

**Submission
No 21**

ASSAULTS ON MEMBERS OF THE NSW POLICE FORCE

Organisation: Public Interest Advocacy Centre

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public interest
ADVOCACY CENTRE

Submission to the Inquiry into assaults on members of the NSW Police Force

4 September 2020

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Our work addresses issues such as:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for Aboriginal and Torres Strait Islander people
- Access to affordable energy and water (the Energy and Water Consumers Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Transitional justice
- Government accountability.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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Recommendation 1 – Discontinue applying the STMP to children under 18

Recommendation 2 – Better implementation of the Protocol

Accountability mechanisms should be incorporated into the Protocol. Signatories should be required to report publicly on the steps they have taken to implement the Protocol and the training provided to staff who interact with rough sleepers.

Recommendation 3 – Fund NSW Health to increase number of health responders to mental health incidents

Fund NSW Health so first responders to people experiencing a mental health crisis are health professionals and not police.

Recommendation 4 – Implement effective mental health training for police

Implement effective mental health training so all operational police have practical knowledge of mental illness, and are trained to use trauma-informed responses.

1. Introduction

1.1 Terms of reference considered

This submission is limited to the second term of reference: ‘strategies that the NSW Police Force has in place to engage with the community, including current or past community and school-based programs’, and is based on the expertise of the Public Interest Advocacy Centre (PIAC) through our casework.

We note that assaults against NSW Police officers were relatively recently considered as part of the Legislative Assembly’s Inquiry into Violence Against Emergency Services Personnel in 2017.¹ The Legislative Assembly Committee on Law and Safety found that it was not necessary to create new offences or penalties to deal appropriately with violence against emergency services personnel.² In coming to this conclusion, the Committee heard that it should focus on measures to prevent violence from happening in the first place – rather than create new offences and penalties to deal with people after the fact – particularly as new offences and penalties would do little to deter people from committing these types of offences.³

PIAC urges this Committee to adopt this view again. While we in no way condone violence against emergency services personnel, including police, we do not support an increase in penalties nor an introduction of mandatory sentencing. These are ineffective and counter-productive responses and will not have the desired result of improving the safety of police officers. Instead, we urge the Committee’s close consideration of alternative approaches that will work to reduce incidents of violence against police.

1.2 Charges for assaults on police officers

There has been a general decline in the incidence of assault on police officers in the past twenty years. In 2018, BOCSAR reported that the rate of assault against police has fallen by 34.5% since 2000.⁴ Assaults on police across NSW appear stable in the past 24 months.⁵

The Committee should be careful to distinguish complaints of assault by police from convictions for the offence of assault police officer. We draw to the Committee’s attention that it is not uncommon for incidence of violence involving police to result from the improper exercise of police power. When acting beyond their power, police officers may be committing an assault or battery on the public, against which a person may use reasonable force to defend themselves.⁶

¹ Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *Violence Against Emergency Services Personnel*, (Report No 1/56, August 2017), available at: <https://www.parliament.nsw.gov.au/ladocs/inquiries/2395/Violence%20Against%20Emergency%20Services%20Personnel%20Report.pdf>.

² Ibid, page 71.

³ Ibid, page 71.

⁴ NSW BOSCAR Media Release 28 May 2018,

https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2018/mr-Crime-Wave.aspx

⁵ NSW Recorded Crime Statistics, Quarterly Update June 2020, BOCSAR, p18 available at https://www.bocsar.nsw.gov.au/Publications/RCS-Quarterly/NSW_Recorded_Crime_June_2020.pdf.

⁶ Section 418 Crimes Act 1900 (NSW). See for example, *Ludlow v Burgess* [1971] Crim L R 238, *Bentley v Brudzinski* (1982) CLR 825, *Collins v Wilcock* [1984] 3 All ER 374 at 378.

PIAC has repeatedly seen police charge clients with the offence of assault police, only for the charges to be dropped before hearing, or dismissed at hearing, because the police officers were not acting lawfully. These actions may give rise to civil claims against the State of NSW.

An important focus for the Committee's inquiry should be on improving the quality of police interactions with members of the public. In PIAC's view, this will both improve safety for the officers and will provide better outcomes for the community.

Annabelle* (16)

Annabelle was at her friend's party when the police attended and asked guests to leave. Annabelle had made plans to stay overnight at the premises, and she walked outside to say goodbye to her friends. A police officer approached her and pushed her in the chest and caused her to stumble backwards. Fearing the police officer would push her again, she raised her hands with open palms to protect herself. The officer grabbed her arm and twisted it behind her back. The police officer did not say that Annabelle was under arrest.

Two other police officers took Annabelle by the arms to a police car and informed her she was under arrest. They did not identify themselves or tell her the reason for her arrest. While she was being twisted and held by the police, Annabelle felt extreme pain in her arm.

After Annabelle's Dad arrived at the party, he took her to a medical facility where she was diagnosed with a fractured arm. Annabelle required surgery that inserted metal plates in her arm. Annabelle continues to experience pain and restricted movement and was left with a visible scar.

The police charged Annabelle with assault against police. The Children's Court Magistrate did not accept the evidence of the arresting police officer and dismissed the charges.

Annabelle continues to have a distrust and fear of police. Annabelle has since commenced civil proceedings against the State of NSW for false imprisonment, assault and battery. The court ordered judgment in Annabelle's favour, by consent. The State was ordered to pay Annabelle compensation, including her legal costs.

** Not her real name*

2. Better policing practices for positive relationships between NSW Police and community

A number of features of policing practice are detrimental to relationships between police and the community and can lead to increased incidence of violence. These features include:

- The use of proactive policing policies, including the Suspect Targeting Management Plan (STMP), particularly on children;
- A failure to effectively de-escalate interactions and a failure to apply the principles of the Protocol for Homeless People in Public Places; and
- The lack of capacity for a health-based response to people in mental health crisis.

2.1 The use of the Suspect Target Management Plan (STMP)

The STMP is a proactive policing practice that aims to reduce crime by specifically targeting people who police believe are likely to commit a crime. STMP policing is premised on the repetition of the use of police powers on targets as a disruption to deter future offending.⁷ It is both a risk assessment tool and a program guiding police interactions with the people placed on the STMP.

In practice, however, the STMP has resulted in unreasonable or unlawful policing of young people and their families. Policing practices of people on the STMP are often inconsistent with the *Law Enforcement (Power and Responsibilities) Act 2002* (NSW) (**LEPRA**), and disproportionately target Aboriginal and Torres Strait Islander children and young people.⁸ Instead of reorienting youth justice and policing towards a more therapeutic approach that reduces the risk of offending amongst young adults,⁹ the STMP is fundamentally incompatible with the *Young Offenders Act 1997* (NSW) and best practice principles regarding children, young people and the criminal justice system.

Targeting under the STMP increases the number of negative interactions between police and young people. This policing is experienced by the targets as harassment. The Youth Justice Coalition has found:¹⁰

The STMP has particularly concerning negative impacts for Aboriginal and Torres Strait Islander young people who experience intensive monitoring and over-policing. The STMP can generate and compound poor police-community relations and undermine well-being for many Aboriginal and Torres Strait Islander youth. The STMP contributes to the stigmatisation and criminalisation of Aboriginal and Torres Strait Islander young people and furthers their disproportionate contact with police. The STMP also disrupts family relations where a young person is living with their family, and is subject to repeated visits by police at their home.¹¹

As many as 72% of young people targeted on the STMP were identified by NSW Police as possibly Aboriginal or Torres Strait Islander. With such little transparency about the use of the STMP, 'even the appearance of discrimination in the application of a policy such as the STMP can have negative implications for its effectiveness'.¹²

⁷ Law Enforcement Conduct Commission, *An investigation into the formulation and use of the NSW Police Force Suspect Targeting Management Plan on children and young people*, (Operation Tepito - Interim Report, January 2020), 7.

⁸ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p14-15, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

⁹ Mental Health Commission of NSW (2017). [Towards a just system: mental illness and cognitive impairment in the criminal justice system](#). Sydney, Mental Health Commission of NSW

¹⁰ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p21, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

¹¹ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p21, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

¹² Ibid.

The continued use of the STMP on young people will entrench negative relationships between NSW Police and the Aboriginal community in particular. PIAC recommends that NSW Police discontinue using the STMP against children.

Recommendation 1 – Discontinue applying the STMP to children.

2.2 Limit interactions and practice de-escalation: the Protocol

PIAC's work with people experiencing homelessness has also raised concerns about the ways in which police power is used on vulnerable and marginalised groups. Clients of our Homeless Persons' Legal Service commonly report negative interactions with the police, including excessive use of force, the use of derogatory or demeaning language and a failure to provide information about the reason for the exercise of police power.¹³

The experience of PIAC's StreetCare group, comprised of people with lived experience of homelessness, and the people we interviewed for an upcoming report into policing of people who are rough sleeping,¹⁴ is that too many police interactions result in use of force or violence because of a failure to de-escalate the interaction and/or provocative behaviour from police.

The Protocol for Homeless People in Public Places (**the Protocol**) and associated implementation guidelines provide a good model to guide interactions between police and people experiencing homelessness.¹⁵ It has been designed to achieve a balance between the effective policing and regulation of public space to protect the interests of residents, businesses and other users, and the rights and interests of people experiencing homelessness. It seeks to avoid unnecessary police interactions, given their potential for negative outcomes.

We are concerned, however, with reports from consumers that suggest principles of the Protocol have been disregarded in favour of approaches that appear to involve punitive, arbitrary policing of public spaces.¹⁶

We reiterate our submission to the recent inquiry by the Legislative Committee on Community Services into the Protocol, that the Protocol continues to be a critical guiding document. We have recommended in particular that accountability mechanisms are required to ensure its successful implementation. This would contribute to more positive relationships between NSW Police and people experiencing homelessness and reduce incidents of violence.

We also invite the Committee to consider whether Police receive sufficient training in de-escalation techniques that would support more effective and safer policing of groups such as people experiencing homelessness.

¹³ Required by s 202 *LEPRA*.

¹⁴ PIAC & Homelessness NSW (Forthcoming, 2020) 'Policing Public Spaces: The experiences of people sleeping rough'.

¹⁵ The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. For further information, see the Family & Community Services 'Protocol for Homeless People in Public Places Guidelines for Implementation', May 2013, available at https://www.housing.nsw.gov.au/_data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf.

¹⁶ Public Interest Advocacy Centre (2020) [Submission to the Inquiry into the Protocol for Homeless People in Public Places](#).

Recommendation 2 – Better implementation of the Protocol

Accountability mechanisms should be incorporated into the Protocol. Signatories should be required to report publicly on the steps they have taken to implement the Protocol and the training provided to staff who interact with rough sleepers.

2.3 Provide a health response for people experiencing a mental health crisis

The level of contact between people experiencing mental health issues and the criminal justice system remains disproportionately high compared to the rest of the population. 83% of young people in custody met the criteria for at least one psychological disorder in 2017.¹⁷ In its submission to the Productivity Commission inquiry into mental health, NSW Government indicated that “in 2018, NSW Police Force responded to 51,000 mental health incidents in 2018, and completed 14,724 section 22 interventions under the *Mental Health Act 2007*”.¹⁸ This is almost up 50% from 34,815 mental health incidents in 2012.¹⁹

Too often, police are the first responders to mental health crisis. This is not a role they are best-placed to perform. As noted in the 2016 Police Association of New South Wales (PANSW) submission to the Inquiry into Violence against Emergency Services Personnel, over-reliance on police to respond to mental health related incidents can cause distress and stigma for people experiencing mental ill health, increase risk of injury for both police and people in crisis, and divert previous police resources from law enforcement and other tasks.²⁰ It may also lead to assaults against police if people are confused and distressed. PIAC supports PANSW’s recommendation that NSW Health should be the primary responder to persons experiencing a mental health crisis. It is essential that NSW Health receives adequate funding and resources for this role.

Recommendation 3 – Fund NSW Health to increase number of health responders to mental health incidents

Fund NSW Health to provide a health response to people experiencing a mental health crisis.

2.4 Mental health training for all operational police

In addition to increased public health resources, it is essential that police receive effective education and training to deal with people experiencing a mental health crisis.

PIAC invites the Committee to consider the adequacy of training currently provided to operational police regarding mental health issues and mental illness crisis, including training in trauma-informed approaches. This training must be mandatory and form part of operational officers’ continuing education, to ensure that officers of all levels of seniority are implementing best practice responses. This is essential to ensure better outcomes, and safer interactions between police and people in mental health crisis.

¹⁷ Mental Health Commission of NSW (2017). [Towards a just system: mental illness and cognitive impairment in the criminal justice system](#). Sydney, Mental Health Commission of NSW

¹⁸ NSW Government, Department of Premier & Cabinet (2019) NSW Submission to the Productivity Commission Inquiry into Mental Health, page 4, using ‘NSW Police Force 2019’ data.

¹⁹ Police Association of NSW (2016) Submission to the Inquiry into violence against emergency services personnel.

²⁰ Ibid.

Recommendation 4 – Implement effective mental health training for police

Implement effective mental health training so all operational police have practical knowledge of mental illness, and are trained to use trauma-informed responses.