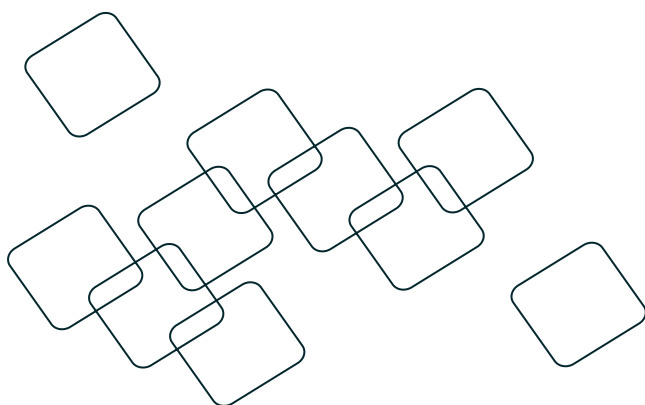


# Part Three.

# Drug move-on powers.



## Chapter 9. Introduction

An amendment to the Summary Offences Act on 1 July 2001 introduced by the Drug Premises Act gave police the power to give a reasonable direction to a person if they have a reasonable belief that they are in a public place for the purpose of buying or selling drugs.

This chapter contains the following:

- a brief history of reasonable directions powers in NSW and a discussion of some of the difficulties that have arisen from the insertion of the drug move-on powers into section 28F of the Summary Offences Act
- an outline of the ambit of the drug move-on powers, and the procedural requirements that relate to their use
- a discussion of the difficulties in establishing reasonable grounds to believe that the purpose of a person's presence in a public place is to buy or sell drugs
- an outline of the training that police have received about the use of the drug move-on powers
- an overview of key concerns that have been raised about the drug move-on powers and
- the methodological difficulties that are inherent in assessing how these powers have been implemented.<sup>818</sup>

Our scrutiny of the operation of the drug move-on powers was largely conducted through two research strategies. The first involved a detailed examination of the use of the powers in the Cabramatta LAC in the first year of the review period. We focused on Cabramatta because a key impetus for the introduction of the legislation was to assist police in dealing with the street-level drug trade in that area. We have set out the findings of this research in the chapter, "Drug Move-ons in Cabramatta".

Our second research strategy involved an audit of the use of the drug move-on powers in twelve other LACs in NSW in the second year of the review period. A statistical snapshot of how often the drug move-on powers were used over the review period in each LAC in NSW is also provided. This research is set out in the chapter, "State-wide move-ons".

### 9.1. The original reasonable directions powers — background

Statutory powers to issue reasonable directions were first conferred on NSW police by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998* (Police and Public Safety Act) which commenced on 1 July 1998. The Police and Public Safety Act gave police a range of new statutory powers, including the power to issue reasonable directions to people in a public place (the move-on powers) and

<sup>818</sup> These are discussed more fully in the "Methodology" chapter at the beginning of this report.

to conduct searches for knives and other dangerous implements. The Police and Public Safety Act was said to be a clear statement by the New South Wales Government in regard to:

*... the sort of community we want this state to be - a community where ordinary people, young and old, can go out without fear of harassment or intimidation, without fear for their safety from knife wielding thugs.*<sup>819</sup>

The Act created the original move-on powers by inserting a new section 28F into the Summary Offences Act. According to these move-on powers police could issue a direction in instances where a person's behaviour or presence in a public place constituted obstruction, harassment or intimidation, or caused fear.<sup>820</sup> These criteria are referred to in the legislation as relevant conduct. The original move-on powers in section 28F(1) read as follows:

- (1) *A police officer may give a direction to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place (referred to in this section as "relevant 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 is 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.*<sup>821</sup>

## 9.2. The Drug Premises Act: the extension of reasonable directions powers

The Drug Premises Act has extended police powers to issue directions by amending section 28F of the Summary Offences Act. These new provisions are clearly aimed at the street-level drug trade. The amendments to section 28F(1) add the following conduct as a grounds for issuing a direction:

- (d) [conduct that] 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) [conduct that] is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.*<sup>822</sup>

Any type of direction can be issued by police, provided it is reasonable in the circumstances, for the purpose of:

- (b) stopping the supply, or soliciting to supply, of the prohibited drug, or*
- (c) stopping the obtaining, procuring or purchasing of a prohibited drug.*<sup>823</sup>

If a direction has been issued twice, in accordance with the procedural requirements in the Act, and has been disobeyed on each occasion, an offence has been committed. No custodial penalty applies to this offence, and the maximum penalty is a fine of \$220.<sup>824</sup>

In this report, we refer to these powers as the drug move-on powers. In addition, clauses (d) and (e) of section 28F(1) specify distinct activities, like procuring any prohibited drug or soliciting another person to supply, and we refer to the two aspects of the drug move-on powers as buying and selling prohibited drugs.

## 9.3. The objectives of the drug move-on powers

The objective of these amendments to the Summary Offences Act was to give police additional powers to reduce the incidence of drug transactions in public places. In the second reading speech, the Attorney General explained the intention of the new drug move-on powers:

<sup>819</sup> The Hon. P. Whelan, second reading speech, NSWPD, 28 April 1998, p. 3972.

<sup>820</sup> *Summary Offences Act* s 28F(a), (b) and (c).

<sup>821</sup> *Summary Offences Act*, s. 28F, (a), (b) and (c).

<sup>822</sup> *Summary Offences Act*, s 28F(1)(d) and (e).

<sup>823</sup> *Summary Offences Act*, s 28F(b) and (c).

<sup>824</sup> *Summary Offences Act*, s. 28F(6).

*This is a feature designed specifically to assist police in places such as Cabramatta, where it is known that persons congregate to supply and possess prohibited drugs, to clear an area. Cabramatta railway station is one such example currently, but the drug trade will remain mobile to try and subvert the law and this amendment allows police to keep pace with it and destroy it wherever it emerges.*<sup>825</sup>

Police also anticipated that the new drug move-on powers would enable them to address a long standing law enforcement and community problem generated by people who “descend upon a location” for the purpose of buying or selling drugs.<sup>826</sup> In the past, in areas such as Cabramatta and Kings Cross, some community members and local businesses have requested an increase in police activity to deal with public amenity and other issues arising from the presence of a street-level drug trade.<sup>827</sup> Police have described the new drug move-on powers as an effective legislative framework that will enable them to address these issues.<sup>828</sup>

In several respects, the drug move-on powers sit somewhat awkwardly in S28F, alongside the original reasonable directions powers in the Act. It was evident from our audit of the drug move-on powers that this uncomfortable fit, as one senior officer described it, has created various implementation difficulties. These issues are discussed more fully later in this report.

## 9.4. The threshold for the exercise of the drug move-on powers

To make use of the drug move-on powers, a police officer must have reasonable grounds to believe<sup>829</sup> that the purpose of a person’s presence in a public place is to buy or sell drugs. There is quite a significant threshold for the exercise of the drug move-on powers that relates to three key aspects of how the legislation is worded.

First, belief is a higher threshold than suspicion. Police were advised in the Policing Issues and Practice Journal that with a suspicion “you may have no particular view either way whether in fact a thing exists but merely a positive apprehension that it may exist”, whereas “belief requires that your positive apprehension must be coupled with a conviction as to the truth of the fact”.<sup>830</sup> In *George v. Rockett* the meaning of belief was defined in the following way:

*The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists. The assent of belief is given on more slender evidence than proof. A belief is an inclination of the mind as towards assenting to, rather than rejecting, a proposition...*<sup>831</sup>

Second, the phrase reasonable belief also requires that the belief must be reasonably held. The test is whether a reasonable person in the position of the police officer who is giving the direction would have come to the same view. In training material on the NSW Police Intranet on issuing directions under s28F police are advised that to meet the reasonable grounds test, “you need to be able to point to facts, existing at the time, which logically and reasonably justify your belief”.<sup>832</sup>

Third, assessing that the purpose of a person’s presence in a public place may be quite difficult. While the original move-on powers refer to observable behaviour, such as causing an obstruction or behaving in an intimidating manner, the drug move-on powers require police to assess if there are reasonable grounds to believe that the purpose of a person’s presence in a public place is to buy or sell drugs, or whether they intend to sell drugs. Establishing reasonable grounds in some circumstances may present challenges for police if a matter ends up in court.

Concerns were expressed in various submissions to our discussion paper that assessing the purpose of a person’s presence in a public place will sometimes be difficult. We discuss the difficulties of establishing a person’s purpose in a public place further in the Chapter, “Drug move-ons in Cabramatta”, and, drawing upon our analysis of event narratives, we will consider the degree to which police appear to have done this successfully.

<sup>825</sup> The Hon. R. Debus, NSWPD, 30 May 2001, p. 13998.

<sup>826</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act, 2001*, p. 1.

<sup>827</sup> See, for example, NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3 Report on Inquiry into Cabramatta Policing, 2001, pp. 29-34.

<sup>828</sup> NSW Police, Mandatory Continuing Police Education Scheme Package, *Police Powers (Drug Premises) Act, 2001*, p. 1.

<sup>829</sup> *Summary Offences Act*, s 28F(1).

<sup>830</sup> *Policing Issues and Practice Journal*, January 2000, p. 13.

<sup>831</sup> *George v Rockett* (1990) 170 CLR 104.

<sup>832</sup> NSW Police, Police Intranet, “Move Along” Directions- What Constitutes a Person of “Reasonable Firmness” Law Notes 11, undated.

## 9.5. Procedural requirements for issuing drug move-ons

Once a police officer has determined that there are reasonable grounds to issue the direction, he/she must then comply with certain procedural requirements when they issue the direction. The procedural requirements in section 4 of the Act are as follows:

- (4) *A police officer may give a direction under subsection (1) only if before giving the direction the police officer:*
- a) *provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and*
  - b) *provides his or her name and place of duty, and*
  - c) *informs the person of the reason for the direction, and*
  - d) *warns the person that failure to comply with the direction may be an offence.*<sup>833</sup>

If a police officer issues a direction in accordance with the procedures in the Act, and the person fails to comply with the direction without a reasonable excuse, the police officer may issue the direction again.<sup>834</sup> If the person again refuses to comply with a direction, provided it is issued in accordance with the Act and the person does not have a reasonable excuse, the direction has been breached, and an offence has been committed.<sup>835</sup> When the drug move-on powers commenced on 1 July 2001, the provisions that outline what constitutes an offence of disobeying a direction read as follows:

- (5) *If a police officer has complied with subsection (4) in giving the direction to a person and the person initially fails to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.*
- (6) *A person must not, without reasonable excuse (proof of which lies on the person), fail to comply with a direction given in accordance with subsection (5).*
- (7) *A person is not guilty of an offence under subsection (6) unless it is established that the person persisted, after the direction concerned was made, to engage in the relevant conduct.*<sup>836</sup>

Therefore, a person has not committed an offence if they have been issued with a direction that stipulates that they leave an area, they are seen in the area again while the direction is still in force, but police do not have reasonable grounds to believe that the person is still in the area to buy or sell drugs (relevant conduct).

This aspect of the legislation was emphasised to police in an article that was published in *Police Weekly* in 2002.<sup>837</sup> The article noted that if police issue a specific direction, such as to stop a particular type of behaviour, rather than a direction like "leave the area", if the behaviour continues, it is clear that the direction has been disobeyed.

### 9.5.1. Amendments to the procedures for issuing directions made in July 2002

Midway through our review of the drug move-on powers, the wording of the provision in the Summary Offences Act that relates to when a direction is disobeyed was amended, and several other changes were made that relate to the issuing of move-on directions to groups.<sup>838</sup>

On 12 July 2002, with the commencement of the Summary Offences Amendment (Public Safety) Act 2002, the words "initially refuses" were omitted, so that the section now reads, "if the person fails to comply with the direction".<sup>839</sup> Section 5 of the Act, the original version of which is quoted above, now reads as follows:

- (5) *If a police officer has complied with subsection (4) in giving a direction to a person and the person fails to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.*<sup>840</sup>

<sup>833</sup> *Summary Offences Act*, s 28F(4).

<sup>834</sup> *Summary Offences Act*, s. 28F(5).

<sup>835</sup> *Summary Offences Act*, s. 28F(6).

<sup>836</sup> *Summary Offences Act*, s. 28F(5), (6) and (7).

<sup>837</sup> *Police Service Weekly*, Vol 14 No. 47, 2 December 2002.

<sup>838</sup> *Summary Offences Act* 28F s. 7(b) and (c).

<sup>839</sup> *Summary Offences Amendment (Public Safety) Act*, 2002, s. 5.

<sup>840</sup> *Summary Offences Act*, s28F(5).

In the second reading speech on the Summary Offences Amendment Act in June 2002, the objective of this change to the legislation was explained as follows:

*... to clarify the operation of the directions power in section 28F of the Summary Offences Act by making it clear that a police officer can proceed to the second direction and warning if a person fails at any time to follow an earlier direction...*<sup>841</sup>

This change was significant to our review because, in a number of drug move-on incidents we examined, the issuing of a second direction, or instances in which a direction was breached, occurred several hours, or sometimes several days after the first direction had been issued. There were many instances of this in Cabramatta, which we discuss more fully in the Chapter, "Drug move-ons in Cabramatta".

Other amendments to the legislation relate to the procedures for issuing directions to groups of people. When a direction is issued to a group of people, a police officer is not required to repeat information to each person in the group about the nature of the direction, information as to his/her office and place of duty, informing the person of the reason for the direction, and warning them that failure to comply may be an offence. Also, in instances when a direction is reissued, the police officer is not required to repeat the direction, or to repeat the warning to each person in the group.<sup>842</sup>

Police were advised of the commencement of the Summary Offences Amendment (Public Safety) Act in an August 2002 edition of Police Weekly. The article discussed the changes in the legislation that relate to the issuing of directions to people in groups. However, the article did not mention or discuss the possible implications of the removal of the word initially from the provision that sets out when a direction has been disobeyed.

### 9.5.2. What type of direction can be issued?

Section 28F of the Act does not provide specific guidance on what type of direction police can give, other than that the direction must be reasonable in the circumstances for the purposes of:

(b) *stopping the supply, or soliciting to supply, of the prohibited drug,*<sup>843</sup> or

(c) *stopping the obtaining, procuring or purchasing of the prohibited drug.*<sup>844</sup>

Our audit found that, notwithstanding the discretion afforded to police in respect of the type of direction they may issue, most directions took the form of requiring a person to move-on.<sup>845</sup> Commonly, the officer also specified the length of time and the spatial boundaries of the direction.

In Cabramatta, a common direction that was issued by police was a seven day direction to leave the suburb and not return for this period. Various concerns were raised with us about seven day directions, and these are discussed in the Chapter, "Drug move-ons in Cabramatta".

### 9.5.3. Police training on the use of the drug move-on powers

Most of the training material and information that is available about issuing move-on directions focuses on the procedures for issuing directions under s28F. This information appears in articles that are published in Police Weekly, and in Law Notes on the Police Intranet.

The most accessible, albeit brief, guide on how to exercise move-on powers, can be found in the "Move Along Direction Constable's Pocket Guide". Police were advised of the pocket guide in the 22 October 2001 edition of the Police Weekly approximately three months after the commencement of the provisions relating to drug move-ons.<sup>846</sup>

The pocket guide provides a step by step guide on the procedures for issuing a direction. An extract from the part of the guide that relates to the procedures for issuing a drug move-on direction reads as follows:

<sup>841</sup> Ms R. Meagher, NSWPD, 26 June 2002, second reading speech, Summary Offences Amendment (Public Safety) Bill.

<sup>842</sup> *Summary Offences Act*, s 28F(7A), (7B) and (7C). The amendments also state that fact that the police officer is not required to "repeat any such direction, information or warning" to each person, "does not in itself give rise to any presumption that each person in the group has received the direction, information or warning". *Summary Offences Act*, s 28F(7D).

<sup>843</sup> *Summary Offences Act*, s. 3(b).

<sup>844</sup> *Summary Offences Act*, s. 3(c).

<sup>845</sup> Our audit of drug move-ons conducted for this review indicates that this is the case.

<sup>846</sup> As the name suggests, the *Police Weekly* is a weekly publication circulated to NSW Police

**“My name is ....., I am a ..... of police attached to ..... LAC/Unit/etc**

**“I have reason to believe that your (behaviour/presence) here:**

...

is for the purpose of unlawfully (supplying, intending to supply or solicitor another to supply, or obtaining, procuring or purchasing a prohibited drug.)”

**“I am warning you that failure to comply with the direction I am about to issue may be an offence.”**

**“In accordance with the provisions of section 28F of the Summary Offences Act, I am directing you to....”**

(Explain what the POI must do or cease doing, and, if applicable, how far and/or how long the POI is required to go away. This direction must be reasonable in the circumstances to remove or prevent the continuance of the behaviour the direction is being issued for).<sup>847</sup>

As the above extract shows, police are told what procedures they need to follow in order to issue a direction in accordance with the Act. The Guide then goes on to note what police need to say if the person fails to comply with the direction: that police need to repeat the direction itself, and to repeat the warning that if they fail to comply with the direction, they may have committed an offence. In determining whether the person has committed an offence, the pocket guide advises:

*If they then fail or refuse to comply and they persist to engage in the conduct you directed them both times to cease, you may then take action for failure to comply.*<sup>848</sup>

The pocket guide poses three questions for police to consider when issuing a direction:

1. Is the POI in a “public place”?
2. Do you have reasonable grounds to believe that the POIs behaviour or presence is:  
  
...  
  
d) For the purpose of unlawfully supplying, intending to supply, or solicit another to supply a prohibited drug, or obtaining, procuring or purchasing a prohibited drug?
3. Is a direction reasonable in the circumstances to reduce or eliminate the Obstruction, Harassment, Intimidation, Fear or Drug related activity?<sup>849</sup>

There are no instructions on how to establish the reasonable grounds referred to in question 2, or to determine what might be a reasonable type of direction in question 3. Police are also instructed in the pocket guide to ensure that all conversations are recorded in a notebook and to ask the person directed to sign the entry.

If the legislation is to remain in its current form, there may be substantial value in police training on the issuing of drug move-on directions becoming more specific, and targeted toward some of the more complex, and less black and white aspects of the application of the legislation.

<sup>847</sup> NSW Police, “Move Along Direction Constable’s Pocket Guide”, undated.

<sup>848</sup> Ibid.

<sup>849</sup> Ibid.

## 9.6. Are they a comfortable fit? Drug related directions and the original move-on powers in the Summary Offences Act

Our review of the powers suggests that the insertion of the drug move-on powers in s28F has created some implementation difficulties. These difficulties appear to arise because there are several differences between the nature and intention of the original move-on powers, and the drug move-on powers. Speaking on this issue, a former commander of Cabramatta LAC said:

*The legislation is, in one sense, doesn't fit neatly with the existing 28F because the 28F was designed to, for the police to intervene with a particular problem, here we have added on to it, and I can see why they did it, obviously it was neat and tidy, but it wasn't for the same reason. It was to disrupt that drug trade at a street-level. It would be pointless just moving someone from one corner to another.*<sup>850</sup>

An important distinction between the original move-on powers, and the drug move-on powers, is that the original move-on powers are directed at behaviour, (such as intimidating passers by), which will more often take the form of an observable action. In contrast, the drug move-on provisions empower police to direct a person if they have a reasonable belief that the purpose of a person's conduct or presence in a public place is to buy or sell drugs. In practice, this means that establishing reasonable grounds to exercise the drug move-on power is likely to be more difficult.

According to police, another difference between the original powers and the drug move-on powers relates to the characteristics of the drug market participants toward whom the powers are directed. Police have argued that the types of direction that may have been issued previously under the Summary Offences Act may not work in relation to drug related directions. For example, it has been suggested that a direction that is issued to a drug supplier to move from where they have been seen by police, without specifying a particular time frame, may not stop the behaviour. According to police, a move-on direction that simply moved a person from one corner to the next would be largely ineffective in relation to people who are in an area to sell drugs.

### 9.6.1. Concerns that have been raised about the drug move-on powers

Various concerns were raised about the drug move-on powers in submissions to our discussion paper, and in parliamentary debate on the Act. Before setting out our research findings about the implementation of the drug move-on powers, we will summarise the key concerns that have been raised.

Probably the most salient concern was that the application of the drug move-on powers could have an adverse impact on public health.<sup>851</sup> Some stakeholders were concerned that drug users' access to services like NSPs or counselling may be disrupted, particularly by the issuing of seven day directions in Cabramatta. Concerns were also expressed that the high level of the use of the powers in Cabramatta had resulted in drug users moving to neighbouring areas, and that health services in these areas did not have sufficient resources to deal with the increased numbers of clients.

Another concern that was raised was that drug move-on directions were issued to people who had syringes in their possession, track marks, or were drug affected, when these factors did not constitute reasonable grounds upon which to base the direction. It was argued that directions were issued to people who exhibited various signs of being drug users, but who were not in a public place to purchase drugs at the time when the direction was issued.<sup>852</sup>

In addition, the types of directions issued under the drug move-on powers has emerged as an issue, with particular concerns being raised about the issuing of seven day directions by police in the Cabramatta LAC. A range of concerns have been expressed, including that the directions have been issued arbitrarily, and it has been argued that banning a person from an area for this length of time is unreasonable.<sup>853</sup>

Another concern was that young people may be targeted by the drug move-on powers. Researchers looking into the street-level drug trade in Cabramatta have noted the prevalence of young Asian people in this market. Concerns were expressed that a disproportionate number of young Asians may be subject to the drug move-on powers.<sup>854</sup>

<sup>850</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>851</sup> For example, we received submissions that expressed concern about this issue from South West Area Health Service, Corrections Health, Northern Sydney Area Health, Mid North Coast Area Health Service, Shopfront Legal Centre, North and North West Community Legal Centre, Clover Moore MP, Family Drug Support, NUAA, and two submissions from health practitioners who had worked in the Cabramatta area.

<sup>852</sup> Shopfront Legal Centre and the NUAA expressed concerns that related to the way that the powers had been applied.

<sup>853</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>854</sup> Submission, Family Drug Support, 31 July 2003 and Submission, Health Worker, Cabramatta, received 30 July 2003.

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Others have questioned the efficacy of the drug move-on powers in dealing with drug supply. In parliamentary debate, for example, a range of views was put forward on the extension of the reasonable direction powers. Some argued that an extension of these powers was necessary “if police ... [were] to control the activities of drug dealers.”<sup>855</sup> Others appeared to be sceptical about the legislation’s potential to impact on the drug trade:

*... this provision will not deter organisers or principal drug dealers as they are hardly likely to be dealing drugs in public places. That is left to the drug users and small fish.*<sup>856</sup>

Concern that the use of the drug move-on powers in Cabramatta may cause the street-level drug trade to be displaced to other areas was also expressed in parliamentary debate about the Act.

## 9.6.2. Assessing the implementation of the Drug Move-on Powers

It is important to note the methodological difficulties that arise in assessing whether some of the concerns that have been raised about the drug move-on powers have been borne out. These limit our ability to examine the basis upon which the drug move-on powers have been exercised.

Event narratives, in which police describe what happened in the drug move-on incident, are the key source that enables us to scrutinise the grounds upon which police have issued the drug move-on direction. However, event narratives are free text fields and police are not required to record any particular aspect of their use of the powers, such as all the reasons why they moved a person on.

Our ability therefore, to determine why a police officer has issued a drug move-on is limited by what police have recorded. If police have only recorded a small amount of information, it is not possible to determine if this reflects poor recording practices, or if it indicates that there were insufficient grounds to issue the direction. It is clearly not possible to know if police noted all the reasons why they moved the person on.

These difficulties aside, we have focused our review on 17 commands for the purposes of reporting on this aspect of the Drug Premises Act.

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<sup>855</sup> Mr C. Hartcher, NSWPD, 6 June 2001, p. 14505.

<sup>856</sup> The Hon. I. Cohen, NSWPD, 21 June 2001, p. 15007.



# Chapter 10. State-wide move-ons

## 10.1. How many drug related move-ons were issued?

A total of 12,751 move-ons were issued for the entire two-year review period. Table E details the number of move-ons issued per month, per LAC.

Over the two year review period, the number of move-ons recorded in COPS peaked at 754 in January 2003 and fell to a low of 276 in June 2003. This low came a month after alterations were made to the way in which move-ons were recorded on COPS, which we discuss in the “Methodology” chapter of this report.

Figure 26 illustrates the number of drug related move-ons issued each month over the first two years of the operation of the Act for NSW, Cabramatta and Fairfield.

## 10.2. Where were drug related move-ons issued?

Cabramatta LAC issued the most drug related move-ons in NSW over the two-year period, with 4,079 move-ons issued, or 32% of the total number issued across the state over the two-year period.

Fairfield and Kings Cross came a distant second issuing approximately 1,200 move-ons each, which is approximately 9% of the total number of move-ons issued across the State over the two-year period.

Figure 23 displays the number of drug related move-ons issued for the first two years of the operation of the Act, for the 27 LACs that issued more than 100 move-ons.

Figure 23 shows that the use of the drug related move-on power decreased significantly in Cabramatta in the second year of the operation of the Act. In the first year, 3,053 drug related move-ons were issued by Cabramatta LAC, compared with 1,026 in the second year.

At the beginning of the review period Cabramatta LAC accounted for a high proportion of all move-ons issued in the State, as illustrated in figure 25. However, by the end of the two-year period, move-ons issued by Cabramatta LAC accounted for less than 10% of all move-ons issued.

In contrast to Cabramatta, in the second year of the review there was an increase in the number of drug move-ons issued in a neighbouring LAC, Fairfield. In Fairfield LAC, there were 330 drug related move-ons issued in the first year, and 880 in the second. It is possible that this was the result of some displacement of the drug trade from Cabramatta to Fairfield. This is explored in more detail later in this report.<sup>857</sup>

Wollongong LAC also showed a marked increase in the use of the drug related move-on powers in the second year of the operation of the Act. The reason for this increase is not immediately apparent.

Table 25 demonstrates the proportion of move-ons issued in each LAC to the population of each LAC. This table reveals that, as a proportion of the local population, Cabramatta LAC issued the highest number of drug move-ons. However, it must be noted that metropolitan LACs such as Cabramatta have a high volume of people moving through the area from other parts of Sydney.

Figure 24 illustrates the proportion of move-ons issued in each police region over the two year period. Figure 24 clearly demonstrates that move-ons were predominantly issued in metropolitan areas.

## 10.3. How many drug move-ons were obeyed?

Figure 27 illustrates that there was a high rate of compliance with drug related move-ons throughout the first two years of the operation of the Act, as only 4.52% of all drug related move-ons were recorded by police as being disobeyed.

There is a discussion of how police determine that a move-on has been disobeyed in the chapter, “Drug Move-ons, Cabramatta LAC”.

<sup>857</sup> See discussion of the displacement of street-level drug trade at paragraph 11.20 of this report.

A large proportion of disobeyed move-ons occurred in Cabramatta. Over the two year period, 404, or 9.9% of the 4,079 drug related move-ons in Cabramatta were disobeyed. In all other LACs, 172 of 8,672 or 2% of move-ons were disobeyed.

The number of disobeyed move-ons in NSW decreased over time. As figure 28 demonstrates, this reflected in part the declining number of disobeyed move-ons in Cabramatta. Without Cabramatta, the proportion of disobeyed move-ons over the two year period remained relatively stable. However, when Cabramatta is included in the data, the first year shows a significantly higher proportion of disobeyed move-ons.

**Figure 23: Total number of drug related move-ons per LAC for 1 July 2001 – 30 June 2003**



Source: Data downloaded from COPS supplied by NSW Police in July 2003.

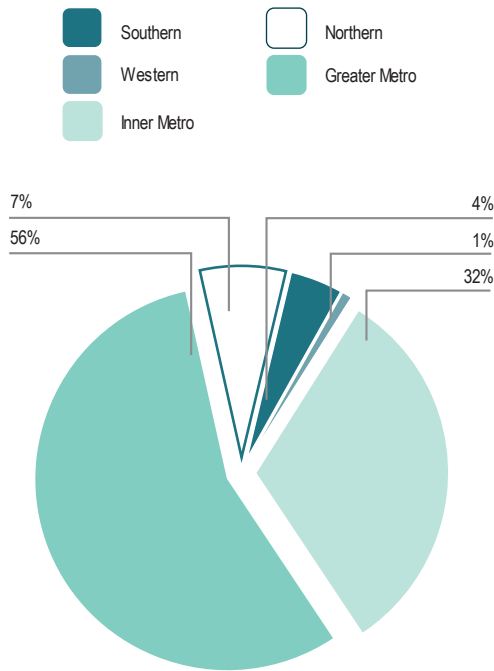
**Table 26. Move-ons issued per LAC as a proportion of the total population of the LAC from 1 July 2001 to 30 June 2003**

LAC	Population	Total move-ons	Total move-ons as a % of population
NSW MARINE AREA COMMAND	0	11	N/A
UNKNOWN	0	1	N/A
CABRAMATTA	181,300	4079	2.25%
KINGS CROSS	113,109	1197	1.06%
FAIRFIELD	181,300	1210	0.67%
CITY CENTRAL	38,204	143	0.37%
REDFERN	86,970	308	0.35%
ASHFIELD	168,897	572	0.34%
MARRICKVILLE	72,589	185	0.25%
CAMPSIE	129,936	317	0.24%
BURWOOD	116,474	270	0.23%
MANNING/GREAT LAKES	67,602	127	0.19%
WOLLONGONG	180,358	334	0.19%
NEWTOWN	147,494	236	0.16%
BLACKTOWN	152,957	242	0.16%
SURRY HILLS	113,109	169	0.15%
GLADESVILLE	106,808	157	0.15%
BANKSTOWN	164,841	233	0.14%
FLEMINGTON	116,474	158	0.14%
DARLING RIVER	17,029	22	0.13%
NEWCASTLE	136,413	161	0.12%
TWEED/BYRON	102,752	120	0.12%
BRISBANE WATER	154,045	174	0.11%
ROSEHILL	143,143	141	0.10%
THE ROCKS	38,204	37	0.10%
ST GEORGE	207,561	186	0.09%
COFFS/CLARENCE	132,440	116	0.09%
HOLROYD	85,263	71	0.08%
GREEN VALLEY	153,633	112	0.07%
GOULBURN	45,930	29	0.06%
LEICHHARDT	136,006	77	0.06%
CAMPBELLTOWN	110,560	62	0.06%
WARATAH	136,413	73	0.05%
THE HILLS	138,418	74	0.05%
BARRIER	32,185	15	0.05%
RICHMOND	127,042	59	0.05%
BARWON	39,901	18	0.05%
KURING GAI	244,844	109	0.04%
MACQUARIE FIELDS	100,280	40	0.04%
MT DRUITT	153,241	60	0.04%
CASTLEREAGH	13,186	5	0.04%
LAKE ILLAWARRA	256,095	94	0.04%
NORTH SHORE	413,296	145	0.04%
PARRAMATTA	143,143	47	0.03%
BLUE MOUNTAINS	73,681	22	0.03%
TUGGERAH LAKES	130,536	38	0.03%

LAC	Population	Total move-ons	Total move-ons as a % of population
PENRITH	148,327	43	0.03%
MUDGEES	58,358	16	0.03%
ST MARYS	158,804	43	0.03%
MONARO	74,420	20	0.03%
HURSTVILLE	119,899	31	0.03%
EASTWOOD	494,795	125	0.03%
LIVERPOOL	153,633	32	0.02%
SHOALHAVEN	83,933	17	0.02%
MIRANDA	202,158	38	0.02%
MID NORTH COAST	108,678	20	0.02%
LACHLAN	35,180	6	0.02%
EASTERN BEACHES	118,584	19	0.02%
BOTANY BAY	123,235	19	0.02%
ALBURY	72,335	11	0.02%
SUTHERLAND	202,158	25	0.01%
QUAKERS HILL	92,476	11	0.01%
LOWER HUNTER	177,429	21	0.01%
ORANA	85,033	10	0.01%
DENILQUIN	43,067	5	0.01%
HAWKESBURY	199,303	23	0.01%
COOTAMUNDRA	87,620	10	0.01%
ROSE BAY	108,587	12	0.01%
CAMDEN	121,363	13	0.01%
WAGGA WAGGA	136,227	14	0.01%
NORTHERN BEACHES	216,536	22	0.01%
HARBOURSIDE	168,452	16	0.01%
GRIFFITH	112,400	9	0.01%
LAKE MACQUARIE	177,185	14	0.01%
NEW ENGLAND	63,721	5	0.01%
HUNTER VALLEY	80,840	6	0.01%
EASTERN SUBURBS	108,587	8	0.01%
CANOBOLAS	100,868	7	0.01%
CHIFLEY	76,792	5	0.01%
FAR SOUTH COAST	63,448	4	0.01%
MANLY/DAVIDSON	216,536	12	0.01%
OXLEY	85,992	3	0.00%

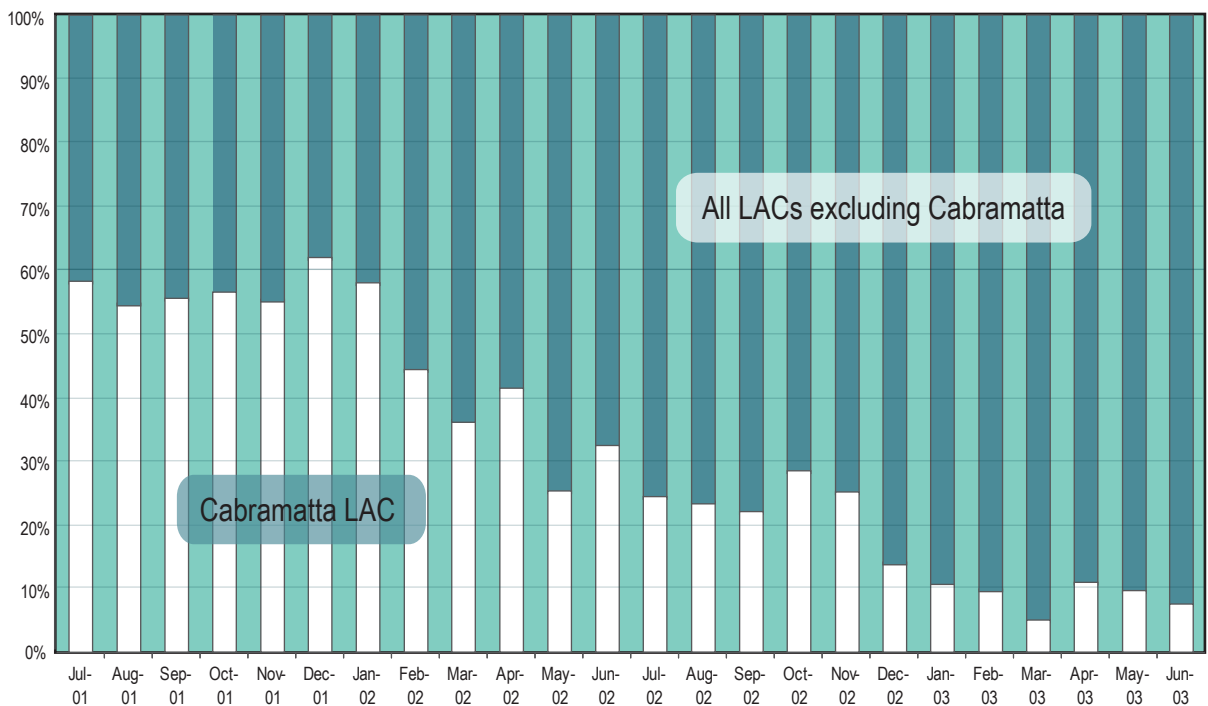
Source: Space Time Research Pty Ltd and CDATEA2001 - the 2001 Census Population and Housing.

Figure 24: Police region of move-ons issued for 1 July 2001 — 30 June 2003



Source: Data downloaded from COPS by NSW Police in July 2003  
n=12,751

Figure 25: Proportion of Cabramatta move-ons to total number of move-ons issued by month



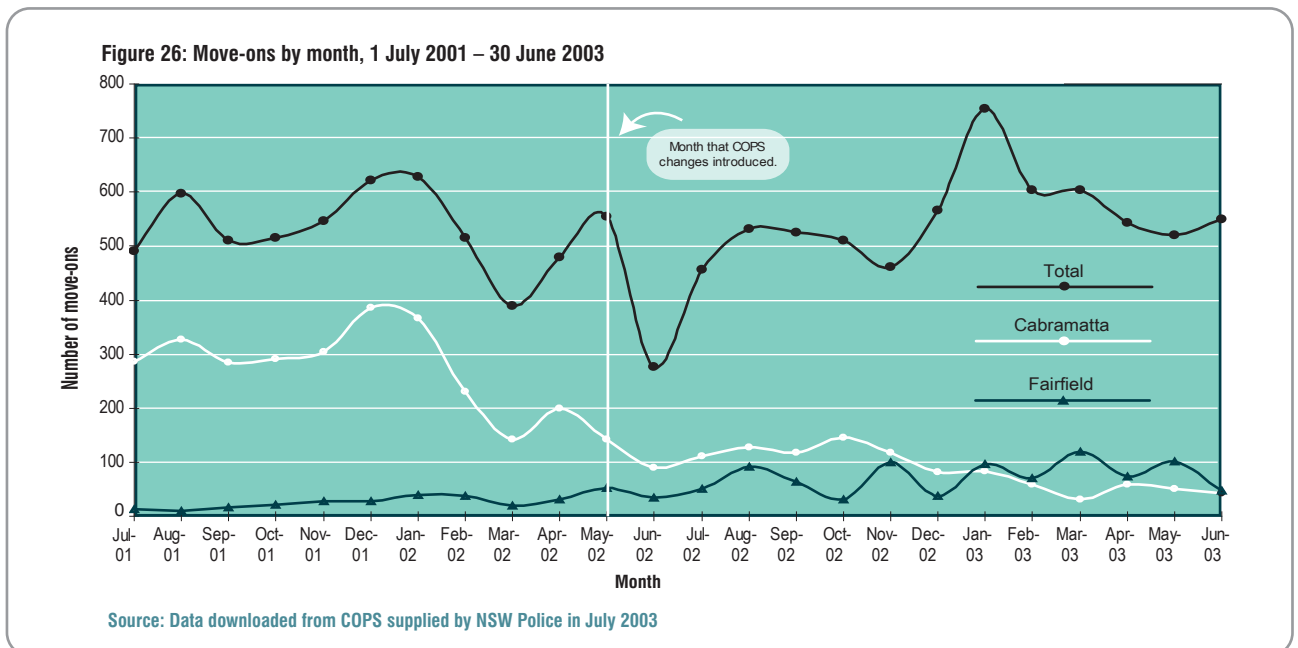
Source: Data downloaded from COPS supplied by NSW Police in July 2003

**Table 27. Total move-ons issued by LAC per month for 1 July 2001 - 30 June 2003**

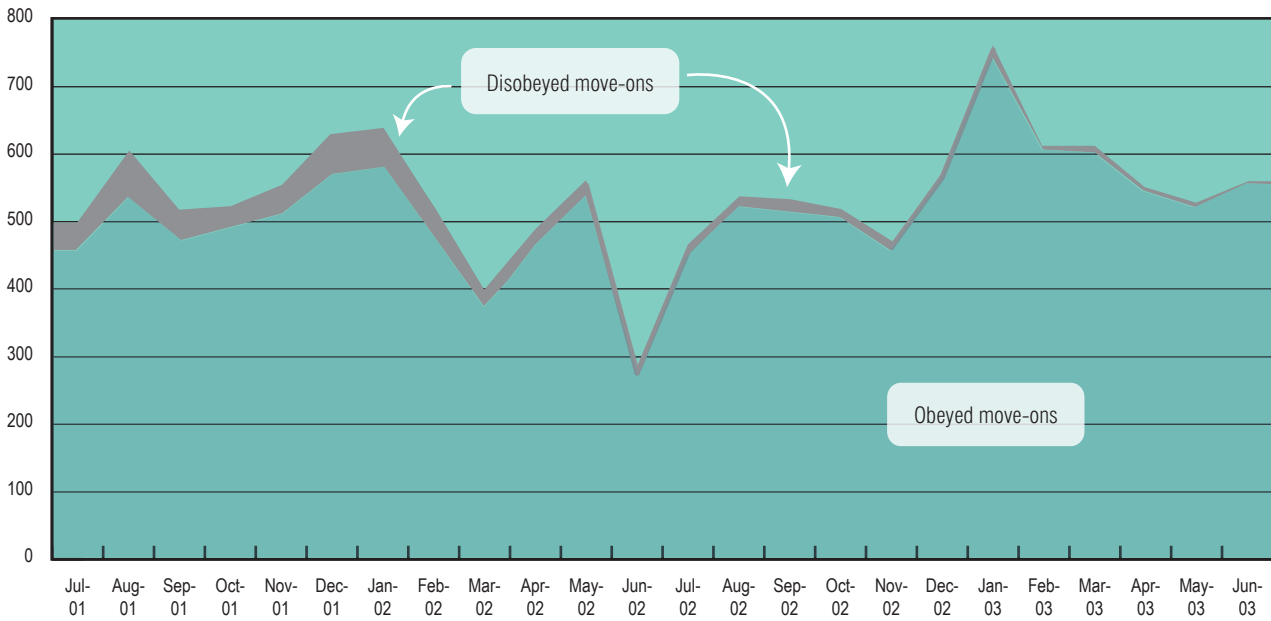
LAC	First Year												Second Year												Total
	J-01	A-01	S-01	O-01	N-01	D-01	J-02	F-02	M-02	A-02	M-02	J-02	J-02	A-02	S-02	O-02	N-02	D-02	J-03	F-03	M-03	A-03	M-03	J-03	
ALBURY	0	0	1	0	2	0	0	0	0	0	0	2	1	2	1	0	0	0	0	0	0	2	0	11	
ASHFIELD	15	22	17	9	25	15	34	19	13	23	15	18	39	35	43	32	15	25	9	21	52	33	14	29	572
BANKSTOWN	2	7	0	2	3	2	1	2	9	19	4	12	21	14	20	5	8	29	23	12	13	10	5	10	233
BARRIER	0	0	0	0	1	0	3	2	1	0	0	0	5	0	0	1	0	0	0	0	0	0	1	1	15
BARWON	2	1	0	1	0	0	0	1	0	1	0	0	1	0	0	2	1	1	0	0	0	2	2	3	18
BLACKTOWN	6	11	9	34	25	4	12	6	5	7	19	7	12	5	13	5	1	6	8	8	12	8	6	13	242
BLUE MOUNTAINS	2	0	0	1	1	0	0	0	1	0	1	2	1	0	1	0	0	0	3	1	1	0	0	7	22
BOTANY BAY	0	0	0	1	0	0	0	1	0	1	1	1	2	1	0	0	0	1	0	2	3	1	3	1	19
BRISBANE WATER	0	3	2	1	1	7	6	7	2	11	12	6	22	27	12	7	4	7	4	8	2	15	5	3	174
BURWOOD	0	2	1	3	1	4	3	6	5	2	1	1	3	1	5	25	14	9	12	45	47	35	15	30	270
CABRAMATTA	287	328	285	292	304	386	366	230	143	200	142	90	112	127	117	146	117	81	83	59	31	59	51	43	4079
CAMDEN	0	0	0	0	0	1	3	0	1	0	0	1	0	0	1	0	0	1	2	0	0	2	0	1	13
CAMPBELLTOWN	2	0	0	0	2	0	1	0	0	0	1	1	1	3	2	15	8	9	4	2	5	3	1	2	62
CAMPSIE	4	7	13	7	19	11	9	3	4	10	23	5	5	9	9	7	2	17	30	31	14	17	21	40	317
CANOBOLAS	1	0	1	0	0	0	0	0	0	1	0	0	1	0	0	1	0	2	0	0	0	0	0	0	7
CASTLEREAGH	0	0	2	0	0	0	0	1	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	5
CHIFLEY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	0	0	0	1	1	0	0	5
CITY CENTRAL	5	8	6	12	8	1	6	4	6	6	7	2	5	4	1	2	3	9	14	7	3	8	7	9	143
COFFS/CLARENCE	0	1	2	2	0	1	1	6	1	0	1	7	3	8	15	3	11	13	11	5	16	4	2	3	116
COOTAMUNDRA	0	0	1	0	0	0	0	0	2	0	1	0	1	0	3	1	0	0	0	0	0	0	0	1	10
DARLING RIVER	0	0	0	0	0	1	0	0	0	0	0	3	0	0	1	1	1	0	9	0	3	1	1	1	22
DENILQUIN	0	0	1	0	0	0	1	0	1	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	5
EASTERN BEACHES	0	3	1	0	0	0	0	0	0	1	0	0	2	1	6	0	0	0	1	1	1	2	0	0	19
EASTERN SUBURBS	0	0	0	1	0	0	0	0	0	0	0	0	1	1	0	0	1	2	0	0	0	1	1	0	8
EASTWOOD	5	5	0	2	8	4	3	4	7	10	19	3	6	17	12	0	2	2	6	5	0	0	0	5	125
FAIRFIELD	13	10	16	22	28	27	39	37	20	31	53	34	51	91	63	31	100	38	96	70	119	73	101	47	1210
FAR SOUTH COAST	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	2	0	4
FLEMINGTON	1	0	5	0	0	0	0	1	1	1	1	0	6	2	3	9	19	10	17	29	26	18	3	6	158
GLADESVILLE	4	3	0	9	0	10	5	5	10	12	33	2	10	8	4	4	8	4	4	4	0	3	3	12	157
GOULBURN	0	0	0	0	0	0	0	1	1	0	0	0	1	0	0	1	1	2	12	7	0	0	0	3	29
GREEN VALLEY	5	0	0	2	0	1	3	0	0	0	18	7	0	5	8	3	3	8	2	2	4	15	9	17	112
GRIFFITH	1	1	0	0	0	0	1	0	0	0	0	1	0	0	0	1	1	0	0	0	1	2	0	0	9
HARBOURSIDE	1	5	0	1	0	1	0	0	0	0	0	0	0	0	0	1	1	2	0	1	1	1	1	0	16
HAWKESBURY	0	0	0	3	0	1	0	2	2	0	1	0	1	0	1	0	0	2	2	0	2	2	3	1	23
HOLROYD	0	0	0	1	9	1	0	2	1	1	8	2	3	3	4	2	8	9	3	4	2	4	2	2	71
HUNTER VALLEY	0	0	0	0	0	0	0	0	0	0	4	0	0	1	1	0	0	0	0	0	0	0	0	0	6
HURSTVILLE	0	0	1	0	0	1	3	4	0	0	1	4	0	2	0	0	1	2	1	0	3	4	1	3	31
KINGS CROSS	59	76	40	30	31	45	56	71	55	50	46	18	45	44	40	43	18	51	96	50	71	64	57	41	1197
KURING GAI	3	3	0	2	0	5	8	12	0	8	12	6	3	5	7	1	0	4	3	5	0	6	11	5	109
LACHLAN	0	0	0	0	0	0	0	1	0	0	0	0	0	1	1	0	0	0	0	1	0	0	2	0	6
LAKE ILLAWARRA	0	1	5	3	2	1	0	1	2	0	0	0	3	0	8	10	9	12	9	8	7	1	6	6	94
LAKE MACQUARIE	1	1	0	1	0	0	0	1	0	1	4	0	0	1	0	0	0	0	1	2	0	0	1	0	14
LEICHHARDT	0	2	0	2	5	0	1	3	2	7	3	1	2	5	8	6	8	2	1	0	1	1	14	3	77
LIVERPOOL	2	1	0	0	0	1	0	2	2	0	0	1	2	0	1	1	2	2	3	1	4	2	1	4	32
LOWER HUNTER	0	0	0	2	1	0	0	0	1	0	0	0	1	0	1	0	0	0	1	0	5	0	7	2	21
MACQUARIE FIELDS	5	0	1	0	0	1	0	0	4	0	4	0	3	4	1	4	3	2	1	2	3	2	0	0	40
MANLY/DAVIDSON	0	0	1	0	1	0	0	0	0	2	0	1	1	0	1	1	0	0	1	2	0	1	0	0	12
MANNING/GREAT LAKES	0	0	1	0	2	2	1	1	0	0	0	0	2	0	0	1	1	54	7	8	14	8	10	15	127
MARRICKVILLE	3	12	9	11	10	14	11	12	3	5	4	2	6	4	3	3	8	4	6	10	5	12	13	15	185
MID NORTH COAST	1	0	2	1	2	1	0	0	3	0	0	0	0	2	0	0	0	3	1	0	0	3	1	0	20
MIRANDA	0	1	1	1	0	3	0	1	0	0	3	0	1	2	2	8	4	3	3	2	0	0	1	2	38

LAC	First Year												Second Year												Total
	J-01	A-01	S-01	O-01	N-01	D-01	J-02	F-02	M-02	A-02	M-02	J-02	J-02	J-02	A-02	S-02	O-02	N-02	D-02	J-03	F-03	M-03	A-03	M-03	
MONARO	0	1	0	0	0	0	0	2	1	0	0	0	0	1	1	0	1	3	0	1	4	4	1	0	20
MT DRUITT	0	0	0	3	2	0	1	1	0	2	0	0	9	7	5	5	3	2	1	5	4	0	3	7	60
MUDGEES	0	0	1	0	0	10	0	2	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	16
NEW ENGLAND	0	0	1	0	1	0	0	0	0	0	1	0	0	0	0	0	0	1	0	1	0	0	0	0	5
NEWCASTLE	5	7	3	6	1	3	1	1	5	9	27	3	6	5	7	5	8	4	12	5	20	9	8	1	161
NEWTOWN	12	5	19	4	6	3	1	1	8	4	5	3	4	1	0	3	1	11	89	25	8	11	7	5	236
NORTH SHORE	0	5	2	0	1	2	5	0	0	2	2	4	1	3	7	17	2	11	16	9	13	12	24	7	145
NORTHERN BEACHES	0	0	0	3	0	0	1	1	0	0	1	1	0	0	1	0	0	0	2	5	1	3	0	3	22
NSW MARINE AREA COMMAND	0	0	0	0	0	0	0	0	0	1	0	1	1	0	0	0	0	0	0	5	2	1	0	0	11
ORANA	0	0	0	0	0	1	0	1	0	0	0	0	0	1	0	2	0	1	2	0	0	1	1	0	10
OXLEY	1	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	3
PARRAMATTA	4	3	1	0	3	3	0	2	0	3	0	1	3	1	1	0	2	6	3	2	1	4	3	1	47
PENRITH	1	9	3	2	8	2	1	0	1	0	1	0	1	1	1	2	1	0	2	0	4	1	0	2	43
QUAKERS HILL	2	0	0	0	1	1	0	1	2	3	0	0	0	0	0	0	0	0	0	1	0	0	0	0	11
REDFERN	16	25	15	14	3	13	5	7	3	6	14	1	12	10	4	3	30	21	24	22	17	6	25	12	308
RICHMOND	1	0	4	2	4	3	2	2	3	2	2	2	2	7	1	0	1	4	2	0	4	1	5	5	59
ROSE BAY	0	0	0	0	1	0	0	0	2	1	0	0	0	1	1	0	1	0	1	2	0	1	0	1	12
ROSEHILL	1	0	0	1	0	0	1	8	8	5	6	3	4	4	16	20	0	13	6	4	7	2	16	16	141
SHOALHAVEN	0	0	2	0	0	0	0	0	2	0	1	0	0	0	3	5	0	1	2	0	0	0	0	1	17
ST GEORGE	1	0	1	0	0	0	1	2	4	4	22	4	5	17	28	16	9	4	3	20	13	14	10	8	186
ST MARYS	2	3	1	0	2	0	0	1	0	9	3	1	2	1	8	2	0	1	3	2	0	0	2	0	43
SURRY HILLS	5	8	7	4	16	7	12	9	8	8	11	1	7	4	9	10	5	8	11	3	2	6	3	5	169
SUTHERLAND	1	3	1	0	1	1	2	0	1	0	1	0	1	0	0	1	0	1	1	1	0	6	0	3	25
THE HILLS	1	1	10	2	0	7	9	21	11	0	0	3	0	0	0	0	0	4	3	0	1	0	0	1	74
THE ROCKS	1	2	2	3	1	3	3	2	6	0	1	1	0	1	0	0	2	2	0	2	1	0	3	1	37
TUGGERAH LAKES	0	0	3	0	0	4	3	1	12	1	1	1	1	3	2	1	0	1	1	1	1	1	0	0	38
TWEED/BYRON	1	3	3	5	1	4	3	2	1	4	6	3	5	5	5	5	3	17	9	7	4	13	6	5	120
UNKNOWN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
WAGGA WAGGA	1	0	1	0	0	1	0	0	0	1	0	0	2	1	1	0	1	0	0	4	0	0	1	0	14
WARATAH	3	0	3	2	0	0	0	0	0	0	2	2	2	14	2	19	4	8	5	1	5	0	1	0	73
WOLLONGONG	2	8	3	6	3	1	1	0	3	5	3	0	1	7	2	10	4	12	67	61	19	22	14	80	334
<b>Total</b>	<b>491</b>	<b>597</b>	<b>510</b>	<b>516</b>	<b>546</b>	<b>621</b>	<b>629</b>	<b>516</b>	<b>390</b>	<b>480</b>	<b>554</b>	<b>276</b>	<b>456</b>	<b>531</b>	<b>525</b>	<b>511</b>	<b>462</b>	<b>566</b>	<b>754</b>	<b>604</b>	<b>603</b>	<b>543</b>	<b>520</b>	<b>550</b>	<b>12751</b>

Source: Data downloaded from COPS supplied by NSW Police in July 2003

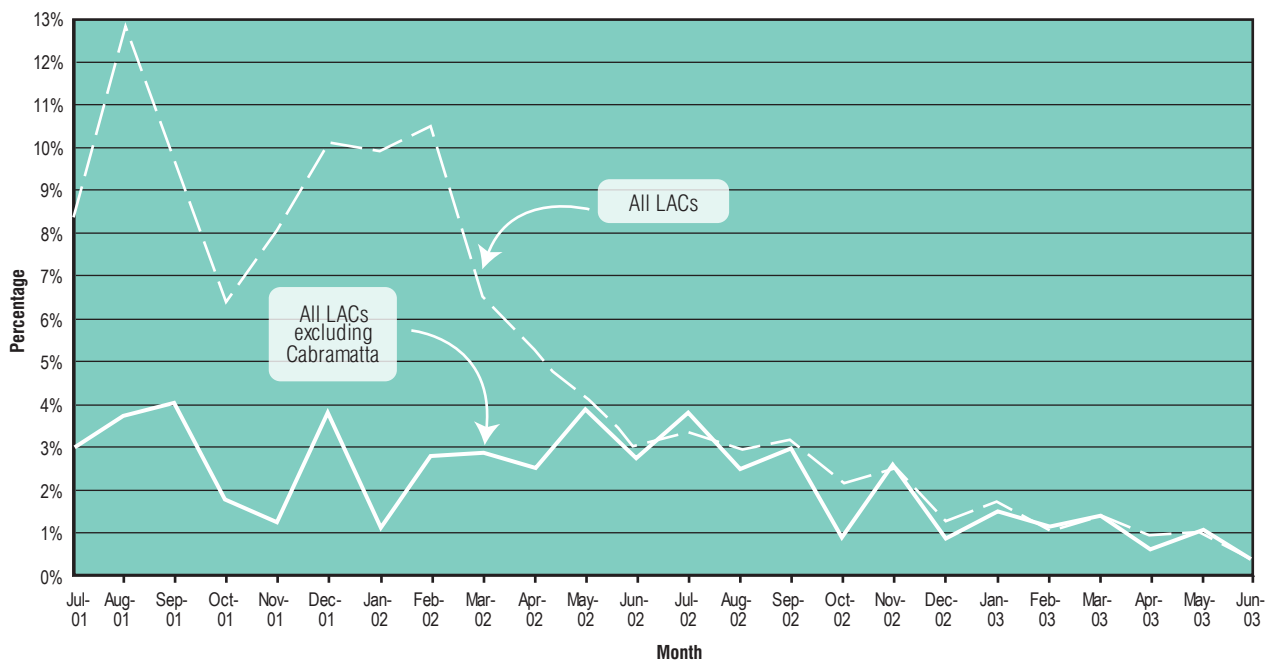


**Figure 27. Obeyed move-ons and refusals to move-on for 1 July 2001 – 30 June 2003**



Source: Data downloaded from COPS supplied by NSW Police in July 2003

**Figure 28: Proportion of disobeyed move-ons to obeyed move-ons by month**



Source: Data downloaded from COPS supplied by NSW Police in July 2003



## 10.4. NSW Audit

As referred to in our methodology chapter, we chose to conduct a NSW audit as well as a Cabramatta audit of move-ons.

We audited a total of 246 move-on events for the NSW audit, which represented a total of 394 people moved on. Police only recorded the details of 382 (or 97%) of people for those records we audited. Our analysis of the age and ethnicity of people moved on is therefore restricted to this slightly smaller group of people.

The NSW audit included 8% of move-ons issued in the second year of the operation of the Act (1 July 2002 till 30 June 2003). As detailed in the chapter, "Methodology", drug move-on events are from a sample of LACs. While LACs were generally chosen to represent metropolitan, regional and rural areas, some LACs were chosen for other reasons, including:

- significant use of the drug premises provisions
- an active street-level drug trade allowing a comparison with the way the drug move-on power was being used in Cabramatta
- a high ATSI population allowing a comparison with the findings in the PPS report that people of ATSI descent were receiving a high number of move-ons.

Additionally, Fairfield LAC was chosen to allow some examination of anecdotal claims that drug trade had been displaced there from Cabramatta as a result of the move-on powers.

Therefore, although statistical analysis of our findings is included in this section, the results are not meant to be statistically representative of the practices that the NSW Police engaged in. Rather, the audit and analysis allowed us to understand the issues relative to move-ons for communities outside Cabramatta.

**Table 28. Analysis of records audited as a proportion of the total number of move-ons issued per LAC**

	Selected LAC	Obedied	Disobeyed	Total number of records audited	Total number of move-ons issued in LAC	Total number of records audited as a % of LAC total	Total audited in LAC as a % of total records audited (246)
1	BARRIER	3	0	3	3	100.00%	1.22%
2	BARWON	10	0	10	14	71.43%	4.07%
3	BLACKTOWN	0	2	2	71	2.82%	0.81%
4	CABRAMATTA	18	11	29	1069	2.71%	11.79%
5	CAMPSIE	3	0	3	171	1.75%	1.22%
6	CANOBOLAS	4	0	4	4	100.00%	1.63%
7	COFFS/CLARENCE	20	1	21	94	22.34%	8.54%
8	DARLING RIVER	12	0	12	12	100.00%	4.88%
9	FAIRFIELD	19	11	30	909	3.30%	12.20%
10	KINGS CROSS	20	5	25	629	3.97%	10.16%
11	LAKE ILLAWARRA	20	1	21	77	27.27%	8.54%
12	MARRICKVILLE	18	3	21	85	24.71%	8.54%
13	NORTH SHORE	20	3	23	108	21.30%	9.35%
14	ORANA	8	0	8	8	100.00%	3.25%
15	REDFERN	20	6	26	188	13.83%	10.57%
16	ROSE BAY	7	0	7	7	100.00%	2.85%
17	WOLLONGONG	0	1	1	287	0.35%	0.41%
	TOTAL	202	44	246	3736	6.58%	100.00%

Source: Audited COPS records from 1 July 2002 till 30 June 2003 and data downloaded from COPS supplied by NSW Police in July 2003

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## 10.5. Demographic information

Concerns were expressed during the parliamentary debate and in submissions to this review that police may be unfairly targeting particular groups of people when using move-on powers. In particular, submissions were received claiming that police were targeting:

- young unemployed people who associate with their peers, those who “look like drug users” and those who are known to police<sup>858</sup>
- “undesirable types”<sup>859</sup>
- young people<sup>860</sup>
- clients attending drug support agencies and staff members of drug clinics<sup>861</sup> and
- Asian youth.<sup>862</sup>

In order to explore these claims, we noted the age, ethnicity and Aboriginal or Torres Strait Islander (ATSI) status of people moved on and the reasons for attracting police attention for each move-on event.

### 10.5.1. Age groups

The details of most people moved-on were recorded on the COPS event record, including their date of birth. For each record audited, we calculated the person’s age at the time of the offence. Where a person’s date of birth was not recorded, their age was recorded as “not noted”.

Figure 31 displays four sets of information. Firstly, it displays the number of people in each age group moved-on as a proportion of the total number of people moved on in the audit. Secondly, it displays the number of people in each age group in the NSW population as a proportion of the total number of people in NSW. Thirdly, it displays the number of people in each age group convicted of an offence at a local court as a proportion of the total number of people convicted at a local court in 2002. And finally, it displays the number of people in each age group convicted of a drug offence at a local court as a proportion of the total number of people convicted of a drug offence at a local court.

People in the age group 19-25 attracted the highest proportion of move-ons in our audit. This is inconsistent with the proportion of people in the NSW population within this age bracket.

However, the proportion of people moved-on in the 19-25 age group is slightly lower than the proportion of people in this age group that were convicted of an offence in local court. Similarly, it is slightly lower than the proportion of people in this age group that were convicted of a drug offence.

It appears that the proportion of people moved-on in the “18 and under” age group is higher than the proportion of people convicted of an offence and drug offence in this age group. In this respect, it is noted that specific statutory powers (for example, the *Young Offenders Act 1997*) reduce the number of young persons dealt with by the courts. It is noted that the local court data did not include people under 11 years of age, and that the audit did not include any events where a person under the age of 11 was moved-on. Both of these figures are less than the NSW population figures, however, the NSW population data includes people under 11 years of age.

People between the ages of 19 and 35 are disproportionately represented in comparison with the NSW population data. However, the proportion of people moved on in these age groups seems to be relatively consistent with the ages of people convicted of offences at local court.

### 10.5.2. Ethnicity and ATSI status

Police are able to record on COPS their perception of the racial appearance of any person dealt with by police. We analysed the racial appearance of each person moved on in the audit. As previously noted, this data may be affected by police perceptions of race and ethnicity.

There were six predominant ethnic groups that appeared in the audit: Caucasian, Asian, Pacific Islander, Middle Eastern, Aboriginal and Mediterranean.

It is not mandatory for police to record the racial appearance of a person on COPS. For 11.78% of events, the racial appearance field was not noted.

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<sup>858</sup> Submission, NUAA, 5 August 2003

<sup>859</sup> Submission, Bronitt

<sup>860</sup> Submission Shopfront Legal Centre, 31 July 2003; and Community Relations Commission, 4 August 2003

<sup>861</sup> Submission, Community Relations Commission, 4 August 2003

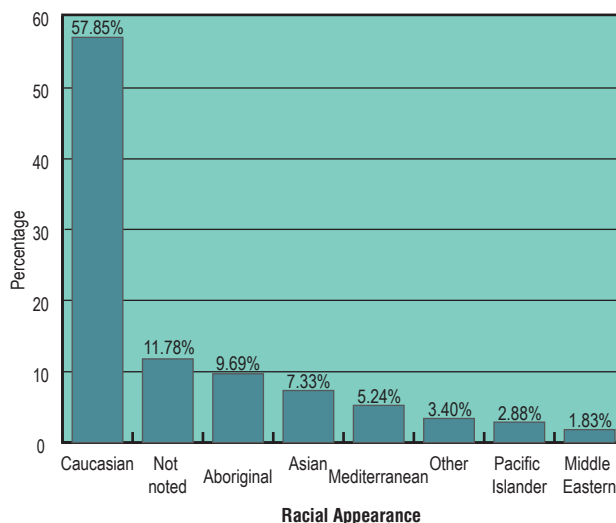
<sup>862</sup> Submission, Family Drug Support, 31 July 2003

We compared the information about ethnicity from our audit with the ancestry data available from the 2001 Census for Sydney and NSW. The audit information was compared with both Sydney and NSW populations as move-ons were predominantly issued in the Sydney metropolitan area (see figure 24).

Although Mediterranean was a distinct category in the audit data, there was no comparative information in the census data, therefore it was excluded from the analysis.

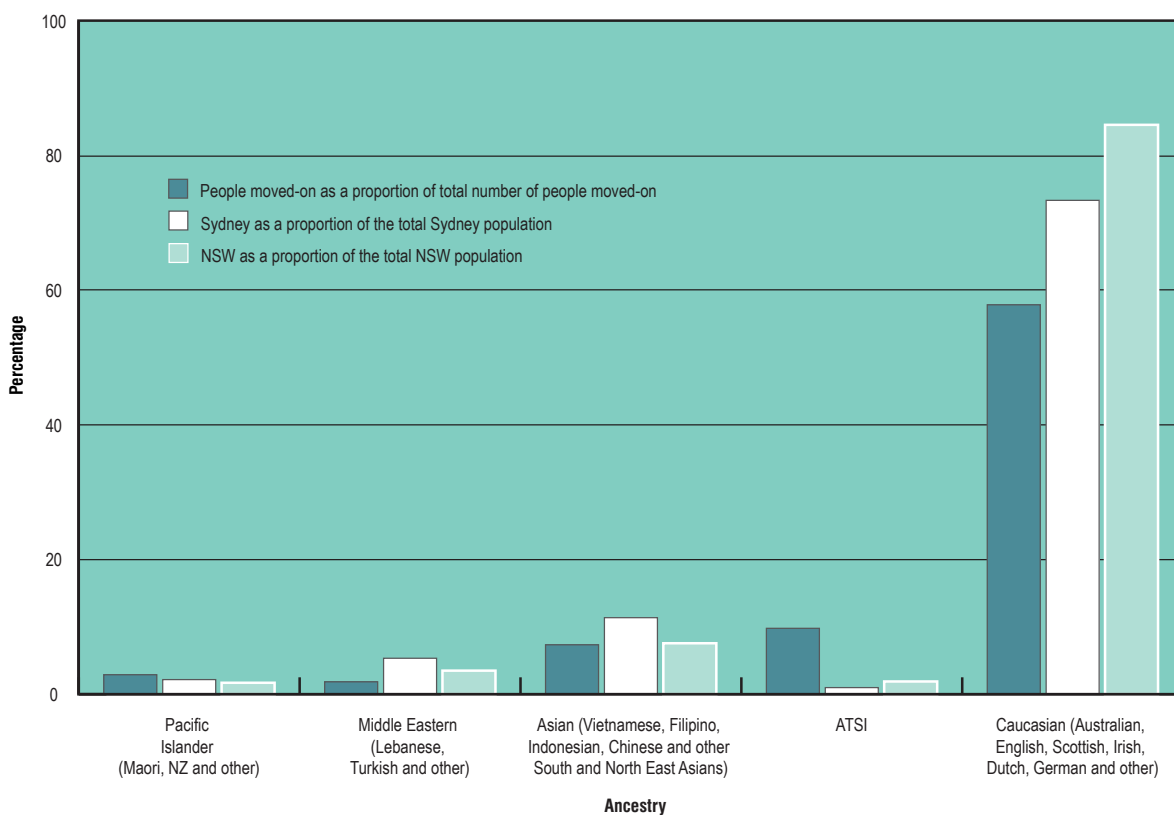
The ancestry of a person in the census reflects the ancestries that a person most closely identifies with, going back as far as three generations. In responding to the Census, people could choose more than one ancestry, but only the first and second were included in the census data. Because people could choose more than one ancestry, this meant that the sum of the categories was greater than the number of people who answered the question. Despite this, the ancestry data is represented in figure 30 as a proportion of the total populations in Sydney and NSW.

**Figure 29: Racial appearance of people moved-on as a proportion of all audited move-ons**



Source: Audited COPS events from 1 July 2002 till 30 June 2003, n=382

**Figure 30: Ethnicity of people moved-on**



Source: Audited COPS events from 1 July 2002 till 30 June 2003; and Census 2001 Australia Bureau of Statistics.

This analysis showed that people of Middle Eastern or Asian ancestry were not disproportionately represented in the audit events, as the proportion of people in these ethnic groups was less than the proportion of people in both they Sydney and NSW populations.

However, there was an indication that people of Pacific Islander descent were disproportionately represented in the audit. While 2.88% of people in the audit were identified by police as having a Pacific Islander appearance, people of Pacific Islander ancestry make up 2.16% of the Sydney population and 0.91% of the NSW population.

Police recorded that 10% of people in our audit were identified as indigenous. As indicated by Figure 30, a much smaller proportion of the populations of both Sydney and NSW identified as indigenous. That is, people of ATSI background are disproportionately represented in the audit. However, it is also noted that some LACs were chosen because of their high Aboriginal populations.

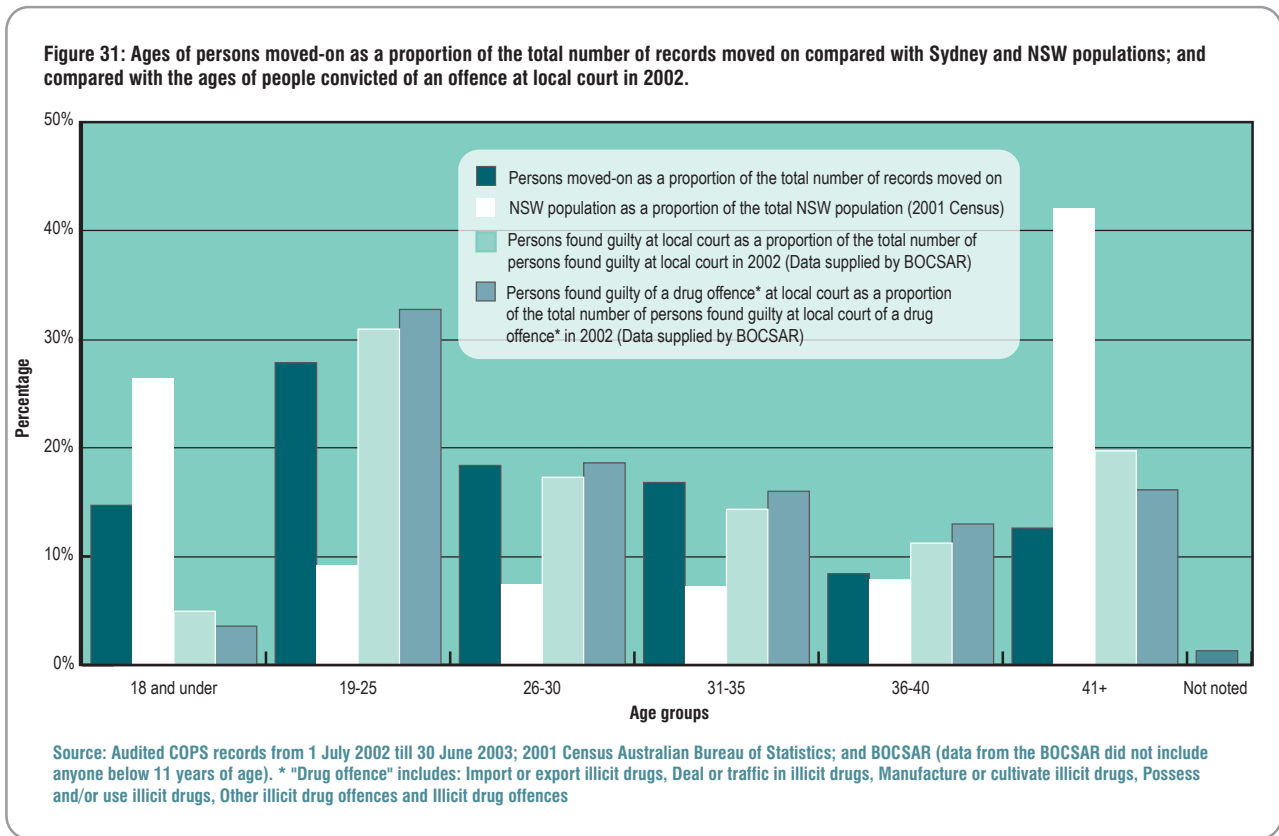
In our previous audit of move-ons, 22% of the people moved on were of Aboriginal or Torres Strait Island descent.<sup>863</sup> Our previous report found that it was not clear why such high numbers of Aboriginal and Torres Strait Islander people were subject to move-ons.

### 10.6. Factors attracting police attention

The free text narrative of each COPS record was analysed to determine why the person moved-on initially came to the attention of the police.

We only noted factors that were explicitly stated by police in the narrative. For example, if a person was stopped in a location well known for drug activity, but the police officer did not include in the narrative that this was among the reasons why the person was stopped, we did not include this as a possible reason for the move-on.

The most common reasons recorded by police for moving on a person are noted in Table 32. Some of these reasons are described in more detail below. It is noted that for many events, more than one reason was cited. That is, the sum of the reasons for attracting police attention was greater than the total number of move-ons issued. Despite this, the results are displayed as a proportion of the total number of move-ons issued.



<sup>863</sup> NSW Ombudsman, *Policing Public Safety*, pp 203-232

**Table 29. Reasons for police attention**

Reason for attracting police attention	Number of events	As a proportion of the total (246)
Being in a location known for drug activity	59	23.98%
Loitering	39	15.85%
No reason recorded by police	27	10.98%
Having short conversations with passers by	23	9.35%
Being a person known for drug supply	22	8.94%
Being a person known as a drug user*	21	8.54%
Being the subject of a 000 phone call for police assistance	19	7.72%
Being a person known for offences (not drug offences)	15	6.10%
Information about drug activity from a community member	15	6.10%
Attempting to avoid police	12	4.88%
Being a person known for drug offences	11	4.47%
Appearing drug affected	10	4.07%
Being in a car that has come to police attention	9	3.66%
Being on or near a drug premises	6	2.44%
Drinking alcohol in a public place or alcohol free zone	6	2.44%
Having the appearance of a drug user	6	2.44%
Being a person known to police (unspecified for what)	5	2.03%
Being seen with a known drug user/supplier	5	2.03%
Information from CCTV operators	5	2.03%
Being seen after being issued a direction	3	1.22%
Having train ticket checked by police	3	1.22%
Being indicated by a drug dog	2	0.81%
Other	36	14.63%

\*Two of these people also known as sex workers, n = 246

Source: Audited COPS events from 1 July 2002 till 30 June 2003

There was a great variety in the number of reasons provided. There was no pattern or combination of factors that was particularly prevalent. Some scenarios are described in more detail below.

### 10.6.1. Being in a location known for drug activity

This was the reason most commonly noted by police as the reason for a person coming to police attention.

Typically, locations known for drug activity were local CBDs or local shopping areas or centres.

Using this factor alone would seem an unlikely basis upon which to issue a drug move-on, as these areas were attended by most of the general public. Yet for some records, it appeared that this was the case.

For 27% of events where this reason was cited (16 of 59 events), it was the sole reason for the person coming to police attention. The majority of these events were issued in Redfern, Kings Cross, Cabramatta or Fairfield, which are all areas known for their street-level drug trade.

For example, one event narrative begins as follows:

*On the stated date and time police were conducting a bike patrol within the CBD of ... and observed the mentioned POIs [person of interest] in the ... park. The park area is well known for the supply and distribution of drugs within the area. The park is utilised on a daily basis by persons who continually loiter wishing to be supplied drugs. As a result the POIs were spoken to by police.<sup>864</sup>*

<sup>864</sup> COPS event narrative, drug move-on incident 61, 21 November 2002

And another record begins as follows:

*About [time and date] police observed the two POIs walking toward [the location]. This area ... is very well known for the supply and distribution of illicit drugs. POIs were stopped and spoken to.*<sup>865</sup>

However, for 69% of events where this reason was cited (41 of 59 events), one or more other reasons were also cited. For example, in the following event, being in a location known for drug activity, being a known supplier of heroin and loitering were among the factors considered by police:

*The POI was sitting at a table smoking. The LOI [location of interest] is a well-known location where drugs, namely heroin, is bought and sold. The POI is known to police as a supplier of heroin, although he has never been charged... The POI stated he was just sitting at the location but did not intend to buy food.*<sup>866</sup>

### 10.6.2. Having short conversations with passers by

This behaviour was taken by police to be indicative of either an attempt to sell or purchase drugs. Over a third of these events occurred in Kings Cross (9 of 23, or 39%).

This reason was not usually given without other factors also being given for attracting police attention. For example,

*The POI was observed to seek out and converse with various persons in and passing through the park. The majority of these persons are known to police as drug users/suppliers. This activity continued for around five minutes. Following this, police intervened and spoke with the POI.*<sup>867</sup>

In this example, short conversations in a location known for drug supply are among the reasons that police approached the POI:

*... police ... were patrolling the vicinity of ... This area of concern is well known to police re the purchase and selling of prohibited drugs. At this time police observed the POI walking around with a mobile phone in his left hand. The POI was observed by police to walk up and down the surrounding street ... several times. Police observed the POI approach several unknown persons and try to have a conversation with them with no avail.*<sup>868</sup>

In the following example, the POI has short conversations with others, and is also known for drug supply:

*... the POI was seen by police walking along ... with several other male persons. The POI has previous intelligence for dealing cannabis to other youths. At the time the POI was seen to talk to several youths whilst walking down the street then walk on.*<sup>869</sup>

### 10.6.3. Being a person known as a drug user

There were 21 events for which being a person known as a drug user was a factor in attracting police attention.

For 6 of these events (or 29%) this was the only reason for attracting police attention. An example of an event where a person was approached solely because they were known as a drug user is as follows:

*[The POI] was seen to be standing outside the chemist... Police stopped and spoke to [the POI] who stated he was waiting for his friend in the chemist. [The POI is] known as a heroin user.*<sup>870</sup>

And another:

*... police ... stopped the POI ... on [location]. Police spoke to him as he was known to them as a person who frequents [the location] and a known drug user.*<sup>871</sup>

And in this record:

*The POI was seen on the corner [of two streets]... the POI is a well known drug user who is currently on a suspended sentence for 12 months. He was stopped and spoken to.*

For the majority of these records, an additional reason was cited for drawing police attention to the POI. For example,

<sup>865</sup> COPS event narrative, drug move-on incident 212, 30 November 2002

<sup>866</sup> COPS event narrative, drug move-on incident 135, 3 May 2003

<sup>867</sup> COPS event narrative, drug move-on incident 85, 6 March 2003

<sup>868</sup> COPS event narrative, drug move-on incident 86, 4 January 2003

<sup>869</sup> COPS event narrative, drug move-on incident 10, 5 October 2002

<sup>870</sup> COPS event narrative, drug move-on incident 35, 20 February 2003

<sup>871</sup> COPS event narrative, drug move-on incident 83, 11 January 2003

...police were performing a patrol of the [location] as per tasking sheet. Police observed POI 1 and 2 loitering on a bench seat at the location. Both POIs have a lengthy criminal history and are currently patients of the [local] methadone clinic. Police have received numerous complaints from shop owners at the location in relation to POI 1 and 2 harassing customers. Uniformed police announced their office and place of duty to both POIs.<sup>872</sup>

And:

At the mentioned time and date police noticed the POI loitering around the location. Police are aware that the POI has a history of substance abuse. Police spoke to the POI...<sup>873</sup>

#### 10.6.4. Being the subject of a 000 phone call for police assistance

On occasion, police would be called to respond to a 000 phone call for assistance. For 89% (17 of 19) of these records, this reason was cited alone.

Some examples of this are:

Informant is security guard at above address and there are approximately 10-15 drug/alcohol affected people hanging around the forum area. Informant would like police to move them along.<sup>874</sup>

[Reports of a] male person throwing bricks and causing problems, possibly drug or alcohol affected.<sup>875</sup>

### 10.7. Factors police noted in determining relevant conduct

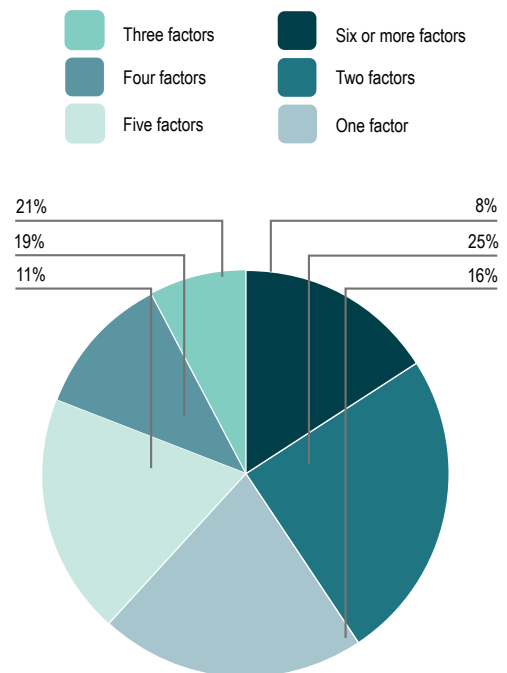
The move-on legislation presupposes that it is possible for police to assess another person's purpose in being somewhere. The difficulties with this proposition will be discussed extensively in the chapter on the use of the drug move-on powers in Cabramatta, and will not be repeated here.

The following is a descriptive account of the factors used by police in the records included in the NSW audit in deciding to issue a move-on.

In order to determine which factors police were using to form the grounds to issue a drug move-on, the free text narrative of each record was analysed. Factors were noted even if they were not explicitly stated, as it was rare that police would cite the reasons for issuing the move-on directly. For example, in the following narrative, the reasons for the move-on are not explicitly stated, but can be ascertained:

The POI stated that he was just waiting until his methadone kicked in. Police then conducted a search of the Poi's bum bag. Whilst conducting this search police have located 2 resealable plastic bags, which appeared to contain cannabis residue. Police also found in his possession a number of plastic spoons, the POI stated that he

Figure 32: Number of factors considered by police



Source: Audited COPS records from 1 July 2002 till 30 June 2003, N = 246

<sup>872</sup> COPS event narrative, drug move-on incident 142, 17 September 2002

<sup>873</sup> COPS event narrative, drug move-on incident 57, 2 September 2002

<sup>874</sup> COPS event narrative, drug move-on incident N155, 20 December 2002

<sup>875</sup> COPS event narrative, drug move-on incident N1, 31 March 2003

had them for when he used the white powder. The POI was then issued with a drug related move-on direction, which was obeyed with out incident.<sup>876</sup>

In this example, we noted that the discovery of drug paraphernalia and the admission of drug use were contributing factors in the decision to move the person on.

After analysing each record narrative, the common reasons for police deciding to move people on were identified and analysed (see Table 29).

It is noted that for many records, more than one reason was cited. As demonstrated by Figure 32, for 16% of records, one factor was considered by police. For the remaining 84% of records, at least two factors were considered by police in determining relevant conduct. The substance of these factors is considered in more detail below.

**Table 30. Factors police noted in determining relevant conduct**

Factors police noted in determining relevant conduct	Number of records	As a proportion of the total (246)
Admitting to being a drug user	68	27.64%
Being in a location known for drug activity	66	26.83%
Appeared drug affected	41	16.67%
No reasonable excuse for being there	38	15.45%
Loitering	36	14.63%
Being in possession of syringes	35	14.23%
Being known for offences other than drug offences	32	13.01%
Intel for drugs	31	12.60%
Being known for drug offences	30	12.20%
Being in possession of drug paraphernalia (not syringes – eg, plastic spoons and bongs)	26	10.57%
Being known for drug supply	24	9.76%
Provoking fear or intimidation	18	7.32%
Having track marks	17	6.91%
Admitting an intent to purchase drugs	16	6.50%
Known drug user**	16	6.50%
Being unable to produce evidence of the friend on claims to be waiting for	10	4.07%
Having short conversations with passers-by	10	4.07%
Alcohol related incident	8	3.25%
Not living in the area	6	2.44%
Being on or near a drug premises	6	2.44%
Information from community members	6	2.44%
The time of day/week	6	2.44%
Attempting to avoid police	5	2.03%
Having the appearance of being a drug user	4	1.63%
Being known to police (unspecified as to why)	4	1.63%
Seen after being issued a direction	4	1.63%
Being seen with a known drug user/supplier	4	1.63%
Admitted recent purchase	3	1.22%
No reason recorded by police	3	1.22%
Being in possession of cash or coin bags	2	0.81%
Admitting to being a sex worker	2	0.81%
Information from CCTV operators	2	0.81%
Being homeless	2	0.81%
Being seen swallowing something	2	0.81%
Other	34	13.82%

\*\* One of these was also known as a sex worker, n = 246

Source: Audited COPS records from 1 July 2002 till 30 June 2003

<sup>876</sup> COPS event narrative, drug move-on incident 144, 13 January 2003



As with the analysis of “Reasons for police attention”, the sum of the “Factors police noted in determining relevant conduct” in Table 29 was greater than the total number of move-ons issued. Again, the results are nevertheless displayed as a proportion of the total number of move-ons issued.

### 10.7.1. Admitting to being a drug user

An admission of drug use was one of the two main factors cited by police in issuing a drug move-on. The following is an example of an event where this reason was the substantial reason for the drug move-on:

*About 1am, police were called to the male toilets at ... railway station re a male unconscious in a cubicle. Upon arrival, the POI could be heard to flush the toilet. Police asked the POI to leave the cubicle which he did and supply his name and date of birth. The POI complied with this direction and showed police recent court papers in his name. The POI admitted to being a drug user, however stated that he had not used [drugs] and was just looking for a safe place to sleep for the night. The POI was given a move along direction and left without incident.<sup>877</sup>*

However, this reason was rarely the only reason that a person was moved on. For the majority of records (62 of 68, or 91%) another reason was also cited. There were many different scenarios for which an admission of drug use was among the factors considered in determining reasonable conduct. However, it appeared that an admission of drug use usually led to police conducting a more thorough investigation, which then led to the move-on being issued.

For example, it appears that in the following incident, police conducted a search on the basis of the admission of recent use of marijuana:

*...police were patrolling the area... and noticed the POIs in the park area with a number of other young persons. Police stopped and spoke with the persons and details [were] obtained. During conversations with the persons, POI 1 appeared to be affected by cannabis or very tired, his eyes were glazy and his speech slow. POI 2 stated to police that they had been smoking “pot”. Both POIs submitted to a search of their bags and person with nil find of cannabis or objects for use.<sup>878</sup>*

In the following example, the POI admits recent drug use, and one has a syringe wrapper, which appears to lead directly to the issue of the move-on:

*Police were at ... when they noticed two persons walking around the unit block. Police stopped and questioned POI 1 and POI 2, noticing that POI 1 had a syringe wrapper in his right hand. POI 1 stated that they had just both had a “hit” or heroin behind the unit block located on. [Police then issued a move-on].<sup>879</sup>*

In this example, the admission of the use of marijuana at some time in the distant past leads to a search for drugs:

*...police were patrolling... when they observed the POI walking in a southerly direction. Upon seeing police the POI quickly changed his direction and crossed the road and began heading for a lane way... Due to the POIs suspicious demeanour, police pulled up beside the POI and asked him what he was up to. The POI appeared very nervous and fidgety and informed police he had been walking the streets looking for his mother... Whilst speaking to the POI police noticed that his speech was slow and deliberate. He had heavily bloodshot eyes and he seemed to have difficult maintaining eye contact with police*

*The POI was asked if he had ever used cannabis to which he replied “yeah, but not for ages.” Based on the observations of the POI and the fact that he admitted to being a cannabis user, he was requested to turn out the pocket of his shorts for the purpose of determining whether or not he was in the possession of any illicit drugs. This non-invasive search was conducted in accordance of section 37(4) of the Drug Misuse and Trafficking Act. No substances were detected.<sup>880</sup>*

In the above examples, the admission was of drug use in the past. However, in some incidents, the admission of being a drug user was given with the admission of an intent to use drugs in the future. For example:

*...the POIs were seen with another male of Asian appearance who admitted to police that he had sold drugs to an Australian male earlier today. When the POIs were questioned they said that they had not got on yet and not shot up as yet. Upon searching the POIs a syringe was located in the pants pocket (left front) of [one POI]. When asked what that was for, [the POI] stated “to shoot up”...*

*On the basis that the POIs were in the company of a person who admitted to police that he had sold drugs this morning and the fact they had implements to administer same and no other lawful purpose to be in the... area a move-on direction was explained to the POIs...<sup>881</sup>*

<sup>877</sup> COPS event narrative, drug move-on incident 189, 14 November 2002

<sup>878</sup> COPS event narrative, drug move-on incident 6, 3 October 2002

<sup>879</sup> COPS event narrative, drug move-on incident 221, 19 August 2002

<sup>880</sup> COPS event narrative, drug move-on incident 161, 22 December 2002

<sup>881</sup> COPS event narrative, drug move-on incident 226, 10 December 2002

## 10.7.2. Being in a location known for drug activity

There is some discussion of this in the previous section. Typically, the location cited as being known for drug activity was in a CBD, street mall or shopping centre. As a sole factor, it would seem unreasonable that a person could be moved on from a place frequented by the majority of the local community. However, for all but one record, this factor was used in conjunction with at least one other factor.

It is of note, nevertheless, that the fact that there were additional reasons other than being in a location known for drug activity does not necessarily imply that the direction was reasonable in the circumstances. This is determined by the substance of the factors when assessed in combination with each other.

Interestingly, we found that in 39 or 16% of all audited records, being in a location known for drug activity and factors which indicated drug use appeared to be used by police to determine relevant conduct. Factors which indicated drug use included:

- admitting to being a drug user
- appearing drug affected
- being in possession of syringes
- being in possession of drug paraphernalia (not syringes)
- being known for drug supply
- having track marks
- admitting an intent to purchase drugs
- being a known drug user
- being on or near a drug premises
- having the appearance of being a drug user and
- admitting to recently purchasing drugs.

**Table 31. Records for which both being in a location known for drug activity and signs of drug use were included in the factors used to determine relevant conduct**

LAC	No. of audited records	No. of audited records as a proportion of the total
FAIRFIELD	11	28.21%
REDFERN	7	17.95%
COFFS/CLARENCE	5	12.82%
CABRAMATTA	4	10.26%
KINGS CROSS	4	10.26%
MARRICKVILLE	4	10.26%
NORTH SHORE	2	5.13%
ROSE BAY	2	5.13%
Total	39	100.00%

Source: Audited COPS records from 1 July 2002 till 30 June 2003

As indicated by Table 31, Fairfield issued most of these types of move-ons. The following is an example of a good description of one such move-on:

*At the above time and date police were making a general patrol of the ... CBD. The POI came under notice loitering around the location which is well known to police as an area where prescription pills, methadone, and prohibited drugs are frequently bought and used. Persons of drug user appearance are continually loitering around the ... CBD for this purpose and as a result, police receive numerous complaints from local shop owners in relation to this behaviour.*

*The POI appeared to be a drug user and for the reasons mentioned, police approached the POI and his bona fides were checked. The POI admitted to being a current user and fresh track marks were noted on his arms. The POI stated he was also on the methadone program...*

*The POI's details were obtained... as a result of all these factors, the POI was searched for drugs with a negative find. The POI stated his only reason for coming to [the area] was in order to see his doctor, and admitted he had no reason to be loitering around anywhere in the ... CBD.*

*The POI was issued a drug related move along direction and he complied with the direction.<sup>882</sup>*

Significantly, for 21 of these records it was clear that both being in a location known for drug activity and admitting to being a drug user were among the reasons for the decision to issue the move-on. This was 32% of all records where being in a location known for drug activity was a factor in deciding to issue the move-on.

### 10.7.3. Having no reasonable excuse for being in the area

The fact that a person did not have a reasonable excuse for being in the area was another factor used by police that recurred frequently in our audit.

Often, police would not say what the POI's ostensible excuse for being in the area was. For example:

*... All four POIs were seen sitting on the bench seat outside the ... bank in the ... City Centre. This area is a known distribution area for prohibited drugs and all four POIs have a drug history. None of them could give a reason for being in the area and were given a direction to move-on, which was complied with.<sup>883</sup>*

When the ostensible excuse was detailed, police would not usually explain in the narrative why they thought the person's ostensible excuse for being the area was not reasonable, for example:

*On the stated date and time police were conducting a bike patrol within the CBD of [the area] and observed the mentioned POIs in the ... park. The park area is well known for the supply and distribution of drugs within the area. The park is utilised on a daily basis by persons who continually loiter wishing to be supplied drugs. As a result, the POIs were spoken to by police. They informed police that they were shopping. Police believe the POIs were in the area to obtain drugs and were issued with a move along direction to leave the area.*

However, sometimes the unreasonable nature of the ostensible reason for being in the area was evident:

*... police observed the POI loitering in the Alcohol Free Zone in ... The POI was spoken to and he stated that he was at [the location] to attend Centrelink. The POI could not explain why he would come to [the area] when he lived across the road from a Centrelink office at [his home suburb]. It was apparent that the POI was loitering in the area to purchase drugs. The POI was given a move along direction which he complied with.<sup>884</sup>*

And in this example, it is also evident why the police regarded the person's excuse for being in the area was unreasonable:

*Prior to the above time/date police received information that the POI who was wearing a blue hooded jacket, was walking up and down the street looking into cars and trying car doors. Police located the POI and a check was subsequently carried out on him via police radio. This check revealed that the POI had warnings, and had committed break, enter and steal offences, and drug related offences*

*The POI had no reason for being in the area and it did appear that the POI was walking up and down the street. The POI stated that he was car shopping. However, there were no car yards in the street that he was walking.<sup>885</sup>*

<sup>882</sup> COPS event narrative, drug move-on incident 68, 25 March 2003

<sup>883</sup> COPS event narrative, drug move-on incident 31, 15 November 2002

<sup>884</sup> COPS event narrative, drug move-on incident 127, 20 June 2002

<sup>885</sup> COPS event narrative, drug move-on incident 159, 12 October 2002

### 10.7.2. Having intelligence on COPS for drugs

In a typical move-on scenario, police will conduct a check on the person's criminal history, and any previous dealings that he or she has had with police. This is usually conducted via police radio.

Frequently, this radio check would inform police that the person had intelligence for drugs. Intelligence reports, which are also known as intel, are created by police and entered onto COPS in relation to a particular person, vehicle or places. To provide a hypothetical example, if a drug detection dog has indicated that a person has the scent of drugs in the air around them, police may then conduct a search of that person. If no drugs are found on that person, but the person admits that they had earlier used cannabis, police may create an intelligence report on COPS that the person had made an admission to using drugs. Another example is when a member of the public informs police that a particular person is a drug user or drug dealer.

In some move-on events, such intelligence was among the reasons for police issuing the move-on. In one incident, on the basis of such an intelligence report alone, two people were moved on:

*Police were patrolling ... when the VOI [vehicle of interest] was seen to be driving with no lights on. A vehicle check revealed intel for drugs. Stopped and both Poi's spoken to. CNI checks on both revealed intel for Drugs. This gave police the reasonable suspicion that the poi's were in the area to purchase drugs. Police informed the POIs of their names and gave them both a move along direction which they complied with.<sup>886</sup>*

However, this was the exception rather than the rule. For most events where intelligence was a factor in forming relevant conduct, it was one of several reasons. For example,

*POIs sighted at intersection of ... Police turned around to speak to POIs, it was noticed that POI 3 had left the company of the females. POI 3 is a heavy drug user within ... [the] LAC at the present time, and is also well known for property/pawning offences. When spoken to POI 2 was unsteady on her feet and appeared to be affected by illegal drugs. POI 1 resides in ... and claimed to be on her way to ... to see her doctor. [The location] and its surrounds are well known as a location for the supply of drugs. POI 1 is well known for drug intel/charges. Due to the above, both POIs were issued with a move along direction (drug related) to which they happily complied.<sup>887</sup>*

And another example:

*... police were patrolling ... when they saw the POI walking around. Police approached the POI and asked him where he was from. He told police he was from ... Police asked the POI why was he was in [the area]. He stated that he was in [the area] to purchase heroin. Police searched the POI and found \$55. Police checks revealed that the POI has an extensive criminal record and intel for drugs.<sup>888</sup>*

### 10.7.5. Having track marks

The fact that the POI had track marks did not frequently occur in the NSW audit, and when it did appear, it was always in conjunction with several other reasons. In addition, 9 of the 17 move-on events where track marks were cited as a factor in forming relevant conduct occurred in Cabramatta. There is a discussion of track marks in the following chapter on the use of the drug move-on powers in Cabramatta.

### 10.7.6. Admitting an intent to purchase drugs

This factor also occurred rarely in the audit, and again, over half (9 of 16) of these occurred in Cabramatta. In the following example, this was the sole reason for the move-on:

*...police were patrolling the areas of ... railway... the POI was seen to be leaving the [area]. The POI was subsequently stopped ... When asked his purpose for being in the [area] the POI stated "trying to score". When asked what had happened the POI replied "they won't sell because of you hanging around". The POI was then given a move-on direction ...<sup>889</sup>*

<sup>886</sup> COPS event narrative, drug move-on incident 107, 17 October 2002

<sup>887</sup> COPS event narrative, drug move-on incident 121, 30 July 2002

<sup>888</sup> COPS event narrative, drug move-on incident 225, 8 August 2002

<sup>889</sup> COPS event narrative, drug move-on incident 170, 11 November 2002

However for only three events was this the sole reason that the move-on was issued. For the majority of these events, there were other factors involved in forming relevant conduct. For example:

*...police observed the POI at the location. As police approached the POI began to walk away. Police stopped and spoke to the POI who stated he was at the location to "get on". The POI further stated he was a frequent heroin user. The POI was searched with a negative result and issued with a move along direction not to be in the lane for the remainder of the day. The POI complied with the direction.<sup>890</sup>*

And:

*At the stated time and date police observed the POI to be loitering at the location of interest. When spoken to by police the POI freely admitted to having recently being released from [a] correctional centre last week and had come to [the area] for a hit of cocaine. Police observed fresh track marks located at the inner crutch of the Poi's left inner arm which was consistent with her story. The POI further stated that the hit of cocaine cost \$50 and was obtained from a street dealer, the level of purity of the drug was highly questionable with the POI stating that it was "shit".<sup>891</sup>*

### 10.7.7. Having no evidence of a friend one claims to be waiting for

In a small number of cases, if the person said that they were waiting for a friend and police did not accept that this was true, this was included among the factors contributing to the relevant belief needed to issue the move-on. This reason was not found to be used in isolation, it was always in conjunction with at least one other factor.

A typical example of this:

*The POI was seen on the corner of ... The POI is a well known drug user who is currently on a suspended sentence for 12 months. He was stopped and spoken to. He was searched under section 37(4) of the Drug Misuse and Trafficking Act. He was carrying syringes and he admitted to still using drugs. Police saw fresh track marks on his left arm. When asked why he was in [the area] the POI said "to see some friends". The POI always says this but he can never nominate these friends.<sup>892</sup>*

Another typical example is:

*At the mentioned time and date police noticed the POI loitering around the location. Police are aware that the POI was a history of substance abuse. Police spoke to the POI and he stated that he was waiting for a friend. The POI could not provide details of this alleged friend. The POI was searched for the presence of a drug (not knife) and nothing was found. Police felt the POI did not have a reasonable reason for being in the area and was directed to move-on. The POI complied with the direction.<sup>893</sup>*

### 10.7.7. Other

There was great variety in the reasons recorded by police for the issue of move-ons. Some of the reasons in our "other" category included:

- the POI putting something down his pants
- police observing the use of drugs
- being in possession of an empty pill packet
- being in possession of methadone
- exhibiting signs of heroin withdrawal
- being the subject of an earlier cannabis caution and
- police detecting the smell of cannabis in the car.

### 10.7.9. Targeting drug supply

For 45 or 18% of all records audited, it was clear that the possibility that the person may be involved in supply was among the reasons the person initially came to the attention of police. This consists of all records where the reasons that the person first came to police attention included: having short conversations with passers by and being a person known for drug supply.<sup>894</sup>

<sup>890</sup> COPS event narrative, drug move-on incident 177, 18 March 2003

<sup>891</sup> COPS event narrative, drug move-on incident 237, 7 August 2002

<sup>892</sup> COPS event narrative, drug move-on incident 104, 30 January 2003

<sup>893</sup> COPS event narrative, drug move-on incident 57

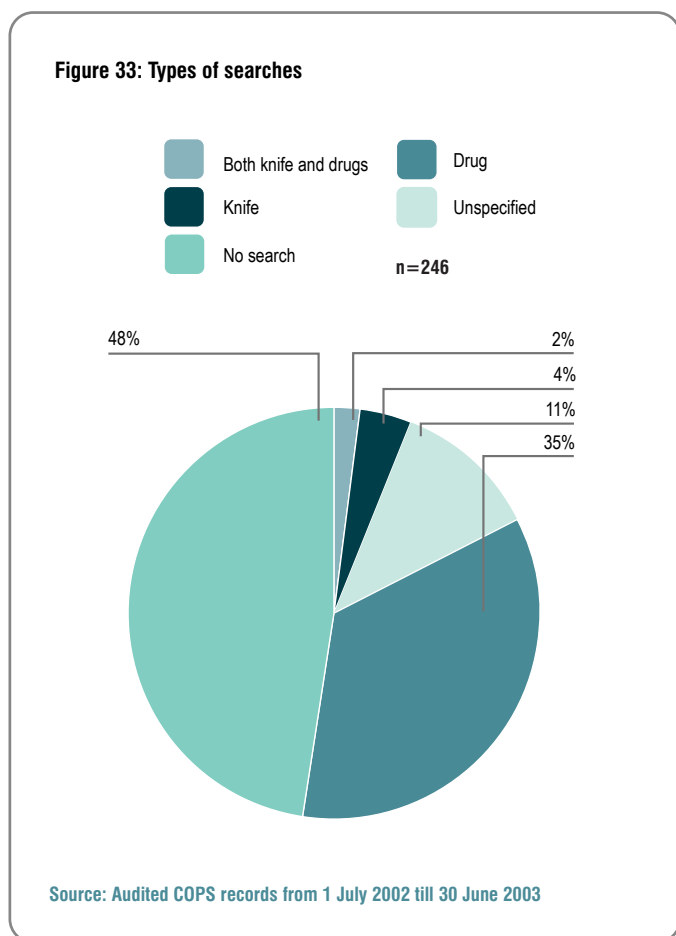
<sup>894</sup> For full list of the reasons for police attention, see paragraph 10.6

In relation to the reasons that the person was eventually moved on (or the factors noted police used to determine relevant conduct) factors that were supply related did not feature significantly.

For 36 or 15% of records, it was clear that the possibility that the person may be involved in supply was among the factors police used to determine relevant conduct. This consists of all records where the factors used to determine relevant conduct included: being seen swallowing something; having short conversations with passers-by; and being known for drug supply.

## 10.8. Searches

During the NSW audit, we identified that searches were frequently conducted during the event description. For this reason, we noted whether the person later moved on was also searched by police. We considered all searches, regardless of whether or not the search was conducted by consent.



For 117 or 48% of move-ons audited, no search was conducted.

For the remaining 129 or 52% of move-ons audited, a person was searched prior to being moved on. We analysed the reasons for the search as described in the narrative.

On some occasions the event explicitly cited either the Drug Misuse and Trafficking Act or the Summary Offences Act as the authority being relied upon to conduct the search. For other events, it was clear from the text which authority was being relied upon. And in yet other events, it was unclear or unspecified which authority was being relied upon.

As demonstrated in Figure 33, 86 or 35% of the move-on searches appear to have been conducted under the Drug Misuse and Trafficking Act and 10 or 4% appear to have been conducted under the Summary Offences Act as knife searches. 28 or 13% records, it was unclear which authority was being used to conduct the search.<sup>895</sup>

In 5, or 2% of records audited it appeared or was stated that the search was being conducted both under the Drug Misuse and Trafficking Act and the Summary Offences Act.

In one record, a knife search was said to be conducted for drugs:

*Police conducted a knife search of the POI as they had reasonable belief that the POI had some drug still on his person.*<sup>896</sup>

A frequent pattern of behaviour that emerged from the audit was that after stopping somebody, police would establish the grounds for conducting a search under the Drug Misuse and Trafficking Act and if nothing was found, would issue a move-on. A typical example of this is:

*This area based on intelligence and other observations is an area used for the distribution of drugs. Information has also been received that the POI has been selling speed. Based on this information a search was carried out on both persons with a negative result. Both persons were then given a move-on direction which was complied with.*<sup>897</sup>

## 10.9. Types of directions

Section 28F of the Summary Offences Act provides that the direction must be reasonable in the circumstances for the purposes of preventing the relevant conduct.

In other words, police are not restricted as to the type of direction they can issue. For example, they could issue a direction to leave the area for seven days, or they could issue a direction to move along, and not specify how long the direction applies for.

<sup>895</sup> As noted previously police are now required to specify the authority for conducting their search.

<sup>896</sup> COPS event narrative, drug move-on incident 169, 12 November 2002. This was recorded in the category of "both".

<sup>897</sup> COPS event narrative, drug move-on incident 32, 28 January 2003

In practice, most directions take the latter form, which is why a reasonable direction under s28F is commonly known as move-on or move-on.

As previously mentioned, the constable's pocket guide does provide some advice on the type of direction to issue. It advises that police must explain what the POI must do or cease doing, and if applicable, how far and/or for how long the POI is required to go away. The guide also notes that "This direction must be reasonable in the circumstances to remove or prevent the continuance of the behaviour the direction is being issued for."

**Table 32. Discretion issued**

Direction	Total	% of Total
Not noted	107	43.50%
To leave the area	58	23.58%
To leave the area for 7 days	26	10.57%
To leave the area for 24 hours	17	6.91%
Other	38	15.45%

Source: Audited COPS records from 1 July 2002 till 30 June 2003

In our audit we noted the type of direction issued in each COPS record. The type of direction was noted only if it was explicitly stated.

As Table 32 demonstrates, in many cases, the type of direction issued was not mentioned at all in the narrative. This included all events where the narrative did not refer to the move-on at all, and all events where the move-on was described as a move-on or move-along with no other details provided.

Although a direction to move-on or move along is arguably a type of direction of itself, it is included in the "not noted" category as it was apparent that police consider this term to be synonymous with any type of direction. Indeed, while the reference to a move-on or move along implies that the person is being directed to leave the area, for some events, the direction was referred to as a "move-on direction to leave the area" (however not all directions included in the "to leave the area" category were of this nature). This meant that we could not assume that a reference to a move-on or move-on meant that the person was in fact being asked to move-on or move along.

The following is an example of an event included in the "not noted" category:

*...POI observed loitering at location with group of other unknown scruffy types. Plain clothes police approached and other POIs walked away, remaining POI spoken to, known sexual offender and has prior intel for heroin supply at this location. Consented drug search negative, as suspected of loitering for purposes of obtaining drugs was directed to move-on, complied with.<sup>898</sup>*

And another:

*...both POIs were found to be at the above location. Both were consuming alcohol and are known drug offenders. Both were moved from the area.<sup>899</sup>*

As mentioned above, the events included in the category of "to leave the area" were more specific than other directions. These directions either referred to a move-on direction to leave the area, or specified that the direction was to leave a particular area. Following is an example of a direction to "leave the area":

*... police were patrolling the ... mall and bus interchange area. POI was seen talking to a number of young males while drinking out of a 750ml bottle of VB beer. Police had spoken to the POI several times during the day, due to complaints from members of the public. The POI was informed that the area was an alcohol free zone and was given a move-on direction to leave the mall and interchange area. This direction was complied with, with no further problems.<sup>900</sup>*

For 26 or just over 10% of the records audited, a direction to leave the area for seven days was issued. It should be noted that 21 of these seven-day directions were issued in Cabramatta LAC. The remaining seven-day directions occurred in either Fairfield LAC or Lake Illawarra LAC. For a detailed discussion about seven day directions please refer to the following chapter on the use of the drug move-on powers in Cabramatta.

### 10.9.1. Other types of directions

There was great variety in the other types of directions issued. Some of these include:

- not to be in the area for 8 hours
- not to return to the area for the rest of the day
- within 10 minutes, to leave the area for 48 hours and
- to leave the area as soon as the person's girlfriend arrived.

<sup>898</sup> COPS event narrative, drug move-on incident 41, 4 September 2001

<sup>899</sup> COPS event narrative, drug move-on incident 140, 26 October 2002

<sup>900</sup> COPS event narrative, drug move-on incident 143, 7 January 2003

## 10.10. Procedural requirements

As outlined earlier in our legislative survey chapter, according to s28F(4) of the Summary Offences Act, police are required to fulfil four procedural requirements before issuing a direction, namely:

1. provide evidence that he or she is a police officer (unless the police officer is in uniform)
2. provide his or her name and place of duty
3. inform the person of the reason for the direction and
4. warn the person that failure to comply with the direction may be an offence.

These requirements are outlined in the "Move Along Direction Constable's Pocket Guide", referred to earlier.

Adherence to this requirement was difficult to audit as police rarely mentioned these procedural requirements in their narratives, as indicated by Table 33.

**Table 33. Procedural requirements**

Requirement	Not noted	% of total (246)	Noted as having been complied with	% of total (246)
Evidence of office	242	98.37%	4	1.63%
Name and place of duty	206	83.74%	40	16.26%
Reason for direction	215	87.40%	31	12.60%
Warning about failure to comply	192	78.05%	54	21.95%

Source: Audited COPS records from 1 July 2002 till 30 June 2003

There are a very low number of records where compliance or non-compliance with the procedural requirements is noted. There are three possible reasons why police did not make note of these requirements:

- police did not feel it necessary to record this
- police did not comply with the procedural requirements or
- police were unaware of the procedural requirements.

As noted previously, very few directions are recorded as having been disobeyed. As people agree to a request by police to leave the area, they may be engaging in what has been termed "consent policing". This was discussed at length in the report of our previous review of move-ons, *Policing Public Safety*.<sup>901</sup> In that report, we found that the practice of police issuing reasonable directions had long been occurring prior to the introduction of the move-on legislation. Apparently this was possible only because of the consent of the persons being moved-on. Therefore, it would seem that the general community does not usually challenge the exercise of this type of authority.

When issuing directions under a consent policing arrangement, police might not adhere to the procedural requirements, as they do not regard themselves as having relied on the authority of s28F of the Summary Offences Act.

However, the fact that the person moves on without questioning the authority of the police does not negate the importance of police adhering to the procedural requirements. The practice of consent policing might, for example, deny the person an opportunity to explain their presence or behaviour, which adherence to the procedural requirements might afford.

Our review received one submission that police sometimes fail to follow these procedural requirements.<sup>902</sup> It submitted that reports had been received that police were issuing directions without providing the reason for the direction. It is said in the submission that police express the reason for the direction in vague terms, such as "you're intimidating people", without explaining the nature of the allegedly intimidating behaviour.

It is conceivable that following these formal requirements would not be appropriate in all situations. For example, if moving along a group of drug affected persons, formal compliance with the procedures may be inappropriate or may aggravate the situation.

<sup>901</sup> NSW Ombudsman, *Policing Public Safety*

<sup>902</sup> Shopfront Legal Centre, representation 1, received 16 June 2003



However, it is also a legislative requirement that these procedures are complied with before the direction can be issued. Failure to do so will mean that the direction issued may be invalid if challenged in court.

## 10.11. Public place

Section 28F states that “A police officer may give a direction to a person in a public place” etc.

A public place is defined by s3 of the Act as:

(a) a place (whether or not covered by water), or

(b) a part of premises,

*that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include a school.*

It would seem then that a public place excludes private residences.

In addition, as s28F provides that “a police officer may give a direction to a person...”, it may be that vehicles are excluded from being able to be moved on, as it may be that they are not capable of being defined as a person.

It appears that the legal position on this matter needs to be clarified for police as the audit found some records where it appeared that directions were being issued to persons on private property and for cars to move-along.

For example, it appears in the following narrative that the move-on direction was issued in the back yard of a residence:

*...police were called to the vicinity [of the residence] in relation to complaints of excessive noise and disturbing behaviour. On arrival, police noticed the occupier... jump a fence into the rear yard of the location. Several other persons were seen to be standing near the side of the rear fence on the street... Fearing that [POI 1] had committed an offence and was now attempting to escape [police] pursued him into the rear yard of [the residence]. [POI 1] then walked back to the fence and threatened to put his dog onto [police]. [POI1] was seen to be displaying signs of being seriously affected by drugs and alcohol. [POI 1's] eyes were extremely wide open and he was appeared to be extremely hyped up... Police noticed that [POI 2] also appeared to be affected by drugs and alcohol. Police asked to search the bag and [POI 2] complied, nil located. [POI 3] was also searched with nil find*

*[Police] then gave all persons present a direction to move-on which was complied with as several persons went back into the residence of POI 1, with the others leaving the location.<sup>903</sup>*

And in the following example, police issue a direction for the vehicles involved to leave the area:

*At the above time and location, the VOI [or vehicle of interest] was observed to speak with a number of vehicles. The vehicles would approach, park next to the VOI, speak with the driver, then leave. Police spoke with the driver of the VOI. He stated he was doing work in the area, however he did not know where. He was waiting for a mate to call him and tell him where he was to go. When questioned about this friend, the driver could not give a name or an address, except to say [which road] he lived [on]... Police observed approximately \$70 hidden in the cover of the driver's UBD, of which he covered upon police arriving. Due to having no business in the area, the VOI was moved on.<sup>904</sup>*

## 10.12. Disobeyed directions

A discussion of how police determine that a direction was disobeyed is in the chapter on the use of the drug move-on powers in Cabramatta.

We audited 43% of all directions recorded by police as having been disobeyed (hereafter referred to as “disobeyed directions”).

<sup>903</sup> COPS event narrative, drug move-on incident 166, 1 December 2003

<sup>904</sup> COPS event narrative, drug move-on incident 55, 19 August 2002

**Table 34. Adherence to direction**

Compliance	Total number	% of total number of move-ons issued (6336)	Total number of records in audit	% of total number of audited records	Total number of records in audit as a % of total number of move-ons issued (6336)
Obeys	6227	98.28%	199	80.89%	3.19%
Disobeys	109	1.72%	47	19.11%	43.11%
Total	6336	100.00%	246	100.00%	46.32%

Source: Data downloaded from COPS supplied by NSW Police for the period 1 July 2002 till 30 June 2003; Audited COPS records from 1 July 2002 till 30 June 2003

Table 34 illustrates that the ratio of disobeyed move-ons to obeyed move-ons in our audit is inconsistent with the ratio of obeyed move-ons to disobeyed move-ons across the state. As mentioned previously, we chose to audit a sample of disobeyed move-ons in Fairfield and Cabramatta as well as all other disobeyed move-ons across NSW.<sup>905</sup>

Overall, there was a high compliance rate with move-ons issued. The number of disobeyed move-ons over the two year period was 109, or less than 2% of the total number of move-ons issued. There are several probable reasons for the low number of disobeyed move-ons recorded.

A person we interviewed in relation to the move-on power said that he had been searched on the first occasion that he disobeyed a move-on. He went on to say that:

*... now it's like, if they say, like, move-on, I just do it, because it's not worth it, it's not worth the hassle.*<sup>906</sup>

Another person we interviewed made similar comments that she was wary of disobeying a move-on:

*... I obey it, I know not to say "get stuffed I'm only sitting here", because I know for a fact, if I disobey it, I'm going to be under arrest. I know how to be polite, or how to obey the law.*<sup>907</sup>

As demonstrated by our audit, the majority of move-ons issued are general in their nature.<sup>908</sup> Only 82 or 33% of the records audited attached a time period or spatial dimension to the move-on. For the remaining records, the direction was to "leave the area" or there was no notation of the direction parameters. As previously mentioned, the fact that police did not note the direction parameters is most likely because the direction was simply to move-on, and therefore police did not think it noteworthy. It could also be that police simply neglected to note down the specifics.

Assuming that they were not, it is likely that a significant proportion of the move-ons issued were to simply "leave the area". Despite the meaning intended by the police when issuing this kind of direction, the general nature of the direction would leave it open to interpretation. For example, the person moved-on may believe that to obey the move-on they need only remove themselves from police sight immediately, after which time they could return to the location.

The apparently high compliance rate could also reflect that it is difficult for police to detect that a move-on has been disobeyed. Street patrols in small communities may be more likely to recognise persons who have breached a direction. However, in metropolitan areas where there are high numbers of people moving through any given area, it is likely that police would have difficulty recognising people who were disobeying directions

### 10.12.1. What happens when a direction is disobeyed?

Police have several options available in dealing with a direction they have deemed to be disobeyed.

We audited 47 move-ons recorded by police as having been disobeyed. We noted the action taken by police in relation to each disobeyed direction. For some records, more than one action was recorded by police.

<sup>905</sup> See paragraphs 2.4.11-2.4.12

<sup>906</sup> Interview with 41 year old male, Liverpool, 17 November 2003

<sup>907</sup> Interview with 25 year old female, Liverpool, 17 November 2003

<sup>908</sup> See "Types of directions" on paragraph 10.9

**Table 35. Outcome of disobeyed directions**

Police Action	Number of disobeyed directions	% of total of disobeyed move-ons (47)
Infringement notice	17	36.17%
Arrest and charge	12	25.53%
First formal caution	10	21.28%
Arrest only	8	17.02%
Not recorded	5	10.64%
Other	1	2.13%

Source: Audited COPS records from 1 July 2002 till 30 June 2003

As demonstrated by Table 35, an infringement notice was the most common response by police to a direction deemed to be disobeyed.

Arresting and charging the offender at the police station was the next most common response. Nine out of the 12 arrest and charge actions occurred in Cabramatta.

In the case noted as “other” in Table 34, police took into account the fact that the person who disobeyed the direction was intoxicated. An extract from the event narrative states that:

*All POIs except POI 1 complied. POI 1 crossed to the opposite side of [the] street. There he was issued with a second move-on direction. POI 1 again failed to comply with this direction. He was arrested for this and conveyed to [a] Police Station. At the police station it was decided it would be more appropriate to deal with the POI as an intoxicated person...the POI [remained at the police station] until he was sober enough to be released. No action was taken in relation to failing to move-on. Police believe the POI was sufficiently intoxicated to have a very limited comprehension of such a direction.<sup>909</sup>*

In their formal submission to this review, NSW Police advised that there was a strong consensus that arrest and charge was “not only appropriate, but also necessary to ensure that persons comply with a move along direction”.<sup>910</sup> The submission further states that as a general rule, arrest is used as a last resort.

Evidence that arrest is used as a last resort by LACs other than Cabramatta was found in a submission by an LAC in the Northern Region. According to the submission, police in that LAC are encouraged to proceed against people who refuse a direction by issuing an infringement notice or FCAN, rather than arrest.<sup>911</sup>

The audit revealed that while arrest was rarely an outcome at most LACs, in Cabramatta arrest was found to be the typical response to a direction that had been disobeyed. We discuss this in the following chapter on the use of the drug move-on powers in the Cabramatta LAC.

## 10.13. Legislative anomaly

Section 28F(5) states that (emphasis added):

*If a police officer has complied with subsection (4) in giving a direction to a person and the person fails to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.*

As raised by a submission from an LAC this section implies that only the officer who first issued the direction can issue the second direction. This is not always possible as the person who first issued the direction may no longer be on duty when the direction is being disobeyed.

For example, let us suppose that a direction is issued at 9am for 12 hours, and the police officer who issued the direction completes his or her shift at 3pm. According to s28F(5), if the person returned to the location before 9pm, no other officer could issue the second direction.

<sup>909</sup> COPS event narrative, drug move-on incident, 211, 9 August 2002

<sup>910</sup> Submission, NSW Police, received 12 August 2003.

<sup>911</sup> Submission, Northern Region LAC, received 30 July 2003.

## Case study 27.

### Kings Cross

There were 25 events from Kings Cross included in the NSW audit. Like Cabramatta, Kings Cross is a suburb in Sydney which is known for its high street-level drug trade. However, Kings Cross is closer to the Sydney CBD, and is also colloquially referred to as the “red light district”.

Kings Cross is home to Australia’s first Medically Supervised Injection Centre (MSIC). MSIC is a NSW government initiative, which aims to reduce the public health and public order issues which result from unsupervised and public injection of drugs.

Predictably then, the fact that the location of the move-on was known for drug activity was a common factor of move-on event narratives in Kings Cross. For 11 events (or 44%) this was among the factors used to form the relevant belief.

There was only one event narrative which involved a reference to syringes. This is likely to be because the MSIC enabled people to inject drugs without having to carry needles around.

The narratives of move-ons in Kings Cross reflected that police had developed an understanding of how street-level drug trade operates. For example:

*...police were patrolling Darlinghurst Road, Kings Cross. Police observed a female... making a phone call on the public phones at the intersection of Roslyn St and Darlinghurst Rd. The female then walked south down Darlinghurst Rd towards the location. At the location, she met the POI who is a known drug dealer in the Kings Cross Area. They appeared to engage in some kind of transaction then left in opposite directions. Police stopped the POI [and] conducted a search of him. As police approached he was observed swallowing something on two separate occasions. It is common for the dealers to store caps in the mouth, so they can be easily swallowed when approached by police. The POI was searched with no find.<sup>912</sup>*

The narratives also reflected that Kings Cross police were more deliberate than other LACs in determining relevant conduct, often observing the POI for a period of time before intervening. This is likely to be another indication that Kings Cross police were frequently dealing with street supply, as it indicates a strategy to deal with the street-level drug market. It is noted that this might also reflect the fact that Kings Cross police were more diligent in noting the details of their actions on COPS.

Correspondingly, the narratives revealed that persons whom police dealt with were familiar with police strategies to deal with drugs. As indicated above, dealers had strategies of their own, such as storing caps in mouths and using telephones to conduct trade. In addition, the conversations described in the narratives indicated that POIs had some “savvy” in dealing with police interventions. For example:

*Plain clothes police were patrolling Darlinghurst Road, Kings Cross. As police approached the location they observed the POIs standing in the entrance to the TAB of the Crest Hotel. Police had observed the POIs in the same location 20 minutes earlier and on separate occasions in the past. Police stopped the POIs and announced their office. The POIs stated they were only outside to have a cigarette and that they were in Kings Cross to watch the soccer. They stated they had only got to Kings Cross about 10 minutes earlier and had only been outside for a couple of minutes. The POIs were not smoking at the time and were approached by a working girl, as police were talking to the POIs. When she recognised us as police, she quickly walked away stating she had the wrong person.<sup>913</sup>*

In another example, the POI told police that he would be taking legal action as a result of the move-on:

*The POI is well known to police for drug, property and knife offences... police observed the POI at the phone box near the Darlinghurst Rd entrance to the Kings Cross railway station... He was spoken to and questioned in relation to his activities. [He] stated that he was in the area to find his sister who is a heroin addicted street-level prostitute... The subsequent search failed to locate the implement. The POI was in possession of a large quantity of fits and other items associated with intravenous drug use. The POI denied that he was in the area to obtain prohibited drugs despite the fact that he was exhibiting all the initial signs of heroin withdrawal... [A direction was issued]. The POI was unhappy with his entire involvement with police. Stated that he would raise the matter of the move-on direction and its application to him with the NSW Ombudsman and his legal representatives.<sup>914</sup>*

<sup>912</sup> COPS event narrative, drug move-on incident 78, 10 October 2002

<sup>913</sup> COPS event narrative, drug move-on incident 84, 21 June 2002

<sup>914</sup> COPS event narrative, drug move-on incident 88, 29 July 2002

Approximately one third (9 of 25 or 36%) of the Kings Cross move-on events in the audit included a reference to “having short conversations with passers-by”. For example:

*The POI was observed to seek out and converse with various persons in and passing through the park. The majority of these persons are known to police as drug users/suppliers. This activity continued for around five minutes. Following this, police intervened and spoke with the POI.*<sup>915</sup>

Loitering and having no reasonable excuse were factors which were commonly cited in the Kings Cross narratives, together with the fact that the area was well known for street-level drug trade. For example:

*The young person... was observed loitering in Springfield Plaza near the intersection with Darlinghurst Road for about 10 minutes. The area of Springfield Plaza where the young person was seen loitering is an area which is well known for the distribution and supply of illegal drugs.*<sup>916</sup>

And:

*... Whilst speaking to the POI, police ascertained that the male had no reason for being in the area. The area in which the POI was seen is a well known area for drug distribution and supply. When questioned the POI stated that he had come to Kings Cross and sat in the park as he was bored.*

There was no consistency about the type of direction issued by officers in Kings Cross LAC. However, in comparison to the type of directions issued throughout the State, directions in Kings Cross tended to be more specific than a general direction to “move-on”.

For six of the 25 records, or 24%, police did not note what type of direction they issued. For seven or 28% of records, police directed the person to leave the area for 24 hours. For 12 or 48% of the Kings Cross move-ons included in the audit, there was some other type of direction. These varied greatly and included the following directions:

- not to be in the area for 8 hours
- to leave Kings Cross as soon as the Poi's girlfriend came
- to not loiter in or near the Springfield Plaza/Springfield Mall area of Kings Cross, north of the Maxims Lodge on Darlinghurst Rd for 12 hours
- to refrain from the areas of Matthew Talbot Hostel and Walla Mulla Park for four hours
- to not enter Darlinghurst Road between Roslyn Street and Bayswater Road including the area of Springfield Plaza (commonly known as Springfield Mall) for eight hours and
- to not to be within 500 metres of Kings Cross Station for eight hours.

<sup>915</sup> COPS event narrative, drug move-on incident 85, 6 March 2003

<sup>916</sup> COPS event narrative, drug move-on incident 82, 1 November 2002



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# Chapter 11. Drug move-on powers in Cabramatta

## 11.1. Organisation of this chapter

This chapter has been divided into parts that each deal with a different aspect of the use of the drug move-on powers by the Cabramatta LAC. These are as follows:

- Part 1: Background
- Part 2: When can police issue a drug move-on? Relevant conduct and reasonable belief
- Part 3: Seven day directions
- Part 4: Disobeying drug move-on directions
- Part 5: Drug move-on powers and public health
- Part 6: Drug move-on powers and vulnerable groups
- Part 7: Impact of the drug move-on powers on the street-level drug trade
- Part 8: Displacement

Key recommendations in relation to the drug move-on provisions are at the end of this section of the report. Other recommendations relating to specific issues have been included in the relevant parts of this section of the report.

## 11.2. Review activities

We conducted an audit of COPS event narratives to monitor the use of the drug move-on powers by the Cabramatta LAC.

The audit included 198 drug related obey move-on incidents in Cabramatta and 32 disobey incidents. Every tenth drug related move-on incident by order of date from 1 July 2001 to April 2002 was examined.

Each of the 198 drug related obey event narratives was examined to assess the basis upon which the direction appeared to have been issued. Demographic information was also collected on each drug related obey move-on incident, including the age, gender and racial appearance of the people who were issued with directions.

This audit, and other research strategies we employed to review the operation of the powers, are discussed in more detail in our chapter, "Methodology".

179 of the 198 directions appeared to have been issued under the new drug move-on powers.<sup>917</sup> A total of 212 people were involved in these 179 incidents, as more than one person was sometimes directed in a single drug move-on incident.

In order to gauge the impact of the drug move-on powers in Cabramatta and to examine their operation, we also spoke with a range of people in Cabramatta. A focus group was conducted with the Cabramatta bike police to discuss their use of the powers, and several senior police from Cabramatta LAC were interviewed. We also interviewed community representatives, health professionals, legal practitioners, and spoke to drug users in Cabramatta, and in the neighbouring suburb of Liverpool, to canvass their views on the impact of the drug move-on powers. A number of submissions to our discussion paper also provided comment on the drug move-on powers, and these comments have also been included in this chapter.

## 11.3. Frequency of the use of the powers in Cabramatta LAC

Cabramatta LAC has recorded high levels of the use of the drug move-on powers compared with other parts of the state, particularly in the first year that they were introduced. One officer said:

When the legislation first came out, we were really aggressive, we were really chasing it, and giving directions, and arresting them, and we were arresting quite a lot.<sup>918</sup>

The table below shows how often the drug related<sup>919</sup> directions were issued in Cabramatta.

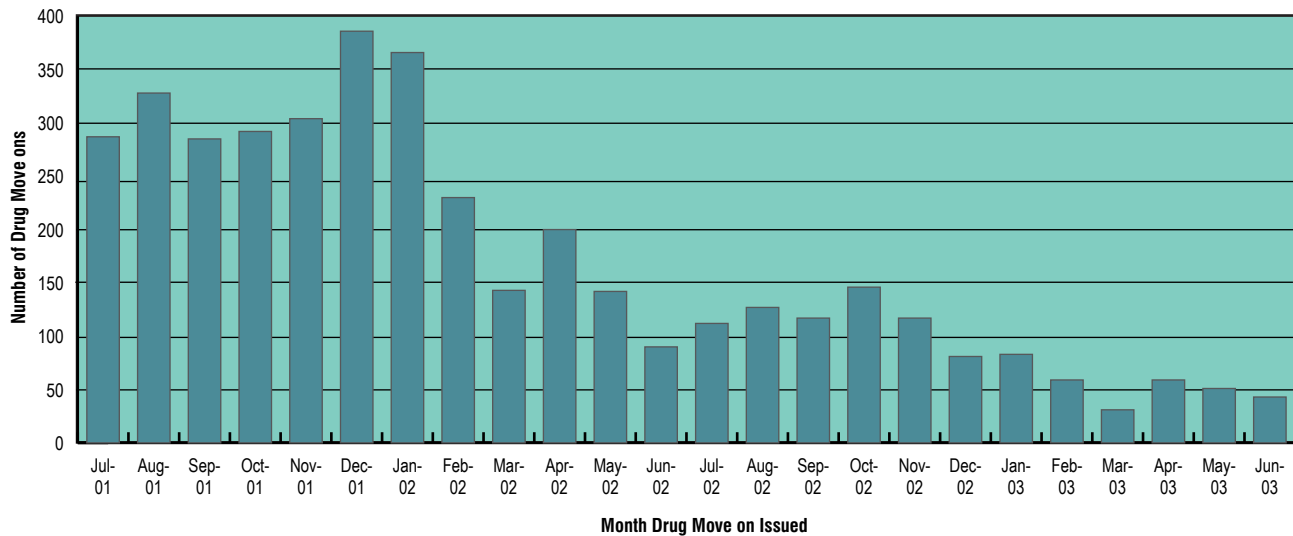
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<sup>917</sup> For a discussion of how we determined this, see the "Methodology" chapter of this report.

<sup>918</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>919</sup> As we discuss further in our chapter on "Methodology", it was not possible to conduct a search of COPS that only showed the numbers of directions that were issued under the drug move-on powers in sections (d) and (e) of the *Summary Offences Act*.— Therefore, the table does not show the total number of directions issued under the new drug move-on powers, but the total number of all "drug related" directions.—

**Figure 34: Total number of drug related move-ons issued, Cabramatta LAC, July 2001 – June 2003**



Source: Data extracted from the COPS Database provided by NSW Police in July 2003.

In the first seven months of the introduction of the Drug Premise Act about 300 drug move-on directions were issued per month by Cabramatta LAC. In December 2001, a peak of 386 directions was issued. By the end of the review period, in June 2003, the number of drug move-ons issued had dropped to 43.

There is likely to be a range of reasons for the initially vigorous, but subsequent decline, in the use of the drug move-on powers in Cabramatta. The high usage of the drug move-on powers in the first year of their operation is perhaps not surprising, given that the impetus for their introduction was to assist police to deal with the street-level drug trade in Cabramatta. The Drug Premises Act was also introduced in a climate of intense scrutiny on policing in Cabramatta, and it is evident that drug law enforcement was accorded a high priority in this area. A reason for the subsequent decline in the use of the powers may have been that they were effective in dealing with the street-level drug trade in Cabramatta, so the need for their use decreased.

The relatively high use of the powers in Cabramatta may reflect pressure on police in the area to be seen to be proactively policing the Cabramatta drug problem. In an interview that we conducted for this review, a former Cabramatta local area commander said:

*Clearly [the] principal problem, both from a perception point of view and reality, was visible street-level drug dealing ... The priority for me was in fact street-level dealing ... My approach to the street-level drug problem at Cabramatta was that, first of all, it had to be a consistent level of enforcement, a consistent level of policing, rather than sporadic.<sup>920</sup>*

Another factor that may have affected the frequency of the use of the powers are mechanisms within NSW Police that monitor and account for police performance in key areas of crime reduction. One of these mechanisms is the Operational and Crime Review (OCR) process. OCRs focus on particular crime trends like, for example, increases in street-level dealing. Each LAC appears before the Commissioner of Police at OCRS, and outlines their progress in addressing the particular crime problems that they face. Reporting on the progress of the Cabramatta LAC in relation to drug law enforcement at an OCR in January 2002, the Local Area Commander said:

*At the end of the day we are applying that consistent and balanced approach, principally at drugs. We have maintained that high level of visibility still with a covert aspect, as a consequence our street offences have increased by about 300 per cent, predominantly in the move along area.<sup>921</sup>*

While it is not possible to measure the impact that OCRs may have had on the use of particular police powers, it is possible that internal processes of this kind may have some impact.

<sup>920</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>921</sup> NSW Police, Transcript, "Greater Hume Operation and Crime Review", 30 January 2002, p. 19.



## 11.4. Part 1: Background

### 11.4.1. The Cabramatta street-level drug market

The Cabramatta street-level drug market has attracted significant public and media attention since the mid to late 1990s. While the intensity of street-level dealing has probably varied at different points in time, it is generally agreed that the drug trade in Cabramatta has often been highly visible.<sup>922</sup>

By the mid 1990s,<sup>923</sup> Cabramatta Railway Station and plazas like Freedom Square were well known for the ready availability of cheap, high purity heroin. For a number of years, it was well known that the cost of a cap of heroin was cheaper in Cabramatta than anywhere else in Sydney.<sup>924</sup>

Cabramatta is in south-west Sydney, and it takes about an hour to get there by train from the city centre. People travelled from all parts of the city, and from rural areas and interstate, to buy drugs.<sup>925</sup> The longevity and constancy of the drug trade is well exemplified by the fact that people have been known to come directly to Cabramatta to buy heroin the day that they are released from prison.<sup>926</sup>

Cabramatta is also characterised by its cultural and racial diversity, and has a particularly large South East Asian community. The involvement of members of this community, particularly young people, in the street-level drug trade has been one aspect of the drug trade that has received substantial public attention. Some have argued that the Asian community has been demonised in media portrayals of the street-level drug trade in Cabramatta,<sup>927</sup> when it is clear that the vast majority of the Asian community in Cabramatta has no involvement in the drug trade.

Probably the most well known hot spot for drug dealing in the suburb is Cabramatta Railway Station. A person arriving at Cabramatta may be approached by a dealer as soon as they walk out of the train station, or on the ramps that lead up to the overpass over the train line, and asked if they want to get on. One drug user we interviewed in late 2003 recollected what Cabramatta train station was like:

*Couple of years ago, you'd get off the train and there'd be like thirty, forty people, just standing there, saying, "You right, you right, you need anything?"<sup>928</sup>*

Alternatively, drug purchasers make their way into Cabramatta itself. Police have referred to the practice that is engaged in by drug purchasers as doing laps around the CBD, looking for someone to buy drugs from. There are also people who walk around the CBD of Cabramatta handing out the phone numbers of dealers written on small pieces of paper like business cards. One officer who has had some experience of policing at Cabramatta described his observations of how drug users get on:

*A lot of them walk around with a \$50 note in their hand, just clenched up, ready to do the drug transaction... They're walking around trying to make eye contact, I mean you can see it, just nodding to different people, trying to get the attention of a dealer, and if the dealer's got drugs on them, there and then ... They've got a fifty dollar note ready to go, they'll go up, they'll nod, just walk somewhere discreetly, behind a car or something, and it will just be a quick hand transaction and then as soon as they get it, they walk quickly, when they haven't got the drug they just walk slow, just looking around.<sup>929</sup>*

Another method of scoring involves intermediaries who use public phones in Cabramatta to call up drug dealers and arrange transactions on behalf of drug purchasers. This method evidences a link between the street-level drug trade and drug houses in the area. Intermediaries make the call on the drug purchaser's behalf, take them to the drug house or wherever the dealer is located, and conduct the transaction. This is usually done in exchange for a taste. One police officer documented this practice in an event narrative we examined for this review:

<sup>922</sup> NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3., Report on Inquiry into Cabramatta Policing, 2001, p. 20.

<sup>923</sup> Some long-term residents of Cabramatta have dated the emergence of the street-level drug market in the suburb to the early 1980s. NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3., Report on Inquiry into Cabramatta Policing, 2001, p. 12.—

<sup>924</sup> NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3., Report on Inquiry into Cabramatta Policing, 2001, p. 17.

<sup>925</sup> The diverse backgrounds of those who come to Cabramatta was evident in our audit of the demographic characteristics of people who had been issued with drug move-ons by police.

<sup>926</sup> Several COPS event narratives we audited for this review involved people who had been released from prison that day, and had come to Cabramatta to purchase drugs.

<sup>927</sup> David Dixon and Lisa Maher, "Anh Hai: Policing, Culture and Social Exclusion in a Street-level Heroin Market", *Policing and Society*, Vol 12. No. 2, pp 93-110.

<sup>928</sup> Interview, 21 year old Caucasian female drug user, Cabramatta, 12 December 2003.

<sup>929</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

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*About 8 pm on Saturday [date], police were patrolling the Cabramatta CBD and observed the POI to be making a telephone call from a public telephone at the LOC. The POI was then observed to run off and speak to a Caucasian male and then commence to walk directly beside him in a southerly direction along [street name]. The POI has then turned and walked in a opposite direction to the other male after seeing police approaching on bikes. Police stopped and spoke to the POI who denied having spoken to the other male person. The POI is well known to local police for being involved in the distribution of illicit drugs in the Cabramatta area ... The POI was searched and found to be in possession of drug paraphernalia, including water vials, plastic spoons, and also wipes. Police formed the opinion that he was leading other drug users from the LOC to drug houses in the Cabramatta area to purchase illicit drugs.<sup>930</sup>*

Therefore, in recent years, the street-level drug trade in Cabramatta has operated in public spaces like the Cabramatta Railway Station and the CBD, and has also acted as a conduit to drug premises in residential parts of the suburb.

## 11.5. Impact of the street-level market on Cabramatta

It is clear that the presence of the street-level drug market, and the effects of high levels of drug usage and of large numbers of drug users coming to Cabramatta, have impacted on local residents, businesses and the community generally. Drug related crime in the area and incidents such as heroin overdoses in public places have also had an impact on the suburb.

One senior officer who had worked at Cabramatta LAC in the mid 1990s described her observations of Cabramatta when she arrived to take up the position of Crime Manager in August 2000:

*What I saw was really disturbing, it was a very overt market place, both for supply and use... it was as bad as I'd ever seen it ... I saw people who had obviously purchased heroin, drug affected people in the streets, they were basically laying wherever they could lay, on street benches, there was lots of vomit around the place, lots of syringes around the place, it was awful.<sup>931</sup>*

At the Parliamentary Inquiry into policing in Cabramatta in 2000,<sup>932</sup> local residents spoke of experiences such as finding overdose victims in parks and of their concerns about the unsafe disposal of syringes in public places. Some residents said that they were tired of being approached by people trying to sell them drugs when they got off the train, and that they felt threatened by the presence of drug dealers in the suburb.

It is also worthwhile noting, however, that the experience of living and working in Cabramatta, as is likely to be the case in any community, is not homogenous

In a survey of people who worked in Cabramatta's CBD that was conducted in late 2002, some people spoke about feelings of fear in relation to the presence of the street-level drug trade, while others said that they had lived in the area for twenty years and had never felt afraid.<sup>933</sup>

It is also evident that some drug users who are involved in the street-level drug trade also live in Cabramatta or in nearby suburbs<sup>934</sup> and that they may also have different experiences of living in the area. We have included extracts from interviews we conducted with drug users in Cabramatta and Liverpool about their experiences in the suburb in this chapter.

## 11.6. Policing the street-level drug trade, interagency and community relations

Police in Cabramatta face the difficulties inherent in balancing the competing needs of the community and other agencies, such as local health services, with effective drug law enforcement. In their enforcement of the drug move-on powers, police in Cabramatta, in the words of the former Crime Manager:

*... were dealing with a lot of government and non-government agencies who were coming from different angles so it was really important that we used the legislation in a really fair and transparent way...<sup>935</sup>*

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<sup>930</sup> COPS event narrative drug move-on incident. This man, a forty-three year old Asian male, was a resident of a suburb adjacent to Cabramatta. He was directed not go to Freedom Plaza, or to several blocks on the street running next to the railway line, for a period of seven days.

<sup>931</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>932</sup> NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3, Report on Inquiry into Cabramatta Policing, 2001.

<sup>933</sup> Community Relations Commission, *Draft Cabramatta Business Door Knock Survey Report*, December, 2002, p. 7.

<sup>934</sup> This was evident from our audit of COPS event narratives.

<sup>935</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

Illicit drug use is a health issue, as well as a legal one. In practice, this means that police are sometimes faced with the task of balancing law enforcement imperatives with a consideration for public health issues, such as illicit drug users' need to access needle and syringe exchange services.<sup>936</sup> The enforcement of the drug move-on powers in Cabramatta, as we will discuss later in this chapter, has involved police liaison with health and community workers who were involved in the provision of services to drug users in Cabramatta.

Another of the challenges in policing the illicit drug market arises from the range of public amenity problems that can be created by street-level drug markets. Public order problems can arise where there are a large number of users and dealers in an area. In the words of one senior officer at Cabramatta, the community have a right to shop, and walk around Cabramatta and police need to ensure that the "community's needs are met".<sup>937</sup> People in the community can feel hassled by dealers wanting to sell drugs, or their use of public space may be reduced because of fear associated with intravenous drug use in public places or health issues associated with discarded syringes. Cabramatta police told us that they sometimes face difficulties when community expectations exceed what they are able to do. For example, police told us that there had been instances in Cabramatta in which people have misread a person, or a situation, and have wanted police to take action. A former commander of Cabramatta raised this issue when we interviewed him for this review:

*Sometimes the public got that very wrong too, and they had expectations of the police... People have a right to go to Cabramatta, ... and you can't tell people not to come to Cabramatta if they don't fit the fashion, we're not fashion police, and some people do look a little, anywhere, you know, they look a bit scruffy, or they look a bit run down. Now locals would say, "Oh they're all drug dealers", well wait a minute, how do you know they are drug dealers, we are not here as police to simply make the streets look tidy, we are here to professionally deal with that street-level drug market.<sup>938</sup>*

## 11.7. The enforcement of drug move-ons: Cabramatta bike police

While police officers from all areas were involved in policing the illicit drug trade in the Cabramatta LAC,<sup>939</sup> the twelve bike police stationed at the command were considered to have particular responsibility, expertise and skill in the enforcement of the drug move-on powers. One senior officer estimated that the bike police had administered ninety percent of the drug move-ons in the command.<sup>940</sup> One member of the unit believed that they were the proactive arm of policing in Cabramatta, and that their role was to be proactively looking, identifying hot spots with a "focus on the drugs and the drug related crime".<sup>941</sup>

We were told by a former commander of Cabramatta LAC that substantial resources had been dedicated to maintaining the constant presence of the bike police in Cabramatta, and that efforts had been made to ensure that these resources were not impinged upon by other policing priorities because of their "very important function in the command".<sup>942</sup>

Senior management at the LAC cited several advantages in using bike police to enforce the drug move-on powers. These officers patrol on pushbikes, usually in pairs,<sup>943</sup> and wear special police uniforms, including bike shorts and caps. A key strength of the bike police in his view was that they were very mobile and were seen everywhere:

*They were able to follow people very easily, they were able to get on top of a situation very quickly, if they saw somebody at the railway station, who'd just got off the train, and was on the other side ... they were very mobile, they could get around, they could, even people just walking could get out of view very easily, they can run, so they were mobile.<sup>944</sup>*

Another advantage that the bike police were perceived to have had was that their uniforms may also have made them more approachable and more friendly to the community. We were also advised that the bike police were "hand picked police who had a great level of interpersonal skills".<sup>945</sup> The former Cabramatta Local Area Commander said that they ensured that these officers were enthusiastic and that he didn't want any cowboys in the bike unit:

<sup>936</sup> Drug policy in NSW is underpinned by the principle of harm minimisation. This policy encompasses supply reduction, demand reduction and harm reduction and has been endorsed by the NSW Government.— In the "NSW Illicit Drug Law Enforcement Performance Indicators", it is stated that "Policing activities in drug law enforcement are based on the concept of harm minimisation and are designed to reduce the aggregate social harm caused by illicit drugs". NSW Police, "NSW Illicit Drug Law Enforcement Performance Indicators", April 2002, p. 4.

<sup>937</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>938</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>939</sup> Including general duties police, detectives and other specialist units.

<sup>940</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>941</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>942</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>943</sup> If there is an odd number of bike police on duty at any given time, they will patrol in a group of three officers. Personal communication, Cabramatta crime manager, 27 January 2004.

<sup>944</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>945</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

*You don't want any cowboys anywhere, but you don't want them doing it [enforcing the drug move-on powers], because they are very front line, and if they are exercising the authority that's given to them, under the move along, I don't want that to be abused, not necessarily abused, but a perception that it's being abused.*<sup>946</sup>

As we will discuss more fully later, it appears that the bike police were well regarded by shopkeepers, business people and others in the community. The former Cabramatta local area commander said that he had received feedback from the community saying that the bike police “do a wonderful job”.<sup>947</sup>

## 11.8. Part 2: When can police issue a drug move-on direction? Relevant conduct and reasonable belief

In this section, we will discuss how police in Cabramatta assessed whether a person is a public place for the purpose of buying or selling drugs, and the factors that police took into account in making this determination.

## 11.9. What attracted the attention of police to a person to whom police issued a direction?

In our audit of event narratives, we recorded how police noted what attracted their attention to the person to whom who they subsequently issued a direction. The following table records what police noted in this regard. More than one reason was sometimes given. As the table shows, loitering was the most common reason why the attention of police was drawn to a person.

**Table 36. Cabramatta drug move-on incidents. Reasons attracting police attention.**

Reason for police attention	Number of times reason noted by police
Loitering	42
No reason given	32
Known drug user	25
Location known for drug activity	15
Known for drug supply	12
Suspicious behaviour	9
Known for drug offences	6
Appeared to be drug affected	5
Drug user and prostitute	2
Known for other offences	1
Seen after first direction	1

Source: Audited COPS records, Cabramatta LAC drug move-on event narratives, 1 July 2001 to April 2002.

### 11.9.1. Factors noted in determining relevant conduct

In the table below, we have set out the reasons noted by police for issuing drug move-ons in Cabramatta. This information is based upon our analysis of event narratives relating to 179 of the drug move-on incidents. Police often noted more than one reason for each direction issued.

<sup>946</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>947</sup> Ibid.

**Table 37. Reasons for issuing a drug move-on direction in Cabramatta**

Reason for issuing a drug move-on direction (total number of drug move-on directions: 179)	Number of times this was noted by police as a reason for a direction
Syringes	63
Admitted they were a drug user to police	58
Other paraphernalia (swabs, water etc)	43
Track marks	41
No lawful excuse for being there	39
Admitted intent to buy	27
Loitering	22
Known drug user	19
Appeared drug affected	19
In a location known for drug supply	15
Known for drug supply	15
No evidence of friend	15
Known for drug offences	12
Drug user and prostitute	11
Police noted that POI was homeless	11
Intel for drugs	9
Provoked fear and intimidation	9
Known for other unspecified offences	7
Seen in company with drug users	7
Seen with known drug dealers	6
Appeared nervous on seeing police	6
Seen after first direction	5
Complaint/information provided to police about drug selling	5
Known as a person who frequents Cabramatta to buy drugs	4
Known for prostitution/ in area known for prostitution	4
Seen entering toilet known for drug use/or seen in other area known for injecting	4
Seen approaching drug users/or other people	4
Sitting down / in plaza	4
Sitting in car known for drug activity / with passenger known as drug supplier/ vehicle of interest	3
Asleep on nature strip/slumped in public place	3
Known to police/or with people known to police	2
Due to addiction	2
Seeing buying fit pack at chemist/seen with fit pack	2
Seen yelling/yelling and jumping	2
Walking/ walking back and forth	2
Seen near drug house	2
Seen using drugs	2

**Source: Audited COPS records, Cabramatta LAC drug move-on event narratives, 1 July 2001 to April 2002. The number of reasons exceeded the number of directions issued, as drug move-ons were usually on the basis of several reasons.**

## 11.9.2. Searches

Police sometimes conducted searches of people to whom they issued directions. This appears to have been one of the ways that police established if there were reasonable grounds to believe that a person was in the area to purchase or sell drugs. For example, if a person was searched and subsequently found with a syringe in their possession, this often appeared to form a basis for the issuing of a direction.

These searches appeared to be conducted under the authority of several legislative instruments. Searches for drugs were conducted under the Drug Misuse and Trafficking Act, which empowers police to stop, search and detain a person if the officer reasonably suspects that they have a drug in their possession or in their control.<sup>948</sup> On other occasions, the searches that police conducted were for knives, which police officers may be authorised to do under the Policing Public Safety Act. On other occasions, police did not note the reason why a search was conducted.

<sup>948</sup> *Drug Misuse and Trafficking Act*, s. 37 (4) (a).

**Table 38. Searches conducted during Cabramatta drug move-on incidents**

Type of search	Number of searches	Percentage of Total Drug Move-on Incidents Audited)
Drug search	10	5.6%
Knife search	17	9.5%
Type of search not specified	28	15.5%
Total	55	30.7%

Source: Audited COPS records, Cabramatta LAC drug move-on event narratives, 1 July 2001 to April 2002.

As the table shows, a search was conducted in about 30% of the 179 drug move-on incidents that we audited for this review.

### 11.9.3. How did police in Cabramatta assess the purpose of a person’s presence in a public place?

When we asked members of the bike police to describe how they go about using the drug move-on powers, one member of the unit said:

*Well, approach them, obviously, for us to approach them, something will have come to our attention, whether it's information we've received, perhaps from commuters, or shopkeepers, a lot of the time, shopkeepers say, "The guy over there in the black - he's been there all morning. He's dealing. Or people are approaching him or we've seen footage on the camera ourselves of him nodding to people. So we'll approach them, we always start pretty much with a greeting, you know, "How you going?" Then we just commence conversation, "What are you doing? Where are you from?" We're taking notes in our notebooks. A lot of times, if they're wearing singlets or T shirts, we look at their arms, and you can see the visible signs of track marks. We'll ask them questions like, "Are you carrying any syringes?" And a lot of times, they'll just empty their pockets, and they'll show us what they got."<sup>949</sup>*

One characteristic of the Cabramatta street-level drug market is the presence of significant numbers of drug users who commute to the area to buy drugs. Because of this, one of the first things police have told us that they do when they approach someone who they suspect is in the area to purchase drugs is to ask them what they are doing in the area.<sup>950</sup>

A former commander of Cabramatta expressed the view that to some extent, the geography of Cabramatta makes it easier for police to identify people who were in the area for drug related purposes:

*Cabramatta is sort of, in some respects it was easier, because it's like a village atmosphere and it is somewhat isolated, it's not like Redfern which is part of the CBD, it's not like Kings Cross... So people who weren't tourists, who weren't there to do their Asian shopping, and weren't locals, tended to jump out a bit from the general public, from those groups, so and there'd be some clustering of those people around the Freedom Plaza, or around the Railway."<sup>951</sup>*

Our audit of event narratives, and consultations with police in the area, suggest that asking a person what they are doing in the area has been fundamental to how police begin to establish if a person is in the area to buy or sell drugs. In a focus group that we conducted, one police officer said the following in relation to people who commute to Cabramatta from other areas to buy drugs:

*...they're here for one purpose only... especially when you've come such large distances just to buy the heroin, and to justify it that you've just come here to come shopping, or to buy some fruit, it just doesn't cut it really, you're here for one reason only."<sup>952</sup>*

We asked drug users what police said to them when they were approached and issued with drug move-ons. One man said:

*They ask us where we live. I told them where I live and they say, "Alright, this is not your area, so you gotta move-on. I give you two or five minutes to go."<sup>953</sup>*

<sup>949</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>950</sup> Ibid.

<sup>951</sup> Interview, former commander Cabramatta LAC, 22 August 2003.

<sup>952</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>953</sup> Interview, 37 year old South American male drug user, Cabramatta, 12 December 2003.

#### 11.9.4. No lawful purpose or reasonable excuse to be in the area

Our audit has revealed that, in their application of the drug move-on powers, police have determined that some people they have issued directions to have no lawful purpose or reasonable excuse to be in Cabramatta. Those about whom this determination is made usually exhibit signs of being intravenous heroin users. They may have track marks, they may be dishevelled or appear to be drug affected, or have syringes or other drug paraphernalia in their possession.

In 39 instances, police gave as a reason for issuing a move-on that a person had no lawful purpose or reasonable excuse to be in Cabramatta, even though the person lived in Cabramatta. In other instances, this reason was noted in relation to people who lived in a suburb neighbouring Cabramatta, or in relation to people who did not live in the area. In the incident documented below, police noted that a 27 year-old male who did not live in Cabramatta had no reason to be in the area. Also noteworthy about the incident is that police did not note any particular conduct that the man engaged in that related to drug purchasing in the area. The event narrative states:

*About 11.30 pm on [date], police spoke to the POI at Cabramatta Railway Station on [street name], Cabramatta. The POI told police he was just hanging around, and had no reason to be in Cabramatta.*

*Checks by police revealed that the POI did not live in Cabramatta, and that he has a lengthy criminal history in relation to drugs, and various other offences.*

*Police gave the POI a move-on direction not to be within 2km of Cabramatta, for 7 days, ending [date].<sup>954</sup>*

Concerns have been raised by Shopfront Legal Centre about cases where police have determined that a person can have no lawful purpose to be in an area. In their submission, the Legal Centre stated:

*It is often asserted on police facts sheets that “the defendant could give no good reason for being in Cabramatta”. The absence of an explanation for the person’s presence should not give rise to an inference that the person was there for an unlawful purpose. Citizens are entitled to use public space without giving any reason for their presence.<sup>955</sup>*

In their submission to our discussion paper, the New South Wales Users and AIDS Association (NUAA) also argued that it is sometimes difficult for people who are known drug users to prove that they were in a particular place for innocent reasons. To illustrate this point, they recounted an incident in their submission that had been reported to NUAA involving the bike police in Cabramatta:

*Two homeless males told NUAA that they were pulled up by bicycle police for standing on the footpath outside a suspected “drug premises”. Although they had no fixed address, they saw themselves as members of the Cabramatta street community. Cabramatta was “home” more than anywhere else. They had no drugs on them and no money to buy drugs but were informed that because they were in the environs of a drug house, they were committing a crime. The police made a “reasonable” assessment that they were undoubtedly planning on getting tic (credit). They were issued with a move-on order and told to stay out of the Cabramatta CBD for seven days. They spent the next week hiding from the bicycle cops and eventually received a second warning.<sup>956</sup>*

#### 11.9.5. Cabramatta CBD and difficulties of establishing purpose

In order to issue a drug move-on, police must have reasonable grounds to believe that the purpose of a person’s presence in a public place is to buy or sell drugs.

One of the difficulties for police in establishing whether a person is in Cabramatta for the purpose of buying and selling drugs appears to arise from the fact that some hot spots for drug activity, like public squares and shopping plazas in the CBD, also serve a range of other social and commercial functions in the community.

Cabramatta also has a particularly lively street culture that is reminiscent of many cities in South East Asia. There are street food stalls, outdoor areas set up for playing games like chess and backgammon, and public squares where people congregate. It is therefore likely that in a suburb where public space is busy, and well-utilised for a multiplicity of purposes, there will be occasions when assessing the purpose of a person’s presence in that space is difficult.

There were instances in our audit in which people were moved on from public places in the Cabramatta CBD in which it was difficult to establish on the basis of the information available that police had a reasonable belief that the person was there for the purpose of buying or selling drugs.

<sup>954</sup> Cabramatta, Drug Move-on Incident 38.

<sup>955</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>956</sup> Submission, NUAA, received August 2003.

In one incident, police approached a man<sup>957</sup> who was sitting with another person in a food court in the Cabramatta CBD. Police did not outline the basis of their reasonable belief that he was in the food court to supply drugs. A security guard had pointed him out to police, but the reason why the guard had done this is not noted. Police document that they had asked the man how long he had been in the food court, and they confirmed with him that he did not intend buying anything. Police also note that they established that the man had been in the food court longer than he originally said that he had been. In noting down the reason why they issued him with a direction, police stated:

*Police formed the opinion that he was obstructing other shoppers from being able to sit at the [location]. Police also believe that POI is involved in drug supply in the Cabramatta area.*<sup>958</sup>

The steps police appear to have gone through to investigate the purpose of this person's presence illustrates that this task is not straightforward in situations like this. No further details are provided as to why police believed the man was engaged in drug supply in Cabramatta, whether they believed he was in the food court on that occasion to engage in drug supply, or in what way his behaviour was obstructing shoppers. In the opinion of police, the direction is likely to have been issued under both the original, and the new drug related reasonable directions powers.<sup>959</sup> Police do not outline the basis of their assumption that he was in the food hall for the purpose of drug supply.

Several drug users we interviewed who lived in Cabramatta or surrounding areas said that they had been issued with directions by police when they were in the area to shop, but that police did not believe them. Police told us that it is sometimes difficult to tell whether the reason that is given by the person is legitimate.<sup>960</sup> Several health professionals we spoke to also acknowledged that this was a problem.

In several submissions to our discussion paper, the difficulties of assessing the purpose of a person's presence in a public place were pointed out. One submission, from a health worker who was involved in the provision of mobile needle and syringe exchange services in western Sydney, illustrated why she believed assessing the presence of a person in a public area is not black and white:

*For example, clients sometimes came to the van to seek information from workers. Commonsense logic may say every time they approached the mobile NSP service the intent was to pick up equipment, but this was not always the case. Similarly, people go to the shops but the intent is not always to purchase items, some people window shop.*<sup>961</sup>

Concerns have been expressed that on some occasions, police form an assumption about the purpose of a person's presence in the public place. This may have been the case in the incident documented above. Shopfront Legal Centre, in their submission to our discussion paper, expressed concern that while it may sometimes be difficult to assess the purpose of a person's presence in a public place:

*...this does not justify the police jumping to conclusions about the person's purpose for being in the area. A suspicion that a person is in a public place to buy or sell drugs must be based on reasonable grounds, not on idle speculation.*<sup>962</sup>

The Legal Aid Commission, in a submission to our discussion paper, said that it is "extremely difficult for police to assess the purpose of an individual's presence in a public place".<sup>963</sup>

## 11.9.6. The purpose of being in a public place to buy drugs

### 11.9.6.1. Introduction

Concerns have been raised that police are issuing directions to drug users who police could not reasonably believe are engaged in the relevant conduct when they are issued with the direction.

In a submission to our discussion paper by the Shopfront Legal Centre, concern was expressed about the issuing of directions to people "merely because they have syringes in their possession, have track marks on their arm, admit to being drug users or appear to be under the influence of drugs". The submission states:

*In our view, evidence that a person is a user of prohibited drugs is not sufficient grounds to issue a direction. Even if the police believe that the person is visiting Cabramatta to purchase and/or use drugs, we suggest this is not sufficient. We suggest that the power to issue a direction only arises if police believe on reasonable grounds the defendant is currently in that particular place for the purpose of obtaining or supplying drugs [original emphasis].*<sup>964</sup>

<sup>957</sup> He was a 32 year old Caucasian male.

<sup>958</sup> COPS event narrative, Drug Move-on Incident 115.

<sup>959</sup> *Summary Offences Act*, s. 28 F. (1) (a). This part of the *Summary Offences Act* empowers police to issue a direction to a person if they believe that they are obstructing other people or "traffic".

<sup>960</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>961</sup> Submission, Health Worker, Western Sydney, received 1 August 2003.

<sup>962</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>963</sup> Submission, New South Wales Legal Aid Commission, 20 July 2003.

<sup>964</sup> Submission, Shopfront Legal Centre, 31 July 2003.



Being a drug user is most likely a pre-condition for being in a public place with the purpose of buying illicit drugs. It is not unreasonable that police attention will be drawn to people who exhibit signs of being drug users in the implementation of provisions such as the drug move-on powers. It is important to note, however, that the second reading speech indicates that the intention of the legislation is to assist police in dealing with drug transactions in public places. It is stated that the legislation was to enable police to clear areas where people congregate in order to supply or possess prohibited drugs.<sup>965</sup> It does not appear that the legislation was intended to give additional powers to police to issue directions to drug users, regardless of whether they were in a public place to purchase drugs.

#### 11.9.6.2. *Audit results*

Most of the directions that were issued under the drug move-on powers were issued to drug users who police believed were in the public place for the purpose of buying, rather than selling, drugs. Our audit found that of the 212 people issued with drug move-on directions, 189 were issued with directions because police believed that they were drug users, not suppliers.<sup>966</sup>

The audit revealed that track marks, having syringes or drug paraphernalia and admissions that the person was a drug user were the most common factors that formed the basis of directions issued by police.

There were some cases where it was clearly evident that there had been reasonable grounds to issue a direction to a person who exhibited signs of being a drug user because they were engaged in the relevant conduct. There were other cases where it was not apparent, based on the information provided in the event narrative, that police had reasonable grounds for issuing the direction. There were also cases that fell between these two extremes, that show the difficulties for police in reaching a reasonable belief that the person is in the public place to buy drugs. These were generally cases where no admission of intent to purchase drugs was made.

Usually, the event narrative suggests that the direction was issued on the basis of a combination of the factors. For example, being found in possession of drug paraphernalia, such as swabs, spoons or water used for mixing up, was commonly one of the reasons that would form part of the basis upon which a direction was issued.

Those instances in which directions were issued to people who exhibited signs of being a drug user, but did not appear to have been engaged in the relevant conduct at the time, fell into several categories. These categories were that the person:

- demonstrated signs of being an intravenous drug user, such as having track marks, syringes and other drug paraphernalia in their possession
- was drug affected
- admitted that they had used drugs recently, either several hours ago, or several days ago
- had just finished, or was in the process of injecting drugs.

We will discuss each of the above in turn.

#### 11.9.6.3. *Track marks, syringes and other indicia of intravenous drug use*

Intravenous, addicted drug users may inadvertently reveal themselves as such to police because of the way they look and behave. Addiction to drugs such as heroin and cocaine can impact upon the health and demeanour of drug users in visible ways that are likely to be readily identifiable by police. Some intravenous, addicted drug users may have visible track marks, and be dishevelled, scratch continuously and sweat. Drug users' pupils might be pinned or dilated, depending on what drug they have used recently. People who are hanging out and looking to score might also be agitated or even distressed. An intravenous drug user may also have syringes or drug paraphernalia in their possession.

#### 11.9.6.4. *Syringes*

The most common reason why a person was issued with a direction was that they had a syringe in their possession. On 63 occasions in our audit, this was one of the reasons why police had issued a direction. Usually, being in possession of a syringe was one of several reasons why a particular direction had been issued, along with other factors such as being in an area known for drug supply, or having track marks.

In our focus group with police, it was also evident that finding syringes or drug paraphernalia on a person, sometimes in combination with other indicia of intravenous drug use such as track marks, were common reasons upon which police would base the issuing of a direction to move-on. During one focus group we conducted with Cabramatta Police, an officer told an anecdote which suggested the importance of these indicia to police issuing drug move-on directions:

<sup>965</sup> The Hon. R. Debus, NSWPD, 30 May 2001, p. 13998.

<sup>966</sup> COPS event narratives, Drug Move-on Incidents.

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*There was an instance where there was a guy coming to Cabramatta, for a long time, and I used to [ask], "What are you doing here?", he was from [name of another suburb in south west Sydney], and he'd say "Shopping, shopping". And he used to show me his arms, but we could never prove it, because you can smoke it, you can inject it into your groin ... only till a month ago, he was finally caught possessing heroin, all these times he would come here, but I could never prove it, he was smart, he'd never carry syringes, and he never had no track marks, so he kind of knew his way around it."<sup>967</sup>*

Another officer believed that drug users in Cabramatta were aware that police were likely to issue them with a direction if they had a syringe on them. This officer believed that drug users had altered their behaviour when purchasing drugs to avoid being caught with a syringe in their possession:

*... quite a lot of them will walk around, when they do walk, straight up they go to the chemist, that's because they've picked up, they know if the police catch them with a syringe on them, they're going to be asked to move-on, so they wait till they find the dealer. Ok, I've got a dealer, now I'll go grab a syringe, ... that way, they kind of avoid the move along, because they've got no drug paraphernalia on them."<sup>968</sup>*

The following extract from an event narrative illustrates the evidentiary significance one officer attached to the fact that he had found syringes on a person:

*Police asked the defendant if he was in possession of any syringes to which he stated, "I just bought a new pack from the chemist". Police asked the POI where he purchased it from? He replied, "up there" referring to the chemist in [location], Cabramatta.*

Police further questioned the POI as to why he purchased the syringe this date. He did not respond. Police informed the POI that they had reason to believe that he was in Cabramatta to purchase and use heroin. This is supported by the fact that he purchased the equipment from the chemist a short time ago. The POI offered police no other explanation for being in Cabramatta.<sup>969</sup>

On this occasion, the man had been seen by police near Cabramatta Railway Station with his girlfriend. Police attention appears to have been drawn to him because he was known to frequent Cabramatta to support his drug habit, had been seen in Cabramatta before in a drug affected state, and had track marks on his arms. In this instance, the fact that he was found in possession of syringes appears to have been a key factor for police in forming the reasonable belief that he was in the area to purchase heroin. He was issued with a seven day direction not to come within a two kilometre radius of Cabramatta Railway.

There were other instances in which a person found in possession of a syringe was issued with a direction when the reasonableness of the police belief that the person was in the public place to buy drugs is less clear. In the case documented below, the admission made by the person that he was a drug user appears to have been a reason why the direction was issued.

One morning bike squad police noticed and issued a direction to a 31 year old Asian male on the rail overpass at Cabramatta Railway Station. The basis for the direction, and the process of issuing it, is explained in the event narrative as follows:

*The defendant was in possession of a used syringe and admitted to using drugs. He was given a seven day move-on direction not to be within two kilometres of Cabramatta Railway Station. Police explained the direction and informed him that failing to comply may result in police action. The defendant stated he understood and complied by leaving the area."<sup>970</sup>*

This person lived in a suburb in south western Sydney. He was seen several hours later playing pool at a nearby hotel in Cabramatta, and was issued with another direction. Six days later, he was again spotted by police, this time in a residential area of Cabramatta. According to the event narrative, he was approached by police and said, "I know I'm not supposed to be here."<sup>971</sup> He was arrested, taken back to Cabramatta police station and charged with disobeying the direction.

The difficulty with the event narrative that relates to this incident is that there is no indication that police actually believed that he was there to either buy or sell drugs, or the reasonableness of that belief.

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<sup>967</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>968</sup> Ibid.

<sup>969</sup> COPS event narrative, Drug Move-on Incident 182, April 2002.

<sup>970</sup> COPS event narrative, Drug Move-on Incident 36, 4 September 2001.

<sup>971</sup> COPS event narrative, Drug Move-on Incident 36, 4 September 2001.

#### 11.9.6.5. Conclusion

In our view, indicia of intravenous drug use alone, such as having track marks and being in possession of syringes, is unlikely to form a sufficient basis for the issuing of a drug move-on, nor is the police belief that a person has no reasonable or lawful excuse to be in an area. According to the legislation, it is necessary for police to have reasonable grounds for believing that the person is in the public place to purchase drugs.

Further, if police see a person again after an initial direction has been issued, there must again be reasonable grounds to believe that the person is in a public place to purchase or supply drugs. Our recommendations about the drug move-on provisions are at the end of this chapter.

#### 11.9.7. Drug affected people

On 19 occasions, the fact that a person appeared drug affected was one of the reasons police noted for issuing a drug related direction.<sup>972</sup>

Our audit of event narratives has revealed instances in which the police belief that the drug affected person was in the public place to buy drugs did not appear to have been reasonable.

In one incident, a man appeared to have been moved on because police believed that he was drug affected. According to the man, he had taken sleeping tablets, and had not taken illicit drugs:

*The POI came under notice as he was extremely drug affected. He had trouble standing up, talking and his eyes were half shut. He denied having used heroin and claimed that it was from sleeping tablets.*

*He was issued with a move-on direction, not to be within 2 km of the Cabramatta railway station for a period of 7 days. (Direction expires at 12. 40 pm on the [date]). The direction was fully explained to him and he repeated the direction back to police.*

*The POI moved on from the area.<sup>973</sup>*

If this is the only basis justifying the issuing of the direction, the basis for the police belief he was engaging in the relevant conduct is unclear. Even if the person was heroin-affected, rather than affected by sleeping tablets, police have not provided any information that supports a reasonable belief that the man was in the public place for the purpose of buying or selling drugs.

In another incident, a man was moved on from Cabramatta Railway Station because he appeared to be drug affected and was loitering. The event narrative reads as follows:

*7 AM [date]. Police spoke to [surname] in [street name], Cabramatta. By his own admissions he stated to Police, "I'm a junkie, but I'm trying to get off it chief". [surname] was affected by heroin and was loitering in the area. Police directed him to leave Cabramatta Railway Station for the next seven days. Ends 7AM [date, a week later]. Knife search conducted. No find.<sup>974</sup>*

In this event narrative, there is no indication of the police belief that he was at the railway at that time for the purpose of purchasing drugs. Furthermore, the various factors mentioned in the event narrative would not seem to provide a reasonable basis for any belief that the officer may have had. It may be that loitering alone was suggestive of this for police, but the other information provided in the event narrative states that he was already drug affected when the direction was issued.

It is important to note that the fact that a person is drug affected, in combination with other factors, may form a reasonable basis for a belief that the person was in an area to buy drugs. For example, in a court case we discuss later in this section of the report, the fact that a person was drug affected, in combination with a previous admission that the person bought their drugs from Cabramatta, was considered by a magistrate to be sufficient to establish a reasonable belief that the person was in the area to buy drugs.

##### 11.9.7.1. Using other powers to deal with drug affected people

Police at Cabramatta have told us that, in the past, they have had difficulties finding an appropriate legislative tool to assist them to deal with any problems that are caused by the presence of drug affected people in public places. One senior officer referred to the difficulty of using other reasonable directions powers in the Summary Offences Act. The officer said that it is likely to be difficult for police to establish reasonable grounds that a drug affected person is intimidating, and that prior to the introduction of the new drug move-on powers, there was:

<sup>972</sup> COPS event narrative, Drug Move-on Incidents.

<sup>973</sup> COPS event narrative, Drug Move-on Incident 154, 10 January 2002.

<sup>974</sup> COPS event narrative, Drug Move-on Incident 167, 6 March 2002.

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*... little legislation in relation to the move along legislation, because the move along legislation was about... intimidation, and one would say, is that person unconscious on the street bench causing intimidation, is it intimidatory to people and we used that legislation as far as we could.*<sup>975</sup>

While it may be difficult for police to use other reasonable directions powers to deal with drug affected people, the new drug move-on powers were not intended to assist police in this task. There may, however, be circumstances involving drug affected people, in which they are causing an obstruction, or intimidating people in public places, in which police should clearly rely on section 28F in the Summary Offences Act. The original move-on powers stipulate that a police officer may give a direction to a person in a public place, if the person:

- (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 is 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...*<sup>976</sup>

In addition, police also have powers available to them under the Intoxicated Persons Act 1979. This Act empowers police to detain a person who is in a public place and appears to be seriously affected by a drug or a combination of drugs if the person is:

- (a) *behaving in a disorderly manner or in a manner likely to cause injury to the person or another person or damage to property, or*
- (b) *in need of physical protection because the person is intoxicated.*<sup>977</sup>

Under certain circumstances, police are authorised to take an intoxicated adult to a police station, or, in the case of a young person, to a detention centre. The circumstances in which police are empowered to do this include if the person is behaving violently, or if the person must be detained in order to find a responsible person who is willing to take care of them.<sup>978</sup>

#### 11.9.7.2. Conclusion

The drug move-on provisions do not empower police to move-on people solely because they are drug affected.

For police considering whether to apply this legislation to drug affected people, the issue of timing is crucial. According to the Act, there must be reasonable grounds to believe that a person was in the public place for the purpose of buying drugs when the move-on is issued. If the person had already used drugs, police need to consider if there are reasonable grounds to believe that the person is still in the public place for the purpose of buying drugs.

If the legislation is to remain in its current form, there is a clear need for training and guidelines that stress to police that they must have a reasonable belief that an illicit drug user is in a public place to buy drugs when the direction is issued.

### 11.9.8. Admissions of drug use and admissions of intent to purchase drugs

Our audit of event narratives showed that on 58 occasions, the fact that a person admitted to police that they were a drug user was one of the reasons why they were issued with a direction. Our audit of event narratives revealed that on 27 occasions, the person admitted to police that they were in the area to buy drugs.

According to our interviews and discussions with police, admissions relating to drug use and/or an intention to purchase drugs were an important basis for directions that were issued in Cabramatta. When members of the bike police were talking about the process of issuing drug move-on directions in a focus group, one officer said "a lot of them are open, and they admit that they are drug users, they admit that they have a habit, that they are there to buy".<sup>979</sup> Senior police at Cabramatta have said that they believe that the interpersonal skills of bike police officers made drug users more likely to disclose this information:

*These police have great interpersonal skills and the person they are talking to will through self admissions say, "Yeah man, I am here to get on", and the police were trying to be, that's why they were picked, not to oppress people but to say, "Look mate, you are here to get on, and you are not to come here to get on. This is not what this is about. Where do you come from?" "I come from Manly" "Well you are moved along for 7 days". So it was based upon admissions by people, particularly the use...*<sup>980</sup>

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<sup>975</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>976</sup> *Summary Offences Act*, s. 28F(a), (b) and (c).

<sup>977</sup> *Intoxicated Persons Act 1979*, s 5(1).

<sup>978</sup> *Intoxicated Persons Act 1979*, s. 5(4).

<sup>979</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>980</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

Sometimes, as described above, the person admitted that they had come to the area to purchase drugs. In such cases, the police would clearly have reasonable grounds to issue a drug move-on direction. The following extracts from two event narratives document two separate instances where such an admission was made:

*Incident 1:*

*At above time and location the POI was observed by police loitering in the Cabramatta with other known drug users. Approached by police the POI stated that he had no lawful reason to be in Cabramatta. He further stated that it had been a week since he had used heroin and was hoping to get some more. A check on the POI criminal history revealed that he has a prior history re: drug use.<sup>981</sup>*

*Incident 2:*

*Police approached the Poi who subsequently stated to Police she was in Cabramatta for the sole purpose of purchasing drugs as she also has bail conditions restricting her from attending Kings Cross.<sup>982</sup>*

There is an important distinction, however, between an admission that a person is a drug user, and an admission that the person is in the area to buy drugs. If the only admission made by the person is that they are a drug user, it is likely that police would need additional reasons upon which to base a reasonable belief that a person was in a public place to buy drugs.

There were some instances when an admission that a person was a drug user, or that they had used drugs some time over the past several days, appeared to have formed the basis of the direction. The police belief that the person was in the public place at that time to purchase drugs may not have been reasonable. We are aware of one particular case in Cabramatta in which the charge against a woman for disobeying a drug move-on was withdrawn. One of the reasons put forward by the woman's lawyer was the fact that, although she had admitted to previously having used drugs, there were insufficient grounds to believe she was currently in the particular public place to buy drugs.<sup>983</sup> An extract from the representation reads as follows:

*It appears that the direction was based on the fact that police observed track marks on [the defendant's] arm, and she admitted to having had a shot of heroin.*

*Evidence that the defendant has just used a prohibited drug is not sufficient grounds to issue a direction. Even the fact that she had purchased drugs on the streets earlier is not sufficient. We submit that there are grounds to issue a direction only if the defendant is currently in the public place for the purpose of obtaining or supplying drugs.<sup>984</sup>*

The case below also demonstrates the difficulties that can arise in assessing whether a drug user is in a public place to buy or sell drugs.

Late one morning in September 2001, police saw a 28 year old Asian male walking up the ramp on the eastern side of Cabramatta Railway Station. It is noted in the event narrative that this area is well known to police for the supply of prohibited drugs. The event narrative reads as follows:

*The POI stated to police that his last shot of heroin was yesterday. Police noticed numerous track marks on the Poi's inner left elbow and lower inner arm.*

*Due to Poi's admitted drug use and the location where he was spoken to by police, he was given a direction, he was given a direction not to be on the eastern side of the Cabramatta train station for a period of 7 days (warning will expire at 1125am on 20.09.01). The POI lives on the western side of Cabramatta near the CBD.*

*The POI was told that if he fails to obey this lawful direction that he may be committing an offence and police may take further action.*

*The POI left the specified area in police presence.<sup>985</sup>*

Police did not note what conduct formed the basis of their reasonable belief that the man was at the railway at that time for the purpose of buying drugs.

As we noted earlier, in a submission we received from Shopfront Legal Centre it was argued that the power to issue a direction only arises if police believe on reasonable grounds the person is currently in that particular place for the purpose of obtaining or supplying drugs.<sup>986</sup>

<sup>981</sup> COPS event narrative, Drug Move-on Incident 153, 7 February 2002.

<sup>982</sup> COPS event narrative, Drug Move-on Incident 24.

<sup>983</sup> Other reasons put forward for the withdrawal of the charge were that a seven day direction was unreasonable, that the defendant complied with the direction by leaving the area and did not persist in the relevant conduct after the first direction was issued.

<sup>984</sup> Shopfront Legal Centre, Representation 1, received, 16 June 2003.

<sup>985</sup> COPS event narrative, Drug Move-on Incident.

<sup>986</sup> Submission, Shopfront Legal Centre, 31 July 2003.

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In the case study presented above, while it is evident that the man issued with the direction was a drug user, and was in a part of Cabramatta which is known for drug supply, it is unclear whether the police belief that the man was there at time for the purpose of buying drugs, was reasonable.

#### 11.9.8.1. Admission of the use of drugs earlier that day, in another suburb

There were also instances in which a person admitted to using drugs that day, but there was no indication of the grounds for a reasonable belief that they were in the public place to buy drugs when police saw them. One event narrative describes an occasion in which police saw a 36 year old male in the Centrelink car park at Cabramatta. When police approached the man, according to the event narrative:

*When spoken to [surname] admitted to using heroin earlier today in [neighbouring suburb]. He had a needle track mark on his arm, an unused syringe and water vial in his bag.*

*He was given a seven day move-on direction not to attend Cabramatta within a 2km radius of the railway station. This direction was explained and he was informed that failing to comply may result in police action. [surname] stated he understood and complied by leaving the area. Direction active till 4.25 pm [date].<sup>987</sup>*

Not only did the admission upon which this direction appears to have been based relate to drug use that had occurred previously that day, but it had also occurred in another suburb. More significantly, however, the admission related to drug use, and there is no information provided by police that suggests that the man was in the place to buy drugs.

There may be circumstances where admissions of prior drug use may legitimately form a basis for a direction, but such instances are likely to involve a combination of factors as well as the admission.

#### 11.9.8.2. Directing people who have just injected drugs

Nine of the drug move-on directions we audited were issued to people in Cabramatta just before, or just after they had injected drugs.

The intravenous use of illicit drugs in public places is a legal, public health, and public amenity issue. According to the Drug Misuse and Trafficking Act, it is an offence to self administer a prohibited drug, punishable by a maximum of two years imprisonment and/or a fine.<sup>988</sup> Drug use in public places like toilets, laneways and in the stairwells of unit blocks, is also a public health concern. People who use a drug like heroin in these situations, particularly if they are alone when they use, are vulnerable to overdose and may die.

Intravenous drug use in public places is also a public amenity issue. It has been well documented that practices such as the unsafe disposal of syringes in public places, and concerns in relation to the potential for them to also carry blood born viruses, are of concern to people in Cabramatta.<sup>989</sup> Some people may also find the experience of witnessing a person inject themselves in a public toilet distressing.

Directions under the drug move-on powers have been issued to people just before, or just after, they were about to inject drugs. Those who were issued with a drug move-on direction in these circumstances were not engaged in conduct that supports a reasonable belief that they were in the public place to buy or sell drugs. While it is an offence to self administer a prohibited drug,<sup>990</sup> a person found so doing is in the process of using, and not purchasing drugs. The following event narrative is an example in which the drug move-on powers were used in such an instance:

*About 1930 [date] police arrive at the location and see both poi's inside the location sitting underneath the steps. Poi's inform police they had just finished shooting up heroin. Police saw poi's carrying used syringes.*

*Poi's were both given a move-on direction not to be within 1 km radius of Cabramatta station. Direction ends [date]. Both poi's understood and acknowledged the move-on direction.<sup>991</sup>*

Both people issued with directions were Aboriginal, one a 23 year old male, the other an 18 year old female, who lived in a suburb adjacent to Cabramatta.

One afternoon, in another incident, police saw a person who they knew to be a drug user walking across a car park and followed him into a public toilet. When the officers looked in to the toilet facility, they saw him drawing water into a vial from the tap. Police then document what happened in the event narrative when they entered the toilet:

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<sup>987</sup> COPS event narrative, Drug Move-on Incident 184.

<sup>988</sup> *Drug Misuse and Trafficking Act*, s. 12.

<sup>989</sup> See for example, NSW Legislative Council, *Cabramatta Policing*, General Purpose Standing Committee No. 3., Report on Inquiry into Cabramatta Policing, 2001, pp. 29-34.

<sup>990</sup> *Drug Misuse and Trafficking Act 1985*, s. 12.

<sup>991</sup> COPS event narrative, Drug Move-on Incident.

*He quickly turned and ran into one of the cubicles, dropping the syringe into the toilet.*

*Police searched the POI believing he may be in possession of a prohibited drug. No drug was found upon the search, however, police still believe that the POI was in Cabramatta to purchase and use drugs.<sup>992</sup>*

It is interesting to note that police state that they believed the man was in Cabramatta to purchase and use drugs. While it does appear that they had grounds for believing he was in the public toilet to use drugs, it is unclear the basis for their belief that he was in a public place to purchase drugs. The man, a 27 year old male from a neighbouring suburb, was directed not to be within 500 meters of Cabramatta railway station for seven days.<sup>993</sup>

It may be that in some instances, police are unclear that their power to issue a direction arises from their reasonable belief that the person's presence or behaviour in the public place is for the purpose of obtaining, procuring or purchasing a drug, and does not empower them to move-on a person who is in the process of using drugs.

### 11.9.8.3. Conclusion

The move-on incidents discussed above again highlight an apparent lack of clarity that the use of the drug move-on powers is limited to situations in which a person is in a public place for the purpose of buying or selling drugs. While the intravenous use of illicit drugs in public places is a legal, public health, and public amenity issue, these move-on powers in their present form were not intended for use in situations when people are in the process of using drugs.

If the legislation is to remain in its current form, there is a need for training and guidelines that emphasise that the powers in the Act relate to instances when a person is in a public place to buy or sell drugs.

## 11.9.9. Directions issued to drug suppliers

Twenty-three of the 179 drug move-on directions in our audit were issued because police believed that the person was in the public place for the purpose of engaging in drug supply when the direction was issued.

The objective of the drug related move-on powers was to give police powers to deal with people in a public place for the purposes of drug supply. Our audit of event narratives indicates that the new powers have been used in situations in which the police believe that the person is in a public place for this purpose. The following is an extract from an event narrative in which this was the case:

*About 1700 on [date] Police sighted [surname of POI] loitering in [street name] Cabramatta approaching known drug users. [Surname of POI] is a heroin user and street dealer who resides in [suburb]. He was searched and directed to leave Cabramatta for seven days and not to be in a two km radius of Cabramatta Railway Station.<sup>994</sup>*

Sometimes, it appeared that a direction had been issued to a drug supplier on the basis that they were known to be involved in drug supply in the area. In the following instance, it is not evident what particular conduct the person engaged in that was the basis of the reasonable belief that they were in the area to engage in drug supply. The event narrative reads as follows:

*Police sighted [surname] in the BKK carpark public toilets. [Surname] is a resident of Cabramatta who is very active in the street supply of heroin. He was subsequently given a knife search. No find.<sup>995</sup>*

According to our audit of event narratives, there were 20 instances in which a drug move-on was issued in instances where it appeared to police that a drug transaction was imminent. An example of such an instance is below:

*About 11.45am [date], Police noticed [name of POI] standing on a corner outside the [name of Hotel] in Cabramatta.*

*[Name of POI] had track marks on his arms. He stated that he was just waiting for a friend. Prior to police approaching him, police noticed another male nod and [name of POI] do the same. Police believe that [name of POI] may have been at the location for the purpose of selling drugs.<sup>996</sup>*

He was directed not to return to the area near the hotel for a period of seven days.<sup>997</sup>

<sup>992</sup> COPS event narrative, Drug Move-on Incident 170, 13 March 2002.

<sup>993</sup> Ibid.

<sup>994</sup> COPS event narrative Drug Move-on Incident 46, 23 September 2001.

<sup>995</sup> COPS event narrative, Drug Move-on Incident 155, 6 February 2002.

<sup>996</sup> COPS event narrative, Drug Move-on Incident 43.

<sup>997</sup> Ibid.

### 11.9.9.1. Conclusion

In situations involving people who are in public places for the purpose of supplying drugs, the exercise of the drug move-on powers often appears to be prompted by police observations of an imminent drug transaction, and therefore the basis for exercising the powers is clear.

However, it is important to note that the sole fact that a person is known for drug supply may not be a sufficient basis for a direction, unless they are engaged in conduct that suggests that they are in the area to supply drugs.

## 11.10. Part 3: Seven day directions in Cabramatta

The Act does not stipulate the nature of the directions police can issue, other than that the direction must be reasonable in the circumstances for the purposes set out in the Act: to stop the purchase or supply of a prohibited drug in a public place.<sup>998</sup>

In the Cabramatta LAC, the practice of issuing seven day directions was employed as a strategy to deal with the street-level drug trade in the area. When the legislation was introduced, seven day directions were issued on a fairly regular basis by this command.

Most seven day directions stipulated that the person not return, for a period of seven days, within either a one, two or three kilometre radius of Cabramatta Railway Station. Other seven day directions were more limited in their radius, and prohibited a person from returning to a particular shopping plaza, or from several blocks in a residential area, for seven days.

Of those LACs in NSW that we audited, Cabramatta LAC was the only LAC that issued seven day drug move-on directions on a fairly regular basis.

Interviews with senior police at Cabramatta, and others who were involved in implementation of the legislation, indicate that the decision to issue seven day directions in Cabramatta arose out of discussions relating to how police would give effect to the spirit of the legislation. A former commander of Cabramatta said that police believed that in order for the legislation to be effective, “we needed to get that person out of that scene, out of the market place and that was I think what the spirit of the legislation was”.<sup>999</sup> He also said that police were of the view that, for the new powers to be effective in the context of the street-level drug trade, it was necessary to issue a type of direction different to the direction that might have been issued under the original reasonable directions powers in the Summary Offences Act. The former commander said:

*Because the existing move along legislation, because that was designed to break up people causing fear and anxiety, and disturbance, blockage, and all of that, that I think that was fair enough ... For police to intervene and solve that particular problem, moving people on the other side of the road, or moving them away from the area, probably worked, but then when the next part of the legislation was put in, which was the drug trade one, it was I suppose argued, and we sat around and we thought about that, to simply move someone from this corner to that corner, and they're involved in the drug trade, either as a buyer or seller or whatever, we're not going to solve that problem, because they are still going to be in an area ... they're still going be - in the market place.<sup>1000</sup>*

Seven day directions are not mentioned in the training manual on the Drug Premises Act, but their use in Cabramatta appears to have been discussed in training lectures given at Cabramatta Police Station when the Act was first introduced. Our audit showed that seven day directions were issued by bike, general duties and beat police in the Cabramatta area. One member of the bike police recalled being told about seven day directions during a training session that was given to police about their powers under the new legislation:

*That seven days came about during that lecture, he deemed, well he said, our drug users are coming here everyday, if we were to give them directions for 24 hours, we wouldn't achieve our objective, which was to keep them away, if we gave them 24 hours, they'd be back the next day, and then they'd be back the day after that ... If someone had no reason to be in Cabramatta, then they can keep away for seven days, it's not an unreasonable request.<sup>1001</sup>*

A legal officer from the NSW Police who was involved in discussions relating to seven day directions when the Act was being introduced, told us that in relation to the reasonableness of seven day directions, that police came to the conclusion that:

*What a court might regard as reasonable when [the direction] specifically related to a person who is not a resident of Cabramatta, has no business being in Cabramatta, and whose only reason for being in Cabramatta is to engage in drug supply activity. It was generally agreed, there was a consensus, that it was arguable that it would not be unreasonable, a direction to a person in those circumstances, not to come to a specified area in Cabramatta, would be reasonable.<sup>1002</sup>*

<sup>998</sup> Summary Offences Act, s. 28 (3) (b) and (c).

<sup>999</sup> Interview, former commander of Cabramatta LAC, 22 August 2003.

<sup>1000</sup> Ibid.

<sup>1001</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1002</sup> Interview, Legal Officer, NSW Police, 29 September 2003.



As we will discuss later in this chapter, the view of some police, including the legal officer quoted above, changed in relation to the reasonableness of seven day directions. There were instances, one of which is discussed below, in which the reasonableness of a particular seven day direction was successfully challenged in court. In addition, we received copies of five representations made by a legal practitioner to Cabramatta LAC for the withdrawal of charges that had been laid for disobeying a seven day drug move-on. Each of these representations put forward several arguments regarding why the charge should be withdrawn. In all five cases, it was argued that a seven day direction was not reasonable. All the charges were withdrawn, though we do not know the extent to which the argument about the reasonableness of the seven day direction determined the police decision to withdraw the charge in each case.<sup>1003</sup>

There is evidence that some police officers altered their practice in relation to the issuing of seven day directions, particularly in relation to those directions issued to people who live in Cabramatta. We will discuss the circumstances in which seven day directions were issued, any evidence of their impact on those who were issued with them, and of their effectiveness as a tool in dealing with the street-level drug trade.

### 11.10.1. Concerns about seven day directions

Substantial concern was expressed about the issuing of seven day directions in various submissions to our discussion paper. For example, the NSW Law Society expressed the view that:

*It is not appropriate that members of the community are effectively banned from certain areas for arbitrary reasons, particularly when those persons mostly attend the area to access certain services that are available in those areas.*<sup>1004</sup>

Shopfront Legal Centre also expressed the view that the practice of banning a person from a particular area for a week was not reasonable. This Legal Centre offered advice to people from the Drug Intervention Service in Cabramatta (DISC), including people who had been issued with seven day directions. According to the Legal Centre, while there may be rare circumstances in which it is appropriate to exclude a person from an area for seven days, which included when a person has “repeatedly engaged in serious and persistent problem behaviour such as blatant street dealing or violence”,<sup>1005</sup> in most circumstances this type of direction would not be reasonable.

Another key objection that Shopfront Legal Centre had to seven day directions was that they were issued on a routine basis in Cabramatta, with no apparent regard to whether a seven day direction was appropriate in each individual circumstance. According to Shopfront Legal Centre, “the same standard seven-day direction to everyone is unreasonable because it is arbitrary”.<sup>1006</sup>

Particular concern was expressed about the potential for seven day directions to impact upon drug users’ access to public health services, such as needle and syringe exchange and counselling. Access to the DISC, and other agencies in Cabramatta, like the Cabramatta Community Centre and Open Family, does appear to have become a problem for some people due to the way the drug move-on powers were enforced in Cabramatta. In their submission to our discussion paper, south western Sydney Area Health Service, which is responsible for the delivery of health services in areas such as Cabramatta and Liverpool, stated that clients had missed appointments with clinicians because they were issued with seven day directions.<sup>1007</sup> In the submission, the range of health services that are available to clients, including wound care, blood tests, counselling and treatment programs was noted. It was further stated that:

*Disruption to such medical contact is clearly not in the best interest of the client and does not support the Health Department initiatives of providing clients with detoxification and treatment options.*<sup>1008</sup>

As we discuss in the section on drug move-on powers and public health, police, health and community workers in Cabramatta met to resolve issues that emerged in relation to the enforcement of the powers. According to police and some health and community workers we spoke to, this worked well to resolve some of the difficulties that arose.

### 11.10.2. Seven day directions and the legislative intention of the drug move-on powers

The practice of issuing seven day directions also raised questions about the legislative objectives of the new drug move-on powers. Banning a person from an area for an extended period of time, it has been argued, is not in accordance with the objectives of the reasonable directions powers in Section 28F.

In their submission, Shopfront Legal Centre argued there was no indication in the second reading speech for the Drug Premises Act that the fundamental nature of the direction-giving power had changed, and stated:

<sup>1003</sup> Shopfront Legal Centre, Representations 1-5, received 16 June 2003.

<sup>1004</sup> Submission, Law Society of New South Wales, 20 August 2003.

<sup>1005</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>1006</sup> Ibid.

<sup>1007</sup> Submission, South West Area Health Service, 4 February 2004.

<sup>1008</sup> Ibid.

*We submit that it was not intended to exclude people from public places for long periods. It was certainly not intended to ban drug users from Cabramatta or to discourage them from using drug treatment and needle exchange services in the area.*<sup>1009</sup>

Quoting the second reading speech on the Police and Public Safety Act which introduced the powers, the Legal Centre stated that the then Attorney General stipulated that the key purpose of this provision is to enable police to disperse persons acting in a disruptive manner before a situation gets out of hand. The submission continues:

*The 2001 amendments (allowing police to issue directions to persons thought to be in public places for the purpose of obtaining or supply drugs) do not alter this position. Nothing in the second reading speech to the Police Powers (Drug Premises) Bill 2001 suggests that the parliament intended to change the fundamental nature of the direction-giving power.*<sup>1010</sup>

### 11.10.3. Seven day directions to clear an area of people who come to Cabramatta to buy drugs

According to the Cabramatta police officers we spoke to for this review, the key rationale behind the seven day direction was that it represented a way of removing for a period of time a person who did not live in the area, thereby disrupting the person's access to the street-level drug market. In a focus group, we asked officers from Cabramatta what they thought was a reasonable direction in order to achieve the purposes set out in the Act. One officer said:

*If they don't reside within the Cabramatta CBD and they have no real reason for being here ... seven days is quite reasonable, if you don't live here, there's plenty of other main shopping centres around the adjoining CBDs, there's really no reason to come here, especially if you see people who come from Blue Mountains, Central Coast, Wollongong...*<sup>1011</sup>

However, there were instances in which directions not to return to Cabramatta for seven days were issued to people who actually lived in the suburb. There were also instances in which seven day directions were issued to people who lived in adjoining suburbs. Submissions to our discussion paper questioned the appropriateness of issuing seven day directions in such instances.

### 11.10.4. Seven day directions to people who lived in surrounding areas

Our audit shows that 17 of the seven day directions that were issued under the new drug move-on powers were issued to people who lived in a suburb neighbouring Cabramatta. This represents about 9% of the 179 obey drug move-on directions audited. Most of these directions stipulated that the person not return within a one, two or three kilometre radius of Cabramatta Railway Station. All but one of the directions includes the railway. In most instances, the ambit of the direction encompasses parts of the suburb in which the person lives. The table below shows the types of directions issued to people in suburbs neighbouring Cabramatta and the suburb where the person lived.

**Table 39. Types of directions issued to people who lived in suburbs neighbouring Cabramatta**

Contact suburb	Type of direction – exclusion area	Number of times issued
Canley Heights	1 km radius of Cabramatta Railway for seven days	2
	2 km radius of Cabramatta Railway	2
Liverpool	1 km radius of Cabramatta Railway	1
	2 km radius of Cabramatta Railway	2
	3 km radius of Cabramatta Railway	2
	5 km radius of Cabramatta Railway	1
Warwick Farm	500 metres of Cabramatta Railway	1
	2 km radius of Cabramatta Railway	1
Fairfield	Not to return to a several blocks in Cabramatta, and a shopping plaza for seven days	1
	2 km radius of Cabramatta Railway	4

Source: Audited COPS records, Cabramatta LAC drug move-on disobey event narratives, 1 July 2001 to April 2002

<sup>1009</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>1010</sup> Ibid.

<sup>1011</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

Directions not to return to within one, two or three kilometres of Cabramatta Railway Station were also given to people who lived in the nearby suburbs of Lansvale, Carramar and Bonnyrigg. Parts of these suburbs are also encompassed within the ambit of some of these directions.

### 11.10.5. Seven day directions to people who live in Cabramatta

Police officers we spoke to at Cabramatta said that drug users and sellers who live in Cabramatta present particular difficulties in relation to the enforcement of the drug move-on powers. One officer we spoke to said the following:

*What makes it hard is the street dealers that are here do reside in or around Cabramatta and to give them a direction to not be in Cabramatta, away from the shops, the Centrelink, we know it's not reasonable, so they're having to [give directions like] don't be on this street ... The hotspots that we know where they do deal, that's where we give the directions for, but they'll just move a hundred metres down, to another street.<sup>1012</sup>*

In the interviews and focus groups we conducted with Cabramatta police officers, they stressed that the first thing they considered when deciding what type of direction to issue was where a person lived. However, as the table below shows, seven day directions were issued to people who lived in Cabramatta. Some of these directions stipulated that residents of Cabramatta not come within a two kilometre radius of Cabramatta Railway Station for seven days.

**Table 40. Seven day directions issued to people who lived in Cabramatta**

Type of 7-day direction - exclusion zone	Number of times issued
Not to return within a 1 kilometre radius of Cabramatta Railway	1
Not to return within a 2 kilometre radius of Cabramatta Railway	4
Not to return within a 3 kilometre radius of Cabramatta Railway	1
Not to return to part of the Cabramatta CBD	5
Not to return to an area near the railway	2
Not to return to a bus shelter	2
Not to return to several blocks in a residential <sup>1013</sup> area	3

Source: Audited COPS records, Cabramatta LAC drug move-on disobey event narratives, 1 July 2001 to April 2002.

As can be seen from the table, while the prohibited area in some seven day directions was a radius of between one and three kilometres, most of the seven day directions that were issued to people who lived in Cabramatta were of a more limited radius than those issued to people who did not live there.

### 11.10.6. Impact of seven day directions on residents of Cabramatta

There is anecdotal evidence to suggest that more limited seven day directions have presented difficulties to Cabramatta residents to whom the directions have been issued. One former DISC worker observed that of those she knew who had been issued with drug move-on directions, "Some of these people lived in the area and the law virtually imprisoned them in their homes."<sup>1014</sup> One 20 year old woman told us about an experience that she had in relation to a seven day direction:

*I was walking home, and then they've [the police] come over to me, and started talking to me, so I'm talking to them, and then they said, "You've got a seven day warning" and I said, "What for?" "Because you're in the street", and I said "I'm f...ing walking home." Excuse my language, and they go, "It doesn't matter, if we see you here, we're going to arrest you, and give a second warning. You know what that means, you'll be locked up". Any reason at all, they'll give me a seven day warning, what ever, it doesn't matter what your doing, if you go to the shop to buy a drink they'll harass you. You can't even walk down the street without em harassing you. It's bullshit.<sup>1015</sup>*

We asked her what impact her experience of being issued with directions such as the one described above had on her, and she said:

*I can't even walk down the street, it's pretty uncomfortable, I'm not doing anything wrong, ... I'm not selling drugs, I do work,<sup>1016</sup> but I do it the legal way.<sup>1017</sup>*

<sup>1012</sup> Ibid.

<sup>1013</sup> Two of these directions involved residential areas adjacent to the Railway.

<sup>1014</sup> Submission, Health Worker, Cabramatta, received 30 July 2003.

<sup>1015</sup> Interview, 20 year old Caucasian female drug user, Cabramatta, 12 December 2003.

<sup>1016</sup> The interviewee is referring to the fact that she is a sex worker.

<sup>1017</sup> Interview, 20 year old Caucasian female drug user, Cabramatta, 12 December 2003.

One 32 year old Aboriginal man we spoke to in Liverpool was asked to describe what type of directions he had been issued by police, and said:

*... the seven day move along is that you have to move along, and not be back in the area for seven days. But unfortunately, a lot of these people live here, you know what I mean? They shop here. This is where they meet and greet their relatives, friends, and sons and daughters, you know what I mean? They [the police] are taking the laws that they have been given just a little bit too far.<sup>1018</sup>*

When asked what impact, if any, these seven day directions he had been issued in Cabramatta had on his daily routines, he said:

*I could not pick up my continuation form for my dole, I could not go and pick up a photograph for my son, which he sent. Emotional and financial hardship is what they put me through.<sup>1019</sup>*

One 34 year old Asian woman who we interviewed had lived in Cabramatta for 20 years. While she did not mention the length of time of the directions that she had been issued with, she spoke of their impact:

*My home is in Cabramatta. Sometimes I find it funny, because I say to them [the police], because they tell me to move, and where am I supposed to move? ... Just say if you move from that spot, that they tell you to move, and you go somewhere else, and you bump into a friend or something, you can't stand there and have a conversation with them. It's just they'd be right behind you and say, "move-on", you know what I mean? It's just pathetic.<sup>1020</sup>*

When asked what type of direction she had been issued with, she said:

*"Go home." Go home? Sometimes you can't go home, when you're out here. Sometimes it's just so unfair, when you just walk out from your home- just stepped out in Cabramatta, you know. It's always like that. You get pulled by the police. "Where you going?" "Shopping." "I don't believe you, I'm giving you a direct order to go home"... It's just s..t.<sup>1021</sup>*

In their submission to our discussion paper, south western Sydney Area Health Service expressed concern that seven day directions had disrupted drug users' access to health services, and also commented on the impact of these directions on people who live in Cabramatta:

*Some of the clients who live in Cabramatta are not allowed to go to [street name]. [Street name] is the main street for banking and shopping purposes in Cabramatta. Some of these people do not have cars or money for transport to travel elsewhere to manage their day to day needs.<sup>1022</sup>*

### 11.10.7. Obeying the spatial and temporal parameters of the direction

Another issue that has emerged in relation to seven day directions relates to an apparent lack of clarity, in some instances, of what parts of a suburb or the surrounding area fall within the geographic radius of the direction. This is likely to be an issue of particular importance to people who are issued with directions and live in suburbs neighbouring Cabramatta. Directions issued by police may be of a one kilometre, two or three kilometre radius from the place where the direction was issued, or they may stipulate that the person not return to a part of the suburb, or not return to Cabramatta for a period of seven days.

It appears that some people have not set out to disobey a direction, but have simply not realised that they were within the spatial parameters of the direction when they were seen on a subsequent occasion by police.

One drug user we interviewed, a 34 year old Asian woman, said that she had been issued with a seven day direction not to return to Cabramatta, but that the direction was not given a specific radius. During the seven day period, she was seen by police in Canley Vale, a suburb on the eastern border of Cabramatta. When we interviewed her, she recalled the interaction that she had with police:

*Even they say to me, not come to Cabramatta, so after I go Canley Vale, alright, and they say, "Didn't I told you not come to Cabramatta?" And I say, "Well, I come to Canley Vale, to buy food." And they say, "Well still Cabramatta".<sup>1023</sup>*

The woman said that she would have liked police to tell her the precise radius of the direction, and said that she would have obeyed it:

*Why not say exactly to me exactly how many kilometres I not allowed to, you know what I mean, you know what I mean? You harassing me every time you see me... They still harassing me. They say still part of Cabramatta. I didn't know that. If I know that OK, I wouldn't come. If you give to me, how many kilometres I not allowed to, OK, I'll go. But every time you see me... maybe they just don't like me, they keep harassing me... They say to me shut up and go. ... I say, "This Canley Vale, not Cabramatta".<sup>1024</sup>*

<sup>1018</sup> Interview, 32 year old Aboriginal male drug user, Liverpool, 17 November 2003.

<sup>1019</sup> Ibid.

<sup>1020</sup> Interviews, 34 year old Asian female drug user, Cabramatta, 17 November 2003.

<sup>1021</sup> Ibid.

<sup>1022</sup> Submission, South West Area Health Service, 4 February 2004.

<sup>1023</sup> Interview, 34 year old Asian woman, Cabramatta, 12 December 2003.

<sup>1024</sup> Ibid.

This woman also recounted an experience in which she was issued with a direction not to return to Cabramatta within seven days, and she came back after she thought that the time had expired. She said that police told her that she was disobeying the direction. There was also some confusion about whether it was her second or third direction. She claimed that she had only received one previous direction, whereas police believed she had received two:

*They told me, "You not allowed to Cabramatta for seven day". They warning me for seven day. I say three times, but they warning me only one time. But some people say three time, they have to warning you three time to do it, but for me only one time...*

*And after one week, I not to come to Cabramatta at all for one week. Exactly seven days I come back, and there they say to me again, "You cannot come back." You know, I say, "Oh one week already, it been one week already, what day did you book me? ... You read in your book, sir, didn't you look in your book?" But different cop. But they come together, one constable they write a day, one constable they see me, and then they say to me, "I see your face before". And I mean yeah, "You see my face before, and your friend write a name, write a day on, but you don't know the day what he write it on. That's not right".*

*I be away for one week, after one week, I have to buy food, because food... we don't have exactly food what we need in here.<sup>1025</sup>*

Incidents such as the experiences of the woman that are documented above suggest that there may be some difficulties in monitoring seven day directions, particularly when each direction is issued on separate occasions, sometimes by different police. This incident also illustrates some of the ways such a direction may impact on a person. It also suggests that some people may find these directions difficult to comply with.

### 11.10.8. Seven day directions and issues raised by initially refusing to comply

Another issue in relation to seven day direction concerns ambiguities in relation to whether a person has initially refused to comply with a direction.

When the Drug Premises Act was first introduced on 1 July 2001, the provision that relates to when a direction is disobeyed stipulated that if the person initially refuses to comply with a direction, then the police officer may again give the direction.<sup>1026</sup> As we discuss in the introduction to this section of the report, the word "initially" was removed from section 28F in July 2002 when the Summary Offences (Amendment) Act commenced.

The issue of whether a person has initially complied with a direction has particular relevance to seven day directions that were issued before the wording of the legislation changed, because second directions were often issued several hours or sometimes several days after the first direction had been issued.

Our audit of seven day directions issued in Cabramatta showed that it was rare for a person to immediately disobey a drug related direction issued by police. People who were issued with directions usually complied and left the area. It was common, however, in instances where police considered that the direction had been disobeyed, for that person to have returned several hours or several days after the first direction had been issued.

Our audit of event narratives indicates that police were often considering this as a breach of the first direction, even though the person had initially complied with the first direction. As we will see in the case study presented at the end of this chapter, one magistrate agreed that this interpretation of initially complied was a valid one.

In another instance, a charge for disobeying a direction was withdrawn by police. One of the arguments that had been put forward was that the woman complied with the direction and left the area, and was seen by police the following day. In the representation made to police for the withdrawal of the charge, the woman's lawyer argued that:

*The use of the word "initially" contemplates that the refusal to comply with the direction must be closely proximate in time (even immediate), and that if the direction is to be given again, this must take place straight away. We submit that it contemplates seconds or minutes, not hours or days. If there is initial compliance, and a later breach or continuation of the relevant conduct, then it would appear the process must start again.<sup>1027</sup>*

<sup>1025</sup> Ibid.

<sup>1026</sup> Summary Offences Act, s. 5.

<sup>1027</sup> Shopfront Legal Centre, Representation 1, received 16 June 2003.

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In the focus group that we conducted with Cabramatta police, we were told that police officers at Cabramatta had been advised by senior management to change how they were interpreting the Act in this regard. Officers said that they were told that the Act was to be interpreted such that if a person obeys a direction, and is seen later by police, that police are to issue a fresh direction:

*As long as they comply with that direction... if you see them the next day, even though you're making a seven day period... really, that should be my first warning the next day, first one again, "I'm directing you", because they complied with the initial one, and [other police] said its too ambiguous, the interpretation.*<sup>1028</sup>

Another officer said:

*Their interpretation was, move-ons, there and then. If they're on a corner there, and you say "move-on", they walk away, and you find them five minutes up the street - say a new move-on ... They obey that initial first direction, that's it. So if you see them later five minutes up the street, give them another move-on, if they keep walking each time. Basically all your doing is playing ping pong and pushing them around the CBD, "cos there obeying every time.*<sup>1029</sup>

One officer reiterated this view, commenting that this way of using the legislation is "a toothless tiger really, you're just pushing them from place to place".<sup>1030</sup>

We audited a small sample of drug move-on incidents in the second year of the review period to assess if police practice had changed in relation to when police considered that a direction had been disobeyed.<sup>1031</sup> Our audit found that in four of the 11 incidents in which a move-on was recorded by police as disobeyed, the person had complied with the initial direction, but was seen in the area again at a later time or date, and was considered to have breached the first direction. On these four occasions, police did not note what conduct formed a basis for a belief that the person was in the area to buy or sell drugs. Based upon what police have recorded, the direction was issued because the person was seen in the area again. Therefore, it appears that some police in Cabramatta have not changed their practice in relation to when they consider a direction has been disobeyed.

### 11.10.9. Seven day directions - Police v Saysouthinh

One court case involving a woman who was charged with disobeying a seven day direction in Cabramatta highlights many of the issues that have emerged in relation to these directions. These include the reasonableness of seven day directions, how the phrase initially refused to comply should be interpreted, whether the person issued with the direction had persisted in engaging in the relevant conduct, and the extent to which seven day directions may impact on drug user's access to health services. Ultimately, the prosecution failed for a range of reasons.

#### 11.10.9.1. The facts of the case

One evening, a constable from Cabramatta saw a woman who she knew to be a heroin user opposite Cabramatta Railway Station. The constable approached the woman at about 5.45 pm. At court, the magistrate recounted the facts that had been asserted by the prosecution regarding the first conversation that took place between the constable and the woman:

*After approaching the defendant in brief exchange, Constable Jones asked, "Have you used any drugs lately, show me your arms." The defendant replied, "Yeah, I used this morning." It was ascertained that the defendant had used heroin and she had obtained it, "Here on the streets".*<sup>1032</sup>

In her statement, the constable described the direction she had issued to the woman as follows:

*As you know I am Constable Jones and I work at Cabramatta Police Station. From what you have told me and what I observed, I believe that you may be here for the purposes of using or selling illicit drugs, heroin. I am issuing you with a direction not to be within three kilometres of Cabramatta Railway Station for the period of seven days. If you fail to comply with this direction then further police action will be taken against you. If you breach it again, you will then be issued with a second warning and if you breach it after that within the seven days, then you may be charged with disobeying police direction.*<sup>1033</sup>

The constable then saw the woman again, at about 9.20 the same night, in the same location, and asked, "What are you doing?" The defendant replied, "I am going now." And the police officer responded, "This is your second direction. If you breach the first direction then you may be charged with an offence of disobey police direction".<sup>1034</sup>

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<sup>1028</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1029</sup> Ibid.

<sup>1030</sup> Ibid.

<sup>1031</sup> 11 "disobeyed" and 18 "obeyed" drug move-on incidents were audited from Cabramatta LAC.

<sup>1032</sup> Liverpool Local Court, *Police v Bovieng Savanh Saysouthinh*, 24 May 2002, p. 8.

<sup>1033</sup> Ibid, p. 9.

<sup>1034</sup> Ibid, 24 May 2002, p. 9.

Two days later, at 2.55 pm on a Sunday afternoon, the woman was seen by the same constable coming from a block of units in Cabramatta, opposite a unit block that was reportedly a location known for heroin dealing. The officer noted that the woman appeared to be drug affected and slow in her reactions. An extract from the event narrative reads as follows:

*At 2.55 pm on Saturday the 10<sup>th</sup> February 2002, police saw the defendant coming out of a block of units situated directly opposite the unit block which is reportedly dealing heroin. Police noted that the defendant had fresh puncture marks on the left inner elbow of her arm consistent with intravenous drug use. She was searched by police where a fit box containing syringes was located in the pocket of her jacket. It is believed that the defendant was using drugs at this location.*<sup>1035</sup>

She was arrested, taken back to Cabramatta Police Station, and charged for disobeying the direction.

#### 11.10.9.2. *The court hearing*

At court, the woman's lawyer contested the direction that had been issued on the following grounds:

1. The direction given under s28F was not based on reasonable grounds.
2. The defendant did initially comply with the direction and the second purported direction was not done in accordance with s28F.
3. The direction given in the first instance was not reasonable in the circumstances.
4. The defendant did not persist or engage in the relevant conduct.<sup>1036</sup>

#### 11.10.9.3. *Initially refusing to comply*

One issue that arose was the question of whether the woman had initially complied with the direction. The prosecution argued:

*So if they're given the seven day direction and they're back within seven days, they're in breach of the direction, even if they leave in the first instance, they're still in breach of the direction.*<sup>1037</sup>

The defence had submitted that there must be a temporal annexus between the first direction and a refusal to comply with that direction, and that this should be measured in "seconds or minutes, rather than hours or days from the first direction".<sup>1038</sup> The magistrate disagreed with this interpretation. After referring to the second reading speech on the Police and Public Safety Act, and considering the wording of the provision, the magistrate found:

*Despite the cumbersome wording of s 28F [sub section] 5, I consider that where the term initially refused is used, it is not meant to be restricted to a narrow time frame associated with the first direction. Accordingly and I find that notwithstanding that some hours had passed before the defendant was seen again and spoken to, it was appropriate to provide a second direction...*<sup>1039</sup>

#### 11.10.9.4. *Procedural Requirements*

According to the Act, police must comply with certain procedural requirements when they issue a direction, including informing the person of the reason for the direction, and warning them that failure to comply with the direction may be an offence. At the time, the section of the Act that stated the procedures for the issuing of second directions read as follows:

- (5) *If a police officer has complied with subsection (4) in giving a direction to a person and the person initially refuses to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.*<sup>1040</sup>

The magistrate found that the second direction that had been issued by the constable was not issued in accordance with the Act:

*The police officer's statement indicated that she said to the defendant, "This is your second direction." Whilst clearly it was referable to the first direction given over three hours before, the officer did not enunciate any of the terms of the direction that the defendant was required to comply with, that is, "Not to be within three kilometres of Cabramatta Railway Station for period of seven days".*

*The failure to give substance to the word "direction", makes the statement by Constable Jones no direction at all.*<sup>1041</sup>

On this basis, because an offence is only created if the police officer gives the direction in accordance with the procedural requirements outlined in section 5, the magistrate determined that the charge failed.<sup>1042</sup>

<sup>1035</sup> COPS event narrative, Drug Move-on Incident 201, 10 February 2002.

<sup>1036</sup> Liverpool Local Court, Police v Bovieng Savanh Saysouthinh, 24 May 2002, p. 8.

<sup>1037</sup> Liverpool Local Court, Police v Bovieng Savanh Saysouthinh, 10 May 2002, p. 5.

<sup>1038</sup> Liverpool Local Court, Police v Bovieng Savanh Saysouthinh, 24 May 2002, p. 10.

<sup>1039</sup> Ibid, p. 11.

<sup>1040</sup> Summary Offences Act, 28 F (5).

<sup>1041</sup> Liverpool Local Court, Police v Bovieng Savanh Saysouthinh, 24 May 2002, p. 11.

<sup>1042</sup> Ibid.

#### 11.10.9.5. Relevant conduct

The woman's lawyer argued that the woman had not persisted in the relevant conduct after the first direction had been issued. However, the magistrate disagreed. On the second occasion when she was seen by police, the woman was seen in Cabramatta in a drug induced state, and on the third occasion, she was also seen in a drug induced state coming out of a block of flats from which police believed heroin was being supplied.

In relation to the second direction, the magistrate was of the view that the prosecution was entitled to rely upon evidence that had been given by the defendant when the first direction was given "that she buys her drugs from the streets and that she was in an area of Cabramatta against a direction, in a drug induced state".<sup>1043</sup> Therefore, the magistrate found that the fact that she was drug affected could establish a reasonable belief that she was in the public place to buy drugs. In relation to the third occasion that she was seen by police and charged for breaching the direction, the magistrate found that while there was no evidence that she had obtained her drugs from the flats that she was seen leaving when police saw her, "On the evidence before me there is an inference available that the relevant conduct was being persisted with contrary to the direction given".<sup>1044</sup>

It is interesting that, in this case, being seen in the area in a drug induced state was sufficient evidence to establish a reasonable belief that the person was in the public place to buy drugs.

#### 11.10.9.6. Reasonableness of directions issued

The woman's lawyer also argued that a seven day direction was unreasonable. According to Section 28F of the Act, a drug related direction must be reasonable in the circumstances for the purposes of:

- (b) stopping the supply, or soliciting to supply, of a prohibited drug, or<sup>1045</sup>
- (c) stopping the obtaining, procuring or purchasing of a prohibited drug.<sup>1046</sup>

The prosecution argued that the seven day direction that was issued was reasonable. The magistrate and prosecutor had the following discussion about the objectives of the legislation in terms of the duration of the direction that can be given:

*PROSECUTOR: It hasn't been tested sir... In my submission the seven days is reasonable because it allows the police to give people [a] direction to stay out of Cabramatta or stay out of areas which are known for relevant conduct, so it may not just be Cabramatta, it may be Kings Cross... for that purpose and knowing that it is the purpose of the legislation, seven days, it would not be outside the ambit because they keep trying to keep them away from Cabramatta for seven days, so during that seven days they're not committing further offences. It's akin to bail conditions sir, one couldn't say that bail conditions were unreasonable... bail conditions are set for much longer periods where persons have been charged...*

*BENCH: It must be said that in this circumstance no-one has been charged.*<sup>1047</sup>

One reason that the direction was unreasonable, according to the defence, was that the seven day direction prevented access to a needle and syringe exchange and to the Drug Intervention Service in Cabramatta (DISC). The magistrate did not accept this argument, on the basis that no evidence had been provided suggesting that the defendant used those services:

*The fact that these may exist in Cabramatta does not [make] the direction itself unreasonable, unless it could be said that these services were the only ones available and were used or sought to be used within the exclusion zone.*<sup>1048</sup>

The magistrate did, however, find that the direction was unreasonable on other grounds. In his view, there was no evidence that the seven day direction, and the radius of three kilometres from Cabramatta Railway, was reasonable in the circumstances. The magistrate stated that the paucity of evidence going to the time and distance restrictions was "insufficient to establish at a prima facie level that the direction given was in all the circumstances a reasonable direction".<sup>1049</sup>

The magistrate noted that there is no legislative assistance as to the parameters of what may be considered reasonable in New South Wales. Referring to the second reading speech for the Police and Public Safety Act, which stated that the purpose of the reasonable directions powers was to give the police power to enable them to disperse people acting in a disruptive manner, before a situation got out of hand, he said:

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<sup>1043</sup> Ibid.

<sup>1044</sup> Ibid.

<sup>1045</sup> *Summary Offences Act*, s. 28 F (3) (b).

<sup>1046</sup> *Summary Offences Act*, s. 28 F (3) (c).

<sup>1047</sup> Liverpool Local Court, *Police v Bovieng Savanh Saysouthinh*, 10 May 2002, p. 5.

<sup>1048</sup> Liverpool Local Court, *Police v Bovieng Savanh Saysouthinh*, 24 May 2002, p. 12.

<sup>1049</sup> Ibid, p. 13.



*When viewed in this light, it seems that the circumstances of this case, bearing in mind that there is no specific evidence on the reasonableness of the direction, but that such a direction in time, being seven days is unreasonable. In addition, the prohibition against being within a three kilometre zone in Cabramatta Railway Station in effect excludes a person from a large track of public space on which it could not be said to have a drug connection. The defendant was effectively stopped from using rail services which travelled through Cabramatta and from accessing major arterial road services which were some distance from Cabramatta proper.<sup>1050</sup>*

#### 11.10.10. Changes in police practice over the review period: seven day directions

There is evidence that, to some extent, police altered their practice in relation to the issuing of directions over the review period, though seven day directions are still being issued. Police we spoke to did not recall whether the result of the court case discussed above was the reason for their change in practice in relation to the issuing of seven day directions. However, they did refer to the fact that several court cases had been lost on this issue.<sup>1051</sup>

According to the officers we spoke to, senior police in Cabramatta had advised them that:

*... there may be a case to answer for ... it not being reasonable - the seven day period, so we sort of dropped it back to like twenty-four hours, two days, things like that. But you still give them the first warning, they'd be there the next day, you'd give them the second warning, but then it all starts all over again. 24 hours. 48 hours. And they know how far. It doesn't take [them] long to get into the swing of things and work out what they can and can't get away with.<sup>1052</sup>*

A legal officer from the NSW Police who had been involved in the decision to issue seven day directions in Cabramatta said that his approach to seven day directions had softened a little bit over time and with a further reading of the legislation.<sup>1053</sup> He said that he was now of the view that there was "some doubt that a court, having regard to the wording of the legislation, that a direction of that duration [seven days] could be regarded as being within the intention of the legislation".<sup>1054</sup> He was not aware of any particular case or incident that had swayed his view on seven day directions, but that "as a general matter we should review our practice of issuing seven day directions".<sup>1055</sup>

Our audit of event narratives suggests that as the review period progressed, police in Cabramatta became increasingly aware of the issue of reasonableness as it related to the length of the direction that they issued. The wording of event narratives, several of which are quoted below, suggests that police had consciously assessed the reasonableness of the type of the direction, and were more likely to take account of where the person lived in deciding what direction to issue them.

Sometimes, police reconsidered the parameters of a direction they issued. On one occasion, a direction had been issued to a person not to return to within a two kilometre radius of Cabramatta Railway for seven days. The person was seen the following afternoon in Cabramatta. He was given a second direction as he did not have any lawful purpose to be in the Cabramatta area. The man told police he lived in Cabramatta. Police documented what happened next as follows:

*Police then agreed to change the radius from 2km to 1km and he was then allowed to leave. The POI said that he understood the police predicament that "junkies" put police in, and knew that police were only trying to clean the Cabramatta area up.<sup>1056</sup>*

In another incident, late one night in January 2002, police saw an Asian woman loitering in Freedom Plaza - a shopping mall in the CBD of Cabramatta. She was watched from a distance by police who saw her approaching people as they entered the plaza. Police then went up to her and asked her what she was doing. She told them that she was in the plaza to get something to eat. A radio check revealed that she had a lengthy history for supplying drugs in the Cabramatta CBD. The event narrative goes on to state:

*Police believe that the POI had no lawful reason to be loitering around [street name] given the time and therefore the POI was issued with a move-on direction which she complied with.*

*Police questioned the POI as to whether she understood the direction and she stated yes. The POI was not issued with a seven day direction as she currently resides in [street name] Cabramatta.<sup>1057</sup>*

<sup>1050</sup> Ibid, p. 13.

<sup>1051</sup> In a focus group that we conducted at Cabramatta Police, officers referred to the loss of several court cases, but could not recall the details of these cases, or if these losses had resulted in a change in their practice in relation to the issuing of seven day directions.

<sup>1052</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1053</sup> Interview, Legal Officer, NSW Police, 29 September 2003.

<sup>1054</sup> Ibid.

<sup>1055</sup> Ibid.

<sup>1056</sup> COPS event narrative, Drug Move-on Incident 56.

<sup>1057</sup> COPS event narrative, Drug Move-on Incident 148, 29 January 2002.

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In this instance, the woman lived in the street where she was given the direction. It is clear that police exercised their discretion in relation to the type of direction that they issued because of where she lived.

In a focus group conducted with Cabramatta police, we asked officers what factors they took into account when they decided what type of direction to give, and one officer said:

*Basically where they live. If they don't live in the Cabramatta CBD, well then they've got no real reason for being here, if they can't prove a lawful reason for being here, then basically that's what instigates the direction... if they live in the Cabramatta CBD, our hands are tied.*<sup>1058</sup>

In another incident, in January 2002, police gave a direction to a man who was in a residential area that had been "recently identified as a hot spot for drug supply and use".<sup>1059</sup> Earlier that day, police had seen the man walking into units in the area with a fit kit in his hand. In explaining the direction they decided to give, which was to not be in a specific part of Cabramatta, and comprised several blocks, police wrote in the event narrative:

*Despite the fact that POI 2 lives in the area, police believe the direction given to him is not unreasonable as it is a residential area, not part of the commercial centre and the POI stated himself he did not know anyone who lived in that area.*<sup>1060</sup>

In some event narratives, such as the one quoted above, the grounds upon which the officer believes that the direction is reasonable are explicitly stated, indicating an awareness of this issue. However, some police continued to issue seven day directions to people who lived within the ambit of the radius of the direction. Of the 29 Cabramatta drug move-ons we audited in the second year of the review period, 21 were seven day directions. Two of the 21 were issued to people who lived in a neighbouring suburb that was within the ambit of the radius of the direction. However, none of the 21 seven day directions we audited were issued to residents of Cabramatta.

Our audit of drug move-ons in the second year of the review period indicated that Cabramatta was the only LAC that issued seven day directions on a fairly regular basis. Of the 217 drug move-ons incidents we audited that took place in other LACs, 5 were seven day directions.

### 11.10.11. Conclusion

We believe that in most circumstances, police will have difficulties demonstrating that a seven day direction is a reasonable direction. While the objective of the drug move-on powers is to address activity in public places that relates to buying and selling drugs, seven day directions effectively also prohibit people from coming to an area for lawful purposes. There is no indication that parliament intended that the drug move-on powers prohibit people from coming to an area altogether for an extended period of time.

Submissions to our review and interviews with health professionals in south western Sydney have also indicated that seven day directions may impact on drug users' access to services which assist in the reduction of the harms associated with using illicit drugs.

In addition, time limits imposed in other Australian jurisdictions provide a useful point of comparison, with six hours and 24 hours respectively, being applied in Queensland and the ACT.

That said, there may be exceptional circumstances where a direction that a person not attend an area for a set period of time may be appropriate. An example of this may be the Supreme court case *Regina v Coung Dieu Troung* which is discussed in the following chapter. In that matter, however, the direction was limited to a prohibition on returning to the public place for the particular purposes of buying or selling drugs. Such a direction would not prevent a person from accessing health or other services, or from engaging in the community in lawful ways.

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<sup>1058</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1059</sup> COPS event narrative, Drug Move-on Incident 146, 26 January 2002.

<sup>1060</sup> *Ibid.*

## 11.11. Recommendations

### **That NSW Police incorporate in its guidelines and training materials advice to officers in relation to responsible and appropriate time periods to enforce a direction.**

NSW Police has advised us that it supports this recommendation. In doing so, it has made the following observations: “The giving of a direction in relation to the move along legislation has been identified as an area of key importance. This has been addressed in [the subjects] PPP114 “Criminal Justice and Society 2” and PPP115 “Police, Crime and Society 1” [which] focus on police powers in general and more specifically drug powers incorporating the move along legislation. Greater emphasis will be given to police justifying their reasonable cause and exactly what is reasonable cause. Another key issue that will be given more attention is the giving of appropriate directions in regard to issuing move along direction, specifically that the direction must be reasonable for that particular case. Some aspects and examples of the report will be included as case studies to clarify issues arising from its operational use”.

### **That seven day directions be issued in exceptional circumstances only and not when the issue of such directions would compromise access to health or other services used by the subject of the direction.**

NSW Police has advised us that it supports this recommendation in principle. In doing so, it has made the following observations: “This [recommendation] has been addressed in PPP114 “Criminal Justice and Society 2” and PPP115 “Police, Crime and Society 1” [which] focus on the application of the power to give “seven day” directions. The use of “seven day” directions has also been addressed in PPP242 “Problem Orientated Policing and Vulnerable People” and PPP123 “Ethical Reasoning and Policing”. These subjects will look at the social implications of the use of move along legislation with the giving of a “seven day” direction”.

We would note in relation to the NSW Police response to recommendations 6 and 7 that, while it is important for student police officers and probationary constables to be given training of the type outlined, it is also essential that there be ongoing training and reinforcement of a similar type for other police officers involved in the exercise of powers under the Drug Premises Act.

In light of the NSW Police response to the recommendations, we also recommend that NSW Police carefully monitor the use of seven day directions, to determine whether they are being used appropriately in the circumstances.

## 11.12. Part 4: Disobeying drug move-on directions

Under section 28F(6), an offence has been committed if a police officer issues two directions to move-on, and the person continues to disobey the direction without a reasonable excuse.<sup>1061</sup> However, no offence has been committed unless the person continues to engage in the relevant conduct.<sup>1062</sup> No custodial penalty applies to this offence, and the maximum penalty is a fine of \$220.<sup>1063</sup>

We audited 32 drug related reasonable directions that had been entered on the COPS database as “drug related - disobey”. In 16 of these incidents, the person had disobeyed the direction on a third occasion. In the remaining 16 incidents, only a second direction had been issued.

Statistics showing the numbers of drug move-ons that were obeyed, compared with those that were disobeyed, indicate that a person who is issued with a direction to move-on will usually obey the direction. Several of the drug users we interviewed indicated that they obeyed directions to move-on because they wanted to avoid difficulties with police. It also appears that people chose to stay away from Cabramatta completely for this purpose.

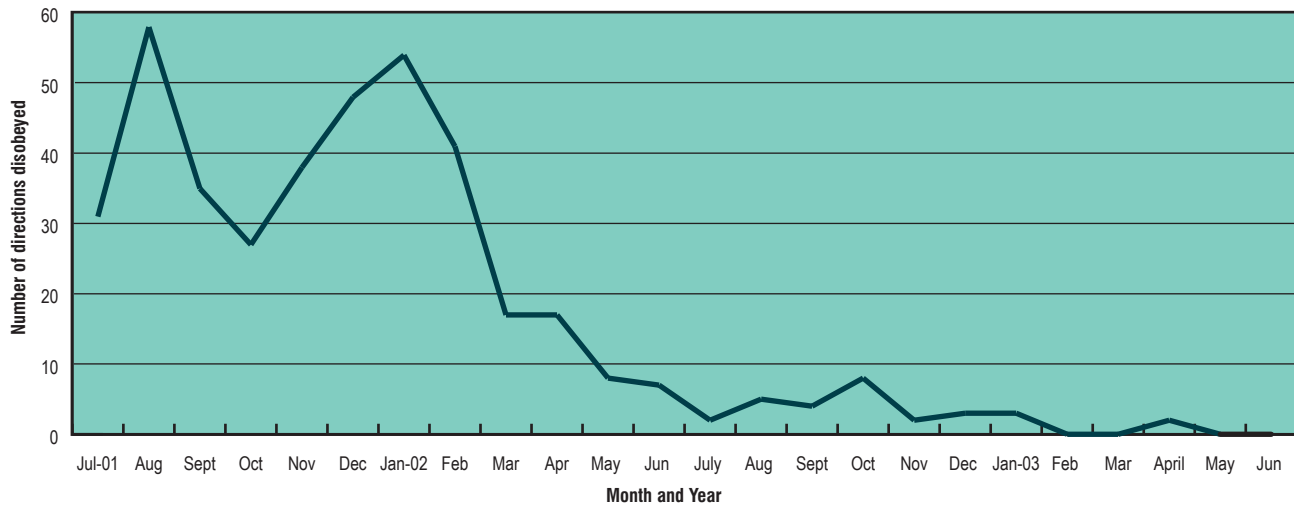
The table below shows the number of directions that were disobeyed in Cabramatta over the review period.

<sup>1061</sup> *Summary Offences Act*, s. 28F (6).

<sup>1062</sup> *Summary Offences Act*, s. 28 F (7).

<sup>1063</sup> *Summary Offences Act*, s. 28F (6).

**Figure 35: Number of directions disobeyed in Cabramatta, July 2001- June 2003**



Source: Extract from the COPS Database, data provided by NSW Police in July 2003.

The table above shows a sharp drop in the number of number of directions that were disobeyed in Cabramatta in the second year of the review period. In a focus group, one officer noted this trend, and gave the following explanation for this change:

*If you look at the stats on the charges for move alongs, for disobey, obviously up to a year ago, we were locking them up all the time for disobey, but when we started losing at court, it became sort of disheartening, or what was the sense of locking them up,<sup>1064</sup> when they go to court, and they deem it unreasonable for seven days? So where we used to get like maybe four lock ups a week for disobey, I've locked no one up for a disobey direction in oh, who knows how long.<sup>1065</sup>*

According to the officer quoted above, police were less inclined to breach people for refusing to obey a direction because court cases had been lost on the basis that a seven day direction was considered unreasonable in the particular circumstances of these cases.

However, it is also important to note that the decline in the numbers of disobeyed directions mirrors the general decline in the number of drug move-ons that were issued in Cabramatta. This decline became apparent from February/March 2002, and the numbers of both obeyed and disobeyed move-ons continued to drop thereafter.

### 11.12.1. Initially refusing to comply

As stated previously in this report, the wording of section 28F(5) changed during the review period. In July 2002, the word “initially” was removed from this section of the Act, and phrase “refuses to comply” was replaced by “fails to comply”. The removal of the word “initially” is significant because in Cabramatta second directions and breaches of directions often occurred several hours or days after the first direction. We will discuss this later in this chapter.

### 11.12.2. Requirement that the person continue to engage in relevant conduct for an offence to have been committed

A person is only guilty of an offence if they continue to engage in the relevant conduct after the direction was issued.<sup>1066</sup> Attention was drawn to this aspect of the legislation in an article published in Police Service Weekly in 2002 that is discussed in the introduction to the drug move-on section of this report.

<sup>1064</sup> The phrase “locking up” may refer to taking a person into police custody in order to charge them.

<sup>1065</sup> Focus Group, Cabramatta Bike Police and General Duties Police, 2 July 2003.

<sup>1066</sup> Summary Offences Act, s. 28F (7).

In Cabramatta LAC, it has almost always been the presence of the person in the public place, rather than any particular conduct, that has, in the police view, constituted the breach of the direction. In the majority of event narratives, police have not noted any particular conduct that the person is engaging in, but that the person was in the area again after a previous direction had been issued.

We are aware of five cases in which the charges against a person for disobeying a direction were withdrawn by police in Cabramatta. One of the arguments put forward was that the person had not persisted in engaging in the relevant conduct. In one of these cases, it was argued that the presence of the person in the public place provided insufficient evidence that there were reasonable grounds to believe that the person was there to buy drugs. The representation stated:

*...there is no evidence that [defendant's name] "persisted, after the direction concerned was made, to engage in the relevant conduct". In this case, we would submit that the "relevant conduct" was being present in the area for the purpose of obtaining or supplying prohibited drugs. The police facts do not indicate that [defendant's name] was involved in any drug related conduct after the initial direction was issued.<sup>1067</sup>*

One of the incidents we audited documented a drug move-on that occurred at 3.55 pm one afternoon, after police saw a man outside a house in Cabramatta. The man told the police that he was looking for his girlfriend. Police noted that he lived in another suburb. He was issued with a direction not to go within one kilometre of Cabramatta Railway Station. No length of time was prescribed in this direction. At 10.30 pm the same day, another police officer saw the man. In the event narrative, the alleged breach of the direction is described as follows:

*Inquires revealed that [surname] was breaching a direction issued to him by Constable [surname] of the [name] operation. [Surname] was directed to move-on from Cabramatta and advised that a further breach of the Constables direction would result in him being charged with the matter.<sup>1068</sup>*

The event narrative continued:

*[date, three days after previous two directions] Police arrested [surname] for breaching Constable [surname] direction.<sup>1069</sup>*

On the second and third occasions that this man was seen by police, he was considered to have breached the direction because he was seen in the area again.

In another incident, a man who was known for drug supply was seen outside an amusement arcade in Cabramatta. An extract from the event narrative relating to this incident states:

*About 6.40 pm on Friday the [date], police patrolling the Cabramatta CBD saw a group of drug users outside [name] amusement arcade located on [street name] close to the intersection with [street name], Cabramatta. This location is well known by police to be used for the supply of illicit drugs.*

*Police observed a male person known to them as [name] (the defendant) a well known identity around Cabramatta for his involvement in the drug trade. Police spoke to the defendant who stated that he had only been issued with one move along direction.<sup>1070</sup>*

Police then conducted a check, and found that he had been issued with a direction two days before. He was then seen again, 25 minutes later, by the same bike police. In the event narrative it is noted that:

*Further to this at 7.05pm this same day the defendant was seen by the same bike police and spoken to again where he was warned in relation to the failed move along. The defendant was also informed that if he was detected in Cabramatta before the expiry of the seven days he would be arrested.*

The defendant was then placed under arrest and conveyed to Cabramatta police station where he was charged with the matter now before the court.<sup>1071</sup>

In the above incident, when police saw the man on the second occasion, they noted that he was in a location known for drug supply, that he was seen with drug users, and was a well known identity in the drug trade. On the third occasion, it appears that he was seen in the area again, but police did not note any particular conduct he was engaged in, only that his presence in the area constituted a breach of the direction.

<sup>1067</sup> Shopfront Legal Centre, Representation 4, received 16 June 2003.

<sup>1068</sup> COPS event narrative, Drug Move-on Disobey Incident 12, 14 October 2001.

<sup>1069</sup> Ibid.

<sup>1070</sup> COPS event narrative, Disobey Drug Move-on Incident 15, 16 November 2001.

<sup>1071</sup> Ibid.

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As we discuss earlier in the introduction to the drug move-on section of this report, in some respects, the new drug move-on powers are an uncomfortable fit with the original reasonable direction powers in the Summary Offences Act. The difference between the original move-on powers, and the drug move-on powers, are highlighted when police are required to assess if a drug move-on direction has been disobeyed.

### 11.12.3. Arresting and charging a person for refusing to move-on

Police have several options when a person disobeys a direction issued under section 28F. They may issue an infringement notice<sup>1072</sup> or a Field Court Attendance Notice (FCAN).<sup>1073</sup> Alternatively, the offender may be arrested, taken to a police station and charged, and be required to enter into a bail agreement prior to their release.<sup>1074</sup>

If a person is charged and convicted of disobeying a drug move-on, they may receive a criminal record.<sup>1075</sup> However, if a person is issued with an infringement notice for disobeying a drug move-on, they do not receive a criminal record.

The consequences of having a criminal record can be serious. A conviction for failing to comply with a direction to move-on will be recorded on a person's criminal history and if the person commits further offences, a sentencing court will take this history into account when determining an appropriate penalty. A person may also be obliged to disclose his or her criminal record when applying for employment, insurance, credit, a statutory licence or a visa for overseas travel. While the *Criminal Records Act 1991* limits the length of time that information about a person's convictions needs to be disclosed to 10 years, these provisions do not apply to certain types of employment, including legal offices, police officers, teachers and providers of child care.

In all of the 16 instances that we audited in which a person disobeyed a direction issued to them in Cabramatta, they were charged. In a submission that we received from Shopfront Legal Centre, it was argued that this practice is an inappropriate way of dealing with a minor summary offence, particularly one for which no custodial penalty applies:

*In our view, arrest and charge are only appropriate where the defendant's conduct is extremely disruptive or violent (in which case they would probably be charged with a more serious offence in any event) or where the police are ... (unable) to establish the defendant's identity.*<sup>1076</sup>

Further, Shopfront Legal Centre argued that arresting and charging, "As a blanket policy (as has been adopted in Cabramatta) ... is grossly inappropriate".<sup>1077</sup>

Other organisations had similar concerns. The New South Wales Legal Aid Commission referred to a recent Supreme Court decision in Carr [2002] NSWSC 194, in which the arrest and charging of a person for offensive language was found to have been improper. In the light of this, and another recent case in which the Carr decision was affirmed, the Legal Aid Commission was of the view that the practice of arresting and charging people for disobeying move-on directions was incongruous. The Commission argued that the deprivation of liberty that occurs when a person is placed in police custody for the charging process is not justified by an offence which carries a maximum penalty of a small monetary fine.<sup>1078</sup>

In the NSW Police submission to our discussion paper, strong endorsement of the practice of arresting and charging a person who disobeys a drug related direction, in certain circumstances, was given. It was noted in the submission that while less intrusive measures are most often used first:

*There was strong consensus that arrest and charge was not only appropriate, but also necessary to ensure that persons comply with a move along direction. Arrest is used as a last resort and other, less intrusive measures are most often used first. However, in certain circumstances an arrest is warranted when supported by intelligence, surveillance and observations.*

*If a person refuses to comply with a direction issued under the Act, Police must have arrest available as a last option, otherwise the person could remain in an area to continue the very conduct the direction is aimed at preventing.*<sup>1079</sup>

In this sense, the arrest itself appears to be designed to give effect to the move-on direction.

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<sup>1072</sup> If a person is issued with an infringement notice by police, they can also elect to have the matter heard in court.

<sup>1073</sup> An FCAN is a notice issued "in the field" that requires the person to attend court where the matter will be heard.

<sup>1074</sup> *Bail Act 1978*.

<sup>1075</sup> However, a magistrate has the option of dismissing the charge without proceeding to conviction, even where the person is found guilty of the offence. *Crimes (Sentencing Procedure) Act 1999* s 10 (1).

<sup>1076</sup> Submission, Shopfront Legal Centre, 28 June 2002.

<sup>1077</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>1078</sup> Submission, NSW Legal Aid Commission, 30 July 2003.

<sup>1079</sup> Submission, NSW Police, received, 12 August 2002.

In a submission we received from a LAC in the Northern Region, it was noted that police in this command are encouraged to proceed against people who refuse a direction to move-on by issuing infringement notices or Field Court Attendance Notices (FCANS). It is noted that "One experienced Sergeant observed that he would issue several infringement notices before feeling it was appropriate to arrest a repeat offender."<sup>1080</sup> This LAC did not indicate that infringement notices were ineffective. However, it appears that some other police are of the view that arresting and charging a person for disobeying a direction is sometimes the only way to stop the conduct that the direction has been issued for.

Some police have also argued that infringement notices are ineffective because they are simply discarded, and the penalty - which is a fine of up to \$220 - is not paid. Senior police told us that in Cabramatta, when infringement notices were issued for disobeying move-on directions prior to the introduction of the drug move-on powers, the infringement notices were just tossed out, littering the streets and malls of Cabramatta, and the fines remain unpaid.<sup>1081</sup>

Infringement notices can be issued for a range of offences, including traffic offences, and more recently, offences like shoplifting.<sup>1082</sup> There is evidence to indicate that a proportion of infringement notices that are issued for other offences are also not paid, so this problem is not unique to infringement notices that are issued for disobeying move-on directions.<sup>1083</sup> For example, our current review of the Crimes Legislation Amendment (Penalty Notices Offences) Act 2002 has found that of 1598 Criminal Infringement Notices (CINS) audited for the review, 914 (57%) remain unpaid. Of those CINS issued by police for offensive language, the percentage of unpaid fines is 68%, and of those issued for offensive behaviour, 54% remain unpaid.<sup>1084</sup>

If a fine is unpaid, the debt is referred to the State Debt Recovery Office (SDRO). The SDRO has the power to initiate further action, which may include imposing additional fines, or cancelling the debtor's driver's licence.

#### 11.12.4. Bail conditions given to people who are charged for breaching a direction

If a person is arrested, taken to a police station and charged, they are then required to enter into a bail agreement prior to their release. The table below indicates the bail conditions that were given to people who were charged for disobeying drug related directions in Cabramatta. As the table shows, the bail conditions imposed were similar to the types of directions that were issued in Cabramatta, except that their duration lasted until the matter was heard in court, as opposed to the seven day period that applied to drug related directions themselves. During a focus group, one officer commented on the effect of the bail conditions that were imposed on people charged for refusing to obey a direction:

*So in actual fact, instead of us getting 7 days out of it, we were getting a charge, and then three weeks, which might have been up to 4 weeks with the initial 7 days.*<sup>1085</sup>

This comment suggests that the police officer saw the imposition of bail conditions as a way to enhance the usefulness of seven day directions.

In the table below, we have set out the number of times particular bail conditions were imposed.

**Table 41. Imposition of bail conditions**

Bail condition	Number of times condition imposed
Not to return to a particular location (ie, a business)	1
Not to return to a part of a residential area	1
Not to go within 1 kilometre of Cabramatta Railway Station	1
Not to go within a 2 kilometre radius of Cabramatta Railway Station	4
Not to go within a 3 kilometre radius of Cabramatta Railway Station	4

**Source: Audited COPS records, Cabramatta LAC drug move-on disobey event narratives, 1 July 2001 to April 2002. Bail conditions recorded on the COPS database for 11 of the 16 people in the audit charged with disobeying a drug related direction, one of the 16 was bail refused. The bail conditions for the remaining five people were not recorded on the COPS database.**

<sup>1080</sup> Submission, Northern Region LAC, received 30 July 2003.

<sup>1081</sup> Consultation, senior police, Cabramatta, 20 May 2003.

<sup>1082</sup> *Crimes Legislation Amendment (Penalty Notices Offences) Act 2002.*

<sup>1083</sup> See, for example, NSW Ombudsman's forthcoming final report on the review of the operation of the *Crimes Legislation Amendment (Penalty Notices Offences) Act 2002.*

<sup>1084</sup> For further discussion of this, see the NSW Ombudsman's forthcoming report on the review of the operation of the *Crimes Legislation Amendment (Penalty Notices Offences) Act 2002.* If fines are unpaid, the debt is referred to the State Debt Recovery Office (SDRO), which has the power to initiate further action, which may include cancellation of the debtor's driver's licence.

<sup>1085</sup> Focus Group, Cabramatta Bike Police and General Duties Police, 2 July 2003.

Concerns were raised by Shopfront Legal Centre that the bail conditions that had been imposed on people charged with disobeying drug move-ons are “far more onerous than is warranted by the nature of the charge”.<sup>1086</sup> The Bail Act stipulates that bail conditions:

... shall not be imposed that are any more onerous for the accused person than appear to the authorised officer or court to be required:

- (a) by the nature of the offence, or
- (b) for the protection and welfare of any specially affected person, or
- (c) by the circumstances of the accused person.<sup>1087</sup>

Particular concerns have also been raised that people have breached bail conditions because they need to return to Cabramatta to access agencies like Centrelink or health services in the area. The Law Society expressed concern that if a person is charged for disobeying a direction, and has bail conditions imposed, they may then “face the further risk of breaching those bail conditions by again, trying to access important services in the area”.<sup>1088</sup>

It is important to note, however, that according to the Bail Act, a person can apply to a magistrate to have their bail conditions varied.<sup>1089</sup> This Act also provides for a bail decision to be reviewed by the Supreme Court, either directly, or after a bail decision had already been reviewed by a local magistrate.<sup>1090</sup> The power to review a bail decision includes the power to:

- affirm the decision regarding the conditions of bail
- vary the decision by removing or imposing bail conditions or
- to grant bail unconditionally.<sup>1091</sup>

## Case study 27.

### Regina v Coung Dieu Troung

In the Supreme Court case of Regina v Coung Dieu Troung,<sup>1092</sup> an application to vary bail conditions not to return within a two kilometre radius of Cabramatta Railway was accepted by the judge, and the bail conditions were varied.

In October 2002, a man was seen on closed circuit television engaging in a drug deal. He was given a seven day direction not to return within a two kilometre radius of Cabramatta Railway Station. Later that day, he was seen again by police in Cabramatta, with drug paraphernalia on him. He was then issued with another direction. Two days later, he was arrested when he was seen again in Cabramatta, this time near the Railway Station. He was charged with disobeying the direction and given bail. The bail condition imposed was that he was not to return within a two kilometre radius of Cabramatta Railway Station.

If a police officer has a reasonable belief that a person has breached their bail conditions, they may arrest the person and take them before a magistrate as soon as practicable for the bail conditions to be reviewed.<sup>1093</sup> The next day, the man was seen inside the prohibited area and was arrested for breaching his bail conditions. Four days later, he was seen again in Cabramatta, ten minutes after the expiry of the original seven day direction, and was again arrested for breach of bail.

The man applied to the local magistrate to have his bail conditions varied. The magistrate refused to vary the conditions. His lawyer then applied to the Supreme Court for a variation of the bail conditions.

<sup>1086</sup> Submission, Shopfront Legal Centre, 28 June 2002.

<sup>1087</sup> *Bail Act*, s. 37 (2).

<sup>1088</sup> Submission, New South Wales Law Society, 20 August 2003.

<sup>1089</sup> *Bail Act*, s. 44.

<sup>1090</sup> *Bail Act*, s. 45.

<sup>1091</sup> *Bail Act*, s 48A (4).

<sup>1092</sup> Supreme Court, NSW Criminal Law Division, *Regina v. Coung Dieu Troung*, 13 November 2002.

<sup>1093</sup> *Bail Act*, s. 50. According to section 50 (2) and (3) of this Act, the court may either release the person on their original bail conditions, revoke the person’s original bail conditions and grant bail again, or refuse to grant bail and send the person to prison.



At the Supreme Court hearing, the man's lawyer sought to have the bail conditions varied on the basis that the bail conditions were invalidly imposed because they were "in excess of what conditions are permitted under the Bail Act and as they are unreasonable".<sup>1094</sup>

The man's lawyer also told the court that there were a number of lawful purposes for which his client needed to return within the area of a two kilometre radius of Cabramatta Railway. These purposes included attending the Drug Intervention Service (DISC), various employment services and Centrelink. His lawyer also noted that the man's counsellor, general practitioner and his relatives were also situated within the two kilometre radius. He also attended the methadone clinic in Liverpool and this required travelling through Cabramatta Railway Station.

Further, it was argued that the original direction not to return within a two kilometre radius of Cabramatta Railway, was:

- *not given in relation to a public place, as the Summary Offences Act stipulates, but was given for a period of time and*
- *that the direction was not reasonable for the purposes set out in section 28F (3) of the Act. The purposes in the Act are to stop the purchase or supply of a prohibited drug.*<sup>1095</sup>

The judge agreed that the ambit of the direction - of two kilometres - was "wider than covering a public place as that term is defined in the Act".<sup>1096</sup> The judge also noted that "any access by train to much of the rest of the world requires one passing through Cabramatta station".<sup>1097</sup>

In relation to the bail conditions, the judge found that while there should be conditions attached to the man's bail, they should be no wider than are "contemplated by the Summary Offences Act".<sup>1098</sup> The new bail conditions that were imposed were explained as follows:

*To comply with a condition not to resort to the area for any drug supply purpose is in accord with a purpose designed to promote effective law enforcement and is no more onerous for the accused person than obeying the law would be.*<sup>1099</sup>

In summary, the judge considered that the bail conditions that were imposed were more onerous than the nature of the offence of disobeying a drug move-on. The judge aligned the man's bail conditions with the nature of the offence, so that they stipulated that he not return to the public place for the purposes of supplying drugs, whereas the bail conditions had originally prevented him from returning to the area for any purpose.<sup>1100</sup>

Although this case is about bail, it is relevant to the proper interpretation of the scope of the drug move-on powers. The Supreme Court judge affirmed that the direction that is issued must be reasonable for the purposes set out in the Act, which are to stop the purchase or supply of prohibited drugs. This judgement suggests that a more appropriate type of drug move-on direction may be to not return to an area for purposes that relate to buying or selling drugs. Directions that stipulate that a person not return to an area at all evidently raise a number of complex issues. These issues are summarised in the conclusion to our section on seven day directions.

### 11.12.5. Conclusion

In our view, arrest and charge should only be used as a last resort. Reasons for this include the other options open to police, such as issuing an infringement notice, and that the maximum penalty for this offence is a fine of \$220. In addition, the consequences that may arise for a person who obtains a criminal record as a result of a conviction for disobeying a drug move-on outweigh the nature of the offence. Further consideration is given to this issue in the conclusion to this chapter.

<sup>1094</sup> Supreme Court, NSW Criminal Law Division, *Regina v. Coung Dieu Troung*, 13 November 2002, p. 5. The man's lawyer had argued that he should be granted unconditional bail, because the offence itself is punishable by a maximum penalty of a fine of \$220, and because breaches of bail are not offences. p. 8.

<sup>1095</sup> Supreme Court, NSW Criminal Law Division, *Regina v. Coung Dieu Troung*, 13 November 2002, p. 5.

<sup>1096</sup> *Ibid*, p. 7.

<sup>1097</sup> *Ibid*, p. 7.

<sup>1098</sup> *Ibid*, p. 9.

<sup>1099</sup> *Ibid*, p. 10.

<sup>1100</sup> *Bail Act*, s. 37 (2).

### 11.13. Recommendation

#### **That arrest and charge for disobeying a direction should only be used as a last resort.**

NSW Police has advised us that it supports this recommendation in principle. In doing so, it has made the following observations. "In all circumstances, police are encouraged to consider alternative means ... other than arrest. However ... it should also be acknowledged that arresting those who, by virtue of the fact that they have disobeyed a move-on direction, continue to participate in [the street level drug] market need to be removed from it. Alternatives to arrest more often than not fail in this regard and in these special circumstances, arrest is seen as the only option rather than as a last resort".

In light of the NSW Police response, we also recommend that NSW Police carefully monitor the extent of the arrest and charging of persons who disobey directions, to determine whether the arrest and charging of such persons was appropriate in the circumstances.

### 11.14. Part 5: Drug move-on powers and public health

Concerns were expressed from a variety of respondents to our discussion paper that the application of the drug move-on powers should not adversely impact upon public health initiatives. South western Sydney Area Health Service, which is responsible for the delivery of health services in Cabramatta and neighbouring suburbs like Liverpool and Fairfield, expressed the view that the enforcement of the drug move-on powers had impacted on public health in this area.<sup>1101</sup>

Other Area Health Services in NSW, legal practitioners and drug user advocacy groups have also commented on the potential impact of the drug move-on powers on public health. A submission received from Corrections Health stated:

*Great care needs to be taken to ensure that people are not unnecessarily given these directions which may affect their ability to access health and welfare services resulting in adverse health outcomes.*

*Police should ensure that a person they wish to move-on is not undergoing health and/or welfare treatment in the area and that their direction will not impact on their ability to access such services.*<sup>1102</sup>

In our audit of the use of the drug move-on powers in Cabramatta, we found instances in which police officers had taken public health considerations into account in the way they had enforced the move-on powers. These included excluding the Cabramatta Drug Intervention Service<sup>1103</sup> from the ambit of a direction, informing a drug user of treatment options, and calling an ambulance to attend to the welfare of a drug affected person to whom officers had issued a direction.<sup>1104</sup> One drug user who we interviewed in Cabramatta told us that particular officers she spoke to regularly often urged her to seek treatment for her drug addiction.<sup>1105</sup>

However, it appears that the intensity of policing in Cabramatta has impacted on some aspects of public health in the area. There were also particular instances in which the drug move-on powers were exercised by officers in a way that may have had a health impact on particular persons. In several submissions to our discussion paper, it was stated that there was some evidence that police were targeting people who were attending various health services in the area.<sup>1106</sup>

Several public health issues that relate to the enforcement of the drug move-on powers in Cabramatta were raised in the course of this review. These included concerns that:

- policing activities had impeded drug user's access to the Drug Intervention Service in Cabramatta (DISC) and to other services such as the Needle and Syringe Exchange van
- the use of the Needle and Syringe van had declined since the drug move-on powers had been in place
- the intensive policing in Cabramatta has caused drug users to disperse to other areas, and this had made it more difficult for health services to access their client group
- new demands were being placed on health services, such as Needle and Syringe Exchanges, in other parts of south west Sydney, particularly Liverpool, because drug users have moved to other areas as a consequence of police activity in Cabramatta and
- police had confiscated unused syringes from drug users.

<sup>1101</sup> South West Area Health Service is made up of five sectors: Bankstown, Liverpool, Fairfield, Macarthur and Wingecarribee.

<sup>1102</sup> Submission, Corrections Health Service, 12 August 2003.

<sup>1103</sup> The Drug Intervention Service in Cabramatta (DISC) provided a range of drug and alcohol services to clients, including counselling, education in safe injecting and safe sex practices, medical services and needle and syringe distribution. DISC was closed down in July 2003. This is discussed later in this chapter.

<sup>1104</sup> COPS event narratives, Drug Move-on Incidents.

<sup>1105</sup> Interview, 21 year old Caucasian female drug user, Cabramatta, 12 December 2003.

<sup>1106</sup> Submission, South West Area Health Service, 4 February 2004; and submission, Community Relations Commission, 4 August 2003.

In this chapter, we will discuss the issues that emerged, and how NSW Police and health and community services sought to resolve them.

### 11.14.1. Liaison between NSW Police and, health and community services in Cabramatta and the enforcement of the drug move-on powers

Since the introduction of the drug move-on powers, police in Cabramatta and health and community agencies in the area have met and discussed the issues that emerged in relation to the enforcement of the new powers. Informal conflict resolution processes evolved between police and some health and community organisations to discuss problems that arose.

In several submissions from Area Health Services in other parts of the city and the state, it was noted that policing issues had been resolved when police and other stakeholders met to discuss them. In a submission we received from Northern Sydney Area Health, it was stated that the Health Service had been able to address the issue of congregation at the clinic and in the railway forum, which is near the clinic, through regular meetings with police, railway forum staff, and customers. They noted that this strategy had “led to a reduction in incidents and the need for police interventions”.<sup>1107</sup>

In Cabramatta, the Crime Manager was responsible for liaising with the health services. This officer described how the process operated:

*... every time we, any client would go to them [an agency] about, “The police have told me to do this”, and have any grievances with the police and administration, they could go to the agency. The agency would then ring me. I would then take myself and some of the bike police along to the agency to discuss the issues to try and sort them out.”*<sup>1108</sup>

For example, one arrangement that police at the Cabramatta LAC had with a youth centre in Cabramatta was that drug users who attended school in the area, and who would also come to the centre, were allowed to be in Cabramatta one hour either side of school hours. The former Crime Manager told us that police “wouldn’t expect them to them to jump straight on the train” and go home after school.<sup>1109</sup>

One of the problems that emerged during our review of the drug move-on powers was that people appeared to have had difficulties accessing health and other services in Cabramatta because they were being moved on by police. In the submission received from the Community Relations Commission, it was noted that City Watch staff in Cabramatta had heard anecdotal evidence from agencies working with people with substance abuse problems that police “particularly target clients who are attending drug support agencies.”<sup>1110</sup> Health professionals we spoke to said that they believed some clients had missed appointments because they had been moved on by police. However, we are unaware of any clear evidence that suggests that police were targeting people because they were attending drug support agencies.

A solution to the problem referred to directly above was found in the course of discussions held between police and these agencies. A system of appointment cards was developed, whereby if a person was stopped by police on their way to a particular service, and the person had an appointment card, they could show this to police as confirmation of the appointment. This same system was introduced for workers at some organisations in the area. We were advised by Cabramatta police of one instance in which a worker from one of the services was approached by police. Police apparently intended to move the woman on because they thought she was a prostitute.<sup>1111</sup> Cabramatta police advised us that the police officer involved in the incident apologised to the woman at the time. The woman’s supervisor also later phoned police to discuss the incident and to confirm that an apology had been made.

### 11.14.2. Views of health professionals in relation to dealing with complaints about police

The process of liaison between police, health and other services was not always smooth. According to one health professional we spoke to, in their efforts to deal effectively with particular complaints that they received about police from clients, client confidentiality had emerged as an issue. The health professional said that it was difficult for a health worker to give police specific information about complaints because of client confidentiality, and the fact that “you do not want to be putting people at risk”.<sup>1112</sup> He said that in order to investigate complaints, police wanted to know specific information, such as the names of people involved, and when and where the incident had allegedly occurred. However, because health workers could not breach client confidentiality, complaints were often addressed in a broader context.<sup>1113</sup>

<sup>1107</sup> Submission, Northern Sydney Area Health Service, 1 August 2003.

<sup>1108</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>1109</sup> Ibid.

<sup>1110</sup> Submission, Community Relations Commission, 4 August 2003.

<sup>1111</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>1112</sup> Interview, Health Worker, 24 July 2003.

<sup>1113</sup> Ibid.

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According to the health professional quoted above, there was also a tendency for the same problems to keep recurring, despite the fact that they had already been raised with police.<sup>1114</sup> He said that even though health agencies met with police to discuss a particular problem, and police had “reinforced the issue that if you hear about anything, let us know”,<sup>1115</sup> several weeks later, they would hear further complaints about the same issue, and that they would again let police know.

Another health worker who we spoke to said that police and health workers realised that they sometimes made each other’s work more difficult because of the conflicting priorities in each role:

*We realised that we made each other’s jobs harder at times, if clients were congregating around DISC, the police didn’t have a legitimate reason to move them on, so it made their job harder... And the ones that didn’t make it to DISC, it stopped them from accessing our services so it made our job harder.*<sup>1116</sup>

A positive outcome of the recent liaison between police and health, according to this worker, was that despite some of difficulties referred to above, “at the same time, it opened up communication between police and health workers”.<sup>1117</sup>

### 11.14.3. Policing drug move-ons and the Drug Intervention Service at Cabramatta

One of the specific concerns that arose during the review period was that policing in Cabramatta was impeding drug users’ access to the Drug Intervention Service in Cabramatta (DISC). DISC was east of the train line, close to Cabramatta Railway Station, but on the other side from the Cabramatta CBD. DISC provided a range of drug and alcohol services to clients, including counselling, education in safe injecting and safe sex practices, medical services and needle and syringe distribution. A Recovery Room for drug-affected people to use to regain their equilibrium was also at the centre. According to a former worker at the centre, DISC clients were “mainly street based users that were either homeless or lived in the area.”<sup>1118</sup> Several health and community workers we spoke to told us that DISC was also used by drug users who were in retreat from the heavily policed public spaces in Cabramatta:

*Clients would come to DISC and hang out at DISC, once they find somewhere they feel quite safe, they will come there ... DISC was the one place left where if you looked like a junkie, you wouldn’t be asked to go, you couldn’t sit in the plaza, a place where people come to. They’d [drug users] would get stopped. If they were walking, they would get stopped, so it [DISC] ended up being a place where they would come where they wouldn’t be questioned or harassed. They could sit down and feel welcome.*<sup>1119</sup>

Concerns were raised with the Cabramatta police about drug users’ access to DISC. According to the former Crime Manager, there was a perception among drug users that they could not go to the service. However, this officer stressed that police would never want to deny treatment to those who needed it and it was “very important to us, if people want treatment, we want them off drugs”.<sup>1120</sup>

However, DISC workers told us that they believed appointments at the centre had been missed by people who had been issued with a drug move-on direction to leave Cabramatta before they had made it from the Railway Station to their centre.<sup>1121</sup> In a submission to our discussion paper, one former DISC worker commented that the “move-on directions have a huge impact on the drug intervention service”.<sup>1122</sup> In this worker’s view, clients had both their physical and mental health compromised as well as “their access to clean injecting equipment”.<sup>1123</sup>

The issue of drug user’s access to DISC was raised in discussions with DISC workers and police. One former DISC worker who was involved in these discussions said that the “response [from police] is that someone is saying that they are coming to the service, but they are not [telling the truth]”.<sup>1124</sup> In a focus group we conducted, one police officer expressed some frustration in relation to this issue:

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<sup>1114</sup> Ibid.

<sup>1115</sup> Ibid.

<sup>1116</sup> Interview, Health Worker, 15 September 2003.

<sup>1117</sup> Ibid.

<sup>1118</sup> Submission, Health Worker, Cabramatta, received 30 July 2003.

<sup>1119</sup> Interview, Health Worker, 15 September 2003.

<sup>1120</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>1121</sup> Interviews, former DISC worker and a health worker based in Cabramatta, 24 July 2003 and 15 September 2003.

<sup>1122</sup> Submission, Health Worker, Cabramatta, received 1 August 2003.

<sup>1123</sup> Submission, Health Worker, Cabramatta, received 30 July 2003.

<sup>1124</sup> Interview, former DISC Worker, Cabramatta, 24 July 2003.

*It's catch 22. They come to Cabramatta, they get their drugs. They go to DISC, just to chill out for the afternoon, they let their gear sort of wear off. They have their barbecue there. They'd go out and [engage in] prostitution ... to support their habit again. It's just a vicious circle where we couldn't keep them away. They'd go to DISC and say ... "Yeah got an appointment", that's now solved that issue.<sup>1125</sup>*

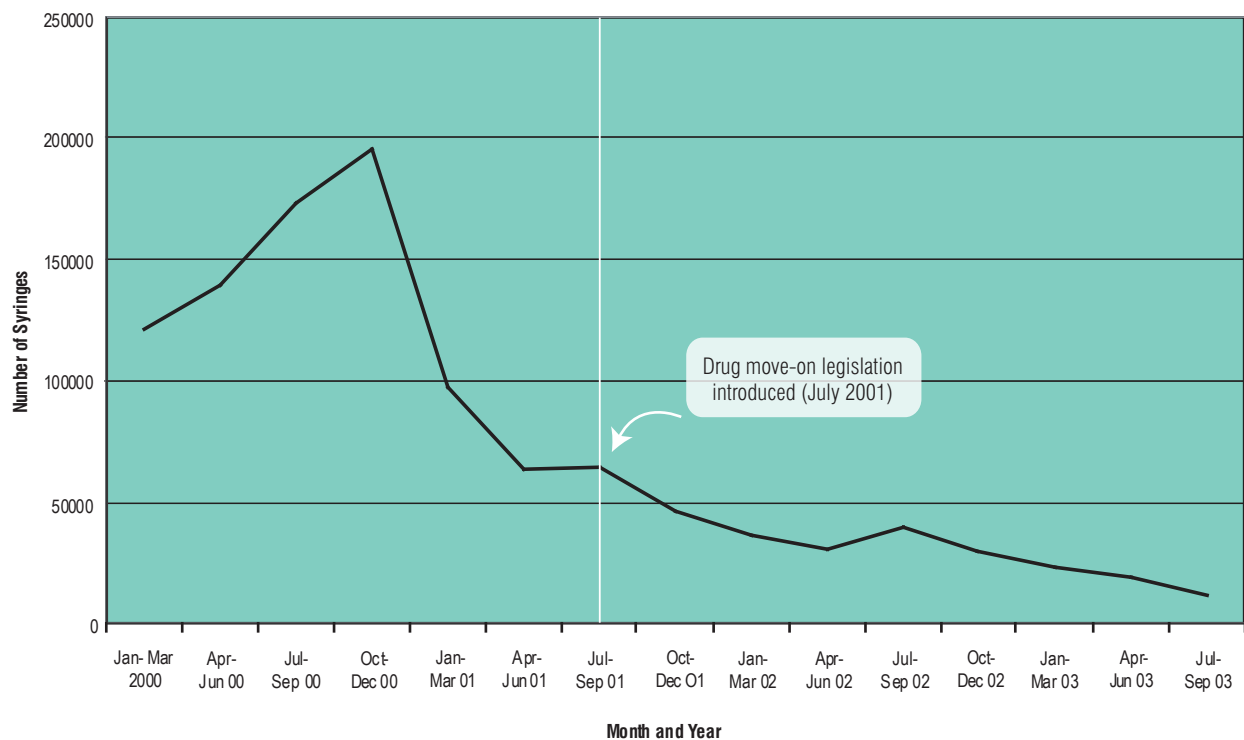
The former DISC worker who we spoke to said that he was "under no illusion that clients are using this [appointments at DISC] as an excuse", but he also believed that legitimate appointments had been missed because clients had been moved on by police.<sup>1126</sup> We spoke to one senior officer at Cabramatta about this issue and were advised that if the person was going straight to DISC, then "we have no drama and you will not be moved along".<sup>1127</sup>

In July 2003, amid some controversy, DISC was shut down by the NSW Government. It appears that the impetus for its closure was CCTV video surveillance footage that showed a drug transaction taking place outside the centre. There is no evidence to suggest that the closure of the service was linked to the enforcement of the drug move-on powers.

#### 11.14.4. Access to the Needle and Syringe Exchange Services in Cabramatta

One of the main syringe distribution venues in Cabramatta is a mobile van that parks near the Railway Station at Cabramatta. Workers on the van give fit packs and condoms to people who request them. Fit packs contain syringes, water, a spoon and swabs. The workers on the mobile van also educate clients about things like safe injecting practices, safe sex and used syringe disposal. Some clients come to the van on a regular basis and develop an on going relationship with the workers. This relationship may ultimately lead to referral to other drug and alcohol services in the area, such as counselling or treatment.

**Figure 36: Numbers of syringes distributed in the Fairfield Sector South West Area Health Service, Jan 2000 – Sept 2003**



Source: South West Area Health Service: Numbers of Syringes Dispensed by Needle and Syringe Program Services, Fairfield Sector.<sup>1129</sup>

<sup>1125</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003. When he noted that the issue had been "solved", the officer told us that he was referring to the fact that the DISC was about to close.

<sup>1126</sup> Interview, former DISC Worker, Cabramatta, 24 July 2003.

<sup>1127</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

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Particular concerns were raised that the use of the drug move-on powers had impacted upon drug users' access to the Needle and Syringe Exchange. In a submission, Shopfront Legal Centre noted that the use of the needle and syringe exchange van had been down significantly since police began using the new provisions.<sup>1128</sup>

Figures on the numbers of syringes distributed show the frequency with which this particular service has been accessed. The graph above shows the numbers of syringes that were distributed in the Fairfield sector, of which Cabramatta is a part, from January 2000 to September 2003.

While it is evident, as the table above indicates, that the numbers of syringes distributed in the Fairfield sector has dropped significantly over the past several years, the extent to which policing in Cabramatta may be responsible for this drop is not possible to determine. One important factor to consider is the impact of the heroin drought on syringe distribution statistics. It is evident from the graph above that a marked drop in the numbers of syringes distributed in the Fairfield sector occurred between October and December 2000 and between January and March 2001, which coincides with the onset of the heroin drought. In addition, the new drug move-on powers had not commenced at this time. The graph also shows that another decrease in syringe distribution began about two months after the drug move-on powers were introduced. As we discuss later in this report, the numbers of syringes dispensed in the neighbouring sector of Liverpool increased not long after the drug move-on powers were introduced.

It is beyond this scope of the review to explore what role factors such as the heroin drought have played in changes to the street-level drug market in Cabramatta. A study on the impact of the heroin drought that focuses on Cabramatta and several other sites in NSW and interstate has been conducted by the National Drug and Alcohol Research Centre, but had not been published at the time of writing.

However, anecdotal evidence from the small number of drug users we interviewed for this review does suggest that some drug users are no longer coming to Cabramatta because of their experience of policing in the area. One drug user who we interviewed in Cabramatta specifically referred to difficulties in accessing particular health services when we asked her to describe the impact of directions that she had been issued by police. She had been issued with move-on directions in both Cabramatta, and in the neighbouring suburb of Fairfield:

*Well it was pretty bloody hard, cos I had to go to the clinic. It's happened to me now, in Fairfield, I'm not allowed in Fairfield and I've got to go to the clinic in Fairfield...*<sup>1130</sup>

However, it must be emphasised that the data from these interviews is purely impressionistic, and experiences such as those referred to above may not be representative of drug users who have been issued with directions by police in this area.

#### 11.14.5. Policing and needle and syringe exchange outlets

In the course of this review, concerns were raised that police sometimes approached drug users just after they have left Needle and Syringe Exchange (NSP) outlets and issued them with directions to move-on. South West Area Health Service stated in their submission to our discussion paper that:

*Observations show that police position themselves in close proximity of the Needle Syringe Program (NSP) van and utilise this service to assist in identifying clients. Police then approach these clients after they have obtained their clean injecting equipment. The approaches by police are regular and frequent. On occasions police will fine clients for unrelated offences such as littering.*<sup>1131</sup>

There are complex issues raised by the concern that is expressed in this submission. Illicit drug use is both a legal, and a health issue. In situations such as those referred to above, police are faced with the task of balancing law enforcement imperatives with a consideration for public health issues, such as the need for illicit drug users to access clean syringes.

In the past, NSW Police have had guidelines that relate to policing in the vicinity of NSP outlets. At the time of writing, the guidelines were under review and new guidelines were not available to police.

The information that is available to police on the NSW Police Intranet does provide some guidance on policing in the vicinity of NSP outlets.<sup>1132</sup> The information that is available advises police to exercise appropriate discretion when policing near NSP outlets, and to not conduct unwarranted patrols in the vicinity of these outlets. Some background on the rationale for NSP programs is also provided. It is also noted that, since the Drug Misuse and Trafficking Act permits syringes to be carried and distributed, "NSP outlets have an unusual role because while their activities are legal, their clients are engaged in illegal activities".<sup>1133</sup> Officers are advised that:

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<sup>1128</sup> Submission, Shopfront Legal Centre, 28 June 2002.

<sup>1129</sup> South West Area Health Service advised us that these statistics represent those syringes dispensed through needle and syringe programs only, and do not include syringes dispensed through other outlets, such as chemists.

<sup>1130</sup> Interview, 21 year old Caucasian Drug User, Cabramatta, 12 December 2003.

<sup>1131</sup> Submission, South West Area Health Service, 9 February 2004.

<sup>1132</sup> Though at the time of writing, the link to the "Guidelines" did not work, because these guidelines were in the process of being revised.

<sup>1133</sup> NSW Police Intranet, Dealing with Drug Affected Persons, The NSW Needle and Syringe Program.

*Police should be mindful that drug users will not use a service if they feel it will make them vulnerable to arrest (which in turn could undermine the vital work of these facilities in preventing the spread of disease).*

*Police should exercise appropriate discretion when policing NSP outlets. Without restricting the day to day police duties and obligations, police should not carry out unwarranted patrols in the vicinity of these facilities which might discourage drug users from attending them.<sup>1134</sup>*

One health worker who we spoke to in Cabramatta said that police had ignored these guidelines, and that he knew of incidents in which police had waited near the NSP van for drug users to leave after they had collected fit packs, and would “grab them around the corner”.<sup>1135</sup> He said that syringes are taken off them sometimes, and they are given a move-on direction.<sup>1136</sup> In this worker’s opinion, in the “attempts to clean up the area they [police] have certainly ignored the guidelines” relating to policing in the vicinity of Needle and Syringe outlets.<sup>1137</sup> Another worker we spoke to believed that some police observed the guidelines, and some did not:

*... police haven't come to the van too often, they are not that bad ... Most police don't walk past the van they go around, others will stop a client right in front of the van.<sup>1138</sup>*

*However, this health worker also said that clients had told her that “they get stopped [by police] the minute they leave the van”.<sup>1139</sup>*

South western Sydney Area Health Service expressed serious concerns about their worker’s observations of policing practices in the vicinity of NSP services in Cabramatta. In their submission, it is stated that:

*It is well known Australia is one of the world leaders in achieving the lowest rate of HIV notifications amongst injecting drug users due to its commitment to providing clean injecting equipment via the Needle and Syringe Program. Deterring clients from accessing these services is serious in relation to the threat of the spread of blood borne viruses, including Hepatitis C, by clients who may then opt to reuse syringes rather than expose themselves to police interference.<sup>1140</sup>*

The recently published report, Return on Investment in Needle and Syringe Programs in Australia, provides confirmation of this view, concluding:

*... the study again demonstrates that NSPs have a positive impact. This has been measured in terms of avoidance of deaths, gains in the duration of life and improvements in the quality of life of injecting drug users... The results demonstrate that, across all measures of effect used in the study, NSPs have yielded a significant public health benefit...<sup>1141</sup>*

It may be, however, that some police are not aware of the guidelines in relation to policing in the vicinity of NSPs. The worker quoted directly above said that “some are not aware of the policy, you tell them and they don’t know”.<sup>1142</sup> Because of these factors, and the current revision of the guidelines, we recommend that new guidelines be completed as soon as practicable, and targeted training be provided to relevant police officers.

We emphasise that no particular examples of police action to intervene in NSPs have been provided to us, and acknowledge the commitment of NSW Police to an appropriate exercise of discretion.

## 11.15. Recommendations

**That the revised guidelines on policing in the vicinity of Needle and Syringe Exchange Outlets be finalised, and be made available on the NSW Police Intranet, as soon as is practicable.**

**That training on the guidelines relating to policing in the vicinity of Needle and Syringe Exchanges be incorporated into the curriculum for students at the Police College and reinforced at commands in which Needle and Syringe Exchange Programs (NSPs) operate.**

In response to these recommendations, NSW Police has advised us that it is expected that the current review of the guidelines will be finalised and endorsed by the Commissioner by the end of September 2004 and that, upon endorsement, the revised guidelines will be made available as soon as is practicable. The revised guidelines will also be included in the subjects PPP242 “Problem Orientated Policing and Vulnerable People”, PPP123 “Ethical Reasoning and Policing” and PPP114 “Criminal Justice and Society 2”. These subjects will look at the social issues of discretions.

<sup>1134</sup> Ibid

<sup>1135</sup> Interview, Health Worker, 24 July 2003.

<sup>1136</sup> Ibid.

<sup>1137</sup> NSW Police Intranet, Dealing with Drug Affected Persons, The NSW Needle and Syringe Program.

<sup>1138</sup> Interview, Health Worker, Cabramatta, 15 September 2003.

<sup>1139</sup> Ibid.

<sup>1141</sup> Commonwealth Department of Health and Ageing, *Return on Investment in Needle & Syringe Programs in Australia*, Summary Report, 2002, p. 21.

<sup>1142</sup> Interview, Health Worker, Cabramatta, 15 September 2003.

### 11.15.1. Being issued with a direction after buying a syringe from a chemist

A related incident came to light in our audit of drug move-on event narratives that raises public health issues in regard to the purchasing of syringes. In this instance, police issued a move-on to a person just after they had bought a syringe from a chemist. The event narrative states:

*About 10.25am Friday the [date] Cabramatta Beat Police observed the POI enter a chemist in [name of shopping plaza], Cabramatta. Police observed the POI purchase a "fit pack" (consists of 1 \*syringe, 1 \* water vial, 1 \* plastic spoon and alco wipe) from within the chemist.*

*Upon leaving the chemist the POI placed the fit pack down the front of his pants. Police followed the POI into [name] Lane where he was stopped and spoken to.*

*The POI admitted to travelling to Cabramatta from [suburb in south-west Sydney] to purchase heroin. He revealed the fit pack from his pants and stated that he had not yet "got on". He was in possession of about \$90. He was searched for drugs with nil find. CNI/WARRANT check conducted, nil outstanding.*

*He was informed that because of his admissions and the fit pack in possession police have reason to believe that he was in Cabramatta to purchase and use heroin therefore a direction to leave Cabramatta and not be within a 2 km radius of the Cabramatta Railway Station for 7 days was issued. This direction is enforceable until 10.30am [date].*

*The POI complied with the direction.<sup>1143</sup>*

The legislation stipulates that police may issue a direction to a person if they are in a public place for the purpose of buying or selling drugs. In this instance, it is clear that the man had come to Cabramatta to buy drugs, and had therefore intended to engage in the relevant conduct in the Act, so police clearly had reasonable grounds to issue the direction. However, this incident raises similar issues to the policing of NSP outlets. Given this, and the review of the relevant guidelines, we recommend that the guidelines also include appropriate reference to other places (especially chemist shops), where syringes may be purchased. The fact that this man was watched by police while entering a chemist, and approached shortly after he left, would appear to be inconsistent with NSW Police policies that relate to similar situations, like policing in the vicinity of NSP outlets.

## 11.16. Recommendation

**That NSW Police include appropriate guidelines dealing with places other than NSPs, including chemists, in their review of guidelines on policing in the vicinity of NSPs.**

NSW Police has advised us that the revised guidelines on policing in the vicinity of needle and syringe exchange outlets (NSPs) will include guidelines relating to pharmacies and places other than NSPs. As noted above, NSW Police has advised us that it expects these revised guidelines to be finalised and endorsed by the end of September 2004.

NSW Police has also noted that the issue of needles and syringes being supplied from outlets other than NSPs, and the fact that possession of a needle or syringe is not an offence and may not of itself grant police access to other powers, are now included in the subjects PPP114 "Criminal Justice and Society 2", PPP123 "Ethical Reasoning and Policing", PPP125 "Police, Crime and Society 2" and PPP242 "Problem Orientated Policing and Vulnerable People".

### 11.16.1. Allegations about the confiscation of syringes

Several of the health workers quoted above said that clients had told them that police had confiscated clean syringes from them. According to the Drug Misuse and Trafficking Act, it is not illegal to carry a syringe.<sup>1144</sup> We asked senior police in Cabramatta if they had received any complaints on this issue. One officer said:

*I would be very shocked if any policeman would touch a syringe out of someone's pocket so I find that more anecdotal. What we were finding was I have been told this and I have been told that, and police are doing, and when I talk to the police that is not what they are saying they are doing, and I am not saying in 100% it wouldn't happened, because there are flaws in all kinds of people, but the system was get the person to say when and get a description so that I could follow it up but I have never had to do that.<sup>1145</sup>*

<sup>1143</sup> COPS event narrative, Drug Move-on Incident 178, 5 April 2002.

<sup>1144</sup> *Drug Misuse and Trafficking Act*, s. 11 (1A).

<sup>1145</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.



### 11.16.2. Has drug law enforcement in Cabramatta resulted in illicit drug users entering treatment?

There is some evidence to suggest that intensive drug law enforcement plays a role in encouraging drug users into treatment.<sup>1146</sup> It has been beyond the scope of this legislative review to thoroughly investigate whether this has been the case in relation to those drug users who frequented Cabramatta to purchase drugs.

The former Crime Manager at Cabramatta told us that police considered seven days was “basically enough time to disrupt them from coming to Cabramatta”, and that while the potential for a seven day direction to prompt a drug user into treatment was not considered when the direction was devised:

*...one would think that if you are an addict, and your only source of heroin was Cabramatta and you don't want to go to any other market place, then seven days away from your source is a long time”.<sup>1147</sup>*

However, health and community workers in Cabramatta had a different view of the likely impact of seven day directions on drug users. One community worker was asked if she thought practices such as issuing seven day directions could provide an intervention in a person's drug use history that may result in them deciding to enter treatment. She said:

*The only thing that moving people along does is move them away to other areas where there may not be the facilities that they need, or the people that they've grown to know and trust, who can help them on their road to recovery. It's pushing them into areas, that it's new areas, that they're not familiar with what's there, most of the places don't even have the services there.<sup>1148</sup>*

We also asked drug users for their views on the potential of seven day directions to encourage users into treatment. One 21 year old woman who we spoke to said:

*A copper can turn around and say to me, “Oh you're not allowed here within seven days”. The way a user thinks is, catch me if you can, number one. And number two, I might [not get drugs] from Cabramatta today, I'll just go to Warwick Farm and pick up instead, or I'll just go to Fairfield and pick up, no matter where you go, no matter which suburb, you're always going to find the drugs there, like you can't get away from it, unless your going to stop, that's the only way you're going to do it.<sup>1149</sup>*

Other drug users we interviewed expressed similar views. A 20 old woman who we spoke to said:

*If someone uses drugs, the police can't stop them from using drugs by giving them a warning, there's always other ways they can get drugs ... You don't have to come to Cabra anymore to get drugs, drugs are everywhere now, because Cabramatta's too red hot, so it's everywhere, go to Fairfield, Liverpool ... you don't have to come here anymore.<sup>1150</sup>*

### 11.16.3. Conclusion

It is not possible to identify if, or to what extent, the use of the drug move-on powers in Cabramatta has been responsible for the change in drug user behaviour in south west Sydney that is noted above, but it seems likely that policing in Cabramatta would at the very least have been a contributing factor. It is also difficult to verify the extent to which police activity has disrupted drug users access to health services in Cabramatta, but nonetheless, we were independently advised by a range of health professionals from the area that this had occurred.

We recognise the efforts of NSW Police and health agencies to strike a balance between policing drug purchase and supply, and ensuring acceptable health outcomes for drug users. Our review of the use of the drug move-on powers in Cabramatta demonstrates that, if a similarly intense use of a drug law enforcement strategy is contemplated elsewhere in the future, police must consult with local health authorities which may be affected by such a strategy before hand. Those discussions would benefit from the opportunity to closely review the Cabramatta experience and to implement strategies to offset some of the difficulties that have emerged for health services, police and drug users in the implementation of the drug move-on powers in south west Sydney. Various Area Health Services in NSW have advised us that consultation between police and local health authorities has been beneficial in enabling issues that emerge in policing and public health to be resolved.

Our review of the use of the drug move-on powers in Cabramatta has also highlighted a need for clear guidelines and targeted police training on policies that relate to policing drug use, public health and harm minimisation.

<sup>1146</sup> See D. Weatherburn, B. Lind, L. Forsyth, “Drug Law Enforcement: Its Effects on Treatment Experience and Injection Practices”, New South Wales Bureau of Crime Statistics, and Research, 1999. For example, it has been found that an important factor that influences a heroin users’ decision to enter Methadone Maintenance Treatment is a desire to avoid experiences such as regular encounters with police, court appearances, and gaol.

<sup>1147</sup> Interview, former crime manager of Cabramatta LAC, 21 August 2003.

<sup>1148</sup> Interview, Community Worker, Cabramatta, 12 December 2003.

<sup>1149</sup> Interview, 21 year old Caucasian female drug user, Cabramatta, 12 December 2003.

<sup>1150</sup> Interview, 20 year old Caucasian female drug user, Cabramatta, 12 December 2003.

## 11.17. Part 6: Drug move-ons and vulnerable groups

Street-level drug markets, while probably fairly diverse in terms of their overall demographic makeup, are comprised of a proportion of people from some of the most vulnerable sections of the community. These include street sex workers, the homeless, people who are socially and economically disadvantaged in other ways, and people who suffer from mental illness. As we have noted above, the Cabramatta street-level drug market is also made up of people from a variety of non-English speaking backgrounds, including a significant proportion of people from Asian countries such as Vietnam. It is clear that some people from non-English speaking backgrounds may face obstacles arising from language and educational difficulties. Drug addiction can also exacerbate economic and social disadvantage, and create health and legal problems.

Various concerns have been expressed that the use of the drug move-on powers may further marginalise vulnerable groups in the community, such as the homeless. These concerns were raised by organisations such as the Council of Social Services in New South Wales (NCOSS) when the legislation was debated in parliament,<sup>1151</sup> and have also been raised subsequently, in submissions to our discussion paper. For example, Family Drug Support said that they believed the move-on powers “probably cause more harm with certain vulnerable individuals and groups being further marginalised by being targeted”.<sup>1152</sup>

In a submission to our discussion paper, Ms Clover Moore, MP, raised several issues about the use of the drug move-on powers on vulnerable groups in the community. Concern was expressed that “there should be clear directions to ensure discretion is used when police are dealing with homeless or and alcohol/drug affected people”.<sup>1153</sup> Ms Moore said that police in her electorate used their discretion “to recognise the need for social solutions to social problems”. Another issue raised in this submission was the potential impact of the use of drug move-on powers on police/community relations. In the submission, it was stated that her constituents were:

*... very concerned about the possibility of these powers being used against a number of stigmatised groups, and this would undermine the work done by police to build constructive relationships with gay men, lesbians, transgender people, street sex workers, injecting drug users, chronic alcohol drinkers, and other marginalised groups.*<sup>1154</sup>

In the following section, we will discuss whether it appears that various vulnerable groups have been targeted by police using the drug move-on powers in Cabramatta.

### 11.17.1. Ethnicity

The involvement of Asian youths in the Cabramatta street-level drug trade has received public attention. In recent years, the practice of recruiting young people to act as go-betweens and to perform other roles in the street-level drug trade has caused concern. In studies of policing in Cabramatta, it has also been claimed that young Indo-Chinese user-dealers are targeted by police in street-level operations.<sup>1155</sup> Allegations have more recently been made, in a submission to our discussion paper, that police are targeting Asian dealers and turning a blind eye to “Anglo” dealers.<sup>1156</sup>

Concerns were also expressed in submissions to our discussion paper that some ethnic groups are being targeted by police in their use of the drug move-on powers. Family Drug Support said that they had anecdotal evidence that Asian and Aboriginal youth were being singled out by police.<sup>1157</sup> A former DISC worker said that she had witnessed the targeting of young Indo-Chinese males.<sup>1158</sup>

It is difficult to form any views in relation to racial targeting when the ethnic make up of the street-level drug market as a whole is not known. Nonetheless, we have collated the racial appearance data collected by police that relates to drug move-on incidents, though there is no data on the total numbers of particular racial groups in the Cabramatta street-level market to compare it to.

### 11.17.2. Racial appearance data

Our audit of the drug move-on powers in Cabramatta suggests that the demographic make up of the drug user population who come into contact with police is diverse, in terms of racial appearance.<sup>1159</sup> The table below shows the numbers of people of particular racial appearance to whom police issued directions to move-on.

<sup>1151</sup> *NSW Debates*, 6 June 2001, p. 14507.

<sup>1152</sup> Submission, Family Drug Support, 31 July 2003.

<sup>1153</sup> Submission, MLA, Clover Moore, 11 August 2003.

<sup>1154</sup> *Ibid.*

<sup>1155</sup> D Dixon and L Maher, “Ahn Hai: Policing, Culture and Social Exclusion in a Street Heroin Market”, *Policing and Society*, 2002, Vol 12, No.2, p. 93.

<sup>1156</sup> Submission, Shopfront Legal Centre, 31 July 2003.

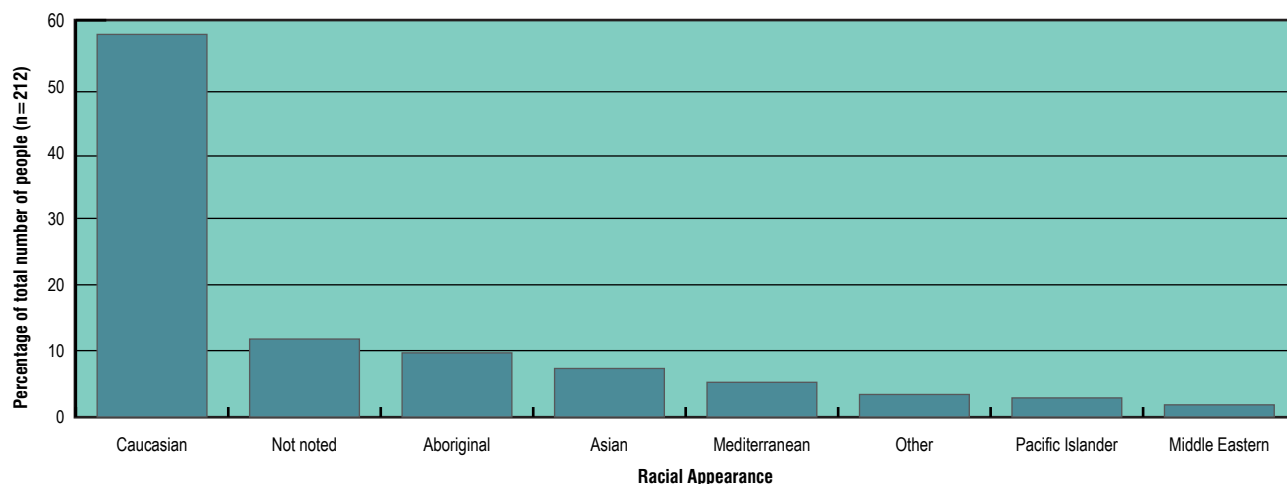
<sup>1157</sup> Submission, Family Drug Support, 31 July 2003.

<sup>1158</sup> Submission, Health Worker, Cabramatta, 30 July 2003.

<sup>1159</sup> For a discussion of “racial appearance” data extracted from COPS, please refer to the chapter, “State-wide” move-on audit”.

The table shows that high numbers of both people who were described by police “Caucasian”, and “East Asian” were issued with drug move-on directions.

**Figure 37: Racial Appearance of People Moved on in Cabramatta**



Source: Data extracted from the COPS Database provided by NSW Police in July 2003

n = 212

There is anecdotal information that some people have interpreted police in Cabramatta repeatedly asking them to move-on as racism. One drug user who we spoke to regarded his frequent interactions with police who issued him with move-on directions in Cabramatta as racial discrimination. The 37 year old man said that he was originally from South America, and has lived in different parts of south west Sydney, including Cabramatta, since he had come to Australia. He said that he used to spend time with other South American people who lived in the area, but that he rarely comes to Cabramatta anymore because of his experience of policing in the suburb:

*I don't come to Cabramatta no more, because all the time they see me, they harass me, they always pushing me out, tell me to go. They giving me directions and they also warning me if they see me after they give me a direction, they going to give me a ticket, and the third time they going to arrest me, and take me to the police office, to the police station... It is unfair, you know what I mean, it look like racial discrimination.<sup>1160</sup>*

Two Asian women we spoke to in Cabramatta said that they believed police harassed Asian people because they were “soft”.<sup>1161</sup> The women also believed Asian people were less aware of their legal rights, because they were usually brought up in households where their parents did not speak English, and had no knowledge of the legal system to pass onto their children.

A 25 year old Caucasian woman who we spoke to in Liverpool said that she believed police targeted Asian people, and people who looked like drug users, particularly if they had tattoos and track marks:

*If they walk past, and they see, you know, even if it's four Asian people hanging around, or me and my friend, hanging around, straight away - and by the way, there's other people hanging around, whoever, but dressed differently, you know, just talking. They automatically go straight away to those people, to the Asians, to us, to girls dressed, in tattoos, or marks on their arms, and I don't agree with that. Fair enough, I've used drugs in the past, but, because I have a scar on my arm, I've been to detox, I've been the rehab, now what gives them the right to confront me, straight away, when I've just detoxed, and rehabilitated myself.<sup>1162</sup>*

One Aboriginal man who we interviewed in Liverpool said that he believed police approached people who looked like drug users, regardless of their racial appearance.

<sup>1160</sup> Interview, 37 year old South American male drug user, Cabramatta, 12 December 2003.

<sup>1161</sup> Interviews, two 34 year old Asian female drug users, Cabramatta, 12 December 2003.

<sup>1162</sup> Interview, 25 year old Caucasian female drug user, Liverpool, 17 November 2003.

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*If you are Aboriginal, or white ...don't bother walking down Cabramatta, otherwise you'll be tailed, until the time you go to the toilet, and even then, when you go to the toilet, they are standing out the front of the cubicle, waiting for you to flush, wipe and wash your hands, you know what I mean.*

...

*Researcher: So have you seen people being targeted in that way?*

*Mate, it doesn't matter what you look like, if you look like the way I am dressed, mate you're bent over.*<sup>1163</sup>

Of the small number of drug users who we spoke to, some believed that police approach them because of their race, and others attributed police contact to the fact that they looked like a drug user, or for other reasons, such as the fact that they have tattoos, or associated with people who had criminal records.

### 11.17.3. Youth

Particular concerns have been expressed that young people are being targeted in the use of the drug move-on powers. Some of these concerns related to young people from particular ethnic groups. Others were concerned that young people were being broadly targeted by police in their use of the drug move-on powers in Cabramatta.

In their submission, Shopfront Legal Centre, who also commented on this issue in a submission to our office on the Police and Public Safety Act several years ago, wrote:

*In all areas (not just Cabramatta) we have observed that young people are prime targets for the exercise of police move-on powers... We remain concerned about the overuse of police directions against young people, including in situations where people are thought to be engaging in drug related conduct.*<sup>1164</sup>

One Fairfield City Councillor and community leader who we spoke to said that there was a lack of "young people in Cabramatta full stop". He pointed to what he saw as a lack of facilities for young people in the area, and noted that there was only one basketball court in the suburb. On the issue of young people and policing, he said:

*Young people don't feel welcome in Cabramatta because they feel the police always give them the eye. They always feel that the attention they are getting is unwelcome. Police may not always come up to them, but they have experienced, whether perceived or real ... police look at them in an unwelcoming or suspicious way.*<sup>1165</sup>

As we discussed earlier in this chapter, one of the strategies that was developed to deal with issues that concerned the enforcement of the drug move-on powers was the issuing of appointment cards to people who frequented services in the area. Young people could show the appointment cards to police to prove that they were in the area for a legitimate reason. However, in a submission to our discussion paper from the Community Relations Commission, it was noted that despite the introduction of this system:

*The perception by some agencies remains that Police broadly target young people rather than assess the relevant conduct as specified in the Act.*<sup>1166</sup>

However, none of those directed in the 200 move-on directions that we audited were under 18. The table below shows the ages of people who were issued with directions to move-on. Most of those issued with directions were in their 20s. The table below indicates that the ages of people issued with drug move-on directions spans from 18 to 50 years old.

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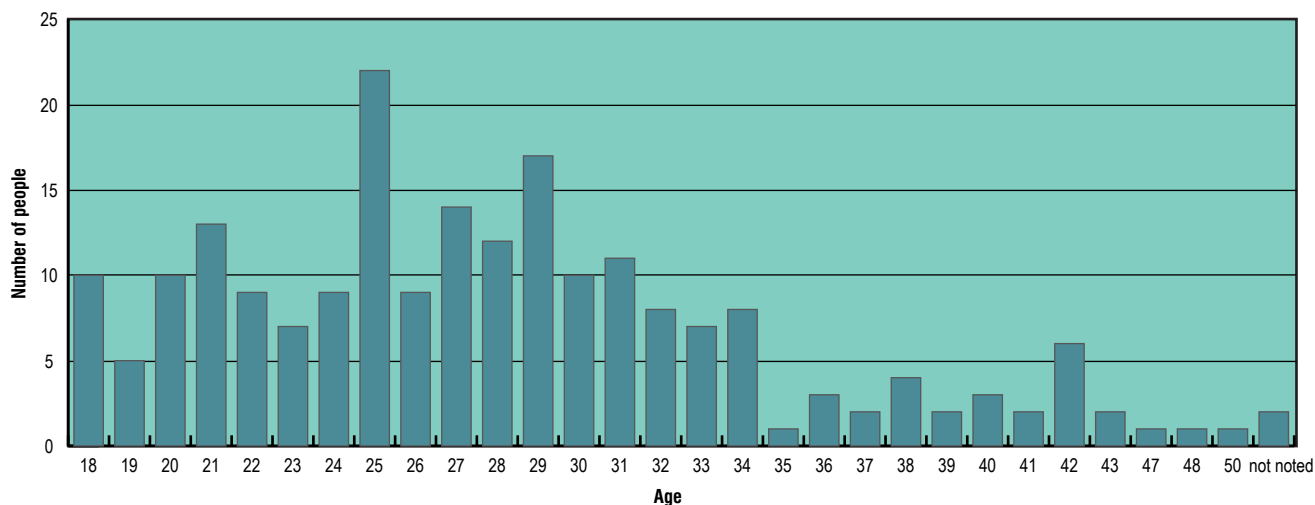
<sup>1163</sup> Interview, 32 year old Aboriginal drug user, Liverpool, 17 November 2003.

<sup>1164</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>1165</sup> Interview, Fairfield City Councillor and community leader, 16 September 2003.

<sup>1166</sup> Submission, Community Relations Commission, received, 5 August 2003.

**Figure 38: Ages of people issued with drug move-on directions in Cabramatta**



Source: Data extracted from the COPS Database provided by NSW Police in July 2003.

Even though none of those people who were issued with the drug move-on directions that we audited were under 18, a perception may remain in Cabramatta that young people are targeted by police. An enhancement of programs and strategies directed toward improving the relationship between young people and police may be part of a solution to this issue. We note that in its July 2001 report, the parliamentary inquiry into policing in Cabramatta also identified a need for improvement in this area, and made a series of recommendations to this effect.<sup>1167</sup>

#### 11.17.4. Homeless people

The emergence of a visible population of homeless people in Cabramatta was contiguous with the expansion of the street-level drug market in the area.<sup>1168</sup> A recent study on homelessness in Cabramatta noted:

*Lacking the financial resources to support their drug use, young people find themselves unable to afford or obtain private rental accommodation or other basic necessities in life. Many end up on the streets.*<sup>1169</sup>

According to the study, some homeless people chose to stay in Cabramatta because they grew up in the suburb and felt a sense of safety and belonging there, and others chose to stay in Cabramatta because of the access to cheap drugs.

Concerns have also been expressed about the potential impact of the drug move-on powers on homeless people in Cabramatta. Much of this concern, as we have noted above, centred on the potential for drug move-on powers to further marginalise this group. The following event narrative documents a use of the drug move-on powers in relation to a homeless person:

*About 9am on [date] Police sighted [name of POI] in the western gutter of the [name of car park] Cabramatta. [name of POI] had just finished administering himself heroin. Inquiries revealed that he is homeless and has been using heroin heavily in the last year. [name of POI] was directed to leave Cabramatta immediately and not to be in a two kilometre radius of Cabramatta Railway Station for seven days.*<sup>1170</sup>

Of the 189 audited directions that were issued under the new drug move-on powers, 11 (5.8%) were issued to people who told police that they were homeless. Shopfront Legal Centre was of the view that some people may feel too ashamed to admit to police that they are homeless. If this is the case, statistics such as those quoted above may under-represent the frequency of the use of the powers in relation to homeless people.

<sup>1167</sup> Legislative Council, General Purpose Standing Committee No. 3, *Cabramatta Policing*, Report on Inquiry into Cabramatta Policing, 2001. See for example, recommendations 23 and 24.

<sup>1168</sup> Heidi Coupland, Lisa Maher and Myly Thach, *Every Day's the Same, Youth Homelessness in Cabramatta*, 2001.

<sup>1169</sup> *Ibid*, p. 23.

<sup>1170</sup> COPS event narrative, Drug Move-on Incident 29.

We note that the "NSW Government Protocol for Homeless People", which has been endorsed by NSW Police, states that:

*People will not be harassed or move-on from public places unless there is a threat to general security, their personal safety or if they are causing a disturbance which constitutes a breach of the peace.*<sup>1171</sup>

In some respects, this protocol is inconsistent with the drug move-on powers. It is clearly important that if NSW Police endorses this policy, police officers should adhere to this protocol in policing public places. Alternatively, if police in certain areas propose a different policing strategy that is inconsistent with the protocol, this should be the subject of appropriate consultation with the relevant agencies and interest/advocacy groups.

### 11.17.5. Conclusion

As we noted above, street-level drug markets are often made up of some of the most vulnerable sections of the community, including the homeless. Of the directions included in our audit, a small percentage were issued to homeless people. It therefore appears that the use of the drug move-on powers has had some impact on the homeless.

Our review did not find any evidence of racial targeting in the implementation of the drug move-on powers. However, as we have noted previously, it is difficult to form any view on this issue when the racial make up of the illicit drug trade as a whole is not known. Nor was there any evidence that young people were being targeted in the use of the drug move-on powers, however, it is evident that a perception remains that young people are targeted by police. This indicates that there is a continuing need for programs and strategies that are directed toward improving the relationship between young people and police in Cabramatta.

## 11.18. Recommendations

**That programs and strategies that are directed toward improving the relationship between young people and police in Cabramatta continue to be implemented.**

NSW Police has advised us that it supports this recommendation. In this respect, NSW Police has said that two subjects covering "Investigation and Communication in Policing" have now been given greater focus, with parts of our review providing examples and subject content. The subject "Problem Orientated Policing and Vulnerable People" also addresses this issue, with our review providing up to date case studies and discussion material. In addition, NSW Police has said that the use of resources such as the Police and Citizens Youth Club is having a "resounding effect" on the relationship between police and young people in areas such as the Redfern LAC.

That NSW Police take steps, including appropriate training, to ensure police officers adhere to the NSW Government Protocol for Homeless People. To the extent, in any community, NSW Police does not propose officers adhere to this policy, appropriate consultations on any different approach should be completed before a different protocol is implemented.

In response to this recommendation, NSW Police has advised us that the NSW Government Protocol for Homeless People is to be incorporated into the subject PPP242 "Problem Orientated Policing and Vulnerable People" and will also be addressed from a communication aspect in PPP112 "Investigation and Communication in Policing 1" and PPP115 "Police, Crime and Society 1".

We would note in relation to the NSW Police response to recommendations 12 and 13 that, while it is important for student police officers and probationary constables to be given training of the type outlined, it is also essential that there be ongoing training and reinforcement of a similar type for other police officers involved in the exercise of powers under the Drug Premises Act.

## 11.19. Part 7: Impact of the drug move-on powers on the street-level drug trade in Cabramatta

### 11.19.1. Evidence of the effectiveness of the drug move-on powers in dealing with the drug trade in Cabramatta

Consultations with police, health workers, legal practitioners and community representatives indicate that the use of the drug move-on powers in Cabramatta has had a dramatic, visible impact on the street-level drug trade. Most people we spoke to noted that there had been a marked improvement in public amenity in Cabramatta. They reported that experiences like the unwanted approaches of drug dealers and finding discarded syringes in the street were much less common. It appears that there has been a sharp decrease in the numbers of drug users coming to the area, and that visible street-level dealing is less common.

<sup>1171</sup> NSW Government Protocol for Homeless People. This protocol was introduced during the 2001 Sydney Olympic Games to ensure that homeless people were treated sensitively and appropriately. This protocol was endorsed by a number of NSW Government agencies, including NSW Police.

Some of the comments about the impact of the powers on the street-level drug trade in Cabramatta from people outside NSW Police include:

*There has been a reduction in the numbers of the injecting drug users on the street, a reduction in the number of discarded syringes, and a reduction in the visible street dealing of heroin and there are no longer queues outside drug premises ... you see exchanges just outside the town centre, but it is not near as bad as it used to be...*<sup>1172</sup> - Community and business leader, Cabramatta

*There is no doubt that the use of "seven day" directions (combined with the practice of arresting, charging and conditionally bailing people alleged to have disobeyed directions) has been effective in removing many drug users from the Cabramatta CBD.*<sup>1173</sup> - Shopfront Legal Centre

*Someone new to the area now, you wouldn't be surprised if it took them a while to get on.*<sup>1174</sup> - Health worker, Cabramatta

*The laws have had a "major impact", in combination with the Anti Drug Strategy, to "crush the drug trade" in the area, "so much to the point that people were being harassed."*<sup>1175</sup> - Health worker, Cabramatta

A Fairfield City Councillor told us that he believed public amenity in the suburb "has improved a lot, maybe due to visible police presence".<sup>1176</sup> Commenting on the street-level drug trade itself, his observations were that there had been "definite improvement, still deals being made, but not as blatant, not around the train station, more by mobiles".<sup>1177</sup> However, his impression was that the increased level of safety that had been reported by some people may have more to do with high visibility policing than the use of the new drug move-on powers:

*What seems to be happening is that visible policing has made the streets look a lot cleaner and the perception is that things are a lot better, but if you ask people, most people would say that that is because there is a lot more police on the street. My impression from what the community is telling me is that visible policing is what is behind people feeling safer and that it may not be because of the new laws that they are feeling that.*

### 11.19.2. Other aspects of the impact of the drug move-on powers- high visibility policing

Another aspect of the use of the drug move-on powers relates to the impact of high visibility policing in Cabramatta. The bike police in Cabramatta were heavily involved in the enforcement of the move-on powers and maintained a strong presence in the Cabramatta area. There is evidence to suggest that their high visibility policing was valued by some people in the Cabramatta community. In a door knock survey of businesses in the Cabramatta CBD conducted in late 2002, respondents were asked about their awareness of the bike squad and some of the responses were:

*Always see them on the street.*

*See them quite often, they come in to the centre once or twice a day.*

*Very good to see Police in the street, feel safer.*

*Quite friendly, and ask how things are.*

*Bikes are very effective, it's quicker to respond.*<sup>1178</sup>

In addition, a Fairfield councillor and community representative, said that:

*The community love the police on bicycles, they would complain about them to me, but they loved seeing them... It seems the community like seeing police patrol the area.*<sup>1179</sup>

<sup>1172</sup> Interview, Community and business leader, Cabramatta, 16 September 2003.

<sup>1173</sup> Submission, Shopfront Legal Centre, 31 July 2003.

<sup>1174</sup> Interview, Health Worker, 15 September 2003.

<sup>1175</sup> Interview, Health Worker, 24 July 2003.

<sup>1176</sup> Interview, Fairfield City Councillor, 16 September 2003.

<sup>1177</sup> Ibid.

<sup>1178</sup> Community Relations Commission, *Draft Cabramatta Business Door Knock Survey Report*, December 2002, p. 6. The survey was initiated and undertaken by the Community Relations Commission and the findings were reported back to the Cabramatta City Watch Council to "determine issues of concern and to gather ideas to develop new approaches and suggest improvements to community policing and safety". p 1. City Watch is a partnership between the Police, Fairfield City Council, local business, residents and community groups to examine crime and safety issues. It began in June 2001 and is resourced by the Community Relations Commission.

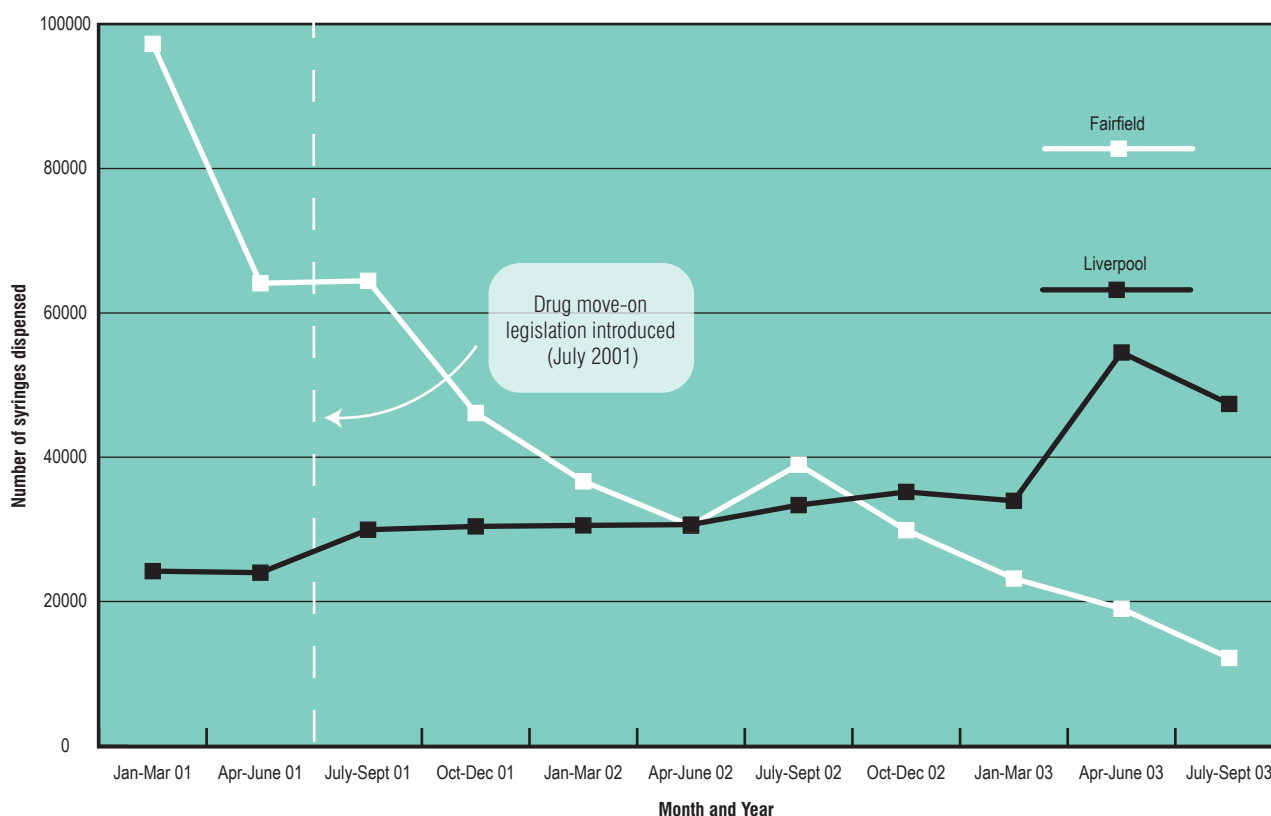
<sup>1179</sup> Interview, Fairfield City Councillor, 16 September 2003.

## 11.20. Part 8: Displacement of the drug trade to other areas and development of new modus operandi

There is some evidence to suggest that the enforcement of drug move-on powers has displaced the drug trade to surrounding areas, particularly to the neighbouring suburb of Liverpool. It is also possible that some displacement has occurred to other nearby suburbs, including Fairfield and Warwick Farm.

Statistics on the numbers of syringes distributed in south west Sydney show that since January 2003, there has been a marked increase in demand for syringes in Liverpool. At the same time, the numbers of syringes dispensed in the Fairfield sector, which includes Cabramatta, had declined. Health workers in south west Sydney believe that these figures indicate that drug users who used to go to Cabramatta are now coming to Liverpool. Anecdotal evidence from the small number of drug users we interviewed in Liverpool also suggests that this may be the case. However, it is also clear from the graph below that the downward trend for Fairfield commenced prior to the commencement of the legislation. This is not to say that policing was irrelevant to these trends, but that the drug move-on powers are unlikely to be the sole factor.

**Figure 39: Number of syringes dispensed, Liverpool and Fairfield sectors, South West Area Health Service, Jan 2001 – Sept 2003**



Data source: South West Area Health Service: Numbers of Syringes Dispensed by Needle and Syringe Program Services, Liverpool and Fairfield Sector.<sup>1180</sup>

South West Area Health Service also reported that Liverpool NSP staff have been "finding it difficult to keep up with the increase in demand of clients wanting to obtain clean injecting equipment".<sup>1181</sup> These staff have also been responding to community concerns about increased inappropriate needle disposal.<sup>1182</sup>

<sup>1180</sup> South West Area Health Service advised us that, "It must be considered when reviewing these [statistics] that the range and number of service delivery options within each sector greatly varies." South West Area Health Service, "Number of Syringes Dispensed South West Area Health Service, data provided, 9 February 2004.

<sup>1181</sup> Submission, South West Area Health Service, 4 February 2004.

<sup>1182</sup> Ibid.



When we asked one health worker to describe their observations of the impact of the powers in Cabramatta, we were told that there was no one around anymore, and that they had “gone underground”.<sup>1183</sup> In her view, the new drug move-on powers had been “very successful in terms of what they wanted, not health wise, but policing”.<sup>1184</sup> However, she noted that it was difficult to isolate how much the new police powers had brought about this change, because the heroin drought was also likely to have had some effect.

While acknowledging that the new powers appeared to have achieved their objectives in terms of policing, as we have noted in the previous section, health workers and others were concerned about the impact that they believed the powers had on public health. Shopfront Legal Centre summed up their concerns in the following way:

*However, any benefit that many have been derived from this “street sweeping” exercise is largely cosmetic. Anecdotal evidence suggests that drug suppliers have simply moved to other areas ... Even if seven day directions are effective in stopping drug purchase/supply, the human cost is far too high. The negative implications for civil liberties and public health far outweigh the benefit of such measures.*<sup>1185</sup>

Anecdotal evidence from police also suggests that the drug trade has been displaced to Liverpool, and to other areas. Several police officers told us that they had observed an increase in the numbers of drug users in Liverpool. Bike police also said that they believed that due to the intensity of policing in Cabramatta, drug users were now going to other areas. One officer said that a recent change he had observed was that drug transactions were less likely to be conducted in Cabramatta:

*Now there is another shift, where they're actually jumping in taxis, or jumping in their own cars, and driving away from Cabramatta ... The customers are coming to Cabramatta to buy their drugs, but then they're being led away, out of the CBD to buy their drugs. So it's always changing.*<sup>1186</sup>

Bike police we interviewed were also of the view that the intensity of their presence in the area, and their use of the drug move-on powers, had driven drug users away. One member of the bike police said:

*It's the harassment, the intensity of the police turning them over, searching them, conducting checks on them, telling them to move-on, I think this move-on legislation has been a big benefit to our patrol ... They're sick of it, they're tired of being told to go away, and being searched, they don't like the intensity, so they're just moving away where it is easier for them to operate, different areas.*<sup>1187</sup>

Drug users who we spoke to at Liverpool said that they no longer go to Cabramatta because of the numbers of police in the area, and because they always get hassled when they come to the suburb. One 21 year old drug user we spoke to in Liverpool said that she doesn't go to Cabramatta any more because there are “too much coppers ... I don't like it” and “I don't go there no more”. Similar comments were made by other drug users who we spoke to in Liverpool, who also said that they do not go to Cabramatta because of the police presence in the suburb. For example, a 41 year old Caucasian male we interviewed said:

*Last five to six years, have been to Cabramatta, but as for hanging around there, no, because of the reason that I don't want any attention, I don't want all the hassle that goes with it.*<sup>1188</sup>

Another drug user who we spoke to in Liverpool, a 32 year old Aboriginal male, referred to policing in Cabramatta as “zero tolerance”, and believed that this had been the policy that had been adopted. He said:

*I know they are going on the American policy of zero tolerance, but mate that don't work in Australia, what works for one country mightn't work for another ... What can I say, we are caught up in the wrong wheel of justice.*<sup>1189</sup>

Statistics on the enforcement of the drug move-on powers also show an increase in levels of the use of these powers in Fairfield. A similar increase has not been evident in Liverpool. The recorded use of the drug move-on powers in Liverpool LAC is very low, with only one or two, or no drug move-ons at all, issued each month in the review period. In total, only 33 move-ons were issued in Liverpool over the two year review period. The table below shows the number of drug move-ons issued in Fairfield and Cabramatta over the review period.

<sup>1183</sup> Interview, Health Worker, 15 September 2003.

<sup>1184</sup> Interview, Cabramatta Health Worker, 15 September 2003.

<sup>1185</sup> Submission, Shopfront Legal Centre, 31 July 2003.

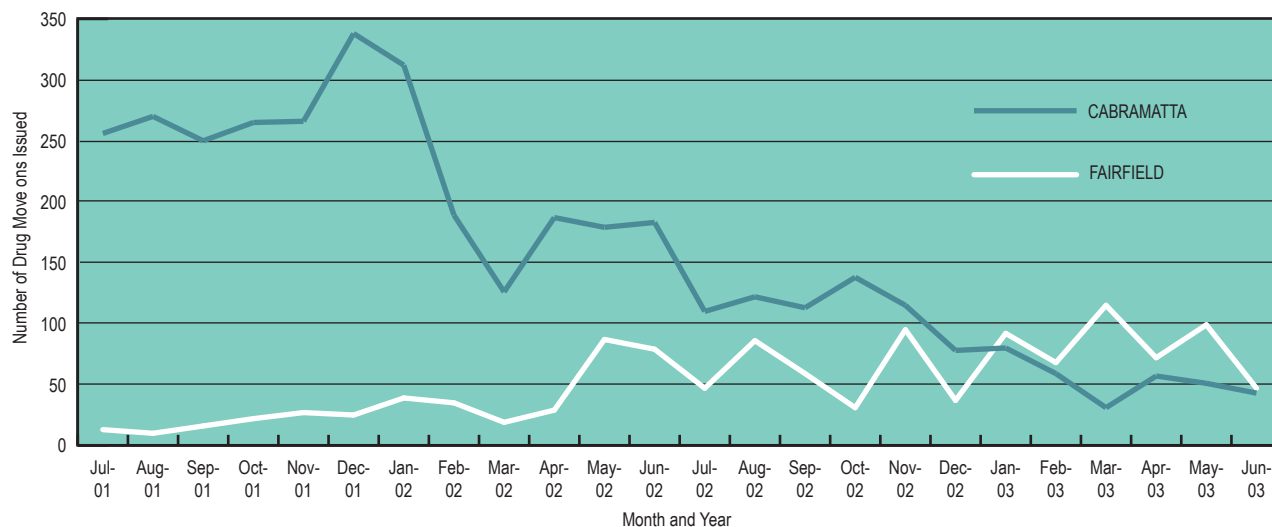
<sup>1186</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1187</sup> Ibid.

<sup>1188</sup> Interview, 41 year old Caucasian drug user, Liverpool, 17 November 2003.

<sup>1189</sup> Interview, 32 year old Aboriginal drug user, Liverpool, 17 November 2003.

**Figure 40: Number of drug move-ons issued by Cabramatta and Fairfield LACs , 1 July 2001 to 30 June 2003**



Source: Data extracted from the COPS database provided by NSW Police in July, 2003.

The table shows that numbers of drug move-ons issued in Fairfield began to increase in about April 2002, and by January 2003, the number that were issued in Fairfield exceeded the number of drug move-ons issued in Cabramatta. However, as we have noted previously in this report, statistics of this nature are only an indicator of police activity at a particular point in time, and do not necessarily reflect an increase in illicit drug activity.

Several drug users we spoke to in Cabramatta reported that in their experience, drugs had become more readily available in a wider range of suburbs in western Sydney. One twenty one year old woman we spoke to said:

*There's more dealers that are getting out of Cabramatta and moving to other suburbs, so instead of keeping it as one unit, where all the drugs was, now its spreading through Sydney even quicker than it was before ... If anything there's a lot more users out there, but they're just shifting around suburbs even more now, which isn't really helping, because at least there was one suburb that was f...ed up, mind my language, where as now it's every other suburb, because everybody's moved around.<sup>1190</sup>*

Commenting on the impact of the drug move-on powers in Cabramatta, she also noted:

*Honestly, they think its cleaned Cabra up. It has in a way, but it hasn't in a way. Like, they think, "Oh, no one's on the streets. We've done a good job", but really, it's just, there's more people out there, it's just more discreet now.<sup>1191</sup>*

In their submission to our discussion paper, south western Sydney Area Health Service made the following observations on how drug users had responded to the enforcement of the move-on powers in Cabramatta, and of the impact on health services in other areas:

*This issue is of particular concern as it is now emerging that many clients do indeed migrate to other "safe" areas. The impact of this migration may highlight that the epicentres of drug related activities may continually change from one geographic location through "move along" directives. While in the short term this may satisfy local concerns it ultimately does not change the fact that drug use among some members of the community will continue to exist. Of further concern is that this geographical movement of clients may be to areas that have minimal health infrastructure to manage such key changes.<sup>1192</sup>*

### 11.20.1. Other changes in the street-level drug trade in Cabramatta and surrounding areas

As well as the possible displacement of the drug trade to surrounding areas, there also appear to have been shifts in the modus operandi of drug dealers. The major change that has been observed is that the drug trade appears to have become more mobile, with an increased reliance on phones to organise transactions, and the use of cars to deliver drugs. This change, as we have discussed previously in this report, also appears to have impacted upon the operation of drug premises in Cabramatta.

<sup>1190</sup> Interviews, 21 year old Caucasian drug user, Cabramatta, 12 December 2003.

<sup>1191</sup> Ibid.

<sup>1192</sup> Submission, South West Area Health Service, 4 February 2004.

Mobile phones, enabling seller and purchaser to be in constant contact, enhance the flexibility and practicality of organising illicit drug transactions. In recent years, similar policing difficulties that have been created by mobile phones have also been reported in relation to street-level drug markets overseas. A study of the policing of low level illicit drug markets in the United Kingdom found that since the mid 1990s, contact between buyers and sellers is increasingly “made by ... making an appointment to meet in an agreed (pre-specified) place”.<sup>1193</sup> The study noted that mobile phones “minimise the risks associated with illicit transactions by making phone surveillance largely impractical”.<sup>1194</sup>

Police we spoke to in Cabramatta commented that the drug trade in the area was “always changing”.<sup>1195</sup> One member of the bike police described the changes that he had observed in the drug trade in Cabramatta over the past several years:

*After the drug houses, were just telephones, mobile dealers, they'd moved to cars ... our local street-level dealers being approached, they'd get the customer, they'd go to the local telephone box, make a phone call, they'd walk to go to local car park, ... and the ... car would come, deliver the drugs, and the car would take off.*<sup>1196</sup>

One drug user we interviewed in Cabramatta had also observed some of the changes noted by the police officer above:

*Before they weren't mobile, so obviously, every one had to be on the streets to kind of sell, whereas now there's telephones, and just rock up at their doorstep and you can get on.*<sup>1197</sup>

Drug transactions now appear to be taking place in a wider variety of locales, instead of the previous concentration of illicit drug activity in places such as the Cabramatta CBD.

## 11.20.2. Conclusion

There is evidence to suggest that the use of the drug move-on powers in Cabramatta has been successful in reducing the incidence of drug dealing in public places. There have also been reports of a marked improvement in public amenity in the suburb. Experiences like unwanted approaches by drug dealers, and finding syringes in parks and other public places, appear to be much less common for people in Cabramatta.

However, there is evidence to suggest that the drug trade in Cabramatta has been displaced to surrounding areas, and that this displacement has had a range of unintended consequences. It appears to have had an impact on policing in the neighbouring suburb of Fairfield, which has recorded an increase in the number of drug move-ons issued. It also appears that increased numbers of drug users are now coming to Liverpool, and this has had an impact on the provision of public health services in the area. South West Area Health Service has reported that it has been finding it difficult to keep up with the increased demand for its services in Liverpool.

Our review of the drug move-on powers has shown that there have been a number of implementation difficulties in relation to these provisions. These difficulties include:

- the nature of the direction to be given, including whether seven day directions are appropriate, and the content of these and other directions
- the “reasonable belief” test provided by the legislation, and in particular, how police form a belief that a person of interest was engaging in conduct for the purpose of obtaining, procuring or purchasing a prohibited drug
- the application of the move-on direction, including its application to places other than public places and vehicles
- the apparent requirement that the same police officer must issue the second direction
- the nature of the conduct which constitutes a breach of the second direction, that is, whether it is engaging again in the relevant conduct itself (seeking to purchase/sell a prohibited drug), or only a breach of the direction itself (for example, to leave an area for a specified period of time) and
- the impact of directions on persons who have a number of reasons such as to access health or other services because they reside nearby) for being in an area, beyond purely drug related purposes.

We note here our own view that parliament did not clearly intend the use of seven day directions under the drug move-on provisions as a matter of regular or usual course. Such a broad and potentially dislocating direction power would have been the subject of significant comment and debate. Because of its impact, in all likelihood significant discussion about appropriate indicators for the direction and

<sup>1193</sup> Tiggery May, Alex Harocopos, Paul J. Turnbull and Michael Hough, *Serving up: the impact of low level police enforcement on drug markets*, Police Research Series Paper 133, Home Office, London, 2000.

<sup>1194</sup> Ibid.

<sup>1195</sup> Focus group, Cabramatta Police, 2 July 2003.

<sup>1196</sup> Focus group, Cabramatta LAC bike police and general duties police, 8 July 2003.

<sup>1197</sup> Interviews, 21 year old Caucasian drug user, Cabramatta, 12 December 2003.

guidance about the context of the direction would have occurred. That said, we acknowledge that the Act probably permits such directions to be given where, having regard to all the circumstances, it is reasonable to do so. We note the difficulties demonstrating before the court that a blanket direction not to attend an area is reasonable, and in all likelihood something more tailored would be required. We also note the change in police practice away from these directions over time which, in our view, was an appropriate response by NSW Police. As we have discussed previously in this report, move-on powers in several other jurisdictions provide specific guidance to police about the type of direction they can issue, such as limiting the length of the direction to 24 hours.<sup>1198</sup>

Many of the issues arise from the fact that these powers are not a comfortable fit with the original move-on powers in the Summary Offences Act. As we have previously noted, the original provisions focus on observable behaviour, whereas the drug move-on provisions focus on assessing a person's purpose. This has clearly created a number of difficulties for police in their implementation of the drug move-on powers.

## 11.21. Recommendations

A purpose-built set of powers, which address the issues outlined above and provide clear and direct guidance on the available directions, would improve the current legislative scheme and benefit both the community and NSW Police. We recommend that a working party be convened to discuss the form and content of new legislative provisions that enable police to issue directions to people who are involved in the street-level drug trade. This working party should include appropriate representatives from NSW Police, health providers, drug user advocacy groups and legal service providers.

Our review has also shown that the vigorous implementation of the drug move-on powers in Cabramatta has had a demonstrable impact on public health services, not just in Cabramatta, but also in surrounding areas. The difficulties that have been reported by NSW Health reinforce the importance of adequate consultation between NSW Police and health agencies if policing strategies of this kind are to be implemented elsewhere in the future. This is a matter that would also be appropriate for consideration by the working party, having regard to any new legislative regime.

Finally, if the drug move-on powers are to remain in their current form, there is a clear need for specific training on their use, and the development of Standard Operating Procedures to assist police to implement these powers in an appropriate and lawful manner.

In particular, additional and targeted training may be required in respect of:

- the legal test under section 28F(1)(d) and (e)
- the types of direction that might be given
- considerations to be taken into account in giving directions, such as whether the person lives in the area where the direction is given
- who may give a second direction and what is required in order to comply with the direction
- conduct that demonstrates a direction has been breached
- appropriate action to be taken when a direction is breached a second time
- appropriate recording of uses of the directions powers on COPS and
- the practical application by police of drug harm minimisation principles.

In addition, in our view arrest should preferably be used as a last resort, and not as a matter of procedure or general course when a direction is breached. Reasons for this include other options open to police and the nature of the penalty (monetary only). In this regard, we note the considerable implications for police and those arrested where other options are not fully explored. A graded or an escalating approach which includes use of infringement notices and Field Court Attendance Notices before arrest, charging and bail would appear most appropriate. Northern Region, for example, appears to have adopted this approach. In addition, it may be appropriate, where possible, to have a senior officer (for example, a Duty Officer) approve the arrest or charge before a more junior officer takes action.

**That a working party be convened to discuss the form and content of new legislative provisions that enable police to issue directions to people who are involved in the street-level drug trade. This working party should include appropriate representatives from NSW Police, health providers, drug user advocacy groups and legal service providers.**

**That the working party also consider appropriate forms of consultation between NSW Police and health agencies that could be put in place if intensive and sustained policing strategies aimed at moving on drug users are to be implemented elsewhere in the future.**

<sup>1198</sup> For a discussion of move-on powers in other jurisdictions, see the "Legislative Survey" chapter in this report.

NSW Police, NSW Health and the Attorney General's Department have advised us that they support these recommendations. NSW Police has suggested that the Attorney General's Department would be the best agency to establish and steer the working party and the Attorney General's Department has advised us that it would be appropriate for it to chair the working party.

**If the drug move-on powers are to remain in their current form, there is a clear need for specific training on the use of drug move-ons, and the development of Standard Operating Procedures, to assist police to implement these powers in an appropriate and lawful manner.**

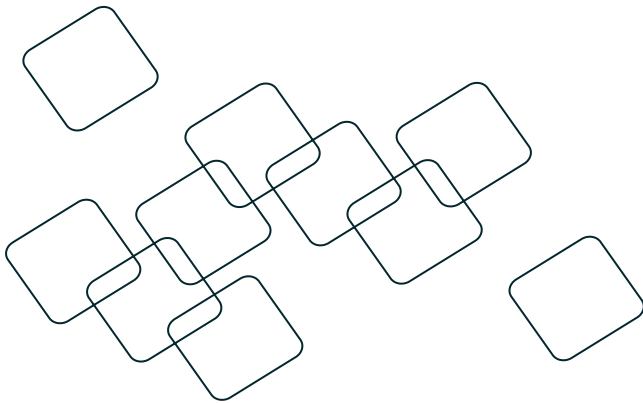
NSW Police has advised us that it supports this recommendation. In doing so, it has said that police education at recruit and probationary constable level has placed a greater focus on the issues identified in our report. The content of this education has been expanded to reflect and correct some of the problems identified in our report as well as including instances of the good use of the legislation as examples of best practice.

We would note in relation to the NSW Police response that, while it is important for student police officers and probationary constables to be given training of the type outlined, it is also essential that there be ongoing training and reinforcement of a similar type for other police officers involved in the exercise of powers under the Drug Premises Act.

We also note that the NSW Police response does not specifically address the issue of whether Standard Operating Procedures are to be developed.



# Appendices



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## Appendix A: Information relevant to Chapter 2 (Methodology)

### Information requirements

Our formal request for information to NSW Police for our review of the Drug Premises Act was stated in the following terms:

#### *General Research Requirements*

The requests below are for state-wide information except where the information relates to programs which operate solely in the Greater Hume or Cabramatta LAC.

1. It is likely that, at an appropriate time during the review period, focus groups and direct interviews of police officers experienced in the use of the 'Drug Premises' powers will need to be conducted.
2. It would be useful to observe any OCRs in which the use of the new powers is examined.
3. In addition to the specific requirements set out below, it would be helpful to have direct and rapid transmission of information about uses of the powers. A system of immediate faxing of a limited amount of COPS information (narrative and other limited incident details) was utilised in the review of the Police Powers (Vehicles) Act. [Research officer] has already discussed this system with [police officer], and implementation of such a system appears to be achievable.
4. Access to current intelligence on drug premises will also be important for the review. Appropriate and secure methods for the examination of such material will need to be arranged.
5. Information about the MERIT program and the operation of Police Drug Bail will also be helpful in putting these new powers in context in Cabramatta.
6. We also hope to examine the impact of the amendments to the Bail Act, Drug Misuse and Trafficking Act and the Criminal Assets Recovery Act. However, at this stage, we have not developed a research strategy for these aspects of the legislation.

#### *Specific Research Requirements*

1. Regular provision of search warrant documents, including:
  - (a) Copies of all 'section 5' search warrants granted, including forms in relation to telephone warrants (see section 12(7) of the Search Warrants Act),
  - (b) Copies of all occupier's notices, including notices in relation to telephone warrants (see section 12(7) of the Search Warrants Act)
  - (c) Copies of all applications for search warrants (successful and unsuccessful)
  - (d) Where such information is provided in written form, copies of any additional information requested by the authorised justice considering the issue of the (section 12A(1) Search Warrants Act),
  - (e) Details about any instances where a warrant has been withdrawn by an authorised justice,
  - (f) Copies of any applications for extension of search warrants and associated replacement search warrants and occupier's notices,
  - (g) Copies of all 'form 7' reports about execution of the warrant made to authorised Justices (section 21 Search Warrants Act),
  - (h) Copies of all video documentation of searches or the ability to view all such videos,
  - (i) Details of the quantity and description of anything seized as a result of the execution of a search warrant under the Act eg. Cash, drugs, syringes, firearms etc. (This may be achieved by providing copies of completed Property Seizure/Exhibit Form for each executed search warrant (p.19 Search Warrants SOPS).
  - (j) Copies of written 'operational orders' (p.8. Search Warrant SOPS) for each use of the powers
  - (k) Copies of the 'search warrant procedures case officers action sheet' for each executed search warrant (p.15. Search Warrant SOPS),
  - (l) Copies of the 'independent observer field form' for each executed search warrant (p.18 Search Warrant SOPS),
  - (m) Copies of the 'search warrant procedures – scene plan' for each executed warrant (p.20 Search Warrant SOPS).



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2. Regular provision of copies of all briefs of evidence in relation to charges under the Act and charges resulting from the Act. Copies of such briefs would be required on completion of the brief.
  3. Copies of COPS records for incidents in which the 'Drug Premises' powers are used, including;
    - (a) Regular provision of copies of all COPS events which refer to the execution, or attempted execution of a search warrant under the Act,
    - (b) Regular provision of copies of all charges resulting from the use of the powers in the Act, including offences created by:
      - i. section 9 (1) and (2)
      - ii. section 12 (1),
      - iii. section 13, and
      - iv. section 14
      - v. and any other offences related to the use of the powers in the Act, for example offences prescribed in the Drug Misuse and Trafficking Act and Summary Offences Act
    - (c) A half yearly report detailing the number of persons:
      - i. required to state name and address under section 7 (e) of the Act,
      - ii. searched under section 7 (1)(a) of the Act,
      - iii. arrested under section 7 (1) (b) of the Act, and any demographic details recorded about such persons, such as age, ethnicity, sex, criminal history.
    - (d) A half yearly report detailing the number of premises searched and LAC in which they were located.
  4. A bi-monthly report detailing all new court matters in which the 'Drug Premises' powers and/or offences will be considered. That is, all court cases in which the offences referred to in 3 (b) above are heard. The report would include the name, rank and LAC of the informant officer, the charge(s) and relevant law part codes, the name of the defendant(s), the corresponding COPS event number and the relevant court and court date. (This is to enable this Office to obtain relevant court tapes or transcripts.)

*Minimum Information Requirements: instances in which a warrant was granted and executed under the Police Powers (Drug Premises) Act*

These are minimal information requirements for reviewing instances in which a warrant was granted and executed under the Police Powers (Drug Premises) Act. There will be instances in our review of the legislation in which fuller documentation (for example, case officer action sheets, briefs of evidence etc.) will be required. Information requirements have been listed according to each stage in the process of applying for, and executing a warrant. We may also want to discuss the operation of the legislation in focus groups and interviews with police.

Research query	Material required
Why was the decision made to apply for a warrant under the Police Powers (Drug Premises) Act?	Intel and the submission made by the officer in support of the application
Was the warrant granted?	A copy of the warrant (or 'notice' if it was a telephone warrant)
What planning was involved in the execution of the warrant?	If written operational orders were produced or a written 'briefing' a copy of this document
What happened when the legislation was used?	The event narrative and video
What were the outcomes of the use of the legislation?	
What was seized?	Property/seizure exhibit form or the 'Form 7' report
Who was charged and for what offence?	'Charging records' of COPs

### *Description of the types of search warrant documents and other documents examined for this review*

These documents are set out in the order in which they are prepared by police when they choose to apply for and execute a search warrant, and prosecute people who they find on the premises.

**Intelligence Reports** are recorded on the COPS database by police officers and are given a security grading that may restrict access to the report to certain officers. Intelligence is described in a NSW policy document on the subject as the 'lifeblood of effective, proactive policing'.<sup>1199</sup>

Criteria set out by NSW Police for determining if an intelligence report should be created include whether the intelligence relates to a known or suspected location for crime, or if the person, group or organisation is engaging in, or is suspected to be engaging in criminal activity.<sup>1200</sup> Intel reports about drug-related activity range from information about drug users loitering in the vicinity of a particular house or details about suspected drug dealing. Police will sometimes refer to particular intelligence reports in search warrant applications or enumerate how many reports they have in relation to a particular premises or its' occupants.

**Surveillance sheets** are a record of surveillance conducted by police.

**Controlled Operation Orders** are the document that authorises an operation under the Law Enforcement (Controlled Operations) Act 1997. One type of controlled operation is illicit drug purchases conducted by undercover police from drug premises.

**Search Warrant Applications** are applications that are prepared by police for the issuing of a search warrant. These are presented by the police officer to an 'authorised justice',<sup>1201</sup> usually a magistrate.

**Search Warrants** are the documents produced by the authorised justice that authorises the search of the premises. Warrants are dated and signed by the issuing magistrate.

**Operational Orders** that are prepared in relation to the execution of search warrants outline the procedures for the execution of the warrant, and also include any relevant background information about the investigation, the occupants or the premises. Police are advised that where possible, operational orders should be in writing but in 'exigent circumstances' they may be in oral form.

**A Scene Plan** is a plan of the premises and/or surrounding area that may be drawn up by police prior to the execution of the search warrant to assist in planning the execution of the search warrant.

**Occupier's Notices** are prepared by the authorised justice and given to the police officer who has been granted the search warrant. Occupier's notices specify information including the name of the police officer who applied for the warrant, the name of the authorised justice who issued it and the address of the premises. When the search warrant is issued, the occupier's notice must be served on the occupier.<sup>1202</sup>

<sup>1199</sup> NSW Police, Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports, Information and Intelligence Centre Executive and Policy, undated.

<sup>1200</sup> Ibid

<sup>1201</sup> According to section 3 of the Search Warrants Act, and 'authorised justice' means a Magistrate, or a registrar of a Local Court or the registrar of the Drug Court, or a person who is employed in the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Minister administering the Search Warrants Act to be an authorised justice for the purposes of the Act.

<sup>1202</sup> If the occupier is not present, the notice must be served as soon as practicable after the search warrant has been executed. Search Warrants Act, s. 15.

**Property Seizure Exhibit Forms** list all the items have been seized during the search warrant, where the item was located in the premises and the name of the police officer who located it.

**Case Officer Action Sheets** are filled out by the case officer, who has carriage and responsibility for the investigation, and record information including when and where the search warrant was executed, the names of the police officers in the search team and a 'chronological record of all events associated with the execution of the search warrant'.<sup>1203</sup>

**Independent Observer Field Forms** are filled out by the 'independent observer', usually a senior officer from a neighbouring station, who attends the execution of the search warrant. On these forms, the police officer notes the details of the search warrant, including quantities of money and details of any drugs seized.

**Search Warrant Videos** are a visual and audio record of the execution of the search warrant. The video operator does not take part in the search, but is responsible for 'recording the location, securing and movement of property, drugs or money during the execution of the search warrant'. Police are not required by law to video the execution of search warrants. However, this requirement has been included in legislation soon to commence in NSW.

**Search Warrant Video** transcripts are a written transcript of the audio record that police made of the execution of the search warrant.

**Exhibit Book Entries** are made in Exhibit Books that are kept at Police Stations. In the *NSW Police Handbook*, police are advised to immediately record a 'comprehensive description' of the exhibit and the identity of its owner/s when the exhibit is brought to the station.<sup>1204</sup>

**Situation Reports** provide a description of incidents, such as the execution of a search warrant. They may also provide some background on the investigation that lead up to execution of the warrant.

**Custody records** document on COPS each process that police are required to go through when a person is taken into police custody.

**Report to Authorised Justice** on the outcome of the search warrant is a report that police are required by law to submit to the issuing magistrate within 10 days of the execution or expiry of the search warrant.<sup>1205</sup> Police are required to indicate on this form whether or not the search warrant was executed, if the 'occupier's notice was served and a brief description of what was seized from the premises.

**Briefs of Evidence** contain the evidence that will be presented to the court by the prosecution to prove an offence. Briefs of evidence will usually include documents such as statements by police and any other witnesses, facts sheets, charge sheets, ERISP transcripts and copies of proposed exhibits relating to the charge that has been laid.<sup>1206</sup>

**Facts Sheets** are written by police and are an account of the offence that police allege has been committed. These documents are presented by police at court.

**Charge Sheets** contain information including the name of the defendant, the name of the informant officer, the offence that police allege has been committed, and the Act under which the charge has been laid.

**Criminal Histories** set out the previous offences for which a person has been charged and are on the COPS database.

**ERISPs transcripts** are transcripts of 'Electronically Recorded Interviews with Suspected Persons'.

**Analysts Certificates** are certificates given under the Drug Misuse and Trafficking Act and certify the results of the chemical analysis of substances that have been submitted to the Division of Analytical Laboratories (DAL) by police.<sup>1207</sup> These certificates may be included in briefs of evidence relating to drug offences.

**Specimen/Exhibit Examination Forms** are submitted with a drug exhibit when it is sent for analysis. These forms contain information including the name of the officer in charge of the case and the police station where the officer is stationed, the name of defendant and a list of the exhibits that have been submitted.

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1203 'Case Officers Action Sheet', NSW Police, Standard Operating Procedures for Search Warrants, undated.

1204 NSW Police, NSW Police Handbook, 'Chapter 'E'', p. 12

1205 Search Warrants Act, s. 21(1).

1206 Criminal Procedure Act 1986, s. 74.

1207 Drug Misuse and Trafficking Act, s. 43.

## Number and type of documents provided by NSW Police for our review

Document Type	Cabramatta	Campbelltown	Redfern	Kings Cross	Richmond	Mid-North Coast	Coffs Clarence	Shoalhaven	Chifley	State Crime Command
Number of Incidents	17	9	10	1	1	4	1	1	1	10
Intelligence Reports	9	1	2	1	1	Nil	Nil	Nil	Nil	Nil
Search Warrant Applications	3	5	Nil	1	1	1	Nil	Nil	1	7
Search Warrants	12	8	7	1	1	2	Nil	Nil	1	9
Operational Orders	1	5	1	Nil	1	Nil	Nil	1	1	7
Occupier's notices	Nil	1	Nil	1	Nil	Nil	1	Nil	Nil	2
Property Seizure Exhibit Forms	9	5	10	1	Nil	3	1	Nil	1	10
Exhibit Book Entries	Nil	2	2	Nil	Nil	1	1	Nil	Nil	Nil
Independent Observer Field Forms	1	Nil	Nil	1	Nil	Nil	Nil	Nil	Nil	1
Search Warrant Videos	4	1	1	1	Nil	Nil	Nil	Nil		
Situation Report	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil		
Report to authorised justice	2	1	Nil	Nil	1	Nil	Nil	Nil		
Specimen/ Exhibit Form	1	Nil	1	Nil	Nil	1	Nil	Nil		
Analyst Certificates	3	Nil	2	Nil	Nil	2	Nil	Nil	Nil	Nil
Police Statements	5	Nil	3	Nil	Nil	3	1	Nil	Nil	Nil
Briefs of Evidence	2	Nil	1	Nil	Nil	3	1	Nil	Nil	Nil
Exhibit Book entry	Nil	Nil	Nil	Nil	Nil	1	1	Nil	Nil	Nil
Scene Plan	Nil	Nil	Nil	Nil	Nil	Nil	1	Nil	Nil	Nil
Facts Sheets	11	7	7	Nil	1	3	1	Nil	Nil	10
Charge Sheets	Nil	Nil	Nil	Nil	1	3	1	Nil	Nil	Nil
Criminal Histories of defendants	1	1	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
ERISP transcript of inter-view with defendant	1	Nil	Nil	Nil	Nil	1	1	Nil	Nil	Nil
transcript of search warrant video	Nil	2	4	Nil	Nil	2	Nil	Nil	Nil	Nil
Photographs of evidence/premises	3	Nil	Nil	Nil	Nil	1	1	Nil	Nil	Nil
Custody Records	1	Nil	Nil	Nil	Nil	1	Nil	Nil	Nil	Nil
Controlled Operation Orders	2	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Surveillance Sheets	Nil	Nil	Nil	Nil	Nil	1	Nil	Nil	Nil	Nil
Detention Warrants	1	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	1

## Appendix B: Information relevant to Chapter 4 (Drug premises search warrants)

### Numbers of search warrant applications provided by NSW Police

Local Area Command	Number of search warrant applications	Number and type of search warrant applications received
Cabramatta	17	3 (Drug Premises)
Western Sydney Command A	9	4 (Drug Premises); 1 (Search Warrants Act)
Inner Metropolitan Command A	10	0
Innter Metropolitan Command B	1	1
State Crime Command	10	2 (Drugs Premises); 5 (Search Warrants Act)
Northern Region Commands (3 Commands)	5	1
Southern Region Command A	1	0
Greater Western Region Command A	1	1

### Type of search warrants granted by Local Area Command

Local Area Command	Number of Drug Premises Search warrant	Number of of Part 2 Search warrants	Number of search warrants provided to us
Cabramatta (1 July 2001-June 30 2002)	14	3	10 drug premises search warrants <sup>1208</sup> and part 2 search warrants <sup>1209</sup>
Western Sydney Local Area Command A	6	3	6 drug premises search warrants; 3 Part 2 search warrants
Inner Metropolitan Local Area Command A	8	2	7 drug Premises search warrants
Innter Metropolitan Local Area Command B	1	0	1 drug premises search warrant
State Crime Command	3	7	3 drug premises search warrants and Part 2 search warrants
Northern Region Commands (5)	2	3	2 Part 2 search warrant; 1 Drug Premises search warrant
Southern Region Command A	1	0	0
Greater Western Region Command A	1	0	1

1208 Four of these search warrants were received from the Greater Hume Target Action Group, and six were from the Cabramatta Police (one of these was a telephone search warrant).

1209 One of these search warrants was provided by Cabramatta Police, and one was provided by the Greater Hume Target Action Group.

## Appendix C: Information relevant to Chapter 5 (Definitions and types of drug premises)

The table below shows the types of items found, and the number of identified drug premises on which they were found.

Region/Local Area Command	Type of item/number of incidents item located
Greater Metropolitan	<ul style="list-style-type: none"> <li>ph tester (1)</li> <li>item associated with drug supply, type not specified (1)</li> <li>hydroponic equipment/apparatus (2)</li> <li>razors (2)</li> <li>foil (3)</li> <li>balloons (4)</li> <li>grinder (5)</li> <li>cutting agents (6)</li> <li>scales (13)</li> <li>resealable plastic bags (18)</li> </ul>
Cabramatta	<ul style="list-style-type: none"> <li>cutting agent (1)</li> <li>heat sealing machine (1)</li> <li>resealable bags (2)</li> <li>razors (4)</li> <li>balloons (8)</li> <li>scales (9)</li> <li>foil (13)</li> </ul>
Inner Metropolitan	<ul style="list-style-type: none"> <li>cutting agent (1)</li> <li>balloons (1)</li> <li>foil (3)</li> <li>scales (4)</li> <li>resealable bags (8)</li> </ul>
Northern Region	<ul style="list-style-type: none"> <li>grinder (1)</li> <li>resealable bags (1)</li> <li>balloons (1)</li> <li>squares of paper cut out (1)</li> <li>cutting agent (2)</li> <li>scales (4)</li> <li>aluminium foil (1)</li> <li>small scraping tool (1)</li> </ul>
Southern Region	<ul style="list-style-type: none"> <li>razor (1)</li> <li>resealable bags (1)</li> <li>foil pipe police allege was used to flush drugs down the toilet (1)</li> <li>item associated with drug supply, type not specified (1)</li> <li>cutting agent (2)</li> <li>scales (4)</li> </ul>
Western Region	<ul style="list-style-type: none"> <li>hydroponic equipment/apparatus (1)</li> <li>metal plate police allege was used to cut amphetamines (1)</li> <li>scales (3)</li> <li>resealable bags (6)</li> </ul>
State Crime Command	<ul style="list-style-type: none"> <li>hydraulic press and two metal plates that related to its' use (1)</li> <li>heating sealing machine (1)</li> <li>large mortar pestle (1)</li> <li>grinder (1)</li> <li>brown packing tape, police allege same tape used to wrapp heroin located (1)</li> <li>razor blade (1)</li> <li>stanley knife (1)</li> <li>foil (1)</li> <li>spoons with powder residue (1)</li> <li>cutting agent (2)</li> <li>resealable bags (4)</li> <li>scales (10)</li> </ul>

## Appendix D: Information relevant to Chapter 8 (Targeting drug supply)

Below is information about the prohibited drugs seized from drug premises in the nominated police region or command. The information was sourced from COPS event narratives and search warrant documents.

### Greater Metropolitan Region

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
1	28 foils heroin 13 foils of 'white powder' brown crystalline substance with white powder		White powder residue on a blade, on scales and on a place mat.
2		40 grams cannabis	
3		Small amount of cannabis (unquantified)	Remnants of green vegetable matter bags with remnants of white powder
4	26 grams 'white rock substance'		
5	5.4 grams ecstasy	5.2 grams cannabis	
6	Small amount of heroin (unquantified)		
7	None		
8	4 bottles of methadone		
9	Heroin wrapped in foil (unquantified)		Spoon with white powder attached
10	5.6 grams amphetamine		
11	7.5 grams heroin 34.4 grams of ecstasy 4 ecstasy tablets	24 grams of cannabis	
12	6 small tablets (type not specified)		Cannabis residue on table
13			Remnants of MDMA located in garage
14	63 grams amphetamine	85 grams cannabis	
15	22 pink tablets (type unspecified)	24.54 grams cannabis 12.88 grams cannabis leaf 19.49 block of cannabis resin 6 cannabis plants 550 cannabis seeds	
16	12.5 grams cocaine 0.5 grams of 'white powder'	41 grams 'green vegetable matter'	
17		10 grams cannabis	
18	1 vial of Stanozolol	91.7 grams of cannabis 2.8 grams cannabis seeds	
19	62.2 grams amphetamine	75.5 grams cannabis 0.7 grams cannabis seeds	
20		255.2 grams cannabis 6 cannabis plants	
21	71.2 grams white powder	56.1 grams of cannabis	
22	90.1 grams amphetamine 2 tabs of LSD	12 bags of cannabis leaf 1 foil stick of cannabis 3 capsules of cannabis oil	
23	120 grams heroin	28 grams cannabis	
24		0.9 grams 'green vegetable matter'	
25			Residue located around toilet
26	2.74 grams amphetamine		

## Greater Metropolitan Region (Continued)

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
27	grams of white powder 29.52 grams of pink powder residue	94.25 grams cannabis	
28	11.4 grams amphetamine 8.8 grams of Ketamine	580 ecstasy tablets 52.8 grams cannabis	
29		39 grams of 'green vegetable matter' small amount of green vegetable matter in a little bowl	
30	3.7 grams amphetamine	21.3 grams cannabis	Small plastic bag with drug residue
31	Quantity of unidentified white powder 1 gram of white rock substance	11.8 grams cannabis	
32			
33	12.3 grams amphetamine 200 Panadol (police allege for use as precursor)	Small quantity of cannabis (unspecified)	
34	None		
35	51.1 amphetamine 202 capsules containing unidentified powder 8 ecstasy tablets	96 grams green vegetable matter 37.5 grams black resin 5.8 grams cannabis seeds	
36	3.8 grams amphetamine	5.9 grams cannabis leaf	Cannabis residue and amphetamine residue
37	1821 pseudoephedrine tablets	29. grams cannabis	
38		315.7 grams cannabis	
39	None		
40	2.9 grams amphetamine		White powder residue in five small bags
41	Light coloured powder' (unquantified) 'white powder' (unquantified)	Cannabis (unquantified)	
42	9 grams amphetamine		Traces of green vegetable matter



## Cabramatta

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
1	0.79 grams heroin 0.52 grams Cocaine		
2	0.26 grams cocaine		
3	None		
4	None		
5	1 gram cocaine		
6	71 grams		
7	1.3grams heroin 5.7 grams cocaine 2 ecstasy tablets 0.4 grams paracetamol		
8		Vegetable Matter (no quantity)	Yes, believed to be cocaine
9	0.06 grams heroin		
10	73.1 grams heroin		
11	5.26 grams cocaine		
12	9.9 grams heroin	2.1 grams cannabis	
13	2.6 grams heroin	2.5 grams cannabis	Small bag 'residue'
14	5.6 grams heroin		
15	None		
16	None		
17	11.6 grams heroin		Yes
18	None		
19	0.35 grams heroin		Yes
20	6.4 grams cocaine		
21	5.63 grams cocaine 0.88 grams heroin		
22	None		
23		0.23 grams cannabis	
24			Silver spoon with hard rock substance
25	0.2 grams heroin		
26			
27	0.38 grams heroin		
28	153.83 grams heroin		
29	7.5 grams heroin		

## Cabramatta (Continued)

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
30	0.16 grams heroin		
31	6.0 grams heroin	5 plants	
32			
33	7.58 grams heroin		White powder residue
34	0.68 grams heroin 4 bottles methadone Normison tablets		
35			
36	1.720 kg heroin		
37	6.2 grams heroin 7.22 grams amphetamine 5.5 ecstasy tablets Methadone in bottle		Small bag with white substance

## State Crime Command

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
1	45.59 grams methylamphetamine 5 ml plastic jar methylamphetamine 0.69 grams Hydrobutanic Acid (GBH) 2 green tablets of a drug called 'V' 34.7 grams testosterone 242 pseudoephedrine tablets	1.4 grams of cannabis leaf	Spoon with 'white powder'
2	67.1 gram amphetamine 161 ecstasy tablets		
3			Small amount on some foil
4	None		
5	143 grams of methylamphetamine 2.13 grams of MDMA 37.46 grams of amphetamine 2.84 grams cocaine 43 tablets of ecstasy	1.5 kg cannabis	
6		Cannabis plant	
7	32.66 grams heroin		White powder residue in a bag
8			1 bag containing drug residue
9	1.7 grams of methylamphetamine 87 ecstasy tablets 1/2 tablet that contained MDMA 4 tablets that contained methylamphetamine and ketamine 3 litres of hypophosphorous 4 stanozolol (steroid) 4 small bottles of anabolic steroids 3 small bottles of anabolic steroids for horses 2 bottles of decodurabin (steroid) 1 bottle of 'tribolin' (steroid) 1 bottle of androbol (steroid) 1 bottle of 'serostim' (steroid) 1 bottle of stanazolol (steroid) small unlabelled bottle with small quantities of steroid 6 pseudoephedrine and ibuprofen 490 Sudafed tablets tablet with 'neo cytamen' 11 oxymetholone		Clear plastic container with 'an amount of drug residue and powder residue' container with 'pink coloured residue' container with white coloured crystalline residue
10	14.51 grams of methylamphetamine (tablet form).	1.9 grams of cannabis	2 bags with drug residue in them several pieces of foil with drug residue 1 clear plastic bag with 'white powder residue.'

## State Crime Command (Continued)

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
11	10.4 grams of heroin 11 small green balloons containing a 'hard rock substance' 2 ecstasy tablets		
12	25.1 grams of amphetamines	35 grams of cannabis	
13	100.9 grams MDMA		White powder residue found on scales, spoons etc.
14	Unspecified quantity of methylamphetamine Sudafed and Actifed tablets (quantity not specified)	Cannabis (quantity not specified)	
15	Not stated	Not stated	
16	758 grams of heroin		
17	21.8 grams heroin		
18	None		

## Northern Region

1	None		
2	White powder in a foil (unquantified)		
3	Heroin (unquantified)	Cannabis leaf (unquantified) hash oil cannabis seeds	Yes
4	5 small bags of white powder (unquantified) small bag with 'a number' of tablets	5 small bags of cannabis (unquantified)	
5	2 grams heroin 4 grams amphetamine		
6	5.6 grams of heroin 5 vials of methadone	3 grams vegetable matter	
7	4 small bags of heroin (unquantified)	Cannabis (unquantified)	
8	3.9 grams of heroin		
9		22 grams cannabis	

## Western Region

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
1		4 cannabis plants	
2	0.47 grams amphetamines		
3	Amphetamine (unspecified quantity in small bag)		
4	8.3 grams amphetamine	5 cannabis plants small amount of cannabis (not quantified)	
5	23.04 of 'white powder'	Small amount of cannabis (not quantified)	
6	30 grams of 'crystalline substance'	Small amount of cannabis (not quantified)	
7	None		

## Inner Metropolitan Region

1	107 grams heroin and cocaine (quantities of each not specified)	47 grams of cannabis	
2		6.9 grams cannabis	
3	3.3 grams white powder 12.8 grams white powder	1 green tablet (unspecified)	
4	117-135 bags of 'white powder' (officer who had this information since transferred, no advice able to be provided by police)	5 small quantities of green vegetable matter	
5	0.33 grams of heroin		
6	11.48 grams cocaine 3.3 grams heroin	0.41 grams green vegetable matter	
7		4 small bags with green vegetable matter	3 small bags with drug residue
8	1 gram heroin	4 small bags of cannabis	1 bag with drug residue
9	1 gram heroin		
10	None		
11	None		
12	Quantity of 'white rock' believed to be heroin white powder (unquantified)		
13	2 grams heroin		
14	37 grams amphetamine 61 tablets ecstasy	201 grams cannabis	
15	Small quantity of powder believed to be amphetamine		
16		61 grams cannabis small quantity of cannabis in bowl	

## Southern Region

Incident Number	Prohibited Drugs/Precursors/ Restricted Substances Located	Cannabis	Drug residue
1	None		
2	1.5 grams amphetamine	Amount unspecified	Possible trace amphetamine' in a resealable bag'
3	2.8 grams amphetamine	2.4 grams cannabis	
4	None		
5	146 grams of steroids 73 white tablets (type not specified) a bottle of methadone	12 grams cannabis	
6	None		
7	3.8 grams amphetamine		
8			
9			Vacuum cleaner seized and forwarded to the lab for analysis due to the 'drug dog indicating the presence of a drug'
10	6.5 grams amphetamine 0.2 grams amphetamine	50 cannabis seeds	
11		Small amount of cannabis	
12	5 grams amphetamine		White powder residue on scales

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## Appendix E: List of submissions

Australian Crime Commission

Australian Medical Association (NSW) Limited

Community Relations Commission

Corrections Health Service

Crime and Misconduct Commission Queensland

Drug Court Parramatta

Eastern Area Tenants Service

Family Drug Support

Health Education Officer DISC, Cabramatta

Illawarra Area Health Service

Law Society of NSW

Legal Aid NSW

Local Courts, NSW Attorney General's Department

Mid North Coast Area Health Service

Mr Simon Bronitt, Faculty of Law, Australian National University

Ms Clover Moore MP, Member for Bligh

North and North West Community Legal Service

Northern Sydney Area Health Service

NSW Department of Community Services

NSW Department of Education and Training

NSW Department of Housing

NSW Department of Local Government

NSW Users and Aids Association

Police Integrity Commission

Shopfront

South Court Primary Care Centre

South Western Sydney Area Health Service

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