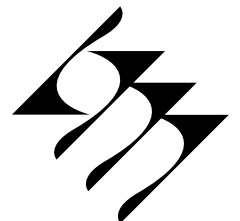


# Police move-on powers

A CMC review of their use

December 2010

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

**CMC vision:**

That the CMC make a unique contribution to protecting Queenslanders from major crime, and promote a trustworthy public sector.

**CMC mission:**

To combat crime and improve public sector integrity.

**ACKNOWLEDGMENTS**

The CMC is appreciative of the many people from government, non-government agencies and the community who contributed to this review. The comments received were a valuable contribution to the review. This report is the result of a substantial collaborative effort by current and former staff of the Research Unit of the CMC. The report was prepared for publication by the Communications Unit.

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The Honourable Reginald John Mickel MP  
Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with section 49(5) of the *Police Powers and Responsibilities Act 2000* (Qld), the Crime and Misconduct Commission hereby furnishes to you its report *Police move-on powers: a CMC review of their use*.

The Commission has adopted the report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Martin Moynihan'. The signature is fluid and cursive, with a long, sweeping flourish extending to the right.

MARTIN MOYNIHAN AO QC  
Chairperson



# FOREWORD

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Move-on powers were given to Queensland police officers in 1997 as a means of preventing crime and maintaining public order and safety. In 2006, these powers were expanded to operate from prescribed areas to public places statewide and the CMC was tasked with reviewing the laws.

Our review of police move-on powers follows a series of CMC reports on the interaction between police and members of the community in public space. It again highlights the complicated nature of public order policing and the delicate balancing exercise that police must undertake in maintaining public order and safety, while respecting the rights of all people to use and access public space.

That balancing exercise requires police officers to exercise their discretion in numerous ways — for example, from taking no action to a formal move-on direction that may lead to arrest if disobeyed. Although the discretionary nature of the move-on powers is one of their advantages, misuse of that discretion has the potential to seriously undermine the objectives of the legislation and to damage public confidence in policing. It is therefore important that the exercise of discretion be properly managed in terms of being reasonable, bona fide, principled and consistent. That management will only come about with adequate training, clear guidelines and cultural awareness.

One of the main concerns of community groups upon the introduction and later geographical expansion of the move-on powers was their possible adverse impact on a number of disadvantaged groups such as young people, homeless persons and Indigenous people. Our review has found some support for those concerns. In particular, young people and Indigenous people are significantly more likely to experience being moved on than any other group. We also see some evidence to support a call to re-emphasise the need to use informal processes to divert people from the justice system, particularly in the context of policing juveniles.

Although we consider that police should retain move-on powers, we are concerned by some of these findings and the lack of proper guidance provided to operational police for the use of the move-on powers, in particular the exercise of discretion. We have recommended a number of legislative and operational changes that we hope will address some of these concerns.

In closing, we wish to make clear that powers for policing public space (including move-on powers) are no solution to some of the complex and difficult social problems of our time that occur in public places. As a community we need to work harder to rectify the problems that result in police taking action on our behalf. We also need to develop greater tolerance of people who live and conduct their lives in social space.

**Martin Moynihan AO QC**  
Chairperson



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# LIST OF ABBREVIATIONS

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APS	Applied Policing Skills
CAP	Competency Acquisition Program
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
FTO	Field Training Officer
OLP	Online Learning Product
OPM	Operational Procedures Manual
OPR	Operational Performance Review
PACE	Police Abridged Competency Education program
PCJC	Parliamentary Criminal Justice Committee
PPO report	<i>Policing public order: a review of the public nuisance offence (CMC 2008a)</i>
PPRA 2000	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>
PROVE	Police Recruit Operational Vocational Education program
QPILCH	Queensland Public Interest Law Clearing House Incorporated
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
QWIC	Queensland-wide Interlinked Courts
SPER	State Penalties Enforcement Registry
SYPT	Safe Youth Parties Taskforce



# GLOSSARY

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<b>Adult</b>	Aged 17 years or over (17+ years).
<b>Juvenile</b>	Aged less than 17 years (0–16 years).
<b>Young adult</b>	Aged between 17 and 24 years.
<b>Move-on incident</b>	A situation in which a move-on direction is issued.
<b>Move-on laws</b>	Used in reference to legislation.
<b>Move-on powers</b>	Used in reference to the use of the move-on laws.
<b>Move-on subjects</b>	We refer to people who have been given a move-on direction as ‘move-on subjects’.
<b>Disobey move-on offence</b>	We refer to the offence of contravene a direction which involves a breach of a move-on direction as a ‘disobey move-on offence’.
<b>Disobey move-on subjects</b>	We refer to people who have disobeyed a move-on direction as ‘disobey move-on subjects’.
<b>Disobey move-on only subjects</b>	People who have only disobeyed a move-on direction and have committed no other offence.
<b>Disobey plus other subjects</b>	People charged with disobeying a move-on direction as well as some other type of offence.
<b>Recidivist disobey move-on subjects</b>	People who have disobeyed a move-on direction more than once.
<b>Disobey move-on defendants</b>	People who have been charged with disobeying a move-on direction.
<b>Community service orders</b>	A court-ordered penalty requiring offenders to perform a specified number of hours of unpaid community work.
<b>Community/youth justice conferences</b>	A police-initiated or court-ordered meeting based on restorative justice principles; the offender meets with the people affected by their crime.
<b>Front-end/back-end diversion</b>	Front-end diversion is the process of diverting persons suspected of having committed an offence to treatment and support programs <i>before</i> charging the person with an offence. Back-end diversion is the process of diverting persons suspected of having committed an offence to treatment and support programs <i>after</i> the person has been charged with an offence and court processes have commenced.
<b>Monetary orders</b>	Monetary penalties requiring offenders to make a payment of a specified sum. The most common monetary order imposed is a fine.
<b>Recognisance/good behaviour orders</b>	Penalties where offenders are ordered to be of good behaviour for a specified period and where a breach thereof may be taken into account if the offender re-offends during the period of the order.
<b>Statewide expansion</b>	Refers to the geographical expansion of move-on powers on 1 June 2006.



# OVERVIEW OF THE REPORT

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The Crime and Misconduct Commission (CMC) was directed by the Queensland Parliament to review the use by police officers of move-on powers. Our report has four chapters:

- Chapter 1: Background
- Chapter 2: Public order policing, move-on powers and the importance of discretion
- Chapter 3: The use of the move-on powers in Queensland
- Chapter 4: The administration of the move-on laws and our recommendations.

This report is accompanied by *Police move-on powers: a CMC review of their use – data report*, which provides more detailed information about the review methodology, information and data sources, and data analyses. The data report is available from the publications section of the CMC website, <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)>.

# SUMMARY

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## Context of the review

Move-on powers enable police to issue a direction to individuals or groups to move on or leave a public place. Move-on powers are intended to give police powers to respond to antisocial behaviour and thus facilitate improved perceptions of community safety. The powers are also seen as having the potential to divert people away from the criminal justice system.

Queensland Police Service (QPS) officers have had the power to issue a move-on direction since 1997. Before 2006, the use of these powers was restricted to certain geographical locations. Over time, there has been an incremental expansion of the areas in which police can apply the laws. On 1 June 2006, new laws were introduced to expand the use of move-on powers to all public places in Queensland. These new laws also required the CMC to review the use of move-on powers as soon as practicable after 31 December 2007.

The statewide expansion of the move-on powers occurred at a time when public attention was focused on antisocial behaviour and the mechanisms available to police to effectively prevent and respond to such behaviour. Significantly, the then Minister for Police and Corrective Services, the Hon. J Spence, established the Safe Youth Parties Taskforce (SYPT)<sup>1</sup> in response to incidents of youth parties being gate-crashed and associated youth violence. This taskforce recommended the geographical expansion of the move-on laws (SYPT 2006).

The debate surrounding the expansion of the powers centred on a number of issues, most of which stem from the discretionary nature of the law and the way in which police can apply it. In the large part, move-on powers are not complaint driven but rather are used by police in the routine activities associated with the policing of public spaces. When faced with a situation involving a person's behaviour or presence in a public place, police officers will use their discretion to determine which response is most appropriate in the circumstance. Such responses can range from doing nothing, to unofficially encouraging the individual or group to relocate, to officially directing them to move on, and to using another power to arrest.

Concerns were expressed that move-on powers would be misused by police officers. In particular, it was feared that those people living and regularly moving within public spaces, such as young people, homeless people and Indigenous people, would be disproportionately affected by the move-on law and would be displaced to another public space or drawn into the criminal justice system. It was also claimed that the law would enable the police to carry out 'back-door' regulation of public spaces, allowing them to remove people who were seen as 'undesirable'. Views that personal biases, prejudices and stereotyping may influence a police officer's decision-making processes were also raised.

These concerns guided our review and focused our research efforts on the following key questions:

1. How are police using move-on powers?
2. What role do move-on powers play in policing public order?
3. What is guiding or influencing the use of move-on powers?

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1 This taskforce comprised seven members of parliament and was created by the then Minister for Police and Corrective Services, the Hon. J Spence, in response to 'increasing media attention and community concern about the nature and extent of disruptive youth parties across Queensland' (SYPT 2006, p. v).

## Key findings

Our review was significantly hampered by the lack of data related to the use of the move-on powers. In general, we found that police do not record move-on directions in the Queensland Police Records and Information Management Exchange (QPRIME) unless a breach flows from the direction. Further, the data that police are recording are insufficient to enable a thorough evaluation of the use by police of move-on powers and we have made recommendations to address this in the future. These data limitations, and their effect on this review, are discussed further in Chapter 1.

However, from the available data our review shows a steady increase in the use of move-on powers. We conclude that in general this increase is likely to be associated with the geographic expansion of the power across Queensland rather than overzealous policing. Notwithstanding, our review highlights a number of areas that require close monitoring to ensure that move-on powers are used effectively and appropriately. Key findings of this review are:

1. The vast majority of people moved on were adults. Young adults aged between 17 and 24 years were more likely than other age groups to be moved on. This finding, together with results showing that peak usage of the powers occurs on the weekends, in warmer months and in entertainment 'hotspots', suggests that the move-on powers are being used to police entertainment precincts.
2. Additional results provide other evidence of spatial effects on the use of move-on powers. After the statewide expansion of move-on powers, we found different effects in different QPS regions. We also identified a number of high-use zones clustered around particular streets. This finding may provide a strong basis on which to modify policing strategies to more effectively use the move-on powers.
3. Juveniles aged between 10 and 16 years of age are overrepresented in the move-on data. However, our review shows a number of positive findings that may indicate that the possible negative effects associated with the move-on power are being minimised. As a proportion of the population, fewer juveniles received a move-on direction after the statewide expansion than they did before it. Our results do not suggest that this age group is any more or less likely than other age groups to be moved on more than once. The majority of juveniles who appear before court for a disobey move-on offence do not have convictions recorded. Indeed, over two-thirds of juvenile defendants were discharged without further punishment.
4. Indigenous people were significantly more likely to receive a move-on direction than were non-Indigenous people. Although there was no overall increase in the rate of Indigenous people being moved on after the statewide expansion of the power, our results showed differing effects when we looked at QPS regions individually.
5. Most people who disobeyed a move-on direction were arrested (in comparison with being issued with a notice to appear, a caution and so on). Of possible concern are the results that seem to indicate that juveniles are not being actively diverted from the justice system. Over two-thirds of juveniles who disobeyed a move-on direction were either dealt with by notice to appear (42%) or arrested (30%). Only 20 per cent of our juvenile sample were cautioned.
6. After the statewide expansion of the move-on powers, more people were charged only with disobeying a move-on direction (that is, they were not also charged with other offences). Perhaps more significantly, Indigenous people were more likely to be charged only with disobeying a move-on direction than were non-Indigenous people. An absence of other charges may suggest that these people are being unnecessarily drawn into the criminal justice system and that move-on powers are not an effective diversionary mechanism. Indigenous people in our sample were also more likely than non-Indigenous people to have a conviction recorded against them. However, this particular analysis did not control for offending histories, so results must be treated with caution.

7. The majority of adult offenders appearing before the court for a disobey move-on offence received a fine monetary order. Most fines are referred to the State Penalties Enforcement Registry (SPER) for enforcement. Of these, more than half had either been paid in full or were in compliance (that is, on a payment plan). However, almost 40 per cent of fines referred to SPER remained unpaid and were not in compliance with SPER conditions (for example, on a payment plan). This accords with the Griffith University review of the trial of ticketing for public nuisance offences, which found that over 50 per cent of public nuisance tickets remained unpaid with SPER (Mazerolle et al. forthcoming).
8. In seeking to explain our review findings, we found that a number of legislative deficiencies exist that must be addressed in order to enhance the operational use of the move-on powers. Our legislative recommendations seek to remove unnecessary ambiguity that leads to confusion and uncertainty for police in applying the law, and to further reduce the possibility that the powers will unfairly affect marginalised groups.
9. We believe that police discretion is essential for effective policing, particularly within the context of public order policing. However, in relation to move-on powers, we believe that police officers need more interpretative guidance and decision-making tools to help them to make good decisions about what policing response might be appropriate in particular circumstances.
10. We also note that, despite the concerns expressed in the earlier reports *Police powers and VSM: a review* (CMC 2005), *Policing public order: a review of the public nuisance offence* (CMC 2008a) and *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities* (CMC 2009), there continues to be a lack of emphasis on:
  - a. arrest as a last resort
  - b. de-escalation
  - c. diversion
  - d. the appropriate use of discretionin police training, policies and procedures, supervision and monitoring, recording practices and culture.

## Recommendations

We have made a number of recommendations based on our findings. In formulating these recommendations, we have sought to:

- provide an effective legislative and operational framework that supports the use of move-on powers
- provide an effective policing tool that enables police to maintain community safety and public order, as well as allowing police to divert people away from the criminal justice system
- change policing practices in the use of move-on powers.

### Recommendation 1

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**That s. 47 of the *Police Powers and Responsibilities Act 2000* (PPRA 2000) where the move-on power can be exercised in relation to 'presence' be repealed.**

## **Recommendation 2**

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**That the 'causing anxiety' limb in s. 46 of the PPRA 2000 be amended to only allow police to take action against a person on the basis:**

- **that the person's behaviour 'is causing or is likely to cause fear to a reasonable person' and**
- **that police have received a complaint about the person's behaviour.**

## **Recommendation 3**

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**That the 'reasonable suspicion' test in s. 46 of the PPRA 2000 be repealed and replaced with a 'reasonable belief' test.**

## **Recommendation 4**

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**That new threshold requirements be inserted into s. 48 of the PPRA 2000 to guide the type of move-on direction that a police officer may issue.**

**These requirements should include:**

- **that police must be satisfied that a move-on direction is reasonably necessary to maintain community safety and public order**
- **that police must issue a move-on direction that is proportional to the conduct which gave rise to the move-on direction.**

**The wording 'that is reasonable in the circumstances' should be repealed.**

## **Recommendation 5**

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**That the issuing of a move-on direction become a 'prescribed circumstance', pursuant to s. 41 of the PPRA 2000, that requires a person to provide their name and address to police.**

## **Recommendation 6**

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**That the QPS continue to improve data collection to better record the use of the move-on powers. For each move-on incident, the QPS should record:**

- **the limb of the move-on power that is relied upon for direction**
- **why a move-on direction is necessary to maintain community safety or public order (that is, the reason for the move-on)**
- **the time and place (including street address) of the move-on direction**
- **the specifics of the direction (the time period for which the move-on direction is in place and the geographic area to which it applies)**
- **the demographics of the person (gender, age, Indigenous status, residential status).**

**For each disobey move-on direction offence, the QPS should record all data mentioned above, and capture the following additional data:**

- **the particulars of the time and place (including street location) of the disobey offence**
- **what action was taken (caution, arrest, notice to appear, and so on).**

## **Recommendation 7**

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**That QPS officers issue a written document to the person being moved on that contains the following information:**

- **the particulars of the 'reasonable belief' about the person's behaviour with reference to the limbs under s. 46 of the PPRA 2000**
- **why a move-on direction is necessary to maintain community safety or public order (that is, the reason for the move-on)**
- **the time and place (including street address) of the move-on direction**
- **the specifics of the direction (the time period the move-on direction is in place and the geographic area to which it applies)**
- **the demographics of the person (gender, age, Indigenous status, residential status)**
- **a statement of the person's rights, including court election and how to contest (this is consistent with the Griffith University suggestion for public nuisance ticketing)**
- **diversion programs available in their area (both front-end and back-end).**

**This document could ideally be combined with a new public nuisance ticket (like that recommended by the Griffith University evaluation report).**

## **Recommendation 8**

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**That the QPS explore options to implement a system whereby police take audio or audiovisual recordings of their interactions with the public.**

## **Recommendation 9**

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**That the QPS revise its approach to policing public order. In developing this new approach, the QPS should:**

- **consider move-on powers and corresponding policing options in the broader context of policing public order**
- **promote an organisational culture that fosters quality leadership and on-the-job mentoring**
- **establish strategic principles for the policing of public order that highlight the following:**
  - **that it is a key function of police to maintain community safety and public order**
  - **that, in doing so, the focus of police should be on ensuring that the least punitive policing options are selected to match the conduct and the perceived effects it has on community safety and public order**
  - **that arrest should be used as a 'last resort' option for public order policing**
  - **that police should always endeavour to de-escalate the situation through communication and conflict resolution strategies**
  - **that police should first consider the use of diversionary options, with an emphasis on front-end diversion**



- **incorporate these strategic principles in all relevant policies and procedures, including the Operational Procedures Manual (OPM) and the First Response Handbook**
- **review recruit and officer training to incorporate the strategic principles and to make the training more relevant to operational policing, using case-based scenarios and decision-making strategies**
- **include an Operational Performance Review (OPR) dedicated to public order policing, making specific provision for examining the use of move-on powers and public nuisance offences.**

#### **Recommendation 10**

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**That the Queensland Government appoint a Public Order Advisory Panel to monitor and report to the Police Minister on the use and impact of public order policing. This panel should have an independent Chair and aim to influence strategy initiatives, facilitate improvements in interagency and stakeholder cooperation, and facilitate improved information exchange.**

#### **Recommendation 11**

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**That the Queensland Government continue to collaborate with other agencies, local governments, businesses and community groups to implement a greater number of front-end diversion programs that are relevant and accessible to disadvantaged groups who frequent public space.**



## BACKGROUND

In this chapter, we discuss why we undertook a review of the move-on powers and the scope of our review.

### The introduction of move-on powers in Queensland

The general concept of providing police with power to direct an individual or group to leave a specified place has a long history. These powers stem from vagrancy provisions in place in England since around 1349 (Statute of Laborers 1349, 23 Edw. 3 (Eng)) and introduced in Queensland in 1931 (repealed and replaced by the *Summary Offences Act 2005* (Qld)), which gave police the power to respond to disorderly people in public places. Before the introduction of the first Police Powers and Responsibilities Act in 1997, there were at least ‘thirteen provisions in ten statutes that conferred on police, powers to direct persons to leave places or to remove persons’ (QLA (Parliamentary Criminal Justice Committee) 1994, p. 269). Notwithstanding these provisions, the then Criminal Justice Commission (CJC) found that police had no formal power to require a person who had not committed an offence or a breach of the peace to move on from a public place (CJC 1993).

In the early 1990s, spurred on by the 1989 report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald 1989, ‘the Fitzgerald inquiry’), a number of comprehensive reviews of police powers in Queensland were undertaken (CJC 1993; CJC & Minister for Police and Emergency Services 1991; QLA (Parliamentary Criminal Justice Committee) 1994).<sup>2</sup> Although the ambit of these reviews extended far beyond policing public space provisions, the desirability of a legislated move-on power gained momentum during this process.

It has often been argued by police officers throughout the country that there are insufficient powers available to them for dealing with persons whom they suspect are likely to commit a breach of the peace or an offence, but have done neither.

A police officer has a duty to preserve the peace and prevent an offence occurring. However, it is difficult for an officer to make a judgement as to when a fractious person becomes a ‘likely offender’ such as to justify the exercise of a power.

One of the suggested methods of dealing with the problem is the introduction of a move-on power. The details of such a power have been varied but the essential feature is a power to require persons in a public place **who may not have committed an offence** to leave that public place. The usefulness of such a power is seen to be its preventative aspect — allowing the police to take action to prevent the occurrence of an offence or of unacceptable behaviour that would not constitute an offence. (QLA (Parliamentary Criminal Justice Committee) 1994, p. 251)<sup>3</sup>

2 Refer to *Police powers in Queensland: an issues paper* prepared by the then Minister for Police and Emergency Services and the CJC (CJC & Minister for Police and Emergency Services 1991). As a result of the issues paper, numerous submissions were received from members of the public and government and non-government agencies. In the early 1990s, the CJC undertook a comprehensive review of police powers and released its findings, *Report on a review of police powers in Queensland: Volume 3: Arrest without warrant, demand name and address and move-on powers* (CJC 1993). The CJC made a number of recommendations. In response to the CJC’s report, the then Parliamentary Criminal Justice Committee (PCJC) released its own report, *Review of the Criminal Justice Commission’s report on police powers in Queensland, Volumes I–III: Part B — Comment, analysis and recommendations* (QLA (Parliamentary Criminal Justice Committee) 1994). The PCJC commented on the CJC’s findings and made its own recommendations. The recommendations made by both the CJC and the PCJC influenced the drafting of the *Police Powers and Responsibilities Act 1997* (Qld).

3 This extract is a quotation from the issues paper released in 1991 by the CJC and the Minister for Police and Emergency Services, which described the proposed move-on power.

The CJC and Parliamentary Criminal Justice Committee (PCJC) reviews included community consultations and a public submission process. These processes identified support for, and resistance to, the prospect of a specific move-on provision, and revealed the contestable nature of the perceived merits of the power. The PCJC noted that 'perhaps no other issue in the Committee's review has provided such intense debate as the issue of the granting to police a general move-on power' (QLA (Parliamentary Criminal Justice Committee) 1994, p. 251). In its report, the CJC recommended against the introduction of a new move-on power for police (CJC 1993). The PCJC opposed a general move-on power but recommended that a new move-on power be introduced that could only be exercisable in defined circumstances (QLA (Parliamentary Criminal Justice Committee) 1994).

Move-on powers were enacted in the Police Powers and Responsibilities Act in 1997. Since their introduction, and arguably even during the dispersed framework in place before that date, the rationale behind move-on powers has remained consistent. Move-on powers are intended to provide police with:

- the ability to respond to antisocial conduct in order to contribute towards improved feelings of community safety and maintain public order (QLA (Barton) 2000; QLA (Cooper) 1997; QLA (Spence) 2006)
- a tool to divert people away from the criminal justice system and an alternative to arrest for public disorder conduct (QLA (Barton) 2000; QLA (Cooper) 1997; QLA (Spence) 2006).

Since 1997 there has been little amendment made to the general nature of the move-on laws. The greatest change has been the geographical expansion of the areas in which police can apply the laws. Initially, the application of the move-on laws was limited to certain areas (malls, shops, childcare centres, railway stations and specified notified areas). Over time there has been an incremental expansion of the areas in which police can apply the laws. On 1 June 2006 the move-on laws were expanded statewide to allow police to apply them in all public places.

The statewide expansion of move-on laws occurred during a period of youth violence and publicised incidents of gate-crashing at youth parties (Alston 2006; Chadwick 2006; Giles 2006). The then Minister for Police and Corrective Services, the Hon. J Spence, established the Safe Youth Parties Taskforce (SYPT) in response to 'increasing media attention and community concern about the nature and extent of disruptive youth parties across Queensland' (SYPT 2006, p. v). The SYPT recommended the geographical expansion of the move-on laws (Recommendation 12, SYPT 2006). In addition to responding to the SYPT recommendation, the 2006 amendments were aimed at providing clarity and certainty to the community about where the move-on laws could be applied.

The statewide expansion of the powers elicited concerns similar to those that were raised during the consultations that preceded the introduction of the original 1997 legislation. These concerns stemmed from the discretionary nature of the laws and the potential for misuse by police.

The main concerns were:

- that the law would inappropriately target disadvantaged groups in the community such as young people, homeless people and Indigenous people (CJC 1993; Fynes-Clinton 2006a; QLA (Parliamentary Criminal Justice Committee) 1994; Taylor & Walsh 2006; Wardill 2006; Weatherup 2006) and that this unfair use might contribute to or heighten tension between such groups and police (CJC 1993; Viellaris 2006)
- that the laws would provide a 'back-door' way for police to regulate behaviour in public places; the laws could be used to monitor, restrict and exclude unwanted people from an area who have not done anything wrong (CJC 1993; Taylor & Walsh 2006; QLA (Parliamentary Criminal Justice Committee) 1994)
- that moving a problem person or group on would displace the problem to another area (CJC 1993; Taylor & Walsh 2006)
- that the move-on power would not prevent or solve crime (Fynes-Clinton 2006b; Taylor & Walsh 2006; QLA (Parliamentary Criminal Justice Committee) 1994).

## Move-on powers: the legislation

The move-on laws are located in Part 5 of Chapter 2, 'General Enforcement Powers', of the *Police Powers and Responsibilities Act 2000* (Qld) (see Appendix 1 for the full wording of the laws). The power enables police to act on their own discretion and issue a move-on direction in response to either a person's behaviour or their presence at or near a public place.

Before being able to give a move-on direction, the police officer must reasonably suspect that a person's or a group of people's behaviour or presence at or near a public place is or has been:

- causing anxiety to a person entering, at or leaving the place
- interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place (this limb can only be applied if police receive a complaint from the proprietor)
- disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

Specifically in relation to a person's behaviour, the move-on laws also include if:

- a person's behaviour is or has been disorderly, indecent, offensive or threatening to someone entering, at or leaving the place
- a police officer reasonably suspects that the person is soliciting for prostitution.

Irrespective of whether a move-on direction is based on behaviour or presence, police can give a person or group of people any direction to move on that is reasonable in the circumstances. The move-on direction can apply for a nominated time period of not more than 24 hours. If the person does not comply with the direction, police may charge them with the offence of contravening a direction of a police officer. This is a summary offence attracting a maximum fine penalty of 40 penalty units (\$4000).

There are a range of 'safeguards' associated with the use of the move-on laws. These safeguards require the police officer issuing a direction to provide the person being moved on with:

- the reason they are being issued with the direction
- the police officer's name, rank and police station
- a reasonable opportunity to comply with the direction.

The officer must also record the details of the move-on direction, and identifying information about the person moved on, in QPRIME.

If the person fails to comply with the move-on direction, further safeguards require police to:

- give the person a warning that it is an offence not to comply with the direction unless they have a reasonable excuse
- warn the person they may be arrested
- give the person another reasonable opportunity to comply.

## Scope of the CMC review

The CMC's legislative obligation to review and report on the use of the move-on powers accompanied the 2006 statewide expansion. Under s. 49 of the PPRA 2000, the CMC is required to 'review the use by police officers of powers under this part ... as soon as practicable after 31 December 2007' (ss. 49(1),(2) PPRA 2000). The legislation did not provide guidance on the desired scope of the review. In the absence of defined review parameters, we used the concerns raised by parliamentarians and the community about the possible negative impact of the move-on powers to guide our review.

Our review aims to answer the following questions:

**1. How are police using move-on powers?**

Here we are attempting to determine whether the concerns about the potential for misuse of the powers against certain groups were well founded.

**2. What role do move-on powers play in policing public order?**

Here, we consider move-on powers in the broader context of other tools and policing options available to deal with citizen behaviour that compromises community safety and public order. This review allowed us to reflect on our previous research into police responses to public disorder, in particular our commentary and findings in *Police powers and VSM: a review* (CMC 2005), *Policing public order: a review of the public nuisance offence* (CMC 2008a) and *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities* (CMC 2009).

**3. What is guiding or influencing the use of move-on powers?**

Here, we examine the legislation, policies, procedures and training provided to police to determine whether these are appropriate and sufficient to guide the use of the move-on powers.

## Approach and information sources

Our review brings together numerous information sources, including:

- literature and resources relating to:
  - move-on laws, police powers in general and policing in public spaces
  - QPS training programs, policies and procedures
- community feedback from:
  - submissions arising from the *Review of Queensland's police move-on powers: invitation for public comment* (CMC 2008b)
  - stakeholder consultations
- consultations with police:
  - focus groups conducted with QPS officers from all police regions
- official data extracted from:
  - QPRIME
  - Queensland-wide Interlinked Courts (QWIC)
  - SPER.

See Appendix 2 for further information. This report is complemented by a companion publication, *Police move-on powers: a CMC review of their use — data report* (henceforth referred to as the *Data report*), which provides comprehensive information about the data sources and analyses presented here. The *Data report* is accessible on the CMC website, <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)>.

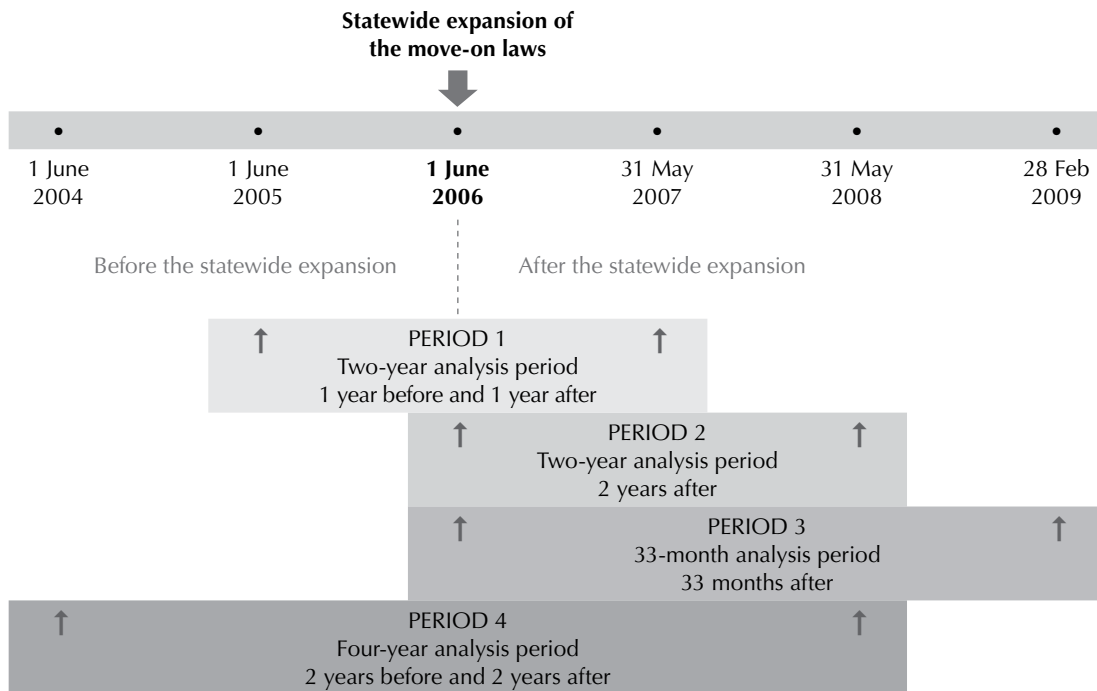
## Time periods for the review

A number of important time periods are considered in this review. As shown in Figure 1, we analyse official data in four main periods:

1. **Period 1:** 1 June 2005 to 31 May 2007 (one year before and one year after the statewide expansion of move-on powers)
2. **Period 2:** 1 June 2006 to 31 May 2008 (two years after the statewide expansion of move-on powers)

3. **Period 3:** 1 June 2006 to 28 February 2009 (33 months after the statewide expansion of move-on powers)
4. **Period 4:** 1 June 2004 to 31 May 2008 (two years before and two years after the statewide expansion of move-on powers).

**Figure 1: Time periods for the review data analysis**



## Limitations of the scope and approach

Our review seeks to determine how police use move-on powers. In doing so, we use official data to examine general trends in move-on incidents and disobey move-on incidents. We also examine the penalties handed down to those who disobey a move-on direction.

We are limited in our ability to move beyond these analyses and put some context around these findings. We cannot examine the broader question of whether the law or its operation achieves its stated policy objectives of maintaining public safety and order and diverting people from the criminal justice system. This is simply because we are unable to disentangle the effects of the move-on provisions from a host of other factors (policing and other) that contribute to public safety and order.

Other questions that cannot be answered arise as a result of data that are not currently captured by QPS data collection practices. In particular, there are no current, reliable recording practices to capture:

- whether police have complied with the prescribed procedures and safeguards when issuing move-on directions and charging for contraventions
- the circumstances in which a person is moved on (that is, the officer's actions, and the particulars and reasons for the move-on)
- whether the move-on is associated with any escalating or de-escalating effects (for example, other charges or criminal justice diversions).

Lack of data also means that we are unable to answer a key question about whether move-on powers have a disproportionate impact on homeless people. There are also no current data or other evidence available to allow us to assess why police are selecting move-on directions as their preferred option among the policing options that might be available for responding to the conduct and maintaining public order. We are unable to assess in what circumstances police officers are more likely to use 'observe' only, informal cautions, formal cautions, welfare diversions, move-on, public nuisance ticketing (where available), notices to appear or arrest and charge.

Notwithstanding these limitations, where possible and appropriate, we use information from our consultations and reviews of the literature and other resources to pose possible explanations for our more robust analyses. In particular, the qualitative information we gathered during our consultations does provide some indication of how the use of the powers is perceived by the community (that is, whether they are perceived as being used 'properly, fairly and effectively'). However, this information must be treated with some caution as these perceptions may reflect particular interests or an incomplete or distorted understanding of the intended objectives and empirical operation of the powers.

### **General limitations of recorded data**

Our analyses of official data are restricted to those incidents where police have made a crime report and those matters that were finalised in the courts. As all official data have limitations, it is important that we highlight the general limitations associated with these data.

In particular, recorded data about move-on directions and disobey move-on incidents may not necessarily reflect the actual level of these incidents in the community. Information provided to us in our consultations with police officers around the state suggests that a significant number of move-on directions are not officially recorded in QPRIME. Our data, therefore, most likely underestimate the extent to which move-on powers are used by police, but we have no reliable way of determining how small or large this discrepancy may be.

Additionally, some people given move-on directions may subsequently disobey that direction without coming to the attention of the police. This may particularly occur in instances where the original move-on directions are not recorded on QPRIME. The rate at which crimes, including disobey move-on offences, are detected can also be influenced by the number of police working in an area and the nature of the policing practices there.

The quality of recorded data naturally depends on the accuracy with which the data are entered. The complexity of QPRIME, the length of time it can take to enter occurrences and the competing demands on police officers may all affect the accuracy of data entered into the system. For example, in preparing our data for analysis, we identified what we believed to be a considerable number of move-on only incidents recorded as disobey move-on offences. We also identified a number of move-on and disobey move-on incidents with only resist arrest or public nuisance offences recorded. The similar offence codes for these events (1303, 1302, 1301 and 1305) suggest that even simple typographical errors may affect the accuracy of recorded data. Although we have attempted to clean the data, it is important to recognise that inaccuracies may remain.

These limitations suggest that our police data, as with all other recorded crime data, should be treated with caution. We have attempted to minimise the impact of these limitations by using medians and controls for extraordinary events. Further information about these police data limitations and the steps we have taken to minimise their effects can be found in Appendix A of the accompanying *Data report*.



Other general limitations in the recorded data are similar to those identified in *Policing public order: a review of the public nuisance offence* (CMC 2008a) — namely, that changes to the number or rate of move-on directions and disobey move-on matters may be caused by other factors, including:

- changes in police numbers, police strategies or recording practices of move-on and disobey move-on matters
- partnerships between government departments and industry stakeholders (for example, the Code of Practice for the Responsible Service, Supply and Promotion of Liquor)
- policy initiatives, such as the 3 am lock-out policy in entertainment precincts
- routine improvements to environmental design (such as improved lighting, and refurbishment of train stations)
- changes in the weather
- events that attract large crowds in public places
- changes in societal attitudes to police.

The *Data report* provides a more comprehensive overview of the general limitations of the recorded data used in the review.

## PUBLIC ORDER POLICING, MOVE-ON POWERS AND THE IMPORTANCE OF DISCRETION

**In this chapter we situate move-on powers within the broader context of public order policing. We consider the social peace-keeping role of police in modern society and how it should be considered in the context of policing public order, particularly in relation to move-on powers. We also discuss the importance of police discretion and how its management and control by police agencies is critical for ensuring the fair and effective use of police powers, and ultimately underpins the legitimacy of police in public space.**

### The role of police in society

Although the popular media may emphasise the crime-fighting role of police (in which police are seen combating serious or violent crime), and many police like to view themselves in this way, the role of police in modern democratic societies is far more diverse, complex and dynamic than this simplistic conception of policing (Dempsey & Forst 2008). More importantly, although crime fighting is undoubtedly an important *function* of police, it is not the broader goal (or role) of police in our society.

The creator of the first standing police service in England, Sir Robert Peel, conceived the primary role of police as being the proactive maintenance of public order and prevention of crime through paid, full-time, ‘conspicuous community-orientated patrol[s]’ (Dempsey & Forst 2008, p. 125). Peel’s Principles of Policing are included in Appendix 3 of this review. Importantly, the principal goal of police under Peel’s model was not to detect and punish crime, but to ensure the maintenance of public order and safety, based on the notion that ‘policing should be a preventative, lawfully carried out endeavour, based on public need, respect and cooperation’ (Fyfe et al. 1997, p. 8). This conception of policing emphasised the need for police to obtain the goodwill of citizens in performing their policing duties (Banks 2008). Peel’s model was premised on the notion that the legitimacy of the police rested on the use of police powers being measured and the minimum necessary to *restore order*. Furthermore, the absence of disorder was the ultimate ‘test’ of policing efficiency, rather than visible police action or crime-fighting activity.

This police service model has become the template for urban police departments throughout the English-speaking world and Peel’s principles of maintaining order and community safety, crime prevention and social service continue to shape modern approaches to policing.

In Queensland, the *Police Service Administration Act 1990* (Qld) formalises the police functions of maintaining ‘peace and good order’, community safety and crime prevention (ss. 2.3(a)–(c)). Sheehan and Cordner (1989) emphasise the centrality of the order maintenance and community safety functions when they argue that these functions are fulfilled through the secondary functions of crime prevention, crime detection, law enforcement, recovering property, and emergency and social service (Sheehan & Cordner 1989, cited in Dempsey & Forst 2008).

This philosophical and legislative architecture drives contemporary policing in Queensland. In general, the vast majority of policing activity and resources is not directed to serious crime, but rather is dedicated to dealing with low-level disorder, antisocial behaviours and community safety problems (such as minor disputes, public nuisance offending, public drunkenness, minor prostitution offences, drink driving, noise complaints, drug abuse violations and traffic or road safety infringements) and to social service provision (such as diverting people to services, directing traffic, crime prevention and road safety initiatives, finding missing persons, calming crime or accident victims and other associated administrative functions) (QPS 2009a).

## The objectives of policing public space

We have raised the role of police here in order to situate the use of move-on powers within a particular context. Move-on powers and other public order policing tools have been bestowed on police by parliament and the community with the intention that they will be used in the specific context of order maintenance and community safety. Police are not intended, nor is it within their role, to use such tools as a means of improving the ‘aesthetics’ of particular social spaces (by the removal of seemingly undesirable or untidy members of the community), or as a means of persecuting individuals perceived as ‘disrespecting’ police but who pose no real threat to public order. We highlighted our concerns about these types of issues in *Policing public order: a review of the public nuisance offence* (CMC 2008a) (‘the PPO report’). In that report, we put forward our view that the objectives of policing public space should be to deal with problem behaviours that actually compromise public order or safety in a material way and that these objectives should be put into operation through tools and policing styles that de-escalate, rather than inflame, that problem behaviour. Within the context of public order policing, we argued that arrest should be viewed as a last resort. We agreed that people should be free to use public space without suffering abuse or harassment, and that it was a proper function of police to reduce antisocial behaviour as this played a role in reducing crime and ensuring community safety. Equally, we raised concerns that taking a heavy-handed approach to trivial incidents (particularly in the absence of any putative victim), or to incidents where the behaviour, while loud, challenging or unusual, was not socially ‘dangerous’, had the potential to draw controversy about the treatment of certain groups and undermine public confidence in the role of police in a liberal democratic society.

The aim of public order policing in liberal democracies is not to ensure the ‘civilised’ behaviour of all citizens who use public space. Such an approach can result in the imposition of a biased or subjective conception of socially acceptable behaviour that may marginalise, and even criminalise, disadvantaged individuals who exhibit challenging characteristics or behaviours that otherwise do not cause harm, much less pose a threat to social order or community safety. In this context, we acknowledge the concerns raised by the community that move-on powers will disproportionately affect young people, homeless people and Indigenous people.

In situating the use of move-on powers, we also wish to highlight another element of Peel’s model, that the effectiveness of policing public order is not demonstrated by the visibility of frequent, vigorous or tough police action — rather, by the absence of disorder. As we highlighted in the PPO report, this may be achieved through informal and often subtle ‘street-level’ approaches to resolving disorder in ways not captured by current data collection activities. The focus of our and other research to date on policing public order — including the recent Griffith University review of police ticketing (Mazerolle et al. forthcoming) — has been on police coercive powers and tangible enforcement actions. But we know, from other literature, that police use a number of policing skills and personal operational styles to ensure the maintenance of public order and community safety, without the use of formal, recordable police powers. We know that police assist, persuade, advise, mediate, mobilise people and organisations, analyse problems, gather and disseminate information and generally use their presence to resolve public order problems (Banks 2008; Dempsey & Forst 2008; Mastrofski 2004). Such approaches are to be commended and encouraged.

## Tools for policing public order: move-on and other powers

Before the introduction of move-on powers, police had existing powers to take action to prevent the commission, continuation or repetition of any offence. These currently include power to respond to threatened assaults, affray, public nuisance, riot and liquor offences (ss. 51–53 PPRA 2000), among others. Police also have the power to prevent a possible breach of the peace (s. 50 PPRA 2000), and since 2006 they have had the power to take substance-affected persons to welfare services (s. 604 PPRA 2000), and to remove alcohol, graffiti instruments, spray paint, burglary instruments or noisy musical devices (ss. 43A(3), 53(2), 53A, 583(2) PPRA 2000; ss. 15, 17 *Summary Offences Act 2005* (Qld)). A list of additional powers and laws that are available to police is provided in Appendix 4.

In addition to the PPRA 2000 powers, some public places, such as local parks, social services agencies and shopping centres, have their own enforceable powers to control antisocial behaviour — for example, exclusion or curfew powers (see the *South Bank Corporation Act 1989* (Qld)).

Moreover, police have always employed ‘informal’ policing strategies to regulate problematic public behaviour regardless of the formal PPRA 2000 powers. Using communication skills, from non-coercive conversation (such as a request, advice, negotiation and persuasion) to verbal coercion (such as a command or legal warning), to make an individual change their behaviour is a policing tactic used by police officers on a daily basis in their interactions with the public (McCluskey, Mastrofski & Parks 1999; Terrill & Paoline 2007). Police may take an authoritative stance to seek an individual’s compliance after a friendly approach fails. Requiring an individual to leave an area through non-coercive or coercive means, without resort to formal powers, has been common practice in Western countries since the advent of modern policing (Mastrofski, Snipes & Supina 1996; McCluskey, Mastrofski & Parks 1999).

Figure 2 is an outline of some of the actions police may take for policing public order along a continuum of options available (adapted from Prenzler 2009, Figure 2.1).

**Figure 2: Possible actions police may take for policing public order**

Informal powers/actions ←————→ Formal police powers/actions

Observe only	Welfare diversion	Informal cautions or requests	Formal caution	Move-on powers	Partial law enforcement	Partial law enforcement	Full law enforcement
	(sometimes supported by a police power)	(conflict resolution/verbal coercion)			(public nuisance ticketing)	(notice to appear, other prevention of offences powers)	(arrest and charge for offence, including charge with possible ‘escalation’ offences occasioned by arrest — e.g. assault police, resist arrest, offensive language/behaviour)

Notwithstanding these existing powers and mechanisms, police argued for the introduction of police move-on powers as they felt it was ‘difficult for an officer to make a judgement as to when a fractious person becomes a “likely offender” such as to justify the exercise of a [formal] power’ (QLA (Parliamentary Criminal Justice Committee) 1994, p. 251). Proponents of move-on powers argued that it was necessary to have a formal power to ask persons to leave an area before their behaviour escalated into criminal activity, in circumstances where they may not have yet committed any offence and where informal ‘conflict resolution’ strategies such as conversation or verbal coercion were insufficient to achieve that desired result.

In our view, move-on powers are a formal extension of informal conflict resolution tactics that police have always employed in preventing crime and maintaining public order. For this reason, we do not oppose their introduction in principle. Research in other jurisdictions has also demonstrated that police–citizen encounters in public were less likely to end in an arrest where police exercised ‘order maintenance’ requests (of which respectfully issued move-on powers are a type) and were successful tools for securing the cessation of disorderly behaviour (Mastrofski, Snipes & Supina 1996; McCluskey, Mastrofski & Parks 1999; Novak et al. 2002).

We are concerned, however, that — unlike conversation or verbal coercion — such formal powers have regulatory force and non-compliance is punishable as an offence. This presents a new dimension and potential criminalisation of those who might otherwise have been dealt with by informal strategies and powers of verbal coercion. It also concerns us that this formalisation of such a power diminishes the ‘vital importance of verbal facility’ — that is, the ability to creatively exercise high-quality conflict resolution tactics and to skilfully talk to the public in a way that mediates, rather than escalates, disputes (Dempsey & Forst 2008; Pugh 1986, p. 5).

As in our PPO report, because of police record keeping and data collection limitations, we have been unable to quantify the extent to which informal resolution of minor incidents has ‘de-escalated’ matters that may have led to arrest, notices to appear, public nuisance tickets, move-on directions or other formal law enforcement responses. Similarly, we have been unable to examine to what extent the exercise of move-on powers has led to the escalation to other more serious offence types or power use. However, the narratives expressed in public consultations suggest to us that there is public concern about the decline in the use of informal resolution techniques.

We have raised the concern about the decline in the use of informal resolution methods in the context of public nuisance ticketing and charging, and restoring order in Indigenous communities (CMC 2008a, 2009). We reiterate that concern here in the context of move-on powers. The greater use of formal and possibly criminal sanctions in policing public order has the potential to lessen the goodwill of the public and create negative perceptions of the legitimacy of police in public space when they are perceived as ‘overpolicing’ or misusing their presence or powers. As we already know, ‘citizens who perceive the police as legitimate are more likely to obey laws without the threat of punishment, are subsequently less likely to make complaints about their encounters with the police, have higher levels of satisfaction with the police generally, and are more likely to report crime and disorder problems’ (Kane 2005; Tyler 1990, 2003; Tyler & Huo 2002, cited in Bennett et al. 2009, p. 1). We also know from the literature that, where police lose legitimacy, they ‘struggle to elicit cooperation and compliance during street encounters and leave themselves vulnerable to citizen complaints against them. Non-compliance with police can escalate to violence towards police officers, and in turn, increase the risk of harm to the citizens at the encounter ...’ (Bennett et al. 2009, p. 1).

## **Public order policing and police discretion**

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest — which may be correct in appropriate circumstances — can be a more effective means of achieving a desired end. (Law Enforcement Code of Ethics, International Association of Chiefs of Police, 1989, cited in Banks 2008, p. 31)

In our PPO report we emphasised the importance that police discretion plays in the policing of public order. Police discretion is said to exist where police are ‘free to make choices among possible courses of action or inaction’ (Davis 1969, p. 4).

Routinely, police officers make decisions about which informal process or formal powers to exercise in a particular circumstance. Public order policing does present 'difficult choices for police' about how, when and why to apply particular policing options and approaches in preference to other approaches (Prenzler 2009, pp. 31–4). This includes difficult decisions on whether or not to invoke any police power or law. Officers decide to investigate an occurrence, and intervene in a situation or decide it is not worth their time and effort. Equally, during any police–citizen interaction, police officers frequently make decisions about the style of communication they employ, the degree of force to use and when to escalate their response (Banks 2008).

In terms of situational factors, while we know from other studies of street-level discretion that police attempt to use 'the lowest tariff [punitive] option available' in public order offending (Coates, Kautt & Mueller-Johnson 2009, p. 401), they will also respond more 'aggressively' to perceived resistance (unresponsive, defensive, hostile, physically resistant or aggressive behaviours) and abusive citizen behaviours (swearing, using threats) (Garner, Maxwell & Heraux 2002; Mastrofski, Reisig & McCluskey 2002; Reisig et al. 2004; Terrill & Paoline 2007). We also know from recent studies that there is an apparent correlation between perceived 'disrespect' shown to police and the likelihood of arrest or higher-level controlled action by police (Coates, Kautt & Mueller-Johnson 2009; Sun 2003, 2007), compared with those who behave 'respectfully' (Schafer & Mastrofski 2005, cited in Coates, Kautt & Mueller-Johnson 2009; Worden & Myers 2000).

We also know that 'location, bystander presence, victim preferences, time of day, cell availability can also determine police responses' (Sherman 1980; Smith & Klein 1984; Tedeschi & Felson 1994, cited in Coates, Kautt & Mueller-Johnson 2009, p. 401). Likewise, offender characteristics such as age, race, gender, ethnicity and socio-economic background can affect the use of discretion (Brown & Frank 2005; Muncer et al. 2001; Pollock 1999, cited in Coates, Kautt & Mueller-Johnson 2009), particularly where police are required to exercise a 'reasonable suspicion' (Beech 2008). Forming a reasonable suspicion about an offender occurs when the officer becomes 'doubtful, distrustful or otherwise troubled or concerned about an individual' and this is influenced by a 'combination of pre-existing attitudes' and the personality traits and any prejudices that a police officer develops through experiences on the job (Beech 2008, p. 21).

Although we believe that discretion is a key pillar of modern policing, we also believe that appropriate management of police discretion is vital (CMC 2008a). Concerns about the appropriate management of police discretion have been a feature of reports and academic literature in Queensland and elsewhere for decades (CMC 2008a, 2009; Prenzler 2009; Fitzgerald 1989, p. 279). A key question that has remained unanswered from our PPO report, from our *Restoring order* report and in much of the Australian policing research literature is how the exercise of 'street-level' discretion should be shaped or controlled by police agencies.

Decision-making about discretion starts much earlier than contact with a person — it starts at the formation of a reasonable suspicion (Beech 2008) and this is shaped in large part by organisational features, learnings and the institutional environment (Coates, Kautt & Mueller-Johnson 2009; Dempsey & Forst 2008), including peer or workgroup subcultures, leadership, supervision, training, policies, operational practices, performance management regimes and reward systems.

Police work in general 'is simplified when [a] police officer's expected behaviour is unambiguous' (Pugh 1986, p. 3) and they are able to define with clarity the appropriate course of action. Although the police role of 'enforcing the law' may be a 'fairly unambiguous one' in cases of serious crime (murder, assault and the like), the function of 'maintaining order' is a much more difficult task because it requires the attainment of an undefined condition: public order. As described above, move-on powers are but one of the many formal and informal tools that an officer may deploy in order to achieve that goal.

The recent Griffith University review of public nuisance ticketing found that there is a degree of confusion and misunderstanding about what policing option to use where, when and for what type of offender in public order policing (Mazerolle et al. forthcoming). Police also have difficulty identifying offenders who might be eligible for welfare responses (for example, the mentally ill) in preference to other responses.

In this regard, the absence of guidance can lead to legitimate complaints from police and their union when they are penalised for acting in an allegedly improper manner (Wilson 1968, cited in Banks 2008). The common police training approach that translates legislation into operational rule books is not sufficient. Such approaches, 'although purporting to be definitive, actually provide limited guidance of any worth to police, because [legislative-style] rules do not adequately assist police in dealing with the fluid and fast-changing situations they may be faced with' (Skolnick & Fyfe 1993, cited in Banks 2008, p. 30).

Police officers need interpretative guidance and decision-making tools about how to determine what policing response (and communication technique) might be appropriate for which set of offenders or circumstances. Police discretion should be shaped or controlled through the use of guiding principles and practice guidelines (including case-based scenarios) that emphasise that discretion is not about selecting any policing response that might be available, but the selection of responses that might be appropriate in circumstances (Liu & Cook 2005). This is not constraint, but tailoring of guidance. Such an approach also has the benefit of achieving a reasonable degree of uniformity in handling similar incidents in the community, thereby bolstering community confidence in the policing process (Goldstein 1977, cited in Dempsey & Forst 2008; Prenzler 2009).

This need for guidelines to shape and, it is hoped, standardise the use of discretion, particularly in certain public order contexts, is important because 'people care about how police exercise their discretion. Police [agencies] rarely experience crises for failing to control crime; it is the failure to control [and guide] police discretion that most often places the jobs of top leadership in jeopardy' (Mastrofski 2004, p. 109).

As well as enhanced training and policies that contain greater interpretative guidance for operational police about the use of discretion, the use of discretion is influenced by two other facets of police organisational environments that cannot go without comment in our report. They are organisational subcultures, and supervision and leadership. 'Controlling discretion involves more than just establishing policies, [training officers] and ensuring that [the policies] are obeyed. Managing discretion involves an effort by management to instil a proper value system in officers' (Dempsey & Forst 2008, p. 136). It involves ensuring that officers are not encouraged to 'throw away the rule book' or 'forget what you learned in the academy' by veteran officers who are not prepared to embrace greater accountability and thus controls over their behaviour and use of powers (Mastrofski 2004, p. 104). It involves challenging peer and organisational norms that do not reflect the social peace-keeping role of police and that compromise respect for individual rights and dignities, particularly in the use of public spaces. It involves the organisation accepting its role in shaping police culture and officer decision-making practices. Focus must be placed on organisational responsibility as a whole rather than the promotion of police disciplinary mechanisms to respond to systemic problems. Such individually targeted mechanisms can only offer individualised consequences for 'rogue' officers and do not seek to tackle the systemic nature of the culture and organisational environment that may have contributed to that 'rogue' behaviour.

Our report does not purport to provide a comprehensive solution for the development and implementation of an optimal control system for police discretion. We raise the topic of discretion control as a means of flagging that it is a matter of concern and uncertainty to those who experience it and those who exercise it. Police agencies who oversee it should explore better institutional means for influencing and shaping its use, so it is employed fairly and effectively by their members.

## THE USE OF THE MOVE-ON POWERS IN QUEENSLAND

**This chapter summarises our analyses of recorded police and courts data on the use of the move-on powers.**

We obtained and examined data extracted from the Queensland Police Records and Information Management Exchange (QPRIME), the Queensland-wide Interlinked Courts (QWIC) and the State Penalties Enforcement Registry (SPER) to understand:

- how often move-on powers are being applied by police
- the recorded characteristics of people given a move-on direction
- the recorded characteristics of people given more than one move-on direction
- how often police are required to apply move-on powers to individuals who fail to comply with a move-on direction
- the recorded characteristics of people who have disobeyed a move-on direction
- the recorded characteristics of people who have disobeyed a move-on direction more than once
- the recorded characteristics of people charged with a disobey move-on offence and other offences
- how police respond to people who have disobeyed a move-on direction
- how disobey move-on offences proceed through the Magistrates Courts and Childrens Courts
- the penalties, including fines, imposed on convicted disobey move-on subjects
- details of the fines imposed that are referred to SPER for enforcement.

In relation to the data, we used four time periods of analyses:

1. **Period 1:** 1 June 2005 to 31 May 2007 (one year before and one year after the statewide expansion of move-on powers)
2. **Period 2:** 1 June 2006 to 31 May 2008 (two years after the statewide expansion of move-on powers)
3. **Period 3:** 1 June 2006 to 28 February 2009 (33 months after the statewide expansion of move-on powers)
4. **Period 4:** 1 June 2004 to 31 May 2008 (two years before and two years after the statewide expansion of move-on powers).

We analysed police data for the whole of Queensland and also for each QPS region (see Appendix 5 for a map of the regions).

Magistrates and Childrens Courts data were examined to determine how a sample of disobey move-on matters are dealt with by the courts. In total, we examined 285 adult matters (Magistrates Courts data) and 88 juvenile matters (Childrens Courts data) separately. All of these defendants were charged only with a disobey move-on offence; that is, there were no accompanying charges listed. The time period used for our courts sample relates to disobey move-on offences that occurred between 1 June 2006 and 31 December 2008 according to police data and were finalised in either the Magistrates Courts or the Childrens Courts between 1 June 2006 and 28 February 2009. We also examined the proportion of these matters that were referred to SPER for enforcement.

For further detail, see the accompanying *Data report*.



## Summary of general trends associated with the use of the move-on powers

Our analyses of police and courts data found some general trends in the use of the move-on powers:

- There has been an upward trend in the rate of recorded move-on incidents since June 2004.
- The pattern of recorded move-on incidents indicates that move-on powers are most often recorded by police on weekends, in the warmer months and in the vicinity of entertainment areas.
- There has been an upward trend in the rate of disobey move-on offences since June 2004.
- Most adult disobey move-on subjects were arrested by police.
- Indigenous adults were less likely to be arrested for disobeying a move-on direction and more likely to be given a notice to appear than were non-Indigenous adults.
- The majority of adult and juvenile defendants pleaded guilty to the disobey move-on offence, and very few matters were struck out or dismissed.
- A conviction was recorded in one-third of adult disobey move-on matters, but in only one juvenile matter.
- Most adults received a fine and the usual fine amount was \$150.
- Juveniles rarely received a fine — they were more often than not discharged without further punishment.
- Most fines were referred to SPER for enforcement (almost 94%). Of these, almost 40 per cent of fines remained unpaid and were not in compliance with SPER conditions.

## Use of move-on powers

### How police use move-on powers

A move-on incident is a situation that requires police attention during which a move-on direction is issued. One incident may involve more than one person and multiple move-on directions may be issued. For example, four men are involved in an altercation outside a nightclub; police attend and issue a move-on direction to all four men. This is recorded in QPRIME as one incident.

We present the number and rate of incidents to show how often police record the use of move-on powers. Incidents provide the best indicator of how many times police record their reliance on the move-on powers to deal with public order situations. If we counted the number of recorded move-on directions issued, we would be overestimating how often the move-on power is being used to respond to public order situations as several directions may relate to the same incident.

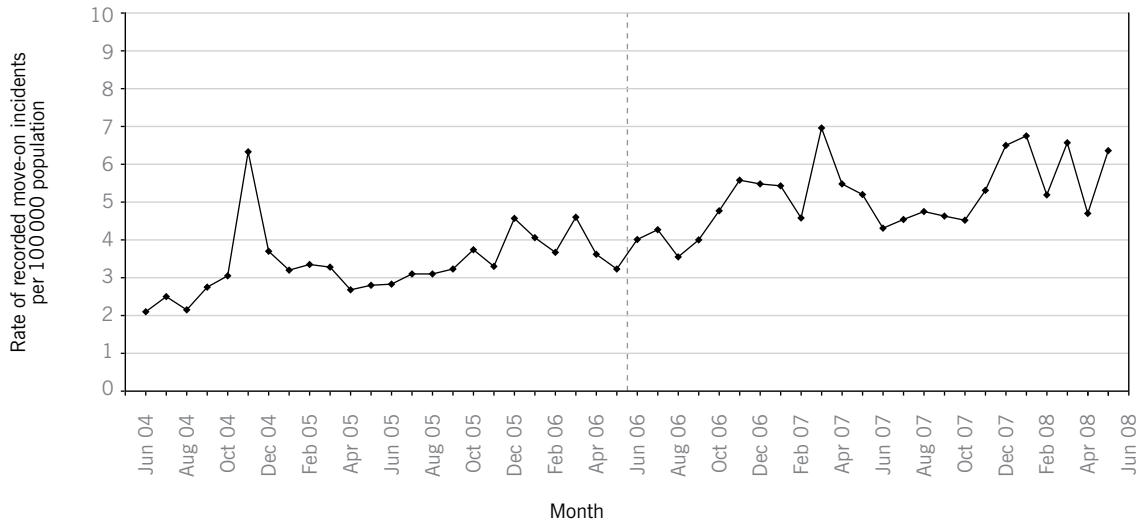
For example, over the period 1 June 2005 to 31 May 2007, there were 4478 move-on incidents involving 6245 separate move-on directions being issued.

### Recorded move-on incidents

Our initial analysis used our longer-term data from 1 June 2004 to 31 May 2008 to examine trends in the police use of move-on powers. As shown in Figure 3, the rate of recorded move-on incidents per 100 000 population has been increasing since data collection for our review began in 2004. In June 2004, there were 2.1 move-on incidents per 100 000 population. By May 2008, the rate had increased to 6.4 incidents per 100 000 population.

This trend is to be expected, given the increasing number of places where police have been able to use move-on powers over this period. For example, between 1 June 2004 and 31 May 2005, there were 17 notified areas in which police could use move-on powers for the whole 12-month period. Between 1 June 2005 and 31 May 2006, this number increased to 24 (see Appendix 6 for a list of the notified areas).

**Figure 3: Four-year trend of recorded move-on incidents per 100 000 population per month (1 June 2004 to 31 May 2008)**



Source: Police data.

Notes: The vertical dotted line bisecting the plot indicates the statewide expansion of the move-on laws. The records for 69 of these recorded move-on incidents were based on information about the contravention of the move-on direction where the disobey move-on offence was recorded on the first day of a month. For the purposes of our analyses, these records were counted in the same month as the disobey offence, although it is recognised that the actual move-on direction may have been given on the previous day and therefore in the previous month. We therefore also ran our analyses without these records, and found that including them made no difference to the overall significance of any results. All results presented in this review are with these records included.

We then examined annual trends in the year before and the two years after the statewide expansion on 1 June 2006. We found that the annual rate of move-on incidents increased by 37.6 per cent after the statewide expansion, from 43.1 incidents per 100 000 population to 59.3 incidents per 100 000 population. The median monthly rate of recorded move-on incidents also increased after the statewide expansion of move-on powers (from 3.5 incidents per 100 000 population during 1 June 2005 to 31 May 2006 to 5.0 incidents during 1 June 2006 to 31 May 2007). Importantly, the monthly move-on rate stabilised at 5.0 incidents per 100 000 population in the second year of expansion.

Altogether, the above findings lead us to believe that increases over time in the rate of recorded move-on incidents, including in the 12-month period immediately after the statewide expansion, are more likely to be related to the geographic expansion of move-on powers in Queensland rather than to other factors such as overzealous policing.

Refer to Part 1 of the *Data report* for further detail of our analyses involving recorded move-on incidents, including the temporal and spatial trends presented below.

### Temporal trends

Using the QPRIME data from 1 June 2005 to 31 May 2007, we examined the times at which police use move-on powers. We examined variation by day and month, and seasonal variation (that is, summer versus winter months), by looking at 4242 move-on incidents.

Generally speaking, the pattern of recorded move-on incidents shows that move-on powers are most often recorded as being used by police on the weekends (57.2%,  $n = 2427$ , of all incidents occurred over the Friday to Sunday period) and in the warmer months (11.3%,  $n = 480$ , in March, 9.8%,  $n = 417$ , in December and 9.3%,  $n = 394$ , in January). We found that this pattern was stable over time, despite the statewide expansion of move-on laws in 2006.

This finding is consistent with the temporal clustering reported in the review of the public nuisance offence (the PPO report) in that both move-on and public nuisance offences are more likely to be recorded in the warmer months and during the weekend.

### **Spatial trends**

We examined spatial patterns by reviewing police use of move-on powers within QPS regions and at specific scene locations. These analyses used the 1 June 2005 to 31 May 2007 QPRIME data.

#### *QPS regions*

Our analysis of the police data showed that there were differences among the QPS regions in the rate of recorded move-on incidents. More specifically, we found:

- The monthly rates of recorded move-on incidents in the Metropolitan North, Central and Northern Regions were generally above the average monthly state rate.
- The Metropolitan South, North Coast, Southern and South Eastern Regions had monthly rates generally below the average monthly state rate.
- In the Far Northern Region, the monthly rate of move-on incidents was similar to the state average in the 12 months before the statewide expansion, but was considerably higher than the state average in the 12 months after.

We also found that the statewide expansion of move-on powers was associated with different effects in different regions:

- There were significant increases in the median monthly rate of move-on incidents in the Southern (a 128.6% increase), North Coast (84.6%), Far Northern (65.0%) and Central (30.4%) Regions in the year after the statewide expansion.
- The statewide expansion was associated with no significant changes in the median monthly rate of move-on incidents in the Northern, Metropolitan North, Metropolitan South and South Eastern Regions. This may be attributable in part to the fact that the main sites of move-on directions in these regions (Flinders Street and The Strand in Northern Region, New Farm and the Brisbane CBD in Metropolitan North Region, South Bank in Metropolitan South Region, and Surfers Paradise in South Eastern Region) were all notified areas before the statewide expansion.

#### *Locations*

We further analysed 2881 recorded move-on incidents to examine the specific locations associated with the use of move-on powers. Scene keywords in QPRIME were recoded and 14 locations were analysed (see Appendix A of the *Data report*).

Over the two-year period, we found that the most common scene locations associated with the recorded application of move-on powers were streets (46.8%,  $n = 1347$ ), business areas (24.2%,  $n = 698$ ), recreational spaces (11.4%,  $n = 329$ ) and licensed premises (6.4%,  $n = 183$ ). Although there were no dramatic differences between the pre- and post-expansion periods in terms of the location of move-on incidents, slightly more incidents occurred in streets (an increase from 43.4%,  $n = 500$ , to 49.0%,  $n = 847$ ) and recreational places (from 9.9%,  $n = 114$ , to 12.4%,  $n = 215$ ) after the statewide expansion of move-on powers in 2006. Conversely, there was a decrease in the proportion of recorded move-on incidents occurring in businesses (from 29.7%,  $n = 343$ , to 20.5%,  $n = 355$ ) after the statewide expansion of move-on powers.

### *Move-on 'hotspots'*

We also analysed the police data according to street and suburb to identify any areas where move-on powers were used at a particularly high level. The following locations all had 30 or more recorded move-on incidents over the two-year period 1 June 2005 to 31 May 2007:

- Brunswick Street/Brunswick Street Mall, Fortitude Valley, Brisbane (354 incidents)
- Flinders Street/Flinders Street East, Townsville (133 incidents)
- Brunswick Street, New Farm, Brisbane (77 incidents)
- Queen Street/Queen Street Mall, Brisbane City (70 incidents)
- Kent Street, New Farm, Brisbane (60 incidents)
- East Street, Rockhampton City (41 incidents)
- Quay Street, Rockhampton City (40 incidents)
- McLeod Street, Cairns City (39 incidents)
- Margaret Street, Toowoomba City (37 incidents)
- Bourbong Street, Bundaberg Central (31 incidents)
- Cavill Avenue, Surfers Paradise, Gold Coast (30 incidents)
- Shute Harbour Road, Airlie Beach (30 incidents).

The relatively high number of recorded move-on incidents for many of these streets (such as Brunswick Street, Flinders Street, Queen Street and Cavill Avenue) can probably be explained by the high volumes of people who frequent these areas, particularly for recreational purposes.

## **The people who are moved on by police**

We examined available demographic data to identify who was being moved on by police. We were interested in determining whether disadvantaged groups were particularly affected by the move-on powers. Unfortunately, because of the nature of the data provided by the QPS, we were unable to determine the impact of the move-on powers on homeless people. Police do not specifically record 'homelessness' as a category. Police may record a person's address as 'no fixed address' but this does not necessarily mean that person would regard themselves as homeless. In addition, even when an address was recorded in the data, we could not accurately determine if this was the person's address on the date of the move-on direction.

In the following section, we examine the gender, age and Indigenous status of people recorded as being given a move-on direction by police for the period 1 June 2005 to 31 May 2007. Refer to Part 2 of the *Data report* for further detail of our analyses.

### *Gender*

Gender was recorded for 6114 of the 6245 people given move-on directions between 1 June 2005 and 31 May 2007. Overall, males were more commonly recorded as being given a move-on direction than females, accounting for 77.3 per cent ( $n = 4726$ ) of people moved on.

When we compared the 12 months before the statewide expansion of move-on powers with the 12 months after, we found that the proportion of males increased from 75.6 per cent ( $n = 1911$ ) to 78.5 per cent ( $n = 2815$ ). The proportion of females decreased from 24.4 per cent ( $n = 616$ ) to 21.5 per cent ( $n = 772$ ) over the same period.

### *Age*

Age was recorded in 6067 of the 6245 recorded move-on directions issued during the 12-month periods before and after the statewide expansion of move-on powers. We found that the vast majority (86.9%,  $n = 5272$ ) of people moved on were adults (aged 17 years or older). More than half (51.7%,  $n = 3136$ ) of the 6067 recorded move-on directions were given to adults aged 25 years or older, and about one-third (35.2%,  $n = 2136$ ) of directions were issued to young adults aged 17 to 24 years. As a proportion of the population, people aged between 17 and

24 years and between 10 and 16 years were significantly more likely to receive a move-on direction than were other age groups. Thirteen per cent ( $n = 795$ ) of move-on subjects were juveniles aged 16 years or younger.

The youngest person issued with a recorded move-on direction was 6 years old and 144 directions in total were issued to juveniles under the age of 13 years. We examined the details of the individual move-on directions issued to the juveniles aged under 10 years ( $n = 4$ ). Three of the cases occurred in the pre-statewide period and one in the post-statewide period. The QPRIME data for all four juveniles indicated that the directions were issued in the daytime, and when they were in the company of other teenagers. Three incidents occurred in shopping areas and one in a fast-food restaurant.

The median age of recorded move-on subjects was 25 years. This median age varied significantly across the different QPS regions, where it ranged from 18 years old in the Southern Region to 34 years old in the Northern Region (see Table 1).

**Table 1: Median age of recorded move-on subjects by QPS region**

QPS region	Median age of move-on subjects (years)
Northern	34
Far Northern	32
Metropolitan North	25
Metropolitan South	25
Central	24
South Eastern	22
North Coast	19
Southern	18
Queensland (all regions)	25

Source: Police data.

We also examined any changes to this age distribution after the statewide expansion of move-on powers. Significantly, as a proportion of the total number of people moved on, fewer juveniles aged between 10 and 16 years (12.1%,  $n = 431$ ) received a move-on direction in the 12 months after the statewide expansion of move-on powers in 2006 than they did in the 12 months before the expansion (14.4%,  $n = 360$ ). However, despite this reduction, juveniles in this age group remained significantly overrepresented in the recorded data. The age profile of people given move-on directions otherwise remained relatively unchanged.

#### *Indigenous status*

For the same two-year period, we were able to identify the Indigenous status of 6092 of the 6245 recorded move-on subjects. Our analysis of these 6092 move-on subjects showed that in the two-year period 42.6 per cent ( $n = 2594$ ) were Indigenous. When we adjusted these numbers to reflect the proportion of Indigenous people in the general Queensland population, we found that Indigenous people were 20.0 times more likely to be given a recorded move-on direction than were non-Indigenous people.

When we compared the 12-month periods before and after the statewide expansion, we found no significant change in the relative proportion of Indigenous and non-Indigenous people being moved on.

We also compared the 12-month periods before and after the statewide expansion for each QPS region. Here we found that, in the 12 months after the statewide expansion of move-on powers, there was:

- a significant increase in the proportion of move-on subjects in the Central Region who were Indigenous (from 55.9%,  $n = 298$ , to 65.6%,  $n = 465$ )
- a significant decrease in the proportion of move-on subjects in the Metropolitan North Region who were Indigenous (from 25.7%,  $n = 204$ , to 21.3%,  $n = 187$ ).

In submissions and during consultations, a number of people raised specific concerns that move-on directions in Cairns (Far Northern Region), Townsville (Northern Region) and Rockhampton (Central Region) were mostly being issued to Indigenous people. We therefore further analysed data relating to recorded move-on subjects in these cities to assess whether there were high numbers of Indigenous people recorded as being given move-on directions in these cities. We did find relatively high proportions of Indigenous move-on subjects in Cairns (55.2%,  $n = 197$ ), Townsville (73.6%,  $n = 593$ ) and Rockhampton (81.9%,  $n = 683$ ). Even though these cities have high Indigenous populations, this did not fully account for the relatively high proportions of Indigenous recorded move-on subjects, and we found that Indigenous people were still significantly overrepresented as recorded move-on subjects in each city.

### **People moved on more than once**

We also examined the period from 1 June 2005 to 31 May 2007 to determine:

- the numbers and proportions of people who were recorded as being moved on once only, or on multiple occasions
- the gender, age and Indigenous status of those people moved on more than once
- whether or not the statewide expansion of move-on powers was associated with a change in the proportions and characteristics of people moved on once only or on multiple occasions.

Refer to Part 2 of the *Data report* for further detail of the analyses conducted.

When we examined the data for the two-year period of interest, we found that, of the 5234 unique people who had been recorded as being moved-on:

- the majority were moved on once only (89.7%,  $n = 4694$ )
- 6.5 per cent ( $n = 341$ ) of subjects were moved on twice
- 3.8 per cent ( $n = 199$ ) were moved on three times or more.

When we compared the 12-month periods before and after the statewide expansion, we found that there was a very small decrease in the proportion of people recorded as being given more than one move-on direction (from 10.8%,  $n = 231$ , to 10.0%,  $n = 309$ ), but this was not statistically significant.

#### *Gender*

Of the 540 subjects recorded as being moved on more than once during the two-year period, 70.0 per cent ( $n = 378$ ) were male. However, when we examined the proportion of male and female move-on subjects being moved on more than once, we found that females (16.0%,  $n = 162$ ) were significantly more likely than males (9.2%,  $n = 378$ ) to be moved on more than once.

When we examined the impact of the statewide expansion on whether someone receives multiple move-on directions, we found that the proportion of males among people moved on more than once increased significantly in the 12 months after the statewide expansion (from 63.6%,  $n = 147$ , of people moved on more than once to 74.8%,  $n = 231$ ) (the inverse is true for females). However, there were no significant changes in the proportion of either male or female move-on subjects who were moved on more than once (as opposed to once only).

### Age

Of the 540 people who were moved on more than once during the two-year period, the majority were 25 years or older (63.1%,  $n = 341$ ). No-one under the age of 10 was moved on more than once and only 78 juveniles aged 10 to 16 years were moved on multiple times in the two-year period (comprising 14.4% of all subjects moved on more than once).

When we examined juveniles as a proportion of move-on subjects, we found that juveniles aged 10 to 16 years (11.6%,  $n = 78$ ) were no more or less likely than other age groups to be moved on more than once. Move-on subjects aged 17 to 24 years (6.3%,  $n = 121$ ), however, were significantly less likely than other age groups to be moved on more than once, while adult subjects aged 25 years or older (13.8%,  $n = 341$ ) were significantly more likely to be moved on more than once.

We found that there were no significant changes to the age profile of people moved on more than once after the statewide expansion of move-on powers.

### Indigenous status

We found that 70.7 per cent ( $n = 382$ ) of the 540 people moved on more than once were Indigenous. Over the two-year period, Indigenous move-on subjects were 4.9 times more likely to be moved on more than once than were non-Indigenous move-on subjects (20.4%,  $n = 382$ , of all unique Indigenous subjects versus 4.9%,  $n = 158$ , of all unique non-Indigenous subjects).

However, as with the trends for use of move-on powers on Indigenous people in general, we found no evidence that the statewide expansion of the move-on powers significantly increased the likelihood that an Indigenous person would be moved on more than once.

## Use of the disobey move-on offence

### Police use of disobey move-on

A disobey move-on incident is a situation in which an individual or a group of people have failed to comply with a move-on direction given by police. A single disobey move-on incident may involve more than one person being charged with a disobey move-on offence.

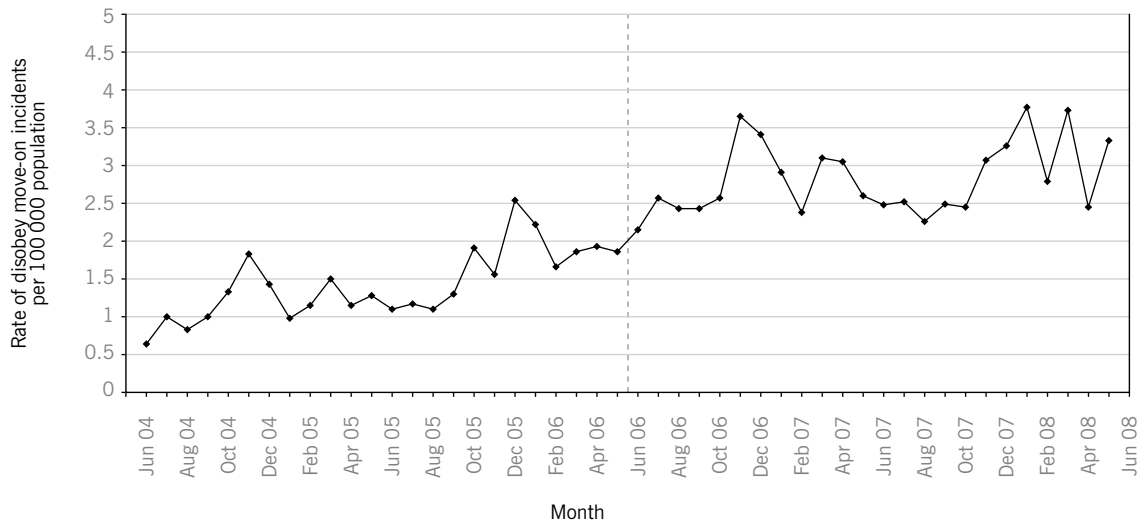
For example, in the period 1 June 2005 to 31 May 2007, there were 2330 disobey move-on incidents, of which 2219 were 'solved'. There were 2444 separate charges of disobey move-on arising from these 2219 incidents.

In this analysis, we focused on the 'solved' disobey move-on incidents. An incident is recorded as 'solved' if police believe there is sufficient evidence that the person involved has committed an offence and some kind of police action has been taken. The type of action police may take includes charging, cautioning or counselling the person. An incident may also be recorded as solved if police believe the person did commit the offence but there is some reason the person should not be charged (for example, the person is a juvenile).

### Recorded disobey move-on incidents

Our initial analysis used our longer-term data from 1 June 2004 to 31 May 2008 to examine trends in the number of disobey move-on incidents. As shown in Figure 4, and as with the rate of recorded move-on incidents, the rate of recorded disobey move-on incidents per 100 000 population has been increasing since data collection for our review began in 2004. In June 2004, there were 0.6 incidents of disobey move-on per 100 000 population. By May 2008, the rate had increased to 3.3.

**Figure 4: Four-year trend of recorded disobey move-on incidents per 100 000 population per month (1 June 2004 to 31 May 2008)**



Source: Police data.

Note: The vertical dotted line bisecting the plot indicates the statewide expansion of the move-on laws.

We then looked more closely at differences between years. As with the rate of recorded move-on incidents, the rate of recorded disobey move-on incidents increased after the statewide expansion of move-on powers. When we compared the 12-month periods before and after the statewide expansion, we found that the annual rate of disobey move-on incidents increased by 64.9 per cent after the expansion (from 20.2 incidents per 100 000 population to 33.3 incidents per 100 000 population). The median monthly rate of disobey move-on incidents also increased from 1.8 to 2.6 incidents per 100 000 population. Like the move-on incident trend, the median monthly rate of disobey move-on incidents did not change significantly from the first year after the statewide expansion of the powers (2.6 incidents per 100 000 population) to the second year after the statewide expansion (2.7 incidents per 100 000 population).

Refer to Part 3 of the *Data report* for further detail of our analyses of recorded disobey move-on incidents, including the temporal and spatial trends discussed below.

### Temporal trends

We used the QPRIME data from 1 June 2005 to 31 May 2007 to examine variation in disobey move-on incidents by day and month, and seasonal variation (that is, summer versus winter months). As with our findings for move-on incidents, the number of disobey move-on incidents recorded by the QPS appears to show some seasonal variation. Higher numbers of disobey move-on incidents tended to be recorded between November and January (summer months) while lower numbers tended to be recorded between June and August (winter months).

### Spatial trends

Using the 1 June 2005 to 31 May 2007 QPRIME data, we examined spatial patterns in disobey move-on incidents by reviewing the distribution of offences within QPS regions. The regional differences we found in the rate of recorded disobey move-on incidents were much the same as those we found in the rate of recorded move-on incidents:

- The monthly rates of recorded disobey move-on incidents over the two-year period in the Metropolitan North, Central and Northern Regions were again generally above the average monthly state rate.
- The Metropolitan South, North Coast, Southern and South Eastern Regions had monthly rates generally below the average monthly state rate.



- In the Far Northern Region, the monthly rate of recorded disobey move-on incidents was similar to the state average in the 12 months before the statewide expansion, but was considerably higher than the state average in the 12 months after.

Again, we found that the statewide expansion of move-on powers was associated with different effects in different regions:

- There were significant increases in the median monthly rate of disobey move-on incidents in the Far Northern (a 246.7% increase), North Coast (120.0%), Southern (75.0%), Central (55.6%) and Northern (17.9%) Regions in the year after the statewide expansion.
- The statewide expansion was associated with no significant changes in the median monthly rate of disobey move-on incidents in the Metropolitan North, Metropolitan South and South Eastern Regions.

## The people who have disobeyed a move-on direction

We refer to those people who have been recorded as disobeying a move-on direction as 'disobey move-on subjects'. Within this group, we refer to those who have disobeyed more than once as 'recidivist disobey move-on subjects'. People who were involved in more than one disobey move-on incident within one of two 12-month periods (that is, in either the 12 months before or the 12 months after the statewide expansion) were classified as a recidivist for that period. Those who were involved in just one disobey move-on incident in a period were not classified as a recidivist.

We refer to people who, in a single incident, were charged with disobeying a move-on direction as well as some other type of offence as 'disobey plus other subjects'.

Because of possible differences in how people's names and dates of birth are recorded in the police data, the data presented here may underestimate the number of recidivist disobey move-on subjects. The data may also underestimate the number of offences attributed to some unique subjects.

Refer to Part 4 of the *Data report* for further detail of the analyses presented in this section.

### Gender

Gender was recorded for all 2444 disobey move-on subjects. For the two-year period from 1 June 2005 to 31 May 2007, disobey move-on subjects were found to be mainly male (84.6%,  $n = 2068$ ). The relative proportions of recorded male and female disobey move-on subjects did not change after the statewide expansion of move-on laws.

### Age

We were able to determine the age of 2442 of the 2444 recorded disobey move-on subjects. About 95 per cent ( $n = 2309$ ) of disobey move-on subjects were adults. The youngest subject was 10 years old, while the oldest subject was 72 years old.

We found that young adults between the ages of 17 and 24 years were significantly overrepresented as disobey move-on subjects; they comprised 41.7 per cent ( $n = 1018$ ) of disobey move-on subjects, but over the same period made up only 11.4 per cent of the Queensland population. Juveniles and adults aged 25 years and over, as a proportion of the Queensland population, were significantly underrepresented as disobey move-on subjects.

The median age of disobey move-on subjects was 25 years. Once again, we found that the median age of subjects varied significantly across the different QPS regions, ranging from 19 years old in the Southern Region to 34 years old in the Far Northern Region.

In examining the effects of the statewide expansion, we found that juveniles comprised a larger proportion of disobey move-on subjects in the 12 months after the statewide expansion (6.2%,  $n = 96$ ) than in the 12 months before (4.2%,  $n = 37$ ). The age profile of disobey move-on subjects otherwise remained relatively unchanged.

### *Indigenous status*

We were able to classify the Indigenous status in 2432 of the 2444 recorded disobey move-on subjects. One-third (33.1%,  $n = 805$ ) of the recorded disobey move-on subjects were Indigenous. This means that Indigenous people — as a proportion of the population — were 13.0 times more likely to be recorded as disobey move-on subjects than were non-Indigenous people.

We also examined whether or not there were any differences in the proportion of Indigenous disobey move-on subjects among the QPS regions. The Northern (68.9%,  $n = 246$ ) and Far Northern (58.4%,  $n = 149$ ) Regions had the highest proportion of recorded Indigenous subjects. Although these findings reflect the large Indigenous populations in these regions, Indigenous people remain overrepresented in the recorded disobey data.

When we looked for any changes after the statewide expansion of move-on powers for each QPS region, we found that there was a significant increase in the Central Region in the proportion of Indigenous disobey move-on subjects (from 27.7%,  $n = 36$ , in the 12 months before the expansion to 46.1%,  $n = 101$ , in the 12 months after). There were no significant changes in any other QPS region.

Our comparison of the two 12-month periods before and after the statewide expansion of move-on laws showed that there was a significant increase in the proportion of Indigenous disobey move-on subjects after the statewide expansion (from 30.1%,  $n = 267$ , to 34.8%,  $n = 538$ ).

### *Recidivist disobey move-on subjects*

We found that the vast majority of disobey move-on subjects had only one disobey move-on offence (94.0%,  $n = 2111$ ). Of the 134 subjects (6.0%) with more than one offence, less than 5 per cent (4.6%,  $n = 103$ ) had two disobey move-on offences, and 1.4 per cent ( $n = 31$ ) had three or more disobey move-on offences. The maximum number of recorded disobey move-on offences identified for a single person was 11. When we compared the 12-month periods before and after the statewide expansion, we did not find a statistically significant difference in the number of recidivist disobey move-on subjects.

We examined the demographic characteristics of our 134 recidivist disobey move-on subjects and found the following:

- Although there were more male (74.6%,  $n = 100$ ) than female (25.4%,  $n = 34$ ) recidivist disobey move-on subjects, females (10.9%) were more likely than males (5.2%) to be recidivist subjects rather than 'once only' disobey move-on subjects.
- The vast majority of the recidivist disobey move-on subjects were adults (72.4%,  $n = 97$ , were 25 years or older and 22.4%,  $n = 30$ , were aged 17 to 24 years), with only 7 (5.2%) juvenile recidivist subjects identified. Adult subjects (those aged 17 to 24 years and those 25 years and older) were significantly more likely to be disobey move-on recidivists than were juveniles.
- Not only were 70.9 per cent ( $n = 95$ ) of recidivist disobey move-on subjects Indigenous, but Indigenous disobey move-on subjects (14.3%) were significantly more likely than non-Indigenous disobey move-on subjects (2.5%,  $n = 39$ ) to be recidivists.

We found no significant changes in the gender, age and Indigenous status profile of recidivist disobey move-on subjects associated with the statewide expansion of move-on laws.

### **Disobey move-on subjects charged with other offences**

We examined the disobey move-on data to ascertain whether people who disobeyed a move-on direction were charged with other offences. Our analysis of the police data over the two-year period from 1 June 2005 to 31 May 2007 revealed 2444 unique disobey move-on subjects whom we examined in this section. Refer to Part 4 of the *Data report* for further detail.

Most subjects (77.8%,  $n = 1901$ ) were charged with disobeying a move-on direction only and were not charged with other types of offences. Of those disobey move-on subjects charged with other offences, our analysis found that:

- 9.3 per cent ( $n = 227$ ) were also charged with offences against police (such as resist arrest, obstruct police, assault police)
- 9.1 per cent ( $n = 222$ ) were also charged with other offences (such as public nuisance)
- 3.8 per cent ( $n = 94$ ) were charged with both offences against police and other offences.

Our comparison of the 12-month periods before and after the statewide expansion showed that there was a significant increase in the proportion of subjects who were charged only with disobeying a move-on direction (from 75.0%,  $n = 669$ , to 79.4%,  $n = 1232$ ). On the other hand, there was a significant decrease in the proportion of disobey move-on subjects charged with any other offences. This was driven especially by a significant decrease in the proportion of subjects being additionally charged with both offences against police and other offences (down from 4.9%,  $n = 44$ , to 3.2%,  $n = 50$ ).

We examined the demographic characteristics of the 543 disobey plus other subjects and determined that:

- Most subjects were male (87.3%,  $n = 474$ ). The likelihood of males (22.9%,  $n = 474$ ) and females (18.4%,  $n = 69$ ) being charged with offences in addition to disobey move-on was not significantly different.
- Juvenile disobey move-on subjects were slightly less likely to be charged with other offences than were adult subjects (17.3%,  $n = 23$ , of juvenile subjects versus 23.9%,  $n = 243$ , of 17 to 24 year olds and 21.5%,  $n = 277$ , of adults 25 years or older), but this difference was not statistically significant.
- The Indigenous status of 538 disobey plus other subjects was identified. Of these, about one-quarter (25.8%,  $n = 139$ ) were Indigenous. We found that Indigenous disobey move-on subjects (17.3%,  $n = 139$ ) were significantly less likely to be charged with other offences than were non-Indigenous subjects (24.5%,  $n = 399$ ).

When we compared the 12-month period before the statewide expansion with the 12-month period after, we found that:

- There were no significant changes in the gender profile of disobey plus other subjects. However, the proportions of both male and female disobey move-on subjects who were charged with other offences decreased after the statewide expansion (consistent with the overall decrease for all subjects); only the decrease for males was statistically significant (down from 26.0%,  $n = 196$ , to 21.1%,  $n = 278$ ).
- There was an increase in the proportion of disobey plus other subjects who were juveniles in the 12 months after the statewide expansion (5.9%,  $n = 19$ , of disobey plus other subjects) compared with the 12 months before (1.8%,  $n = 4$ ). We also found that, after the statewide expansion, disobey move-on subjects aged 17 to 24 years were significantly less likely to be charged with other offences (down from 29.6%,  $n = 110$ , to 20.6%,  $n = 133$ ).
- There were no significant changes in the Indigenous profile of disobey plus other subjects. There was, however, a significant decrease in the proportion of Indigenous disobey move-on subjects who were charged with other offences (from 22.1%,  $n = 59$ , of all Indigenous disobey move-on subjects to 14.9%,  $n = 80$ ).

## The police response to people who disobey a move-on direction

Recorded data about the action police took in response to a person disobeying a move-on direction was available for 1789 adult and 110 juvenile disobey move-on only subjects.<sup>4</sup> We first examined adults, followed by juveniles. Refer to Part 5 of the *Data report* for further detail of our analyses.

From 1 June 2005 to 31 May 2007, most adult disobey move-on only subjects were arrested by police (69.3%,  $n = 1239$ ). Less than one-third (30.4%,  $n = 543$ ) were given a notice to appear. Despite the statewide expansion of move-on laws on 1 June 2006, the proportion of recorded adult disobey move-on subjects arrested or given a notice to appear did not change significantly.

Given the concerns raised during consultations and submissions that the move-on powers may unfairly affect Indigenous people, we compared how police responded to Indigenous and non-Indigenous adults. Analysis of the police data for the two-year period indicates that Indigenous adults were less likely to be arrested for disobeying a move-on direction and more likely to be given a notice to appear than were non-Indigenous adults. More specifically:

- 59.1 per cent ( $n = 362$ ) of Indigenous adult subjects were arrested, in contrast to 74.5 per cent ( $n = 871$ ) of non-Indigenous adult subjects. Our analyses based on these figures found that Indigenous adults were significantly less likely to be arrested for disobeying a move-on direction than were non-Indigenous adults.
- 40.6 per cent ( $n = 249$ ) of Indigenous adults were given a notice to appear, in comparison with 25.1 per cent ( $n = 294$ ) of non-Indigenous adults. Indigenous adults were therefore significantly more likely than non-Indigenous adults to be dealt with by way of notice to appear.

There were no significant changes to how either Indigenous or non-Indigenous adult disobey move-on only subjects were dealt with by police after the statewide expansion of the move-on powers.

When we examined the 110 recorded juvenile disobey move-on only subjects over the two-year period, we found that:

- 41.8 per cent ( $n = 46$ ) were dealt with by way of notice to appear
- 30.0 per cent ( $n = 33$ ) were dealt with by way of arrest (1 aged 13 years, 5 aged 14 years, 9 aged 15 years, and 18 aged 16 years)
- 20.0 per cent ( $n = 22$ ) were cautioned
- 8.2 per cent ( $n = 9$ ) were dealt with through some other police action, including one juvenile who was referred to a community conference.

As we did for adults, we examined how Indigenous juveniles who disobey a move-on direction are dealt with by police. Although the sample is small ( $n = 52$  of Indigenous,  $n = 58$  of non-Indigenous over two years), the data do not indicate that police responded differently to Indigenous juveniles when compared with non-Indigenous juveniles. That is, Indigenous juveniles were no more or no less likely to be arrested, given a notice to appear or cautioned than were non-Indigenous juveniles.

When we compared the two 12-month periods before and after the statewide expansion of move-on powers, we found that there were no significant changes in the proportion of subjects being dealt with by way of arrest, notice to appear or caution for either Indigenous or non-Indigenous juveniles.

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4 We were unable to ascertain the action taken by police in two cases.

## The court response to people who disobey a move-on direction

A person charged with disobeying a move-on direction is required to appear in court to answer the charge; however, in some situations the charge can be heard in the person's absence. The remainder of this chapter examines Magistrates and Childrens Courts data to determine how a sample of disobey move-on matters are dealt with by the courts. Refer to Part 6 of the *Data report* for further detail of our analyses of the courts data.

When appearing in court for a disobey move-on offence, a defendant may be legally represented by engaging their own legal representative or by being self-represented. In instances where the defendant is pleading guilty, they may access a free duty lawyer service to represent them at the sentence and make submissions to the court on their behalf. A duty lawyer cannot represent a defendant if they contest the charge. The defendant will need to either represent themselves or engage a legal representative independently or by making an application for legal aid.

The issue of whether or not a person charged with a disobey move-on offence knows to obtain legal advice and actually does seek out that advice is an important one. Legal advice allows the offence to be assessed to determine whether or not it can be contested — for example, if the direction was not a lawful direction, or if the person had a reasonable excuse for failing to comply with the direction.

Disobey move-on offences are usually prosecuted by police prosecutors from the QPS. Prosecutors are briefed on the matter by reading a court brief prepared by the arresting officer. The court brief usually contains a copy of the QP9, a bench charge sheet and any criminal history the accused may have. The bench charge sheet describes the offence and the QP9 provides particular details of the offence and the antecedents of the accused. The QP9 is a summary of the police officer's version of events. If the person pleads guilty, the QP9 is relied upon as the summary of facts of the matter for sentencing. In most instances, unless the matter proceeds to a summary hearing, no witness statements will be prepared.

If the matter proceeds to a summary hearing, evidence will be called and the magistrate will be required to make a determination of whether or not the prosecution has proved beyond a reasonable doubt that the defendant committed the offence. If the defendant is found guilty, in addition to a penalty for the offence the court may order that costs be paid. If the defendant is found not guilty, the prosecution may be liable to pay costs.

## Our sample of disobey move-on defendants

When recording charges relating to contravention of a direction or requirement of police, courts data do not distinguish between whether the charge relates to a disobey move-on offence or other type of conduct giving rise to a contravene direction or requirement of police offence. To overcome this limitation in the data, we extracted a stratified random sample of disobey move-on offenders from our QPS dataset and endeavoured to match these known disobey move-on offenders to defendants listed in our courts dataset. All of these defendants were charged only with a disobey move-on offence; that is, they had no accompanying charges listed.

Our final sample consisted of 285 adult (Magistrates Courts data) and 88 juvenile (Childrens Courts data) disobey move-on defendants. Overall, we found that young adult and Indigenous defendants were significantly overrepresented in the Queensland courts data for our sample of disobey move-on matters, compared with the Queensland population. In particular, people aged between 17 and 24 years of age (37.5%,  $n = 140$ ) were 4.0 times more likely to appear for a disobey move-on charge than were people of other ages (62.5%,  $n = 233$ ), and Indigenous people (25.8%,  $n = 94$ ) were 9.3 times more likely to appear for a disobey move-on charge than were non-Indigenous people (74.2%,  $n = 271$ ).

An adult who has been charged with disobeying a move-on direction will have their matter heard in a Queensland Magistrates Court. A juvenile, who in Queensland is a person under 17 years of age, will have their matter heard in the Childrens Court or in the Magistrates Court, where the principles of the *Youth Justice Act 1992* (Qld) will apply.

### Adults

Of the 285 adult disobey move-on defendants in our sample:

- Gender was identified in 279 matters that we examined. Of these matters, most defendants were male (91.0%,  $n = 254$ ); 9.0 per cent of defendants ( $n = 25$ ) were female.
- Defendants ranged in age from 17 to 66 years, with a median age of 25 years (and a mean age of 28 years). About half of the adult sample were aged 17–24 years (49.1%,  $n = 140$ ).
- We were unable to identify Indigenous status in four matters. Where Indigenous status was identified, less than 20 per cent of defendants were recorded as Indigenous (18.9%,  $n = 53$ ).

### Juveniles

Of the 88 juvenile disobey move-on defendants in our sample:

- Most were male (82.8%,  $n = 72$ ) — there were only 15 (17.2%) female juvenile defendants. Gender was not specified for one juvenile.
- Defendants ranged in age from 11 to 16 years, with a median (and mean) age of 15 years.<sup>5</sup> Only juveniles over the age of 10 years can be charged with an offence, and so there is no record of juveniles aged 10 years or under in our sample.
- We were unable to identify Indigenous status in four juvenile matters. Where Indigenous status was identified, about half of the juveniles were recorded as Indigenous (48.8%,  $n = 41$ ).

## Results of the courts process

At court, a person charged with disobeying a move-on direction may enter a plea of guilty or may contest the matter by pleading not guilty. A person may, or may not, have legal representation in court. A person who fails to attend court for such a charge may have their matter dealt with in their absence; this is known as an *ex parte* proceeding.

If the matter relates to a juvenile defendant, the court will only be able to deal with a matter in the juvenile's absence in certain circumstances (s. 46 Youth Justice Act). Specifically, if a juvenile fails to appear in court and the matter proceeds *ex parte*, the magistrate can only make an order imposing a fine, and only in situations where the child has indicated in writing that they have the capacity to pay the particular fine.

### Adults

The median length of time between the date that the disobey move-on offence occurred and the date that the most serious penalty was imposed by the court in relation to the disobey move-on charge was 18 days, with most matters processed in 17 days.<sup>6</sup> We have used the date that the most serious penalty was imposed as this predominantly represents the date the matter was disposed of in the courts.

<sup>5</sup> Age was not identified in one matter.

<sup>6</sup> Considering that the processing time in both the Magistrates Courts and the Childrens Courts ranged from 0 days to nearly 300 days, we identified the median as a more accurate estimate of central tendency than the mean (average). The mean number of days to resolve matters heard in a Magistrates Court was 29 days and for Childrens Court matters it was 25 days.

Of the 285 adult disobey move-on only defendants we examined:

- More than half (61.8%,  $n = 176$ ) of adult defendants pleaded guilty to the offence.
- In over one-third (35.1%,  $n = 100$ ) of move-on matters, the defendant failed to appear in court, the matter was dealt with by way of an *ex parte* proceeding and the defendant was found guilty.
- Nine matters (3.2%) did not proceed because they were either dismissed or struck out by the magistrate (1.4%,  $n = 4$ ) or they were discontinued by the prosecution (1.8%,  $n = 5$ ).

As with our review of public nuisance, our results show that Indigenous adult disobey move-on defendants (62.3%,  $n = 33$ ) were 4.1 times more likely to have their disobey move-on matter dealt with through *ex parte* proceedings than were non-Indigenous defendants (28.9%,  $n = 66$ ), and were less likely to plead guilty to the charge in person (35.8%,  $n = 19$ , of Indigenous defendants; 67.5%,  $n = 154$ , of non-Indigenous defendants).

### *Juveniles*

The median length of time between the date that the disobey move-on offence occurred and the date that the most serious penalty was imposed by the court was 15 days; however, most of these matters were processed within 7 days.

Of the 88 disobey move-on only matters that we examined, 94.3 per cent ( $n = 83$ ) of juveniles pleaded guilty. The remaining small proportion (5.7%,  $n = 5$ ) of juvenile disobey move-on only matters did not proceed — four matters were dismissed or struck out, and one matter was withdrawn by the prosecution. From the data, we were unable to determine the reasons for the matters being dismissed or struck out.

## **Recording of convictions**

After the acceptance or determination of a person's guilt, a magistrate has discretion as to whether or not a conviction is recorded against the person (s. 12 *Penalties and Sentences Act 1992* (Qld)). A recorded conviction will be included in a person's formal criminal history and may affect such matters as their work opportunities and the severity of future criminal justice system penalties.

In exercising their discretion, a magistrate will consider factors such as the nature of the offence, the offender's character (which will include their prior criminal history), and the impact of recording a conviction on the offender's economic or social wellbeing or chances of finding employment (s. 12 *Penalties and Sentences Act*).

If the accused is a juvenile, the magistrate will be guided by the specific principles of the Youth Justice Act in determining whether or not a conviction will be recorded (see ss. 150, 183–184). This includes having consideration as to the age of the juvenile and any impact that the recording of the conviction will have on their chances of rehabilitation (s. 184 Youth Justice Act).

### *Adults*

Of the 285 adults, 96.8 per cent ( $n = 276$ ) resulted in a guilty finding (by either pleading guilty or having the matter dealt with in their absence by *ex parte* proceedings). Where we were able to establish if a conviction was recorded,<sup>7</sup> this occurred in over one-third of matters (34.7%,  $n = 93$ ).

<sup>7</sup> In eight matters (2.9%), the way that the QWIC database is set up did not allow us to determine whether or not a conviction was recorded.

Disobey move-on defendants who had their matter dealt with through *ex parte* proceedings were significantly more likely to have a conviction recorded (46.7%,  $n = 43$ , had a conviction recorded while 53.3%,  $n = 49$ , did not have a conviction recorded) than were defendants who pleaded guilty in person (28.4%,  $n = 50$ , had a conviction recorded while 71.6%,  $n = 126$ , did not have a conviction recorded). A contributing factor for this may be the lack of submissions to argue against recording of a conviction.

As well, Indigenous disobey move-on defendants (65.4%,  $n = 34$ ) were close to five (4.9) times more likely to have a conviction recorded against them than were non-Indigenous defendants (27.8%,  $n = 59$ ). This difference in convictions being recorded may not necessarily be from discriminatory sentencing. Rather, it may be the result of differences in prior criminal records and the high level of Indigenous matters that are dealt with by *ex parte* proceedings.

### *Juveniles*

Our examination of Childrens Court data for disobey move-on matters shows that, of the 83 juveniles found guilty, we were able to establish whether or not a conviction was recorded in 76 matters. Of these, convictions were not recorded for almost all matters (98.7%,  $n = 75$ ). Only one male juvenile had a conviction recorded.<sup>8</sup>

Overall, adult disobey move-on defendants (34.7%,  $n = 93$ ) were more likely to have a conviction recorded against them for the disobey move-on offence than were juveniles (1.3%,  $n = 1$ ). This low proportion of juveniles having a conviction recorded for the disobey move-on offence is likely to reflect the juvenile justice principles, as outlined in the Youth Justice Act and as discussed above.

## **Penalties imposed**

The penalties that may be imposed for a disobey move-on offence are:

- a fine of not more than \$4000
- the conversion of a fine to a fine option order that requires the offender to perform community service
- the release of a person on their own recognisance for a period of time
- the offender being discharged with no further penalty imposed.

As indicated earlier, in dealing with a juvenile, the court will be guided by the principles of the Youth Justice Act and this will affect the penalties and sentences imposed by the court. For example, a juvenile's age may be considered a mitigating factor in determining whether a penalty will be imposed, and the nature of that penalty (s. 150(2) Youth Justice Act). There are also distinct sentencing options available in relation to juveniles, such as youth justice conferences (see Part 3 Youth Justice Act).

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<sup>8</sup> This juvenile was recorded as non-Indigenous in the courts data. However, information from police data provides sufficient information to identify this juvenile as an Indigenous male.



### Adults

Our analysis of the orders imposed in the Magistrates Courts for the 276 disobey move-on defendants convicted of the offence in our sample revealed that:

- the majority of adult defendants received a fine monetary order (81.5%,  $n = 225$ )
- in an additional 5.1 per cent of matters ( $n = 14$ ), another type of monetary order was imposed, most commonly that the defendant's bail was revoked or forfeited as penalty (all of these were *ex parte* matters)
- in a small proportion (6.5%,  $n = 18$ ), a recognisance order was imposed
- a conviction but no further punishment was imposed by the court in 6.9 per cent ( $n = 19$ ) of matters.

Adult Indigenous defendants in our sample who were convicted of a disobey move-on offence (92.3%,  $n = 48$ ) were significantly more likely (3.2 times) than non-Indigenous defendants (79.1%,  $n = 174$ ) to be given a fine monetary order. Although there was a higher number of non-Indigenous matters where a recognisance/good behaviour order was imposed (7.7%,  $n = 17$ ) or the defendant was discharged without any further punishment (6.8%,  $n = 15$ ), we were unable to test for significant differences compared with Indigenous defendants, given the small number of Indigenous matters resulting in these penalties (1.9%,  $n = 1$ , received a recognisance/good behaviour order, while 5.8%,  $n = 3$ , received no further punishment).

### Juveniles

Our analysis of the orders imposed in the Childrens Courts revealed that:

- the majority of juvenile disobey move-on defendants (69.9%,  $n = 58$ ) were discharged without any further punishment
- a good behaviour/recognisance order was made in 18.1 per cent ( $n = 15$ ) of matters
- a small proportion (6.0%,  $n = 5$ ) were ordered to attend a community/youth justice conference
- three defendants (3.6%) were ordered to pay a fine
- one defendant (1.2%) received a community service order
- a general order was given to one defendant (1.2%) — no further details were provided.

Given the small sample size, few comparisons could be made between the orders imposed by the Childrens Courts on convicted Indigenous and non-Indigenous juvenile disobey move-on defendants. We found no significant difference in the likelihood of Indigenous and non-Indigenous juveniles being discharged without any further punishment.

## Monetary orders

We analysed the monetary orders for both adult and juvenile disobey move-on defendants in our sample who were convicted and ordered to pay a fine.

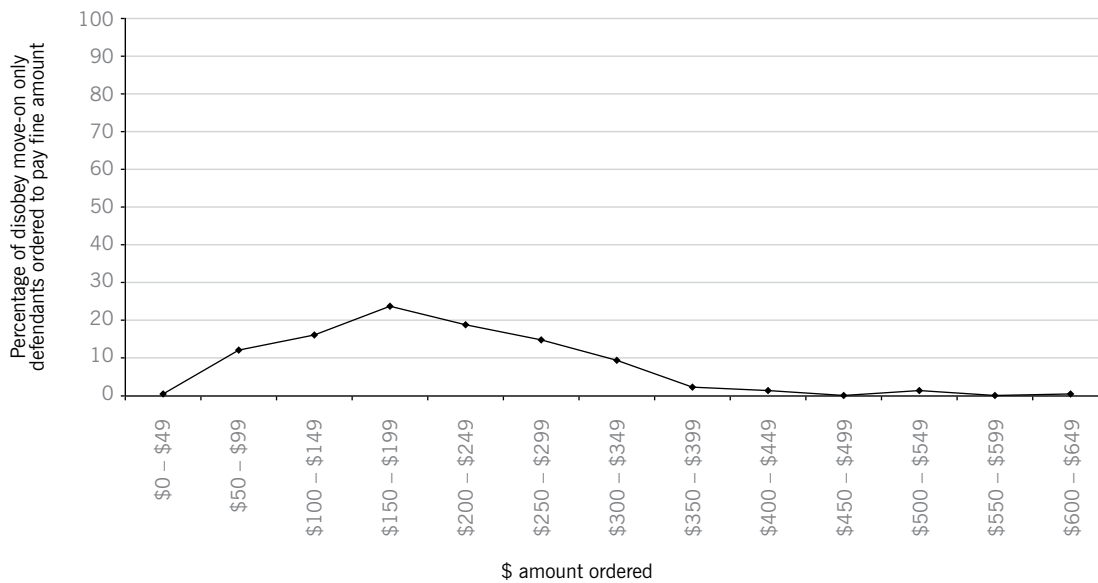
### Adults

As noted above, the majority of penalties handed down by the court to our sample of convicted adult disobey move-on defendants were fines (81.5%,  $n = 225$ ). These ranged from a minimum of \$40 to a maximum of \$600. The median fine amount ordered was \$175, although the most frequent fine amount was \$150 ( $n = 47$ ).<sup>9</sup> Figure 5 displays the distribution of fine amounts for the 225 adults ordered to pay a fine from the sample we analysed.

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9 Given the large range in fine amounts, the median is a better estimate of central tendency than the mean.

**Figure 5: Magistrates Court fine amounts for adult disobey move-on defendants**



Source: Courts data.

### Juveniles

Of our sample of 83 juvenile disobey move-on defendants who pleaded guilty to a disobey move-on offence, only three were ordered to pay a fine. Two defendants were ordered to pay \$100, while the third defendant was ordered to pay \$50. All were aged 16 years.

### Unpaid fines

In Queensland, the State Penalties Enforcement Registry (SPER) is responsible for the collection and enforcement of infringement notice fines and court-ordered monetary fines.

When a magistrate orders a monetary fine, they will determine a time in which the fine is to be paid. If a person does not pay the fine within the predetermined time, the fine will be sent to SPER, who will become responsible for its enforcement. A magistrate may also determine that a fine be sent to SPER immediately; this may be because of a person's limited financial means.

In its enforcement capacity, SPER offers payment options such as setting up part-payments through an instalment plan. However, if a fine is not paid or attended to, SPER has the authority to undertake enforcement actions such as the suspension of driver licences, forced transfers of money, seizure of property or applying to have a warrant issued for a person's arrest.

### Adults

Of the 225 disobey move-on fines we analysed, the vast majority (93.8%,  $n = 211$ ) were sent to SPER for enforcement. Only a small number of disobey move-on fines issued during this period were paid in the time allocated by the court (6.2%,  $n = 14$ ).

Of the 211 disobey move-on fines referred to SPER, 41.2 per cent ( $n = 87$ ) were finalised by the defendant and had been paid in full, while 58.8 per cent ( $n = 124$ ) remained outstanding.

Our analysis of the 124 outstanding fine amounts revealed:

- the minimum amount owing was \$28.50 and the maximum amount owing was \$500
- the median and most common amount outstanding to SPER was \$150 (and the mean amount was \$180.55)
- 33.1 per cent ( $n = 41$ ) were in compliance with SPER conditions and were on either a payment plan or a community service order

- 66.9 per cent ( $n = 83$ ) were not in compliance with the SPER conditions; that is, they were not on a payment plan or community service order.

This means that almost 40 per cent (39.3%,  $n = 83$ ) of the 211 disobey move-on fines sent to SPER from our sample were not in compliance with SPER conditions at the time of our data request.

#### *Juveniles*

The three juvenile disobey move-on defendants who were ordered to pay a monetary fine either were not referred to SPER or could not be identified in our dataset. No determination can therefore be made about whether these fines were paid and whether they were in compliance with any order or conditions.

## **How the data correspond with concerns regarding the potential for misuse of move-on powers**

In this section we reflect on how the data correspond with the concerns raised first in the debate surrounding the introduction of move-on powers in 1997 and again upon the statewide expansion of the powers in 2006. The data available made it difficult to analyse all areas of concern. For instance, we were not able to examine whether the power gave police more or less ability to regulate public space. Nor were we able to determine whether or not the laws simply displaced people or groups from one location to another.

### **Inappropriately targeting disadvantaged groups**

As mentioned previously in this report, the nature of QPS data means that we are unable to comment on the use of the move-on powers on homeless people.

When we look at age, the data indicate that adults receive the majority of move-on directions. In fact, in the first 12 months after the statewide expansion of move-on powers (compared with the previous 12 months), fewer juveniles aged between 10 and 16 were moved on. Despite this, there are a number of findings that may be of concern:

- juveniles in the 10 to 16 year age group remain overrepresented in the move-on data
- over 140 directions were issued to juveniles under the age of 13 years
- the median age of people who were moved on differed significantly among QPS regions
- people aged between 17 and 24 years were significantly overrepresented in the move-on and disobey move-on data.

Our analyses also show that the move-on laws significantly affect Indigenous people. Importantly, Indigenous overrepresentation has remained stable for recorded move-on incidents, with the data showing no additional impact as a result of the statewide expansion of the powers.

Key findings are:

- Indigenous people were 20 times more likely than non-Indigenous people to be moved on.
- Indigenous people were close to 5 times more likely than non-Indigenous people to be moved on more than once.
- Indigenous people were 13 times more likely than non-Indigenous people to be charged with disobeying a move-on direction.
- In certain areas where most people who are given move-on directions are Indigenous, Indigenous overrepresentation was still significant even after accounting for the larger Indigenous populations in these locations.
- Adult Indigenous defendants were significantly more likely than adult non-Indigenous defendants to have their matter dealt with *ex parte* and a conviction recorded for a disobey move-on offence.

## THE ADMINISTRATION OF THE MOVE-ON LAWS AND OUR RECOMMENDATIONS

In this final chapter, we discuss the use of move-on powers in the context of their stated intentions, specifically to provide police with:

- an ability to respond to antisocial conduct in order to contribute towards improved feelings of community safety and maintain public order
- an alternative to arrest for public disorder conduct and to divert people away from the criminal justice system.

We situate these stated intentions within the broader contexts of police discretion and public order policing, paying particular attention to:

- the legislative framework for move-on powers, and
- how police have put move-on laws into operation, including the guidance on the use of move-on powers provided in training, policy and procedures.

In examining these key areas, we draw on our data analysis presented in the previous chapter, and the information that we have obtained from our analysis of the literature and policing resources, community consultations and consultations with police. We also present our recommendations for improvements to the move-on powers and how their use by police could be enhanced. In formulating our recommendations, we have tried to ensure that police discretion remains central to the use of the move-on power, but that this discretion operates within a framework that serves to reduce the impact of the move-on powers on marginalised groups.

### The legislative framework

The move-on laws located in Part 5 of Chapter 2, 'General Enforcement Powers', of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA 2000) enable police to act on their own discretion and issue a move-on direction in response to either a person's behaviour or their presence at or near a public place.

Although discretion underpins policing in general, and public order policing in particular, the degree of discretion provided for in the move-on legislation is seen as a significant problem. In our consultations, stakeholders criticised the discretionary nature of the power, arguing that the provisions lack clarity and objectivity. (A list of some of the stakeholders consulted and submissions relied upon in this chapter can be found in Appendix 2.) For example:

The way in which move on powers are applied is a matter entirely in the hands of the members of the Queensland Police Service. (Queensland Council for Civil Liberties, 19 February 2009)

[The powers] enable the police to themselves determine and impose their own view of what they deem to be the standard of acceptable behaviour in a public place. (Legal Aid Queensland, 19 February 2009)

In this section, we present the key issues associated with the move-on provisions, specifically:

- the behaviour and presence provisions
- the reasonable suspicion test
- the type of move-on direction a police officer can give
- legislative safeguards for the use of the move-on powers
- the reasonable excuse defence.

## Behaviour and presence

A move-on direction can be issued in response to either a person's behaviour or their presence at or near a public place or a prescribed place if a police officer reasonably suspects that a person or group of people's behaviour or presence is:

- Causing anxiety to a person entering, at or leaving the place.<sup>10</sup> The anxiety caused must be reasonably arising in the circumstances.
- Interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place.<sup>11</sup> Police can only rely on this limb if they first receive a complaint from the proprietor.
- Disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.<sup>12</sup> The move-on laws cannot be used if the gathering is an authorised public assembly or peaceful assembly, unless certain circumstances apply.<sup>13</sup>

Specifically in relation to a person's behaviour, a move-on direction can be issued if a police officer reasonably suspects that:

- the person's behaviour is or has been disorderly, indecent, offensive or threatening to someone entering, at or leaving the place<sup>14</sup>
- the person is soliciting for prostitution.<sup>15</sup>

Our review identified three main concerns with the move-on provisions:

- the use of presence as a basis for issuing a move-on direction
- the 'causing anxiety' limb of the behaviour and presence provisions
- the 'soliciting for prostitution' limb.

### Presence as a basis to move on

The presence provisions attracted significant criticism in submissions and consultations. For example:

A person's mere 'presence' should never justify a move-on direction being issued. (QPILCH Homeless Persons' Legal Clinic, 24 February 2009)

... a person's mere presence in a regulated or public place, in the absence of anything further, should not justify police interference with their otherwise lawful rights to use that space ... The power to issue a move-on direction on the basis of mere presence is clearly one prone to misuse and discriminatory and unfair application. (Legal Aid Queensland, 19 February 2009)

Section 47 of the PPRA has the effect of criminalising a person's presence ... move-on powers are effectively criminalising society's negative perceptions of certain groups. This has serious consequences for Indigenous people; 'due to negative and sometimes racist stereotypes that exist in our society about Aboriginal and Torres Strait Islander peoples, it is a sad fact that in many circumstances certain people will feel threatened by an Aboriginal person, not because of their behaviour but by the very fact that they are Indigenous'. The prejudices of some community members should not form the basis of coercive police powers. (Queensland Council for Civil Liberties, 19 February 2009)

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10 Section 46(1)(a) & s. 47(1)(a) PPRA 2000.

11 Section 46(1)(b) & s. 47(1)(b) PPRA 2000.

12 Section 46(1)(d) & s. 47(1)(c) PPRA 2000.

13 Section 45 & s. 48(2) PPRA 2000. Unless it is reasonably necessary in the interests of public safety, public order, protection of rights and freedoms of others.

14 Section 46(1)(c) PPRA 2000.

15 Section 46(5) PPRA 2000. The *Criminal Code Act 1899* (Qld) s. 229E definition of prostitution applies. Prostitution means if a person engages, or offers to engage, in a commercial agreement with another, to provide services of a sexual nature including: sexual intercourse, masturbation, oral sex or any physical activity for sexual satisfaction. Section 229E of the Criminal Code also provides for lawful prostitution activities.

Although we are unable to determine from police and courts data how often police rely on s. 47 of the PPRA 2000 as the basis for a move-on direction, information from police focus groups indicated that police place little emphasis on the use of the presence provision as a ground for a move-on direction. This conflicts with many views expressed in public submissions, where it was felt that presence was often relied on by police:

There was also a perception that the laws were being applied in a way that was biased against particular individuals or groups of people ... consistent themes of discriminatory application of the powers emerged, with feelings that factors other than a person's behaviour played a role in them being moved-on. (West End Community House, 20 February 2009)

Our analysis of the three limbs of the presence provision in s. 47 of the PPRA 2000 revealed that only s. 47(1)(a) (the 'causing anxiety' limb) allows police to move a person on, based on their presence alone without any objectionable conduct. We discuss the issues associated with the 'causing anxiety' limb in the following section.

Adopting an everyday ordinary meaning of the word 'behaviour' indicates that the conduct required pursuant to s. 47(1)(b) and (c) of the PPRA 2000 refers to more than passive presence; behaviour is involved:

- s. 47(1)(b) of the PPRA 2000 refers to obstructing, hindering or impeding someone's ability to enter or leave a place
- s. 47(1)(c) of the PPRA 2000 refers to causing a disruption.

We found that the conduct captured by s. 47(1)(b) and (c) of the PPRA 2000 is suitably captured by the behaviour provisions of s. 46(1)(b) and (d). Consequently, s. 47(1)(b) and (c) of the PPRA 2000 are superfluous. This analysis is supported by the examples given in the Explanatory Notes of the PPRA 1997 and the PPRA 2000, which are presented in Table 2.

### **The 'causing anxiety' limb**

In general, the 'causing anxiety' limb, regardless of whether used in the context of behaviour (s. 46(1)(a) PPRA 2000) or presence (s. 47(1)(a) PPRA 2000), was the focus of considerable concern in the submissions. This limb requires police to make a subjective judgment about whether one person's behaviour or presence has prompted feelings of anxiety in another. This requires them to make a psychological judgment about the impact of the behaviour or presence on another person's psychological state.

The current wording of the limbs in s. 46(1)(a) and s. 47(1)(a) of the PPRA 2000 provides a high level of discretionary power for police to make this determination. Because police do not need to first receive a complaint before they can rely on the 'causing anxiety' limb, they may act in error or overzealously, based on what they perceive to be the other person's anxiety when it may be nothing of the sort. The only aspect of guidance in the use of this limb is that the anxiety must be reasonably arising in all the circumstances; this leaves it open for bias, prejudice, stereotyping or discrimination to affect an officer's or complainant's decision-making process.

Giving police the power to forcibly move people on when they are doing nothing wrong, just because other people experience anxiety, can reward and reinforce discriminatory attitudes, while increasing a sense of grievance and isolation against [among] those who are being unfairly targeted. (Ethnic Communities Council of Queensland, 20 February 2009)

We do agree that the police should have the power to ask drunken, violent etc. people to move-on. The problem is that how does the police conclude that the situation is causing anxiety, interference and disruption and who is the doer of the action? (Queensland African Communities Council, 20 February 2009 )

Communities noted concerns over terminology used in the legislation, that 'causing a person anxiety' being used as justification for being asked to move on. In particular, reflected that this assessment is reliant upon the value system of the police or person making a complaint, and of the police and/or complainant's personal experiences and

judgement of groups. (Office of Aboriginal and Torres Strait Islander Partnership Regional Consultations in submission of the Department of Communities — Disability Services Queensland, 27 March 2009)

The notion of persons causing ‘anxiety’ is highly subjective. Members of the broader community may be anxious in the presence of such open disadvantage. Through media stereotypes people may be fearful of homeless, indigenous and young people who occupy public space making these groups prime targets for police move-on directions, whether justified or unjustified ... The notion of presence causing ‘anxiety’ is far too subjective, ill-defined and value-laden to ensure natural justice and the fair interpretation and application of these powers. What is seen as causing anxiety to one person, may not be reasonably viewed as causing anxiety by another. There is far too greater discretion, ambiguity and scope for discrimination under such a clause. (Indigenous Women’s Unit, Aboriginal and Torres Strait Islander Women’s Legal Services NQ Inc., 30 March 2009)

**Table 2: Scenario examples for the behaviour and presence provisions**

Behaviour	Scenario example	Presence	Scenario example
Causing anxiety	A stranger approaching a child and asking the child if he or she wants to be driven home. Youths gathering around the footpath near the entrance to a railway station tunnel and causing anxiety to any person who wants to use the tunnel to get to a train platform.	Causing anxiety	A person, who has no reasonable excuse for being there, is sitting in a vehicle parked across from a school yard. A person who is known, or reputed, to be selling drugs to school children is standing outside a school yard without reasonable cause.
Interfering with trade or business	A group of youths deliberately stepping in front of someone who is attempting to enter or leave a late-night store.	Interfering with trade or business	A group of youths sitting on the steps in front of a store and by their presence preventing or impeding the entry of a person to that store.
Disorderly Indecent Offensive Threatening	Youths fighting in front of a place in such a manner that a reasonable person may feel threatened if they were to enter or leave. A husband yelling at his estranged spouse who is attempting to leave a school yard after picking up her child. Youths gathering around the entrance to a railway station and threatening, or by menace demanding something from, a person who wants to catch a train or wants to leave a railway station.	Not applicable	Not applicable
Disrupting the peaceable and orderly conduct of any event, entertainment or gathering	An intoxicated person or a group of intoxicated persons disrupting a school fete. A person or persons interrupting or disrupting entertainment held at a shopping centre.	Disrupting the peaceable and orderly conduct of any event, entertainment or gathering.	Members of an extremist group standing at the entrance of a shopping centre where a book opposing their views is to be launched by the author.
For the purpose of soliciting for prostitution	No examples were provided.	Not applicable	Not applicable

The subjective nature of the context of causing anxiety, the lack of guidance in the legislation, the potential for discrimination to occur, and the perceived low tolerance threshold also led to concerns that this limb could facilitate misuse of the power:

Further, RIPS believes that the possibility that a person may be **causing mere anxiety to another person is too low a threshold** for the powers to be exercised. RIPS believes that the threshold should be raised such that a person may only be subject to a move-on direction if they are engaging in behaviour that **constitutes harassment or intimidation**. (Rights in Public Space Action Group, 17 February 2009)

We believe that the 'causing anxiety' limb should be improved by making it a complaint-based provision; police would first be required to receive a complaint before being able to rely on the 'causing anxiety' limb. This would remove the need for police to make the determination about the impact of one person's behaviour on another.

Additionally, the anxiety threshold should be raised to a higher level by replacing anxiety with 'causing or likely to cause fear to a reasonable person'. This accords with the New South Wales move-on legislation (s. 197 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)). Appendix 7 details some of the move-on laws in other Australian jurisdictions.

### **The move-on powers prostitution limb**

Street-based sex work is illegal in Queensland. Where a police officer reasonably suspects that a person is soliciting for prostitution, police are provided with the discretion to draw on powers under either the PPRA 2000 (s. 46(5)) or the *Prostitution Act 1999* (Qld) (s. 73).<sup>16</sup>

Submissions made to our review by some prostitution interest groups claimed that s. 46(5) of the PPRA 2000 is discriminatory and unfairly targets street-based sex workers who are already heavily regulated under the Prostitution Act (Crimson Coalition, 20 February 2009; Scarlet Alliance Australian Sex Workers Association, 23 February 2009; United Sex-workers North Queensland Inc., 23 February 2009).

Further concerns were raised that the move-on powers:

- Contribute to compromising the safety of a street-based sex worker as that person leaves a familiar place and goes to a more unsafe area (Crimson Coalition, 20 February 2009; Prostitution Licensing Authority, 2 February 2009).
- Are being used by police against persons known to police for prostitution but applied in situations where the person's behaviour is lawful (for example, when shopping, using services or facilities, or socialising) (Crimson Coalition, 20 February 2009; United Sex Workers North Queensland Inc., 23 February 2009). This is particularly so in smaller communities where sex workers are well known to the police, public space areas are smaller and there is a greater likelihood that a police officer would come into contact with the worker.
- Contribute to increased encounters between street-based sex workers and police. This may make these sex workers hesitant to report crimes or seek help from police, who have a dual role of prosecutor and protector of street-based sex workers (Scarlet Alliance Australian Sex Workers Association, 23 February 2009).

On the other hand, some police expressed support for the prostitution limb, indicating that it is a useful tool in the prevention of the offence to which it relates. Police did state that one of the complexities of moving a person on who is suspected of street-based prostitution is that they are simply displacing the problem from one area to another. This view was supported by the Prostitution Licensing Authority.

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<sup>16</sup> Under the Prostitution Act, soliciting for prostitution attracts a range of substantial penalties. The maximum penalties are a fine of \$1500 for a first offence, \$2500 for a second offence, and \$3000 or 6 months imprisonment for a third or subsequent offence.



Lack of recorded data meant that we were unable to determine how often the move-on powers are being applied in relation to the prostitution limb. More research facilitated by enhanced data collection practices is necessary if we are to determine the real impact of the move-on provisions on the prostitution industry.

Although we make no specific recommendation in relation to the prostitution limb in s. 46(5) of the PPRA 2000, we agree with the submission of the Prostitution Licensing Authority that, as an alternative to applying the move-on prostitution limb or charging a person with soliciting, the focus should be on diverting street-based sex workers to organisations that will help them to address the factors contributing to their involvement in prostitution.

Overall, in relation to the behaviour and presence limbs, we found that:

- the conduct captured by s. 47(1)(b) and (c) of the PPRA 2000 is suitably captured by the behaviour provisions of s. 46(1)(b) and (d) of the Act
- passive presence provides insufficient basis for a move-on direction
- the limbs of ‘causing anxiety’ in s. 46(1)(a) and s. 47(1)(a) of the PPRA 2000 are drafted in a manner that is too broad and subjective.

## Recommendation 1

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**That s. 47 of the PPRA 2000 where the move-on power can be exercised in relation to ‘presence’ be repealed.**

## Recommendation 2

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**That the ‘causing anxiety’ limb in s. 46 of the PPRA 2000 be amended to only allow police to take action against a person on the basis:**

- **that the person’s behaviour ‘is causing or is likely to cause fear to a reasonable person’ and**
- **that police have received a complaint about the person’s behaviour.**

### The reasonable suspicion test

Before police can issue a move-on direction, the police officer must ‘reasonably suspect’ that a person’s behaviour or presence is fulfilling or has fulfilled one of the limbs of s. 46 or s. 47 of the PPRA 2000.

The PPRA 2000 defines ‘reasonably suspects’ to mean ‘suspects on grounds that are reasonable in the circumstances’ (Schedule 6 PPRA 2000). The Court of Appeal in the case of *Rowe v. Kemper* [2009] 1 Qd R 247 (Appendix 8 provides a brief summary of Rowe’s case) provided that, in determining what a reasonable suspicion is, the totality of the circumstances needs to be taken into consideration and the police officer’s suspicion must be objectively reasonable. In the view of McMurdo P (at 254) ‘it [the suspicion] must be based on facts which would create a reasonable suspicion in the mind of a reasonable person’. Mackenzie AJA (at 275) further commented that ‘while the holding of a suspicion, which is a state of mind, can be inferred from circumstantial evidence in the absence of any direct evidence from the person concerned, the question is whether the suspicion was in fact held by the person’.

Building on the notion that the threshold for move-on is too low, we propose that the move-on laws would be enhanced by replacing the reasonable suspicion test with a reasonable belief test. Given the discretionary nature of the powers, the exercise of a reasonable belief test involves a higher threshold of proof. To ‘reasonably believe’ means to believe on grounds that are reasonable in the circumstances (Schedule 6 PPRA 2000).

### Recommendation 3

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**That the 'reasonable suspicion' test in s. 46 of the PPRA 2000 be repealed and replaced with a 'reasonable belief' test.**

#### The type of move-on direction a police officer can give

The move-on laws are quite broad in describing what type of move-on direction a police officer may give a person; a police officer may give a person of any age, or a group of persons, any direction that is reasonable in the circumstances (s. 48(1) PPRA 2000).

Interpretative guidance is provided in the form of three specific examples of move-on directions (s. 48(1) PPRA 2000):<sup>17</sup>

If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.

If a group of people have been fighting in a nightclub car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.

If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.

In addition to these examples, the move-on laws provide further guidance by describing three different types of directions that a police officer may give:

- a direction to leave a place and not return or be within the place within a stated reasonable time of not more than 24 hours (s. 48(3)(a) PPRA 2000)
- a direction to leave part of a place and not return or be within that part of the place within a stated reasonable time of not more than 24 hours (s. 48(3)(b) PPRA 2000)
- a direction to move from a particular location at or near the place for a reasonable distance, in a particular direction, and not return or be within the distance from the place within a stated reasonable time of not more than 24 hours (s. 48(3)(c) PPRA 2000).

However, these examples do not limit the ability of police to give any direction that is reasonable in the circumstances.

In considering what kind of direction is reasonable in the circumstances, an objective test is applied to the particular circumstances of each case. In *Rowe's case*, Holmes JA (at 271) noted that the move-on direction must 'bear a relationship to the behaviour about which the reasonable suspicion' in the mind of the officer was formed. The move-on direction must be proportional to the conduct it is seeking to address. Mackenzie AJA (at 275) noted:

What constitutes a 'reasonable' direction depends on the circumstances with which the police officer is confronted ... What is a 'reasonable' direction has to be judged in light of the reasonable suspicion that is held. The suspicion must be that held by the police officer.

The direction must not be so broad that it is not reasonable in the circumstances; the direction must be closely linked or related to the triggering conduct that gives rise to the move-on direction (per *McMurdo P* at 258).

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<sup>17</sup> The examples give guidance on the type of direction a police officer may give but do not limit the type of direction that can be given. Section 14D of the *Acts Interpretation Act 1954* (Qld) provides that examples used in legislation are not exhaustive and do not limit but may extend the meaning of the provision. The examples and the section are to be read in the context of each other and other sections of the Act.

We believe that there is an opportunity to strengthen the coupling of the move-on legislation to its original intention by amending this part of the legislation. Building on the finding from Rowe’s case, we find that the current wording of s. 48(1) of the PPRA 2000 is too broad. The direction must be proportional to the conduct that gave rise to the direction, and the reason for the direction should be in accordance with the purposes of the move-on laws — that is, to maintain community safety and public order.

#### **Recommendation 4**

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**That new threshold requirements be inserted into s. 48 of the PPRA 2000 to guide the type of move-on direction that a police officer may issue.**

**These requirements should include:**

- **that police must be satisfied that a move-on direction is reasonably necessary to maintain community safety and public order**
- **that police must issue a move-on direction that is proportional to the conduct which gave rise to the move-on direction.**

**The wording ‘that is reasonable in the circumstances’ should be repealed.**

In relation to the time frame for which a move-on direction can apply, the legislation currently gives police the discretion to nominate a period of up to 24 hours. Some comments made to our review argued that a 24-hour time period is excessive and longer than is necessary to address the conduct that is the subject of the direction. The Queensland Council for Civil Liberties argued that a 24-hour limit is excessive and ‘can limit individuals’ access to vital services. This is particularly true for Indigenous homeless people who need access to valuable outreach services, such as medical assistance and the provision of food.’

Lack of recorded data meant that we were unable to use official data to determine the length of time move-on directions commonly apply. Further, no consensus regarding a more appropriate duration came through in our consultations. Consequently we have elected not to recommend any modification to the legislated 24-hour time period. Our position is that the upper limit should remain in place and that, in deciding the most appropriate duration of the move-on direction, police should consider the circumstances of the event as it relates to community safety and public order.

We reiterate the principle from Rowe’s case that the particulars of the direction, including the time period for which it applies, must be proportional to the conduct.

#### **Legislative safeguards for the use of the move-on powers**

Legislative safeguards were introduced as an accountability measure to help prevent the misuse or abuse of the move-on powers. Some of these safeguards are specifically captured in the move-on provisions, while others are found in other sections of the PPRA 2000 that apply to other situations that allow police officers to give a person a verbal direction or make a verbal requirement. A failure by police to comply with the legislative safeguards may result in a move-on direction being unlawful or an offence of disobeying a move-on direction being dismissed or struck out by the court.

### Safeguards related to the move-on direction

A police officer issuing a direction is required to give the person being moved on:

- the reason for them being issued with the direction (s. 48(4) PPRA 2000)
- the officer's name, rank and police station (s. 637 PPRA 2000)
- a reasonable opportunity to comply with the direction (s. 633(3) PPRA 2000).

The officer must also record on QPRIME the details of the move-on direction and identifying information about the person moved on (s. 680 PPRA 2000; Schedule 10, number 65 Police Powers and Responsibilities Regulation 2000). The following information must be included:

- when the direction was given
- the location of the person who was given the direction
- if known, the name of the person given the direction
- the reason for giving the direction
- a description of the person, including age, sex and ethnic background.

A person who has been given a move-on direction is entitled, upon request, to be given a copy of the information recorded in the police register of enforcement acts within three years of the direction being issued (s. 681 PPRA 2000).

A number of operational factors mean that these safeguards are less effective than they could otherwise be. When issuing a move-on direction, police have no ability to demand the person's name and address. Issuing a move-on direction is not a 'prescribed circumstance' in which a police officer can require a person to provide his or her name and address (ss. 40 and 41 PPRA 2000). Police can only demand a person's name and address if the person has disobeyed the move-on direction and police have made a decision to charge them (ss. 40 and 41 PPRA 2000).

Individual officers and the QPS in their submission to our review affirmed that the lack of legislative authority to demand name and address at the time of issuing a direction is problematic because:

- it hinders the legislative requirement that all move-on directions must be recorded, and
- it makes it more difficult to detect a breach of a move-on direction if the person returns to the location, unless the same officers are present.

Although it is possible to record the details of a move-on direction without a person's name, the general perception among police officers is that such reports would be virtually meaningless. In the absence of a name, police officers would be unable to discover the existence of a move-on direction or determine if a move-on direction has been contravened.

As a consequence of this loophole, we believe that police are significantly underreporting move-on directions (and, it follows, disobey move-on offences). In addition to the legal and operational ramifications mentioned above, this underreporting has clear implications for this review. We believe that the PPRA 2000 should be amended to give police a power to demand that a person provide their name and address when being issued with a move-on direction. Additionally, this amendment will contribute to better QPS data collection and allow greater opportunities to monitor the use of move-on powers.

## Recommendation 5

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**That the issuing of a move-on direction become a 'prescribed circumstance', pursuant to s. 41 of the PPRA 2000, that requires a person to provide their name and address to police.**

## Recommendation 6

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**That the QPS continue to improve data collection to better record the use of the move-on powers. For each move-on incident, the QPS should record:**

- **the limb of the move-on power that is relied upon for direction**
- **why a move-on direction is necessary to maintain community safety or public order (that is, the reason for the move-on)**
- **the time and place (including street address) of the move-on direction**
- **the specifics of the direction (the time period for which the move-on direction is in place and the geographic area to which it applies)**
- **the demographics of the person (gender, age, Indigenous status, residential status).**

**For each disobey move-on direction offence, the QPS should record all data mentioned above, and capture the following additional data:**

- **the particulars of the time and place (including street location) of the disobey offence**
- **what action was taken (caution, arrest, notice to appear, and so on).**

Additional safeguards apply in the circumstance where a person who has been given a direction to move on fails to comply with the direction.

### **Safeguards related to the disobey move-on charge**

In this situation, police are required to:

- give the person a warning that it is an offence not to comply with the direction unless they have a reasonable excuse (s. 633(2)(a) PPRA 2000)
- warn the person they may be arrested (s. 633(2)(b) PPRA 2000), and
- give the person another reasonable opportunity to comply (s. 633(3) PPRA 2000).

These safeguard requirements apply only after a person has been given a verbal direction and has failed to comply with the direction (s. 633(2) PPRA 2000). The objective of the warnings is to ensure that a person is aware of the consequences of failing to comply with the direction. In giving the warnings, police do not need to recite the exact wording of the law but their warning must include all the requirements that s. 633(2) of the PPRA 2000 provides. It was noted in Rowe's case by Mackenzie AGA (at 282–3) that if police did give the warnings using the words of the legislation then this would eliminate any room for argument about whether the substance of the law had been conveyed to the person.

If, after police have applied the safeguards, a person still fails to obey a move-on direction, police may charge the person for contravening a move-on direction by either:

- issuing a notice to appear (s. 382 PPRA 2000) or
- arresting the person (s. 365 PPRA 2000).

A police officer has discretion to charge a person in a manner that is appropriate for the particular situation. For example, if there was a threat of harm to others, the police officer might consider it appropriate to arrest the person in order to remove the threat.

Where a person under 17 years of age has failed to comply with a move-on direction, police have special obligations to consider before charging the person; we discuss these further below.

In conducting our review, we were unable to determine whether police comply with the move-on safeguards either at the time of issuing the move-on direction or when a person fails to comply with the direction. One of the reasons we were unable to capture this information is that there is no formalised recording system which captures the use of the safeguards. In the absence of court challenges to a disobey move-on offence it is impossible to appreciate whether the safeguards are adhered to. However, the general perception throughout submissions and consultations is that the safeguards are applied in an ad hoc manner, if at all. We believe there is a need to improve and strengthen the use of — and the ability to monitor the use of — the move-on powers and the associated safeguards. One way of achieving this would be to issue a person moved on with a written direction. A written direction could detail:

- information about why the move-on direction is being issued
- what limb of the move-on laws is being relied on
- the particulars of the move-on direction
- a statement of the person's right to contest the direction.

In our consultations with police, some officers indicated a practical difficulty with issuing written directions, particularly in relation to groups of people and individuals who are intoxicated or acting in a manner that is threatening public safety. In April 2009, Brisbane City Division implemented an optional written move-on notice process (consultation with QPS, 30 September 2010). Although no formal evaluation has been conducted, the officers who were consulted believe that the division has experienced a decrease in the number of persons apprehended for disobeying move-on directions.

We see significant benefits in the provision of written move-on directions. The written notice would provide:

- information and clarity to the community
- procedural guidance to police
- some protection to police from complaints about the abuse or misuse of the power, and
- information upon which to contest the direction and perhaps any subsequent disobey move-on charge.

The use of a written direction was supported in many comments made to our review (for example, the Anti-Discrimination Commission Queensland, 9 March 2009; Legal Aid Queensland, 19 February 2009; Multicultural Affairs Queensland in submission of the Department of Communities — Disability Services Queensland, 27 March 2009; Queensland Council for Civil Liberties, 19 February 2009; Youth Advocacy Centre, 27 February 2009).

This will provide individuals with written evidence to make a complaint against the misuse of the powers. (Queensland African Communities Council, 20 February 2009)

We suggest it may be of great use to initiate an additional procedural requirement of providing a written record of the move on direction to the subject of the direction, detailing the reasons a police officer has for requiring a person to move and the consequences of failing to do so. (Logan Youth Legal Service, 24 March 2009)

Similar issues relating to the provision of information were raised in our PPO report and in Griffith University's public nuisance review (Mazerolle et al. forthcoming). In their review of the trial of public nuisance ticketing, Griffith University recommended the use of dedicated public nuisance infringement notices that contain comprehensive information about the nature of the infringement and options available to a defendant. The review recommended that a dedicated public nuisance infringement notice should be designed to include clear instructions for the ticketed person, including instructions on how and when to pay, how to contest a ticket and where to access further information. The infringement notice should also record key demographic information, including the gender, age and Indigenous status of the ticketed person. The Griffith University review also recommended that diversion information be provided to all ticketed persons.

We believe that one form could be created for a move-on direction and a public nuisance infringement notice (some information could be captured in a tick-a-box option as suggested by the Griffith University review).

As well, an even greater level of accountability could be achieved by moving to a system whereby police take audio or audiovisual recordings of their interactions with the public, as occurs in other jurisdictions.

Individual officers have over the last ten years at their own expense purchased tape recorders, and more recently digital audio recorders, to assist in the collection and gathering of evidence and to protect themselves from false complaints (Lyll 2010).

We acknowledge the costs associated with this strategy. A staged implementation, focusing initially on key locations associated with elevated rates of move-on directions, may be worth considering. In July 2010, the QPS began a six-month trial of body-worn video and audio recording devices in the Toowoomba and Townsville districts, but these trials are limited to officers carrying a Taser (QPS 2010k).

## **Recommendation 7**

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**That QPS officers issue a written document to the person being moved on that contains the following information:**

- **the particulars of the ‘reasonable belief’ about the person’s behaviour with reference to the limbs under s. 46 of the PPRA 2000**
- **why a move-on direction is necessary to maintain community safety or public order (that is, the reason for the move-on)**
- **the time and place (including street address) of the move-on direction**
- **the specifics of the direction (the time period the move-on direction is in place and the geographic area to which it applies)**
- **the demographics of the person (gender, age, Indigenous status, residential status)**
- **a statement of the person’s rights, including court election and how to contest (this is consistent with the Griffith University suggestion for public nuisance ticketing)**
- **diversion programs available in their area (both front-end and back-end).**

**This document could ideally be combined with a new public nuisance ticket (like that recommended by the Griffith University evaluation report).**

## **Recommendation 8**

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**That the Queensland Police Service explore options to implement a system whereby police take audio or audiovisual recordings of their interactions with the public.**

## Failing to comply with a move-on direction — the ‘reasonable excuse’ defence

The move-on laws provide a ‘reasonable excuse’ defence for failing to comply with a move-on direction. Despite the inclusion of this safeguard, many submissions made to our review highlighted that most people will comply with a move-on direction even if they feel the direction is inappropriate or unfair. For example, in their submission to our review, Legal Aid Queensland commented:

It must also be understood that many vulnerable people, such as the young, the homeless and the mentally ill, often have little capacity to properly understand (and hence comply with) the details provided to them by a police officer giving a move-on direction. By implication it is difficult for these people to understand whether a direction has been given lawfully, or to later recount all relevant detail, for the purpose of potentially defending any resulting charge.

The ‘reasonable excuse’ defence is activated after a person has been charged. However, police should take into account any reasons offered by a person for failing to comply, as the reasons may provide a defence in later court proceedings. There is some indication that a police officer is not required to ask a person if he or she has a reasonable excuse for failing to comply with the direction, but only to warn a person that it is an offence to fail to comply unless the person has a reasonable excuse (Rowe’s case per Holmes JA at 274 and Mackenzie at 282–3). A person may be reluctant, for a number of reasons, to make the excuse clear to police at the time of the incident.

Whether an excuse is reasonable or not will be determined by a court according to the particular facts and circumstances of each case. We found that most people charged with contravening a direction do not contest the offence in court. Consequently, we were unable to examine the effectiveness of the ‘reasonable excuse’ defence as a mechanism for protecting individuals.

## Juveniles and the move-on laws

Although police can apply the move-on laws to persons of any age, they are required to take a different approach in their dealings with persons aged less than 17 years, particularly if the person disobeys the move-on direction. These obligations arise from specific legislative provisions relating to young people.

Police are lawfully entitled to issue a juvenile with a move-on direction, but if the juvenile is under 10 years and contravenes the direction the juvenile cannot be charged with an offence. The *Criminal Code Act 1899* (Qld) provides that a person under the age of 10 years cannot be held criminally responsible for any act or omission (s. 29(1) Criminal Code Act). If the juvenile is aged between 10 and 14 years, the court will need to satisfy itself that the juvenile had the capacity to know their conduct was wrong (s. 29(1) Criminal Code Act).

In relation to dealing with a juvenile 12 years of age or younger, police can take a welfare approach. Police are able to move the juvenile to a safe place if there is a risk of harm to the juvenile (s. 21 *Child Protection Act 1999* (Qld)). The juvenile may remain at the safe place until arrangements can be made for a parent or other family member to take the juvenile into their care.

If police have issued a juvenile with a move-on direction and the juvenile has disobeyed the direction, police have special legal obligations and are required to first consider alternatives to charging the juvenile (s. 11 *Youth Justice Act 1992* (Qld)). Such alternatives include:

- taking no formal action and adopting the least intrusive method of dealing with the offence, by talking to the juvenile or a parent or guardian
- administering a caution to the juvenile (see Part 2, Division 2 Youth Justice Act)
- referring the juvenile to a community conference (also known as a ‘youth justice conference’) (see Part 3 Youth Justice Act).



In considering what action is appropriate, police must take into account:

- the circumstances of the offence
- any criminal history the juvenile may have
- any previous cautions administered to the juvenile
- the juvenile's previous dealings with the criminal justice system, if any (s. 11 Youth Justice Act).

If the police officer deems it appropriate to charge the juvenile, police should start proceedings by way of issuing a notice to appear or complaint and summons (s. 12 Youth Justice Act), unless an arrest is necessary to:

- prevent the continuation or repetition of the offence
- obtain or preserve evidence
- prevent the fabrication of evidence
- ensure the juvenile's appearance before court (s. 13 Youth Justice Act).

Because juveniles frequent public space, considerable concern was raised at the time of the introduction of move-on powers that this group would be disproportionately affected by the powers. Our analysis of the QPRIME data suggests that juveniles aged between 10 and 16 years (particularly males) are overrepresented in these data. However, fewer juveniles in this age group received a move-on direction in the 12 months after the statewide expansion of move-on powers in 2006 than they did in the 12 months before the expansion. Also of concern is that the youngest person issued with a direction was 6 years old and that over 140 directions were issued to juveniles under the age of 13 years. Of particular concern is that, in our sample, half of the juveniles appearing before the court for a disobey offence were Indigenous. Convictions are very rarely recorded for juveniles appearing on disobey move-on charges.

It is important that we try to decrease the level of overrepresentation of juveniles in these move-on data. The relevant legislation provides clear direction that policing must focus on diverting juveniles from the juvenile justice system. When used for their stated objectives, the move-on powers can achieve this outcome. However, police must realise that a breach of a move-on direction does draw the young person into the juvenile justice system. Police must be guided to use other mechanisms, such as cautioning, that do not direct juveniles further into the system.

## The policing architecture of the move-on powers

The previous section has highlighted the discretionary nature of the move-on legislation. As we argued in Chapter 2, police discretion is a fundamental element of modern policing. Notwithstanding this, police officers function best when supported and guided by the organisation. Effective police leadership, well-crafted practice guidelines and quality training all work to shape and support police discretion.

In this section we examine the policing architecture that the QPS has developed to put move-on powers into operation. More specifically, we discuss:

- QPS training related to move-on powers, and
- operational resources that support the move-on powers.

### QPS training in the move-on powers

Our review of training programs and associated material included:

- the Police Recruit Operational Vocational Education (PROVE) program for new police recruits with no previous policing experience
- the Police Abridged Competency Education (PACE) program (a condensed program for recruits who have previous policing experience)
- the First Year Constable Program for new police graduates who have been sworn in

- the Constable Development Program available to constables after they have completed their first year
- computer-based training through an Online Learning Product (OLP) that is available to all police officers
- other training and education initiatives undertaken at a regional level.

### **Recruit training**

The QPS selects recruits to be trained as general duties police officers (Police Education Advisory Council 1998). Recruit (PROVE) training aims to give recruits the opportunity to develop knowledge, skills and behaviour to a level where they will be able to effectively perform the duties and functions of a first-year constable under supervision (QPS 2010h, 2010j). At the conclusion of the 30-week program, recruits should be:

- capable of following the correct policies and procedures
- able to apply the principles that guide the use of discretionary powers of police officers
- able to employ effective communication skills in handling the wide range of people and situations encountered in policing a multicultural and diverse community, and
- capable of working in partnership with the diverse sectors of the community, using contemporary and problem-orientated policing strategies (QPS 2010j).

Recruits with previous experience as police officers complete the PACE program, which involves approximately 14 weeks of recruit training where they undergo an assessment process to determine whether they are competent in key areas or whether they require further training (QPS 2010j).

After being sworn in as constables, all new police officers complete a year of field training.

#### *Specific move-on training*

Training related to move-on laws is generally done within a two-week public order module (QPS 2010i). This module aims to give recruits a basic understanding of offences common to public order situations and provides training specific to move-on, breach of the peace and prevention of offences powers. As part of this review, the CMC reviewed the public order training module. CMC officers also attended and participated in a PROVE recruit training session on the move-on laws.<sup>18</sup>

Within this public order module, one hour of training is devoted to the application of move-on powers and dealing with breaches of move-on directions (QPS 2010g). In our focus groups, police indicated their perception that the attention given to move-on powers at the Police Academy is cursory at best.

The training provides for few practical scenarios involving either the issuing of a move-on direction or responding to a breach of a move-on direction. Two specific case studies are provided, one involving several hundred persons gathered at a service station on a Saturday night to conduct illegal street racing, and another focused on an exclusion from a shopping centre. The case studies require the recruits to:

- nominate police powers that could be used to deal with the situation
- decide on the wording of an appropriate direction that could be given under the circumstances
- decide to whom they would give the direction
- review performances in the role plays
- formulate their own charge for disobey move-on, and
- discuss the elements of the offence of a disobey move-on direction (QPS 2010g).

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<sup>18</sup> CMC officers attended the Oxley Police Academy on 14 September 2010.

Competency assessment of the recruits' ability to correctly apply move-on powers is conducted throughout the training through regular question-and-answer sessions, class participation and the completion of a workbook. Recruits must also pass a written examination. At the end of the recruit training, Applied Policing Skills (APS) sessions are conducted. The APS sessions involve recruits performing role plays in a simulated police environment, including one where recruits are required to issue a move-on direction. On 5 October 2010, a CMC researcher observed the APS training sessions. The move-on skills training scenario was one of 10 assessment scenarios that recruits were required to complete (QPS 2010f). The scenario involved a recruit issuing a move-on direction to a drunken customer in a bottleshop.

After witnessing training and analysing training materials, it is our view that the move-on training and assessment focuses heavily on the legal requirements and police procedures that facilitate the identification and arrest of offenders. It would appear that far less attention is directed to methods of de-escalation. Though we do not suggest that de-escalation is not at the forefront of QPS policy or training, we do question whether this specific module clearly articulates the importance of de-escalation in the context of move-on powers, and the methods that are available to achieve it.

The legal focus of the training may not best serve the application of the move-on powers in practice. Indeed, during our focus groups, police indicated that in relation to move-on powers it is insufficient to merely memorise the law. We suggest that move-on training could be improved by simplifying the legal content and focusing more on practical scenarios. We also believe that these practical examples must more accurately reflect the parameters of the powers. The current training and scenarios reflect a very narrow interpretation of move-on. For example, little if any attention is directed toward move-on in the context of prostitution or impeding trade.

### **First Year Constable Program**

After successful completion of recruit training, the First Year Constable Program begins with an eight-week mentoring phase. The new constable is placed with a Field Training Officer (FTO)<sup>19</sup> who will mentor and educate the constable in the basic competencies of general duties policing (QPS 2010d). The new constable and the FTO are usually rostered as partners on the same shifts and work similar duties. At the completion of this initial eight-week mentoring phase, new constables perform duties under the FTO's supervision for half of the time left in their first year, while the other half is under the general supervision of other experienced officers (QPS 2010d).

During focus groups, concern was raised about the calibre of mentoring, guidance and supervision provided by the FTOs to first-year constables. In our focus groups, police officers raised a number of points relating to the FTO process:

- in some instances, FTOs have very limited policing experience
- bad practice is being handed down, and
- constables seek out good FTOs and these individuals are at risk of becoming 'burnt out'.

Research indicates that the quality of field supervision can significantly influence an officer's behaviour, especially in situations where officers have the most discretion. Many police officers have suggested that keeping experienced general duties officers is crucial to good practice and police have expressed some concern that the presence of senior staff within some general duties units has been decreasing over time.

In the final stages of our review, the QPS advised that the service was reviewing its FTO policy (consultation with the QPS, 31 August 2010).

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<sup>19</sup> A QPS officer can become an FTO after completing a two-day training course. The number of FTOs in each region is determined on a needs basis. FTOs receive an allowance for undertaking the role.

### *Specific training in move-on powers*

Throughout the First Year Constable Program, new constables continually develop and are assessed in specific competencies associated with general policing.<sup>20</sup> Specifically in relation to the move-on powers, a 30-minute training session is conducted that includes revision of the legislation, a scenario example, a PowerPoint presentation and the completion of a workbook (QPS 2009b).

Officers must also complete a range of Workplace Activity Assessments, including Activity 24 (recently renumbered as Activity 13), 'Street Offences', which covers the move-on powers (QPS 2009c). The policing tasks in this activity focus on responding to public disorder situations by applying various legislative provisions and police policies and procedures. Out of the 13 policing tasks, most involve applying the provisions of legislation.<sup>21</sup> Significantly, no policing task in the activity is evaluated on the successful resolution of a public order situation without the application of law. Once again, de-escalation does not appear to be at the forefront of this activity.

### **Constable Development Program**

The Constable Development Program is a three-year program designed to enhance officers' operational and leadership skills.

During this program, there is a week-long workshop (conducted at the Brisbane or Townsville Academies) during which move-on powers are revised (QPS 2010a). Officers are required to revise their knowledge of the PPRA 2000 before attending. Training in move-on laws forms a very small part of the workshop. CMC officers did not observe the Constable Development Program.

### **Training for sworn officers**

#### *Online Learning Products*

The QPS identifies and prioritises its training needs on a state and regional level. At the state level, training needs are identified and prioritised by the State Education Training Management Conference, which meets quarterly. This is made up of Regional Education and Training Coordinators from all police regions, two statewide commands and the directorate. Regional training needs are identified and prioritised by the Regional Training Priorities Committee. Regional-level training is identified on a local needs basis and may be targeted towards officers performing particular duties or in preparation for particular events (such as Gold Coast Schoolies Week celebrations).

Training available to the whole service is typically delivered by means of an Online Learning Product (OLP). OLPs contain modules specific to a topic, and often a module contains a series of activities. Police officers may be provided with scenario examples, links to legislation and other information. Police may also be required to answer questions at the end of each activity.

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20 Also available for first-year constables is exposure to specialist areas such as the Child Protection and Investigation Unit, Criminal Investigation Branch and Traffic Branch.

21 For example:

- apply the provisions of the *Summary Offences Act 2005* (Qld) associated with offensive, obscene, indecent, abusive or threatening language, or disorderly, offensive, threatening or violent behaviour, to operational situations
- apply s. 790 of the PPRA 2000 (assault or obstruct a police officer) to operational situations
- give a move-on direction
- demand name and address (s. 40 PPRA 2000)
- enter places to make investigations or inquiries (s. 19 PPRA 2000)
- enter places to arrest or detain person/s (s. 21 PPRA 2000)
- initiate appropriate prosecution options relevant to street disturbance situations.

These answers are officially submitted. Officers can work at their own pace, focus on training that is most relevant to their needs and bypass training that is not relevant to their operational focus or where competence has already been achieved (QPS 2010b).

In mid-2006, the QPS introduced a module into the OLPs in response to the amendments introduced into the PPRA 2000, including the statewide expansion of move-on powers (QPS 2009d). The entire OLP package was allocated a two-hour time frame and was mandatory training for all sworn officers statewide.

The move-on laws component of the 2006 OLP provided:

- an explanation of the change in areas where move-on laws applied after the statewide expansion, with a link to the definition in the PPRA 2000
- a brief description of what the move-on powers are in relation to the nature of the direction that can be issued by replicating the wording of the legislation (s. 48(3)(a),(b),(c) PPRA 2000)
- advice that the direction should only require a person to leave the area of the place that is affected by the person's behaviour or presence
- advice that the time period of the direction must be reasonable and based on the circumstances
- a brief example of a person's behaviour interfering with trade at the Plough Inn Hotel at South Bank (the example provides little to no guidance in the issuing of the move-on direction), and
- hyperlink references to the provisions of the legislation and OPM sections (QPS 2009d).

As at the end of October 2010, there is no OLP module dedicated to the policing of public order (QPS 2010b).

In addition to using the OLPs, the QPS delivers education and training through the Competency Acquisition Program (CAP). CAP is a skills-based training initiative that also provides a mechanism for officers to progress to higher pay points through the successful completion of competency acquisition booklets. CAP was not used for the move-on powers because the topic was not large enough to justify a dedicated CAP module (booklet) (QPS 2010a).

### **Additional training and education initiatives**

During the review, we were advised of specific move-on education and training initiatives occurring at the regional level. We present these below to illustrate the kind of training being provided, but not as a full audit of regional training initiatives.

- In the Northern Region, the District Education and Training Officer published a newsletter about the move-on powers for officers in the Townsville District (QPS consultation, 7 July 2009).
- In the North Coast Region, a PowerPoint presentation on street offences was created and given to officers in Bundaberg during Police Operational Skills and Tactics training. The presentation included information on Rowe's case (QPS consultation, 6 July 2009).
- In the Metropolitan North Region, the OLP was supplemented by a separate City Central District Support Unit Training Package for officers in the Brisbane Central District. In North Brisbane District another training initiative was conducted that incorporated move-on law training with liquor offences training focused on the policing of licensed premises (QPS consultation, 3 July 2009).
- At the State Crime Operations Command, move-on law training is provided through the Brief Checkers course (QPS consultation, 3 July 2009).
- The Operation Support Command has limited groups or units who apply the move-on powers. A Command initiative for training in the move-on powers was implemented by the Public Safety Response Team. One example of this was a PowerPoint presentation that was delivered to all Public Safety Response Team officers before the Gold Coast Indy Festival in October 2006 (QPS consultation, 3 June 2009).

## Operational resources for the move-on laws

In addition to training programs and materials, police officers have operational support materials to assist them in their duties. The primary resources are the QPS Operational Procedures Manual (OPM) and the First Response Handbook (QPS 2009e, 2010c). We reviewed how the move-on laws have been incorporated into these key policing tools.

### Operational Procedures Manual

The OPM provides guidance and instruction in all aspects of operational policing.<sup>22</sup> It is available to police to view or print online through the QPS Bulletin Board, which forms part of the QPS Intranet (QPS 2009e). Related legislation to which the OPM refers, such as the PPRA 2000, can be accessed from its electronic version through hyperlinks. Most of the training material we examined refers officers to sections of the OPM.

Although police officers are directed to comply with the contents of the OPM, the OPM clearly states that the material it contains is not exhaustive and that the effective resolution of many matters must be left to the discretion of members.

Police move-on powers are dealt with in section 13.25 of the OPM (QPS 2009e). This section details the orders, policies and procedures<sup>23</sup> relating to their use, and the applicable safeguards, as well as how directions must be recorded by a police officer. The discussion of move-on powers under the OPM adheres very closely to the legislative framework governing the use of these powers, in that it largely reproduces the relevant legislative provisions.

In providing guidance on the use of the move-on powers, the OPM reproduces the operational guidelines previously provided for in the Responsibilities Code, Police Powers and Responsibilities Regulation 1998 (repealed):

Because the right of a person to move about peacefully in public places is carefully guarded by the community generally, a decision to use a power under the Act that interferes with a person's right to free movement should be able to withstand public scrutiny.

Officers should consider the following before deciding to give a move on direction to a person:

- any reason the person offers for being in or near the place
- the nature of any complaint made about the person
- the nature of any anxiety the person is allegedly causing to someone else and whether the anxiety has any factual basis and
- the effect of the person's presence or behaviour on anyone else in or near the place. (OPM 13.25.5)

The OPM also provides some guidance if a person fails to comply with a move-on direction — an officer should:

- ascertain that the person is a person to whom a move-on direction was given
- determine whether the actions of the person do contravene the terms of the move-on direction
- establish whether the person has a reasonable excuse for failing to comply with the move-on direction

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22 The OPM is issued pursuant to the provisions of s. 4.9 of the *Police Service Administration Act 1990* (Qld).

23 These are the three groupings of information under this section of the QPS OPM. A 'policy' outlines the QPS attitude regarding a specific subject and must be complied with under ordinary circumstances. Policy may only be departed from if there are good and sufficient reasons for doing so. An 'order' requires compliance with the course of action specified and is not to be departed from. A 'procedure' outlines generally how an objective is achieved or a task is performed.

- warn the person that it is an offence to fail to comply with a move-on direction and that the person may be arrested for the offence
- give the person a reasonable opportunity to comply with the direction. (OPM 13.25.6)

The OPM references to the move-on powers reinforce our view that operational police may not fully understand how the legislation applies in practice. Together, the broad nature of the legislation and the complexities of public order policing mean that police may not fully understand the range of policing options available to them and those circumstances in which they are best applied. More practical interpretation of the move-on laws may improve this situation. Further, better aligning the OPM to fully correspond to the parameters of the power would improve the policing response. The findings of the court in Rowe's case, and more importantly the implications of these findings for identifying circumstances in which the move-on powers should be applied and how they should be applied, should also be incorporated into police practice tools.

As well, we believe that greater linkages should be made with other QPS policies that influence the use of the move-on powers and public order policing. For example, in February 2010, the QPS introduced a Vulnerable Persons Policy that applies to victims, witnesses and defendants (QPS 2010).<sup>24</sup> The policy provides for a statement of commitment of the QPS in dealing with vulnerable persons, which is to be achieved through four ambitions:

- Reduce crime against vulnerable people and hold offenders accountable for their actions.
- Support vulnerable people to understand and participate in criminal justice system processes.
- Treat vulnerable people with dignity, respecting their individual needs, challenges and circumstances.
- Facilitate access by vulnerable people to appropriate support services, including support persons and victim assistance. (QPS 2010)

Though it does not provide specific detail on how the policy is implemented, the QPS states that a range of training programs are provided to assist officers in dealing with vulnerable people.<sup>25</sup>

### **First Response Handbook**

Since 1995, QPS general duties officers have been issued with a pocket-sized First Response Handbook. The handbook was prepared as a handy reference to assist operational police in situations where decisions must often be made and where appropriate and timely actions need to be taken. The handbook is divided into two parts. Part One provides a summary of essential policing powers, while Part Two outlines the first response actions for a number of operational situations. The first response actions in the handbook are intended to supplement the OPM and include references to applicable legislation and to QPS policy at the beginning of each section. An updated handbook was issued to all officers in mid-2010 (QPS 2010c).

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24 The policy provides a guide for determining who may be a vulnerable person, including factors such as mental illness, immaturity (in age or development), infirmity (including early dementia or disease), intellectual disability, illiteracy or limited education, which may impair a person's capacity to understand police questions, inability or limited ability to speak or understand the English language, chronic alcoholism, physical disabilities such as deafness or loss of sight, drug dependence, and cultural, ethnic or religious factors, including those relating to gender attitudes, Aboriginal people or Torres Strait Islanders and persons with impaired capacity.

25 These include:

- elements of the PROVE program, the First Year Constable Program, the Constable Development Program and detective training
- the Competency Acquisition Program on disability and mental health matters
- the First Response Officer training in mental health intervention
- some Police Liaison Officer training.

Three pages of the handbook refer to the move-on laws (Part 2.22). The section begins by making reference to ss. 44–48 of the PPRA 2000 and to section 13.25 of the OPM (QPS 2010c). The section provides:

- the definition of a ‘regulated place’ and a ‘prescribed place’
- information about when move-on powers apply, including factors officers should consider before deciding to give a person a move-on direction (such as the reason the person offers for being in or near the place, or any complaint made against the person)
- information on move-on directions, including what information police should record in their official police notebook, the procedure for issuing a move-on direction and making an occurrence report afterwards, and the importance of telling individuals being moved on the reasons for giving the direction, and
- processes associated with the failure to comply with move-on directions and the factors an officer should consider before taking any enforcement actions for a contravention of move-on.

In response to the limitations and deficiencies exhibited in the police training material, the OPM and the First Response Handbook, we believe there is a need for greater interpretative guidance for police in use of the move-on powers. We also believe a comprehensive approach should be taken to guide police in the appropriate use of their discretion when responding to public disorder situations. As well, we believe that the QPS should explore options to better respond to public order issues.

## **Recommendation 9**

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**That the QPS revise its approach to policing public order. In developing this new approach, the QPS should:**

- **consider move-on powers and corresponding policing options in the broader context of policing public order**
- **promote an organisational culture that fosters quality leadership and on-the-job mentoring**
- **establish strategic principles for the policing of public order that highlight the following:**
  - **that it is a key function of police to maintain community safety and public order**
  - **that, in doing so, the focus of police should be on ensuring that the least punitive policing options are selected to match the conduct and the perceived effects it has on community safety and public order**
  - **that arrest should be used as a ‘last resort’ option for public order policing**
  - **that police should always endeavour to de-escalate the situation through communication and conflict resolution strategies**
  - **that police should first consider the use of diversionary options, with an emphasis on front-end diversion**
- **incorporate these strategic principles in all relevant policies and procedures (including the OPM and the First Response Handbook)**
- **review recruit and officer training to incorporate the strategic principles and to make the training more relevant to operational policing, using case-based scenarios and decision-making strategies**
- **include an Operational Performance Review (OPR) dedicated to public order policing, making specific provision for examining the use of move-on powers and public nuisance offences.**



## Monitoring and oversight in the broader context

Our review has highlighted the importance of considering move-on powers in the broader context of public order policing. Although a full review of the mechanisms providing for and supporting the policing of public order is beyond the scope of this review, we believe that it is crucial to think about move-on powers in this broader context. Together, this review and the PPO report (CMC 2008a) provide us with a large part of the picture and position the CMC to be able to make a number of comments on the matter.

### The need for a Public Order Advisory Panel

We believe there should be greater collaboration between the police and the community about how to deal with the social problems that arise from antisocial behaviour and public disorder. Such an approach is a means of ensuring that public order policing is reflective of community standards. Our consultations revealed that there is a demand from the community to have greater input into how public space is policed. We believe that many of these stakeholder groups have important contributions to make. These groups are in a unique position to provide police with assistance, ideas and services regarding enhanced ways of responding to their clientele. For example:

Service providers proposed police participation in early intervention strategies in public spaces which alleviate the need to use the move on powers. For example:

- Participation of police officers in networks with community agencies and other government departments to increase the capacity for shared development of strategies to respond to public space issues. (Department of Communities Service Delivery Regional Consultations in the submission of the Department of Communities — Disability Services Queensland, 27 March 2009)

We firmly believe that there is a need for improved mutual understanding between police and the Aboriginal and Torres Strait Islander communities. This can be achieved in part by broader community education and consultation, particularly in respect of new and increased policing powers. We would argue that police should be required to meet with local community organisations, Aboriginal elder groups and community lawyers to discuss details of legislative and policy changes. (Indigenous Women's Unit, Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc., 30 March 2009)

We believe that a formalised Public Order Advisory Panel, reporting to the Minister of Police, may facilitate the development of this cooperative approach. This panel would play an instrumental role in considering and advising on matters of community concern related to policing and public order, and contributing to the development of policing and other solutions to these problems. This panel would also facilitate mutual information sharing, lack of which has been a consistent concern raised with us both in this review and in our previous research.

In a practical context, we see this public advisory panel as being put into operation through the appointment of people who represent the interests of those who experience, or are likely to be the subject of, move-on powers and other public order policing powers. The panel should take input from a range of stakeholders, including those groups who have contact with clientele in entertainment precincts and other groups who have contact with marginalised groups. This panel should have an independent convenor who reports directly to the Minister of Police. QPS representation should be included on this panel as it is crucial as a means of conveying the realities of policing public order, as a custodian of data and as the primary policy-maker.

## Recommendation 10

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**That the Queensland Government appoint a Public Order Advisory Panel to monitor and report to the Police Minister on the use and impact of public order policing. This panel should have an independent Chair and aim to influence strategy initiatives, facilitate improvements in interagency and stakeholder cooperation, and facilitate improved information exchange.**

### **Focusing on front-end diversion**

Associated with community concerns about marginalised groups who are likely to experience public order policing powers is the issue of how these groups, many of whom have complex social, cultural and health-related needs, are dealt with on first contact by police. In the consultations for this and our PPO review, police and community stakeholders highlighted the need for improved front-end service provision for these groups, and enhanced education to promote a better understanding of the availability of these services and how police might access them.

This increase in police inter-action must presumably be a concern to, and drain upon, the police service itself — a service which finds itself by virtue of ill-conceived legislation, policing matters which should be addressed by social workers and the like ... In essence we believe that the move-on powers are an *ineffective* and *inappropriate* tool to address problems 'downstream' after the issues have become manifest as problems. Rather such problems should and could be effectively addressed 'upstream' at their genesis, with minimal involvement ...

The police are not social workers, nor psychologists, nor taxi drivers. Police are the target of criticism when an arrested person self-harms. However, rarely reported are the frustrations with 'the system' that police routinely have in the case of 'people-at-risk'. These frustrations are typified by police having to wait for hours at medical facilities before the arrested person is seen by staff, let alone treated. Psychiatric facilities do refuse to admit an arrested person, in effect saying that police will be able to 'care' for the arrested person. There is a need for support of police by coordinating them with social welfare and health services. (Submission 48, February 2009)

Recommendation 5 of our PPO report calls for State Government departments and local councils to collaborate with other agencies, businesses and the community to develop, implement and evaluate programs that can come to grips with the underlying causes of public nuisance offending before the involvement of the criminal justice system. We continue to support this and emphasis a focus on front-end diversion programs.

### **Recommendation 11**

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**That the Queensland Government continue to collaborate with other agencies, local governments, businesses and community groups to implement a greater number of front-end diversion programs that are relevant and accessible to disadvantaged groups who frequent public space.**

# APPENDIX 1: The PPRA 2000 move-on laws

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## Part 5 Directions to move on

### s. 44 Application of pt 5

This part applies in relation to the following places (*regulated places*) —

- a. public places;
- b. prescribed places that are not also public places.<sup>26</sup>

### s. 45 Part does not apply to authorised public assemblies

This part does not apply to an authorised public assembly under the *Peaceful Assembly Act 1992*.

### s. 46 When power applies to behaviour

1. A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person's behaviour is or has been —
  - a. causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or
  - b. interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
  - c. disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or
  - d. disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

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26 A **public place** is broadly defined to include not just a place or part of a place that is open to or used by the public as a right but also places that might be more accurately considered to be private property. The definition of public place provides:

- a. a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to the place may be restricted at particular times or for particular purposes, e.g. a road, a park, a beach, a road that is closed to general use by vehicles for a public procession or parade
- b. a place declared under another Act to be a public place for any law conferring powers or imposing functions on police officers, e.g. under s. 54A of the *Sanctuary Cove Resort Act 1985* (Qld) primary and secondary thoroughfares are public places for the purposes of any law conferring powers or imposing functions on a police officer
- c. a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public, e.g. a cinema complex, a shop, a restaurant, a racecourse
- d. a place that is a public place under another Act (Schedule 6 PPRA 2000).

**Prescribed places** include certain areas that could be considered to fall within the broad definition of public places. Specific prescribed places are a shop, a childcare centre, a preschool centre, a primary, secondary or special school, premises licensed under the *Liquor Act 1992* (Qld), a railway station and any railway land around it, a mall, the part of the corporation area under the *South Bank Corporation Act 1989* (Qld) declared to be the site under that Act, a licensed venue under the *Racing Act 2002* (Qld), an automatic teller machine, a war memorial (Schedule 6 PPRA 2000).

2. If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in the part of the public place at or near where the person then is.
3. Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's behaviour.
4. However, subsections (1)(b) and (3) do not limit subsection (1)(a), (c) and (d).
5. This part also applies to a person in a regulated place if a police officer reasonably suspects that, because of the person's behaviour, the person is soliciting for prostitution.
6. For this part, the person's behaviour is a **relevant act**.

**s. 47 When power applies to a person's presence**

1. A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person's presence is or has been —
  - a. causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances; or
  - b. interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
  - c. disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.
2. If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's presence has or had the effect mentioned in subsection (1)(a), (b) or (c) in the part of the public place at or near where the person then is.
3. Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.
4. However, subsections (1)(b) and (3) do not limit subsection (1)(a) and (c).
5. For this part, the person's presence is a relevant act.

**s. 48 Direction may be given to person**

1. A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances.

*Examples for subsection (1) —*

- 1
  - 1 If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
  - 2 If a group of people have been fighting in a nightclub car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.
  - 3 If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.
2. However, a police officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of —
  - a. public safety; or
  - b. public order; or
  - c. the protection of the rights and freedoms of other persons.

*Examples of rights and freedoms for subsection (2)(c) —*

- 1 the rights and freedoms of the public to enjoy the place
- 2 the rights of persons to carry on lawful business in or in association with the place
3. Without limiting subsection (1), a direction may require a person to do 1 of the following —
  - a. leave the regulated place and not return or be within the regulated place within a stated reasonable time of not more than 24 hours;
  - b. leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours;
  - c. move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.
4. The police officer must tell the person or group of persons the reasons for giving the direction.

**s. 49 Review**

1. The CMC must review the use by police officers of powers under this part and prepare a report on the review.
2. The review must be started as soon as practicable after 31 December 2007.
3. The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.
4. In the course of preparing the report, the CMC must consult with the Minister.
5. The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

## APPENDIX 2:

# Review approach and information sources

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### Literature review

We reviewed literature relating to move-on laws, police powers in general and policing in public spaces. For the full list of literature examined and cited in this review, refer to the reference list.

### Legislation

In addition to reviewing the PPRA 2000, we considered other Queensland legislation and bills.

We examined the history of Queensland's move-on laws and the parliamentary intention behind their introduction. We did this by analysing the parliamentary debates and second reading speeches as well as the explanatory notes accompanying the relevant legislation. We also considered the case of *Rowe v. Kemper* [2009] 1 Qd R 247. Legislation and case law from other jurisdictions also informed our review. For a full list of the legislation and case law cited in this review, refer to the reference list.

### Police training materials, policies and procedures

In order to explore the influences on the use of move-on powers and what training and other interpretative guidance is provided to police about how and when to use move-on powers, we reviewed the following relevant training programs and resources:

- the Police Recruit Operational Vocational Education (PROVE) program and the Police Abridged Competency Education (PACE) program
- First Year Constable Program
- the Constable Development Program
- Online Learning Products (formerly known as Computer Based Training)
- the QPS Operational Procedures Manual (online)
- the QPS First Response Handbook.

We also consulted with a range of QPS officers from different areas who are responsible for the education and training of recruits and sworn officers. In order to better understand the training materials, policies and procedures, we also sought feedback from QPS officers from all eight police regions, using focus groups.

### Police focus groups

We conducted 14 focus groups involving 60 police officers from all police regions. The focus groups involved beat officers, general duties officers and officers from watch-houses, the Tactical Crime Squad, the Public Safety Response Team and the Railway Squad.

These focus groups were a rich source of information about how the police use the move-on powers and the circumstances in which they use move-on powers. They also informed our knowledge of the influences on the way the powers are put into operation. The community expectations and the responsibility placed on police to make appropriate decisions about the use of the powers also necessitate that we pay particular attention to the influences on police and their response to those influences.

## Public submissions

In December 2008, we released an issues paper entitled *Review of Queensland's police move-on powers: invitation for public comment*, which provided a brief description of the move-on laws and the nature of our review, and invited public comment (CMC 2008b).

We received 64 submissions. They came from private citizens, councils, government agencies and departments, interest groups and stakeholders. Some of these are displayed on the CMC website.

We received submissions from local councils. These councils were:

- Gympie Regional Council
- Shire of Hinchinbrook
- Bundaberg Regional Council
- Scenic Rim Regional Council
- Brisbane City Council

We received submissions from government agencies and departments. These agencies were:

- Anti-Discrimination Commission Queensland
- Department of Communities
- Legal Aid Queensland
- Office of Liquor, Gaming and Racing
- Queensland Police Service
- South Bank Corporation
- The Commission for Children and Young People and Child Guardian

We received submissions from interest groups in the community, which included:

- Crimson Coalition
- Ethnic Communities Council of Queensland
- Homeless Persons' Legal Clinic/Queensland Public Interest Law Clearing House Incorporated
- Logan Youth Legal Centre
- Media, Entertainment and Arts Alliance
- Queensland African Communities Council
- Queensland Council for Civil Liberties
- Queensland Law Society
- Queensland Police Union
- Rights in Public Space Action Group
- West End Community House
- Youth Advocacy Centre
- Youth Affairs Network of Queensland

As part of the public submission process, the Homeless Persons' Legal Clinic and Refugee Civil Law Clinic created a questionnaire and provided resources to help their clients attending the 139 Club and Mission Australia Café One in Fortitude Valley, Brisbane to complete the questionnaire. Seventeen client questionnaires were collected in the period 1 February 2009 to 18 February 2009 and submitted to our review.

The public submissions are a rich source of information, but this information needs to be interpreted cautiously. Quantitative assessments, including the prevalence of people being given a direction to move on or disobeying a move-on direction, cannot be estimated by public submissions. Nor can we make a determination that the public submissions we received are truly representative of the community generally or of specific affected communities. For this reason, information from the public submissions (and from our consultations) is presented in our review alongside the results of the quantitative analyses to provide context for the data, rather than conclusions about meaning or effects.

## Stakeholder consultations

In addition to our public submission process, we consulted with a wide range of stakeholders, including:

- advocacy groups and community services
- industry representatives such as licensees, retailers and businesses
- local government representatives
- magistrates
- members of the public
- representatives from public and community legal services
- police prosecutors
- Hon. Neil Roberts, Minister for Police, Corrective Services and Emergency Services.

Again, the views expressed in these consultations need to be treated with some caution for the same reasons given in relation to public submissions.

## Police and courts quantitative data

We analysed various types of police data and courts data. For readers interested in the specifics of what data we requested and received, how we sampled and analysed the data and the associated limitations, refer to the companion publication *Police move-on powers: a CMC review of their use — data report*. In short, we analysed the following types of data:

- **Queensland Police Records and Information Management Exchange (QPRIME) data**
  - We analysed QPRIME data that related to all recorded move-on directions and all recorded disobey move-on offences in Queensland. To take into account offences that occurred before and after the statewide expansion of move-on laws, we analysed data from 1 June 2004 to 31 May 2008. Throughout the report, we refer to QPRIME data as ‘police data’ or ‘QPRIME data’.
  - These data were provided by the QPS.
- **Queensland-wide Interlinked Courts (QWIC) data**
  - To determine how Queensland courts respond to disobey move-on offences, we analysed QWIC data after the statewide expansion of the move-on laws, from 1 June 2006 to 28 February 2009. We analysed a sample of adult defendants and all juvenile defendants that we could locate in the QWIC data. Throughout the report, we refer to QWIC data as ‘courts data’.
  - These data were provided by the Department of Justice and Attorney-General.
- **State Penalties Enforcement Registry (SPER) data**
  - We used SPER data to examine the debt status of our sample of disobey move-on offenders who were ordered by the courts to pay a monetary fine during the period 1 June 2006 to 28 February 2009.
  - These data were provided by the Department of Justice and Attorney-General.



## APPENDIX 3: Peel's Principles of Policing

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### Peel's Principles of Policing

(summarised from Lee 1901 in Fyfe et al. 1997, p. 8)

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.
2. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect.
3. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.
4. To recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives.
5. To seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.
6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
8. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.
9. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

## APPENDIX 4: Other Queensland police powers and laws

Behaviours that could be dealt with by issuing a move-on direction or alternatively by charging the person with an offence:

Offence	Section and Act	Maximum penalty	Details of the offence
<b>General disorder</b>			
<b>Public nuisance</b>	s. 6 <i>Summary Offences Act 2005</i>	10 penalty units or 6 months imprisonment	<ul style="list-style-type: none"> <li>A person must not behave in a disorderly, offensive (inc. language), threatening (inc. language) or violent way; and</li> <li>Behaviour that 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 <i>Summary Offences Act 2005</i>	2 penalty units	<ul style="list-style-type: none"> <li>A person must not be drunk in a public place.</li> </ul>
<b>Consume liquor in a public place</b>	s. 173B <i>Liquor Act 1992</i>	1 penalty unit	<ul style="list-style-type: none"> <li>A person must not consume liquor in a 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 penalty units	<ul style="list-style-type: none"> <li>A person must not be drunk or disorderly or create a disturbance in a licensed premises.</li> </ul>
<b>Behaviour in a council park</b>			
<b>Contravene Local Law (Brisbane City Council – Parks)</b>	Chapter 9 Brisbane City Council Local Laws	\$5000 fine 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 (s. 17)</li> <li>carelessly or negligently foul or pollute any such water (s. 17)</li> <li>take, injure, or destroy, or attempt to take, injure, or destroy, or disturb any fish in water (s. 17)</li> <li>disturb, worry or ill-treat any fowl in such water or elsewhere in any park (s. 17)</li> <li>obstruct, disturb, interrupt or annoy any person in the 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>

Offence	Section and Act	Maximum penalty	Details of the offence
<b>Contravene Local Law (Townsville – Parks &amp; Reserves)</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: <ul style="list-style-type: none"> <li>– do any act which would be likely to injure, endanger, obstruct, inconvenience, or annoy any other person, 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> <li>• Every person who infringes any by-law for the regulation of any park may be removed or arrested by any officer or employee of the Council or by any member of the Police Force in any one of the following circumstances — <ul style="list-style-type: none"> <li>(i) where the infraction of the by-law is committed within the view of a member of the Police Force, and the name and residence of the person infringing the by-law are unknown and cannot be readily ascertained</li> <li>(ii) where the infraction of the by-law is committed within the view of a member of the Police Force and there may be reasonable ground for belief that the continuance in the park of the person infringing the by-law may result in another infraction of a by-law, or that the removal of such person from the park is otherwise necessary (s. 522).</li> </ul> </li> </ul>
<b>Behaviour at South Bank</b>			
<b>Public nuisance (South Bank Corporation Act 1989)</b>	s. 82 <i>South Bank Corporation Act 1989</i>	20 penalty units and exclusion from area for up to 24 hrs	<ul style="list-style-type: none"> <li>• A person must not on the South Bank site: <ul style="list-style-type: none"> <li>– be drunk or disorderly or</li> <li>– create a disturbance.</li> </ul> </li> </ul>
<b>Contravene direction to leave South Bank (South Bank Corporation Act 1989)</b>	s. 83 <i>South Bank Corporation Act 1989</i>	10 penalty units	<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 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>

Offence	Section and Act	Maximum penalty	Details of the offence
<b>Exclusion of person from South Bank (South Bank Corporation Act 1989)</b>	s. 86 <i>South Bank Corporation Act 1989</i>	20 penalty units	<ul style="list-style-type: none"> <li>Police or the South Bank Corporation may apply to a 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>Unwanted presence on property</b>			
<b>Unlawful stalking</b>	s. 359B <i>Criminal Code Act 1899</i>	Penalty depends on the circumstances of the offence and ranges from: 5 years imprisonment 7 years imprisonment 10 years imprisonment	<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: <ul style="list-style-type: none"> <li>loitering near a person or at a place where a person lives, works or visits;</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 against a person that would cause an apprehension, fear or detriment to the other person or to property.</li> </ul> </li> </ul>
<b>Public annoyance</b>			
<b>Begging</b>	s. 8 <i>Summary Offences Act 2005</i>	10 penalty units or 6 months imprisonment	<ul style="list-style-type: none"> <li>A person must not in a public place: <ul style="list-style-type: none"> <li>beg for money or goods or cause a child to beg for money or goods;</li> <li>solicit for donations of money or goods.</li> </ul> </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 penalty units or 6 months imprisonment	<ul style="list-style-type: none"> <li>A person must not while on a railway or public passenger vehicle create a disturbance or nuisance, unless the person has a reasonable excuse.</li> <li>Offence may be enforced by an authorised person, namely a police officer or person appointed by the chief executive pursuant to this Act.</li> </ul>
<b>Physical aggression</b>			
<b>Common assault</b>	s. 335 <i>Criminal Code Act 1899</i>	3 years imprisonment	<ul style="list-style-type: none"> <li>A person must not strike, touch, or move, or apply force of any kind to, another person without the other person's consent; or</li> <li>By any bodily act or gesture attempt or threaten to apply force to another person, under such circumstances that the person making the attempt or threat has the ability to effect the person's purpose.</li> </ul>

Offence	Section and Act	Maximum penalty	Details of the offence
<b>Assault or obstruct police officer</b>	s. 790 <i>PPRA 2000</i>	40 penalty units or 6 months imprisonment	<ul style="list-style-type: none"> <li>A person must not assault, hinder, resist, obstruct or attempt to obstruct a police officer in the performance of the officer's duties.</li> </ul>
<b>Assault etc. of authorised person</b>	s. 575 <i>PPRA 2000</i>	40 penalty units	<ul style="list-style-type: none"> <li>A person must not assault or obstruct an authorised person exercising power at a special event.</li> </ul>
<b>Affray</b>	s. 72 <i>Criminal Code Act 1899</i>	1 year imprisonment	<ul style="list-style-type: none"> <li>A person must not take part in a fight in a public place or take part in a fight of such a nature as to alarm the public in any other place to which the public have access.</li> </ul>
<b>Sexual assault</b>	s. 352 <i>Criminal Code Act 1899</i>	10 years imprisonment	<ul style="list-style-type: none"> <li>A person must not unlawfully and indecently assault another person, or 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 penalty units or 6 months imprisonment	<ul style="list-style-type: none"> <li>A person must not by a public act knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons in a way that includes — <ul style="list-style-type: none"> <li>doing an act threatening physical harm towards, or towards any property of, the person or group of persons; or</li> <li>inciting others to threaten physical harm towards, or towards any property of, the person or group of persons</li> </ul> </li> </ul> <p>on the grounds of race, religion, sexuality or gender identity of the person or members of the group.</p>
<b>Riot</b>	s. 61 <i>Criminal Code Act 1899</i>	Penalty depends on the circumstances of the offence and ranges from: 3 years imprisonment 7 years imprisonment life imprisonment	<ul style="list-style-type: none"> <li>12 or more persons together must not: <ul style="list-style-type: none"> <li>Use or threaten to use unlawful violence to a person or property for a common purpose.</li> <li>The conduct of them together would cause a person in the vicinity to reasonably fear for their safety.</li> </ul> </li> </ul>
<b>Going armed so as to cause fear</b>	s. 69 <i>Criminal Code Act 1899</i>	2 years imprisonment	<ul style="list-style-type: none"> <li>A person must not go armed in public without lawful occasion in such a manner as to cause fear in another person.</li> </ul>
<b>Threatening violence</b>	s. 75 <i>Criminal Code Act 1899</i>	2 years imprisonment or if the offence is committed at night 5 years imprisonment	<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	Maximum penalty	Details of the offence
<b>Threats</b>	s. 359 <i>Criminal Code Act 1899</i>	Penalty depends on the circumstances of the offence and ranges from: 5 years imprisonment 10 years imprisonment	<ul style="list-style-type: none"> <li>A person must not threaten to cause detriment to another person with intent to stop a person doing something or make a person do something or to cause public alarm or anxiety.</li> </ul>
<b>Offensive or abusive language</b>			
<b>Sexual harassment</b>	ss. 118–119 <i>Anti-Discrimination Act 1991</i>	Order of Tribunal	<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 engages 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 offended, humiliated or intimidated by the conduct.</li> </ul>
<b>Obstruction</b>	s. 222 <i>Anti-Discrimination Act 1991</i>	Individual: 35 penalty units Corporation: 170 penalty units	<ul style="list-style-type: none"> <li>A person must not consciously hinder or use insulting language 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	<ul style="list-style-type: none"> <li>A person must not do a public act 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: <ul style="list-style-type: none"> <li>it is publication of a fair report</li> <li>absolute privilege would be a defence</li> <li>or in good faith for academic, artistic, scientific or research purposes or as part of public interest.</li> </ul> </li> </ul>
<b>Obscene/offensive/indecent behaviour</b>			
<b>Wilful exposure</b>	s. 9 <i>Summary Offences Act 2005</i>	2 penalty units (simple) 40 penalty units or 1 year imprisonment (aggravated)	<ul style="list-style-type: none"> <li>A person must not in a public place or being able to be seen from a public place <ul style="list-style-type: none"> <li>wilfully expose his or her genitals</li> <li>without reasonable excuse.</li> </ul> </li> </ul>
<b>Indecent acts</b>	s. 227 <i>Criminal Code Act 1899</i>	2 years imprisonment	<ul style="list-style-type: none"> <li>A person must not in any place to which the public are permitted to have access wilfully and without lawful excuse do any indecent act.</li> <li>A person must not in any place wilfully do any indecent act with intent to insult or offend any person.</li> </ul>

# APPENDIX 5: Map of Queensland Police Service regions



Source: QPS

## APPENDIX 6: Notified areas where move-on laws could be applied

### Notified areas for the application of move-on powers, 1 January 2000 – 31 May 2008

Location	Date	Reference
<b>GOLD COAST</b>		
Surfers Paradise The Esplanade between Clifford St and Higman St	11.08.00 to 10.08.06	PPRA Regulations 2000 Reprint 1C 2001 SL No 133 Reprint 2A 2002 SL No 196 Reprint 3D 2004 SL No 211
Surfers Paradise The Esplanade between the Esplanade and Elkhorn Ave and Trickett St	22.11.03 to 01.12.03	PPRA Regulations 2000 Reprint 2I 2003 SL No 286
Surfers Paradise The area between the Esplanade and low water mark	20.11.04 to 3.12.04	PPRA Regulations 2000 Reprint 3F 2004 SL No 246
Burleigh Heads John Laws Park and Justin Park	12.12.03 to 11.12.07	PPRA Regulations 2000 Reprint 2K 2003 SL No 325 Reprint 4C 2005 SL No 299
<b>BRISBANE</b>		
Goodwill Bridge Pedestrian and cycle bridge across the Brisbane River from Gardens Point to South Bank; South Bank end of the bridge to Stanley St and Sidon Street and to South Bank Parklands; along the border of South Bank Parklands to main entrance Maritime Museum	08.10.01 to 07.10.06	PPRA Regulations 2000 Reprint 1E 2001 SL No 181 Reprint 2B 2002 SL No 265 Reprint 3D 2004 SL No 211
Brisbane City King George Square, Ann St, Edward St, Elizabeth Street, George Street	17.02.06 to 16.02.08	PPRA Regulations 2000 Reprint 4E 2006 SL No 15
New Farm Park Brisbane Powerhouse	17.02.06 to 16.02.08	PPRA Regulations 2000 Reprint 4E 2006 SL No 15
South Brisbane Kurilpa Point		PPRA Regulations 2000 Reprint 4E 2006 SL No 15



Location	Date	Reference
<b>KINGAROY</b>		
Kingaroy — bus terminal	12.12.03 to 11.12.07	PPRA Regulations 2000 Reprint 2K 2003 SL No 325 Reprint 4C 2005 SL No 299
Kingaroy — civic centre	12.12.03 to 11.12.07	PPRA Regulations 2000 Reprint 2K 2003 SL No 325 Reprint 4C 2005 SL No 299
Kingaroy — O'Neill Square	12.12.03 to 11.12.07	PPRA Regulations 2000 Reprint 2K 2003 SL No 325 Reprint 4C 2005 SL No 299
<b>MT ISA</b>		
Mt Isa CBD	27.10.03 to 26.10.06	PPRA Regulations 2000 Reprint 2H 2003 SL No 251 Reprint 3E 2004 SL No 221 & 225
<b>ROCKHAMPTON</b>		
Rockhampton — CBD	28.10.02 to 27.10.07	PPRA Regulations 2000 Reprint 2C 2002 SL No 270 Reprint 2H 2003 SL No 251 Reprint 4 2005 SL No 270
Rockhampton — Central Park	28.10.02 to 27.10.06	PPRA Regulations 2000 Reprint 2C SL No 270 Reprint 3E
Rockhampton — Bencke Park	28.10.02 to 27.10.06	PPRA Regulations 2000 Reprint 2C 2002 SL No 270 Reprint 3E 2004 SL No 221 & 225
Rockhampton — Kershaw Park/Gardens	28.10.02 to 27.10.06	PPRA Regulations 2000 Reprint 2C SL No 270 Reprint 3E SL No 221 & 225
Rockhampton — The area in the vicinity of Fitzroy River/Alexandra Bridge	28.10.02 to 27.10.07	PPRA Regulations 2000 Reprint 2C 2002 SL No 270 Reprint 2H 2003 SL No 251 Reprint 4 2005 SL No 257
<b>TOWNSVILLE</b>		
Townsville — The Strand	01.06.01 to 19.05.07	PPRA Regulations 2000 Reprint 1B 2001 SL No 53 Reprint 1C 2001 SL No 133 Reprint 2F rv 2003 SL No 92 Reprint 3J 2005 SL No 90
Townsville — Dean Park	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
Townsville — Echlin St and West Quarry Reserve	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90

Location	Date	Reference
Townsville — Flinders St	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
Townsville — Palmer St (South Townsville)	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
Townsville — Perfume Gardens and Old Magistrates Court	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
Townsville — Victoria Bridge	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
Townsville — West End Park	20.05.05 to 19.05.07	PPRA Regulations 2000 Reprint 3J 2005 SL No 90
<b>CAIRNS</b>		
Cairns Esplanade	28.10.02 to 27.10.06	PPRA Regulations 2000 Reprint 2C 2002 SL No 270 Reprint 3E 2004 SL No 221 & 225
Cairns City Library, Abbott St	28.10.02 to 27.10.06	PPRA Regulations 2000 Reprint 2C 2002 SL No 270 Reprint 3E 2004 SL No 221 & 225
<b>PORT DOUGLAS</b>		
Port Douglas Esplanade and Jalun Park	17.02.06 to 28.05.06	PPRA Regulations 2000 Reprint 4F 2006 SL No 88
<b>OTHER</b>		
Boyne Island, Bray Park Wyndham Avenue	21.09.01 to 20.09.07	PPRA Regulations 2000 Reprint 1D 2001 SL No 162 Reprint 2G 2003 SL No 208 Reprint 3N 2005 SL No 226
Tannum Sands (Tannum Sands Millennium Esplanade Recreation Area)	21.09.01 to 20.09.07	PPRA Regulations 2000 Reprint 1D 2001 SL No 162 Reprint 2G 2003 SL No 208 Reprint 3N 2005 SL No 226

# APPENDIX 7: Move-on powers and related laws in other Australian jurisdictions

Principal legislation	Move-on type law	Maximum penalty
<b>SOUTH AUSTRALIA</b>		
<p><i>Summary Offences Act 1953 (SA)</i></p>	<p>This Act provides a police officer with three types of move-on powers:</p> <ul style="list-style-type: none"> <li>request to move on or disperse (s. 18)</li> <li>to remove a person from a public meeting (s. 18A)</li> <li>to remove disorderly persons from public venues (s. 73).</li> </ul> <p><b>Section 18 Order to move on or disperse</b> This section allows a police officer to request a person or a group of persons assembled in a public place to:</p> <ul style="list-style-type: none"> <li>cease loitering</li> <li>disperse.</li> </ul> <p>If such a request has been made by police, the person requested must leave the place and the area in the vicinity of the place where they are loitering or assembled.</p> <p>Before using this power, the police officer must believe or apprehend on reasonable grounds that either:</p> <ul style="list-style-type: none"> <li>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</li> <li>a breach of the peace has occurred, is occurring, is about to occur, in the vicinity of that person or group</li> <li>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 others in the vicinity</li> <li>the safety of a person in the vicinity is in danger.</li> </ul> <p>The section does not provide any guidance on the time frame that will apply to a request.</p> <p><b>Section 18A Public meetings</b> This section gives a police officer power to remove a person from where a public meeting is being held, if they have been requested to by a person presiding over a meeting, who is of the opinion that the person to be removed is:</p> <ul style="list-style-type: none"> <li>behaving in a disorderly, indecent, offensive, threatening or insulting manner</li> <li>using threatening, abusive or insulting words</li> <li>obstructing or interfering with: <ul style="list-style-type: none"> <li>a person seeking to attend the meeting</li> <li>any of the proceedings at the meeting</li> <li>a person presiding at the meeting.</li> </ul> </li> </ul> <p>Note that, although there is a fine of \$1250 or three months imprisonment (s. 18A(a)), this is in relation to the grounds on which a person can be removed, and not in relation to contravening a request made by a police officer to move on.</p> <p style="text-align: right;"><i>Continued next page</i></p>	<p>Fine \$1250 or 3 months imprisonment (s. 18)</p>

Principal legislation	Move-on type law	Maximum penalty
	<p>A place means any place whether or not a hall, building or room. A public meeting includes any political, religious, social or other meeting, congregation or gathering that the public are permitted to attend.</p> <p><b>Section 73 Power of police to remove disorderly persons from public venues</b></p> <p>This section provides police with the power to enter a public venue and order a person to leave the venue if they are behaving in a disorderly or offensive manner. Police may also use reasonable force to remove the person.</p> <p>A person may be charged with an offence if:</p> <ul style="list-style-type: none"> <li>• the person remains in a public venue after being ordered to leave or re-enters</li> <li>• the person attempts to re-enter a venue within 24 hours of having left or being removed.</li> </ul> <p>A public venue is defined to be a place where members of the public are gathered for an entertainment or an event or activity of any kind, whether admission is free, or on payment or restricted to certain members of a club or specific class of persons. However, a public venue does not include a church or place of public worship (s. 4).</p> <p>Although the section does not provide a specific time limit, the wording of the offence subsection 2(b) indicates that a direction would apply for 24 hours.</p>	<p>Fine \$2500 or 6 months imprisonment</p>

**WESTERN AUSTRALIA**

<p><i>Criminal Investigation Act 2006 (WA)</i></p>	<p><b>Section 27 Suspects and others may be ordered to move on</b></p> <p>This section provides police with the power to order a person to leave a public place or a vehicle used for public transport or a part of it, if the police officer reasonably suspects a person is behaving in a way which:</p> <ul style="list-style-type: none"> <li>• involves violence (including using, causing or creating fear of violence)</li> <li>• commits a breach of the peace</li> <li>• is hindering, obstructing or preventing lawful activity</li> <li>• intends to or has committed or is about to commit an offence.</li> </ul> <p>In addition to leaving, the police can also order the person to:</p> <ul style="list-style-type: none"> <li>• go beyond a reasonable distance from the place</li> <li>• obey the order for a period of no longer than 24 hours.</li> </ul> <p>For the purposes of giving an order, a police officer may request the person to provide their personal details to police.</p> <p>When police apply this section they must:</p> <ul style="list-style-type: none"> <li>• give the order in writing on a prescribed form</li> <li>• consider the effect of the order on a person's access to the places where the person usually resides, shops, work, transport, health, education or essential services.</li> </ul> <p>A person will not be in breach of an order if they are taking reasonable steps to comply with it.</p> <p>A public place includes:</p> <ul style="list-style-type: none"> <li>• a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not</li> <li>• a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place, and</li> <li>• a school, university or other place of education, other than a part of it to which neither students nor the public usually has access (s. 3).</li> </ul>	<p>Fine \$12 000 or 12 months imprisonment (s. 153)</p>
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Principal legislation	Move-on type law	Maximum penalty
<p><i>Prostitution Act 2000 (WA)</i></p>	<p><b>Section 24 Police may direct person to move on</b>  This section gives power to a police officer to direct a person to:</p> <ul style="list-style-type: none"> <li>• move on if they have reason to suspect that a person has committed, or intends to commit, an offence under this Act in view of or within hearing of a public place, and</li> <li>• stay away from the place for not more than 24 hours.</li> </ul> <p><b>Section 38 Restraining order against person who could be required to move on</b>  A police officer may obtain a restraining order if:</p> <ul style="list-style-type: none"> <li>• a person has been given direction under s. 24</li> <li>• circumstances have arisen where police could issue them with another direction under s. 24.</li> </ul> <p>The direction must be in writing in a prescribed form. A person who, without a lawful excuse, contravenes a direction commits an offence (s. 12).</p> <p>The effect of the restraining order is to impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court thinks are appropriate in order to prevent the person from being given further move-on directions (s. 40(2)). The restraining order can be for a specified period or if no period is specified then for one year (s. 41(2)).</p> <p>A public place means:</p> <ul style="list-style-type: none"> <li>• any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise</li> <li>• a school, university or other place of education, other than a part of it to which neither students nor the public usually have access, or</li> <li>• a privately owned place that is unoccupied or is occupied by a person who is not the owner and does not have the authority of the owner (s. 3).</li> </ul>	<p>First offence  Fine \$6000</p> <p>Second or subsequent offence  12 months imprisonment (s. 12)</p> <p>Breach of the restraining order  — Fine \$5000 (s. 46)</p>
<b>NEW SOUTH WALES</b>		
<p><i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i></p>	<p>This Act provides a police officer with powers to provide the following directions:</p> <ul style="list-style-type: none"> <li>• generally relating to public places (s. 197)</li> <li>• the dispersal of groups of intoxicated persons in public places (s. 198).</li> </ul> <p><b>Section 197 Directions generally relating to public places</b>  This section gives a police officer power to give a person a direction in a public place if the police officer believes on reasonable grounds that a person's behaviour or presence:</p> <ul style="list-style-type: none"> <li>• is obstructing people or traffic</li> <li>• constitutes harassment or intimidation</li> <li>• is causing or is likely to cause fear to a person of reasonable firmness</li> <li>• is for the purpose of supplying or obtaining a prohibited drug.</li> </ul> <p>For the purposes of the above grounds on which a direction can be given, it is sufficient for a person to be near the public place at the time the offender engages in this conduct.</p> <p style="text-align: right;"><i>Continued next page</i></p>	<p>Fine 2 penalty units (\$220) (s. 199)<sup>27</sup></p>

<sup>27</sup> One penalty unit is \$110 (s. 17 *Crimes (Sentencing Procedure) Act 1999* (NSW)).

Principal legislation	Move-on type law	Maximum penalty
	<p>Police may give a direction which is reasonable for the purposes of:</p> <ul style="list-style-type: none"> <li>• reducing or eliminating the obstruction, harassment, intimidation or fear</li> <li>• stopping the supply or obtaining of a prohibited drug.</li> </ul> <p>A person must comply with the direction, unless they have a reasonable excuse (s. 199(1)).</p> <p><b>Section 198 Directions relating to dispersal of groups of intoxicated persons in public places</b></p> <p>This section gives a police officer power to direct intoxicated persons in a group of three or more, who are in a public place, to leave the place and not return for a specified period of time of not more than six hours.</p> <p>A person is considered intoxicated if:</p> <ul style="list-style-type: none"> <li>• the person’s speech, balance, co-ordination or behaviour is noticeably affected, and</li> <li>• it is reasonable to believe that the person’s affected speech, balance, coordination or behaviour is the result of the consumption of alcohol or drugs.</li> </ul> <p>A police officer can only use this power if they believe on reasonable grounds that the person’s behaviour is due to their intoxication and is:</p> <ul style="list-style-type: none"> <li>• likely to cause injury to any other person or persons or damage to property</li> <li>• likely to give rise to a risk to public safety.</li> </ul> <p>The direction must be reasonable for the purposes of preventing injury or damage or reducing the risk to public safety.</p> <p><b>Safeguards and warnings</b></p> <p>When issuing the direction under either s. 197 or s. 198, police must adhere to certain safeguards and supply details, reasons and give warnings (s. 201). Such safeguards include providing the police officer’s name and station, and the reason for the exercise of the power, and warning the person they are required by law to comply with the direction and that a failure to comply is an offence.</p>	<p>Fine 2 penalty units (\$220) (s. 199)</p>
<p><i>Children (Protection and Parental Responsibility) Act 1997 (NSW)</i></p>	<p><b>Part 3, Division 2 Removal of children from public places</b></p> <p>This Part allows police to remove a person under the age of 16 years from certain public places and take the child to a parent or carer’s residence. Before being able to take removal action, a police officer must believe on reasonable grounds that all of the following are present — the child:</p> <ul style="list-style-type: none"> <li>• is under 16 years of age</li> <li>• is not subject to supervision or control by a responsible adult</li> <li>• is subject to circumstances that place the child <ul style="list-style-type: none"> <li>– at risk of being physically harmed or injured</li> <li>– in danger of abuse (including assault, sexual assault, ill-treatment or psychological harm)</li> <li>– is about to commit an offence.</li> </ul> </li> </ul>	

Principal legislation	Move-on type law	Maximum penalty
	<p>The Children (Protection and Parental Responsibility) Regulation 2008 may limit the circumstances, and regulate the manner, in which functions conferred on police officers in relation to removal of children from public places may be exercised. The Regulation authorises the Commissioner of Police and the Director-General of Community Services to enter into Protocols regarding the exercise of functions conferred on police officers and other persons under Part 3.<sup>28</sup></p> <p>The Regulation also requires that a police officer must keep certain records, such as the person's name and age, and the reason the person was removed from the public place.<sup>29</sup></p>	
<b>TASMANIA</b>		
<p><i>Police Offences Act 1935 (Tas)</i></p>	<p><b>Section 15B Dispersal of persons</b></p> <p>This section allows a police officer to direct a person in a public place to leave the place and not return for a specified period of not less than four hours if a police officer believes on reasonable grounds the following behaviour has occurred or is likely to occur:</p> <ul style="list-style-type: none"> <li>• the commission of an offence</li> <li>• the obstruction of movement of pedestrians/vehicles</li> <li>• endangering the safety of any other person</li> <li>• a breach of the peace.</li> </ul>	<p>Fine 2 penalty units (\$260)<sup>30</sup></p>
<b>AUSTRALIAN CAPITAL TERRITORY</b>		
<p><i>Crime Prevention Powers Act 1998 (ACT)</i></p>	<p>Move-on powers are the sole focus of this Act.</p> <p>A police officer may issue a move-on direction if the officer has reasonable grounds to believe a person in a public place has engaged, or is likely to engage, in violent conduct in that place. Violent conduct means any violence to, or intimidation of, a person or damage to property.</p> <p>The police officer can direct a person:</p> <ul style="list-style-type: none"> <li>• to leave</li> <li>• to leave by a specific route</li> <li>• to not return to the vicinity for a stated period of not more than six hours.</li> </ul> <p>A person must not contravene the direction without a reasonable excuse.</p> <p>The Act provides for exemptions if a person is:</p> <ul style="list-style-type: none"> <li>• picketing a place of employment</li> <li>• demonstrating or protesting about a particular issue</li> <li>• identifying with a banner or intending to publicise views about a particular issue.</li> </ul>	<p>Fine 2 penalty units (\$220)<sup>31</sup></p>

28 Section 8 Children (Protection and Parental Responsibility) Regulation 2008.

29 Section 9 Children (Protection and Parental Responsibility) Regulation 2008.

30 One penalty unit is \$130 (s. 4A *Penalty Units and Other Penalties Act 1987 (Tas)*).

31 One penalty unit is \$110 for an individual (s. 133 *Legislation Act 2001 (ACT)*).

Principal legislation	Move-on type law	Maximum penalty
<p><i>Crimes Act 1900</i> (ACT)</p>	<p><b>Section 379 Misbehaviour at public meetings</b></p> <p>This section gives a police officer power to remove a person, if they have been requested by a person presiding over the meeting, who holds a reasonable belief that the person to be removed is behaving in a manner that is disrupting a public meeting.</p> <p>A public meeting is not defined.</p> <p>Although there is a fine of \$1000, imprisonment for six months or both, this is in relation to the grounds on which a person can be removed, and not in relation to contravening a request made by a police officer to move on.</p>	
<b>NORTHERN TERRITORY</b>		
<p><i>Summary Offences Act</i> (no date)</p>	<p><b>Section 47B Loitering — offence following notice</b></p> <p>This section allows a police officer to give a person loitering at a public place a written notice which:</p> <ul style="list-style-type: none"> <li>• requires the person to stay away from the place or an area in the public place</li> <li>• identifies the specified part of the place or area</li> <li>• is for a specified period of not more than 72 hours</li> <li>• outlines the consequences of failing to comply with the notice.</li> </ul> <p>Before police can issue a notice, they must reasonably suspect that the person:</p> <ul style="list-style-type: none"> <li>• has committed or is about to commit an offence</li> <li>• is part of a group of people at the place and one or more of those people have committed or are about to commit an offence.</li> </ul> <p>A person must not contravene the conditions of the notice unless they have a reasonable excuse.</p> <p>A police officer must ensure all reasonable steps are taken to explain to the person the conditions of the notice.</p>	<p>Fine 100 penalty units (approx. \$13 000) or six months imprisonment<sup>32</sup></p>

<sup>32</sup> See *Penalty Units Act 2009* (NT) for the calculation to determine a penalty unit.



## APPENDIX 8:

### Case note, *Rowe v. Kemper*

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#### ***Rowe v. Kemper* [2009] 1 Qd R 247 (Rowe's case)**

In *Rowe v. Kemper*, a 65-year-old homeless man, Bruce Rowe, was arrested in Brisbane's Queen Street Mall on 8 July 2006 and charged with failing to obey a police direction and obstructing a police officer.

Rowe had been changing his clothes in a public toilet when he was asked by a cleaner to leave the premises. When Rowe did not comply with the request an argument ensued and the cleaner contacted police. Four police officers and two police recruits attended. Two officers went into the toilet block and accompanied Rowe out. Rowe was issued with a move-on direction to leave the Mall for a period of 8 hours. Rowe repeatedly demanded identification details from the officers. When he failed to leave, Rowe was arrested for failing to comply with the direction. A struggle ensued in which several officers subdued Rowe by forcing him to the ground. Rowe was also charged with obstructing a police officer.

At first instance in the Magistrates Court, Rowe was found guilty on both charges but was released by the magistrate without a conviction being recorded. Rowe lodged an appeal to the District Court and the magistrate's decision was upheld. Rowe appealed to the Queensland Court of Appeal, where he was successful in having his convictions overturned for contravening a direction and obstructing police and verdicts of acquittal entered. President McMurdo (at 252) noted that the case highlighted 'the difficulty police officers often face in determining if, when and how to exercise their move-on power ... in respect of members of the public behaving in a non-conforming manner'.

The Court of Appeal held that the police officer had a lawful basis for giving a move-on direction<sup>33</sup> but that both the nature of the direction and the manner in which it was given were contrary to law. In relation to the nature of the direction, which was for Rowe to leave the Queen Street Mall for a period of 8 hours, the court determined that this was not a reasonable direction considering the particular circumstances of the case. The court found that the direction given was too broad in both its scope and the length of time to be reasonable in the context of Rowe's behaviour. There needed to be a stronger connection between the nature of the direction and the behaviour giving rise to it; the direction needed to be proportionate to the particular conduct. On this basis, the Court of Appeal determined that the direction was not reasonable<sup>34</sup> and was therefore unlawful. The majority of the court stated that a more appropriate direction in the circumstances would have been for Rowe to leave the toilets for a reasonable time in order to allow the cleaning to occur.

The court also considered the manner in which the move-on direction was given and the subsequent arrest was undertaken. The court was particularly concerned with a legislative safeguard under then s. 371 (now renumbered as s. 633 of the PPRA 2000). Without the observance of these safeguards, the court stated that the offence of contravening a direction

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33 The court held that it was lawful for a move-on direction to be given on the basis that Mr Rowe's behaviour (arguing with the cleaner) had caused him anxiety reasonably arising in all the circumstances. The court dismissed the submission that Rowe's behaviour also fell within then s. 37(1)(c) (now s. 46(1)(c)) — 'disorderly, indecent, offensive, or threatening to someone entering, at, or leaving a place' — because of a lack of evidence both that the police officer subjectively suspected this and that his suspicion was objectively reasonable.

34 The requirement for a move-on direction to be 'reasonable' was then at s. 39(1) of the PPRA 2000. This is now s. 48(1) of the PPRA 2000.

could not be established. The court determined that in this case the police officer had arrested Rowe too quickly and without giving him a further reasonable opportunity to comply with the direction. The court also determined that the officer had not complied with the requirement to provide Rowe with a proper warning before arresting him. Therefore the offence of contravening a police direction could not be proven to have been committed by Rowe.

This case provides a number of important principles regarding the appropriate use of police move-on powers:

- that the police officer's suspicion must be objectively reasonable and held by the police officer
- the need for a strong connection between the scope and duration of the move-on direction and the conduct giving rise to it
- the importance of police officers following the safeguards associated with the powers.

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**Case**

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