

# Chapter 3: Contesting Public Space

## The Nuisance of Being Homeless

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In February, we were invited to contribute to the Manning Street Project, a partnership between the University of Queensland (UQ) and Caxton Legal Centre. Since 2011, the Manning Street Project has been investigating the issue of infringement notices for public nuisance offences in Queensland and their wider impact on disadvantaged sectors of the community.

It is well established that people experiencing homelessness are disproportionately impacted by laws regulating public spaces, and their enforcement. Cassandra Goldie, in the February 2006 Edition of *Parity* detailed her concern for the ubiquitous emergence of laws designed to regulate public areas through increased police powers and their legal significance for the homeless. She argued that police 'move-on' powers directly contravened human rights recognised by customary international law and relevant international instruments.<sup>2</sup> While an analysis of these arguments is not within the scope of this article, they remain relevant to our contention that the wide discretionary powers of police have, since then, continued to substantially and needlessly impact upon one of the more profoundly disadvantaged sectors of our community. Moreover, the new ticketing system in Queensland has, if anything further disadvantaged them.

### What is the New Ticketing System?

The system of issuing infringement notices for public nuisance offences was implemented as an alternative to issuing a notice to appear or arresting the person on the basis of a report published by the Crime and Misconduct Commission (CMC) in 2008.<sup>3</sup> The CMC report was written amidst considerable anxiety among community groups regarding the potential impact of the 'public nuisance' offence on marginalised groups.

The CMC's review of public nuisance recommended the introduction of ticketing to 'more effectively manage public nuisance offending from the perspective of the criminal

justice system'. The report stated that a ticketing scheme would offer a 'practical alternative for police and offenders rather than proceeding through the courts'.<sup>4</sup> It was said that the primary advantages of introducing a ticketing scheme would be lowering costs and increasing efficiency in the resolution of matters.

The findings of the CMC report led to a 12-month trial of a ticketing regime in the areas of South Brisbane and Townsville, the results of which were examined in a Queensland Government commissioned report by Griffith University. Police officers reported that public nuisance infringement

notices were an ideal step in the reduction of offenders, yet the Griffith Report concluded that there was a 20 per cent increase in recorded public nuisance offending rates in trial districts compared with 2008. Officers indicated that the ticketing scheme made it easier to police public nuisance offences, involving less paper work and allowing responses to be made in a timely fashion. With an increased number of public nuisance offences during the trial period, surveyed police commented that minor offences that were previously ignored were more likely to be resolved with the issuing of tickets.



## Problems with the Ticketing System

What became immediately apparent from the quantitative and qualitative data collected by the Manning Street Project and research conducted by Dr Tamara Walsh was uncertainty regarding the scope of the offence, and the potential for selective application in the use of ticketing.

The CMC report distinguished between two core groups of public nuisance 'offenders'—the 'party people' and the 'street people'. It was expected that the ticketing regime would target the former group, yet our research suggests that the majority of tickets have been issued to, so-called, 'street people'. The media and policy emphasis on the public nuisance offence focused on community unease with the growing violence in inner-city Brisbane, and elsewhere, driven by 'drunken and thuggish behaviour'. Yet, it seems that it is those who are disadvantaged who have received most of the tickets. Unfortunately, concerns expressed regarding selective enforcement against disadvantaged groups were treated by the CMC with little more than token regard. As feared by community legal advocates, the new regime has only further disadvantaged those experiencing homelessness or impaired capacity.

Almost none of the people who receive infringement notices (only around 1 per cent) challenge these notices in court. For people who are homeless or have impaired capacity, it is actually preferable for them to come before a court for public nuisance type offences. This is because, at court, they can access diversionary programs, such as the Special Circumstances Court and adequate support services. Alternatively, the court might just dismiss the charge. Instead, the ticketing regime transfers enforcement costs from the court system to the fine enforcement agency, the Special Penalties Enforcement Registry (SPER). Since people experiencing significant disadvantage are unable to pay their fines, the resource implications for SPER are significant.

The other problem with ticketing is that the person charged with the offence does not enjoy the protections offered by the criminal case law. The High Court stated in *Coleman v Power* that the offence of 'offensiveness' should not be applied in a manner that punishes 'deviance' and that a narrow interpretation should be preferred, specifically one that regulates behaviour that is 'likely to provoke unlawful physical retaliation'. In *Ball v McIntyre*, Kerr J stated that these offences should not be used to

'ensure punishment of those who differ from the majority'. Ticketing does not facilitate the observance of the *Coleman v Power* standard of offensiveness due to the arbitrary character of its enforcement and the extraneous factors that influence the respective officer's discretion. The broad definition of the offence itself, as well as related terms such as 'disorderly' and 'inciting, hindering or obstructing police', allow for the police to issue infringement notices for a wide array of conduct which could be manipulated to fall within the public nuisance category.

In a modern democracy that values personal freedom, community confidence in police is essential—their discretion must be exercised consistently and free of bias. Failure to take into consideration an individual's homelessness can only result in an unfair and unjust outcome. People experiencing homelessness are those least equipped to pay these fines. Our interviews with community service providers and homeless individuals themselves suggest that the ticketing system has only served to cause an attitude of carelessness in 'offenders'. It seems that many simply add the fine to their growing collection of unpaid debts with SPER, often resulting in serious charges. Ultimately this can lead to jail time. Fine default only leads to increased administrative and procedural costs that the system purported to eliminate.

The system of issuing infringement notices for public nuisance offences certainly has its place in the justice system. However, amendments are required to account for the more marginalised members of society. Previously, offenders were issued a notice to appear, providing them the opportunity to challenge any dubious fines in front of a magistrate. While this option is still available to offenders, it is rarely exercised—most people just cop the fine. The government's need for greater regulatory efficiency cannot be reconciled with its adverse impact on the state's most disadvantaged. We strongly encourage those affected to appeal their issued ticket where there is perceived injustice. Only through such challenges may the problems with the system be corrected. ■

### Footnotes

1. The Manning Street Project is a network of volunteer UQ law students who work on action research and law reform projects. Many students have worked on the public nuisance project at Manning St—in particular we would like to acknowledge the work of Darren Williams and Alan Hewson, who worked on this project for most of 2011. The Manning St Project is supervised by Tamara Walsh and Monica Taylor (probono@law.uq.edu.au).
2. Cassandra Goldie, 'Criminalisation People in Public Space in Australia and Canada' (2006) 19(1) *Parity*
3. Queensland Crime and Misconduct Commission (CMC), *Policing Public Order: A Review of the Public Nuisance Offence*, 2008
4. Griffith University, *Ticketing for Public Nuisance Offences in Queensland: An Evaluation of the 12-month Trial*, 2010

