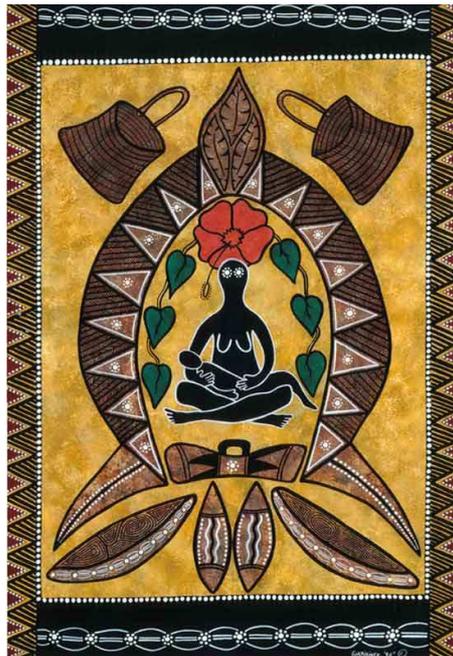


SUBMISSION TO THE CRIME AND MISCONDUCT COMMISSION

ON THE REVIEW OF QUEENSLAND 'S POLICE MOVE-ON POWERS

Aboriginal and Torres Strait Islander Women's Legal Service North Queensland Inc



The following submission is not intended to be an in-depth analysis of the issues involved in Police Move-On Powers in Queensland. What is supplied is a brief overview of some issues identified by our service as relevant considerations in the assessment of such powers, their implementation, and short and long term viability.

To date our service has not conducted comprehensive surveys of our client base in regards to police move-on powers. We have provided community legal education for Aboriginal and Torres Strait Islander Women on police powers and responsibilities, including police move-on powers. Most recently we discussed police move-on powers with women providing services to Aboriginal and Torres Strait Islander communities in Mount Isa.

Summary of Recommendations

Recommendation 1

Emphasis be upon de-escalating potential conflict in the exercise of move-on powers in Queensland.

Recommendation 2

Fines and arrest be an absolute last resort in the application of police move-on powers

Recommendation 3

An exemption be created for Sacred Grounds and Traditional Meeting Places in the application of Part 5 of the *Police Powers and Responsibilities Act 2000*

Recommendation 4

Subsection (a) of Section 47(1) be removed so there is no longer grounds to move someone on for mere presence "causing anxiety"

Recommendation 5

An end to police targeting of minority groups in the exercise of discretion under police move-on provisions

Recommendation 6

Implementation of effective means for public reporting to ensure accountability and supervision in the use of police move-on powers

Recommendation 7

The Queensland Government put into place comprehensive community education and socialisation in relation to police move-on powers

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About ATSIWLSNQ Inc

1.1 Service History

The Indigenous Women's Unit was established as part of the North Queensland Women's Legal Service Inc (NQWLS) in July of 1998 through funding from the Commonwealth Attorney-General's Indigenous Women's Project. This unit operated out of both the Townsville and Cairns NQWLS centres.

In February 2005 the Indigenous Women's Unit received approval from the Attorney-General to set up a single office in Townsville, separate from the NQWLS. In May 2005 the IWU relocated to separate premises with two permanent full-time staff, a Principal Solicitor and a Community Development Worker. A part-time Administrative Assistant also joined the team. In February of 2006 the Aboriginal and Torres Strait Islander Women's Legal Service NQ (ATSWILSNQ) was incorporated and in March 2006 an interim Management Committee was elected.

Our funding comes from the Commonwealth Attorney General's department and from the State Attorney General's Department. Legal Aid Queensland is responsible for the distribution of funds. We have also received funding from the Gambling Community Benefit Fund to enable us to purchase a work car for the purpose of our Community Legal Education program and outreach services.

1.2 Objectives

- To provide timely and appropriate legal advice and information to Aboriginal and Torres Strait Islander women
- To be responsive to the Law and Justice needs of Aboriginal and Torres Strait Islander women
- To provide Aboriginal and Torres Strait Islander women with the knowledge and ability to assert or defend their legal rights
- To promote awareness of Legal issues that affect Aboriginal and Torres Strait Islander women
- To develop a Community Legal Education Program that is responsive and appropriate to the needs of Aboriginal and Torres Strait Islander women

1.3 Services and Service Delivery

The service and activities of the Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc include:

- (i) Networking and Liaison
- (ii) Promotion
- (iii) Community Legal Education
- (iv) Legal Advice and Information
- (v) Casework
- (vi) Law Reform and Policy
- (vii) Client Support

These services are facilitated through:

- (a) Face to Face Appointments
- (b) Continuing representation of Indigenous women in legal matters (including court appearances) in selected cases subject to strict guidelines
- (c) Client support may also be given to assist Indigenous women to access other services
- (d) Advocacy through the media about issues of particular concern to Indigenous women
- (e) Law Reform submissions and campaigns on legal issues affecting Indigenous women

Introduction

Police Move-On powers are of specific concern to Aboriginal and Torres Strait Islander Women for a number of reasons. It is acknowledged, in studies¹ and submissions, that Indigenous people, comprise a significant percentage of the population being issued with move-on directions in Queensland. Whether it is predominately Indigenous women, Indigenous men or Indigenous youth and children that are being directed to move on, these practices clearly impact upon:-

- (a) the family, kin and social dynamics of Indigenous women;
- (b) their right to freedom of association;
- (c) their right to maintain a connection to their land; and
- (d) their right to freedom from discrimination.

¹ Taylor, M and Walsh, T (eds) (2006) *Nowhere to Go: The Impact of Police Move-On Powers on Homeless People in Queensland*, Queensland Public Interest Law Clearing House, Brisbane.

2.1 Public Space and Culture

Many policy makers, police, businesses, media outlets and members of the community don't seem to fully appreciate the integral part that parks and public space play in indigenous culture. These public spaces form gathering points, they are hubs for information sharing and for maintaining community links. Some of these locations were meeting points long before European settlement. Uncle Bill, a respected Aboriginal Elder, explained to those at the Red Cross Heading Home Launch in Townsville recently that anyone passing through, returning or leaving a town knows to approach these gatherings to seek information about relatives, community and events. It is important also to understand that the locations for these gatherings shift with the seasons, with changes in the land and in accordance with traditional ways.

2.2 Spiritual Homelessness

Another concept requiring greater appreciation in relation to Indigenous use of public space is that of homelessness. Again, Uncle Bill at the Heading Home Program provided a heartfelt explanation of spiritual homelessness. This is the homelessness felt in the heart of Aboriginal and Torres Strait Islanders when they are estranged from their homelands. It is not the homelessness that involves not having a roof over ones head, but the separation from community, family ties, kinship and the land.

It is also important to realise that some people do make the choice to live without four walls, in such circumstances we have a responsibility to protect these people and supply reasonable services to ensure their wellbeing. A policy and system of law enforcement which promotes continual uprooting of such people, such as Police Move-On powers, amounts to repeat victimisation of highly vulnerable and disadvantaged members of our society.

Experiences

As stated in the preliminary to this submission, the Aboriginal and Torres Strait Islander Women's Legal Service North Queensland Inc has not attempted to survey our clients or target group in respect to Move-On powers. In the next six months, and beyond, it is our aim to engage in discussions with communities on this topic and provide guidance in the form of community legal education on police powers, and specifically, police move-on powers.

3.1 The Mount Isa Experience

On March 18 of this year ATSIWLSNQ Inc conducted an information session in Mount Isa which was well attended by service providers working with aboriginal communities in the Mount Isa region. Attendees raised two main concerns in regards to the operation of move-on powers in their community:

1. Directions given to young people and the legality of such directions; and
2. Police and council actions with respect to local 'riverbed' communities.

Directions given to young people

One participant advised that young people were being questioned by police and moved on from the local "Food for Less" Supermarket on a daily basis. This participant went on to elaborate that the young people in question have not been blocking entry to the building and not harming anyone through their conduct. This participant explained that the actions of the police have angered and upset the young people as they feel they have nowhere to go to "just hang out".

When a person in a position of authority gives a direction, just by way of their mere authority one might take the direction to be lawful. Without community education young and old people alike are not aware of what is and isn't lawful. In the absence of any independent third parties there is no way of ensuring police are not overstepping the boundaries in their exercise of move-on powers.

Actions with respect to riverbed communities

In Mount Isa a number of aboriginal people reside at the local riverbed. At the information session mentioned above we were made aware of an incident which is alleged to have taken place on 10 October 2008². Members of the riverbed communities reported that council staff, in the presence of police officers, set fire to a number of their possessions in an attempt to move the people on from this site. The local media followed up on this incident seeking comment from the Mount Isa police, Mount Isa City Council and the Mount Isa Mayor, John Molony.

Mount Isa Police Superintendent Les Hopkins reportedly refused to comment on the specific incident but advised that police were present on the day to ensure the security of council workers. The Mayor, John Molony is reported to have conducted an internal investigation into the incident and found no wrongdoing on the council workers' behalf³.

On the face of it this incident may not relate specifically to police move-on powers. What it does highlight however are the experiences and vulnerabilities of homeless Aboriginal and Torres Strait Islanders living in our Queensland communities. This incident also highlights the difficulties these communities experience in seeking to have their concerns acknowledged and rights protected.

Move-on Powers - Proper, Fair and Effective?

4.1 Reference to the Submission of the Queensland Council for Civil Liberties

² Rowling, T (2008) "Beds are Burning", *North West Star*, October 24 2008, p3: Mount Isa

³ Rowling, T (2008) "Beds are Burning", *North West Star*, October 24 2008, p3: Mount Isa

We have had the benefit of reading the submission of the Queensland Council for Civil Liberties⁴ and agree with those concerns raised in regards to proper, fair and effective use of police move-on powers in Queensland, in particular:

- Current policy and practice has amounted to the criminalisation of “presence”;
- “Causing anxiety” should not be a valid ground for directing someone to move-on;
- Current policy and practice fails to demonstrate an understanding, appreciation and respect for Indigenous Australians connection to the land;
- The targeting and over-representation of minority groups in the application of police move-on powers is of great concern and should not be allowed to continue;
- There is currently a lack of avenues for public scrutiny of police practice in regards to move-on powers and the use of police discretion;
- Indirect and direct discrimination against Aboriginal and Torres Strait Island communities in the application of police move-on powers is unacceptable; and
- The imposition of large fines on those who are already suffering from disadvantage is inappropriate and unjust.

4.2 Further Concerns

4.2.1 Insufficient community education and socialisation of move-on powers

There appears to be a lack of awareness amongst the community in regards to what constitutes a legal and an illegal move-on direction.

We would argue that it is fair to say the responsibility lies with the Queensland Police Service to ensure that there is comprehensive public education and socialisation of police move-on powers. To date there is a lack of evidence to suggest that the communities targeted by these powers have been satisfactorily made aware of their rights and responsibilities under these laws.

4.2.2 Tensions between Police and Aboriginal and Torres Strait Islander Communities

Our primary concern in this regard is that police move-on powers have the potential to create a further avenue for negative interaction between indigenous communities, the police and the criminal justice system. By their mere presence indigenous Queenslanders may be approached by police officers and given directions to ‘move-on’. In any such interactions there is the potential for misunderstanding and conflict. In effect an otherwise non-criminal activity on the part of persons occupying public space has the potential to become criminal.

⁴ Rogers, D (2009) *Re: CMC Review of Police Move-On Powers*, Queensland Council of Civil Liberties Homepage [URL: http://www.qccl.org.au/documents/Sub_MC_19Feb09_MoveOn_Powers_CMC.pdf]

There is currently no mechanism for issuing a warning in the instance where someone does not obey a move-on direction, hence leaving arrest as the only action for this failure to adhere to a police direction. Such increased potential for arrest and incarceration of indigenous Queenslanders is in direct contravention of policy documents and recommendations in regards to diverting Aboriginal Australians away from prisons and police custody.

4.2.3 Criminalisation of Disadvantage

As noted above, by their very essence police move-on powers broaden the scope for criminalisation of otherwise non-criminal activities⁵. Homelessness and the occupation of public space under such powers can become a direct avenue for entry into the criminal justice system on the part of disadvantaged Queenslanders. With large fines being applied for failures to comply with move-on directions there is the very real potential for disadvantaged persons to be imprisoned due to an inability to pay such fines.

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.

Recommendations

5.1 Emphasis on De-escalation of potential Conflict

In the issuing of move-on directions it is important that police are effectively trained and briefed on measures for de-escalating conflict. Where a person who is issued a move-on order reacts negatively it is important that police are seen to respond in such a way that will not further aggravate an individual or group of individuals. Police best practice should be aimed at fairly assessing a situation and adopting strategies to diffuse, rather than inflame, a potential conflict. Such procedures may go a long way to reducing instances of arrest for failures to adhere to move-on directions, and to reducing the "trifecta" of offences that often follows⁶.

Given the suggestions above, it seems appropriate to take steps to prevent the criminalisation of negative reactions towards police move-on directions. Where a person seeks to challenge a direction or believes such a direction to be unfair, their response should not be viewed and treated as criminal.

5.2 Arrest and fines as an absolute last resort

⁵ Taylor, M and Walsh, T (eds) (2006) *Nowhere to Go: The Impact of Police Move On Powers on Homeless People in Queensland*, Queensland Public Interest Clearing House, Brisbane.

⁶ Mr Sullivan (Australian Labor Party Member for Stafford), 'Police Powers and Responsibilities and Other Acts Amendment Bill 2006' *Queensland Parliament Hansard Transcription Debates*, 23 May 2006, 1766-1823, 1809 as referred to in the submission of the Queensland Council For Civil Liberties to the CMC Review of Police Move-On Powers, pages 7-8.

We advocate for prioritisation of diversionary options. We consider fines and arrest should be options of absolute last resort in regards to the operation of police move-on powers. In particular we refer to the recommendations of Dr Tamara Walsh⁷ in regards to alternatives in public nuisance cases:

- Cautions
- Referral to Social or Welfare Services
- Imposition of Additional Requirements to trigger arrest, in particular a multi-step approach where the following stages must be satisfied prior to arrest: -
 1. There must first be a complaint from the public in regards to specific actions on the part of the person who is being asked to be move-on;
 2. the person must have been given a caution in regards to their failure to comply with a reasonable direction to move-on; and
 3. arrest of the person must be reasonably necessary to ensure public safety.

5.3 An Exemption for Traditional Grounds and Sacred Meeting Places

As noted in the introduction to this submission public spaces and parks are of special significance to Aboriginal and Torres Strait Islander communities. It is important in seeking reconciliation and improving relationships between indigenous and non-indigenous Australians that Australian law be seen to respect indigenous cultures and traditions.

A means by which this could be done in relation to police move-on powers would be to designate certain public meeting spaces as exempt from the Application of Part 5 of the *Police Powers and Responsibilities Act 2000*. This could be determined by public consultation, in particular with members of local Aboriginal and Torres Strait Islander communities in each local government region. These designations would need to have an element of flexibility and the means for regular review, as noted in our introduction traditional meeting grounds shift with the seasons, the land, and in accordance with traditional patterns.

5.4 Eliminating presence “causing anxiety” as grounds for issuing a move-on direction

We believe subsection (a) of Section 47 (1) should be removed from the *Police Powers and Responsibilities Act 2000*. 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 by 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.

⁷ Walsh, T, T.C. Bierne School of Law, University of Queensland, Rights in Public Space Action Group. (2006) *Dealing with nuisance behavior: Logical alternatives to traditional sentences*, International Society for Reform of the Criminal Law Conference, July 2006.

5.5 A reduction in targeting of minority groups and discrimination

The law should be seen to apply fairly to all members of the public. Where the administration of particular law sees certain members of the community being treated less favourably than others, the law is being administered in a discriminative manner. To properly ascertain the levels of targeting and discrimination in the application of police move-on powers it is necessary that there be greater transparency in police reporting. This point leads in well to our next recommendation.

5.6 Supervision and Accountability in the issuing of directions

We note and support recommendations from the Council of Civil Liberties⁸ in regards to more transparent and detailed reporting by police when it comes to issuing move-on directions. In particular we would like to see such reports made available to the public for review and comment.

5.7 Comprehensive community education and information

We firmly believe that there is a need for improved mutual understanding between police and 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 the details of legislative and policy changes.

When a young person, an aboriginal woman, or a homeless man come face-to-face with the police it is imperative that they understand their rights and their position at that moment in time. They need to be able to discern for themselves whether a move-on direction is a legal direction and what the consequences are of refusing such a direction.

People have a right to know whom they can complain to and where they can go for assistance. With power indeed comes responsibility. With increased powers, the police service has the responsibility to ensure the community understands these powers and how they apply us all.

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27 March 2009

⁸ Rogers, D (2009) *Re: CMC Review of Police Move-On Powers*, Queensland Council of Civil Liberties Homepage [URL: http://www.qccl.org.au/documents/Sub_MC_19Feb09_MoveOn_Powers_CMC.pdf]