



COVID-19 CRACKDOWNS

THE POLICING OF PROTEST IN NEW SOUTH WALES DURING THE COVID-19 PANDEMIC

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Since the beginning of the COVID-19 pandemic police, in Australia and around the world, have been granted extraordinary powers in order to protect public health. New South Wales police have used the powers granted to them under the Public Health Act 2010 to unduly restrict peaceful protesters' rights to freedom of expression and peaceful assembly.

Under international human rights law, restrictions can be placed on certain human rights, including the rights to freedom of peaceful assembly and expression, so long as these restrictions are proportionate and necessary, and in the pursuit of the protection of public health.

When enforcing these restrictions, police must respect the principles of proportionality and necessity at all times. Their actions should be in the pursuit of a legitimate law-enforcement objective and the protection of public health. In particular, any use of force by police must be the minimum that can still be considered effective to achieve that objective, and police, including the chain of command, must be held accountable and responsible for violations of human rights.

New South Wales police failed to publicly release guidelines to clearly explain to the public on how they are approaching policing over the pandemic and have repeatedly used force to arrest protesters and disperse protests, including through the use of chemical irritants. They have also maintained a disproportionate police presence at protests, and fined peaceful protesters tens of thousands of dollars for exercising their human rights. The approach to the policing of protests in New South Wales was too often not necessary to protect public health, proportionate to the threat of the COVID-19 pandemic, nor have any police been held accountable for the unnecessary and disproportionate use of force.

Legitimacy

In the context of the COVID-19 pandemic, governments must ensure that restrictions on the rights to the freedom of expression and peaceful assembly are proportionate to the threat posed by the pandemic and necessary to protect public health.

In New South Wales, COVID-19 restrictions concerning public assemblies have been disproportionate to the threat posed by the COVID-19 pandemic. Restrictions on public assemblies in New South Wales were often inconsistent with, and harsher than, restrictions on other outdoor public gatherings such as community sport.

While protesters at the University of Sydney were being violently arrested and fined for gathering in groups of over 20, students only meters away could eat lunch in large groups, and students could attend classes indoors with over 30 other students. As public assemblies continued to be limited to groups of 20, restrictions were gradually eased elsewhere, allowing thousands to attend the beach, the football, and to congregate in indoor shopping centres.

New South Wales police often used force when enforcing COVID-19 restrictions, with the purported aim of protecting public health. Protesters told Amnesty International of multiple occasions when they were pushed from the street onto the footpath by police, forcing them closer together and meaning they could not socially distance, and increasing the likelihood of spreading COVID-19. On 6 June 2020, police deployed capsicum spray on protesters at Central Station, after police herded protesters into a confined space in Central Station.

The use of capsicum spray on a group of largely peaceful protesters, including those under 18 years of age, raises particular concerns during the COVID-19 pandemic. When exposed to capsicum spray, people tend to remove their face masks in order to flush their eyes, noses and mouths, and expel the chemicals from their mouths and lungs, potentially spreading the virus. Such uses of force by police were disproportionate and not necessary to stop the spread of the COVID-19 virus – to date no transmission of COVID-19 has been recorded at a protest in Australia.

Article 19, Universal Declaration of Human Rights

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Necessity and proportionality

New South Wales police also used disproportionate and unnecessary force against peaceful protesters multiple times throughout 2020, including through the deployment of capsicum spray at Central Station during a Black Lives Matter protest on 6 June 2020.

Amnesty International interviewed several people present at Central Station on 6 June in a method known as ‘kettling’. Those interviewed said that police pushed protesters into the Eddie Avenue exit of Central Station at around 6:00pm. Once inside Central Station, with exits limited, police continued to push protesters further into the Station, exacerbating an already tense situation. At 6:43pm police deployed capsicum spray.

A police spokesperson later stated that police were attempting to disperse the protesters, but those interviewed by Amnesty International said that they were not given clear directions to disperse, nor were they able to leave due to the manner in which they were being surrounded. One interviewee said police were standing on the entrance to station platforms so they could not leave. Police did not give a formal move on order to protesters until after 7:00pm.

Human rights standards state that chemical irritants such as capsicum spray should only be used as a last resort, and only in response to widespread violence on the part of protesters. No one Amnesty spoke to witnessed widespread violence on the part of protesters. Police could and should have chosen to de-escalate the situation and to disperse protesters, instead of resorting to the use of force.

Over the following months police continued to use unnecessary and disproportionate force to disperse protests, including at least eight protests at the University of Sydney. Under international human rights standards, police should resort to force to disperse a public assembly only when it is absolutely necessary, such as when there is violence, or an imminent threat of violence.

This force included mounted police chasing student protesters at protest on 23 September 2021, police pushing both protesters and bystanders to the ground, and arresting and fining dozens of students and staff for breaches of public health orders.

The police’s use of force caused injuries to multiple students and bystanders. On 14 October, University of Sydney law Professor Simon Rice was pushed to the ground by police while observing protests. His legs were kicked out from under him by police, and when he tried to get up, he was pushed down a second time, and then arrested. He was also fined \$1000. In less than 12 months, police issued over \$75,000 worth of fines to protesters, and arrested dozens of protesters for simply exercising their human rights.

Amnesty International's research from around the world has demonstrated over time that police deployed in larger numbers than necessary, or wearing riot gear where this is not necessary, can be confrontational and intimidating, and can escalate and exacerbate tensions. Since the beginning of the COVID-19 pandemic, New South Wales police's presence at protests has been consistently disproportionate to the often small number of protesters. In particular, the large presence of the Public Order Riot Squad at many peaceful protests intimidated protesters simply exercising their human rights. Well over 20 police, including members of the Public Order Riot Squad, were present at a protest in Newtown on 8 October 2020, despite only 19 people attending the protest.

Unfortunately, this punitive policing of protests has continued into 2021. Organisers of the 2021 Invasion Day march reported they felt pressured and intimidated by police to call off the march. Organisers told Amnesty International that the police "arked up" when it became clear that more than 500 people would attend the protest.

Article 21, International Covenant on Civil and Political Rights

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of ... the protection of public health ... or the protection of the rights and freedoms of others."

Accountability

Human rights should always be protected, including in a pandemic. Australia remains the only liberal democracy in the world without a human rights act, which prohibits full respect and accountability for human rights. Police must be held accountable and responsible for violations of human rights. Those held accountable should include individual officers and superiors who give orders to, supervise, or otherwise command and control police, and who are responsible for the planning and preparation of operations.

Any public assembly during which police resorted to the use of force must be subjected to a thorough and independent investigation with a view to establishing responsibilities and accountability of the officers involved.

To date, there have been no independent investigations into the use of force by New South Wales police at public assemblies in 2020, including into force that caused injury

RECOMMENDATIONS

New South Wales police must commit to using their powers in a manner that complies with their human rights obligations. The exercise of police powers must respect the principles of necessity and proportionality. New South Wales police should:

- Ensure that police are completely aware of and understand their responsibilities and powers in regards to protests, through regular training and compliance checks, so that everyone can enjoy their human rights to peaceful assembly and freedom of expression,
- Ensure that police undertake training on how to work with diverse communities, including Indigenous people, the LGBTQIA+ community, refugees and asylum seekers, and people with a disability, so that everyone can enjoy their human rights to peaceful assembly and freedom of expression,
- Always liaise with peaceful protest organisers to negotiate suitable conditions for all parties in a protest, rather than automatically seeking legal interventions,
- Ensure that the decision to disperse an assembly is in line with the principles of necessity and proportionality, and is only taken when there are no other means available to protect public order from an imminent risk of violence.
- Conduct prompt, thorough, effective, and independent investigations into the use of force, and those responsible for excessive or otherwise unlawful use of force must be held accountable.

The New South Wales government should treat the COVID-19 pandemic first and foremost as a public health crisis to be addressed through appropriate public health measures rooted in respect for human rights. The New South Wales government should:

- Ensure that COVID-19 restrictions which concern public assemblies, and so the rights to freedom of peaceful assembly and expression, are proportionate to the threat posed by the public health emergency and necessary to protect the threat posed to people's right to health by the COVID-19 pandemic,
- Review the Public Health Act, Crimes Act and other legislation relevant to the right to peaceful protest, in light of learnings of the COVID-19 pandemic, to ensure that they are suitable and meeting the expectations of the community,
- Restrictions concerning public assemblies should not disproportionately prohibit or restrict public assemblies in comparison to public gatherings of similar sizes, for example community sport.

The Commonwealth Government should:

- Legislate a national human rights act that enshrines international human rights law into domestic legislation and provides accountability to ensure the rights of all people in Australia are protected.

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