

DRAFT ONLY

The “Blue Heelers”¹ Dilemma: The Vagaries of Police Use of Force in Australia **David Baker**

Introduction

Policing is never far from controversy as police are expected to control or limit dangerous situations. The use of force is central to police work and definitions of policing. As I left Australia, controversies were raging in my home state of Victoria about the use of force or non-lethal force. There have been three fatal police shootings this year and on the weekend a policeman was fatally shot with his own gun. Debate rages over the advocacy of Taser stun guns to operational police.

Contemporary debates about police use of force or lack of force include the issues of:

- police vehicle pursuits resulting in fatalities (especially in WA and NSW),
- racial riots in Sydney in February of 2004 and 2005,
- the re-emergence of fatal police shootings in Victoria,
- the use of capsicum spray,
- the deployment of Taser guns,
- gangland killings in Victoria with links between some members of the former drug squad and Victoria Police.

Debate has raged over how much force private security staff at hotels and nightclubs can employ. This issue became headline news after the death of former Test cricketer, David Hookes, in 2003 when he was allegedly hit by a nightclub security guard.

However, it must be stressed that the vast majority of citizen-police interactions in Australia do not involve coercion. The use of police force is a rare and uncommon event, but in the highly-regulated environment of the 21st century, excessive or lethal force by police attracts critical scrutiny by the media, concerned groups and the police themselves.

Excessive use of force by police has surfaced at various times in Australian history, especially in relation to Indigenous peoples, the unemployed, picketers, youth and the socially marginalised (Baker 2005:28-49, White & Perrone 42-50, Findlay 2004:4). Police enforced the law that dispossessed Aborigines of their land, suppressed Aboriginal resistance and enforced segregation (Finnane 1994:111-130). The 1991 Royal Commission of Aboriginal Deaths in Custody found that an Aborigine was 27 times more likely to be in police custody than a non-Aborigine. Deaths in police custody present a graphic insight of the unequal treatment of Aborigines by police around Australia. As Chan (1997) elaborates, racism and xenophobia have been manifest in police occupational culture.

Findlay (2004:12) argues that police in Australia have acted within an atmosphere of “selective coercion” as they have confronted the young, the unemployed, ethnic communities and marginalised groups isolated within the vast Australian continent. Policing of the 2004 Redfern riot and the 2005 Macquarie Fields riots, both race riots in Sydney, have highlighted the difficulties of police coercive responses. Arguably, Redfern was the worst riot in Australian history, with Aboriginal youth and NSW police in combating an urban environment of poverty, unemployment, limited education, and drug and alcohol dysfunctions (Ridgeway 2004). One Aboriginal leader reflected that things

were “very bad between our people and the police because they really gave our people a really hard time in the early ‘70s and ‘80s” (ABC radio: World Today, 16 February 2004).

Settle (1990: 20, 29) sees much patrolling police “intimation of working-class kids on the street” as an irrational effort to force respect for the police organisation and to defend group solidarity. Such police intervention of young males is based on discretionary powers but employed differentially against the socially vulnerable. Adverse effects such as death, injury and community antagonism have followed belligerent police incursions but normality has often been quickly restored. A defining challenge for modern-day police is to achieve an appropriate balance between maintaining safety and order while avoiding excessive application of force (Bowling et al 2004:4). Thomas Lupton, who established the NSW police tactical response group in the early 1980s, claimed that police at the time of the four nights of the Macquarie Fields rioting failed to achieve that balance: they had “stood still for too long” and lost their “psychological effect” by not taking out the 60 or so rioters at Macquarie Fields (*Daily Telegraph*, 3 March 2005).

Police History, Structure and Powers in Australia

In the nineteenth century, the six Australian colonies all established independent police forces organised and supported by centralised bureaucracies. With the advent of the Federation of Australia in 1901, each of the six states maintained its policing autonomy under a centralised, disciplined, bureaucratic system. After the Hilton bombing in 1979, the Australian Federal Police was formed to enforce commonwealth law. The Northern Territory runs its own police force. These eight centralised public police departments (six state, AFP, NTP) are large-scale organisations: the NSW Police Service numbers more than 14,000 sworn members; Victoria Police has approximately 11,000 sworn members. Approximately 47,000 sworn police serve a population of 19 million Australians. There is no unitary police administration in Australia (unlike the strongly centralised, unitary New Zealand police system).

These eight police agencies acknowledge a legacy to the model of Sir Robert Peel’s London Metropolitan Police. Colonial police forces in Australia adopted similar policy and administrative control mechanisms and replicated the English policing institutions. Although in theory policing was meant to be civil in nature, both in organisation and operation it often was militaristic (Haldane 1995, McCulloch 2001). Police departments adopted many procedures and symbols of the military: uniform, ranks, batons, drill, ceremonies, procedures. Colonial policing featured many confrontational and militaristic clashes, especially with workers (eg, 1850s on the goldfields, 1873 Clunes Riot, Great Strikes of early 1890s; see Baker 2005: 28-49). Yet, even in colonial times, much policing was of a community nature as the local police often acted as a “jack of all trades” performing a variety of roles including enforcer, social worker and even undertaker (Haldane 1995: 101-113).

Each state agency, as the controlling functionary, maintains its authority as the legitimate coercive agency of that particular state and remains the visible symbol of state authority. Some states dropped the word “force” from the title as being too aggressive and substituted the more approachable “service” (eg. Queensland Police Service, New South Wales Police Service). Philosophical change has witnessed Australian policing adopting community policing and problem-oriented policing models rather than a militaristic

model. However, all the state police agencies have some form of special response units. Victoria boasts an elite Special Operations Group and a specific crowd control unit named the Force Response Unit. McCulloch (2001) argues that there has been a blurring of distinctions between police and military training and activities in Australia.

The AFP is a unique police organisation in that it performs the three-fold law enforcement functions of the local policing of the Australian Capital Territory (suburban Canberra), national and international policing. The contemporary AFP is fundamentally an investigative police service and since S11 and the “Bali bombings” (12 October 2002) has emerged together with the Australian Security Intelligence Organisation as the leading Australian institutions of the “war against terrorism”.

With Australia’s recent priorities of combating people smuggling, transnational crime and terrorism in the South-east Asian and Pacific regions, the AFP’s off-shore and intelligence-gathering roles are intrinsic to the enforcement of the Federal Government’s interventionist role in the region. The June 2002 federal legislation enacted terrorism as a crime and subsequently provided the AFP with a mandate against extremists and subversives. The advent of “failed states” in the Pacific has aroused fears of easy facilitation of terrorist bases and finances, weapon smuggling, drug dealing, money laundering and people smuggling (Baker 2004). The 2003 Australian-led, peace-making contingent to the Solomon Islands constituted 155 AFP agents and 90 Australian Protective Services members protected by 1500 Australian Defence Force personnel. 300 police, both federal and state, are performing duties in Papua-New Guinea.

Since 1985 all Australian police services have been subjected to varying forms of civilian oversight of the complaints against police process, including excessive use of force. Following calls for a royal commission into the Victoria Police in 1996, the Victoria Police established an internal Ethical Standards Department. Its primary role is to investigate complaints against police and to prevent, detect and investigate corruption, crime, malpractice and breaches of discipline within Victoria Police. It is a large department with approximately 200 personnel; ESD’s Complaint Investigation Division manages and investigates specific operational incidents including use of firearms, pursuits, deaths in custody and other incidents involving police which are likely to be of public concern. A few months after the creation of the Police Ombudsman in 2004 in Victoria, the position was replaced by a Director, Police Integrity within an Office of Police Integrity, both of which reside in the Ombudsman’s Office. The Ombudsman and Director, Police Integrity are the same person.

Use of Force Principles and Guidelines

The vast majority of police-citizen encounters in Australia do not involve the use of force or even the threat of force. The first principle of the *National Guidelines for Incident Management, Conflict Resolution and Use of Force: 2004* (p.v) explicitly states that police management should “promote the policy that the police will use the minimum amount of force appropriate for the safe and effective performance of their duties. In addition, any force used should be proportional to the level of risk involved.” What force is “appropriate” in a given circumstance? That nebulous and ambiguous term is often defined in hindsight by the courts. Operational police can only carry operational safety equipment “for which they are fully trained and deemed competent”. Emphasis is placed on “the over-arching importance of effective communication and conflict resolution as

means to resolve incidents” (p.vii). Tactical options range from police presence, lethal force, cordon and containment, and a variety of less lethal options (p.2). “Ongoing tactical communication” and an unwritten “hasten slowly” approach are often employed in appeasing and controlling crowd and protest situations. Police organisations and individual police are conscious that they can be held vicariously liable for unnecessary use of force as well as failing to perform required duty. (civil litigation and damages). The Queensland Police Service’s ‘Operational Procedures Manual’ stresses that the use of force must be authorised, justified, reasonable, proportionate, appropriate, legally defensible, and tactically sound and effective (CJC Research Paper 2000:3).

Victoria Police follow section 462A of the *1958 Crimes Act* which states:

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing an offence.

The pertinent phrase is “not disproportionate to the objective”. This statement relates to all citizens, not just police.

Situational, rather than incremental, models are being explored by state police agencies for the selection of appropriate tactical options. Incremental models follow a step-by-step, linear progression in the level of force but such models restrict tactical options and limit the opportunity for de-escalation of the incident. Situational models follow a circular format in which tactical options are randomly arranged and in which continual assessment of the scenario creates appropriate responses (National Guidelines, 2004:10). Options available to Victoria Police under this option include: presence, other tactics and weapons, tactical disengagement, OC spray, empty hand tactics (unarmed impact), negotiation, firearm, baton (armed impact), and cordon and containment.

The Queensland Criminal Justice Commission in 1999 conducted a survey of 1,005 defendants (carried out at eight magistrates courts) about their perceptions of police behaviour. 80% of respondents claimed that they were not subjected to any police force. Twenty percent reported that police had used some kind of force such as ‘general struggling’ (grabbing, pushing, shoving, wrestling, holding, dragging). The Queensland CJC survey concluded that most suspects were apprehended without any police force and where police used force, it was usually at the lower end of the scale. A proper monitoring system of police use of force was advocated (CJC Research Paper 2000:3).

In the 1970s, NSW police was the only routinely armed force in Australia. Today, police in all states routinely carry a firearm; it is mandatory on operational duty. Paramilitary, confrontational and aggressive tactics are still evidenced randomly in Australia (eg, Richmond Secondary College baton charge of December 2003; see Baker 2005:64-69). There are some subtle differences between states, but street police also usually carry a baton, handcuffs, extendable baton and some form of chemical spray (normally capsicum spray). The purpose of the non-lethal weapons is to save the lives of both police and the public, although the firearm is regarded as necessary in certain circumstances. Police dogs and mounted police are used for certain situations as well as the paramilitary specialist units.

Taking a Beacon to Lethal Force

The issue of lethal use of force has been an on-going saga in Victoria. 33 fatal shootings took place in Victoria from 1984 to 1995, which was double that of the rest of Australia and which was very difficult for the police hierarchy to explain. Six out of nine people shot dead by police in 1994 had a history of mental illness. State coroner Hal Hallenstein criticised a “police ethic and culture of public duty requiring courage in physical exposure to personal risks”. He asserted that Victorian police considered it a public duty to risk their lives in confrontations and that they did not have adequate training in alternatives (*Age*, 21 June 1994, pp.1 & 4). After an increasing number of calls for an external inquiry and after considerable consultation with other policing agencies, Chief Commissioner Comrie announced the implementation of Project Beacon, which was designed to develop defensive tactics to limit dependence on firearms. Comrie emphasised that for this Safety First evaluation philosophy, “the success of an operation will primarily be judged by the extent to which the use of force is avoided or minimised”. This major operation resulted from community pressures and outcries against fatal police shootings in the first instance. The government happily let Victoria Police rectify its difficulties. In the face of vehement criticism over the fatal police shootings, both Conservative Government and Police stood firm in their defence of exclusively internal police procedures to deal with the concerns.

More than 8,600 police undertook intensive, “safety first” training in conflict resolution, dealing with the mentally impaired and the use of firearms. Police attended a five-day operational safety and training tactics course, with a two-day follow-up course every six months. The course included incident planning, dealing with mentally disordered persons, conflict resolution, defensive tactics, scenario training and firearms training (*Victoria Police: Annual Report 1996-1997*, pp.4, 59-60). The Tactical Options Model, which was implemented with Beacon, is a situational model providing feasibility to react or initiate action with the objective of minimum force and a safe resolution (*Project Beacon 1996*). Victoria was the first state to establish a Use of Force Register to monitor the extent of use and the effectiveness of less-than-lethal equipment options.

The Beacon principles were extended to training for public order situations. The apparent success of Beacon mitigated the increasing demands on the government for an independent investigation. The introduction of capsicum spray, compulsory apparel for operational street police, was a feature of Beacon. It has attracted controversy from some civil liberty groups, lawyers and doctors due to alleged potentially lethal side-effects and potentially inappropriate use, but again the government has supported the police decision.

Initial results indicated that Beacon had been successful with a significant decrease in the number of people killed by police, but much had to happen before its need was recognised by police. Certainly until 2004, there was a significant decrease in fatal police shootings. It may be too simplistic to assign a cause and effect relationship and much may still need to be done. In the past 14 months in Victoria, six people have been fatally shot by police, the majority at the hands of the anti-terrorist, paramilitary Special Operations Group. This figure is more than the rest of Australia put together. The Office of Police Integrity is investigating the police shootings over the past two years. Victoria Police homicide detectives are conducting the investigation into the latest fatality on behalf of the coroner.. Bruce McKenzie, the Police Association’s assistant secretary, criticised the inquiry as undermining and a misuse of powers (*Age*, 21 April 2005, p.20). Task Force Victor, the only publicly released internal review of Victoria Police firearms

tactics, recommended a reduction on reliance on the SOG but its role has actually been expanded. Like SWAT teams in America, Victoria's SOG members, an elite who are highly trained, are more likely to use weapons than street police. Critics of the recent police shootings advocate conflict resolution and verbal negotiation, rather than confrontation (Walters 2005). In two cases, capsicum spray failed to subdue the alleged offender.

The police shootings have prompted debate about police use of alternative tactics, including capsicum spray and Taser guns, when apprehending suspects. The 98% membership-strong union, Victoria Police Association, has urged the state government to issue Taser guns to all frontline police (*Herald-Sun*, 15 November 2004, p.17). The police minister advocated the introduction of stun guns with 50,000-volt charges to disable suspects. This year, the Special Operations Group and the Critical Incident Response teams are conducting a 12-month trial of the X-26 stun guns model (*Herald-Sun*, 6 April 2005). A specialist Australian Federal Police unit is also trialling the Taser X-26. A coalition of Liberty Victoria, the Law Institute of Victoria and the Mental Health Legal Centre has opposed Taser guns on the grounds that, although they may save lives in the short term, they are dangerous and potentially fatal and that police should try to avoid violent responses. Other techniques such as negotiations, handcuffs, capsicum spray or batons might be more appropriate where the threshold for lethal force had not been encountered. A leaked report from an Alfred Hospital report warned that Tasers posed "immediate risks and potentially fatal dangers" (*Age*, 18 April 2005). An Adelaide man was hit in the eye by one of a Taser's fishhook-like darts. All the states, except Tasmania, have issued Taser guns to some sort of specialist task and tactical response units (Law Institute of Victoria media release, 12 November 2004). Victoria Police Association also is campaigning for the replacement of the present issue of Smith and Wesson .38 revolvers by semi-automatics. Victoria and South Australia are the only two states without semi-automatic pistols (*Herald-Sun*, 13 July 2004, p.25).

Gangland organised crime killings has also become the new cause celebre in Victoria, with allegations that police are doing too little to prevent the gangland vendettas. Connections between organised crime and some former drug squad members have emerged. 42 of the 97 organised crime gangs operating in Australia have been identified as having links with Victoria.

Collective Use of Force: Traditional, Confrontational Policing of Industrial Disputes

The ambivalence of police use of force is epitomised by policing of industrial disputation in Australia. Historically, in periods of bitter industrial strife, police served employer and government demands for decisive action. Unionists perceived police as the agent making it possible for the capitalist employer to continue production by the use of "scab" (non-striking or replacement) labour – the enemy of the unionised workforce. Although the policing of industrial disputation is an irregular and infrequent activity for police, such disputes have been one of the more common arenas for police and worker clashes. The existence of a picket establishes a potentially violent confrontational situation. The baton charge has been the symbol of police public order might. Historically, it was the main coercive instrument of crowd dispersal, and potentially a source of escalating violence (della Porta and Reiter 1998: 2). In Australia, police were ruthless in the suppression of shearers in the Great Strikes of the 1890s and the stevedores in the late-1920s. Avowed anti-unionist commissioners such as Victorian Thomas Blamey and his South Australian counterpart R. L. Leane, willingly supported hard-line confrontational crusades against the

stevedores in the late 1920s.

Forceful police actions in industrial disputation -- arrests, physical confrontations, summonses, dislocation – were directed against workers, especially the union organisers. Although there has been no formulated policy of repression against strikers, whenever major conflict between worker and police occurred on the Australian industrial front, police actions were usually swift, uncompromising and ruthless (Baker 2001). The failure of government to hold police accountable for alleged excesses, violence and brutality while controlling disputation has been a common characteristic of Australia's industrial history. A few notable examples follow.

- On 2 February 1912, "Black Baton Friday", in Brisbane about 15,000 demonstrators were confronted by the police and special constables who were armed with rifles and bayonets. Batons were used freely against the marchers. (Johnston 1992: 185-187).
- On 2 November 1928 constables fired approximately one hundred bullets at fleeing stevedores at Port Melbourne. Alan Whittaker, "got shot right through the back of his neck. The bullet came out through his mouth" (in Lowenstein and Hills 1982: 64). The stevedores went "berserk" and showered the police with blue metal.
- In Queensland, the illegal march of unionists, 'the 1948 St. Patrick's Day bash', resulted in numerous arrests, raids on union offices, the hospitalisation of several demonstrators and the bashing of Fred Patterson, a member of the Queensland Parliament (Blackmur 1993).

Police have been determined to keep control of public order, their perceived mandate, while governments are determined to maintain control of the state. Disorder has traditionally been contained by the strategy of concentrating large numbers of unarmed officers in order to disperse the crowd; ie "drowning" a picket-line by overwhelming the group with the sheer presence of police numbers (Cairns interviews).

The Choice between Force or Compromise: the 1998 Australian Waterfront Dispute

The primary source of improved public order policing is to advance formal cooperation between the parties. As a result of violent clashes between police and the Builders Labourers Federation in the 1980s, Victoria Police and the Victorian Trades Hall Council (VTHC) established professional protocol arrangements to deal with potentially volatile situations. Victoria Police established the position of Industrial Disputation Officer to liaise with employer, unions and government in order to provide practical and pragmatic advice to operational police about industrial law and "desirable procedures for the policing of picket lines" in terms of available numbers, location, timing, acceptable behaviour and control contingencies.

Police and Trades Hall Councils co-operate in relation to notification of rallies, boundaries, routes and acceptable picketing practices. Neither union leaders nor police want injured members or the stigma of violence associated with negative publicity. But if police are called to a dispute, either major or minor, they "take control of it" (Winther interview 2001).

The 1998 Australian waterfront dispute, the largest industrial dispute since World War Two, revealed the effectiveness of community union protest and the desirability of negotiation, compromise and formal protocol between the union movement and non-confrontational and consultative state police in order to maintain peaceful protest and to

avoid violence (Baker 2005:163-182). Picketing or locked out employees act for an articulated and collective purpose; that purpose is not criminal. Police force, therefore, is problematic in such circumstances. On 7 April 1998 Patrick Stevedoring sacked its entire unionised workforce of 1,400 full-time and 600 part-time workers. The ingredients of a prolonged and bitter national dispute existed in a federal Government headstrong for both waterfront reform and the demise of the Maritime Union of Australia (MUA), a stevedoring company prepared to sack its entire workforce and a powerful union prepared to fight for its survival. Mass picketing, disciplined and resolute, on the wharves prevented a quick, decisive victory by Patrick Stevedores and the Federal Government. However, the volatility and unpredictability of the five month “War on the Wharves” did not culminate in full-scale pitched battle between picketers and police.

Throughout the dispute, the MUA, various THCs and ACTU officials advocated and generally maintained a peaceful, disciplined and law-abiding protest determined to gain significant sections of community support. In response, police normally adhered to a peace-keeping and non-interventionist philosophy as opposed to the rigid law enforcement of arraignment summary offences, that are basically minor charges (Winther interview 1998). The Victoria Police Chief Commissioner's instructions (*Police Gazette* 28 April 1997, paragraph 30) state that minor offences (those common to picketing) should be “ignored in the interests of containing the overall situation” in public order situations and not deplete police personnel numbers by conducting arrests. The seeds of the police and union cooperation, based on communication and negotiated management of potential conflict scenarios, had been nurturing for about a decade.

Daily meetings between police, MUA and VTHC negotiators were conducted at Police Headquarters, and close consultations took place on days of great industrial volatility. Communication was intense, regular and co-ordinated. A special mobile telephone listing of key personnel was kept by both police and union negotiators (Winther interview 1998). Victoria Police viewed the consultation as an extension of its Project Beacon training, seeking non-violent strategies to control potentially dangerous situations emphasising “safety first” rather than a police culture of “risk-taking” (Victoria Police 1997, pp 4, 59-60). In Victoria, MUA officials made commitments of no violence, only routine yelling at change-overs of non-union labour; police agreed not to employ shields, batons and horses to intimidate protesters.

(i) East Swanson Dock

The potential for violence was most pronounced at East Swanson Dock, Melbourne, which became the focus of mass picketing. On 17 April, police notified the union negotiators that they would be removing the picket line because it was blocking vehicle access to the port. They informed the negotiators that there would be no riot shields, no truncheons, no excessive physical force and that horses would not lead the operation. In return, the unions agreed to safeguard women and children: there would be no violence, only passive resistance (Higgins interview 1998). Near dawn on Saturday, 18 April, 1000 police confronted a determined opposition from 4000 MUA members and supporters, later augmented by 2000 construction workers. Strategically, the lack of open space at the dock limited police ability to manoeuvre the throng of people. Police, legally empowered to arrest, move and detain, used discretionary powers not to arrest protesters on trespass laws.

As industrial court rulings unravelled, a truce ensued between police and picketers in which “both parties were true to their word” (Winther interview 1998). Throughout the dispute, Victoria Police, acting according to legal advice, appeared to be delaying any sortie against picket lines until the Federal and High Court decisions were announced. Police would have appeared “rather foolish” if they had intervened hastily and forcefully prior to the court rulings (Winther interview 1998). If court orders had not favoured the MUA in April 1998, police had alternative operational plans to act decisively and forcefully. Police would have “eventually” moved to “facilitate movement of trucks in and out of the dock, there is no trouble in the world about that” (Winther interview 1998). The uncertainty is whether or not police would have been successful because the MUA, via the “telephone tree”, was capable of rallying in excess of ten thousand at East Swanson Dock in such an eventuality. If full-scale pitched battle between picketers and police had ensued, Chief Commissioner Comrie feared “serious injury and even loss of life to a number of people” (3LO Terry Laider program, 17 March 1999). Comrie, boasting of a record of managing disputes with “minimal violence”, refused to enter “battle mode” and be “pushed into using excessive force” (*Courier Mail* 20 April 1998).

(ii) Western Australia Tactical Response

By contrast, in Western Australia police played a more aggressive, interventionist and legalistic role, although violence was still largely avoided. 120 police, including the tactical response group and the independent patrol group attired in riot gear, used batons to disperse a union protest at Fremantle on 16 April (*West Australian* 17 April 1998: 1 & 7). Despite the volatility of the situation, the protesters sat down peacefully and about seventy were dragged away by the hands to police vans. Paramilitary response units, like those used in WA, have emerged in most industrialised nations and states: they are specially trained, armed and mobile, in order to quell both industrial and political dissent if required (PAJ Waddington 1994: 23). The sortie of the riot police was a “tactical blunder” which tarnished the police image at a time when policing rhetoric extolled the importance of developing community links (Cooke interview 1998). State police forces elsewhere avoided such forays. The police image and demeanour of black-shirted riot police appeared ominous but such a threat never fully eventuated.

(iii) Police Commissioners Communique

Police commissioners established a framework to prevent the use of unnecessary police force. In an unprecedented and significant initiative, state police commissioners at their annual conference in Melbourne on 21 April issued a statement advocating a “negotiated” and “non-violent” resolution of the maritime dispute. Conscious of the “complex and emotive” nature of the dispute, the commissioners stressed that police would act as necessary to deal with unlawful blockades, but reaffirmed “their strong desire that the maritime dispute is settled through negotiations and the legal processes rather than violent conflict” (*Sydney Morning Herald* 23 April 1998). The police commissioners advocated the safety-first, non-coercive approach for all ranks: “Physical contact on the wharves is likely to lead to violence and perhaps serious injury to participants and police” (*Courier Mail* 23 April 1998).

(iv) Political Players Advocating Force

The 1998 police-union protocols and non-confrontational policing of industrial disputation are being challenged by a New Right agenda. Powerful forces are encouraging and pushing the police to return to more traditional and coercive strategies

against organised labour, protests and recently racial riots in Sydney. Criticism from employer and conservative politicians focused on the police's inaction against the MUA assemblies in 1998. Premier Kennett in private talks with Chief Commissioner Comrie and Deputy Commissioner Sinclair insisted that the blockade be broken (*Age: News Extra* 9 December 2000). Stuart Wood (1998:23-25), a solicitor for Patrick, argued that the future policing of pickets should involve: early intervention from a dispute's beginning so that picketers cannot establish a blockade; police enforcement of all law even if violent confrontation ensues; no police consultation with "persons determined to break the law", presumably any picketer; and police training in the "erroneous policing strategy" employed in the 1998 MUA dispute. Patrick's Chairperson Chris Corrigan scorned police inaction in the face of illegal "community protest", time delaying "while the police sniff the wind to see who's winning the public relations war before deciding whether to enforce the law" (Corrigan 1998). Corrigan, like the Federal Government, acted upon the traditional assumption that if the employer demands police intervention to clear passage that police will immediately concur without consideration of the consequences. Despite the various injunctions, it is not the courts which physically clear pickets, but the police. The police are the legitimate coercive agent of the state, a vital ingredient if obstructionist and symbolic pickets are to be removed from the stage of an industrial dispute. If police are to attempt to break mass, well-organised and disciplined pickets or blockades as occurred in April 1998, they will need to deploy riot-trained personnel and paramilitary riot technology as Victoria Police utilised during the S11 protest.

During the waterfront dispute, police were not enforcing those offences, mainly minor, that relate to picketing, but rather were concerned with the practical and potentially dangerous consequences of enforcing such laws. According to senior Victoria Police, the lack of arrests, complaints and injuries justified "a good result" for a hundred days' operation (Winther interview 2001).

Conclusion

In Australia, the use of force by police has generally become much more accountable and restrained. However, those on the margins know that police always have the potential to use legitimate force if it is reasonable in the circumstances. Almost invariably confrontations are weighted in the favour of police with their modern armoury of guns, capsicum spray, riot shields and helmets, horses, dogs and in some cases Taser guns. Elite squads exist in all states capable of employing militaristic tactics if needed. The flexible and non-confrontational philosophical approach of police sits ambivalently with paramilitary capabilities. Talk may be the preferred option of all, but the "Blue Heelers" have legal and practical capacity to use force. An uneasiness exists amongst police and sections of the community about the levels of force appropriate for given circumstances. The challenge for police leadership is to reconcile the capacity to use force with the ability to negotiate and utilise other violence minimisation strategies.

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¹ “Blue Heelers” is Australia’s longest running television police program. Set in a mythical rural town, the local force foster community good-will. However, in virtually every episode the police are beset by violent crime and must use considerable displays of force. It is an unrealistic portrayal of policing in Australia, especially rural Australia.