

# The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

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**Advice to:** Crime and Misconduct Commission

**Topic:** Review of Police Move-On Powers

**Date due:** 20 February 2009

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Thank you for inviting comment from the Commission for Children and Young People and Child Guardian (the Commission) in relation to the Crime and Misconduct Commission's (CMC) Review of Queensland's Police Move-On Powers (the Review).

The Commission acknowledges the importance of police having the capacity to move citizens on in certain circumstances, including for the protection of children and young people. However, the Commission is concerned that police move-on powers disproportionately affect young people, which may be having more severe impacts on young people if the move-on directions issued are also leading to higher incidences of associated criminal charges.

## **The Commission's recommends that:**

1. The Review determine the incidence of criminal charges laid against children and young people for not obeying a move-on direction or associated non-compliance offences
2. Further legislative guidance for determining what is a circumstantially 'reasonable' direction under s.48 be provided, and
3. the use of 'causing anxiety to a person' in s.47(1)(a) as a ground for exercising move-on powers be tightened by applying a 'reasonable person' test.

## **1. The Review determine the incidence of criminal charges laid against children and young people for not obeying a move-on direction**

Empirical studies undertaken on move-on powers to date have consistently found that certain groups of people are more adversely affected by the exercise of police move-on powers than others<sup>1</sup>. These studies indicate that young people (as well as indigenous people and homeless people) are disproportionately affected by police move-on powers and are more likely to be moved-on than other community members<sup>2</sup>.

This could mean that the move-on provisions in the *Police Powers and Responsibilities Act 2000 (Qld)* indirectly discriminate against young people<sup>3</sup>.

However, the question most relevant to the Commission is, does this apparent overrepresentation of young people as recipients of move-on directions lead to higher numbers of young people being criminally charged with non-compliance offences as a result of not following police move-on directions?

Australian research has demonstrated that:

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<sup>1</sup> *You're Not Welcome Here: Police Move-On Powers and Discrimination Law*, Tamara Walsh & Monica Taylor, UNSW Law Journal, Vol 30(1) 2007, 151 at 151; *Policing Public Safety*, Paul Spooner 1999 and *Moving in the Wrong Direction: An Analysis of Police Move-On Powers in Queensland*, Youth Studies Australia (2001) 20(1) 27

<sup>2</sup> *Ibid*

<sup>3</sup> *You're Not Welcome Here: Police Move-On Powers and Discrimination Law*, Tamara Walsh & Monica Taylor, UNSW Law Journal, Vol 30(1) 2007, 151; *Policing Public Safety*, Paul Spooner 1999

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- the use of move-on powers does not result in fewer arrests for public space offences and in fact, as the use of move-on powers increased, so did the number of charges for public space offences<sup>4</sup>, and
- move-on powers are frequently accompanied by an arrest for obstructing or assaulting police, public nuisance or failing to follow the direction<sup>5</sup>.

Given the potentially adverse impacts on children and young people of being moved on and subsequently criminally charged for not doing so, the Commission recommends that the numbers of children and young people criminally charged for not obeying a move-on direction or associated non-compliance offences be examined as part of the Review.

The application of move-on powers to children and young people needs to be considered carefully to ensure that move-on powers are being used in a manner consistent with the intention of the legislation, that is to reduce the need for people to be formally charged and dealt with by the criminal justice system and prevent more serious crime from occurring. To assist with this, the Commission recommends the following measures to help reduce the overrepresentation of young people as recipients of move-on directions:

2. provide further legislative guidance for determining what is a circumstantially 'reasonable' direction under s.48, and
3. tighten the usage of 'causing anxiety to a person' in s.47(1)(a) as a ground for exercising move-on powers by applying a 'reasonable person' test. This extremely broad ground does not require the recipient of a move-on direction to do or say anything offensive, obstructive or unlawful. Their mere presence can trigger an anxious reaction from another person and in circumstances where a move-on direction is issued on the basis of stereotyped views regarding what a young person might do, a police officer may still be capable of maintaining that they were acting in accordance with the legislation, due to the broad construction of s.48(1)(a). In the Commission's view, this ground should be subject to a consideration of whether a reasonable person would be caused anxiety in the circumstances.

Please do not hesitate to contact Yvette Norris, Principal Policy Officer, Strategic Policy and Research, ph: 30088986 (38986); e-mail: Yvette.Norris@ccypcg.qld.gov.au should any aspects of this advice require clarification.

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<sup>4</sup> 'You're Not Welcome Here': *Police Move-On Powers and Discrimination Law*, Tamara Walsh & Monica Taylor, UNSW Law Journal, Vol 30(1) 2007, 151 at 151

<sup>5</sup> *No Vagrancy: An Examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland*, Tamara Walsh (2007)