

Review of Queensland's police move-on powers

Invitation for public comment

December 2008

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

Move-on powers form part of the police response to public order issues in Queensland. These powers enable the police, in certain circumstances, to issue a direction to individuals or groups to move on or leave a public place.

According to speeches and debates in the Queensland Parliament over the last decade, these powers were intended to:

- help police respond to public concerns about safety
- reduce the impact of antisocial behaviour on members of the public
- prevent more serious crime from occurring
- reduce the need for people to be formally charged and dealt with by the criminal justice system.

Why are we reviewing police move-on powers?

In June 2006, the *Police Powers and Responsibilities Act 2000* (Qld) was amended to make move-on powers available to the police in all public places statewide (s. 44).¹ The legislation also required the Crime and Misconduct Commission (CMC) to review the use of these powers after an initial period of implementation (s. 49).

We are now seeking public comment on these move-on powers. This paper explains the current powers, their history, the nature of our review, and how you can provide your comments.

What are police move-on powers?

In Queensland, move-on powers authorise police, in particular circumstances, to issue a direction to an individual or a group of people to move on or leave a public place (and some other places where the public has a limited right of access such as schools or railway stations).

If a person does not obey a move-on direction they may be charged with the offence of ‘contravening the direction or requirement of a police officer’, unless they have a ‘reasonable excuse’. The maximum penalty for this offence is \$4000 (s. 791).²

Police move-on powers are discretionary in nature, allowing a police officer to consider the particular circumstances of an incident prior to exercising these powers.

When can police use a move-on direction?

These powers enable a police officer to give a move-on direction if the officer reasonably suspects that a person’s or group’s behaviour (s. 46) or presence (s. 47) is or has been:

- causing anxiety to a person who is at a public place or entering or leaving it
- interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone at, entering or leaving a public place (in this circumstance, the occupier of the premises must be the complainant regarding the person’s behaviour or presence)
- disrupting the peaceable and orderly conduct of any event, entertainment or gathering at a public place.

Additionally, if a person or group of persons is or has been behaving in a disorderly, indecent, offensive or threatening way, or if a police officer reasonably suspects that a person is soliciting for prostitution, an officer may give a direction to move on (s. 46).

What are the safeguards for police use of the powers?

Any move-on direction given by a police officer must be reasonable in the context of the particular circumstances (s. 48). For example, in an incident in July 2006, a man in the Queen Street Mall was asked by police to leave the mall for eight hours after he declined to leave a public toilet when asked to by a cleaner. Mr Rowe was subsequently found guilty in the Magistrates Court of failure to comply with a police direction and obstruction of a police officer, a decision that was upheld by the District Court.³ Upon further appeal, the Queensland Court of Appeal⁴ held that the move-on direction given by the police officer was unnecessarily broad and, therefore, not reasonable in the circumstances.⁵ The majority of the judges stated that in the particular circumstances, the police officer should have directed that Mr Rowe leave the public toilet for a reasonable period of time to allow the cleaner to perform his duties.

There are also safeguards that apply before a person can be charged with an offence if they do not move on as directed. A police officer must, if practicable, warn the person that it is an offence to fail to comply with a police direction without a reasonable excuse, and that they may be arrested. Following this warning, the police officer must then give the person a further reasonable opportunity to comply with the direction before arresting them (s. 633).

1 Unless specified, all references to sections of legislation are to the *Police Powers and Responsibilities Act 2000* (Qld).

2 This monetary amount equals 40 penalty units. The value of the penalty unit in Queensland will increase on 1 January 2009 from \$75 to \$100.

3 *Rowe v Kemper* [2007] QDC 187.

4 *Rowe v Kemper* [2008] QCA 175.

5 See *McMurdo* P at [22], *Holmes* JA at [72], and *MacKenzie* AJA at [113].

How did Queensland's move-on powers develop?

Prior to the statewide implementation of police move-on powers in 2006, the history of the powers in Queensland was one of incremental expansion throughout the state. Move-on powers were first given to Queensland police in 1997 through the *Police Powers and Responsibilities Act 1997* (Qld). Their geographical application was restricted to certain places such as shops and railway stations, or to particular areas after an application had been made by, for example, a local government.⁶

In 2000 move-on powers were expanded in the *Police Powers and Responsibilities Act 2000* (Qld) to include places such as racing venues and malls.⁷ Through the application process, these powers were progressively applied to a number of other places including the Goodwill Bridge in Brisbane and the Surfers Paradise Esplanade.

In 2006, police move-on powers were introduced statewide through the *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

Issues relating to move-on powers

Move-on powers have attracted significant debate across the Queensland community since their introduction in 1997. Support for the powers has been expressed by some people on the basis that they constitute an important police response to public safety concerns in public space. Others express concern regarding the discretionary nature of the police move-on provisions, their possible effects upon youthful, vulnerable or minority groups, and the right of the community to use public space with minimal police intervention.

It is clear that there are competing interests at stake regarding this issue, which police may be called upon to balance when deciding whether to exercise their move-on powers. For example, some groups, such as youths and homeless people, may use public space more often than others, and other groups, such as the elderly, may be fearful of encountering some of these groups in public areas such as malls.

How will the CMC conduct the review?

Our review will examine the use of move-on powers in Queensland, including whether they are being used properly, fairly and effectively by Queensland police. As an independent body with a role in contributing to public policy, we will consider all points of view in assessing the evidence and determining the impact of move-on powers in Queensland.

In undertaking the review, we will:

- receive submissions either in writing or verbally
- consult with police and other stakeholders such as civil liberties groups, shop owners and government departments
- consider police and courts data about the use of move-on powers and the associated offence
- examine similar issues in other jurisdictions.

Upon completion of our review, we will table a report in the Queensland Parliament and release it to the public.

Our review will consider the following topics in detail:

- use of move-on powers by Queensland police — including when and where they are used and who they are used against
- how people who fail to obey a move-on direction are dealt with by police
- positive or negative consequences of the use of move-on powers in Queensland.

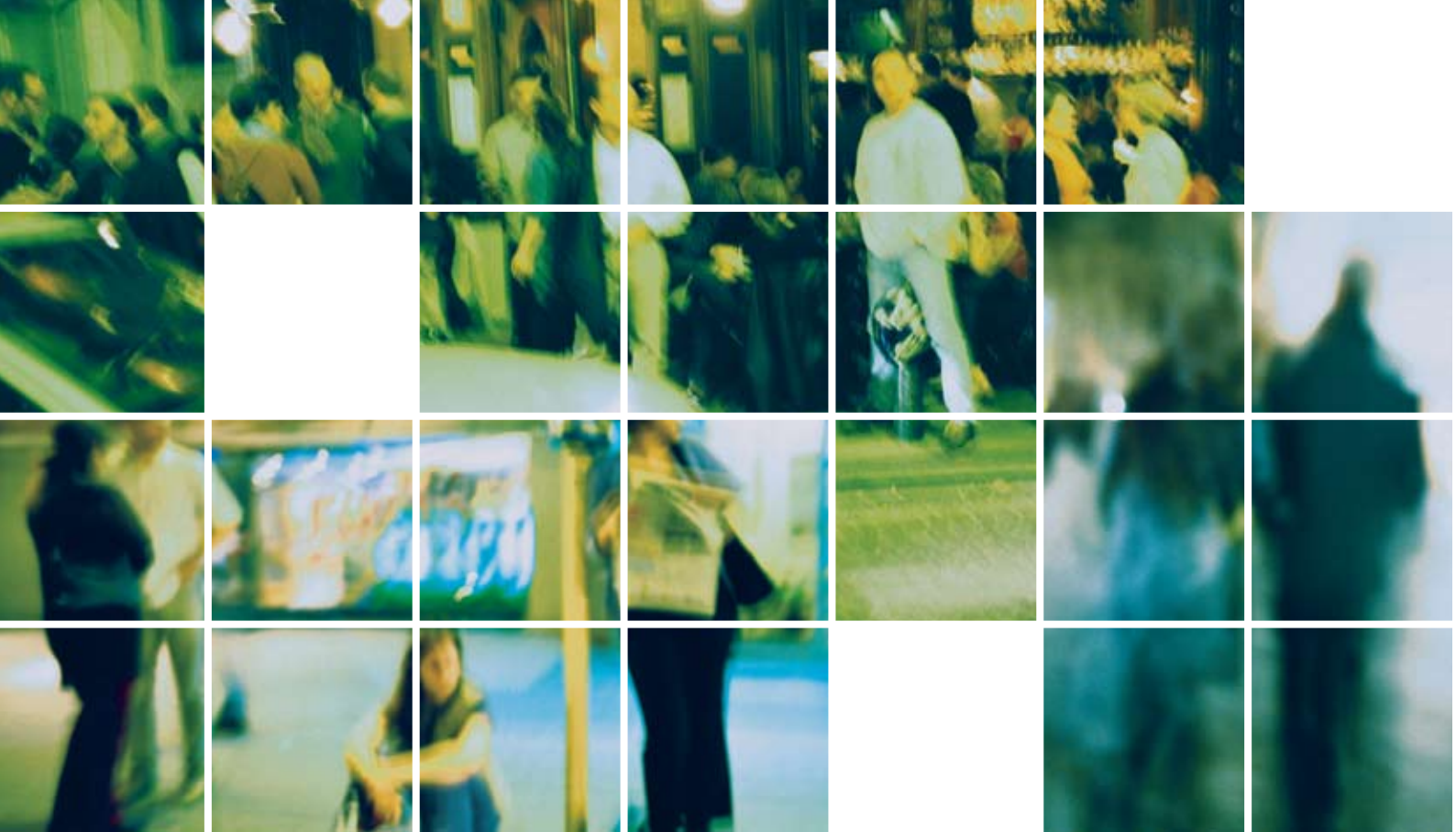
Questions we would like you to consider

Based on your experience, the experience of your clients/customers, or the experience of your agency, please consider the following questions as a guide when preparing your comment. Where possible, please provide examples to illustrate the points you make in your submission.

- What has been your experience, or the experience of your clients, customers, staff or friends, of police move-on powers in Queensland?
- Do you believe police move-on powers are being used properly, fairly and effectively?
- Do you have any recommendations regarding the existence or use of police move-on powers in Queensland?

⁶ See Part 11 and Schedule 3, *Police Powers and Responsibilities Act 1997* (Qld).

⁷ See Schedule 4, *Police Powers and Responsibilities Act 2000* (Qld) Act No. 5 of 2000.



How to make your comments

There is no set format for written comments. You may wish to write a letter or a substantial report, and you may wish to attach appendixes and other supporting documents. You may write or type your comments. You may post or email it.

Please send your comments by **Friday 20 February 2009** to:

CMC Review of Police Move-on Powers

GPO Box 3123, Brisbane Qld 4001

Email: moveonpowers@cmc.qld.gov.au

Fax: 07 3360 6333

Written comments will be displayed on the CMC's website at www.cmc.qld.gov.au, unless you ask for them not to be. Your identity will remain confidential if you request it.

For more information please contact **CMC Review of Police Move-on Powers** on **07 3360 6269/6134** (Sally Lohrisch or Stephen Fay) or toll-free **1800 061 611** (in Queensland outside Brisbane).

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