

24 September 2021

Commissioner Michael Fuller APM
1 Charles Street
Parramatta, NSW 2150
By email: customerassistance@police.nsw.gov.au Attn Commissioner Fuller

Dear Commissioner Fuller,

RE: Concerns about NSWPF practices and equipment

The New South Wales Council for Civil Liberties (NSWCCL) has become increasingly concerned with the policing practice of the NSWPF as it responds to the COVID19 pandemic by enforcing several NSW Public Health Orders. NSWCCL is additionally concerned with the possible possession and use of pepper pellets and hard squash-ball like missiles.

Disproportionate police response

The NSWCCL is particularly concerned at the disproportionate police response towards the multicultural communities of West and South-Western Sydney. This is evidenced by a series of recent media clips in which members of the NSWPF have approached and/or arrested several young men visibly of racial and/or ethnic minority backgrounds. In these incidents, the NSWPF have alleged the young men have not been wearing face masks. Police intervention of this nature directly undermines the common law principle that arrest is indeed a sanction of last resort.

In DPP v Carr, Smart J said at [35]:

This Court in its appellate and trial divisions has been emphasising for many years that it is inappropriate for powers of arrest to be used for minor offences where the defendant's name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective. Arrest is an additional punishment involving deprivation of freedom and frequently ignominy and fear. The consequences of the employment of the power of arrest unnecessarily and inappropriately and instead of issuing a summons are often anger on the part of the person arrested and an escalation of the situation leading to the person resisting arrest and assaulting the police. The pattern in this case is all too familiar. It is time that the statements of this Court were heeded.

For example on Thursday 9 September 2021, video footage depicts a young male at Bass Hill Plaza in Sydney's west receiving first aid treatment for a medical episode. The male was clearly incapacitated, yet he was handcuffed, which was both unnecessary and an interference with vital first aid. A group of distressed bystanders instruct police that

¹ DPP v Carr [2002] NSWSC 194, (2002) 127 ALJ 151 per Smart J

the young man has a heart condition while others shout "call an ambulance". Disappointingly, police do not respond.

The NSWCCCL, and indeed the wider NSW community, appreciate the real risk in community policing. However, this recent heavy-handed policing strategy is not only unnecessary but it is also harmful and oppressive. It serves to undermine and damage community-police relations. NSW Health and NSW Police must commit to using the powers granted to them under the Public Health Act 2010 in a manner that respects human rights.

The NSWCCCL respectfully asks Senior and Executive members of the NSWPF to reflect upon the damage that these separate incidents have caused, and the NSWCCCL encourages the NSWPF to remind its officers to use their discretion across what are sensitive and complex times.

Possession and use of pepper pellets etc.

Prompted by recent events in Victoria, the NSWCCCL is alarmed about the possible possession and use by the NSWPF of pepper pellets and hard squash-ball like missiles in the community. The NSWCCCL asks:

1. Is such equipment being held in reserve?
2. How did the NSWPF come to get such equipment?
3. In what circumstances will they be used?

We call on all the Commissioner to communicate its guidelines relating to the possession, training and use of this equipment in the community by the NSWPF

Yours sincerely,



Pauline Wright
President
NSW Council for Civil Liberties