultation question regarding experience of clients etc include:

- There have been some examples regarding experiences of clients etc. being told they are banned from particular locations for months, years or even indefinitely. This has a major impact in smaller regional centres where there are limited facilities and public transport and high levels of disadvantage.
- There have been examples of people with high support needs who are unable to access support services as they are of the understanding that they had been banned from particular locations: for example, a man with mental health

issues was told he was banned from Brunswick Street, when his mental health service was located in that street.

- Support workers advise that the homeless people have been dispersed into smaller groups, making it more difficult to engage them in services. Increased visibility of homeless people has been noted in other locations including Moorooka, Stones Corner, Yeronga, Stafford and as far away as Redcliffe and Wynnum, where there is access to barbeques and showers but a lower level of support services.
- Regions, including the Gold Coast, Mackay Whitsunday and Fitzroy Central West noted that there were high levels of understanding of the powers by the public, including young people, and that the occasions where there had been arrests made were necessary and as a last resort.

Office for Aboriginal and Torres Strait Islander Partnerships Regional Consultations

Some communities have expressed concerns about the use of police move-on powers in relation to young people. The issues raised indicated that police were using the powers provided in the Police Powers and Responsibilities Act (the Act) to:

- Move young people on from a place that is not a prescribed place under the Act;
- Move young people on when a young person is not doing a relevant action;
- Move young people on because their presence or boisterous behaviour is causing concern to certain sections of the public such as the elderly or retailers.

In particular, the Aboriginal and Torres Strait Islander communities indicated that they are concerned when these powers are used insensitively during sorry times.

Some communities noted concerns over the terminology “causing a person anxiety” is used as justification for being asked to move on.

As a result, this issue has resulted in changes to cultural activities undertaken by Aboriginal and Torres Strait Islander communities in Mt Isa and outlying areas. For example, in the past groups from these communities would congregate in public areas to visit with friends and relatives and exchange information on family events, in a setting where alcohol was not consumed. The introduction of the move-on powers has resulted in a reduction in this type of activity.

Concerns were also raised, regarding members of the local Indigenous community, speaking English as a second language, and in some cases, individuals not fully understanding to a standard capable regarding the police direction to move on.

Regions also had a positive view of the powers. The Fitzroy-Central West region noted that the first twelve months of the operation of police move-on powers caused some concern but since that stage, there have been no serious problems. The region suggests that the introduction of the Police Liaison Officer program has contributed to this improvement, as well as other reasons such as:

- The whole-of-government response to alcohol, substance abuse and youth issues;
- The Rockhampton Regional Council City Safe Committee, which has helped to improve relationships between the Council and community;
- Coordinated and enhanced service delivery in the following funding areas:
 - Queensland Indigenous Alcohol Diversion Program;

- Darumbal Community Youth Service, providing services in youth development, youth justice, homelessness and community support services;
- Juwarki Kapu-Lug Aboriginal and Torres Strait Islander Corporation diversion and homelessness services;
- Aboriginal and Islander Community Resource Agency Corporation, which runs the management of public intoxication and community and individual support services;
- Milbi Incorporated, which runs youth justice services; and
- Helem Yumba Incorporated, which is funded for domestic violence prevention.

Response to Consultation Question 2: Do you believe police move-on powers are being used properly, fairly and effectively?

Similarly to the response above, service providers from different regions provided varied feedback on the appropriate, fair and effective use of the move-on powers.

Multicultural Affairs Queensland Service Provider Consultations

a) Multicultural Development Association

There are concerns that people from disadvantaged backgrounds – including refugee backgrounds – are unfairly targeted. Anecdotal evidence suggests people of certain ethnic backgrounds are being specifically targeted over and above other Australians. Similar anecdotal evidence was outlined in the Victorian Equal Opportunity and Human Rights Commission report, “Rights of Passage: the experiences of Australian-Sudanese young people” (p.30)

However, this issue may be related to the fact that people from refugee backgrounds may be more likely to leave school early and congregate around places where move-on powers may be used.

b) ACCES Services Inc.

There is a general feeling among the prominent African communities that their young people are sometimes targeted by the police. Their main criticism has been that in groups of people where more than one nationality are present, the police appear only to address the African young people. This leads to them feeling marginalised and strengthens their belief that they are being targeted only because they are African and that the same rules do not apply across all communities. This is particularly experienced by African young people when they are in public areas in large groups.

Department of Communities Service Delivery Regional Consultations

A number of non-government organisations working with people who are homeless, affected by drugs and/or alcohol and/or have mental health issues, suggest that there is not a clear understanding of the particular circumstances that could trigger the use of move-on powers, neither from the perspective of their client group nor the police who are using the powers. Those who are moved on are frequently told they are ‘banned’ from particular locations at particular times of day, or are moved on without an understanding of the circumstances which have led to this action being taken.

There is also feedback from a number of service providers in relation to the language and action of ‘move-on’ being used but not as a formal documented move-on

process. As a consequence, there is a statistical undercount of people being moved on.

Clients are being moved from locations where service providers were able to engage them, to areas where this becomes more challenging, making it difficult to maintain support.

Office of Aboriginal and Torres Strait Islander Partnerships Regional Consultations

In the Darling Downs region, Youth Justice Officers noted that young people who are charged under this part of the Act do not contest the charge and regularly plead guilty. Young people consider the offence to be minor and that they will not have to return to Court for the 'hassle' of contesting the matter.

However, they also noted that young people who may be sleeping rough do not understand all aspects of the law or its implications.

Communities noted concerns over the terminology used in the legislation, that "causing a person anxiety" being used as justification for being asked to move on. In particular, reflected that this assessment is reliant upon the value system of the police or person making a complaint, and of the police and/or complainant's personal experiences and judgement of groups.

Consultation Question 3: Do you have any recommendations regarding the existence or use of police move-on powers in Queensland?

Multicultural Affairs Queensland Service Provider Consultations

a) Multicultural Development Association

This organisation proposed that police officers working in the areas in which these powers operate require additional education around the use of the powers. In addition, they proposed that education around the needs and experiences of different cultural groups, and how to respond to people from diverse backgrounds be provided.

Education is also required for young people and community groups, focusing on both rights and responsibilities.

This organisation also proposed the use of a written record provided to individuals who are subject to move-on powers, giving them written evidence of the incident should they wish to make a complaint. This suggestion is based on the use in the United Kingdom of a similar written record in relation to 'stop and search' powers.

b) ACCES Services Inc

This organisation noted a general sense from the communities that police could better understand, and acknowledge that mistakes and miscommunication can occur through ignorance rather than a specific intent to break the law. On many occasions the instructions issued by police do not appear to make sense to young people and their request for clarification is at times misunderstood or misinterpreted.

Many young people who are clients of this organisation have had experiences in refugee camps, and for this reason feel safer in group environments which may appear threatening to outsiders.

This organisation also suggested that there would be benefit in holding community forums where multicultural communities are able to interact with police and receive assurance that move-on powers are widely utilised and not targeted. Such a forum would also allow the community to raise any particular questions they may have and reduce their fear of law enforcement officials who carry arms.

Department of Communities Service Delivery Regional Consultations

Service providers proposed police participation in early intervention strategies in public spaces which alleviate the need to use the move on powers. For example:

- Young people have suggested that if police worked with them to assist them to get home or to another safe place, then they may not have returned to the same area resulting in a move-on intervention or arrest.
- The Public Space Liaison Officers in Brisbane City Council have averted the need for a move-on intervention on a number of occasions through direct negotiation with funded non government organisations to intervene in identified hot spot locations.
- Training of police officers with community agencies and other support workers (for example mental health outreach team) to promote a shared understanding of legislation and the particular impact it has on people who are homeless.
- Participation of police officers in networks with community agencies and other government departments to increase the capacity for shared development of strategies to respond to public space issues. This should be underpinned by the Public Space Protocol that was an initiative of the Queensland Government's *Responding to Homelessness* program.

Other issues of concern

The Department notes the following general issues of concern relating to the use of police move-on powers

Access to police data

- Department of Communities would benefit from having access to police data on the use of Police move-on powers in order to assess the extent to which diversionary services are used to assist people asked to move-on, and hence diverting them from the criminal justice system. Initial consultation with regions indicates that where service providers have good relationships with local police, intervention which effectively and efficiently diverts vulnerable people from contact with the criminal justice system is occurring.
- In light of the Closing the Gap agenda for Aboriginal and Torres Strait Islander Queenslanders, police data on the use of move-on powers with Indigenous people would be useful in identifying needs of vulnerable people and the capacity of the community service system to assist.

Safety

- While the move-on powers exist in support of improved public safety, this primarily refers to the safety of other people in a public space, rather than the person being moved-on. For instance, a rough sleeper being moved from a very visible public place may be forced to find a less visible, and hence, less safe place.

Escalation

- Experience in the Non Government Organisation sector with other extended police powers, (particularly those associated with Volatile Substance Misuse, and the police power to transport to a place of safety) indicates that contact with police for non-criminal activities can be upsetting and result in an escalation of an incident. This may result in the person committing minor offences (e.g. verbal assault) which increase their likelihood of coming into contact with the criminal justice system.
- In addition, for homeless people, the inability to pay fines incurred as a result of non-compliance with a move-on order can lead to an increase in debts with the State Penalties and Enforcement Registry.