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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

G.P.O. Box 2281 Brisbane 4001

TOG:DR

5 June 2006

CMC Review of Public Nuisance
Attention: Mr Derran Moss
GPO BOX 3123
BRISBANE QLD 4001

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Dear Mr Moss,

RE: **PUBLIC NUISANCE PROVISION**

In reply to your call for submissions, received at my office on 19 May 2006, I wish to make a number of points on how the public nuisance provision is being applied in Queensland.

A 'Catch all' Provision

It is the concern of this council that the public nuisance provision is being abused as a 'catch-all provision'. This is reflected by the diverse range of acts which constitute a charge of public nuisance. This writer is aware of a number of instances where relatively minor acts have attracted a charge of public nuisance.

At present, it is unclear what in fact constitutes a public nuisance. Section 6 of the *Summary Offences Act 2005* states that a person commits a public nuisance offence if the person behaves in:

(1) a disorderly way;
(2) an offensive way;
(3) a threatening way or;
(4) a violent way

It is unclear from the wording of the legislation what the scope of the offence is. The explanatory memorandum to the *Summary Offences Bill 2004* lists 11 examples of public nuisance conduct. This is also relatively unhelpful for a clearer understanding about what warrants a charge. As a result of this ambiguity, it is not

surprising that a huge range of acts are now attracting charges of public nuisance. This is reflected in official statistics. In the period from July 2004 (prior to the *Summary Offences Act 2005*) to July 2005 (after the *Summary Offences Act 2005*), the number of public nuisance offences increased 44% in a one year period.[1] It is my concern that the public nuisance provision is being used too often for trivial offences in substitute for a formal warning or caution.

As a result of the broadening scope of offences punishable under the public nuisance provision, it is important to provide greater clarity in what constitutes an offence under the act. Because of the fact that very few public nuisance offences are challenged, there is a void in terms of judicial interpretation of section 6 of the *Summary Offences Act 2005*. The High Court case of *Coleman v Power*[2] is the most recognised authority of what constitutes offensive conduct under section 7 of the *Vagrants, Gaming and other Offences Act 1931* (*Summary Offences Act 2005* predecessor). *Coleman v Power* provides for a relatively narrow interpretation of the term 'offensiveness'. To constitute offensiveness, the conduct must amount to a serious disruption of public disorder, by provoking physical violence, serious victimisation or bullying. Mere insulting language in the absence of aggravating circumstances is not sufficient to found a criminal charge.[3]

In order for the public nuisance offence to not be misused against those committing trivial acts of deviance or misconduct, a clearer definition of 'public nuisance' is sought. It is suggested that section 6 of the *Summary Offences Act 2005* be amended in line with the High Court's interpretation of offensive language as pronounced in *Coleman v Power*.[4]

Furthermore, police officers need to be better educated about what acts amount to an offence under the Act. In light of the fact that very few defendants contest public nuisance charges, police's officer's interpretations of section 6 play a pivotal role in the amount of people brought before the court. In addition to greater police education on the provision, the Queensland Operations and Procedures Manual needs to include guidelines for the charging of a public nuisance offence.[5]

Serious charge?

Very few public nuisance defendants plead not guilty. In my submission, this is a result of the public's perception that a public nuisance offence and the subsequent punishment is trivial. This is not the case. Rather, there are a significant number of defendants receiving recorded convictions for a public nuisance offence. Tamara

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[1] Walsh, T. (2006) 'No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland.' *T.C. Bierne School of Law*, 13
[2] (2004) 209 ALR 182
[3] ibid, at [200]
[4] (2004) 209 ALR 182
[5] Walsh, T. (2006) 'No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland.' *T.C. Bierne School of Law*, 38

Walsh of the T.C. Beirne School of Law conducted a lengthy study looking at the prosecution of offensive language. That study revealed that in the period of 2005, 43% of public nuisance offences in the Brisbane Magistrates Court attracted a recorded conviction.

The most common penalty imposed is a fine (77%).[6] As at July 2005 in the Brisbane Magistrates Court, the average monetary value imposed was $212.[7] When you consider the fact that homeless people as well as youth are the most common offenders of a public nuisance charge, a monetary fine does have the potential to cause financial hardship to some extent. It is suggested that more flexible sentencing options are made available such as more reasonable fines, small periods of community service, diversionary programs (particularly for youth) or a greater use of good behaviour bonds.

Yours faithfully
ROBERTSON O'GORMAN

TERRY O'GORMAN

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[6] ibid, 30
[7] ibid, 32