



**Queensland Public Interest Law Clearing
House Incorporated**

**HOMELESS PERSONS'
LEGAL CLINIC**

**Submission to the Crime and
Misconduct Commission's review of
Queensland's police move-on powers**

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**Prepared by the Queensland Public Interest Law Clearing House
Incorporated**

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About QPILCH

QPILCH is an independent, not-for-profit incorporated association bringing together private law firms, barristers, community legal centres, law schools, legal professional associations, corporate legal units and government legal units to provide free and low cost legal services to people who cannot afford private legal assistance or obtain legal aid. QPILCH coordinates referrals to members for pro bono legal services in public interest matters and provides direct services – advice, assistance and representation support - through targeted projects, including the Homeless Persons' Legal Clinic, the Administrative Law Clinic, the Consumer Law Advice Clinic and the Self-Representation Civil Law Service.

QPILCH was established in June 2001 as an initiative of the legal profession and commenced services in January 2002.

QPILCH is a member of the Queensland Association of Independent Legal Services, affiliated with the National Association of Community Legal Centres, and is a member of the PILCH network.

Submission endorsements

QPILCH facilitated the completion and collection of seventeen client submissions. QPILCH acknowledges and endorses these submissions, which are annexed to this document.

Introduction

The Queensland Public Interest Law Clearing House (**QPILCH**) Homeless Persons' Legal Clinic (**HPLC**) welcomes the opportunity to contribute to the review by the Crime and Misconduct Commission (**CMC**) of Queensland's police move-on powers.

The HPLC began as a project of QPILCH¹ in December 2002 and since inception has assisted over 1600 people experiencing or at risk of homelessness through the provision of pro bono legal and advocacy services. The HPLC currently operates 12 outreach legal clinics in Brisbane, Toowoomba and Townsville which are attended by lawyers from private firms and community legal centres.

The use of move-on powers by Queensland police officers has been a significant focus of the HPLC, both as a policy issue, and through our casework.

In 2006 the HPLC, in conjunction with the University of Queensland, produced a report on the use and impact of move-on powers on people experiencing homelessness in Brisbane. This report, entitled, '*Nowhere to Go*',² was based on research conducted prior to the introduction of state-wide move-on powers: 132 survey responses from people experiencing homelessness were collected and collated to provide a comprehensive and empirical report.

The casework resulting from move-on experiences of HPLC clients with move-on powers attending our clinics is limited. This is because although clients report of move-on directions being issued in what are undoubtedly unlawful circumstances,³ more often than not, a client will comply with a direction rather than contest it. Furthermore, when a client attempts to defend their right to enjoy the public space they are in and are consequently charged with contravening a direction, they do not have the resources or strength to contest charges in Court and plead guilty. Few, if any, clients have the opportunity to test the legality of a move-on direction issued against them. Bruce Rowe, a client of the HPLC whose case is noted by the CMC in its invitation for Public Comment, is an exception. Unfortunately, the circumstances that led to his proceedings are not exceptional.

Response to CMC's Invitation for Public Comment

Given the policy work already conducted by the HPLC⁴ and other relevant groups and researchers,⁵ the HPLC does not consider it necessary to compile a further

¹ See www.qpilch.org.au.

² Monica Taylor and Tamara Walsh (Ed), *Nowhere to Go: The Impact of Police Move-On Powers on Homeless People in Queensland* (2006). Accessible at: http://www.law.uq.edu.au/staffprofiles/publications/Walsh_t_NowhereToGo_Combined.pdf

³ Ibid, Chapter 5.

⁴ Ibid; QPILCH Homeless Persons' Legal Clinic, *Submission to the Brisbane City Council on Move-On Power Applications*, October 2005.

submission repeating what has been said in the past. Instead, the HPLC has directed our limited resources to facilitating our clients' responses to the CMC's Invitation for Public Comment. The submissions collected are by no means sufficient for the purposes of obtaining comment from Queensland's public space users, who are disproportionately impacted by move-on powers. The submissions are just a sample, representing an effort to allow our clients to have input into this inquiry. We believe it is crucial, in order to produce a comprehensive, balanced report on the use of move-on powers in Queensland, for the CMC to consult directly with public space users by conducting similar 'on the ground' research itself. Given that a substantial proportion of homeless clients have mental health issues, cognitive impairments and physical disabilities, the HPLC believes it is imperative that the CMC takes necessary steps to ensure that these clients are able to participate in the review.

The pro forma client submission enabled clients to provide details of two of their experiences with move-on powers and to provide their opinion on the fairness and/or effectiveness of the powers.

A total of 17 client submissions were collected over the period from 1 February to 18 February from clients attending the 139 Club and Mission Australia Café One in Fortitude Valley.

Comments on submissions and recommendations

Although we expect that each submission received by the CMC in the HPLC format will be considered in their own right, we note the following findings which reflect findings outlined in the more comprehensive, *Nowhere to Go*:

1. The majority of respondents asked to move-on were not given a reason for the direction, despite s 48(4) of the *Police Powers and Responsibilities Act*.
2. In nearly all experiences described, move-on directions were issued to respondents while respondents were going about their normal daily business, which by necessity, is conducted in public space: sleeping, walking, waiting for a food van, talking with friends.
3. Two thirds of respondents indicated they were not given a reasonable time to comply with a move-on direction despite s 633(3) of the PPRA.
4. One third of respondents reported they were not given a warning about the consequences for failing to comply with a direction despite s 633(2) PPRA.

⁵ See for example, Tamara Walsh, *No Vagrancy: An examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland*, June 2007, T.C. Beirne School of Law, University of Queensland; *Rights in Public Space* (RIPS) submissions accessible at: <http://www.rips.asn.au/submissions>.

5. Many respondents were not provided with a timeframe for how long they needed to stay away, despite s 48(3) of the PPRA. The ambiguity of these move-on directions means that a person may interpret the direction as lasting for more than 24 hours or indefinitely, both of which would constitute unlawful directions.

In light of these findings, the HPLC believes that the concerns raised in *Nowhere to Go* remain current. Move-on directions have a significant impact on people experiencing homelessness, continue to be issued in inappropriate or unlawful circumstances, and officers issuing unlawful move-on directions remain unaccountable for their conduct. We therefore repeat recommendations outlined in *Nowhere to Go*, and in particular advocate that:

1. Section 47 PPRA be repealed, so that only a person's 'behaviour' can be a trigger for use of the power. A person's mere 'presence' should never justify a moved-on direction being issued. A sentiment echoed by one respondent who noted that "[police] shouldn't be able to move a person on...because of how they look". Because people experiencing homelessness by necessity live more of their private lives out in public spaces, they will continue to be disproportionately and unfairly affected by this section unless it is repealed.
2. The 'behaviour' necessary to trigger a move-on direction as set out in s 46 PPRA is too wide-ranging. This section should be amended so that move-on directions can only be issued if there is a reasonable likelihood that the safety or security of a member of the public will be threatened unless a police officer intervenes.
3. The Queensland Police Service should focus on de-escalation of policing in public space. As one respondent noted: "*police should talk to people, not just handcuff them*". The experience of HPLC clients is that move-on directions are often issued in situations where a more appropriate method of dealing with a situation exists.⁶ One of the arguments forwarded in favour of the introduction of state-wide move-on powers was that providing officers with the power to move a person on would decrease the number of public order arrests. There is no evidence to show that this aim has been achieved.
4. Mechanisms for accountability of the use of move-on powers should be introduced. This recommendation is supported by one respondent who

⁶ In *Rowe v Kemper* [2008] QCA 175 at paragraph 30 Justice McMurdo stated that "...police officers have the sometimes difficult task, for which they are extensively trained, of exercising tolerance and patience so that an individual's liberty is only curtailed when plainly necessary and lawful". This judgment reinforces the assertion that move-on powers should not be exercised without due consideration of alternatives.

stated we should: “*Ensure there is a recording of any request to move on...and inform the person that the recording is being taken*”. Reporting all instances of the use of move-on powers in a publicly available format and including information such as the characteristics of the person moved-on, and details of the direction (location, timeframe and reason) would allow for an independent assessment of the effect of move-on powers on Queensland’s public space users.

The HPLC believes that the introduction of accountability mechanisms is paramount because the potential for misuse of move-on powers by Queensland police officers will remain for as long as the powers do.
