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06/04508

Mr Derran Moss
CMC Review of Public Nuisance
GPO Box 3123
Brisbane Qld 4001

Dear Mr Moss,

Enclosed please find our brief submission on the Public Nuisance provisions of the Summary Offences Act 2005.

Yours sincerely

J.Andrews
President

This submission is to be read in conjunction with that of Dr Walsh and any submission made by Prisoners Legal Service, Sisters Inside or State InCorrections Network.

At the outset we wish to point out that there is no readily available data on convictions for public nuisance offences in Cairns and the Far North, so one is only able to rely on anecdotal evidence from clients and other agencies. A further difficulty is that provision of legal services to Indigenous defendants was disrupted by the Federal Government tendering process defunding the two existing legal services, Tharpuntoo which served Cape York and Njiku Jowan which covered Cairns, Yarrabah, Innisfail and Tablelands. The tender for the whole FNQ region went to ATSILS which is based in Townsville. This debacle caused enormous delays and other problems for defendants on very serious charges, so naturally those facing public nuisance charges were the lowest priority for a struggling, grossly understaffed new legal service that had little knowledge of the clients or the region. This lack of continuity in legal services means that data is not available from the disbanded services or the new service as the change over happened midway. Through the period under review.

The Summary Offences Act has more deficiencies than just section 6. The criminalising of public drunkenness in section 10 is completely contrary to the Recommendations of the Royal Commission of Inquiry into Aboriginal Deaths in Custody and previous assurances on the part of the Queensland government that it would implement the recommendations when Diversionary Centres were built. Cairns and other major cities have had these facilities for many years now but public drunkenness is again a criminal offence with a penalty attached. This makes possible a return to the 'bad old days' when vulnerable homeless people were imprisoned for lengthy periods for non-payment of repeated fines for drunkenness.

Also relevant are the 'Move-on powers' which have also served to encourage police to target people such as the young, Indigenous, homeless, mentally ill or otherwise disadvantaged whose use of public space makes them visible and easy pickings for police. In conjunction these pieces of legislation have made life even harder for the marginalised.

There seems to be an unspoken assumption that enjoyment of public space is only for those members of the public who are affluent middle class locals or tourists with money to spend in the countless Cairns souvenir shops. Those members of the public who are down on their luck and look untidy have no place in this frenzy of commerce.

The public nuisance offences have aspects that are highly unjust per se with the manner and enthusiasm of their enforcement by police adds another layer of injustice.

Firstly the high penalty encourages magistrates to fine those who have no capacity to pay with damaging consequences for them.

Secondly the lack of defences such a reasonable excuse leave magistrates no option but to convict . Urinating in public is the only possibility when public toilets are closed. One of our clients was followed by police when he urinated well away from public view in an closed market. He was quite distress by being charged when he was doing all he could I to avoid offending anyone. He commented 'It's as if they think I'm being a nuisance just because I don't lie down and die'.

Thirdly the lack of requirement for a member of the public to complain to police who are present is another serious deficiency. Obviously if someone finds behaviour offensive and police are present they will complain to them, if no one does so the behaviour is obviously not offending a member of the public. The lack of need for complain encourages police to regard the public as having excessively delicate sensibilities rather than the robust Coleman v Power level. Perhaps it is some

hangover from Victorian working class police believing that the bourgeoisie are strangers to four letter words and raised voices.

The situation for the vulnerable people who are usually the targets of the public nuisance provisions is compounded by the fact that even if the charge does not meet the Coleman standard, there is no possibility of defending the charge as such charge would not fit the legal aid criteria because the immediate likelihood of jail is remote. ATSILS in Cairns is not always able to adequately defend clients on serious charges let alone public nuisance.

The argument that public nuisance legislation somehow makes public space safer is more a matter of perception than reality and it is incumbent on government to legislate on the basis of reality not on public perception. The legislation has resulted in police crack-downs that have increased the numbers of vulnerable people being criminalised for their vulnerability. It encourages police to believe that a zero tolerance approach to trivial offences is desirable.

The Summary Offences Act and its enforcement requires urgent amendment to avoid the damaging and unjust consequences it has for the homeless, young, Indigenous and those with disabilities who have little option but to live their lives in public space and are criminalised and heavily penalised for everyday activities that are absolutely legal in the privacy of ones own home.

We support the recommendations made by Dr Tamara Walsh in her report No Offence : The enforcement of offensive language and behaviour offences in Queensland.