

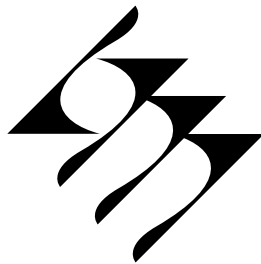
# POLICING PUBLIC ORDER

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A REVIEW OF THE PUBLIC NUISANCE OFFENCE

MAY 2008

CRIME AND  
MISCONDUCT  
COMMISSION



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QUEENSLAND

**CMC vision:**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC mission:**

To combat crime and improve public sector integrity.

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The Honourable The Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with section 7(4) of the *Summary Offences Act 2005*, the Crime and Misconduct Commission hereby furnishes to you its report, *Policing public order: A review of the public nuisance offence*.

The Commission has adopted the report.

Yours sincerely

**ROBERT NEEDHAM**  
Chairperson



# FOREWORD

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It is clear that public order policing, or policing ‘the small stuff’, has the potential to generate a great deal of contention in the community. The new public nuisance offence, like its predecessor, accommodates the highly contextual and changing nature of what is being regulated by allowing:

- the police to exercise a significant degree of discretion; it is police who make a judgment call about when to act and when not to act on the basis of the legislation
- the courts to consider circumstances and apply the community standards of the day when determining whether particular behaviour constitutes an offence.

Criminalising public nuisance behaviours necessarily involves an important balancing act, one which must strike a fair compromise between the rights of individuals to engage in certain behaviours that might not ordinarily warrant criminal justice system intervention, and the rights of all sectors of the community to be able to enjoy public places.

In Queensland, after the introduction of the new public nuisance offence, there was on one hand a great deal of anxiety expressed about its impact by some sectors of the community — there were fears that the balance of rights had been significantly altered, to the detriment of some groups. (In addition, there were concerns about the new public nuisance offence that are, in fact, longstanding concerns about public order policing.) On the other hand, other groups were pleased by the prospect of the new offence’s allowing police to tighten their control of public order issues; they saw it as an opportunity for police to better respond to public concerns, often relating to the behaviour of those in public places who had consumed alcohol excessively.

The Research and Prevention Unit of the Crime and Misconduct Commission stands in a unique position in being able to provide independent research into aspects of the criminal justice system — in particular, policing. It has been ultimately very satisfying indeed for us to be able to conduct this research on the use of the new public nuisance offence and objectively consider the issues associated with a quite intense public debate.

The story that emerges from our consideration of the evidence regarding the new public nuisance offence is quite different from that which has emerged from previous research, or from the picture painted by political and public debates in Queensland in the past. I have no doubt that the evidence presented in this report will better inform policy and public debates on these issues.

We are also pleased that we will have a further opportunity to contribute to the understanding of public order issues in Queensland. The CMC has now commenced its review of police use of move-on powers as required by section 49 of the *Police Powers and Responsibilities Act 2000* (Qld). We look forward to the opportunity to consider some issues that we were unable to cover in this review. In addition, it will allow us to assess the progress of the recommendations we have made in this report.

**Susan Johnson**

Director, Research and Prevention



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# ACKNOWLEDGMENTS

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This report is the result of a great collaborative effort by current and former staff of the Research and Prevention Unit of the CMC. Angela Carr has been involved from the outset and, along with Derran Moss, conducted much of the early research and the consultations. Angela has played a key role in conducting the statistical analysis for the report.

Zoe Ellerman took over from Derran as project manager (following Derran's departure) and was responsible for the legal and policy analysis and the writing of the final report. Zoe worked closely with Angela and coordinated contributions from other staff of the unit on a range of issues in order to produce this report. Other officers from Research and Prevention who made important contributions include Stephen Fay who prepared the review of previous research literature and Nadine Seifert who undertook the cross-jurisdictional analysis. Substantial contributions were also made by Mark Pathe, Margot Legosz, Mark Lynch, Dennis Budz, Kellie Moule and Vivien Chan.

This project was carried out during a period of significant structural reform within the unit, accompanied by a number of staffing changes. The quality of the final report is a testament to the commitment and perseverance of the staff involved and the CMC is very grateful to them.

The CMC would also like to acknowledge the contributions of the many individuals and agencies who provided valuable input through their written submissions and through our consultations. These include officers of the Queensland Police Service, Magistrates, Legal Aid officers, Aboriginal and Torres Strait Island Legal Services officers, local and state government representatives, other criminal justice and community agency representatives, academics and private citizens. Without their valuable input, this review would not have been possible. We would also like to thank the Queensland Police Service and the Department of Justice and Attorney-General who provided the data included in this report.

Finally, we are very grateful to the staff of our Communications Unit for their tireless effort in the editing and production of this report.

# LIST OF ABBREVIATIONS

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ASBO	Anti-Social Behaviour Order
ATSILS	Aboriginal and Torres Strait Island Legal Service
CAD	Computer Aided Dispatch
CBD	central business district
CMC	Crime and Misconduct Commission
CRISP	Crime Reporting Information System for Police
HREOC	Human Rights and Equal Opportunities Commission
LAQ	Legal Aid Queensland
NYPD	New York Police Department
OPR	Operational Performance Review
OR	odds ratio
p.u.	penalty unit
POPP	Problem-Oriented and Partnership Policing
QLA	Queensland Legislative Assembly
QPILCH	Queensland Public Interest Law Clearinghouse
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
QWIC	Queensland-wide Interlinked Courts data management system
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RIPS	Rights in Public Spaces Action Group
SETON	Self Enforcing Ticketable Offence Notice
SPER	State Penalties Enforcement Register
YAC	Youth Advocacy Centre

# OVERVIEW OF THE REPORT

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The Crime and Misconduct Commission (CMC) was directed by the Queensland Parliament to review and report on the use of the new public nuisance offence after October 2005. Our report is in four parts.

**Part 1** provides the background to this review by the CMC. It describes how the new public nuisance offence came to be introduced into Queensland law, the context of our review, details of our methodology and a summary of some of the relevant research on this topic.

**Part 2** explains Queensland's legal framework for public nuisance offending and provides a comparison with similar offences in other Australian jurisdictions. It provides our view of the legal changes introduced by the new offence. It includes consideration of what guidance is provided by court decisions.

**Part 3** presents the findings of our review of public nuisance in Queensland. These include:

- the behaviours and circumstances characterised as public nuisance offending (Chapter 7)
- the number and rate of public nuisance offences in Queensland (Chapter 8)
- a description of where public nuisance offending is occurring in Queensland (Chapter 9)
- the characteristics of Queensland's public nuisance offenders by sex, age and Indigenous status (Chapter 10)
- a description of how public nuisance offences proceed through the criminal justice system, including how police initiate proceedings against public nuisance offenders (Chapter 11) and how public nuisance matters are dealt with in the Magistrates Courts and Childrens Courts (Chapter 12).

**Part 4** summarises our main conclusions about the impact of the introduction of the new public nuisance offence. As the review also provided an opportunity for us to understand more about public nuisance offences and offenders in Queensland, in Part 4 we discuss some key issues that have arisen during the course of the review. These include points of contention relating to the exercise of police discretion in the policing of public nuisance, issues relating to the very small number of contested public nuisance charges, and the need to address the underlying causes of public order offending.

It should be noted that, since the CMC undertook this review of the public nuisance offence, an obligation has been imposed on it by the Queensland Parliament to review the use of police move-on powers as soon as practicable after 31 December 2007 (s. 49 *Police Powers and Responsibilities Act 2000* (Qld)).

The review of police move-on powers will allow us to build on the current review of public nuisance. This report can therefore be considered the first part of an ongoing review of public order offences to be continued by the CMC in 2008–09.

# SUMMARY

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## BACKGROUND: CONTEXT OF THE REVIEW

The CMC was required by law to conduct a review of the use of the public nuisance offence. There were two key legislative developments that established the new public nuisance offence in Queensland and required this review:

1. The new public nuisance offence was introduced as section 7AA of the *Vagrants, Gaming and Other Offences Act 1931* (Qld) (the Vagrants Act) in 2003. The changes took effect from 1 April 2004.

Legislation introducing the new public nuisance offence in Queensland also required the CMC, 'as soon as practicable after 18 months after the commencement of this section', to 'review the use of this section' and report on the review.

2. The whole of the Vagrants Act was subsequently repealed and replaced by the *Summary Offences Act 2005* (Qld) (the Summary Offences Act). The public nuisance offence in section 7AA of the Vagrants Act was carried over in identical terms into section 6 of the Summary Offences Act. The changes took effect on 21 March 2005.

The requirement that the CMC review and report on the use of the new public nuisance offence was also transferred from the Vagrants Act to the Summary Offences Act (s. 7). The review was to commence as soon as practicable after 1 October 2005 (being 18 months after the commencement of the s. 7AA Vagrants Act offence).

There is some history to the move for a change to Queensland's law on offensive language and behaviour. In the early 1990s, significant reviews were undertaken of Queensland's criminal laws, including a review of the *Criminal Code 1899* and a review of the Vagrants Act.

The review of the Vagrants Act was intended to lead to simplification and modernisation of the law. The review process involved a public call for submissions as well as targeted consultations on a draft report outlining the proposals for reform. The review committee recommended that the Vagrants Act be repealed, as many of its provisions were no longer suitable for enforcement in today's society and could be dealt with through welfare agencies rather than the criminal justice system (Vagrants, Gaming and Other Offences Act Review Committee 1993, p. 1).

The new public nuisance offence was first introduced in the context of public interest over an extended period in relation to the behaviour of intoxicated Indigenous homeless people, particularly in Cairns, Townsville and Mt Isa (see Beattie 2003; McGrady 2003a; Spence 2002a, 2002b, 2003a, 2003b, 2003c; Rose 2002). The then Minister for Police and Corrective Services, the Hon. T McGrady, explained that the change would help to address community concerns and expectations and respond to 'serious, widespread complaints concerning the behaviour of some people using public places' (QLA (McGrady) 2003a, p. 4363). The parliamentary debates and media statements made by Queensland politicians in the lead-up to the introduction of the new offence indicated that the change would 'tighten laws' surrounding anti-social behaviour, raise community standards of conduct and help prevent the unacceptable behaviour of drinkers in public places causing disruption to community and business life (see also Beattie 2003; McGrady 2003b).

It was said that the new public nuisance offence was to be a 'living document' that would adapt over time with community standards and that the courts would play an important role in determining what behaviours would fall within the new public nuisance offence at any particular time (QLA (McGrady) 2003a, p. 4363).

At the time the new public nuisance offence was introduced into the Vagrants Act there was one specific concern raised regarding the potentially negative impact of the new public nuisance provision on Indigenous people (QLA (Clark) 2003, p. 5061).

The Summary Offences Bill 2004 was then tabled in September 2004 by the Minister for Police and Corrective Services, the Hon. JC Spence. She stated that the intention of the Bill was to repeal the 'antiquated' and 'obsolete' Vagrants Act and replace it with legislation to address the needs of a modern community (QLA (Spence) 2004a, p. 2396). The minister explained that the section 6 public nuisance offence provided 'a means of ensuring that a person lawfully enjoying the facilities of a public place is not interfered with by the unlawful activities of another' (QLA (Spence) 2004a, p. 2397).

At this time safety concerns and possible solutions to violence in and around licensed premises in the Brisbane CBD had become a particularly prominent issue. The section 6 public nuisance offence was passed by parliament on the eve of a safety summit convened by the Queensland Government to improve the management of alcohol and crime in the Brisbane CBD. The Hon. JC Spence publicly stated that the Summary Offences Act would respond to 'justified community concern' and help deal with alcohol-fuelled and offensive behaviour in Brisbane's CBD as the laws allowed police to intervene in lower-level offences and prevent them from leading to more serious offences such as assault and rape (QLA (Spence) 2005a, p. 263; Spence 2005a).

At the same time there was research published by Dr Tamara Walsh and increasing public concern expressed by groups such as the Caxton Legal Centre and Legal Aid Queensland, suggesting selective enforcement by police of the new public nuisance offence on disadvantaged populations such as the homeless, Indigenous people, mentally ill people and young people (see Walsh 2004b, pp. 20–1; Mathewson 2005; Heffernan 2004). It was claimed that the new public nuisance offence significantly broadened the old offensive language and behaviour provision, allowing police to 'arrest virtually anyone'.

The role of police in exercising their discretion to enforce the public nuisance law was frequently acknowledged as being vital to achieving the right balance between the rights and liberties of individuals and the rights of the community as a whole. Parliamentarians commented, for example, that:

- the legislation must be used by police with 'commonsense' (QLA (Cunningham) 2005, p. 253; see also QLA (Shine) 2005a, p. 142)
- the legislation must not be acted on in ways 'contrary to its intent' or with 'zealousness' (QLA (Pratt) 2005, p. 179; QLA (Sullivan) 2005, p. 256)
- the courts would play a significant role in ensuring that the legislation is implemented fairly and appropriately (QLA (Fenlon) 2005, p. 179).

In their assessment of the Summary Offences Bill, the Scrutiny of Legislation Committee (2004, pp. 25–34) raised a large number of concerns over the proposed public nuisance provision (despite the fact that it was not a new offence and that these concerns were not raised in their earlier report). The committee (2004, pp. 25 & 34) expressed concern about the recent Queensland research published by Walsh (2004b) suggesting the apparent use of public order offences by police in a way that impacted disproportionately on disadvantaged groups.

The committee identified its particular concerns about the public nuisance offence as follows:

- that the breadth and imprecision of the public nuisance offence meant that the provision might go well beyond the legitimate achievement of its stated objective (the committee's examination of this aspect included consideration of the constitutional issues and the judgments in *Coleman v. Power* [2001] QCA 539, [2004] HCA 39)
- that there were no defences or excuses for the offence of 'public nuisance' provided for in the offence-creating provision
- that it would be difficult to argue in most circumstances that an arrest for an offence of public nuisance was unlawful, even after dismissal of the charge by a magistrate; the offence was drafted so widely that a police officer could reasonably suspect that a person had committed the offence, and this would give rise to the power to arrest.

This review was conceived in the context of the discussion and debate outlined above which suggested that the new public nuisance provision had introduced a significant change to Queensland's public order laws, that the law had been broadened and that a greatly increased number of prosecutions for public nuisance had resulted. We therefore set out to answer the following question:

**What was the impact of the introduction of the new public nuisance offence?**

In conducting the review, our attention was necessarily drawn to the broader concerns that are applicable to public order offences and policing generally. They have a long history of debate and discussion and are highlighted in the research literature. Therefore a secondary focus of the review became:

**Are Queensland's public nuisance laws being used properly, fairly and effectively?**

## **CONDUCT OF THE REVIEW**

Our review brings together information we have obtained from:

- consultations and submissions received
- analysis of Queensland criminal justice system data, including data provided by the police and courts
- a legal analysis comparing the old and the new public nuisance offences and relevant case law
- a review of relevant literature, including research conducted in other jurisdictions.

In reviewing the impact of the introduction of the new public nuisance offence, we considered:

- the nature and circumstances of public nuisance offences
- the number and rate of public nuisance incidents
- where public nuisance offending is occurring
- the age, sex and Indigenous status of public nuisance offenders
- the recidivism of public nuisance offenders
- how public nuisance offences proceed through the criminal justice system, including the penalties and sentences provided for public nuisance offending.

## REVIEW OF THE LITERATURE

Australian research shows that ‘incivilities’, including ‘the frequent presence of drunks, vagrants, or unruly gatherings of young males’, induce a fear of crime in some people as these seem to suggest that the location in question is ‘out of control’. Grabosky states that ‘fear of crime is very much higher in those Australian neighbourhoods where it is common for unruly young people to congregate’. Research also indicates police believe there is the potential for routine incidents of public nuisance to escalate to more serious, especially violent, offences (Deehan, Marshall & Saville 2002).

The research indicates the ‘causes’ of public order offending are complex and varied; the criminological literature that focuses in particular on public order offending can be categorised into two distinct and largely unconnected areas of research:

1. The relationship between alcohol and disorder — or, as we refer to them in this review, ‘party people’ as public order offenders.
2. The over-representation of marginalised groups, or ‘street people’, as public order offenders.

Much of the previous research has been focused on the over-representation of marginalised groups to the exclusion of the issues related to the policing of behaviours associated with ‘party people’.

## FINDINGS OF THE REVIEW

The findings of our review, based on the examination of criminal justice system data presented in Part 3 of this report, do not show marked changes since the introduction of the new public nuisance offence. For example:

- Our examination of a random sample of police narratives did not show any dramatic change in the types of behaviour which police identified as public nuisance. The type of behaviours for which public nuisance is applied continues to range from relatively minor behaviour such as tipping over rubbish bins and riding in shopping trolleys to ‘altercations’, ‘scuffles’ and fights with the potential to result in serious injury and some sexual behaviours that could potentially amount to serious sexual offences. Offensive language offences appeared under both the old and the new provisions and the language involved was often directed at police.
- Police data show alcohol was involved in about three-quarters of public nuisance only incidents with an increasing proportion of incidents involving alcohol in the period after the introduction of the new offence (see page 48).
- While our results show an increase in the number and rate of public nuisance offences when we compare the 12 months before and after the introduction of the new offence, the regional variations in the degree and direction of the change tend to argue against the conclusion that the introduction of the new offence was driving the changes. Rather, the statewide increase in the number and rate of public nuisance offences appears consistent with a significant upward trend in police public nuisance data over a 10-year period from 1997. Over the 10-year period the rate of public nuisance offending has increased by an average of 7 per cent each year but there is a notable increase in the upward trend from July 2006.
- Under both the old and the new public nuisance offences, most offending occurs on weekends and between the hours of 9 pm and 5 am.
- Most public nuisance offending occurs on the street and this remained unchanged after the introduction of the new offence. However, after the introduction of the new offence, there has been an increase in the amount of offending on licensed premises and businesses, and a decrease in offences in recreational spaces (such as parks). Since the introduction of the new offence, the QPS also records whether or not offences are ‘associated with licensed premises’ and in the 12 months following the



introduction of the new offence, a quarter of offences were said to be associated with licensed premises.

- Both before and after the introduction of the new offence, public nuisance incidents mostly occurred in major centres such as Surfers Paradise, the Brisbane CBD, Fortitude Valley and Cairns.
- The profile of public nuisance offenders has not changed much since the introduction of the new offence — most public nuisance offenders are males aged between 17 and 30 years. Indigenous people and young people were over-represented as public nuisance offenders under both the old and the new offence. Although concerns had been expressed about a perceived increase in the proportion of young and Indigenous offenders, the data did not show any increase and in fact showed a decrease in the proportion of Indigenous public nuisance offenders for the new offence period. The data did not enable us to examine the impact on homeless and mentally ill or impaired people.
- The use of arrest was relied upon by police in around 60 per cent of public nuisance incidents involving adults both before and after the new offence. Those not arrested were generally issued with a notice to appear. Both adult and juvenile Indigenous public nuisance offenders were more likely to be arrested than non-Indigenous offenders.
- Where other offences accompanied public nuisance, most of them continued to be offences against police. We did find a decrease in the proportion of public nuisance offences accompanied by other charges in the period following the introduction of the new offence, and this was attributable to a decrease in offences against police accompanying public nuisance offences.
- The proportion of public nuisance matters contested in the courts was very low both before and after the introduction of the new offence. Ninety-eight per cent of adult offenders were convicted and just over half had their conviction recorded. Sentencing practices also remained similar over the two periods under review with the vast majority of adult offenders receiving a fine and the fine amount most commonly being \$100 under both the old and the new offences.

Our conclusion therefore is that the legislative change itself did not appear to have a significant impact on public nuisance offending or on the police and courts response to it.

We certainly found marginalised groups were over-represented, but that this over-representation had not been amplified since the introduction of the new offence.

On the contrary, the picture that emerged to us was that the principal focus of the offence was on managing the behaviours of ‘party people’ and that this focus has strengthened over time in response to community ‘signals’ and concerns around public order. Evidence of the strengthening focus on ‘party people’ is provided, for example, by:

- the increased proportion of incidents involving alcohol in the period after the introduction of the new offence
- the increased amount of offending on licensed premises and businesses
- the high number of public nuisance incidents in ‘hot spot’ areas which are considered to be major entertainment centres such as the Brisbane CBD, Fortitude Valley, Cairns and Surfers Paradise, and associated with events such as Schoolies Week and the Indy Carnival at the Gold Coast.

In terms of whether Queensland’s public nuisance laws were being used properly, effectively and fairly, it is our conclusion that, on balance, Queensland’s public nuisance laws are being used fairly and effectively, in the sense that police are taking action to respond to the messages being sent by the broader community. We can see, however, that police are being asked to respond to a variety of ‘signals’, some of which are mixed or

even contradictory. This is particularly true, for example, in terms of the ‘signals’ police receive regarding dealing with offensive language directed at them.

## RECOMMENDATIONS

Our review identified some key ongoing issues about which we make recommendations. We also make recommendations to improve the management of public nuisance offending in the criminal justice system.

The enforcement of offensive language offences is surrounded by a history of controversy, particularly in relation to the policing of Indigenous people. Currently in Queensland it is difficult to accurately assess how frequently the public nuisance offence is used for offensive language, or how frequently it is used as the basis to arrest a person. This is contrary to recommendation 86 of the Royal Commission into Aboriginal Deaths in Custody that the Queensland Government says it has implemented.

In order to address these concerns, and to provide a greater level of transparency generally, we recommend that changes should be made to legislation and practice requiring police to indicate which ‘limb’ of the public nuisance definition is the basis of any charge.

### Recommendation 1:

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**That the legislation and practice surrounding the new public nuisance offence be amended to ensure that a person charged with a public nuisance offence is provided with sufficient particulars to identify under which ‘limb’ of the public nuisance definition the alleged behaviour falls. In particular, those offences which are based on offensive language should be able to be identified and monitored by the QPS in accordance with recommendation 86 of the Royal Commission into Aboriginal Deaths in Custody.**

Public urination is one of the behaviours at the more trivial end of the public nuisance spectrum but one which is commonly policed as public nuisance. There exists an alternative charge of ‘wilful exposure’ available for public urination under section 9(1) of the Summary Offences Act which provides a lesser penalty range to the public nuisance offence. However, it was reported to the review that often offenders preferred to be charged with the more serious public nuisance offence because the section 9 (1) ‘wilful exposure’ offence carries a sexual connotation in the title of the offence and this has implications for a person’s criminal record. For this reason the Commission recommends that there should be a separate offence of public urination which is not titled ‘wilful exposure’.

### Recommendation 2:

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**That a separate offence titled ‘public urination’ be created with the same penalty as section 9(1) of the Summary Offences Act.**

It is our view that it is important that the public nuisance offence remain flexible and responsive to community standards. However, this necessitates considerable reliance on the exercise of police discretion. We believe QPS management, oversight and guidance regarding the exercise of police discretion is necessary through to the highest levels and that the QPS Operational Performance Review processes can provide an effective mechanism ensuring that, for instance, de-escalation and informal resolution of public nuisance incidents is encouraged wherever possible.

### Recommendation 3:

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**That the QPS hold a themed OPR in 2008–09 focusing on public order policing, including dealing with public nuisance behaviours. The OPR should identify best-practice partnership solutions to the problems and encourage de-escalation of public order incidents wherever possible.**

Given that for public nuisance matters:

- the volume dealt with in the courts is high
- the proportion contested is small
- the majority of offenders are convicted
- the vast majority of offenders receive a fine
- the number dealt with ex parte is high,

it begs the question of whether there should be an option for public nuisance to be a ticketable offence.

The CMC believes that ticketing for public nuisance offences in Queensland would provide a valuable alternative for police and offenders in relation to a substantial proportion of public nuisance matters, rather than proceeding through the courts. This may lead to improved efficiency and cost savings for police and Queensland courts. The advantage to the offenders may be lower fine levels, convenience of payment, consistency of approach and no conviction recorded.

However, if a ticketing option is to be introduced, care must be taken to ensure that the potentially adverse effects seen in other jurisdictions, such as the decline in the use of informal resolution for public order incidents, do not eventuate in Queensland. The conduct of the trials in Victoria and the ACT should also be closely monitored in order to ensure that a best-practice ticketing option is provided in Queensland.

### Recommendation 4:

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**That ticketing should be introduced as a further option available to police to deal with public nuisance behaviour. Ticketing should be introduced only in conjunction with a focus on 'de-escalation' and informal resolution of public order issues. The introduction of ticketing as an option should be evaluated to ensure it is not having an adverse effect in Queensland.**

Finally, this report emphasises the importance of preventive and partnership approaches in order to address the underlying causes of public nuisance offending both in respect of:

- the 'party people' and the anti-social behaviour associated with the consumption of alcohol at licensed premises
- the 'street people' or the core group of recidivist public nuisance offenders from marginalised and over-represented groups affected by complex problems.

It is clear that the most effective response to public nuisance offending, and public order issues more generally, requires a commitment from state and local government, non-government agencies, businesses and the community generally to work in partnership to ensure that our public spaces are available to, and enjoyed by, all sectors of the community.

## **Recommendation 5:**

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That the relevant State government departments (such as the Department of Communities, Queensland Health, Department of Local Government, Sport and Recreation) and local councils continue to work with other agencies, businesses and the community to develop, implement and evaluate programs to address the underlying causes of public nuisance offending prior to involvement of the criminal justice system. This should include, for example, that the state government continue to work with the liquor industry to develop strategies to manage the consumption of alcohol and prevent behaviour associated with alcohol consumption triggering a criminal justice system response.

That the QPS and other agencies work in partnership to continue to identify strategies to deal with the problem of public nuisance and to divert offenders at various stages throughout the criminal justice system. This should include, for example:

- that the QPS continue to use POPP as a framework for dealing with public nuisance offences that occur in and around public spaces or at entertainment venues such as pubs and clubs (that is, 'hot spots')
- that the Department of Justice and Attorney-General continue to work with other agencies to develop and evaluate court diversionary programs such as the pilot Homeless Persons Court Diversion program in Brisbane and the Cairns Alcoholic Offenders Remand and Rehabilitation Program in order to identify and implement effective programs.

**Part 1:**

***Background***

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## INTRODUCTION: CONTEXT OF THE REVIEW

### WHY HAS THE CRIME AND MISCONDUCT COMMISSION REVIEWED THE PUBLIC NUISANCE OFFENCE?

The CMC was required by law to conduct a review of the use of the public nuisance offence. There were two key legislative developments that established the new public nuisance offence in Queensland and required this review:

1. The new public nuisance offence was introduced as section 7AA of the *Vagrants, Gaming and Other Offences Act 1931* (Qld) (the Vagrants Act) in 2003. The changes took effect from 1 April 2004.

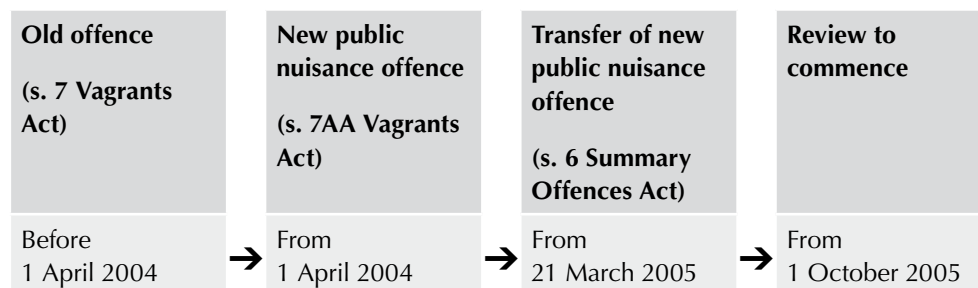
Legislation introducing the new public nuisance offence in Queensland also required the CMC, 'as soon as practicable after 18 months after the commencement of this section', to 'review the use of this section' and report on the review.

2. The whole of the Vagrants Act was subsequently repealed and replaced by the *Summary Offences Act 2005* (Qld) (the Summary Offences Act). The public nuisance offence in section 7AA of the Vagrants Act was carried over in identical terms into section 6 of the Summary Offences Act. The changes took effect on 21 March 2005.

The requirement that the CMC review and report on the use of the new public nuisance offence was also transferred from the Vagrants Act to the Summary Offences Act (s. 7). The review was to commence as soon as practicable after 1 October 2005 (being 18 months after the commencement of the s. 7AA Vagrants Act offence).

Given that the public nuisance provision included in section 6 of the Summary Offences Act was transferred from section 7AA of the Vagrants Act in the same form, this review refers to both of these public nuisance provisions as the 'new public nuisance offence' or the 'new public nuisance provision'.

The new public nuisance offence replaced an earlier offence of offensive language and behaviour (s. 7 Vagrants Act) that was also commonly referred to as the offence of 'disorderly conduct'. The old offence did not use the term 'public nuisance' but it covered the same types of offensive language and behaviour included in the new public nuisance offence. We refer to the s. 7 Vagrants Act offence throughout this report as the 'old offence' or the 'old provision'.



## Old offence and new offence

### Old offence — *Vagrants, Gaming and Other Offences Act 1931*

#### 7. Obscene, abusive language etc.

- (1) Any person who, in any public place or so near to any public place that any person who might be therein, and whether any person is therein or not, could view or hear —
    - (a) sings any obscene song or ballad;
    - (b) writes or draws any indecent or obscene word, figure, or representation;
    - (c) uses any profane, indecent, or obscene language;
    - (d) uses any threatening, abusive, or insulting words to any person;
    - (e) behaves in a riotous, violent, disorderly, indecent, offensive, threatening, or insulting manner;
- shall be liable to a penalty of \$100 or to imprisonment for 6 months ...

### New offence — *Summary Offences Act 2005*

#### 6. Public nuisance

- (1) A person must not commit a public nuisance offence. Maximum penalty — 10 penalty units or 6 months' imprisonment.
- (2) A person commits a public nuisance offence if —
  - (a) the person behaves in —
    - (i) a disorderly way; or
    - (ii) an offensive way; or
    - (iii) a threatening way; or
    - (iv) a violent way; and
  - (b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.
- (3) Without limiting subsection (2) —
  - (a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and
  - (b) a person behaves in a threatening way if the person uses threatening language.
- (4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.
- (5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

## WHY WAS THE NEW PUBLIC NUISANCE OFFENCE INTRODUCED?

There is some history to the move for a change to Queensland's law on offensive language and behaviour. In the early 1990s, significant reviews were undertaken of Queensland's criminal laws, including a review of the *Criminal Code 1899* and a review of the Vagrants Act.

The review of the Vagrants Act was intended to lead to simplification and modernisation of the law. The review process involved a public call for submissions as well as targeted consultations on a draft report outlining the proposals for reform. The review committee recommended that the Vagrants Act be repealed, as many of its provisions were no longer suitable for enforcement in today's society and could be dealt with through welfare agencies rather than the criminal justice system (Vagrants, Gaming and Other Offences Act Review Committee 1993, p. 1).

However, the review committee recommended that an offensive language and behaviour provision be maintained, and proposed a new wording of such a provision to be incorporated into a Summary Offences Act (Vagrants, Gaming and Other Offences Act Review Committee 1993, pp. 11–12). There was no immediate response to the review committee's recommendations. Although the Vagrants Act was eventually repealed and replaced by the Summary Offences Act, the form of the new public nuisance offence introduced some 10 years later differs from that proposed by the committee.

### **What was said when the new public nuisance offence was first introduced as section 7AA of the Vagrants Act?**

The new public nuisance offence was introduced in the context of public interest over an extended period in relation to the behaviour of intoxicated Indigenous homeless people, particularly in Cairns, Townsville and Mt Isa (see Beattie 2003a; McGrady 2003a; Spence 2002a, 2002b, 2003a, 2003b, 2003c; Rose 2002). Media statements made by the then Premier, Peter Beattie (2003a), in the lead-up to the introduction of the new public nuisance offence indicated that the government intended the new offence to 'tighten laws surrounding disorderly conduct' and to help prevent the unacceptable behaviour of drinkers in public places causing disruption to community and business life (see also McGrady 2003b). Premier Beattie stated that the balancing of rights and responsibilities in this area was a complex issue that governments had been grappling with for decades.

When the new public nuisance offence was proposed by then Minister for Police and Corrective Services, the Hon. T McGrady, in the Police Powers and Responsibilities and Other Legislation Amendment Bill 2003, it was explained that the repeal and replacement of the old offence were intended to deal with the quality of the community's use of public spaces (QLA (McGrady) 2003a, p. 4363). The Hon. T McGrady said the change would help to address community concerns and expectations and respond to 'serious, widespread complaints concerning the behaviour of some people using public places' (McGrady 2003b). He made the following statements:

Public places are there for the use of all members of the community. Persons who choose to disrupt a family picnic in a park, groups of people who have nothing better to do than intimidate people at railway stations or persons who take delight in intimidating women or children at a shopping centre will face the full force of the law. (QLA (McGrady) 2003a, p. 4363)

This legislation is about raising the standards. All too often people in our community will not accept the standards that the community imposes upon itself. That is sad and it is regrettable. However, I think law-abiding citizens have a right to go about their life free from some of the nonsense that goes on in public space. (QLA (McGrady) 2003b, p. 5095)

The Hon. T McGrady claimed that the new law was 'fair and allows justice for all'. He said that the new public nuisance offence was to be a 'living document' that would adapt over time with community standards and that the courts would play an important role in



determining what behaviours would fall within the new public nuisance offence at any particular time (QLA (McGrady) 2003a, p. 4363).

The introduction of Queensland's new public nuisance offence in section 7AA of the Vagrants Act received bipartisan support and did not attract significant concern during the course of its parliamentary debate. Many of Queensland's parliamentarians made reference to the need to protect members of the public from intoxicated persons in public places and to raise community standards of conduct (see, for example, QLA (Choi) 2003, p. 5094; QLA (Clark) 2003, p. 5060; QLA (Stone) 2003, p. 5065). For example, it was stated:

In many parts of Queensland, the community has been crying out for the government to do something about public drunkenness and its effect on business and the community's use of public space. The community has a right to enjoy public spaces without the unacceptable behaviour of drunken people causing them fear or distress. (QLA (Pitt) 2003, p. 4990; see also pp. 4991–2).

A number of parliamentarians referred to particular problems in areas including Townsville, Cairns central business district (CBD) and Cairns Esplanade, and reference was also made to the behaviour of Indigenous people in these places (QLA (Boyle) 2003, pp. 5078–9; QLA (Clark) 2003, pp. 5060–1; QLA (Pitt) 2003, pp. 4991–2). A reference was also made to the drunkenness, brawling and violence occurring in Cairns 'in the middle of the night when mostly males exit nightclubs' (QLA (Boyle) 2003, p. 5079).

There was one specific concern raised regarding the impact of the new public nuisance provision on Indigenous people:

Because the reality is that many people who will be the subject of these new changes will be Indigenous persons, I think it is important we are satisfied that this is not abused and that people do not feel they have been victimised by virtue of their cultural and ethnic background. (QLA (Clark) 2003, p. 5061)

The Scrutiny of Legislation Committee assessed the Bill but did not make specific reference to the introduction of the new public nuisance offence as section 7AA. The committee noted (2003, p. 18):

All of these provisions ... have an obviously significant potential impact upon the rights and liberties of individuals. Whether or not each of them is appropriate is, in the final analysis, a matter for Parliament to determine.

A number of factors may have contributed to the general lack of debate and the paucity of concern expressed at the time the new public nuisance offence was introduced as section 7AA of the Vagrants Act. Some possible factors were that the new public nuisance offence was introduced in a Bill that was also introducing many other significant changes to a whole range of legislation,<sup>1</sup> or that there had not been recent media and public focus on particular public order incidents, or that the new public nuisance provision, in fact, introduced little substantive change (although this was not suggested by parliamentarians during the course of the debate or in their public statements about the new offence).

The decision to replace the old offence appears to have also been influenced by the pending High Court appeal against the Queensland Court of Appeal decision in *Coleman v. Power* [2001] QCA 539; [2004] HCA 39. When the new public nuisance offence was first introduced, the High Court was considering the question of whether the old offence, which included an offence of 'insulting' language, was so broad that it went beyond the Queensland Parliament's legislative power because it infringed the implied constitutional

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1 The Police Powers and Responsibilities and Other Legislation Amendment Bill 2003 proposed other amendments to the Vagrants Act and significant amendments to 10 other Acts, including amendments relating to the prevention of the unlawful sale of potentially harmful things; prevention of tattooing and body piercing of children; the impounding of vehicles for hooning; 'chroming', including providing for places of safety and the seizure of substances; granting bail to persons in custody; charging and bringing prisoners before the court; criminal history checks on employees of the Queensland Police Service; the regulation of prostitution; increasing penalties for the sale of alcohol to intoxicated persons; and the use of weapons such as crossbows, shanghais and swords.

freedom of political communication. Although there was no explicit link made in the parliamentary debates to the pending High Court decision and the uncertainty it created for the application of the old offence, the timing and precise wording of the new public nuisance offence indicate that it was an influence.<sup>2</sup>

### **What was said about the new public nuisance offence when it was transferred to section 6 of the Summary Offences Act?**

The Summary Offences Bill 2004 was tabled in September 2004 by the Minister for Police and Corrective Services, the Hon. JC Spence. She stated that the intention of the Bill was to repeal the ‘antiquated’ and ‘obsolete’ Vagrants Act and replace it with legislation to address the needs of a modern community (QLA (Spence) 2004a, p. 2396). The minister explained that the section 6 public nuisance offence provided ‘a means of ensuring that a person lawfully enjoying the facilities of a public place is not interfered with by the unlawful activities of another’ (QLA (Spence) 2004a, p. 2397).

Again the new public nuisance offence received bipartisan support. There was, however, significantly more debate on the topic than at the time of its initial enactment, despite the offence being the same as the existing law in section 7AA of the Vagrants Act. It appears that a number of events during the period in which the Summary Offences Bill was being debated in parliament contributed to the heightened interest in the subject.

First, a number of incidents occurred in the Brisbane CBD that attracted a great deal of media, public and political attention. These incidents included an alleged rape in the Queen Street mall, and two young men being bashed to death, one at a taxi rank and one sitting on a bench outside a city hotel (Heffernan 2004, p. 6; McKenna 2005, p. 3). Brisbane’s Lord Mayor, Campbell Newman, publicly claimed that he felt safer in New York City than in Brisbane’s centre:

We never felt unsafe, we never saw drunken incidents, we never saw fights, we never saw people screaming obscenities, we never saw people urinating on the footpath or in the bushes or things like that — you’ll see all that on a Saturday night in Brisbane.  
(Cited in ABC Online 2005, p. 1)

Lord Mayor Newman argued that there was not a strong enough police presence in the CBD and that there was an inadequate police response to calls for service in this area to incidents and disturbances including assaults, property crimes, harassment of pedestrians, ‘chroming’, urinating in public, begging and alcohol-induced offences. He claimed that the rate of police failing to attend incidents recorded and notified by Brisbane City Council security staff was 41 per cent (cited in Griffith 2004, p. 3). The Queensland Government response to this controversy included convening a summit in February 2005 to discuss safety concerns and possible solutions to violence in and around licensed premises in Brisbane, and the development of a Brisbane City Safety Action Plan to improve the management of alcohol and crime in the Brisbane CBD.

The section 6 public nuisance offence was passed by parliament on the eve of this safety summit. The Hon. JC Spence publicly stated that the Summary Offences Act would help police to respond to alcohol-fuelled and offensive behaviour in Brisbane’s CBD as the laws allowed police to intervene in lower-level offences and prevent them from leading to more serious offences such as assault and rape (Spence 2005a).

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2 The dissenting decision of McMurdo P in *Coleman v. Power* in the Queensland Court of Appeal ([2001] QCA 539 at [1–33]) raised uncertainty about whether an offence of ‘insulting’ words pursuant to the old offence was invalid for constitutional reasons. The majority of the High Court subsequently decided that the old offence provision regarding ‘insulting words’ was not invalid; see [2004] HCA 39 per Gleeson CJ, Hayne, Gummow, Callinan, Heydon and Kirby JJ. The new public nuisance offence no longer includes a reference to ‘insulting words’ (see s. 7AA Vagrants Act and s. 6 Summary Offences Act; see also Chapters 4 and 5 for further discussion of the differences between the old offence and the new public nuisance offence).

Second, and quite distinctly, there was increasing advocacy and concern expressed publicly by those such as the Caxton Legal Centre and Legal Aid Queensland, suggesting a harsh impact of the selective enforcement by police of the new public nuisance offence on disadvantaged populations such as the homeless, Indigenous people, mentally ill people and young people (see Mathewson 2005; Heffernan 2004). It was claimed that the new public nuisance offence significantly broadened the old offensive language and behaviour provision, allowing police to ‘arrest virtually anyone’ (Mathewson 2005; Heffernan 2004). These concerns were linked to the publication of research by Dr Tamara Walsh that claimed to show a ‘dramatic increase’ of 200 per cent in prosecutions for offensive language and behaviour in Brisbane since the new public nuisance offence was introduced (Walsh 2004b, pp. 20–1).<sup>3</sup> These results were reported in the media, with Walsh quoted as saying that prosecutions for the offence were commonly ‘ridiculous’ because of the minor nature of the behaviour involved (Heffernan 2004; Mathewson 2005). She also stated:

What we see coming through in the statistics is that huge percentages of these people are Indigenous. Huge percentages of them are young. Huge percentages of them are poor, homeless. I think that’s why Indigenous people get so frustrated because they see this happen time and time again — people being arrested when they just should have been left alone. (Cited in Mathewson 2005)

Concerns about the use of the offence were also highlighted when, on 19 November 2004, Cameron Doomadgee (Mulrunji) died in police custody on Palm Island after his arrest for allegedly creating a public nuisance. Many commentators have suggested that the arrest of Mulrunji for public nuisance was inappropriate and arguably unlawful (see, for example, Morreau 2007, p. 9; HREOC 2006, p. 1; see also the further discussion in Chapter 14.)

During the final debate on the Summary Offences Bill, the Hon. JC Spence explained that the government’s intention in introducing the Bill was to ‘address justified community concern’ (QLA (Spence) 2005a, p. 263). Dr B Flegg, then Deputy Leader of the Queensland Opposition, also stated the importance of addressing community concerns:

Law and order, particularly in relation to street crime ... are of considerable concern to the community. The community wants this parliament to give the police effective and practical powers to deal with people creating a nuisance. (QLA (Flegg) 2005, p. 153)

During the course of the debate, a number of other parliamentarians also referred to the importance of:

- the community’s safety and ensuring that police can protect law-abiding members of the community (see, for example, QLA (Johnson) 2005, pp. 139–40; QLA (Horan) 2005, p. 252)
- dealing with behaviour occurring in parks or other public places that frightens or intimidates people (QLA (Foley) 2005, p. 151; QLA (English) 2005, p. 145)
- the need for ‘tough legislation’ to provide police with powers to ‘crack down’ on drunken and thuggish behaviour (QLA (Johnson) 2005, p. 142; see also QLA (Foley) 2005, p. 150)

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3 Our results do not support these claims (see Chapter 8).

- allowing police to take immediate action to intervene and prevent public nuisance offences and serious criminal offences being committed, particularly in relation to intoxicated people (QLA (Male) 2005, p. 151; QLA (Menkens) 2005, p. 173; QLA (Sullivan) 2005, pp. 255–6; QLA (Spence) 2005a, p. 267)
- ‘zero tolerance’ of anti-social behaviour (QLA (Messenger) 2005, p. 258). For example, one parliamentarian commented:

In relation to zero tolerance, it is not too much to ask that we have a friendly and secure environment for all people; we do not want to see Brisbane or any other of our showcase cities being frequented by people in a drunken and irresponsible state. That will not only turn clean, free living people away but also put fear into many who venture into the areas in question. We must develop and nurture pride in our communities and together we must change the negative attitude and anti-social behaviour of some elements of our society to give our state an image of security, friendship and prosperity. If we have to wear the stigma associated with anti-social behaviour, it is going to have long term dire consequences on the liveability and prosperity of our cities and the enjoyment of life of our citizens. (QLA (Johnson) 2005, p. 141)

The Hon. JC Spence explicitly stated that the Queensland police do not operate on zero-tolerance policing strategies but rather ‘we ask our police to use discretion, and that is why laws such as this work in this state’ (QLA (Spence) 2005a, p. 267).

The role of police in exercising their discretion to enforce the public nuisance law was frequently acknowledged as being vital to achieving the right balance between the rights and liberties of individuals and the rights of the community as a whole. Parliamentarians commented, for example, that:

- the legislation must be used by police with ‘commonsense’ (QLA (Cunningham) 2005, p. 253; see also QLA (Shine) 2005a, p. 142)
- the legislation must not be acted on in ways ‘contrary to its intent’ or with ‘zealousness’ (QLA (Pratt) 2005, p. 179; QLA (Sullivan) 2005, p. 256)
- the courts would play a significant role in ensuring that the legislation is implemented fairly and appropriately (QLA (Fenlon) 2005, p. 179).

Direct reference was made to the published research of Walsh (QLA (Shine) 2005a, p. 142) and several parliamentarians also raised concerns about the impact of the public nuisance offence on ‘street people’ or the marginalised — the homeless, young people, Indigenous people and the mentally ill (QLA (Nelson-Carr) 2005, p. 170; QLA (Sullivan) 2005, p. 255).

In their assessment of the Summary Offences Bill, the Scrutiny of Legislation Committee (2004, pp. 25–34) raised a large number of concerns over the proposed public nuisance provision (despite the fact that it was not a new offence and that these concerns were not raised in their earlier report). The committee (2004, pp. 25 and 34) expressed concern about the recent Queensland research published by Walsh (2004b) suggesting the apparent use of public order offences by police in a way that impacted disproportionately on disadvantaged groups. In particular, the committee cited Walsh’s research suggesting ‘that up to 60% [of public order offenders] are homeless or at risk thereof, 41% are Indigenous, 39% are aged between 17 and 25 years and 10% have impaired capacity’ (Scrutiny of Legislation Committee 2004, p. 25). The committee identified its particular concerns about the public nuisance offence as follows:

- that the breadth and imprecision of the public nuisance offence meant that the provision might go well beyond the legitimate achievement of its stated objective (the committee’s examination of this aspect included consideration of the constitutional issues and the judgments in *Coleman v. Power* [2001] QCA 539, [2004] HCA 39)
- that there were no defences or excuses for the offence of ‘public nuisance’ provided for in the offence-creating provision

- that it would be difficult to argue in most circumstances that an arrest for an offence of public nuisance was unlawful, even after dismissal of the charge by a magistrate; the offence was drafted so widely that a police officer could reasonably suspect that a person had committed the offence, and this would give rise to the power to arrest.

Without any alterations being made as a result of the concerns raised, the section 6 Summary Offences Act public nuisance provision was passed with bipartisan support and came into effect on 21 March 2005.

## WHAT WAS THE FOCUS OF THIS REVIEW?

The legislative requirement that the CMC review and report on the use of the public nuisance offence came with the introduction of the new public nuisance offence (s. 7AA Vagrants Act) and was also included when the new offence was transferred to the Summary Offences Act (s. 7). The legislation does not provide further guidance as to the Queensland Parliament's expectations of the review or key questions for us to examine. The legislation does, however, specify that the review was to be conducted 18 months after the introduction of the new public nuisance offence.

This review was conceived in the context of the discussion and debate outlined above which suggested that the new public nuisance provision had introduced a significant change in the operation of Queensland's criminal justice system, that the law had been broadened and that a greatly increased number of prosecutions for offensive language and behaviour resulted. We therefore set out to answer the following question:

### **What was the impact of the introduction of the new public nuisance offence?**

In conducting the review, our attention was necessarily drawn to the broader concerns that are applicable to public order offences and policing generally. They have a long history of debate and discussion and are highlighted in the research literature. Therefore a secondary focus of the review became:

### **Are Queensland's public nuisance laws being used properly, fairly and effectively?**

## HOW DID WE CONDUCT THE REVIEW?

### HOW DID WE CONDUCT THE REVIEW OF PUBLIC NUISANCE?

Our review brings together information we have obtained from:

- seeking people's views in consultations and submissions
- analysis of Queensland criminal justice system data, including data provided by the Queensland Police Service (QPS/the police) and Queensland courts
- a review of relevant literature, including empirical research and similar reviews conducted in other jurisdictions
- a legal analysis comparing the old and the new public nuisance offence and relevant case law.

#### Consultations and submissions

We conducted consultations in a range of locations across Queensland, including Brisbane, Cairns, Ipswich, Maroochydore, Mount Isa, Southport, Toowoomba and Townsville. In total, we held 27 consultation meetings involving more than 120 representatives from various stakeholder groups.

We met with police in all of the locations in which consultations were held, as well as some police from areas nearby. The majority of these police were operationally involved in policing public space. We also met with police involved in developing QPS training and guidance regarding the policing of public space, and with senior management of the QPS.

In all the locations in which we consulted we also met with representatives from at least one of the following groups:

- Legal Aid Queensland (LAQ)
- Aboriginal and Torres Strait Island Legal Service (ATSILS)
- Queensland magistrates
- local government councils
- non-government organisations.

We publicly called for submissions and provided an issues paper entitled *The new public nuisance offence provision: an issues paper* (CMC 2006). We received 24 submissions in response. These were made by:

- Aboriginal and Torres Strait Island Legal Service (South)
- Bar Association of Queensland
- Brisbane City Council (oral submission)
- Caxton Legal Centre
- Chief Magistrate
- Department of Communities
- Family and Prisoners Support
- Legal Aid Queensland
- Coalition Against Professional Abuse

- Queensland Public Interest Law Clearinghouse (QPILCH)
- Queensland Council for Civil Liberties
- Queensland Police Service
- Operations Support Command, Queensland Police Service
- Pine Rivers District, Queensland Police Service
- Rights in Public Spaces Action Group (RIPS)
- Dr Tamara Walsh, University of Queensland
- Townsville City Council
- Youth Advocacy Centre
- private citizens and anonymous sources.

***What were the views expressed about the new public nuisance provision?***

The views provided by the police generally indicated that:

- the new public nuisance offence is an ‘invaluable tool’ for maintaining public order and for preventing the escalation of disorderly behaviour into more serious acts of violence or property destruction (submission by QPS, p. 4)
- it provides a way of getting intoxicated or violent offenders ‘away from the public’ until they are no longer a risk to themselves or others (QPS (Fortitude Valley) consultations, 10 October 2006)
- it is useful when other powers are not available (for example, ‘when move-on powers are not going to work’) or issues of proof for other offences are problematic (for example, when there has been a fight or an assault and no-one wants to make a complaint) (QPS (Townsville) consultations, 11 September 2006)
- changes in the number of public order offences detected by police are more likely to be a result of change in police strategies and resources regarding public order policing than a result of the change in the legislation (see, for example, QPS (Fortitude Valley) consultations, 10 October 2006; QPS (Toowoomba) consultations, 25 September 2006).

Submissions from and consultations with local governments indicated that their view was generally supportive of any legislation and action that might increase the safety of individuals using public spaces. Consultations did reveal that, despite the general support for this type of legislation from local government, there was concern about the potential for a negative and disproportionate impact on marginalised groups and possible displacement of the problem from highly policed areas to less highly policed areas (see Brisbane City Council oral submission, 4 September 2006; Brisbane City Council consultations, 4 September 2006; Cairns City Council consultations, 19 September 2006; Townsville City Council consultations, 12 September 2006).

Other views expressed to the review indicate some polarisation of opinions about the public nuisance offence. This is indicative of the broader debates about the policing of public space. After the enactment of the new public nuisance offence, and also during this review, a number of government and community stakeholders (including Legal Aid Queensland, the Caxton Legal Centre, the Youth Advocacy Centre and the Rights in Public Space Action Group) expressed concerns about the operation of the new public nuisance provisions. The key concerns were:

- the breadth of the provision and the scope for police to ‘over-use’ it (resulting in a wider range of behaviours being identified as public nuisance and a greater number of individuals being identified as public nuisance offenders)

- the possibility that, because of their higher levels of public space use, individuals from certain disadvantaged social groups — for example, youth, Indigenous populations, the homeless, the mentally ill or impaired, and chronic alcoholics — would be disproportionately identified as public nuisance offenders
- the potential for these individuals to be sentenced to imprisonment and given fines for relatively minor public nuisance offences; these individuals may be unable to pay because of their disadvantaged status
- the potential for police to use public nuisance charges as an ‘easy’ means to arrest an individual; the inappropriate use of public nuisance where an alternative charge exists or in addition to other charges
- the potential for police to provoke public nuisance offences; the potential for the policing of public nuisance offences to increase other offences such as resisting arrest and disobeying, obstructing or assaulting police
- the lack of defences to public nuisance charges provided in the legislation.

## What data did we use in this review?

To consider the use of the public nuisance offence in Queensland and assess the impact of the introduction of the new public nuisance offence, we analysed QPS data and Queensland courts data on recorded public nuisance offences over two comparable 12-month periods:<sup>4</sup>

1. The 12 months preceding the introduction of the new public nuisance offence, 1 April 2003 to 31 March 2004
2. The 12 months after the introduction of the new public nuisance offence, 1 April 2004 to 31 March 2005.

As well as comparing the data for these two periods, we examined the data for the whole two-year period in order to examine public nuisance offending in Queensland more generally.

### **Police data**

The QPS data used in this review were principally crime report data from the QPS Crime Reporting Information System for Police (CRISP) database. At the time this review was being undertaken, the CRISP system was the principal crime reporting system used by the QPS and the main data source for identifying crime trends and patterns (the CRISP recording system has since been superseded). The principal purpose of the CRISP system was to assist operational policing rather than to provide information for research purposes. Public nuisance crime reports recorded by police officers on the CRISP system would not necessarily lead to charges being laid in all cases, and, where charges did eventuate, they would not necessarily always be public nuisance charges (police might ultimately proceed with a prosecution for the offence behaviour as an alternative charge, such as being drunk in a public place, assault or wilful damage).

The police CRISP crime reporting system is based on offence-related incidents. Incidents are events in which one or more individuals are alleged to have committed one or more offences, which may have included one or more victims. This review considers both incidents and all alleged offenders by incident data from the QPS system.

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4 Originally we looked at the data for the 18 months preceding the introduction of the new offence and the 18 months after its introduction. As noted in the legislation, the review was to begin 18 months after the introduction of the new offence. It was evident from our early analysis that these periods were not comparable because of the high level of seasonal fluctuation in the public nuisance offence. Accordingly the detailed analysis for this report was conducted on the comparable 12-month periods.



### ***Queensland courts data***

In addition to QPS data, we considered Childrens Court and Magistrates Court data on public nuisance matters. The data were sourced from the Queensland-wide Interlinked Courts (QWIC) data management system. This system counts 'matters' heard by the courts. A matter will involve a single alleged offender but may involve more than one offence and/or offences from more than one incident.

The police CRISP database and the courts' QWIC databases are organised to count different things and their data are not directly comparable. For further information on the CRISP or QWIC databases and how we used the data in this report, see Appendix 1.

### ***Data limitations***

Because of the nature of the available police and courts data, our consideration of public nuisance in Queensland is limited to a consideration of those public nuisance incidents where police have made a public nuisance crime report, and those matters that have proceeded to be finalised in the Magistrates Courts or Childrens Courts.

The general problems with recorded crime data apply to the public nuisance data considered in this report. (For example, recorded crime levels may reflect the rate at which crime and offenders are reported to or detected by law enforcement and criminal justice agencies; the detection of crimes generally is significantly influenced by the number of police operating in an area and the nature of policing practices in that area. See Appendix 1 for further examples.)

It may be that changes in the number, rate and other details of public nuisance offending recorded by police and courts after the introduction of the new public nuisance offence are the result of the changes made to legislation; however, such changes could also be the result of other factors such as:

- changes in police numbers or policing strategies for policing public spaces; there is significant evidence in the literature that the number of recorded public order offences is highly dependent on police policies and practices, which vary across time and place; this has also been acknowledged by the Queensland Government (see, for example, Spence 2005b)
- changes in the weather, or the staging of large events such as Schoolies Week and the Indy carnival on the Gold Coast, that may alter the number of people using certain public spaces (and the policing of particular public spaces)
- changes in societal attitudes to police, public nuisance offences and public nuisance offenders
- changes in public policy and services that increase or reduce the likelihood or visibility of public nuisance offences (for example, reducing access to public toilet facilities may lead to an increase in public urination offences; moving a social service for drug- or alcohol-affected individuals to an area of high population density may increase the visibility of individuals whose behaviour is likely to be disorderly; introducing 3 am lock-outs from licensed premises is likely to increase public nuisance offences at around these times).

Therefore, in interpreting the data we have tried to take into account the possible impact of factors other than the introduction of the new public nuisance offence itself.

The available data do not allow us to definitively answer all the key questions identified for consideration by the review and we highlight throughout this report the limitations of the data that must be taken into account.

For example, we also recognise that many public nuisance behaviours may alternatively be charged as other public order offences (for example, 'drunk in public place') or dealt with by the use of police move-on powers. In this review we were not able to monitor trends in the use of these alternatives to see how they may impact on the use of the public nuisance offence because:

- police data on the offence of 'drunk in a public place' were not available
- move-on powers were not uniformly available to police across Queensland during the period with which we are concerned in this review.

(The requirement that the CMC also review move-on powers will now provide an opportunity to consider the relationship between the use of public order offences and move-on powers more broadly.)

## **WHAT ARE THE KEY QUESTIONS WE CONSIDERED IN THIS REVIEW?**

In reviewing the impact of the introduction of the new public nuisance offence, we considered:

- the nature and circumstances of public nuisance offences
- the number and rate of public nuisance incidents
- where public nuisance offending is occurring
- the age, sex and Indigenous status of public nuisance offenders
- the recidivism of public nuisance offenders
- how public nuisance offences proceed through the criminal justice system, including the penalties and sentences provided for public nuisance offending.

In examining the broader concerns about whether or not Queensland's public nuisance laws are being used properly, fairly and effectively, we considered:

- Are police appropriately exercising their discretion in dealing with public nuisance behaviours?
- What are the issues or community 'signals' that influence police response to public nuisance?
- Is the offence appropriate to the goal of increasing public safety?
- Do police have appropriate powers to respond to incidents in public spaces?
- Are the courts able to respond appropriately to charges of public nuisances?

## WHAT CAN WE LEARN FROM PREVIOUS RESEARCH INTO POLICING PUBLIC ORDER?

### WHY ARE PUBLIC ORDER ISSUES IMPORTANT?

Australian empirical research clearly indicates that public order incidents contribute to fear of crime. Peter Grabosky's (1995, p. 3) review of Australian research shows that 'incivilities',<sup>5</sup> including 'the frequent presence of drunks, vagrants, or unruly gatherings of young males', induce a fear of crime in some people as these seem to suggest that the location in question is 'out of control'. Grabosky states that 'fear of crime is very much higher in those Australian neighbourhoods where it is common for unruly young people to congregate'. He admits that incivility may be in the eye of the beholder — one person's incivility is another person's fun — but states that the association between fear of crime and perceived concentration of rowdy youth in a neighbourhood 'is one of the more consistent and striking findings to emerge from recent research on the fear of crime' (1995, p. 3).

Likewise, in the United Kingdom there are data providing 'clear evidence that some residents — especially in the poorest communities — find incivilities both emotionally distressing and threatening to their sense of neighbourhood safety' (Bottoms 2006, p. 1). The British Crime Survey (an annual victim survey of approximately 50,000 respondents living in private households in England and Wales) reveals, for example, that many members of the public regard 'teenagers hanging around' as a significant problem in their area, especially where the youths were 'loud, noisy or rowdy', 'used bad language' or were 'drinking' (Bottoms 2006, pp. 243–5). For those who experienced 'young people hanging around' as a problem, most described their emotional reaction as 'annoyed' but many also felt 'angry' and 'worried' (Bottoms 2006, p. 259).

There have been several criminological theories that address the problem of why, when asked about their experiences and anxieties concerning crime, members of the public consistently attach considerable significance to issues of physical and social disorder (Bottoms 2006). Innes's notion of 'signal crimes' and 'signal disorders' helps to explain why disorderly events occurring in public space are the most commonly identified 'top signals' that an area is 'out of control' (cited in Bottoms 2006, p. 257). The theory suggests that some crime and disorder incidents matter more than others to people in terms of shaping their risk perceptions. Top signals are those that may cause ordinary people to reconsider as 'risky' certain places, people or situations they could encounter in their everyday lives. Signal crime and disorder theory may help explain why research can show that, even when crime rates and victimisation rates may be falling, public anxiety about crime often remains high, with most people believing that crime rates continue to increase (Bottoms 2006, p. 256).

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5 The terms 'anti-social behaviour', 'incivilities' and 'disorder' are often used interchangeably in the research literature, and they are also used in this way in the following discussion. They are frequently defined broadly and are used to refer to litter, vandalism, graffiti and other aspects of the built environment that reflect a general state of disrepair, in addition to public drunkenness, offensive behaviour, drunken violence, or the presence of groups of young people hanging around (see Grabosky 1995, p. 3; Bottoms 2006, p. 243).

## What relationship is there between public disorder and other crime?

The best known of the criminological theories linking disorder or incivility to crime is the 'broken windows' theory. In 1982, James Q Wilson and George Kelling published a magazine article entitled 'Broken windows: the police and neighbourhood safety'. The authors asserted that crime and disorder are 'inextricably linked' in a developmental sequence (1982, p. 31). More specifically, they claimed that community tolerance of physical disorder such as broken windows, graffiti and other acts of vandalism, and of social disorder such as aggressive begging, prostitution, public drinking and public urination, sends a signal that there is a lack of control in the area. Criminals become 'emboldened by the lack of social control' (Kelling, quoted in Brook 2006) and serious crime ensues. Kelling and Coles (1996) later claimed that fear of crime on the part of law-abiding citizens contributes to the escalation in seriousness of criminal behaviour in neighbourhoods, a process described by Katz, Webb and Schaefer (2001, p. 827) in the following terms:

Visible disorder, if left uncontrolled, heightens citizens' fear of crime and leads them to fear that a neighbourhood is unsafe. After citizens begin to feel unsafe, they withdraw from the community, both physically and psychologically, by reducing their public presence and severing social ties with other residents ... After residents withdraw ... informal social control mechanisms break down. Residents are no longer present to supervise youths or others in the community who are prone to mischief and misbehaviour, and no longer feel a mutual responsibility to react to such behaviour ... As a consequence, more serious forms of disorder begin to materialise; eventually these lead to an increase in serious crime ... Intervention, according to the hypothesis, must occur at the first sign of disorder to prevent the neighbourhood from spiralling deeper into decline.

The theory has a commonsense appeal, and it became enormously influential during the 1990s after the New York Police Department (NYPD) embraced it as the rationale for 'zero tolerance' policing of petty crime and disorder, despite the paucity of empirical evidence supporting its adoption (Dixon 1999, p. 3). In 1994, the newly appointed New York City mayor, Rudolph Giuliani, and his first chief of police, William Bratton, embarked on a campaign of 'reclaiming the streets' (Cunneen 2004, p. 153) by exhorting and empowering the NYPD to crack down on minor crime and disorder. The pair claimed credit for very significant reductions in recorded crime, including homicide, which Bratton attributed solely to the actions of the NYPD (Bratton 1997), despite similar reductions occurring elsewhere in the United States where policing did not focus principally on petty crime and disorder. Many commentators (see, for example, Bowling 1999; Brereton 1999; Cunneen 1999; Dixon 1999) have expressed scepticism about the claims made by Bratton, citing instead social, economic and demographic changes, and other changes in policing, as factors contributing to the fall in recorded crime in New York (which began, incidentally, before the arrival of Giuliani and Bratton) and in other US cities in the 1990s (Newburn & Jones 2007, p. 226).

Although the rhetoric of 'zero tolerance' gained popularity among politicians on many continents during the 1990s, Bratton and Kelling came to distance themselves from the phrase, as did senior police figures outside New York (Newburn & Jones 2007, p. 235). Several studies have emerged that challenge the validity of the 'broken windows' thesis itself (as distinct from merely contesting the claims made for the achievements of the NYPD).

For example, Ralph Taylor (1999, 2001) conducted a longitudinal study investigating the relationship between incivilities (physical and social disorder) and changes in recorded crime in Baltimore over 13 years from the early 1980s. Taylor found that, although there was some evidence that incivilities had an impact on crime changes, that impact was not consistent across crimes or type of incivility, and he concluded that his results indicated that it was unjustifiable to adopt zero tolerance policing in preference to other community

policing strategies (1999, pp. 10–11). More generally, Taylor (2001) asserts that economic decline is a far more significant contributor to recorded crime levels than are incivilities.

Sampson and Raudenbush (1999, 2001) undertook a detailed study of 196 neighbourhoods in Chicago in 1995. They found that, contrary to the ‘broken windows’ thesis, ‘the relationship between public disorder and crime is spurious except perhaps for robbery’ (1999, p. 603). Instead, the researchers concluded that crime and disorder stem from ‘structural characteristics specific to certain neighbourhoods, most notably concentrated poverty’ (2001, p. 2). For Sampson and Raudenbush (2001, p. 4), the social cohesion and mutual trust among residents of an area, in conjunction with their willingness to intervene to exercise control over social space for the common good — a combination they termed ‘collective efficacy’ — explained lower rates of crime and disorder after taking account of structural characteristics such as disadvantage. Sampson and Raudenbush concluded that there are other more effective strategies for tackling crime, rather than focusing on policing disorder:

The active ingredients of crime seem to be structural disadvantage and low levels of collective efficacy more than disorder. Tackling public disorder as a means of reducing crime leaves the common origins of both, but especially the latter, untouched. Perhaps more effective would be an approach that focuses on how residents’ efforts to stem disorder may reap unanticipated benefits in greater collective efficacy, which in turn would lower crime in the long run. (2001, p. 5)

Despite the empirical studies that convincingly point to the flaws in a zero tolerance policing strategy that aims to reduce crime by cracking down on minor crime and disorder, it should be remembered that these studies (and other research) continue to suggest that there is some relationship between disorder and crime — but it is perhaps not as consistent or as strong as the ‘broken windows’ theory would suggest. For example, there is evidence that:

- the involvement in crime of persistent offenders is a reflection of a general pattern of anti-social conduct rather than just a response to some passing criminal opportunity; persistent offenders tend to be highly versatile in their anti-social behaviour (see Weatherburn 2004, p. 61)
- police believe there is the potential for routine incidents of public nuisance to escalate to more serious, especially violent, offences (Deehan, Marshall & Saville 2002).

## WHAT ARE THE ‘CAUSES’ OF PUBLIC ORDER OFFENDING?

The ‘causes’ of public order offending are complex and varied, as is the case with other types of criminal offending (see Weatherburn 2004, pp. 52–76). The criminological literature that focuses in particular on public order offending can be categorised into two distinct and largely unconnected areas of research:

1. The relationship between alcohol and disorder — or, as we refer to them in this review, ‘party people’ as public order offenders.
2. The over-representation of marginalised groups, or ‘street people’, as public order offenders.

The vast bulk of the research literature does not focus on the aspect of the policing of disorder or incivility associated generally with the behaviours of young men who have consumed large amounts of alcohol at licensed premises, but rather on the impact of public order policing on over-represented marginal or disadvantaged populations such as Indigenous people or young people. This may be explained partly by the fact that, as Grabosky (1995, p. 4) notes, police public order powers have tended to be used most visibly against disadvantaged minorities, or perhaps by public order policing of ‘street people’ being more problematic than public order policing of ‘party people’.

## **The relationship between alcohol and public disorder**

Australian empirical research has shown that the links between alcohol and disorder (although not necessarily public disorder) are strong. For example:

- The results of the 2004 Australian National Drug Strategy Household Survey show that more than 4 million Australians each year are verbally abused by someone affected by alcohol, while a further 2 million are 'put in fear' by persons under the influence of alcohol, and nearly half a million Australians are physically abused by persons under the influence of alcohol (Australian Institute of Health and Welfare 2005, p. 48; see also Makkai 1997).
- Similarly, the Alcohol Education and Rehabilitation Foundation found that over the Christmas/New Year period in 2007 more than 2.2 million Australians experienced physical and/or verbal abuse and 2.4 million had concerns over their or another person's safety because of persons affected by alcohol (Alcohol Education and Rehabilitation Foundation 2008).
- Self-report data indicate that those committing alcohol-related crime or disorder tend to be young, be male, have income, and report either consuming alcohol at harmful levels or being binge drinkers (Makkai 1998).

There is also Australian empirical research that specifically links alcohol and public disorder. For example:

- A study conducted by the NSW Police Service found that 77 per cent of public order incidents (assaults, offensive behaviour and offensive language) were alcohol related in that the perpetrators had consumed alcohol within a few hours before the offence. In addition, 60 per cent of all alcohol-related street offences in this study occurred on, or in the vicinity of, licensed premises and 91 per cent occurred around the closing times of bars, from 10 pm to 2 am (Ireland & Thommeny, cited in Stockwell 1997, p. 12; Briscoe & Donnelly 2001, p. 2).
- Research conducted by the NSW Bureau of Crime Statistics and Research shows a clear link between the amount of alcohol sold in a neighbourhood and the rate of assault, malicious damage to property and offensive behaviour (Stevenson 1996; Stevenson, Lind & Weatherburn 1999; Briscoe & Donnelly 2002).

Research conducted by the British Home Office indicates that alcohol-related crime and disorder associated with city-centre entertainment districts place a huge burden on police (Deehan, Marshall & Saville 2002; Home Office 2003).

Commentators have argued that policing to reduce alcohol-related disorder can improve by focusing not only on the traditional responses or reactive policing but on the development of integrated multi-agency approaches that include a focus on regulation of the drinking environment — for example, by enforcing laws that require the responsible service of alcohol at the small number of licensed premises that can be identified as strongly associated with crime and disorder (see Hauritz et al. 1998; Homel 1997, p. 1; Homel et al. 1997; Homel & Clark 1994, p. 1; Weatherburn 2004, p. 101; see also Deehan, Marshall & Saville 2002; Home Office 2003).

## **Over-representation of marginalised groups**

It is well known that Indigenous people and young people are over-represented generally in the criminal justice system. This over-representation is pronounced for public order offences (NSW Bureau of Crime Statistics and Research 1999; Taylor & Bareja 2002; see also Cunneen and White 2007; QPS 2007d, p. 90; Reiner 1997, 2000; Wundersitz & Skrzypiec 2005).

Many commentators also argue that public order policing disproportionately impacts on other marginalised groups such as the homeless and the mentally ill or impaired.

The empirical evidence in this regard is not strong, as homeless people and the mentally ill or impaired are more difficult to identify within the criminal justice system data, so research on these groups tends to rely on observational data (see, for example, Legal Aid Queensland 2005; Walsh 2003, 2004a, 2004b, 2005a, 2005b, 2006a, 2006c).

Explanations of the over-representation of marginalised populations as public order offenders tend to focus on three (related) arguments:

1. That public order problems arise as a result of fundamental changes in our society, including the changing and 'contested' nature of public space.
2. That these over-represented marginal groups spend more time in public spaces than others, are more visible to the police and are therefore more likely to be charged with public order offences.
3. That the exercise of police discretion or selective enforcement plays a role in the over-representation of disadvantaged groups.

### ***The changing and 'contested' nature of public space***

A prominent theme in the literature is that, as our urban spaces have become more intensively used, the patterns of the use of space have changed. The processes of 'privatisation, corporatisation and marketisation' have seen privately owned shopping centres increasingly becoming sites for the delivery of core public services such as bus interchanges, post offices and libraries (Crane 2000, p. 106; see also von Hirsch & Shearing 2000). Business and corporations are increasingly involved in the management of key public spaces, for example shopping malls and public recreation areas such as Brisbane's South Bank (which is operated by a corporation). Increasingly the public-private space dichotomy is an inadequate tool for understanding, planning and managing space; terms such as 'mass private property' or 'quasi-public' space have been used in the literature to reflect these changes (Crane 2000, pp. 106-7; Shearing & Stenning 1981; von Hirsch & Shearing 2000; Gray & Gray 1999).

Many commentators argue that the change in use of space in modern society has led to tensions emerging for a range of parties as public space has become increasingly 'contested' (Crane 2000, p. 106; Malone 2002). These tensions or contests are commonly said to involve police, local government, shopping centre management and 'customers' on one hand, and (most frequently) young people or Indigenous people on the other.

The State's response to the increasingly contested nature of public space is often characterised by commentators as 'exclusionary' and reliant on increasingly assertive policing (see Crane 2000; von Hirsch & Shearing 2000; Wakefield 2000; White 1995). For example, Crane (2000, p. 107) argues that shifts in how public spaces are being used have been accompanied by significant shifts in how various spaces are managed and policed:

- patrolling in many locations has been privatised, with contracted security forces (with state police backup) often engaged to protect the property or customers of hotels, shopping centres and amusement areas (such as South Bank in Brisbane)
- there is increased reliance on strategies that prohibit or regulate access to certain spaces (curfews, move-on powers, admission charges) and electronic surveillance
- practices such as repeated questioning of particular 'types' of people are used.

In Australia, arguments about the contested nature of public space have tended to be focused on young and Indigenous people's use of that space (see, for example, Hil & Bessant 1999; Malone 2002; White 1995, 1998). For example, Cunneen & White (2007, p. 224) state:

The police have been central players in the leisure and spare-time activities of young people, especially working-class young people and Indigenous young people. Young people have used streets, beaches, malls, and shopping areas as prime sites for their unstructured activities, and it is these areas that have received the main attention of state police services.

Perhaps the high-water mark of the characterisation of public order offences as arising from the contested nature of public space can be seen in the work of Chris Cunneen. For Cunneen, public order is a 'legal fiction' used as a means of social, political and economic control of Indigenous people. That control is said to be challenged by those Indigenous people whose behaviour is sought to be regulated, and any perceived crisis in public order is really just the 'contestation over the legitimate use of social space' (1988, p. 192). Cunneen (2001, pp. 191–2; see also Johnston 1991, vol. 2, p. 199) characterises the interaction between the police and Indigenous people in public spaces as a process of the imposition of, and resistance to, colonial authority:

Challenges against police authority and the criminal justice system by Aboriginal people become part of the daily ritual of resistance ... What is defined as public disorder may well represent the active refusal of Aboriginal people to accept their position in the dominant spatial order of non-Indigenous society ... The use of summary offences by police is one way of maintaining authority when there has been defiance or disrespect shown towards them by Aboriginal people. Disrespect in itself can be seen as a form of resistance to police authority ... Policing and resistance can be seen as forming a symbiotic relationship. If there is no challenge to authority, and Aboriginal people accepted a pre-defined position of subservience, the overt forms of policing of Aboriginal people in public places would be unnecessary.

### ***Presence and visibility in public space***

Many commentators concerned about the over-representation of disadvantaged groups such as the young, Indigenous, homeless or mentally ill emphasise that the nature of public order crime is that it is a 'police offence' — that is, it is largely police-generated by police on patrol. This rationale helps explain why public order offences impact most heavily on those who spend large amounts of time in public spaces and whose presence there is said to be highly visible (Johnston 1991, vol. 2, p. 200). For example, Reiner (1997, p. 1011) argues:

Most police resources are devoted to uniformed patrol of public space ... It has long been recognised that the institution of privacy has a class dimension ... The lower the social class of people, the more their social lives take place in public space, and the more likely they are to come to the attention of the police for infractions. People are not usually arrested for being drunk and disorderly in their living rooms, but they may be if their living room is the street ... The overwhelming majority of people arrested and detained at police stations are economically and socially marginal.

A key illustration of this argument is homeless people who spend most or all of their time without privacy, with the result that public order laws tend to criminalise their behaviour:

In all Australian jurisdictions, many basic human functions, such as sleeping, being naked, having sex and going to the toilet, are unlawful or regulated when conducted in public space ... This means that many people are criminalised by reason only of meeting basic human needs whilst living in public space. If these activities were conducted inside a private dwelling, they would be perfectly legal. (Goldie 2002, p. 279)

Legal philosopher Jeremy Waldron (1991, 2000) has analysed the relationship between homelessness, freedom and community. He points out that legislative proscriptions of activities such as sleeping and excreting in public assume that the private and public realms are complementary, and that the home rather than the street or park is the appropriate setting for such basic human functions. However, the fact that the homeless do not have a private realm means that they are denied the freedom to perform essential activities:

The rules of property prohibit the homeless person from any of these acts ... [such as sleeping, washing and urinating] in private, since there is no private place that he has a right to be. And the rules governing public places prohibit him from doing any of these acts in public, since that is how we have decided to regulate the use of public places. So what is the result? Since private places and public places between them exhaust all the places that there are, there is nowhere that these actions may be performed by the homeless person. And since freedom to perform a concrete action



requires freedom to perform it at some place, it follows that the homeless person does not have the freedom to perform them ... If urinating is prohibited in public places (and there are no public lavatories) then the homeless are simply unfree to urinate. These are not altogether comfortable conclusions, and they are certainly not comfortable for those who have to live with them. (1991, p. 315)

In response to an argument that the community has the right to prohibit those activities of homeless people that are regarded as a public nuisance, in order to preserve (or reclaim) public spaces as viable public meeting places where people want to spend their time, Waldron (2000, pp. 404–5, 406) points out that the homeless are members of the community and therefore have a stake in the regulation of public space:

The fact that someone smells bad, looks dishevelled, or is not the person one would choose to associate with does not mean that that he is not a member of one's community. If he is there, on the streets — the very streets that are the basis of one's social, commercial, recreational interactions — then he is a member of the community too. And any story one tells about communal rights and responsibilities must take him and his interests into account

...

We cannot accept ... that the definition of communal responsibilities should proceed on a basis that takes no account of the predicament of the homeless person ... If the norms for public space are to be observed by him, then ... those norms [must] be constructed in part for him as well.

Many commentators make a similar argument that the over-representation of young people, Indigenous people and the mentally ill is also a result, at least in part, of their frequent presence and visibility in public space. For example, it has been argued that:

- Indigenous people are frequently present in public space, and gather to drink in public space, because of cultural and structural factors (Langton 1988, p. 212; Walsh 2006a, p. 19)
- as a result of the de-institutionalisation of the mentally ill since the 1980s, many people with a mental illness now reside in public space (Walsh 2004b, p. 34)
- young people often socialise in public space because they lack private space (Shearing & Stenning 1981; Gray & Gray 1999; Walsh 2006a, p. 20).

### ***Police discretion and selective enforcement***

Much of the research literature is heavily critical of the role of police discretion in dealing with public order issues. Public order offences in general, and offensive language and offensive behaviour in particular, are said to provide police with the widest scope of all offences for selective enforcement on the basis of stereotypes and discriminatory practices (Cunneen & White 2007, p. 152; Walsh 2005b, p. 220).

Robert Reiner's review (1997, 2000) of British and American police research from the 1950s onwards highlights that similar groups in many societies find themselves the focus of police attention (and criminal prosecution) as a result of discretionary police decisions made on the street or at police stations:

Research on police practice has shown consistently that police discretion is not an equal opportunity phenomenon. Some groups are much more likely than others to be at the receiving end of the exercise of police powers. A general pattern of benign under-enforcement of the law disguises the often oppressive use of police powers against unpopular, uninfluential, and hence powerless, minorities. (1997, p. 1010)

Reiner adopts Lee's (1981) terminology, describing such groups as 'police property', a phrase which indicates that the problems associated with the social control of the groups have been left to the police to deal with. More specifically, 'police property' is:

low status, powerless groups whom the dominant majority see as problematic or distasteful ... Examples would be vagrants, skid-row alcoholics, the unemployed or casually employed residuum, youth adopting a deviant cultural style, ethnic minorities, gays, prostitutes and radical political organisations. (2000, p. 93)

Reiner suggests that historically the control and segregation of such groups have been a key function of police work, and that the police are 'armed with a battery of permissive and discretionary laws for this purpose' (2000, p. 93). He claims such groups are liable to a kind of double victimisation: they are both over-policed and yet they are under-protected (1997, p. 1010).

Similarly, in the Australian context, Cunneen argues that the criminalisation of Indigenous people in particular has occurred by reference to notions of social consensus and social order/disorder:

Those who are responsible for public disorder are ideologically separated from law-abiding citizens through their construction as 'criminal'. They are defined outside the social consensus, and outside the community of citizens who are policed within the framework of social consensus. Specifically in relation to Indigenous people, history and politics are evacuated from notions of public order. The history of racial segregation in Australia and the police role in maintaining it are forgotten in the name of a new consensus around public order in which all citizens are defined as having an equal stake. (2001, pp. 181–2).

Cunneen argues that, far from being treated as equal citizens, Indigenous people have been, and continue to be, constructed as 'non-citizens, as not the public, and as inherently "untidy"' (2001, p. 184; see also Havemann 2005). For example, the presence of Aboriginal people in some social spaces has been regarded as warranting civic intervention, such as the removal of public benches from a country town's main street where the use of such seating by Indigenous people 'didn't look nice for tourists' (Cowlishaw 1986, cited in Cunneen 1988, p. 202). Cunneen (2001, p. 189) also notes that the public consumption of alcohol by Indigenous people has been considered particularly problematic, leading to bans, restrictions, arrests for public order offences and attempts at 'zero tolerance' policing in locations across Australia. In Townsville, for example, the presence of Aboriginal people dwelling and drinking in public parks has led the local authority to 'call upon public and private police to cleanse the area through the forced removal of Indigenous people from public places' (Cunneen 2001, p. 189).

Cunneen and White (2007, p. 232) argue that the exercise of police discretion in relation to young people is also strongly influenced by stereotypes:

The police develop expectations regarding the potential threat or trouble posed by certain groups of young people. This leads them to pre-empt possible trouble by harassing those young people whose demeanour, dress and language identify them as being of potential concern. Indeed, distinctions are made between the 'respectable' and the 'rough', the 'haves' and the 'have-nots', and police action is taken in accordance with these perceptions.

In Australia, the degree of cooperation displayed by a youth, together with the seriousness of the offence, have been shown to determine the police officer's decision to deal with the youth in a particular way (Alder et al. 1992). This is consistent with research on police–youth interaction in the United States (for example, Piliavin & Briar 1964).

## WHAT ARE THE POSSIBLE CONSEQUENCES OF PUBLIC ORDER POLICING?

The research literature cautions that public order policing has the potential to generate ill feelings on the part of those on the receiving end of the police response, and to damage relationships between police and certain sections of the community. For example, Cunneen (2001, p. 193) argues that, for many young Indigenous people, public space 'is experienced as a hostile environment' in which police harassment may occur, generating in turn 'a great sense of injustice and anger'.

Certainly, empirical research shows that taking a law enforcement response to public disorder will often result in negative interactions with police that lead to further charges. For example, data show that, for Indigenous people, a single minor offence of offensive language or behaviour can often lead to an altercation with police that results in more

serious charges such as resisting arrest and assaulting police (Jochelson 1997). There is also evidence that the New York policing clampdown on disorder was accompanied by sharp increases in the number of complaints and lawsuits alleging police misconduct and excessive force (Greene 1999; Harcourt 1998, pp. 377–80).<sup>6</sup>

Because of these potentially negative consequences, commentators generally urge police to exercise restraint when dealing with disorder or incivility (Loader 2006, p. 215; Bottoms 2006, p. 5). As Grabosky (1995, p. 4) states, ‘coercive street level powers would seem most appropriately employed not indiscriminately as a general strategy, but in those extreme circumstances which a wide cross section of the community would regard as appropriate’. For Loader (2006, p. 215), the police can foster and sustain public security and democracy only by operating as ‘constrained, reactive, rights-regarding agencies of minimal interference and last resort’ — not as oppressive forces facilitating the continued social exclusion and insecurity of ‘police property’ groups.

None the less, there are good reasons for paying close attention to minor offenders and attempting to reduce problems of public incivility, vandalism and social disorder. The evidence of the emotional impact of incivilities and disorder shows that these are not trivial issues for a substantial proportion of people; public perceptions of social disorder appear to heighten concerns about crime. Weatherburn (2004, pp. 100–101) states:

Reducing incivility, vandalism and social disorder is important in its own right. People like to be able to walk down the street or use public transport without suffering verbal abuse and harassment, having to put up with damaged or broken public amenities, having to step over drunks and drug users or being discouraged from using public playgrounds by the debris associated with drug and alcohol use. It is also worth remembering that people disposed to commit serious crime are prone to commit minor offences as well.

## WHAT RESEARCH ON PUBLIC ORDER OFFENCES HAS BEEN DONE IN QUEENSLAND?

Empirical research in Queensland conducted to date has been exclusively focused on the issues relating to the impact of public order policing on marginalised groups or ‘street people’.

- Legal Aid Queensland reported on their Homelessness and Street Offences Project in 2005. This project researched the offences homeless people were charged with and how they were dealt with by the courts.
- A series of articles and reports has been published by Dr Tamara Walsh, based on observational studies conducted in the Magistrates Court in Brisbane and Townsville.

The work of Dr Walsh, in particular, has made a substantial contribution to highlighting the impact of the law on people in poverty and ‘street people’ (see, for example, Walsh 2005c, 2007). Walsh’s research papers and presentations have attracted significant media and public interest. Her work has been influential in the introduction in Queensland of strategies to mitigate the impact, in some circumstances, of public order policing on vulnerable groups including the homeless, the Indigenous, the mentally ill and the young people. Some of Walsh’s results and conclusions, however, are not supported by the evidence compiled in this review. We highlight the differences in our results throughout this report.

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6 In order to consider this issue in Queensland we examined CMC complaints data directly relating to public nuisance offences (under the old and the new offence). However, the small number of complaints arising out of public nuisance situations makes it difficult to detect trends in our data. The profile of complaints against police arising out of public nuisance situations reflects the profile of complaints made to the CMC against police more generally (see CMC 2007, p. 30).

In contrast to much of the previous research conducted, our research highlights that the principal feature of the public nuisance offence is its use to manage the behaviour of mainly young men who have consumed alcohol at licensed premises (that is, the 'party people'). In addition, we agree with the prior research that argues for the careful management of issues relating to the over-representation of Indigenous people and other marginalised groups (or 'street people').

## **Part 2:**

### ***Legal framework***

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## THE BASICS

### WHAT WAS THE OLD OFFENCE?

The new public nuisance offence replaced an earlier offence of offensive language and behaviour (s. 7 Vagrants Act). The old offence did not use the term 'public nuisance' but it covered many of the behaviours included in the new public nuisance offence. The old offence was commonly referred to as the offence of 'disorderly conduct', but it included doing any of the following wide range of behaviours in a public place:

- behaving in a riotous, violent, disorderly, indecent, offensive, threatening or insulting manner
- using any profane, indecent or obscene language or using any threatening, abusive or insulting words to any person
- singing any obscene song or ballad
- writing or drawing any indecent or obscene word, figure or representation.

The old offence made it an offence to do any of the above things in a public place or so near to a public place that a person might hear or see it. It did not matter whether a person was actually in the public place.

The old offence carried a maximum penalty of a fine of \$100 and/or a 12 months' good behaviour bond, or 6 months' imprisonment (with or without a good behaviour requirement).

### WHAT IS A 'PUBLIC NUISANCE' IN QUEENSLAND NOW?

The new public nuisance offence now contained in section 6 of the Summary Offences Act makes it an offence to commit a public nuisance, with a maximum penalty of 10 penalty units (\$750)<sup>7</sup> or 6 months' imprisonment (s. 6(1)).

A person commits a public nuisance offence if their behaviour is both:

- disorderly, offensive, threatening or violent
- interfering with, or likely to interfere with, a person's peaceful passage through, or enjoyment of, a public place (s. 6(2)).

Section 6 states that offensive behaviour will include the use of offensive, obscene, indecent or abusive language and threatening behaviour includes the use of threatening language (s. 6(3)).

A 'public place' is broadly defined to mean a place that is open to or used by the public, whether or not on payment of a fee. It clearly includes places such as shopping centres (see Schedule 2 of the Summary Offences Act).

Section 6 specifically states that it is not necessary for a police officer to receive a complaint about the behaviour before starting any proceedings for the offence (s. 6(4)).

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<sup>7</sup> One penalty unit is \$75; see s. 5 *Penalties and Sentences Act 1992* (Qld).

## HOW DOES QUEENSLAND'S PUBLIC NUISANCE OFFENCE COMPARE WITH THOSE IN OTHER JURISDICTIONS?

It has been suggested that the public nuisance laws in Queensland were, and are, somehow out of step with those of other jurisdictions (see McMurdo P in *Coleman v. Power* [2001] QCA 539 at [18 & 24]; Walsh 2004b, p. 37; cf. Gleeson CJ in *Coleman v. Power* [2004] HCA 39 at [3 & 32]).

Although the precise details do vary, public order legislation of this general kind exists in all Australian jurisdictions, New Zealand and the United Kingdom. Queensland's new public nuisance legislation is comparable to that in other Australian jurisdictions in terms of the range of behaviours covered, the penalty range provided and its broad applicability to public places. (See Appendix 2 for a table providing further details of the key legislation in other Australian jurisdictions.)

### Range of behaviours

Although no other Australian jurisdiction has a specific offence of 'public nuisance' the same as Queensland's, all seek to capture aspects of 'disorderly', 'offensive', 'riotous', 'indecent' and 'insulting' behaviour in their public order offence provisions.

In Victoria, the Northern Territory and Tasmania there are broad 'catch-all' provisions similar to Queensland's public nuisance offence that cover both language and behaviour (see s. 17 'Obscene, indecent, threatening language and behaviour in public' *Summary Offences Act 1966* (Vic); s. 47 'Offensive conduct etc' *Summary Offences Act 1978* (NT); ss. 12 & 13 'Prohibited language and behaviour' and 'Public annoyance' *Police Offences Act 1935* (Tas)).

In some jurisdictions, behaviours included within Queensland's public nuisance offence are the subject of distinct offence provisions. For example:

- Unlike Queensland, which includes specific reference to 'indecent' in the public nuisance offence, the South Australian *Summary Offences Act 1953* provides for separate offences for 'disorderly or offensive conduct or language' (s. 7), 'indecent language' (s. 22) and 'indecent behaviour and gross indecency' (s. 23). South Australia is the only jurisdiction to provide for a distinct offence for public urination and defecation in a public place (s. 24).
- The Western Australian *Criminal Code 1913* provides an offence of disorderly behaviour in public (s. 74A) and separate offences of threatening violence (s. 74), indecent acts in public (s. 203) and obscene acts in public (s. 202).
- The New South Wales *Summary Offences Act 1988* provides separate offence provisions for 'offensive language', 'offensive conduct' and 'violent disorder' (see ss. 4, 4A & 11A *Summary Offences Act 1988* (NSW)).
- Currently, the Australian Capital Territory provides for an offence of offensive behaviour but not offensive language (s. 392 *Crimes Act 1990* (ACT)). However, two new offence provisions, 'disorderly or offensive behaviour' and 'offensive language', have been proposed in the Crimes (Street Offences) Amendment Bill 2007 (ACT).

### Penalty ranges

In all Australian jurisdictions, the courts have the power to impose a fine for public order offences. Some jurisdictions also allow the courts to impose a term of imprisonment (although in some jurisdictions imprisonment is allowed only for certain offences/categories of anti-social behaviours).

- Offensive language and behaviour offences similar to Queensland's public nuisance offence in Victoria, the Northern Territory and Tasmania provide for both fines and imprisonment as penalty options. In these jurisdictions, maximum penalties for a first

offence range from \$300 or 3 months' imprisonment in Tasmania (s. 12 *Police Offences Act 1935*) to \$2000 or 6 months' imprisonment in Victoria (s. 17 *Summary Offences Act 1966*). Victoria and Tasmania provide for a specific scale of fine and imprisonment penalties based on whether it is a person's first, second, third or subsequent offence (see s. 17 *Summary Offences Act 1966* (Vic) and s. 12 *Police Offences Act 1935* (Tas)).

- In New South Wales, imprisonment is a penalty option for 'offensive behaviour' (s. 4 *Summary Offences Act 1988* provides maximum penalties of \$660 or 3 months' imprisonment), but not for 'offensive language' (s. 4A *Summary Offences Act 1988* provides maximum penalties of \$660 or up to 100 hours' community service work).
- In a bid to reduce prison numbers, Western Australia has adopted a policy of no longer allowing terms of imprisonment of less than 6 months for minor offending. The offence of 'disorderly behaviour in public' in Western Australia (s. 74A *Criminal Code 1913*) therefore does not provide imprisonment as a penalty option but provides for a maximum fine amount of \$6000. The separate offence of threatening violence (s. 74), however, carries a maximum term of imprisonment of 12 months and fine of \$12,000. The offence of 'indecent acts in public' (s. 203) provides penalties of \$9000 and 9 months' imprisonment. 'Obscene acts in public' provides penalties of \$12,000 and 12 months' imprisonment (s. 202).
- South Australia (s. 22 *Summary Offences Act 1953* (SA)) provides only for a fine penalty to a maximum of \$250 in relation to its 'indecent language' provision (s. 22) and 'urinating etc in a public place' (s. 24) but provides maximum penalties of \$1250 or 3 months' imprisonment for its 'disorderly or offensive conduct or language' offence (s. 7) and 'indecent behaviour and gross indecency' offence (s. 23).
- The Australian Capital Territory offensive behaviour provision provides for only a fine penalty to a maximum amount of \$1000 (s. 392 *Crimes Act 1990* (ACT)).

Having separate offence categories each with its own penalty regime allows the legislature greater control over the range of penalties and sentences available for particular behaviours, ensuring, for example, that a fine-only penalty is available for indecent or offensive language that does not involve threats of violence (as in New South Wales and South Australia). The legislatures in Victoria and Tasmania have provided for some greater control, also, by specifying different maximum penalties for first, second, third and subsequent offences.

## Intent and breach of the peace

In Queensland, the element of our public nuisance offence explicitly requiring that the offence behaviour must have been such as to potentially or actually provoke a breach of the peace was removed in 1931. At this time the Queensland offence was also expanded to include not just behaviours that were threatening or insulting, but also disorderly, indecent or offensive behaviour 'which might involve no threat of a breach of the peace but which was nevertheless regarded by Parliament as contrary to good order' (see *Coleman v. Power* [2004] HCA 39 per Gleeson CJ at [5–6, see also 6–11]) (see also per McHugh J at [67] and Heydon J at [310], cf. per Gummow and Hayne JJ [163–93], Kirby J at [226 & 258] and Callinan at [287]).

Offensive behaviour and language laws in South Australia and Tasmania continue to explicitly provide that there be an element of intent to provoke a breach of peace or that such a breach of the peace occur (ss. 22 & 23 *Summary Offences Act 1953* (SA); s. 12 *Police Offences Act 1935* (Tas)).



## Actual or likely interference

The requirement under the new offence of ‘actual or likely interference with the peaceful passage’ of a member of the public is unique to Queensland. No other Australian jurisdiction provides explicitly that police may proceed without a complainant, as does Queensland’s (s. 6(4) Summary Offences Act).

## Public place

All similar legislation in other Australian jurisdictions seeks to define ‘public places’ broadly, so as to include areas where the public may be present but which might more accurately be described as private property. The legislation in other jurisdictions commonly captures offending that occurs outside public places but that may impact upon a public place (see ss. 4 & 4A *Summary Offences Act 1988* (NSW); ss. 392 & 393 *Crimes Act 1900* (ACT); s. 17 *Summary Offences Act 1966* (Vic); ss. 22 & 23 *Summary Offences Act 1953* (SA); ss. 74A, 202, 203 *Criminal Code 1913* (WA); s. 47 *Summary Offences Act 1978* (NT)).

In South Australia the relevant legislation appears to extend the reach of the provisions relating to indecent language and indecent behaviour well beyond public places into all places where there is an intent to offend or insult any person in the case of language, or so as to offend or insult in the case of behaviour (ss. 22 & 23 *Summary Offences Act 1953* (SA)).

## ‘Reasonable excuse’

The Queensland public nuisance provision does not provide any specific defences and does not provide for a defence of ‘reasonable excuse’. New South Wales provides the only like Australian legislation to provide a defence of reasonable excuse in its provisions for offensive conduct and offensive language (ss. 4 & 4A *Summary Offences Act 1988*).

## Behaviour directed at police

Behaviour directed at a police officer is commonly prosecuted in other jurisdictions (see, for example, *Police v. Christie* [1962] NZLR 1109; *Melser v. Police* [1967] NZLR 437; *Connors v. Craigie* [1994] 76 A Crim R 502; *DPP v. Carr* [2002] NSWSC 194).

In summary, our comparison of jurisdictions shows that, despite suggestions to the contrary, Queensland’s new public nuisance offence is broadly similar to those in other Australian jurisdictions both in terms of its scope and the range of penalties and sentences provided. In some other jurisdictions, however, the legislature has exercised greater control over the range of penalties available for particular behaviours (such as offensive language) than is provided in Queensland’s broad ‘catch-all’ offence.

## WHAT ALTERNATIVE CHARGES ARE THERE IN QUEENSLAND FOR PUBLIC NUISANCE BEHAVIOUR?

A number of behaviours that could be charged as public nuisance behaviour could also be dealt with under alternative public order offence provisions. These offences include:

- Wilful exposure simpliciter (s. 9(1) Summary Offences Act) — 2 penalty units (\$150) or, if the offence is aggravated by an intent to offend or embarrass a person (s. 9(2)) — 40 penalty units (\$3000) or 1 year imprisonment.
- Drunk in a public place (s. 10 Summary Offences Act) — 2 penalty units (\$150). The Police Powers and Responsibilities Act (s. 378) imposes a duty on police officers to take a person arrested for being drunk in a public place to a place of safety in order to recover from being drunk, if the officer is satisfied that this is a more appropriate course of action than taking the person to a watch-house.

- Consume liquor in a public place (s. 173B *Liquor Act 1992* (Qld)) — 1 penalty unit (\$75). Liquor Act offences can be enforced by both police and Liquor Licensing Officers. While police can still arrest or issue a notice to appear for people in breach of the Liquor Act, they can also issue an infringement notice/on-the-spot fine (known as a SETON or Self Enforcing Ticketable Offence Notice).
- Contravene a direction or requirement of a police officer (s. 791 *Police Powers and Responsibilities Act*) — 40 penalty units (\$3000). For example, where police have directed a person to ‘move on’ under section 48 of the *Police Powers and Responsibilities Act* and that person fails to comply, they may be charged with this offence.

Public nuisance behaviour may also include behaviour that could alternatively be charged with more serious criminal offences — in particular, assault and wilful damage.

The table in Appendix 3 provides a more comprehensive list of other offences under Queensland legislation that compare to public nuisance in terms of the nature of the conduct and their associated penalty range. It also provides a list of police powers most relevant to public order policing.

## HOW MUCH CHANGE DID THE NEW PUBLIC NUISANCE OFFENCE INTRODUCE TO QUEENSLAND LAW?

As described in Part 1 of this report, the view of some members of Queensland's Parliament was that the new public nuisance offence had significantly altered the landscape of public order policing in Queensland by 'tightening' laws surrounding anti-social behaviour (Beattie 2003a; McGrady 2003b, 2003c; Spence 2005a, 2005b). This view was supported by:

- public statements made by the media and groups working to protect the interests of marginalised groups such as homeless people, Indigenous people, young people and the mentally ill; these statements suggested that the new offence had a broader reach and was having an increasingly harsh impact on these groups (see Mathewson 2005, p. 13; Heffernan 2004)
- Dr Tamara Walsh's (2004b, p. 20) research suggesting that the new offence 'allows for the continued selective enforcement of the provision and it has led to a dramatic increase in the number of prosecutions for offensive language and behaviour' (2004b, pp. 20–1 & 36; 2005a, pp. 7 & 10; 2006a, p. 11).

We conducted an analysis of the changes introduced to Queensland's law with the new public nuisance offence in order to understand their scope and significance.

### HOW DOES THE NEW PUBLIC NUISANCE OFFENCE DIFFER FROM THE OLD OFFENCE?

A range of views was provided to us about the possible interpretations and precise legal implications of the new public nuisance offence. For example:

- In the Metropolitan North, Metropolitan South, South Eastern and Southern QPS regions,<sup>8</sup> operational police officers indicated that the new public nuisance offence did not differ substantially from the old one and the range of behaviours covered remained essentially the same.
- In Mount Isa, Cairns and Ipswich, it appeared there was a perception that the new public nuisance offence was broader than the old and could be applied to a much wider range of behaviours (QPS (Mt Isa, Cairns and Ipswich) consultations, 13 September 2006, 18 September 2006 and 29 October 2006).
- In Townsville, police officers generally were of the view that the new public nuisance offence excluded some behaviours that were contained in the old provision, so that they were now more limited in how they could police those behaviours. Specifically, they believed that police could no longer charge individuals for insulting words. This was attributed to the narrower scope of the new provision and its judicial interpretation by the Townsville magistrates (QPS (Townsville) consultations, 20 September 2006).

<sup>8</sup> See Appendix 8 for a map of QPS regions.

The submission of the Chief Magistrate (p. 2) also suggested that, if the evidence did support widely held views that the new offence had led to an increase in charges and an increase in charges for less serious levels of behaviour, these increases might be linked to particular changes introduced by the new offence:

... it is likely to result from the removal of the requirement that the words be used towards a person together with the introduction of the generalised requirement that the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public. The fact that it is not necessary for a person to make a complaint about the behaviour is likely to be another contributing factor.

It is our view that there are five main points of difference between the old offence and the new public nuisance offence. These are:

1. The fine penalty amount has been substantially increased from \$100 to \$750. (The maximum term of imprisonment remains the same at 6 months.) There was no comment made in the parliamentary debates about the increase in the fine penalty amount.
2. The new offence adds the element that the person's behaviour must interfere, or be likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public. This requirement for 'actual or likely interference' represents a change from the old offence, which emphasised that behaviour had to occur in a public place or within a particular proximity to a public place, whether or not any person was in the place (except that threatening, abusive or insulting words had to be directed 'to any person').
3. Under the new public nuisance offence there is no longer a requirement that certain categories of language (threatening, abusive or insulting) need to be directed 'to any person'.
4. The references to 'insulting' and 'profane' language have been omitted in the new public nuisance provision, and a reference to 'offensive' language has been included. Despite this change in wording it can be concluded that there is little substantive change. In the case of *Green v. Ashton*, Skoien SJDC accepts that insulting words may be offensive words under the new public nuisance provision (see [2006] QDC 008 at [14–15]; cf. *Darney v. Fisher* [2005] QDC 206 at [30]). This conclusion is supported by the comments in the second reading speech of the Hon. T McGrady (QLA 2003a, p. 4364) when the new public nuisance offence was introduced:

The amendment does not, in any sense, relax current laws so that a person may feel free to abuse their right to use a public place and, in doing so, cause an unacceptable annoyance or interference to others who also wish to use a public place. I wish to make it clear that the amendment does not give any person the right to use offensive language in front of another in inappropriate circumstances.

5. The drafting of the new public nuisance offence reduces the level of detail required in the wording of the charge given by police to the defendant. Under the new offence an offender may be provided with a charge of 'public nuisance' with no other particulars provided (see s. 6(1) Summary Offences Act; s. 47 *Justices Act 1886* (Qld); *Brooks v. Halfpenny* [2002] QDC 269). In contrast, the old offence was drafted in such a manner that it required police to describe the charge with a greater level of detail to specify the 'limb' of the offence; for example, under the old offence a description was required specifying if offending behaviour was 'disorderly', 'violent', 'indecent', 'offensive' or 'threatening'. (See Chapter 14 in which we discuss some of the implications of this issue.)

(A table in Appendix 4 provides a more detailed comparison of the old and the new public nuisance offence.)

Contrary to the public statements made around the time of the introduction of the new offence, it is our view that, despite the five changes arising from the introduction of the new public nuisance offence, the new offence introduces very little substantive change to Queensland's law. There is no evidence to support the suggestion that the new offence introduced changes to significantly 'tighten' the pre-existing law. This is consistent with Walsh's conclusion (2004a, p. 81) that, despite the changes introduced with the redrafting of the new public nuisance offence, the 'practical effect remains unchanged'.

## WHAT GUIDANCE IS PROVIDED BY THE COURTS ABOUT PUBLIC NUISANCE?

The courts have described the public nuisance offence as being designed to protect citizens' rights to peaceful passage and enjoyment of public places free of 'unacceptable annoyance or interference' from the behaviour of others (*Green v. Ashton* [2006] QDC 008). Gleeson CJ in *Coleman v. Power* [2004] HCA 39 at [12, 23] outlines the general principles of law as follows:<sup>9</sup>

- Concepts of what is disorderly, or indecent, or offensive, vary with time and place, and may be affected by the circumstances in which the relevant conduct occurs (at [12]); the question of whether particular behaviour is disorderly, indecent or offensive will often be a matter of degree (at [11]; see also *Butterworth v. Geddes* [2005] QDC 333 at [8]; *Coleman v. Kinbacher & anor* [2003] QDC 231 at [10]).
- It would be wrong to attribute to parliament an intention that any words or conduct that could wound a person's feelings should involve a criminal offence (at [12]); the offence should be interpreted as having built into it a requirement related to a serious disturbance of public order or affront to standards of contemporary behaviour (at [23]).
- The behaviour prohibited by this section must tend to annoy or insult people 'sufficiently deeply or seriously to warrant the interference of the criminal law' (at [11]; see also *Butterworth v. Geddes* [2005] QDC 333); conduct included would be 'any substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people' or be conduct at least 'likely to cause a disturbance or annoyance to others considerably' (at [11]), or behaviour 'likely to arouse significant emotional reaction' such as anger, resentment, disgust or outrage (*Ball v. McIntyre* [1966] 9 FLR 237 at [13]; see also *Worcester v. Smith* [1951] VLR 31).
- It would not be sufficient that the conduct be indecorous, ill-mannered or in bad taste (at [11]).

It has long been established in law that, although the courts will consider all the surrounding circumstances, including evidence of the (subjective) feelings of hurt or upset caused by the behaviour in question, the courts will determine on an objective basis whether particular behaviour constitutes a public nuisance according to contemporary community standards (see *Del Vecchio v. Couchy* [2002] QCA 9; *Couchy v. Birchley* [2005] QDC 334 at [40]; *Green v. Ashton* [2006] QDC 008 at [12]; *Coleman v. Power* [2004] HCA 39 per Gleeson CJ at [15]).

Two particular questions have been highlighted in the case law. First, what language should be criminalised? Second, what behaviour directed at police officers should be considered an offence?

<sup>9</sup> Although the decision of the High Court in *Coleman v. Power* dealt with the old offence under s. 7 of the Vagrants Act and specific constitutional issues, the general principles outlined by Gleeson CJ continue to provide an accurate summary of the law applicable to the new public nuisance offence.

## Offensive language

What language may be criminalised by the offence? As stated by Gleeson CJ in *Coleman v. Power* [2004] HCA 39 at [15], 'it is impossible to state comprehensively and precisely the circumstances in which defamatory language in a public place will involve such a disturbance of public order, or such an affront to contemporary standards of behaviour, as to constitute the offence'. The same words may be found to be obscene or not, depending on the circumstances and the manner in which they were spoken (see *Butterworth v. Geddes* [2005] QDC 333 at [11]; *Police v. Carr*, unreported, Wellington Local Court, NSW, 8 June 2000; *DPP v. Carr* [2002] NSWSC 194; *Police v. Dunn*, unreported, Dubbo Local Court, NSW, 27 August 1999).

There is evidence in the reported cases to suggest that the courts are reflecting changing community standards over time (see *Police v. Carr*, unreported, Wellington Local Court, NSW, 8 June 2000).

## Language or behaviour directed at police

What language and behaviour solely directed at police officers may be criminalised by the offence? Again Gleeson CJ in *Coleman v. Power* [2004] HCA 39 at [16] provides a description of the relevant law:

- the fact that the person to whom the words in question were directed is a police officer may be relevant but not necessarily decisive
- police officers are not required to be completely impervious to insult.

The law suggests that police must tolerate a different level of behaviour from that applying to other members of the public:

- by their training and temperament, police officers must be expected to resist the sting of insults directed to them (*Coleman v. Power* [2004] HCA 39 per Gummow and Hayne JJ at [200])
- police officers should be thick skinned and broad shouldered in their duties (*Coleman v. Power* [2004] HCA 39 per Kirby J at [258])
- in the case of police officers, for words to constitute an offence the words directed to them must carry an extra sting (*Green v. Ashton* [2006] QDC 008 at [12]) or be reasonably likely to provoke others who hear what is said to physical retaliation against the speaker (*Coleman v. Power* [2004] HCA 39 per Gummow and Hayne JJ at [200]).

Judges have remarked that in many cases the most appropriate course of action for a police officer to whom offensive language or behaviour has been directed will be to turn a blind eye (*Bryant v. Stone*, unreported, Townsville District Court, 26 October 1990; see also Walsh 2005a). A number of court decisions also provide a warning to police that the way they choose to deal with particular incidents may actually provoke an offence or escalate incidents and lead to further offences (*Bryant v. Stone*, unreported, Townsville District Court, 26 October 1990; *Singh v. Duncan*, unreported, Townsville District Court, 11 December 1990; *Police v. Carr*, unreported, Wellington Local Court, NSW, 8 June 2000; *DPP v. Carr* [2002] NSWSC 194 at [37 & 40]; *Police v. Dunn*, unreported, Dubbo Local Court, NSW, 27 August 1999). (For further discussion of this point, see Chapter 14.)

The case law indicates that courts are reflecting changing community standards and providing guidance to the police to ensure that the legislation is implemented fairly and appropriately.





## **Part 3:**

### ***Findings of the review***

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## TO WHAT TYPES OF BEHAVIOUR DO POLICE APPLY THE PUBLIC NUISANCE OFFENCE?

The public nuisance provision, like many of its kind in other jurisdictions, is purposefully vague in that the classification of the behaviour in question is left to the discretion of police and subsequently to the courts. Concepts of what may or may not amount to public nuisance behaviour will vary with time and place, and may be affected by the circumstances in which the behaviour occurs.<sup>10</sup>

Our politicians have made it clear that strict enforcement of the public nuisance offence is not desirable. If police were to act against everyone who behaved in an uncivil or anti-social manner, most of us would face a public nuisance charge at some time or other. The drafting of the offence to allow police discretion and judicial interpretation to play such a significant role, depending on the time, place and circumstances of the behaviour, does mean there is a degree of uncertainty for both the community and police about exactly what behaviour will be criminalised (see, for example, QLA (Johnson) 2005, p. 142; QLA (Shine) 2004, p. 142). This uncertainty is the price we pay for the flexibility and responsiveness allowed for by the public nuisance offence.

A number of submissions and consultations raised concerns that the exercise of police discretion, particularly under the new offence, meant that a range of behaviours that should not have been criminalised have resulted in public nuisance offences (submissions of Caxton Legal Centre, p. 7; Queensland Bar Association, p. 1; RIPS, p. 8; LAQ (Brisbane) consultations, 5 September 2006; LAQ (Gold Coast) consultations, 7 September 2006; LAQ (Cairns) consultations, 19 September 2006). For example, the Caxton Legal Centre (p. 7) submitted that most public nuisance offences were for relatively minor incidents and that even if the behaviour was to continue without intervention 'the majority of the members of the public would not notice'.

On the other hand, concerns were also expressed to the review about using public nuisance as a charge for behaviour that may satisfy more serious criminal charges such as assault or wilful damage (LAQ (Brisbane) consultations, 5 September 2006), or otherwise using public nuisance where a more suitable alternative charge was available. For example, some stakeholders expressed concern regarding the charging of some behaviour as public nuisance as opposed to being drunk in a public place or consuming liquor in a public place (QPILCH, p. 12; Chief Magistrate, p. 3; ATSILS (South), p. 7; see also Caxton Legal Centre, p. 8; submissions of private citizen p. 1; Lee p. 1; LAQ, p. 4).

In order to enhance our understanding of the public nuisance offence and to explore the issues raised in the submissions, we looked at the behaviours and circumstances that resulted in public nuisance offences.

<sup>10</sup> The importance of the circumstances in which a particular behaviour occurs is reinforced by the requirement in the new public nuisance offence itself that the behaviour must interfere or be likely to interfere with the peaceful passage through, or enjoyment of, a public place by a member of the public. (s.6(2) Summary Offences Act).

## HOW DID WE EXAMINE THE BEHAVIOUR AND CIRCUMSTANCES OF PUBLIC NUISANCE OFFENCES?

We were limited in our ability to consider in a quantitative sense the behaviour and circumstances of public nuisance offences in this review. The broad drafting of Queensland's public nuisance offence, combined with the way police and courts data are recorded, means that it is very difficult (if not impossible) to determine the actual frequency with which the new public nuisance offence is enforced in respect of particular categories of public nuisance behaviour, for example disorderly, offensive or threatening behaviour (or particular behaviours within such categories, for example public urination or offensive language). It follows that it is also impossible to accurately quantify any changes in the frequency of particular categories of behaviour, or behaviours, being charged as public nuisance after the introduction of the new offence.

### Examination of police narratives

We were, however, able to consider the behaviours and circumstances of public nuisance offences through qualitative police data. We did this by examining a random sample of narrative information recorded by police in their crime reports database which described the behaviour and the circumstances relating to a public nuisance incident.<sup>11</sup>

We had 2000 crime reports in our random sample, but a large proportion ( $n = 1480$ , 74%) of the associated police narratives were found to have either no details or insufficient details recorded to establish the nature of the behaviour constituting the public nuisance offence. Only 520 of the police narratives contained sufficient information to allow an analysis of the behaviour and circumstances associated with public nuisance. Of these 520 narratives, 354 related only to a public nuisance offence. The remaining 166 narratives related to other offences in addition to public nuisance (such as resisting arrest, assault), making it difficult to determine the behaviour that constituted the alleged public nuisance offence. For accuracy, where we wanted to get some indication of the frequency of particular categories of public nuisance behaviour (such as disorderly behaviour) or particular behaviours (such as public urination) we limited our analysis to the narrative records in which public nuisance was the only offence associated with the crime report.

As noted by other research, narrative descriptions do not provide an unbiased account of the incidents described (see, for example, Jochelson 1997, p. 14). The narrative field does not contain mandatory sections, nor does it instruct police about the kind of information which ought to be recorded within it. Police do not rely on this narrative information to proceed with a prosecution; police are not required to particularise evidence of the offence or describe all its circumstances in this section of the crime report. Therefore, the presence or absence of a particular piece of information does not necessarily mean that an element was present or absent in the circumstances of the offence. For example, just because no other people were mentioned in the narrative, it cannot necessarily be assumed that no other people were present. However, narrative descriptions do provide some information about the sorts of behaviours and circumstances which prompt police to make a crime report of public nuisance (see Jochelson 1997). Narrative descriptions also allow us to compare the types of behaviour and circumstances identified by police as public nuisance offences under the new and the old provisions.

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11 The narrative information we examined is recorded in an open text field of a crime report (CRISP MO field).

## WHAT BEHAVIOURS AND CIRCUMSTANCES ARE DESCRIBED IN POLICE NARRATIVES FOR PUBLIC NUISANCE ONLY OFFENCES?

### Warning

**Some of the narratives presented in this section of the report contain offensive words or phrases.**

The behaviour described in the police narratives ranges from relatively minor and trivial matters such as kicking over rubbish bins to much more serious matters such as fights resulting in serious injuries. This broad range is present in the narratives reviewed under both the old and the new offence.

For the purposes of this discussion we grouped the public nuisance behaviours described in the narratives into four broad categories:

1. offensive language
2. offensive/indecent behaviour, including public urination
3. threatening or violent behaviour
4. disorderly behaviour.

It was not possible to group the narratives into these four broad categories with absolute precision. Often the narratives described a series of behaviours and/or included behaviours that could fall into more than one of these categories of public nuisance behaviour. There are clearly examples of narratives where any number of behaviours described, or all those behaviours together, may have constituted the public nuisance offence.<sup>12</sup> For example:

P1:<sup>13</sup> At the stated time the known juvenile offender has punched his mother and has started throwing stones at Council workers who were controlling traffic at the intersection. The offender has also thrown rocks at passing cars and at parked vehicles. Police have attended and the offender has started yelling at police saying 'fucking [Name], the cunt'. The offender was then arrested and conveyed to [Name] Police Station.

P2: Offender was being evicted from the [Name] Tavern as he had been observed urinating at the public bar. Once the offender was outside the premises, he has thrown a few punches at one of the security officers. Two security officers have then detained the offender until police arrival. Offender was placed into the rear of the police vehicle. Once the reporting officer had entered the front seat of the vehicle, she heard the offender yelling out... 'you fucking slut, you're nothing but a fucking whore, you fucking slut, you fucking slut'.

We provide further explanation of our categorisation of the narratives in our discussion of each of the four groups below.

The narrative information also suggests that there may have been some shifts since the introduction of the new offence — for example, at one end of the scale there was a sense that the new public nuisance offence was being used more often to deal with public urination than was the old offence. At the other end, the new public nuisance offence appeared to be associated with more serious forms of physical aggression than the old offence. However, our overall impression was that the behaviour described in the narratives was broadly similar over the two periods. Certainly there were examples of all the various categories of public nuisance behaviour evident in both the periods before and after the introduction of the new offence.

12 The new public nuisance offence explicitly provides that more than one behaviour may be relied on to prove a single public nuisance offence (s. 6(5) Summary Offences Act).

13 The letter and numbers preceding each of the narratives indicate whether or not the narrative was from the first sampling period (P1 = before the introduction of the new offence) or the second sampling period (P2 = after the introduction of the new offence). The narratives presented here are exactly as they appear in the police crime report database, except that identifying details have been deleted as indicated.

## Offensive language

In order to get an indication of how frequently the public nuisance charge is used to respond to offensive language we considered all those narratives that appeared to describe 'only' offensive language as the public nuisance offence behaviour; however, this was not without complications.

We considered that offensive language included language that was indecent or vulgar. Where the only reference was to 'shouting and yelling' with no reference to the details of the offensive language, we consider it to be an example of disorderly behaviour (see below). However, there are examples that we consider here to be offensive language that may have alternatively been categorised as disorderly behaviour (and which are often described by police within the narrative as such). Language that was threatening or suggested violence was considered under the threatening or violent behaviour category (see below).

Our analysis suggests that about one in six of the public nuisance only narratives sampled as part of this research described offensive language as the only public nuisance offence behaviour. Of these, just over half described offensive language directed at police. The remainder described language directed at a member of the general public or at the world in general (whether or not the police were present).

### *Directed at police*

We distinguished three broad scenarios in which police enforced the public nuisance offence for offensive language directed at police.

First, the narratives often described circumstances where police officers were dealing with the offender to provide assistance or carry out other duties (for example, questioning the offender in relation to another offence such as a traffic offence or domestic violence incident) when the offender used offensive language directed at the police.

P1: Police attended the offence location regarding a domestic violence incident. Police were speaking to both parties on the front doorstep at the offence address. In a loud voice, the offender has yelled to the reporting officer 'you fucking dickheads'. Reporting officer was insulted by the words used by the offender. Offender has said it loud enough that persons in units at... [address] had come outside onto their balconies. Offender arrested by police.

P1: Police had cause to speak to the offender in relation to another matter. During the interview the suspect yelled out 'fuck man, this is fucked, fuck you all'. Police warned the offender to stop but he continued. The suspect was subsequently arrested. And then said 'you are a fucking cock sucking cunt'.

P2: ... police were speaking to a group of persons in relation to another matter. As police were leaving the location offender stated to police 'thanks a lot, have a good weekend you fuckheads'. Offender was arrested.

P2: Whilst [police were] performing random breath testing duties, the offender called police 'pushy bastards'.

In some situations, the offensive language directed at police appears to have acted as the 'trigger' for the enforcement of the public nuisance offence in circumstances where the police otherwise might have dealt with offence behaviours without a formal law enforcement response.

P1: The offender and friend were walking along the [Name] Expressway where pedestrians are not permitted. The offender and friend were conveyed by police vehicle to [Name] Street and advised by police to make their way home via a safer route. The offender then said 'thanks for nothing pig'.

P2: Police located the offender sitting on a brick fence outside his residential address. The offender appeared intoxicated and was yelling abuse at passing traffic. The offender was drinking from an opened Fourx stubby and had another unopened stubby on the ground. Police asked the offender to put the stubby down, to which he

refused and the offender then yelled abuse towards police and said 'fuck off cunt'. He was then arrested and handcuffed and transported to [Name]City Watchhouse.

Second, and less frequently, the narratives described circumstances where police officers were carrying out duties in relation to another person (for example, questioning or arresting another person), when the public nuisance offender directed offensive language toward police. In a sense, the public nuisance offender could be described as an onlooker 'interfering' with the police carrying out their duties by using offensive language directed at the police.

P1: Police attended the disturbance involving an altercation between two men. Whilst [police were] trying to resolve the situation the offender was yelling and screaming obscene language and aggravating the situation. The offender was warned to stop her behaviour. Moments later the offender continued her disorderly behaviour, once again using obscene language and fuelling a volatile situation. Offender was again warned to stop her behaviour to which the offender screamed to police 'fuck you'.

P2: Police attended regarding excessive noise, while police issuing a noise abatement notice to occupier, offender repeatedly shouted obscene language at police despite numerous warnings. Offender arrested and resisted police during arrest.

Finally, although rare, there were examples in the narratives of police responding to offensive language directed at them when they or the offender were simply passing by in circumstances where it could not be suggested that there was any real 'interference' with the police carrying out their duties. For example:

P1: The defendant in this matter stood at the doorway of the [Name] Hotel and yelled towards Police 'you fucking cock sucking cunt'. The defendant was then dragged back inside the hotel by another patron. At the time the [Name] police officer was in his vehicle on [Name] Street and heard the offender clearly.

P2: Offender screamed at police 'you fucking pig' as officer was closing the door to the police beat. Offender was intoxicated and has been drinking at licensed premises [Name].

### ***Other offensive language***

The public nuisance narratives described offensive language directed at members of the general public both in circumstances where it appears the incident was the subject of a complaint to police (that is, police were not present when the offence occurred), and also when police were present while offensive language was directed at members of the public or at the world in general. For example:

P1: Informant and two witnesses went to the [Name] Cinema to watch a movie and whilst in the cinema offender stated 'stalker'. Witness two responded 'get over yourself'. Offender said, 'bunch of lesbians'. After the movie they moved out into the carpark, where offender was following them out and stated 'dumb bitches stupid sluts'. Offender has stopped and stood in front of the informant stated 'fucking fat slut stop stalking me'.

P1: Known offender walked out into the street opposite a neighbour after a noise complaint had been made about his stereo. The offender stood in the street and yelled and swore and shouted out towards the neighbour.

P2: The offender was seen to depart the [Name] Hotel in [Name] Street and walk toward the town, and to push through a group of people standing in front of the [Name] Shire Council Hall. The offender was then seen to turn and face the people and utter the words 'get fucked you cunts'. The offender was subsequently arrested and charged. The offender used further insulting words towards the arresting police.

P2: Three offenders in this instance have verbally abused the informant while he was sitting in his car at the above location waiting for the lights to change. Suspect 1 said 'oi you fucking white cunt' and suspect [1] and suspect 2 walked towards the informant's vehicle. Suspect 2 then said 'it's all your fault things like this happen'. Suspect 1 then said 'you racist cunt' then spat on the informant's windscreen, laughed and walked away. Suspect 2 attempted to pick off a South African sticker that was on the glass window right rear and suspect 3 also verbally abused the informant with racist comments and laughed at the antics of suspects 1 and 2.

### ***Indigenous offenders***

One in three offensive language only narratives examined involved an Indigenous offender. Just under half of these narratives described offensive language directed at police. The three broad scenarios discussed above in which police enforced the public nuisance offence for offensive language generally were also reflected in those incidents involving Indigenous offenders. The narratives involving Indigenous offenders do convey a sense of tension between police and Indigenous people. In particular, it appears police often respond to offensive language used by Indigenous people where it could not be suggested that there was any real 'interference' with the police carrying out their duties.

We provide the following narratives as examples of offensive language incidents that involve Indigenous offenders; alcohol is a recurrent theme.

P1: Police drove past the offender who was walking on the footpath outside residential apartments. As police drove past the offender yelled out 'fuck you'. When approached by police, the offender continued to be agitated and aggressive and was subsequently arrested.

P1: Police have attended the offence location and observed a large group of ATSI persons. Offender has been aggressive towards police and stated to police 'get fucked you cunts why don't you leave us alone'. Offender has also attempted to walk away from police and continued to yell abuse at police from a distance. Offender was arrested for disorderly.

P1: The offender was observed with several open bottles of port around him. The offender was sitting on the steps of the shire hall when police approached. Police then tipped out the alcohol as per the requirements of the Liquor Act. The offender then went over to the police liaison officer and said, 'you're supposed to look after us, you black cunt'. The offender was then arrested for the offence, however a struggle ensued. The offender was then physically placed into the rear of the paddy wagon.

P2: Offender affected by alcohol. Police had intercepted a vehicle in relation to another matter. When offending vehicle has driven past Police with offender seated in front passenger side, offender has leaned out at the window, looked directly at the Officer and yelled in a very loud voice 'fuckhead'. Police pursued and intercepted offending vehicle a short time later.

P2: Offender was located with some alcohol in his pack. The alcohol was destroyed in his presence. After the alcohol was destroyed, he got on his bicycle and rode away from the arresting officer. At the same time using obscene language towards the police. He was located about 5 minutes later was then detained and taken to [Name] police station and issued a notice to appear.

P2: Disorderly behaviour related to licensed premises. Offender was yelling and swearing abuse at security staff opposite nightclub after having been refused entry.

(Issues relating to offensive language offences are discussed further in Chapter 14.)

### **Offensive/indecent behaviour**

Offensive/indecent behaviour included behaviours described in police narratives such as exposing genitals, urinating in public or engaging in sexual behaviour. Where the narrative described both offensive language and offensive/indecent behaviour, we considered it to be within our offensive/indecent behaviour category.

Our analysis suggests that about one in four of the public nuisance only narratives sampled as part of this research could be categorised as offensive/indecent behaviour.

The use of the public nuisance offence to deal with public urination was not uncommon; public urination was the largest single category of offensive/indecent behaviour. The police narratives frequently describe public urination occurring in key public spaces such as malls and main streets, and also often describe urination on vehicles, shops or other buildings.

### **Public urination**

The following are some examples drawn from the narratives that describe public urination:

P1: The offender in this matter was located in the front yard of [Name] Street in [Name] urinating in full view of a passing motorist. He could easily have been seen by pedestrians who regularly use that stretch of road.

P2: The offender was urinating in a garden bed directly opposite the [Name] Nightclub in City Place. At this time there were numerous members of the public in the vicinity. Offender was affected by alcohol. Arrested and charged with indecent manner.

### **Sexual behaviours**

In addition to public urination we provide further examples that illustrate the range of other offensive/indecent behaviours dealt with as public nuisance offences:

P1: The offender was swimming naked in a fountain and walked through the fountain onto [Name] Square and had a conversation with some Aboriginal juveniles while naked and put his boxers on and was arrested. Police could easily see his genitalia whilst talking to the Aboriginal children.

P1: Offender exposed himself to a large gathering at [Nightclub name] and yelled out Ozzie, Ozzie.

P2: The offender flashed her breast at police while they were dealing with another matter. [Name] Park was heavily crowded with people due to it being a public holiday.

P2: The informant was taking her dogs for a late night walk. The informant's residence is a street that adjoins [Name] Park. Whilst walking near the toilet block in [Name] Park, the informant has seen the offender sitting in the doorway of the male toilets. The informant not knowing if this person had been assaulted and not knowing what type of condition they were in moved closer to the toilets. When she was in clear view she saw the male offender with his pants down below his knees seated on the ground masturbating. The informant did not think that the male person had seen her. The informant has quickly turned around with her dogs and run home where she immediately contacted police.

### **Threatening or violent behaviour**

The range of threatening or violent behaviours was broad. It was suggested during our review that public nuisance was a tool frequently used to respond to incidents involving physical aggression such as where punches have been thrown, 'scuffles', 'altercations' and fights. Our consideration of police narrative descriptions overwhelmingly supports this view.

In addition to actual physical aggression, threatened violent behaviour (such as where an offender has been 'shaping up' to fight and including threatening language) was frequently described in the police narratives. These situations include some that were potentially very serious, such as that described below where the offender appeared to be attempting to commit a sexual assault.

Where the police narratives describe threatening or violent behaviour, and offensive language and offensive/indecent behaviour, we considered it to be within our threatening or violent behaviour category.

Our consideration of the public nuisance only narratives suggests that about one in three public nuisance incidents could be categorised as violent or threatening; this was the largest single category of public nuisance behaviour.

The following narratives provide examples:

P1: Between nominated times unknown offender has entered the yard at the offence location. The offender has turned off the power to the main switchboard and knocked several times on the door where the informant was staying in Unit 1. The informant



has gone outside calling for the offender, however she could not see anyone. Once back inside the informant has heard more knocking and could see a thin dark arm near the window of the front door. When the informant has asked 'what do you want' through the closed locked door the offender replied 'I want sex, sex, sex!' The informant told the offender to leave. The informant has later reported the incident to police. The informant felt threatened by the offender's behaviour.

P1: All three offenders were involved in a scuffle outside the [Name] Hotel following verbal taunts by both parties.

P1: The offender one in this matter called offender two 'a faggot' within the nightclub within the [Name] Hotel. This provoked offender two to want to fight offender one, however, security staff intervened and advised offender two he had to leave the premises. He took no notice and continued to struggle and want to fight offender one. The security staff without causing bodily harm removed him from the premises and on to the footpath, with the offender resisting all the way. The offender on the way out with an open hand, struck [Name] in the chest, and did the same thing again five minutes later when he tried to get back in. Offender two then punched the external hotel walls and was seen by staff to kick as well.

P1: Footage was observed on council monitor of a fight in [Name] Avenue. Fight involved four men and the offender. Offender observed kicking and punching another male. Offender subsequently arrested.

P2: Whilst the offender in this matter was in the offence location she stated to the informant in this matter, words to the effect of: 'I know you, I know where you work, I'll fucking kill you cunt'. A short time later the offender in this matter was intercepted by police and subsequently charged on this and linked matters.

P2: Offender was involved in a large fight outside the [Name] Hotel involving approximately 8 males. Offender was seen to be fighting other males in the group. Police were patrolling the area and came across the fight on the footpath. Offender was taken back to the Policebeat where he was issued with a Notice to Appear.

P2: At the offence time the offender has been involved in a physical altercation with another patron, during which the offender has kneed the other patron in the stomach. No complaint forthcoming.

## Disorderly behaviour

Disorderly behaviour included matters where the person acted in an 'unruly' manner, engaged in anti-social behaviour or created a disturbance. Frequently these matters involved circumstances where an individual was behaving in a manner that was potentially dangerous to themselves, to others or to property.

We grouped all those narratives that did not fall within one of our other three categories into disorderly behaviour. Our consideration of the public nuisance only police narratives suggested that about one in four public nuisance incidents could be categorised as disorderly behaviour.

In our examination of the police narratives we found the following examples of disorderly behaviours; alcohol was a recurrent theme:

P1: The offenders in this instance were observed by the witness to be standing on [Name] Street when they have then picked up rocks and thrown them upon a witness's roof. No damage has been caused to the witness's roof.

P1: Male offender was behaving in an unruly manner in the car park and adjacent area, kicking over bins and other council property in the vicinity.

P1: Offender was tearing out plants on the garden footpath along the street.

P1: The offender jumped up on a water main cover causing it to burst and was subsequently detained by security at the [Name] Hotel.

P1: The juvenile offender in this instance was behaving in an extremely loud and verbose manner on the platform of the railway station. The offender was throwing a number of items around the railway station platform and continually banging on the public phone box. Police told the offender repeatedly to cease her behaviour, however she continued to behave in a disorderly manner and as a result was arrested.

P2: Two of the offenders were pushing a shopping trolley with a third offender inside the shopping trolley on the roadside. The trolley fell over and all three offenders fell onto the road and lay there for a period of time laughing and causing a disturbance. Offenders had been drinking.

P2: The offender was observed climbing the X-mas tree in [Name] Square on CCTV.

P2: The offender was observed walking west along [Name] Street, [Name] the offender was observed to stop and commenced kicking a street sign on the centre island. The offender then stepped into the path of a motor vehicle against the don't walk signal and was nearly run over. The offender continued to walk along [Name] street, screaming and yelling loudly and waving his arms around. Police approached and the offender stopped and commenced kicking an advertising sign. Person walking to the offender were observed to cross over the other side of the street. Police spoke to the offender and he was grossly intoxicated and arrested and transported to the [Name] watch house.

P2: The offender was intoxicated. After an argument with his girlfriend has jumped into the middle of the road in front of an oncoming taxi, in order to scare his girlfriend. The taxi has failed to brake in time. Offender has then hit the taxi's windscreen completely smashing it. Offender was not injured and upon police arrival surrendered to police. Offender has been drinking at an unknown licensed premise.

## **PUBLIC NUISANCE ACCOMPANIED BY OTHER OFFENCES**

The examples above all relate to incidents that were dealt with by police as public nuisance offences only. Other narratives do provide insights into incidents where public nuisance is accompanied by other offences (see also Chapter 11, where we present other data on the number of public nuisance incidents associated with other offences).

Our examination of police narratives reveals that public nuisance offences are most often accompanied by other charges in two distinct circumstances.

First, the policing of public order leads to an escalation in conflict between the offender and police — resulting in other charges for offences against police. For example:

P1: Between stated time and date at offence location, police arrested the offender for disorderly behaviour, as offender was swearing and abusing customers and police. Upon being arrested, offender resisted arrest and a short struggle occurred before handcuffs were applied.

P1: The offender was asked to leave the races which he has started to do. He has then returned and become involved in another scuffle. He has been led away by security staff. He continued to resist this and continued to behave in a disorderly manner. Consequently complainant had to arrest offender for disorderly manner. Offender resisted and obstructed. In the process attempted to headbutt complainant on three separate occasions. No injuries.

P1: Police attended a disturbance at the offence location. Police observed the nominated offender drinking out of a Vodka cruiser bottle. When asked to tip her drink out and stop consuming the liquor the suspect tipped the contents onto the police officer's leg, assaulting him. The suspect then said to police 'stick that up your arse, you cunt'. The nominated offender then resisted arrest when being placed in the rear of the vehicle.

P2: The offender was involved in a brawl between youths in [Name] Street. Offender has been warned earlier in the night to refrain from disorderly behaviour. When arrested offender struggled and attempted to break free from police.

P2: Police were conducting patrols along [Name] Street and located the offender who was sitting outside a chemist. Police have approached the offender and he has stated to Police 'fuck off, white cunts, leave me alone'. Police have subsequently arrested the offender and placed the offender in the back of a caged Police vehicle. The offender has spat through the cage hitting Constable [Name] in the face and eye. The Complainant has suffered no visible injuries. The Complainant has sought medical attention at the [Name] Hospital...

P2: During given times, police were patrolling [Name] Street when they observed a large group of adult males walking east along [Name] Street. One of the males stopped and was observed urinating onto a control box at the intersection of [Name] and [Name] Streets. Police approached and spoke to the male offender, who became agitated when Police advised him of their observations and then asked him for identification. The offender started abusing Police and calling them, 'fucking cunts', and other words to that effect. The male offender was warned re his language towards Police. The offender continued to speak to the Police officer in the same manner and then pushed the Police officer in the chest, causing the officer to take a step backwards. The male offender was then arrested and transported to [Name] Watchhouse. No injuries.

Less frequently, the policing of public nuisance led to other charges such as those in relation to drugs (that is, offences against police). For example:

P1: Offender located urinating in alley way in [Name] Mall. Offender arrested and conveyed to [Name] Mall post. Offender searched and located two marijuana joints in offender's cigarette packet. Police also located a small clip seal bag GLM in offender's shorts pocket. Police then located two small clip seal bags containing white crystal substance and a piece of straw used as a drug utensil in the front of the offender's pants.

Second, there were examples of narratives suggesting that the public nuisance offence is an 'add-on' offence to other offences being dealt with by police, such as a breach of a domestic violence order, or a traffic or drug offence.

P1: Police attended the offence location regarding other matters. Police located a clipseal bag containing 2.3 grams of Cannabis sativa. The offender directed obscene language at Police and then resisted arrest.

P1: The informant and suspect are listed as the aggrieved and respondent persons... [in a domestic violence order]. The offender attended the offence location whilst intoxicated and has broken a glass door panel with her hands, cutting her right hand and has gained entry and threatened to kill the aggrieved. The aggrieved left the premises and phoned police. On arrival, the offender was yelling abuse and obscenities at the aggrieved spouse.

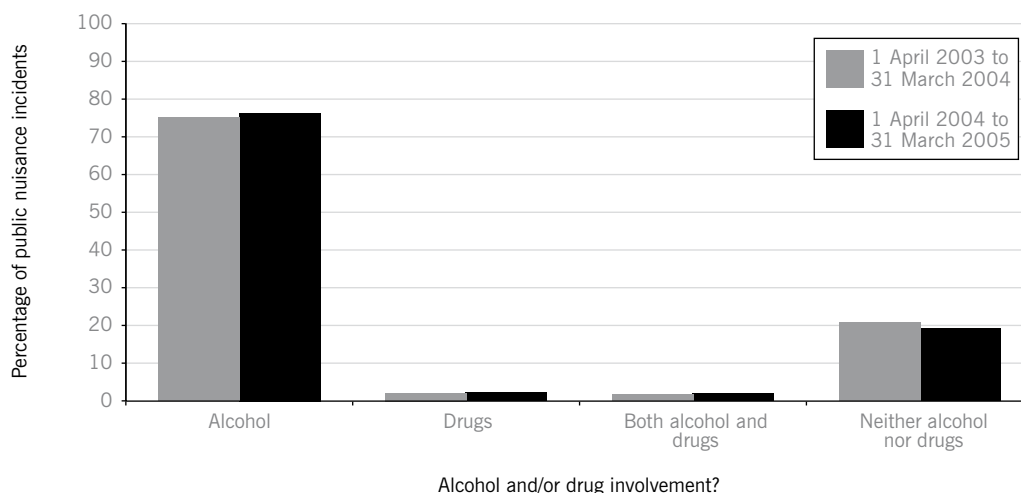
P2: The offender was intercepted initially due to a detected speeding offence. Whilst speaking to the offender, the arresting officer approached the vehicle to conduct a random breath test. The offender started screaming and hitting the side of his vehicle. He then called the arresting officer a 'fuckhead', then got out of the vehicle and hit the arresting officer with two open hands in the chest area. The arresting officer then took hold of the offender where he refused to comply and resisted arrest. He was then taken to the ground where handcuffs were applied to him. He was then transported to the [Name] Watchhouse.

P2: At the mentioned time police executed a search warrant at the offence location and located smoking implements in the kitchen cupboard. Suspect agreed to attend the police station. As he left the dwelling he yelled 'I'm going to bash you, you fucking retard' towards the unit at [address].

## HOW MANY PUBLIC NUISANCE OFFENCES ARE LINKED TO THE USE OF ALCOHOL AND OTHER DRUGS?

An overwhelming theme across all the categories of public nuisance behaviours considered in the police narratives is the strong association of public nuisance with the consumption of alcohol and other drugs. Police crime report data provide further quantitative information — not derived from police narratives — regarding the link between alcohol and public nuisance offending that confirms this strong association. Figure 1 presents this police data on the proportion of public nuisance only incidents in which offenders were identified as being affected by alcohol and/or other drugs.

**Figure 1: Public nuisance only incidents where offenders were identified as alcohol- or drug-affected during the 12-month periods before and after the introduction of the new offence**



Source: QPS data

Over the two-year data period our analysis of the QPS data presented in Figure 1 shows:

- just over three-quarters of public nuisance only incidents identified offenders affected by alcohol (76%)<sup>14</sup>
- 3 per cent of public nuisance only incidents identified offenders affected by other drugs, or affected by both alcohol and other drugs
- 21 per cent of public nuisance only incidents did not identify alcohol or other drugs as an issue.

Our analysis of this data also shows:

- a statistically significant increase in the proportion of public nuisance only incidents identified as involving alcohol and/or drugs after the introduction of the new public nuisance offence
- that Indigenous public nuisance only offenders were significantly more likely to be identified by police as affected by alcohol at the time of the offence than non-Indigenous public nuisance only offenders.

#### **What does it mean if something is 'statistically significant'?**

If a change or a difference is found to be statistically significant, it is unlikely to have occurred by chance. There will always be variations in the numbers of incidents, offenders and matters recorded by the QPS and Queensland courts each year. Statistically significant changes or differences, however, are of such a magnitude that they exceed the level of change that could be expected because of usual variation alone (see Appendix 1 for more information).

See Appendix 5 for further details of these analyses.

<sup>14</sup> This is consistent with results from a NSW police study referred to on page 18.

## SUMMARY OF FINDINGS

The broad drafting of the offence and the nature of police information recording systems make it difficult to quantify accurately how frequently particular behaviours and circumstances are associated with the enforcement of the public nuisance offence.

Our analysis of a sample of police narrative descriptions in crime reports of public nuisance suggests no major shifts in the types of behaviours or surrounding circumstances identified as public nuisance offences after the introduction of the new offence; examples of all categories of public nuisance offence behaviour were present in the 12-month periods before and after the introduction of the new offence.

Our consideration of the police narratives describing the behaviour and surrounding circumstances of public nuisance incidents also suggests that the public nuisance offence is:

- most frequently used to respond to violent or threatening behaviour (including threatening language)
- commonly used to deal with the remaining categories of public nuisance behaviour, including disorderly conduct, offensive language, and offensive/indecent behaviour (particularly public urination).

Of those narratives that appear to suggest offensive language was the only offence behaviour, about half described offensive language directed at police. In some situations described, the offensive language provided:

- the 'trigger' for police to take a formal law enforcement response to behaviour that might otherwise have been dealt with informally
- a means for police to prevent 'interference' as they went about their duties
- a means for police to take a formal law enforcement response in circumstances where the offensive language directed at them could not be said to have the potential to amount to any real 'interference'.

The offensive language narratives we considered tended to suggest a tense and volatile relationship between police and Indigenous people.

Our consideration of police narratives from crime reports involving both public nuisance and other offences provides examples of:

- the policing of public nuisance resulting in escalating conflict with police and leading to other charges such as resisting, obstructing or assaulting police
- the public nuisance offence being used as an 'add-on' offence to other offences being dealt with by police, such as a breach of a domestic violence order or a drug offence.

(Chapter 11 presents statistical data regarding the frequency with which public nuisance offending is accompanied by other offending, including offences against police.)

Police statistical data support the overwhelming impression given by the police narratives that a great many of these offences — across all the categories of public nuisance behaviour — are fuelled by the consumption of alcohol and other drugs; the vast majority of public nuisance offences were committed by offenders identified by police as under the influence of alcohol and/or other drugs. We also found that:

- the association between public nuisance offences and drug and alcohol intoxication strengthened after the introduction of the new public nuisance offence
- this association was significantly stronger for Indigenous offenders than for non-Indigenous offenders.

In conclusion we compare our findings, as presented in this chapter, with the concerns expressed to the review by some stakeholders.

As we have noted, a number of stakeholders suggested to the review that the public nuisance offence is used to deal with trivial behaviours that do not warrant criminal justice system intervention. It is arguable that some of the police narratives reproduced in this chapter describe such trivial behaviour (for example, the incident described as disorderly behaviour above at page 46 which involved offenders riding in a shopping trolley that falls over). However, it is our view that it is impossible to reach any firm conclusions on the basis of the police narratives and without a full examination of all the circumstances. Depending on the circumstances ‘trivial’ behaviours could potentially:

- be dangerous to the defendant’s own safety or the safety of others
- cause damage to property
- be frightening or intimidating to others
- be offensive to some members of the community
- be an indication of an individual’s poor mental health
- provide an indication of a person’s level of intoxication
- be behaviours that may escalate into further aggression against persons or property
- be excusable in certain circumstances.

The question of whether some of the behaviours described in the police narratives should have been dealt with as some alternative offence rather than public nuisance is also arguable (particularly in the case of the fights and also some of the sexual behaviours described such as public masturbation). Again, however, it is impossible to conclude that police are exercising their discretion inappropriately without a further consideration of all the circumstances. Issues of proof, for example, may be a major influence on police charging practices in many cases. For example, a charge of assault may be difficult to prove when police are unable to determine who the instigator was or where there may be no obvious or willing victim to make a complaint. In such circumstances, a charge of public nuisance may provide an alternative course of action (see submission of QPS p. 1; LAQ p. 4).

## HOW OFTEN ARE PUBLIC NUISANCE OFFENCES OCCURRING?

### HOW MANY PUBLIC NUISANCE OFFENCES ARE OCCURRING IN QUEENSLAND?

One of the goals of the review was to consider the frequency with which public nuisance offences are occurring in Queensland and whether the new public nuisance offence had resulted in an increased incidence of the offence. The view that the introduction of the new public nuisance offence had led to increases in the number of public nuisance offences was well publicised and highly influential prior to and during the conduct of this review (Walsh 2004b, pp. 20–1 & 36; 2005a, pp. 7 & 10; 2006a, p. 11; see also Scrutiny of Legislation Committee 2004; RIPS 2004a, p. 12; Legal Aid Queensland 2005, p. 2; submissions by the Bar Association of Queensland, p. 1; Families and Prisoners Support, p. 2; Queensland Council for Civil Liberties, p. 2).

Statements made by Queensland politicians as a result of media and public interest generated by particular incidents of violence have also fuelled perceptions that the new public nuisance offence is linked to a marked increase in the incidence of police apprehension of people for public nuisance behaviours. For example, although it was well after the introduction of the new public nuisance offence, the Hon. JC Spence, Minister for Police and Corrective Services, made a Ministerial Statement to Parliament on 26 October 2005 outlining the new policing strategy to ‘crack down on violence in inner-city Brisbane’. The minister stated: ‘I expect the statistics for arrests and public disorder offences will increase over the next few months as this new proactive approach continues’ (QLA (Spence) 2005b, p. 3503). On the same day in a media statement she stated that preliminary figures for the 2004–05 financial year indicated that in inner-city Brisbane ‘... obscene, insulting and offensive language used against police has risen by 2,600 per cent’ (Spence 2005b). (The accuracy of these statistics is discussed further on page 57).

The published research of Walsh also claims to show a ‘massive’ and ‘dramatic’ increase in the number of prosecutions for the offence ‘sparked by the change in legislation’ (2004b, pp. 20–1 & 36; 2005a, pp. 7 & 10; 2006a, p. 11). Walsh claims that her series of court-based observational studies demonstrate:

- a 200 per cent increase in the number of prosecutions proceeding when she compared prosecutions in the Brisbane Magistrates Court in February 2004 and in July 2004 after the introduction of the new offence (2004b, pp. 20–1 & 36; 2005a, pp. 7 & 10)
- three times the number of people coming before the Brisbane Magistrates Court for the offence in July 2004, after the introduction of the new public nuisance offence, compared with the number in February 2004, before the introduction of the new offence (2006a, p. 11)
- continuing increases in the number of people in Townsville and Brisbane coming before the courts after the introduction of the new offence; she states that her studies show increases in the number of prosecutions of 44 per cent in Brisbane and 38 per cent in Townsville between July 2004 and July 2005 (2006a, p. 11).

The view that the introduction of the new public nuisance offence was linked to an increased incidence of charging and prosecution of the offence was also put to our review in a number of submissions and consultations. For example:

- Legal Aid Queensland (p. 5) noted that ‘... we perceived that in some locations, including Brisbane city, there has been an increase in the number of persons charged in relation to such behaviour and language’.
- The ATSILS (South) (p. 2) submission reported that client representations for ‘disorderly/public nuisance’ matters had increased from approximately 220 in 2003–04 to approximately 380 in 2004–05 and to 550 in 2005–06.
- The Chief Magistrate (p. 2) reported: ‘The impression is that there has been an increase in the charges brought for the offence as compared to the position before 1 April 2004.’
- The submissions of the Queensland Bar Association (p. 1) and the Queensland Council for Civil Liberties (pp. 2–3) relied on the ‘official statistics’ provided by Walsh’s (2006a) research to support their view that the new public nuisance offence had led to an increase in the incidence of the offence.
- The Caxton Legal Centre (p. 2) reported that the numbers of clients with public nuisance charges had increased dramatically.

By contrast, police and some local government stakeholders were of the opinion that the frequency of public nuisance offences had remained essentially the same, or even decreased, since the introduction of the new provision. Only in relation to the Brisbane City and Fortitude Valley areas did police believe that the number of public nuisance offences detected since the introduction of the new offence had increased (QPS (Metropolitan North) consultations, 10 October 2006).

We considered police and courts data in order to examine the number or rate of public nuisance offences after the introduction of the new offence and also long-term trends.

### **Total number of public nuisance incidents actioned by police**

Police data show 29,415 public nuisance incidents<sup>15</sup> between 1 April 2003 and 31 March 2005.<sup>16</sup> Of these incidents, 29,141 (99 per cent) were described as ‘solved’<sup>17</sup> through police action being taken against an offender.<sup>18,19</sup>

Details of the results of our statistical analyses, including measures of statistical significance, presented in the remainder of this chapter are provided in Appendix 6.

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15 A single incident could, and often did, involve more than one offence charge and more than one offender.

16 Of these, 14,052 (48 per cent) were recorded during the 12 months preceding the introduction of the new public nuisance offence and 15,363 (52 per cent) were recorded during the 12 months after the introduction of the new public nuisance offence.

17 The categorisation of offences as ‘solved’ in police data is very broad and does not correspond to the ordinary meaning of the term. Incidents described as ‘solved’ in police data are those ‘solved’ through any police action, including attendance and identification of an offender, interviewing, cautioning, diverting, arresting and charging and issuing a notice to appear.

18 Police data record ‘alleged’ offenders as the offences have not yet been determined by the courts. Although we recognise that this is an important distinction, for convenience throughout the rest of this report alleged offenders are referred to simply as offenders.

19 The remainder were described as ‘unsolved’, where no action had been taken against an offender (153), ‘not substantiated’, where there was insufficient evidence to indicate that the offence did occur (93), ‘withdrawn’, where the complaint had been withdrawn (10), or ‘lapsed’, where time limitations for proceeding against an offender had expired (18). The remainder of this review reports only the data of public nuisance incidents for which police took some action (those referred to as ‘solved’ in the police database), and does not report incidents about which no police action was taken.

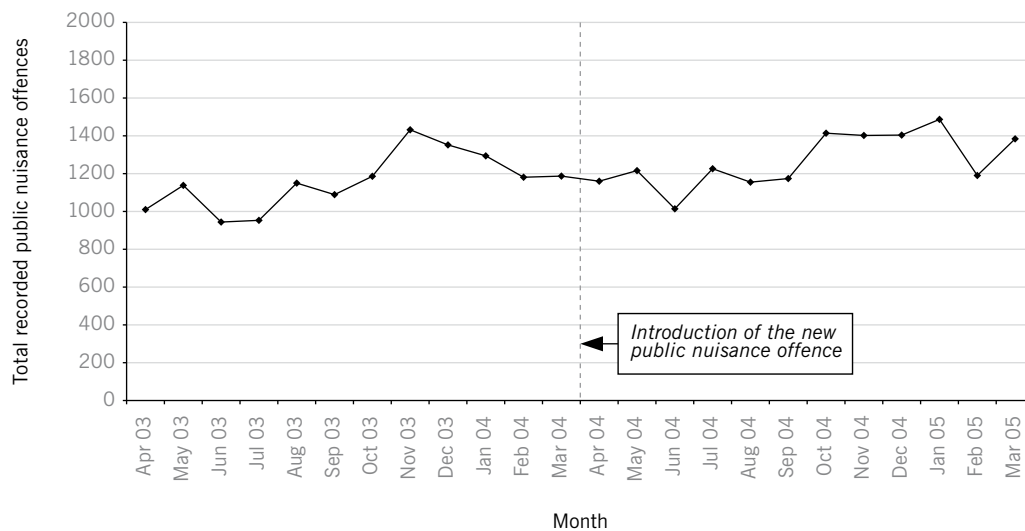


Figure 2 presents the number of public nuisance incidents for our two-year data period, comprising the two 12-month periods before and after the introduction of the new public nuisance offence.

As can be seen in Figure 2, the police data show that, after the introduction of the new public nuisance offence, the number of public nuisance incidents increased by 9 per cent, from 13,916 (1 April 2003 to 31 March 2004) to 15,225 (1 April 2004 to 31 March 2005). The median number of public nuisance incidents per month during each of these 12-month periods also increased, from 1166 to 1221 incidents; this increase was not found to be statistically significant.

The number of public nuisance incidents recorded by the QPS shows clear seasonal variation, with the highest number of offences recorded during the summer months (November to January) and the lowest number consistently being recorded during the winter months (June to August) for both 12-month periods examined.

**Figure 2: Total number of public nuisance incidents per month during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

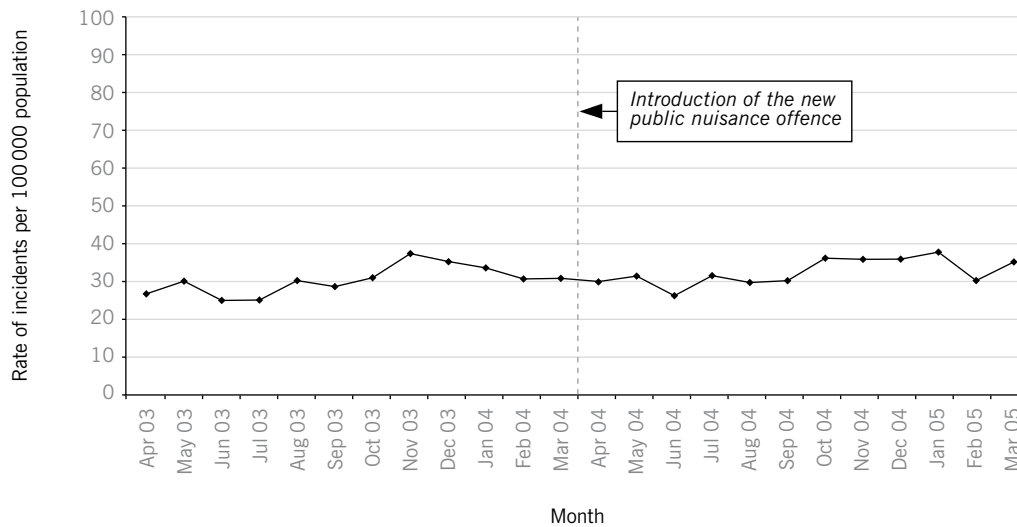
### Rate of public nuisance incidents actioned by police

The increase in the number of public nuisance incidents does not take into account population growth in Queensland during the periods under consideration. Rather than resulting from the introduction of the new public nuisance offence, the increased number of public nuisance incidents may be the result of an increase in the number of people in Queensland who may commit or report a public nuisance offence.<sup>20</sup>

To take account of growth in the Queensland population, we examined public nuisance incidents as a rate per 100,000 Queenslanders. Figure 3 shows the monthly rate of public nuisance incidents per 100,000 Queenslanders for our two-year data period, 1 April 2003 to 31 March 2005.

<sup>20</sup> It should also be noted that the number of police in Queensland has steadily increased each year by several hundred officers from 2001 to 2007 (see QPS 2002, p. 140; QPS 2003a, p. 140; QPS 2004b, p. 140; QPS 2005b, p. 140; QPS 2006a, p. 140; QPS 2007d, p. 130). The increase in the number of police may also have contributed to the increased number of public nuisance incidents detected.

**Figure 3: Public nuisance incidents per 100,000 population per month during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

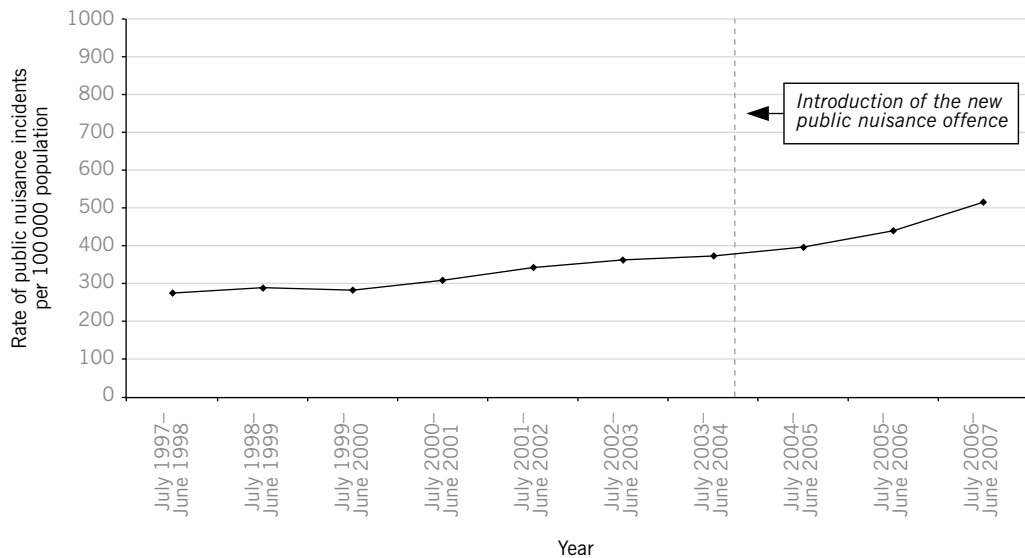
When we compared the 12-month periods before and after the introduction of the new public nuisance offence, we found that the 12-month rate of public nuisance incidents per 100,000 population after the introduction of the new offence increased by 7 per cent (from 364 to 389). The median rate of public nuisance incidents per 100,000 population per month increased from 30 to 31. These increases were not statistically significant.

### Longer-term trends

We also examined the trend in public nuisance incident rates across the full two-year period (from 1 April 2003 to 31 March 2005) and we found a statistically significant increase in the rate of public nuisance incidents per 100,000 population. Both this trend, and the small but not statistically significant increase we found in the rate of public nuisance incidents per 100,000 population when we compared the 12 months before and after the introduction of the new public nuisance offence, are consistent with longer-term trends extending back in time beyond the introduction of the new offence.

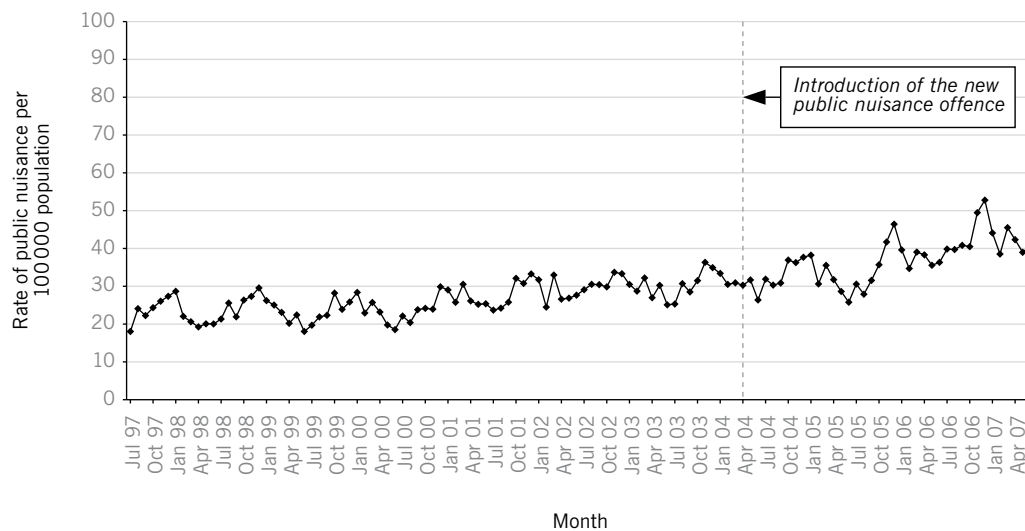
Figures 4 and 5 present police data on public nuisance incidents for the 10 years from July 1997 (including the old offence).

**Figure 4: Ten-year trend: public nuisance incidents per 100,000 population per year from July 1997 to June 2007**



Source: QPS data

**Figure 5: Ten-year trend: public nuisance incidents per 100,000 population per month from July 1997 to June 2007**



Source: QPS data

Figures 4 and 5 show a significant upward trend in the rate of public nuisance incidents (including the new and the old offence) per 100,000 population during the 10-year period since July 1997. Over the 10-year period the rate has increased by an average of 7 per cent each year. As can be seen in Figures 4 and 5 there is a notable increase in the upward trend from July 2006. Figure 5 shows that, despite the overall upward trend, there are substantial monthly fluctuations in the rate of public nuisance incidents. It can be seen that measuring the change in public nuisance by comparing selected monthly totals may produce misleading results.

The long-term trend mirrors the QPS statistics published annually showing that the rate of 'good order' offences (of which public nuisance is the largest subcategory) has been increasing steadily since July 1996 (QPS 2006a, p. 33; QPS 2007d, p. 15). Police Commissioner Bob Atkinson has attributed the increase in the rate of good order offences

in 2006–07 to ‘the Police Service’s activity in targeting alcohol and violence related incidents in and around licensed premises’ (QPS 2007d).

### Total number of public nuisance matters finalised in Queensland courts

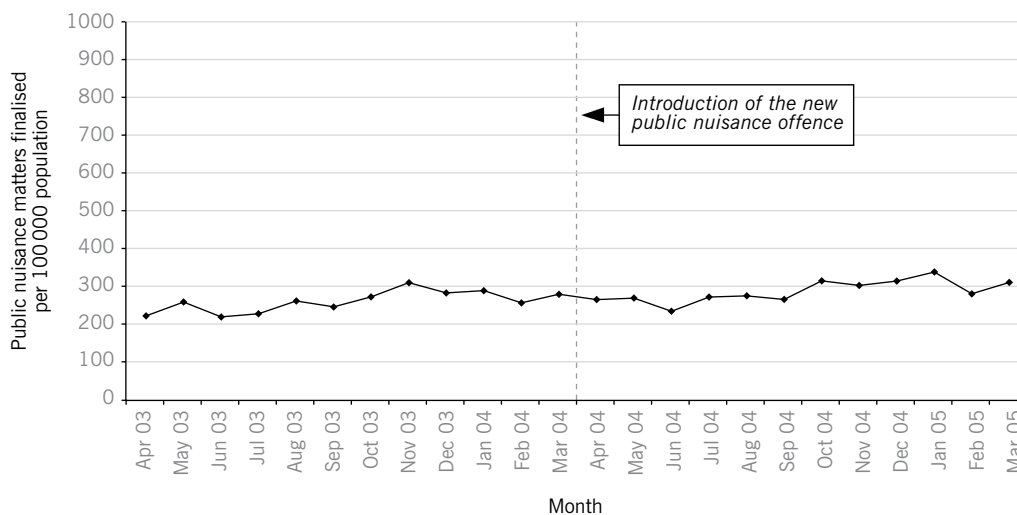
Queensland courts data show a total of 25,244 public nuisance matters finalised in Queensland Magistrates Courts and Childrens Courts for offences occurring between 1 April 2003 and 31 March 2005.

The courts data show that, after the introduction of the new public nuisance offence, the number of public nuisance matters increased by 13 per cent, from 11,876<sup>21</sup> (1 April 2003 to 31 March 2004) to 13,368<sup>22</sup> (1 April 2004 to 31 March 2005). The median number of public nuisance matters for each month during these 12-month periods also increased, from 987 to 1082 matters. This increase was found to be statistically significant.

The rate of public nuisance matters per 100,000 population finalised in Queensland Magistrates Courts and Childrens Courts was also found to have increased by 10 per cent between the two periods under consideration in this review, from 310 (1 April 2003 to 31 March 2004) to 342 (1 April 2004 to 31 March 2005). Between these periods the median rate per month of public nuisance matters per 100,000 Queensland population increased from 26 to 28. This increase was found to be significant.<sup>23</sup>

Figure 6 plots the rate of public nuisance matters finalised in Queensland’s Magistrates Courts and Childrens Courts for public nuisance offences that occurred<sup>24</sup> between 1 April 2003 and 31 March 2005.

**Figure 6: Public nuisance matters finalised in Queensland’s Magistrates Courts and Childrens Courts during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: Courts data

21 Childrens Courts = 633, Magistrates Courts = 11,243.

22 Childrens Courts = 680, Magistrates Courts = 12,688.

23 The larger increase in the number of public nuisance matters recorded in courts data than in police data is likely to be the result of different counting practices of the courts and police.

24 Note that the data on public nuisance matters were requested by offence date to ensure clear distinction between offences occurring and charged under the old legislation, and offences occurring and charged under the new legislation.

Figure 6 shows that, although the rate of public nuisance matters per 100,000 population increased after the introduction of the new public nuisance legislation, it also increased during the 12 months before the introduction of the new public nuisance legislation (between April 2003 and March 2004). Further analysis of this data revealed a highly significant positive trend in the rate of public nuisance matters finalised per 100,000 population for offences occurring between 1 April 2003 and 31 March 2005.

These results again suggest that the increased number of public nuisance matters shown in the courts data after the introduction of the new public nuisance offence is consistent with a trend that precedes the introduction of the new offence; the statistically significant increase in public nuisance matters finalised in Queensland's courts after the introduction of the new offence is not likely to be solely the result of the change in legislation.

## COMPARISON OF OUR RESULTS WITH THOSE PREVIOUSLY PUBLISHED

Our analysis of police data provides no support for the claim made on 26 October 2005 by the Hon. JC Spence in relation to public order issues in inner-city Brisbane. In her statement she suggested a link between the introduction of the new offence and figures for the 2004–05 financial year, indicating that '... obscene, insulting and offensive language used against police has risen by 2,600 per cent' (Spence 2005b).

When we queried this figure with the QPS, the QPS checked and indicated that it was provided to the minister in error. The way police crime data are collected makes it very difficult, if not impossible, to accurately identify those public nuisance offences committed against police, whether for language or for other behaviour. The QPS have indicated that they have taken steps to ensure that similar errors are not made in the future.

Our analysis of police and courts data does not provide support, either, for Dr Tamara Walsh's heavily relied-on claim that the new public nuisance offence resulted in a 'massive' and 'dramatic' increase in the prosecution of the new public nuisance offence. This claim was based particularly on a key finding said to show a 200 per cent increase in the number of prosecutions proceeding through the Brisbane Magistrates Court after the introduction of the new offence (2004b, pp. 20–1 & 36; 2005a, pp. 7 & 10; 2006a, p. 11). Walsh's results also include other figures said to demonstrate large increases in the prosecutions of public nuisance offences. Walsh's observational court studies involved law students:

- attending Court 1 of the Central Brisbane Magistrates Court on every sitting day during the months of February 2004 (two months before the introduction of the new offence), July 2004 (three months after the introduction of the new offence) and July 2005 (15 months after the introduction of the new offence) and recording every case of language and offensive behaviour that was brought before the court
- attending Townsville Magistrates Court on every sitting day during the months of July 2004 (three months after the introduction of the new offence) and July 2005 (15 months after the introduction of the new offence) and recording observed cases of offensive language and behaviour (Walsh 2006a, pp. 10–12).

Our results for Queensland showed modest increases but nothing that could be described as ‘massive’ or ‘dramatic’ on the scale claimed by Walsh. To better compare our results with Walsh’s we analysed courts data for all public nuisance matters finalised in Brisbane Central Magistrates Court and Townsville Magistrates Court for the same months that Walsh conducted her studies.<sup>25</sup> The results of this analysis are presented in Table 1. For the purpose of comparison, Table 1 also lists the results recorded by Walsh (2006a).

**Table 1: Brisbane Central Magistrates Court and Townsville Magistrates Court public nuisance counts collected by Walsh (2006a) during February 2004, July 2004 and July 2005, compared with counts obtained from Queensland courts data for the same time periods**

	Brisbane Central (courts data)	Brisbane Central (Walsh 2006a)	Townsville (courts data)	Townsville (Walsh 2006a)
February 2004	154	26	62	NA
July 2004	190	77	42	42
July 2005	181	111	74	58

Our results obtained on the basis of courts data are not consistent with the results obtained by Walsh through observational studies.

- Walsh claimed a 200 per cent increase in offences involving offensive language or behaviour between February 2004 and July 2004. The courts data suggest a 23 per cent increase in these offences between these times.
- Similarly, Walsh reported a 44 per cent increase in offensive language or behaviour matters in the Brisbane Central Magistrates Court between July 2004 and July 2005. The courts data suggest a 5 per cent decrease in these matters in this court between the same times.
- In Townsville Magistrates Court, Walsh reported a 38 per cent increase in offensive language or behaviour matters between July 2004 and July 2005. The courts data suggest a 76 per cent increase in public nuisance matters during this time. (They also suggest a 32 per cent decrease in public nuisance matters between February 2004 and July 2004, but Walsh did not count offensive language or behaviour matters in Townsville before the introduction of the new offence.)

The difference between Walsh’s results and our results is likely to be explained by our different methodologies. While our research uses official courts data, Walsh’s used courtroom observations conducted by law students. Although observational techniques are valid forms of social science data collection, the reliability of the data collected using these techniques is easily compromised if the observational process is not sufficiently controlled. The main risks associated with the use of observational techniques are observer bias and human error (see Coolican 1990). Walsh (2004b, 2005a, 2006a) does not specify whether the research methodology used was piloted (to ensure reliability of observational counts) or provide any other details of quality controls.

Matters presented before the Magistrates Courts are processed rapidly, with significant variability in the description of the charges involved, the facts of the case and surrounding circumstances. As Legal Aid Queensland (2005, p. 31) found in its project on homelessness and street offences, in arrest courts such as Courts 1 and 3 in the Brisbane Central Magistrates Court ‘the sheer volume of work demanded rapid disposition of matters — things moved quickly and, to the uninitiated, [incomprehensibly]’.

<sup>25</sup> This methodology differed from the methodology used to obtain other results presented in this review. Matters were counted on the basis of order date in order to better approximate Walsh’s methodology, rather than by offence date, which is how we have counted public nuisance matters elsewhere.

Our own experiences of observing public nuisance offences in Brisbane Central Magistrates Court 1 suggest that these offences may be variously described in court as public nuisance, disorderly behaviour, offensive language or behaviour, indecent or obscene language or behaviour, violent or threatening language or behaviour, insulting language, abusive language or behaviour, and aggressive or confronting language or behaviour. Alternatively, the prosecution may simply report the words used or actions engaged in by the defendant without naming the offence at all. Often it is almost impossible for an observer to distinguish in court charges that are specifically for public nuisance behaviour from charges for other offences (such as public drunkenness, threatening violence, common assault and wilful exposure). These issues are further complicated by the high number of public nuisance matters that are heard *ex parte*.<sup>26</sup>

It is our view that Walsh's results may have been affected by the following factors:

- Her very small sample size. Examining any data on the number of offences from one-month periods at particular points in time is not likely to produce reliable results. To accurately consider the frequency of any offence requires a sample size that is large enough to account for the usual fluctuations that may occur for a wide range of reasons, including seasonality.
- The possibility that her observers experienced learning effects over time, so that they became better able to identify public nuisance offences as they became more comfortable and familiar with the court environment. This may explain the decrease for July 2004 and July 2005 in the difference between our results obtained from the courts data and Walsh's results.
- Different observers may have counted different things as public nuisance and this may have contributed to differences.

## SUMMARY OF FINDINGS

We examined police and courts data to establish the frequency with which public nuisance offences are occurring in Queensland and to see whether the new public nuisance offence had resulted in an increased incidence of the offence.

We found:

- The number of public nuisance incidents recorded by police increased by 9 per cent from 13,916 in the 12 months before the new offence to 15,225 in the following 12-month period; the median number of incidents per month also increased from 1166 to 1221; this increase was not found to be statistically significant.
- Courts data show that the number of public nuisance matters increased by 13 per cent after the introduction of the new public nuisance offence; this increase was found to be statistically significant.<sup>27</sup>

When population growth is taken into account, the rate of public nuisance offending per 100,000 Queenslanders increased by 7 per cent according to the police data and by 10 per cent in the courts data (the increase in the court data was found to be statistically significant).

There is no evidence of large-scale increases in public nuisance after the introduction of the new offence; rather, these increases appear to be consistent with a steady upward long-term trend in public nuisance data over the 10 years from 1997.

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26 A magistrate has power to deal with an offence of public nuisance where the defendant fails to appear in court to answer to the charge; this is referred to as '*ex parte*'.

27 The larger increase in the number of public nuisance matters recorded in courts data is likely to be the result of different counting practices of the courts and police.

## WHERE DOES PUBLIC NUISANCE OFFENDING OCCUR IN QUEENSLAND?

Our review of Queensland's parliamentary debates and media clearly highlights a number of particular areas in the state where public order issues have attracted significant interest over a period of time. These include Cairns, Townsville, Brisbane's CBD and the Fortitude Valley area, and the Gold Coast (particularly when it hosts the annual end-of-year Schoolies Week celebrations). Our submissions and consultations also reflected that these were key geographic areas of concern for public nuisance offending.

For example, in Townsville, where public nuisance was clearly a major issue, the Townsville City Council and police noted the two main locations of public nuisance activity:

1. Parks, where itinerant Indigenous people, many of them said to be from Palm Island, reside in Townsville and where the problem behaviours were described as defecation, urination and fighting (QPS (Townsville) consultations, 11 September 2006).
2. The Flinders Street nightclub precinct, which has problems especially on Thursday, Friday and Saturday nights, with drunk people 'fighting, urinating and wandering across the road in front of traffic' (QPS (Townsville) consultations, 20 September 2006; Townsville City Council consultations, 12 September 2006).

A clear level of consensus emerged from submissions and consultations generally that public nuisance offending often occurs in CBDs and is frequently linked to the proximity of licensed premises (see, for example, submissions by Legal Aid Queensland, p. 10; Chief Magistrate, pp. 2 & 4; Caxton Legal Centre, p. 14).

We considered police data to examine:

- the links between public nuisance and proximity to licensed premises or parks
- regional differences in the impact of the new offence, but also to consider regional differences in public nuisance more generally.

## WHAT ARE THE LINKS BETWEEN PUBLIC NUISANCE OFFENDING AND PROXIMITY TO LICENSED PREMISES OR PARKS?

Police data about public nuisance offences show that:<sup>28</sup>

- the majority of public nuisance offences were recorded as occurring on a street (69%,  $n = 20,071$ ) (which may include outside a licensed premises)<sup>29</sup>
- around 9 per cent of public nuisance offences were recorded as occurring in businesses ( $n = 2682$ ) and a further 5 per cent were recorded as occurring on a licensed premises ( $n = 1466$ )

<sup>28</sup> When recording details of a criminal incident, QPS officers are required to select one of approximately 66 keywords to describe the scene of that offence. The public nuisance data provided to the CMC by the QPS included reference to at least 63 of these scene classifications. However, many of these scene classifications are similar or overlapping. In order to summarise this data, the CMC recoded the QPS data into 14 scene classifications. These classifications are listed in Appendix 1.

<sup>29</sup> In three incident records the location (scene) of the public nuisance offences was not specified. Further analysis of this variable excluded these records.



- about 7 per cent ( $n = 1890$ ) of public nuisance offences occurred in recreational spaces such as parks
- around 4 per cent of public nuisance offences were recorded in private dwellings ( $n = 1249$ ).<sup>30</sup>

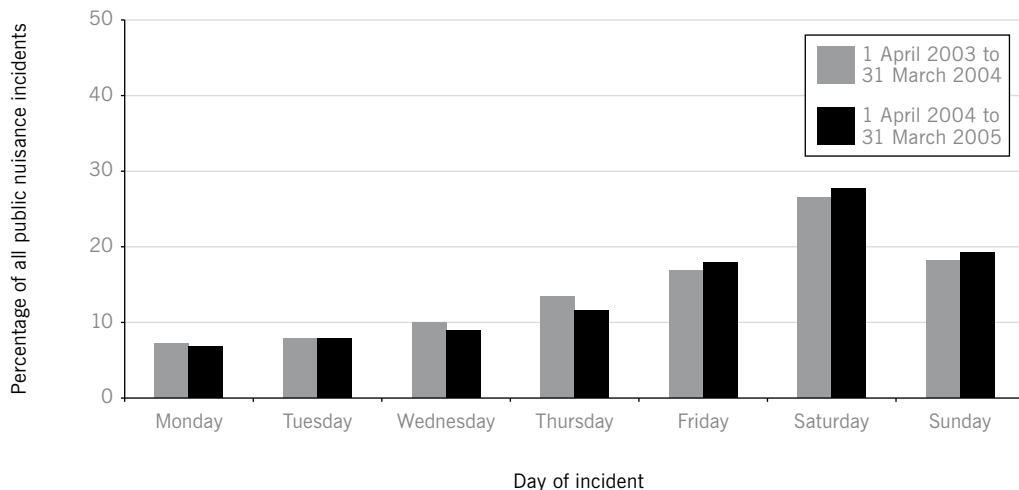
When we compared the 12 months before and after the introduction of the new offence, we found:

- no change in the proportion of public nuisance offences occurring on a street
- statistically significant increases in the proportion occurring in businesses or on a licensed premises
- statistically significant decreases in the proportion occurring in private dwellings or in recreational spaces (see Appendix 7 for further details of the results of these analyses).

After the introduction of the new public nuisance offence, the QPS also began to record those offences ‘associated with a licensed premises’. This is clearly a broader category than the category of ‘on a licensed premises’. Of the public nuisance records made in the 12 months after the introduction of this data recording practice, 24 per cent ( $n = 2853$ ) were described as being associated with licensed premises.

Further evidence of the links between public nuisance offending and licensed premises is provided by examining the days and times when public nuisance incidents are occurring. Figures 7 and 8 present, respectively, police data on the days when public nuisance incidents occur, and the time of day or night.

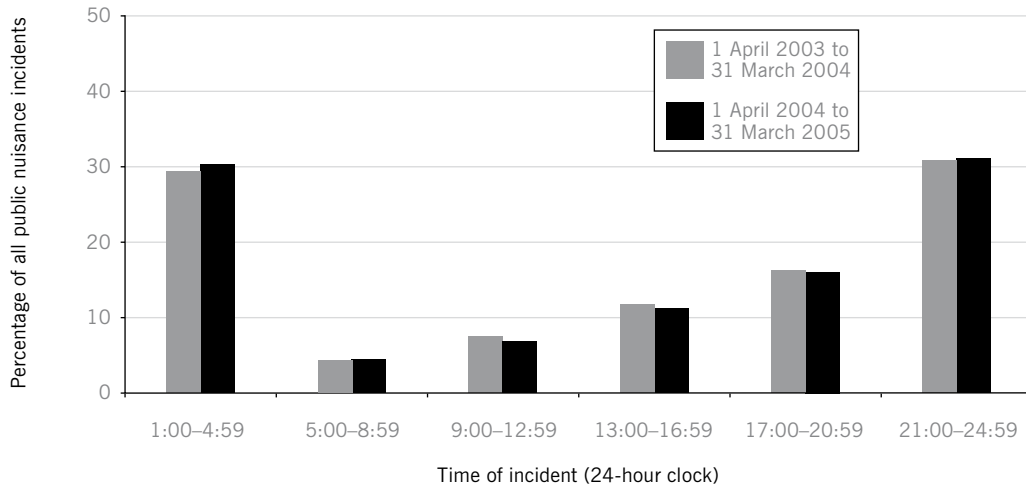
**Figure 7: Day on which public nuisance incidents occurred during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

30 As discussed in Chapter 4, a broad definition of ‘public place’ applies under both the old offence and the new public nuisance offence to capture places where the public is present; the provisions may also capture behaviour that takes place either in or outside a private place but which interferes with a public place. For example, some police indicated that the public nuisance offence could be of assistance in dealing with domestic disputes occurring on private premises (for example, QPS (Townsville) consultations, 20 September 2006).

**Figure 8: Times of day that public nuisance incidents occurred during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

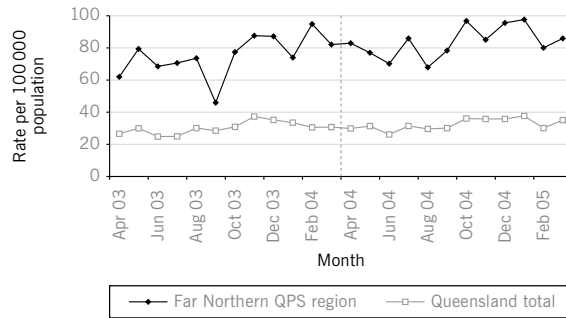
Our analysis of the two-year data period shows that 45 per cent of public nuisance incidents occurred on Fridays and Saturdays and 61 per cent of public nuisance incidents occurred at night between the hours of 9 pm and 5 am. Our findings are consistent with previous research showing that this type of offence mostly occurs on the street or around pubs and clubs, from Friday through to Sunday during the night hours (see, for example, Travis 1983, p. 215).

## WHAT ARE THE REGIONAL DIFFERENCES IN THE RATE OF PUBLIC NUISANCE?

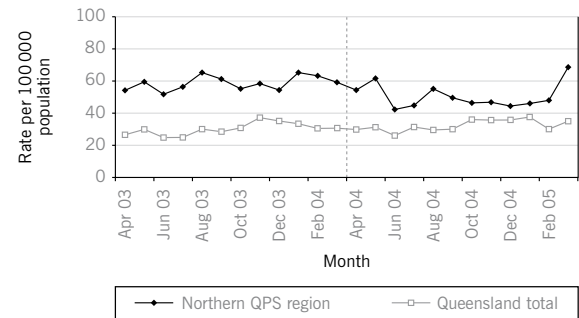
Police data show differences in the degree and direction of change in the public nuisance rates after the introduction of the new public nuisance offence across Queensland's QPS regions. (Appendix 8 provides a map of the QPS regions.) Figures 9(a) to 9(h) show the rate of public nuisance incidents per month per 100,000 population for each of the QPS regions for the 12 months before and after the introduction of the new offence (1 April 2003 to 31 March 2004, and 1 April 2004 to 31 March 2005).

## Public nuisance incidents: rate per QPS region

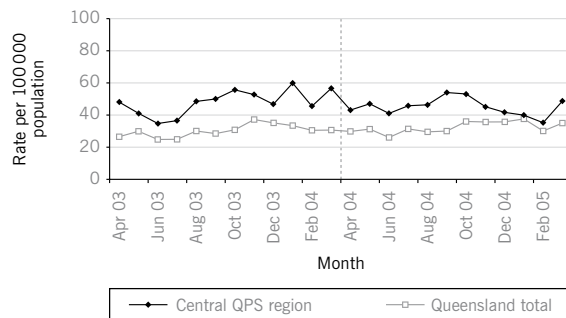
**Figure 9(a): Far Northern QPS region**



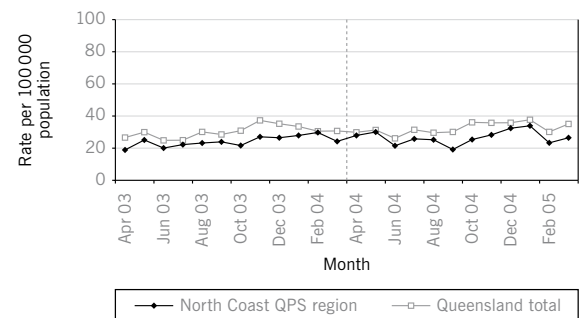
**Figure 9(b): Northern QPS region**



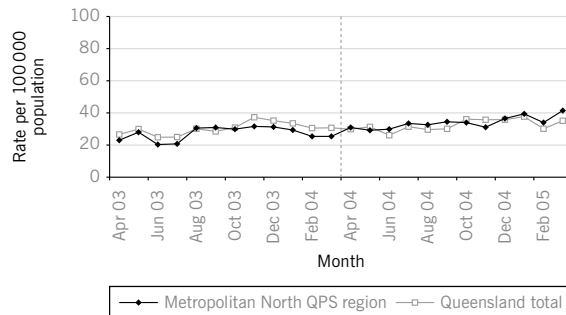
**Figure 9(c): Central QPS region**



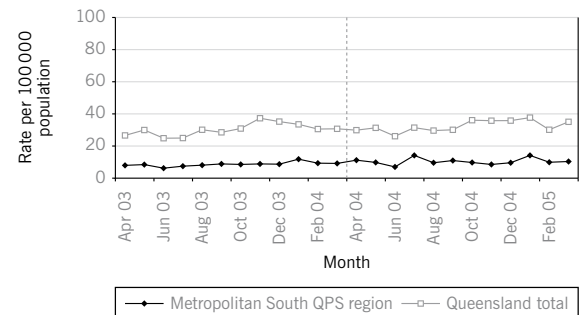
**Figure 9(d): North Coast QPS region**



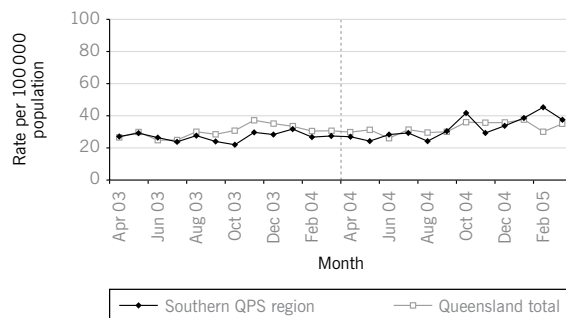
**Figure 9(e): Metropolitan North QPS region**



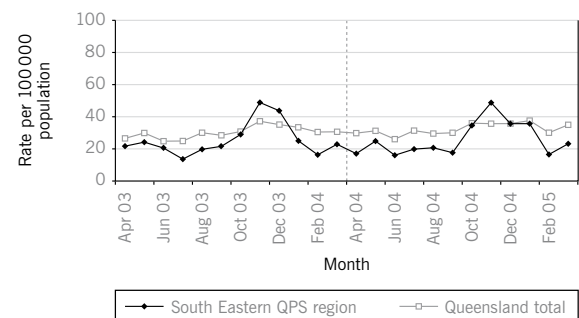
**Figure 9(f): Metropolitan South QPS region**



**Figure 9(g): Southern QPS region**



**Figure 9(h): South Eastern QPS region**



Note: the vertical dotted line bisecting the plot indicates the introduction of the new public nuisance offence.

When we compared the 12-month periods before and after the introduction of the new public nuisance offence:

- The Metropolitan North and Metropolitan South QPS regions recorded statistically significant increases in the rate of public nuisance incidents per 100,000 population (by 25 per cent and 21 per cent respectively).
  - » In the Metropolitan North QPS region this increase was primarily the result of an increase in the rate in the Brisbane CBD and Fortitude Valley areas. Comparing the 12 months before and after the introduction of the new public nuisance offence, the rate of public nuisance incidents per 1000<sup>31</sup> population in these areas (combined) increased by approximately 25 per cent, while the rate of incidents recorded in other parts of the Metropolitan North region only increased by 7 per cent. This is consistent with the rising concern over this period for public safety, after notable incidents of drunken violence occurring in the Brisbane CBD and Fortitude Valley areas (see previous discussion in Chapter 1). This clearly resulted in an increasing police focus on public order issues relating to 'party people', in particular in the lead-up to the implementation of the Brisbane City Safety 17 Point Action Plan in April 2005.
  - » In the Metropolitan South region, the increase was spread across a large number of areas.<sup>32</sup>
- The Southern QPS region recorded an increase of 20 per cent in the rate of public nuisance incidents per 100,000 population in the 12 months after the introduction of the new public nuisance offence. This increase was statistically significant. Almost half the increase resulted from public nuisance incidents in Toowoomba. Comparing the 12 months before and after the introduction of the new public nuisance offence, the rate of public nuisance incidents recorded per 1000 population in Toowoomba increased by approximately 56 per cent, while the rate in other parts of the Southern QPS region only increased by 12 per cent. Information provided during consultations indicated that in Toowoomba:
 

There is an operation every Friday and Saturday night specifically targeting public safety. Last Saturday there were 12 people arrested in Margaret Street where there are lots of licensed premises in a small space ... They can't deal with them at the licensed premises. Many of them top up before they get there. There is also the issue of people going from one club to the next. (QPS (Toowoomba) consultations, 25 September 2006)
- The Far Northern, North Coast and South Eastern QPS regions recorded relatively small increases when we compared the rates of public nuisance in the 12 months before and after the introduction of the new offence (11%, 10% and 1% respectively). These increases were not found to be statistically significant.

31 The Australian Bureau of Statistics estimated that in 2003–04 the combined population of the Brisbane City (CBD) and Fortitude Valley was 7074 and the 2004–05 combined population of the Brisbane City (CBD) and Fortitude Valley was 7797 (Australian Bureau of Statistics, 2007, 3218.0 Regional Population Growth, Australia, Table 3: Estimated Resident Population, Statistical Local Areas, Queensland. <[http://abs.gov.au/AUSSTATS/subscriber.nsf/0/a202921AA9EFDA9DCA257367008042CC/\\$File/32180\\_statistical\\_local\\_areas\\_96to06.xls](http://abs.gov.au/AUSSTATS/subscriber.nsf/0/a202921AA9EFDA9DCA257367008042CC/$File/32180_statistical_local_areas_96to06.xls)> (accessed 25/02/08)). Therefore, rates are reported here per 1000 population rather than per 100,000 population as elsewhere in this chapter.

32 Notably, however, during the period before the introduction of the new public nuisance offence, Inala accounted for 21 per cent of public nuisance offences in the area. After the introduction of the new public nuisance offence, Inala accounted for only 11 per cent of Metropolitan South's public nuisance offences (the same percentage as the second most commonly recorded area, South Brisbane).

- In the Northern QPS region, the rate of public nuisance decreased significantly (by 14 per cent) after the introduction of the new offence.<sup>33</sup> This decrease was primarily the result of a decrease in the rate in Townsville. Comparing the 12 months before and after the introduction of the new public nuisance offence, the rate of public nuisance incidents per 1000 population in Townsville decreased by 28 per cent, while the rate in other parts of the Northern QPS region only decreased by 9 per cent.
- In the Central QPS region there was a decrease in the rate of public nuisance (by 6 per cent), but this is not statistically significant.

Appendix 9 provides further details of the changes occurring in QPS regions after the introduction of the new offence.

These regional variations in the degree and direction of change after the introduction of the new public offence argue against the conclusion that they can be attributed solely to the new provisions. Other factors may have influenced regional public nuisance rates, as illustrated below.

- The Metropolitan North, Metropolitan South and Southern QPS regions, where the public nuisance rates increased, provide the clearest evidence of an increased police focus on public order policing of key public spaces (see further discussions below of the significance of particular 'hot spots' within these regions). For example, in the Brisbane City and Fortitude Valley area of the Metropolitan North QPS region, during consultations police were clear that public order issues in these key entertainment areas had increasingly become a policing focus and more resources had been devoted accordingly (QPS (Metropolitan North) consultations, 10 October 2006; QPS (Fortitude Valley) consultations, 10 October 2006).
- In the Far Northern region, where there was no significant change in the offence rate after the introduction of the new offence, a significant new diversion program — the Homelands Project — commenced in the Cairns Police District on 1 July 2003, during our data period. This project seeks to address the historical problem of homelessness in Cairns and related issues of public drunkenness, anti-social behaviour, criminal acts and low feelings of safety by the public of Cairns. The project involved taking predominantly Indigenous homeless people affected by alcohol to identified places of safety, providing links to relevant support networks and agencies, and assisting those people to return home to their communities. The QPS claims that the program has been highly successful in reducing calls for service for anti-social behaviour in the Cairns CBD (see QPS 2004c, p. 37; 2006b, pp. 31 & 83).
- In the Northern QPS region, consultations frequently suggested that the new public nuisance offence was the reason for the decrease in public nuisance; for example, in Townsville police interpreted Magistrates Court decisions as imposing a higher threshold of proof for the new offence and police charging practices reflected these changes (QPS (Townsville) consultations, 11 September 2006). Consultations elsewhere in the region, however, revealed other factors that are also likely to have had an influence on the decrease. In Mt Isa for example, the introduction of the new offence roughly coincided with the closing and 'gentrification' of 'Boyd's Hotel', a licensed premises identified by police as a 'hot spot' for public nuisance behaviour, local government and police initiatives aiming to move Indigenous people away from the riverbed in the centre of town, and the development of an (informal) 'wet area' for Indigenous drinkers outside town (QPS (Mt Isa) consultations, 13 September 2006).

33 Figure 9(b) for the Northern QPS region shows an increase in the rate of recorded public nuisance offences in April 2005 (one year after the introduction of the new provision and around the time of the transfer of this provision to the *Summary Offences Act 2005*). After April 2005 the rate of offences recorded in the Northern QPS region returned to the rate recorded before the introduction of the new offence. Other areas (most notably the Far Northern, Central and South Eastern QPS regions) also demonstrated this trend.

- In the Central QPS region in the period before the introduction of the new offence, police had conducted an operation targeting anti-social behaviour in the Rockhampton CBD, which the QPS claimed led to a high number of arrests for street offences (QPS 2003b, p. 39). The cessation of this operation may have influenced the decrease in public nuisance offence rates after the introduction of the new offence.

## Detailed geographical differences in the rate of public nuisance incidence

### *Far Northern QPS region*

As shown above in Figure 9(a), the Far Northern QPS region consistently recorded the highest median rate of public nuisance across the two-year data period (80 per 100,000 population), 2.6 times the rate for Queensland as a whole (31 per 100,000 population). This high rate is consistent with the high rate of offences against the person and other offences (but not offences against property) in the Far Northern region (QPS 2003a, 2004b, 2005b, 2007d).

Figure 10(a) shows those suburbs and towns that had the highest proportion of public nuisance incidents in the Far Northern QPS region.

**Figure 10(a): Public nuisance incidents in the Far Northern QPS region between 1 April 2003 and 31 March 2005**

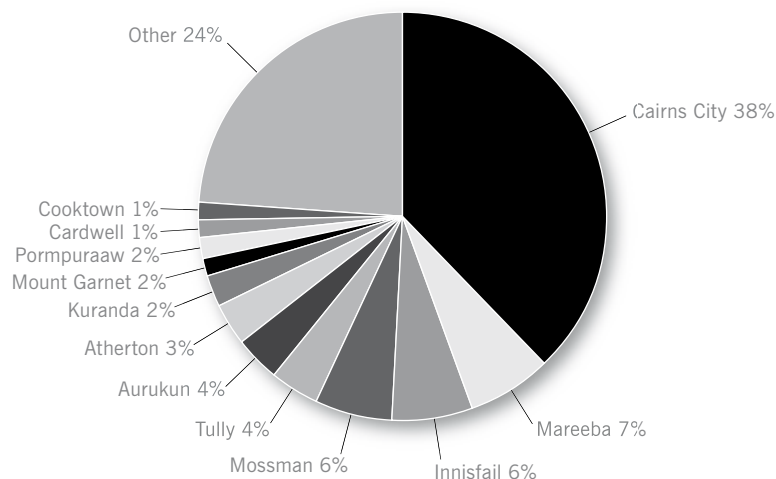


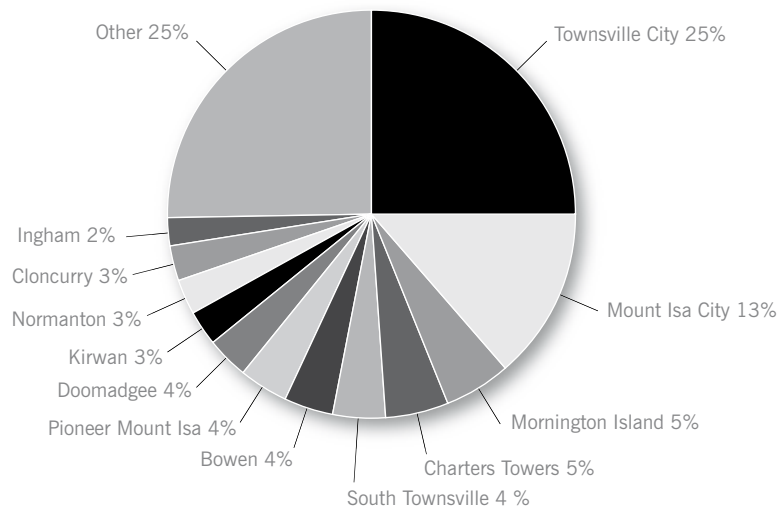
Figure 10(a) shows that a substantial proportion of incidents are occurring in Cairns (38 per cent,  $n = 1701$ ). Given the large population of this city and the fact that it is a major entertainment centre for a high number of tourists each year, this finding is probably not surprising. What is noticeable, however, is the relatively large proportion of incidents occurring in the Indigenous communities of Aurukun and Pormpuraaw. Given the small populations of these communities, this finding is noteworthy.<sup>34</sup>

34 According to the Australian Bureau of Statistics, 2002, 4705.0 — Population Distribution, Indigenous Australians, 2001 <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/CA2568A90021A807CA256BE30080BFD9/\\$File/47050\\_tables%20to%2012.xls](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/CA2568A90021A807CA256BE30080BFD9/$File/47050_tables%20to%2012.xls)> (accessed 14.01.08), in 2001 the population of Aurukun was 1045 and the population of Pormpuraaw was 582. Although none of these figures were collected during the years under consideration in this review, they appear to be the best population estimates available for these periods. Furthermore, even if it is assumed that the population of these areas doubled between 2001 and the period under consideration in this review (2003–05), the population of each area would still represent less than 1 per cent of the total estimated population of the QPS Far Northern region as at 30 June 2004 (235,102 — QPS 2004b).

### ***Northern QPS region***

As was shown in Figure 9(b), the median monthly public nuisance offence rate for the Northern QPS region (55 per 100,000 population) was consistently above the median monthly rate for Queensland for this period (31 per 100,000 population). Figure 10(b) provides more details of the location of public nuisance offending in the Northern QPS region.

**Figure 10(b): Public nuisance incidents in the Northern QPS region between 1 April 2003 and 1 March 2005**



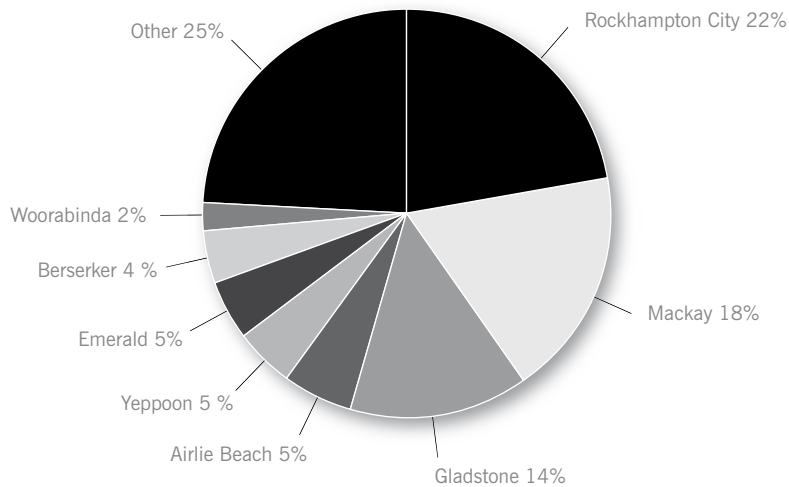
As shown in Figure 10(b), a significant proportion of public nuisance incidents in the region occurred in Townsville City and surrounds (Kirwan and South Townsville are suburbs of Townsville). The large proportion of public nuisance incidents that occurred in Mt Isa City and Pioneer (a suburb of Mt Isa that is home to many Indigenous families) is also noteworthy.

### ***Central QPS region***

As shown in Figure 9(c), the median monthly public nuisance rate for the Central QPS region (47 per 100,000 population) was consistently above the median monthly rate for Queensland (31 per 100,000 population).

As can be seen in Figure 10(c), a large proportion of public nuisance incidents in this region occurred in the three main urban areas: Rockhampton City and surrounds (Berserker is a suburb of Rockhampton), Mackay and Gladstone.

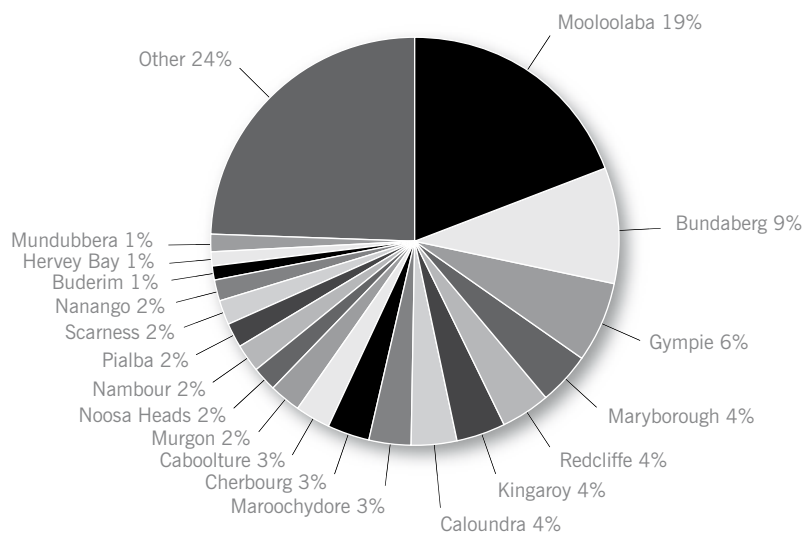
**Figure 10(c): Public nuisance incidents in the Central QPS region between 1 April 2003 and 31 March 2005**



#### ***North Coast QPS region***

As shown in Figure 9(d), the median monthly public nuisance offence rate of the North Coast QPS region (25 per 100,000 population) was consistently below the rate for Queensland as a whole (31 per 100,000 population). Figure 10(d) provides further details of public nuisance offending in the North Coast QPS region.

**Figure 10(d): Public nuisance incidents in the North Coast QPS region between 1 April 2003 and 31 March 2005**



As shown in Figure 10(d), public nuisance incidents in the North Coast QPS region were more evenly distributed than was the case for most other regions. The North Coast QPS region does have a major tourist and entertainment area on the Sunshine Coast and a concentration of heavily frequented licensed premises at Mooloolaba in particular, which has a high percentage of recorded public nuisance incidents in the region.

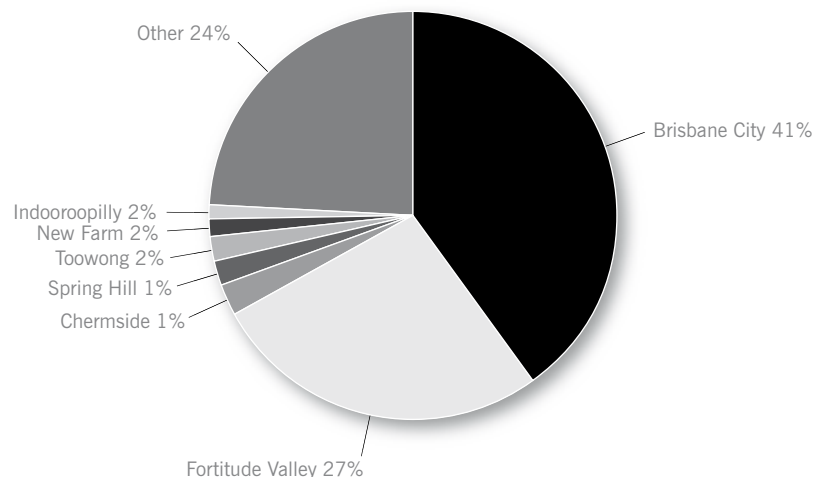


### ***Metropolitan North QPS region***

As shown in Figure 9(e), the median monthly public nuisance offence rate of the Metropolitan North QPS region (31 per 100,000 population) was consistent with the rate for Queensland as a whole (31 per 100,000 population).

As shown in Figure 10(e), the Brisbane City and Fortitude Valley areas of the Metropolitan North QPS region accounted for the vast majority of the number of public nuisance incidents recorded in the region (approximately 67%).

**Figure 10(e): Public nuisance incidents in the Metropolitan North QPS region between 1 April 2003 and 31 March 2005**

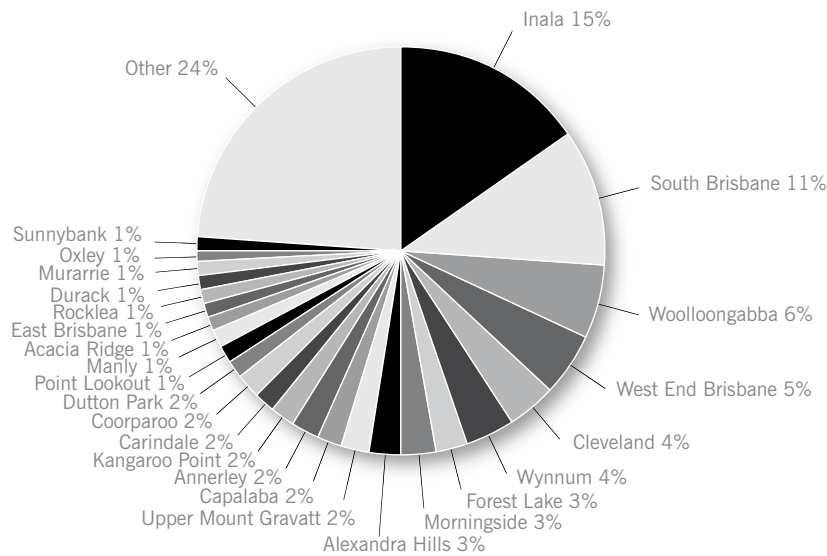


The Brisbane City and Fortitude Valley corridor is the largest entertainment precinct in Queensland, containing many licensed venues that have an influx of clientele on Friday and Saturday nights in particular. Officers involved in policing these areas commented to the review that, given the approximately 50,000 people who visit the Fortitude Valley entertainment precinct each Friday and Saturday night, 'the number done for public nuisance is actually quite low'. They also argued that the increase in public nuisance charges has been accompanied by a decrease in grievous assaults and sexual offences (QPS (Fortitude Valley) consultations, 10 October 2006; QPS (Brisbane) consultations, 28 September 2006).

### ***Metropolitan South QPS region***

As was shown in Figure 9(f), the Metropolitan South QPS region consistently recorded the lowest median monthly rate of public nuisance. Across the two-year data period the rate of public nuisance in the Metropolitan South QPS region (9 per 100,000 population) was less than a third the rate for Queensland for this period. Figure 10(f) provides details of public nuisance incidents in the Metropolitan South QPS region.

**Figure 10(f): Public nuisance incidents in the Metropolitan South QPS region between 1 April 2003 and 31 March 2005**



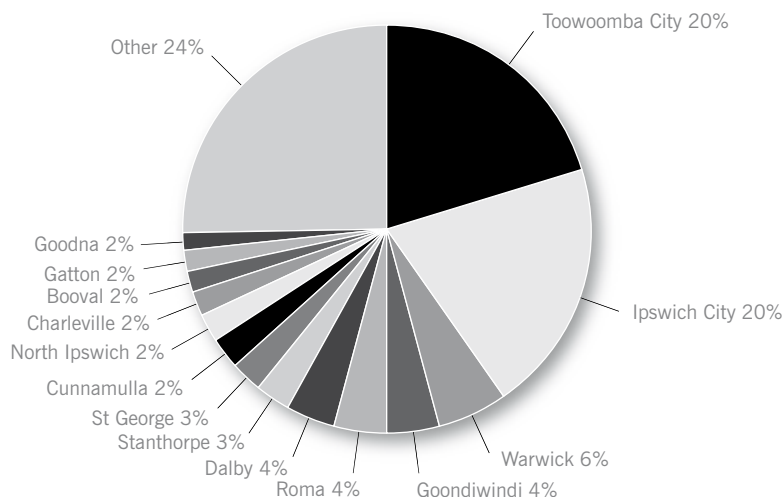
As was the case for the North Coast QPS region, Figure 10(f) shows that public nuisance incidents in the Metropolitan South QPS region were more evenly distributed than was the case for most other regions.

Figure 10(f) shows that the highest concentration of public nuisance incidents in the Metropolitan South QPS region occurred in Inala and South Brisbane, which are not noted for being entertainment districts. South Brisbane does include the large recreational space of Brisbane's South Bank and Inala is noted for its high crime rate generally and its significant Indigenous and other ethnic population (Butler & Creamer 2002).

#### ***Southern QPS region***

As shown in Figure 9(g), the median monthly public nuisance rate in the Southern QPS region (28 per 100,000 population) was relatively close to the Queensland state rate (31 per 100,000 population). As can be seen in Figure 10(g), a substantial proportion of the public nuisance incidents in this region occurred in the main urban areas of Toowoomba City and Ipswich City.

**Figure 10(g): Public nuisance incidents in the Southern QPS region between 1 April 2003 and 31 March 2005**

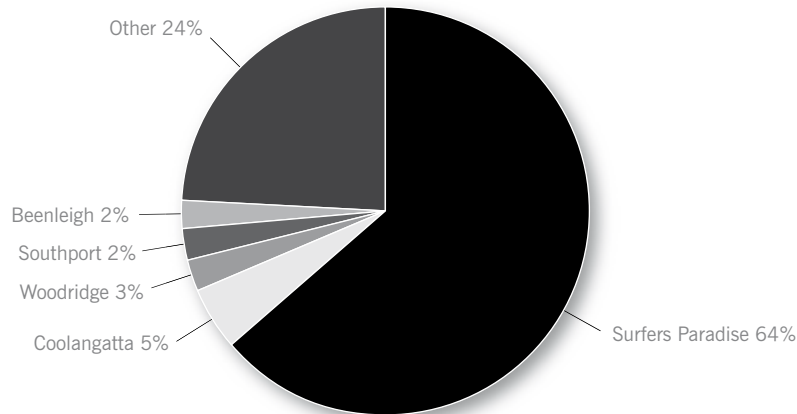


### ***South Eastern QPS region***

As shown in Figure 9(h), the median monthly public nuisance offence rate of the South Eastern QPS region (22 per 100,000 population) was consistently around three-quarters of the rate for Queensland as a whole (31 per 100,000 population).

As shown in Figure 10(h), the majority of public nuisance incidents in the South Eastern QPS region were recorded in Surfers Paradise and relatively few were recorded in other areas within the region.<sup>35</sup>

**Figure 10(h): Public nuisance incidents in the South Eastern QPS region between 1 April 2003 and 31 March 2005**



As was shown in Figure 9(h), public nuisance incidents in the South Eastern QPS region showed the highest seasonal fluctuations. The region had a median monthly public nuisance rate well below the state median rate (31 per 100,000 population) during the winter months (20 per 100,000 population from June to August each year) and levels of public nuisance that were relatively consistent with the state median during the summer months (30 per 100,000 population from December to February each year).

There are clear spikes in the public nuisance rate in this region around the end of October and again around the end of November. These spikes coincide with two major events occurring on the Gold Coast, the Indy carnival at the end of October and Schoolies Week celebrations at the end of November. (A large music festival, the Big Day Out, held on the Gold Coast towards the end of January appears to also coincide with a smaller spike.) These events result in a great influx of people to the Gold Coast area, many of whom are drinking alcohol or consuming other drugs; police numbers are also increased. For example, the QPS reports that it devoted 530 officers to policing the Indy carnival in 2003, to manage the crowd of over 300,000 spectators (QPS 2004c, p. 38).

In response to public and local council concerns, and media interest, particular police practices have developed to actively target public nuisance behaviours during these major events (QPS (Gold Coast) consultations, 28 October 2006; Legal Aid Officers (Gold Coast) consultations, 7 September 2006).

<sup>35</sup> The South Eastern QPS region includes Logan.

## SUMMARY OF FINDINGS

The greatest proportion of public nuisance offending under both the old and the new offence occurs on the street (around 70 per cent). There have been statistically significant increases in public nuisance offending in licensed premises and other businesses under the new legislation and decreases in offending in private dwellings and recreational spaces.

For the most part, public nuisance offending occurs late in the evening/early morning and on weekends. This again suggests links between the consumption of alcohol at licensed premises and public nuisance offending.

Our findings clearly show that the key locations for public nuisance activity are usually major urban centres such as Brisbane CBD and Fortitude Valley, Surfers Paradise, Cairns CBD, Townsville CBD and Mt Isa CBD. The data show clear evidence of spikes in the rates of public nuisance offending at the time of key events such as Schoolies Week and the Indy carnival. (Again the data suggests a link between alcohol consumption at licensed premises and public nuisance offences.)

Police data show regional differences in the rate of public nuisance offending, with Far Northern QPS region having the highest rate and Northern and Central QPS regions recording rates above the state average. Metropolitan South QPS region consistently recorded rates below the state average.

Comparing the offence rates before and after the introduction of the new offence, we found regional variations in the size and direction of change. For example, Metropolitan North, Metropolitan South and Southern QPS regions all showed statistically significant increases (21 per cent, 25 per cent and 20 per cent) and Northern QPS region recorded a significant decrease (14 per cent).

These regional variations argue against the conclusion that the change in the legislation alone has resulted in these fluctuations.

There are a wide variety of factors which might explain the differences across regions and across times in rates of public nuisance offending including:

- the presence or otherwise of members of marginalised groups in the area or region
- the presence or absence of public nuisance 'hot spots' or events — for example, pubs, clubs, entertainment venues, Schoolies Week and the Indy carnival
- whether or not the area is a high crime area generally
- the existence of local community initiatives either to 'crack down' on disorder or to respond to particular public order problems — for example, the Brisbane City Safety 17 Point Action Plan and the Cairns Homelands project — or to provide support services to address underlying problems
- the influence of court decisions on police practices — for example, in some areas the police may be more aware of, and responsive to, the standards set by the Courts.

All of these factors may influence policing priorities and objectives.

## WHO ARE QUEENSLAND'S PUBLIC NUISANCE OFFENDERS?

### WHAT VIEWS WERE PUT TO THE REVIEW ABOUT PUBLIC NUISANCE OFFENDERS?

The police views presented to the review regarding public nuisance offenders were very clear. The police considered that while they often had little choice other than to use the public nuisance offence to deal with the behaviour of some 'street people', especially those living in parks in particular areas, its principal use was directed at managing the behaviour of 'party people'. Police clearly placed considerable reliance on the public nuisance offence when dealing with intoxicated persons.

The main concern expressed to the review about public nuisance offenders was overwhelmingly about the disproportionate impact of public order offences on disadvantaged people such as the homeless, the mentally ill, young people and Indigenous people (submissions from the Queensland Bar Association, p. 1; Family and Prisoners Support, p. 2; Caxton Legal Centre, p. 6; Chief Magistrate, p. 2; QPILCH, p. 11; Legal Aid Queensland, p. 3; Walsh, pp. 20–1). This concern was also reflected in the parliamentary and public debates that have occurred in Queensland about the new public nuisance offence. For example, the Attorney-General at the time of the introduction of the new public nuisance offence, the Hon. Rod Welford, admitted 'it is true that laws relating to public order do disproportionately affect people who are homeless and Indigenous people' (2004, p. 28).

Dr Tamara Walsh's research has been the largest body of research regarding the characteristics of Queensland's public nuisance offenders published to date (see also Legal Aid Queensland 2005). Walsh (2004a, p. 85) asserts that in Queensland the law is applied in a discriminatory fashion and 'those most likely to be prosecuted' for street offences such as public nuisance are people who are homeless or at risk of homelessness. She states that 'the majority of defendants in these cases are homeless, Indigenous, young and/or display signs of mental illness, intellectual disability and drug dependency' (2004b, pp. 20 & 5).

Walsh's observational court research has found that:

- as many as 60 per cent of public nuisance defendants coming before the Brisbane Magistrates Court are aged under 25 years (2006a, p. 20)
- as many as 30 per cent of public nuisance defendants in Brisbane and 60 per cent in Townsville are Indigenous; this amounts to an Indigenous over-representation rate of 18 times in Brisbane and 14 times in Townsville (2006a, p. 19)
- up to 50 per cent or 'a large proportion of public nuisance defendants are social security recipients and/or homeless; around 30 per cent in Brisbane and 40–50 per cent in Townsville' (2006a, p. 18); see also Walsh (2005b, p. 223), where she states that up to 60 per cent of public nuisance defendants in the Brisbane Magistrates Court in February 2004 were 'homeless or of a low income'
- a substantial proportion (around 15 per cent) of public nuisance defendants suffer from cognitive, behavioural or psychological impairment (Walsh 2006a, pp. 17 & 20).

Walsh also claims her results demonstrate the negative impact of the new offence. She states that the rate of prosecution of young persons (aged 17–25) for offensive conduct 'has increased dramatically since the offence of public nuisance was introduced, particularly in

Brisbane' (2006a, p. 20). Her results show that young people constituted 46 per cent of defendants at Brisbane in February 2004 but 65 per cent in July 2004 under the new provision — an increase of 41 per cent (2006a, p. 17; 2005a, p. 7). She has described this as a 'staggering increase for which there is no obvious explanation other than selective enforcement' (2005a, p. 7).

However, some of her other findings concerning the impact of the new offence are not consistent with this view. For example, she found that:

- Fewer homeless people were being prosecuted for public nuisance than were apprehended for similar offences under the old provision: in February 2004, 15 per cent of those appearing at Brisbane were homeless, compared with 5 per cent in July of that year (2006a, p. 17; see also 2005a, p. 6).
- The number of people with a cognitive, behavioural or psychological impairment raised during court proceedings in Brisbane under the new public nuisance offence was nearly half that recorded under the old provision.
- Her figures (2006a, p. 17) show a decrease in the number of Indigenous public nuisance defendants appearing before the Brisbane courts after the introduction of the new offence.

She makes little or no comment on these findings (see also Walsh 2005a, p. 6).

Some submissions and consultations suggested that more disadvantaged people were being charged with the public nuisance offence since the introduction of the new provision. For example:

- The Chief Magistrate (p. 2) reported the anecdotal view of Queensland magistrates that the introduction of the new offence was having a disproportionate effect on disadvantaged and vulnerable community groups, such as alcoholics, homeless people and Indigenous people.
- The Department of Communities (pp. 1–2) submitted that their experience was of more young people being charged with public nuisance under the new offence.
- Legal Aid Queensland (p. 7) reported an increase in the number of homeless people coming before the courts for street offences, including public nuisance (see also Legal Aid Queensland 2005, p. 1).

There was also a suggestion put to the review that the new public nuisance offence was drawing in first-time offenders to the criminal justice system. For example, Legal Aid Queensland officers at the Gold Coast also suggested that many offenders were first offenders, mainly young males. The Caxton Legal Centre noted that the 'majority of the clients of the Centre had not been involved with the criminal justice system prior to these [public nuisance] incidents occurring' (Caxton Legal Centre, p. 11). And Legal Aid Queensland officers asserted that the new public nuisance offence would encompass people who 'wouldn't usually be in trouble with the police', namely 'blokes at the footy, or uni students' (Legal Aid Queensland (Gold Coast) consultations, 7 September 2006).

We considered police and courts data regarding the general characteristics of public nuisance offenders and the impact of the introduction of the new offence.

## WHO ARE QUEENSLAND'S PUBLIC NUISANCE OFFENDERS?

We examined police and courts public nuisance data for the two-year period from 1 April 2003 to 31 March 2005 (the 12-month periods before and after the introduction of the new offence) to determine:

- the sex, age and Indigenous characteristics of public nuisance offenders
- whether or not the introduction of the new public nuisance offence coincided with a change in the characteristics of public nuisance offenders

- the number and proportion of single-incident and recidivist public nuisance offenders within our two-year data period; characteristics of recidivist public nuisance offenders; and whether or not the introduction of the new public nuisance offence coincided with any change.

Neither police data nor courts data provide information on homelessness or mental illness or impairment. It would be very difficult, if not impossible, for police or courts to accurately record these details as these factors are notoriously difficult to define and assess. For this reason we are not able to provide empirical evidence on homeless, mentally ill or impaired public nuisance offenders.

Additional details of the results of our analyses, including the results of statistical tests, are provided in Appendixes 10–13.

## Total number of offenders

In the police data we identified 30,926<sup>36</sup> offenders involved in public nuisance incidents for the two-year period from 1 April 2003 to 31 March 2005.

In the Magistrates and Childrens Courts data we identified 25,244 offenders involved in public nuisance matters finalised during the same period.

### Sex

Police data show:

- 84 per cent (25,772) of public nuisance offenders were male
- 16 per cent (5092) were female.<sup>37</sup>

Courts data show:

- 83 per cent (20,997) of public nuisance offenders were male
- 17 per cent (4204) were female.

When we compared the 12 months before and the 12 months after the introduction of the new offence, the relative proportions of male to female public nuisance offenders remained relatively constant in the police data and courts data (see Appendix 10).

This sex profile, with the vast majority of public nuisance offenders being male, is generally consistent with the sex profile of Queensland offenders across all offence categories (QPS 2004b, pp. 73–90; 2005b, pp. 73–90; 2006a, pp. 73–90).

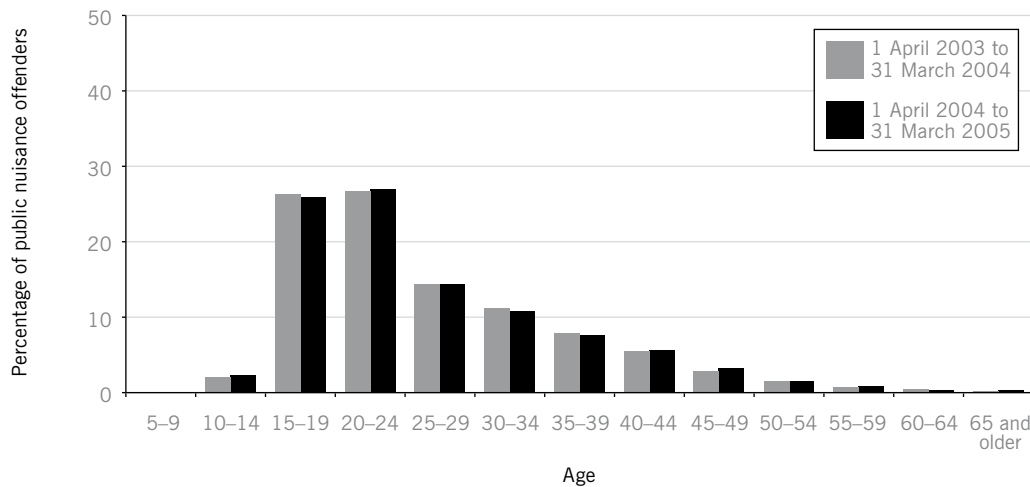
### Age

Figure 11 presents police data on the age of public nuisance offenders during each of the 12-month periods before and after the introduction of the new offence.

36 The number of public nuisance offenders recorded exceeds the number of public nuisance incidents recorded because some incidents involved multiple offenders.

37 The numbers of male and female offenders are less than the total number of offenders identified in police data because there were a number of records that do not provide details of whether the offender was male or female (see Appendix 10 for further details). Similarly, analyses that follow in this report of offender age and Indigenous status, police action, courts results and penalty imposed only included records where relevant details were recorded (the associated appendixes will provide the details of the number of offenders whose records were excluded from statistical consideration in all cases).

**Figure 11: Age of public nuisance offenders during the 12-month periods before and after the introduction of the new offence**



Source: QPS data

Our examination of the age profile of public nuisance offenders for the two-year data period shows:

- the age profile of public nuisance offenders varied very little when we compared the 12-month periods before and after the introduction of the new offence
- 7 per cent (2217) were aged less than 17 years (that is, were legally defined as juveniles)
- 93 per cent (28,701) were aged 17 years and older (that is, they were legally defined as adults)
- 48 per cent (14,832) were aged 17–24 years
- the median age was 23 years
- there were significant variations in the median age of public nuisance offenders across QPS regions; median ages ranged from 21 years old in the Southern and South Eastern QPS regions through to 27 years old in the Northern and Far Northern QPS regions
- young people (aged less than 25 years) were over-represented as public nuisance offenders; they make up 55 per cent of the public nuisance offenders but only 35 per cent of the Queensland population.

We also considered courts data on the age of public nuisance offenders and found they were consistent with our results from the police data. See Appendix 11 for further details of the analysis of the age profile of offenders recorded in the QPS data and Queensland courts data.

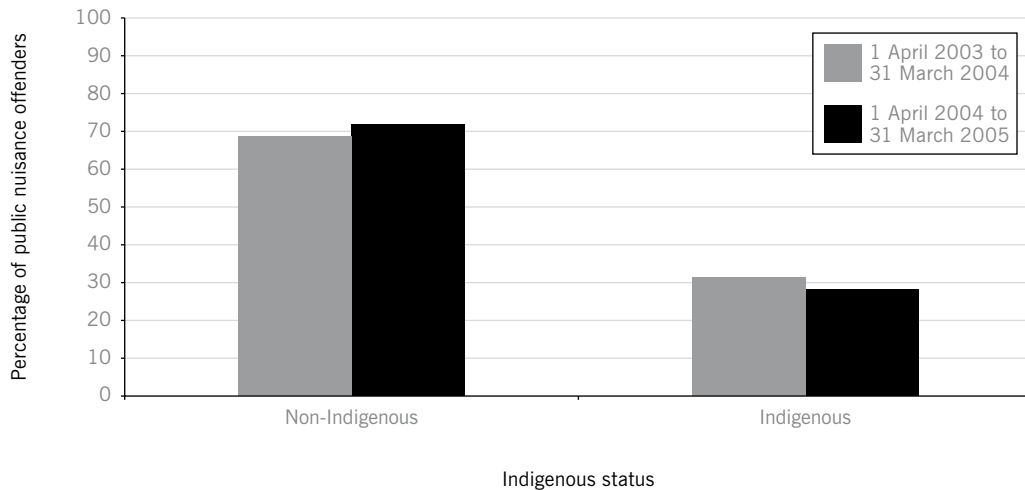
The age profile of public nuisance offenders as shown in both the police data and the courts data is largely consistent with the age profile generally of Queensland's offenders for other types of offences (including offences against the person and offences against property) (QPS 2004b, pp. 73 & 84; 2005b, pp. 73 & 84; 2006a, pp. 73 & 84). We did not see an increase in the proportion of young offenders after the introduction of the new offence.



### Indigenous status

Figure 12 compares police data for Indigenous and non-Indigenous public nuisance offenders.

**Figure 12: Indigenous and non-Indigenous public nuisance offenders in the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

Our comparison of Indigenous and non-Indigenous public nuisance offenders in police data for the two-year period shows:

- the proportion of Indigenous offenders (30%,  $n = 9065$ ) was significantly higher than the proportion of all Queenslanders who identify as Indigenous (approximately 3.5%); Indigenous people<sup>38</sup> were 12.6 times more likely than non-Indigenous people to be public nuisance offenders
- the proportion of Indigenous public nuisance offenders decreased during the 12 months after the introduction of the new public nuisance offence; this decrease was found to be statistically significant.

We considered courts data on the Indigenous status of public nuisance offenders and found they were consistent with our results from the police data. See Appendix 12 for further details of the analysis of the Indigenous status of offenders recorded in the QPS data and Queensland courts data.

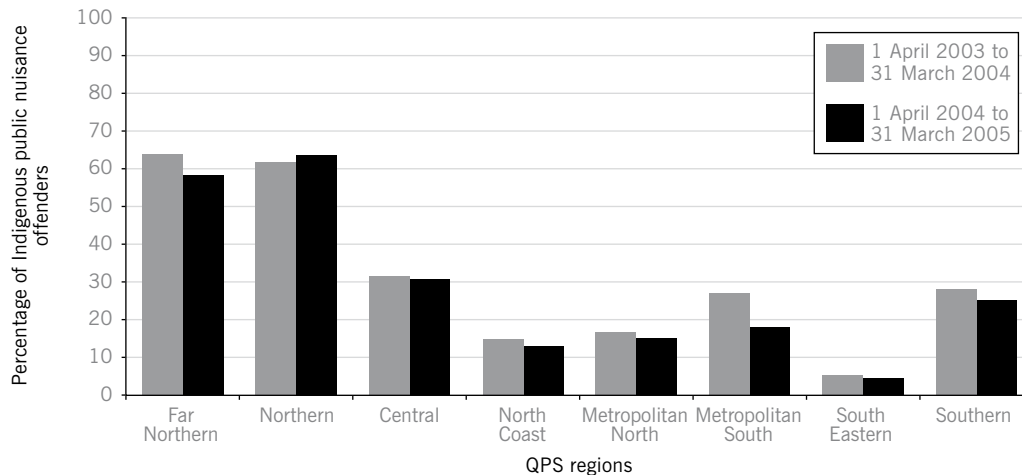
#### What does it mean when we say something is 'X times more likely'?

This is called an 'odds ratio' (OR). An odds ratio is a particular statistical calculation we have made. The greater the size of the odds ratio, the greater the magnitude of the association between a possible predictor, or risk factor (for example, Indigenous status), and an outcome (for example, being a public nuisance offender). The closer the odds ratio is to 1, the smaller the association; the larger the odds ratio, the greater the association. Therefore, an odds ratio of 1.5, for example, indicates that the outcome is about 50 per cent more likely to occur among the predictor or risk factor group than its counterparts; an odds ratio of 2.0 indicates that the outcome is twice as likely to occur among the predictor or risk factor group than its counterparts (see Appendix 1 for more information).

38 As a proportion of the general population.

We also considered regional differences in the number and proportion of Indigenous and non-Indigenous offenders. Figure 13 compares the proportions of Indigenous public nuisance offenders in each QPS region during the 12 months before and after the introduction of the new public nuisance offence.

**Figure 13: Proportion of Indigenous public nuisance offenders in each QPS region during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

Our analysis of the police data shows:

- more than 60 per cent of public nuisance offenders in the Far Northern ( $n = 2937$ ) and Northern ( $n = 2138$ ) QPS regions were Indigenous; this figure reflects the higher proportion of the population in these regions that is Indigenous, but is still an over-representation of Indigenous people as public nuisance offenders
- less than 5 per cent ( $n = 219$ ) of offenders in the South Eastern QPS region were Indigenous
- with the exception of the Northern QPS region, all QPS regions recorded a decrease in the proportion of Indigenous public nuisance offenders in the 12 months after the introduction of the new public nuisance offence; in the Metropolitan South and Far Northern QPS regions, this decrease was found to be statistically significant.

## RECIDIVIST OFFENDERS OR SINGLE-INCIDENT OFFENDERS?

We did not consider the criminal histories of public nuisance offenders, and we did not consider public nuisance offenders' broad criminal trajectories after they had committed a public nuisance offence. We were, however, able to consider recidivism in a more limited sense.

We examined police data of public nuisance incidents for the two-year period from 1 April 2003 to 31 March 2005 (12 months before and 12 months after the introduction of the new offence) to determine:

- the proportions of single-incident and recidivist public nuisance offenders, and whether or not the introduction of the new offence coincided with any change in these proportions
- the age and Indigenous status of recidivist offenders
- whether or not the introduction of the new public nuisance offence coincided with changed characteristics of recidivist public nuisance offenders or single-incident public nuisance offenders.

## Total number of recidivist public nuisance offenders

Our analysis of the 26,835 unique offenders recorded in police data between 1 April 2003 and 31 March 2005 shows that in the 12-month period after the introduction of the new offence there was a 1 per cent increase in the proportion of single-incident offenders and a corresponding decrease in the proportion of recidivist offenders. These changes were not statistically significant. Further:

- both before and after the introduction of the new offence, the vast majority of unique public nuisance offenders were identified in relation to only one public nuisance incident (89%,  $n = 24,006$ )
- 11 per cent of unique public nuisance offenders were identified in relation to more than one public nuisance offence ( $n = 2829$ ) and 3 per cent were identified in relation to more than two public nuisance offences ( $n = 716$ ).

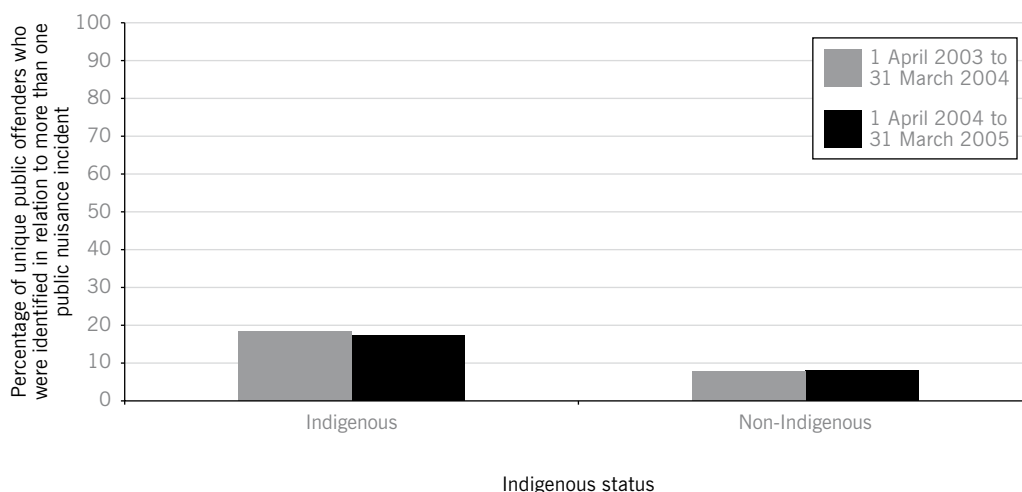
## Age

We did not see increases in the proportion of young people (aged less than 25 years) who were recidivist public nuisance offenders after the introduction of the new public nuisance offence.

## Indigenous status

Figure 14 shows the percentage of unique Indigenous and non-Indigenous offenders who were identified in relation to more than one public nuisance incident during the 12-month periods before and after the introduction of the new offence (recidivist public nuisance offenders).

**Figure 14: Proportion of Indigenous and non-Indigenous offenders involved in more than one public nuisance incident during the 12-month periods before and after the introduction of the new offence**



Source: QPS data

Over the two-year period, Indigenous (18%,  $n = 1256$ ) public nuisance offenders were significantly more likely to be recidivist public nuisance offenders than were non-Indigenous public nuisance offenders (8%,  $n = 1547$ ) (2.5 times more likely).

After the introduction of the new public nuisance offence, the proportion of recidivist Indigenous public nuisance offenders decreased from 18 per cent of all unique Indigenous offenders ( $n = 641$ ) to 17 per cent of all unique Indigenous offenders ( $n = 615$ ). This decrease was not statistically significant.

Appendix 13 provides further details of our analyses of the number of recidivist public nuisance offenders and their characteristics.

## SUMMARY OF FINDINGS

There were two main issues raised during the review regarding public nuisance offenders. The first was the over-representation of marginalised groups such as Indigenous people, homeless people, young people, and the mentally ill or impaired as public nuisance offenders.

Our analysis of police and courts data shows:

- the majority of public nuisance offenders in Queensland are male, aged 17–30 years; this is consistent with criminal offender profiles more generally; around 7 per cent were juveniles aged less than 17 years
- the median age of public nuisance offenders is 23 years
- Indigenous people and young people (aged less than 25 years) are over-represented as public nuisance offenders
- no evidence that the new public nuisance offence has led to an increase in the proportion of young people and Indigenous people who were public nuisance offenders; the age profile of public nuisance offenders remains unchanged when we compare the 12 months before and after the introduction of the new offence and there was a statistically significant decrease in the proportion of Indigenous public nuisance offenders.

The data did not enable identification of individuals who were homeless or mentally ill or impaired.

The second issue was whether there was a change in the proportion of recidivist public nuisance offenders. We were only able to measure recidivism in a limited way — whether in a 12-month period an offender had one or more public nuisance incidents recorded. We found:

- both before and after the introduction of the new public nuisance offence, the majority of public nuisance offenders (89%) only offended once, 8 per cent offended twice and 3 per cent offended three or more times in 12 months
- Indigenous people were significantly over-represented as recidivist public nuisance offenders
- contrary to some claims, there was no increase in the proportion of young people who were recidivist public nuisance offenders after the introduction of the new offence and the proportion of recidivist Indigenous offenders decreased after the introduction of the new public nuisance offence.

## HOW ARE PUBLIC NUISANCE OFFENCES DEALT WITH BY POLICE?

An important issue in the debate about public nuisance is the manner in which police respond to public nuisance. The police views expressed to the review can be summarised as follows:

- Police frequently deal with public nuisance incidents as a result of requests for assistance from members of the public, including security staff, local councils and others.
- Arrest was in the majority of cases the appropriate response to public nuisance offending in the circumstances. Police clearly believed that they often had to remove the offender/s in order to 'stop the problem' and that arresting them prevented their conduct continuing or escalating into more serious offending; this was said to be particularly true when managing the drunken aggressive behaviour of crowds (QPS (Townsville) consultations, 20 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006; QPS (Ipswich) consultations, 29 October 2006; QPS (Toowoomba) consultations, 25 October 2006; QPS (Cairns) consultations, 18 September 2006).
- Police acknowledged that their intervention can lead to an escalation in conflict and aggression. For example, it was a source of frustration to some officers that council security staff often requested police assistance to deal with people in parks when their presence can 'create more problems than it solves' (QPS (Townsville) consultations, 20 September 2006). Other police noted that people committing public nuisance offences are, as indicated by the nature of the offence, generally uncooperative, so it was hardly surprising that these offences could escalate into situations that result in charges of offences against police also being laid (QPS (Cairns) consultations, 18 September 2006).

Other stakeholders identified the following key concerns about how public nuisance offences are dealt with by police:

- It was suggested that most public nuisance offending is police-generated (see Walsh 2004b, pp. 20, 21, 25 & 30; Walsh 2006b, p. 206; Legal Aid Queensland 2005, p. 18; submissions of LAQ p. 6; Chief Magistrate p. 3). For example, the submission of Caxton Legal Centre (pp. 4 & 7) states 'the majority of public order charges we have seen at our Centre do not involve any complaint from members of the public... [rather] police are on routine duties when they see the behaviour that results in the majority of the charges' (although the submission does qualify that the numbers of cases they are referring to is very small). Caxton Legal Centre argues 'the perception of public safety has not increased as a result of the rigorous enforcement of this offence', public nuisance offences are:  

relatively minor incidents, and are not such as to impact one way or the other on the perception of safety in the community... this is evidenced by the fact that seemingly, only one of the complaints we have seen has certainly been brought by a member of the public, and as such a reduction in this type of behaviour would not change the public perception of safety levels (Caxton Legal Centre, p. 7).
- It was suggested that police may over-use arrest (rather than alternative methods that do not involve detention in police custody) as a method of initiating proceedings against public nuisance offenders. The over-use of arrest was a particular concern in relation to young people and Indigenous people (Legal Aid Queensland (Sunshine

Coast) consultations, 5 October 2006; Legal Aid Queensland (Townsville) consultations, 14 September 2006; Legal Aid Queensland (Cairns) consultations, 19 September 2006; ATSILS (Cairns) consultations, 19 September 2006; ATSILS (Mt Isa) consultations, 13 September 2006; Walsh 2006a, p. 24).

- It was suggested that public nuisance offending is typically associated with other offences against police (Legal Aid Queensland (Gold Coast) consultations, 7 September 2006); that police involvement often leads to the public nuisance behaviour (5 September 2006); that police handling of public nuisance behaviours often escalates into more serious behaviours such as assault of police, which in turn carry more serious consequences (ATSILS (Townsville) consultations, 14 September 2006; ATSILS (Mt Isa) consultations, 13 September 2006); and that public nuisance policing in some circumstances leads to police violence (ATSILS (Mt Isa) consultations, 13 September 2006).

In this chapter we present the results of our examination of police data to determine how often:

- police are called to assist with public nuisance incidents (as opposed to detecting the incidents while on patrol)
- police are using arrest to initiate proceedings against public nuisance
- public nuisance offending is accompanied by other types of offence charges, particularly offences against police.

## HOW DO POLICE BECOME AWARE OF PUBLIC NUISANCE BEHAVIOUR?

Only rarely does the criminological research literature, which is generally highly critical of police for their overzealous public order policing, acknowledge that it is the police who are often called and empowered to assist the public when confronted by behaviour that is 'offensive or potentially dangerous' (see, for example, Jochelson 1997, p. 1). However, information already described in this review provides evidence of significant levels of public concern around issues of anti-social behaviour in public places. It is our belief that the notion that public nuisance crimes are largely detected and generated by police needs to be closely examined.

Unfortunately, the way police data are recorded makes it very difficult to determine exactly how public nuisance comes to the attention of police. This is largely because the QPS relies on two separate systems for dealing with a report of a public nuisance offence occurring in the community.

The first system is known as Computer Aided Dispatch (or CAD), which is the system used in some areas when a member of the public calls police to ask for assistance or report a public nuisance. A communications room operator records the details and then calls out police in the area to respond. Unfortunately, these calls-for-service data are not available statewide as CAD is only used in a few of the larger centres in Queensland, such as Brisbane, Beenleigh, Broadbeach, Townsville and Cairns.

The second system that police rely on to record a public nuisance offence is the crime reports database (CRISP) (which was recently replaced by the QPRIME system). Although this system is used statewide, it does not reliably record details of whether police action was triggered by a member of the public calling to ask for police assistance or to report a crime (nor is it used to record some of the actions that may be taken by the officer, such as dealing with public nuisance behaviours through an informal warning).

To gain some indication of the extent to which police are responding to public reports or requests for assistance when they respond to public nuisance behaviours, we examined CAD data (that is, calls for service) for a one-month period (March 2005) in six suburbs from within the Metropolitan North and Metropolitan South QPS regions. On the basis of

dates, we were able to match police call-outs for 'disturbances' and 'street disturbances' with the dates of public nuisance incidents in the same areas as recorded in the police crime reports database (CRISP).

- In the Toowong, New Farm and Fortitude Valley<sup>39</sup> suburbs of the Metropolitan North region, we were able to match 64 of 77 public nuisance incidents (83%) to call-out dates.
- In the Inala, West End and South Brisbane suburbs of the Metropolitan South region, we were able to match 15 of 17 public nuisance incidents (88%) to call-out dates.

In contrast to what a number of stakeholders have stated, our analysis suggests that a high proportion of public nuisance incidents are not generated by police, but in fact are brought to their attention by members of the public.

Previous research conducted by the Criminal Justice Commission in one police division in Queensland provides further evidence in support of the view that many public nuisance offences are brought to the notice of police through a complaint made by a member of the public. This research found that uniformed police spend the largest amount of their time responding to calls for service and handling incidents, rather than on general patrol. It also showed that the single largest category of calls for service involved 'disturbances', including unruly or rowdy behaviour, offensive language, and other 'public order' problems (CJC 1996, pp. 3-4).

Our analysis suggests that a high proportion of public nuisance incidents is brought to police attention by members of the public and not generated by police themselves, as was frequently suggested by information considered in the course of the review.

The QPS has been the subject of criticism by some groups because of the perception that many of the public nuisance offences rely on the police as 'complainant' rather than relying on the evidence of other complainants. It appears that some groups take this as evidence that there are no other complainants and that the offences are police generated. A number of non-police submissions to the review suggested that police should only be empowered to act on the basis of a complaint (Caxton Legal Centre, p. 5; Youth Advocacy Centre, p. 5; RIPS, p. 2; see also RIPS 2004, p. 7). RIPS (p. 2), for example, suggested this would provide an appropriate 'check for heavy-handed policing'.

Our analysis suggests that just because no other complainant is apparent in the prosecution process it cannot be assumed that the police were not responding to a complaint. Rather, for the purposes of prosecuting the offence, police may often choose to be the complainant to simplify the process and perhaps avoid the need to provide evidence of witnesses other than themselves (QPS Pine Rivers District, p. 2)

In order for the QPS to defend itself more robustly against the criticism that its officers are overzealous in their enforcement of the public nuisance offence, the QPS should consider using the new QPRIME information system to reliably record whether public order offences are generated by police acting on their own initiative or are the result of police acting in response to community concerns.

Although our limited analysis described above tends to support the view that the police action is taken largely in response to calls for service, consistently recorded data on this issue would provide important information to assist in monitoring the exercise of police discretion and the QPS's responsiveness to community concerns.

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39 These suburbs were selected because they accounted for a relatively high proportion of the total number of public nuisance incidents recorded in the region, yet differed in terms of local socio-demographic composition.

## WHAT ACTION CAN POLICE TAKE AGAINST PUBLIC NUISANCE OFFENDERS?

Police have discretion about whether to charge a person with public nuisance.<sup>40</sup> Police receive training relevant to the exercise of their discretion that emphasises the preventive and diversionary actions that a police officer may take in circumstances such as dealing with a public nuisance incident (QPS 2007e, 2007f). There is a range of diversionary strategies available to police that do not involve charging the offender with an offence. These include:

- police officer observes the conduct, ignores it and takes no action
- police officer informally cautions; the officer verbally warns the person on the spot without any legal repercussions and the person does not receive a police record of the warning
- the police officer formally cautions; the officer verbally warns the person and a written record is made of the warning
- the police officer exercises the power to move people on by issuing a move-on direction (s. 48 *Police Powers and Responsibilities Act 2000* (Qld))
- the police can provide a direct referral to a community conference for persons less than 17 years old (although it could be expected that this option may not be applicable very often for public nuisance offences).

Police do not record crime report data on those public nuisance incidents that were ignored or resolved through the use of informal warnings.

If police decide to charge the person with an offence, options may include public drunkenness, wilful exposure, assault, wilful damage or public nuisance.<sup>41</sup>

If police determine it is appropriate in all the circumstances to charge a person with public nuisance, they are likely to commence formal criminal justice system proceedings in one of the following two ways:<sup>42</sup>

- Arrest (without a warrant) and charge. Once an arrest is made, police are obliged to transport the person to a watch-house, formally charge them, and either release the person on bail or take the person before a court as soon as practicable to have bail issues considered. Police have this power to arrest where they reasonably suspect a person is committing or has committed an offence and providing it is necessary for reasons that may include:
  - » prevention of the continuation or repetition of the offence or the commission of another offence
  - » to establish a person's identity

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40 When police are exercising their discretion as to whether to charge a person with any offence, including a public nuisance offence, they must consider two criteria: the sufficiency of evidence and the public interest. The sufficiency of evidence criterion requires police to establish on reasonable grounds that an offence has been committed, the accused can be identified, the elements of the offence can be proved, a statutory authority exists to prosecute the offence, and no time limit on proceedings has expired. The public interest criterion provides police with a wide range of discretionary factors that may be taken into consideration when determining if a person should be charged, including the triviality of the offence, whether the alleged offence is of minimal public concern, the cost of prosecution and the availability of alternatives to prosecution (QPS 2007e, 3.4.1–3.4.3).

41 Our analysis in this review does not consider trends across these alternatives, for the reasons stated in Chapter 2.

42 Police may also commence formal proceedings in two other ways but these are less likely to be used for public nuisance behaviours — first, by arresting a person after a warrant has been issued; or second, through a complaint and summons process. These processes are more complex in that they do not occur on the spot at the point of the alleged offending. They involve police preparing paperwork for approval by a magistrate or justice, which is then served on a suspect/offender. The complaint and summons and arrest warrant processes are mostly irrelevant to public nuisance offending, where police usually require some on-the-spot intervention to occur to initiate proceedings.



- » to prevent the person escaping
- » to ensure the person appears before a court
- » to preserve the safety or welfare of any person because of the nature and seriousness of the offence (s. 365 *Police Powers and Responsibilities Act 2000*).
- Issuing a notice to appear in court. A notice to appear may be issued on the spot and it contains brief details about the alleged offences and states when the recipient must appear in court.

The law imposes special obligations on police to consider diversionary options if the suspect/offender is less than 17 years old (see Part 2, Division 1 and Schedule 1 *Juvenile Justice Act 1992* (Qld); see also s. 380 of the *Police Powers and Responsibilities Act 2000*).<sup>43</sup>

Police may discontinue an arrest where a person is no longer reasonably suspected of committing the offence for which they were arrested or there is not enough evidence to bring the person before the court (s. 376 *Police Powers and Responsibilities Act 2000*). However, there was no information available from the police crime reports data to indicate that police are discontinuing arrest for public nuisance offences after a person has been arrested and charged. During consultations conducted for this review, police indicated that they may initiate an arrest and, if an offender cooperates or sobers up while at the watch-house, they may 'unarrest' and issue the offender with a notice to appear (Magistrates' consultations, 20 September 2006). Again, there is no information available in police crime reports data to indicate how frequently this occurs, so these possibilities are not considered in the following analyses.

## HOW ARE PUBLIC NUISANCE OFFENDERS BEING DEALT WITH BY POLICE?

When an offender is charged with public nuisance and other offences, these other offences may influence the way in which police respond to the offender. For this reason our analysis of police data excludes incidents involving offences other than public nuisance — that is, the analyses are based on 'public nuisance only' records, unless it is stated otherwise.

Further details of our results and analyses presented in this chapter, including measures of statistical significance, are provided in Appendixes 14 and 15.

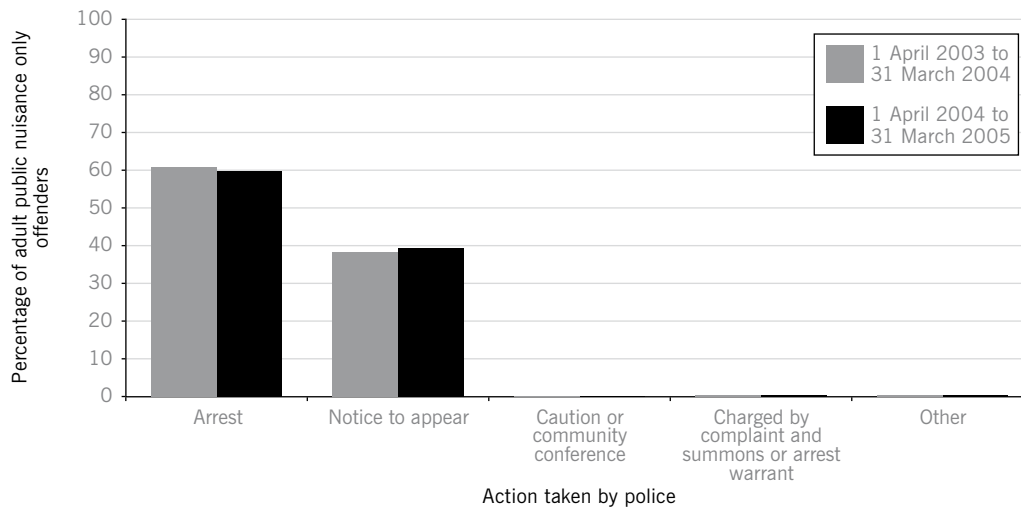
### Adults

Figure 15 shows police data for adult public nuisance offenders for the 12-month periods before and after the introduction of the new offence.

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43 For example, since May 2006 in Brisbane, after charging an adult, police are also able to provide direct referrals for eligible persons to the Magistrates Court-based Homeless Person Diversion Program. (Information provided to the review indicates that this only very rarely, if ever, occurs in practice. Most persons referred to the Homeless Person Diversion Program are identified by the courts rather than by police) (personal communication, Homeless Person Court Diversion Program, 11 December 2007).

**Figure 15: Police response to adult public nuisance offenders for the 12-month periods before and after the introduction of the new public nuisance offence.**



Source: QPS data

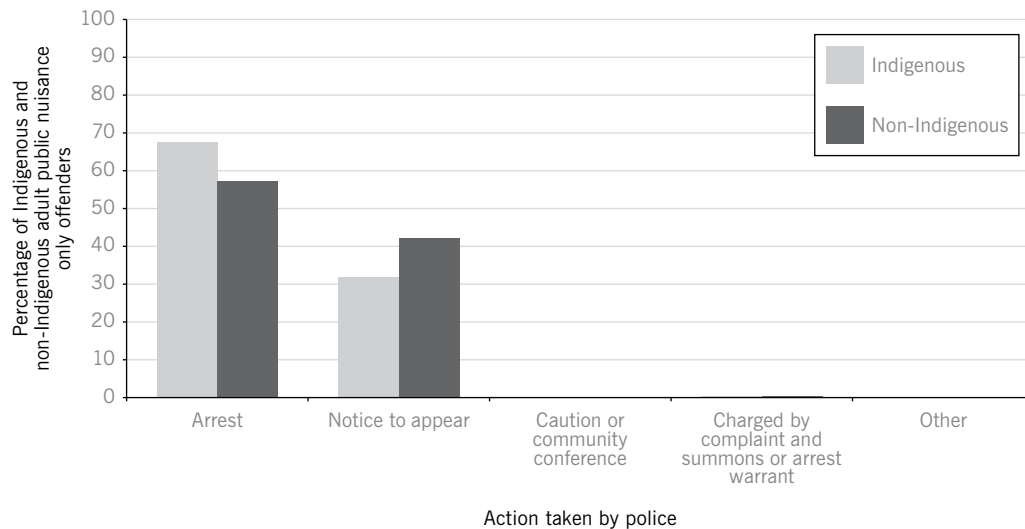
Figure 15 shows that, when we compared the 12-month periods before and after the introduction of the new public nuisance offence, we found there was no significant change in the proportion of adults arrested or issued a notice to appear for public nuisance.

The results over the two-year data period for adult public nuisance offenders show:

- 60 per cent ( $n = 13,578$ ) were dealt with by way of arrest
- 39 per cent ( $n = 8753$ ) were dealt with by way of notice to appear
- only a very small proportion were dealt with by way of caution, conferencing or other counselling (0.07%,  $n = 15$ )
- a further very small proportion were dealt with through other police action or police action was continuing (0.69%,  $n = 155$ ) (for example, these offenders were categorised in police data as charged by complaint and summons, no longer wanted, interviewed, wanted, or charged by arrest warrant).

Given the vast amount of research showing that Indigenous people tend to be over-represented in the most intrusive criminal justice processes, we compared how Indigenous and non-Indigenous adults were dealt with by police. Figure 16 presents this comparison of Indigenous and non-Indigenous offenders for our two-year data period.

**Figure 16: Police response to Indigenous and non-Indigenous public nuisance offenders for the two-year data period (1 April 2003 – 31 March 2005).**



Source: QPS data

Figure 16 shows:

- 68 per cent ( $n = 4415$ ) of Indigenous adults were dealt with by way of arrest, whereas 57 per cent ( $n = 9037$ ) of non-Indigenous adults were dealt with by way of arrest; Indigenous adults were 1.6 times more likely<sup>44</sup> than non-Indigenous adults to be dealt with by way of arrest, and this difference was found to be statistically significant
- 32 per cent ( $n = 2078$ ) of Indigenous adults were dealt with by notice to appear, whereas 42 per cent ( $n = 6647$ ) of non-Indigenous adults were dealt with by notice to appear; non-Indigenous adults were 1.6 times more likely than Indigenous adults to be dealt with by way of notice to appear, and this difference was found to be statistically significant.

When we compared how Indigenous and non-Indigenous adults were dealt with by police in the 12-month periods before and after the introduction of the new public nuisance offence, we found no significant change in the proportion of Indigenous adults arrested or issued a notice to appear..

The finding that Indigenous offenders are more likely to be dealt with by way of arrest rather than by other means is consistent with previous research (see, for example, Cunneen, Collings & Ralph 2005, pp. 61–5).

44 This calculation is a statistical calculation called an ‘odds ratio’. The greater the size of the odds ratio, the greater the magnitude of the association between a possible predictor, or risk factor (for example, Indigenous status), and an outcome (for example, being dealt with by way of arrest). The closer the odds ratio is to 1, the smaller the association; the larger the odds ratio, the greater the association (see Appendix 1 for more information).

## Juveniles

The law imposes special obligations on police when dealing with those who have not yet turned 17 years of age. Police are required to consider all available alternatives to charging a juvenile with an offence (s. 11 *Juvenile Justice Act 1992*). Police are required to consider if it is more appropriate to:

- take no formal action and adopt the least intrusive method of dealing with the offence by talking to the child or their parent<sup>45</sup>
- administer a caution (see Part 2 Division 2 *Juvenile Justice Act 1992*)<sup>46</sup>
- make a referral to a community conference (which is otherwise known as a youth justice conference — see Part 2 Division 3 & Part 3 *Juvenile Justice Act 1992*).<sup>47</sup>

When determining what course of action is appropriate regarding a juvenile, police must consider:

- the circumstances of the offence
- any criminal history
- any previous cautions administered
- any other previous dealings with the criminal justice system — for example, previous referrals to youth justice conferencing (s. 11 *Juvenile Justice Act 1992*; QPS 2007e, 5.4.2).

Where a child is under the age of criminal responsibility<sup>48</sup> but behaves in a manner that may constitute public nuisance, police may officially counsel the child. This is essentially an administrative process aimed at diverting the child away from further involvement with the criminal justice system (QPS 2007e, 5.5.3).

Figure 17 shows police data for juvenile public nuisance offenders for each of the 12-month periods before and after the introduction of the new offence.

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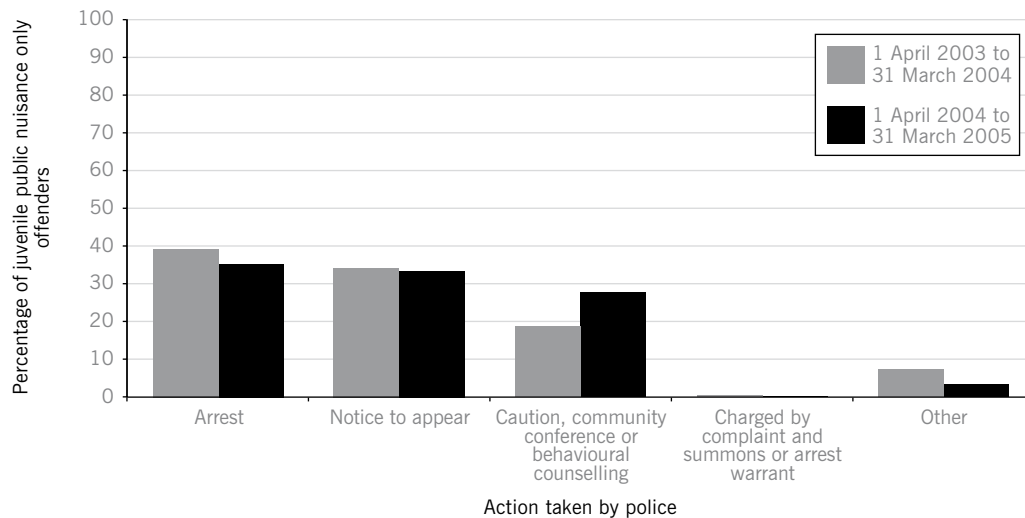
45 Schedule 1 subsection 5 *Juvenile Justice Act 1992*, Charter of Juvenile Justice Principles: 'If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.'

46 The QPS Operational Procedures Manual provides that, if appropriate, juvenile offenders should be cautioned for their first offence and/or subsequent offences, depending on the seriousness and circumstances of their conduct (QPS 2007e, 5.5.1). Police may administer a caution where they have a *prime facie* case, and the juvenile admits to committing the offence and consents to being cautioned (ss. 16 & 17 *Juvenile Justice Act 1992*; QPS 2007e, 5.5.3).

47 Police may be able to refer a child to a conference if the child admits that they committed an offence. Conferencing brings together the child, any victims of the offence and other concerned persons, to reach a mediated outcome.

48 A person under 10 years old is not criminally responsible for any act or omission. A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time the person did the act they knew what they were doing was wrong (s. 29 *Criminal Code 1899*).

**Figure 17: Police response to juvenile public nuisance offenders during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

As Figure 17 shows, when we compared the 12-month periods before and after the introduction of the new public nuisance offence we found:

- no significant change in the proportion of juveniles who were arrested or issued a notice to appear.

For ease of reading, Figure 17 shows the data for police cautions, community conferences and behavioural counselling as a single variable. Further analysis of these data revealed:

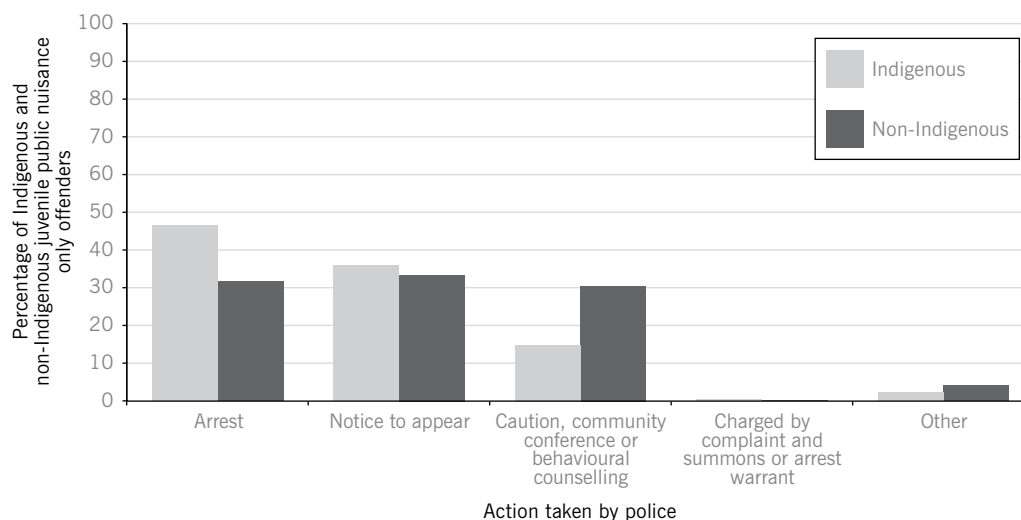
- a statistically significant increase in the proportion of juveniles who were cautioned by police in the 12-month period after the introduction of the new offence.

For the two-year data period, our analysis of the police response to juvenile public nuisance offenders shows:

- 37 per cent of juveniles were arrested ( $n = 599$ )
- 34 per cent of juveniles were dealt with by way of notice to appear ( $n = 547$ )
- 21 per cent of juveniles were cautioned ( $n = 332$ ); 2 per cent were dealt with by referral to a community conference ( $n = 33$ ) and 1 per cent were given behavioural counselling ( $n = 21$ ).

Again, we considered how police exercised their discretion to initiate proceedings in relation to Indigenous juveniles. Figure 18 shows how Indigenous and non-Indigenous juveniles were dealt with by police over our two-year data period.

**Figure 18: Police responses to Indigenous and non-Indigenous juvenile public nuisance only offenders<sup>49</sup> for the two-year data period (1 April 2003 – 31 March 2005)**



Source: QPS data

Figure 18 shows that when we compare police responses to Indigenous and non-Indigenous juvenile public nuisance offenders over the two-year data period:

- most Indigenous juveniles were dealt with by way of arrest (47%,  $n = 288$ ); Indigenous juveniles were significantly more likely than non-Indigenous juveniles to be dealt with by way of arrest (1.9 times)
- 36 per cent of Indigenous juveniles were dealt with by way of notice to appear ( $n = 223$ ); this proportion was not found to be significantly different from the proportion of non-Indigenous juveniles dealt with by way of a notice to appear (33 per cent,  $n = 322$ ).

For ease of reading, Figure 18 shows the data for police cautions, community conferences and behavioural counselling as a single variable. Further analysis of this data revealed:

- 11 per cent of Indigenous juveniles were dealt with by way of a caution ( $n = 70$ ), compared with 27 per cent of non-Indigenous juveniles ( $n = 262$ ); Indigenous juveniles were significantly less likely than non-Indigenous juveniles to be dealt with by way of a caution; non-Indigenous juveniles were 2.9 times more likely than Indigenous juveniles to be cautioned.
- 2 per cent ( $n = 12$ ) of Indigenous juveniles were dealt with by way of behavioural counselling, compared with 1 per cent ( $n = 9$ ) of non-Indigenous juveniles
- 2 per cent ( $n = 10$ ) of Indigenous juveniles were dealt with by way of a community/youth justice conference, as were 2 per cent ( $n = 23$ ) of non-Indigenous juveniles.

When we compared the 12-month periods before and after the introduction of the new offence we found:

- no significant change in the proportion of Indigenous juveniles who were arrested, issued a notice to appear or cautioned by police for public nuisance offences
- a statistically significant increase in the proportion of non-Indigenous juveniles who were cautioned by police for public nuisance offences.

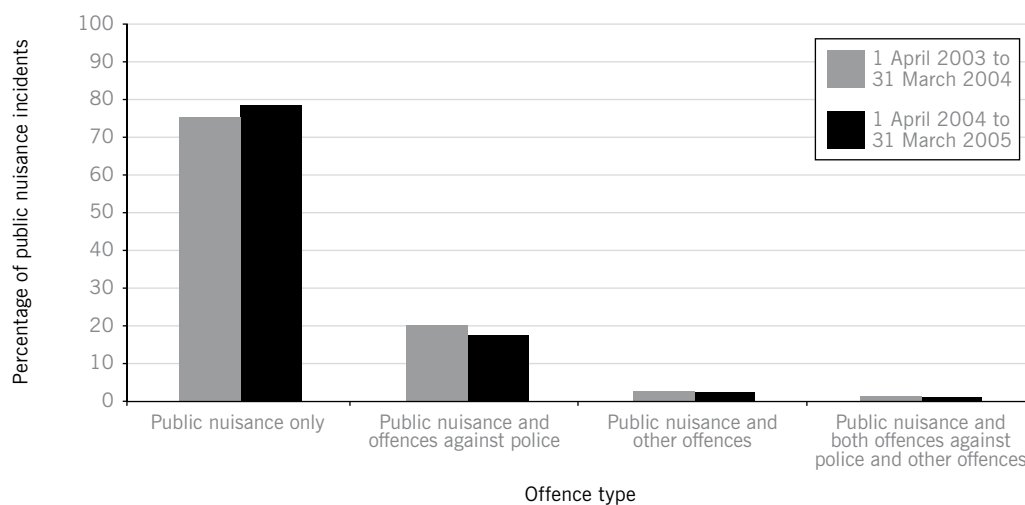
<sup>49</sup> In contrast to Figure 17, Figure 18 does not show juvenile offenders who were charged by arrest warrant. One juvenile offender was charged by arrest warrant; however, the Indigenous status of that offender was not recorded in the CRISP database. Therefore, data for that offender were not included in the analysis shown in Figure 18.

Our results, indicating that Indigenous juvenile offenders are more likely than non-Indigenous juvenile offenders to be dealt with by way of arrest and are less likely to be dealt with by way of caution, are consistent with previous research (see, for example, Cunneen, Collings & Ralph 2005, pp. 61–5).

## HOW FREQUENTLY IS PUBLIC NUISANCE OFFENDING ACCOMPANIED BY OTHER TYPES OF OFFENDING?

Our consideration of all public nuisance incidents recorded by the QPS between 1 April 2003 and 31 March 2005 showed that most public nuisance incidents involved public nuisance offending alone and were not accompanied by other types of offences (see Figure 19).<sup>50</sup> (See Appendix 14 for further details of the results of these analyses.)

**Figure 19: Offence types in public nuisance incidents for the 12-month periods before and after the introduction of the new public nuisance offence**



Source: QPS data

As shown in Figure 19, when we compare the 12-month periods before and after the introduction of the new public nuisance offence, the proportion of all public nuisance only incidents increased significantly (from 75% to 79%) and the proportion involving any other offences decreased significantly. The significant decrease in other offences was largely due to a decrease in the number and proportion of offences against police that accompany a public nuisance offence.

Our analysis over the two-year data period shows:

- 77 per cent of public nuisance incidents ( $n = 22,476$ ) did not involve any other types of offences
- 23 per cent ( $n = 6665$ ) of public nuisance incidents also involved offences other than public nuisance; of these, the majority (89 per cent,  $n = 5921$ ) involved offences against police (resist and/or obstruct arrest, disobey direction, assault police).

Our results regarding how frequently public nuisance is accompanied by other types of offending, in particular offences against police, are consistent with the previously published research of Walsh (2006a, pp. 14–15) suggesting that up to a quarter of public nuisance offences are accompanied by charges for offences against police.

<sup>50</sup> In 11 cases we were unable to establish whether or not an incident involved more than one offence type. These cases were excluded from the current analysis.

When we considered the courts data of the matters involving public nuisance charges finalised in Queensland Magistrates and Childrens Courts between 1 April 2003 and 31 March 2005, we again found that most public nuisance matters involved public nuisance charges alone and were not accompanied by other types of offence charges:

- 67 per cent ( $n = 16,880$ ) involved public nuisance offences only; specifically:
  - » 68 per cent ( $n = 16,261$ ) of Magistrates Court matters were public nuisance only matters
  - » 47 per cent ( $n = 619$ ) of Childrens Court matters were public nuisance only.
- 33 per cent ( $n = 8364$ ) also involved charges for other types of offences; specifically:
  - » 32 per cent ( $n = 7670$ ) of Magistrates Court matters also involved charges for other offence types
  - » 53 per cent ( $n = 694$ ) of Childrens Court matters also involved charges for other offence types.
- Childrens Court matters were significantly more likely to also involve offences other than public nuisance than were Magistrates Court matters.
- When we compared the 12-month periods before and after the introduction of the new offence, we saw a statistically significant increase in the proportion of Magistrates Court matters that only involved public nuisance offences (and a statistically significant decrease in the proportion of matters that involved both public nuisance and other offences) after the introduction of the new public nuisance offence.
- There was no significant change in the proportion of Childrens Court matters in which both public nuisance and other offences were recorded when we compared the 12-month periods before and after the introduction of the new public nuisance offence.

## SUMMARY OF FINDINGS

This chapter examined the manner in which police respond to public nuisance. We found that:

- In contrast to what a number of stakeholders have stated, our analysis suggests that a high proportion of public nuisance incidents are not generated by police, but are in fact brought to their attention by members of the public.
- The majority of adult public nuisance offenders were dealt with by way of arrest (60 per cent), and the vast majority of those not arrested were dealt with by way of notice to appear. There was no significant change after the introduction of the new offence.
- Indigenous adults were 1.6 times more likely than non-Indigenous adults to be dealt with by way of arrest; this difference was found to be statistically significant. There was no significant change after the introduction of the new offence.
- In the case of juveniles, the law imposes special obligations on police to consider alternatives to arrest and this is reflected in the findings that juveniles were provided with a caution/community conference in 24 per cent of cases, issued a notice to appear in 34 per cent of cases and arrested in 37 per cent of cases.
- Indigenous juveniles were significantly more likely (1.9 times more) to be dealt with by way of arrest than non-Indigenous juveniles and significantly less likely (2.9 times less) than non-Indigenous juveniles to be dealt with by way of caution over the two-year period.



- When we compared the 12-month periods before and after the new public nuisance offence, there was a statistically significant increase in the proportion of juveniles cautioned in the second 12 months but no change in the proportion arrested or issued a notice to appear; this significant increase in the use of caution was restricted to non-Indigenous juveniles.
- Overall, more than three-quarters of public nuisance incidents did not involve any other types of offences; of those that did, most (89%) involved offences against police.
- Contrary to some views expressed during our review, our comparison of the two 12-month periods found a significant decrease in the proportion of public nuisance incidents that also involved other offending and a corresponding increase in the public nuisance only incident; the decrease was almost entirely attributable to a decrease in offences against police.

## HOW ARE PUBLIC NUISANCE OFFENCES DEALT WITH BY THE COURTS?

The issues raised in this review about the progress of public nuisance matters through the court system relate to two areas of concern:

1. The lack of contested charges (under the old and the new offence) was said to raise questions about fundamental principles of justice and the accountability of police. This view was common across stakeholder groups, including police. More specifically, some stakeholders suggested that the introduction of the new public nuisance offence had made it harder to contest a charge than under the old offence (Legal Aid Queensland (Gold Coast) consultations, 7 September 2006; Legal Aid Queensland (Brisbane) consultations, 5 September 2006; ATSILS (Cairns) consultations, 19 September 2006). In contrast, some police suggested that the new offence was easier to contest (QPS (Townsville) consultations, 20 September 2006; QPS (Cairns) consultations, 18 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006).
2. In relation to the penalties and sentences imposed by the courts for public nuisance, it was argued both:
  - that they are too harsh and ineffective (submissions by Caxton Legal Centre, p. 4; Legal Aid Queensland, p. 8; Queensland Bar Association, p. 2; RIPS consultations, 27 September 2006; ATSILS (Mt Isa) consultations, 13 September 2006; Legal Aid Queensland (Townsville) consultations, 14 September 2006; ATSILS (Townsville) consultations, 14 September 2006)
  - that they are too lenient and ineffective (QPS (Cairns) consultations, 18 September 2006; QPS (Inala) consultations, 26 September 2006; QPS (Fortitude Valley) consultations, 10 October 2006; Townsville City Council consultations, 12 September 2006; QPS (Mt Isa) consultations, 13 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006).

A number of submissions suggested that imprisonment is an inappropriate penalty for public nuisance offending (Caxton Legal Centre, p. 3; RIPS 2004, p. 18).

A number of stakeholders suggested that the introduction of the new offence has led to an increase in fine amounts and an increase in the number of people imprisoned for the offence (ATSILS (Townsville) consultations, 14 September 2006; Legal Aid Queensland (Brisbane) consultations, 5 September 2006; ATSILS (Cairns) consultations, 19 September 2006).

Dr Tamara Walsh's previously published research highlights that a small proportion of public nuisance matters in Queensland are contested. She also suggests (2005a, p. 18; 2006b, p. 11) that the introduction of the new offence has led to an increase of 35 per cent in the average fine imposed for public space offences; Walsh found that the average fine amount was over \$200 (2004b, p. 42). Walsh also suggests that there has been a substantial increase in the number of offenders who have a conviction recorded (2006a, p. 15).

We examined courts data to determine how public nuisance matters are dealt with by the Magistrates and Childrens Courts, including how many matters are contested, the results of the court process and the penalties and sentences imposed. Our results show important differences from the claims made to this review and some differences from the results of previously published research.<sup>51</sup>

## HOW ARE PUBLIC NUISANCE MATTERS DEALT WITH BY THE COURTS?

Where an adult is charged with public nuisance, the matter is dealt with in the Magistrates Court. Where a child is charged with public nuisance, the matter is dealt with in the Childrens Court (exercising its Magistrates Court jurisdiction).<sup>52</sup>

An accused person may plead guilty to the offence or contest the offence. If the matter is contested, it will proceed to a summary hearing where the prosecution and defence have the opportunity to call evidence and the magistrate will make a determination as to the guilt or innocence of the accused person.

A magistrate has power to deal with an offence of public nuisance where the defendant fails to appear in court to answer to the charge; this is referred to as 'ex parte'. In order to deal with a matter ex parte, the court must be satisfied the defendant was aware of the court appearance date.

If a person pleads guilty or is found guilty by the magistrate, the magistrate will sentence the person from the range of options available.<sup>53</sup> If a person is found not guilty of the offence, no further action is taken.

Almost all public nuisance matters were heard in a Queensland Magistrates Court (95 per cent), with only 5 per cent of matters heard in the Childrens Court.<sup>54</sup>

As discussed in Chapter 11, courts data show that around three-quarters of public nuisance matters prosecuted in court have no other type of offence charges accompanying them — that is, they are public nuisance matters alone. When a person's public nuisance charge/s are heard together with another type of charge, this may influence how an offender is sentenced. For example, global sentencing principles mean a court may impose a sentence reflecting the nature and seriousness of all the types of charges a person is convicted of rather than the public nuisance charges alone.<sup>55</sup> For this reason we have limited our analysis of the courts data that follows in this chapter to 'public nuisance only' offences so that plea and sentence data are comparable.

Further details of the results of these analyses, including measures of statistical significance, are provided in Appendix 16.

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51 As discussed in Chapter 8, the differences between our results and Walsh's results are likely to arise from differences in methodology. In addition to the factors mentioned in Chapter 8, Walsh's methodology may be distinguished from our own as it appears that Walsh does not consider public nuisance only matters, but also considers matters that include other offence types which are likely to impact on outcomes and penalties and sentences imposed, and are therefore not directly comparable.

52 In most instances, police officers prosecute public nuisance offences in the Magistrates and Childrens Courts (rather than prosecutors from the Office of the Director of Public Prosecutions).

53 When dealing with a matter ex parte, the court's power includes sentencing the person for the offence, but if the court is seeking to impose a term of imprisonment it must adjourn the matter to allow the defendant to make submissions on penalty. If a person was arrested for the offence of public nuisance and released from the watch-house on cash bail, the cash bail can be forfeited pursuant to any penalty imposed by the magistrate dealing with the matter ex parte (s. 14 *Bail Act 1980* (Qld)).

54 See Appendix 15 for more details.

55 Sections 49, 97 and 155 *Penalties and Sentences Act 1992* (Qld).

## HOW DO THE COURTS DEAL WITH ADULT PUBLIC NUISANCE OFFENDERS?

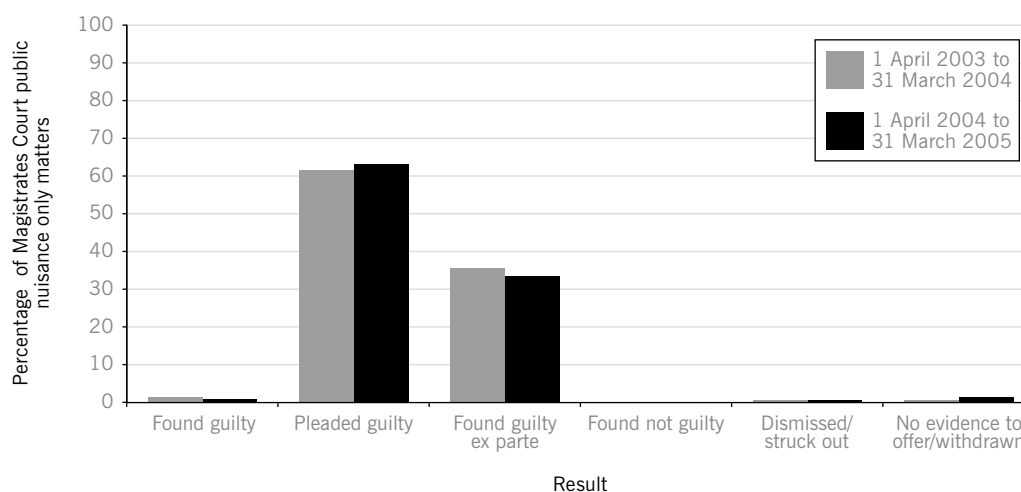
The volume of public nuisance offences through the Magistrates Court is high. Information from the Magistrates Court indicates that Summary Offences Act prosecutions make up about 8 per cent of the matters coming before the Magistrates Court (see Queensland Magistrates Court 2006, pp. 39 & 169). In the first full year of the operation of the Summary Offences Act, the offence of public nuisance constituted approximately 60 per cent of all charges lodged under this Act dealt with in the Magistrates Court. The next most frequently prosecuted offences under the Summary Offences Act were being drunk in a public place, trespass and unlawful possession of suspected stolen property (Queensland Magistrates Court 2006, p. 39).

Although the volume of public nuisance offences in the Magistrates Court is high, the offence is intended to be dealt with efficiently and quickly by the criminal justice system, without the need for lengthy adjournments, repeated mentions or the giving of extensive evidence.

Examination of the Magistrates Court data for public nuisance matters between 1 April 2003 and 31 March 2005 shows that the median<sup>56</sup> length of time between the date a public nuisance offence occurred and the date the offence became subject to a court order was 19 days, with offences most commonly being processed within 17 days.

Figure 20 shows Magistrates Court 'results' for public nuisance matters heard in the 12-month periods before and after the introduction of the new public nuisance offence.

**Figure 20: Magistrates Court 'results' for public nuisance matters during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: Courts data

Our examination of 'results' in the Magistrate Court for public nuisance matters over the two-year data period shows:

- the vast majority (98 per cent) of defendants were convicted of the offence
  - » in 62 per cent of matters the defendant entered a guilty plea ( $n = 9400$ )

<sup>56</sup> Given that in both the Magistrates Courts and the Childrens Courts processing time was recorded as ranging from 0 days to more than two years, we identified the median as a better estimate of central tendency than the mean (average). For Magistrates Court matters the mean days to resolution was 33 and for Childrens Court matters it was 45.

- » a large proportion were dealt with by ex parte proceedings (35 per cent,  $n = 5201$ ) in which the defendant did not attend the court hearing but was found guilty in their absence
- » in approximately 1 per cent of matters the offender was found guilty after pleading not guilty ( $n = 165$ )
- only a very small proportion (2 per cent) of defendants were not convicted of the offence
  - » less than 1 per cent resulted in a finding of not guilty (0.1 per cent,  $n = 15$ ), including two that resulted in a finding of not guilty by reason of the defendants not being of sound mind at the time of the offence (0.01 per cent)
  - » less than 1 per cent (0.7 per cent) were dismissed or struck out by magistrates ( $n = 102$ )
  - » approximately 1 per cent were finalised by the prosecution discontinuing the prosecution (withdrawn or no evidence to offer) ( $n = 160$ ).

It is very difficult to accurately determine from courts data the number and proportion of public nuisance matters that were contested by the defendant; we can say that it was only a small proportion of matters and was less than 3 per cent.<sup>57</sup>

Comparing the 12-month periods before and after the introduction of the new public nuisance offence shows:

- relatively little change in the proportion of offenders who pleaded guilty or were found guilty
- a statistically significant increase in the proportion of matters in which the prosecution withdrew charges, or failed to offer evidence for charges (albeit the numbers involved were small)
- a statistically significant decrease in the proportion of matters in which the defendant was found guilty after pleading not guilty (albeit the numbers involved were small)
- a statistically significant decrease in the proportion of matters in which the defendant was found guilty ex parte.

Our results show that Indigenous adult public nuisance offenders were 1.6 times more likely than non-Indigenous adult public nuisance offenders to have their matters dealt with ex parte. Conversely, non-Indigenous adult public nuisance offenders were 2.1 times more likely than Indigenous adult public nuisance offenders to be found guilty in person, and 1.6 times more likely to plead guilty.

## HOW DO THE COURTS DEAL WITH JUVENILE PUBLIC NUISANCE OFFENDERS?

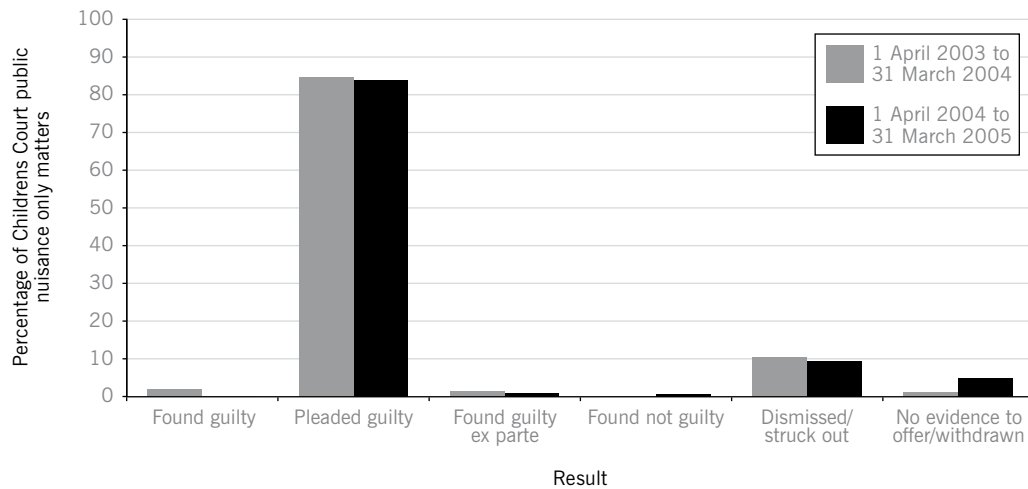
Our examination of the Childrens Court data for public nuisance matters between 1 April 2003 and 31 March 2005 shows that the median time between the date the public nuisance offence occurred and the date the offence was finalised by court order was 23 days, but these offences were most commonly processed within three days.

Figure 21 shows Childrens Court 'results' for public nuisance matters heard in the 12-month periods before and after the introduction of the new public nuisance offence.

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<sup>57</sup> This includes the matters for which the offender was found guilty or found not guilty, matters struck out by magistrates and those finalised by the prosecution withdrawing or offering no evidence.

**Figure 21: Childrens Court ‘results’ for public nuisance matters during the 12 months before and after the introduction of the new public nuisance offence**



Source: Courts data

Our examination of the ‘results’ for Childrens Court public nuisance matters shows:

- the vast majority of defendants (86 per cent) were convicted of the offence
  - » a guilty plea was entered in the vast majority of matters (84 per cent,  $n = 466$ )
  - » approximately 1 per cent of matters were heard ex parte ( $n = 7$ )<sup>58</sup>
  - » approximately 1 per cent were found guilty after pleading not guilty ( $n = 5$ )
- only a small proportion (14 per cent,  $n = 75$ ) of public nuisance defendants were not convicted of the offence
  - » less than 1 per cent were found not guilty (0.4 per cent,  $n = 2$ )
  - » approximately 10 per cent of matters were dismissed or struck out ( $n = 55$ )
  - » approximately 3 per cent were discontinued by the prosecution (withdrawn or prosecution offered no evidence) ( $n = 18$ ).

From the courts data it is very difficult to establish an accurate figure for the number of public nuisance matters that were contested by the defendant; we can say that it was certainly only a small proportion of matters and was less than 14 per cent.<sup>59</sup> This is a much higher proportion than was the case for adult offenders.

When we compared the 12-month periods before and after the introduction of the new public nuisance offence, the results were consistent between the two periods.

No statistically significant differences were found between the results recorded for Indigenous and non-Indigenous juveniles in the Childrens Court.

<sup>58</sup> This may reflect the special obligations imposed on the court when dealing with child offenders ex parte (s. 47 *Juvenile Justice Act 1992*). It may also be that children are more likely to appear in court, are more likely to be represented or are easier to locate.

<sup>59</sup> This includes the matters for which the offender was found guilty or found not guilty, matters struck out by magistrates and those finalised by the prosecution withdrawing or offering no evidence.

## PENALTIES AND SENTENCES

Appendix 17 provides further details of the results of the analyses presented in the following sections, including measures of statistical significance.

### **What proportion of public nuisance offenders have a conviction recorded for the offence?**

In some instances, the courts have discretion whether or not to record a conviction when sentencing a person (s. 12 *Penalties and Sentences Act 1992*).<sup>60</sup> The decision whether or not to record a conviction is an important one: a criminal record may affect a person's future employment and may influence consideration by the courts of appropriate penalties and sentences for any future offending.

#### ***Magistrates Court***

Our comparison of the 12-month periods before and after the introduction of the new offence did not reveal any significant changes in the proportion of matters that resulted in a conviction being recorded. In this respect our results contrast with the previously published results of Walsh (2006a, p. 15). Our analysis of Magistrates Court orders for adult public nuisance matters over the two-year period shows:

- just over half of those convicted had that conviction recorded (55 per cent,  $n = 8037$ )
- offenders who were found guilty *ex parte* were significantly more likely (1.9 times) to have convictions recorded than defendants who pleaded guilty or were found guilty after pleading not guilty (this finding is not surprising, given that in *ex parte* cases there is no defendant or legal representative present to argue for no conviction to be recorded)
- the proportion of matters involving Indigenous offenders that resulted in a conviction being recorded (74 per cent,  $n = 3089$ ) was significantly higher (3.4 times) than the proportion of matters involving non-Indigenous offenders that resulted in a conviction being recorded (46 per cent,  $n = 4167$ ); this difference in the proportion of convictions recorded for Indigenous and non-Indigenous offenders does not necessarily arise from discriminatory sentencing but may be the result of differences in prior criminal records and the fact that more Indigenous matters are dealt with *ex parte*.

#### ***Childrens Court***

Our examination of Childrens Court orders for public nuisance matters shows:

- the vast majority of matters in which defendants were convicted did not result in a conviction being recorded (97 per cent,  $n = 435$ )
- the introduction of the new public nuisance offence did not correspond with any significant change to this proportion.

This low proportion of convictions recorded for juveniles contrasts with the adult data discussed above. It is likely that this reflects the special considerations applicable to juveniles when sentencing, including the juvenile justice principles set out in the *Juvenile Justice Act 1992* (see s. 150).

The proportion of Childrens Court matters involving Indigenous offenders that resulted in a conviction being recorded (5 per cent) was higher than the proportion of Childrens Court

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60 The court has discretion whether or not to record a conviction in the case of a fine, community service order or probation order (ss. 44, 100, 90 *Penalties and Sentences Act 1992*). The court must record a conviction for an intensive correction order and a term of imprisonment (whether suspended or not) (ss. 111, 143 and 152 *Penalties and Sentences Act 1992*). The court must not record a conviction when a recognisance order is made or when the offender is convicted but not further punished (s. 16 *Penalties and Sentences Act 1992*).

matters involving non-Indigenous offenders (1 per cent). However, this difference was not found to be statistically significant.

### **What penalties are imposed for public nuisance matters?**

When an offender is convicted of an offence, the court will impose a sentence. The old offence carried a maximum penalty of a fine of \$100 and/or a 12 months' good behaviour bond, or 6 months' imprisonment (with or without a good behaviour requirement). The new public nuisance offence increased the maximum fine penalty to 10 penalty units (\$750)<sup>61</sup> but continued to provide for a maximum of 6 months' imprisonment (s. 6(1) Summary Offences Act).

The only purposes of sentencing an offender (s. 9(1) *Penalties and Sentences Act 1992* (Qld)) are to:

- punish the offender in a manner that is just in the circumstances
- rehabilitate the offender
- deter others in the community from committing the same or a similar offence
- denounce the conduct to the community
- protect the community from the offender.

Under the *Penalties and Sentences Act 1992*, when sentencing a person for an offence, the court has discretion to impose the following:

- a conviction with no further punishment
- a fine (s. 45) or a fine option order (Part 4 Division 2) (which allows a person to apply to the court to convert a fine to community service)
- a term of imprisonment (whether wholly or partially suspended, s. 144)
- an intensive correction order served in the community (s. 141)
- a probation order (s. 91)
- a 'good behaviour bond' or recognisance order (s. 31)
- a community service order.

A court must consider a range of other factors in determining the sentence to be imposed, including:

- principles that a sentence of imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable
- the maximum and minimum penalty prescribed for the offence
- the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim
- the extent to which the offender is to blame for the offence
- the offender's character, age and intellectual capacity
- the prevalence of the offence
- how much assistance the offender gave to law enforcement agencies in the investigation of the offence
- sentences already imposed on the offender that have not been served (s. 9(2) *Penalties and Sentences Act 1992*).

When imposing a fine, the court is required to take into account the financial circumstances of the defendant and their capacity to pay a fine (s. 48 *Penalties and Sentences Act 1992*).

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61 One penalty unit is \$75; see s. 5 *Penalties and Sentences Act 1992* (Qld).

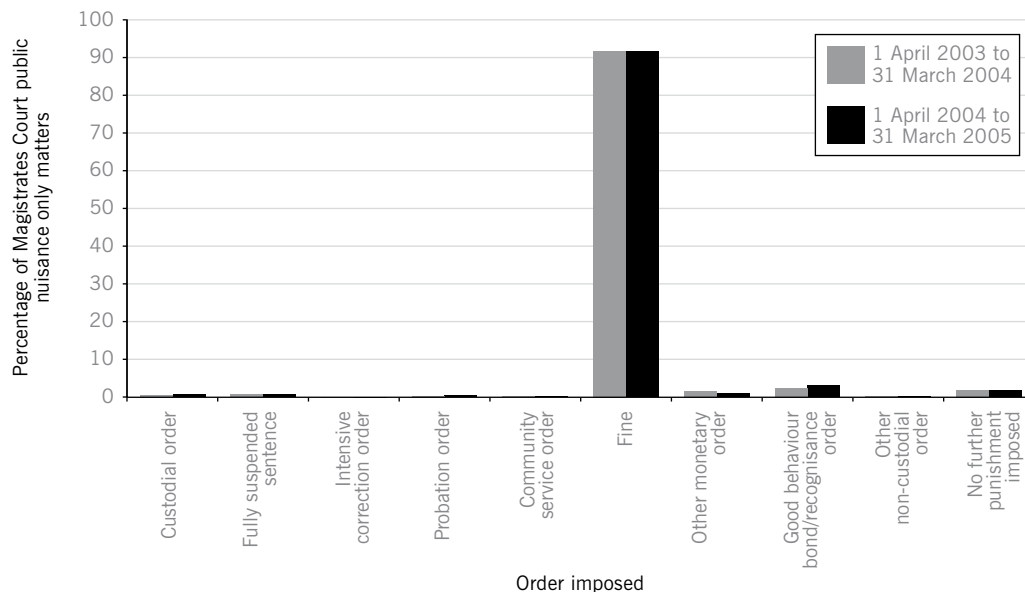


When dealing with matters summarily in the Magistrates Court, the magistrate also has a discretionary power to make an order for costs associated with the proceedings against either party (Part 6 Division 8 *Justices Act 1886* (Qld)).

### Magistrates Court

Figure 22 shows the penalties and sentences imposed in the Magistrates Court for the 12-month periods before and after the introduction of the new offence.

**Figure 22: Magistrates Court orders for public nuisance matters during the 12-month periods before and after the introduction of the new public nuisance offence**



Source: Courts data

Our analysis of the penalties and sentences imposed in the Magistrates Court for the two-year data period shows that:

- the vast majority of offenders had a fine order imposed (92 per cent,  $n = 13,502$ )
- a small proportion had a good behaviour bond/recognition order imposed (3 per cent,  $n = 414$ )
- a small proportion were convicted but had no further punishment imposed (although they may have been admonished by the court) (2 per cent,  $n = 275$ )
- a small proportion had monetary orders (other than fines) imposed (1.3 per cent,  $n = 195$ ); these other monetary orders included, for example, a small number of fine option orders, costs of the court, forfeit bail, restitution and witness expenses
- less than 2 per cent had a custodial sentence imposed (1.4 per cent,  $n = 209$ ); these included
  - » imprisonment and partially suspended sentences of imprisonment (0.7 per cent,  $n = 100$ )
  - » fully suspended sentences of imprisonment (0.7 per cent,  $n = 109$ )
- less than 1 per cent had a probation order imposed (0.4%,  $n = 59$ )
- less than 1 per cent had a community service order imposed (0.2 per cent,  $n = 30$ )
- less than 1 per cent had other non-custodial orders imposed (0.2 per cent,  $n = 28$ )
- less than 1 per cent had an intensive corrections order imposed (0.02 per cent,  $n = 3$ ).

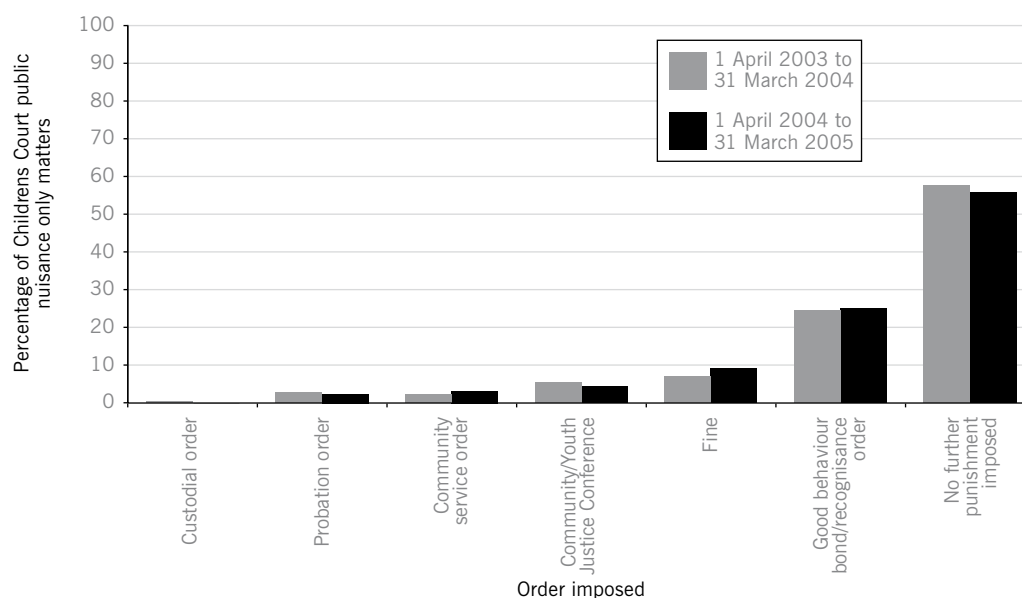
As can be seen in Figure 22, when we compared the court orders made in relation to public nuisance matters for the 12 months before and after the introduction of the new public nuisance offence we found relatively little change between the periods.

A statistically significant (albeit numerically small) increase was observed in the proportion of offenders who were subject to good behaviour bonds/recognition orders. When Indigenous and non-Indigenous offenders were considered separately, this increase was only evident for non-Indigenous defendants.

### **Childrens Court**

Figure 23 shows the penalties and sentences imposed in the Childrens Court for the 12 months before and after the introduction of the new offence.

**Figure 23: Childrens Court orders for the 12 months before and after the introduction of the new public nuisance offence**



Source: Courts data

Our examination of Childrens Court orders for public nuisance matters show:

- the majority (57 per cent,  $n = 270$ ) of matters were discharged without any further punishment (an admonishment may have been provided)
- relatively few matters resulted in a fine (8 per cent,  $n = 39$ )
- a good behaviour bond/recognition order was made in 25 per cent ( $n = 118$ ) of matters
- community service orders were made in 3 per cent ( $n = 13$ ) of matters
- probation orders were made in 3 per cent ( $n = 12$ ) of matters
- only one public nuisance only offender received a custodial sentence (accounting for less than 1 per cent) (0.21 per cent)
- 5 per cent ( $n = 23$ ) of offenders were ordered to community/youth justice conferences
- there were no significant changes in the proportions of types of orders made when we compared the 12 months before and after the introduction of the new public nuisance offence.

## How do penalties and sentences imposed for Indigenous and non-Indigenous public nuisance offenders differ?

Indigenous offenders were found to be significantly more likely to receive a custodial sentence for public nuisance only offences than non-Indigenous offenders (4.5 times more likely).

- Approximately 2 per cent ( $n = 66$ ) of Indigenous offenders were actually imprisoned (including partially suspended sentences), compared with less than 1 per cent (0.3 per cent,  $n = 29$ ) of non-Indigenous defendants; approximately 1 per cent ( $n = 63$ ) of Indigenous offenders were given fully suspended sentences of imprisonment, compared with less than 1 per cent (0.4 per cent,  $n = 34$ ) of non-Indigenous offenders.

Indigenous offenders were significantly less likely to be given a fine order than non-Indigenous offenders:

- 90 per cent ( $n = 8472$ ) of non-Indigenous offenders were given a fine order, compared with 87 per cent ( $n = 3821$ ) of Indigenous offenders; non-Indigenous defendants were 1.3 times more likely than Indigenous defendants to be given a fine order.

Indigenous offenders were significantly less likely than non-Indigenous offenders to be given a monetary order other than a fine order:

- less than 1 per cent ( $n = 34$ ) of Indigenous offenders were given a monetary order other than a fine, compared with just over 1 per cent ( $n = 127$ ) of non-Indigenous offenders; non-Indigenous defendants were 1.7 times more likely than Indigenous defendants to be given a monetary order other than a fine.

Indigenous defendants were significantly more likely than non-Indigenous offenders to be discharged without further punishment:

- about 3 per cent ( $n = 304$ ) of non-Indigenous offenders were discharged without further punishment, compared with 4 per cent ( $n = 180$ ) of Indigenous offenders; Indigenous defendants were 1.3 times more likely than non-Indigenous defendants to be discharged without further punishment.

Indigenous defendants were more likely than non-Indigenous defendants to be given a probation order.

- about 1 per cent ( $n = 34$ ) of Indigenous defendants were given a probation order compared with less than 0.5 per cent ( $n = 34$ ) of non-Indigenous defendants.

Again, the apparent difference in penalties imposed on Indigenous and non-Indigenous offenders does not necessarily mean discriminatory sentencing — it may be the result of differences in prior criminal records.

Indeed, qualitative examination of the narrative information in the courts databases reveals that in many cases (involving both Indigenous and non-Indigenous offenders) public nuisance convictions could have triggered a pre-existing suspended sentence but instead magistrates chose to extend the period of the previous suspended sentence.

## What do we know about the small proportion of public nuisance offenders receiving custodial sentences?

Although both the old and the new offence provide for a maximum penalty of 6 months' imprisonment, our analyses of courts data above show that these offences very rarely lead to imprisonment.

- Magistrates Courts data show that a small minority of public nuisance offenders were given custodial sentences (imprisonment = 0.6 per cent,  $n = 85$ ; partially suspended

sentence = 0.02 per cent,  $n = 3$ ; pre-sentence custody = 0.08 per cent,  $n = 12$ ; fully suspended sentence = 0.7 per cent,  $n = 109$ ).

- Childrens Court data show that one public nuisance only offender received a custodial sentence, accounting for less than 1 per cent (0.2 per cent); this occurred before the introduction of the new offence.
- When we compared the 12-month periods before and after the introduction of the new offence, there were no significant changes in the proportion of public nuisance matters that resulted in the imposition of a custodial sentence.

To further consider what circumstances may lead to public nuisance only offenders receiving custodial sentences, we went beyond consideration of courts data. We examined the court files for those public nuisance only matters heard in the Brisbane Central Magistrates Court that resulted in a custodial sentence ( $n = 18$ ) during our two-year data period. We also reviewed the court file of the one Childrens Court matter that resulted in a custodial sentence during our data period. From this examination we are able to say:

- The defendants in all of these matters had substantial prior criminal histories (ranging from 1 to 14 pages); at least in some cases this seemed to be a lengthy history of minor offending.
- Although precise details of the offence behaviour and circumstances were often not available from reviewing the court file, we can say that in at least three of these public nuisance only matters a custodial sentence was imposed for using offensive language to a police officer. Of these three matters, two were the same offender (for two separate public nuisance incidents involving offensive language against police) and in both cases the offender received a wholly suspended period of imprisonment of 7 days. The third matter involved an offender who, despite being identified in the courts data as a 'public nuisance only' offender, had other types of charges in addition to public nuisance and it appears these matters were sentenced together.
- The juvenile offender who received a custodial sentence had a lengthy criminal history and the public nuisance offence breached an existing order (a good behaviour bond). Again, the juvenile was categorised in courts data as a public nuisance only offender but the court file shows the juvenile was sentenced for other unrelated matters on the same date (including wilful damage, stealing, and entering a dwelling with intent) and was sentenced to imprisonment for 3 months to be served concurrently for each charge.

Our findings that, where an offender has a significant prior history, a custodial sentence may be imposed for an offensive language only offence committed against a police officer are consistent with the reported case of *Del Vecchio v. Couchy* ([2002] QCA 9). In this case the offender was sentenced in the Magistrates Court to 3 weeks' imprisonment for a public nuisance offence where the offender, when asked for her name and address, responded to the complainant police officer: 'You fucking cunt.' Imprisonment was ordered because of her lengthy record and her continued similar offending despite previous non-custodial penalties. On appeal to the District Court the sentence was reduced to 7 days' imprisonment. A further appeal against this sentence was rejected by the Queensland Court of Appeal on the grounds that 'the applicant's past history justified more than a token penalty' (QCA [2002] QCA 9).

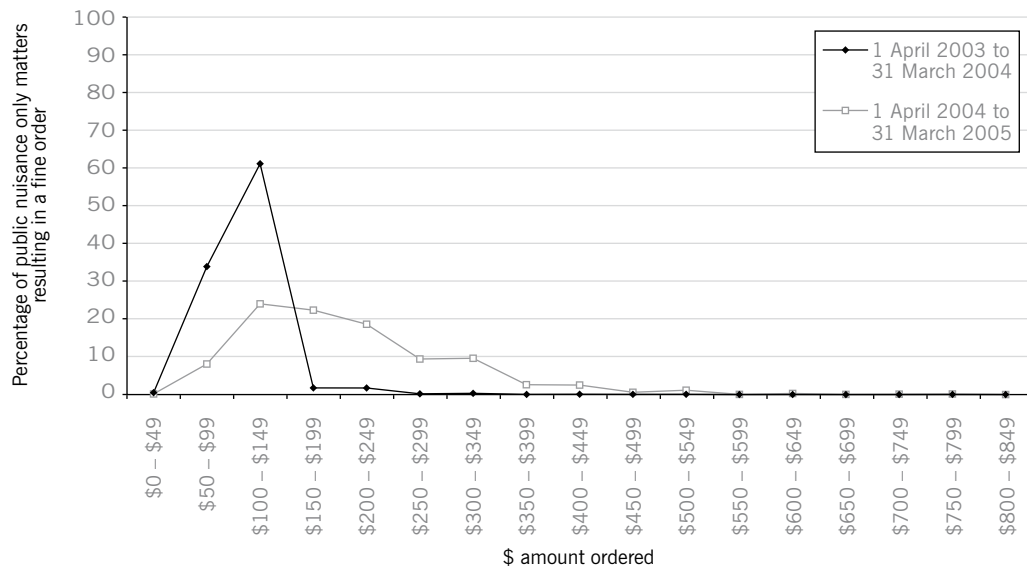
### **What do we know about the vast majority of public nuisance offenders who receive a fine penalty?**

Magistrates Court data for public nuisance matters between 1 April 2003 and 31 March 2005 show that the vast majority of orders made were orders to pay a fine (92 per cent,  $n = 13,502$ ). The data also show that few fine orders in public nuisance only matters were made as, or converted to, fine option orders (whereby community service could be performed instead of payment).

The introduction of the new public nuisance offence in April 2004 increased the maximum penalty available from \$100 to 10 penalty units (\$750).

Figure 24 presents the results of our analysis of fines imposed for public nuisance offences in the Magistrates Court for the 12-month periods before and after the introduction of the new offence.

**Figure 24: Magistrates Court fine amounts for the 12-month periods before and after the introduction of the new public nuisance offence**



Source: Courts data

In the 12 months before the introduction of the new public nuisance offence when the maximum fine was \$100:

- fine amounts per matter ranged from \$20 to \$750 (which includes cumulative fine amounts imposed for multiple public nuisance offences)
- the median fine amount ordered was \$100<sup>62</sup>
- the most commonly ordered fine amount was \$100.

In the 12 months after the introduction of the new offence when the maximum fine increased to \$750:

- fine amounts per matter ranged from \$20 to the maximum of \$800 (which includes cumulative fine amounts imposed for multiple public nuisance offences)
- the median fine amount ordered was \$150
- the most commonly ordered fine amount was \$100.

As can be seen in Figure 24, since the introduction of the new public nuisance offence and the large increase in the maximum penalty available for the offence, the range of fine amounts has become more evenly (normally) distributed than it was before the change. It is possible that, since the introduction of the new legislation, the range of monetary fines ordered in response to public nuisance offences better reflects the range of public nuisance behaviours, with a smaller proportion of offenders receiving the maximum penalty amount.

62 Given that the range of fine amount was large (as shown in Figure 24), we identified the median as a better estimate of central tendency than the mean (average).

Our analysis revealed there were no significant differences in the median fine amounts imposed when the matter was heard *ex parte*.<sup>63</sup>

When a comparison is made for the 12-month periods before and after the introduction of the new public nuisance offence, it shows a statistically significant increase in the median fine amount imposed for public nuisance offences, from \$100 to \$150. The most commonly ordered fine amount remained constant at \$100. This level of consistency after the introduction of the new offence is noteworthy, given that the new offence introduced a substantial increase in the maximum fine penalty amount.

### ***Juveniles***

In the 12 months before the introduction of the new offence, Childrens Court data show that:

- fine amounts per offence ranged from \$30 to the maximum of \$100
- where a person was convicted of more than one public nuisance charge, Childrens Courts imposed cumulative fines, the highest of which was \$100
- the median fine amount was \$67.50.

In the 12 months after the introduction of the new offence:

- fine amounts per offence ranged from \$20 to a maximum of \$300
- where a person was convicted of more than one public nuisance charge, Childrens Courts imposed cumulative fines, the highest of which was \$300
- the median fine amount was \$50.

Comparing the two periods before and after the introduction of the new offence, the most common fine amount decreased from \$100 to \$50. These decreases were not, however, found to be statistically significant.

(This is in contrast to the pattern seen in the Magistrates Court data. Juvenile public nuisance only offenders generally received lower fine amounts than adults, and after the introduction of the new offence the most commonly awarded fine amount for juveniles decreased, whereas for adults it stayed constant.)

### **How many public nuisance fines go unpaid?**

We identified during consultations a common perception that fines were frequently not being paid by offenders and were then being transferred to the State Penalties Enforcement Register (SPER), which is responsible for the collection and enforcement of unpaid court-ordered fines issued in Queensland. It was also widely believed that SPER debts were not being paid, with some stakeholders reporting that there were offenders with thousands and tens of thousands of dollars in unpaid SPER debts, some of which were for public nuisance matters (Townsville City Council consultations, 12 September 2006; Legal Aid Queensland (Brisbane) consultations, 7 September 2006; ATSILS (Mt Isa) consultations, 14 September 2006).

Generally, non-police stakeholders suggested that unpaid fines and high levels of SPER debt for public nuisance offenders provided further evidence of the disproportionate impact on disadvantaged groups and those least likely to be in a position to be able to pay a fine (ATSILS (Mt Isa) consultations, 13 September 2006; Magistrates' consultations, 13 September 2006, 14 September 2006, 6 October 2006; ATSILS (Townsville) consultations, 14 September 2006; Legal Aid Queensland (Townsville) consultations, 14 September 2006; Legal Aid Queensland (Cairns) consultations, 19 September 2006; Legal Aid Queensland (Toowoomba) consultations, 25 September 2006; RIPS

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<sup>63</sup> There was a suggestion made to the review that lower fines were given *ex parte* than for matters where the defendant appeared in court (ATSILS (Cairns) consultations, 19 September 2006).

consultations, 27 September 2006). In contrast, some police and local government representatives suggested that high unpaid fines provide evidence that imprisonment should more frequently be used to respond to public nuisance offending (Townsville City Council consultations, 12 September 2006; QPS (Mt Isa) consultations, 13 September 2006).

Comparison between the courts and SPER data shows that, during the 12 months preceding the introduction of the new public nuisance offence, approximately 61 per cent ( $n = 3836$ ) of fine orders were transferred to SPER. During the 12 months after the introduction of the new public nuisance offence, 64 per cent ( $n = 4741$ ) of public nuisance fines went to SPER. This increase was found to be statistically significant.

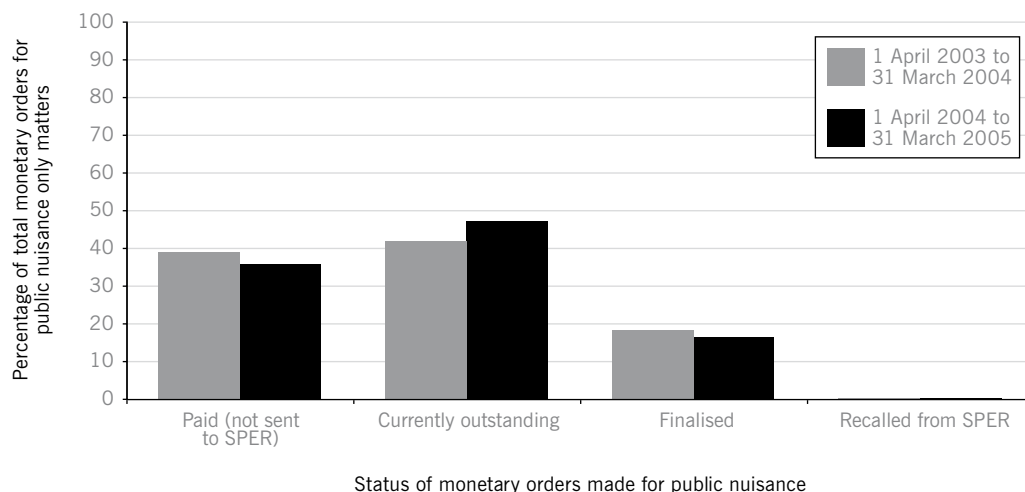
Analysis of the fine amounts recorded in the SPER database revealed that:

- the maximum amount owing for public nuisance only offenders was \$795 and the median amount owing was \$144 (average = \$124.26)
- the maximum amount owing for all public nuisance offenders (including offenders who had also been charged with other offences such as assaults, drug offences, offences against police, property offences) was \$2245 and the median amount owing was \$144 (average = \$149.19).

These figures contrast with the claim by many stakeholders that individual public nuisance offenders owed thousands and tens of thousands of dollars in outstanding fines.

Figure 25 shows the status of SPER debts, at the time of our data request (4 December 2006), for offenders who had been sentenced for public nuisance only matters committed during the 12-month periods before and after the introduction of the new public nuisance offence.

**Figure 25: Status of SPER debts (as at 4 December 2006) as a proportion of all monetary orders for public nuisance matters during the 12 months before and after the introduction of the new public nuisance offence**



Source: Courts data

Figure 25 appears to suggest an increase in outstanding debts for public nuisance only matters. However, the differences between the two periods may simply reflect the fact that, at 4 December 2006, there had been more time for monetary orders from the 1 April 2003 – 31 March 2004 period to be paid. Bearing this in mind, it may be concluded that the proportion of outstanding SPER debt is relatively similar across both of the periods under consideration. Indeed, given the higher average fine amounts recorded after the

introduction of the new public nuisance offence, the lack of a corresponding 'spike' in outstanding SPER debt or in the proportion of fines that are transferred to SPER is noteworthy.

## SUMMARY OF FINDINGS

This chapter examined the manner in which courts respond to public nuisance using Magistrates Court and Childrens Court data for public nuisance only matters. We found that:

- The volume of public nuisance matters dealt with by the courts is high, particularly in the Magistrates Court, where it represents a substantial proportion of the courts' workload.
- The overwhelming majority of public nuisance offences (95%) were heard in the Magistrates Court; only 5% were heard in the Childrens Court.
- The proportion of public nuisance matters contested was small (adults = less than 3 per cent, juveniles = less than 14 per cent).
- The vast majority of offenders were convicted (adults = 98 per cent, juveniles = 86 per cent) either through entering a plea of guilty (adults = 62 per cent, juveniles = 84 per cent) or by the matter being dealt with ex parte (adults = 35 per cent, juveniles = 1 per cent). A small percentage were found guilty after pleading not guilty (adults and juveniles = 1 per cent).

In terms of penalties and sentences imposed by the courts for public nuisance only offences, our results show:

- Of those adult offenders convicted, just over half had a conviction recorded. These offenders were more likely to have a conviction recorded if the matter was dealt with ex parte. Indigenous adult offenders were significantly more likely to be dealt with in ex parte proceedings than non-Indigenous offenders and were also significantly more likely to have a conviction recorded.
- In contrast to the pattern seen with adult offenders, the vast majority of juvenile offenders who were convicted did not have that conviction recorded (97 per cent).
- The vast majority of adult offenders received a fine (92 per cent).
- In contrast to the pattern for adult offenders, the majority of juvenile public nuisance only offenders were discharged without further punishment (57 per cent); only 8 per cent received a fine.
- A custodial sentence was imposed (including imprisonment, partially suspended sentences of imprisonment, or fully suspended sentences of imprisonment) in less than 2 per cent of matters. Indigenous adult offenders were more likely than non-Indigenous adult offenders to receive custodial sentences and less likely to receive other orders (such as a good behaviour order or fine). (We identified no statistically significant differences in the Childrens Court data between Indigenous and non-Indigenous offenders.)
- Our examination of the court files shows that, in our sample, all those offenders who received a custodial sentence had substantial previous criminal histories. Three of the adult public nuisance offenders in our sample of court files received a custodial sentence for language-only offences, and that language was directed at a police officer.

In contrast to claims put to the review that the new offence was more difficult to contest, our results show:

- In the Magistrates Court there was little change after the introduction of the new offence. Those statistically significant changes that were identified tend to indicate that the new offence is easier to defend (that is, there was a statistically significant



increase in the proportion of matters in which the prosecution withdrew the charges, or failed to offer evidence, and a statistically significant decrease in the proportion of matters in which the defendant was found guilty after pleading not guilty).

- In the Childrens Court results, the small proportion of contested matters remained consistent before and after the introduction of the new offence.

In contrast to claims put to the review, and the results of previously published research, which suggested that the substantial increase in the amount of the maximum fine penalty introduced with the new offence had led to a corresponding increase in the amount of fines imposed for the public nuisance offence, our results show:

- the range of fine amounts increased after the introduction of the new offence and the higher maximum amount
- in the Magistrates Court the most commonly ordered fine amount continued to be \$100 after the introduction of the new offence
- in the Childrens Court the most commonly ordered fine amount decreased from \$100 to \$50 after the introduction of the new offence.

Finally, in contrast to some claims put to the review, the introduction of the new offence did not coincide with any increase in the proportion of public nuisance only matters that result in a custodial sentence being imposed.

Given that for public nuisance matters:

- the volume dealt with in the courts is high
- the proportion contested is small
- the majority of offenders are convicted
- the vast majority of offenders convicted receive a fine
- the number dealt with ex parte is high

it begs the question of whether there should be an option for public nuisance to be a ticketable offence. We consider this issue in detail in our discussion and recommendations in Chapter 14.



## **Part 4:**

### ***Conclusions and recommendations***

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## CONCLUSIONS FROM THE REVIEW FINDINGS

As stated in Chapter 1 of this report, in conducting this review of the public nuisance offence we set out to answer two questions:

- What was the impact of the introduction of the new public nuisance offence?
- Are Queensland's public nuisance laws being used properly, fairly and effectively?

To answer them, we examined the:

- legislation itself
- social and political environment — the community 'signals' and concerns around public order, including all the views expressed through consultations and submissions
- criminal justice system data.

### WHAT WAS THE IMPACT OF THE INTRODUCTION OF THE NEW PUBLIC NUISANCE OFFENCE?

The findings of our review, based on the examination of criminal justice system data presented in Part 3 of this report, do not show marked changes since the introduction of the new public nuisance offence. For example:

- Our examination of a random sample of police narratives did not show any dramatic change in the types of behaviour which police identified as public nuisance. The type of behaviours for which public nuisance is applied continues to range from relatively minor behaviour such as tipping over rubbish bins and riding in shopping trolleys to 'altercations', 'scuffles' and fights with the potential to result in serious injury and some sexual behaviours that could potentially amount to serious sexual offences. Offensive language offences appeared under both the old and new provisions and the language involved was often directed at police.
- Police data show alcohol was involved in about three-quarters of public nuisance only incidents with an increasing proportion of incidents involving alcohol in the period after the introduction of the new offence (see page 48).
- While our results show an increase in the number and rate of public nuisance offences when we compare the 12 months before and after the introduction of the new offence, the regional variations in the degree and direction of the change tend to argue against the conclusion that the introduction of the new offence was driving the changes. Rather, the statewide increase in the number and rate of public nuisance offences appears consistent with a significant upward trend in police public nuisance data over a 10-year period from 1997. Over the 10-year period the rate of public nuisance offending has increased by an average of 7 per cent each year but there is a notable increase in the upward trend from July 2006.
- Under both the old and the new public nuisance offences, most offending occurs on weekends and between the hours of 9 pm and 5 am.
- In terms of where public nuisances occur, most public nuisance offending occurs on the street and this remained unchanged after the introduction of the new offence. However, after the introduction of the new offence, there has been an increase in the amount of offending on licensed premises and businesses, and a decrease in

offences in recreational spaces (such as parks). Since the introduction of the new offence, the QPS also records whether or not offences are 'associated with licensed premises' and in the 12 months following the introduction of the new offence, a quarter of offences were said to be associated with licensed premises.

- Both before and after the introduction of the new offence, public nuisance incidents mostly occurred in major centres such as Surfers Paradise, the Brisbane CBD, Fortitude Valley and Cairns.
- The profile of public nuisance offenders has not changed much since the introduction of the new offence — most public nuisance offenders are males aged between 17 and 30 years. Indigenous people and young people were over-represented as public nuisance offenders under both the old and the new offence. Although concerns had been expressed about a perceived increase in the proportion of young and Indigenous offenders, the data did not show any increase and in fact showed a decrease in the proportion of Indigenous public nuisance offenders for the new offence period. The data did not enable us to examine the impact on homeless and mentally ill or impaired people.
- The use of arrest was relied upon by police in around 60 per cent of public nuisance incidents involving adults both before and after the new offence. Those not arrested were generally issued with a notice to appear. Both adult and juvenile Indigenous public nuisance offenders were more likely to be arrested than non-Indigenous offenders.
- Where other offences accompanied public nuisance, most of them continued to be offences against police. We did find a decrease in the proportion of public nuisance offences accompanied by other charges in the period following the introduction of the new offence, and this was attributable to a decrease in offences against police accompanying public nuisance offences.
- The proportion of public nuisance matters contested in the courts was very low both before and after the introduction of the new offence. Ninety-eight per cent of adult offenders were convicted and just over half had their conviction recorded. Sentencing practices also remained similar over the two periods under review, with the vast majority of adult offenders receiving a fine and the fine amount most commonly being \$100 under both the old and new offences.

Our conclusion therefore is that the legislative change itself did not appear to have a significant impact on public nuisance offending or on the police and courts response to it. We certainly found marginalised groups were over-represented, but that this over-representation had not been amplified since the introduction of the new offence.

On the contrary, the picture that emerged to us was that the principal focus of the offence was on managing the behaviours of 'party people' and that this focus has strengthened over time in response to community 'signals' and concerns around public order. Evidence of the strengthening focus on 'party people' is provided, for example, by

- the increased proportion of incidents involving alcohol in the period after the introduction of the new offence
- the increased amount of offending on licensed premises and businesses
- the high number of public nuisance incidents in 'hot spot' areas which are considered to be major entertainment centres such as the Brisbane CBD, Fortitude Valley, Cairns and Surfers Paradise, and associated with events such as Schoolies Week and the Indy carnival at the Gold Coast.

## ARE QUEENSLAND'S PUBLIC NUISANCE LAWS BEING USED PROPERLY, FAIRLY AND EFFECTIVELY?

The fundamental nature of the public nuisance offence is that it is flexible and responsive to prevailing community standards, which vary according to time, place and circumstance. To determine the proper and 'fair' use of the offence, we examined the legislation itself and the community 'signals' about expected behavioural standards.

In looking at the legislation, we found:

- that the definition of public nuisance is intentionally vague as to what behaviour in what circumstances will constitute an offence in the eyes of the law
- that the offence therefore allows a wide scope for the exercise of police discretion and for the courts to interpret the law and act to fetter the inappropriate exercise of police discretion
- that under the new offence people can be charged with public nuisance without knowing from the charge any further details of the type of behaviour for which they were being charged.

In looking at the community 'signals' about prevailing and expected standards of behaviour, we found:

- widespread concerns about public safety in the face of anti-social behaviour, especially and increasingly where alcohol was involved
- the public actively seeking police assistance in maintaining social order, as evidenced by calls for service
- concerns for the treatment of marginalised groups, with particular reference to the exercise of police discretion and selective enforcement
- that there were a number of ongoing issues around the exercise of police discretion, including in relation to those behaviours at the more trivial end of the spectrum such as offensive language and public urination.

Our conclusion is that police are being asked to respond to a variety of 'signals', some of which are mixed or even contradictory. On balance, therefore, we believe that Queensland's public nuisance laws are being used fairly and effectively, in the sense that police are taking action to respond to the messages being sent by the broader community.

However, as noted in Chapter 1 of this report, during parliamentary debate on the new offence members from all sides agreed that although the public nuisance offence was a necessary and valuable tool, by its very nature, it required careful management. This may be through the exercise of police discretion and the influence of court decisions.

In the following chapter we make recommendations in relation to:

- some ongoing issues relating to the use of the public nuisance offence and legislative implications
- the response of the criminal justice system
- the underlying causes of public nuisance offending and the need for management strategies through partnership approaches.

## MANAGING PUBLIC ORDER: DISCUSSION AND RECOMMENDATIONS

We believe that the broad discretion provided to police and courts in the public nuisance offence is necessary — it allows the offence to be interpreted flexibly in response to prevailing community standards. However, important concerns exist about how police exercise their discretion, and how the criminal justice system responds to public nuisance offences and offenders. Many of these concerns are longstanding and have not just arisen under the new public nuisance offence.

Our conclusion described above in Chapter 13 is that the legislative changes introduced with the new public nuisance offence in Queensland did not have a significant impact on public nuisance offending and the police and courts response to it. Rather, we concluded that it was the social and political ‘signals’ sent to police that appeared to have the strongest influence on the policing of public nuisance as police are increasingly called upon to respond to growing concerns about anti-social behaviour, especially where alcohol is involved.

With this in mind, this chapter discusses and makes recommendations to address some of the longstanding concerns about the enforcement of the public nuisance offence and improve the management of public nuisance in the criminal justice system.

### ONGOING ISSUES IN POLICING PUBLIC ORDER

As the law relating to public nuisance does not attempt to define or codify the limits of what may be considered disorderly, indecent or offensive behaviour — indeed it would be impossible to do so — contentious issues associated with the offence will remain (particularly regarding discretionary decisions made by police). Those areas of concern that we believed could be improved were:

- offensive language, particularly where that language is directed at police
- public urination.

#### Offensive language

The Queensland Parliament indicated its intention that offensive language, including offensive language directed at a police officer, is behaviour that may constitute a public nuisance offence. The explanatory notes accompanying the introduction of the new public nuisance offence state that ‘a person using obscene language in a mall or a street may constitute offensive language’. Although no reference is made in the explanatory notes to offensive language directed at police officers, statements of parliamentarians indicate that the public nuisance offence should be available to police in some circumstances where offensive language is directed at them, but that there is a need for police to accept that being exposed to bad language is also going to be part of their job (see, for example, QLA (McGrady) 2003, p. 4364; Spence 2005; QLA (Shine) 2005c, p. 142).<sup>64</sup>

<sup>64</sup> This view is consistent with the case law that does not demand police officers be completely impervious to insult, but does suggest a higher tolerance threshold should apply to police than to other members of the public (*Coleman v. Power* [2004] HCA 39; *Green v. Ashton* [2006] QDC 008 at [12]; *Bryant v. Stone*, unreported, Townsville District Court, 26 October 1990).

Although it is difficult to accurately assess how frequently the public nuisance offence is used for offensive language in Queensland, or how frequently it is used as the basis to arrest a person, Chapter 7 provided some information through our consideration of a sample of police narrative descriptions of public nuisance incidents. We suggest that about one in six of the public nuisance only narratives sampled described offensive language as the only public nuisance offence behaviour. Of these, just over half described offensive language directed at police.

The enforcement of offensive language offences, particularly where that language was directed at police, is surrounded by a history of controversy. Previous research in NSW has described the number of people brought to court solely for using offensive language as 'most disturbing' (Weatherburn 1997) and has found that offensive language crimes often function as:

a trigger for detention of a person who has abusively challenged police authority rather than as a means of protecting members of the community at large from conduct that is patently offensive. (Jochelson 1997, p. 15)

### ***Offensive language and the challenge to police authority***

Historically there has been debate about whether the power to arrest a person solely for using offensive language is in fact 'necessary to the maintenance of public order' (Weatherburn 1997).

The views expressed by police during consultations were that they often felt arrest was necessary when they were subject to abuse, or not shown any respect. For example, police commented that they were expected to take a lot of abuse on the street:

It's not us, it's their attitude towards us — they yell out abuse as we drive by ... If you do nothing once — next time they'll be not [just] yelling at you — it just escalates ... You've lost your authority. You let it slide and you shouldn't have ... (QPS (Townsville) consultations, 20 September 2006).

I can get called names all day and I don't arrest. But if members of the public hear someone swearing at me, then I arrest. (QPS (Inala) consultations, 26 September 2006)

The comments of police are consistent with previous research suggesting that, where defendants through their language or actions demonstrate disrespect for police authority, the probability of informal handling of the incident decreases and the likelihood of arrest increases. For example, research findings of Travis (1983, p. 214) suggest:

While obscene language may be simply that to most people, in their handling of public space, police perceive such language as symbolic of lack of respect for authority, trouble, losing control and indicative of potential danger ... Without this respect, the police feel they cannot handle the situation.

This issue has been of particular concern in relation to the policing of Indigenous people as empirical evidence has repeatedly shown Indigenous people are disproportionately likely to be arrested and that public order offences are a major trigger leading to the detention of Indigenous people in police custody (Cunneen 2001, pp. 20–21; Jochelson 1997, p. 15; Johnston 1991, vol. 2, pp. 200–202).<sup>65</sup> In addition, an examination of empirical evidence available in NSW found evidence that Indigenous over-representation is especially pronounced for offensive language offences (NSW Bureau of Crime Statistics and Research 1999).

In so far as we were able to consider data on these issues, our findings largely support the findings of this previous research. Our results presented in Chapter 11 show that Indigenous public nuisance offenders were significantly more likely than non-Indigenous

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<sup>65</sup> While public order offences are a major trigger for the detention of Indigenous people in police custody, it is not true (as it is sometimes assumed) that a substantial proportion of Indigenous people sentenced to imprisonment have been convicted of these relatively trivial offences (Biles 1992, p. 96; cf. Langton 1988).



offenders to be dealt with by way of arrest. Our consideration of a sample of police narrative descriptions of public nuisance incidents in Chapter 7 suggests that about one in three offensive language matters involved Indigenous offenders.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) considered there was a need to reduce the police detention of Aboriginal people resulting from offensive language crimes in particular. The RCIADIC made the following recommendation:

86. That:

- a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and
- b. Police Services should examine and monitor the use of offensive language charges.

(Johnston 1991, vol. 5, p. 88)

This recommendation is considered to have been ‘implemented’ by the Queensland Government, and as such it has not been reported against or assessed by Queensland Government reporting processes or reviews since 2001. The 2001 report that established the recommendation as ‘implemented’ does not provide any further details (Deaths in Custody Monitoring Unit 2001, p. 419; see also QLA (Beattie) 2007, p. 14; Queensland Government 2007a, 2007b).

While we were undertaking this review, the arrest of Mulrunji on Palm Island for public nuisance after his use of offensive language to Senior Sergeant Hurley, and his subsequent death in police custody, provides a clear illustration of circumstances where an offensive language challenge to police authority led to an arrest which ultimately had terrible consequences.<sup>66</sup>

### Mulrunji’s arrest for public nuisance

The circumstances that led to the arrest of Cameron Doomadgee (Mulrunji) by Senior Sergeant Chris Hurley have been variously described by media commentators as ‘a trivial verbal altercation’, ‘swearing at a policeman’, and singing the song ‘Who let the dogs out?’ (Hooper 2006a; Marriner 2007).

The evidence provided during legal proceedings of the circumstances leading to Mulrunji’s arrest indicates:

- on 19 November 2004, Hurley and Police Liaison Officer Lloyd Bengaroo drove Gladys Nugent, who had earlier been assaulted by her partner, Roy Bramwell, to her house in Dee Street, Palm Island, in order for Gladys to retrieve her medicine for diabetes
- while at the house Hurley arrested Patrick Nugent for yelling abuse and swearing at him and Bengaroo, after being requested to make the arrest by Nugent’s grandmother (Transcript, *R v. Hurley*, Supreme Court of Queensland Indictment No. 4 of 2007, at p. 591)
- while Hurley was putting Nugent in the back of the police vehicle, Mulrunji, who had earlier been drinking with Nugent, was walking past and confronted Bengaroo by saying ‘Bengaroo, you black like me. Can’t you help us?’ (Transcript of proceedings, Coroner’s Court, Townsville, p. 511)
- Bengaroo warned Mulrunji ‘just walk down the road or you’ll get locked up’ (Transcript of proceedings, Coroner’s Court, Townsville, p. 511)

Continued next page >

66 As in the case of Mulrunji, *Courtney v. Thomson* [2007] QCA 49 provides an example of police using their powers of arrest for public nuisance in circumstances that raise questions as to the lawfulness and/or appropriateness of the arrest.

Continued from previous page >

- Mulrunji said or called out 'You fucking cunts' or similar (referring to Bengaroo and Hurley) (Transcript, *R v. Hurley*, Supreme Court of Queensland Indictment No. 4 of 2007, at p. 342).

The Coroner commented that the arrest of Mulrunji was 'completely unjustified' (Clements 2006, p. 3). Criticisms by some commentators of Hurley's decision to arrest include:

- the alleged remarks of Mulrunji's were insufficiently serious to justify arrest; police officers and other public officials must be more resilient than the average person regarding insults and abuse (HREOC 2006)
- that in the circumstances where Mulrunji was walking away, the offence behaviour had occurred and was unlikely to occur again, so alternatives to arrest should have been preferred (HREOC 2006)
- there was no other reason to justify the arrest: Hurley's suggestion that he needed to establish Mulrunji's identity as he did not know him was flawed as Mulrunji was known to Bengaroo; Hurley's suggestion that Mulrunji was too drunk to have understood the meaning of a notice to appear is flawed because Hurley had not spoken to Mulrunji at the time of his decision to arrest him, so could not have gauged his level of intoxication (HREOC 2006)
- Hurley's action to arrest Mulrunji 'in support' of Bengaroo was an assertion or defence of authority by police where this authority had been challenged (Morreau 2007, p. 10; Hooper 2006b; HREOC 2006)
- Hurley's claim that Mulrunji was arrested in order to allow him to 'sleep off' his drunkenness is not supported by Hurley's acceptance that Mulrunji was not so intoxicated as to be a danger to himself or others (HREOC 2006).

Other factors that tend to show the complexity of this situation include:

- Mulrunji was seriously intoxicated. His blood alcohol content was nearly six times the legal limit for driving (292 mg/100 mL or 0.292) (Clements 2005, p. 7; Transcript, *R v. Hurley*, Supreme Court of Queensland Indictment No. 4 of 2007, at pp. 23 & 24). Immediately preceding his arrest at about 10 am, Mulrunji was drinking from a cask of moselle and also methylated spirits mixed with water or 'goom' (Transcript, *R v. Hurley*, Supreme Court of Queensland Indictment No. 4 of 2007, at p. 415). This level of intoxication may have been visually apparent to Hurley.
- It was the second time that day that Hurley had visited the Dee Street household outside which the altercation with Mulrunji took place (Hurley, Transcript, *R v. Hurley*, Supreme Court of Queensland, Indictment No. 4 of 2007, at p. 335). On the previous occasion police had been responding to a violent incident involving Nugent. Evidence was that serious drinking had been occurring in the area all night (Transcript, *R v. Hurley*, Supreme Court of Queensland, Indictment No. 4 of 2007, at pp. 84 & 336).
- Mulrunji's putdown of Bengaroo was highly derogatory and inflammatory to an Indigenous person. There is a long history within Aboriginal communities of these kinds of putdowns for Aboriginal people who work in roles to assist police, casting them as somehow betraying their own people.
- Hurley had just arrested Nugent for very similar behaviour to that of Mulrunji, after a request to do so from Nugent's grandmother (Transcript, *R v. Hurley*, Supreme Court of Queensland Indictment No. 4 of 2007, at p. 591)
- Police in Queensland have been criticised for their inadequate response to the 'epidemic' of domestic violence in Indigenous communities (Robertson 1999; Fitzgerald 2001; Memmot et al. 2001). Hurley and Bengaroo were attempting to assist in relation to a domestic violence incident.

## Monitoring strategies

As we have discussed in Chapter 7 of this report, the nature of Queensland's broadly drafted public nuisance offence (rather than having separate offences for offensive behaviour and offensive language as exist in some other jurisdictions, for example), and police information recording systems, have made it particularly difficult to scrutinise these issues. Currently in Queensland, contrary to the recommendations of the Royal Commission, it is not possible to determine how frequently offensive language only offences are charged, or how frequently offensive language only provides the trigger for arrest of people for public nuisance. It follows that it is impossible for the QPS, or anyone else, to reliably examine and monitor the use of offensive language charges.

It is the Commission's view that, given the history of controversy surrounding the use of offensive language charges in particular, changes must be made so that it is possible to examine and monitor the use of public nuisance charges to deal with particular categories of offence behaviour, including offensive language.

There are a number of ways in which the QPS can monitor the use of offensive language charges. First, the QPS could develop a capacity to record and identify the number of public nuisance charges based on offensive language, including those directed at police, and the action police took in respect of the offence (for example, arrest or notice to appear). This could provide an effective monitoring strategy if accompanied by a reporting mechanism — for example, the number of such offences could be reported in the QPS Annual Statistical Review.

Another option is to have a separate offence covering only offensive language so that it can be monitored separately from the public nuisance offence.

## Particularisation of offences

A broader and more transparent approach would be to require that, when charging a person with a public nuisance offence, the police are obliged to indicate which 'limb' of the public nuisance definition was the basis of the charge. As noted in Chapter 5, it appears that the way the new offence is crafted, combined with the effect of the Justices Act, has resulted in a reduced level of detail required to be provided in the wording of the public nuisance charge.<sup>67</sup> The approach under the old offence required police to describe the charge with a greater degree of detail.

To adopt the level of particularisation that was evident under the old offence would serve a broader purpose than just enabling the identification and monitoring of offensive language offences. It would also provide defendants, their lawyers and the courts with more particularity about the nature of the allegedly offensive actions. This would address the concerns raised by many stakeholders during the course of our review (for example, Magistrates' consultations, 13 September 2006; Legal Aid (Brisbane) consultations, 5 September 2006).

Accordingly, the Commission proposes that the necessary amendments be made to legislation and to practice to ensure that, when a person is charged with a public nuisance offence, they are provided with enough information to determine which 'limb' of the public nuisance definition is the basis of the charge. We recognise that some offences may fall under one or more limbs (s. 6(5) Summary Offences Act) but are particularly concerned that we are able to monitor those that are offensive language only. In addition,

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<sup>67</sup> Under the new offence an offender may be provided with a charge of 'public nuisance' with no other particulars provided (see s. 6(1) Summary Offences Act; s. 47 *Justices Act 1886* (Qld); *Brooks v. Halfpenny* [2002] QDC 269). The old offence was drafted in such a manner that it required police to describe the charge with a greater level of detail; under the old offence a description was required specifying if offending behaviour was 'disorderly', 'violent', 'indecent', 'offensive' or 'threatening', for example.

we would suggest that the other categories be offensive behaviour; threatening or violent behaviour, including language; and disorderly behaviour.

We also propose that the QPS and the courts record data in a manner that distinguishes between the various 'limbs' of the public nuisance definition. This will enable easier analysis in the future of public nuisance offending, the types of behaviour that are driving any changes to the use of the offence, and the sentences imposed for the wide variety of public nuisance matters.

## Recommendation 1:

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**That the legislation and practice surrounding the new public nuisance offence be amended to ensure that a person charged with a public nuisance offence is provided with sufficient particulars to identify under which 'limb' of the public nuisance definition the alleged behaviour falls. In particular, those offences which are based on offensive language should be able to be identified and monitored by the QPS in accordance with recommendation 86 of the Royal Commission into Aboriginal Deaths in Custody.**

## Public urination

The Queensland Parliament indicated its intention that public urination is behaviour that may constitute a public nuisance offence. The explanatory notes accompanying the introduction of the new public nuisance offence specify that offensive behaviour coming within the meaning of the public nuisance offence included a 'person urinating in view of another in a public place' (see Police Powers and Responsibilities and Other Legislation Amendment Bill 2003 (Qld) Explanatory Notes, p. 20; Summary Offences Bill 2004 (Qld) Explanatory Notes, p. 4).

A number of the submissions to the review noted the views of some people that public urination is a trivial behaviour that may not warrant criminal justice system attention (Chief Magistrate, p. 3; QPILCH, pp. 8-9; YAC, p. 4; Caxton Legal Centre, p. 8; LAQ, p. 4; Walsh, p. 25).

In respect of public urination, an argument can be made that where the behaviour is 'harmless', in that it is done discreetly and without impacting on public property or amenity — for example, urinating behind a tree by the side of a road — police should exercise their discretion not to act and should ignore the behaviour. On the other hand, where a person is urinating on a shopfront in full view of others, it would seem police action is clearly justified.

Our analysis of the police narratives in Chapter 7 shows that there were numerous occasions when police took justifiable action under both the old and the new offence. Commonly these incidents described public urination in key public spaces such as main streets and malls, and on property such as vehicles, shops and other buildings. We did not find examples of any narratives describing circumstances to suggest police clearly should not have exercised their discretion to act.

## *Public urination or wilful exposure?*

The issue of public urination is complicated by the fact that the behaviour can also constitute a specific offence under the wilful exposure offence (s. 9(1) Summary Offences Act). In mounting a prosecution under that provision, there is less room for the analysis of the surrounding circumstances as the elements to be established are that there was an exposure of the genitalia and that such exposure was wilful. Clearly, where the alleged offender has made an effort to hide themselves from public view, they may well be able to defend a wilful exposure charge.

Some stakeholders argued that public urination should be charged under the wilful exposure provision as it has several advantages for the defendant: a simple wilful exposure offence carries a lesser maximum penalty than public nuisance with no potential for imprisonment; and wilful exposure has a defence of ‘reasonable excuse’. However, though the chances of successfully defending a charge may be enhanced, others argue that the consequence of a conviction, should that occur, may be greater despite a potentially lesser penalty. The Chief Magistrate’s submission (p. 3) notes that both the prosecution and the defence have advised magistrates that people often prefer to be charged with public nuisance as distinct from wilful exposure because of the sexual connotation of the title of a wilful exposure charge on their records.

### ***Public urination as a separate offence***

Several stakeholders put forward the view that public urination should be dealt with as a separate offence. For example, the Chief Magistrate’s submission (p. 3) proposed an amendment to the Summary Offences Act to create a separate offence of public urination by retitling section 9(1) as public urination and making section 9(2) a separate offence of wilful exposure (see also submissions of Walsh, p. 25; QPILCH, p. 9; Caxton Legal Centre, p. 6; ATSILS (South), p. 7; LAQ, p. 4).

The Commission agrees that there should be a separate offence of public urination which is not titled ‘wilful exposure’, thus removing a perceived obstacle to people being dealt with under the less serious offence. The retitled offence should carry the same penalty range as the existing section 9(1) of the Summary Offences Act. In the absence of any aggravating circumstances, police should be encouraged to charge this lesser offence rather than the broader wilful exposure offence or the public nuisance offence, which carries a higher maximum penalty.

## **Recommendation 2:**

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**That a separate offence titled ‘public urination’ be created with the same penalty as section 9(1) of the Summary Offences Act.**

There still remains the question of whether the courts’ time should be taken up with such trivial behaviours as public urination. In such cases, ‘ticketing’ may offer a better solution and this is discussed later at page 128.

## **MANAGING POLICE DISCRETION**

### **How should police respond to a public nuisance?**

The primary objective when dealing with behavioural offences is to modify behaviour in line with community expectations. A great deal of previous research indicates that this may best be achieved through informal means to de-escalate the situation rather than to cause it to escalate. In Chapter 7 of this report we provided examples of police narratives describing situations where the police response to a minor public nuisance has resulted in an escalation of the incident into a violent altercation with police, in which offences against police are committed in addition to the original public nuisance incident.<sup>68</sup> It is difficult to assess the frequency with which informal resolution of minor incidents effectively ‘de-escalates’ the situation so that no offence results. Police simply do not routinely record information on incidents that they are able to deal with other than through a formal law enforcement type response.

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<sup>68</sup> Such escalations can also be seen in reflected in the facts of a number of reported cases (see, for example, *Coleman v. Kinbacher and Anor* [2003] QDC 231 at [10]; *Singh v. Duncan*, unreported, Townsville District Court, Qld, 11 December 1990; *Couchy (Melissa Jane) v. Birchley* [2005] QDC 334; *DPP v. Orum* (1988) 3 All ER 449).

Police officers receive training to assist them in the exercise of discretion, including directly in relation to public order issues. For example, police recruits and first-year constables are trained in public order policing. This training includes some discussion of interpersonal skills and focuses on:

- dealing with people affected by alcohol and other drugs
- the case law providing guidance on the exercise of police discretion in relation to public nuisance (QPS 2007f).

Further ongoing training for police officers over the last two years has included compulsory training on aspects of 'tactical communication', including tactical communication with mentally ill people. Tactical communication is described as 'saying the right thing at the right time to achieve a desired result', such as to prevent confrontation from becoming violent (QPS 2006d, 2007g).

The QPS also provides ongoing training for officers on arrest that focuses on the exercise of police discretion, including in relation to public order incidents (QPS 2005d; see also QPS 2007h). This training advises police that they cannot enforce all of the laws all of the time, and nor are they expected to. The training includes reference to a police officer's duty to consider the spirit, limits and objects of the statute when making the decision to prosecute and to arrest. It provides the following advice:

Given that adverse comment is sometimes made by the news media and the courts when police officers have arrested suspects for minor offences, they should carefully consider all the circumstances before deciding to arrest or deciding to prosecute or to take some other lawful action. (QPS 2005d, p. 27)

The training also advises that, when police officers decide whether or not to prosecute, 'they are taking on the role of society. They are not deciding guilt or innocence but rather whether a person should be brought to account through the judicial system' (QPS 2005d, p. 29).

Despite the training provided to police regarding the exercise of discretion, controversy remains. Again, the picture presented during this review reinforces the fact that the public nuisance offence is a highly discretionary tool. The most controversial aspect of the exercise of police discretion in relation to the public nuisance offence clearly involves the enforcement of the offence for what may be regarded as trivial behaviour. This is particularly the case for offensive language offences, but it is also true for other behaviours at the less serious end of the public nuisance spectrum, such as public urination (at least in some circumstances). The appropriate management of police discretion is clearly vital to ensuring the offence is used properly, fairly and effectively.

### **How should the exercise of police discretion be managed?**

The Queensland Parliament in introducing the new public nuisance offence frequently acknowledged the importance of the appropriate exercise of police discretion (QLA (Spence) 2005a, p. 267; QLA (Cunningham) 2005, p. 253; QLA (Shine) 2005a, p. 142; QLA (Pratt) 2005, p. 179; QLA (Sullivan) 2005, p. 256). In our report we have illustrated that the exercise of this discretion is not always without complexity and controversy.

However, as we said earlier, we think it is important that the public nuisance offence remain flexible and responsive to community standards. This necessitates considerable reliance on police discretion. It is our view that the QPS needs to ensure management, oversight and guidance regarding the exercise of discretion through to the highest levels. Although it is unrealistic for senior management to oversee the exercise of police discretion in every case, they play an important role in sending a message that the emphasis should be on de-escalating incidents and use of arrest as a last resort. We think that this can be effectively done through the use of the QPS Operational Performance Review processes.

## QPS Operational Performance Review

In June 2001, the QPS introduced the Operational Performance Review (OPR). The purpose of the OPR is to improve performance by directly holding responsible those individuals who have the greatest capacity to influence performance — regional and district managers. (Queensland is comprised of a number of QPS regions, within which there are a number of districts [see Appendix 8 for further details]). In the QPS a regional manager is an Assistant Commissioner and a district manager is called a District Officer.

Essentially, an OPR is a regular meeting chaired by the Commissioner of Police that focuses on the performance of a particular region, district or station. There are two types of OPR: the standard OPR focuses on key operational priorities and a 'themed' OPR focuses on a significant issue for the QPS.

At OPR sessions District Officers are required to respond to questions from the Commissioner about key operational priorities. The District Officer is usually accompanied by the regional Assistant Commissioner, the Chief Superintendent and a small delegation of senior police from the region or district.

During the OPR, relevant data are presented and inform the Commissioner's questions. For example, data may be presented on the number of offences committed in each area, the number of those cleared or solved and five-year trends for each crime type in the area compared with the state rate. Non-crime data, such as human resources or financial information, may also be presented. All data used during the OPR are sent to the district a week before the meeting, allowing all participants to examine the district's performance before the meeting.

In late 2005, the QPS facilitated its first 'themed' OPR, in the Southern Region. It considered the role of the District Education and Training Officer in contributing to the performance of the district. A themed OPR was also held in Cairns in May 2006 focusing on issues arising from Tropical Cyclone Larry.

More recently, the QPS undertook a 'mini' themed OPR in the Brisbane Central District that focused on the policing of liquor-related offences. This included a critical review of police processes and decisions in regards to the granting of watch-house bail and diversion. In addition to local police, the OPR involved representatives from the Brisbane City Council and Liquor Licensing.

In 2008 the standard OPR process focusing on key operational priorities has been used in the Metropolitan North Region. In this region a shift in the strategic approach taken to policing public order from the District Officer level down has included a greater emphasis on preventive, proactive and problem-solving approaches, as well as partnerships and intelligence-led practice. The Brisbane Central District is part of the Metropolitan North QPS region; in this district the management of public safety and amenity, particularly in entertainment areas, is an identified key priority area. The new approach has been directly linked to a de-escalation of conflicts with police and a reduced number of complaints against police in the Brisbane Central District (decreasing from well above the state average to just above the state average).

(Information presented here is largely derived from a 2006 internal CMC report entitled *Operational Performance review — how senior police perceive the OPR.*)

Given the growing emphasis on the need to manage anti-social behaviour associated with the consumption of alcohol particularly, and the regional differences in the public order issues being confronted by police highlighted throughout this report, it is the Commission's view that it would be timely for the QPS to closely consider issues associated with public order policing across the State. The OPR process (see text box above) can provide an effective mechanism for allowing senior management at QPS to reinforce the message that



de-escalation and prevention are guiding principles, monitor police performance at the local level, encourage partnerships and problem-solving approaches to local issues, and share information about effective strategies implemented in other districts. A themed OPR, focusing on public order policing, would provide an opportunity for the challenges facing police in local areas to be discussed and for new approaches to be examined.

### **Recommendation 3:**

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**That the QPS hold a themed OPR in 2008–09 focusing on public order policing, including dealing with public nuisance behaviours. The OPR should identify best-practice partnership solutions to the problems and encourage de-escalation of public order incidents wherever possible.**

### **The role of the courts in managing police discretion**

The importance of strong internal oversight of the exercise of police discretion is heightened by the fact that the courts' ability to moderate police discretion in relation to public nuisance is limited in a number of ways.

First, because public nuisance cases are overwhelmingly unreported decisions of magistrates; reported decisions of higher courts, to which police and magistrates can look for binding precedent, are rare. The QPS must be careful to ensure that guidance provided in public nuisance decisions of the Magistrates Court is able to be passed on to front-line officers dealing with public order issues.

Second, and more fundamentally, our results show that, while the volume of public nuisance matters is high, only a very small percentage of public nuisance matters are contested in the Queensland courts. The large proportion of public nuisance matters are dealt with *ex parte* or by pleas of guilty and the small proportion of offences that are contested means that the courts have a limited number of opportunities to act as an accountability mechanism regarding the exercise of police discretion. Comments were indeed made to the review from a range of stakeholder groups that, because public nuisance matters are very rarely challenged, 'many are getting through that possibly shouldn't' (QPS (Mt Isa) consultations, 13 September 2006; see also LAQ (Sunshine Coast) consultations, 5 October 2006).

The small percentage of contested matters may be the result of a number of factors, including:

- the lack of legal advice and representation sought by, or available to, public nuisance defendants
- the cost associated with defending a charge or appealing a conviction being greater than the cost of the fine
- the perception that there is a limited prospect of being acquitted of a public nuisance charge and lack of available defences to the charge (but see the further discussion of this aspect below)
- general acceptance by the defendant of their wrongdoing, or a perception that the public nuisance offence and the subsequent punishment are trivial.

Issues around the lack of legal representation are very real for public nuisance defendants. Duty lawyers are provided at court to give advice to those appearing on criminal charges in most of the state's Magistrates and Childrens Courts. Duty lawyer services are performed by Legal Aid Lawyers, lawyers from private firms or other legal services. However, duty lawyers are only able to take instructions and make submissions to the court on behalf of a defendant who pleads guilty. Should a person charged with public



nuisance want to contest the charge, the duty lawyer cannot assist and that person would need to:

- pay a private lawyer for representation
- be self-represented in court
- make an application for legal aid.<sup>69</sup>

There is no doubt that the cost of legal representation is likely to outweigh the fine imposed for a public nuisance offence and this contributes to the small percentage of matters contested.

In addition to the issues relating to the lack of legal representation we heard a range of views about the prospects of acquittal and the degree of proof required to establish the public nuisance offence before magistrates. For example, it was suggested that the new public nuisance offence is both:

- easier to prove (QPS (Ipswich) consultations, 29 October 2006; LAQ (Brisbane) consultations, 5 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006)
- harder to prove (QPS (Cairns) consultations, 18 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006).

Our review also heard comments arising from a perception that magistrates' decisions in public nuisance cases showed significant variability and inconsistency (QPS (Townsville) consultations, 20 September 2006; QPS (Ipswich) consultations, 29 October 2006; QPS (Cairns) consultations, 18 September 2006; LAQ (Brisbane) consultations, 5 September 2006). These perceptions of the variability of Magistrates Courts decisions in interpreting and applying the public nuisance law, including in relation to the amount of proof required, may simply reflect the law's elasticity in terms of what actions may fall within the scope of the offence and the fact that it is intended that the elements of the offence, such as 'offensive' language or behaviour, will adapt to changing community standards and be interpreted according to the time, place and other circumstances. This elasticity means that seemingly conflicting decisions can be found on aspects of the offence, but that the apparent inconsistencies may be explained by the particular circumstances of individual cases.

### ***Are there adequate defences?***

A key suggestion offered to the review to increase the degree of scrutiny that public nuisance charges receive in the criminal justice system was that a defence of 'reasonable excuse' should be included within the public nuisance offence. This, it was argued by some stakeholders, would increase a defendant's chance of success in defending a charge because there are currently few (if any) defences available (Caxton Legal Centre, p. 11; ATSILS, p. 5).

Our research shows that, generally, the defences provided in the Criminal Code, such as defences of insanity and immaturity, are available to a person charged with public nuisance (see s. 36 Criminal Code). The defence of provocation, however, which may be useful in a number of public nuisance scenarios, is not available in public nuisance matters (as it is only available for offences in the definition of which assault is an element: ss. 268 and 269 Criminal Code; *R v. Kaporonowski* (1973) 133 CLR 209). In contrast, self-defence may be available in some circumstances (see s. 271(1) Criminal Code; see also the submission of the Chief Magistrate, p. 3).

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<sup>69</sup> Applications for legal aid for public nuisance matters are likely to be successful only in very limited circumstances; legal aid may be granted, for example, if conviction would be likely to result in imprisonment, the defendant suffers from a disability, or there is a reasonable prospect of acquittal (Legal Aid Queensland, p. 2).

The practical difficulty in applying many of the available defences to certain public nuisance behaviours and circumstances was highlighted in the High Court decision of *Coleman v. Power* [2004] HCA 39 per McHugh J at [69–71], which suggested that, with the exceptions of the defences of insanity and immaturity, it is hard to see how any of these defences could be available in the circumstances of insulting language (see also Scrutiny of Legislation Committee 2004, pp. 25–34; Walsh 2005a).

The review was provided with a range of reasons supporting the inclusion of a ‘reasonable excuse’ defence, including to:

- help to alleviate any hardship created by the offence for homeless people, for example, by allowing for the context of the behaviour to be taken into account (RIPS 2004a; Walsh 2004a, p. 86; 2004b, pp. 7 & 27; submission of Caxton Legal Centre, pp. 3 & 11; Queensland Bar Association, p. 2; Department of Communities, p. 2; QPILCH, p. 11; Youth Advocacy Centre, pp. 5–6; see also Chief Magistrate, p. 3)
- give some flexibility to the courts and the police (LAQ (Sunshine Coast) consultations, 5 October 2006)
- deal unambiguously with situations of self-defence in fights (LAQ (Gold Coast) consultations, 7 October 2006; LAQ (Toowoomba) consultations, 25 September 2006; Magistrates’ consultations, 25 September 2006, 6 October 2006; submission of the Chief Magistrate, p. 3)
- deal with the situation of urination in public when public toilets are closed or otherwise not available (submission of Families and Prisoners Support Inc, p. 2; Youth Advocacy Centre, p. 6)
- improve people’s perceptions of how the criminal justice system treated them (Magistrates’ consultations, 14 September 2006).

The Caxton Legal Centre provided the most detailed description of a rationale for the inclusion of a ‘reasonable excuse’:

The majority of people charged with public nuisance will utilise the services of a duty lawyer. Duty lawyers have extremely high workloads and operate in the often hectic circumstances of the first mention court. Often, in such circumstances, duty lawyers are unable to give sufficient time to establishing in detail whether or not the elements of public nuisance have been made out in the [documents provided by police to court outlining the facts of the offence]. This results in an inordinate number of pleas of guilty to the offence of public nuisance.

The advantage of providing a defence of ‘reasonable excuse’ is threefold. First, duty lawyers could readily ascertain whether their clients could make out a defence. Second, duty lawyers could advise their clients on the prospects of defending a charge with greater certainty. Third, as a result of increased certainty in relation to defending a public nuisance charge, the circumstances leading to the charge would be more likely to be tested in court, leading to greater transparency with respect to the policing of these offences. (pp. 6–7)

It has also been suggested that a reasonable excuse clause should be included because there is an apparent inconsistency in that the offence of wilful exposure (s. 9 Summary Offences Act) does provide for a ‘reasonable excuse’ defence, and yet the same behaviour may be charged under the public nuisance provision and no such defence is available (Scrutiny of Legislation Committee 2003; Caxton Legal Centre, p. 6). It could be argued, however, that this apparent inconsistency may be explained by the fact that the wilful exposure provision does not have the same history of judicial interpretation as the public nuisance offence requiring that the ‘surrounding circumstances’ be taken into account.

Although there was certainly substantial support indicated to the review for the introduction of a reasonable excuse clause, it appears that it was primarily hoped such a clause would provide further clarity to the Queensland law. In NSW, where offensive language and behaviour laws do provide a reasonable excuse clause (see text box), the case law would suggest that, despite the existence of the defence, ambiguity remains.

## **‘Reasonable excuse’ in NSW offensive language laws and behaviour laws**

Offensive language laws and behaviour laws in NSW have included various formulations of a ‘reasonable excuse’ clause since 1979. NSW case law on this aspect suggests:

- that reasonable excuse for the use of profanity in a public place might be available ‘where the behaviour is almost a reflex action, for instance...a heavy implement falling on one’s foot, suddenly being hurt or angered by a sudden outrageous outburst or provocation’ (*Karpik v. Zisis* (1979) 5 Petty Sessions Review 2055 at 2056)
- that ‘reasonable excuse’ would include matters such as self-defence or trying to break up a brawl (*Patterson v. Alsleben* (1990), unreported, Supreme Court of NSW (BC9002355)).

However, it should be noted that ambiguity remains in NSW law, despite the existence of the ‘reasonable excuse’ defence. In *Connors v. Craigie* (1994) 76 A Crim R 502, Craigie was an Indigenous man who had watched a video on the subject of black deaths in custody while drinking heavily in a pub in Redfern. Some time later he approached two police officers talking to a third man in the street and shouted: ‘Fuck off, all you white cunts. We’ve had enough of you. We’d like to see you all dead’; and ‘You don’t fucking belong here...Youse are all just fucking white cunts, get out of the area’.

Local Court Magistrate Lillian Horler initially dismissed the charges, holding that the words did not amount to offensive language. She took into account factors such as Redfern’s large Aboriginal population; the dispossession of Aboriginal people by white settlers; the frequent mistreatment of the former during the time since settlement; Craigie was Aboriginal; he was intoxicated; the language was directed to non-Aboriginal persons; the language expressed anger, rage and hatred directed to the three men not as individuals but as representatives of non-Aboriginal people; and that a reasonably tolerant person, mindful of these factors, would not have regarded the language as warranting arrest and charge for offensive language.

Connors appealed by way of case stated to the Supreme Court of NSW, where McInerney J held that the words clearly constituted offensive language. The case was remitted to the Local Court, where Horler again dismissed the charge, this time holding that Craigie had a reasonable excuse for his language, for broadly the same reasons as those set out in the original judgment.

Connors appealed again, arguing that Horler had wrongly applied a purely subjective test of reasonable excuse, without any evidence to support the conclusion that Craigie had a reasonable excuse to use the language he did. Dunford J in the Supreme Court agreed with the appellant, holding:

In my opinion, reasonable excuse involves both subjective and objective considerations, but these considerations must be related to the immediately prevailing circumstances in which the offensive words, etc. are used, just as in self-defence or provocation the response of the accused must be related in some way to the actions of the victim and the particular circumstances. Although in an appropriate case it may also be proper to look at the immediate surrounding circumstances against the background of the defendant’s antecedents, prior experiences (both recent and less recent), and other related events, there must, in my view, always be something involved in the immediate particular circumstances before there can be reasonable excuse. In this case there was nothing of that nature...and accordingly her Worship erred in law...and on the evidence she was bound to find the offence proved.

The case went back to the Local Court, where Craigie was convicted and fined \$80.

Although a number of submissions made to the review provided examples of ‘unjust’ charges of public nuisance, or charges of public nuisance where a defence of ‘reasonable excuse’ may have been of assistance, in most cases it appears these cases were successfully contested in so far as they were said to have resulted in an acquittal, or to have been otherwise discontinued (Youth Advocacy Centre, pp. 7, 9 & 10; Legal Aid Queensland, p. 3; Chief Magistrate, p. 3). From the examples provided to the review we have not been able to clearly identify situations in which a defence of ‘reasonable excuse’ would alleviate injustice or hardship in a way that could not already be achieved within the parameters of the existing law, which emphasises that the offence behaviour is to be considered in all the surrounding circumstances (see *Del Vecchio v. Couchy* [2002] QCA 9; *Couchy v. Birchley* [2005] QDC 334 at [40]; *Green v. Ashton* [2006] QDC 008 at [12]; *Coleman v. Power* [2004] HCA 39 per Gleeson CJ at [15]).<sup>70</sup>

It is our view that the biggest hurdles to defending a public nuisance charge do not appear to relate to the law itself, but rather appear to be:

- lack of legal advice and legal representation
- the relative cost of legal representation or advice, versus the amount of a likely fine penalty.

On the basis of the information provided to our review and our consideration of existing case law, we are not convinced that providing a ‘reasonable excuse’ defence will add a new avenue by which public nuisance matters could be contested. The courts’ current interpretation of the law that requires the offence behaviour to be considered in the surrounding circumstances would appear to allow for circumstances comprising a ‘reasonable excuse’ to be taken into account.

We will further consider the issue of ‘reasonable excuse’ in our review of police move-on powers in 2008–09. We will, therefore, be able to consider any further material provided that can demonstrate a need for a reasonable excuse defence to public nuisance in the course of that review.

### Should public nuisance be a ticketable offence?

As we have noted in Chapter 12, given that for public nuisance matters:

- the volume dealt with in the courts is high
- the proportion contested is small
- the majority of offenders are convicted
- the vast majority of offenders receive a fine
- the number dealt with ex parte is high,

it begs the question of whether there should be an option for public nuisance to be a ticketable offence (that is, an on-the-spot fine or infringement notice offence) to provide a practical alternative for police and offenders, rather than proceeding through the courts.

It was frequently suggested to this review that public urination in particular could become a ‘ticket’ offence. It was also suggested, although less frequently, that public nuisance in its entirety or other limited aspects of the offence, such as offensive language, should be a ticket offence (see Chief Magistrate, p. 3; QPS (Townsville) consultations, 11 September 2006; QPS (Sunshine Coast) consultations, 5 October 2006; LAQ (Sunshine Coast) consultations, 5 October 2006; QPS (Cairns) consultations, 18 September 2006; LAQ (Cairns) consultations, 19 September 2006; LAQ (Toowoomba) consultations,

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<sup>70</sup> It should be noted also that a number of Queensland cases have explicitly considered whether, in the surrounding circumstances, the defendant’s offensive behaviour may have been justified and lawful (*Dowling v. Robinson* [2005] QDC 171; *Parson v. Raby* [2007] QCA 98).

25 September 2006; QPS (Toowoomba) consultations, 25 September 2006; QPS (Inala) consultations, 26 September 2006; RIPS consultations, 27 September 2006; QPS (Fortitude Valley) consultations, 10 October 2006).

Traditionally tickets have been used only to deal with minor offences that are regulatory in character, such as speeding fines, parking fines and fare-evasion. More recently there have been moves in Australia and the United Kingdom to expand the use of tickets for offences usually characterised as criminal in nature — in some jurisdictions this has included public order offences. The United Kingdom, New South Wales and the Northern Territory have introduced systems whereby police have an option to issue a ticket for public order offences including the relevant disorderly/offensive language and behaviour offences (see Criminal Justice and Police Act 2001 (UK), *Criminal Procedure Act 1986* (NSW), Summary Offences Regulations 1994 (NT) respectively). A trial of a similar system is currently being put in place in Victoria (see *Infringements Act 2006* (Vic)) and is proposed for the ACT (see Crimes (Street Offences) Amendment Bill 2007).

Infringement notice schemes generally work in the following way:

- The infringement notice system is optional: police exercise their discretion whether to issue an infringement notice or proceed down a more traditional route; the defendant may also elect to have the matter dealt with before a Magistrates Court for summary determination.
- The penalty is always fixed and is usually a monetary amount.
- Payment of the fine within the prescribed time effectively ends the matter — there is no need for court involvement. Most commonly, no conviction can result. A record is kept that tracks offenders' infringement notice histories.
- When fines are not paid in the prescribed period, enforcement procedures are activated.<sup>71</sup>

There are clear advantages in such systems in terms of cost, efficiency and consistency. They reduce the enormous expense involved in criminal justice proceedings and reduce time police spend doing paperwork; in fact, such systems have been described as 'bargain basement justice' (Fox 2003, p. 13). Concerns about such infringement notice systems include that they:

- may be seen to trivialise crime and result in a reduction in the quality of criminal justice due to fewer people having their day in court
- remove procedural protections warranted by the seriousness of the offence
- may lead to inappropriate exercise of discretion and heavy-handed enforcement
- are unable to take adequate account of an individual's circumstances, including financial circumstances when imposing a penalty
- may diminish the level of deterrence provided by matters being dealt with by the court
- are perceived as being primarily about revenue raising; they risk the law losing its moral legitimacy
- may lead to a reduction in informal resolution; across several jurisdictions there is evidence to suggest that the introduction of on-the-spot fines is accompanied by a reduction in the use of informal resolution of matters as an alternative (see Bagaric 1998; Fox 1995, 2003; NSW Ombudsman 2005; Spicer & Kilsby 2004).

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71 In Queensland, tickets for an on-the-spot fine are 'SETONs' or Self Enforcing Ticketable Offence Notices; the State Penalties Enforcement Register (SPER) is responsible for enforcement when the fine is not paid.

A 12-month trial was conducted by New South Wales before the introduction of its infringement notice scheme from November 2007. The trial evaluation found:

- significant administrative savings for police and courts
- a significant proportion of the infringement notices were issued for offensive language and behaviour offences
- some evidence of infringement notices being issued in circumstances unlikely to be considered criminal if determined by the courts
- some evidence of the diminution of the seriousness of the criminal act; for example, infringement notices were used to deal with assault matters that may have required a more significant sanction than a fine (NSW Ombudsman 2005).

During the trial only 2.6 per cent of the total number of infringement notices issued were challenged in the courts, and 0.9 per cent were withdrawn after being issued (NSW Ombudsman 2005, p. ii). These percentages are not dissimilar to the small percentages of public nuisance matters currently challenged under the current Queensland system whereby all matters proceed through the Magistrates or Childrens Courts.

The CMC believes that ticketing for public nuisance offences in Queensland would provide a valuable alternative for police and offenders in relation to a substantial proportion of public nuisance matters, rather than proceeding through the courts. This may lead to improved efficiency and cost savings for police and Queensland courts. The advantage to the offenders may be lower fine levels, convenience of payment, consistency of approach and no conviction recorded.

However, if a ticketing option is to be introduced, care must be taken to ensure that the potentially adverse effects seen in other jurisdictions, such as the decline in the use of informal resolution for public order incidents, do not eventuate in Queensland. The conduct of the trials in Victoria and the ACT should also be closely monitored in order to ensure that a best-practice ticketing option is provided in Queensland.

#### **Recommendation 4:**

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**That ticketing should be introduced as a further option available to police to deal with public nuisance behaviour. Ticketing should be introduced only in conjunction with a focus on 'de-escalation' and informal resolution of public order issues. The introduction of ticketing as an option should be evaluated to ensure it is not having an adverse effect in Queensland.**

## **BEYOND THE CRIMINAL JUSTICE SYSTEM: PARTNERSHIPS WITH OTHER AGENCIES**

A universal theme expressed during this review was a sense of frustration at the ineffectiveness of the criminal justice system to address the underlying factors that may lead to public nuisance offending, especially in the case of repeat offenders. A number of people suggested to the review:

- at times the prosecution of this offence could be seen as a waste of resources (LAQ (Toowoomba) consultations, 25 September 2006; LAQ (Cairns) consultations, 19 September 2006; Magistrates' consultations, 6 October 2006; RIPS 2004, p. 11)
- there is a 'hard core' group of people with complex problems who tend to be the repeat public nuisance offenders; these people are difficult to assist and criminal justice system processes, including penalties and sentences, are particularly

ineffective (LAQ (Toowoomba) consultations, 25 September 2006; Townsville City Council consultations, 12 September 2006; Magistrates' consultations, 14 September 2006)

- that fine penalties are ineffective and problematic; for example, Walsh (2004b, pp. 8 & 21) states that fine penalties 'lack creativity' in that they fail to address the underlying causes and others asserted to the review that fines 'mean nothing' to offenders (QPS (Mt Isa) consultations 13.09.06; Magistrates' consultations 14 September 2006).

This report has identified the anti-social behaviour associated with the consumption of alcohol by 'party people' as the primary focus of public nuisance law enforcement. The effective management of this type of anti-social behaviour has policy implications beyond putting more police on the streets around licensed premises at the times when they are heavily patronised. The primary implication, as described by some police, is 'cut back on the alcohol consumption and you will see a cutback on the public nuisance arrests' (cited in Meers 2007). Police and the courts cannot effectively implement strategies to reduce and control the excessive consumption of alcohol alone. This must necessarily involve working in partnership with licensees, liquor licensing officials and others.

In addition to being used for dealing with behaviours associated with the excessive consumption of alcohol and other drugs by 'party people', there is no doubt that, particularly in some areas, public nuisance is commonly used to respond to issues associated with 'street people'. Our review has highlighted that in Townsville, Cairns and Mt Isa, in particular, public order issues — often primarily relating to Indigenous people 'living rough' in parks — are a significant and continuing problem. Police and the courts must also continue to work with other agencies to develop and implement a distinct range of strategies to address the underlying issues associated with 'street people'.

The current QPS Strategic Plan not only identifies public order and safety as a key priority area, but also appropriately emphasises preventive and partnership approaches. The Problem-Oriented and Partnership Policing (POPP) program adopted by the QPS in 1999 provides a good framework within which to continue to develop such partnership approaches relating to both the anti-social behaviour of 'party people' through the reduction and control of the excessive consumption of alcohol and to the underlying issues for 'street people' (see text box below).

### **Problem-Oriented and Partnership Policing (POPP)**

In the late 1970s, an American professor, Herman Goldstein, suggested a new way of thinking about policing to shift the emphasis away from police relying solely on reacting to incidents as they occurred, towards examining the main problems that caused these incidents in order to develop strategies to prevent them. Goldstein argued that a radical change was urgently needed in the way that policing services were delivered if police were to be successful in improving police operations, and that police should adopt what he termed a 'problem-oriented' approach to policing.

Problem-oriented policing is a systematic and targeted approach to analysing and addressing crime trends and associated community problems. It focuses on identifying common characteristics between incidents, analysing their underlying causes and sources, developing responses and solutions, and evaluating the outcomes of these responses.

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A key difference between problem-oriented policing and the more traditional 'reactive' policing approach is that police officers are encouraged not to rely solely on the use of criminal law enforcement to resolve a problem. In fact, Goldstein identifies a wide range of possible responses to deal with a problem, including:

- using mediation and negotiation to resolve the problem
- making better use of existing forms of social control (involving parents or friends) to deal with the problem
- altering the physical environment to reduce opportunities for the problem to occur
- referring the problem to other agencies for resolution
- identifying various gaps in legislation or policy that allow the problem to occur or persist. (QPS undated)

In a way that is consistent with the POPP framework, the QPS already works in partnership to control alcohol-related anti-social behaviour in the key entertainment precinct of the Brisbane CBD and Fortitude Valley. For example:

- A Liquor Enforcement and Investigation Unit was established in November 2004 to implement the Liquor Enforcement and Proactive Strategies (LEAPS) initiative, which involves officers and liquor licensing officials working closely together to address irresponsible service of alcohol (QPS 2005c, p. 31).
- The Brisbane City Safety 17 Point Action Plan was implemented in April 2005 (QPS 2005c, pp. 30-1). This plan introduced a 12-month trial of the 3 am lockout condition preventing the entry or re-entry of patrons at 67 selected clubs, hotels and restaurants in the Brisbane City and Fortitude Valley area. The objective was to reduce the number of pedestrian movements after 3 am by preventing 'club-hopping' and thereby reducing anti-social behaviour. The QPS claims that the 3 am lockout has been a highly successful strategy. (Similar lockouts have previously been implemented in other areas including Cairns, the Gold Coast, Mackay, Yeppoon, Mooloolaba and Caxton Street in Brisbane.)

Some police and local government representatives expressed their frustration at having to depend on other agencies to address alcohol-related anti-social behaviour. For example, the decision to allow bottle shops to open from as early as 8 am was described as 'unjustifiable' (QPS (Townsville) consultations, 20 September 2006; Townsville City

Council consultations, 12 September 2006).<sup>72</sup> Even having an integrated transport plan can be vital as it was also noted that a 3 am lockout is not that helpful if patrons then spend two hours waiting around on the streets to get a taxi (LAQ (Townsville) consultations, 14 September 2006).

The work of the QPS and other agencies in relation to Schoolies Week in recent years also provides a good example of policing consistent with the POPP framework and the implementation of a range of strategies in partnership to minimise the anti-social behaviour associated with the excessive consumption of alcohol.

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<sup>72</sup> Information from the Liquor Licensing Division of the Department of Tourism, Fair Trading and Wine Industry Development indicates that a six-month trial restricting the sale of takeaway liquor prior to 9 am in Cairns ended in February 2004. The trial was said to produce some positive results in Cairns, where there was a reduction in 'incidence of violence and other public nuisance related reports'. The trial was extended for a further six months 'to ensure these positive results can actually be attributed to the trial'. In contrast it was stated that the outcome of the Townsville trial was not as positive. The evaluation showed insufficient supportive evidence to suggest any improvement with respect to anti-social behaviour and public drunkenness issues. As a result, the takeaway sale restrictions were removed (Liquor Licensing Division 2004, p. 8).



## Schoolies Week celebrations: problem-oriented and partnership approaches

The end-of-year Schoolies Week celebrations — where it has been estimated that between 50,000 and 133,000 school leavers from across several Australian states gather on the Gold Coast — have been described as ‘the largest sustained policing event in Australia’ (Wray 2006; QPS 2007a). The QPS has been a central player in the development of an increasingly sophisticated and multi-agency response that has been developed since ‘the blood-soaked Schoolies of 2002’ when serious violence, including stabbings, assaults and fights, drew a great deal of media attention and public concern (Wray 2006).

Since 2003 the state government has become actively involved in the management of the Schoolies Week celebrations and has coordinated a range of strategies to improve safety and security (QLA (Bligh) 2007, p. 3520). The government agencies now involved in managing Schoolies Week include police, Emergency Services, Health, Liquor Licensing, Education, Transport and Communities. These agencies work in partnership with the Gold Coast City Council, security staff, licensees and other businesses, as well as a large number of volunteers from organisations such as Red Frog Australia (QLA (Bligh) 2007, p. 3520). The partnership approach seeks to implement a range of strategies focusing on the government’s three-point plan for (1) better coordination, (2) improved safety and (3) awareness of rights and responsibilities.

Key strategies have included:

- Increasing police numbers. It was reported there were around 100 officers at Schoolies Week in 2002, about 285 in 2003, over 900 officers in 2004, and more than 1000 in 2005 and 2006 (QLA (Beattie) 2003a, p. 5123; QLA (Spence) 2004, p. 3736; QLA (Spence) 2006, p. 594).
- Increasing police visibility. The increased police numbers have assisted with this but other strategies include the use of mounted police to provide highly visible patrols.
- Ensuring compliance with government regulations and licensing requirements. Police working in close partnership with liquor licensing officers has been an important focus.
- Emphasis on prevention and early intervention. This has increasingly become the focus of police intervention. In 2007 a network of more than 40 CCTVs was used to monitor ‘hot spots’ so that on-the-ground crews could be requested to respond to potential flare-ups as they were happening.
- Pre-Schoolies Week education of school leavers through schools.
- Wristband identification of school leavers.
- Promotion of organised events and activities.
- Introduction in 2007 of a patrolled, security-fenced beach area, into which only school leavers can be admitted.
- More effective media and public affairs management by the QPS and Schoolies Week organisers.

The CMC believes that the POPP program is well suited to dealing with the issues associated with the public nuisance behaviours of 'party people'. For example, in Chapter 9 we presented results showing that public nuisance offending often occurs in and around key public spaces associated with entertainment venues such as pubs and clubs (that is, 'hot spots'). The report also identifies that public nuisance offending is more likely to occur at certain times or on certain days of the week. The real strength of POPP is that it identifies patterns in police data, such as the place or time that an offence occurred, to inform and drive police and community efforts towards eliminating (or minimising) the problems associated with the policing of public nuisance.

In relation to 'street people', the QPS has also engaged in development of initiatives that are consistent with the POPP framework. These partnership strategies include:

- A Mental Health Crisis Intervention Project established in collaboration with ambulance officers and Queensland Health. This project's objectives include the de-escalation of situations involving people with a mental illness; 285 police received specialist training under this project (QPS 2006b, p. 5).
- The Homelands Project initiated in mid 2004 by the Cairns Police District to address the historical problem of homelessness in Cairns and the related problems of public drunkenness, anti-social behaviour, criminal acts and low feelings of public safety. The project involves taking people affected by alcohol to identified places of safety, providing links to relevant support networks and agencies, and assisting displaced people to return home to their communities. The homeless people involved are predominantly Indigenous.

Although there has been some criticism of the Homelands Project for displacing problems rather than addressing them (see Guppy 2007a, 2007b), the project's success in addressing the underlying causes of the behaviour of 'street people' in Cairns has been recognised through the receipt of a number of awards, including the 2005 QPS Gold Medal (Lantern) award for Problem Orientated Policing Projects; Highly Commended in the 2005 Queensland Premier's Awards for Excellence; and the 2006 Prime Minister's National Drug and Alcohol Award — Excellence in Policing (QPS 2006b, pp.31 & 83).

The courts in Queensland are also involved in a number of initiatives that seek to address the underlying behaviour of 'street people':

- The pilot Homeless Persons Court Diversion program established in the Brisbane Magistrates Court from 2006, which is run in conjunction with the court's 'special circumstances' list, which has operated since 2005 for those matters involving offenders who suffer from mental or intellectual impairment (Chief Magistrate, pp. 4–5). This program allows courts to make orders such as bail or recognisances with conditions aimed at addressing the causes of offending, rather than simply imposing fines.
- The Cairns Alcoholic Offenders Remand and Rehabilitation Program (CARRP), developed in 2003 by Cairns magistrates to deal with 'street people' in Cairns charged with drunkenness and public order offences — people who are mostly homeless Indigenous people, according to the Chief Magistrate (p. 5). The program provides an opportunity for offenders to address their alcohol-induced offending behaviour through a conditional bail program requiring residence at a rehabilitation facility for one month.

The review heard a great deal of enthusiasm for approaches that address the underlying cause of public nuisance as a much better approach than the more usual response provided by the courts to public nuisance offences — that is, in the overwhelming majority of cases, the imposition of a fine penalty. However, there is no simple solution to the complex underlying issues that may lead to public nuisance offending. It is likely that most public nuisance offenders will continue to receive a fine penalty, for reasons including:

- there may be no appropriate penalty other than the imposition of a small fine for some public nuisance behaviours (for example, public urination)
- there are difficulties in effectively implementing community service orders, especially for remote Indigenous communities (ATSILS (Mt Isa) consultations, 13 September 2006)
- those offenders who are least likely to be able to pay a fine are also unable to perform community-based orders because they are ‘too drunk or they do not turn up, don’t have a licence, or cannot do what is required’ (ATSILS (Mt Isa) consultations, 14 September 2006)
- good behaviour bonds are of limited use for repeat offenders with complex problems — it is setting them up to fail — and the only real penalty options available for these people are a fine or imprisonment (Magistrates’ consultations, 20 September 2006).

Despite the positive initiatives of the courts described above, including the Homeless Persons Court Diversion program in Brisbane, it is likely that the capacity of the courts to provide or expand such programs will be limited. The criminal justice system does not provide the best method to address underlying issues leading to crime, but merely provides one final filter before the sanction for inappropriate behaviour is to be imposed.

The Commission encourages the continuing identification, development and implementation of strategies to address the underlying issues leading to public nuisance offending at various points throughout the criminal justice system’s response. More importantly though, the Commission recognises that although the police are most often the agency called upon to provide the front-line response, there is much that can and should be done by other agencies to prevent the need for criminal justice system involvement. For example, the provision by local councils of public toilet facilities open at the time revellers are leaving nightclubs could well reduce the number of public nuisance offences. Providing adequate facilities and services for the homeless should also have that effect. The responsible service of alcohol by liquor licensees is another strategy that should minimise the likelihood of intoxicated people behaving in a manner that requires police intervention.

It is clear that the most effective response requires a commitment from state and local government, non-government agencies, businesses and the community generally to work in partnership to ensure that our public spaces are available to, and enjoyed by, all sectors of the community.

## Recommendation 5:

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**That the relevant State government departments (such as the Department of Communities, Queensland Health, Department of Local Government, Sport and Recreation) and local councils continue to work with other agencies, businesses and the community to develop, implement and evaluate programs to address the underlying causes of public nuisance offending prior to involvement of the criminal justice system. This should include, for example, that the state government continue to work with the liquor industry to develop strategies to manage the consumption of alcohol and prevent behaviour associated with alcohol consumption triggering a criminal justice system response.**

**That the QPS and other agencies work in partnership to continue to identify strategies to deal with the problem of public nuisance and to divert offenders at various stages throughout the criminal justice system. This should include, for example:**

- **that the QPS continue to use POPP as a framework for dealing with public nuisance offences that occur in and around public spaces or at entertainment venues such as pubs and clubs (that is, 'hot spots')**
- **that the Department of Justice and Attorney-General continue to work with other agencies to develop and evaluate court diversionary programs such as the pilot Homeless Persons Court Diversion program in Brisbane and the Cairns Alcoholic Offenders Remand and Rehabilitation Program in order to identify and implement effective programs.**

## PUBLIC ORDER: THE FUTURE

Clearly there is no easy solution to the complex issues involved in public order — in Queensland or elsewhere — particularly those involving the core group of recidivist public nuisance offenders from marginalised and over-represented groups. These people are affected by complex problems and solutions must seek to address the underlying causes.

The most comprehensive, but controversial, attempt to deal with public order issues is the British Home Office led 'Respect' initiatives to improve how anti-social behaviours are dealt with by the community, police and criminal justice system (see <http://www.homeoffice.gov.uk/anti-social-behaviour/>; see also Wain 2008).<sup>73</sup> These initiatives include:

- Since 1999, the use of Anti-Social Behaviour Orders (ASBOs), which are court orders which prohibit the perpetrator from specific anti-social behaviours, or from spending time with a particular group of friends or visiting certain areas. The aim of an ASBO is to protect the public from the behaviour, rather than to punish the perpetrator (there is no criminal sanction attached and it does not appear on an individual's criminal record). However, a breach of an ASBO is a criminal offence punishable by a fine or up to five years in prison. ASBOs are issued for a minimum of two years.
- Parenting Orders, which require the parent of the child/young person who has been made subject of an Anti-Social Behaviour Order to attend a counselling and/or guidance program to help parents develop their skills so that they can respond more effectively to their child's needs. A Parenting Order will also contain conditions and/or reasonable requirements with which the parent is required to comply — for example, ensuring that the child attends school.

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<sup>73</sup> The work of the Home Office on tackling anti-social behaviour is one of the main pillars of reform to come out of calls for a Royal Commission into police reform in the UK and then a white paper titled *Policing a new century: a blueprint for reform* in 2001 (Home Office 2001, pp. 1 & 142).

- Individual Support Orders, which can be made on a child/young person who is subject of an Anti-Social Behaviour Order. The Individual Support Order places positive requirements on the offender aimed at tackling the underlying issues which caused the child/young person to engage in anti-social behaviour, for example, receiving counselling or attending positive activities designed to prevent them from engaging in offending. An Individual Support Order can last for up to six months and can require a person to attend up to two sessions a week. Failure to comply with the conditions is a criminal offence.

Despite many positive results in terms of the number of ASBOs made, the evaluation of the Home Office initiatives concluded that a small group of core people repeatedly engaged in anti-social behaviour. Around 20 per cent of the sample received 55 per cent of all interventions issued in the period covered by the files in the review (National Audit Office 2006, p. 5).

The development and progress of the Home Office's initiatives, as well as the use of ASBOs in other jurisdictions such as Scotland (Wain 2008), is nonetheless interesting and should continue to be monitored.

The CMC has now commenced its review of police use of move-on powers as required by section 49 of the *Police Powers and Responsibilities Act 2000*. This review will provide us with the opportunity to again consider public order issues in Queensland and consider the progress that has been made in implementing the recommendations of this public nuisance review.



# APPENDIX 1: METHODOLOGICAL ISSUES

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## DATA SOURCES AND COUNTING METHODOLOGIES

### QPS Crime Reporting Information System for Police (CRISP)

During the 24-month period considered for our review, CRISP was the principal crime recording system used by the QPS.<sup>74</sup> Police officers were required to make a CRISP crime report ‘in respect of the commission or suspected commission of any ... simple offence of a serious nature’ (QPS 2004a, p. 3). Included in the definition of ‘a simple offence of a serious nature’ are offences under the provisions of legislation such as the Vagrants Act and offences under the provisions of the Summary Offences Act (QPS 2004a, p. 3).

CRISP was based on offence-related incidents.<sup>75</sup> Offence codes were applied to incidents regardless of the number of times an offence was committed during an incident. ‘The QPS counting rule is to count each distinct criminal act per criminal incident’ (QPS 2006a, p. 149).

The incident-based nature of CRISP has implications for interpreting the data generated from the system. Because one incident may have involved more than one offender, if we only count incidents (in this case, public nuisance offences), we will inevitably underestimate the number of offenders identified in relation to particular offences (such as public nuisance offences). For this reason, we amalgamated offender names, dates of birth and incident identification numbers to count the number of offenders identified in each incident, their ages, Indigenous identity and the results of their contact with police (whether they were charged, cautioned, etc.).

On the other hand, if we only count the number of offenders per incident, we risk overestimating the number of times police respond to specific types of offences. For example, we would be likely to overestimate the number of violent offences resulting from brawls, in which more than one offender must necessarily be present (as well as overestimating the prevalence of offences in places where brawls most frequently occur — for example, near licensed premises).<sup>76</sup>

Given that we were interested in whether the introduction of the new public nuisance offence had contributed to changes in both the number of times police identify and respond to public nuisance incidents (including where and when they respond to these events) and changes in the *type* of individuals identified as offenders in these incidents, we analysed both incident and offender by incident data from CRISP. In addition, to determine whether there had been any change in the likelihood that some individuals would be more

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74 On 1 July 2007, the Queensland Police Records and Information Management Exchange (QPRIME) replaced CRISP as the principal crime recording system for the QPS.

75 Incidents are events in which one or more individuals are alleged to have committed one or more offences which may have included one or more victims. For example, a single incident could involve five individuals engaged in a brawl during which offensive language was used and, after police intervention, a police officer was assaulted by one of the offenders. In this example, all five individuals may be considered offenders and these offenders may be recorded as committing offences involving both offensive language and violent behaviour. One of these offenders may also have assaulted a police officer and the police officer may be considered to be a victim.

76 Similarly, if we focused on counting individual offences associated with offenders and incidents, we would be likely to overestimate the number of times police respond to incidents involving more than one offence.

frequently identified as public nuisance offenders (for example, be more likely to be counted in relation to more than one incident — that is, an increase in offender recidivism in specific groups), we also counted unique offenders (identified by their full name and date of birth) independent of incident.

We included the following CRISP ‘incident’ variables in our analyses:

- time of day, day of the week and date the incident occurred
- date the incident was reported to the QPS
- suburb and QPS region in which the incident occurred
- primary function of the scene, building or location where the incident occurred
- location or means by which the incident was reported or detected (for example, at the counter of a police station, in person to or by a police officer, by telephone)
- relationship of the incident to a licensed premises (for example, incident was committed at a licensed premises or immediately after the offender’s attendance at a licensed premises).

With regard to the data on the primary function of the scene, building or location where the incident occurred, we recoded the CRISP variables from a possible 66 ‘scenes’ to 14 scene classifications that were similar in nature or function (as shown in Table 1):

**Table 1: QPS CRISP crime scene classifications and recoded crime scene classifications**

Recoded scene classifications	Original QPS scene classifications
Street	Car Park, Street
Business/agency	Adult Entertainment, Agency, Bank, Brothel, Business, Chemist, Construction Site, Mall, Manufacturing, Motel, Office, Post Office, Restaurant, Shop, Shopping Area, Food Shop, Gaming/Gambling, Garage, Warehouse, Wholesale
Recreational	Beach, Bushland/Scrub, Crown Land, Open Space, Recreational, Rest Area, River
Licensed premises	Club, Licensed, Nightclub, Hotel
Dwelling	Boarding, Caravan Park, Dwelling, Outbuilding, Private Grounds, Unit
Terminal	Airport, Railway, Terminal
Government agency/facility	Corrections Centre, Court, Military Area, Police, Government
Medical	Medical, Hospital, Hospital Grounds
Community centre/facility	Community, Library
Education	Education, School
In transit	In Transit, Train, Vehicle
Marine	Boat Ramp, Marine, Wharf
Church	Church
Other	Other
Unknown	Blank/Not Specified

The CRISP ‘offender’ variables analysed included:

- offender age
- offender gender
- offender’s self-reported identification as Indigenous
- last recorded police action for the offender (for example, arrested and charged, behavioural counselling, caution, description, evicted, no longer wanted,



interviewed, community conference, notice to appear/notice to attend,<sup>77</sup> removed, summons served, moved on, wanted, summons issued, warrant, other)

- whether or not the offender was affected by alcohol and/or drugs at the time of the incident.

In our analyses we only included incidents that had been ‘solved’.<sup>78</sup> These were incidents where police had taken action (arrest, caution, diversion, etc.) against at least one offender involved in the incident. Table 2 shows that the majority of public nuisance incidents were classified as ‘solved’ and hence our analyses include almost all public nuisance offences occurring in the timeframes under review.

**Table 2: ‘Crime status’ of public nuisance incidents recorded on CRISP from 1 April 2003 to 31 March 2004 and 1 April 2004 to 31 March 2005**

	Number of incidents		Per cent of incidents	
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005
Solved	13,916	15,225	99.0	99.1
Unsolved	62	91	0.4	0.6
Not substantiated	51	42	0.4	0.3
Lapsed	14	4	0.1	0.03
Withdrawn	9	1	0.1	0.01
<b>Total</b>	<b>14,052</b>	<b>15,363</b>	<b>100.0</b>	<b>100.0</b>

### Courts data: Queensland-wide Interlinked Courts (QWIC) data management system

Courts staff are required to register all non-civil court matters (including domestic violence matters) on the QWIC system. This system was developed to ‘improve ... the ability [of courts] to schedule cases, record court orders, receipt court payments and handle consequential financial transactions (banking and disbursement)’ (Department of Premier and Cabinet 2005, p. 5).

The QWIC system is based on cases, or ‘matters’. A matter arises when the court hears allegations against a defendant in relation to one or more offences. Of note, where more than one charge is heard, the offences may or may not have occurred during the same ‘incident’.<sup>79</sup> The QWIC database records the date of the first offence only.

The courts matter variables analysed in this review included:

- location of the court where the matter was heard
- defendant’s age
- defendant’s gender
- defendant’s self-identified Indigenous status
- charge title (public nuisance, obscene, abusive language, etc.)

<sup>77</sup> Juvenile offenders.

<sup>78</sup> The definition of ‘solved’ differs from that of ‘cleared’, which may also include incidents that are withdrawn. The QPS’s *Annual statistical review 2006–2007* (2007a, pp. 141–2) provides full definitions of these terms and lists of possible actions taken by police.

<sup>79</sup> The practice of hearing charges from more than one incident involving the same offender could, at least partially, account for the statistically significant increase in court matters recorded between the two 12-month periods under consideration in this review, despite no such increase being observed in QPS incidents. This is because the increase could reflect the decrease in the number of recidivist offenders after the introduction of the new offence; recidivist offenders are more likely to have multiple offences during multiple incidents heard during the same matter.

- section of the Act under which the offence was recorded (for example, s. 7, s. 7AA, s. 6)
- Act under which the charge was made (for example, Vagrants Act, Summary Offences Act)
- result/finding of the court<sup>80</sup>
- order made by the court<sup>81</sup>
- if the defendant was found or pleaded guilty, whether or not a conviction was recorded
- amount of fine or other monetary order.<sup>82</sup>

Although the QWIC dataset that we requested for this review was limited to finalised matters, in some cases the same incident and offences required an offender to return to court multiple times (for example, to change a fine to a fine option order). To ensure that we didn't double count offenders, we amalgamated offenders' names, dates of birth and offence dates (date of first offence if a range of offences were listed) to form a variable that could provide an approximate count of offenders by incidents heard in the Magistrates and Childrens Courts. In addition, the data were sorted so that only the most serious order made in relation to each offender in each incident was counted. Table 3 lists the orders made in relation to offenders from most serious to least serious.

**Table 3: Orders imposed on public nuisance offenders by seriousness rating**

Order	Seriousness rating
Custodial orders (including partially suspended sentences)	1
Fully suspended sentences	2
Intensive correction orders	3
Probation orders	4
Community service orders	5
Community/youth justice conferences	6
Monetary orders	7
Good behaviour bonds/recognisance orders	8
Other non-custodial orders	9
No further punishment imposed (discharges, absolute discharges, etc.)	10

## COUNTING PERIOD

Section 7AA of the Vagrants Act specified that the CMC review the use of the new public nuisance offence 18 months after its commencement. To facilitate direct comparison between public nuisance incidents, offenders and matters recorded before and after the introduction of the new offence, we limited comparison of the available data to the 12 months before and the 12 months after this change. Had we compared the 18 months before the introduction of the new provision with the 18 months after its introduction, we

<sup>80</sup> These include found guilty, pleaded guilty, found guilty ex parte, found not guilty (including 'not of sound mind at the time of the offence'), dismissed/struck out, no evidence to offer/withdrawn. Other entries recorded in the QWIC results field but which we did not analyse included abandoned, assigned new file, committed, dealt with at higher court, discharged, fine/restitution paid, Intensive Drug Rehabilitation Order (INDRO) terminated, no conviction recorded, no further action, order varied, proved, recommitted, resentenced, result, s. 653 dealt with at higher court.

<sup>81</sup> Preliminary analysis of the Queensland Magistrates and Childrens Courts data revealed 54 different types of orders made in relation to public nuisance only matters. These order types were recoded into 10 basic categories for our analyses (listed in Table 3).

<sup>82</sup> These data were supplemented with further information about the number of fines for public nuisance incidents that were transferred to SPER.

would have compared two summer periods with two winter periods. As shown in the analyses presented in Chapter 8, summer periods are associated with a higher recorded incidence of public nuisance. Therefore, such a comparison would have been inappropriate and undermined the reliability of any conclusions drawn from it.

Because of possible delays between the date an offence occurred and the date it was finalised in the courts system, we sampled courts data on the basis of the offence date in QWIC rather than the order date in QWIC. Had we sampled on the basis of the order date, it is possible that some offences that occurred and were charged before the introduction of the new offence would have been counted in the new offence dataset.

## STATISTICAL ANALYSES

We undertook both descriptive and inferential statistics to produce our results.

Descriptive statistics include numbers, rates (per 100,000 population), percentages and measures of central tendency. As their name suggests, they describe the parameters of the dataset and provide basic comparisons between the incidents, offenders and matters recorded during each of the 12-month periods under review.

Inferential statistics aim to test whether changes in, or differences between, the numbers, rates, percentages and measures of central tendency are 'statistically significant'. If a change or a difference is found to be statistically significant, it is unlikely to have occurred by chance. There will always be variations in the numbers of incidents, offenders and matters recorded by the QPS and the Queensland courts each year (and, in turn, variations in the rates, percentages and measures of central tendency associated with these numbers). Statistically significant changes or differences, however, are of such a magnitude that they exceed the level of change that could be expected because of usual variation alone.

Because the two 12-month periods that we reviewed were not probability samples, only non-parametric tests of statistical inference were used. Specifically, we selected:

- Kendall's Rank Order Correlation Test to test for statistically significant trends in the rate and number of public nuisance incidents across the 24 months sampled in this report<sup>83</sup>
- the Mann–Whitney U Test to test for statistically significant differences between the rate and number of public nuisance incidents recorded during the 12 months before the introduction of the new public nuisance offence and the 12 months after its introduction<sup>84</sup>
- the Mann–Whitney U Test to test for differences between the ages of public nuisance offenders recorded during the 12 months preceding the introduction of the new public nuisance legislation and the 12 months after the introduction of the new public nuisance legislation
- the Chi-squared Median Test to compare offender ages across QPS regions
- the binomial Z Test to test for differences between the proportion of offenders in the sample population who demonstrated a particular attribute and the proportion in the Queensland population who demonstrated that attribute.

For these tests, only results that were identified as statistically significant at the 5 per cent (or  $p < 0.05$ ) level were reported.

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83 Kendall's Rank Order Correlation Test is also the test used by the QPS and the NSW Bureau of Crime Statistics and Research to measure trends in crime data.

84 The Mann–Whitney U Test for difference is also directly comparable with the Kendall's Rank Order Correlation Test. Both tests use rank order comparisons to generate a measure of change.

In addition, to test for changes in other variables, we generated odds ratios (ORs) and tested for differences using Cochran's test of Mantel–Haenszel continuity-corrected chi square. Given the large sample sizes and nominal data level used in these analyses, only results identified as being significant at the 1 per cent level (or  $p < 0.01$ ) were reported.

For readers who are unfamiliar with ORs and confidence intervals, the results presented in this report can be interpreted in the following way:

- The larger the size of the OR,<sup>85</sup> the greater the magnitude of the association between a possible predictor, or risk factor (for example, a demographic factor such as age or gender), and an outcome (for example, being a public nuisance offender, being arrested for public nuisance). The closer the OR is to 1, the smaller the association; the larger the OR, the greater the association. Therefore, an OR of 1.5, for example, indicates that the outcome is about 50 per cent more likely to occur among the predictor or risk factor group than among its counterparts; an OR of 2.0 indicates that the outcome is twice as likely to occur among the predictor or risk factor group than among its counterparts.
- The width of the confidence interval indicates the amount of variability inherent in the OR estimates, and thus the precision of the findings and the confidence we can place in the estimate of the OR. For example, a confidence interval of 1.3–1.8 indicates a much smaller degree of variability than one of 1.2–7.6, and is much more informative about the true magnitude of the OR.

Except where they describe a percentage less than 0.5, or an odds ratio, all descriptive statistics presented in this review are rounded to the nearest whole number.

## LIMITATIONS OF RECORDED CRIME DATA

Recorded crime data should always be treated with caution for the following reasons:<sup>86</sup>

- recorded crime levels do not necessarily reflect the actual level of crime in the community
- recorded crime levels may reflect the rate at which crime and offenders are reported to or detected by law enforcement and criminal justice agencies; many crimes are not reported to, or detected by, these agencies
- the detection of crime can be influenced by the number of police operating in an area and the nature of policing practices in that area
- reported crime is significantly influenced by the population density in an area,<sup>87</sup> public confidence in and accessibility to police resources, and public perceptions about the 'seriousness' of the criminal activity.

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<sup>85</sup> In contrast to other statistical tests commonly used with nominal level data, odds ratios are unaffected by sample size and by unequal row and column variables (Howell 1997, p. 159). Given the extremely large samples considered in this review, together with the variation in base Queensland population between the two periods under consideration, these measures were considered the most appropriate for this dataset. Research has shown that, when very large samples are used, statistical tests are prone to deliver false positives. In such cases, between groups statistical differences may be identified despite the real between groups differences being proportionately relatively small.

<sup>86</sup> For further discussion of the use and misuse of crime statistics, see Matka (1997).

<sup>87</sup> Areas with larger populations provide more potential offenders and witnesses and can influence the willingness of witnesses to report crimes to the police (for example, witnesses may be less willing to come forward in smaller communities). On the other hand, larger communities also have more police available for preventing and responding to crime. Therefore, comparing rates of incidents per 100,000 population and assessing the proportional differences between incidents, matters and offenders provide better estimates of group differences or change over time than raw figures (counts).

## HOW DID WE MINIMISE THE IMPACT OF THE LIMITATIONS OF THE DATA?

The statistical analyses presented in this review suffer from a lack of control over influences other than the introduction of the new public nuisance offence that might equally have contributed to changes in the number and rate of public nuisance incidents, offenders and matters recorded between the time periods under consideration. For example, 'one-off' events that are commonly associated with high police presence (such as sporting events or music festivals) have the potential to inflate the incidence of recorded public nuisance. Alternatively, adverse weather conditions leading to fewer people patronising public places have the potential to reduce the incidence of recorded public nuisance. It is possible, therefore, that in our two 12-month samples one-off events influenced the number of recorded public nuisance incidents in one period but not the other. To reduce the influence of such events on our between period comparisons, we used the median (middle) number and rate (per 100,000 population) of public nuisance incidents and matters recorded during each month of each 12-month period to assess the degree of change between the two periods. In effect, this process 'averaged'<sup>88</sup> the number and rate of public nuisance incidents recorded over time and therefore reduced the potential impact of unrepresentative measures on our assessment.

Although the use of medians can reduce the influence of one-off events, medians do not provide insurance against the influence of larger-scale events (such as changes in local police and government policies). To control for these types of events, we compared data between QPS regions.<sup>89</sup> In doing so, we assumed that, if changes (or lack of changes) were the result of the new offence alone, they should impact equally on the number and rate of offences recorded in all regions. If this was not found to be the case, we could conclude that other factors must assume at least some responsibility for any changes observed.

Neither of these approaches control for statewide influences. The only way to achieve any insight into these influences was to engage in extensive consultation with key informants and stakeholders. Therefore, the results of consultations with key informants and stakeholders are presented in our review alongside the results of the quantitative analyses.

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88 The median is an alternative measure to the mean (or average) of a dataset; used when the dataset includes irregular measures.

89 Because of the large number of Magistrates Courts throughout Queensland, regional comparisons of the courts dataset were not possible.

## APPENDIX 2:

### Key public order offences in other Australian jurisdictions

Legislation	Offence	Maximum penalty
<b>New South Wales</b>	The <i>Summary Offences Act 1988</i> provides for a range of offences in public and other places. Part 2 Division 1 provides for offences relating to offensive behaviour, offensive conduct, obscene exposure and offences relating to property damage. Section 12 provides for a defence for offences under this Act where the defendant satisfies the court that the alleged act subject of the charge was done with lawful authority. The offensive language provision also contains a 'reasonable excuse' defence within it (s. 4A). Summary offences are prosecuted in the Local Court pursuant to section 32 <i>Summary Offences Act 1988</i> .	
<i>Summary Offences Act 1988</i> s. 4 Offensive conduct	Offensive conduct (1) A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or school. (2) A person does not conduct himself or herself in an offensive manner as referred to in subsection (1) merely by using offensive language. (3) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.	Fine 6 penalty units (p.u.) (\$660) or 3 months' imprisonment
<i>Summary Offences Act 1988</i> s. 4A Offensive language	Offensive language (1) A person must not use offensive language in or near, or within hearing from, a public place or school. (2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence. (3) Instead of imposing a fine on a person, a court: (a) may make an order under section 8(1) of the <i>Crimes (Sentencing Procedure) Act 1999</i> directing the person to perform community service work, or (b) may make an order under section 5(1) of the <i>Children (Community Service Orders) Act 1857</i> requiring the person to perform community service work, as the case requires. ... (6) However, the maximum number of hours of community service work that a person may be required to perform under an order in respect of an offence under this section is 100 hours.	Fine 6 p.u. (\$660) or community service work (up to 100 hrs)
<i>Summary Offences Act 1988</i> s. 5 Obscene exposure	Obscene exposure A person shall not, in or within view from a public place or a school, wilfully and obscenely expose his or her person.	Fine 10 (\$1100) p.u. or 6 months' imprisonment

Legislation	Offence	Maximum penalty
<i>Summary Offences Act 1988</i> s. 11A Violent disorder	<p>Violent disorder</p> <p>(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence is guilty of an offence.</p> <p>(2) It is immaterial whether or not the 3 persons use or threaten unlawful violence simultaneously.</p> <p>(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.</p> <p>(4) An offence under subsection (1) may be committed in private as well as public places.</p> <p>(5) A person is guilty of an offence under subsection (1) only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.</p> <p>(6) Subsection (5) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.</p> <p>(7) In this section:  <b>violence</b> means any violent conduct, so that:  (a) it includes violent conduct towards property as well as violent conduct towards persons, and  (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).</p>	Fine 10 p.u. (\$1100) or 6 months' imprisonment
<b>Australian Capital Territory</b>	<p>The <i>Crimes Act 1900</i> provides for a range of summary offences in Part 17. Offences are located in sections 379–99 and include offensive behaviour, fighting, possession of weapons and indecent exposure. Offences are prosecuted summarily pursuant to section 372 <i>Crimes Act 1900</i>.</p> <p>The <i>Summary Offences Act 1966</i> provides for a range of offences, including good order, personal injury and damage to property. Offences are prosecuted summarily in the Magistrates Court.</p>	
<i>Crimes Act 1900</i> s. 392 Offensive behaviour	<p>Offensive behaviour</p> <p>A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.</p>	Fine \$1000
<i>Crimes Act 1900</i> s. 391 Fighting	<p>Fighting</p> <p>A person shall not fight with another person in a public place.</p>	Fine \$1000
<i>Crimes Act 1900</i> s. 393 Indecent exposure	<p>Indecent exposure</p> <p>A person who offends against decency by the exposure of his or her person in a public place, or in any place within the view of a person who is in a public place, commits an offence.</p>	Fine 20 p.u. (\$2000) and/or 1 year imprisonment
Crimes (Street Offences) Amendment Bill 2007 s. 392 Disorderly or offensive behaviour <sup>90</sup>	<p>Disorderly or offensive behaviour</p> <p>(1) A person must not behave in a disorderly or offensive way in or near a public place or school. Maximum penalty: 10 penalty units</p> <p>(2) An offence against this section is a strict liability offence.</p> <p>(3) In this section:  disorderly includes violent or riotous.  near, a public place or school, includes within view of, or hearing from, the place or school.  offensive, includes intimidating, indecent, threatening, abusive, obscene or insulting</p>	10 p.u. (\$1000)

90 This Bill proposes amendments to the *Crimes Act 1900* and was presented to the ACT Parliament on 29 August 2007



Legislation	Offence	Maximum penalty
Crimes (Street Offences) Amendment Bill 2007 s. 392A Offensive language <sup>91</sup>	Offensive language (1) A person must not use offensive language in or near a public place or school. Maximum penalty: 10 penalty units (2) An offence against this section is a strict liability offence. (3) In this section: near, a public place or school, includes within view of, or hearing from, the place or school. offensive, includes intimidating, indecent, threatening, abusive, obscene or insulting.	10 p.u. (\$1000)
<b>Victoria</b>	The <i>Summary Offences Act 1966</i> Part 1 Division 2 provides for a range of offences, including good order, personal injury and damage to property. Offences are prosecuted summarily in the Magistrates Court.	
<i>Summary Offences Act 1966</i> s. 13 Persons found drunk	Persons found drunk Any person found drunk in a public place shall be guilty of an offence and may be arrested by a member of the police force and lodged in safe custody.	Fine 1 p.u. (\$110.12)
<i>Summary Offences Act 1966</i> s. 14 Persons found drunk and disorderly	Persons found drunk and disorderly Any person found drunk and disorderly in a public place shall be guilty of an offence. ...	First offence: fine 1 p.u. (\$110.12) or 3 days' imprisonment Second or subsequent offence: fine 5 p.u. (\$550.60) or 1 month imprisonment
<i>Summary Offences Act 1966</i> s. 16 Drunkards behaving in a riotous or disorderly manner	Drunkards behaving in a riotous or disorderly manner Any person who, while drunk — (a) behaves in a riotous or disorderly manner in a public place; (b) is in charge, in a public place, of a carriage (not including a motor vehicle within the meaning of the <i>Road Safety Act 1986</i> ) or a horse or cattle or a steam engine — shall be guilty of an offence.	Fine 10 p.u. (\$1101.20) or 2 months' imprisonment

<sup>91</sup> The proposed amendments also seek to provide for on-the-spot offence notices (fines) for certain summary offences, including fighting, misbehaviour at public meetings, disorderly or offensive behaviour, offensive language, indecent exposure and noise abatement directions. It is also proposed that the penalty provisions be amended and that a penalty for an on-the-spot offence notice be defined as a 'prescribed penalty', which is \$200 (where the original penalty for the offence is more than 2 penalty units).



Legislation	Offence	Maximum penalty
<i>Summary Offences Act 1966</i> s. 17 Obscene, indecent, threatening language and behaviour etc. in public	<p>Obscene, indecent, threatening language and behaviour etc. in public</p> <p>(1) Any person who in or near a public place or within view or hearing of any person being or passing therein or thereon —</p> <p>(a) sings an obscene song or ballad;</p> <p>(b) writes or draws exhibits or displays in an indecent or obscene word figure or representation;</p> <p>(c) uses profane indecent or obscene language or threatening abusive or insulting words; or</p> <p>(d) behaves in a riotous, indecent, offensive, or insulting manner — shall be guilty of an offence.</p> <p>...</p> <p>(2) Where in the opinion of the chairman presiding at a public meeting any person in or near the hall room or building in which the meeting is being held —</p> <p>(a) behaves in a riotous, indecent, offensive, threatening or insulting manner; or</p> <p>(b) uses threatening, abusive, obscene, indecent or insulting words — the Chairman may verbally direct any member of the police force who is present to remove such person from the hall room or building or the neighbourhood thereof and the member of the police force shall remove such person accordingly.</p> <p>(3) Where at a general meeting of a corporation a person wilfully fails to obey a ruling or direction given in good faith by the Chairman presiding at the meeting for the preservation of order at the meeting, such person shall be liable to be removed from the meeting if the meeting so resolves or where because the meeting has been so disrupted that it is not practicable to put such a resolution to the meeting the Chairman so directs.</p> <p>(4) Where a person is liable to be removed from a meeting under sub-section (3), the Chairman may verbally direct any member of the police force who is present to remove such person from the hall, room or building in which the meeting is being held or the neighbourhood thereof and the member of the police force shall remove such person accordingly.</p>	<p>First offence: fine 10 p.u. (\$1101.20) or 2 months' imprisonment</p> <p>Second offence: fine 15 p.u. (\$1651.80) or 3 months' imprisonment</p> <p>Third offence: fine 25 p.u. (\$2753) or 6 months' imprisonment</p>
<i>Summary Offences Act 1966</i> s. 19 Obscene exposure	<p>Obscene exposure</p> <p>A person must not wilfully and obscenely expose the genital area of his or her body, in or within the view of, a public place.</p>	2 years' imprisonment
<i>Summary Offences Act 1966</i> s. 49A Begging or gathering alms	<p>Begging or gathering alms</p> <p>(1) A person must not beg or gather alms.</p> <p>(2) A person must not cause, procure or encourage a child to beg or gather alms.</p>	12 months' imprisonment

Legislation	Offence	Maximum penalty
<b>South Australia</b>	The <i>Summary Offences Act 1953</i> provides for a range of summary offences, including offences against public order, nuisances and annoyances, assault and hindering police and indecent or offensive material. The Act also provides for a range of associated police powers. The <i>Summary Procedure Act 1921</i> governs processes including charging and procedures in the Magistrates Court.	
<i>Summary Offences Act 1953</i> s. 7 Disorderly or offensive conduct or language	Disorderly or offensive conduct or language (1) A person who, in a public place or a police station — (a) behaves in a disorderly or offensive manner; or (b) fights with another person; or uses offensive language; is guilty of an offence. (2) A person who disturbs the public peace is guilty of an offence. (3) In this section — ‘disorderly’ includes riotous; ‘offensive’ includes threatening, abusive or insulting; ‘public place’ includes, in addition to the places mentioned in section 4 [s. 4 defines public place as a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property] — (a) a ship or vessel (not being a naval ship or vessel) in a harbour, port, dock or river; (b) premises or a part of premises in respect of which a licence is in force under the <i>Liquor Licensing Act 1997</i> .	Fine \$1250 or 3 months’ imprisonment
<i>Summary Offences Act 1953</i> s. 12 Begging alms	Begging alms (1) A person who — (a) begs or gathers alms in a public place; or (b) is in a public place for the purpose of begging or gathering alms; or (c) goes from house to house begging or gathering alms; or (d) causes or encourages a child to beg or gather alms in a public place, or to be in a public place for the purpose of begging or gathering alms; or (e) exposes wounds or deformities with the object of obtaining alms, is guilty of an offence. (2) In this section — ‘house’ includes a building or any separately occupied part of a building.	Fine \$250
<i>Summary Offences Act 1953</i> s. 18 Order to move on or disperse	Order to move on or disperse (1) Where a person is loitering in a public place or a group of persons is assembled in a public place and a police officer believes or apprehends on reasonable grounds — (a) that an offence has been, or is about to be, committed by that person or by one or more of the persons in the group or by another in the vicinity; or (b) that a breach of the peace has occurred, is occurring, or is about to occur, in the vicinity of that person or group; or (c) that the movement of pedestrians or vehicular traffic is obstructed, or is about to be obstructed, by the presence of that person or group or of other in the vicinity, or (d) that the safety of a person in the vicinity is in danger, the officer may request that person to cease loitering, or request the person in that group to disperse, as the case may require. (2) A person of whom a request is made under subsection (1) must leave the place and the area in the vicinity of the place in which he or she is loitering or assembled in the group.	Fine \$1250 or 3 months’ imprisonment

Legislation	Offence	Maximum penalty
<i>Summary Offences Act 1953</i> s. 22 Indecent language	Indecent language (1) A person who uses indecent or profane language or sings any indecent or profane song or ballad — (a) in a public place; or (b) in police station; or (c) which is audible from a public place; or (d) which is audible in neighbouring or adjoining occupied premises; or (e) with intent to offend or insult any person is guilty of an offence. (2) In this section — indecent includes obscene.	Fine \$250
<i>Summary Offences Act 1953</i> s. 23 Indecent behaviour and gross indecency	Indecent behaviour and gross indecency (1) A person who behaves in an indecent manner — (a) in a public place, or while visible from a public place, or in a police station; or (b) in a place, other than a public place or police station, so as to offend or insult any person is guilty of an offence. (2) A person, who in a public place, or while visible from a public place or from occupied premises, wilfully does a grossly indecent act, whether alone or with another person, is guilty of an offence. <i>Note:</i> s. 23A provides that certain acts are not an offence.	For a subsection (1) offence: fine \$1250 or 3 months' imprisonment For a subsection (2) offence: fine \$2500 or 6 months' imprisonment
<i>Summary Offences Act 1953</i> s. 24 Urinating etc. in a public place	Urinating etc. in a public place A person who urinates or defecates in a public place within a municipality or town, elsewhere than in premises provided for that purpose, is guilty of an offence.	Fine \$250
<i>Summary Offences Act 1953</i> s. 73 Power of police to remove disorderly persons from public venues	Power of police to remove disorderly persons from public venues (1) A police officer may enter a public venue and — (a) order any person who is behaving in a disorderly or offensive manner to leave; or (b) use reasonable force to remove any person who is behaving in such a manner. (2) A person — (a) who remains in a public venue after having been ordered to leave pursuant to this section; or (b) who re-enters, or attempts to re-enter, a public venue within 24 hrs of having left or having been removed from such a place pursuant to this section, is guilty of an offence.	Fine \$2500 or 6 months' imprisonment
Western Australia	<i>The Criminal Code Act 1913</i> provides for a range of public order offences. Proceedings for charges may be either prosecuted summarily or on indictment, depending on the offence.	
Criminal Code 1913 s. 74 Threatening violence	Threatening violence Any person who — (1) with intent to intimidate or annoy any person, threatens to enter or damage a dwelling; or (2) with intent to alarm any person in a dwelling, discharges a loaded firearm or commits any other breach of the peace; is guilty of a crime, and is liable to imprisonment for 3 years.	For a summary conviction: 12 months' imprisonment and a fine of \$12,000 On indictment: 3 years' imprisonment

Legislation	Offence	Maximum penalty
Criminal Code 1913 s. 74A Disorderly behaviour in public	<p>Disorderly behaviour in public</p> <p>(1) In this section — ‘behave in a disorderly way’ includes —</p> <p>(a) to use insulting, offensive or threatening language; and</p> <p>(b) to behave in an insulting, offensive or threatening manner.</p> <p>(2) A person who behaves in a disorderly manner —</p> <p>(a) in a public place or in the sight or hearing of any person who is in a public place; or</p> <p>(b) in a police station or lock-up, is guilty of an offence and is liable to a fine of \$6000.</p> <p>(3) A person who has the control or management of a place where food or refreshments are sold to or consumed by the public and who permits a person to behave in a disorderly manner in that place is guilty of an offence and is liable to a fine of \$4000.</p>	<p>For a subsection (2) offence: fine \$6000</p> <p>For a subsection (3) offence: fine \$4000</p>
Criminal Code 1913 s. 202 Obscene acts in public	<p>Obscene acts in public</p> <p>(1) A person who does an obscene act —</p> <p>(a) in a public place or in the sight of any person who is in a public place; or</p> <p>(b) in a police station or lock-up, is guilty of a crime and is liable to imprisonment for 3 years. Alternative offence: s. 203(1) Summary conviction penalty: imprisonment for 12 months and a fine of \$12,000</p> <p>(2) A person who owns, or has the control or management of, a place to which the public is admitted, whether on payment of consideration or not, and who permits a person to do an obscene act in that place is guilty of a crime and is liable to imprisonment for 3 years. Alternative offence: s. 203(2) Summary conviction penalty: imprisonment for 12 months and a fine of \$12,000</p> <p>(3) It is a defence to a charge of an offence under this section to prove that it was done for the public benefit that the act complained of should be done.</p> <p>(4) Whether the doing of any such act is or is not for the public benefit is a question of fact.</p>	<p>Summary conviction: fine \$12,000 and 12 months’ imprisonment On indictment: 3 years’ imprisonment</p>
Criminal Code 1913 s. 203 Indecent acts in public	<p>Indecent acts in public</p> <p>(1) A person who does an indecent act —</p> <p>(a) in a public place or in the sight of any person who is in a public place; or</p> <p>(b) in a police station or lock-up, is guilty of a crime and is liable to imprisonment for 2 years. Summary conviction penalty: imprisonment for 9 months and a fine of \$9000</p> <p>(2) A person who owns, or has control or management of, a place to which the public is admitted, whether on payment of consideration or not, and who permits a person to do an indecent act in that place is guilty of a crime and is liable to imprisonment for 2 years. Summary conviction penalty: imprisonment 9 months and a fine of \$9000.</p> <p>(3) It is a defence to a charge of an offence under this section to prove that it was done for the public benefit that the act complained of should be done.</p> <p>(4) Whether the doing of any such act is or is not for the public benefit is a question of fact.</p>	<p>Summary: fine \$9000 and 9 months’ imprisonment Indictment: 2 years’ imprisonment</p>

Legislation	Offence	Maximum penalty
<b>Northern Territory</b>	The <i>Summary Offences Act 1923</i> provides for a range of summary offences in Part VIA and Part VII. Offences include drinking in a public place, offensive conduct, violent disorder, threatening violence, loitering and undue noise. Offences are prosecuted summarily in the Magistrates Court.	
<i>Summary Offences Act 1923</i> s. 45D Drinking in a public place	<p>Drinking in a public place</p> <p>A person who, within 2 kilometres of premises licensed under Part III of the Liquor Act for the sale of liquor, drinks liquor in a public place or on unoccupied private land is, unless —</p> <ol style="list-style-type: none"> <li>the owner or lawful occupier of that public place or land has given him express permission, which has not been withdrawn, to do so; or</li> <li>the public place or part of the public place in which he drinks the liquor is the subject of a Certificate of Exemption under section 45E or is an exempt area under section 45EA, and the drinking of that liquor is not in contravention of a condition of that Certificate of Exemption or declaration of the exempt area,</li> </ol> <p>guilty of an offence and the penalty for the offence is the forfeiture of the liquor seized under section 45H at the time of the commission of the offence.</p>	Forfeiture of the liquor seized
<i>Summary Offences Act 1923</i> s. 45K Drinking by minors in public places	<p>Drinking by minors in public places</p> <ol style="list-style-type: none"> <li>(1) A person who has not yet attained the age of 18 years shall not drink liquor in a public place or on unoccupied private land unless the person is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years).</li> <li>(2) A person who is not the other person's parent, guardian or spouse (who has attained the age of 18 years) shall not in a public place or on unoccupied private land supply liquor to another person who has not yet attained the age of 18 years, except where the person to whom it is supplied is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years).</li> <li>(3) In this section 'parent' and 'guardian', in relation to a person who has not attained the age of 18 years, includes a person who has attained 18 years to whom the care and control of the first-mentioned person has been given by a parent or guardian (irrespective of its duration).</li> <li>(4) In a prosecution for an offence against subsection (1) or (2) the onus of proving that the care and control of a person who has not yet attained the age of 18 years had, at the relevant time, been given to a particular person by a parent or guardian rests on the accused.</li> <li>(5) In this section 'public place' does not include licensed premises within the meaning of the Liquor Act.</li> <li>(6) Nothing in this section derogates from the other provisions of this Part.</li> </ol>	
<i>Summary Offences Act 1923</i> s. 47 Offensive conduct etc.	<p>Offensive conduct etc.</p> <p>Every person is guilty —</p> <ol style="list-style-type: none"> <li>of any riotous, offensive, disorderly or indecent behaviour, or of fighting, or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place;</li> <li>of disturbing the public place;</li> <li>of any riotous, offensive, disorderly or indecent behaviour in any police station;</li> <li>of offensive behaviour in or about a dwelling house, dressing-room, training shed or clubhouse;</li> <li>of unreasonably causing substantial annoyance to another person; or</li> <li>of unreasonably disrupting the privacy of another person,</li> </ol> <p>shall be guilty of an offence.</p>	Fine \$2000 and/or 6 months' imprisonment

Legislation	Offence	Maximum penalty
<i>Summary Offences Act 1923</i> s. 47A Loitering — general offence	<p>Loitering — general offence</p> <p>(1) A person loitering in any public place who does not give a satisfactory account of himself when requested so to do by a member of the Police Force shall, on request by a member of the Police Force to cease loitering, cease so to loiter.</p> <p>(2) Where a person is loitering in a public place and a member of the Police Force believes, on reasonable grounds</p> <ul style="list-style-type: none"> <li>(a) that an offence has been or is likely to be committed; or</li> <li>(b) that the movement of pedestrian or vehicular traffic is obstructed or is about to be obstructed, by that person or by any other person loitering in the vicinity of that person;</li> <li>(c) that the safety of the person or any person in his vicinity is in danger; or</li> <li>(d) that the person is interfering with the reasonable enjoyment of other persons using the public place for the purpose or purposes for which it was intended,</li> </ul> <p>the member of the Police Force may require any person so loitering to cease loitering and to remove from that public place any article under his control, and a person so required shall comply with and shall not contravene the requirement.</p>	<p>For a subsection (1) offence: fine \$2000 or 6 months' imprisonment or both</p> <p>For a subsection (2) offence: fine \$2000 or 6 months' imprisonment or both</p>
<i>Summary Offences Act 1923</i> s. 47B Loitering — offence following notice	<p>This provision allows police to move a person on for a stated period for loitering and creates an offence provision for failing to comply with a direction.</p> <p>The section provides for a defence if the accused can show a reasonable excuse.</p>	<p>Fine 100 p.u. (\$110,000) or 6 months' imprisonment</p>
<i>Summary Offences Act 1923</i> s. 47AA Violent disorder	<p>Violent disorder</p> <p>(1) A person is guilty of an offence if:</p> <ul style="list-style-type: none"> <li>(a) the person is one of 2 or more people engaging in conduct that involves a violent act; and</li> <li>(b) the conduct would result in anyone who is in the vicinity and of reasonable firmness fearing for his or her safety; and</li> <li>(c) the person: <ul style="list-style-type: none"> <li>(i) intends or knows that the conduct involves a violent act and would have the result mentioned in paragraph (b); or</li> <li>(ii) is reckless as to whether the conduct involves a violent act and would have that result.</li> </ul> </li> </ul> <p>(2) To avoid doubt:</p> <ul style="list-style-type: none"> <li>(a) to establish the offence, it is unnecessary to prove that each of the 2 or more people individually engaged in conduct that involves a violent act and would have the result mentioned in subsection (1)(b); and</li> <li>(b) no person of reasonable firmness need actually be, or be likely to be, present in the vicinity for the offence to be committed; and</li> <li>(c) the offence may be committed in private or public places; and</li> <li>(d) subsection (1)(c) does not affect the determination of the number of people mentioned in subsection (1)(a).</li> </ul> <p>(3) The offence is an offence to which Part IIAA of the Criminal Code applies.</p> <p>(4) In this section: 'conduct that involves a violent act' includes:</p> <ul style="list-style-type: none"> <li>(a) conduct capable of causing injury to a person or damage to property (whether or not it actually causes such injury or damage); and</li> <li>(b) a threat to engage in such conduct.</li> </ul>	<p>12 months' imprisonment</p>
<i>Summary Offences Act 1923</i> s. 47AB Threatening violence	<p>Threatening violence</p> <p>A person who —</p> <ul style="list-style-type: none"> <li>(a) with intent to intimidate or annoy a person, threatens to damage a dwelling-house; or</li> <li>(b) [omitted]</li> </ul> <p>is guilty of an offence.</p>	<p>12 months' imprisonment or if the offence is committed at night-time 2 years' imprisonment</p>

Legislation	Offence	Maximum penalty
<i>Summary Offences Act 1923</i> s. 50 Penalty for indecent exposure of the person	Penalty for indecent exposure of the person Any person who offends against decency by the exposure of his person in any street or public place, or in the view thereof, shall be guilty of an offence.	Fine \$2000 and/or 6 months' imprisonment
<i>Summary Offences Act 1923</i> s. 53 Obscenity	Obscenity (1) Any person who — (a) in a public place, or within the view or hearing of any person passing therein — (i) sings any obscene song or ballad, or writes or draws any indecent or obscene word, figure or representation, or uses any profane, indecent or obscene language, (ii) [omitted] (b) [omitted] shall be guilty of an offence. (2) –(6) [omitted] (7) A person who in a public place or in a licensed premises within the meaning of the Liquor Act — (a) by threatening, abusive or objectionable words or behaviour, offends or causes substantial annoyance to another person; or (b) makes a noise as might reasonably in the circumstances cause substantial annoyance to another person, whether that other person is in the public place, those premises or elsewhere, is guilty of an offence. (8) Where the words or behaviours or noise referred to in subsection (7) are or is made in licensed premises within the meaning of the Liquor Act and the Court is satisfied that the licensee might reasonably have taken action to prevent the commission of the offence, the licensee is also guilty of an offence. (9) The penalty for an offence against this section is a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months, or both. (10) The Court hearing a complaint for an offence against this section shall not award costs against the complainant unless the Court considers that the complaint was unreasonably made.	Fine \$2000 and/or 6 months' imprisonment
<i>Summary Offences Act 1923</i> s. 55 Challenges to fight	Challenge to fight (1) Any person who sends or accepts, either by word or letter, any challenge to fight for money, or engages in any prize fight, shall be liable to a penalty of \$500, or to imprisonment, for a period not exceeding 3 months, or both. (2) The Justice before whom any person is found guilty of an offence against this section may, if he thinks fit, in addition to imposing a penalty, also require that person to find sureties for keeping the peace.	Fine \$500 and/or 3 months' imprisonment
<i>Summary Offences Act 1923</i> s. 56 Offences	This section provides for offences relating to begging or causing or procuring a child to beg; being in possession of any deleterious drug or any article of disguise or habitually consorting with reputed criminals. Where a person is found guilty under s. 56, a further penalty provision for related offences is found in s. 57.	Fine \$500 and/or 3 months' imprisonment



Legislation	Offence	Maximum penalty
<b>Tasmania</b>	The <i>Police Offences Act 1935</i> provides for a range of public order offences and also provisions relating to police powers. The Act provides for offences relating to drunkenness, vagrancy, indecency, public annoyance, trespass, good order and safety, liquor, smoking, injuries to the person and activities in public streets. Offences with a penalty of 2 years' imprisonment or less can be dealt with summarily before a Magistrate (s. 5 <i>Criminal Code Act 1924</i> ).	
<i>Police Offences Act 1935</i> s. 7 Loiterers	Loiterers (1) A person, being a suspected person or reputed thief, shall not — (a) be in or upon any building whatsoever or in any enclosed yard, garden or area for any unlawful purpose; or (b) frequent or loiter in or near any public place, or any river, or area for any unlawful purpose; or (2) In proving under this section intent to commit a crime it shall not be necessary to show that the person charged was guilty of any particular act tending to show his intent, and he may be convicted if from the circumstances of the case and from his known character it is proved to the court before which he is charged it appears to such court that his intent was to commit a crime. (3) A person shall not have in his possession without lawful excuse any implement or instrument with intent to commit a crime. (4) Every such key, implement, or instrument may be taken from the offender by the police officer and shall, on conviction of the offender, become forfeit to the Crown. (5) A person who contravenes a provision of subsection (1) or (3) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months.	6 months' imprisonment
<i>Police Offences Act 1935</i> s. 8 Begging, imposition, prostitution	This section provides for offences relating to: (1) begging in a public place or instigating a child to beg; (2) wilfully and obscenely exposing his person in public place or in the view of persons therein	For a subsection (1) offence: fine 5 p.u. (\$500) or 6 months' imprisonment For a subsection (2) offence: fine 10 p.u. (\$1000) or 12 months' imprisonment
<i>Police Offences Act 1935</i> s. 12 Prohibited language and behaviour	Prohibited language and behaviour (1) A person shall not, in any public place, or within hearing of any person in that place — (a) curse or swear; (b) sing any profane or obscene song; (c) use any profane, indecent, obscene, offensive, or blasphemous language; or (d) use any threatening, abusive, or insulting words or behaviour with intent or calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned. (1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months. (2) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence thereunder is liable to double the penalty prescribed in subsection (1) in respect of the offence in respect of which he is so convicted.	General: fine 3 p.u. (\$300) or 3 months' imprisonment For a second offence committed within 6 months: fine 6 p.u. (\$600) or 6 months' imprisonment



Legislation	Offence	Maximum penalty
<i>Police Offences Act 1935</i> s. 13 Public annoyance	<p>(1) A person shall not, in a public place —</p> <ul style="list-style-type: none"> <li>(a) behave in a violent, riotous, offensive, or indecent manner;</li> <li>(b) disturb the public peace;</li> <li>(c) engage in disorderly conduct;</li> <li>(d) jostle, insult, or annoy any person;</li> <li>(e) commit any nuisance; or</li> <li>(f) throw, let off, or set fire to any firework.</li> </ul> <p>(2) A person shall not recklessly throw or discharge a missile to the danger or damage of another person or to the danger or damage of the property of another person.</p> <p>(2A) A person shall not, in a public place, supply liquor to a person under the age of 18 years.</p> <p>(2B) A person under the age of 18 years shall not consume liquor in a public place.</p> <p>(2C) A person under the age of 18 years shall not have possession or control of liquor in a public place.</p> <p>(3) A person shall not wilfully disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship.</p> <p>(3AA) A person who contravenes a provision of subsection (1),(2)(2A), (2B),(2C) or (3) is guilty of an offence and liable on summary conviction to —</p> <ul style="list-style-type: none"> <li>(a) a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months, in the case of an offence under subsection (1) or (3); or</li> <li>(b) a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2); or</li> <li>(c) a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2A),(2B) or (2C).</li> </ul> <p>(3A) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence thereunder is liable to double the penalty prescribed in respect of the offence in respect of which he is convicted.</p> <p>(3B) A police officer may seize liquor in the possession of a person the police reasonably believes in committing an offence under subsection (1),(2),(2A),(2B),(2C) or (3)</p> <p>...</p>	<p>For an offence under subsection (1) or (3): fine 3 p.u. (\$300) or 3 months' imprisonment</p> <p>For an offence under subsections (2): fine 5 p.u. (\$500) or 6 months' imprisonment</p> <p>An offence under subsections (2A), (2B), (2C): fine 10 p.u. (\$1000) or 6 months' imprisonment</p> <p>For a second offence committed within 6 months: the maximum penalty is doubled.</p>
<i>Police Offences Act 1935</i> s. 14 Public decency	<p>Public decency</p> <p>(1) A person, in any public place or within sight of any person in a public place, must not bathe in any river, lake, harbour or stream or sunbathe unless —</p> <ul style="list-style-type: none"> <li>(a) a person is decently clothed; or</li> <li>(b) the conduct is authorised in that place by the appropriate council.</li> </ul> <p>(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding one penalty unit.</p>	Fine 1 p.u. (\$100)
<i>Police Offences Act 1935</i> s. 15B Dispersal of persons	<p>Dispersal of persons</p> <p>(1) A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person —</p> <ul style="list-style-type: none"> <li>(a) has committed or is likely to commit an offence; or</li> <li>(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or</li> <li>(c) is endangering or likely to endanger the safety of any other person; or</li> <li>(d) has committed or is likely to commit a breach of the peace.</li> </ul> <p>(2) A person must comply with a direction under subsection (1).</p>	Fine 2 p.u. (\$200)

Legislation	Offence	Maximum penalty
<i>Police Offences Act 1935</i> s. 21 Prohibited behaviour	Prohibited behaviour A person must not, wilfully and without reasonable excuse, do any act or behave in a manner that a reasonable person is likely to find indecent or offensive in all the circumstances, if that person knew or should have known that his or her conduct was being, or may have been, viewed by another person.	Fine 50 p.u. (\$50,000) and/or 12 months' imprisonment
<i>Police Offences Act 1935</i> s. 25 Consumption of liquor in streets	Consumption of liquor in streets (1) In this section — 'motor vehicle' has the same meaning as in the <i>Vehicle and Traffic Act 1999</i> ; 'public street' has the same meaning as in the <i>Traffic Act 1925</i> . (2) A person must not consume liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section. Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units. (3) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an opened or unsealed container of liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section. Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units. (4) This section does not apply to a person who is — (a) on licensed premises, within the meaning of the <i>Liquor Licensing Act 1990</i> , or on premises at which food is sold for consumption on those premises; or (b) within 50 metres of any such premises and is using furniture or other facilities lawfully provided by the proprietor or lessee of those premises for that purpose; or (c) in a place where the possession and consumption of liquor is permitted under a permit or licence in force under the <i>Liquor Licensing Act 1900</i> . (5) A person who is in a stationary motor vehicle in a public street or in a prescribed public place is taken to be in the public street or in the prescribed place. ...	For a subsection (2) offence, first offence: fine 2 p.u. (\$200). Second or subsequent offences: fine 5 p.u. (\$500) For a subsection (3) offence, first offence: fine 2 p.u. (\$200) Second or subsequent: fine 5 p.u. (\$500)

## APPENDIX 3:

### Alternative public nuisance charges and relevant police powers

**Table 1: Queensland's possible alternative charges for behaviours that may be public nuisance**

Offence	Section and Act	Penalty	Elements
<b>Public nuisance</b>	s. 6 Summary Offences Act	10 penalty units (p.u.) or 6 months	<ul style="list-style-type: none"> <li>A person behaves in a disorderly, offensive (including language), threatening (including language) or violent way; and</li> <li>Behaviour interferes with or is likely to interfere with peaceful passage through or enjoyment of a public place</li> </ul>
<b>Alcohol and drunkenness</b>			
<b>Drunk in a public place</b>	s. 10 Summary Offences Act	2 p.u.	<ul style="list-style-type: none"> <li>A person must not be drunk</li> <li>In a public place</li> </ul>
<b>Consume liquor in public place</b>	s. 173B <i>Liquor Act 1992</i>	1 p.u.	<ul style="list-style-type: none"> <li>A person must not consume liquor</li> <li>In public place that is a road or land under local government or doorway, entrance or vestibule to a public place</li> </ul>
<b>Conduct causing public nuisance</b>	s. 164 <i>Liquor Act 1992</i>	25 p.u.	<ul style="list-style-type: none"> <li>A person must not be drunk or disorderly</li> <li>In a licensed premises</li> </ul>
<b>Failure to comply with police direction or requirement</b>			
<b>Contravene a police direction</b>	s. 791 <i>Police Powers and Responsibilities Act 2000</i>	40 p.u.	<ul style="list-style-type: none"> <li>A person must not contravene a direction or requirement given by a police officer</li> <li>Unless there is a reasonable excuse</li> </ul>
<b>Behaviour in a council park</b>			
<b>Contravene local law (Brisbane City Council — Parks)</b>	Local Law Chapter 9 Brisbane City Council	\$5000 and removal from park	<ul style="list-style-type: none"> <li>Contravene park laws (Local Laws — Chapter 9)</li> <li>A person must not in a park:               <ul style="list-style-type: none"> <li>bathe, wade or wash in any lake, pond, stream or other ornamental water feature (s. 17)</li> <li>carelessly or negligently foul or pollute any such water (s. 17)</li> <li>obstruct, disturb, interrupt or annoy any person in proper use of the park (s. 27)</li> <li>use obscene or indecent language to the annoyance of any person in the park (s. 28)</li> </ul> </li> </ul>
<b>Contravene local law (Townsville — Parks)</b>	Local Law No. 15 Townsville City Council Local Laws	\$500 (Local Law No. 1, s. 4)	<ul style="list-style-type: none"> <li>Contravenes park laws (Local Law No. 15, ss. 516 &amp; 521)</li> <li>A person must not in a park or reserve:               <ul style="list-style-type: none"> <li>do any act which would be likely to injure, endanger, obstruct, inconvenience, or annoy any other person in such park, or interfere with the reasonable use and enjoyment thereof by such other person (s. 516)</li> <li>wilfully obstruct, disturb, interrupt, or annoy any other person in the proper use of the park (s. 521)</li> </ul> </li> </ul>

Offence	Section and Act	Penalty	Elements
<b>Contravene local law (Cairns — Parks)</b>	Local Law No. 26 Cairns Local Laws (Local Law Policy No.5, subsection 12)	20 p.u.	<ul style="list-style-type: none"> <li>A person must not in a park or reserve               <ul style="list-style-type: none"> <li>the undertaking of any activity which causes unreasonable disturbance to other users or adjacent properties</li> </ul> </li> </ul>
<b>Contravene local law (Gold Coast — Parks and Reserves)</b>	Local Law Chapter 9 Gold Coast Local Laws	20 p.u.	<ul style="list-style-type: none"> <li>A person must not in a park or reserve (Local Law Policy 9.1, s. 16):               <ul style="list-style-type: none"> <li>sleep between the hours of 6 pm and 6 am</li> <li>live in the park</li> <li>behave in a manner that causes unreasonable distress, inconvenience or danger to a person whether or not that person is in a park or reserve</li> <li>behave in a riotous, disorderly, indecent, offensive, threatening or insulting manner</li> <li>behave in a manner or conduct an activity which is likely to cause injury, danger, obstruction, inconvenience or excessive annoyance to any person whether or not that person is in a park or reserve</li> </ul> </li> </ul>
<b>Behaviour at South Bank</b>			
<b>Public nuisance (South Bank Corporation Act 1989)</b>	s. 82 South Bank Corporation Act 1989	20 p.u. & exclusion from area for up to 24 hrs	<ul style="list-style-type: none"> <li>A person must not</li> <li>On the South Bank site:               <ul style="list-style-type: none"> <li>Be drunk or disorderly or</li> <li>Cause a disturbance</li> </ul> </li> </ul>
<b>Contravene direction to leave South Bank (South Bank Corporation Act 1989)</b>	s. 83 South Bank Corporation Act 1989	10 p.u.	<ul style="list-style-type: none"> <li>A South Bank Corporation security officer may, by written notice, direct a person to leave the site for a period of up to 24 hrs.</li> <li>A person must not contravene a direction given by a security officer without reasonable excuse.</li> <li>If a person contravenes this initial direction, a security officer may give written notice to leave and not re-enter the site for a period of up to 10 days.</li> <li>A person must not contravene a direction given by a security officer without reasonable excuse.</li> </ul>
<b>Exclusion of person from South Bank (South Bank Corporation Act 1989)</b>	s. 86 South Bank Corporation Act 1989	20 p.u.	<ul style="list-style-type: none"> <li>Police or the South Bank Corporation may apply to the court for an order to exclude a person from the site for a period up to one year because of their behaviour.</li> <li>A person must not contravene an exclusion order.</li> </ul>
<b>Causing danger to the public</b>			
<b>Common nuisance</b>	s. 230 Criminal Code 1899	2 years' imp.	<ul style="list-style-type: none"> <li>A person must not by act or omission</li> <li>With respect to property under his or her control</li> <li>Cause danger to lives, safety or health of public; or</li> <li>Cause danger to property or comfort of the public, or the public are obstructed in the exercise or enjoyment of any right common to public, and by which injury is caused to the person of some person</li> <li>Without lawful justification or excuse</li> </ul>
<b>Unwanted presence on property</b>			
<b>Trespass</b>	s. 11 Summary Offences Act	20 p.u. or 1 year imp.	<ul style="list-style-type: none"> <li>A person must not unlawfully enter or remain in</li> <li>A dwelling or yard of a dwelling</li> <li>A yard or place of business</li> </ul>
<b>Trespass (on railway)</b>	s. 257 Transport Infrastructure Act 1994	40 p.u.	<ul style="list-style-type: none"> <li>A person must not wilfully trespass on a railway</li> </ul>

Offence	Section and Act	Penalty	Elements
<b>Unlawful stalking</b>	s. 359B <i>Criminal Code 1899</i>	5 years' imp.	<ul style="list-style-type: none"> <li>A person must not intentionally direct conduct at a person on any one occasion or a series of occasions that consists of one or more of the listed acts including:               <ul style="list-style-type: none"> <li>» loitering near a person or at a place</li> <li>» leaving offensive material where it may be found by a person</li> <li>» giving offensive material to a person</li> <li>» doing any intimidating, harassing or threatening act towards a person</li> </ul> </li> <li>That would cause an apprehension, fear or detriment to the other person or to property</li> </ul>
<b>Physical aggression against property</b>			
<b>Wilful damage</b>	s. 469 <i>Criminal Code 1899</i>	5 years' imp.	<ul style="list-style-type: none"> <li>A person must not wilfully and unlawfully destroy or damage any property</li> </ul>
<b>Wilful damage — railways</b>	s. 469(5) <i>Criminal Code 1899</i>	14 years' imp.	<ul style="list-style-type: none"> <li>A person must not wilfully and unlawfully destroy or damage part of a railway or any work connected to a railway</li> </ul>
<b>Wilful damage — graffiti</b>	s. 469(9) <i>Criminal Code 1899</i>	5 years' imp. or if the images are obscene or indecent — 7 years' imp.	<ul style="list-style-type: none"> <li>If property is in a public place or visible from a public place</li> <li>A person must not wilfully and unlawfully</li> <li>Write, spray, draw, mark or scratch</li> <li>By applying paint or any other marking substance</li> </ul>
<b>Public annoyance</b>			
<b>Begging</b>	s. 8 Summary Offences Act	10 p.u. or 6 months' imp.	<ul style="list-style-type: none"> <li>In a public place</li> <li>A person must not beg for money or goods</li> <li>Solicit for donations of money or goods</li> <li>Or cause child to do any of the above acts.</li> </ul>
<b>Noise abatement</b>	s. 581 <i>Police Powers and Responsibilities Act 2000</i>	10 p.u.	<ul style="list-style-type: none"> <li>A person must immediately comply with noise abatement direction given by police</li> <li>A failure to comply may result in a fine and the seizure of property</li> </ul>
<b>Common nuisance</b>	s. 230 <i>Criminal Code 1899</i>	2 years' imp.	<ul style="list-style-type: none"> <li>A person must not by act or omission</li> <li>Without lawful justification or excuse</li> <li>With respect to property under his or her control</li> <li>Cause danger to lives, safety or health of public; or</li> <li>Cause danger to property or comfort of the public, or the public are obstructed in the exercise or enjoyment of any right common to public, and by which injury is caused to the person of some person</li> </ul>
<b>Behaviour on a railway</b>			
<b>Create disturbance or nuisance on train or bus</b>	s. 143AF <i>Transport Operations (Passenger Transport) Act 1994</i>	40 p.u. or 6 months' imp.	<ul style="list-style-type: none"> <li>A person must not while on a railway or public passenger vehicle</li> <li>Create a disturbance or nuisance</li> <li>Unless the person has a reasonable excuse</li> </ul>
<b>Drinking on railway</b>	s. 8 Transport Infrastructure (Rail) Regulation 2006	10 p.u.	<ul style="list-style-type: none"> <li>A person must not drink alcohol on a railway or on rolling stock unless</li> <li>The person has been granted permission</li> </ul>

Offence	Section and Act	Penalty	Elements
<b>Nuisance behaviour on railway</b>	ss. 4–15 Transport Infrastructure (Rail) Regulation 2006	Penalties range from 10 p.u. to 40 p.u.	<ul style="list-style-type: none"> <li>A person must not:               <ol style="list-style-type: none"> <li>smoke (s. 7)</li> <li>litter (s. 12)</li> <li>consume food or drink (s. 4)</li> <li>put the person's feet (whether or not with shoes) on a seat (s. 5)</li> <li>occupy more than 1 seat (s. 5)</li> <li>spit (s. 7)</li> <li>bring anything on that can not be put under a seat or in an overhead rack or in a designated storage area (s. 5)</li> <li>put anything in the aisles that is likely to cause an obstruction or injury to someone (s. 5)</li> <li>publicly sell anything, seek business; or conduct a survey (s. 14)</li> <li>play a musical instrument (s. 6)</li> <li>operate sound equipment (s. 6)</li> <li>wilfully damage or deface a railway (s. 15)</li> </ol> </li> </ul>
<b>Behaviour on a road</b>			
<b>Interference or damage to roads</b>	s. 149 Traffic Regulations 1962	20 p.u.	<ul style="list-style-type: none"> <li>A person shall not dig up, undermine or otherwise interfere</li> <li>With any road or use upon any road</li> <li>Anything which may or would be likely to cause danger, obstruction, inconvenience, annoyance or injury to any person or animal upon such road</li> </ul>
<b>Painting or construction on</b>	s. 149A Traffic Regulations 1962	20 p.u.	<ul style="list-style-type: none"> <li>A person shall not make or paint any notice, sign, or mark on the surface of a road; or construct, erect, or place any placard, board, notice, or sign in or on a road</li> </ul>
<b>Crossing a road</b>	s. 230 Transport Operations (Road Use Management — Road Rules) Regulations 1999	20 p.u.	<ul style="list-style-type: none"> <li>A pedestrian crossing a road must cross by the shortest safe route; and must not stay on the road longer than necessary to cross the road safely</li> </ul>
<b>Pedestrians not to cause a traffic hazard or obstruction</b>	s. 236 Transport Operations (Road Use Management — Road Rules) Regulations 1999	20 p.u.	<ul style="list-style-type: none"> <li>A pedestrian must not cause a traffic hazard by moving into the path of a driver</li> <li>A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian</li> <li>A pedestrian must not stand on, or move onto, a road to solicit contributions, employment or business from an occupant of a vehicle; or to hitchhike; or to display an advertisement; or to sell things or offer things for sale; or to wash or clean, or offer to wash or clean, a vehicle's windscreen</li> </ul>
<b>Behaviour in a licensed premises</b>			
<b>Conduct causing public nuisance</b>	s. 164 <i>Liquor Act 1992</i>	25 p.u.	<ul style="list-style-type: none"> <li>A person must not in licensed premises</li> <li>Be drunk, or be disorderly or create a disturbance</li> </ul>
<b>Physical aggression</b>			
<b>Common assault</b>	s. 335 <i>Criminal Code 1899</i>	3 years' imp.	<ul style="list-style-type: none"> <li>A person must not strike, touch, or move, or otherwise apply force of any kind to, the person of another; or</li> <li>By any bodily act or gesture attempt or threaten to apply force of any kind to the person of another, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose</li> </ul>

Offence	Section and Act	Penalty	Elements
<b>Serious assault</b>	s. 340 <i>Criminal Code 1899</i>	7 years' imp.	<ul style="list-style-type: none"> <li>A person must not assault, resist or wilfully obstruct</li> <li>With intent to commit a crime any person; or a police officer in the execution of their duty; or any person making a lawful arrest or detention; or a person over the age of 60 years; or a person assisted by a guide dog, wheelchair or other remedial device</li> </ul>
<b>Assault or obstruct police officer</b>	s. 790 <i>Police Powers and Responsibilities Act 2000</i>	40 p.u. or 6 months' imp.	<ul style="list-style-type: none"> <li>A person must not assault, hinder, resist, obstruct or attempt to obstruct</li> <li>A police officer in the performance of the officer's duties</li> </ul>
<b>Assault etc. of authorised person</b>	s. 575 <i>Police Powers and Responsibilities Act 2000</i>	40 p.u.	<ul style="list-style-type: none"> <li>A person must not assault or obstruct</li> <li>An authorised person exercising power at a special event under this Act</li> </ul>
<b>Affray</b>	s. 72 <i>Criminal Code 1899</i>	1 year imp.	<ul style="list-style-type: none"> <li>A person must not</li> <li>Take part in a fight in a public highway or</li> <li>Take part in a fight of such a nature as to alarm the public in any other place to which the public has access</li> </ul>
<b>Sexual assault</b>	s. 352 <i>Criminal Code 1899</i>	10 years' imp.	<ul style="list-style-type: none"> <li>A person must not unlawfully and indecently assault another person, or</li> <li>Procure another person without consent to witness an act of indecency or commit an act of indecency</li> </ul>
<b>Threatening behaviour (including language)</b>			
<b>Serious racial, religious, sexual or gender vilification</b>	s. 131A <i>Anti-Discrimination Act 1991</i>	70 p.u. or 6 months' imp.	<ul style="list-style-type: none"> <li>A person must not by a public act</li> <li>Knowingly or recklessly</li> <li>Incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons in a way that includes</li> <li>Threatening physical harm towards, or towards any property of, the person or group of persons; or inciting others to threaten physical harm towards, or towards any property of, the person or group of persons</li> <li>On the grounds of race, religion, sexuality or gender identity of the person or members of the group</li> </ul>
<b>Unlawful assembly</b>	ss. 61 & 62 <i>Criminal Code 1899</i>	1 year imp.	<ul style="list-style-type: none"> <li>3 or more persons</li> <li>Intent to carry out some common purpose</li> <li>Assemble in such a manner, or conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace</li> </ul>
<b>Riot</b>	ss. 61 & 63 <i>Criminal Code 1899</i>	3 years' imp.	<ul style="list-style-type: none"> <li>Unlawful assembly (<i>see above</i>)</li> <li>Begin to act in so tumultuous a manner as to disturb the peace</li> </ul>
<b>Going armed so as to cause fear</b>	s. 69 <i>Criminal Code 1899</i>	2 years' imp.	<ul style="list-style-type: none"> <li>A person must not in public</li> <li>Go armed</li> <li>In such a manner as to cause fear in another person</li> </ul>
<b>Threatening violence</b>	s. 75 <i>Criminal Code 1899</i>	2 years' imp. or if the offence is committed at night 5 years' imp.	<ul style="list-style-type: none"> <li>A person with intent to intimidate or annoy any person, by words or conduct, threatens to enter or damage a dwelling or other premises; or</li> <li>With intent to alarm any person, discharges loaded firearms or does any other act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property</li> </ul>



Offence	Section and Act	Penalty	Elements
<b>Challenge to fight a duel</b>	s. 73 <i>Criminal Code 1899</i>	3 years' imp.	<ul style="list-style-type: none"> <li>A person must not challenge, provoke, attempt to provoke another to fight a duel</li> </ul>
<b>Threats</b>	s. 359 <i>Criminal Code 1899</i>	5 years' imp.	<ul style="list-style-type: none"> <li>A person must not threaten to do any injury, or cause any detriment, of any kind</li> <li>With intent to stop a person doing something or make a person do something or to cause public alarm or anxiety</li> </ul>
<b>Unlawful stalking</b>	ss. 359B & 359E <i>Criminal Code 1899</i>	5 years' imp.	<ul style="list-style-type: none"> <li>Conduct intentionally directed at a person on any 1 occasion or a series of occasions that consists of one or more of the listed acts</li> <li>That would cause detriment or fear in the other person</li> </ul>
<b>Offensive or abusive language</b>			
<b>Sexual harassment</b>	ss. 118–19 <i>Anti-Discrimination Act 1991</i>	Order of Tribunal 35 p.u. (contravention)	<ul style="list-style-type: none"> <li>Unsolicited act of physical intimacy; unsolicited demand or request for sexual favours; makes a remark with sexual connotations; or engage in any other unwelcome conduct of a sexual nature</li> <li>Intention of offending, humiliating, intimidating the other person; or in circumstances where a reasonable person would have anticipated the possibility that a person would be offended, humiliated or intimidated by the conduct</li> </ul>
<b>Obstruction</b>	s. 222 <i>Anti-Discrimination Act 1991</i>	Individual: 35 p.u. Corporation: 170 p.u.	<ul style="list-style-type: none"> <li>A person must not consciously hinder or use insulting language</li> <li>Towards a person performing a function under this Act</li> </ul>
<b>Racial, religious, sexual or gender vilification</b>	s. 124A <i>Anti-Discrimination Act 1991</i>	Order of Tribunal 35 p.u. (contravention)	<ul style="list-style-type: none"> <li>A person must not do a public act</li> <li>To incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group</li> <li>Unless fair report, absolute privilege or in good faith as part of public interest</li> </ul>
<b>Obscene/offensive/indecent behaviour</b>			
<b>Wilful exposure</b>	s. 9 Summary Offences Act	2 p.u. (simple) 40 p.u. or 1 year (aggravated)	<ul style="list-style-type: none"> <li>A person must not in a public place or where able to be seen from a public place</li> <li>Wilfully expose genitals</li> <li>Without reasonable excuse</li> </ul>
<b>Observations or recordings in breach of privacy</b>	s. 227A <i>Criminal Code 1899</i>	2 years' imp.	<ul style="list-style-type: none"> <li>In circumstances where a reasonable adult would expect to be afforded privacy</li> <li>Without the other person's consent; and</li> <li>When the other person is in a private place or is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act</li> <li>A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region</li> </ul>



Offence	Section and Act	Penalty	Elements
<b>Obscene publications and exhibitions</b>	s. 228 <i>Criminal Code 1899</i>	2 years' imp.	<ul style="list-style-type: none"> <li>Publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or</li> <li>Exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or</li> <li>Publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not</li> </ul>
<b>Indecent treatment of child under 16</b>	s. 210 <i>Criminal Code 1899</i>	14 years' imp. (12–16 years) 20 years' imp. (< 12 years)	<ul style="list-style-type: none"> <li>A person must not wilfully and unlawfully expose a child under the age of 16 years to an indecent act by the offender or any other person; or</li> <li>Without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years</li> </ul>
<b>Indecent acts</b>	s. 227 <i>Criminal Code 1899</i>	2 years' imp.	<ul style="list-style-type: none"> <li>A person must not in any place to which the public are permitted to have access</li> <li>Wilfully and without lawful excuse do any indecent act</li> <li>In any place, and</li> <li>Wilfully do any indecent act with intent to insult or offend any person</li> </ul>

**Table 2: Police powers relevant to public nuisance and related offences**

Police power	Section and Act	Circumstances	Power
<b>Move-on</b>	s. 48 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>In a public place</li> <li>Where behaviour is:               <ul style="list-style-type: none"> <li>» Causing anxiety</li> <li>» Interfering with trade (only if complaint)</li> <li>» Disorderly, indecent, offensive or threatening</li> <li>» Disrupting the peaceable and orderly conduct of event</li> </ul> </li> <li>Where presence is:               <ul style="list-style-type: none"> <li>» Causing anxiety</li> <li>» Interfering with trade (only if complaint)</li> <li>» Disrupting the peaceable and orderly conduct of event</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Issue direction that is reasonable in the circumstances (e.g to 'move-on')</li> </ul>
<b>Prevention of liquor offences</b>	s. 53 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person reasonably suspected to have committed, is committing or is about to commit <i>Liquor Act 1992</i> offence (including public nuisance under <i>Liquor Act 1992</i>)</li> </ul>	<ul style="list-style-type: none"> <li>May seize container and contents and dispose of accordingly</li> </ul>
<b>Breach of the peace</b>	s. 50 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Police officer reasonably suspects               <ul style="list-style-type: none"> <li>» Breach of the peace happening or has happened</li> <li>» Imminent likelihood that will happen</li> <li>» Threatened breach of the peace</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Take steps the officer considers reasonably necessary</li> <li>Including taking person into custody and detaining for a reasonable time</li> </ul>
<b>Prevention of offences</b>	s. 52 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Police officer reasonably suspects offence has been committed, is being committed or is about to be committed</li> </ul>	<ul style="list-style-type: none"> <li>Take steps the officer considers reasonably necessary</li> </ul>
<b>Prevention of offences relating to liquor</b>	s. 53 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Police officer reasonably suspects an offence has been committed, is being committed or is about to be committed. Applies to the following offences:               <ul style="list-style-type: none"> <li>» <i>Liquor Act 1992</i>: s. 164 Conduct causing public nuisance; s. 168B Prohibition on possession of liquor in restricted area; s. 173B Consumption of liquor in certain public places prohibited</li> <li>» <i>Aboriginal Communities (Justice and Land Matters) Act 1984</i>: s. 35 Possession or consumption of alcohol in or on dry places; s. 45 Offences relating to homemade alcohol</li> <li>» <i>Community Services (Torres Strait) Act 1984</i>: s. 101 Possession or consumption of alcohol in or on dry place; s. 110A Offences relating to homemade alcohol</li> </ul> </li> <li>The police officer reasonably suspects the person has an opened container of liquor in the person's control</li> </ul>	<ul style="list-style-type: none"> <li>Seize and dispose of the container and its contents</li> </ul>

Police power	Section and Act	Circumstances	Power
<b>Discontinue arrest</b>	ss. 376 & 377 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person arrested</li> </ul>	<ul style="list-style-type: none"> <li>Arrest discontinued where: <ul style="list-style-type: none"> <li>» Reason for arrest no longer exists; and</li> <li>» More appropriate to issue a notice to appear</li> </ul> </li> <li>Arrest discontinued where: <ul style="list-style-type: none"> <li>» Police officer reasonably considers it more appropriate for person to be dealt with other than by charging with offence; and</li> <li>» Person and victim agree</li> </ul> </li> </ul>
<b>Discontinue arrest (drunk)</b>	s. 378 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person arrested for being drunk in a public place (s. 10 Summary Offences Act)</li> </ul>	<ul style="list-style-type: none"> <li>Police satisfied that more appropriate that person be taken to place of safety for care and treatment</li> </ul>
<b>Discontinue arrest (minor drug offence)</b>	s. 379 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person arrested or being questioned in relation to a minor drug offence and satisfies the remaining criteria</li> </ul>	<ul style="list-style-type: none"> <li>Police must offer the person the opportunity to attend a drug diversion assessment program</li> </ul>
<b>Notice to appear</b>	s. 382 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person suspected of offence</li> </ul>	<ul style="list-style-type: none"> <li>Charge the person with an offence by way of serving a notice to appear</li> </ul>
<b>Noise abatement direction</b>	s. 581 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Excessive noise from musical instrument, electrical appliance, motor vehicle (other than on a road) or group of people, or music from motor vehicle; and</li> <li>There is a complaint (unless motor vehicle)</li> </ul>	<ul style="list-style-type: none"> <li>Give direction to immediately abate the excessive noise</li> <li>Enter without warrant</li> </ul>
<b>Noise abatement powers</b>	s. 583 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Noise abatement direction already given</li> <li>Further excessive noise made</li> </ul>	<ul style="list-style-type: none"> <li>Enter without warrant</li> <li>Prevent use of, seize and remove, or make inoperable the noise-making device</li> </ul>
<b>Nuisance direction in moveable dwelling park</b>	s. 594 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person is causing a serious nuisance in a moveable dwelling park</li> </ul>	<ul style="list-style-type: none"> <li>Direct person to immediately stop or not create another serious nuisance ('initial nuisance direction')</li> </ul>
<b>Direct to leave moveable dwelling park</b>	s. 595 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person been given an initial nuisance direction; and</li> <li>Direction contravened</li> </ul>	<ul style="list-style-type: none"> <li>Direct person to leave moveable dwelling park for no longer than 24 hrs</li> </ul>
<b>Seize potentially harmful things</b>	s. 603 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person in possession of potentially harmful thing</li> </ul>	<ul style="list-style-type: none"> <li>Search person</li> <li>Seize potentially harmful thing</li> </ul>
<b>Deal with person affected by potentially harmful thing</b>	s. 604 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Person affected by a potentially harmful thing</li> <li>Appropriate that person be taken somewhere else to recover</li> </ul>	<ul style="list-style-type: none"> <li>Detain person for the purpose of taking them to place of safety</li> </ul>
<b>Discontinue arrest against child</b>	s. 380 <i>Police Powers and Responsibilities Act 2000</i> s. 11 <i>Juvenile Justice Act 1992</i>	<ul style="list-style-type: none"> <li>Child arrested</li> <li>Reason for arresting the child no longer exists</li> <li>More appropriate to deal with child other than by arrest</li> </ul>	<ul style="list-style-type: none"> <li>Take no action and release</li> <li>Administer caution</li> <li>Refer to youth justice conference or issue a notice to appear or summons</li> </ul>

Police power	Section and Act	Circumstances	Power
<b>Take identifying particulars</b>	s. 467 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>If person in custody for identifying particulars offence</li> </ul>	<ul style="list-style-type: none"> <li>Identifying particulars, including a photograph, may be taken</li> </ul>
<b>Issue identifying particulars notice</b>	s. 470 <i>Police Powers and Responsibilities Act 2000</i>	<ul style="list-style-type: none"> <li>Where person issued a notice to appear, may then be issued an identifying particulars notice</li> </ul>	<ul style="list-style-type: none"> <li>Identifying particulars, including a photograph, may be taken</li> </ul>
<b>Caution a child</b>	s. 15 <i>Juvenile Justice Act 1992</i>	<ul style="list-style-type: none"> <li>Child arrested</li> <li>Child admits to offence and consents to being cautioned</li> </ul>	<ul style="list-style-type: none"> <li>Issue a caution to child</li> </ul>
<b>Youth justice conference</b>	s. 30 <i>Juvenile Justice Act 1992</i>	<ul style="list-style-type: none"> <li>Child arrested</li> <li>Child admits to offence or child is found guilty of the offence</li> </ul>	<ul style="list-style-type: none"> <li>Police refer child to youth justice conference</li> <li>Court refers child to youth justice conference</li> </ul>

## APPENDIX 4:

# Comparison of the old and the new public nuisance offence

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### Old offence

#### *Vagrants, Gaming and Other Offences Act 1931*

##### **7. Obscene, abusive language etc.**

- (1) Any person who, in any public place or so near to any public place that any person who might be therein, and whether any person is therein or not, could view or hear —
  - (a) sings any obscene song or ballad;
  - (b) writes or draws any indecent or obscene word, figure, or representation;
  - (c) uses any profane, indecent, or obscene language;
  - (d) uses any threatening, abusive, or insulting words to any person;
  - (e) behaves in a riotous, violent, disorderly, indecent, offensive, threatening, or insulting manner;shall be liable to a penalty of \$100 or to imprisonment for 6 months ...

### New offence

#### *Summary Offences Act 2005*

##### **6. Public nuisance**

- (1) A person must not commit a public nuisance offence. Maximum penalty — 10 penalty units or 6 months' imprisonment ...
- (2) A person commits a public nuisance offence if —
  - (a) the person behaves in —
    - (i) a disorderly way; or
    - (ii) an offensive way; or
    - (iii) a threatening way; or
    - (iv) a violent way; and
  - (b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.
- (3) Without limiting subsection (2) —
  - (a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and
  - (b) a person behaves in a threatening way if the person uses threatening language.
- (4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.
- (5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

	Old offence (s. 7 Vagrants Act)	New public nuisance offence (s. 7AA Vagrants Act, then s. 6 Summary Offences Act)	What is the difference?
What <b>language</b> can be an offence?	<ul style="list-style-type: none"> <li>• profane</li> <li>• indecent</li> <li>• obscene</li> <li>• threatening</li> <li>• abusive</li> <li>• insulting</li> <li>• sings any obscene song or ballad</li> </ul> <p>Threatening, abusive or insulting words must be directed 'to any person' (see <i>Coleman v. Power</i> [2004] HCA 39 per Gleeson CJ at [4] and McHugh at [63]).</p>	<ul style="list-style-type: none"> <li>• offensive</li> <li>• indecent</li> <li>• obscene</li> <li>• threatening</li> <li>• abusive</li> </ul> <p>The new public nuisance provision does not explicitly include 'insulting' and 'profane' language, but does include 'offensive' language. (The reference to singing any obscene song or ballad has also been removed.)</p> <p>The Explanatory Notes provide examples of language that may constitute public nuisance, including:</p> <ul style="list-style-type: none"> <li>• a person calling another person a slut in a shopping centre or a park</li> <li>• a person using obscene language in a mall or a street.</li> </ul>	<p>There is little practical difference resulting from the removal of the terms 'profane' and 'insulting' and the inclusion of the term 'offensive' (<i>Green v. Ashton</i> [2006] QDC 008 at [14–15]; cf. <i>Darney v. Fisher</i> [2005] QDC 206 at [30]).</p> <p>There is no longer a specific requirement that threatening, abusive or insulting words be directed 'to any person'.</p> <p>It remains a matter for the court to determine what behaviour constitutes an offence by applying current community standards.</p>
What <b>behaviours</b> can be an offence?	<p>Behaves in a way that is:</p> <ul style="list-style-type: none"> <li>• disorderly</li> <li>• offensive</li> <li>• violent</li> <li>• riotous</li> <li>• indecent</li> <li>• writes or draws any indecent or obscene word, figure or representation.</li> </ul>	<p>Behaves in a way that is:</p> <ul style="list-style-type: none"> <li>• disorderly</li> <li>• offensive</li> <li>• violent</li> <li>• threatening.</li> </ul> <p>The new public nuisance provision does not explicitly include references to 'riotous' or 'indecent' behaviour. (The reference to writing or drawing indecent or obscene words or figures has also been removed.)</p> <p>Examples found in the Explanatory Notes indicate that indecent behaviours may still be captured as offensive behaviour. These examples include a person engaging in an act of sexual intercourse in view of another person in a public place; and urinating in view of another in a public place.</p> <p>The Explanatory Notes also provide a range of other examples of public nuisance behaviour, including:</p> <ul style="list-style-type: none"> <li>• a person encouraging another to participate in a fight</li> <li>• a person running over the roofs of parked cars</li> <li>• a person walking past persons dining and interfering with a person's food</li> <li>• seeking money from another in a manner that causes a person to be intimidated</li> <li>• behaving in a manner that might cause another person to leave a public place.</li> </ul>	<p>There is little practical difference resulting from the change in wording.</p> <p>It remains a matter for the court to determine what behaviour constitutes an offence by applying current community standards.</p>

	Old offence (s. 7 Vagrants Act)	New public nuisance offence (s. 7AA Vagrants Act, then s. 6 Summary Offences Act)	What is the difference?
<b>Where</b> can an offence occur?	<ul style="list-style-type: none"> <li>In a public place; or</li> <li>so near to any public place as to be within view or hearing of a person in a public place</li> </ul> <p>An offence could be committed whether any person is in the place or not (except in the case of using 'threatening, abusive or insulting words', which must be directed 'to any person' (see <i>Coleman v. Power</i> [2004] HCA 39 per Gleeson CJ at [4] and McHugh at [63])).</p> <p>A lengthy definition of a public place was developed over time which aims to broadly include places accessible to the public.</p>	<p>Anywhere, so long as:</p> <ul style="list-style-type: none"> <li>the behaviour (including language) <i>interferes with</i> the peaceful passage through or enjoyment of the public place; or</li> <li>the behaviour <i>is likely to interfere with</i> the peaceful passage through or enjoyment of the public place by a member of the public.</li> </ul> <p>A public place is broadly defined to mean a place that is open to or used by the public, whether or not on payment of a fee.</p>	<p>The emphasis of the new offence is not on the offender's presence in a public place or proximity to a public place, but it requires that the behaviour or language must interfere, or be likely to interfere, with another person's peaceful passage through a public place.</p>
Against <b>whom</b> can an offence be committed?	<p>Anyone.</p> <p>Although it is not specifically stated therein, the provision implies that no complaint is necessary for police to be able to take action, except in the case of s. 7(1)(d). Section 7(1)(d) requires the use of threatening, abusive or insulting words to <i>any person</i> (see, for example, McHugh J in <i>Coleman v. Power</i> [2004] HCA 39 at [63–8]).</p> <p>Offences could be committed for behaviour directed against police (<i>Del Vecchio v. Couchy</i> [2002] QCA 9).</p>	<p>Anyone.</p> <p>The new offence specifically states that it is not necessary for a complaint to be made to police before police may take action.</p> <p>Nor does the offending language or behaviour need to be directed at a person.</p> <p>The new public nuisance offence refers to 'a member of the public'. The Hon. T McGrady in his second reading speech introducing the changes stated this included police officers acting in the execution of their duties. This has been confirmed by the courts: <i>Green v. Ashton</i> [2006] QDC 008; <i>Kris v. Tramacchi</i> [2006] QDC 035; <i>Couchy v. Birchley</i> [2005] QDC 334 at [51]; cf. <i>Darney v. Fisher</i> [2005] QDC 206 at [30].</p>	<p>Little practical difference.</p> <p>There is no longer a specific requirement that threatening, abusive or insulting language be directed 'to any person'.</p>

	Old offence (s. 7 Vagrants Act)	New public nuisance offence (s. 7AA Vagrants Act, then s. 6 Summary Offences Act)	What is the difference?
Max. penalty	<p>Fine of \$100 and/or 12 months' good behaviour bond, or 6 months' imprisonment.</p> <p>(The maximum fine amount of \$100 had remained the same since 1971.)</p> <p>(The period of imprisonment had remained the same since 1955.)</p>	<p>Fine of 10 penalty units (\$750) or 6 months' imprisonment.</p>	<p>The fine penalty amount has been significantly increased under the new offence. The maximum period of imprisonment remains the same as it has been since 1955.</p> <p>(It should be noted that, with the introduction of the <i>Penalties and Sentences Act 1992</i> (Qld), the court gained discretionary sentencing powers, which include the ability to sentence a person to:</p> <ul style="list-style-type: none"> <li>• a recognisance (or good behaviour bond)</li> <li>• probation</li> <li>• a community service order</li> <li>• an intensive correction order.</li> </ul> <p>Therefore, despite no specific reference being made to a good behaviour bond being an available penalty in the new public nuisance offence, it remains available to the courts.)</p>
What details are required in the description of the charge provided by police to the defendant?	<p>The old offence required police to describe the charge specifying if offending behaviour was 'disorderly', 'violent', 'indecent' 'offensive' or 'threatening', for example (s. 47 <i>Justices Act 1886</i> (Qld)).</p>	<p>The drafting of the new public nuisance offence reduces the level of detail required in the wording of the charge given by police to the defendant. Under the new offence an offender may be provided with a charge of 'public nuisance' with no other particulars provided (see s. 6(1) Summary Offences Act; s. 47 <i>Justices Act 1886</i> (Qld); <i>Brooks v. Halfpenny</i> [2002] QDC 269).</p>	<p>The new offence requires no details be provided to the defendant at the time they are charged to assist them to assess the case being made against them.</p>



## APPENDIX 5:

### Alcohol and/or other drug involvement

**Table 1: Alcohol and/or drug involvement in public nuisance only incidents recorded in QPS data**

Alcohol and/or other drug involvement?	Number of public nuisance incidents		% of public nuisance incidents		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Alcohol and/or other drugs	8204	9599	78.2	80.1	1.1 ‡ <sup>92, 93</sup>
<i>alcohol</i>	7893	9195	75.3	76.7	1.1 ‡ <sup>94</sup>
<i>other drugs</i>	181	206	1.7	1.7	1.0 <sup>ns</sup> <sup>95</sup>
<i>both alcohol and other drugs</i>	130	198	1.2	1.7	1.3 ‡ <sup>96</sup>
Neither alcohol nor other drugs	2282	2388	21.8	19.9	0.9 ‡ <sup>97</sup>

**Table 2: Alcohol and/or other drug involvement of Indigenous offenders in public nuisance only incidents recorded in QPS data**

Alcohol and/or drug involvement?	Number of public nuisance offenders		% of public nuisance offenders		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous / Non-Indigenous
Alcohol and/or other drugs	5761	12995	80.6	77.6	1.2 ‡ <sup>98</sup>
<i>alcohol</i>	5543	12474	77.5	74.5	1.2 ‡ <sup>99</sup>
<i>drugs</i>	136	267	1.9	1.6	1.2 <sup>ns</sup>
<i>both alcohol and other drugs</i>	82	254	1.1	1.5	0.8 <sup>ns</sup>
Neither alcohol nor other drugs	1391	3758	19.4	22.4	0.8 ‡ <sup>100</sup>

92 OR = 1.120 (1.050, 1.194),  $\chi^2 = 11.678$ ,  $p = 0.001$ .

93 ‡ denotes that the result was statistically significant.

94 OR=1.083 (1.019, 1.152),  $\chi^2 = 6.443$ ,  $p = 0.011$ .

95 <sup>ns</sup> denotes that the result was not statistically significant.

96 OR=1.338 (1.071, 1.672),  $\chi^2 = 6.332$ ,  $p = 0.012$ .

97 OR = 0.895 (0.839, 0.954),  $\chi^2 = 11.326$ ,  $p = 0.001$ .

98 OR = 1.198 (1.118, 1.283),  $\chi^2 = 26.287$ ,  $p = 0.000$ .

99 OR=1.182 (1.107, 1.262),  $\chi^2 = 24.932$ ,  $p = 0.000$ .

100 OR = 0.835 (0.779, 0.895),  $\chi^2 = 26.186$ ,  $p = 0.000$ .

## APPENDIX 6:

### Number and rate of public nuisance incidents and matters across Queensland

**Table 1: Total and median monthly number of public nuisance incidents and matters across Queensland**

	Number of public nuisance			Median number of public nuisance per month			Statistical significance	
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	Z =	p =
QPS data <sup>101</sup>	13,916	15,225	9.4	1,166	1,221	4.7	-1.848	0.068 <sup>ns</sup> <sup>102</sup>
Courts data <sup>103</sup>	11,876	13,368	12.6	987	1,082	9.6	-2.136	0.033 <sup>‡</sup> <sup>104</sup>

**Table 2: Total and median monthly rate of public nuisance incidents and matters per 100,000 Queensland population**

	Rate of public nuisance per 100,000 population			Median rate per 100,000 population of public nuisance per month			Statistical significance	
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	Z =	p =
QPS data <sup>101</sup>	363.5	389.4	7.1	30.3	31.4	3.6	-1.270	0.219 <sup>ns</sup>
Courts data <sup>103</sup>	310.2	341.9	10.2	25.8	27.6	7	-2.021	0.043 <sup>‡</sup>

**Table 3: Monthly rate (per 100,000 population) of public nuisance incidents and matters across Queensland: trend analysis 1 April 2003 to 31 March 2005 (including comparison between monthly rates recorded in April 2003 and March 2005)**

	Rate of public nuisance per 100,000 population			Statistical significance	
	1 April 2003 to 30 April 2003	1 March 2005 to 31 March 2005	% change	Kendall's Tau b =	p =
QPS data <sup>101</sup>	26.6	35.7	34.2	0.377	0.010 <sup>‡</sup>
Courts data <sup>103</sup>	22	30.8	40	0.514	0.000 <sup>‡</sup>

<sup>101</sup> QPS data count incidents. See Appendix 1 for further details regarding the analysis of this dataset.

<sup>102</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>103</sup> Courts data count matters finalised for offences occurring between 1 April 2003 and 31 March 2005. See Appendix 1 for further details regarding the analysis of this dataset.

<sup>104</sup> <sup>‡</sup> denotes that the result was statistically significant.

**Table 4: Monthly rate (per 100,000 population) of public nuisance incidents and matters across Queensland: trend analysis 1 July 1997 to 30 June 2007 (including comparison between monthly rates recorded in July 1997 and June 2007)**

	Rate of public nuisance per 100,000 population			Statistical significance	
	1 July 1997 to 31 July 1997	1 June 2007 to 30 June 2007	% change	Kendall's Tau b =	p =
QPS data	18.0	40.7	126.1	0.644	0.000 ‡

**Table 5: Annual rate (per 100,000 population) of public nuisance incidents and matters across Queensland, 1997–98 to 2006–07 (including comparison between annual rates recorded each year)**

Year	Rate of incidents per 100,000 Queensland population	Change in the rate of incidents per 100,000 Queensland population	% change in the rate of incidents per 100,000 Queensland population
1997–98	272.7	NA	NA
1998–99	287.0	14.3	5.2
1999–2000	280.4	–6.6	–2.3
2000–01	306.5	26.1	9.3
2001–02	340.1	33.6	11.0
2002–03	360.5	20.3	6.0
2003–04	370.7	10.3	2.9
2004–05	394.3	23.6	6.4
2005–06	437.5	43.1	10.9
2006–07	513.1	75.6	17.3
<i>Median</i>	360.5	23.6	6.4
<i>Average</i>	365.6	26.7	7.4

## APPENDIX 7:

### Scene of public nuisance incidents

**Table 1: Most common scenes of public nuisance incidents in QPS data<sup>105</sup>**

Scene of incident	Number of incidents		% of incidents		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Street	9,586	10,485	68.9	68.9	1.0 <sup>ns 106</sup>
Licensed premises	646	820	4.6	5.4	1.2 ‡ <sup>107, 108</sup>
Private dwelling	653	596	4.7	3.9	0.8 ‡ <sup>109</sup>
Businesses	1,188	1,494	8.5	9.8	1.2 ‡ <sup>110</sup>
Recreational spaces	969	921	7.0	6.0	0.9 ‡ <sup>111</sup>

<sup>105</sup> In three incident records the location (scene) of the public nuisance offences was not specified. Further analysis of this variable excluded these records.

<sup>106</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>107</sup> OR = 1.169 (1.052, 1.300),  $X^2 = 8.238$ ,  $p = 0.004$ .

<sup>108</sup> ‡ denotes that the result was statistically significant.

<sup>109</sup> OR = 0.827 (0.739, 0.927),  $X^2 = 10.559$ ,  $p = 0.001$ .

<sup>110</sup> OR = 1.165 (1.076, 1.262),  $X^2 = 13.967$ ,  $p = 0.000$ .

<sup>111</sup> OR = 0.860 (0.783, 0.944),  $X^2 = 9.893$ ,  $p = 0.002$ .

# APPENDIX 8: Map of QPS regions



## APPENDIX 9:

### Number and rate of public nuisance incidents by QPS region

**Table 1: Number, rate and median monthly rate of public nuisance incidents in each QPS region**

QPS region	Number of public nuisance incidents			Rate of public nuisance incidents per 100,000 population			Median rate of public nuisance incidents per 100,000 population per month			Statistical significance	
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	% change	Z value	P value
Far Northern	2,114	2,386	12.9	899.2	1,000.0	11.2	75.7	84.0	11.0	-1.501	0.133 <sup>ns 112</sup>
Northern	1,743	1,527	-12.4	703.6	606.9	-13.7	58.9	47.5	-19.4	-2.628	0.009 <sup># 113</sup>
Central	1,920	1,835	-4.4	576.1	539.7	-6.3	48.4	45.6	-5.8	-1.155	0.248 <sup>ns</sup>
North Coast	2,024	2,298	13.5	288.3	316.9	9.9	24.1	26.1	8.3	-1.473	0.141 <sup>ns</sup>
Metropolitan North	1,877	2,387	27.2	324.3	405.5	25.0	28.7	33.7	17.4	-3.294	0.001 <sup>#</sup>
Metropolitan South	662	817	23.4	103.0	124.5	20.9	8.6	9.9	15.1	-2.658	0.008 <sup>#</sup>
Southern	1,425	1,748	22.7	323.5	388.8	20.2	27.3	29.9	9.5	-2.224	0.026 <sup>#</sup>
South Eastern	2,148	2,227	3.7	305.9	310.1	1.4	22.3	22.0	-1.3	-0.115	0.908 <sup>ns</sup>

<sup>112</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>113</sup> <sup>#</sup> denotes that the result was statistically significant.

## APPENDIX 10:

### Sex of public nuisance offenders

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**Table 1: Sex of public nuisance offenders in QPS data<sup>114</sup>**

Sex of offender	Number of offenders		% of offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Males	12,118	13,654	83	83.9	1.1 <sup>ns 115</sup>
Females	2,474	2,618	17	16.1	0.9 <sup>ns</sup>

**Table 2: Sex of defendants in public nuisance matters in Queensland Courts data<sup>116</sup>**

Sex of offender	Number of offenders		% of offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Males	9,789	11,208	82.6	84	1.1 <sup>ns</sup>
Females	2,064	2,140	17.4	16	0.9 <sup>ns</sup>

<sup>114</sup> In 62 incidents the sex of the offender was not recorded; these records were excluded from the analysis.

<sup>115</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>116</sup> In 43 matters the sex of the offender was not recorded; these matters were excluded from analysis.

## APPENDIX 11:

### Age of public nuisance offenders

**Table 1: Age of public nuisance offenders in QPS data**

Age of offenders	Number of offenders		% of offenders		Odds ratio	Queensland population <sup>117</sup>		Population odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004	Number in population	% of population	Public nuisance offenders / Queensland population
Less than 10 years old	9	13	0.06	0.08	1.3 <sup>ns</sup>	525,339	13.5 <sup>118</sup>	0.005 ‡ <sup>119</sup>
10 to 16 years old	991	1,204	6.8	7.4	1.1 <sup>ns</sup>	390,398	10.0 <sup>120</sup>	0.7 ‡
17 to 24 years old	7,050	7,782	48.2	47.8	1 <sup>ns</sup>	473,130	11.3 <sup>121</sup>	7.4 ‡
25 years and older	6,580	7,289	45.0	44.8	1 <sup>ns</sup>	2,744,878	65.6 <sup>122</sup>	0.4 ‡

**Table 2: Median age of public nuisance offenders in QPS regions**

QPS region	Median offender age <sup>123</sup>
Far Northern	27
Northern	27
Central	23
North Coast	22
Metropolitan North	23
Metropolitan South	24
South Eastern	21
Southern	21
Queensland (all)	23 ‡ <sup>124</sup>

<sup>117</sup> Australian Bureau of Statistics, 2007.

<sup>118</sup> Z (hypothesised value = 14%, actual value = 0.07%), p = 0.000.

<sup>119</sup> ‡ denotes that the result was statistically significant.

<sup>120</sup> Z (hypothesised value = 10%, actual value = 7%), p = 0.000.

<sup>121</sup> Z (hypothesised value = 11%, actual value = 48%), p = 0.000.

<sup>122</sup> Z (hypothesised value = 66%, actual value = 45%), p = 0.000.

<sup>123</sup> The ages of 8 public nuisance offenders were not recorded; these records were excluded from these analyses.

<sup>124</sup> Chi-squared Median Test:  $X^2 = 1007.730$ , p = 0.000.



**Table 3: Age of public nuisance defendants in courts data**

Age of defendants	Number of defendants		% of defendants		Odds ratio	Queensland population <sup>125</sup>		Population odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004	Number in population	% of population	Public nuisance offenders / Queensland population
10 to 16 years old	629	672	5.3	5.0	0.9 <sup>ns</sup>	390,398	10.0 <sup>126</sup>	0.4 ‡
17 to 24 years old	5,713	6,515	48.2	48.8	1 <sup>ns</sup>	473,130	11.3 <sup>127</sup>	6.4 ‡
25 years and older	5,511	6,160	46.5	46.2	1 <sup>ns</sup>	2,744,878	65.6 <sup>128</sup>	0.3 ‡

125 Australian Bureau of Statistics, 2007.

126 Z (hypothesised value = 10%, actual value = 5%), p = 0.000.

127 Z (hypothesised value = 11%, actual value = 49%), p = 0.000.

128 Z (hypothesised value = 66%, actual value = 46%), p = 0.000.

## APPENDIX 12:

### Indigenous status (including age comparisons) of public nuisance offenders

**Table 1: Indigenous status of public nuisance offenders in QPS data<sup>129</sup>**

Indigenous status of offender	Number of offenders		% of offenders		Odds ratio	Queensland population <sup>130</sup>		Population odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004	Number in population	% of population	Public nuisance offenders/ Queensland population (Indigenous/ Non-Indigenous)
Indigenous	4,529	4,536	31.4	28.1	0.9 ‡ <sup>131</sup>	125,910	3.5 <sup>132</sup>	12.6 ‡
Non-Indigenous	9,912	11,596	68.6	71.9	1.2 ‡	3,503,036	96.5	0.08 ‡

**Table 2: Indigenous public nuisance offenders by QPS region<sup>133</sup>**

QPS region	Number of Indigenous offenders		% of Indigenous offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Far Northern	1,441	1,496	63.8	58.3	0.8 ‡ <sup>134</sup>
Northern	1,110	1,028	61.6	63.7	1.1 <sup>ns</sup>
Central	634	595	31.4	30.5	1 <sup>ns</sup>
North Coast	308	316	14.8	12.9	0.9 <sup>ns</sup>
Metropolitan North	318	372	16.6	14.9	0.9 <sup>ns</sup>
Metropolitan South	184	149	27	18	0.6 ‡ <sup>135</sup>
South Eastern	115	104	5.3	4.4	0.8 <sup>ns</sup>
Southern	419	476	27.9	25.1	0.9 <sup>ns</sup>

<sup>129</sup> In 1% of cases (353), police did not record the Indigenous status of public nuisance offenders recorded as being involved in public nuisance incidents; these records were excluded from these analyses.

<sup>130</sup> Australian Bureau of Statistics, 2001.

<sup>131</sup> OR = 0.856 (0.815, 0.899),  $\chi^2 = 38.288$ ,  $p = 0.000$ .

<sup>132</sup> Z (hypothesised value = 4%, actual value = 30%),  $p = 0.000$ .

<sup>133</sup> In two records, the QPS region in which the offence was recorded was not specified; these records were excluded from the analysis.

<sup>134</sup> OR = 0.792 (0.705, 0.890),  $\chi^2 = 15.142$ ,  $p = 0.000$ .

<sup>135</sup> OR = 0.591 (0.463, 0.755),  $\chi^2 = 17.365$ ,  $p = 0.000$ .

**Table 3: Indigenous status of public nuisance defendants in Queensland courts data<sup>136</sup>**

Indigenous status of defendants	Number of defendants		% of defendants		Odds ratio	Queensland population <sup>137</sup>		Population odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004	Number in population	% of population	Public nuisance offenders / Queensland population (Indigenous / Non-Indigenous)
Indigenous	3,421	3,573	33.3	29	0.8 ‡ <sup>138</sup>	125,910	3.5 <sup>139</sup>	12.4 ‡
Non-Indigenous	6,842	8,746	66.7	71	1.2 ‡	3,503,036	96.5	0.08 ‡

<sup>136</sup> In 11% of matters ( $n = 2,662$ ) the courts dataset did not record the Indigenous or non-Indigenous status of public nuisance defendants. These matters were excluded from the analyses presented here.

<sup>137</sup> Australian Bureau of Statistics, 2001.

<sup>138</sup> OR = 0.817 (0.772, 0.865),  $X^2 = 48.880$ ,  $p = 0.000$ .

<sup>139</sup> Z (hypothesised value = 4%, actual value = 30%),  $p = 0.000$ .

## APPENDIX 13:

### Unique public nuisance offenders

**Table 1: Public nuisance incidents associated with each unique public nuisance offender in QPS data<sup>140</sup>**

Number of incidents	Number of unique offenders		% of unique offenders	
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005
1	11,296	12,710	89.2	89.7
2	1,016	1,097	8	7.7
3	230	220	1.8	1.6
4	72	83	0.6	0.6
5	22	22	0.2	0.2
6 to 10	29	32	0.2	0.2
More than 10 <sup>141</sup>	1	5	0.01	0.04

**Table 2: Unique Indigenous and non-Indigenous recidivist<sup>142</sup> public nuisance offenders in QPS data<sup>143</sup>**

Indigenous status of offenders	Number of unique offenders who were identified in relation to more than one incident		% of unique offenders who were identified in relation to more than one incident		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Indigenous	641	615	18.3	17.2	1.0 <sup>ns</sup>
Non-Indigenous	703	844	7.7	8.0	1.0 <sup>ns</sup>

<sup>140</sup> Because of possible inaccuracies in the recording of offender names and dates of birth in the police data, the number of offences attributed to some offenders may also be inaccurate, as may the number of offenders identified as being involved in multiple offences. In the case of unique offender counts, it is possible that some offenders were counted more than once under different names or different name spellings. It should also be noted that recidivism was only measured within each 12-month period. Offenders who offended more than once within a period were classified as recidivist. Offenders who offended once in each period were not.

<sup>141</sup> The maximum number of offences identified for a single (discrete) public nuisance offender in either time period was 14.

<sup>142</sup> Identified in relation to more than one incident during the time period specified.

<sup>143</sup> In 26 records (0.1%) the Indigenous status of the offender was not specified. These records were excluded from the analyses presented here.

**Table 3: Recidivism status of unique public nuisance offenders in QPS data — comparison between Indigenous and non-Indigenous offenders**

Recidivism status of offenders	Number of offenders		% of offenders		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous/Non-Indigenous
Recidivist (more than one incident)	1,256	1,547	17.8	7.8	2.5 ‡ <sup>144</sup>
Non-recidivist (one incident only)	5,808	18,198	82.2	92.2	0.4 ‡

**Table 4: Unique juvenile and adult recidivist public nuisance offenders in QPS data**

Age of offenders	Number of unique offenders who were identified in relation to more than one incident		% of unique offenders who were identified in relation to more than one incident		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Less than 17 years old	107	119	12.5	11.5	0.9 <sup>ns</sup>
17 years and older	1,262	1,340	10.7	10.2	1.0 <sup>ns</sup>

**Table 5: Recidivism status of unique public nuisance offenders in QPS data — comparison between juvenile and adult offenders**

Recidivism status of offenders	Number of offenders		% of offenders		Odds ratio
	Juvenile offenders	Adult offenders	Juvenile offenders	Adult offenders	Juvenile/adult
Recidivist (more than one incident)	226	2,602	12	10.5	1.2 <sup>ns</sup>
Non-recidivist (one incident only)	1,665	22,285	88	89.5	0.9 <sup>ns</sup>

**Table 6: Unique recidivist public nuisance offenders aged less than 25 years old and aged 25 years and older recorded by the QPS**

Age of offenders	Number of unique offenders who were identified in relation to more than one incident		% of unique offenders who were identified in relation to more than one incident		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Less than 25 years	719	776	10.2	9.8	1.0 <sup>ns</sup>
25 years and older	650	683	11.6	11	0.9 <sup>ns</sup>

<sup>144</sup> OR = 2.544 (2.348, 2.756),  $\chi^2 = 548.573$ ,  $p = 0.000$ .

**Table 7: Recidivism status of unique public nuisance offenders in QPS data — comparison between offenders who were aged less than 25 and offenders who were aged 25 and older**

Recidivism status of offenders	Number of offenders		% of offenders		Odds ratio
	Aged less than 25 years	Aged 25 years and older	Aged less than 25 years	Aged 25 years and older	Aged less than 25 years/ Aged 25 years and older
Recidivist (more than one incident)	1,495	1,333	10	11.3	0.9 ‡ <sup>145</sup>
Non-recidivist (one incident only)	13,491	10,459	90	88.7	1.2 ‡

**Table 8: Unique 17 to 24 year old and other aged recidivist public nuisance offenders recorded by the QPS**

Age of offenders	Number of unique offenders who were identified in relation to more than one incident		% of unique offenders who were identified in relation to more than one incident		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Between 17 years and 24 years	612	657	9.9	9.5	1.0 <sup>ns</sup>
Less than 17 years or older than 24 years	757	802	11.8	11.1	0.9 <sup>ns</sup>

**Table 9: Recidivism status of unique public nuisance offenders in QPS data — comparison between offenders who were aged 17 to 24 years and offenders who were aged less than 17 or older than 24 years**

Recidivism status of offenders	Number of offenders		% of offenders		Odds ratio
	Aged between 17 years and 24 years	Aged less than 17 years or older than 24 years	Aged between 17 years and 24 years	Aged less than 17 years or older than 24 years	Aged less than 17 years or older than 24 years/ Aged between 17 years and 24 years
Recidivist (more than one incident)	1,269	1,559	9.7	11.4	1.2 ‡ <sup>146</sup>
Non-recidivist (one incident only)	11,826	12,124	90.3	88.6	0.8 ‡

<sup>145</sup> OR = 0.869 (0.804, 0.940),  $\chi^2 = 12.186$ ,  $p = 0.000$ .

<sup>146</sup> OR = 1.198 (1.108, 1.296),  $\chi^2 = 20.364$ ,  $p = 0.000$ .

## APPENDIX 14:

### Actions taken by police against public nuisance only offenders

**Table 1: Actions taken by police against adult<sup>147</sup> public nuisance only offenders**

Action taken by police	Number of adult public nuisance only offenders		% of adult public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Arrest	6,366	7,212	60.9	59.8	1 <sup>ns 148</sup>
Notice to appear	3,995	4,758	38.2	39.5	1.1 <sup>ns</sup>
Caution	6	6	0.1	0.05	0.9 <sup>ns</sup>
Community conference	3	0	0.03	0	† <sup>149</sup>
Behavioural counselling	0	0	0	0	†
Charged by complaint and summons	43	42	0.4	0.3	0.8 <sup>ns</sup>
Charged by arrest warrant	0	1	0	0.01	†
Other	32	37	0.3	0.3	1 <sup>ns</sup>

<sup>147</sup> Data for offenders whose ages were not recorded in the CRISP dataset were excluded from these analyses ( $n = 8$ ).

<sup>148</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>149</sup> Where one period recorded no police actions (of the nature specified), odds ratios were not calculated: † denotes that odds ratio were not calculated.

**Table 2: Actions taken by police against Indigenous<sup>150</sup> adult public nuisance only offenders**

Action taken by police	Number of Indigenous adult public nuisance only offenders		% of Indigenous adult public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Arrest	2,128	2,287	67	68.1	1.1 <sup>ns</sup>
Notice to appear	1,026	1,052	32.3	31.3	1 <sup>ns</sup>
Caution	3	0	0.1	0	†
Community conference	0	0	0	0	†
Behavioural counselling	0	0	0	0	†
Charged by complaint and summons	17	9	0.5	0.3	0.5 <sup>ns</sup>
Charged by arrest warrant	0	1	0	0.03	†
Other	3	7	0.1	0.2	2.2 <sup>ns</sup>

**Table 3: Actions taken by police against non-Indigenous adult public nuisance only offenders**

Action taken by police	Number of non-Indigenous adult public nuisance only offenders		% of non-Indigenous adult public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Arrest	4,164	4,873	58.1	56.5	0.9 <sup>ns</sup>
Notice to appear	2,954	3,693	41.2	42.8	1.1 <sup>ns</sup>
Caution	3	6	0.04	0.1	1.7 <sup>ns</sup>
Community conference	3	0	0.04	0	†
Behavioural counselling	0	0	0	0	†
Charged by complaint and summons	26	31	0.4	0.4	1 <sup>ns</sup>
Charged by arrest warrant	0	0	0	0	†
Other	21	17	0.3	0.2	0.7 <sup>ns</sup>

150 Data for offenders whose Indigenous status was not recorded in the CRISP dataset were excluded from these analyses ( $n = 353$ ).



**Table 4: Actions taken by police against juvenile public nuisance only offenders**

Action taken by police	Number of juvenile public nuisance only offenders		% of juvenile public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Arrest	274	325	39.3	35.3	0.8 <sup>ns</sup>
Notice to appear	239	308	34.2	33.5	1 <sup>ns</sup>
Caution	115	217	16.5	23.6	1.6 ‡ <sup>151, 152</sup>
Community conference	8	25	1.1	2.7	2.4
Behavioural counselling	8	13	1.1	1.4	1.2
Charged by complaint and summons	3	0	0.4	0	†
Charged by arrest warrant	0	1	0	0.1	†
Other	51	31	7.3	3.4	0.4 <sup>ns</sup>

**Table 5: Actions taken by police against Indigenous juvenile public nuisance only offenders**

Action taken by police	Number of Indigenous juvenile public nuisance only offenders		% of Indigenous juvenile public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Arrest	144	144	49.7	43.8	0.8 <sup>ns</sup>
Notice to appear	102	121	35.2	36.8	1.1 <sup>ns</sup>
Caution	26	44	9	13.4	1.6 <sup>ns</sup>
Community conference	2	8	0.7	2.4	3.6 <sup>ns</sup>
Behavioural counselling	5	7	1.7	2.1	1.2 <sup>ns</sup>
Charged by complaint and summons	1	0	0.3	0.6	†
Charged by arrest warrant	0	1	0	0.3	†
Other	10	4	3.4	1.2	0.3 <sup>ns</sup>

151 OR = 1.565 (1.217, 2.012),  $X^2 = 11.867$ ,  $p = 0.001$ .

152 ‡ denotes that the result was statistically significant.

**Table 6: Actions taken by police against non-Indigenous juvenile public nuisance only offenders**

Action taken by police	Number of non-Indigenous juvenile public nuisance only offenders		% of non-Indigenous juvenile public nuisance only offenders		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Arrest	128	178	32.7	31.2	0.9 <sup>ns</sup>
Notice to appear	136	186	34.7	32.6	0.9 <sup>ns</sup>
Caution	89	173	22.7	30.3	1.5 ‡ <sup>153</sup>
Community conference	6	17	1.5	3	2 <sup>ns</sup>
Behavioural counselling	3	6	0.8	1.1	1.4 <sup>ns</sup>
Charged by complaint and summons	2	0	0.5	0	†
Charged by arrest warrant	0	0	0	0	†
Other	28	11	7.1	1.9	0.3 <sup>ns</sup>

**Table 7: Actions taken by police — comparison between juvenile and adult public nuisance only offenders**

Action taken by police	Number of public nuisance only offenders		% of public nuisance only offenders		Odds ratio
	Juvenile	Adult	Juvenile	Adult	Adult/Juvenile
Arrest	599	13,578	37.0	60.3	2.6 ‡ <sup>154</sup>
Notice to appear	547	8,753	33.8	38.9	1.2 ‡ <sup>155</sup>
Caution	332	12	20.5	0.1	0.002 ‡ <sup>156</sup>
Community conference	33	3	2.0	0.0	0.006 <sup>157</sup>
Behavioural counselling	21	0	1.3	0.0	†
Charged by complaint and summons	3	85	0.2	0.4	2 <sup>ns</sup>
Charged by arrest warrant	1	1	0.1	0.0	0.07 <sup>ns</sup>
Other	82	69	5.1	0.3	0.06 <sup>ns</sup>

153 OR = 1.480 (1.101, 1.990),  $X^2 = 6.383$ ,  $p = 0.012$ .

154 OR = 2.589 (2.332, 2.873),  $X^2 = 333.907$ ,  $p = 0.000$ .

155 OR = 1.247 (1.121, 1.387),  $X^2 = 16.314$ ,  $p = 0.000$ .

156 OR = 0.002 (0.001, 0.004),  $X^2 = 4482.232$ ,  $p = 0.000$ .

157 OR = 0.006 (0.002, 0.021),  $X^2 = 402.315$ ,  $p = 0.000$ .

**Table 8: Actions taken by police — comparison between Indigenous and non-Indigenous adult public nuisance only offenders**

Action taken by police	Number of adult public nuisance only offenders		% of adult public nuisance only offenders		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous/Non-Indigenous
Arrested	4,415	9,037	67.6	57.2	1.6 ‡ <sup>158</sup>
Notice to appear	2,078	6,647	31.8	42.1	0.6 ‡ <sup>159</sup>
Cautioned	3	9	0.05	0.1	0.8 <sup>ns</sup>
Community conference	0	3	0	0.02	†
Behavioural counselling	0	0	0	0	†
Charged by complaint and summons	26	57	0.4	0.4	1.1 <sup>ns</sup>
Charged by arrest warrant	1	0	0.02	0	†
Other	10	38	0.2	0.2	0.6 <sup>ns</sup>

**Table 9: Actions taken by police — comparison between Indigenous and non-Indigenous juvenile public nuisance only offenders**

Action taken by police	Number of juvenile public nuisance only offenders		% of juvenile public nuisance only offenders		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous/Non-Indigenous
Arrested	288	306	46.5	31.8	1.9 ‡ <sup>160</sup>
Notice to appear	223	322	36.0	33.4	1.1 <sup>ns</sup>
Cautioned	70	262	11.3	27.2	0.3 ‡ <sup>161</sup>
Community conference	10	23	1.6	2.4	0.7 <sup>ns</sup>
Behavioural counselling	12	9	1.9	0.9	2.1 <sup>ns</sup>
Charged by complaint and summons	1	2	0.2	0.2	0.8 <sup>ns</sup>
Charged by arrest warrant	1	0	0.2	0	†
Other	14	39	2.3	4	

158 OR = 1.558 (1.466, 1.655),  $\chi^2 = 206.318$ ,  $p = 0.000$ .

159 OR = 0.642 (0.604, 0.682),  $\chi^2 = 204.913$ ,  $p = 0.000$ .

160 OR = 1.868 (1.517, 1.2.301),  $\chi^2 = 34.316$ ,  $p = 0.000$ .

161 OR = 0.341 (0.256, 0.454),  $\chi^2 = 56.443$ ,  $p = 0.000$ .

## APPENDIX 15:

### Public nuisance offences and other offences

**Table 1: Public nuisance and other offences recorded in QPS data**

Types of offence recorded per incident	Number of incidents		% of incidents		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Public nuisance and other offences	3,427	3,238	24.6	21.3	0.8 ‡ <sup>162, 163</sup>
<i>public nuisance and offences against police</i>	3,051	2,870	21.9	18.9	0.8 ‡ <sup>164</sup>
<i>public nuisance and other offences (not including offences against police)</i>	376	368	2.7	2.4	0.9 <sup>ns 165</sup>
Public nuisance only	10,489	11,987	75.4	78.7	1.2 ‡

**Table 2: Public nuisance and other offences in Magistrates Courts data**

Types of offences per matter	Number of matters		% of matters		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Public nuisance and other offences	3,848	3,822	34.2	30.1	0.8 ‡ <sup>166</sup>
Public nuisance only	7,395	8,866	65.8	69.9	1.2 ‡

**Table 3: Public nuisance and other offences in Childrens Courts data**

Types of offences per matter	Number of matters		% of matters		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Public nuisance and other offences	348	346	55	50.9	0.8 <sup>ns</sup>
Public nuisance only	285	334	45	49.1	1.2 <sup>ns</sup>

<sup>162</sup> OR = 0.827 (0.783, 0.873),  $X^2 = 46.302$ ,  $p = 0.000$ .

<sup>163</sup> ‡ denotes that the result was statistically significant.

<sup>164</sup> OR = 0.827 (0.781, 0.876),  $X^2 = 42.239$ ,  $p = 0.000$ .

<sup>165</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>166</sup> OR = 0.828 (0.785, 0.875),  $X^2 = 45.883$ ,  $p = 0.000$ .

**Table 4: Public nuisance and other offences: comparison between Childrens Courts and Magistrates Courts data**

Types of offences per matter	Number of matters		% of matters		Odds ratio
	Childrens Courts	Magistrates Courts	Childrens Courts	Magistrates Courts	Magistrates Courts/ Childrens Courts
Public nuisance and other offences	694	7,670	52.9	32.1	0.4 <sup>167</sup>
Public nuisance only	619	16,261	47.1	67.9	2.4 ‡

<sup>167</sup> OR = 0.421 (0.376, 0.470),  $X^2 = 242.248$ ,  $p = 0.000$ .

## APPENDIX 16:

### Magistrates and Childrens Courts results for public nuisance only offenders

**Table 1: Results<sup>168</sup> of public nuisance only matters involving all adult defendants (Magistrates Court data)**

Magistrates Court results	Number of public nuisance only matters involving adult defendants		% of public nuisance only matters involving adult defendants		Odds ratio
	1 April 2003 to 31 March 2004 <sup>169</sup>	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Found guilty (in person)	95	70	1.4	0.9	0.6 ‡ <sup>170, 171</sup>
Pleaded guilty	4,229	5,171	61.6	63.2	1.1 <sup>ns</sup> <sup>172</sup>
Found guilty ex parte	2,449	2,752	35.7	33.6	0.9 ‡ <sup>173</sup>
Found not guilty	7	8	0.1	0.1	1 <sup>ns</sup>
Dismissed/struck out	37	65	0.5	0.8	1.5 <sup>ns</sup>
No evidence to offer/withdrawn	43	117	0.6	1.4	2.3 ‡ <sup>174</sup>

<sup>168</sup> In 7 per cent (1,170) of the public nuisance only matters heard in the Magistrates Court between 1 April 2003 and 31 March 2005, court officials failed to specify a 'result' in the relevant court's database. The data from these matters were excluded from these analyses. In a further 6 cases (0.04%) the matter was recorded as 'abandoned', while in 42 cases (0.26%) the matters were recorded as having being transferred or transmitted to another court or jurisdiction. The data from these matters were also excluded from these analyses.

<sup>169</sup> Offences occurred between the dates specified.

<sup>170</sup> OR = 0.614 (0.450, 0.838),  $X^2 = 9.159$ ,  $p = 0.002$ .

<sup>171</sup> ‡ denotes that the result was statistically significant.

<sup>172</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>173</sup> OR = 0.913 (0.853, 0.976),  $X^2 = 6.970$ ,  $p = 0.008$ .

<sup>174</sup> OR = 2.300 (1.619, 3.267),  $X^2 = 22.106$ ,  $p = 0.000$ .

**Table 2: Results of public nuisance only matters involving Indigenous<sup>175</sup> adult defendants (Magistrates Court data)**

Magistrates Court results	Number of public nuisance only matters involving Indigenous adult defendants		% of public nuisance only matters involving Indigenous adult defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Found guilty (in person)	13	13	0.7	0.6	0.9 <sup>ns</sup>
Pleaded guilty	1,047	1,299	52.7	56.9	1.2 ‡ <sup>176</sup>
Found guilty ex parte	899	915	45.3	40.1	0.8 ‡ <sup>177</sup>
Found not guilty	2	1	0.1	0.04	0.4 <sup>ns</sup>
Dismissed/struck out	11	25	0.6	1.1	2 <sup>ns</sup>
No evidence to offer/withdrawn	14	31	0.7	1.4	1.9 <sup>ns</sup>

**Table 3: Results of public nuisance only matters involving non-Indigenous adult defendants (Magistrates Court data)**

Magistrates Court results	Number of public nuisance only matters involving non-Indigenous adult defendants		% of public nuisance only matters involving non-Indigenous adult defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	
Found guilty (in person)	69	52	1.7	1	0.6 ‡ <sup>178</sup>
Pleaded guilty	2,631	3,532	65.3	66	1 <sup>ns</sup>
Found guilty ex parte	1,281	1,650	31.8	30.8	1 <sup>ns</sup>
Found not guilty	4	7	0.1	0.1	1.3 <sup>ns</sup>
Dismissed/struck out	20	34	0.5	0.6	1.3 <sup>ns</sup>
No evidence to offer/withdrawn	26	77	0.6	1.4	2.2 ‡ <sup>179</sup>

<sup>175</sup> In 51 (8.2%) Childrens Court matters and 1,469 (9%) Magistrates Court matters the Indigenous status of the defendant was not specified. The data from these matters were excluded from the analyses presented here.

<sup>176</sup> OR = 1.183 (1.048, 1.335),  $X^2 = 7.239$ ,  $p = 0.007$ .

<sup>177</sup> OR = 0.808 (0.716, 0.913),  $X^2 = 11.566$ ,  $p = 0.001$ .

<sup>178</sup> OR = 0.563 (0.392, 0.809),  $X^2 = 9.321$ ,  $p = 0.002$ .

<sup>179</sup> OR = 2.249 (1.439, 3.514),  $X^2 = 12.619$ ,  $p = 0.000$ .

**Table 4: Results<sup>180</sup> of public nuisance only matters involving juvenile defendants  
(Childrens Court data)**

Childrens Court results	Number of public nuisance only matters involving juvenile defendants		% of public nuisance only matters involving juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Found guilty (in person)	5	0	2	0	† <sup>181</sup>
Pleaded guilty	216	250	84.7	83.9	0.9 <sup>ns</sup>
Found guilty ex parte	4	3	1.6	1	0.6 <sup>ns</sup>
Found not guilty	0	2	0	0.7	†
Dismissed/ struck out	27	28	10.6	9.4	0.9 <sup>ns</sup>
No evidence to offer/withdrawn	3	15	1.2	5	4.5 <sup>ns</sup>

**Table 5: Results of public nuisance only matters involving Indigenous juvenile defendants  
(Childrens Court data)**

Childrens Court results	Number of public nuisance only matters involving Indigenous juvenile defendants		% of public nuisance only matters involving Indigenous juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Found guilty (in person)	0	0	0	0	†
Pleaded guilty	103	96	86.6	85.7	0.9 <sup>ns</sup>
Found guilty ex parte	3	2	2.5	1.8	0.7 <sup>ns</sup>
Found not guilty	0	1	0	0.9	†
Dismissed/ struck out	11	5	9.2	4.5	0.5 <sup>ns</sup>
No evidence to offer/withdrawn	2	8	1.7	7.1	4.5 <sup>ns</sup>

180 In 10 per cent (64) of the public nuisance only matters heard in the Childrens Court between 1 April 2003 and 31 March 2005, court officials failed to specify a 'result' in the relevant courts' database. The data from these matters were excluded from these analyses. In a further 2 cases (0.32%) the matters were recorded as having been transferred or transmitted to another court or jurisdiction. The data from these matters were also excluded from these analyses.

181 Where one period recorded no results (of the nature specified), odds ratios were not calculated:  
† denotes that odds ratio were not calculated.



**Table 6: Results of public nuisance only matters involving non-Indigenous juvenile defendants (Childrens Court data)**

Childrens Court results	Number of public nuisance only matters involving non-Indigenous juvenile defendants		% of public nuisance only matters involving non-Indigenous juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Found guilty (in person)	2	0	1.8	0	†
Pleaded guilty	91	136	83.5	82.9	1 <sup>ns</sup>
Found guilty ex parte	1	1	0.9	0.6	0.7 <sup>ns</sup>
Found not guilty	0	1	0	0.6	†
Dismissed/struck out	14	19	12.8	11.6	0.9 <sup>ns</sup>
No evidence to offer/withdrawn	1	7	0.9	4.3	4.8 <sup>ns</sup>

**Table 7: Results of public nuisance only matters heard in the Magistrates Court — comparison between Indigenous and non-Indigenous adult defendants**

Magistrates Court results	Number of adult public nuisance only defendants		% of adult public nuisance only defendants		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous / Non-Indigenous
Found guilty (in person)	26	121	0.6	1.3	0.5 † <sup>182</sup>
Pleaded guilty	2,346	6,163	54.9	65.7	0.6 † <sup>183</sup>
Found guilty ex parte	1,814	2,931	42.5	31.2	1.6 † <sup>184</sup>
Found not guilty	3	11	0.1	0.1	0.1 <sup>ns</sup>
Dismissed/struck out	36	54	0.8	0.6	1.5 <sup>ns</sup>
No evidence to offer/withdrawn	45	103	1.1	1.1	1 <sup>ns</sup>

**Table 8: Results of public nuisance only matters heard in the Childrens Court — comparison between Indigenous and non-Indigenous juvenile defendants**

Childrens Court results	Number of juvenile public nuisance only defendants		% of juvenile public nuisance only defendants		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous / Non-Indigenous
Found guilty (in person)	0	2	0	0.7	†
Pleaded guilty	199	227	86.1	83.2	1.3 <sup>ns</sup>
Found guilty ex parte	5	2	2.2	0.7	3 <sup>ns</sup>
Found not guilty	1	1	0.4	0.4	1.2 <sup>ns</sup>
Dismissed/struck out	16	33	6.9	12.1	0.5 <sup>ns</sup>
No evidence to offer/withdrawn	10	8	4.3	2.9	1.5 <sup>ns</sup>

182 OR = 0.469 (0.307, 0.717),  $X^2 = 12.133$ ,  $p = 0.000$ .

183 OR = 0.637 (0.592, 0.686),  $X^2 = 143.718$ ,  $p = 0.000$ .

184 OR = 1.626 (1.509, 1.752),  $X^2 = 163.139$ ,  $p = 0.000$ .

## APPENDIX 17:

### Orders made in the Magistrates and Childrens Courts for public nuisance only offences

**Table 1: Orders for public nuisance only matters involving adult defendants (Magistrates Court data)<sup>185</sup>**

Magistrates Court orders	Number of public nuisance only matters involving adult defendants		% of public nuisance only matters involving adult defendants		Odds ratio
	1 April 2003 to 31 March 2004 <sup>186</sup>	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	41	59	0.6	0.7	1.2 <sup>ns 187</sup>
Fully suspended sentences	53	56	0.8	0.7	0.9 <sup>ns</sup>
Intensive correction orders	2	1	0.03	0.01	0.4 <sup>ns</sup>
Probation orders	22	37	0.3	0.5	1.4 <sup>ns</sup>
Community service orders	16	14	0.2	0.2	0.7 <sup>ns</sup>
Community conference orders	0	0	0	0	† <sup>188</sup>
Fine orders	6,197	7,305	91.8	91.7	1 <sup>ns</sup>
Other monetary orders	111	84	1.6	1.1	0.6 ‡ <sup>189, 190</sup>
Recognisance/good behaviour bonds	164	250	2.4	3.1	1.3 ‡ <sup>191</sup>
Other orders	14	14	0.21	0.18	0.8 <sup>ns</sup>
No further punishment imposed	128	147	1.9	1.8	1 <sup>ns</sup>
Conviction recorded <sup>192</sup>	3,739	4,298	55.6	54.2	0.9 <sup>ns</sup>

<sup>185</sup> Only data from matters that resulted in a guilty plea or finding (in person or ex parte) were included in these analyses (Childrens Court = 478 matters, Magistrates Court = 14,766 matters). Where the result of a matter was not recorded in the Childrens or Magistrates Courts dataset, the data were excluded from these analyses. In 51 matters (0.35%) the order was not specified in the Magistrates Court dataset. The data from these matters were excluded from the analyses presented here.

<sup>186</sup> Offences occurred between the dates specified.

<sup>187</sup> <sup>ns</sup> denotes that the result was not statistically significant.

<sup>188</sup> Where one period recorded no orders (of the nature specified), odds ratios were not calculated: † denotes that odds ratio were not calculated.

<sup>189</sup> OR = 0.637 (0.479, 0.848),  $\chi^2 = 9.298$ ,  $p = 0.002$ .

<sup>190</sup> ‡ denotes that the result was statistically significant.

<sup>191</sup> OR = 1.301 (1.065, 1.588),  $\chi^2 = 6.433$ ,  $p = 0.011$ .

<sup>192</sup> In 107 matters (0.7%) the Magistrates Court dataset did not specify whether or not a conviction had been recorded. The data from these matters were excluded from the analyses presented here.

**Table 2: Orders for public nuisance only matters involving Indigenous<sup>193</sup> adult defendants (Magistrates Court data)**

Magistrates Court orders	Number of public nuisance only matters involving Indigenous adult defendants		% of public nuisance only matters involving Indigenous adult defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	22	44	1.1	2	1.8 <sup>ns</sup>
Fully suspended sentences	31	32	1.6	1.4	0.4 <sup>ns</sup>
Intensive correction orders	0	0	0	0	†
Probation orders	10	16	0.5	0.7	1.4 <sup>ns</sup>
Community service orders	4	5	0.2	0.2	1.1 <sup>ns</sup>
Community conference orders	0	0	0	0	†
Fine orders	1,783	2,018	91.4	90.9	0.9 <sup>ns</sup>
Other monetary orders	23	11	1.2	0.5	0.4 <sup>ns</sup>
Recognisance/ good behaviour bonds	44	51	2.3	2.3	1 <sup>ns</sup>
Other orders	4	2	0.2	0.1	0.4 <sup>ns</sup>
No further punishment imposed	29	40	1.5	1.8	1.2 <sup>ns</sup>
Conviction recorded	1,415	1,674	72.6	75.5	1.2 <sup>ns</sup>

<sup>193</sup> In 43 (9%) Childrens Court matters and 1365 (9.2%) Magistrates Court matters the Indigenous status of the defendant was not specified. The data from these matters were excluded from the analyses presented here.

**Table 3: Orders for public nuisance only matters involving non-Indigenous adult defendants (Magistrates Court data)**

Magistrates Court orders	Number of public nuisance only matters involving non-Indigenous adult defendants		% of public nuisance only matters involving non-Indigenous adult defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	15	14	0.4	0.3	0.7 <sup>ns</sup>
Fully suspended sentences	14	20	0.4	0.4	1.1 <sup>ns</sup>
Intensive correction orders	2	1	0.1	0.02	0.4 <sup>ns</sup>
Probation orders	11	19	0.3	0.4	1.3 <sup>ns</sup>
Community service orders	8	9	0.2	0.2	0.9 <sup>ns</sup>
Community conference orders	0	0	0	0	†
Fine orders	3,671	4,804	92.5	92.1	0.9 <sup>ns</sup>
Other monetary orders	67	60	1.7	1.1	0.7 <sup>ns</sup>
Recognisance/ good behaviour bonds	99	185	2.5	3.5	1.4 ‡ <sup>194</sup>
Other orders	10	10	0.3	0.2	0.8 <sup>ns</sup>
No further punishment imposed	71	96	1.8	1.8	1 <sup>ns</sup>
Conviction recorded	1,832	2,335	46.4	45	0.9 <sup>ns</sup>

194 OR = 1.437 (1.121, 1.840),  $X^2 = 7.954$ ,  $p = 0.005$ .

**Table 4: Orders for public nuisance only matters involving juvenile defendants  
(Childrens Court data)**

Childrens Court orders	Number of public nuisance only matters involving juvenile defendants		% of public nuisance only matters involving juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	1	0	0.4	0	†
Fully suspended sentences	0	0	0	0	†
Intensive correction orders	0	0	0	0	†
Probation orders	6	6	2.7	2.4	0.9 <sup>ns</sup>
Community service orders	5	8	2.2	3.2	1.4 <sup>ns</sup>
Community/youth justice conferences	12	11	5.3	4.4	0.8 <sup>ns</sup>
Fine orders	16	23	7.1	9.2	1.3 <sup>ns</sup>
Recognisance/ good behaviour bonds	55	63	24.4	25.1	1.0 <sup>ns</sup>
Other orders	0	0	0	0	†
No further punishment imposed	130	140	57.8	55.8	0.9 <sup>ns</sup>
Conviction recorded <sup>195</sup>	7	6	3.3	2.6	0.8 <sup>ns</sup>

<sup>195</sup> In 30 matters (6.3%) the Childrens Courts dataset did not specify whether or not a conviction had been recorded. The data from these matters were excluded from the analyses presented here.

**Table 5: Orders for public nuisance only matters involving Indigenous juvenile defendants  
(Childrens Court data)**

Childrens Court orders	Number of public nuisance only matters involving Indigenous juvenile defendants		% of public nuisance only matters involving Indigenous juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/ 1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	0	0	0	0	†
Fully suspended sentences	0	0	0	0	†
Intensive correction orders	0	0	0	0	†
Probation orders	5	3	4.7	3.1	0.6 <sup>ns</sup>
Community service orders	2	5	1.9	5.2	2.8 <sup>ns</sup>
Community/youth justice conferences	5	4	4.7	4.1	0.9 <sup>ns</sup>
Fine orders	7	13	6.6	13.4	2.2 <sup>ns</sup>
Recognisance/ good behaviour bonds	25	23	23.6	23.7	1 <sup>ns</sup>
Other orders	0	0	0	0	†
No further punishment imposed	62	49	58.5	50.5	0.7 <sup>ns</sup>
Conviction recorded	4	5	4	5.3	1.4 <sup>ns</sup>

**Table 6: Orders for public nuisance only matters involving non-Indigenous juvenile defendants (Childrens Court data)**

Children's Court orders	Number of public nuisance only matters involving non-Indigenous juvenile defendants		% of public nuisance only matters involving non-Indigenous juvenile defendants		Odds ratio
	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005/1 April 2003 to 31 March 2004
Custodial (not including fully suspended sentence)	0	0	0	0	†
Fully suspended sentences	0	0	0	0	†
Intensive correction orders	0	0	0	0	†
Probation orders	1	3	1.1	2.2	2.1 <sup>ns</sup>
Community service orders	1	3	1.1	2.2	2.1 <sup>ns</sup>
Community/youth justice conferences	7	7	7.4	5.1	0.7 <sup>ns</sup>
Fine orders	7	10	7.4	7.4	1 <sup>ns</sup>
Recognisance/ good behaviour bonds	24	30	25.5	22.1	0.8 <sup>ns</sup>
Other orders	0	0	0	0	†
No further punishment imposed	54	83	57.4	61	1.2 <sup>ns</sup>
Conviction recorded	1	2	0.8	2.3	1.4 <sup>ns</sup>

**Table 7: Orders for public nuisance only matters heard in the Childrens and Magistrates Courts — comparison between Indigenous and non-Indigenous adults**

Magistrates Court orders	Number of public nuisance only defendants		% of public nuisance only defendants		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous/Non-Indigenous
Custodial (including fully suspended sentence)	129	63	3	0.7	4.5 ‡ <sup>196</sup>
Custodial (not including fully suspended sentence)	66	29	1.5	0.3	5 ‡ <sup>197</sup>
Fully suspended sentences	63	34	1.4	0.4	4 ‡ <sup>198</sup>
Intensive correction orders	0	3	0	0.03	†
Probation orders	34	34	0.8	0.4	2.2 ‡ <sup>199</sup>
Community service orders	16	21	0.4	0.2	1.6 <sup>ns</sup>
Community/youth justice conferences	9	14	0.1	0.2	1.4 <sup>ns</sup>
Fine orders	3,821	8,492	87.4	90.2	0.8 ‡ <sup>200</sup>
Other monetary orders	34	127	0.8	1.3	0.6 ‡ <sup>201</sup>
Recognisance/good behaviour bonds	143	338	3.3	3.6	0.9 <sup>ns</sup>
Other orders	6	20	0.1	0.2	0.6 <sup>ns</sup>
No further punishment imposed	180	304	4.1	3.2	1.3 ‡ <sup>202</sup>

<sup>196</sup> OR = 4.514 (3.332, 6.114),  $X^2 = 111.520$ ,  $p = 0.000$ .

<sup>197</sup> OR = 4.961 (3.201, 7.689),  $X^2 = 61.255$ ,  $p = 0.000$ .

<sup>198</sup> OR = 4.034 (2.654, 6.123),  $X^2 = 48.306$ ,  $p = 0.000$ .

<sup>199</sup> OR = 2.163 (1.343, 3.484),  $X^2 = 9.726$ ,  $p = 0.002$ .

<sup>200</sup> OR = 0.755 (0.674, 0.844),  $X^2 = 24.032$ ,  $p = 0.000$ .

<sup>201</sup> OR = 0.573 (0.392, 0.838),  $X^2 = 7.950$ ,  $p = 0.005$ .

<sup>202</sup> OR = 1.287 (1.067, 1.553),  $X^2 = 6.699$ ,  $p = 0.010$ .



**Table 8: Adult public nuisance only defendants whose monetary orders were transferred to SPER**

Magistrates Court monetary order	Number of public nuisance only matters involving adult defendants		% of public nuisance only matters involving adult defendants		Odds ratio
	1 April 2003 to 31 March 2004 <sup>203</sup>	1 April 2004 to 31 March 2005	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	1 April 2004 to 31 March 2005 / 1 April 2003 to 31 March 2004
Transferred to SPER	3,836	4,741	60.8	64.2	1.2 ‡ <sup>204</sup>

**Table 9: Median monetary order amounts for adult defendants, Indigenous adult defendants, and non-Indigenous adult defendants**

Magistrates Court monetary order	1 April 2003 to 31 March 2004 (median fine amount)	1 April 2004 to 31 March 2005 (median fine amount)
Median order amount — all adult defendants	\$100.00	\$150.00 ‡ <sup>205</sup>
Indigenous adult defendants	\$100.00	\$150.00 <sup>ns</sup>
Non-Indigenous adult defendants	\$100.00	\$180.00 ‡ <sup>206</sup>

**Table 10: Convictions recorded in the Magistrates Court — comparison between Indigenous and non-Indigenous adult public nuisance only defendants**

Conviction recorded?	Number of adult public nuisance only defendants		% of adult public nuisance only defendants		Odds ratio
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous / Non-Indigenous
Conviction recorded	3,089	4,167	74.1	45.6	3.4 ‡ <sup>207</sup>
No conviction recorded	1,079	4,974	25.9	54.4	0.3 <sup>ns</sup>

**Table 11: Convictions recorded in the Magistrates Court — comparison between juvenile and adult public nuisance only defendants**

Conviction recorded?	Number of public nuisance only defendants		% of public nuisance only defendants		Odds ratio
	Juveniles	Adults	Juveniles	Adults	Adults/Juveniles
Conviction recorded	13	435	2.9	54.8	40.6 ‡ <sup>208</sup>
No conviction recorded	8,037	6,622	97.1	45.2	0.02 <sup>ns</sup>

<sup>203</sup> Offences occurred between the dates specified.

<sup>204</sup> OR = 1.154 (1.076, 1.237),  $\chi^2 = 16.183$ ,  $p = 0.000$ .

<sup>205</sup>  $Z = -72.079$ ,  $p = 0.000$ .

<sup>206</sup>  $Z = -9.355$ ,  $p = 0.000$ .

<sup>207</sup> OR = 3.417 (3.153, 3.704),  $\chi^2 = 938.275$ ,  $p = 0.000$ .

<sup>208</sup> OR = 40.612 (23.370, 70.575),  $\chi^2 = 468.744$ ,  $p = 0.000$ . (The width of the confidence interval recorded for this variable suggests that the odds ratio — the size of the effect — may be unreliable. Clearly, however, a significant difference exists between the proportion of juveniles and adults against whom a conviction was recorded.)

**Table 12: Convictions recorded for public nuisance only matters involving adult defendants (in Magistrates Court data) — comparison between being found or pleading guilty in person and being found guilty ex parte**

Conviction recorded?	Number of adult public nuisance only defendants		% of adult public nuisance only defendants		Odds ratio
	Found guilty in person or pleaded guilty	Found guilty ex parte	Found guilty in person or pleaded guilty	Found guilty ex parte	Ex parte/Found guilty in person or pleaded guilty
Conviction recorded	4,691	3,346	49.3	65.2	1.9 ‡ <sup>209</sup>
No conviction recorded	4,833	1,789	50.7	34.8	0.5 <sup>ns</sup>

<sup>209</sup> OR = 1.927 (1.797, 2.067),  $X^2 = 340.144$ ,  $p = 0.000$ .

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