



ANTI DISCRIMINATION
COMMISSION QUEENSLAND

**SUBMISSION IN RESPONSE
TO DISCUSSION PAPER**

**REVIEW OF
*POLICE POWERS AND
RESPONSIBILITIES ACT 2000***

17 May 2010

1. Introduction

The Anti-Discrimination Commission Queensland (ADCQ) is an independent statutory authority established under the *Anti-Discrimination Act 1991*. Its functions include:

1. Providing education programs and information services about human rights; and
2. Promoting an understanding, public discussion and acceptance of human rights in Queensland.

This submission primarily focuses on the review purpose of:

Assessing the current safeguards that ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under the Police Powers and Responsibilities Act 2000.

The *Police Powers and Responsibilities Act 2000 (PPR Act)* is a primary source of power for police in performing their function of the enforcement of law and order in Queensland. The type of powers that are conferred by the *PPR Act* and how those powers are utilised by police performing their work can have a significant impact on the outcomes of law enforcement.

2. Background

It is well known that Indigenous people are overrepresented in the justice system.

In 2005 Indigenous prison rates were 2,021.2 per 100,000 compared to 162.5 for non Indigenous people, and 22 per cent of the total Australian prisoner population were Indigenous people (ABS, 2005, p3).¹

¹ Cunneen C. (2008) p252

The Crime and Misconduct Commission Queensland, in its November 2009 report *'Restoring Order - Crime Prevention, policing and local justice in Queensland's Indigenous communities'* (CMC Report) reports:²

- Indigenous people attract a disproportionately high percentage of police attention for reported crimes. Overall, Indigenous people account for about 3.5 per cent of the state's population but they make up 18.5 per cent of offenders in Queensland Police Service (QPS) crime report data.
- Indigenous young people made up 61 per cent of juveniles in detention in Queensland at 30 June 2007.
- Indigenous adults made up 27 per cent of those in prison in Queensland at 30 June 2008.

Significantly, the evidence shows that Indigenous people are highly overrepresented at the less serious end of the scale, for good order or public order offences such as offensive language and behaviour offences, which are said to rest heavily on the exercise of police discretion.³

Cunneen reports⁴ that the evidence shows clearly that Indigenous young people are:

- less likely to receive diversionary options like youth conferencing compared to non-Indigenous youth;
- more likely to be proceeded against by way of arrest;
- more likely to be refused bail and remanded in custody; and
- more likely to be sentenced to a period of detention.

² CMC Report, chapter 4

³ CMC Report, chapter 4

⁴ Cunneen & White, 2007, pp141-170; and Cunneen C. (2008) p 253

3. Principles

The 1991 *Royal Commission into Aboriginal Deaths in Custody* recommended that arrest should be used as a last resort when deciding to commence criminal proceedings.⁵ The *Royal Commission* established that the high number of deaths in custody of Aboriginal people in relation to the size of their population is explained by their disproportionate detention rates. Some of the reasons for the disproportion relate to social, cultural and legal factors, but others are more immediately related to the processes of the criminal justice system itself, starting at the point of policing and carrying through to sentencing in the case of charges and a finding of guilt.

The *Royal Commission* considered arrest as an area of policing practice and policy which can have significance for either increasing or decreasing the numbers of people, particularly Aboriginal people, in custody.⁶ The *Royal Commission* found:

...there is an urgent need to ensure that summons proceedings and other means of addressing offending, short of arrest, become more extensively used by police. Where practical matters, such as the amount of paperwork involved in policing intervention, may affect the use of non-custodial options by police, consideration should be given to changing the balance in favour of the non-custodial procedure.⁷

Specific human rights protections developed for children and young people include:

- detention as a last resort, the utilisation of alternatives to detention and the availability of a variety of sentencing dispositions;
- treatment with humanity and respect, treatment suitable for age, and treatment to promote a child's sense of dignity; and
- the promotion of the child's reintegration into society.

⁵ Recommendation 87

⁶ Royal Commission report, volume 3, Introduction to Part D

⁷ Royal Commission report, volume 3, 21.2.30

4. Issues

4.1 Arrest

In 1992 the Queensland Government indicated it supported the *Royal Commission* recommendation that arrest should be a last resort; but indicated that in the then occurring review of police powers, it would review ways of streamlining the summoning process, as the current procedures enabled arrest to be affected more easily than a summons.⁸

The ADCQ understands that since then, the implementation of this recommendation has been via the QPS Operational Procedures Manual, and that the instruction to police is that proceedings should be instituted by way of summons 'wherever practicable'.

In 2006, the Queensland government supported in principle the comments of the coroner in the initial inquest into the death of Cameron Doomadgee that the *PPR Act* should be amended to reflect the principle of arrest as a last resort, and supported the amendment of the Operational Procedures Manual to reinforce that officers should consider all other alternatives before arresting a person, particularly for minor offences.⁹

The support of the recommendation that the *PPR Act* be amended to reflect the principle does not appear to have been acted upon.

The ADCQ has not been able to locate any statistics from the police public information to be able to determine whether the principle of arrest being used as a last resort is being observed by police in performing their functions. The ADCQ understands that in New South Wales, attendance notices and on the spot fines are now being used in the majority of cases, and arrest occurs in the minority of cases.

⁸ Response by Governments to the Royal Commission, Volume 1, 1992

⁹ Queensland Government response to coroner's comments in the inquest into the death of Mulrunji as at 2 November 2006, items 1 and 4

The *CMC report* states that previous research conducted by the CMC suggests that arrest is not normally used for minor behavioural offences such as offensive language and public nuisance in Indigenous communities.

Even if it is the case that arrest is now only occurring in a minority of cases, if arrest is occurring in circumstances that are not appropriate, it can have the highly undesirable outcomes that led to the *Royal Commission into Aboriginal Deaths in Custody*.

As with all powers, the discretion to arrest for minor offences needs to be exercised with wisdom and judgement. Police officers need to consider the proportionality of their response to the incident. The arrest of Mr Doomadgee is a tragic example of a disproportional response to a public order incident. Mr Doomadgee was arrested for offensive language only which resulted in his death in custody and the subsequent public outcry and deterioration of relations between the police and the community.

The New South Wales Supreme Court has said:

This Court ...has been emphasising for many years that it is inappropriate for powers of arrest to be used for minor offences where the defendant's name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective. Arrest is an additional punishment involving deprivation of freedom and frequently ignominy and fear. The consequences of the employment of the power of arrest unnecessarily and inappropriately and instead of issuing a summons are often anger ... and an escalation of the situation leading to the person resisting arrest and assaulting the police.¹⁰

The discretion to arrest needs to be exercised with caution in relation to minor offences and minor public order incidents. It is about balancing the response to the

¹⁰ *DPP v Carr* [2002] NSWSC 194 at 35

behaviour from the objective of policing: providing a safe and secure environment in a caring community.

The ADCQ is concerned that some police officers do not appear to have taken on board the principle of arrest as a last resort.

4.2 Taking identifying particulars

Where proceedings are commenced by notice to appear or complaint and summons, the person can be served with an identifying particulars notice requiring them to attend a police station within 7 days to provide the identifying particulars.¹¹ If the person misplaces the notice or simply forgets to attend as required in the notice, they commit an offence.

The ADCQ has been informed that for many Indigenous persons who may be homeless or living away from their community, it is a frequent occurrence that the notice to attend is often lost or misplaced due to the relatively chaotic conditions in which that person may be living. While the aim is that persons should not be arrested in order to provide particulars, it is a highly undesirable outcome that a person may end up with 2 convictions simply through failing to follow a process requirement to attend at a police station.

If guilty of the original offence the person then has 2 convictions, and even if found not guilty of the original offence the person still has the conviction of failing to provide particulars. This result can be unduly oppressive, and again leads to Indigenous persons having extra convictions for a relatively minor procedural matter.

Consideration should be given to alternatives to the identifying particulars notice; for example, requiring identifying particulars only on conviction. This is consistent with the requirement to destroy the identifying particulars if the person is found not guilty of, or is not further proceeded against for the offence.

¹¹ PPR Act sections 469-470

5. Recommendations

1. That the *PPR Act* should be amended to reflect the principle of arrest as a last resort. The ADCQ supports the recommendation¹² that:

Section 365 be amended to provide that a police officer may only arrest an adult without warrant where the officer reasonably suspects that he or she has committed an offence and where they reasonably believe that no other action, in all the circumstances, is appropriate given the matters set out in section 365.

2. That a greater emphasis be placed on the implementation of the *Royal Commission* recommendation in the training, supervision and monitoring of police officers as they perform their duties.
3. That the QPS gather statistics on how often the arrest power is used in relation to public order and other minor offences.
4. That further consideration be given to the process for gathering identifying particulars, to minimise the likelihood of the person being served with the notice committing a further offence through failure to comply with the requirement to attend a police station within 7 days.

¹² Recommendation of the coroner in the initial inquest into the death of Cameron Doomadgee

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