

The Shopfront

YOUTH LEGAL CENTRE

Police move-on directions

1 The right to use public space

Public places like parks, streets and beaches are there for everyone to use and enjoy.

In New South Wales, there are laws which allow police to control the use of public places, including the power to issue “move-on” directions.

Police must have a reason for giving you a “move-on” direction. They can’t move you on from a public place just because you are loitering (hanging around) or because you can’t give them a reason for being there.

For the purpose of the “move-on” laws, **the legal meaning of “public place” is very broad** and includes:

- (a) Places that are open to everyone without restriction and without you needing a reason to be there – eg. streets, parks, beaches.
- (b) Places where there is some entry restriction – eg. pubs (where you have to be over 18), entertainment venues (which you might have to pay to get in to), or railway platforms (where you must have a train ticket).
- (c) Some places which are actually private property but do not belong exclusively to one person – eg. car parks or common areas belonging to blocks of flats.

2 History of move-on powers in New South Wales

The power to issue “move-on” directions was given to police on 1 July 1998, with the introduction of section 28F of the *Summary Offences Act 1988*. It gave police the power to give directions to people in public places. At the time, it was promoted as an “anti-gang” measure, to allow police to disperse people acting in a disruptive manner before the situation got out of hand¹.

A report by the NSW Ombudsman in 1999² highlighted some problems with the way the move-on powers were being used by the police. The main findings were:

- (a) A very high percentage (48%) of all directions were issued to people under 18, and to Aboriginal and Torres Strait Islander people (22%).
- (b) Directions were given for a variety of reasons, including that people were begging, intoxicated, in a high crime area, or merely had no reason to be there. In the Ombudsman’s opinion, about 50% of directions were issued without a valid reason.
- (c) Young people hanging about in groups, or street sex workers, were often thought to be intimidating or likely to cause fear by their mere presence.

¹ See the Second Reading Speech in the Legislative Council by the then Attorney-General, Mr Shaw, Hansard, pp4275-4277, 5 May 1998.

² Policing Public Safety, Report by NSW Ombudsman, dated November 1999, released publicly in June 2000, available at www.nswombudsman.nsw.gov.au.

The move-on power was expanded in 2001 to allow police to give directions to suspected drug dealers and purchasers. The Ombudsman has also reported on the use of “drug move on” powers, and has expressed some concerns about how the powers have been used against young people³.

On 1 December 2005, section 28F of the *Summary Offences Act 1998* was replaced by Part 14 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. Some further amendments were made to the move-on powers in December 2006.

In December 2005, as part of the emergency public disorder powers, police were given the power to break up groups.

In 2007, police were given powers to move on people who were intoxicated and behaving in a disorderly manner. Some amendments were made to these powers in 2011, to make it easier for police to give directions, and to introduce a new offence of being intoxicated and disorderly in a public place after being given a direction.

3 General move-on powers

3.1 When can police issue a direction?

Section 197 of the *Law Enforcement (Powers and Responsibilities) Act* allows a police officer to give a **reasonable direction** to a person in a **public place** if the police officer has **reasonable grounds to believe** that the **person's presence or conduct**:

- (a) is **obstructing** another person or persons or traffic; or
- (b) constitutes **harassment or intimidation** of another person or persons; or
- (c) 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**; or
- (d) is for the purpose of **unlawfully supplying**, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any **prohibited drug**; or
- (e) is for the purpose of **obtaining, procuring or purchasing any prohibited drug** that it would be unlawful for the person to possess.

Paragraph (c) in particular can cause real problems, because it is not necessary that the person is *actually* causing fear to anyone else! **It seems it is possible for the police to give a direction on the basis of fear to a hypothetical person, even if there is no one else around.**

A direction may not be given to anyone taking part in an **industrial dispute**, an apparently genuine **demonstration or protest**, a **procession** or an **organised assembly** (*Law Enforcement (Powers and Responsibilities) Act* s200).

3.2 What sort of direction the police may give

The law does not say exactly what type of direction the police may give. However, the direction must be **reasonable in the circumstances** to reduce or eliminate the obstruction, harassment, intimidation or fear, or to stop the sale/purchase of drugs (*Law Enforcement (Powers and Responsibilities) Act* s197(2)).

³ Review of the *Police Powers (Drug Premises) Act 2001*, Report by NSW Ombudsman, August 2005, available at www.nswombudsman.nsw.gov.au.

Examples of reasonable directions include telling people to stop fighting, or to move away from a doorway they are blocking. It is probably *not* reasonable to give people a standard-form map of the area (with whole blocks marked "out of bounds") and tell them not to come back for several hours or seven days. At least one Local Court has held that a seven-day direction was unreasonable⁴.

The Ombudsman's report (mentioned in the introduction to this document) discusses what types of directions may be reasonable and unreasonable⁵.

3.3 What the police must tell you

When giving a direction, a police officer must:

- (a) provide **evidence that they are a police officer** (unless they are in uniform);
- (b) give their **name and place of duty**; and
- (c) tell you the **reason for the direction**.

(*Law Enforcement (Powers and Responsibilities) Act* s201).

If police are giving a **direction to one person only**, they must give this information **before** giving the direction.

If police are giving a **direction to a group** of people, they must give this information before giving the direction only if it's reasonably practicable. Otherwise they must provide the information while they are giving the direction or as soon as possible afterwards (*Law Enforcement (Powers and Responsibilities) Act* s201). The police don't have to repeat all the information to everyone in the group (*Law Enforcement (Powers and Responsibilities) Act* s198A).

If you do not comply with the direction, the police must **warn** you that you are required by law to comply. If you still don't comply, the police must give a warning that failure to comply is an offence (*Law Enforcement (Powers and Responsibilities) Act* s201).

3.4 Failure to comply with police direction

Failure to comply with a police direction is an offence if:

- (a) the direction given is **reasonable**;
- (b) the police have given the required **information and warnings**;
- (c) you **persist** with the "relevant conduct" (the problem behaviour) or any other "relevant conduct"; and
- (d) you can't prove you had a **reasonable excuse** for not complying.

(*Law Enforcement (Powers and Responsibilities) Act* s199)

The **maximum penalty** for this offence is 2 penalty units (currently \$220).

A person who is alleged to have disobeyed a police direction will usually be given a \$220 infringement notice (on-the-spot fine). Sometimes the police will instead arrest and charge the person.

⁴ *Police v Sayoutinh*, Liverpool Local Court, 10 May 2002.

⁵ Policing Public Safety, Report by NSW Ombudsman, November 1999, pp 250-263.

4 Power to move on intoxicated people

4.1 When can police issue a direction?

Section 198(1) of the *Law Enforcement (Powers and Responsibilities) Act* came into force on 21 December 2007 and was amended on 7 June 2011.

Police can give a direction to a person in a public place who is an **intoxicated person**. This means a person whose speech, balance, co-ordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that this is due to alcohol or any drug.

A direction may be given if the police officer believes on reasonable grounds that the person's behaviour in the place as a result of the intoxication:

- (a) is likely to cause **injury** to anyone else or **damage to property**, or otherwise causes a **risk to public safety**; or
- (b) is **disorderly** (there is no definition of "disorderly").

Until an amendment which took effect on 7 June 2011, police could only give directions to people who were part of a group of 3 or more intoxicated persons. Directions may now be given to single intoxicated persons.

4.2 What sort of direction the police may give

The police may tell you to **leave the public place and not return for up to 6 hours** (*Law Enforcement (Powers and Responsibilities) Act* s198(1) and (3)).

The direction must be **reasonable** in the circumstances for the purpose of preventing the injury or damage, reducing or eliminating the risk to public safety, or preventing the continuation of disorderly behaviour in a public place (*Law Enforcement (Powers and Responsibilities) Act* s198(2)).

Just like a direction under s197, a direction under s198 may not be given in relation to an industrial dispute, protest, etc (*Law Enforcement (Powers and Responsibilities) Act* s200).

4.3 What the police must tell you

The police must give you the same information and warnings as for a general move-on direction under section 197 (*Law Enforcement (Powers and Responsibilities) Act* s201).

4.4 Failure to comply with direction

Just like a direction under s197, failure to comply with a direction under s198 is an offence (*Law Enforcement (Powers and Responsibilities) Act* s199).

The maximum penalty is the same (2 penalty units, which is currently equal to \$220).

4.5 Being intoxicated and disorderly in a public place after being given a direction

As of 30 September 2011, it is now also an offence to be found intoxicated and disorderly in any public place in NSW, within 6 hours of being given a move-on direction because of intoxication and disorderly conduct (*Summary Offences Act* s9).

The maximum penalty is 6 penalty units, currently equal to \$660.

It is not an offence if you have a reasonable excuse (for example, you are still on your way home, or you are homeless and you have nowhere to go).

A person cannot be charged both with this offence and failing to comply with a direction (*Summary Offences Act* s9(4)).

5 Power to demand name and address

As of 1 November 2011, a police officer may ask for your name and address if:

- they do not already know these details; and
- they intend to give you a direction to leave a place (either under the general move-on powers or because you are intoxicated).

(*Law Enforcement (Powers and Responsibilities) Act* s11(2)).

The police must give you the same information and warnings as when they are giving you a direction (*Law Enforcement (Powers and Responsibilities) Act* s201).

If the police have given you this information and warnings, you must provide your name and address. The police can also ask you for documentary ID but you do not have to provide it.

Failure to provide your name and address, or giving false information, is an offence with a maximum fine of \$220 (*Law Enforcement (Powers and Responsibilities) Act* s12).

6 Emergency public disorder powers

6.1 When can these powers be used?

After the “Cronulla riots” in December 2005, the NSW Parliament enacted emergency laws giving police special powers to deal with “**large-scale public disorder**”. These powers are in Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

To use the emergency powers, the Commissioner of Police (or a Deputy or Assistant Commissioner) must issue an **authorisation** for a certain **target area**. The authorisation can only last for 48 hours unless it is extended by the Supreme Court (*Law Enforcement (Powers and Responsibilities) Act 2002* ss87D-H).

A **target area** could be a few blocks, a whole suburb or maybe an even larger area.

6.2 Grounds for issuing a direction

The police may give a direction to any **group of people** (or any members of that group) within a **target area** (*Law Enforcement (Powers and Responsibilities) Act* s87MA).

6.3 What sort of direction the police may give

The police may direct the group to **disperse (break up) immediately** (*Law Enforcement (Powers and Responsibilities) Act* s87MA). It appears that the police can do this even if they have no reason to think that breaking up the group will help prevent or control the public disorder.

6.4 What the police must tell you

The police must give you the **same information and warnings as for a general move-on direction** under s197 (*Law Enforcement (Powers and Responsibilities) Act* s201).

The police must also **warn you that the direction is given for the purpose of preventing or controlling a public disorder** (*Law Enforcement (Powers and Responsibilities) Act s87MA*).

6.5 Failure to comply with direction

Failure to comply with such a direction, without a reasonable excuse, is an offence. The maximum penalty is 50 penalty units (currently equal to \$5,500).

7 Challenging fines and defending charges in court

If you are given a penalty notice (on-the-spot fine) for failing to obey a police direction, don't ignore it! Failure to pay fines can lead to all sorts of nasty consequences, including being hassled by the State Debt Recovery Office and being unable to get a driving licence.

You have the option of filling in the "**court election**" on the back of the penalty notice (we recommend that you get some legal advice before doing this). You will be given a court date and will have the chance to defend the matter.

Instead of giving you a penalty notice, the police may give you a **court attendance notice**. If you end up in court, you should try to get some legal representation and consider pleading not guilty. Even if you are found guilty (or plead guilty) the court might still reduce the fine or dismiss the charge without recording a conviction.

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The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people, provided by Freehills in association with Mission Australia and the Salvation Army.

This document was last updated in December 2011 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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