

## Chapter 2

### Restrictions on the Red and Black Bloc

#### Public order and enforcing standards of behaviour

2.1 In its capacity as the law-enforcement arm of the executive government, a police force possesses a number of responsibilities, including the maintenance of public order and public safety. In order to discharge these responsibilities effectively, the police are generally granted a range of powers, some of which are coercive. Subject to constitutional arrangements, statute and common law, a police force is entitled to use these powers in some circumstances and under certain conditions: its responsibilities and powers are therefore defined.<sup>1</sup>

2.2 In relation to the policing of sporting events, such as an A-League soccer match, the NSW Police has responsibility for maintaining public order, either by preventing or containing violence, and maintaining public safety, including by ensuring that stadiums are not overcrowded.

2.3 The policing challenges presented by crowd violence are many and varied. Some restrictions on fan behaviour are clearly justified. These can sometimes be coercive without becoming examples of the State overstepping its legitimate authority.

2.4 A question remains as to the extent to which the current restrictions are partly a consequence of an implicit assumption on the part of the NSW Police that WSW supporters are more likely to engage in acts of violence than supporters of other clubs or sporting codes. There is a danger that the police might be predisposed to the assumption that WSW supporters – and members of the RBB, in particular – pose a higher or unusual threat to public order and safety.

2.5 Such an assumption has the potential to give rise to questionable conclusions. Most significantly, it runs the risk that public order policing becomes implicitly committed to a form of collective responsibility: the genuine crimes of the few come to be seen as the responsibility of the many. Justifiable restrictions on certain forms of behaviour become essentially punitive measures that do not differentiate between the guilty and the innocent.

2.6 The possibility that the NSW Police manage WSW matches through the 'lens' of collective responsibility, on the assumption that the violent behaviour of the few justifies restrictions on the majority, brings with it the possibility that supporters, including members of the RBB, have come to be seen as undifferentiated. Importantly, if a complex situation, such as crowd violence, is seen in an undifferentiated manner, then the risk of a disproportionate response is likely to increase.

2.7 Given the possibility that the police response to crowd violence at WSW matches might be influenced by a collectivised view of the club's supporters, it is

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1 In the NSW context, see the *Law Enforcement (Powers and Responsibilities) Act 2002*, s. 4.

possible that the restrictions imposed on fans, including on members of the RBB, are no longer solely focussed on maintaining public order, but have been transformed into the imposition of *standards* of behaviour.

2.8 In situations where soccer fans are viewed as a threat to public order, then some forms of behaviour, such as lewd chanting, which may be considered merely offensive in a different context, can be interpreted as a precursor to violence. Restricting these actions then comes to be seen as necessary for public order.

2.9 While some of the restrictions placed on WSW supporters, including a prohibition of the lighting of flares, may be justifiable on the grounds of public safety, it can be argued that personal choice is being restricted on the basis of holding fan behaviour to a particular (non-legal) standard. This is not a police matter.

### **The Elaborated Social Identity Model (ESIM) and effective policing**

2.10 International research suggests that the way in which crowds are policed often depends on how law enforcement agencies understand the nature of crowds: a large crowd, for example, is frequently interpreted as an inherent threat to public order and safety. Professor Stephen Reicher, a social psychologist at the University of Edinburgh, argues that contemporary public order policing is based on the implicit assumption that crowds are inherently irrational and dangerous.<sup>2</sup>

2.11 This assumption has significant practical consequences for the way police attempt to reduce or eliminate the potential for violence within large crowds. In particular, it leads to a view of crowd violence that is committed to locating the source of conflict wholly within the crowd and implicitly dismisses the possibility that such violence could be a consequence of the interaction between police officers and the crowds they are meant to police. According to Professor Reicher:

This assumption has profound implications for the ways in which crowds are policed. Most crucially, because it relates the cause of violence as lying entirely with the crowd as opposed to arising out of the interaction between crowds and police, it neglects the possibility that police actions may contribute to the production of conflict and hence provides no basis for developing strategies, tactics and technologies that might minimise such a possibility.<sup>3</sup>

2.12 In practice, the view of crowds as inherently irrational and dangerous, treating them as a problem that requires a solution, produces public order policing that is focussed on finding ways to repress crowds' supposedly natural belligerence and irrationality. On this view, public safety necessitates crowds be 'fenced in' by a series of strictly enforced restrictions on their behaviour.

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2 Stephen Reicher et al, 'Knowledge-based Public Order Policing: Principles and Practice', *Policing*, vol. 1, no. 4, pp. 403–415, at p. 403.

3 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, pp. 403–404.

2.13 The fundamental aim of policing becomes minimising the supposed threat posed by crowds to public order and safety. Arbitrary restrictions on crowd behaviour - such as those that have been imposed on the RBB – are rationalised on the basis that crowds are inherently harmful to public order. This is a radical miscasting of the 'harm principle' – which is properly concerned with individual choice, not public order – and becomes the justification for restricting individuals' personal choice while they are members of a crowd.

2.14 The assumption that crowds are an inherent threat to public order, however, brings its own risks. First, by defining crowds as inherently hostile, police create a self-fulfilling prophecy: if the police act on the assumption that crowds are innately irrational and dangerous, then it becomes increasingly likely that the members of a crowd will become hostile in response.<sup>4</sup>

2.15 Secondly, defining crowds as dangerous and irrational risks overlooking a significant opportunity. If crowds are policed through restrictions that flow from the view that they are inherently a threat to public order, then the police will miss out on the opportunity of creating a form of interaction that has the potential to reduce conflict. The possibility of de-escalating conflict can be lost:

...the fate of crowd members is directly determined by what outsiders (notably the police) allow them to do. That is, where police have both the inclination and the power to treat all members in a crowd event as if they were the same, then this will create a common experience amongst crowd members...<sup>5</sup>

2.16 Central to Reicher's 'Elaborated Social Identity Model' (ESIM) of effective policing is the idea that crowds are neither innately irrational nor dangerous, and that violence is often a consequence of the interaction between police and members of a crowd. In particular, Reicher argues that imposing severe restrictions on crowd behaviour often leads to an escalation of conflict, while also obscuring forms of policing that can promote understanding.<sup>6</sup>

2.17 Reicher argues that a more effective method of policing crowds requires police to interact with crowd members in such a way that the measures taken to protect public order are not imposed in a unilateral way, but are developed in consultation with the crowd.<sup>7</sup> By working with crowds, and thereby helping to facilitate the crowds' legitimate aims, the police are in a position to reduce the potential for violence at the outset:

By facilitating [the crowd's aims], the police will not only avoid violence from these participants, they will also gain their cooperation in dealing with the minority of others [whose aims are illegal]...But this only becomes possible where there is information which allows the police to understand

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4 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, p. 404.

5 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, p. 407.

6 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, p. 404.

7 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, p. 409.

the priorities of these groups and to devise practices which will allow legal aims to be met.<sup>8</sup>

2.18 For Reicher's ESIM model of policing, it is the interaction between police and crowds that predominantly determines whether conflict can be effectively avoided. The process of minimising conflict requires measures to maintain public order devised in consultation with supporters and supporters' organisations.

### **International perspective**

2.19 The problem of crowd violence at football matches is not unique to Australia. Experience overseas, especially in Europe and the United Kingdom, suggests that there is no 'one size fits all' solution.<sup>9</sup>

2.20 Despite the inherent diversity of crowd-related violence, international research and experience, principally in Europe, suggests that all successful strategies to minimise soccer violence possess a common feature: the most effective measures are those that have been planned and implemented in collaboration with fans, rather than being imposed on them by authorities.

2.21 In their wide-ranging study of the dilemmas of maintaining public order at soccer matches, Warren and Hay suggest that:

...it is generally agreed that a multi-agency approach involving meaningful contributions from, and the development of sustained partnerships with, football authorities, local governments, venue managers, security personnel, club administrators and fan groups is crucial to the policing role at both pre-event planning and operational stages.<sup>10</sup>

2.22 Based on the assumption that successful measures to curb crowd violence require cooperation between fans and authorities, so that supporters begin to self-police their behaviour, a number of European countries have instituted so-called 'fan projects'.

2.23 First set up in Germany in the early 1980s, following the killing of a Werder Bremen fan by Hamburg supporters, fan projects have sought to reduce violence by providing supporters with a variety of activities and support services, including: guidance services; educational and career advice; intervention in critical situations (if arrested, for example); and recreational activities, such as organising travel to matches and producing fan magazines.<sup>11</sup>

2.24 While the challenges of curbing violence are many and varied, the international research suggests that fan projects – by channelling supporters' passion

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8 Stephen Reicher et al, 'Knowledge-based Public Order Policing', *Policing*, vol. 1, no. 4, p. 409.

9 Social Issues Research Centre, *Football Violence in Europe* (Executive Summary), 1996, <http://www.sirc.org/publik/fvexec.html> (accessed 6 November 2015).

10 Ian Warren and Roy Hay, 'Fencing them in: The A-League, Policing and the Dilemma of Public Order', *Soccer and Society*, vol. 10, no. 1 (January 2009), pp. 124–141, at p. 129.

11 Richard Giulianotti and Peter Millward, 'The Role of Fan Projects in Avoiding Conflict At Football Matches', *International Centre for Sport Security Journal*, vol. 1, no. 4, at p. 2.

into positive directions – have made a significant contribution to reducing the incidence and severity of crowd violence in a number of European countries, such as Germany, Austria and the United Kingdom.<sup>12</sup>

### **Police presence at Wanderers games**

2.25 In evidence to the committee on 3 November 2015, Mr John Tsatsimas, Chief Executive Officer of the Western Sydney Wanderers, pointed out that the club's opportunities for corporate sponsorship and commercial relationships were being undermined by a heavy police presence, including mounted police:

It has been conveyed to me a number of times that people will not come, because of the sheer number of police at the perimeter of the precinct as they enter. I have had commercial partners say, 'It's not something I want to get involved with; all I see is people on horses.' That is just being candid.<sup>13</sup>

2.26 He went on to describe problems of cultural miscommunication:

Our concern is that there is a blanket approach to the Wanderers as opposed to dealing with the issue specifically at hand, and that the culture of football is not understood in this country, particularly with the Wanderers being only a recent addition to the sporting landscape. The football culture is not understood, and nor is the active support, in particular by those who make those calls.<sup>14</sup>

2.27 This cultural miscommunication was of particular concern because the Western Sydney Wanderers are a true local success story, contributing significantly to multicultural harmony in the area:

Senator DASTYARI: To what extent has being able to build a fan base and having a passionate and supportive fan base been a part of that success story of the club?

Mr Tsatsimas: The prime platform for our success has been the Western Sydney community. In the past, particularly in a previous life, the National Soccer League had a raft of teams that came from the Western Sydney region. A number of them represented a number of ethnicities. The Western Sydney Wanderers brought those communities together to be represented at the one junction. I think it is a point of difference that the community feels it is more than just a football club; it is an advocate for Western Sydney on a global and national stage. Our success on the global stage has precipitated us having a mantra of being globally respected and recognised, and I think we have achieved that in a very short period of time.<sup>15</sup>

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12 Ian Warren and Roy Hay, 'Fencing them in: The A-League, Policing and the Dilemma of Public Order', *Soccer and Society*, vol. 10, no. 1 (January 2009), p. 124.

13 Mr John Tsatsimas, Western Sydney Wanderers, *Committee Hansard*, 3 November 2015, p. 15.

14 Mr John Tsatsimas, Western Sydney Wanderers, *Committee Hansard*, 3 November 2015, p. 15.

15 Mr John Tsatsimas, Western Sydney Wanderers, *Committee Hansard*, 3 November 2015, p. 14.

2.28 Deputy Mayor of Parramatta, Councillor Steven Issa, echoed Mr Tsatsimas's concerns and supported his account with data on the economic contribution the Western Sydney Wanderers make to his city:

I make no apology for supporting the fans of the Wanderers and the RBB. I say that for numerous reasons. Predominantly, it is about the economic and social benefit that Parramatta receives as a result of these fans. Let's make no mistake: visitation to our city increases. The number of families enjoying restaurants, retail and accommodation in the Parramatta CBD categorically increases. The direct economic benefit to Parramatta City is estimated at \$19 million for the 2014-15 season. In 2013, the first season, it was around \$17 million, so there is a steady increase in the economic development and what that brings to Parramatta. In the first season, the gross regional product increased to the tune of about 81 jobs, with a direct correlation between the Wanderers' introduction into our city and the outcomes it is perceived to have.

Further, in 2013 we surveyed visitors as well as businesses in our city specifically related to the Wanderers and what they bring in economic development terms. Of the businesses, 89 per cent surveyed saw an improvement in Parramatta due to Wanderers' games and the involvement of fans. Ninety-six per cent of businesses reported new customers and 81 per cent of those spoke to repeat business as a result. For me, the games and activities associated with the games, including the fans, the march and so on, improve the perception of Parramatta for both visitors, at 78 per cent, and businesses, at 93 per cent. For us as a city, if you are improving the perception of Parramatta, it is something we need to support.<sup>16</sup>

2.29 Councillor Issa then commented on the scale of the policing operations at the Wanderers' games:

I have been quite vocal about police presence and the way they conduct themselves in both marches and games. I will categorically say that anything that stifles that sort of economic stimulus to a city should be dealt with. Anything that stifles return visits or visitation increases should be dealt with. I say that again with no apology. I support the police in all their endeavours to make Parramatta a safer place. If criminal activity is proven beyond reasonable doubt, I support the police going out with the full force of the law to prosecute. For me, though, when we talk about what the police do and their presence and managing situations such as the march where we have police on horseback, we have the dog squad, we have public order and riot squad, we have the two blues, we have Strike Force Raptor—which is the Middle East crime squad, all dealing with fans and an alleged behaviour problem, I think that detracts from the positive image the Wanderers bring to the city and the economic development it brings to the greater Parramatta region.<sup>17</sup>

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16 Cr Steven Issa, Parramatta City Council, *Committee Hansard*, 3 November 2015, p. 20.

17 Cr Steven Issa, Parramatta City Council, *Committee Hansard*, 3 November 2015, p. 20.

2.30 To that end, Mr Tsatsimas was anxious not only to improve relationships between the fans and the police, but reduce the size and scale of the policing:

CHAIR: Again, in this scenario where you are commissioner for a sufficient time to determine this policy of policing of sporting games—including Wanderers games—how many police would you have at games and what would they wear?

Mr Tsatsimas: The simple answer is: not the numbers we have at the moment.

CHAIR: Fewer?

Mr Tsatsimas: A lot fewer.

CHAIR: What would they wear?

Mr Tsatsimas: I would prefer the two blues rather than the OSG; it is less intimidating.<sup>18</sup>

2.31 Councillor Issa pointed out that police complaints about flares at matches seemed disingenuous in light of heavy-handed policing:

I understand the police say that their aim is to protect the safety of fans. I was at the Anzac Day match, and I put a post on Twitter—probably against my better judgement, but I was a little bit disheartened by what I saw. The assistant commissioner was talking about a 14-year-old in hospital with burns as a result of a flare. At that incident, there was a 14-year-old in hospital with burns to his eyes as a result of capsicum spray. So there is a disparity here that we should really be acknowledging in the way we treat fans with a broad brushstroke as a homogeneous group and how we deal with the handful, as you say, of members who are antisocial.<sup>19</sup>

2.32 Councillor Issa also suggested that an understanding of 'football fan culture' was necessary, with the police learning to distinguish between what was criminal behaviour and what was simple exuberance:

I think it is a paradigm shift that needs to happen. I do not think we are used to this sort of exuberance in Australia. Essentially, there is a learning experience that needs to happen, not only for the police but for the fans and for the club, and for the FFA in general. Everybody needs to learn from this because it is new in this country.<sup>20</sup>

### **Police and the Red and Black Bloc**

2.33 In evidence to the committee, Mr Fadi Bushara of the Red and Black Bloc reiterated comments made by Mr Tsatsimas and Councillor Issa with respect to football culture, and the understanding that, with a modicum of care, it need not be threatening or lead to violence.

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18 Mr John Tsatsimas, Western Sydney Wanderers, *Committee Hansard*, 3 November 2015, p. 18-19.

19 Cr Steven Issa, Parramatta City Council, *Committee Hansard*, 3 November 2015, p. 21.

20 Cr Steven Issa, Parramatta City Council, *Committee Hansard*, 3 November 2015, p. 23.

We support the team: we are active and we are vibrant—flags, colours, chanting and marching. This is the attraction for a lot of people to this club. It is a club that is three years old and it has the second-highest membership in the league. That is not only down to the fact that the club has been successful in its first year, because in the last season the club almost finished last and this season the club is not having a great start. But you still have close to 18,000 members, and part of the attraction is the active supporters and supporters throughout the stadium who also become active and bring something to the table. This is the attraction, not just to people who follow football but to people outside football.<sup>21</sup>

2.34 Mr Matt Adamson, also of the Red and Black Bloc, drew on his experience working in crowd control and private security in the United Kingdom, also citing Professor Reicher and Dr Stott and their approach to cooperative policing:

Senator Leyonhjelm, you mentioned Professor Stephen Reicher. As it would happen, in my own notes I was going to reference one of his students, Professor Clifford Stott. I would like to read from a release from Western Sydney University regarding the recent visit, in May of this year, of Dr Clifford Stott. Funnily enough, he was just around the corner at the University of Western Sydney campus. He delivered a talk called ‘Mad mobs and football hooligans—debunking the myths’. As with Professor Reicher, Dr Stott is also a proponent of engagement, and the RBB are as well. We in no way, shape or form condone any sort of criminal behaviour, and we have always been very open about this fact whether through social media or through interviews to media, some of which I have given. I would like to read a quote from Dr Stott that I believe is important to these proceedings: “If we want to solve the problem of ‘football hooligans’, we need to understand the nature of the problem accurately, to see the crowd psychology not as madness, but a meaningful response to circumstances. It’s often a matter of heavy-handed crowd management practices that lead to circumstances where violence develops.”<sup>22</sup>

2.35 Mr Bushara pointed out the danger when authorities failed to appreciate that football in Western Sydney has moved beyond ethnic rivalries, with the Western Sydney Wanderers providing a focus for local unity:

Western Sydney does unite the people of the West and that is nowhere more evident than in the RBB—as he said, in terms of different races, religions and even cultures. People are surprised—they say, ‘How can you have people of Croatian background and people of Serbian background together?’ That all goes out the window because nobody thinks like that; people are just there to support the team. But it becomes very difficult for us to do so when we feel there is always someone watching over our back or if people feel intimidated.<sup>23</sup>

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21 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015 p. 27.

22 Mr Matt Adamson, Red and Black Bloc, *Committee Hansard*, 3 November 2015 p. 26.

23 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 26.



2.36 Members of the Red and Black Bloc – when they did meet with the police to work out appropriate controls on crowd behaviour – perceived negotiations to be somewhat one-sided.

We were always responsive to their requests, but some of their requests were too much or over the top. The compromises were not reciprocated. The compromises were always expected to come from us, not from them. We did so on a number of things. He mentioned the swearing in chants and whatnot. We were told we could not swear in chants while we were conducting the march. We adhered to that. We were told we could not throw receipt rolls because we might injure someone—mind you, it is a paper roll. We adhered to that. This is not to mention that people were arrested and got banned for doing such things. But we still adhered to that.<sup>24</sup>

2.37 On other occasions, members of the RBB found the police presence frankly intimidating:

CHAIR: [...] The next issue I would like you to talk about is: could you describe to the committee how the police behave towards members of the RBB at games?

Mr Adamson: It would be unfair to those officers who are fantastic and engaging to tar all of the police with the same brush. And it would be hypocritical of us to do so seeing as we are asking not to have that done to us. But in some instances there is aggression. In particular, in terms of gestures: things like walking up and down the aisles with your hand on a gun or pepper spray; riot gear at a sporting event. I believe that is absolutely counterproductive and extremely intimidating to families and young people who we have in our area.<sup>25</sup>

2.38 Mr Bushara went on to recount how police periodically pinned spectators – including children – into their seating bays, sometimes for long periods:

But they travel around in numbers, especially the riot police in overalls—or pyjamas, as we like to call them. They will travel around in groups of four or five. We have been told by police that they will not send in one or two officers into the bay, because they feel that it is too intimidating for them. Meanwhile, they are the ones walking around with guns, batons and pepper spray. But they need to send in four or five officers to apprehend one person or to speak to one person and, in that process, they will infringe on other people's rights. If they are taking someone out of the bay to speak to them at the back, behind the hill, nobody else is allowed to leave the bay at that time, even if it is someone that needs to go to the toilet or buy a drink, or small children, anyone. That bay becomes a lockdown zone. No-one is allowed to leave.

CHAIR: Is that so? How long does that last for?

Mr Bushara: It is up to their discretion.

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24 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 27.

25 Mr Matt Adamson, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 30.

CHAIR: That is effectively placing an entire group of people under arrest, isn't it?

Mr Bushara: And if you try to leave the bay, you are told that you will be escorted out.

CHAIR: You will be escorted out.

Mr Bushara: Correct.

CHAIR: From the match.

Mr Bushara: Correct.

CHAIR: That is their only sanction, because they could not do anything else, could they?

Mr Bushara: They can. This is another point. What happens after that is if you are escorted out from the venue, you are spoken to by police, your details are taken and, in a matter of weeks, you are issued with an FFA ban which prevents you from attending any FFA-sanctioned event. That means no attending any game across Australia that is related to football. In the same breath, you cannot participate in any grassroots football. I cannot go and sign up to my local club and play Sunday football if I have been banned by the FFA.

CHAIR: This is interesting. If you do not adhere to their corralling into an area while they want to speak to somebody, so you decide you want to go to the toilet or whatever, you will be escorted outside?

Mr Bushara: Correct.

CHAIR: And then you will subsequently be banned from attending any matches?

Mr Bushara: That is correct.<sup>26</sup>

### **Football Federation Australia bans**

2.39 In evidence to the committee, Mr Bushara pointed out that there was no avenue of appeal once Football Federation Australia (FFA) decides to ban an individual for disorderly behaviour. Mr Bushara suggested that the FFA did not appear to see itself as being bound by the rules of procedural fairness and natural justice:

Funnily enough, the FFA believe that they do not fall under the rules of natural justice, and this is quoted here in no uncertain terms in an email from them in response to someone who had requested information as to the reason why they had been banned..."Please be advised that Football Federation Australia (FFA) is not a government agency and, as such, is the obligation to adhere to the rules of procedural fairness and natural justice does not apply to our organisation. For this reason, FFA will not consider any appeal".<sup>27</sup>

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26 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 30.

27 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 31.

2.40 Mr Bushara suggested that the lack of an appeals process against bans imposed by the FFA led to a situation in which people were excluded from all FFA sanctioned events on grounds that were both unclear and without a foundation in procedural fairness.

2.41 Given that the process of banning individuals could be based on undisclosed reasoning, without any avenue of appeal, Mr Bushara suggested that the FFA ran the risk of promoting a situation in which distrust between fans and authorities is allowed to increase to the point that cooperation becomes increasingly difficult.<sup>28</sup> As a consequence, Professor Reicher's concept of a self-fulfilling prophecy leading to inevitable crowd violence becomes more likely.

2.42 In particular, if the model of effective public order policing put forward by Professor Reicher is taken seriously, then the FFA may be helping to create a situation where conflict on the basis of mistrust becomes more difficult to prevent. By refusing to disclose the justification for a ban, as well as denying those banned an avenue of appeal, the FFA might be contributing to a greater likelihood of crowd violence by refusing to engage proactively and openly with supporters.

2.43 On 4 November 2015, following the committee hearing, the A-League's Chief Executive Officer, Mr Damien de Bohun, was reported as having confirmed that there was no right of appeal to FFA bans:

FFA takes the view that we have a right to decide if a person is welcome among the football community at our matches. It's a general deterrent to those who cause trouble that they face long bans with no right of appeal.<sup>29</sup>

2.44 Yet, after the publication in the media of a confidential list of 198 people allegedly banned by the FFA from attending A-League matches, followed by extensive complaints from fans, the FFA clarified that an appeals process had always been in place. In a 26 November press release, the FFA stated:

Since the inception of the banning process, it has always been the case that if a banned person can prove that they did not engage in the relevant behaviour the ban will not apply. If a banned person can bring the evidence that proves this to FFA through their club, the ban will be lifted.<sup>30</sup>

2.45 Media reports suggested that, while at least two fans had their bans overturned after sustained lobbying by their respective clubs, a number of clubs were not aware it

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28 Mr Fadi Bushara, Red and Black Bloc, *Committee Hansard*, 3 November 2015, p. 32.

29 Tom Smithies, Football Federation Australia has 'moral obligation' to allow banned fans to appeal, warns Senator, *Daily Telegraph*, 4 November 2015, <http://www.dailytelegraph.com.au/sport/football/football-federation-australia-has-moral-obligation-to-allow-banned-fans-to-appeal-warns-senator/story-fnp0lxay-1227596457019> (accessed 7 December 2015).

30 FFA clarifies banning process, *Football Federation of Australia*, 26 November 2015, <http://www.footballaustralia.com.au/article/ffa-clarifies-banning-process/1isx558wvyfvd15dd4c06e4kmg> (accessed 7 December 2015).

was possible to have a ban overturned at all.<sup>31</sup> Furthermore, it was reported that, while many of the banned individuals had been charged by police, others were underage, not facing police charges or had no avenue to appeal the offences for which they were named. There were suggestions that some of those named had not been banned at all.<sup>32</sup>

2.46 On 24 November, the RBB and Melbourne Victory's main supporter group, the 'North Terrace', issued a joint statement asking for the FFA to:

- Issue a statement condemning the articles (that revealed the confidential list of banned supporters) and supporting the fans;
- Launch an investigation into how such information was leaked and present the findings to the public in a transparent manner;
- Work out and implement an independent and transparent appeals process, agreed upon by all parties including every active support group.<sup>33</sup>

2.47 Five days later, Mr de Bohun argued that any fan could, in fact, appeal their ban by providing evidence of their innocence. He noted in this regard that in any case, the FFA will 'formalise its appeals process to review any such evidence'.<sup>34</sup>

2.48 Amid the confusion over the appeals process – up to and including whether it even existed formally – the following day, FFA Chief Executive, Mr David Gallop, held a press conference. He acknowledged that the FFA had failed to correctly communicate their appeals procedure. According to Mr Gallop:

The banning system has served its purpose for seven seasons, but like any process it needs fine-tuning. We accept that the system needs some clarification and better communication.<sup>35</sup>

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- 31 Tom Smithies, 'FFA response to fan anger over bans and appeal process making situation worse', *Daily Telegraph*, 30 November 2015, <http://www.foxsports.com.au/football/a-league/ffa-response-to-fan-anger-over-bans-and-appeal-process-making-situation-worse/story-e6frf4gl-1227627949912> (accessed 7 December 2015); Ben Cuzzupe, 'FFA security 'spies on fans, bans innocent supporters'', *The New Daily*, 2 December 2015, <http://thenewdaily.com.au/sport/2015/12/02/ffa-security-spy-fans-mistakenly-ban-innocent-supporters/> (accessed 8 December 2015).
- 32 Ben Cuzzupe, 'FFA security 'spies on fans, bans innocent supporters'', *The New Daily*, 2 December 2015, <http://thenewdaily.com.au/sport/2015/12/02/ffa-security-spy-fans-mistakenly-ban-innocent-supporters/> (accessed 8 December 2015).
- 33 'North Terrace and RBB combined statement', 24 November 2015, *West Sydney Football*, 24 November 2015, <http://www.westsydneyfootball.com/topic/6490-rbb-statement-on-ffa-bans-and-walk-out/> (accessed 7 December 2015).
- 34 Aidan Ormond, 'Banned A-League fans can appeal: De Bohun', *SBS*, 29 November 2015, <http://www.footbballaustralia.com.au/article/banned-a-league-fans-can-appeal-de-bohun/1e5j1p1dx7nf1ljdy0lnzx10v> (accessed 7 December 2015); Lucy Zelic, 'De Bohun must go as A-League fans find their collective voice', *SBS*, 30 November 2015, <http://theworldgame.sbs.com.au/blog/2015/11/30/de-bohun-must-go-league-fans-find-their-collective-voice-0> (accessed 7 December 2015).

2.49 However, Mr Gallop maintained that the onus rested with banned fans to prove that they should have their bans overturned.<sup>36</sup> He noted that proposals in relation to the banning system would be taken to the FFA Board with a view to reviewing and improving the system. Further, he explained that the process whereby a banned person can have a ban overturned, if there were clear proof that they did not engage in anti-social behaviour, would be formalised.

2.50 Active supporter groups including the RBB, North Terrace and Sydney FC's The Cove denounced the proposed appeals structure on the basis that it placed the burden of proof on fans when they should remain innocent until proven guilty.<sup>37</sup> The three support groups boycotted the subsequent A-League matches played by their respective teams.<sup>38</sup>

2.51 The RBB said that match boycotts together with legal action over the leaked list of banned fans would continue until the FFA and A-League present active supporter groups with a transparent ban appeals process that is agreed upon by all parties. This would include providing any banned person with the evidence used against them and allowing them to refute it.<sup>39</sup>

2.52 In response to growing fan discontent with the FFA, on 3 December, FFA Chairman, Mr Steven Lowry affirmed a proposal to review the banned fans policy would be taken to the FFA Board later that week with a new policy finalised by February 2016. Mr Lowry stated that the review, which would involve the fans, would seek to improve the system whereby the FFA, police and security, and the clubs and stadiums worked together.<sup>40</sup>

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35 'Point made, time to support your team', *Hyundai A-League*, 1 December 2015, <http://www.a-league.com.au/article/david-gallop-point-made-time-to-support-your-a-league-team/so6cej1k66rq12a216nth0qfx> (accessed 7 December 2015).

36 'Gallop admits FFA appeals process needs 'fine tuning'', *SBS*, 1 December 2015, <http://theworldgame.sbs.com.au/article/2015/12/01/gallop-admits-ffa-appeals-process-needs-fine-tuning> (accessed 7 December 2015).

37 AAP, 'RBB Responds to Gallop, Vows Match Boycott', *Sky News Sport*, 1 December 2015, <http://www.skynewsport.com.au/football-news-display/rbb-responds-to-gallop-vows-match-boycott/2889> (accessed 7 December 2015).

38 Basil Saab, 'Yellow Fever back the Cove and RBB boycotts', *SBS*, 2 December 2015, <http://theworldgame.sbs.com.au/article/2015/12/02/yellow-fever-back-cove-and-rbb-boycotts> (accessed 7 December 2015).

39 'Western Sydney Wanderers' Red and Black Bloc to boycott A-League clash with Brisbane Roar', *ABC News*, 2 December 2015, <http://www.abc.net.au/news/2015-12-01/western-sydney-wanderers-boycott-a-league-david-gallop/6992274> (accessed 7 December 2015).

40 'FFA Chairman: Banned list leak 'a travesty'', *Football Federation of Australia*, 3 December 2015, <http://www.footballaustralia.com.au/article/ffa-chairman-banned-list-leak-a-travesty/git8p4m46g0n18w2ff4pl8dhl> (accessed 7 December 2015); Tom Smithies, 'FFA to review A-League's bans policy, says Steven Lowy, as he and David Gallop try to quell fan fury', *Daily Telegraph*, 3 December 2015, <http://www.dailytelegraph.com.au/sport/football/ffa-to-review-a-leagues-bans-policy-says-steven-lowy-as-he-and-david-gallop-try-to-quell-fan-fury/story-fnk6pqot-1227632652127> (accessed 7 December 2015).

2.53 Following a meeting with representatives from all 10 active supporters groups in Sydney on 9 December, the FFA's Mr Gallop announced a number of amendments to its ban policy. These included the replacement of a ban notice with that of an 'intention to ban' notice and an agreement to allow fans to view evidence used against them. The changes apply retrospectively to the 198 people already banned, if the evidence against them still exists. Where a ban is maintained, the individual will have an opportunity to go before an independent panel. The changes form part of the review of FFA's appeals policy.<sup>41</sup>

### *Flares*

2.54 Both at the inquiry hearing and in subsequent media commentary, it became clear that much of the controversy surrounding Australian football's active supporter groups, particularly the Red and Black Bloc, concerned the use of flares.

2.55 The Western Sydney Wanderers Football Club has opposed the use of flares since its inception, as do all other A-League clubs. Fans who use them at games are routinely subjected to bans, and teams have had competition points deducted if the behaviour becomes commonplace.<sup>42</sup>

2.56 Flares are particularly associated with European and South American football supporter groups, and do not have a significant presence in other Australian sporting codes.<sup>43</sup>

2.57 Flares are not strongly associated with English or Scottish football, and in the UK they are widely viewed as an import from the Continent.<sup>44</sup>

2.58 Because of their significant presence in European and South American football, sporting authorities and police in those jurisdictions have had to develop arrangements to ensure they can be used safely.

2.59 In their paper 'The role of fan projects in avoiding conflict at football matches', Professor Richard Giulianotti and Dr Peter Millward describe how fan

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41 AAP, 'Football Federation Australia backs down over bans on A-League fans', *The Guardian*, 10 December 2015, <http://www.theguardian.com/football/2015/dec/10/football-federation-australia-backs-down-bans-a-league-fans> (accessed 16 December 2015).

42 Ben McKay, 'Melbourne Victory accept FFA flares punishment', *The Roar*, 17 February 2016, <http://www.theroar.com.au/2016/02/17/melbourne-victory-accept-ffa-flares-punishment> (accessed 13 April 2016).

43 Janek Speight, 'Stop the flares! Australia's fight with fire', *The Roar*, 26 October 2015, <http://www.theroar.com.au/2015/10/26/stop-the-flares-australias-fight-with-fire> (accessed 13 April 2016).

44 Duleep Allirajah, 'A rocket under English football', *Spiked*, 8 November 2013, [http://www.spiked-online.com/newsite/article/a\\_rocket\\_under\\_english\\_football/14263#.Vvsx4OJ95aR](http://www.spiked-online.com/newsite/article/a_rocket_under_english_football/14263#.Vvsx4OJ95aR) (accessed 13 April 2016)

project workers arranged with security officials before a match in Germany to allow flares to be set off safely.<sup>45</sup>

2.60 Similarly, in Australian football magazine *The Roar*, commentator Janek Speight describes how a flat prohibition on flares actually increases the risk of injury to spectators:

What if the A-League introduced pyro-friendly zones for the big games? Fenced off, so those who love inhaling a little smoke and staring into bright lights can have their fun.

The biggest danger that comes from using flares is when they are thrown, that's when injuries become likely. Why are they thrown? Because users are threatened with lengthy bans, they are not going to hold onto that flare for long enough to get identified.

If a flare is held by one person, in a designated area, it could work. Couldn't it?

There does not seem to be another immediate answer. The more police condemn the actions in their current manner, the less likely they are going to convince pyro-loving fans to change their ways.<sup>46</sup>

2.61 The committee is aware that the use of flares at games deeply divides Australian football supporters, with passionate voices both for and against.<sup>47</sup>

2.62 The committee holds the view that, with appropriate consultation and cooperation between A-League clubs, the FFA, police, and active supporter groups, it may be possible to ensure – if flares are used – they are at least used safely.

### **Restrictions on the RBB – police perspective**

2.63 In his evidence to the committee, Assistant Commissioner Denis Clifford suggested that the violence that has marred some WSW matches is due to a 'handful' of 'troublemakers', who have managed to incite larger groups of fans to commit criminal acts, including damaging stadium property.<sup>48</sup>

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45 Richard Giulianotti and Peter Millward, 'The Role of Fan Projects in Avoiding Conflict at Football Matches', *International Centre for Sport Security Journal*, vol. 1, no. 4.

46 Janek Speight, 'Stop the flares! Australia's fight with fire', *The Roar*, 26 October 2015, <http://www.theroar.com.au/2015/10/26/stop-the-flares-australias-fight-with-fire> (accessed 13 April 2016).

47 See for example: Bradley Jurd, 'Australian Football's Biggest Debate Flares Up Again', *The Roar*, 11 February 2016, <http://www.theroar.com.au/2016/02/11/australian-footballs-biggest-debate-flares> (accessed 13 April 2016).

48 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 7.

2.64 Assistant Commissioner Clifford argued that the restrictions that have been placed on the RBB are not intended to treat the majority of law-abiding fans as potential criminals, but to 'target the people that are causing the problems'.<sup>49</sup>

2.65 While the Assistant Commissioner agreed with the committee that alternative methods of policing soccer crowds, such as those suggested by Professor Reicher, are potentially valuable, he pointed out that, in some situations, a cooperative approach to policing crowd behaviour is incapable of meeting the threat posed by small groups of 'troublemakers':

There is a time when you do need to have a police force that will step in and take action in relation to people who break the law – if people threaten the safety of others or put them in danger. It is okay to adopt those principles, and of course they are valid comments that you make, but there is a time when we cannot stand back and let people engage in violent, threatening behaviour.<sup>50</sup>

2.66 According to Assistant Commissioner Clifford, although the police have attempted to engage with the RBB, including by deploying dedicated Fan Liaison Officers, violent outbursts at some matches have had the potential to cause a 'large-scale public disorder'.<sup>51</sup> In those situations, a coercive police response is the only effective way to prevent further violence. In his evidence to the committee, Assistant Commissioner Denis Clifford pointed out that a disproportionately large number of WSW supporters have been either removed or arrested for public order violations:

Since the inception of the Wanderers, I understand that there have been over 100 Western Sydney Wanderers supporters banned, then it drops to something like 50-plus for the Perth Glory club and about 30-something for Sydney FC. I do not know about other clubs, but, interestingly, in that period of time, I am told that Pirtek Stadium has banned eight people from NRL games...<sup>52</sup>

2.67 Assistant Commissioner Clifford suggested that small groups of individuals have the capacity to incite a violent reaction from the majority in a crowd, referring to the Cronulla riots in 2005. Major threats to public order and safety, the Assistant Commissioner maintained, often have their origins in smaller instances of violence and disorder.

2.68 During the course of his evidence before the Committee, Assistant Commissioner Clifford also argued that some of the chants and songs performed by

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49 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 11.

50 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 12.

51 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 8.

52 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 6.



the RBB at games were unusually foul and abusive. This view had the effect of drawing police into controlling activity that may be uncivil but is not criminal:

CHAIR: All right. It is not a criminal offence to stand on seats. It is not a criminal offence to chant foul and abusive language, notwithstanding the fact that it is foul and abusive.

Mr Clifford: You asked me a question about the chants. Look at the nature of it. If somebody said that to any one of us, I would suggest you would react violently. That is a vulgar chant. The one I referred to is talking about 'your mother'. If that is not inciteful—people might wonder why people leave the games after hearing that sort of chant and engage in violence outside the game. That is what I am trying to stamp out, not someone dropping the magic word here and there. It is about that organised, inciteful, vulgar chant.

CHAIR: It seems to me that you have a particular view of how football fans behave and you are determined to ensure they behave in that way. They have a different view of how they should behave—

Mr Clifford: Not all fans. I would like to think the majority of decent fans would support what we are trying to do, and that is to keep them safe.

CHAIR: If they agree with you, they are decent; if they do not agree with you, they are not decent?<sup>53</sup>

2.69 Mr Clifford also drew a distinction between the behaviour of A-League fans and NRL fans, pointing out that, since the foundation of the Western Sydney Wanderers, 100 fans had been banned, while in the same period, only eight National Rugby League (NRL) fans had been banned.<sup>54</sup>

2.70 The committee notes that the number of bans handed out may not be indicative of crowd behaviour at any given sporting event, given that different codes have different banning procedures. In addition, the day immediately after the hearing, the NSW Police Association (the peak representative body for NSW Police officers) issued a press release referring to all Western Sydney Wanderers fans – not just members of the RBB – as 'these grubs'.<sup>55</sup>

2.71 This would seem to indicate a degree of pre-existing acrimony between NSW Police and Wanderers supporters more generally.

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53 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 10.

54 Assistant Commissioner Denis Clifford, NSW Police, *Committee Hansard*, 3 November 2015, p. 6.

55 Police Association of New South Wales, 'Police Association calls out Senator Leyonhjelm', *Press Release*, 4 November 2015, [https://pansw.org.au/downloads/Media\\_Release\\_Archives/2015/041115\\_PANSW\\_MR\\_Police\\_AssocCallsOutSenatorLeyonhjelm.pdf](https://pansw.org.au/downloads/Media_Release_Archives/2015/041115_PANSW_MR_Police_AssocCallsOutSenatorLeyonhjelm.pdf) (accessed 13 April 2016).

### **Committee's view**

2.72 The committee notes that a number of measures to address the root causes of fan violence, including the deployment of dedicated Supporter Marshalls and Fan Liaison Officers, have already been introduced by both the WSW club and the NSW Police. The committee supports these measures, and suggests that they be further developed.

2.73 Furthermore, as the committee recognises the fundamental importance of a transparent, well communicated and fair appeal process in relation to the imposition of a ban by the FFA, it is encouraged by the recent FFA announcement regarding changes to the ban appeal process.

2.74 The committee encourages the NSW Police to build a positive relationship with A-League clubs and their supporters, to ensure that interactions between police officers and fans are productive in achieving both safety and enjoyment for all.

2.75 The committee also encourages both the NSW Police and media organisations to view A-League supporters in the same way they view other dedicated sporting fans, without resorting to stereotyping or demanding they behave in an identical manner to the supporters of other football codes, or of cricket.

2.76 The committee is also of the view that NSW Police should remain mindful of the fact that criminal behaviour is undertaken by individuals, not groups. It is important to be wary of attributing negative behaviour to members of a group solely on the basis of their appearance, dress, or presence within a group. This is particularly the case in light of the jury's findings in the recently concluded Hillsborough Inquest.<sup>56</sup> The jury found there had been 'errors or omissions in policing on the day of the match which caused or contributed to a dangerous situation developing at the Leppings Lane turnstiles'. Much of this came about because police viewed Liverpool fans as an undifferentiated group.

2.77 Furthermore, the committee encourages police to distinguish between criminal behaviour and activities that are legal but uncivil or vulgar. The police are meant to ensure public safety; it is not their role to impose or maintain any particular mode of behaviour or speech on the basis that it does not accord with a particular set of values.

**Senator Chris Ketter**

**Committee Chair**

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56 See further: <http://www.telegraph.co.uk/news/2016/04/26/Hillsborough-disaster-verdict-96-victims-unlawfully-killed-jury-concludes/>