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Logan Youth Legal Centre Submission to CMC Review of Police 'Move-on' Powers

We write in response to the Crime and Misconduct Commission (CMC) review of Police move-on powers, which were introduced state-wide in the *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

This document contains:

- Examples of our clients experiences of the use of move-on powers by Queensland Police;
- Submissions about the proper, fair and effective use of such powers, based on the experiences of young people we work with;
- Endorsement of the submissions made by Legal Aid Queensland and Queensland Law Society regarding the existence and use of police move-on powers in Queensland.

Logan Youth Legal Service

Logan Youth Legal Service (LYLS) provides free legal information, advice and representation for young people in Logan City and surrounding areas. During the 2007-08 financial year LYLS delivered services to 229 clients. Most young people supported by the service are aged under 18 years, and dealing with criminal law or child protection matters. LYLS provides support to young people regarding a range of other legal issues. The team also regularly engages in community education, law reform and crime prevention projects. LYLS is part of a larger community agency called YFS (Logan City) Inc.

Rights for 'all Queenslanders'

The Hon. Judy Spence told Parliament during her second reading speech regarding the *Police Powers and Responsibilities and Other Acts Amendment Bill 2006* (Qld) that the purpose of the expanded jurisdiction of the Police move-on powers was to, “represent the right of *all Queenslanders* to use their homes and public places as areas of recreation (emphasis added).”

It is trite to say that young people are included in the phrase ‘all Queenslanders’ yet it is the experience of our clients that these move-on powers have diminished their access to public spaces as areas of recreation.

Public spaces are frequently of more importance to the social gathering of young people than adults as young people are often unable to socialise in the places that adults take for granted. They can not enter licensed premises without adult supervision. As young people grow and seek independence from their families, home may not always be a developmentally appropriate place for gathering with friends. Many young people have limited or no independent income and therefore seek to socialise in public spaces that are freely accessible to them. For all these reasons, in our experience young people often socialise with peers in public spaces such as shopping malls, public parks and train stations.

The use of a move-on direction under the *Police Powers and Responsibilities Act 2000* (Qld) (*PPRA*) can be triggered based on a person’s presence, causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances.¹

If this is satisfied, a person can be directed to leave a space for up to 24 hours².

¹ *Police Powers and Responsibilities Act 2000* (Qld) s47(1)(a)

² *Police Powers and Responsibilities Act 2000* (Qld) s48(3)

This move-on power is qualified by PPRA s48(2) which restricts the use of the move on power of PPRA s48(1) if the use of this power,

interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—

- (a) public safety; or
- (b) public order; or
- (c) the protection of the rights and freedoms of other persons.³

It has been the experience of our clients that in practice, their right to peaceful assembly does not restrict the use of move-on directions in the way intended by the PPRA. In our view, the application of the move-on powers has marginalised young people and criminalised their use of public space and criminalised otherwise non-offending adolescent behaviour, creating an unintended 'net-widening effect'.

Young people should be free from harassment and permitted to congregate in public groups for their own enjoyment. We do not propose that young people should be free to commit offences against property or person but should be free to be young people and have fun with their friends in public.

We suggest it may be of great use to initiate an additional procedural requirement of a providing a written record of the move on direction the the subject of the direction, detailing the reason a police officer has for requiring a person to move and the consequences for failing to do so. This requirement may de-escalate the situation such that the subject of the move-on direction will chose to follow the direction rather than risk charges. Practically, this written record could be in a form similar to the current "Notice to Appear" slip used by Police⁴. The requirement of a written record will also ensure Police are able to substantiate compliance with the PPRA requirement to give reasons for giving a direction,⁵ should the validity of the direction later be disputed.

³ *Police Powers and Responsibilities Act 2000 (Qld)* s48(2)

⁴ *Police Powers and Responsibilities Act 2000 (Qld)* s382

⁵ *Police Powers and Responsibilities Act 2000 (Qld)* s48(4)

Examples of Client Experiences

Example 1

A group of youth workers and young people initiated a regular BBQ in a local council park land. Police accompanied by police dogs regularly used the move-on power to get this group to leave the park without any explanation of the reasons for the use of this power.

It would seem that the presence of young people being young people, that is skylarking, laughing and having fun, triggered the use of the move on power in this instance. The police use of the move-on powers in this way results in a greater strain on the relationship between the police and the community.

Example 2

One of our male clients, an African refugee, was directed to move-on from a train station where he was waiting with a friend until the friend caught his train. It appeared that when our client spoke to his companion in his birth language, the situation became increasingly volatile. The young person attempted to explain why he thought the move-on direction was unfairly given and became agitated when he felt that Police were not prepared to discuss his point of view. He struggled when Police initiated an arrest and was subsequently charged with obstructing police. He was not charged with any offences relating to being on the train platform illegally.

When introduced, the move-on powers were intended as a tool to reduce crime by moving people on before a crime was committed. In application, the move-on powers may not have delivered on this intention. Example 2 shows a net widening effect occurring with our client becoming involved in the criminal justice system due to an altercation instigated by the Police application of the move-on power. It is our submission that this is not an isolated incident and the use of the move-on power creates situations of confrontation which result in offences occurring rather than reducing the incidence of crime.

Example 2 also shows how the move-on powers can exacerbate the poor perception of Police, culturally inherited by refugee communities. The effect of this use of the move on powers has been to both compound our client's fears of Police and widen the gap between his refugee community and Police.

Example 3

A group of young people waiting at a bus stop on their way to school were asked by Police to move on. The young people explained that they were waiting for their school bus. The Police asked to see school identification as the students were not wearing school uniforms. The school they attended did not have a uniform. The students showed the Police their school identity cards but the Police appeared not to accept that these identity cards were genuine. The Police then re-issued the move-on direction to the young people.

In example 3, it is unclear whether the young people were causing a disturbance by their behaviour. It may be that school children waiting at bus stops need to be supervised so as not to create disturbances in the community. We submit that the solution for this issue would be best met at a social/cultural level through schools and parents rather than criminalising the presence of congregations of young people in the community.

Example 4

A client was directed by Police to move-on from a hospital where she was supporting her brother who was experiencing a psychotic episode. Our client, failed to follow the move-on order due to her concern for her brother. Our client then became distressed and was subsequently charged with obstructing police.⁶

⁶ *Criminal Code 1899 (Qld) s790*

In the situation described, our client's concern was for the welfare of her brother and she wished to assist hospital staff to calm him. Unfortunately it appears that she was unable to effectively communicate this intention to Police and hospital staff. We submit that rather than the current verbal delivery of a move-on direction was not appropriate or effective in reducing the volatility of the situation. Instead, it increased our client's distress, resulting in her being charged and separated from her unwell brother.

Endorsement of Legal Aid Submission and Queensland Law Society

Having had the benefit of viewing the Legal Aid Queensland and Queensland Law Society submission to the Crime and Misconduct Commission (CMC) review of Police move-on powers we fully support their recommendations.

Conclusion

The purpose of widening of the application of the move-on power was to assert the right of all Queenslanders to use public spaces.⁷ The application of the move-on powers by the Queensland Police has marginalised young people wishing to socially congregate in public spaces and lead to an increase, rather than decrease, in young people's involvement in the criminal justice system.

⁷ Hon. Judy Spence, Police Powers and Responsibilities and other Acts Amendment Bill Second Reading Speech, 21 April 2006.