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Since limited 'Move-on' powers were introduced in 1997 until today's statewide powers under the Police Powers and Responsibilities and Other Acts Amendment Act 2006 [Qld], their use has impacted unequally on the community in Cairns. All people have the right to enjoy our public parks, beaches and other public places and to expect fellow users not to harass them or interfere with their enjoyment of public facilities. However 'Move-on' powers do little to protect these rights, indeed they, in effect, remove these rights from some marginalised groups.

When the 'Move-on' powers were introduced, the then Cairns City Council, which had gained notoriety by its failed attempt at transporting homeless Indigenous people to Lockhardt River, caused further controversy by applying for gazetting of 'Move-on' areas which were mainly used by Indigenous people, some of whom come from Cape York Communities and some of whom are homeless. It appeared that the application was mainly based on discrimination against these people and on an unrealistic expectation that by 'moving-on' social problems they would disappear and no proper understanding or adequate services would be required. Since then the expansion of the powers has been highly detrimental to the marginalised in Cairns. Out of sight is not out of mind, particularly for those who bear the brunt of police powers.

There are serious problems of homelessness in Cairns, with high rents, low-cost housing being converted to tourist accommodation and very long waiting lists for public housing. The available emergency accommodation is inadequate to cater for the needs of the number of homeless people and even if there were sufficient beds, they cannot provide more than a very basic meal and bed service. Emergency hostels provide short-term overnight accommodation only and are closed all day, leaving people with nowhere to go except to parks and other public space. There is a pressing need for facilities and services for people to use in daylight hours, which may go some way to addressing the health and other needs of homeless people and reducing unacceptable behavior in public places. It is almost impossible for those who have no alternative to spending their days in parks where others are drinking to resist the pressure to drink.

As well as lack of housing there is a lack of adequate detox and rehab services in Cairns for those with alcohol and drug problems. While the existing rehab services and the mobile detox service do excellent work, there is a lack of dedicated detox hospital beds and rehab services cannot take those who are either intoxicated or in withdrawal. Thus people are unable to access the services they need when they need them. Community-based services need to be properly resourced to provide residential detox services as well as rehabilitation services and adequate numbers of hospital beds are also needed. However if there is no co-ordination of services and no proper accommodation for people to go to after leaving rehab there is little chance for people who are living with severe drug and alcohol problems to improve their situation.

Thus inadequate housing and shortage of appropriate services results in many marginalised people being forced to live their lives in public places, subject to police scrutiny and intervention. In Cairns, police 'move-on' powers over public areas, in effect leaving no where for marginalised people to go, impact severely on a range of poor and powerless groups who must spend their days in public space. It particularly discriminates against indigenous groups, with other powerless users of public space will also be targeted. One such group is those with mental illness, who are also homeless and spend their days in public space. Their unusual but otherwise lawful behaviour is caught in the net of these powers, resulting in their illness being exacerbated by interaction with police and being caught up in the criminal justice system, to the detriment of their health and well-being.

Serious and complex social problems can only be solved by carefully planned measures, provision of a range of appropriate services, designed in close consultation with those whose needs they will meet. Coercive and punitive legislation only serves to exacerbate these problems.

If a person is acting in a manner that constitutes criminal behaviour police have adequate powers to deal with the situation, if however a person is acting lawfully they should be able to do so without undue police attention. Where police discretion is used in the exercise of their powers, there is a substantial risk that judgement will be based upon stereotypes rather than on a careful consideration of objective factors. Cairns is a city whose economy is based on tourism, and it seems that some police officers have the attitude that it is an appropriate use of their discretion to move-on those they perceive may offend the gaze of the free-spending tourists, an attitude reinforced by tourist businesses.

There is considerable anecdotal evidence that move-on powers are over used or used in a discriminatory manner by some police officers in Cairns. Clients of welfare services including YETI [ Youth Empowered Towards Independence], Youthlink, Mental Health Resource Service, Cell Watch, FNQ Families and Prisoners Support, report being moved-on<sup>1</sup> for no apparent reason other than age, appearance, aboriginality, homelessness, reputation, or other characteristics that lead them to be stereotyped.

While working for xxxxxx [until my retirement in xxxx] and when conducting interviews and focus groups for xxxxxxx, I have heard numerous complaints about people being moved-on for no apparent reason. A example is the story of an Indigenous man with a mental illness who was directed to move-on from City Place although he was not behaving in any offensive or disorderly manner. He complied reluctantly, because he wanted to use the public toilet there, and walked a couple of blocks away to Rustys Market which was closed and found what he believed to be a private spot to urinate unobserved. However, unbeknown to him, the police officer had followed him and arrested him for indecent exposure. He was greatly upset by this charge which he quite understandably regarded as unjust and harassment. The whole episode had a very negative impact on this mental health.

The introduction of police move-on powers has not yet been subject to thorough evaluation to determine if it has led to lower crime rates in the regulated areas or whether it has resulted in more contact between police and marginalised groups leading to their further criminalisation when they react to being moved on although they have not committed any offence or they return to an area from which they have been moved. However, research by Paul Spooner of the Youth Advocacy Centre published in Youth Studies Australia into the impact of these police powers on youth indicate that there are serious negative consequences. Tamara Walsh's 'No Vagrancy'<sup>1</sup> research has shown 'people experiencing poverty and homelessness endure extraordinarily high levels of police harassment and interference in their lives'<sup>1</sup>[p59] which is 'not obviously matched by a reduction in crime rates or an increase in community safety'<sup>1</sup> [p71]. Indeed there was an 11% increase in 'good order'<sup>1</sup> offences in 2004/05 to 2005/06 and 19% in the first 6 months of 2006.

Although the Queensland government claimed to support the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, the introduction of the move-on powers and particularly the 2006 expansion is quite contrary to Recommendations 79, 84, 86 and 87. The 'move-on'<sup>1</sup> powers increase contact with police which in turn leads to increased incarceration rates, with all the negative consequences that entails, contrary to the RCIADIC recommendations.

A closer examination of sections 44 to 49 of the Police Powers and Responsibilities Act 2000 reveals provisions of the Act that result in potential interference with and harassment of the marginalised. The extension of the power to all public places in s44 is unnecessarily wide and virtually subjects the homeless to being constantly moved-on.

S46 (1) (a) requires police officers, in the absence of any complain about behaviour from a member of the public, to be  $\text{\textcircled{C}}$ mind-readers<sup>1</sup> able to assess persons<sup>1</sup> emotional states and to decide if this putative emotional state [ie anxiety] is reasonable in the circumstances. There is considerable evidence that the sensibilities of many police officers are far less robust than those of the general public, as some prosecutions for obscene or insulting language attest.

S47 (1) (a) extends to there mere presence of someone causing putative anxiety.

S48 (3) permits a direction to be given to leave and not return for 24 hours.

These sections give far more power to police than could be considered reasonably necessary. While it is reasonable that police officers should be able to move-on someone who is making a scene at a kindergarten or school, or disperse a rowdy mob about to come to blows around a pub or night club, it is quite draconian to move a person merely because they are present in a public place. The 24 hour period in S48 is also excessive and far longer than would be needed to interrupt and/or defuse any behaviour that is causing or about to cause problems for other members of the public.

I wish to support the Recommendations 6 and 7 in the  $\text{\textcircled{C}}$ No Vagrancy<sup>1</sup> Report : Rec.6 That police officers be instructed that they should only interfere with an individual's use and enjoyment of public space if there is a reasonable risk that harm to another person will result if they fail to intervene and that a provision to this effect be inserted in the Police Powers and Responsibilities Act. And further that repealing S47 (1) (a) which allows a police officer to move a person on in circumstances where their mere presence could cause anxiety. Rec.7 Legislating a  $\text{\textcircled{C}}$ Charter of Rights<sup>1</sup> protecting the rights of all public space users.

Furthermore I strongly urge that S46 (1) (a) be repealed and that (b), (c) and (d) include a requirement for a complaint by a member of the public. I would also urge that the maximum period in S48 be reduced to 4 hours.

Overall the  $\text{\textcircled{C}}$ move-on powers do not reduce crime rates and arguably increase the incidence of  $\text{\textcircled{C}}$ good order<sup>1</sup> offences as people react to being directed to move-on, an action that they perceive as unjustified by any behaviour on their part and part of a pattern of discrimination against them.

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