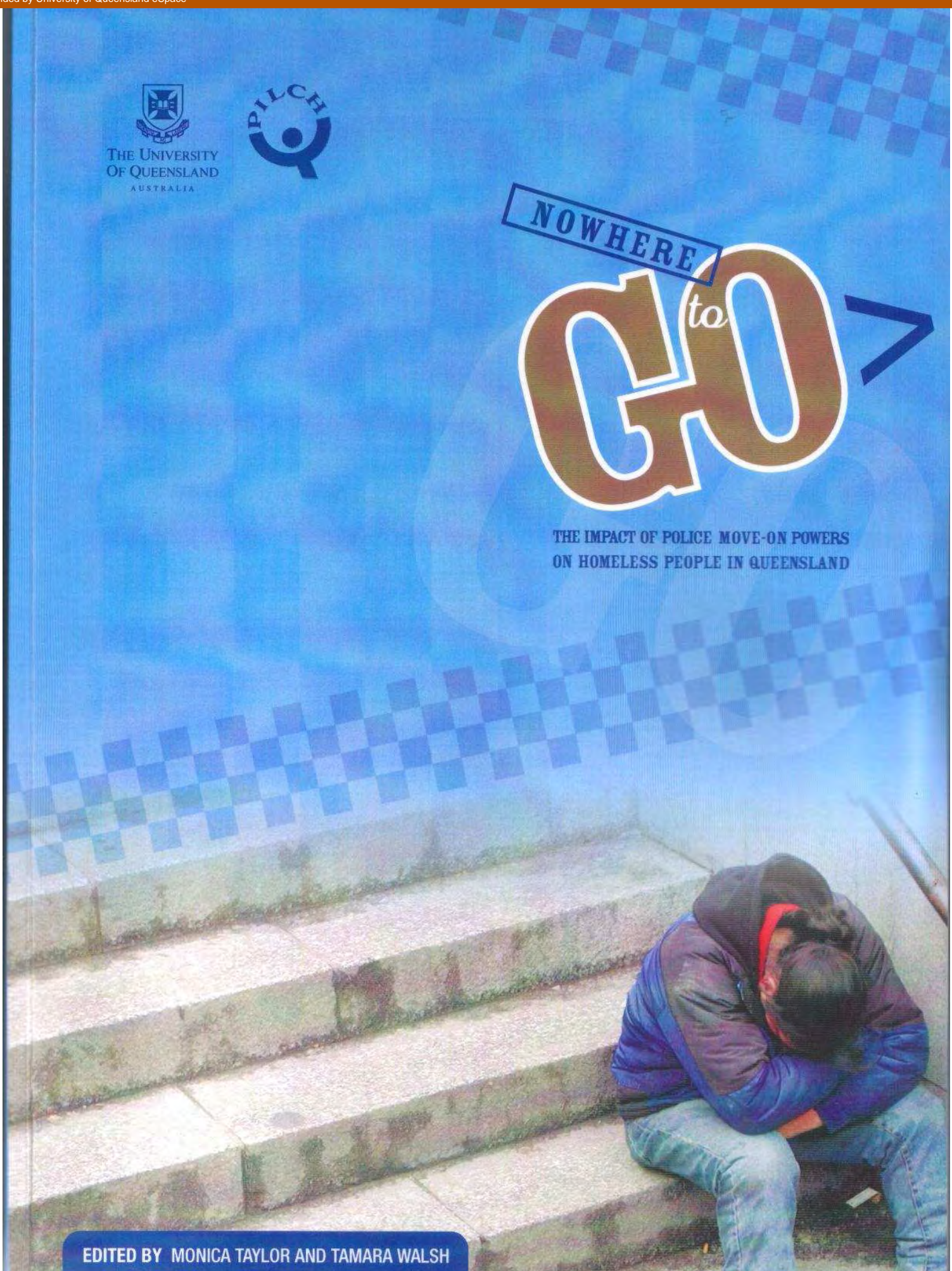




NOWHERE
to
GO >

THE IMPACT OF POLICE MOVE-ON POWERS
ON HOMELESS PEOPLE IN QUEENSLAND

EDITED BY MONICA TAYLOR AND TAMARA WALSH



NOWHERE TO GO:
**THE IMPACT OF POLICE MOVE-ON POWERS
ON HOMELESS PEOPLE IN QUEENSLAND**

Edited by:

Monica Taylor

(Coordinator, Homeless Persons' Legal Clinic,
Queensland Public Interest Law Clearing House)

and Dr Tamara Walsh

(T.C. Beirne School of Law, University of Queensland)

With:

**Megan Breen, Binny de Saram, Lindsay Nicholson, Hillary Nye,
Marianna O'Gorman and Davina Wadley**

(Students of the T.C. Beirne School of Law, University of Queensland)

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EXECUTIVE SUMMARY

Introduction

This report is the result of a joint research project undertaken by the T.C. Beirne School of Law, University of Queensland, Queensland Public Interest Law Clearing House (QPILCH) Homeless Persons' Legal Clinic. The project researched the use and effect of police move-on powers on homeless people in Brisbane.

Chapter 1 provides an introduction to the law and policies surrounding move-on powers in Queensland. Chapter 2 explores the historical and current policy concerns surrounding the use and effect of move-on powers. Chapter 3 provides a comparative analysis of approaches to move-on powers in other jurisdictions in Australia. Chapter 4 analyses the use and effect of police move-on powers on homeless people from a human rights perspective. Chapter 5 documents the empirical research findings. Chapters 6 and 7 analyse the impact of police-move on powers on two specific vulnerable groups; young people and Indigenous people, and Chapter 8 summarises the report's recommendations.

Findings

A survey of 132 people experiencing or at risk of homelessness in Brisbane was conducted in early 2006. The survey instrument asked respondents to comment on the use of move-on powers against them, including the frequency of their use, the circumstances surrounding their use, and the efficacy of their use.

The key findings of the survey were:

- 76.5% of homeless people surveyed had been told to move-on one or more times in the last six months.

- Homeless people sleeping rough or in squats were most susceptible to being moved-on; 90% respondents who were sleeping rough had been moved on in the last six months.
- 34% young people surveyed were associating with other young people at the time they were issued a move-on direction.
- 77.9% respondents who received a move-on direction indicated their behaviour or presence when directed to move-on was innocuous and unlikely to meet the threshold requirements for lawfully issuing a move-on direction.
- 85% respondents who had been told to move-on one or more times within the last six months were given nowhere in particular to go upon being issued with move-on directions.
- Concerns about police ‘chasing’ homeless people from one place to the next were raised throughout the research. Some respondents stated that it was often the same officers that followed homeless people throughout the day to ‘chase them away’.
- 40% respondents who were asked to move-on in the last six months were not given a time frame for doing so. Of those that were given a time frame, 81% were given allowable amounts of time (24 hours or less). 19% respondents (approximately 1 in 5) were given time-frames that exceeded 24 hours, indicating that a large number of unlawful move-on directions are being issued to homeless people.
- 71% homeless people who were given a move-on direction complied with direction when issued, without question or argument.
- Homeless people surveyed had little knowledge about what constitutes a lawful police move-on direction, indicating their vulnerability to abuse of the power by police.

- 21% respondents agreed that move-on powers should exist for specific situations, primarily as a tool to increase their own safety on the streets.
- Alarming, 75% respondents provided personal accounts of police harassment and targeting, raising serious concerns about attitudes of operational police towards homeless people, and policing practices in Brisbane.
- In relation to general interactions with police, 73.5% respondents stated they had been approached by the police on various occasions when in their view they had not been doing anything wrong.

Recommendations

Recommendation 1

That section 38 of the *Police Powers and Responsibilities Act 2000* (Qld) be repealed, so that only a person's 'behaviour' and not merely their 'presence' can trigger a move-on direction.

Recommendation 2

That section 37 of the *Police Powers and Responsibilities Act 2000* (Qld) be amended so that police officers are only permitted to issue a move-on direction if there is a reasonable likelihood that the safety or security of a member of the public will be threatened unless the police officer intervenes.

This could be achieved by:

- 1) replacing section 37(1)(a) with the equivalent provision in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which reads (at s197(1)(c)) 'causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness'; and

- 2) replacing section 37(1)(c) with the equivalent provision in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which reads (at s197(1)(b)) ‘constitutes harassment or intimidation of another person or persons’.

Recommendation 3

That a statutory defence of reasonable excuse be available to persons charged with contravening a move-on direction under section 445 of the *Police Powers and Responsibilities Act 2000* (Qld).

Recommendation 4

That the maximum fine amount for contravening a police direction be reduced to 3 penalty units (\$225), so it is in line with equivalent provisions in other Australian jurisdictions.

Recommendation 5

That the process for publicly reporting on the use of move-on directions in the QPS Annual Statistical Review include data about a person’s age, housing status, whether they are of Aboriginal or Torres Strait Islander descent, and the location, timeframe and reason provided for the move-on direction.

CHAPTER 1: INTRODUCTION

This report undertakes a comprehensive study of police move-on powers in Queensland. It is the result of a joint research project undertaken by the T.C. Beirne School of Law, University of Queensland, and the Queensland Public Interest Law Clearing House (QPILCH) Homeless Persons' Legal Clinic, from February to June 2006.

Research partners

QPILCH Homeless Persons' Legal Clinic

QPILCH is a non-profit community based legal service that coordinates the provision of pro bono legal services in public interest matters for individuals and community organisations.

The Homeless Persons' Legal Clinic (HPLC) is a project of QPILCH. The HPLC provides free legal advice and assistance to people experiencing or at risk of homelessness at 8 outreach locations in Brisbane. Each clinic is staffed by volunteer lawyers from private law firms on a rostered basis. Participating firms include Allens Arthur Robinson, Minter Ellison, Blake Dawson Waldron, Clayton Utz, Mallesons Stephen Jaques, Phillips Fox, McInnes Wilson, Gilshenan & Luton, Freehills, MurphySchmidt and McCullough Robertson. In total, approximately 200 volunteer lawyers from 11 private law firms participate in the HPLC.

T.C. Beirne School of Law

The T.C. Beirne School of Law (UQ Law School) is a long established Australian law school based at the University of Queensland. It is a member of QPILCH and, together

with QPILCH, runs clinical legal education subjects which have a public interest law focus for undergraduate law students.

From February to June 2006, six final year law students from the UQ Law School undertook a 12 week clinical legal education subject at QPILCH. Students spent six weeks undertaking casework and field research functions at one of the HPLC outreach locations, and six weeks conducting research and policy work at QPILCH.

History and purpose of research

This research project was prompted by the expansion of police move-on powers into three major public spaces in Brisbane. In October 2005, Brisbane Lord Mayor Campbell Newman announced the Brisbane City Council's intention to apply for police move-on powers in King George Square, Kurilpa Point Park, New Farm Park and nearby surrounding public areas.

At that time, under the *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA'), police move-on powers could only be lawfully used in 'notified areas' which included places such as shopping malls, licensed premises, ATMs and schools. Additional areas could become a notified area by being listed as a 'prescribed place' within the legislation. For an area to be listed as a 'prescribed place', a local council or government entity had to apply to the Minister for Police for a declaration making it a 'notified area'.

A statutory process was outlined in the PPRA for declaring an area a 'prescribed place'. Applicants were required to:

- place a notice in a newspaper of state-wide circulation stating why they intended to apply for the declaration;

- for an ‘extended declaration’ of up to two years, engage in a public consultation process by inviting interested persons to make written submissions supporting or opposing the proposal;
- provide written information verifying the existence of any criminal conduct or public order problems, if that was the basis for applying for the declaration;
- provide a copy of each submission received and a summary of those submissions to the Minister for her consideration of the application.¹

A maximum two year time period was set for an area to become a notified area. This, coupled with the extensive opportunity for public consultation and stringent advertising conditions, indicated Parliament’s concern about the impact of extended move-on powers at the time they were introduced. These checks and balances were inherent in the legislation; indeed, the Minister was charged with the responsibility of ensuring that any requirements prescribed under a regulation were complied with.²

Council’s notice of intention to apply for declaration of notified area in The Courier-Mail on 24-25 September 2005 resulted in robust public debate and a large number of submissions opposing Council’s intended application. An internal Council memorandum indicated that, of the 247 submissions received, 85% opposed Council’s application. Indeed, there were:

- 50 submissions opposing the application;
- 130 standard letters opposing the application;
- 31 signatories on a petition opposing the application;
- 15 submissions supporting the application; and
- 21 standard letters supporting the application.

¹ Sections 40 and 41 PPRA 2000 (now repealed)

² Sections 40(2) PPRA 2000 (now repealed)

There was a high degree of media interest surrounding the Council's application in both local and state-wide media³ and submitters included state-wide statutory organisations, such as Legal Aid Queensland and the Anti-Discrimination Commission of Queensland. However, despite this overwhelming rejection of Council's proposal, in February 2006 the Police Minister approved Brisbane City Council's application and the three public spaces became 'prescribed areas' and therefore subject to police move-on powers.

Following this limited yet controversial expansion of police move-on powers in inner-city Brisbane, in June 2006 the Police Minister announced her intention to amend the PPRA to automatically enable move-on powers to be exercised in every public place in Queensland. Despite the magnitude of this foreshadowed legislative amendment, and impervious to the public consultation process enshrined in the PPRA, the Minister did not engage in any genuine public consultation about the impact of the proposed legislative amendment.

Political 'law and order commonsense'⁴ arguments about the need for state-wide move-on powers vacillated in the lead-up to the introduction of the amending Bill and its ultimate enactment in June 2006. The various arguments included:

- the ability for state-wide police move-on powers to prevent a 'Cronulla type incident' from occurring in Queensland;⁵
- removing the need for local councils to undertake a 'time-consuming' and application process, thereby eliminating 'unnecessary red tape';⁶ and

³ See for example 'Mayor seeks police move-on action', *The Courier-Mail*, 6 May 2005; 'Law targets homeless', *The Sunday Mail*, 4 September 2005; 'Brisbane 'move-on' powers criticised as unnecessary', *ABC News*, 7 May 2005; 'Move on laws likely', Cover story, *Southern News*, Thursday 9 February 2006; 'Move-on laws to go ahead', *The Courier-Mail*, 21 November 2005; 'BCC urges move-on powers for public hot spots', *ABC News online*, 24 November 2005; 'Homeless get a move-on', Issue 112, *City News*, 27 October 2005; 'Pushing the Limits', Issue 122 *City News*, 25 January 2006, Front Page; 'Council powers ahead on move-on' Issue 116 *City News*, 24 November 2005.

⁴ Russell Hogg and David Brown, *Rethinking Law and Order*, 1998.

⁵ 'Beattie wants move-on powers to avoid race riots', *The Sunday Mail*, January 1, 2006, at 24.

- the need to stop young gatecrashers at parties.⁷

In light of the lack of consultation, and fearing the effect that expanded move-on powers would have on homeless people, the HPLC and the UQ Law School resolved to undertake a comprehensive research project on homeless persons' experience of move on powers.

The research was conducted after Brisbane City Council's application for expansion was approved, but prior to the introduction of state-wide move-on powers. It therefore captures a time of changing legislative terrain, with police having just been granted use of the move-on power in additional public spaces in Brisbane.

The aim of the move-on powers research was to:

- document and analyse the interactions that homeless people have with police in relation to move-on powers;
- draw conclusions regarding the appropriateness of the use of move-on powers in relation to homeless people; and
- based on the results of the research, make recommendations about current and new or different ways of using move-on powers.

Research methodology

Throughout the 12 weeks, students administered a move-on powers survey designed by the Monica Taylor (Coordinator of the HPLC) and Dr Tamara Walsh (UQ Law School). A total of 132 survey responses were collected.

⁶ The Hon Judy Spence MP, 'Brisbane City Council gets extended move-on areas', Media Release, 17 February 2006; The Hon Judy Spence MP, 'Move-on powers for all public spaces in Queensland', Media Release, 21 April 2006.

⁷ The Hon Judy Spence MP, 'Safe Youth Parties Taskforce delivers its report', Media Release, 28 March 2006.

The research was also informed by a series of facilitated discussions held at numerous homelessness services in and around Brisbane during April and May 2006. The aims of the facilitated discussions were to:

- inform participants about the move-on powers research;
- generate debate about the circumstances in which police officers can lawfully use move-on powers; and
- create an informal space for people to share their opinions about, and experiences of, police move-on powers.

Details of the events, including the location, date, number of participants and type of event, as set out in the table below.

Date	Location	Event type	Partici- pants
11.04.06	Pindari Men's Hostel	Facilitated discussion	10
26.04.06	4AAA Kiosk, West End	Community BBQ	12
03.05.06	Pindari Women's Hostel	Facilitated discussion	14
08.05.06	The Big Issue vendor's meeting	Facilitated discussion	10
15.05.06	HART4000 / New Farm Neighbourhood Centre	Community meal	15
17.05.06	139 Club, Fortitude Valley	Facilitated discussion	25
24.05.06	Brisbane Homelessness Service Centre	Facilitated discussion	6

What is homelessness?

Homelessness is more than simply not having a roof over one's head. In Australia, the most recognised definition of homelessness is one which categorises homeless as primary, secondary or tertiary homelessness.⁸

- *Primary homelessness* refers to people without conventional accommodation, such as sleeping rough in parks or on the streets, squatting, living in vehicles or in improvised dwellings.
- *Secondary homelessness* refers to people moving between various forms of temporary shelter, such as refuges, emergency hostel accommodation or 'couch surfing' between the homes of family and friends.
- *Tertiary homelessness* is where a person lives in a boarding house on a medium to long-term basis.

A fourth category of those who are 'marginally housed' is comprised of those who live in caravan parks because they are unable to afford or find alternative accommodation.

In addition to housing status, homelessness also refers to a person's feelings of disconnection and exclusion from society.⁹ Being 'at home' therefore incorporates subjective feelings of personal safety, connectedness with one's community and a sense of personal autonomy and control.

⁸ Chris Chamberlain and David MacKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274.

⁹ See Council to Homeless Persons, Information Sheet Number 1, http://www.chp.org.au/public_library/items/2005/03/00055-upload-00001.doc

Causes and extent of homelessness

Homelessness is a significant social issue in Queensland. On any given night, more than 20,000 Queenslanders are homeless. The Australian Bureau of Statistics estimates that on the night of the 2001 census, 24,596 people were homeless in Queensland.¹⁰ Of that number, an estimated 16% of people were primary homeless, 62% secondary homeless and 22% tertiary homeless. The rate of homelessness for Queensland in 2001 was 69.8 per 10,000, the second highest in Australia.

In 2003, a census by the Brisbane Homelessness Taskforce estimated that on one particular night, there were 345 homeless people sleeping rough or staying in crisis accommodation within three kilometres of Brisbane City Hall.¹¹

Causes of homelessness are complex and varied, however they are generally acknowledged to include:

- *structural causes* (poverty, unemployment and inadequate supply of affordable housing);
- *fiscal, social and public policy causes* (taxation policy and expenditure on public and community housing, health care, education and vocational training);
- *individual causes* (ill health, mental illness, intellectual disability, substance and alcohol dependency, problem gambling, domestic violence, family breakdown);
and
- *cultural causes* (the provision of culturally inappropriate housing or support services to indigenous communities).

In many cases of homelessness, these causes intersect and interrelate.¹²

¹⁰ Chris Chamberlain and David MacKenzie, 'Counting the Homeless - Queensland' 2004, http://www.salvationarmy.org.au/reports/Counting_The_Homeless/SWI002_Qld_report.pdf

¹¹ See <http://www.qshelter.asn.au> & City South Homelessness Profile, Brisbane City Council http://www.brisbane.qld.gov.au/bccwr/plans_and_strategies/documents/cs_homelessness_profile.pdf

The law: Move-on powers

The relevant sections of the PPRA read as follows:

37 When power applies to behaviour

- (1) A police officer may exercise a power under section 39 in relation to a person at or near a prescribed 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.
- (2) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's behaviour
- (3) This part also applies to a person in a prescribed place if a police officer reasonably suspects that, because of the person's behaviour, the person is soliciting for prostitution.
- (4) For this act, the person's behaviour is a *relevant act*.

38 When power applies to a person's presence

- (1) A police officer may exercise a power under section 39 in relation to a person at or near a prescribed 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

¹² We acknowledge the work of the PILCH Homeless Persons' Legal Clinic in Victoria for this definition of causes of homelessness.

- 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) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.
- (3) For this part, the person's presence is a *relevant act*.

39 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.
- (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.
- (3) without limiting subsection (1), a direction may require a person to do either of the following –
- a) leave the prescribed place and not return within a stated reasonable time of not more than 24 hours;
 - b) move from a particular location for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place for 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.

This report

This report provides an investigation, both theoretical and empirical, into the use of these provisions in inner-city Brisbane, and the impact that their use has on people experiencing homelessness or at risk of homelessness.

Chapter 1 provides an introduction to the law and policies surrounding move-on powers in Queensland. Chapter 2 explores the historical and current policy concerns surrounding the use and effect of move-on powers. Chapter 3 provides a comparative analysis of approaches to move-on powers in other jurisdictions in Australia. Chapter 4 analyses the use and effect of police move-on powers on homeless people from a human rights perspective. Chapter 5 documents the empirical research findings. Chapters 6 and 7 analyse the impact of police-move on powers on two specific vulnerable groups; young people and Indigenous people, and Chapter 8 summarises the report's recommendations.

CHAPTER 2: POLICY CONCERNS SURROUNDING THE USE AND EFFECT OF MOVE-ON POWERS*

The introduction and use of the move-on powers in Queensland has been subject to much discussion over the past 13 years. As early as 1993-4, the Criminal Justice Commission (CJC)¹ and the Parliamentary Criminal Justice Committee (PCJC)² were debating whether Queensland police should have some form of move-on power. The conclusion of the CJC was that the Queensland police should ‘not be given a general move-on power’.³ The PCJC also recommended that the police not be given a general move-on power, yet supported the introduction of a restricted power that would apply only in a limited set of circumstances, with certain procedural restrictions and numerous safeguards.⁴

Despite the CJC and PCJC recommendations, on 1 July 2000, the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) was introduced with the aim of consolidating into one Act all of the powers held by Queensland police.⁵ The legislation also included enhanced powers for police to issue ‘move-on’ directions to people who were perceived to be displaying threatening behaviour or causing a nuisance in prescribed places.⁶ Prior to the enactment of the PPRA, Queensland police had no formal power to move people on, however they did so informally in an operational policing context.

As a result of the recent amendments to the PPRA in June 2006, police move-on powers can now be exercised in any public place throughout Queensland. The current ambit of move-on powers comes extremely close to the ‘general move-on power’ that the PCJC recommended against.

* This chapter was substantially written and researched by Marianna O’Gorman.

¹ Criminal Justice Commission, *A Report on a Review of Police Powers in Queensland – Volume III: Arrest without Warrant, Demand Name and Address and Move-On Powers*, 1993.

² Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the Criminal Justice Commission’s Report on Police Powers in Queensland Volumes I-III: Part B – Comment, Analysis and Recommendations*, 1994.

³ Criminal Justice Commission, above n1, at 650.

⁴ Parliamentary Criminal Justice Committee, above n2, at 285-6.

⁵ Criminal Justice Commission ‘Police Powers Briefing Paper’ No. 1 December (2000), <http://www.cmc.qld.gov.au/data/portal/00000005/content/94166001131403329213.pdf>

⁶ Ibid.

After nearly 10 years of police move-on powers in Queensland, it is time to review the policies underpinning the continued use of move-on powers. This chapter will examine a number of policy concerns regarding police move-on powers; from whether police require the powers to whether the powers actually solve public space issues.

Do police require move-on powers?⁷

Critics of move-on powers often argue that Queensland police already have sufficient powers to maintain public order and safety without the use of move-on powers.⁸

Existing police powers can be used in a broad range of circumstances to prevent crime and maintain public order and safety. They include the power to:

- stop, search, detain and/or to arrest persons suspected of committing an offence⁹
- prevent or stop a breach of the peace¹⁰
- prevent a riot¹¹
- prevent the commission of an offence¹²
- decrease noise disturbance in a public place¹³
- seize potentially harmful things;¹⁴ and
- deal with persons affected by potentially harmful things (e.g. intoxicated persons).¹⁵

⁷ In 1993, when the CJC reached its conclusion, it advised against the introduction because, among other reasons, any powers that the police needed to maintain public order and peace already existed. (Criminal Justice Commission, above n1, at 649)

⁸ Terry O’Gorman, ‘Move-on Powers’, speech delivered at the Labor Party Social Justice Forum on Move-on Powers, Brisbane, 22 March 2006; Legal Aid Queensland, *Proposed ‘Move-on’ Powers Application*, 2005 at 1-3; Paul Spooner, ‘Moving in the Wrong Direction: An Analysis of Police Move-On Powers in Queensland’ (2001) 20(1) *Youth Studies Australia* 27; Michael Cope, ‘Brisbane ‘Move-on’ Powers Criticised as Unnecessary’ ABC News Online, 5 April 2006; Anti-Discrimination Commission Queensland, *Submission to Brisbane City Council regarding its Application for Declarations of notified areas at Kurilpa Point, King George Square and New Farm Park*, 2005, http://www.adcq.qld.gov.au/docs/Move_on_Powers.rtf at 3.

⁹ *Police Powers and Responsibilities Act 2000* (Qld) s 27, s 28, s 198.

¹⁰ *Police Powers and Responsibilities Act 2000* (Qld) s 42.

¹¹ *Police Powers and Responsibilities Act 2000* (Qld) s 43.

¹² *Police Powers and Responsibilities Act 2000* (Qld) s 44, s 44A.

¹³ *Police Powers and Responsibilities Act 2000* (Qld) s 360.

¹⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 371A.

¹⁵ *Police Powers and Responsibilities Act 2000* (Qld) s38(1)(b).

If the intent of the move-on powers under the PPRA is merely to ensure that the use of public space by members of the public is not interfered with by disorderly or criminal conduct, and to protect public safety, then it appears that police have a sufficiently wide range of powers to effect this, without the use of move-on powers.

Do move-on powers lower crime rates and are they an effective preventative tool?

The Queensland Government has consistently argued that there is a need for move-on powers, as they are an extra tool which both prevents crimes and lowers crime rates.¹⁶

‘The move-on power is not a detrimental law. In my view it is a tremendously good law because it means that the police are not arresting anyone and they are not charging anyone...’¹⁷

In stark contrast, the PCJC in its 1993 report argued that there was ‘little empirical evidence to support’ the deterrent effect of move-on powers,¹⁸ and since the powers’ introduction, there has been no publicly available report of any study proving the link between the use of move-on powers and reduction in crime rates.

The only studies that have been conducted have tended to indicate that no such link exists.¹⁹ For example, a study undertaken by the New South Wales (NSW) Ombudsman, regarding the NSW equivalent of the move-on powers, highlighted concerns about the existence of a genuine relationship between the reduction or restriction of criminal or offensive behaviour and the use of ‘dispersal legislation’.²⁰ The study showed that, despite the fact that young people are significantly more likely to be the target of move-on powers, it is people over the age of 25 who are twice as likely to be involved in incidents of offensive or criminal behaviour against another person.²¹

¹⁶ Mr Healy of Toowoomba North, *Queensland Parliament Hansard*, 18 November 1997, at 4335; The Honourable Tom Barton, *Queensland Parliament Hansard*, 29 February 2000.

¹⁷ Hon. T.R.Cooper, Police Powers and Responsibilities Bill, Second Reading Speech, *Queensland Parliament Hansard*, 19 November 1997, at 4393.

¹⁸ See Parliamentary Criminal Justice Committee, above n2, at 283.

¹⁹ See for example New South Wales Ombudsman, *NSW Ombudsman Report on Policing Public Safety*, 1999; Spooner, above n8.

²⁰ *Ibid* at 228.

²¹ *Ibid*.

Do move-on powers increase public safety or public perception of safety?

Many argue that move-on powers prevent crime; but what crime? In 2005, the Lord Mayor of Brisbane, when explaining the need for an extension of the move-on powers, stressed he was mainly concerned about dealing with 'violent and intimidating behaviour'.²² However, powers such as arrest and detention are the only suitable powers for offences involving incidents of violence against another person.²³

Street offences pose a minimum risk to actual community safety. Yet, it is often argued that they have a significant impact on people's *perceptions* of safety.²⁴ By using the move-on powers, police can indeed rid the city of sights of 'public nuisance' or 'disorderly conduct', but this does nothing to increase the public's *actual* safety (eg. from being seriously assaulted, attacked or robbed). The public are provided with little more than a false sense of security.

Linked with this concept is the notion of what the public 'perceives' to be dangerous. Under section 38(a) of the PPRA, a police officer may give a move-on direction to a person merely if he or she reasonably suspects the person's presence is, or has been, causing anxiety to another person. Unfortunately, the mere sighting of a group of young people late at night, of someone searching through a bin for food and wearing dirty clothes, or of someone talking to themselves, may cause anxiety to some members of the public. In fact, these are examples of Queensland's most vulnerable people - young people, people who are homeless and people who suffer from mental illness. To move these people on does not increase public safety; in fact, it wastes valuable police resources dealing with what should be considered a welfare issue.

²² Margaret Wenham, 'Mayor seeks Police Move-on Action', *The Courier Mail*, 6 May 2005.

²³ Queensland Public Interest Law Clearing House, *Homeless Persons' Legal Clinic Submission to Brisbane City Council on Move-On Power Applications*, 2005, http://www.qpilch.org.au/_dbase_upl/Move%20On%20Powers.pdf, at 8.

²⁴ Max Rowlands, *The State of ASBO Britain – the Rise of Intolerance*, 2005, www.ecln.org/essays/essay-9.pdf; Young People Legal Rights Centre, *A Good Night for All – Options for Improving Safety and amenity in Inner City Entertainment Precincts – Discussion Paper*, 2005, <http://www.youthlaw.asn.au/projects/ICEPTGoodNightforAll.doc>; Stan Winford, *A New (Legal) Threat to Public Space: The Rise and Rise of the ASBO*, 2006.

A study conducted in Brisbane in 2001 found that it was more common for a non-homeless person to act violently towards a homeless person, than vice-versa.²⁵ Yet, the empirical research findings reported on in Chapter 5 of this report demonstrate that homeless people are often the subject of move-on directions in inner-city Brisbane.

Preventing arrest or providing an entry into the criminal justice system?

Another common argument in support of move-on powers is that they divert people from the criminal justice system by merely asking them to move-on, instead of arresting them.²⁶

In May 2006, during the parliamentary debate regarding the expansion of police move-on powers, the member for Yeerongpilly stated:

‘...2,000 [move-on] directions were given in the nine months to December 2005. In some 1,300 cases the directions were complied with and approximately 700 directions resulted in arrest... One interpretation may be that there were 1,300 cases of a move-on direction avoiding the need to arrest. Another may be that the move-on direction resulted in 700 arrests that may not have been justified in the first instance.’²⁷

If a move-on direction is given to a person who is neither engaging in, nor attempting to engage in, any disruptive activity, but is perhaps approached because a police officer believes his or her presence may be causing anxiety, that person may feel targeted or unfairly treated and be reluctant to comply.²⁸ If that person is homeless with nowhere to move-on to, or Indigenous and feels a close association with the public space, that person may be even more likely to refuse to move-on.²⁹ The latter case can lead to a number of legal infringements – (i) failing to obey a lawful direction; (ii) ‘offensive’ language against police; (iii) resisting arrest;

²⁵ J Eastgate, ‘Where do People go when there’s Nowhere to go? Brisbane City Council’s Response to Homelessness’ (2001) 15(1) *National Housing Action* 39. See also Tamara Walsh, ‘The overruled underclass: Homelessness and the law in Queensland’ (2005) 28(1) *University of New South Wales Law Journal* 122.

²⁶ The Honourable T.R. Cooper, above n17; Mr Healy of Toowoomba North, above n16; Local Government Association Queensland, *Creating Safe Spaces* (2004) Local Government Association Queensland, <http://www.lgaq.asn.au/portal/dt?action=content&provider=JSPTabContainer>; The Honourable Judy Spence, *Police Move-On Directions Explained*, 2006, at 4.

²⁷ Mr Finn of Yeerongpilly, *Queensland Parliament Hansard*, 11 May 2006, at 1711.

²⁸ West End Community House, *Submission – Kurilpa Point as Notified Area*, 2005, at 4.

²⁹ Monica Taylor, ‘Moving-on Homelessness – The Impact of police Move-on Powers in Public Space’ (2006) 19(1) *Parity* 60; Queensland Public Interest Law Clearing House, above n23, at 11; Young People Legal Rights Centre, above n24.

and for the economically disadvantaged, (iv) failure to pay fines, thus leading to a cycle of criminalising behaviour that stems from poverty, and is not criminal.³⁰ In this sense, move-on powers can provide an entry point into the criminal justice system for vulnerable people.³¹

Is there a potential for police misuse of move-on powers?

When move-on powers were first introduced in 1997, many feared that they would be abused. One Member of Parliament was quoted in Hansard:

‘I beg the minister and this government and most of all the officers of the Queensland Police: please ensure that this power is not overused or abused, because if it is, the power will not deserve to survive’.³²

Since this time, the Queensland government has been eager to assert that the powers have not been abused,³³ but anecdotal evidence and studies to date suggest that there is at least some evidence of abuse. A study conducted by the Youth Advocacy Centre in 2001 revealed that 10% of young people surveyed were directed to move-on for reasons not prescribed by the legislation,³⁴ and 57% were given a direction not covered by the legislation.³⁵ Further, the QPILCH Homeless Person’s Legal Clinic, Caxton Legal Centre and Legal Aid Queensland have all received complaints from clients claiming police officers have unlawfully directed them to move-on. Clients of these services have been asked to move-on for more than 24 hours; when they were not in a prescribed place; without providing reasons; to an area further away than could be considered reasonable; or for behaviour that could not be considered to come within the scope of the PPRA provisions.³⁶ The survey findings in Chapter 5 also reveal significant police misuse of move-on powers against homeless people in Brisbane.

³⁰ Tamara Walsh, *From Park Bench to Court Bench: Developing a Response to Breaches of Public Space Law by Marginalised People*, 2004, at 36; Taylor, above n29, at 3; Queensland Public Interest Law Clearing House, above n 23, at 11.

³¹ Taylor, above n29, at 2-3.

³² The Hon Tom Barton, above n16 at 4308.

³³ The Hon Tom Barton, above n16.

³⁴ Spooner, above n8, at 30.

³⁵ Ibid.

³⁶ Queensland Public Interest Law Clearing House, above n 23; Scott McDougall, ‘Move-on Powers and Civil Liberties’, speech delivered at the Labor Party Social Justice Forum on Move-on Powers, Brisbane, 22 March 2006; Legal Aid Queensland, above n8, at 4.

Discretionary nature of the powers: Applied equally or targeting the marginalised?

At first glance, the move-on laws appear to apply equally to all users of public space. Whilst the powers may not be intended to target the young, Indigenous, the mentally ill and homeless, such is their practical effect, as it is these groups who are the most regular users of public spaces.³⁷

A key concern therefore, is the disproportionate use of move-on powers against marginalised people, as a result of their use being based on the subjective perceptions of individual police officers.³⁸ The PPRA has the extraordinary effect of defining a person's *presence* as the 'relevant act'.³⁹ When a person's presence is considered to be the relevant act, the judgement of the police officer must be based, not upon what a person is doing, but upon *who a person is*.⁴⁰ Thus, the essential question to be asked by a police officer is: 'Is this person, by the fact of who they are or what they look like, likely to be causing anxiety to others?'⁴¹

In answering this question, a police officer will most likely consider a person's ethnicity, apparel, state of cleanliness and social status. If a business-owner or member of the public objects to the mere *presence* of a homeless person they can request that police order the person causing the 'anxiety' to move-on.

Homeless people more frequently attract unwarranted police attention due to their appearance and visibility in public space. A survey conducted in Brisbane revealed that an overwhelming 72% of the homeless respondents felt that 'the police gave them undeserved attention'.⁴²

³⁷ Council to Homeless Persons, *Submission to A Good Night for All: Options for Improving Safety and Amenity in Inner City Entertainment Precincts*, 2005, http://www.chp.org.au/public_library/items/2005/05/00065-upload-00001.doc, at 5, Emma Greenhalgh, 'Local Government Responses to Homelessness in Public Space: An Overview' (2006) 19(1) *Parity* 95; Terry O'Gorman, *Move-on Powers Background*, 2006, at 2.

³⁸ Paula Grogan, 'Out of Order: The Increasing Regulation of Young People in Public Space' (2006) 19(1) *Parity* 87; Legal Aid Queensland, above n8, Kevin Smith, *The Not So New Move-on Powers*, 2000, Land Rights Queensland News Room http://www.faira.org.au/lrq/archives/200010/stories/powers_move.html.

³⁹ *Police Powers and Responsibilities Act 2000* (Qld) s38(3)

⁴⁰ O'Gorman, above n38, at 2.

⁴¹ *Ibid.*

⁴² Tamara Walsh and Carla Klease, 'Down and out: homelessness and citizenship' (2004) 10(2) *Australian Journal of Human Rights* 87.

The effect of the discretionary nature of the power on the marginalised was first noted in 1994, when the PCJC stated, 'In the committee's opinion there is little doubt that this power would most often be used against the young, the homeless and aboriginal people'.⁴³ Concerns about the selective use of move-on powers against marginalised people have subsequently been raised by various statutory bodies, including the Anti-Discrimination Commission of Queensland (ADCQ), Legal Aid Queensland and the Human Rights and Equal Opportunities Commission (HREOC).⁴⁴

These survey findings at Chapter 5 of this report confirm that homeless people are overwhelmingly subjected to and targeted by police move-on powers.

Public safety and public space – who is the 'public'?

One of the most common reasons used to justify the need for move-on powers is public safety and the right of the public to use and access public spaces.⁴⁵ But whose safety do move-on powers protect? Who constitutes 'the public' in the right to use and access public space?⁴⁶ When the move-on powers were first debated in Parliament, one Member of Parliament stated:

'Move-on power diminishes the existing rights of individuals. When we look at the issue of rights, we also have to consider competing rights. I think a case can be made that move-on powers are a matter of the competing rights of two groups of people and which group gets primacy.'⁴⁷

⁴³ Parliamentary Criminal Justice Committee, above n2, at 277.

⁴⁴ Anti-Discrimination Commission of Queensland, above n8, 9; Human Rights and Equal Opportunities Commission, *Annual Report 2002-03*, 2003, http://www.hreoc.gov.au/annrep02_03/index.html at Chapter 7; Terry O'Gorman, *Police Powers and Responsibilities Bill 1997*, 1997, http://www.qccl.org.au/documents/Sub_TOG_13Nov97_Police_Powers_and_Responsibilities_Bill.pdf; Queensland Council of Social Service, 'Move-on Powers will Affect At Risk and Disadvantaged People', Media Release, May 25 2006, <http://www.qcross.org.au/Article.aspx?type=news&id=853>. It should also be noted that the 2005 application by the Brisbane City Council to extend the areas to which move-on powers can be applied attracted 248 public submissions/letters, 85% of which opposed the application

⁴⁵ The Honourable Judy Spence, 'Move-on Powers Approved for Burleigh Heads', Media Release, 14 December 2005; The Honourable Tony McGrady, 'Minister Approves 'Move-on' Powers for Cairns', Media Release, 21 June 2002; The Honourable Tom Barton, 'Hoons to be Moved on from Surfers Paradise', Media Release, 6 July 2000; Brisbane City Council, 'Public Notice', *The Courier Mail*, 24-25 September 2005; ABC Brisbane, 'BCC Urges Move-on Powers for Public "Hot Spots"', 2005, <http://abc.net.au/news/items/200511/1516368.htm?brisbane>.

⁴⁶ Tamara Walsh, 'Who is the public in public space?' (2004) 29(2) *Alternative Law Journal* 82.

⁴⁷ Mr JH Sullivan, Second Reading Speech of the Police Powers and Responsibilities Bill 1997, Queensland *Parliament Hansard*, 19 November 1997 at 4402.

A study undertaken in the Fortitude Valley area in 1998 indicated that the move-on powers target certain public space use, associated with certain groups of public space users and thus disproportionately affecting certain groups of society.⁴⁸ With the increasing gentrification of the city spaces and the privatisation, regulation and competing demands on public space use, the rights of heavy public space users, such as the homeless, indigenous and young people are being restricted in order to prioritise the rights of other sections of the public, namely consumers and commercial operators. The ADCQ has made the poignant point that, ‘All members of the public, *including the homeless*, have a right to use public space’ (emphasis added).⁴⁹ In an effort to increase the accessibility to public space for some, it seems that the heaviest users of public space must necessarily be excluded.⁵⁰

Solves problems or merely moves problems on?

In its 2002-2006 homeless strategy, the Brisbane City Council acknowledged that move-on powers, ‘often result in the same problem arising in a different area’.⁵¹

The danger of move-on laws is that they may do just that. The problem will not be solved, but will be moved from place to place,⁵² hidden from view, but not dealt with in any permanent or positive way.

Waldron raises an important philosophical argument when he points out that the annoyance of citizens who are faced with homeless people might be viewed as a positive, rather than a negative consequence.⁵³ That is, when faced with the sight of a person begging, a citizen might be moved to do something to help solve the problem. Society should be educated about such problems, rather than sheltered from them, as education leads to positive change.

⁴⁸ Anne Coleman, ‘Public Spaces, Public Stories: Long-Term Homelessness in Fortitude Valley’ (2002) 15(1) *Parity*.

⁴⁹ Anti-Discrimination Commission Queensland, above n8, at 3.

⁵⁰ Legal Aid Queensland, above n8, at 6.

⁵¹ Social Policy Branch Community and Economic Development, Brisbane City Council, *Response to Homelessness Strategy 2002-2006*, 2002, http://www.brisbane.qld.gov.au/bccwr/plans_and_strategies/documents/response_to_homelessness_strategy_21112002e&capproved.pdf at 16.

⁵² See the arguments in Queensland Public Interest Law Clearing House, above n23.

⁵³ Jeremy Waldron, ‘Homelessness and Community’ (2000) 50 *University of Toronto Law Journal* 371, at 379.

The PPRA does not require that a person who is subject to a move-on direction be moved to a safe area (both for themselves and for the public), or that he or she be referred to appropriate social service providers. Without such legislative provisions, move-on powers will do little more than remove the ‘problem’ from obvious public sight for up to 24 hours.

Many homeless, outreach and support services operate in public spaces, where homeless and marginalised people congregate. When police direct people to move away from these areas, it jeopardises their access to vital services, including food, clothing, information and counselling, and this reduces their sense of security and increases their vulnerability.⁵⁴ Such action can reinforce in the minds of public space users the sense that ‘they do not belong anywhere’,⁵⁵ amplifying feelings of alienation and exclusion, which can then cause or increase the problems which were originally complained of or feared by the rest of the general public.⁵⁶

Using a simplistic law and order approach to respond to the behaviour or presence of homeless people, young people, indigenous people and people with mental illness in public space ignores and consequently compounds the structural reasons underlying why these people are such heavy users of public space.⁵⁷

⁵⁴ Queensland Public Interest Law Clearing House, above n23, at 9; Monica Taylor, above n29, at 3.

⁵⁵ Felicity Reynolds, ‘Managing Public Space and Assisting People who are Homeless in the City of Sydney’ (2006) 19(1) *Parity* at 97.

⁵⁶ Anti-Discrimination Commission Queensland, above n8, at 9.

⁵⁷ *Ibid.*

CHAPTER 3:

COMPARATIVE ANALYSIS OF APPROACHES TO MOVE-ON POWERS IN OTHER JURISDICTIONS*

In this chapter, the inappropriateness of move-on powers will be demonstrated by a comparative analysis of similar powers in other jurisdictions in Australia and overseas.

What can we learn from other jurisdictions in Australia?

Throughout Australia, police officers are empowered to give move-on directions similar to those in Queensland. As was discussed in Chapter 2, move-on powers are often used to target vulnerable and marginalised people. However, it will be shown here that the move-on powers in Queensland are broader and therefore have a greater detrimental impact on homeless people than their interstate equivalents. This section will discuss and compare the various jurisdictional approaches to move-on powers in Australia.

Police move-on powers exist in most other Australian States, including New South Wales (NSW),¹ South Australia (SA)², Western Australia (WA),³ Tasmania⁴, the Northern Territory (NT),⁵ and the Australian Capital Territory (ACT).⁶ While each of these powers has a different name, their purpose is the same: to allow police to issue enforceable directions to persons (both individuals and groups) in public places to move away, or ‘disperse’ from a particular area.

* This chapter was substantially written and researched by Davina Wadley.

¹ Section 197(c) *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

² Section 18(1)(d) *Summary Offences Act 1953* (SA).

³ Section 50(1) *Police Act 1998* (WA).

⁴ Section 15B(c) *Police Offences Act 1935* (Tas).

⁵ Section 47A(2)(c) *Summary Offences Act 2002* (NT).

⁶ Section 4(1) *Crime Prevention Powers Act 1998* (ACT).

Comparing behaviour giving rise to a move-on direction

The broad discretion granted to a police officer under section 37(1)(a) *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) is concerning. In NSW, NT and WA, police officers are granted a similar discretion, however the sections in these other jurisdictions are more narrowly framed than the Queensland provision.

For example, in NSW, the relevant section states that:

‘a police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person’s behaviour or presence in the place is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a *person of reasonable firmness*’. (emphasis added)

This is more appropriate than the equivalent Queensland section because a police officer is explicitly directed to consider the kinds of circumstances in which a *reasonable* person, not a person of ‘elegant or dainty modes or habits’,⁷ would experience fear.

In WA and the ACT, the discretionary power is limited to whether someone is doing something likely to cause another person to be frightened of violence. The relevant section in WA states:

- (1) A police officer may order a person who is in a public place, or in a vehicle, vessel or aircraft used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —
 - (a) is doing an act —
 - (i) that involves the use of violence against a person;
 - (ii) that will cause a person to use violence against another person; or
 - (iii) that will cause a person to fear violence will be used by a person against another person;
 - (b) is just about to do an act that is likely to —

⁷ In the words of the court in *Norley v Malthouse* [1942] SASR 268 at 296-270.

- (i) involve the use of violence against a person;
- (ii) cause a person to use violence against another person; or
- (iii) cause a person to fear violence will be used by a person against another person;
- (c) is committing any other breach of the peace;
- (d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person;
- (e) intends to commit an offence; or
- (f) has just committed or is committing an offence.

And the ACT section states:

‘This section applies if there are reasonable grounds for a police officer to believe that a person in a public place has engaged, or is likely to engage, in violent conduct in that place.’

In SA, Tasmania and the NT, a person may be given a direction to move on if the person is endangering or likely to endanger the safety of any other person. Similarly, in SA, WA, Tasmania and NT, a police officer can give a move-on direction if the police officer has reasonable grounds to believe the person intends to commit an offence has just committed or is committing an offence.⁸ Sergeant of Police, Julie Fahy, of the South Australian Police Force says this power ‘is used to deflate a situation’.⁹ These approaches, which have regard to violence, safety and a person’s intention to commit an offence, are less discretionary than the Queensland equivalent.

A fairer approach is also found in the NT¹⁰ where, if ‘a person loitering in any public place who does not give a satisfactory account of himself when requested so to do by a member of the Police Force shall, on request by a member of the Police Force to cease

⁸ Section 50(1)(e) *Police Act (1892)* (WA), s15B(a) *Police Offences Act 1935* (Tas), s47A(2)(a) *Summary Offences Act 2002* (NT), and s 18(1)(a) *Summary Offences Act 1953* (SA).

⁹ Interview with Sergeant of Police, Julie Fahy, Sergeant of Police, South Australian Police Force (Telephone Interview, 6 June 2006).

¹⁰ Section 47A(1) the *Summary Offences Act 2002* NT.

loitering, cease so to loiter'.¹¹ This approach reduces the discretion with which a police officer can issue a move-on direction, as found in section 37(1)(a) of the PPRA. This is positive since it engages the person in the process and allows the person to better understand what is required of them and what is required of the police.

Comparing the nature & extent of move-on directions

The maximum time limit for a move-on direction in Queensland is 24 hours. In the ACT, the maximum time limit is 6 hours and in Tasmania the minimum time limit is 4 hours.¹² Lesser maximum time limits are arguably more appropriate for homeless people who, as the research findings in Chapter 5 demonstrate, are more likely to be subject to a move-on direction than the general community. A key reason why this is the case is that many homeless people frequent public spaces which support services attend to provide valuable outreach services, such as medical assistance and the provision of food.¹³ Excluding a homeless person for a period of up to 24 hours from a public place because of a move-on direction prevents that person from going about their daily routine and accessing essential services.

In Queensland, police are obliged to provide a person subject to a move-on direction with a reason as to why they are being moved-on. In NSW, the police officer must not only provide reasons for the move-on direction, he or she must also provide evidence to prove they are police officer, including their name and their place of duty.¹⁴ In WA the direction must be given to the person in writing.¹⁵ The NSW and WA legislation clearly contains greater checks and balances regarding police use of the move-on power. Arguably, Queensland would also benefit by also adopting an approach that scrutinises police use of the power as in NSW and WA.

¹¹ Ibid.

¹² Section 4(3)(b) *Crime Prevention Powers Act 1998* (ACT) and s15B *Police Offences Act 1935* (Tas).

¹³ Stuart Boyd "I Thought it was a Public Space": The impact of Privatisation of Public Space' (2006) 19(1) *Parity* 18.

¹⁴ Section 201(1) *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

¹⁵ Section 50(5) *Police Act 1998* (WA).

Comparing the effect of move-on directions

In Queensland, the maximum penalty for contravening a lawful police move-on direction is a fine of \$3,000.¹⁶ In SA, the maximum penalty for failing to comply with a police order is \$1,250.¹⁷ In NSW¹⁸ the maximum penalty is \$220 and in the ACT¹⁹ the maximum penalty is \$200. A lower penalty is more appropriate as marginalised people have limited ability to pay large fines. The fine is disproportionate in its impact and the obligation of a fine payment further hinders their ability to move out of homelessness.

If a person fails to comply with a move-direction in Queensland, that person can be arrested. A more effective approach is adopted in NSW²⁰ and NT,²¹ where a police officer must give a warning if the person fails to comply with a direction. A warning is a preferred approach as it is less likely lead to arrest.

Further, in relation to the NSW offence of offensive language and behaviour, a statutory defence of reasonable excuse is available.²² This would be an appropriate defence in relation to a person's failure to contravene a move-on direction; for example, in circumstances where a homeless person needed to stay in the area to access essential services.

¹⁶ Section 445(2)(b) *Police Powers and Responsibilities Act 2000* (Qld).

¹⁷ Section 18(2) *Summary Offences Act 1921* (SA).

¹⁸ Section 199 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

¹⁹ Section 4(2) *Crime Prevention Powers Act 1998* (ACT).

²⁰ Section 198(a) *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

²¹ Section 5(3) *Public Order and Anti-Social Conduct Act 2001* (NT).

²² Sections 4 and 4A *Summary Offences Act 1988* (NSW).

What can we learn from other jurisdictions around the world?

United Kingdom

The United Kingdom's *Anti-Social Behaviour Act 2003* (ASB Act) permits police officers to regulate 'undesirable behaviour yet to occur'.²³ An Anti-Social Behaviour Order (ASBO) is a civil order made by the court to protect the public from anti-social behaviour.²⁴ This is defined as 'behaviour which causes harassment, alarm and distress to one or more people who are not in the same household as the perpetrator'.²⁵ An ASBO can be used to prevent a person from both from carrying out specific acts, and from entering certain geographical locations.²⁶ ASBOs last a minimum of two years, but can be imposed for longer periods of time.²⁷ Indeed, police can set up 'Dispersal Zones' in designated areas, within which both police and community support officers have the authority to disperse groups in situations where either their presence or behaviour has resulted, or is likely to result, in a member of the public being intimidated, alarmed, harassed or distressed.²⁸ Breaching an ASBO is a criminal offence. A person who breaches an ASBO may be jailed for up to 5 years for conduct that would not normally be criminal.²⁹

Like similar move-on powers in Australia, ASBOs have proven to be ineffective. The European Commissioner for Human Rights recently examined the ASB Act.³⁰ The report notes that a very broad, and occasionally, excessive range of behaviour falls within the

²³ Stan Winford, 'A New (Legal) Threat to Public Space: The Rise and Rise of the ASBO' (2006) 19(1) *Parity* 55.

²⁴ *Ibid.*

²⁵ Paula Grogan, 'Out of order? The increasing regulation of young people in public space' (2006) 19(1) *Parity* 85.

²⁶ Winford, above n23.

²⁷ *Ibid.*

²⁸ Youth Rights UK, *Child Curfews and Dispersal Zones*, 2005, www.youth-rights-uk.org/briefings/curfews_dispersals.pdf; Inner City Entertainment Precincts Taskforce, '*A good night for all*' *Options for improving safety and amenity in inner city entertainment precincts*, 2005, at 41.

²⁹ Youth Rights UK, *ibid.*; Winford, above n23 at 59; Grogan, above n25.

³⁰ Grogan, above n25.

scope of an ASBO and that ‘the determination of what constitutes anti-social behaviour becomes conditional on the subjective views of any given collective’.³¹

The ineffectiveness of ABSOs has also been proven by research carried out by a UK homelessness charity, the Simon Community in Leeds, where a number of homeless persons were given ASBOs.³² The study found that ASBOs have a breach rate of around 40%, and concluded that ‘ASBOs are expensive, they do little to change people’s behaviour, and they do not tackle the root causes of homelessness’.³³ It also stated that ASBOs will result in the further social exclusion of the already marginalised.³⁴ Further, it has been said that ASBOs are emerging as a new cause of homelessness.³⁵ The housing charity Shelter has expressed concern that being given an ASBO can lead to eviction and exclusion from housing, whether it is breached or not, because it may violate a tenancy agreement.³⁶ Also, the powers granted to police officers via ASBOs discourage positive relationships between the police officers and young people.³⁷

As is the case in Queensland, vulnerable people, such as those who are homeless, young, mentally ill or drug-dependant, ‘are becoming key targets of the ASBO system’.³⁸ In 2005, the ASB Act was reviewed by the Youth Justice Board. This review ‘reported that young people (under the age of 18) represented around 54% of those being issued with an ASBO’.³⁹ Furthermore, of that 54%, 15.5% resulted in the young person being placed in custody.⁴⁰ They concluded, therefore, that ‘[c]learly, ASBOs are predominantly used

³¹ Ibid.

³² Winford, above n23.

³³ Ibid at 57.

³⁴ Ibid at 58.

³⁵ Ibid at 59.

³⁶ Ibid at 61.

³⁷ Scotland, *Parliamentary Business*, 10 March 2004, Col 6445 (Nicola Sturgeon, Depute Leader of the Scottish National Party).

³⁸ Winford, above n23, at 60.

³⁹ Youth Affairs Council of Victoria Inc, *YACVic’s response ‘A good night for all’ Options for improving safety and amenity in inner city entertainment precincts*, 2005, <http://www.yacvic.org.au/includes/pdfs_wordfiles/A%20good%20night%20for%20all_YACVic%20submission.pdf.

⁴⁰ Ibid.

against vulnerable people who should be receiving assistance and support or referral rather than prohibitions – with criminal consequences - on movement and behaviour’.⁴¹

It is not without alarm that the incumbent Queensland Minister for Transport, Paul Lucas, has indicated his support for the introduction of ASBOs on Queensland public transport.⁴²

Canada

A number of Canadian cities have introduced new anti-begging or anti-loitering laws over the last 10 years.⁴³ For example, in 1999, the Ontario Provincial Government enacted the *Safe Streets Act 1999* (SS Act). Like move-on powers in Queensland, this legislation prohibits a range of forms of begging and associated street behaviour throughout an entire province.⁴⁴ In particular, the SS Act prohibits the ‘practice of “squeegeeing” (the cleaning of car windows whilst cars are stationary in the hope of receiving a small fee from the driver) by mostly young, poor “street” people’.⁴⁵

Like other forms of similar legislation, the SS Act has proven to be ineffective since the ‘young and homeless people who made money from the initiative of “squeegeeing” have not disappeared’ and there is ‘no evidence that [the Act] has had a positive impact on the crime rates or otherwise increased community safety’.⁴⁶

Conclusion

In comparison with interstate and overseas jurisdictions, the Queensland move-on power seems excessively permissive in that it provides a very broad discretion to police officers

⁴¹ Winford, above n23 at 60.

⁴² ‘Off the Rails’, *Sunday Mail*, 5 February 2006.

⁴³ Randall Amster, ‘Patterns of exclusion: Sanitizing space, criminalizing homelessness’ (2003) 30(1) *Social Justice* 195.

⁴⁴ Cassandra Goldie, ‘Criminalising People in Public Space in Australia and Canada’ (2006) 19(1) *Parity* 43, at 44.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

in their exercise of a move-on direction. This increases the potential for abuse of the powers by police, and for the targeting of vulnerable people including people experiencing homelessness.

Features	QLD	VIC	NSW	WA	SA	NT	ACT	TAS
Legislation:	s37,38 and 39 <i>Police Powers and Responsibilities Act 2000</i>	nil	s197(c) <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	s 50(1) <i>Police Act 1892</i>	s18(1)(d) <i>Summary Offences Act 1953</i>	s47A(2)(c) <i>Summary Offences Act 2002</i>	s4(1) <i>Crime Prevention Powers Act 1998</i>	s15B(c) <i>Police Offences Act 1935</i>
When direction can be given?	Behaviour or presence causing anxiety to another person in the place; obstructing trade/business; disrupting an event	n/a	Behaviour or presence in any public place that is obstructing another person/traffic; harassment/intimidation; causing/likely to cause fear to a person of reasonable firmness	Doing an act that involves the use of violence, cause a person to fear violence, committing a breach of the peace, hindering a lawful activity, intends to commit or has just committed an offence	Loitering in a public place and offence has been or is likely to be committed; breach of peace has occurred or is about to occur; safety of person is in danger	Loitering and unable to give a satisfactory account of themselves	Engaged or likely to engage in violent conduct in a public place	Committed or likely to commit an offence; obstructing or likely to obstruct; endangering or likely to commit a breach of the peace.
Max. Time	24 hours	n/a	Not stated	24 hours	Not stated		6 hours	Not less than 4 hours
Max Penalty	\$3,000		\$220	12 months imprisonment or fine of \$12,000	\$1,250 or imprisonment for 3 months	\$2000 or 6 months prison	\$200	\$200
Defence?	No	n/a	Reasonable excuse	Reasonable excuse	No	Satisfactory account	Reasonable excuse	No
Other limits on Direction	Give reasons & reasonable opportunity to comply	n/a	Name and place of duty of police officer to be provided	Direction must be in writing				

CHAPTER 4:

WHAT RIGHTS DO THE HOMELESS HAVE?

AN ANALYSIS OF HUMAN RIGHTS AND POLICE

MOVE-ON POWERS*

This chapter will analyse police move-on powers from a human rights perspective. It will contend that move-on powers within the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) violate the fundamental rights and freedoms of people experiencing homelessness. It will be argued that move-on powers contravene a plethora of human rights which are protected by international treaty law and customary international law. Broadly speaking, these include the right to life, the right to liberty, the right to security of the person, the right to be free from torture and cruel, the right to freedom from inhumane or degrading treatment or punishment, the right to freedom from discrimination, the right to freedom from expression, the right to freedom of association and the right to a fair hearing and administration of justice. The consequences of the infringement of these rights will be analysed with reference to three groups that are over-represented in the homeless community: Indigenous Australians, young people and people with impaired capacity, such as those with a mental illness or an acquired brain injury.

Australia's human rights obligations generally

Australia has ratified and committed to fully implementing the human rights contained in numerous United Nations treaties. This commitment to full implementation requires that Australian federal and state governments, departments, statutory bodies and administrative decision makers:

1. respect human rights;
2. protect people from human rights violations; and
3. take positive action to fulfil human rights.¹

* This chapter was substantially written and researched by Binny de Saram.

Importantly, a human rights analysis enables debate about, and responses to homelessness, to be framed in the context of state responsibility. It shifts the responsibility from that of an individual to that of Australia's federal, state and local governments, including the Queensland state government and every local city council throughout the state.

Right to Life

Article 6(1) of the *International Covenant on Civil and Political Rights* (ICCPR) holds that, 'Every human has the inherent right to life'. This right must be protected by law and be free from derogation.² The freedom secured by the right to life is of such fundamental importance that the Canadian Supreme Court has identified it as a condition precedent to the enjoyment of all other rights.³

Move-on powers interfere with homeless persons' inherent right to life by criminalising activities which are considered legal in private residences.⁴ The ambit of move-on powers extends to the effective prohibition of those life-sustaining activities that homeless people must perform in public due to their lack of housing. Under section 37(c) of the PPRA, sleeping, bathing, urinating, drinking, swearing or storing belongings in a public space may constitute behaviour that is 'disorderly, indecent, and offensive'.⁵ By criminalising these basic human necessities, move-on legislation is effectively denying homeless people their right to life. As Don Mitchell posits:

¹ 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 691

² HRC, *CCPR General Comment 6: The Right to Life*, UN Doc HRI/GEN/1/Rev.5 (2001).

³ *Gosselin v Quebec (A-G)* (2002) 221 DLR (4th) 257, [346] (Arbour J dissenting) and Dianne Otto, 'Homelessness and human rights: engaging human rights discourse in the Australian context' (2002) 27(6) *Alternative Law Journal* 276.

⁴ Tamara Walsh, 'Homelessness, public space and the law in Queensland' (2006) 19(1) *Parity* 46.

⁵ Beth Midgley, 'Achieving just outcomes for homeless people through the court process' (2005) 15 *Journal of Judicial Administration* 85.

‘If homeless people can only live in public, and if the things one must do to live are not allowed in public space, then homelessness is not just criminalised; life for homeless people is made impossible.’⁶

In 1981, the Court of India held that the right to life includes the right to human dignity; this includes access to the ‘bare necessities’ of life such as nutrition, clothing and shelter.⁷ Homelessness assistance services are concentrated in areas where homeless people frequent.⁸ These services provide food, accommodation, clothing and health (physical and mental) support. Move-on powers are also consistently applied in these areas. Moving people on from areas which provide access to the ‘bare necessities’ of life is an effective denial of the right to life. This denial also violates the right to be treated with dignity and respect; which imposes positive obligations on States to provide access to the basic necessities of life.⁹ Thus, moving-on homeless people from areas where food and shelter are provided arguably breaches the right to life and the right to human dignity and respect.¹⁰

The act of begging is also considered fundamental to the right to life. However this life-sustaining activity is an offence under the *Summary Offences Act 2005* (Qld) and may also attract a move-on direction. As the findings in Chapter 5 reveal, a number of homeless people were begging at the time they were given a move-on direction. Moving-on poverty-stricken persons who beg in order to sustain their lives has dire consequences. Not only is their economic right to earn money compromised, their very survival is threatened.¹¹ Philip Lynch refers to a study conducted in Melbourne which found that 94% of people who beg are homeless, 76% of whom are primary homeless.¹² This implies that despite a large proportion of the primary homeless population participating in begging behaviour, they are still unable to afford safe, secure housing.

⁶ Don Mitchell, ‘Anti-homeless laws and public space: begging and the first amendment’ (1998) 19 *Urban Geography* 1.

⁷ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 68 All India Reporter SC 746.

⁸ Anti-Discrimination Commission Queensland, *Submission to Brisbane City Council regarding its Application for Declarations of notified areas at Kurilpa Point, King George Square and New Farm Park*, 2005, at 6.

⁹ The right to dignity and respect is enshrined in UDHR, Article 1 and the Preambles to the ICCPR and ICESCR.

¹⁰ Queensland Public Interest Law Clearing House, *Brisbane City Council Move-On Power Applications*, 2005, at 13.

¹¹ Cassandra Goldie, ‘Criminalising people in public space in Australia and Canada’ (2006) 19(1) *Parity* 44.

¹² Philip Lynch, ‘We want change: understanding and responding to begging in Melbourne’ (2006) 19(1) *Parity* 40; citing Michael Horn and Michelle Cooke, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne*, 2001.

This poverty will most likely be aggravated by the extension of move-on powers throughout Queensland, and due to the vulnerability of primary homeless people to move-on directions. The denial of the life-sustaining activity of begging is a violation of Australia's obligation to preserve the right to life.

Right to Liberty

The right to liberty is enshrined in article 9 of the ICCPR and article 3 of the *Universal Declaration of Human Rights* (UDHR), which state that, 'Everyone has the right to liberty.'¹³ The contravention of the right to liberty offends the inherent dignity of the human person.¹⁴ It is contended that move-on powers unfairly impact upon homeless persons' liberty due to the absence of a safe, secure place of residence.¹⁵ Move-on powers violate this right in several ways, for example:

- when homeless persons are moved-on without committing an offence or without receiving adequate reasons for the issue of a move-on direction;¹⁶
- when homeless persons are removed from the public space which they consider their home: this infringement of liberty is also a violation of article 12 of the ICCPR which preserves the freedom to choose one's residence and the right to freedom of movement.¹⁷ This right is infringed by either keeping homeless people out of certain areas or forcing them to move to places involuntarily;¹⁸
- when move-on powers are abused and homeless persons are subject to excessive police interference: the Chapter 5 survey findings reveal that move-on directions are often applied unlawfully in Brisbane, for example, by permanently banning of people from certain areas (in

¹³ This right is also recognised in CROC, Article 37(b) which states that, 'No child shall be deprived of his or her liberty unlawfully or arbitrarily.'

¹⁴ Ken Fernandes, 'Why not involve the homeless: housing rights and community building', paper presented at the 3rd National Conference 'Beyond the Divide' convened by the Australian Federation of Homelessness Organisations, Brisbane, 6-8 April 2003) at 4.

¹⁵ Philip Lynch and Jacqueline Cole, 'Homelessness and human rights: regarding and responding to homelessness as a human rights violation' (2003) 4 *Melbourne Journal of International Law* 146.

¹⁶ Queensland Public Interest Law Clearing House, above n10, at 12.

¹⁷ Maria Foscarnis, 'Homelessness and human rights: towards an integrated strategy' (2000) 19 *St. Louis University Public Law Review* 349.

¹⁸ Human Rights Commission, *CCPR General Comment 27, Freedom of movement*, UN Doc C/21/Rev.1/Add.9 (1999).

contravention of section 39(3) which states that the maximum length for a move-on direction is 24 hours).¹⁹ Alarming, in 2004, a client of the QPILCH Homeless Persons' Legal Clinic was even ordered to move-on 'out of the state'.²⁰

Right to Security of the Person

The right to security of the person is protected by article 9 of the ICCPR and article 3 of the UDHR, which state that, 'Everyone has the right to... security of the person.'²¹ Homeless people are especially vulnerable to violations of this right due to their lack of safe and secure housing.²² The selective and disproportionate use of move-on powers against homeless people exploits this vulnerability further. As will be discussed below, a move-on direction for the primary homeless population is tantamount to and synonymous with an eviction. The removal of people from their homes jeopardises both physical and mental security,²³ by forcing them to move-on to areas which are less familiar to them.

Right to be Free from Torture and Cruel, Inhumane or Degrading Treatment or Punishment

ICCPR article 7 mandates that, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'²⁴ 'Torture' is defined in article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* as, '...any act by which severe pain of suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as... punishing him for an act he has committed or is suspected of having committed or for any reason based on discrimination of any kind.' The Human Rights Committee (HRC) has qualified the application of article 7 of the ICCPR by holding that the right

¹⁹ Tamara Walsh, 'Homelessness, public space and the law in Queensland' (2006) 19(1) *Parity* 46.

²⁰ Monica Taylor, 'Moving-on homelessness: the impact of the police move-on powers in public space' (2006) 19(1) *Parity* 60.

²¹ This right is also recognised in the *Convention on the Rights of the Child (CROC)*, Article 37(b) which states that, 'No child shall be deprived of his or her liberty unlawfully or arbitrarily.'

²² Lynch and Cole, above n15.

²³ Queensland Public Interest Law Clearing House, above n10, at 12.

²⁴ This right is also recognised in Article 5 of the UDHR, Article 37(a) of the CROC and the Preamble to the *Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (CAT)*.

to be free from torture applies to protection from acts which inflict both mental and physical suffering and degrade human dignity.²⁵ Whether acts constitute torture under article 7 of the ICCPR involves weighing the nature, purpose and severity of the punitive act against the punishable conduct.²⁶

It is submitted that move-on powers violate the right of homeless people to be free from torture. Move-on powers criminalise the activities of homeless people which they must perform in public space due to their lack of housing. This ‘offending’ behaviour is punished by the issue of a move-on direction under section 39 of the PPRA. This move-on order is equivalent to an eviction for a primary homeless person who resides in public space.²⁷ The removal from one’s home causes severe mental suffering and jeopardises the physical safety of primary homeless people.²⁸ Moving people on from their homes is manifestly unjust and disproportionate to the behaviour triggering a direction, as set out in sections 37 and 38 PPRA,²⁹ Move-on powers arguably contravene the prohibition against torture in Article 1 of the CAT and therefore violate the right to be free from torture.

The eviction of homeless people with mental illness from public space also violates the United Nations *Principles for the Protection of Persons with a Mental Illness and for the Improvement of Mental Health Care* (adopted by General Assembly Resolution, 1991). These principles state that:

- Principle 1.2: ‘All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect’
- Principle 1.5: ‘Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights...’

²⁵ HRC, *CCPR General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment*, Un Doc HRI/GEN/1/Rev.5 (2000).

²⁶ HRC, *CCPR General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment*, Un Doc HRI/GEN/1/Rev.5 (2000).

²⁷ Michelle Bradfield, ‘Nowhere to hide: when homes is not a haven’ (2004) 17(1) *Parity* 48.

²⁸ Moving-on children from public spaces which they consider their homes is a prima facie violation of the State’s obligations under article 37(a) of the CROC. This provision states that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.’

²⁹ Section 37(a) *PPRA*.

People suffering from mental illness are over-represented in the homeless community.³⁰ Due to a lack of training, police officers are often unable to recognise or manage the complex needs of homeless people with mental illness,³¹ which violates principle 1.2. As mentioned above, moving on homeless people from public spaces which they consider to be home arguably amount to torture and is a violation of article 7 of the ICCPR. This violation is more reprehensible when the person being moved-on suffers from a mental illness. The move-on from areas which are familiar to the mentally ill increases the severity of the ‘punishment’ and the physical vulnerability and mental suffering of the person being moved-on. Removal from areas from which homeless people with mental illness know they can obtain services threatens the right to life by denying access to the ‘necessaries of life’. Therefore homeless people with mental illness are denied the protection of certain civil, political, economic, social and cultural rights in violation of principle 1.5.

The prohibition on the performance of life-sustaining activities in public space constitutes cruel, unusual and degrading treatment.³² The criminalisation of behaviour such as sleeping, bathing, urinating, drinking, swearing or storing belongings in a public space is an act which inflicts severe mental and physical suffering and is not proportionate to the ‘crime’ of being homeless. By virtue of their housing status, homeless people must perform these behaviours in public.³³ The criminalisation of such behaviour leads to the reasoning that in the absence of public toilets, homeless people are not free to urinate.³⁴ To deny homeless people their right to perform these activities is a gross degradation of human dignity. This contention is supported by Jeremy Waldron who opines,

³⁰ M Teesson, T Hodder, N Buhrich, ‘Psychiatric disorders in homeless men and women in inner Sydney’ (2004) *Australian and New Zealand Journal of Psychiatry* 38; S Parker, L Limbers, E McKeon (Mental Health Coordinating Council), *Homelessness and Mental Illness: Mapping the ways home*, 2002; Catherine Robinson, *Understanding Iterative Homelessness: the case of people with mental disorders*, 2003.

³¹ Chris Sidoti, ‘Housing as a human right’, paper presented at the National Conference on Homelessness Council to Homeless Persons 4 September 1996, at 5-6; Police Federation of Australia, *Submission to Mental Health Council of Australia ‘Not for Service’ Report*.

³² Lynch and Cole, above n15.

³³ Tamara Walsh, ‘Inequality before the law: legal issues confronting people who are homeless’ (2004) 17(1) *Parity* 39-40.

³⁴ Jeremy Waldron, ‘Homelessness and the issue of freedom’ (1991) 239 *UCLA Law Review* 315.

‘Though... there is nothing particularly dignified about sleeping or urinating, there is certainly something deeply and inherently undignified about being prevented from doing so. ... We should be ashamed that we have allowed or laws of public and private property to reduce a million or more citizens to something approaching this level of degradation.’³⁵

Right to Freedom from Discrimination

The right to be free from discrimination is a non-derogable norm of customary international law.³⁶ This right is articulated in article 26 of the ICCPR, article 2(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and article 7 of the UDHR. Article 26 of the ICCPR states that,

‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

This broad provision does not just protect rights enshrined in the ICCPR; it protects all human rights and fundamental freedoms.³⁷ Correspondingly, the HRC has defined discrimination as,

‘any distinction, exclusion, restriction or preference... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms in the political, economic, social, cultural or nay other field of public life’.³⁸

³⁵ Ibid.

³⁶ Peter Bailey and Annemarie Devereux, ‘The Operation of Anti-Discrimination Law in Australia’ in David Kinley, *Human Rights in Australian Law: Principles, Practice and Potential*, 1998, at 292.

³⁷ Philip Lynch and Bella Stagoll, ‘Promoting equality: homelessness and discrimination’ (2002) 15 *Deakin Law Review* 307.

³⁸ HRC, *CCPR General Comment 18: Non-Discrimination*, UN Doc HRI/GEN/1/Rev.5 (2001) and ratio of the ‘Namibia Case’ which argues that the UDHR codifies the right to equality: *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] ICJ Rep 16, 76.

It is contended that move-on powers discriminate against homeless people on five grounds: social status, lack of housing, economic status, race and age.

Discrimination on the Basis of Social Status

It is contended that move-on powers discriminate against homeless people on the basis of social status. Section 38 of the PPRA permits a move-on where there is a reasonable suspicion that a person's presence is causing anxiety, interfering with trade or disrupting public order. Chapter 2 explored the subjective process of weighing up whether a person's presence ought to be the trigger for a move-on direction. When a police officer makes a judgement that a person's 'mere presence' is causing anxiety, that decision is based solely on that individual's public appearance. The targeting of homeless people based on their appearance constitutes discrimination as it makes distinctions which restrict the enjoyment of several fundamental rights, including:

- the right to equal access to public space;
- the right to liberty from undue police interference;³⁹
- the right to life which encompasses the right to be free from excessive police interference;⁴⁰ and
- the right to privacy which proscribes arbitrary or unlawful interference with one's privacy, family, home or correspondence.⁴¹

The cumulative effect of this discrimination is inequality before the law and violation of article 26 of the ICCPR.

Discrimination on the Basis of Housing Status

Move-on powers discriminate against homeless people on the basis of housing. Homeless people are disproportionately impacted by move-on powers due to their lack of secure housing.⁴² They

³⁹ HRC, *CCPR General Comment 18: Non-Discrimination*, UN Doc HRI/GEN/1/Rev.5 (2001).

⁴⁰ HRC, *CCPR General Comment 6: The Right to Life*, UN Doc HRI/GEN/1/Rev.5 (2001).

⁴¹ Article 17 of the ICCPR states that, 'No one shall be subjected to CROC, Article 16 of the CROC states that, 'No child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence'. Lynch and Cole, above n15, at 151-152.

are forced to reside in or occupy public space and are therefore more vulnerable to the application of move-on powers, particularly as they perform necessary activities such as sleeping, socialising and storing belongings in public places.⁴³ This is exacerbated by the fact that move-on powers are selectively enforced against homeless people in areas in which homeless people congregate.⁴⁴ Therefore, move-on powers and their enforcement violate right to freedom from discrimination and equal treatment under the law which are protected by article 26 of the ICCPR.

Discrimination on the Basis of Economic Status

The \$3,000 maximum penalty for failing to comply with a lawful police direction on people experiencing homelessness is inequitable and tantamount to discrimination on the grounds of economic status. Due to their limited economic resources and a restriction on their right to beg, homeless people are often unable to pay these fines. Consequently, fines are lodged and amplified by the State Penalties and Enforcement Registry (SPER).⁴⁵ Increasing SPER debts exacerbate poverty and lead to greater entrenchment in homelessness. This illustrates that the imposition of fines has inequitable effects on the economic welfare of homeless people when compared to those who have a secure place of residence and income.⁴⁶ This distinction may even constitute cruel, unusual and degrading treatment under article 7 of the ICCPR.⁴⁷ Failure to recognise the disparate effects of fines on homeless people constitutes discrimination on economic grounds which contravenes article 26 of the ICCPR.

Discrimination on the Basis of Race

The Preamble to the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) states that, due to

⁴² Philip Lynch, 'Justice for all: achieving access to justice and substantive justice for the homeless', paper presented at the Commonwealth Law Conference, Melbourne, Australia, 13-17 April 2003, at 1; Ben Saul, 'Olympic street sweeping: 'moving on' people and the erosion of public space' (1999) 11(1) *Polemic* 34.

⁴³ Walsh, above n33, at 39-40.

⁴⁴ Ibid at 40; Philip Lynch, 'Begging for change: homelessness and the law' (2002) 35 *Melbourne University Law Review* 690.

⁴⁵ See the *State Penalties Enforcement Act 1999* (Qld).

⁴⁶ Midgley, above n5.

⁴⁷ Lynch and Cole, above n15.

‘the dignity and equality inherent in all human beings’ States must, ‘encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.’⁴⁸

It is submitted that move-on powers are racially discriminatory against Indigenous Australians. This racial discrimination is both indirect and direct. Move-on powers indirectly discriminate against Indigenous Australians due to their over-representation in the homeless community.⁴⁹ Because move-on powers criminalise homelessness, Indigenous Australians are disproportionately affected. Thus it is the practical application of the legislation that produces racially discriminatory outcomes. This constitutes a violation of our international obligations under the ICERD and the ICCPR and a violation of our domestic obligations under the Queensland *Aboriginal and Torres Strait Islander Justice Agreement*.⁵⁰ The ICERD mandates that we reform move-on legislation to eliminate its racially discriminatory effects.⁵¹

The enforcement of move-on powers is directly discriminatory. This discrimination occurs on two levels; (1) move-on powers are exercised in areas in which Indigenous Australians are known to reside or occupy,⁵² and (2) move-on power are selectively applied against Indigenous Australians.⁵³ This violates ICCPR, article 27 which preserves the right to enjoy one’s culture. Therefore move-on powers operate to deny Indigenous Australians the capacity to exercise their human rights on the basis of equality with other Australians.⁵⁴

Chapters 2 and 6 of this report highlight the selective application of police move-on powers against Indigenous people. Moreover, the survey findings in Chapter 5 provide empirical

⁴⁸ This is qualified by an obligation, ‘to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination.

⁴⁹ Cassandra Goldie states that on a national scale, 50% of the primary homeless population comprised of Indigenous Australians, Goldie, Cassandra, ‘Living in public space: a human rights wasteland?’ (1996) 27 *Alternative Law Journal* 278.

⁵⁰ Queensland Government, *Aboriginal and Torres Strait Islander Justice Agreement*, 2000.

⁵¹ Preamble to the ICERD.

⁵² Rose Best, ‘Out and about in Kurilpa: the right to public space’ (2006) 19(1) *Parity* 68.

⁵³ Victorian Aboriginal Legal Service Co-operative Ltd, ‘Submission to Crime Prevention Victoria in response to: ‘A Good Night for All’ - Options for Improving Safety and Amenity in Inner City Entertainment Precincts’, 2005, at 1.

⁵⁴ Sidoti, above n31, at 6.

evidence of move-on powers being selectively applied against Indigenous Australians, which constitutes direct discrimination in violation of obligations under the ICERD. The state-wide expansion of move-on powers will arguably result in higher rates of incarceration and entrenchment of Indigenous Australians within the criminal justice system, contrary to the *Aboriginal and Torres Strait Islander Justice Agreement*.⁵⁵ Under the ICERD, reform of move-on powers must be effected in order to comply with our domestic and international human rights standards.

Discrimination on the Basis of Age

The Preamble to the *Convention on the Rights of the Child* (CROC) states that, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.’ Move-on powers indirectly and directly discriminate against children and groups of young people in public space. Like Indigenous Australians, young people are over-represented in the homeless community.⁵⁶ Consequently, they will be adversely and disproportionately affected by law which criminalise homelessness, such as move-on laws. This is a violation of the right of children to adequate protection of the law.

Move-on powers directly discriminate against children and young people. Due to their lack of stable housing, young people have a complex and regular relationship with public space.⁵⁷ As with Indigenous Australians, move-on powers are selectively exercised to disband groups of young homeless people in areas which young homeless people frequent.⁵⁸ These groups are subject to the same negative public image as Indigenous Australians. As such they generate the public’s fear for safety and perpetuate negative stereotypes of young homeless people.⁵⁹ The phenomenon of disproportional application of move-on powers against young people was studied

⁵⁵ Scott McDougall (for the Rights in Public Space Action Group), ‘Move on Powers and Civil Liberties’, paper presented at the ALP Forum, Brisbane, 22 March 2006, at 2.

⁵⁶ Date reveals that youth homelessness comprises 35% of the national homeless population; Council to Homeless Persons, *A Good Night for All: Options for Improving Safety and Amenity in Inner City Entertainment Precincts*, 2005, at 4.

⁵⁷ *Ibid* at 5.

⁵⁸ Paula Grogan, ‘Out of order? The increasing regulation of young people in public space’ (2006) 19(1) *Parity* 85.

⁵⁹ Council to Homeless Persons, above n56 at 8-9.

by Paul Spooner.⁶⁰ Data obtained from his study showed that more than half of all the people surveyed were known to police before they were issued with a move-on direction. This also violates our obligations under the CRC. In fact, the Committee on the Rights of the Child, in its 1997 Concluding Observations, noted that ‘local legislation that allows the local police to remove children and young people congregating’ is an infringement of children’s civil rights.⁶¹

Right to Freedom of Expression

The right to freedom of expression is enshrined in article 19(2) of the ICCPR, article 9 of the UDHR and article 13 of the CRC. These provisions state that,

‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’

Begging is ‘an attempt to communicate poverty and need to wealthier people’,⁶² and is therefore a method of imparting information and ideas. The restriction of begging under Part 4 of the PPRA is therefore a violation of freedom of expression. This contravention is manifestly unjust as it proscribes both passive and active begging techniques.⁶³ This restriction criminalises peaceful verbal or written communication,⁶⁴ by targeting the act of asking for money, not the associated conduct.⁶⁵ This is a gross infringement on the right of homeless people to freely express themselves.

⁶⁰ Paul Spooner, ‘Moving in the wrong direction: an analysis of police move-one powers in Queensland’ (2001) 20(1) *Youth Studies Australia* 30.

⁶¹ Council to Homeless Persons, above n56 at 4.

⁶² *Banks v R* (2002) File No SCA-162-01 Ontario Court of Appeal; see also Tamara Walsh, ‘Defending begging offenders’ (2004) 4(1) *Queensland University of Technology Law and Justice Journal* 58.

⁶³ Passive begging techniques involve sitting to standing in one location with a sign or hat, whereas active begging techniques approaching people and expressing a need for money; Helen Hershkoff and Adam Cohen, ‘Begging to differ: the first amendment and the right to beg’ (1991) 104 *Harvard Law Review* 908.

⁶⁴ Lynch and Cole, above n15.

⁶⁵ Hershkoff and Cohen, above n63.

The use of ‘coarse’ language is a mode of communication by which people express themselves. This method of imparting information and ideas is lawful if used in a private residence. However, under section 37 of the PPRA, a person may be moved-on if their behaviour (such as the use of swear words in a public place) causes offence to another person. It is acknowledged that people have different modes of communication and expression and definitions of ‘acceptable’ communication may differ. However for homeless people whose place of residence is public space, the restriction of the use of coarse language is an unjust infringement on their right to freedom of expression.

Right to Freedom of Association

The ICCPR article 22(1) and CRC article 15 preserve the right to freedom of association. Article 22(2) of the ICCPR states that,

‘No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.’

Move-on powers unduly restrict the exercise of the right to freedom of association which is enshrined in the ICCPR and the right to peaceful assembly in the CRC. The integrity of this right is significantly compromised by refusing homeless people access to space that other members of the public are permitted to enter. Despite section 39(2) of the PPRA which claims not to offend the right to peaceful assembly, move-on powers have, as their very intent, the disbanding groups of people in public space.⁶⁶ Due to a lack of private accommodation, homeless people assemble in public space and are therefore victimised by the exercise of move-on powers.⁶⁷ In effect, move-on powers prohibit groups of homeless people occupying public space.⁶⁸ This isolates and

⁶⁶ Section 39(1) of the PPRA.

⁶⁷ Midgley, above n5, at 85-87.

⁶⁸ Randall Amster, ‘Patterns of exclusion: sanitising space, criminalising homelessness’ (2003) 30(1) *Social Justice* 200.

ostracises individuals within the homeless community,⁶⁹ which leads to loss of support and greater marginalisation. Thus the use of move-on powers to dismantle groups of homeless people in public space is an unjustifiable violation of the right to freely associate and the right to equal access of public space.

Right to a Fair Hearing and the Administration of Justice

ICCPR article 14 enshrines the right to equal access to justice. Move-on powers provide inequitable outcomes for people experiencing homelessness. As the survey findings in Chapter 5 demonstrate, the application of move-on powers in areas where homeless people congregate leads to more interactions between homeless people and police. By virtue of the over-representation of Indigenous Australians in the homeless community, it is likely that these increases in police interaction will violate the recommendations made by the Royal Commission into Aboriginal Deaths in Custody.⁷⁰ Furthermore, the likelihood that people will be charged due to a failure to follow a move-on direction is heightened by the ‘mere presence’ provisions in section 38 of the PPRA.⁷¹ Due to the nature of homelessness, people charged with failure to move-on or another criminal charge may not attend court or if they do, they may not receive adequate legal representation.⁷² Thus the right to a fair hearing and the administration of justice will rarely be respected.⁷³

⁶⁹ Lynch and Cole, above n15.

⁷⁰ Anti-Discrimination Commission Queensland, above n 8, at 7.

⁷¹ Bradfield, above n27.

⁷² Suzie Forell, Emily McCarron and Louis Schetzer, *No Home No Justice: The Legal Needs of Homeless People in New South Wales* (2005).

⁷³ Queensland Public Interest Law Clearing House, above n10, at 13.

CHAPTER 5: THE IMPACT OF POLICE MOVE-ON POWERS ON HOMELESS PEOPLE IN BRISBANE: EMPIRICAL RESEARCH*

This chapter examines the quantitative and qualitative data gathered over a period of 12 weeks in Brisbane's inner city areas.

Methodology

Fortitude Valley, New Farm, West End, and the Brisbane CBD were chosen as areas in which to administer the surveys because of the high incidence of homelessness and police contact with homeless people in these areas. These areas were also utilised because of the Homeless Persons' Legal Clinics (HPLCs) that currently operate out of a number of decentralised locations across Brisbane's inner city.¹ The Clinics are located at community welfare agencies and emergency accommodation hostels.² These are places that numerous homeless persons already attend. As was explained in Chapter 1, facilitated workshops were also held at these service provider organisations, and such forums were further used as a means to gather data for this report. These workshops ensured that persons from a diverse cross-section of the community were able to contribute to the research.

There were, therefore, two methods of data collection employed in this study:

1. individual surveys; and
2. group discussions in the form of facilitated workshops or focus groups held at various welfare agencies in Brisbane.

* This chapter was substantially written and researched by Lindsay Nicholson.

¹ Queensland Public Interest Law Clearing House, *Brisbane City Council Move-On Power Applications: Community Development Services*, 2005, at 3.

² *Ibid.*

The primary method of research for this report was one-on-one interviews using a survey instrument devised by Monica Taylor (QPILCH) and Dr Tamara Walsh (T.C. Beirne School of Law, University of Queensland). A team of University of Queensland law students, and Monica Taylor, administered the surveys at the Clinics in Brisbane. The surveys contained a series of questions designed to determine the impact of move-on powers on homeless people and whether or not the powers are being lawfully administered. A number of questions were also used to ascertain the impact of police powers in general on homeless people in Brisbane.

The survey asked the respondents to indicate where they lived, and to record their gender, age, and Aboriginal, Torres Strait Islander, or South Sea Islander status.

A total of 132 responses was received.

Respondent profiles

Indigenous status

Of the 132 people surveyed, 107 (81%) were male and 22 (17%) were female. The remaining three respondents consisted of two who did not respond to the questions on age, gender, and identity and one who ticked every box.

Indigenous males constituted at least 21% (n=23) of the male group surveyed. Of those 23 males who identified as Indigenous, 20 identified as Aboriginal, two as South Sea Islander, and one as Torres Strait Islander.

Eight female respondents identified as Indigenous, comprising 36% of the total women surveyed. Thus, of the 132 people surveyed, Aboriginal women represented 6%.

Indigenous Australians, therefore, made up 23% of the entire group surveyed.

Age

Respondents were asked to select one of the following age categories: under 16, 17 – 24 years, 25 – 35 years, 36 – 45 years, 46 – 55 years, 56- 65 years and over 65 years.

There was only one respondent who selected the ‘under 16’ category, a female, and four respondents, three male, who selected the ‘over 65’ category.

A total of 29 respondents selected the 17 – 24 age group (22% of the entire survey respondents).

Table 1: Respondents’ age by gender

Age	Total	Males	Females
Under 16	1	0	1
17-24	29	22	7
25-35	31	29	2
36-45	28	22	6
46-55	28	23	5
56-65	11	10	1
Over 65	4	3	0
Total	132	110	22

Housing status

Respondents were also asked about their current living arrangement, and were provided with ten possible categories, including ‘other’ so as not to restrict them to closed categories.

The most common response was ‘sleeping rough’, with almost one third of respondents selecting this category. Indeed, more than one-third (39%) of respondents came within the overarching category of ‘primary homelessness’ which included those ‘sleeping rough’ (n=43) and those living in squats (n=9). The second largest category after ‘sleeping rough’ were those living in boarding houses, which constituted 23% (n=31) of the respondents. There were 11 (8%) participants living rent free with friends and 10 (7%) in emergency hostels. Not one participant said that they were living in their own home. Only 10 (7%) respondents said

that they were living in a private rental and 9 (7%) in public housing. Eight respondents (6%) selected the 'other' category; these respondents were housed in either a hotel, motel, bed-sitter, parent's house, a yacht, or a caravan.

Housing, Indigenous status and age

'Rough sleepers'

Of the 43 respondents reported to be sleeping rough, 12 (28%) were Indigenous men and five (11%) were Indigenous women. Indigenous persons made up 42% of those respondents sleeping rough. Of those living in squats, one was an Indigenous male; the remaining eight did not identify as Indigenous.

People living in boarding houses

Of the 31 respondents living in boarding houses, there were four Indigenous males and 26 (23 male and 3 female) who did not identify as belonging to one of the designated groups. (The other did not indicate his/her age, gender or Indigenous status.)

The four Indigenous males in this group were between the ages of 36 and 55. The three females who reported living in a boarding house were relatively young, with one aged less than 16 years.

Emergency Hostels, Living with Friends Rent-Free, and 'Other'

Of those living in emergency hostels, one was an Indigenous male, one was an Indigenous female and the remainder (n=8) were males who did not identify as Indigenous. The one respondent to this survey who was aged over 65 years selected this housing category

Of those living with friends rent free, there was one Indigenous female, and 10 others who did not identify as Indigenous (nine males and one female). These respondents were also generally young.

Within the category of 'other', many respondents indicated that they frequently move from one place of residence to another. Four respondents from this category stated that they were currently living in either a hotel, motel, one room bed-sitter, or were in between boarding houses and private rental. One respondent stated that she stayed at her parents' house, one on a yacht, one in care (in a home), and one simply ticked 'other' with no explanation. One identified as Indigenous male, and six (five males and one female) did not identify as Indigenous. One respondent ticked every box and therefore it is not possible to determine which sub-category this respondent belongs to.

Public housing, private rental, and caravan parks

Of the nine respondents who reported that they lived in public housing, there were two Indigenous males, one Indigenous female, and six others who did not identify as Indigenous (5 males and one female). None of the respondents who chose private rental as their current living arrangement identified as Indigenous; eight males and two females made up this category.

Of the 132 respondents only one person (a 36-45 year old female) chose the category of 'caravan'.

Table 2: Current living arrangement by gender and Indigenous status.

Current Living Arrangement	Indigenous Male		Indigenous female		Non-identifying male		Non-identifying female	
	n	% of total respondents	n	% of total respondents	n	% of total respondents	n	% of total respondents
Sleeping Rough	12	9.0	5	3.8	20	15	4	3.0
Boarding Houses	4	3.0	0	0	23	17.4	3	2.3
Living with friends rent free	0	0	1	0.75	8	6.0	1	0.75
Emergency Hostel	1	0.75	1	0.75	8	6.0	0	0
Private Rental	0	0	0	0	8	6.0	2	1.5
Public Housing	1	0.75	1	0.75	5	3.8	1	0.75
Squats	1	0.75	0	0	7	5.3	1	0.75
Other	1	0.75	0	0	5	3.8	1	0.75
Caravan	0	0	0	0	0	0	1	0.75
Total*	20	15.0	8	6.0	84	63.6	14	10.5

* NB: This does not add up to the total number of respondents (132) because not all respondents answered these questions.

The number of times respondents were told to move-on in the last six months

Out of 132 respondents surveyed, 101 had been told to move on one or more times in the last six months. This figure represents 77% of the entire group of participants. Thirty-one (23%) respondents had never been told to move on. The specific categories and the amount of times respondents within each category were told to move-on are presented below. The data indicates a correlation between the type of homelessness and the impact of move-on laws on the particular categories. As shown below, the primary homeless that were surveyed (‘rough sleepers’ and those living in squats), and secondary homeless people (particularly those living with friends rent-free), have suffered the most noticeable effects of police move-on laws.

Sleeping Rough, Living in Squats, and Living with Friends Rent-Free

Within the ‘sleeping rough’ category around 90% (n=39) of respondents had been moved on in the last six months. Fourteen (32%) had been told to move on more than 10 times in the last six months, seven (17%) had been told to move-on between six and 10 times, 14 (33%) has been told to move-on between two and five times, four (9%) had been told to move-on once in this period, and four (9%) had never been told to move-on.

Of those respondents living in squats eight (89%) had been told to move on in the last six months. Of the 52 combined ‘primary homeless’³ (respondents sleeping rough and those living in squats) 47 (90%) had been moved on in the last six months one or more times.

Table 3: Current living arrangement and how many times moved on in last six months

No. of times moved-on in the last six months	Sleeping Rough (n=43)			Living in Squats (n=9)			Living with Friends Rent Free (n=11)		
	n	%		n	%		n	%	
		of this category	of total respondents		of this category	of total respondents		of this category	of total respondents
Once	4	9.3	3.0	1	11.1	0.75	4	36.4	3.0
2-5 times	14	32.5	10.6	3	33.3	2.3	2	18.2	1.5
6-10 times	7	16.3	5.3	1	11.1	0.75	4	36.4	3.0
> 10 times	14	32.5	10.6	3	33.3	2.3	0	0	0
Total	39	90.7	29.5	8	88.8	6.1	10	91.0	7.5

Boarding Houses, Emergency Hostels, and Public Housing

High numbers of those living in boarding houses, emergency hostels and public housing also reported receiving move-on directions recently. Of the 31 respondents from ‘boarding houses’, 21 (67%) had been given a police direction to move on in the last six months; of the nine respondents residing in public housing, more than half (n=6) had been told to move-on within the last six months; and of the 10 reportedly living in ‘emergency housing’, five had been told to move-on within the last six months.

³ See Chapter 1 of this report.

Table 4: Current living arrangement and how many times moved on in last six months

No. of times moved-on in the last six months	Boarding House (n=31)			Emergency Hostel (n=10)			Public Housing (n=9)		
	n	%		n	%		n	%	
		of this category	of total respondents		of this category	of total respondents		of this category	of total respondents
Once	6	19.4	4.5	2	20.0	1.5	3	33.3	2.3
2-5 times	11	35.5	8.3	3	30.0	2.3	1	11.1	0.75
6-10 times	2	6.4	1.5	0	0	0	2	22.2	1.5
> 10 times	2	6.4	1.5	0	0	0	0	0	0
Total	21	67.7	15.8	5	50.0	3.8	6	66.6	4.5

Private rental, caravan and ‘other’

Of the 10 respondents from the ‘private rental’ category, half had received a move-on direction in the last six months. Six of the eight respondents who selected ‘caravan’ or ‘other’ as their living arrangement had been told to move-on in the last six months.

Table 5: Living arrangement and how many times moved on in last 6 months

No. of times moved-on in the last six months	Private Rental (n=10)			Other (n=8)			Caravan (n=1)		
	n.	%		n	%		n	%	
		of this category	of total respondents		of this category	of total respondents		of this category	of total respondents
Once	2	20.0	1.5	1	12.5	0.75	1	100	0.75
2-5 times	3	30.0	2.3	2	25.0	1.5	0	0	0
6-10 times	0	0	0	2	25.0	1.5	0	0	0
> 10 times	0	0	0	1	12.5	0.75	0	0	0
Total	5	50.0	3.8	6	75.0	4.5	1	100	0.75

Where homeless people were when they were told to move-on

Under the Act as it stood at the time of this research, a person could only be directed to move-on by the police if they were in a 'prescribed place' and their 'behaviour' or 'presence' fell with any of the stipulated types provided for under sections 37 and 38 of the legislation. Of course, since some respondents had been told to move-on more than once in the last six months, the number of responses relating to where people were moved-on from (n=125) exceeds the total number of people who reported that they had been moved-on (n=101).

In 30 instances, Fortitude Valley was stated to be the place where the move-on direction had been given. This represents 24% of the 125 responses. Of these 30 responses, 19 move-on directions were given in Brunswick Street in and about the Valley Mall, three in the Valley generally, five at the Brunswick Street Train Station, one on Wickham Terrace, and two at the Valley end of Ann Street. There were also four responses that designated New Farm as the area in which move-on orders were given.

There were 45 instances reported to have occurred in the Brisbane CBD (36% of the 125 responses), which included 18 move-on directions given in King George Square, 11 in the Queen Street Mall, four on Adelaide Street, two on Albert Street, and two on Ann Street. The remainder of responses for the CBD consisted of one in a City Church, four in the City generally, one at Central Station, one in the City Botanical Gardens, and one homeless man who lived in a yacht docked alongside the Botanical gardens.

There were 36 responses indicating West End as the place where the move-on direction was given (28.8% of the 125 responses), which consisted of four move-on directions being issued in Kurilpa Park, 10 at the West End Markets, two on Boundary Street, and three in Musgrave Park. There were also 17 instances (13.6%) where people gave general locations, which included parks, train stations, outside shops and on footpaths, in car parks, and outside ATMs.

Respondents also reported that six move-on directions (4.8%) had been received in and about Roma Street, including two near the Police Headquarters, two in the Roma Street Parklands, and two near the Roma Street Train Station. Of the remaining four responses, two reported

Southbank (1.6%) as the location in which the move-on direction was received, one in Marsden Shopping Centre (0.8%), and one in Caboolture (0.8%) outside a council building.

What homeless people were doing when they were asked to move-on

As above, some respondents had been moved-on more than once in the last six months, so the total number of responses to this question (n=104) exceed the actual number of respondents who had been told to move on (n=101).

Of the 104 responses, 81 (77.9%) indicated that their 'behaviour' or 'presence' when directed to move-on was innocuous: sitting, standing, waiting, walking, or doing nothing. These responses consisted of people who were standing, sitting, sleeping, waiting, doing nothing, crying, walking, leaving a nightclub, selling magazines, selling books, and selling glo sticks. One of these respondents (a male 36-45 years old) said that he was 'just watching the world go by'. Of the young people surveyed, 34% were asked to move-on when they were occupying public space with other young people, usually when they were 'talking' or 'relaxing' with their friends.

Twenty-two respondents (21.2%) reported that their 'behaviour' or 'presence' was of a nature that would be likely to be perceived by police as anti-social or, at least, unconventional in the context of public spaces. These responses consisted of individuals drinking alcohol, 'being idiots and making noise', using drugs and sniffing, begging, cursing, and one respondent found carrying pipes and bottles. Another said he was 'playing football'.

Of these 22 responses, 14 said that they were drinking. They generally responded that they were 'having a quiet drink'; none of the 14 said that they were creating a nuisance or disturbance. One respondent had witnessed a fight outside of a Valley nightclub; he said that police insisted that he make a statement and that it was his refusal to make this statement to the police that led to him being taken to the Valley Police Beat. Upon release he was directed to move-on. The respondent found by police with pipes and bottles in his possession said that he had only just picked these items off the ground and was on his way to the Police Station to hand them in. He was consequently ordered to attend a drug diversion program before being moved-on.

Where police officers told the homeless people to move to

An overwhelming 86 (85%) of the 101 respondents who had been told to move on one or more times within the last six months were given nowhere in particular to go upon being issued with move-on directions. It is not a mandatory requirement of the legislation that police officers give or suggest another location for persons upon issuing a direction to move-on. As was noted in Chapter 1, the police must not direct a person to leave the place for any longer than a maximum of 24 hours and they may also direct a person to move a certain distance in a stated direction for up to 24 hours.

Of the remaining responses, three respondents were told to move to Musgrave Park, two to West End, one to the Valley, one to SEQEB (the former South East Queensland Energy Board), one to Kurilpa Park, one to the City Botanical Gardens, and one to Ivory Street Park. A further two respondents were told to go home, two could not remember and one was taken to St Vincent De Pauls. As noted above, SEQEB, Kurilpa Park, West End, the Valley, and the City Botanical Gardens are all locations at which homeless persons have been issued directions to move-on.

If homeless people are directed to move-on to areas from which other homeless people have previously been told to move-on, they are placed in a position where they are likely to be issued another direction. If the recipient of the direction refuses to leave, or is too tired or ill to move-on again so soon, he or she is at risk of being charged with contravening a police direction.⁴ The suggested location of ‘Kurilpa Park’ given to one respondent was, in fact, a ‘prescribed place’ at the time the respondent was told to go to this location.

A number of respondents raised the concern of being ‘chased’ by police officers from one place to the next. Some respondents said that it is often the same officers that follow homeless people throughout the day solely for the purpose of chasing them away. That it is not mandatory for the police to offer an alternative location for persons receiving a move-on direction highlights the detrimental and discriminatory impact that move-on laws have had and continue to have on homeless people. The vulnerability of homeless persons who may be

⁴ Taylor, above n 1, at 6.

chased from one location to the next by different police officers patrolling different areas of Brisbane's inner city is of serious concern.

Time given to homeless people in which to move-on

As noted in previous chapters, the legislation provides that a police officer can direct a person to leave a place for a set period of time (maximum 24 hours). Of the 101 respondents who were told to move-on by police in the last six months, 41 (40%) responded that they were not given any time frame whatsoever. Fifty-eight (57%) respondents said that they were given a time frame regarding how long they were to leave the area before returning. However, ten of these respondents (7.6% of those surveyed, and 10% of the 101 who were asked to move-on at least once in the last six months) misunderstood the survey question, thinking it meant 'how much time did the police officer give for a respondent to move on from the area'. (Note that under the Act police must give people a reasonable opportunity to comply with a move-on direction.) This limitation of the report was discovered and corrected in the later weeks of the project. However, this misunderstanding yielded some interesting results. Respondents invariably reported that they were given very short periods of time in which to move on; most responded that they were told to move on either 'right now'/'immediately', in 'one minute' or in 'five minutes'. One respondent stated he was given 'twenty minutes' to move-on.

Of those 48 respondents who understood the meaning of the question, 39 (81%) were given allowable amounts of time (24 hours and less) in which they could not return to the area where the direction was first given. There were nine respondents (19%) who were given time-frames that exceeded 24 hours, including directions to leave for 48 hours, one week, one month, and 'don't come back'.

Reasons homeless people were given for being moved-on

Under the Act, a police officer '*must*' tell the person or group of persons the reasons for giving the move-on direction. This is a mandatory requirement of the legislation. Yet, of the 101 people surveyed who were told to move-on in the last six months, almost half (48%, n=48) said they were not given reasons for being moved on.

Further, of the 53 people who were given reasons when moved on, a significant number recalled reasons that may not satisfy the requirements of sections 37, 38 and 39 of the Act combined.⁵

Table 6: Reasons given by police officers when issuing homeless people move-on directions.

Reasons that may satisfy the Act if correct	Reasons that are unlikely to satisfy the Act
11 x drinking alcohol	2 x being in a group
5 x complaints	2 x sleeping
4 x public nuisance	1 x storing belongings
3 x soliciting for prostitution	1 x being in public view
2 x begging	1 x 'you'll get locked up' if you do not
1 x vomiting	1 x refusing to be a witness to a fight
1 x being a threat to the public	1 x being in possession of prescribed drugs
1 x loitering	1 x 'because it's within my rights'
1 x trespass	1 x 'because we can'
1 x disturbing the peace	1 x his presence was a 'health hazard'
1 x being mischievous	(2 x reason not stated)
1 x sniffing a chemical	
1 x carrying materials for drug-use	
1 x swearing	
1 x in a group that was drinking/swearing	
1 x disrupting local business	
1 x being with drunk mates	
1 x because an Event was happening	
1 x 'you're not allowed there'	
Total: 39 (73.6%)	Total: 12 (22.6%)

It is noted that of the responses in column 1, only four respondents said that the reasons stated were factually correct: in that one respondent was vomiting, one was carrying items associated with drug use, one was in a group that was drinking and swearing, and one was around an event.

⁵ See Chapter 1 of this report.

What happened after homeless people were told to move-on

The vast majority of those who were told to move-on (n=72, 71%) said that they did move-on after the direction was issued, without question or argument. Twelve respondents (12%) said that (at least sometimes) they did not move, but made no comment as to whether or not they were arrested for failing to obey a police direction; one of these respondents said that he was ultimately permitted to stay on the Church grounds because he had permission from the minister. Seven respondents (7%) either could not remember or made no comment. Only 6 (4.5%) respondents said that they questioned police and then moved on: two of these respondents said that they argued with the police, two respondents said that they were taken to the police station and charged, one respondent said that he was taken to the police station for checks and then released, and one respondent said that he was assaulted by a police officer (who broke his ribs and bloodied his nose) (1%).

Homeless people's beliefs as to when police officers can use move-on powers

This question set out to gather qualitative responses from respondents, and was designed to ascertain the level of understanding of homeless people in respect of the move-on powers.

Approximately 10% (n=13) of the entire group of respondents stated that the police can never use move-on powers. A significant proportion (n=41, 31%) of respondents had an understanding of the type of conduct that is likely to attract a police move-on direction. Their responses included 'public nuisance', 'disturbing the peace', 'violence' and 'threatening behaviour', 'causing trouble', 'drinking', 'disrupting businesses', 'complaints', 'crowds' or 'big groups', 'breaking the law' or 'doing something wrong', and 'endangering others'. One respondent stated that the police can use move-on powers 'when they catch people out sniffing paint'. Another respondent stated that the powers can be employed 'only when you are running amok or causing public nuisance'. Similarly one respondent responded, 'when you are disruptive or committing an offence'. A young male respondent said that the powers can be used in cases of 'begging' and that the police can 'move people on for 24 hours'.

While such responses suggest a reasonable level of understanding as to the type of behaviour that may give rise to a move-on direction, none of the respondents indicated that they

understood move-on powers should involve police officers forming a requisite degree of 'reasonable suspicion'. The minimal knowledge of homeless people of the power and responsibilities of the police in this respect highlights their vulnerability to abuse of power. Further illustrating the susceptibility of homeless people to the abuse of police powers, were the four respondents who said that they did not know when police can use move-on powers and the six respondents who thought that the police can use move-on powers whenever they like. Several respondents did not respond to the question.

What homeless people think about move-on powers

As with the above question, qualitative responses were sought from the respondents in administering this question. More than half (n=69, 52%) of the respondents disagreed with move-on laws. Four respondents said that the laws were not a problem. Two respondents were unsure. One respondent stated that the powers should be reviewed, and one respondent said that they should be used less.

Other respondents made no comment in response to the question. A not insignificant proportion of respondents (n=28, 21%) agreed that move-on powers should exist for specific situations. The main concern for most respondents was their safety. Respondents supported laws that would protect them on the streets. However these same respondents commonly agreed that the problem with the powers is two-fold: the manner of their enforcement and the laws themselves, which give the police an excessive amount of discretion.

One respondent agreed with move-on laws 'in so far as the criminal element'. He noted, however, that 'this law is trying to... enable them to move innocent people on'. This respondent complained that the police are 'stepping over the boundaries of the power they have'. Many respondents felt that police discretion leads to abuse of power. One of the most frequently heard responses in this regard was that Queensland has become a 'Police State'.

Many respondents believed that the application of move-on laws in many cases was unjustified. One respondent complained that the move-on powers are 'unfair because they target the marginalised such as the homeless and youth'. Another respondent who

attended the Clinic at the Mission Café said that he was treated unfairly when the police found him trying to catch his breath in the Valley Train Station. The man, from the 56-65 year age category, was the recipient of a heart and lung transplant and was carrying anti-rejection drugs. Despite showing the police his hospital identification card (which listed his prescribed drugs) he was arrested and charged for possession of drugs. Ultimately the charges were dropped. Instances such as these are best analysed in the words of the homeless. As one homeless man explained, 'It seems...that where [move-on laws] should be used [they are] not...and then abused at [the police's] pleasure'.

Other respondents viewed the laws as confusing, pointing to inconsistency in the application of move-on directions. A middle-aged respondent said that there is 'no equilibrium with these laws – [the police] either bombard you or [you] never see them at all'. This uncertainty and confusion has caused much frustration among many homeless people. One young man in the 17-24 age category said, 'I am doing nothing wrong and I am told to move-on. Someone else may be messing about and we all get in trouble'.

Many participants specifically raised the issue of discrimination in relation to the move-on laws. Many homeless people feel that they are being discriminated against either on the basis of their homelessness, or their minority status, particularly their Indigenous status. One respondent, in saying the move-on laws are 'wrong', explained that police officers deliberately victimised and targeted homeless people waiting for food vans. He said, 'When you help with the street vans it's not OK for them to pull up and stir up all the homeless people'.

One Aboriginal (middle-aged) woman said that the police 'stereotype' black people. She complained, 'As soon as police see that I am black, they think I am a threat to them'. One Aboriginal man said that the police 'target black people' and that 'when they have nothing else to do they come up to us and say if we are there next time they will arrest us'.

Homeless people and other police powers

In addition to the information collected with regard to move-on powers, respondents were asked some general questions about other police powers, and their interactions with police in general.

Ninety-seven (73.5%) respondents said that they had been approached by the police on various occasions when in their view they had not been doing anything wrong. Indeed, 82% of respondents living with friends; 81% of respondents who were sleeping rough; 70% of respondents living in boarding houses; 68% of respondents living in boarding houses; 56% of respondents living in public housing; 50% of those renting privately; and all of those living in caravans and squats said they had been approached by police in such circumstances.

How homeless people feel about their contact with police

A significant number of respondents had negative feelings about their contact with police. Those responses that can be neatly categorised appear in the table below.

Table 7: How homeless people feel about their contact with police by accommodation type.

How homeless people feel about police contact	Sleeping rough	Living in squat	Living with friends rent-free	Boarding house	Emergency hostel	Public housing	Private rental	Other
Harassed	8	2	2	3	5	0	2	3
Targeted	6	1	5	4	0	2	1	0
Harassed and targeted	12	1	0	4	0	0	0	0
Contact is unnecessary	3	2	1	3	1	1	0	1
Harassed and contact is unnecessary	0	0	0	1	0	0	0	0
Targeted and contact is unnecessary	0	0	0	1	0	0	0	0
Harassed, targeted and contact is unnecessary	1	1	1	2	0	0	0	0
Good	1	0	0	1	3	1	1	1
Harassed and good	1	0	0	2	0	0	0	0
No problem	5	1	0	6	0	2	5	3
Targeted and no problem	1	0	0	0	0	0	0	0
Total (n)	38	8	9	27	9	6	9	8

In summary, approximately 100 respondents (around 75%) gave accounts of police harassment and targeting by police raises alarming concerns as to the safety of homeless people and the apparent infringements of their legal rights under domestic laws (the Act itself) and human rights under international human rights treaties.

Responses of homeless people regarding human rights

In Chapter 4, the impact of move-on powers on the human rights of homeless people was canvassed. In this survey, homeless people made a number of comments regarding the infringement of their human rights; indeed, one respondent actually posed the question: “Do we have any rights as human beings or Australian citizens?”

Freedom from discrimination?

Many respondents raised concerns about their human rights and rights as citizens and the discriminatory effect of move-on powers (and police powers in general) on homeless people. Many homeless people said that they felt discriminated against on the basis of their state of homelessness. One participant from a workshop discussion said ‘it doesn’t matter what colour our skin is, we’re just one group of people, Homeless. We want a bit of normality like everyone else, but they won’t give us a chance.’

This respondent and numerous others provided accounts of being harassed and targeted. One respondent at the Mission Café spoke of having his ribs broken and ‘nose bloodied’ by a police officer. A quadriplegic man provided an account of being searched and humiliated in his wheelchair in front of his sixteen year old son in King George Square.

One male respondent said, ‘We have no money, no food, no nothing, let the Ministers and the police experience that for one day to get a dose of reality.’ Another said that the move-on powers make him feel like he ‘can’t go anywhere or do anything’. He believed that the powers are directed ‘only toward homeless people’ and he said that he had been searched merely because of what he has been wearing. The respondent viewed this as discrimination. Upon asking the police ‘where else can I go?’ one respondent was told ‘that’s your problem’. Perhaps one of the most startling responses from respondents regarding discrimination was a man who stated that the police told him to move-on and the reason given was that he was a ‘health hazard’. One respondent stated:

‘...they should come up with ideas as to where we can go instead of just making us move-on...makes matters worse, we can get moved on from place to place...some cops chase you around.’

The general consensus among the respondents was that homeless people are targeted (‘picked on’) simply because of their appearance, which is a consequence of their poverty and socio-economically disadvantaged status. A significant number of homeless respondents complained that they are ‘picked on’ simply because of what they are wearing, or because of their appearance, or because a police officer has come to know and target them individually. Many of the respondents felt victimised by the police and a number of Indigenous Australians believe that the police vilify them on the grounds of their race.

In addition to those homeless respondents who felt that they were being discriminated against as a group, there were a number of Indigenous Australians who said that they were targeted because of the colour of their skin. One Aboriginal woman complained that ‘people get moved on depending on who they are’. She said ‘if you are black, it is bad’ and that while ‘people who are dressed up do drugs and drink worse than black people...we get told to move on. It’s a stereotype thing.’ Another respondent said, ‘It is the way they look at you. If you are dark with a bag you get picked out of the crowd’. One Aboriginal man stated that ‘That [Valley] mall is for everybody – that is why it’s called the mall...the ‘Mall’ it comes from an English term’. Another respondent said that ‘Police abuse their rights, and took away ours. They should not be allowed to continue this’, and an Aboriginal woman explained that ‘This is our land. We drink in a public place because we own this land’.

Right to the highest attainable standard of physical and mental health?

One respondent at 139 Club on Brunswick Street complained of police officers refusing him passage through the Valley Mall on his way to a health care service provider. The respondent said that he ‘needs regular visitation’ to monitor his schizophrenia and medication. He stated that he was regularly prevented from making the relatively short trip through the Valley Mall and is only left with the option of circling the Valley block on transport, which he cannot always afford. He said that as a consequence of these move-on laws he sometimes misses his appointments.

Move-on laws also threaten the physical (and associated mental) health of homeless people. One respondent, a Vietnam veteran, stated that he was directed to move-on by police at the Brunswick Street train station in the Valley. He said that he explained to the police that he just needed to catch his breath and that he was the recipient of a heart and lung transplant several years prior. The police responded that he was to move-on immediately and performed a search in which they found a container of hospital prescribed anti-rejection drugs. He was arrested and taken to the police station and charged, despite providing a hospital identification card, which listed his prescribed medication (anti-rejection drugs), and his Vietnam Veteran's counselling card. On the morning of his appearance, he was finally informed that the police had dropped the charge, because his story checked out.

Conclusion

Clearly, the results of this empirical research indicate that homeless people, particularly those who are young and Indigenous, are targeted in the use of police move-on powers. The remaining two chapters of this report will examine in detail the impact that this kind of differential policing can have on Indigenous homeless people and young homeless people specifically.

CHAPTER 6: THE IMPACT OF MOVE-ON POWERS ON INDIGENOUS AUSTRALIANS*

‘We have been subject to these things all our lives... the Aboriginal Act made it legal for them to do it. Now it’s this legislation doing it. But it’s nothing new to us and it’s been happening to us, our parents, our grandparents, all our lives... the last 200-odd years... because of our Aboriginality.’

Police move-on powers disproportionately affect Indigenous homeless people and in some cases the powers provide an entry-point into the criminal justice system.¹ The survey findings reported in Chapter 5 suggest that the move-on powers are being used inappropriately against homeless people and disproportionately against Indigenous homeless people.

The results show that in some instances the move-on powers have been used in a discriminatory manner against Indigenous people inhabiting public space. The reasons for this trend towards differential and discriminatory policing are explored below – including:

- centuries of regulated social exclusion of Indigenous people;
- the potential for move-on powers to act as an ‘entry-point’ for Indigenous people into the criminal justice system;
- the increased risk of unnecessary police contact that Indigenous people inhabiting public space will face as a result of the recent expansion of the move-on powers to all public places state-wide; and
- the role of the media and authorities in influencing public perceptions of homeless people.

* This chapter was substantially written and researched by Megan Breen. Megan says thank you to Debbie Schneider and Mike Salbro of Murri Watch and Bowman Johnson Hostel for taking me out on Outreach with them, and for introducing me to some of the Indigenous people of West End and Kurilpa Park. To all the Indigenous people who participated in discussion groups and completed surveys – thank you for allowing us to tell your stories.

¹ For a discussion of the criminalisation of marginalised people in public space see Tamara Walsh, *From Park Bench to Court Bench: Developing a response to breaches of public space law by marginalised people*, 2004.

In addition to reflecting on the results of the survey reported in Chapter 5 of this report, this chapter presents some direct statements from participants in facilitated workshops and discussion groups held throughout the survey period.

Indigenous homelessness: What does it mean?

Indigenous people experience homelessness in different ways to non-indigenous people, for historical reasons and as a consequence of cultural differences. For this reason, it is important to understand the state of homelessness as it applies to Indigenous people. Although Indigenous people are represented in the Chamberlain & MacKenzie categories of primary, secondary and tertiary homelessness, historical and cultural reasons dictate that homelessness as experienced by Indigenous people is somewhat more complex.²

A 2003 study into Indigenous homelessness proposed that Indigenous people may be homeless even if they are, for practical purposes, housed.³ This notion was also discussed in a 1999 report of the Commonwealth Supported Accommodation Assistance Program (SAAP) that identified the following types of Indigenous homelessness:

- **spiritual** – relates to separation from traditional land or family/kinship networks;
- **overcrowding** – a hidden form of homelessness causing considerable stress and distress to Aboriginal communities;
- **relocation and transient homelessness** – due to mobile lifestyles, the necessity of travelling to obtain services and people's wish to relocate back to their traditional country or to larger regional centres;
- **unsafe home; escaping violence, abuse or neglect** – affecting large numbers of Indigenous people, especially women and young people; and

² Andrew Millsom, 'Defining Homelessness in the Aboriginal and Torres Strait Islander Context' (2002) 15(1) *Parity* 5.

³ Paul Memmott, Stephen Long, Catherine Chambers and Frederick Spring, *Categories of Indigenous 'Homeless' People and Good Practice Responses to Their Needs*, 2003.

- **lack of access to any stable shelter, accommodation or housing** - literally having ‘nowhere to go’ – people living on the streets, parks, river beds, in fringe camps or at railway stations.⁴

The phrase ‘spiritually homeless’ also refers to the psychological dimension⁵ of Indigenous homelessness; situation connected to the dispossession of Aboriginal people of their traditional homelands, culture and law. As one Indigenous respondent to our survey said:

‘Well, they [police officers] got the uniform, they got the law. We got no law anymore.’

Indigenous homelessness – Historical context

The history of relations between Indigenous and non-Indigenous people in Queensland is one of exclusion and dispossession. This control and marginalisation of Indigenous peoples was legalised by the ‘Protection Acts’,⁶ the first of which was the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld). The legislation allowed the government to declare any Aboriginal person a ward of state and control all aspects of their lives, under a system of church missions and government reserves.⁷ To avoid being a ward of the state Indigenous people could seek a certificate of exemption,⁸ but as Jackie Huggins has argued, ‘exemption came of huge personal costs’,⁹ including separation from family, land, and the breaking or straining of social, spiritual, and cultural ties. As Huggins argues, ‘the legislation

⁴ Keys Young, *Homelessness in the Aboriginal and Torres Strait Islander context and its possible implications for the Supported Accommodation Assistance Program*, 1999; cited in: Department of Family and Community Services, Supported Accommodation Assistance Program (SAAP), ‘*Indigenous SAAP Clients*’, 2001, at 2-3.

⁵ *Ibid.*, at 14-15.

⁶ This is a general term used by prominent Queensland historian Ros Kidd to refer to racially discriminatory legislation dating from the earliest days of colonisation including: *The Aboriginals Protection and Restriction of the Sale of Opium Act 1897*; the *Aboriginals Preservation and Protection Act 1939*; the *Torres Strait Islander Act 1939*; *Aborigines and Torres Strait Islanders’ Affairs Act 1965*; the *Aborigines Act 1971*; the *Torres Strait Islander Act 1971*; the *Community Services (Aborigines) Act 1984*; and the *Community Services (Torres Strait) Act 1984*. See: Ros Kidd, *Black Lives, Government Lies*, 2000 and Ros Kidd, *The Way We Civilise*, 1997.

⁷ Ros Kidd, ‘Stolen Wages Fact Sheet’, 2002, <http://www.linksdisk.com/roskidd/site/Speech17.htm>.

⁸ Under s.33 of *The Aboriginals Protection and Restriction of the Sale of Opium Act 1897*; see: Loretta de Plevitz, ‘Falling Through the Safety Net: Minimum Entitlements Legislation for Aboriginal Workers in the Queensland Pastoral Industry 1919-1968’ (1997) 13 *Australian Journal of Law and Society* 1-15, at 2.

⁹ Jackie Huggins, ‘White Aprons, Black Hands: Aboriginal Women Domestic Servants in Queensland’ (1995) 69 *Labour History* 188-195, at 188.

succeeded in its intention to divide and rule the physical and psychological lives of Aboriginal people'.¹⁰

In the majority of cases, the provision of food and shelter by the mission (or in the case of people sent to work in private employment, the employer) was considered part of the wages of workers and, as wards of the state, those confined on missions were not able to leave and find work elsewhere.¹¹ This was the situation of many Aboriginal people **until 1971**, when forced confinement on Aboriginal reserves was abolished in Queensland.¹²

Throughout the 19th and 20th centuries, public order legislation has been used as the basis for discriminatory control of Aboriginal people.¹³ The historical control over Aboriginal people has involved both excluding them from particular spaces and forcibly retaining them in other spaces.¹⁴ Considering that, until **35 years ago**, many Indigenous people in Queensland were essentially held in detention on missions and reserves, it is not at all surprising that there is a significant population who have failed or refused to 'assimilate' into the mainstream and adopt the housing arrangements of wider Australian society. In addition, the fact that generations of Indigenous families have been denied access to wages and savings earned on reserves or in mission-sponsored private employment, has meant that poverty among Indigenous people is endemic.¹⁵ It is this history of legislated exclusion, control and exploitation, which has contributed to the significant number of Indigenous people who have been dispossessed of wealth, traditional culture, homeland, and of a home.

It is however very important to acknowledge that Indigenous people are not homogenous and not all peoples' lands, culture and traditions were lost. Therefore, it follows that in contrast to the 'spiritual homelessness' that may be felt among some Indigenous people, other Aboriginal people occupying public spaces would reject the label 'homeless' and characterise the public spaces they occupy as both their spiritual and physical home. As one Indigenous respondent to our survey said:

¹⁰ Ibid.

¹¹ Kidd 1997, above n6.

¹² Kidd, above n7.

¹³ Stuart Ross and Kenneth Polk, 'Crime in the Streets' in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds) *Crime and Justice a Guide to Criminology*, 3rd ed, 2006, at 146.

¹⁴ See Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001), particularly Chapter 8: 'Governance and the policing of contested space' at 180-204.

¹⁵ See Kidd 2000, above n6; Kidd above n7; *ibid*.

‘[I was told by police that I was] not allowed to sleep in the park. But I was born outside – in a windbreak in the Eastern Tanami Desert... They can’t move us – I like sleeping out.’

A rejection of the term ‘homeless’ and a broader rejection of the norms and standards of mainstream Australian society (including the expectation that everyone should own or rent their own home) by Aboriginal people could also be characterised as behaviour that constitutes a form of resistance to colonialism.¹⁶ A number of respondents to the survey reported on in Chapter 5 of this report expressed the opinion that they shouldn’t be subject to move-on orders by police, referring to a moral entitlement to occupy the land that arises as an incident of being Aboriginal and the fact that it is important that Indigenous peoples’ right to gather in public places is recognised and respected.¹⁷ As one Indigenous respondent said:

‘Well, this is our land. We drink in a public place ‘cos we own this land. No, we don’t listen to them ‘cos we own this place – we own this land.’

Indigenous homelessness and police discretion

Despite the development of policies of inclusion and service provision objectives contained in the Brisbane City Council’s *Response to Homelessness Strategy 2002-2005*,¹⁸ homelessness is, for all practical purposes, criminalised in Queensland.¹⁹ Although the offence of vagrancy was recently removed from state statute books,²⁰ expansive police powers and the broad

¹⁶ See Roderic Broadhurst, ‘Crime and Indigenous People’ in Adam Graycar and Peter Grabosky (eds), *The Cambridge Handbook of Australian Criminology*, 2002, at 262. For an in-depth exploration of this notion of resistance see also: Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police*, 2001, particularly at 60-61.

¹⁷ Anne Coleman, ‘Sister, It happens to me everyday’: *An exploration of the needs of, and responses to, Indigenous women in Brisbane’s inner city public spaces*, 2000, <http://www.datsip.qld.gov.au/pdf/sister.pdf>.

¹⁸ Brisbane City Council, *Response to Homelessness: Strategy 2002-06*, 2002, http://www.brisbane.qld.gov.au/bccwr/plans_and_strategies/documents/plans_strategies_homelessness_strategy_full_strategy_document.pdf.

¹⁹ See generally Tamara Walsh, ‘The overruled underclass: the impact of the law on Queensland’s homeless people’ (2005) 28(1) *UNSW Law Journal* 122.

²⁰ Vagrancy was abolished as an offence when the *Vagrancy, Gaming and other Offences Act 1931* was repealed in March 2005. See Tamara Walsh, ‘Homelessness, Public Space and the Law in Queensland’ (2006) 19(1) *Parity* 46.

discretion²¹ existing within public order laws allows for ‘differential’²² and ‘zero-tolerance’²³ policing, and means that homelessness in Queensland is still criminalised.²⁴

The reasons for the targeting of homeless and Indigenous people through the enforcement of public order laws are varied, and involve political, moral and commercial pressures. Business interests, the media and some policy-makers play a significant role in creating a socio-political environment in which the criminalisation of marginalised groups in public spaces is more prevalent.²⁵

The recent amendment to the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) to expand the use of police move-on powers into all public places in Queensland means that the police have even more scope for ‘moving-along’ marginalised people who are perceived to be a nuisance or a threat. In particular, problems arise for homeless and Indigenous people as a result of the wide discretion afforded to police to determine whether someone constitutes a threat or public nuisance. This discretion is discussed in detail in Chapter 2 and is powerfully illustrated by a statement from one of our survey respondents:

‘[I was] talking to elders in Boundary Street – shops nearby complained – [we were] told to move on to Musgrave Park.’

Clearly, if a business owner or member of the public objects to the mere *presence* of a homeless Aboriginal person they can request that police order the person causing the “anxiety”, to move-on. The statement above was made at a time when the powers only related to certain prescribed areas,²⁶ and would have in fact constituted an unlawful move-on order. The fact that the powers have recently been extended to cover all public places in Queensland,²⁷ and the conditions for the use of the powers are so broadly stated in the

²¹ Anti-Discrimination Commission Queensland (ADCQ) *Submission to Brisbane City Council regarding its Application for Declarations of notified areas at Kurilpa Point, King George Square and New Farm Park*, 2005, http://www.adcq.qld.gov.au/docs/Move_on_Powers.rtf.

²² Rob White and Santina Perrone, *Crime and Social Control*, 2nd ed, 2005, at 42-53.

²³ Peter Grabosky, ‘Zero-Tolerance Policing’ (1999) 102 *Trends and Issues in Crime and Criminal Justice*, <http://www.aic.gov.au/publications/tandi/tandi102.html>.

²⁴ Walsh, above n1, at 29-37.

²⁵ Russell Hogg and David Brown, ‘Crime, Government and Social Cohesion in Australia’ in Russell Hogg and David Brown, *Rethinking Law and Order*, 1998, at 140-180.

²⁶ See Anti-Discrimination Commission Queensland, above n21.

²⁷ See Second Reading Debate of the Police Powers and Responsibilities and Other Acts Amendment Bill 2005, *Queensland Parliamentary Hansard*,

legislation, means that there is now an even wider scope for powers to be used in a differential or discriminatory manner.²⁸

Political debates about the need for increased police powers in Queensland focus on the need for prevention of violent street crime and control of gate-crashers at parties,²⁹ yet the evidence suggests that these powers are disproportionately being used against homeless people, youth and indigenous people inhabiting public space. Furthermore the results of the survey reported on in Chapter 5 of this report suggest that there is a differential or even discriminatory use of the move-on powers against homeless Indigenous people.

For example, in response to the question ‘when can police use move-on powers?’, one Indigenous respondent said:

‘Anytime they feel like it... depends on who you are... We are running out of space – [there is] not enough space, nowhere to go. That’s why a lot of homeless people end up in detention.’

While it is not disputed that Indigenous people are over-represented, both as ‘victims’³⁰ and ‘perpetrators’,³¹ in crime rates, the issue of their criminalisation in public space is conceptually distinct.

The results of the survey reported on in Chapter 5 of this report indicate that police move-on powers and the application of other public order laws create an ‘entry-point’ for Indigenous people into the criminal justice system. In many instances, Indigenous people are criminalised for their *very existence* in public space; therefore criminalisation is a process that occurs irrespective of whether the Indigenous person in public space actively engages in criminal

<http://www.parliament.qld.gov.au/view/legislativeassembly/tableOffice/documents/HALnks/060523/PolicePowers.pdf>.

²⁸ This point has been made by commentators elsewhere; see for example: Queensland Public Interest Law Clearing House, *Submission: Brisbane City Council Move-On Power Applications*, 2005, http://www.qpilch.org.au/dbase_upl/Move%20On%20Powers.pdf.

²⁹ Queensland Parliament, *Hansard*, 23 May 2006, at 1798 (Second Reading Debate of the Police Powers and Responsibilities and other Acts Amendment Bill).

³⁰ In 2002, almost one-quarter (24%) of Indigenous people aged 15 years or over reported that they had been a victim of physical or threatened violence in the previous 12 months: Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2002*, 2004, at 4.

³¹ In 2002, 7% of Indigenous people aged 15 and over, reported that they had been incarcerated in the previous five years; *ibid*.

activity.³² When asked ‘what do you think about move-on powers’ one Indigenous respondent to our survey said:

‘I see [the police] every day. I just want to go down to Musgrave Park and gather with the black people and all I see is police – it’s as if they have nothing better to do. They should go arrest criminals... Community workers should have the powers and the police should only have a right to interfere when there is criminal activity... [the powers] should be given back to the frontline workers.’

Homeless Indigenous people come into contact with police at a much higher rate than the general population,³³ and this contact can often lead to minor offences such as failure to follow a police direction and offensive language offences.³⁴ The wide discretions granted to police in Queensland’s public order laws, combined with a general tendency for zero-tolerance policing of Indigenous people,³⁵ lead to the criminalisation of Indigenous homeless people in Queensland.

Racial Discrimination and Move-On Powers

The increasing trend in Australia towards the use of law enforcement measures to regulate behaviour in public space³⁶ is, in part, a response to the fear created by moral entrepreneurs in the media and in politics³⁷ - a process discussed in more depth later in this chapter. In addition, the privatisation of many formerly public places has contributed to the over-policing of public space.³⁸

As shopping malls increasingly dominate the streetscape, poor and marginalised people, who may not be shopping but instead may use the malls for shelter or as recreational spaces, are

³² Rose Best, ‘Out and About in Kurilpa: The Right to Public Space’ (2006) 19(1) *Parity* 68-70 at 68.

³³ Many of those surveyed reported daily contact with police officers – see Chapter 6 with survey breakdown.

³⁴ Walsh, above n1, at 36.

³⁵ See: Chris Cuneen, ‘Zero Tolerance Policing: Implications for Indigenous People’, paper prepared for the *Law and Justice Section, ATSIC*, in conjunction with the *Institute of Criminology Sydney University Law School*, 1999, at 5. See also Charles Pollard, ‘Zero-Tolerance: Short-Term Fix, Long-Term Liability’ in Dennis, (ed), *Zero Tolerance: Policing a Free Society*, 1997.

³⁶ Monica Taylor, ‘Moving-On Homelessness: The Impact of Police Move-On Powers in Public Space’ (2006) 19(1) *Parity* 60.

³⁷ The term ‘moral entrepreneur’ was introduced in 1963 by Howard Becker, in his book *Outsiders*. See Claire Valier, ‘Just Theory: Theory, Crime and Criminal Justice’ in Chris Hale et al, (eds) *Criminology*, 2005, at 89-108.

³⁸ Hogg and Brown, above n25, at 140.

'likely to be seen as nuisances or threats, and are often effectively excluded from these spaces'.³⁹

In addition, due to a long history of negative interaction with police⁴⁰ there is a tendency for discriminatory or 'differential'⁴¹ policing against Indigenous people, to the point where a group of Indigenous people gathering in, or inhabiting public space, has been constructed as a 'law and order issue' with the presence of Aboriginal people being characterised as a problem.⁴² A number of respondents to the survey indicated that they felt that they were unfairly targeted by police on the basis of the Aboriginality, expressing the opinion that police were discriminatory and even racist. One Indigenous respondent to our survey said:

'If there's a big bunch of us, 10 to 12, that's when they move us on. If it's just 2 or 3, they just talk to us, ask questions, but don't move us.'

This type of response was also supported by a number of responses from non-Indigenous participants including the response extracted below:

'[The police said] "you're not welcome here"... the Valley police are a huge problem... racist... they pick on black people, including me. I'm not Aboriginal but I have dark skin.'

Public Perception, Public Space Policy and Policing

The media and public officials can play a major role – positive or negative – in the creation and modification of public perceptions of homeless people and Indigenous people inhabiting public space. Authorities have an obligation to ensure the creation and maintenance of a society in which all peoples' rights to inhabit public space are respected and upheld, irrespective of poverty, race, age or other personal characteristics.

³⁹ Ross and Polk, above n13, at 147.

⁴⁰ See Robyn Lincoln and Paul Wilson, 'Aboriginal Criminal Justice: Background and Foreground' in Duncan Chappell and Paul Wilson (eds), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*, at 205-221.

⁴¹ White and Perrone, above n22, at 42-53.

⁴² Richard Hil and Glenn Dawes, 'The "Thin White Line": Juvenile Crime, Racialised Narrative And Vigilantism – A North Queensland Study' (2000) 11(3) *Current Issues in Criminal Justice* 308.

The results of the survey reported on in Chapter 5 indicate that police are tending to adopt a ‘zero-tolerance’ approach to homeless and Indigenous people in their current use of move-on powers. It is suggested that this approach may be due to public and political pressure to ‘clean-up the streets’ by making homeless and Indigenous people less visible in public places. As one respondent said:

‘[I was] asked for ID... asked to empty out all my pockets. He said I was swearing at him, but I was just calling him “cop”. I had to take off my boots and socks. He made me squat and take off my pants to see if I had any yamdi in my bum... Police need to do some training about Murris and understanding culture.’

The media, fear of homelessness and the move-on powers

The mass media provides most of the public’s information on crime;⁴³ and yet the ‘virtually universal finding in the literature is that media representation exaggerate both the levels of serious interpersonal crime in society and the risk of becoming a crime victim’.⁴⁴ Obviously this is problematic, particularly for marginalised groups in society who tend to be the targets of ‘moral panics’ generated by the media.⁴⁵

Dominant media representations of homelessness include themes of violence, drug use and crime, and media portrayals of homeless people often rely on the stereotype of the homeless person as mentally ill, dirty and ill educated.⁴⁶ Elements within the media thrive on the creation of ‘moral panics’ which target specific groups, use sensationalised language and make demands for government action.⁴⁷ An example of this approach is evident in an article which appeared in *The Australian* newspaper with the headline ‘Blacks Blamed’.⁴⁸ The 300-word story arbitrarily links homeless Aboriginal people living in Kurilpa Point with the ‘bashing death’⁴⁹ of a Gold Coast man. Racialised accounts of violent crime such as this only

⁴³ Ibid.

⁴⁴ Chris Greer, ‘Crime and the media: Understanding the connections’ in Chris Hale, et al (eds), *Criminology*, 2005, at 163.

⁴⁵ Ibid, at 173-174. In a 1995 survey, conducted as part of the National Homelessness Awareness Strategy, most respondents agreed with the proposition that the media encourages sensational images and portrayals of homelessness. The survey, conducted by AGB McNair in 1995, is analysed in Sally Watson, ‘What does the Australian Community Think about Homelessness (and why does it matter?)’ (1998) 11(9) *Parity* 10-11.

⁴⁶ Cath Mackie and Guy Johnson, ‘Homelessness and the Print News Media’ (1998) 11(9) *Parity* 16-17, at 16.

⁴⁷ Greer, above n44, at 173-174.

⁴⁸ Sean Parnell, ‘Blacks blamed for City Violence’ (2005) *The Australian* 22 February 2005, 4.

⁴⁹ Ibid.

encourage negative perceptions of marginalised groups within society and create a distorted or ‘amplified’⁵⁰ fear in the audience of becoming the victim of a violent attack in a public place.

However, there are definitely elements within the media willing to present the alternate view of zero-tolerance policing and its effects on the marginalised. For example, in an editorial appearing in the *Courier Mail* in March this year, the following comments were made in relation to the potential for discriminatory use of the police move-on powers:

‘If a person gets moved on and they have no home, where do they go?
Who has the duty of care if they have been cast out of their safety zones?
If you ask vulnerable people to move on, surely you must also properly
equip and fund the places to which they can go.’⁵¹

It remains true however, that most media representations of homelessness are generally negative and involve constructions of homeless people as potentially violent and posing a ‘law and order problem’. In reality, there are two main categories of violence within homeless communities: acts of violence by homeless people against other homeless people; and acts of violence by non-homeless people against homeless people – ‘a homeless person being violent towards a non-homeless person is the least likely scenario’.⁵² While this may be the reality of homelessness and violent crime, reality is not reflected in the representations produced by the media and promoted by certain authorities.

The political reaction to fear and the improper use of ‘move-on’ powers

While it is widely acknowledged among criminologists that public perceptions of violent crime do not accord with the statistical data on crime,⁵³ policy-makers, politicians and other

⁵⁰ Gerry Bloustien and Mark Israel ‘Crime and the Media’ in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds) *Crime and Justice a Guide to Criminology*, 3rd ed, 2006, at 51.

⁵¹ Jane Fynes-Clinton, ‘Power to Oppress’ (2006) *The Courier Mail* 30 March 2006, Editorial, at 27. See also: Anon, ‘Spence pushes for uniform ‘move-on’ laws’ (2006) ABC News Online, 22 January <http://abc.net.au/news/australia/qld/capricornia/200601/s1552641.htm>; Kevin Smith, ‘The not so new move on powers’ (2000) *Land Rights Queensland*, October 2000, http://www.faira.org.au/Irq/archives/200010/stories/powers_move.html; Margaret Wenham, ‘Court provides a public space for questioning’ *The Courier Mail*, 9 June 2004.

⁵² Paul Memmott, ‘Responses to Indigenous People Living in Public Spaces’ (2002) 15(1) *Parity* 11.

⁵³ Ross and Polk, above n13, at 136.

public authorities often either fail to acknowledge facts or blatantly distort facts about crime in public spaces as a cynical political strategy.

The latter approach is evident in a recent statement by Queensland's former Opposition Leader, Laurence Springborg. In a media release on the party's response to the introduction of the move-on powers, Mr Springborg was quoted saying: 'Families should be able to enjoy local parks and green spaces without the fear of being harassed or even assaulted'.⁵⁴ The same media release also refers to the Nationals' calls 'for more extensive move on powers to help police crack down on public drunkenness and allow local communities to reclaim their streets and parks'.⁵⁵ This statement is an obvious attempt to benefit from the perceived popularity of tougher 'law and order' measures and it panders to a distorted public perception of violent crime. In reality, there is no need for 'local communities to reclaim their streets and parks' and such a statement is an example of the type of damaging 'scaremongering' that is at times utilised by political figures desperate to gain public support.

Still it should be recognised that some people may find the presence of homeless people confronting or disturbing,⁵⁶ and there will inevitably be some people who have a fear of homeless Indigenous people who inhabit public space. Yet, the ongoing representation of Aboriginal people within the media 'as a law and order problem'⁵⁷ does nothing to dispel fears and may mean that fear or suspicion of Indigenous homeless people is even more extreme than the fear or suspicion of homeless people generally. Unfortunately there is a tendency for politicians to tap into these fears to obtain political advantage. As a local media commentator recently noted:

'On perceived matters of law and order, few politicians want to be seen to dissent or be cautious. Overtones of lock 'em up or move 'em out of sight are big vote winners: big words and heavy-handedness from those in charge make everyone feel safer'.⁵⁸

⁵⁴ Laurence Springborg, 'Police move on powers welcomed' *The Nationals Queensland*, <http://www.qld.nationals.org.au/news/default.asp?action=article&ID=288>.

⁵⁵ Ibid.

⁵⁶ See Brisbane City Council, above n18, foreword.

⁵⁷ Hil and Dawes, above n42, at 312.

⁵⁸ Fynes-Clinton, above n51.

The responsibilities of public authorities

Governments at both the state and local level in Queensland have made statements about the need for inclusion of Indigenous homeless people and have committed to introducing measures to remedy the marginalisation and criminalisation of Indigenous people in general. The *Queensland Aboriginal and Torres Strait Islander Justice Agreement* contains a commitment to significantly reduce the number of Indigenous people coming into contact with the criminal justice system.⁵⁹ It states that:

The long-term aim of this Agreement is to reduce the rate of Aboriginal and Torres Strait Islander peoples coming into contact with the Queensland criminal justice system to at least the same rate as other Queenslanders.⁶⁰

Yet, results from the survey reported on in Chapter 5 indicate that the current use of move-on powers is counter-productive to the expressly stated aims of the Queensland State Government in this respect.

The application of move-on powers is also occurring contrary to the goals of local government. The Brisbane City Council's Homelessness Strategy 2002-2006⁶¹ includes a Homelessness Charter which acknowledges a person's right to 'live rough or out in the open' and that for Indigenous people, there may be cultural reasons for the person's living situation.⁶²

In addition the Charter contains an *express* rejection of the 'zero-tolerance' approach:

'Council acknowledges that people are homeless for a range of reasons and in the absence of viable alternatives they should not be blamed or punished for their homelessness. We therefore recognise that a law enforcement approach is not an appropriate response to homelessness. The doctrine of

⁵⁹ Walsh, above n1, at 33.

⁶⁰ Agreements, Treaties and Negotiated Settlements Project, 'Queensland Aboriginal and Torres Strait Islander Justice Agreement (19 December 2000), <http://www.atns.net.au/biogs/A000637b.htm> at 11.

⁶¹ Brisbane City Council, above n18.

⁶² *Ibid* at 23.

“zero tolerance” does not address the cause of problems but only moves the problem on to another neighbourhood.’⁶³

Public authorities, including the police, have a duty to dispel irrational fears of the homeless and Indigenous people in public space, to educate the majority on the issues of the minority, rather than using marginalised and disadvantaged people to score political points.

Conclusion

The differential use of police move-on powers, and the discriminatory application of other public order laws against homeless Indigenous people, does not constitute a sound law and order strategy. The people who are being affected by these laws are not necessarily posing any threat to the peace and security of the wider public, and therefore they should not be subject to unnecessary interference with their liberties or used as political scapegoats and become the hapless targets of ‘zero-tolerance policing’.

If public authorities really want to develop effective strategies for addressing homelessness and other forms of visible social disadvantage, more funding should be found for service provision and less time and money should be spent on hiding these people from the public gaze, or ‘moving them on’.⁶⁴ There are a multitude of historical, social, cultural and economic reasons for Indigenous people occupying public space and experiencing homelessness, and it is vital that they are not criminalised for their disadvantage. The reality is that people inhabit public spaces because there is often nowhere else for them to be.⁶⁵ Differential or discriminatory applications of police move-on powers have the potential to criminalise people who are already amongst the most marginalised in our society. In a humane modern society it is imperative to ensure that having ‘nowhere else to go’ is not a crime.

⁶³ Ibid at 23-24.

⁶⁴ Paul Spooner, ‘Moving in the Wrong Direction’ (2001) 20(1) *Youth Studies Australia* 27.

⁶⁵ People living in public space may be escaping a violent home or may not be able to access any stable shelter, accommodation or housing; see Department of Family and Community Services, above n4.

CHAPTER 7:

THE IMPACT OF MOVE-ON POWERS ON YOUNG PEOPLE*

Introduction

This chapter will focus on how the use of move-on powers impacts disproportionately on young people. Young people experience homelessness differently to other homeless people. The results of the empirical research reported in Chapter 5 demonstrate that young people are sometimes targeted by police, and are more vulnerable because of their age; thus they are impacted in a different way by the move-on powers. This chapter will examine issues specific to young people and how they are perceived by society. The use of the move-on powers in practice and how they impact specifically on youth will be explored.

Youth in focus: examination of a marginalised group

Perceptions of young people

One of the main reasons that young people are often targeted by ‘public space’ laws is because of their visibility as a group in public space. Additionally, people have a certain preconception of what they are like, so only a small indiscretion on their part is enough to bring a disproportionate reaction from authority figures. As Paula Grogan has said: ‘Young people are often perceived as troublemakers, associated with criminal or deviant behaviour, and viewed with fear or suspicion by other community members.’¹

This is exacerbated when they congregate in public places, as any threat people feel is increased by the sense that these people are ‘claiming’ or ‘taking over’ a place which is meant for the enjoyment of all. This is clearly a question of perception, as more often than not, these groups of young people do not pose an actual threat. Unfortunately, the unreasonable perception by society of youth as threatening is often echoed in police treatment of young

* This chapter was substantially written and researched by Hillary Nye.

¹ Paula Grogan, ‘Out of Order? The Increasing Regulation of Young People in Public Space’ (2006) 19(1) *Parity* 85, 85.

people – and broad powers such as the move-on powers facilitate this.² As Forsyth powerfully argues, ‘young people are typically cast as villains and occasionally victims, but not as community stakeholders with the rights to access public spaces freely and without harassment.’³

Youth ‘gangs’

Young people tend to congregate together for safety – physical or emotional – but this very act can be perceived as threatening. A gathering of youth may be seen as a ‘gang’, which may engender fear in others, while, ironically, the motivation was personal security to start with.⁴

There is evidence that simply by virtue of being in a group, young people are much more vulnerable to being moved on. In the NSW Shopfront Youth Legal Centre’s research, 78% of young people were with friends when moved on, and 40% of these were in a group of four or more.⁵ The perception of youth gatherings as ‘gangs’ clearly plays a part in the way public order laws are applied. As one respondent to our survey said:

‘It is a load of crap. Because I am doing nothing wrong and I am told to move-on. Someone else may be messing around and we all get in trouble.’

Personal expression & identity

The negative perceptions of young people can be caused by the clothing, hairstyle, or behavioural choices young people make. Young people tend to do certain things to rebel against society’s norms, and to express their individuality. Youth is a time of discovery and identity-creation. Dressing or behaving in a non-conformist manner is a way of expressing individuality. This adds to the visibility of young people in public space.

² Shopfront Youth Legal Centre, *Submission to NSW Ombudsman Re: Crimes Legislation Amendment (Police and Public Safety) Act 1998*, (2003), at 22.

³ Anna Forsyth, ‘Shelter from the Storm?’ (2006) 19(1) *Parity* 82, 83.

⁴ Rob White, ‘Cleaning up the streets: Cultural Resistance, Coercive Force and Social Inequality’ (2006) 19(1) *Parity* 88.

⁵ Shopfront Youth Legal Centre, above n2, at 17.

Many young people align themselves with outsider groups in order to find a sense of belonging or community. This can further alienate them from society. Because of their clothing, piercings, tattoos, or other non-conformist statements, they are viewed with intense scrutiny. This can translate to police attention: ‘the attitude and appearance of young people obviously play a part in shaping police perceptions and decisions’.⁶ Consequently, they may be denied the rights that conforming members of society get, such as the right to freely use public space. As one young respondent to our survey said:

‘I was approached because I’m a Goth – told to move on when [I was] doing nothing wrong – told they don’t want people like me hanging around here.’

The young person’s statement above illustrates two points: firstly, move-on powers are evidently subject to wide discretion and are currently being abused, and secondly, a person’s appearance does have an impact on the level of police scrutiny faced. Discrimination against those who don’t conform to society’s dress codes may not always be so clear-cut. But when it is not stated outright, it often operates below the surface to influence the decisions made by those in power.

What often attracts scrutiny and undeserved sanctions is not what young people do in public space, but their mere presence. It is frequently the case that groups already identified as threatening face police action even in the case of minor offences.⁷ The authorities are sensitised to their presence, so even a minor transgression generates a response. One young respondent to our survey said:

‘Police tell you to move-on and go home, but when you’re a streebie, it is your home’

⁶ Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia*, 2nd ed, 2002, at 249.

⁷ White, above n4 at 88.

Usage of the powers

General usage

Move-on powers fall into a category of law and order strategies known as zero tolerance; that is, behaviour deemed ‘antisocial’ is not to be tolerated.⁸ Governments allow police to have more power in order to take crime ‘seriously’.⁹ This includes pre-emptive measures, designed to clean up the streets. As has been noted in previous chapters, this often involves a great deal of discretion; for example, problems arise when what is considered antisocial is entirely up to the discretion of the person implementing the law at the ground level. Hard-line street policing tactics and the zero tolerance approach have been widely criticised.¹⁰ Indeed, it has been found that this sort of approach can be counterproductive by actually worsening the problem, in that it creates ‘resentment amongst young people toward authority figures’.¹¹ Such an approach will only make young people likely to have further trouble with the authorities. One young respondent to our survey said:

‘Police have too much power... [Queensland is] in jeopardy of becoming [a] full on police state where police have all the power and the average person has no power whatsoever.’

Another young respondent said:

‘They make me feel less of a citizen. I can’t hang around my own state – my own Brisbane. If we can’t live here, where are we supposed to go? We can’t afford to move.’

⁸ Ibid.

⁹ Ibid.

¹⁰ See for example Rob White, ‘Police and Community Responses to Youth Gangs’ (2004) 274 *Australian Institute of Criminology* 1, at 3.

¹¹ Ibid.

Use of the move-on powers in New South Wales

As has been noted in previous chapters, New South Wales has similar move-on legislation to Queensland,¹² and is therefore an excellent source of empirical data relevant to the situation in Queensland. The NSW legislation allows police to move-on a person reasonably believed to be harassing or intimidating another person or causing fear in them.¹³ Although there are safeguards in place, this has done little good in practice, as there is limited or no accountability.¹⁴

There is some evidence in NSW that the powers are being arbitrarily used against homeless people, particularly those who are young.¹⁵ In fact, in 1999, it was reported that 48% of those who had been moved on by police were under 17 years of age.¹⁶ The report which made these findings advised the NSW police force to monitor the use of these powers closely, as this kind of activity may have an adverse impact on relations with the community, especially those sections of the community who are most affected.¹⁷ The Shopfront Youth Legal Centre has reported numerous incidents of young people being told to move-on ‘for no apparent reason’.¹⁸

Positive usage?

As has been noted in previous chapters, move-on powers have been justified by the claim that they may be used as an alternative to arrest in situations where a person is engaged in minor offending behaviour (such as public drinking). However, the counter argument is that the use of the move-on powers can actually create a situation leading to an arrest.¹⁹ For young people, this is of more particular concern, as such an arrest may mark a young person’s entry into the criminal justice system; in the long-term, this can be very damaging. Society should aim to keep young people out of the criminal justice system for as long as possible, in order to avoid

¹² See the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)

¹³ Helen Jefferson Lenskyj, *Review of Recent Legislation on Police Powers and Public Behaviour in New South Wales, Australia: An Olympic Police State?*, 2000, http://www.breadnotcircuses.org/police_state_aus_article_hlenskyj.html.

¹⁴ *Ibid.*

¹⁵ Lenskyj, above n13.

¹⁶ Grogan, above n1, at 87.

¹⁷ *Ibid.*

¹⁸ Shopfront Youth Legal Centre, above n2, at 4.

¹⁹ Queensland Public Interest Law Clearing House, *Submission: Brisbane City Council Move-On Power Applications*, 2005, at [6].

future involvement in a deviant lifestyle.²⁰ Once inside the sphere of the justice system, it can be hard for young people to start over.

Further, if a fine is ultimately issued, a young person will invariably find it impossible to pay.²¹ Since fines are often imposed without consideration of the person's socio-economic status,²² they can greatly contribute to exacerbating the problem of homelessness.²³

Impact on youth

Homeless youth: their struggles

Youth homelessness is a widespread problem in Australia; Chamberlain and MacKenzie estimate that 25,000 to 30,000 school students experience homelessness for a period of time during a single year.²⁴ In the survey reported on in Chapter 5 of this report, 22% of homeless respondents were between the ages of 17 and 24.

Young homeless people face a different set of problems to other homeless people. Even when in a stable environment, with dependable housing, young people typically face problems of isolation, exclusion, uncertainty and alienation from their peers. This is only compounded by 'heightened regulation leading to the increasing exclusion of young people from public space'.²⁵ Because of their age and consequent vulnerability, police attention can have a negative impact on the mental and physical health of young people.

Because young people tend to be emotionally immature, it is common for their reactions to police attention to be hostile, aggressive, and even violent.²⁶ Unfortunately, this compounds the problem further, as a police may react in kind. Cunneen and White relate that as many as

²⁰ Cunneen and White, above n6, at 48.

²¹ See Philip Lynch's discussion of Andy in 'From 'cause' to 'solution': Using the law to respond to homelessness' (2003) 28 (3) *Alternative Law Journal* 127, 127.

²² Tamara Walsh, 'Won't pay or can't pay? Exploring the use of fines as a sentencing alternative for public nuisance type offences in Queensland' (2005) 17(2) *Current Issues in Criminal Justice* 217.

²³ *Ibid.*

²⁴ Chris Chamberlain and David MacKenzie, 'Youth Homelessness: Four Policy Proposals' (2005) 24(2) *Youth Studies Australia* 32, 32.

²⁵ Forsyth, above n3, at 83.

²⁶ Cunneen and White, above n6, at 261.

82% of police report having to apply force to a young person in the course of their job.²⁷ Given this, there is a great deal of ‘frustration and unease in the police-youth relationship [and] it is not unusual for emotions to boil over into physical confrontations.’²⁸ This often leads to more serious consequences than a move-on direction – it can be the beginning of the unfortunate cycle where young people enter the criminal justice system.

The targeting of homeless youth?

Youth, like other marginalised groups such as Indigenous people, are disproportionately affected by move-on directions. Clearly the legislation promotes equality in form; it does not specify that young people can be moved on more frequently. Yet, research and anecdotal evidence suggest that direct targeting does occur.²⁹ Many homeless people feel targeted by police, and many report being treated differently to other non-homeless public space users.³⁰ Selective enforcement of laws is a proven phenomenon and a significant way in which the law itself contributes to homelessness.³¹ As one young homeless respondent to our survey said:

‘I have to walk around for ages sometimes trying to find somewhere else safe enough to go back to sleep. Police abuse their rights, and take away ours. They should not be able to continue this bullshit.’

Young people may also be indirectly targeted by police use of move-on powers. There are two ways this occurs. Firstly, young people may be less confident to argue with a police officer, and more easily taken advantage of, so a higher percentage may be moved on without addressing the validity of the police officer’s direction.

Secondly, and even more crucial, is their behaviour. Young people ‘are particularly vulnerable to sanctions because they are more frequently in the public eye and so their

²⁷ Ibid.

²⁸ Ibid.

²⁹ Anthony Cowie, *How do young homeless people interact with their environment and access public space in Townsville?* (Honours Thesis, James Cook University, 2005), at 40.

³⁰ Tamara Walsh, ‘Who is the ‘public’ in ‘public space’? A Queensland perspective on poverty, homelessness and vagrancy.’ (2004) 29(2) *Alternative Law Journal* 81, at 84.

³¹ Lynch, above n21, at 128.

behaviour comes under greater scrutiny.’³² So while that behaviour might be merely sitting with friends, the added factor of the person’s age makes them a much greater target for police attention.

Young people can also be indirectly targeted because of their strong connection with public space.³³ They ‘seek privacy, test boundaries and enjoy leisure time in public space’.³⁴ It is natural, then, that they will occasionally engage in behaviour that some people find objectionable. However, it is important to note that the bulk of this behaviour is not illegal. In a random survey of Australian young people, 80% had been stopped by police, and 70% of these stated that they had simply been ‘hanging out’ when approached.³⁵ As argued by the Anti-Discrimination Commission Queensland, young people have a right to use public space like any member of the community, and that right is highly likely to be infringed by the expansion of the move-on powers.³⁶

Conclusion

Young people, especially young homeless people, are adversely affected by the move-on powers. The impact on them is greater than it is on the general public. Young people face both indirect and direct targeting in terms of being moved on. This is in a large part due to the discretionary nature of the laws.

One young woman who responded to our survey summed up her views in this way:

‘[Move-on powers] aren’t used for the general public – just druggies or the homeless. The powers are used illegally by police in terms of moving us on too far away, for too long, or most often, for no reason. They suck.’

³² Grogan, above n1, at 85.

³³ Paul Spooner, ‘Moving in the wrong direction’ (2001) 20(1) *Youth Studies Australia* 27.

³⁴ Tamara Walsh, *No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland*, 2006 at 9.

³⁵ Cunneen and White, above n6, at 259.

³⁶ Anti-Discrimination Commission Queensland, *Submission to Brisbane City Council regarding its application for declarations of notified areas at Kurilpa Point, King George Square and New Farm Park*, 2005, at 6.

CHAPTER 8: RECOMMENDATIONS

The foregoing analysis, both empirical and theoretical, implies that move-on powers in Queensland are currently applied in an unjust manner. It has been shown that their use results in extreme hardship to homeless people in inner-city Brisbane, particularly those who are young and/or Indigenous.

Five recommendations for reform, based on the findings made in this report, are outlined below:

Recommendation 1

That section 38 of the *Police Powers and Responsibilities Act 2000* (Qld) be repealed, so that only a person's 'behaviour' and not merely their 'presence' can trigger a move-on direction.

Recommendation 2

That section 37 of the *Police Powers and Responsibilities Act 2000* (Qld) be amended so that police officers are only permitted to issue a move-on direction if there is a reasonable likelihood that the safety or security of a member of the public will be threatened unless the police officer intervenes.

This could be achieved by:

- 1) replacing section 37(1)(a) with the equivalent provision in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which reads (at s197(1)(c)) 'causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness'; and

- 2) replacing section 37(1)(c) with the equivalent provision in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which reads (at s197(1)(b)) ‘constitutes harassment or intimidation of another person or persons’.

Recommendation 3

That a statutory defence of reasonable excuse be available to persons charged with contravening a move-on direction under section 445 of the *Police Powers and Responsibilities Act 2000* (Qld).

Recommendation 4

That the maximum fine amount for contravening a police direction be reduced to 3 penalty units (\$225), so it is in line with equivalent provisions in other Australian jurisdictions.

Recommendation 5

That the process for publicly reporting on the use of move-on directions in the QPS Annual Statistical Review include data about a person’s age, housing status, whether they are of Aboriginal or Torres Strait Islander descent, and the location, timeframe and reason provided for the move-on direction.