

19 February 2009

CMC Review of Police Move-on Powers
GPO Box 3123,
Brisbane Qld 4001

Re: Submission to the Review of Police Move-on Powers

To whom it may concern,

Thank you for the opportunity to respond to the issues paper in relation to the police move-on powers.

Please do not hesitate to contact us in relation to this submission or if we can be of further assistance. Dr Phil Crane can be contacted via telephone on (07) 3138 4663 or email at p.crane@qut.edu.au and Ms Megan McKay can be contacted by email at megan.j.mckay@gmail.com.

Yours faithfully,

Ms Megan McKay

and

Dr Phil Crane

Submission to the Crime and Misconduct Commission

Review of Queensland's police move-on powers

February 2009

Megan McKay and Phil Crane

Contents

BACKGROUND	3
Ms Megan McKay	3
Dr Phil Crane	3
OVERVIEW AND FINDINGS OF MCKAY'S HONOURS THESIS ON THE QUEENSLAND POLICE MOVE-ON POWERS	4
THE QUEENSLAND POLICE MOVE-ON POWERS: TOPICS UNDER CONSIDERATION IN THE ISSUES PAPER	5
Use of move-on powers by Queensland police – including when and where they are used and who they are used against	5
Who they are used against	5
Where the move-on powers are used	7
When the move-on powers are used	8
How people who fail to obey a move-on direction are dealt with by police	9
Positive and negative consequences of the use of the move-on powers in Queensland	10
Negative consequences	11
RESPONSES TO THE QUESTIONS IN THE ISSUES PAPER	13
What has been your experience, or the experience of your clients, customers, staff or friends, of police move-on powers in Queensland?	13
Do you believe police move-on powers are being used properly, fairly and effectively?	15
Do you have any recommendations regarding the existence or use of police move-on powers?	15
REFERENCES	18
APPENDICES	21
Appendix A	Error! Bookmark not defined.

Background

Ms Megan McKay

Ms Megan McKay completed her Honours thesis in November 2008. This thesis explored the purposes of the Queensland police move-on powers, how front-line witnesses to the Queensland police move-on powers describe the purposes and practice of these powers and how the practice of these powers could be further investigated. The thesis utilised both quantitative content analysis – to analyse the purposes of the powers as provided by the Queensland State Government – and qualitative interviews with front-line human services and justice workers who work in organisations whose clients are within a population group identified as disproportionately affected by the Queensland police move-on powers. The thesis was awarded the highest available grade of 7 after independent examination; Ms McKay will graduate with First Class Honours and an overall GPA of 7.

Ms McKay has extensive experience in research, particularly in relation to public space issues. From April 2005 to December 2008, Ms McKay worked as the website administrator of [Yspace International Youth and Public Space Network](http://www.yspace.net) (www.yspace.net). She has also worked with the Queensland University of Technology (QUT) Public Space Research Team and tutored at the QUT in a public space unit.

Dr Phil Crane

Dr Crane has 20 years experience as an academic. He is currently a Senior Lecturer in the Social Work and Human Services program in the Faculty of Health at the Queensland University of Technology. Dr Crane has particular expertise in respect of public space and/or young people. Examples of his expertise include his development of:

- guidelines for the development of major centres in the City of Brisbane in respect of young people; and,
- the first shopping centre protocol outlining how an inclusive approach could be used in relation to young people. This research resulted in the Myer Centre Youth Protocol established in 2000¹.

Dr Crane has supervised a range of relevant public space research projects in Australia and overseas, is the founder of the QUT Public Space Research Team, and is the co-ordinator of the web-based [Yspace International Youth and Public Space Network](http://www.yspace.net) (www.yspace.net).

¹ To read the Myer Centre Youth Protocol in its entirety, visit <http://www.yspace.net/index.php?option=Articles&task=viewarticle&artid=50>.

Overview and findings of McKay's Honours thesis on the Queensland police move-on powers

This submission draws extensively, but not exclusively, on a thesis written by Ms Megan McKay (2008) as part of a Bachelor of Arts (Honours) degree undertaken at the Queensland University of Technology. This thesis explores the espoused and underlying purposes and practice of the Queensland police move-on powers, a topic which, to date, has been largely unexplored (McKay, 2008, pp. 19 – 20). Given the limited number of empirical studies into Queensland's police move-on powers, this of itself makes the research relevant to the Review.

A triangulated method of gathering information was applied in this research. A quantitative content analysis of Hansard and Ministerial media statements was utilised to identify and compare the purposes of the Queensland police move-on powers as stated by the Queensland State Government to those embodied in the legislation. Twenty-eight documents were subjected to content analysis, in which there were 1049 instances where a purpose of the Queensland police move-on powers was provided.

Five qualitative semi-structured interviews of front-line witnesses to the Queensland police move-on powers were undertaken to further illuminate the nexus between the purposes and practice of the powers, as well as establish a platform for how the purposes and actual practice of the powers might be further investigated (McKay, 2008, p. iv). Front-line witnesses were individuals who work in Queensland organisations whose clients are within a population group identified as disproportionately affected by the Queensland police move-on powers.

The content analysis of documents, which can reasonably be seen to embody the Queensland State Government's position on the Queensland police move-on powers, found that more than half (56.91%) of the purposes for the powers provided were not reasons stated in the legislation (McKay, 2008, pp. 47, 49 – 50). Furthermore, this analysis found that, despite moving on persons from particular demographic groups not being stated in the legislation as a purpose of the powers, young people were commonly referred to by members of the Government as either a target of the powers or in such a way as to associate application of the powers with that demographic group (McKay, 2008, pp. 49, 59 – 61). Assertions that the Queensland police move-on powers are not intended to be used to target this particular demographic group are not supported by this data. Moving on Indigenous people, homeless people or those with mental health conditions, or using move-on powers to address behaviours typically associated with homelessness, were presented as purposes of the Queensland police move-on powers on relatively few instances (McKay, 2008, pp. 62 – 63).

The interview data analysis, though based on a limited number of participants, supports the conclusion that front-line witnesses see substantial and differential application of police move-on powers to young people, Indigenous people, homeless people and those with mental health conditions (see McKay, 2008, Chapter 5).

Overall, the findings of this research support the view that there is a significant level of incongruence between legislative and Government statements regarding the purposes of police move-on powers, as well as between the purposes of the Queensland police move-on powers espoused by the Government and police, and ‘on the ground’ implementation experiences. When this study is viewed alongside other evidence, it is reasonable to conclude that the Queensland police move-on powers are being disproportionately applied to marginalised demographic groups, particularly young people, homeless people, Indigenous people and people with a mental illness (McKay, 2008, p. iv).

Additionally, this research found that the Queensland police move-on powers are:

- being used to address behaviours that have not been presented by the Government as a purpose of the powers (McKay, 2008, pp. 9, 98 – 100); and, in some instances,
- being applied unlawfully (McKay, 2008, p. 103).

In summary, this study indicates that a lack of congruence exists between both:

1. the purposes of the move-on powers as presented by the Queensland State Government and the practice of these powers ‘on the ground’ by police; and,
2. the move-on powers as established in the *Police Powers and Responsibilities Act (PPRA) 2000* (Qld) and the practice of these powers ‘on the ground’ by police (McKay, 2008, pp. 100 - 103; Office of the Queensland Parliamentary Counsel, 2009, pp. 70 - 73).

McKay’s thesis has been attached to this submission as Appendix A. Please accept this thesis as further evidence for your enquiry.

The Queensland police move-on powers: Topics under consideration in the issues paper

The following section of this submission will address the three topics identified by the CMC as requiring review, namely:

1. Use of move-on powers by Queensland police – including when and where they are used and who they are used against
2. How people who fail to obey a move-on direction are dealt with by police
3. Positive or negative consequences of the use of move-on powers in Queensland

Use of move-on powers by Queensland police – including when and where they are used and who they are used against

Who they are used against

There is a consensus among the human services and justice professionals interviewed as part of McKay’s thesis, as well as in agency publications and academic literature, that the Queensland police move-on powers are being disproportionately used against marginalised demographic groups (McKay, 2008, p. 111; Queensland Council of Social

Service, 2006; Spooner, 2001; Taylor & Walsh, 2006, pp. 22, 23, 92; Youth Affairs Network of Queensland, 2005, pp. 3 – 4). These groups include, but are not limited to:

- young people;
- Indigenous people;
- homeless people; and,
- people with a mental illness.

Anecdotal evidence provided by the human services and justice professionals interviewed as part of McKay's (2008) study indicates that marginalised demographic groups are disproportionately affected by the Queensland police move-on powers. The professionals interviewed overwhelmingly agreed that young people, Indigenous people, homeless people and people with a mental illness are being targeted disproportionately using the Queensland move-on powers (McKay, 2008, pp. 77 - 78).

Drew: Just that we know so many stories, y' know. I mean, you could probably talk to most of the young people down[stairs at the service] – maybe not most – maybe 50[%] to 75% of the young people downstairs will have had some kind of move-on direction. Umm, y' know, and that's quite a lot really (McKay, 2008, p. 78).

A growing body of anecdotal evidence concurs with McKay's (2008) findings that the Queensland police move-on powers are being disproportionately used against young people, Indigenous people, homeless people and people with a mental illness. Walsh and Taylor (2007) state that “there is a significant body of anecdotal evidence from service providers and peak bodies suggesting that young people, Indigenous people and people who are homeless are more likely to be moved on than other community members” (p. 152). What is more, Walsh and Taylor (2007, p. 152) highlight that multiple government inquiries and reports, including the Queensland Parliament Criminal Justice Committee and Queensland Criminal Justice Commission's (1994) *Review of the Criminal Justice Commission's Report on a review of police powers in Queensland Volumes I-III*, have found anecdotal reports that young, homeless and Indigenous people are more likely to be moved on than other members of the public to be reliable.

A number of empirical studies have also consistently found that the young people, Indigenous people, homeless people and people with a mental illness are subjected to move-on powers at a higher rate than the general population. In a survey of young people who had been instructed by a police officer to move on, Spooner (2001) found that 37% of young persons who had been moved on were Indigenous, yet, at the time that the research was undertaken, Indigenous young people comprised only 4% of the Queensland population (pp. 28, 30). Additionally, in a survey of 132 homeless people performed by Taylor and Walsh (2006), it was found that 76.5% of the homeless people surveyed had been directed to move on one or more times in the six months prior to the survey and 90% of respondents who were sleeping rough or in squats has been directed to move on one or more times in the six months prior to the survey (pp. 1, 2).

The use of the Queensland police move-on powers against these marginalised groups is particularly significant in view of statements by the current Queensland Minister for Police, Corrective Services and Sport, The Honourable Judy Spence, that the Queensland police move-on powers “are not designed to be used against the homeless” and “are not focused on any particular age group, sex, colour or race within the community” (Queensland Parliament, 2006, p. 1814; The State of Queensland (Department of the Premier and Cabinet), 2006b). Furthermore, the aforementioned anecdotal reports and empirical research refute her statement that “[m]ostly the police are using the move on powers in party zones; they’re certainly not being used against homeless people” (McCutcheon, 2008). McKay (2008) found that the use of the move-on powers by Queensland police is not congruent with the purposes of the powers as presented by the Queensland State Government (pp. 62, 76).

Where the move-on powers are used

The locations or instances in which the Queensland police move-on powers are being used as presented by front-line human service and justice professionals, conflict with the locations or instances in which the Queensland police move-on powers are being used as presented by police and the Queensland State Government.

Front-line human services and justice professionals interviewed as part of McKay’s (2008) research “stated that they had been informed by police that the move-on powers are most frequently used at sporting events” (p. 75). As noted previously, the Queensland Minister for Police, Corrective Services and Sport has publicly stated that the Queensland move-on powers are mostly being used by police “in party zones” (McCutcheon, 2008).

Such statements by police and the Government that the move-on powers are predominately being used at sporting events and to move-on people from parties is understood by human services and justice professionals as a counter to the claim that the move-on powers are used in respect of particular demographic groups who experience marginalisation in public space.

Terry: ...so what I've heard is that the police, from the police themselves, is that they issue them very rarely. That there are more move-on orders issued around the Gabba [the Brisbane Cricket Ground at Woolloongabba] at cricket time then there are for vulnerable people...

Drew: Funny thing is though, y' know, that, umm, again, good coppers who work in the field, y' know, saying that the most times they use the move-on powers is not with the client group we're talking about but with people, like, at football (McKay, 2008, p. 75).

It is also significant to note that empirical research has demonstrated that the Queensland police move-on powers, prior to their state-wide expansion in June 2006, were being used

in locations not classified as prescribed places or notified areas² under the *PPRA 2000* (Spooner, 2001, pp. 29- 30; The State of Queensland (Department of the Premier and Cabinet), 2006a).

Spooner (2001) found that approximately 10% of the young people he surveyed who had been instructed by a police officer to move on were moved on from an area not covered by the legislation at the time (p. 30). By reason of these findings, Spooner (2001) raised concern that “police are using the move-on powers as a general enforcement measure” (p. 30).

Taylor and Walsh (2006), in their 2006 report, provided a break-down of locations from which homeless people have been frequently directed to move-on from (pp. 59 - 60). At the time this research was undertaken, the Queensland police move-on powers could still only be used in prescribed areas and notified areas. Thus, current trends in locations from which persons are directed to move-on are likely to require further research; since Taylor and Walsh’s (2006) research was completed, the Queensland police move-on powers have been expanded state-wide and the locations from which persons are frequently moved on may have changed and expanded.

When the move-on powers are used

According to the *PPRA 2000*, a person may be moved on if a police officer “reasonably suspects” that the person’s behaviour or presence is or has been causing anxiety; interfering with trade or business; or, “disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place” (Office of the Queensland Parliamentary Counsel, 2009, pp. 70 - 72). A person may also be moved on if a police officer reasonably suspects that the person’s behaviour is or has been “disorderly, indecent, offensive, or threatening” or that “the person is soliciting for prostitution” (Office of the Queensland Parliamentary Counsel, 2009, pp. 70 - 71).

In McKay’s (2008) study, the front-line human services and justice professionals that were interviewed stated that, on numerous occasions, clients of their organisations had been moved on when they reported that they were not ‘doing anything wrong’ (McKay, 2008, p. 88). Professionals reported that young people in particular are moved on for a range of behaviours that they felt were unlikely to meet the requirements of the *PPRA 2000* including “hanging out in public space” and “not having a clear purpose for being there” (McKay, 2008, p. 79). One professional expressed concern that young people were being moved on for behaviours such as hanging out in groups and acting exuberantly in public space, behaviours that young people may engage in as part of their social development (McKay, 2008, p. 79).

While the McKay (2008) study was not in a position to adjudicate on the veracity of these statements they are indicative of a widespread view that the implementation by police is

² Under this version of the Act, persons could only be moved on from prescribed places or notified areas if their behaviour or presence fell under the types outlined in Part 4, Sections 37 and 38 of the *PPRA 2000* (Office of the Queensland Parliamentary Counsel, 2006, pp. 54 - 57).

often unreasonable and experienced as unfair. Nor is it suggested that moving on for youthful behaviour is never warranted. However, there is clear evidence that the ‘on the ground’ experience of front-line human services and justice professionals is that much intervention in the name of moving on is not clearly warranted on the basis of behaviour.

One participant stated that the behaviour for which clients they work for are frequently moved on for is chroming.

Drew: Umm, I think chroming’s probably one of our biggest examples [of when a client of the organisation has been moved on due to their behaviour], umm, in public spaces. Umm, and because chroming’s really visible – unlike other drug use, it’s really visible and it’s really disturbing, umm, you know, for the general public” (McKay, 2008, p. 76)

That marginalised persons are reported as being moved on for chroming is concerning as the *PPRA 2000* provides police with the power to take a person affected from chroming to a ‘place of safety’ in order to recover from the effects “if it is appropriate” (Office of the Queensland Parliamentary Counsel, 2009, pp. 452 - 453).

Overall, empirical research and anecdotal reports indicate that the Queensland police move-on powers are often being issued where it is unlikely that the person’s behaviour or presence satisfies the aforementioned requirements of the *PPRA 2000*. Taylor and Walsh (2006) report that, of the 101 homeless persons they surveyed who had been directed to move-on in the six months prior to the survey, 77.9% of these persons indicated that their behaviour or presence at the time they were directed to move-on was innocuous (p. 60). The behaviours reported included “sitting, standing, waiting, walking, or doing nothing, crying, walking, leaving a nightclub, selling magazines, selling books, and selling glo-sticks” (Taylor & Walsh, 2006, p. 60). Of the young people surveyed, 34% were directed to move-on while they were occupying or ‘hanging out’ in public space with other young people (Taylor & Walsh, 2006, p. 60). McKay’s (2008) study provides further support from the perspective of service professionals (pp. 75 – 84).

How people who fail to obey a move-on direction are dealt with by police

How people who fail to obey a move-on direction are dealt with by police was not in the scope of the research performed by McKay (2008). However, media reports of the case of Bruce Rowe, a homeless pensioner who was charged with failing to adhere to a move-on direction in 2006, raise serious concerns as to how persons who fail to obey a move-on direction are dealt with by police (Australian Broadcasting Company, 2008; Keim, 2006; McCutcheon, 2006; McCutcheon, 2008; McDonald, 2006).

Mr Rowe, a 65-year-old pensioner who became homeless as a result of a depressive illness, was pinned to the ground by a group of police officers after failing to follow move-on from a public bathroom. Furthermore, one of the officers allegedly repeatedly lunged his knee in the direction of Mr Rowe (“Rowe v Kemper [2008] QCA 175,” 2008).

The Bruce Rowe case ("Rowe v Kemper [2008] QCA 175," 2008) demonstrates that, at least in one instance, a high level of force was used by officers in dealing with a person who failed to obey a Queensland police move-on direction. The level of force used by the group of officers to arrest Mr Rowe is particularly concerning, given that Mr Rowe is frail, elderly and, at the time, was suffering from a mental illness. The Bruce Rowe case raises concern that a high level of force may have been used in dealing with other persons who have failed to obey a move-on direction but that these cases have not come to the attention of the media or human services or justice professionals; the professionals interviewed by McKay (2008) attested that often their clients do not question police, leading to possible unlawful applications of the Queensland police move-on powers to go uninvestigated (p. 103).

In 2008, the conviction of Bruce Rowe for failing to adhere to a move-on direction was overturned by the Court of Appeal which found that the direction issued was disproportionate in the circumstances ("Rowe v Kemper [2008] QCA 175," 2008, p. 32).

Positive and negative consequences of the use of the move-on powers in Queensland

Literature on the topic of the Queensland police move-on powers is divided as to whether move-on powers are a beneficial or negative phenomenon. While Government publications on this topic generally present both arguments in favour of and against move-on powers (see Dixon, 2006, pp. 10 – 12), agency publications and academic literature on the whole are critical of the powers and highlight that there are many negative consequences of the use of the move-on powers (Anti-Discrimination Commission Queensland, 2005, pp. 6 – 8, 9; Homeless Persons' Legal Clinic, 2005, pp. 5 – 12; Taylor & Walsh, 2006; Youth Affairs Network of Queensland, 2005, pp. 3 – 5).

Additional insight can be gained by considering what other options exist in respect of the management of public spaces, and the opportunity cost of placing an over-emphasis on police intervention as the mechanism for achieving positive impacts regarding people's experience of such spaces. A range of applied work has been undertaken which has examined the contribution that various strategies may make to minimising the apparent need for police to exercise move-on powers at all or in particular contexts. For example the development of protocols between major shopping centres and those representing one or more marginalised groups can ameliorate tensions and result in diminished coercive intervention (see Crane, Adkins, & Marston, 2000, which outlines the development and positive impact of the Myer Centre Youth Protocol). Our view is that the utilisation and application of police move-on powers should not be considered as an entirely separate matter to the development of inclusive and safe public spaces. We suggest that unilateral approaches to move-on powers have the effect of over-simplifying the terrain of public space and what is needed to respond to management challenges. A more integrated and 'whole of government' approach, of which policing is one element, is required (see Crane, 2000; New South Wales Parliament Legislative Assembly Committee on Children and Young People, 2006).

Negative consequences

1. Moving people from one public place to another without addressing underlying social issues

Concerns have been raised by multiple human services and justice organisations that the Queensland police move-on powers are serving to move marginalised public space users from one geographical location to another without addressing the reasons that underlie why these persons are such heavy users of public space (Anti-Discrimination Commission Queensland, 2005, p. 9; Homeless Persons' Legal Clinic, 2005, p. 3). For instance, it is argued that moving on a homeless person from public space to public space does not serve to address the underlying issue of homelessness.

2. The Queensland police move-on powers have not served to reduce arrests and in fact may serve as an entry point into the criminal justice system for vulnerable people

While the police move-on powers were presented by the Queensland State Government as an alternative to arrest, statistical data demonstrates that the number of arrests for disobeying a move-on direction have increased every year since this statistic was included in the annual Queensland Police statistical reports³. “Disobey a move-on direction’ offences increased 46% between the 2004/2005 financial year and 2005/2006 financial and a further 68% between 2005/2006 and 2006/2007 (Queensland Police Service 2006b, p. 7; Queensland Police Service, 2007a, p. 7). Empirical research by Walsh and Taylor (2007) also demonstrates that ‘the use of move-on powers does not result in fewer arrests for public space offences, despite police claims to the contrary’ (p. 151)” (McKay, 2008, p. 66).

Therefore, it may be concluded that one negative affect of the Queensland police move-on powers is that of a net-widening effect providing an additional entry point into the criminal justice system, particularly for vulnerable people.

It is also significant to note that arrests for failing to obey a police move-on direction are often accompanied by additional charges commonly related to their engagement with police. Human services and justice professionals interviewed by McKay (2008) outlined this situation:

Alex: Umm, relatively few clients that I've had, have been charged simply with failure to move-on following a direction from a police officer...umm, so typically what will happen in the, with our clients is that, umm, they may be told by a police officer to move on. Our clients will typically say, "I wasn't doing anything wrong, I was just sitting there, I wasn't causing any problem, umm, you know, sure I don't have a nice clean shirt but I wasn't hassling anyone". And then what will happen typically is that, from there, things escalate so what comes about is the person will respond to the police officer with some obscene language, usually saying something like, "I'm not doing anything wrong, and who the f-- are you and,

³ Statistics for the subcategory of ‘Disobey a move-on direction’ have been included in the Queensland Police Service annual statistical review since 2005/2006 (The State of Queensland (Department of the Premier and Cabinet), 2006b).

I'm, you know, you can't speak to me like that". And then the officer will say something in response to that and then they, the ah person may try to run away which then becomes obstructing police in the execution of duty. Or they may respond by lame...swinging a very lame punch at a police officer, then of course it's assault. So, while relatively few cases that come, that I've experienced that come before the court are dealing with a breach of the move-on direction, it is the move-on direction which then triggers a series of responses that leads to more serious charges being brought.

Casey: so a direction may be issued and if some-one doesn't like it then they may, you know, say something back to the officer that's trying to get them to move on and it'll culminate and you'll have, from initially, from one offence, the person'll be charged with five or something. That's when we see them (p. 83).

Research by Taylor and Walsh (2006) also supports these findings; the authors state that “[i]f that person is homeless with nowhere to move-on to, or Indigenous and feels a close association with the public space, that person may be even more likely to refuse to move-on. The latter case can lead to a number of legal infringements – (i) failing to obey a lawful direction; (ii) ‘offensive’ language against police; (iii) resisting arrest” (p. 20).

3. The Queensland police move-on powers disproportionately affect marginalised groups who occupy public space more frequently than the general public

As already stated, anecdotal evidence and empirical research consistently indicate that the Queensland police move-on powers disproportionately and negatively affect marginalised demographic groups, including young people, Indigenous people, homeless people and people with a mental illness.

A number of reasons have been proffered as to why these groups are disproportionately affected by the powers:

1. Marginalised demographic groups spend more time in public space than members of the general public

Marginalised demographic groups, including young, Indigenous and homeless people, spend more time in public space than the general public due to their lack of a private dwelling and their attachment to and/or dependence on particular public spaces. For example, Indigenous Australians possess strong attachments to places that have traditionally served as meeting places within their culture, such as Kurilpa Point and New Farm Park in Brisbane (Anti-Discrimination Commission Queensland, 2005, pp. 5 – 6; Best, 2006, p. 68). Homeless people spend more time in public space than the general public due to their lack of a private dwelling. Additionally public spaces are where homeless people can access outreach and support services (Taylor & Walsh, 2006, p. 25).

Criminal justice professionals argue that the frequent presence of marginalised demographic groups, and their visibility, in public space means that they attract

increased police attention and are more likely to be charged with criminal offences than other demographic groups (McKay, 2008, p. 23; Walsh, 2007, pp. 61, 70).

Therefore, a negative consequence of the Queensland police move-on powers is that marginalised demographic groups, due to their frequent presence in and/or dependence on public space, are disproportionately affected by the move-on powers.

- 2. That the behaviours defined in the PPRA 2000 as behaviours for which a person can be moved on mean that behaviours frequently engaged in by marginalised demographic groups in public space are subject to Queensland police move-on powers*

The boundary-challenging behaviours that young people engage in as part of their social development, such as hanging out in groups in public space; behaviours associated with homelessness, such as searching through a bin for food, drinking in public and wearing dirty clothes; and behaviours arising as a result of mental illness, such as a person talking to themselves can all be construed as behaviours for which a person may be moved on according to the *PPRA 2000* (Office of the Queensland Parliamentary Counsel, 2009, pp. 70 – 73).

A negative consequence of the Queensland police move-on powers is that, due to the classification of behaviours associated with the social development of young people, homelessness and mental illness as behaviours for which a person can be moved on, these groups are disproportionately affected by the Queensland police move-on powers.

- 3. Move-on powers are discretionary in nature and anecdotal evidence indicates that police may define behaviour committed by a person from a marginalised demographic group differently to the same behaviour committed by a person not from a marginalised demographic group.*

Both McKay (2008, p. 84) and Taylor and Walsh (2006, p. 22) raise concerns about the subjectiveness of the move-on powers legislation and discretionary application of these powers. The professionals interviewed by McKay (2008) indicated that police may define behaviours committed by a person from a marginalised demographic group differently to the same behaviour committed by a person not from a marginalised demographic group (p. 84). Police have discretion in both (1) deciding whether to use a move-on direction or another power in a given situation; and, (2) defining whether a person's behaviour or presence warrants a direction.

Responses to the questions in the issues paper

What has been your experience, or the experience of your clients, customers, staff or friends, of police move-on powers in Queensland?

The experience of the human services and justice professionals interviewed by McKay, and their clients, of police move-on powers in Queensland can be summarised as follows:

1. Queensland police move-on powers disproportionately affect marginalised demographic groups

The professionals interviewed attributed the anxiety around marginalised public space users to stereotypical representations of these groups (McKay, 2008, p. 78). It is also significant to note that professionals explained that marginalised demographic groups are also being disproportionately moved on using informal move-on directions, which are in some instances being used instead of formal directions. This finding concurs with previous findings by Walsh and Taylor (2007) that police regularly issue informal directions to move people away from particular places or refrain from engaging in certain behaviours without resorting to any formal police power (p. 153).

2. The Queensland police move-on powers are being used to address behaviours and issues never presented by the Queensland State Government as purposes of the powers

As indicated previously, chroming behaviour was cited as a basis for which clients have been moved-on even though the *PPRA 2000* provides police with the power to take a person affected from chroming to a ‘place of safety’ in order to recover from the effects “if it is appropriate” (Office of the Queensland Parliamentary Counsel, 2009, pp. 452 – 453; McKay, 2008, pp. 76 – 77).

3. That explanations by police and the Government as to the most frequent targets of the Queensland police move-on powers either are not accurate or easily substantiated.

There is a distinct lack of transparency regarding the frequency of, localities of and behaviours targeted by move-on power use. This in some respects mirrors the lack of coherence regarding the purposes of the legislative provisions as illuminated in the content analysis of Parliamentary and Ministerial statements by McKay (2008, Chapter 4).

4. Professionals doubt that the Queensland police move-on powers are being recorded as required under the *PPRA 2000*

Under the *PPRA 2000*, police are required to record all the move-on directions that they issue in the Register of enforcement acts, along with when the direction was given; the location of the person when s/he was issued the direction; the name of person issued with the direction, if known; the reason for giving the direction; and, “the apparent demographic category of the person” (Office of the Queensland Parliamentary Counsel, 2008, p. 73). However, the professionals interviewed by McKay (2008) expressed serious doubt as to whether this data was in fact being recorded (pp. 81 – 82).

5. It is apparent that police sometimes use informal directions and coercive policing practices to move people on, rather than formal move-on directions.

The extent to which informal directions and coercive policing practices are being used to move people on is difficult to ascertain, though anecdotal reports would suggest it is quite common (McKay, 2008, pp. 75, 80). Some of the human services and justice

professionals interviewed as by McKay also expressed doubt that police were moving people on in response to complaints from members of the public and business owners; rather the police officer themselves is the only complainant.

Jordan: *That's one of the interesting things about the [Police Powers and Responsibilities] Act, which I doubt has ever been implemented, is the requirement that if it's [a person's behaviour or presence] interfering with trade or business, that the shop owner's...*

I: *Yeah, they have to complain before they get moved on.*

Jordan: *Yeah, yeah, yeah. I bet you that has never happened.* (Interview transcript extract)

Do you believe police move-on powers are being used properly, fairly and effectively?

McKay's (2008) study supports the view that the Queensland police move-on powers are not being used properly, fairly or effectively. This in part can be conceptualised as implementation failure but not entirely so. Of concern is that normative accounts of the purposes of the move-on powers expressed within Parliament and by Ministers on behalf of the Queensland State Government reveal a mix of formal and inferred purposes, the result being a mixed set of messages upon which everyday policing is activated. McKay's (2008) study unpacks this by undertaking a detailed content analysis of parliamentary speeches and Ministerial statements (Chapter 4).

Do you have any recommendations regarding the existence or use of police move-on powers?

This submission has demonstrated that the Queensland police move-on powers

- disproportionately affect young people, Indigenous people, homeless people and people with a mental illness;
- are, in some instances, being applied unlawfully, e.g. being issued where it is unlikely that a person's behaviour or presence satisfy the requirements of the *PPRA 2000*; and,
- are not being recorded as required under the *PPRA 2000*.

Four recommendations for reform of these powers are made, based on the findings of McKay's (2008) research, including the interviews with human services and justice professionals.

1. That a defence of 'reasonable excuse' and/or a 'vulnerable persons provision' be included in the *PPRA 2000* and made available to persons issued with a move-on direction

Human services and justice professionals, as well as many academics, are in agreement that a statutory defence of reasonable excuse is a necessary provision of the move-on

powers (Taylor & Walsh, 2006, pp. 30, 95; Walsh & Taylor, 2007, p. 172). Such a defence would ensure that persons engaging in behaviour out of necessity, or for reasons related to mental illness or homelessness – for example, a homeless person lingering in a public space waiting to access essential services – would not be charged with contravening a direction unjustly (Taylor & Walsh, 2006, p. 30; Walsh, 2006, p. 35).

A vulnerable persons' provision would also play a part in ensuring that vulnerable persons engaging in behaviour out of necessity, or for reasons related to homelessness or mental illness are not unjustly affected by the powers. This test “would require a police officer, prior to arresting a vulnerable person, to consider:

- Taking no action
- Administering a caution
- Issuing a move-on direction
- Contacting a welfare agency
- Taking the person to a ‘place of safety’ (Queensland Public Interest Law Clearing House Incorporated, 2006, pp. 13 – 14). The Queensland Public Interest Law Clearing House (2006) previously called for this provision with respect to public nuisance laws.

Walsh (2006) has also recommended that such a test be incorporated into public nuisance laws and argues that the objective of such a section “would be to ensure that police officers consider alternative courses of action before proceeding against a vulnerable person” (p. 35). We argue that the inclusion of a vulnerable persons' provision in the *PPRA 2000* in relation to the move-on powers would be beneficial and could serve to reduce the number of vulnerable persons entering the criminal justice system as a result of failing to adhere to a move-on direction.

2. Reducing the subjectiveness of the move-on powers legislation

The professional interviewed in McKay’s (2008) research identified the broadness of, and subjectivity of the terminology used in, the *PPRA 2000* as problematic.

Jordan: *Umm (pause). The legislation’s so broad that, y’ know, anything can be captured by it.*

Drew: *Causing anxiety, I mean, what is that? That is so subjective. Legislation shouldn’t be subjective. Y’ know, human beings are so incredibly un-black and white as it is. Y’ know, it’s a completely imperfect science – anything to do with human beings – but add something so subjective as causing anxiety and basically you can move anybody on at any time (McKay, 2008, p. 82).*

Rewording of the legislation to prevent directions being used based on subjective perceptions would provide a more coherent and just basis for implementation.

3. Recording by police of all move-on directions issued and that these records be accessible to the public

Under the *PPRA 2000*, police are already required to record all the move-on directions that they issue in the Register of enforcement acts, along with when the direction was given; the location of the person when s/he was issued the direction; the name of person issued with the direction, if known; the reason for giving the direction; and, “the apparent demographic category of the person” (Office of the Queensland Parliamentary Counsel, 2008, p. 73). However, the professionals interviewed by McKay (2008) expressed serious doubt as to whether this data is in fact being recorded (pp. 81 – 82). Thus, it is recommended and emphasised that every move-on direction issued by police must be recorded as outlined in the *Police Powers and Responsibilities Act 2000* (Qld) and *Police Powers and Responsibilities Regulation 2000* (Qld) (Office of the Queensland Parliamentary Counsel, 2008, p. 73; Office of the Queensland Parliamentary Counsel, 2009, pp. 494 – 495, 639 – 640). Further investigation into whether this data is being recorded and, if not, why not and how the recording of such data can be improved, is also recommended.

Previously, professionals and academics have experienced difficulty in accessing these records. “In 2005, the Youth Justice Coalition did not receive any data on the use of the move-on powers despite submitting written requests to the Queensland Police Service for the statistics on the use of the move-on powers on several occasions over a three year period (Youth Affairs Network of Queensland, 2005, p. 4). McKay (2008) “experienced similar difficulty in accessing statistics on the use of the move-on powers from the Queensland Police Service” (p. 82). In order for research to be performed and to determine whether the move-on powers are disproportionately affecting any section of the community, these records should be made available to the public through application to the Queensland Police Service. The application process for these records should not be overly complex or onerous so as to ensure the unproblematic retrieval of this data by organisations, professionals and academics.

4. The establishment of a whole of government mechanism/ strategy for examining the way that public spaces can be managed, configured and serviced so as to be inclusive of the diversity of public space users (including the marginalised groups referred to in this submission) whilst being mindful of concerns regarding safety, lawful behaviour, and economic and social wellbeing.

A narrow focus on move-on powers as a discrete intervention will not adequately deal with the complexities it purports to address. Ultimately these complexities are part material, part relational, part health related, part legal, and part related to some activities in the particular built environments being formally or informally privileged.

Issues related to the communal use of various types of public spaces will not be adequately addressed by reform to the way the police move-on powers are conceptualised and implemented though these are important. The need for a broader consideration of the intersection of issues is clearly evident from the evidence available.

References

Anti-Discrimination Commission Queensland. (2005). *Submission to Brisbane City Council regarding its application for declarations of notified areas at Kurilpa Point, King George Square and New Farm Park*. Retrieved May 17, 2007, from http://www.adcq.qld.gov.au/docs/Move_on_Powers.rtf

Australian Broadcasting Company. (2008, June 27). *Brisbane homeless man wrongfully arrested*. Retrieved June 30, 2008, from <http://www.abc.net.au/news/stories/2008/06/27/2288228.htm>

Best, R. (2006). Out and about in Kurilpa: The right to public space. *Parity*, 19(1), 68 - 70.

Crane, P. (2000). Young people and public space: Developing inclusive policy and practice. *Scottish Youth Issues Journal*, 1, 105 – 124. Retrieved February 18, 2009, from http://eprints.qut.edu.au/3/1/Crane_syij_article.pdf

Crane, P., Adkins, B., & Marston, G. (2000). *Brokering inclusion: The Myer Centre Youth Protocol*. Queensland University of Technology, Brisbane. Retrieved February 18, 2009, from <http://www.yspace.net/index.php?option=Articles&task=viewarticle&artid=255>

Dixon, N. (2006). *Police 'move-on' powers*. Retrieved March 15, 2007, from <http://www.parliament.qld.gov.au/view/publications/documents/research/ResearchBriefs/2006/RBR200616.pdf>

Homeless Persons' Legal Clinic. (2005). *Homeless Persons' Legal Clinic: Submission - Brisbane City Council move-on powers applications*. Retrieved April 17, 2007, from http://www.qpilch.org.au/dbase_upl/Move%20On%20Powers.pdf

Inquiry sought into Qld police training. (2006, October 27). *The Age*. Retrieved June 30, 2008, from <http://www.theage.com.au/news/National/Inquiry-sought-into-Qld-police-training/2006/10/27/1161749300527.html>

McCutcheon, P. (2006, October 30). Qld police face violent arrest claims. *The 7.30 Report*. Retrieved June 30, 2008, from <http://www.abc.net.au/7.30/content/2006/s1777152.htm>

McCutcheon, P. (2008, June 30). QLD public nuisance laws under fire. *The 7.30 Report*. Retrieved July 30, 2008, from <http://www.abc.net.au/7.30/content/2008/s2290231.htm>

McDonald, A. (2006, October 11). Video footage captures police abusing homeless man. *The Australian*. Retrieved June 30, 2008, from <http://www.theaustralian.news.com.au/story/0,20867,20560717-2702,00.html>

McKay, M. (2008). *The reasons and the reality: A critical analysis of the purposes of the Queensland police move-on powers*. Honours Thesis, Queensland University of Technology, Brisbane. Retrieved February 1, 2009, from <http://eprints.qut.edu.au/17299/1/17299.pdf>

New South Wales Parliament Legislative Assembly Committee on Children and Young People. (2006). *Inquiry into children, young people and the built environment*. Retrieved February 1, 2009, from <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/1e393f5347168127ca2575350014485e/7e4da544cfa8382dca2570260020c057!OpenDocument>

Office of the Queensland Parliamentary Counsel. (2006). *Police Powers and Responsibilities Act 2000 (Qld) (Reprinted as in force on 31 May 2006)*. Retrieved February 8, 2009, from http://www.legislation.qld.gov.au/LEGISLTN/SUPERSED/P/PolicePowResA00_04G_060531.pdf

Office of the Queensland Parliamentary Counsel. (2008). *Police Powers and Responsibilities Regulation 2000 (Qld) (Reprinted as in force on 1 July 2008)*. Retrieved September 4, 2008, from <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PolicePowResR00.pdf>

Office of the Queensland Parliamentary Counsel. (2009). *Police Powers and Responsibilities Act 2000 (Qld) (Reprinted as in force on 1 January 2009)*. Retrieved January 15, 2009, from <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PolicePowResA00.pdf>

Queensland Council of Social Service. (2006, May 25). *Move on powers will effect at risk and disadvantaged people*. Retrieved May 18, 2007, from <http://www.acoss.org.au/News.aspx?displayID=99&articleID=898>

Queensland Parliament. (2006, May 23). *Queensland Parliament Hansard*. Retrieved May 23, 2008, from http://parlinfo.parliament.qld.gov.au/isysquery/7cce35b2-706f-48a6-88c3-f626ec24c5e2/1/doc/2006_05_23_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au/isysquery/7cce35b2-706f-48a6-88c3-f626ec24c5e2/1/hilite/

Queensland Parliament Criminal Justice Committee, & Queensland Criminal Justice Commission. (1994). *Review of the Criminal Justice Commission's Report on a review of police powers in Queensland Volumes I-III*. Brisbane: Queensland Parliament Criminal Justice Committee.

Queensland Public Interest Law Clearing House Incorporated. (2006). *Submission: Crime and Misconduct Commission. Offence of public nuisance: How is the new public nuisance offence provision being enforced and what is its impact on the Queensland*

public? Retrieved January 14, 2009, from <http://www.cmc.qld.gov.au/data/portal/00000005/content/47109001187741073921.pdf>

Rowe v Kemper (Court of Appeal 2008).

Spooner, P. (2001). Moving in the wrong direction: An analysis of police move-on powers in Queensland [Electronic Version]. *Youth Studies Australia*, 20, 27 - 31. Retrieved March 7, 2007, from Informit: Australian Public Affairs - Full Text database.

Taylor, M., & Walsh, T. (2006). *Nowhere to go: The impact of police move-on powers on homeless people in Queensland*. Retrieved March 13, 2007, from http://www.law.uq.edu.au/staff/tempprofiles/publications/Walsh_t_NowhereToGo_Combined.pdf

The State of Queensland (Department of the Premier and Cabinet). (2006a, April 21). *Minister for Police & Corrective Services, The Honourable Judy Spence: Move-on powers for all public spaces in Queensland*. Retrieved April 29, 2007, from <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=45735>

The State of Queensland (Department of the Premier and Cabinet). (2006b, February 17). *Minister for Police and Corrective Services, The Honourable Judy Spence: Brisbane City Council gets extended move-on areas*. Retrieved May 21, 2007, from <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=44574>

Walsh, T. (2006). *'No offence': The enforcement of offensive language and offensive behaviour offences in Queensland*. Retrieved March 6, 2007, from http://www.law.uq.edu.au/staff/tempprofiles/publications/Walsh_T_ParkBenchToCourtBench_Combined.pdf

Walsh, T. (2007). *No vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland*. Retrieved August 21, 2007, from http://www.law.uq.edu.au/staff/tempprofiles/publications/Walsh_T_No-Vagrancy-CombinedIncCover-LoRes.pdf

Walsh, T., & Taylor, M. (2007). You're not welcome here: Police move-on powers and discrimination law [Electronic Version]. *University of New South Wales Law Journal*, 30, 151 - 173. Retrieved March 12, 2008, from Informit: Australian Public Affairs - Full Text database.

Youth Affairs Network of Queensland. (2005). *A submission by the Youth Affairs Network of Queensland in opposition to Brisbane City Council's application to grant move-on powers to police in King George Square, Kurilpa Park and New Farm Park*. Retrieved April 6, 2007, from http://www.yanq.org.au/images/stories/Documents/sbmsn_-_bcc_move_on_powers_application_1005.pdf

Appendices

Appendix A

Bachelor of Arts (Honours) thesis by Megan McKay (2008) *The reasons and the reality: A critical analysis of the purposes of the Queensland police move-on powers* (also available at <http://eprints.qut.edu.au/17299/1/17299.pdf>) attached.