

# The New Public Disorder Laws: The Rise Of Move-On Powers

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Reading the newspaper in Australia can leave the reader with the impression that we are in grips of major crisis in public order. Community surveys reveal high levels of public anxiety about local 'law and order' problems. In the face of this moral panic over street crime and gangs, lawmakers have responded by significantly widening the powers of the police. 'Move-on' laws are one of the new weapons in the legal armory available to frontline police to prevent crime and deal with public disorder (Bronitt and McSherry, 2010). Adopted by all Australian jurisdictions during the 1990s, move-on powers combat a wide range of anti-social conduct. These powers have a strong preventive rationale permitting police officers to direct persons or groups to move-away from an area or to cease particular conduct. A distinctive feature of these powers, unlike arrest, is that they do not necessarily require any triggering offence to have been committed or indeed threatened.

## STUDENT ACTIVITIES

1. What are 'move-on' laws?
2. Why do you think they are thought to be necessary?

Statutory move-on powers supplement rather than replace the existing common law powers (which are available to citizens and police officers alike) to take reasonable steps to prevent a breach of peace. It is important to recognize that 'breach of the peace' is a not an offence in its own right, but rather provides a trigger for exercising a range of powers available under the common law and statute. Powers include entry onto private premises to prevent a breach of the peace, dispersal of a procession or assembly, seizure of property, and in one decision, the House of Lords recognised that, under common law, a person who attempted to 'jump the queue' at a bus stop could be lawfully restrained using force and arrested on the ground that such conduct was likely to provoke an imminent breach of the peace (*Albert v Lavin* [1982] AC 546). In Queensland, these common law powers governing breach of the peace have been put on a statutory footing in section 50 of the *Police Powers and Responsibilities Act 2000*, which provides that if a police officer reasonably suspects: (i) a breach of the peace is happening or has happened; (ii) there is an imminent likelihood of a breach of the peace; or (iii) there is a threatened breach of the peace; it is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful. What constitutes a breach of the peace is not defined in the statute, but remains a matter of consulting the current state of the common law on the topic.

It is not surprising then, that police in Australia have embraced statutory move-on powers in preference to the hodge-podge of ill-defined common law powers governing the limits of the constable's powers to 'Keep the Queen's Peace'!

## STUDENT ACTIVITIES

3. Explain three powers the police have that are aimed at keeping the peace.
4. Explain three rights individuals have if they are questioned or arrested.

Another attraction from a police perspective is that these new statutory move-on powers go further than the common law powers to prevent a breach of the peace. For example, sections 47 and 48 of the *Police Powers and Responsibilities Act 2000* (Qld), allow police officers to issue any direction that is reasonable in the circumstances where there is reasonably suspicion that the person's conduct is:

- causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances
- interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place
- disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place.

In all jurisdictions, except Western Australia, the relevant act contains a 'breach offence' that applies where the person subject to the direction fails or refuses to comply without lawful or reasonable excuse. Notwithstanding these breach offences, individuals do not always comply with the directions. Recent data gathered in Queensland revealed that the use of these powers (between 1 June 2005 to 3 May 2007) resulted in a sizeable proportion of directions being contravened. Of the 4478 move-on incidents recorded, 2219 (almost 50 per cent) were recorded as 'disobey move-on incidents'. Of these incidents, 1901 persons (1789 adults and 110 juveniles) were subsequently charged with disobeying that direction (CMC, 2010).

Over the years, public inquiries into these powers have identified problems with the administration of these powers. In New South Wales, a review of move-on powers by the Ombudsman noted that police officers did not always satisfy the statutory threshold for giving the direction, or follow the procedural safeguards in the act (Ombudsman, 1999). Also that there has been concern that these powers simply become a vehicle for asserting police authority on the streets improperly, and contribute to the over-policing of young people and minorities. The fact that the powers are triggered simply because a person's 'mere presence' causes anxiety potentially discriminates against vulnerable groups (such

as persons who are homeless and suffering mentally illness). Empirical research supports this concern about disproportionate use. A study by Spooner (2001) found that significantly more indigenous young people were issued move-on directions than non-indigenous young people. Indigenous youth represent only four per cent of the general youth population of Queensland yet they received 37 per cent of the directions to move-on (Spooner, 2001). This was confirmed by more recent data collected by the Crime and Misconduct Commission (CMC, 2010) that revealed that move-on directions were disproportionately applied to juveniles (aged 10–16 years) and those identified as Indigenous. Of the 6092 directions given – where Indigenous status was recorded – 42.6 per cent ( $n = 2494$ ) were Indigenous (CMC, 2010). Indigenous people were thus ‘20.2 times more likely to be given a recorded move-on direction than were non-Indigenous people’ (CMC, 2010, 19). The politically unpopular may also be subject to these laws, though several jurisdictions (Queensland and New South Wales) have excluded these powers from applying to peaceful protest or industrial action. Such exclusions do not apply in Victoria, the Australian Capital Territory, South Australia, Northern Territory and Tasmania.

From a public policy perspective, the original aims of the architects of move-on powers were admirable. Directing a person or group of persons to move away from an area before trouble starts can de-escalate situations and enhance community safety. Moreover, issuing such an order is preferable to arrest, providing officers with another diversionary tool that may be used to keep youth and minorities away from the courts and juvenile justice system. In practice, however, move-on powers operate as merely another pathway into the criminal justice

system. As this short comment sadly concludes, the wide scope and inherently discretionary nature of move-on powers pose significant risks of both arbitrariness and unfairness in the administration of criminal justice.

## STUDENT ACTIVITIES

- Do you think the ‘move-on’ laws give police too much power? Discuss.
- What problems can you see with the ‘breach offence’?
- Present a reasoned argument for and against ‘move-on’ laws.

## Legislation

*Crime Prevention Powers Act 1998* (ACT), s 4.

*Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), ss 197–200.

*Summary Offences Act* (NT), ss 47A–47B

*Police Powers and Responsibilities Act 2000* (QLD), ss 44–48.

*Summary Offences Act 1953* (SA), s 18.

*Police Offences Act 1935* (TAS), s 15B.

*Summary Offences Act 1966* (VIC), s 6.

*Criminal Investigation Act 2006* (WA), s 27.

## References

Crime and Misconduct Commission (CMC, 2010). *Police move-on powers: A CMC review of their use*. Brisbane, Queensland: Crime and Misconduct Commission.

NSW Ombudsman (Ombudsman, 1999), *Policing Public Safety – Report under s. 6 of the Crimes Legislation Amendment (Police and Public Safety) Act 1998* (1999).

Spooner, P. (Spooner, 2001). ‘Moving in the wrong direction: An analysis of police move-on powers in Queensland’ *Youth Studies Australia*, 20(1), 27–31.

Bronitt, S and McSherry B. (Bronitt and McSherry, 2010), *Principles of Criminal Law*, Thomson Reuters, 3rd ed. Ch 13.

# Legal Snapshot

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## High Court Decisions Enshrine The Right To Vote As A Fundamental Right In The Australian Constitution

Many Australians are not aware of the fact that Australian laws do not contain comprehensive protection of human rights. Indeed, the Australian Constitution contains very few human rights guarantees and Australia remains the only developed democracy in the world which does not have a Bill of Rights or Human Rights Act. Up until several years ago, it was not even recognised that Australians had a right to vote in federal elections.

## STUDENT ACTIVITIES

- Make a list of the rights listed in the *Commonwealth of Australia Constitution Act 1901* (the *Australian Constitution*).
- How are rights generally protected in Australia?
- Which state has a human rights act?

Back in 2007, Vickie Lee Roach, a female Aboriginal prisoner in Victoria, commenced legal proceedings to challenge the validity of amendments that were made to the Commonwealth *Electoral Act 1918* (Cth). Changes that had been introduced by the Commonwealth Parliament in 2006 meant that all prisoners were disqualified from voting in federal elections. Roach claimed that this ban was a denial of the fundamental human right to vote and was a breach of the *Australian Constitution*.

The issues raised by Roach in her case were of broad public interest. The High Court was asked to consider important questions about the right to vote, prisoners’ rights and the rights of Aboriginal and Torres Strait Islander peoples, as well as fundamental questions about representative democracy and responsible government. The basis of Roach’s argument was that the right to vote is an implied right in the *Australian Constitution* because of sections 7 and 24 of the Constitution. These sections require that the Senate and the House of Representatives be ‘directly chosen by the people’.

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