

Policing people of Middle Eastern appearance : the construction of a suspect community in New South Wales, Australia

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Policing People of Middle Eastern Appearance

The Construction of a Suspect Community in New South Wales, Australia

Megan McElhone

A thesis in fulfilment of the requirements for the degree of
Doctor of Philosophy



Faculty of Law

April 2019

This thesis was written on the lands of the Bedegal people of the Eora Nation and the Cabrogal people of the Darug Nation. I acknowledge the Traditional Owners of the lands where I live and work, and pay my respects to Elders past, present, and emerging.

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ABSTRACT

People of Middle Eastern background and appearance have been over-policed by the New South Wales Police Force since the 1990s. This over-policing has involved an assemblage of policies, practices, and institutional units. Police work has also coalesced with law-and-order police, political, and media rhetoric to produce public discourses about the criminal capacities of 'Middle Eastern' people, as captured in the neologism 'Middle Eastern organised crime'. These developments have been subject to little academic scrutiny. This thesis reduces the gap in the literature by examining the Police Force's approaches to policing people of Middle Eastern background and appearance, for non-terrorism-related matters, between 1998 and 2018.

The conceptual tool used to examine the over-policing of people of Middle Eastern background and appearance is the 'suspect community thesis'. The suspect community thesis draws attention to institutionalised policies and practices that render members of racialised groups collectively subject to extraordinary policing and surveillance because of their status, identity, or associations, rather than their conduct. This study does not merely apply the suspect community thesis but also develops it in specific ways, thereby making both empirical and conceptual contributions. It draws on data from interviews with lawyers, community workers, members of the Police Multicultural Advisory Council, former police officers, and a range of documents.

This thesis contends that the Police Force's over-policing of people of Middle Eastern background and appearance has created and maintained a 'Middle Eastern suspect community' in New South Wales. Key themes traced in this regime of over-policing include the creation of police squads; the territorial policing of localities racialised as Middle Eastern; the targeted use of legal powers; and the extension of surveillance and regulation through community-based policing. The thesis also explores how institutional censorship and image-maintenance practices have allowed the police organisation to insulate its public knowledge claims about the suspect community.

The policing of the Middle Eastern suspect community has been animated by proactive, intelligence-led, and pre-emptive rationalities and methodologies, which have also taken root in other jurisdictions. Accordingly, the findings of this thesis may be useful in conceptualising the over-policing of racialised communities in other contexts.

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Undertaking a PhD is an opportunity that most people can't afford to pursue; especially in Sydney. My parents have made lots of sacrifices (not least allowing me to live at home into my mid-twenties) so that I could pursue this PhD and I will be forever grateful, so thank you Loz and Tez. Special thanks also to my sister Michelle for her unwavering belief in me. More broadly, my family have (often unknowingly) provided me with much-needed reminders of what's important when I have fallen into the trap of isolating myself.

Finally, thank you to my friends for encouraging me (and for forgiving me when I fell off the face of the Earth and missed football training). I look forward to seeing you all soon.

Abstract

People of Middle Eastern background and appearance have been over-policed by the New South Wales Police Force since the 1990s. This over-policing has involved an assemblage of policies, practices, and institutional units. Police work has also coalesced with law-and-order police, political, and media rhetoric to produce public discourses about the criminal capacities of ‘Middle Eastern’ people, as captured in the neologism ‘Middle Eastern organised crime’. These developments have been subject to little academic scrutiny. This thesis reduces the gap in the literature by examining the Police Force’s approaches to policing people of Middle Eastern background and appearance, for non-terrorism-related matters, between 1998 and 2018.

The conceptual tool used to examine the over-policing of people of Middle Eastern background and appearance is the ‘suspect community thesis’. The suspect community thesis draws attention to institutionalised policies and practices that render members of racialised groups collectively subject to extraordinary policing and surveillance because of their status, identity, or associations, rather than their conduct. This study does not merely apply the suspect community thesis but also develops it in specific ways, thereby making both empirical and conceptual contributions. It draws on data from interviews with lawyers, community workers, members of the Police Multicultural Advisory Council, former police officers, and a range of documents.

This thesis contends that the Police Force’s over-policing of people of Middle Eastern background and appearance has created and maintained a ‘Middle Eastern suspect community’ in New South Wales. Key themes traced in this regime of over-policing include the creation of police squads; the territorial policing of localities racialised as Middle Eastern; the targeted use of legal powers; and the extension of surveillance and regulation through community-based policing. The thesis also explores how institutional censorship and image-maintenance practices have allowed the police organisation to insulate its public knowledge claims about the suspect community.

The policing of the Middle Eastern suspect community has been animated by proactive, intelligence-led, and pre-emptive rationalities and methodologies, which have also taken root in other jurisdictions. Accordingly, the findings of this thesis may be useful in conceptualising the over-policing of racialised communities in other contexts.

Acronyms and Abbreviations

Abbreviation/ Acronym	Term
9/11	11 September 2001 attacks in the United States
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACC	Australian Crime Commission
ACIC	Australian Criminal Intelligence Commission
AFP	Australian Federal Police
BFL	Brothers for Life
BOCSAR	Bureau of Crime Statistics and Research (New South Wales)
CALD	Culturally and linguistically diverse
CCC	Community Consultative Committee
CGS	Criminal Groups Squad
CIB	Criminal Investigation Branch
CLC	Community Legal Centre
CMU	Crime Management Unit
COPS	Computerised Operational Policing System

ECLO	Ethnic Community Liaison Officer
EIAU	External Information Access Unit
ERISP	Electronically Recorded Interview of a Suspected Person
FOI	Freedom of Information
FPO	Firearms Prohibition Order
GIPAA	<i>Government Information (Public Access) Act 2009</i> (NSW)
IPC	Information and Privacy Commission (New South Wales)
ISIL	Islamic State of Iraq and the Levant
JOCG	Joint Organised Crime Group
LAC	Local Area Command
LECC	Law Enforcement Conduct Commission (New South Wales)
LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)
LGA	Local government area
MCLO	Multicultural Community Liaison Officer
MEOC	Middle Eastern organised crime
MEOCS	Middle Eastern Organised Crime Squad
MP	Member of Parliament

MPSP	Multicultural Policies and Services Program
NCAT	New South Wales Civil and Administrative Tribunal
NESB	Non-English-speaking background
NJU	National Joint Unit
NYPD	New York Police Department
NSW	New South Wales
OCR	Operations and Crime Review
OMCG	Outlaw Motorcycle Gang
PAC	Police Area Command
PCYC	Police Citizens Youth Clubs
PISC	Participant Information Statement and Consent Form
PMAC	Police Multicultural Advisory Council
PMU	Police Media Unit
PTA	<i>Prevention of Terrorism (Temporary Provisions) Act 1974 (UK)</i>
QSARP	Qualitative and Strategic Audit of the Reform Process
RBT	Random breath test
RCU	Research Coordination Unit

RMS	Roads and Maritime Services (New South Wales)
SCC	State Crime Command
STMP	Suspect Targeting Management Plan
TA	<i>Terrorism Act 2000</i> (UK)
VKG	NSW Police Force radio call sign

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Chapter I

‘Guilty of Middle Eastern Appearance’: An Introduction

You see, we suffer from a chronic condition, all of us. A crime so grand, it is best viewed as a deadly disease or an eternal curse. A pre-emptive crime; one that convicts us before we even act. A crime so grave, it justifies having your shoulders dislocated, your head smashed against the curb or your face showered with pepper spray. We are criminals, it’s true. Guilty of Middle-Eastern appearance.¹

In May 2015, twenty-year-old Omar Bensaidi authored an opinion piece entitled ‘Of Middle Eastern Appearance’ for Right Now, which is a media outlet that publishes content about human rights issues in Australia. In a little over a thousand words, Bensaidi relays several instances in which he was harassed or caused physical or emotional injury by police officers employed by the New South Wales (NSW) Police Force.² At its heart, Bensaidi’s piece troubles the idea that police officers simply detect and respond to criminal wrongdoing. Rather, Bensaidi testifies to a lived experience of policing in which he and his friends are subjected to police attention and intervention more for who they are – or at least who they appear to be – than for what they have done.

As indicated by the title of his piece, Bensaidi is ‘of Middle Eastern appearance’. For Joseph Pugliese, ‘of Middle Eastern appearance’ is not merely an ethnic descriptor

¹ Omar Bensaidi, ‘Of “Middle Eastern Appearance”’, *Right Now*, 25 May 2015 <<http://rightnow.org.au/opinion-3/of-middle-eastern-appearance/>>.

² In Australia, there is a police organisation for each of the states and the Northern Territory. The NSW Police Force is the police organisation for the state of New South Wales. New South Wales is Australia’s most populous state. At the time of writing, the population of New South Wales is around 7.5 million people; approximately 4.4 million of whom live in the capital city, Sydney. The NSW Police Force is Australia’s oldest and largest police organisation. According to the Police Force’s 2017-18 Annual Report, the Force employs 20,725 people (16,788 sworn officers and 3,937 civilian staff members). See NSW Police Force, *Annual Report 2017-18* (2018) 5. The official title of the police organisation in New South Wales has changed several times in recent decades. Throughout this thesis, which considers policing in New South Wales between the 1990s and the present, I refer to the police organisation by its correct title at the point in time under immediate consideration.

used to thematise diverse (but often dark-eyed, bearded, and ‘swarthy’)³ individuals;⁴ it is also a signifier for the mutually constitutive relationship between essentialist ideas about ‘Middle Eastern’ people, and the routinised suppression and surveillance of the people in question.⁵ As described by Pugliese, the ‘trope’ ‘of Middle Eastern appearance’ functions as a deposit for Orientalist antipathies and contemporary fears about crime and terrorism.⁶ These antipathies and fears are inscribed into the bodies of individuals who are read geopolitically in ways that they cannot avoid and bestowed with presumptive Oriental, criminal, and terrorist identities even when they have not engaged in any substantive wrongdoing.⁷ Through processes of collective attribution, ‘race, and its identificatory descriptors, becomes coextensive with the activities of an entire community rather than the few individuals who actually commit crimes’.⁸ These processes, which Pugliese calls ‘homogenising violence’, are sustained by the media and law enforcement and security practices.⁹ Reflecting on his own experience of ‘homogenising violence’, Bensaidi concludes his piece with the assertion, quoted above, that he and ‘his community’¹⁰ have been policed because it is a crime to be ‘of Middle Eastern appearance’.¹¹

Throughout his piece, Bensaidi eloquently describes how the police’s acts and omissions bear heavily upon him. This is apparent in a literal sense in one of Bensaidi’s recollections, in which he describes being restrained on a paved surface under the weight of an officer who repeatedly drove his knee into Bensaidi’s back and used his

³ Joseph Pugliese, ‘The Locus of the Non: The Racial Fault-Line of “of Middle Eastern Appearance”’ (2003) 2(3) *Borderlands E-journal* <http://www.borderlands.net.au/vol2no3_2003/pugliese_non.htm> [19]. See also Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000) 171–72.

⁴ Pugliese, above n 3, [11], [28].

⁵ Ibid [5], [30], [37]–[38], [42]–[45].

⁶ Ibid [5], [20], [23], [28]–[29], [38]. See also Joseph Pugliese, ‘Biotypologies of Terrorism’ (2008) 14(2) *Cultural Studies Review* 49, 61–63. In his work, Pugliese draws heavily upon the intellectual legacy of Edward Said. See especially Edward W Said, *Orientalism* (Penguin, revised ed, 2003).

⁷ Pugliese, above n 3, [21]–[23], [37].

⁸ Ibid [45]. See also Pugliese, above n 6, 61–63.

⁹ Pugliese, above n 3, [37]–[38], [42]–[45]; Pugliese, above n 6, 61–62.

¹⁰ Bensaidi uses the phrase ‘my community’ twice in his piece, but it is not clear who is included in his community. I speak of Middle Eastern background communities (plural) in this thesis, in recognition of the differences between (and diversity within) each of Sydney’s many Middle Eastern background communities (discussed further below). However, as set out in Chapter II, I ultimately take a minimalist approach to the concept of ‘community’.

¹¹ Bensaidi, above n 1.

elbow to force Bensaidi's head into the ground, grating his face against the pavement. Then aged seventeen, Bensaidi incurred this punishment for 'being a smartass'. His physical injuries were later compounded by feelings of indignation and 'powerlessness' when he was laughed out of a police station after attempting to file a complaint about the officer's conduct.¹²

Shortly before his piece was published, Bensaidi and some friends were jaywalking in Sydney's eastern suburbs when they were herded off the street by an unmarked police vehicle. The police officers in the vehicle were less concerned that the young men had been jaywalking than with their apparent incongruity in the local area.¹³ In one of the officers' words, Bensaidi and his friends appeared to be 'a far way from home'. When Bensaidi challenged the officers for using their vehicle to force the young men off the road, he became involved in a verbal altercation in which one officer intimated that he might shoot Bensaidi in the back.¹⁴

The experiences relayed by Bensaidi are confronting and troubling, but the 'homogenising violence' of Middle Eastern appearance means that they are not without precedent. On the contrary, amongst Sydney's many diverse Middle Eastern background communities there exists what might be called a 'collective memory'¹⁵ of frequent – and often antagonistic – policing.¹⁶ As elaborated by Bensaidi:

Encounters with police racism and brutality are no strangers within my community. If it's not you on the receiving end, it's always someone's brother, cousin, uncle or a local business man being harassed by police. Indeed, recounting all police abuse would fill pages upon pages. But the majority of these cases are never brought to light. There is an implicit defeatism within my community, and it is somewhat understandable. After so many racially-driven

¹² Ibid.

¹³ For a discussion of the so-called 'incongruity procedure', whereby police officers assess whether an individual is 'out-of-place' and therefore worthwhile stopping for questioning, see David Dixon et al, 'Reality and Rules in the Construction and Regulation of Police Suspicion' (1989) 17 *International Journal of the Sociology of Law* 185, 186–87. See also Chapter VI of this thesis.

¹⁴ Bensaidi, above n 1.

¹⁵ Mike Brogden, "All Policing Is Conning Bastards" - Policing and the Problem of Consent' in Bob Fryer et al (eds), *Law, State and Society* (Croom Helm, 1981) 202, 221.

¹⁶ Collins et al, above n 3.

encounters, we've learned to play the position handed to us, to submit.¹⁷

The original contribution of this thesis is that it provides a case study of the policing of people of Middle Eastern background and appearance in New South Wales, for non-terrorism-related matters, between 1998 and 2018. There is a personal dimension inherent in this endeavour that I acknowledge upfront: I have Lebanese heritage, I am from Sydney's south-west where large Middle Eastern background communities reside, and many of my friends and acquaintances are second- and third-generation Lebanese-Australians. But it is equally important for me to clarify that this thesis is not animated by a desire to make blunt charges of police racism. Instead, this thesis aims to explore the racialisation of policing – or, in other words, how race facilitates police work and how it is re-constituted by that work.¹⁸

The specific conceptual tool that I use to make sense of the racialisation of policing policies, strategies and practices in this context is the 'suspect community thesis'.¹⁹ I set out to explore the diverse ways in which racialised police institutional policies and practices act upon collective identities and criminalise and regulate people who are of Middle Eastern background, or who are thought to be Middle Eastern because of their physical features, dress, and so on. It is not my contention that members of Middle Eastern background communities never commit crimes.²⁰ However, I do argue that members of Middle Eastern background communities are often policed in instances where they are unreasonably suspected of having committed an offence because police treat their race or status as a proxy for criminality. I have adopted the suspect community thesis because it draws attention to the ways in which members of

¹⁷ Bensaidi, above n 1.

¹⁸ Simon Holdaway, *The Racialisation of British Policing* (Macmillan Press, 1996); Simon Holdaway, 'Some Recent Approaches to the Study of Race in Criminological Research - Race as Social Process' (1997) 37(3) *British Journal of Criminology* 383.

¹⁹ The suspect community thesis was first formulated by Paddy Hillyard in 1993. See Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993). See also Chapter II of this thesis for a review of the literature on the suspect community thesis.

²⁰ It is worth noting here that the Police Force does not systematically record or publish data about the racial or ethnic background of those people who are arrested and charged with offences. See NSW Police Force Strike Force Neil, *Cronulla Riots: Review of the Police Response, Report and Recommendations* (2006) 18–22 on the Police Force's recording policies and practices. See also Chapter V of this thesis.

racialised communities become collectively subject to extraordinary policing and state surveillance owing to their status, identity, or associations, rather than legally articulable suspicion that they have engaged in criminal wrongdoing.

I. Background, Scope, and Contribution

Historically, police powers have primarily been practised against the economically and socially marginal.²¹ Discrimination against ethnic minority communities has been an enduring feature of policing across Western liberal democracies since the Second World War and ensuing movements of mass migration to receiving states. These communities are placed disproportionately in the least privileged and powerful social strata, often live exposed public lifestyles, and are likely to exhibit the kinds of behaviours that police tend to focus on.²² A key site for understanding discrimination in policing has been to examine the concentration of police resources and the use of more aggressive tactics in ‘high crime’ areas suffering from social deprivation, which results in a higher probability of stop and search, arrest, and so on, for those people who are vulnerable to police attention, like ethnic minority youths.²³ Previous work

²¹ Robert Reiner, *The Politics of the Police* (Oxford University Press, 4th ed, 2010) ch 2; David Dixon, *Law in Policing: Legal Regulation and Policing Practice* (Clarendon Press, 1997) 56–64; Satnam Choongh, *Policing as Social Discipline* (Clarendon Press, 1998) 50–52. It is of foremost importance to acknowledge that, since invasion, the police in Australia have played a crucial role in the dispossession, regulation, surveillance, and suppression of Aboriginal and Torres Strait Islander peoples. As argued by Chris Cunneen, while it is possible to compare some aspects of the policing of Aboriginal and Torres Strait Islander peoples to that of economically and socially marginal groups in Australia, ‘drawing ... such parallels risks disguising the specific nature of the history of policing Indigenous people in Australia, both in terms of the level of violence used against them and in terms of the level of police surveillance which was later developed’. See Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) 77–78. In keeping with Cunneen’s observation, this thesis avoids comparing the policing of Aboriginal and Torres Strait Islander peoples with the policing of economically and socially marginal groups.

²² Reiner, above n 21; David Smith, ‘Criminology, Contemporary Society and Race Issues’ in Hindpal Singh Bhui (ed), *Race and Criminal Justice* (Sage, 2009) 30; Michael Rowe, *Policing, Race and Racism* (Willan, 2004); Ben Bowling, Alpa Parmar and Coretta Phillips, ‘Policing Minority Ethnic Communities’ in Tim Newburn (ed), *Handbook of Policing* (Routledge, 2008) 611, 613–22.

²³ See, eg, Ben Bowling and Coretta Phillips, *Racism, Crime and Justice* (Longman, 2002) 138–44; Bowling, Parmar and Phillips, above n 22, 613–22; Kristian Williams, *Our Enemies in Blue: Police and Power in America* (AK Press, 3rd ed, 2015) ch 5; Cunneen, above n 21, ch 2, ch 8.

has also indicated that the police may be less restrained in dealing with members of marginalised groups because of their relative powerlessness.²⁴

Examining the relationships between police and ethnic minority communities has been a long-standing theme in policing research internationally. Though scholars' preoccupations in policing research are diverse, debates about police racism and discrimination have remained at the forefront of police research agendas in the United Kingdom, the United States, and Australia since at least the 1970s.²⁵ Scholars have developed many conceptual approaches to explain how and why people of particular races and ethnicities are subjected to inequitable and prejudiced police treatment. Commonly, these scholars have considered direct and indirect discrimination by police officers in the conduct of their duties, the extent to which police racism develops through police occupational culture, and whether the police institution itself discriminates against minority communities.²⁶

There now exists a large body of international work documenting patterns of discriminatory police treatment of particular racial or ethnic minority communities, being both direct and indirect, attitudinal and cultural, and institutional. Abiding tensions arise between the ideal of policing by consent and the realities of crime control, whereby race and racism have become implicit 'ways of seeing', or unacknowledged categories by which populations are policed and regulated.²⁷ Scholars have indicated that racial stereotypes and prejudices may lead police to use their powers disproportionately in contact with particular racial or ethnic groups.²⁸ However, far less scholarship has focused on the diverse ways in which policing

²⁴ See, eg, John A Lee, 'Some Structural Aspects of Police Deviance in Relations with Minority Groups' in Clifford Shearing (ed), *Organizational Police Deviance: Its Structure and Control* (Butterworths, 1981) 49.

²⁵ Robert Reiner and Tim Newburn, 'Police Research' in Roy D King and Emma Wincup (eds), *Doing Research on Crime and Justice* (Oxford University Press, 2008) 343, 346.

²⁶ For overviews, see, eg, Janet BL Chan, *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press, 1997) 17–27, 38–48; Elizabeth Comack, *Racialized Policing: Aboriginal People's Encounters with the Police* (Fernwood Publishing, 2012) ch 1. See also Rowe, above n 22.

²⁷ See Holdaway, above n 18, ch 4; Comack, above n 26, 23–26.

²⁸ Reiner, above n 21, 108; Chan, above n 26, 23. Rowe, above n 22.

‘racialises’ or brings race into being.²⁹ By explicitly considering the construction of race by police institutional policies and practices in New South Wales, and the outcomes for those people of Middle Eastern background and appearance who are policed, this thesis will contribute to developing scholarship on the relationship between race, policing, and crime.

Throughout the last three decades, people of Middle Eastern background – and especially those who are Muslim – have been the focus of diverse ‘ethnic crime’ debates in Australia. Racialised media and political discourse has contributed to these debates, and has linked key events including the so-called ‘Sydney gang rapes’ of 2000, the Tampa Affair of 2001, and the 11 September 2001 terrorist attacks in the United States (‘9/11’) to a deviant and dangerous ‘Middle Eastern culture’.³⁰ In New South Wales specifically, ex-police officers and crime reporters have published sensationalist books detailing the Police Force’s attempts to grapple with Middle Eastern background criminals, while often purporting to reveal drastic upsurges in so-called ‘Middle Eastern crime’ or ‘Middle Eastern organised crime’ in Sydney.³¹ Significantly, the idea of ‘ethnic crime’ may lead to the disproportionate policing of particular groups of people.³²

Research conducted in New South Wales during the 1990s documented the harassment, intimidation, mistreatment, and targeting of young people of both Asian and Middle Eastern backgrounds by the police.³³ Several scholars have explored the practices and strategies of the Police Force in their encounters with Asian background

²⁹ For examples of recent works that have considered the racialisation of police practice, see Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014); Holdaway, above n 18; Comack, above n 26.

³⁰ Scott Poynting et al, *Bin Laden in the Suburbs: Criminalising the Arab Other* (Sydney Institute of Criminology, 2004); Collins et al, above n 3.

³¹ The terms ‘Middle Eastern crime’ and ‘Middle Eastern organised crime’ appear to be interchangeable. See Yoni Bashan, *The Squad* (HarperCollins, 2016); Tim Priest, ‘The Rise of Middle Eastern Crime in Australia’ [2004] *Quadrant* <<http://www.icjs-online.org/indarch.php?article=684>>; Clive Small and Tom Gilling, *Blood Money: Bikies, Terrorists and Middle Eastern Gangs* (Allen & Unwin, 2011).

³² Collins et al, above n 3.

³³ In Australia, the term ‘Asian’ is generally used to refer to people with ancestry from East Asia and South East Asia. The research in question was concerned with the policing of people of Indochinese background.

communities and the effects on those policed.³⁴ However, there is a relative dearth of research documenting police encounters with Middle Eastern background communities in New South Wales since the 1990s.³⁵

The policing of Middle Eastern background and Muslim communities in many (if not most) Western jurisdictions has intensified since the 11 September 2001 attacks in the United States.³⁶ The distinction between counter-terrorism policing and policing for non-terrorism-related matters is somewhat difficult to determine (and is perhaps artificial).³⁷ Nevertheless, the NSW Police Force's approaches to policing people of Middle Eastern background and appearance for non-terrorism-related matters are not a simple by-product of the racialised policing of Muslim and Arab communities post-9/11. As acknowledged above, people of Middle Eastern background and appearance in New South Wales have been aggressively policed for non-terrorism-related matters since before the advent of the War on Terror. Moreover, policing practices and authoritarian law-and-order public discourses in New South Wales have coalesced to produce public knowledges about so-called 'Middle Eastern Organised Crime' (MEOC) as a distinct – and allegedly ever-worsening – 'type' of crime. However, scholars have not yet fully examined these practices or discourses. Accordingly, this thesis seeks to reduce this gap in the literature by providing a case study of the NSW Police Force's approaches to policing of people of Middle Eastern background and appearance, for non-terrorism-related matters, in the two decades between 1998 and 2018.

³⁴ See, eg, David Dixon and Lisa Maher, 'Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market' (2002) 12(2) *Policing and Society* 93; Lisa Maher et al, *Anh Hai: Young Asian Background People's Perceptions and Experiences of Policing* (UNSW Faculty of Law Research Monograph Series, 1997).

³⁵ But see Collins et al, above n 3; Rob White, 'Policing the Other: Lebanese Young People in a Climate of Conflict' in James Jupp, John Peter Nieuwenhuysen and Emma Dawson (eds), *Social Cohesion in Australia* (Cambridge University Press, 2007) 70.

³⁶ See, eg, Sentas, above n 29; Christina Pantazis and Simon Pemberton, 'From the "Old" to the "New" Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation' (2009) 49(5) *British Journal of Criminology* 646; Arun Kundnani, *The Muslims Are Coming! Islamophobia, Extremism and the Domestic War on Terror* (Verso, 2014).

³⁷ For example, proactive and intelligence-led frames and policing approaches pre-dated the 11 September 2001 attacks, but have intensified since the advent of the War on Terror, and are evident in the policing of organised crime and more routine offending. See Jerry Ratcliffe, *Intelligence-Led Policing* (Willan, 2008) 5–6, 22, 32, 227.

This thesis examines a range of policing functions that are deployed across diverse institutional units within the Police Force. It is informed by data from interviews conducted with lawyers, community workers, members of the Police Multicultural Advisory Council (PMAC), and former police officers, and from analyses of original documents (see Chapter III). Specifically, the study considers the policing of serious, organised, and violent crime and the work of relevant squads in the Force's State Crime Command and provides the first academic account of the Middle Eastern Organised Crime Squad (MEOCS). The study also considers the policing of 'Middle Eastern' people as problems of public order and anti-social behaviour, and, in doing so, examines the use of a range of police powers, including search powers, move-on powers, and traffic-related powers. Finally, the study examines the Police Force's cultural diversity policies and community policing programs, including the work of Multicultural Community Liaison Officers (MCLOs) in Police Area Commands.³⁸

II. Language Matters³⁹

It is important to note that despite my repeated use of the label 'Middle Eastern' the term has been subject to extensive critique. Not only are the geographic parameters of the Middle East imprecise and contested, but the term has also been criticised for being Eurocentric.⁴⁰

In Australia, the term 'Middle Eastern' is often used interchangeably with others including 'Lebanese', 'Arab', and 'Muslim'. The classification of the Middle East used by the Australian Bureau of Statistics identifies six 'primary source countries of birth'. These are Lebanon, Iraq, Turkey, Iran, Israel, and Syria.⁴¹ However, many Australians of Middle Eastern background can trace their heritage to other countries or regions in the Middle East, such as Palestine. Moreover, many individuals who are classified or

³⁸ Until 2017, PACs were called Local Area Commands (LACs).

³⁹ Heading first used by Ian Black, *Enemies and Neighbours: Arabs and Jews in Palestine and Israel 1917-2017* (Allen Lane, 2017) xvii.

⁴⁰ Poynting et al, above n 30; Said, above n 6.

⁴¹ Australian Bureau of Statistics, *3416.0 - Perspectives on Migrants: Census 2006 - People Born in the Middle East* (2008) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3416.0Main+Features42008>>. It is significant to note that Israel is often omitted from discussions about the 'Middle East', despite the decision made by the Australian Bureau of Statistics to include Israel in its classification of 'people born in the Middle East'.

who self-identify as being Middle Eastern were born in Australia but have at least one parent or grandparent who was born in the Middle East.

This imprecision is precisely where the signifier – or, as Pugliese calls it, the ‘trope’ – ‘of Middle Eastern appearance’ draws its power from. Despite ostensibly identifying an individual’s place of birth or heritage, the signifier facilitates homogenisation by ‘obliterat[ing] the specificity of geography’.⁴² At the same time, the ‘of Middle Eastern appearance’ is productive, in that its use brings into being essentialist ideas about the behaviours and pathologies of ‘Middle Eastern’ people.⁴³ I entitled this thesis ‘Policing People of Middle Eastern Appearance’ in acknowledgement of the productive power of the signifier or ‘trope’ ‘of Middle Eastern appearance’ described by Pugliese. However, to be clear, this thesis considers many instances where people of Middle Eastern background are brought into relation with the police not just because they possess racialised phenotypical features, but because of their socio-economic status, identity, family, or associates. When speaking of policing practices that target both people of Middle Eastern background and people of Middle Eastern appearance, I refer to these diverse groups of people as either ‘people of Middle Eastern background and appearance’ or ‘the Middle Eastern suspect community’.

Ben Bowling and Coretta Phillips note that studies about race and criminal justice are often beleaguered by an abiding epistemological problem; scholars often assume that categories such as ‘race’ and ‘ethnicity’ are real and measurable, while simultaneously acknowledging that those concepts are ‘essentially contested’ and socially constructed, or ‘racialised’.⁴⁴ Bowling and Phillips provide a cogent solution to this problem, by advising scholars to ‘[r]eject raciological and criminological essentialism while retaining race and ethnic categories in order to illuminate the racialised patterns of everyday human experience’.⁴⁵ In this thesis, I heed Bowling and Phillips’ advice by employing the method of racialisation to engage with the lived phenomenon of being policed as Middle Eastern in New South Wales. Such an approach is consistent with my stance that while races are not objective, biologically-determined categories, race

⁴² Pugliese, above n 3, [5], [28].

⁴³ Ibid [4]–[6], [28], [36]–[37].

⁴⁴ Bowling and Phillips, above n 23, xvi–xvii.

⁴⁵ Ibid.

is ‘real’ in that it is central to the ways that social issues are defined and understood because institutional, social, and political processes establish race as a lived reality.⁴⁶

III. Thesis Outline

The body of this thesis consists of six chapters. Chapter II provides a review of the literature on the suspect community thesis. Much of the literature in Chapter II originates from the United Kingdom, as does the suspect community thesis itself. In essence, the suspect community thesis draws attention to how police institutionally act upon collective identities and bring members of racialised communities into the ambit of policing, effectively criminalising those people and communities. The task for this thesis is to identify and examine the specific processes of racialisation and criminalisation involved in the creation and maintenance of the Middle Eastern suspect community in New South Wales.

Chapter III sets out how I have conducted a case study which illuminates the relevant rationales, policies, strategies, and practices used by the Police Force in its policing of the Middle Eastern suspect community. In addition to describing how I designed and conducted this study, Chapter III also describes something that I was unable to do in this study – that is, obtain research access from the NSW Police Force. More broadly then, the chapter also considers the issues of police non-transparency and resistance to independent research. It argues that police institutional practices of censorship and image management are modes of power that have contributed to the creation and maintenance of the Middle Eastern suspect community by allowing the police to insulate their public knowledge claims about the criminal capacities of people of Middle Eastern background and appearance.

I commence my account of the NSW Police Force’s approaches to policing people of Middle Eastern background and appearance in Chapter IV. Chapter IV contends that the foundations for the Police Force’s contemporary policing of the Middle Eastern suspect community were laid in the late 1990s, in the aftermath of the Royal

⁴⁶ This line of thinking follows a particular tradition influenced by the work of Stuart Hall. See also Sentas, above n 29.

Commission into the New South Wales Police Service (1994-97, also known as the Wood Royal Commission). Chapter IV provides an alternative account to the received narrative that the Royal Commission and its adverse findings about the then-Police Service incapacitated the police, and thereby provided a window of opportunity for serious and organised crime – including so-called ‘MEOC’ – to thrive.

Chapter IV also argues that the neologism MEOC does not denote a particular ‘type’ of criminal behaviour. The chapter introduces four case studies to illustrate how convergent authoritarian law-and-order political, police, and media discourses in the late 1990s racialised and discursively framed a range of behaviours (both criminal and ‘anti-social’) as evidence of the criminal capacities of Middle Eastern background communities. These behaviours and alleged criminal capacities came to be captured in the byword MEOC. At the same time, the Police Service took up an agenda of ‘crime-fighting’ in the wake of the Wood Royal Commission, and proactive and aggressive policing was positioned and practised as the ‘solution’ to the MEOC ‘problem’. Eventually, calls were made for a permanent, centralised squad to police MEOC. The MEOCS was established in direct response to the Cronulla Riots of December 2005.

In Chapter V, I provide the first academic examination of the establishment and practices of the MEOCS, which operated from 1 May 2006 to 30 November 2017. The Squad’s official charter spoke in terms of policing ‘Middle Eastern crime groups’ and the ‘networks’ and ‘associates’ of those groups, which, in practice, often amounted to the targeted policing of familial relations. Indeed, targeting Middle Eastern familial relations has been a key practice in making the Middle Eastern suspect community. The Squad’s officers also conducted broader proactive operations throughout Sydney’s south-western and western suburbs which were premised on the need to disrupt criminal behaviour and trawl the suburbs for information.

It was not always clear whether individuals policed by the MEOCS were indeed ‘Middle Eastern’. Nevertheless, the Squad’s targets were squarely racialised in police, political, and media discourse, which venerated the Squad’s attempts to grapple with the problem of MEOC. Building on Chapter IV, Chapter V argues that since the term MEOC encompasses a breadth of behaviours unified only by the alleged involvement

of offenders of Middle Eastern background, Middle Eastern identity has essentially been constructed as a ‘type’ of crime in New South Wales.

The MEOCS was amalgamated with the Police Force’s Gangs Squad on 1 December 2017 to form the Criminal Groups Squad (CGS). Earlier that year, the Police Commissioner had declared that organised criminals in New South Wales are no longer confined to ethnic ‘lanes’.⁴⁷ However, there is no reason to believe that the CGS’s mandate is different from that of the MEOCS which preceded it. Not only are certain Middle Eastern background families firmly fixed within the CGS’s sights, but it also uses a range of police powers that have been integral to forming the Middle Eastern suspect community.

Chapter VI focuses on two such powers. These are Random Breath Testing (RBT) powers and Firearms Prohibition Order (FPO) search powers. Chapter VI takes RBT powers and FPO search powers as case studies which illustrate that the police in New South Wales have developed deliberate strategies of targeting people of Middle Eastern background and appearance as ‘the usual suspects’. These strategies have been developed in line with operational shifts towards proactive and intelligence-led policing that have been evident in New South Wales and elsewhere throughout the last two decades. These strategies are not the sole domain of ‘specialist’ squads like the MEOCS or CGS, but also involve police at the local level.

Chapter VI draws on the work of Egon Bittner, Michael Chatterton, Richard V. Ericson and David Dixon to conceptualise RBT powers and FPO search powers as ‘legal resources’.⁴⁸ The above-mentioned scholars have emphasised that formal powers are not the only resources available to police, but that police officers may use procedural and substantive criminal laws as tools to fulfil their overarching mandate of

⁴⁷ Evidence to Portfolio Committee No 4 on Legal Affairs, New South Wales Legislative Council, Sydney, 31 August 2017, 2 (Michael Fuller, New South Wales Police Commissioner).

⁴⁸ Egon Bittner, ‘The Police on Skid-Row: A Study of Peace Keeping’ (1967) 32(5) *American Sociological Review* 699; Michael Chatterton, ‘Police in Social Control’ in Joan FS King (ed), *Control Without Custody? Papers Presented to the Cropwood Round-Table Conference, December 1975* (University of Cambridge Institute of Criminology, 1976) 104; Richard Ericson, *Reproducing Order: A Study of Police Patrol Work* (University of Toronto Press, 1982); Dixon, above n 21.

reproducing ‘social order’.⁴⁹ In practice, this broad mandate of order maintenance is comprised of a range of intermediary policing functions including not only law enforcement, but also surveillance, intelligence gathering, and authority imposition, amongst others. Chapter VI sketches how RBT powers and FPO search powers are being used to stage proactive, targeted, and aggressive policing against people of Middle Eastern background and appearance in pursuit of social order.

As observed by Francesco Ragazzi, studies of suspect communities often fail to account for ostensibly benign policing practices that contribute to the creation and maintenance of those communities.⁵⁰ As such, Chapter VII considers community policing and community engagement policies and practices that have normalised the policing of Middle Eastern background communities in New South Wales. The chapter focuses on the Police Force’s most prominent initiatives for engaging culturally and linguistically diverse communities, which are the Force’s MCLOs and its PMAC. Chapter VII discusses how these initiatives are intended to be inclusive and participatory and how they have built community trust and confidence in the police in some important ways. However, they have simultaneously extended the scope and reach of policing within racialised Middle Eastern background communities.

This thesis concludes in Chapter VIII, which draws together the findings and arguments of Chapters IV to VII, and highlights the key strategies, policies, practices, resources and discourses that have constructed a Middle Eastern suspect community in New South Wales over the past two decades. Chapter VIII also discusses the limitations of the study and outlines opportunities for further research.

⁴⁹ See especially Ericson, above n 48.

⁵⁰ Francesco Ragazzi, ‘Policed Multiculturalism? The Impact of Counter-Terrorism and Counter-Radicalization and the “End” of Multiculturalism’ in Christopher Baker-Beall, Charlotte Heath-Kelly and Lee Jarvis (eds), *Counter-Radicalisation: Critical Perspectives* (Routledge, 2015) 156, 163.

Chapter II

How Racialised Policing Creates ‘Suspect Communities’: A Conceptual Framework

I. Introduction

This chapter presents the conceptual framework of the thesis. The body of the chapter is divided into three parts. I begin in Part II by sketching how the racialisation of police knowledges, policies and practices renders particular groups of people ‘suspicious’ so that they stimulate police attention. In Part III, I introduce Paddy Hillyard’s ‘suspect community thesis’, which is my preferred approach for exploring how racialised policing policies and practices constitute and criminalise suspect populations. In Part III, I then outline how the reporting of police knowledge claims (or ‘police talk’) in the media can buttress suspect community creation by attesting to the need for the extraordinary policing of particular racialised groups. Like the suspect community thesis itself, much of the literature in this chapter originates from the United Kingdom. However, I also situate and ground key ideas in the Australian context.

II. Race, Crime, and Police Suspicion

Crime is not an objectively determined or static concept. Crime does not exist until lawmakers and criminal justice institutions designate particular acts and people as ‘criminal’ through processes and practices of criminalisation. As defined by Luke McNamara, criminalisation can take many forms, including

public policy strateg[ies] that [involve] the creation of a defined legal wrong (a ‘criminal offence’), the authorisation of state agents (police officers or officers employed in other regulatory agencies) to

detect and punish breaches of the crime so defined, and the enforcement practices adopted by those officers.¹

Criminalisation is, therefore, more than the making of criminal offences in law; policing is also crucial in producing the objects of crime.² For McNamara, failure to look beyond the creation of criminal offences (the ‘substantive’) to the policing of those offences (the ‘operational’) belies the interconnection of substantive and operational criminalisation and will ultimately frustrate any attempt to assess ‘the actual parameters of the crime’.³ To expand on McNamara’s observations, police officers’ discretionary practices in pre-trial processes, including decisions about whether to stop and search, issue a move-on direction, arrest, detain or charge an individual, are crucial in determining whether acts and people are criminalised. In most cases, if the police as the ‘gatekeepers’ of the criminal justice system do not formally intervene in a given situation, then no crime will have occurred.⁴

It is appropriate, then, to question how and why people become subject to police attention and intervention. A helpful starting point is Mike McConville et al.’s thinking on the relationships between police suspicion, police discretion, and police practices.⁵

As part of their study of the decision-making processes of police and the Crown Prosecution Service in Britain, McConville et al. sought to turn a popular conception about police suspects on its head. According to McConville et al., ‘most people’ conceptualise the relationship between criminals and police suspects as such: criminals are individuals who have been found guilty of committing crimes, and suspects are

¹ Luke McNamara, ‘Criminalisation Research in Australia: Building a Foundation for Normative Theorising and Principled Law Reform’ in Thomas Crofts and Arlie Loughnan (eds), *Criminalisation and Criminal Responsibility in Australia* (2015) 33, 39–40. See also Nicola Lacey and Lucia Zedner, ‘Criminalization: Historical, Legal and Criminological Perspectives’ in Alison Liebling, Shadd Maruna and Lesley McAra (eds), *The Oxford Handbook of Criminology* (Oxford University Press, 2017) 57; Luke McNamara et al, ‘Theorising Criminalisation: The Value of a Modalities Approach’ (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 91.

² Of course, as explained by Robert Reiner, ‘policing’ entails processes and activities that are carried out by actors aside from ‘the police’ (that is, public police organisations). See Robert Reiner, *The Politics of the Police* (Oxford University Press, 4th ed, 2010) 1–8.

³ McNamara, above n 1, 41, 45. See also Lacey and Zedner, above n 1, 59–60.

⁴ As noted by Nicola Lacey and Lucia Zedner, ‘quasi-criminal regulatory offences’ like tax offences are somewhat of an exception to this observation. Lacey and Zedner, above n 1, 64.

⁵ Mike McConville, Andrew Sanders and Roger Leng, *The Case for the Prosecution: Police Suspects and the Construction of Criminality* (Routledge, 1991) ch 2.

those people whose behaviour suggests to police that they are criminals.⁶ However, McConville et al. argue that this popular belief is an inversion of the truth and that ‘the “criminal” population ... is a sub-set of the suspect population’.⁷

The criminal population is subsidiary to the suspect population because ‘suspicion, accusation, conviction and criminal identity are not objective characteristics of “criminals”, but are the products of law enforcers as well’.⁸ It is not the law that determines whether people are suspicious and worthy of investigation, detention, arrest, or charge.⁹ Rather, the police shape the suspect population as they make decisions about the proper subjects of policing in accordance with their occupational cultures and institutional knowledges and rules.¹⁰ In their interactions with the suspect population the police may detect criminals, and this is why the criminal population is a ‘sub-set’ of the suspect population.¹¹

Crucially, McConville et al. highlight that people are not equally likely to be drawn into the suspect population.¹² As explored in Chapter VI, police organisations in English-speaking jurisdictions have historically been mandated to reproduce ‘social order’.¹³ A key component of this mandate has been to control and discipline those who are socially marginal, including members of the working class and ethnic minority communities.¹⁴ As such, it is somewhat unsurprising that McConville et al. found that ‘[i]n working class areas, nearly everyone is fair game’,¹⁵ and that men of ethnic minority background were susceptible to police intervention.¹⁶ Moreover, individuals

⁶ Ibid 14.

⁷ Ibid.

⁸ Ibid 15.

⁹ Ibid 15–17. See also David Dixon et al, ‘Reality and Rules in the Construction and Regulation of Police Suspicion’ (1989) 17 *International Journal of the Sociology of Law* 185.

¹⁰ McConville, Sanders and Leng, above n 5, 15–17, 21–23, 34–35.

¹¹ However, it is worth noting that the police might decide to initiate interactions with members of the suspect population for a range of reasons unrelated to the detection of criminal offences. See Chapter VI on this point.

¹² McConville, Sanders and Leng, above n 5, 17.

¹³ Richard Ericson, *Reproducing Order: A Study of Police Patrol Work* (University of Toronto Press, 1982).

¹⁴ Ibid 6–7, 18–19, 137, 203–05; David Dixon, *Law in Policing: Legal Regulation and Policing Practice* (Clarendon Press, 1997) 78–79; Dixon et al, above n 9, 186–87; Satnam Choongh, *Policing as Social Discipline* (Clarendon Press, 1998) 48.

¹⁵ McConville, Sanders and Leng, above n 5, 28.

¹⁶ Ibid 17, 35.

belonging to working class and ethnic minority communities were often subject to self-perpetuating policing because those people who had previous contact with the police,¹⁷ or who associated with reputed criminals,¹⁸ attracted police attention.

Proceeding from these observations, I aim to explore how the racialisation of police institutional knowledges, policies and practices renders particular groups of people ‘suspicious’ so that they stimulate police attention. Racialisation is ‘a problematic, a process, a concept, a theory, a framework and a paradigm’ which assists in uncovering and describing how racial meanings are attached to different people, and how these people are categorised and understood.¹⁹ Scholars of racialisation take the constructivist stance that race does not have a biological basis. Instead, race is made and re-made through social, cultural and psychological processes which classify and typify groups of people and may vary according to time and place.²⁰ Police knowledges, policies, and practices are imbued with racialised meanings. In other words, ideas about race facilitate police work and are also re-constituted by that work. Racialised policing policies and practices have the real effect of bringing particular groups of people into the ambit of the criminal justice system. So, while race is not ‘real’ in a biological sense, it is ‘real’ in the sense that social, political, and institutional processes – including policing – make race a lived reality.²¹

In this study, I adopt the standpoint that racialised policies, programs, and practices do not always constitute racism. Because race is socially constructed, racism is neither fixed, nor monolithic, but generally relates to ideas of racial superiority or inferiority.

¹⁷ Ibid 23. See also Choongh, above n 14, 45; Dixon et al, above n 9, 203.

¹⁸ McConville, Sanders and Leng, above n 5, 26, 28, 35.

¹⁹ Stephen Small cited in Karim Murji and John Solomos (eds), ‘Introduction: Racialization in Theory and Practice’ in Karim Murji and John Solomos (eds), *Racialization: Studies in Theory and Practice* (Oxford University Press, 2005) 1, 2.

²⁰ Steve Garner, *Racisms: An Introduction* (Sage Publications, 2nd ed, 2017) ch 1, ch 2. As noted by Murji and Solomos, scholars and other commentators tend to place inverted commas (or ‘scare quotes’) around the term race, to acknowledge that it has no biological basis. However, while race is not ‘real’ in any biological sense, it is ‘real’ in the sense that the social construct of race affects people’s lived experiences. See Murji and Solomos, above n 19. Accordingly, I have chosen not to place the term race in inverted commas in this thesis.

²¹ See, eg, Simon Holdaway, *The Racialisation of British Policing* (Macmillan Press, 1996); Simon Holdaway, ‘Some Recent Approaches to the Study of Race in Criminological Research - Race as Social Process’ (1997) 37(3) *British Journal of Criminology* 383; Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014).

Accordingly, the precise meaning of the term ‘racism’ is contested. Scholars often use the term to call attention to how racial ideas and categorisation bring about inequality and discrimination in social relations, forms of social organisation, and systems of power. This inequality and discrimination arises from the complex interplay between individual and social attitudes and values and institutional practices (see Part III of this chapter for a discussion of the concept of institutional racism in policing).²² For Sentas, unlike racism, ‘racialization is not simply an external ascription of inferiorising characteristics for the purpose of subjugation’.²³ Rather, as noted above, racialisation draws attention to how racial categorisation occurs, with the effect of creating racialised identities and groups.²⁴ Moreover, those who are racialised may act ‘reflexively’, and variously accept, challenge, transform, or form group solidarity around processes of racialisation.²⁵

The specific approach that I adopt in this thesis for exploring how racialised policing constitutes suspect populations is that of the suspect community thesis. I provide a reading of the literature on the suspect community thesis in the next part of this chapter.

III. The Suspect Community Thesis

Paddy Hillyard introduced the suspect community thesis in 1993. In his influential book *Suspect Community*, Hillyard argued that the operation of the *Prevention of Terrorism (Temporary Provisions) Act 1974* (UK)(PTA) had rendered Irish people in the United Kingdom collectively suspect, as evidenced by the disproportionate number of Irish people subjected to policing practices of examination, search, arrest, and

²² Robert Miles and Malcolm Brown, *Racism* (Routledge, 2nd ed, 2003); Martin Barker, *The New Racism: Conservatives and the Ideology of the Tribe* (Aletheia Books, 1981); Garner, above n 20, ch 1, ch 9; Howard Winant, ‘Race and Racism: Towards a Global Future’ in Les Back and John Solomos (eds), *Theories of Race and Racism: A Reader* (Routledge, 2nd ed, 2009) 678; Ben Bowling and Coretta Phillips, *Racism, Crime and Justice* (Longman, 2002) 20–23.

²³ Sentas, above n 21, 34–35. See also Garner, above n 20, 24–25.

²⁴ Ibid.

²⁵ Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000) 17; Sentas, above n 21, 34; Garner, above n 20, 28; Ghassan Hage, ‘White Self-Racialisation as Identity Fetishism: Capitalism and the Experience of Colonial Whiteness’ in Karim Murji and John Solomos (eds), *Racialization: Studies in Theory and Practice* (Oxford University Press, 2005) 185.

detention under the PTA.²⁶ Hillyard interviewed 115 people who were policed under the PTA between 1978-91 and detailed the many different adverse effects that counter-terrorism policing had upon those peoples' health and wellbeing, family lives and work lives, freedoms of association and movement, and lawful participation in political activity.²⁷

The introduction of the PTA in 1974 was a response to the Birmingham pub bombings, set against the broader context of the Northern Irish Conflict.²⁸ Though the scope of the PTA was broadened in 1984 to encompass 'international terrorism', Hillyard maintained that the police continued to target Irish people under the PTA 1984 in the same manner that they had during the first decade of the Act's operation.²⁹

Hillyard's principal contention was that Irish people were disproportionately policed under the PTA primarily for being Irish – and not because they were thought to have engaged in specific criminal wrongdoing or terrorism. The PTA contained a range of permissive police powers. For example, the PTA empowered police to interrogate any person, irrespective of whether they had formed reasonable suspicion that the person in question was involved in terrorism.³⁰ Examination powers at ports and airports also allowed police considerable discretion in selecting who would be examined.³¹ Hillyard contended that, in practice, the police used the powers contained in the PTA to target Irish people, and that this exceptionalism had created not only a 'dual system of criminal justice',³² but also an Irish suspect community:

What is abundantly clear is that a person who is drawn into the criminal justice system under the PTA is not a suspect in the normal sense of the word. In other words, they are not believed to be guilty of some illegal act ... people are suspects primarily because they are Irish and once they are in the police station they are often labelled

²⁶ Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993). Hillyard also considered the successors to the 1974 PTA, including the PTAs of 1976, 1984 and 1989.

²⁷ Ibid 2.

²⁸ Ibid 5, 33.

²⁹ Ibid 5.

³⁰ Ibid.

³¹ Ibid 19.

³² Ibid 5, 93, 261.

an Irish suspect, presumably as part of some classification system. In practice, they are being held because they belong to a suspect community.³³

The family members, friends, and associates of Irish people were also frequently arrested and questioned under the PTA.³⁴ Hillyard discerned that the disproportionate policing of Irish people and their associates was not premised upon the objective of initiating prosecutions for terrorism-related offences, but was primarily carried out to ‘trawl’ Irish communities for information as part of a broad regime of surveillance.³⁵ For Hillyard, the operationalisation of the PTA in this manner amounted to the criminalisation of Irish identity, because Irish people and their associates were being subjected to extraordinary policing because of who they were, rather than how they had behaved.³⁶

As originally conceived by Hillyard, then, a suspect community is constructed when individuals belonging to a particular section of the population are collectively subjected to extraordinary policing and state surveillance upon the basis of their status, identity, or associations, rather than legally articulable suspicion that they have committed an offence.³⁷ As distilled by Vicki Sentas, the suspect community thesis

focus[s] attention to how racialized groups become the object of state inquiry due to their collective status rather than any putative conduct made unlawful ... the concept of suspect community provides in shorthand, critique of the liberal democratic myth that the object of democratic law criminalizes doing, and not being, or one’s ‘status’.³⁸

³³ Ibid 7.

³⁴ Ibid 183, 193, 197, 258.

³⁵ Ibid 6, 31, 58, 65–66, 93–94, 193–95, 258.

³⁶ Ibid 260.

³⁷ Christina Pantazis and Simon Pemberton also provide a working definition of ‘suspect community’. See Christina Pantazis and Simon Pemberton, ‘From the “Old” to the “New” Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation’ (2009) 49(5) *British Journal of Criminology* 646, 649.

³⁸ Vicki Sentas, ‘Policing the Diaspora: Kurdish Londoners, MI5 and the Proscription of Terrorist Organizations in the United Kingdom’ (2016) 56(5) *British Journal of Criminology* 898, 900.

Sentas further holds that the task for scholars is not simply to identify suspect communities, but to examine the diverse ‘modalities of power’ through which those communities are criminalised and regulated.³⁹

Below, I review the broader literature on suspect communities to explore some of the main policing policies, strategies, and practices that contribute to suspect community formation. The existing literature on suspect communities is concerned with counter-terrorism policing. Accordingly, I also intersperse insights from the bodies of literature on the policing of racialised and other marginalised communities to indicate how the suspect community thesis can be applied in studies such as the present, which focus on policing for non-terrorism-related matters. It is not my intention to provide a systematic review; instead, I identify themes and gaps in the literature to foreground the specific policing policies, strategies and practices that I view as having contributed to the construction of a Middle Eastern suspect community in New South Wales – which I will then expand upon in Chapters IV through VII.

It is important to acknowledge that while ‘suspect community’ has remained a popular turn of phrase since the publication of Hillyard’s book, the suspect community thesis is not a universally accepted concept. The strongest critic of the suspect community thesis is Steven Greer, who has written several pieces critiquing the concept, including a review of Hillyard’s book.⁴⁰ Greer offered his most extensive appraisal of the suspect community thesis in response to a 2009 article by Christina Pantazis and Simon Pemberton, published in the *British Journal of Criminology*.⁴¹ Pantazis and Pemberton’s overarching argument in their 2009 article was that counter-terrorism law and policing and public discourses had constructed a Muslim suspect community in Britain.⁴² For Greer, Pantazis and Pemberton’s article ‘fail[ed] to convince’ and was

³⁹ Ibid.

⁴⁰ Steven Greer, ‘Reviewed Work(s): Suspect Community: People’s Experiences of the Prevention of Terrorism Acts in Britain by Paddy Hillyard’ (1994) 34(4) *The British Journal of Criminology* 510. See also Steven Greer ‘Anti-Terrorist Laws and the United Kingdom’s “Suspect Muslim Community”’ (2010) 50(6) *The British Journal of Criminology* 1171; Steven Greer, ‘Reply to Marie Breen-Smyth, “Theorising the ‘Suspect Community’”: Counterterrorism, Security Practices and the Public Imagination’ (2014) 7(3) *Critical Studies on Terrorism* 468.

⁴¹ Greer ‘Anti-Terrorist Laws and the United Kingdom’s “Suspect Muslim Community”’, above n 40.

⁴² Pantazis and Pemberton, above n 37.

‘undermined by a series of ... analytical, methodological, conceptual, logical, empirical and interpretive flaws’.⁴³

Adopting a legalistic, positivist approach, Greer argued that Pantazis and Pemberton lacked the empirical basis to demonstrate that most British Muslims were under ‘official’ state suspicion, and that they therefore constituted a suspect community.⁴⁴ In a second article in the *British Journal of Criminology*, published in 2011, Pantazis and Pemberton responded to Greer by countering that he had failed to explain what constituted ‘official suspicion’, what constituted a ‘substantial majority’ of British Muslims, and that his approach would not allow for sufficient engagement with ‘suspicion’ as a ‘diffuse social phenomenon’, or with people’s lived experiences of being suspect.⁴⁵ It is unlikely that this (somewhat disjointed) debate between Greer and Pantazis and Pemberton will be resolved, given that the interlocutors ultimately have very different (and perhaps irreconcilable) views about what a suspect community is.

The approach taken in this thesis is to consider how policing in New South Wales has constructed a Middle Eastern suspect community by racialising entire Middle Eastern background communities as ‘criminal’, and to consider the Middle Eastern suspect community’s experiences of being policed (see Chapter III for a discussion of this study’s methodology and methods). Conceptually, this approach aligns with Hillyard’s appreciative, constructivist work on suspect communities, and is difficult to reconcile with Greer’s legalism and his insistence on the need to quantify the number of people subject to ‘official’ suspicion before determining whether a suspect community exists. Indeed, Greer’s approach is somewhat unhelpful in New South Wales, where police have proudly advertised that they have dedicated significant resources and effort to policing the alleged criminality of Middle Eastern communities in Sydney (see Chapters IV through VI).

⁴³ Greer ‘Anti-Terrorist Laws and the United Kingdom’s “Suspect Muslim Community”’, above n 40, 1171.

⁴⁴ Ibid.

⁴⁵ Christina Pantazis and Simon Pemberton, ‘Restating the Case for the “Suspect Community”: A Reply to Greer’ (2011) 51(6) *British Journal of Criminology* 1054

Police Practices that Contribute to Suspect Community Formation

As noted above, scholars have argued that Muslims have become the pre-eminent suspect community in Britain since the advent of the War on Terror.⁴⁶ A continuity in the literature on the ‘new’ suspect community from Hillyard’s work on the Irish suspect community has been a concern with the disproportionate use of counter-terrorism policing powers. For example, Christina Pantazis and Simon Pemberton have argued that Muslim communities were rendered collectively suspect by the police’s use of stop and search powers formerly contained in s 44 *Terrorism Act 2000* (UK)(TA).⁴⁷ As was the case with some of the PTA powers considered by Hillyard, the TA stop and search discussed by Pantazis and Pemberton can be characterised as ‘suspicionless’ powers.⁴⁸ In other words, police did not need to form reasonable suspicion that a person had committed an offence before exercising their s 44 TA stop and search powers against that person.⁴⁹

⁴⁶ Ibid; Pantazis and Pemberton, above n 37; Marie Breen-Smyth, ‘Theorising the “Suspect Community”’: Counterterrorism, Security Practices and the Public Imagination’ (2014) 7(2) *Critical Studies on Terrorism* 223; Charlotte Heath-Kelly, ‘Reinventing Prevention or Exposing the Gap? False Positives in UK Terrorism Governance and the Quest for Pre-Emption’ (2012) 5(1) *Critical Studies on Terrorism* 69; Mary J Hickman et al, ‘*Suspect Communities? Counter-Terrorism Policy, the Press, and the Impact on Irish and Muslim Communities in Britain*’ (2011) <https://www.city.ac.uk/_data/assets/pdf_file/0005/96287/suspect-communities-report-july2011.pdf>; Mary J Hickman et al, ‘Social Cohesion and the Notion of “Suspect Communities”: A Study of the Experiences and Impacts of Being “Suspect” for Irish Communities and Muslim Communities in Britain’ (2012) 5(1) *Critical Studies on Terrorism* 89; Henri C Nickels et al, ‘De/constructing “Suspect” Communities: A Critical Discourse Analysis of British Newspaper Coverage of Irish and Muslim Communities, 1974-2007’ (2012) 13(3) *Journalism Studies* 340; Henri C Nickels et al, ‘Constructing “Suspect” Communities and Britishness: Mapping British Press Coverage of Irish and Muslim Communities, 1974-2007’ (2012) 27(2) *European Journal of Communication* 135; Stefano Bonino, ‘Preventing Muslimness in Britain: The Normalisation of Exceptional Measures to Combat Terrorism’ (2013) 33(3) *Journal of Muslim Minority Affairs* 385.

⁴⁷ Pantazis and Pemberton, above n 37, 652–59. See also Gabe Mythen, ‘“No One Speaks For Us”: Security Policy, Suspected Communities and the Problem of Voice’ (2012) 5(3) *Critical Studies on Terrorism* 409, 417.

⁴⁸ The powers previously contained in s 44 of the TA empowered police to stop and search any person or vehicle within an ‘authorised area’ in order to determine if that person was carrying items ‘of a kind which could be used in connection with terrorism’. ‘Authorised areas’ were declared by senior police officers. In 2011, s 44 was repealed, though powers to ‘stop and search in specified locations’ are now contained in s 47A of the TA.

⁴⁹ On s 44 TA, see Alpa Parmar, ‘Stop and Search in London: Counter-Terrorist or Counter-Productive?’ (2011) 21(4) *Policing and Society* 369. See generally Ben Bowling and Estelle Marks, ‘The Rise and Fall of Suspicionless Searches’ (2017) 28(1) *King’s Law Journal* 62.

To further examine the role of suspicionless powers in constructing suspect communities, I provide two case studies of suspicionless powers that police use to initiate stops and searches people of Middle Eastern background and appearance in New South Wales. These are random breath test powers and Firearms Prohibition Order search powers (see Chapter VI). The broader policing scholarship has shown that the legal construct of reasonable suspicion does not tend to constrain officers from targeting the ‘usual suspects’ (that is, members of marginalised groups).⁵⁰ However, suspicionless search powers *facilitate* suspect construction by licencing the police to proactively intervene against individuals because of their identity or appearance, rather than their conduct.

In addition to documenting the use of coercive powers against the ‘new’ suspect community, recent scholarship has also examined the proliferation of community-based (and ostensibly non-coercive) policing programs for Muslim communities across Britain.⁵¹ These programs have been funded and delivered in line with the ‘Prevent’ arm of the UK Government’s CONTEST counter-terrorism strategy. Broadly speaking, the programs have been predicated on the rationale that, collectively, British Muslims do not hold ‘British values’ and are prone to violence and extremism. As such, the programs have been developed to responsibilise Muslims to detect extremists amongst their ranks, and to forge information conduits between Muslim communities and the police and other authorities. In examining these programs, scholars have argued that community policing for counter-terrorism has contributed to suspect community formation by spreading and deepening the reach of the police and government’s surveillance of Muslim communities in Britain.⁵²

As argued by Sentas in her consideration of the community-based counter-terrorism policing of Muslims in Victoria, Australia, community policing can constitute over-

⁵⁰ Dixon et al, above n 9.

⁵¹ Arun Kundnani, *Spooked! How Not to Prevent Violent Extremism* (2009); Pantazis and Pemberton, above n 37, 659–60; Francesco Ragazzi, ‘Suspect Community or Suspect Category? The Impact of Counter-Terrorism as “Policed Multiculturalism”’ (2016) 42(5) *Journal of Ethnic and Migration Studies* 724, 627–29. For reasons explained in his article, Ragazzi prefers the term ‘suspect category’ to that of ‘suspect community’. He nevertheless considers the community-based counter-terrorism policing of Muslim communities in Britain.

⁵² Pantazis and Pemberton, above n 37, 659–60; Ragazzi, above n 51, 627–29.

policing even if it is intended to be ‘inclusive’.⁵³ The concept of over-policing draws attention to the differential policing of racialised communities. Over-policing concerns both the extent of police intervention, and the forms the intervention takes.⁵⁴ In Chapter VII, this thesis provides support for Sentas’s above observation in its examination of two community policing initiatives in New South Wales. Though these initiatives appear to have fostered some trust in the police amongst members of Middle Eastern background and Muslim communities, they have also been used to gather community intelligence and enhance police surveillance. Overall, these programs have contributed to suspect community formation by normalising Middle Eastern background communities as the subjects of policing (albeit ‘soft’ policing).⁵⁵

The extraordinary policing (or over-policing) that constructs suspect communities can also take other forms that have been less considered in the literature. One area of inquiry that is underdeveloped is the role of ‘specialist’ units and police squads in policing racialised suspect communities. Hillyard’s *Suspect Community* appears to be the only study in the suspect communities literature that has followed this line of inquiry, by providing an account of the National Joint Unit (NJU). It is worth noting, however, that this gap is not unique to the suspect communities literature: despite their prevalence across Western policing jurisdictions, specialist police squads have received surprisingly little attention in policing scholarship.⁵⁶

In essence, the NJU provided permanent infrastructure for the administration of the PTA. Notwithstanding the lack of information about the NJU on the public record, Hillyard determined that the Unit’s work in conducting database checks of ship and aeroplane manifests had systematised the use of PTA examination powers against

⁵³ Sentas, above n 21, 176–78.

⁵⁴ Chris Cunneen discusses the concept of over-policing in his work on the policing of Indigenous Australian peoples. See *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) ch 4.

⁵⁵ Sentas, above n 21, 172–78.

⁵⁶ But see Martin Innes, *Investigating Murder: Detective Work and the Police Response to Homicide* (Oxford University Press, 2003); Alex S Vitale, *The End of Policing* (Verso, 2017) ch 8; Mike Maguire, ‘Criminal Investigation and Crime Control’ in Tim Newburn (ed), *Handbook of Policing* (Willan, 2nd ed, 2008) 430; Malcolm W Klein, *Gang Cop: The Words and Ways of Officer Paco Domingo* (AltaMira Press, 2004); Patrick Williams and Becky Clarke, *Dangerous Associations: Joint Enterprise, Gangs and Racism: An Analysis of the Processes of Criminalisation of Black, Asian and Minority Ethnic Individuals* (2016).

individuals involved in Irish politics and those with previous convictions in Northern Ireland.⁵⁷ The NJU also acted as a ‘de-facto filter’ for exclusion under the PTA (that is, exile from Britain to Northern Ireland), in that its officers were responsible for preparing exclusion applications for consideration by the Secretary of State.⁵⁸ Like the NJU, the police squads considered in this study have provided permanent infrastructure and extensive resources for the sustained over-policing of people of Middle Eastern background and appearance.

One of the contributions of this study is that it maps how police squads have created and maintained a suspect community by practising surveillance and suppression in Sydney’s western and south-western suburbs (see Chapters IV and V). Though Hillyard examined the use of exclusion powers to exile alleged terrorists from Britain and contain the problem of political violence in Northern Ireland, the more recent literature on suspect communities has provided very little evidence of the police controlling and surveilling the movements of members of suspect communities.⁵⁹ However, the broader policing literature has provided some evidence that police in English-speaking jurisdictions often attempt to regulate members of racialised communities’ movements and uses of public space through ‘territorial’ strategies and practices.⁶⁰

Police often act territorially when members of racialised communities appear to be ‘out-of-place’ – that is, when they are occupying public areas outside of the localities where they and other marginalised communities (or the ‘usual suspects’) tend to reside. In turn, the policing of areas where racialised and other marginalised communities reside is often structured by local histories of poor police-community relations.⁶¹ As

⁵⁷ Hillyard, above n 26, 66.

⁵⁸ Ibid 202.

⁵⁹ An exception to this observation is the much-cited example of Project Champion, a police operation in which over 200 CCTV cameras were placed in localities with large resident populations of Muslim people. See Mythen, above n 47, 417; Bonino, above n 46, 289; Ragazzi, above n 51, 728; Hickman et al, ‘Social Cohesion and the Notion of “Suspect Communities”: A Study of the Experiences and Impacts of Being “Suspect” for Irish Communities and Muslim Communities in Britain’, above n 46, 98.

⁶⁰ See Steve Herbert, *Policing Space: Territoriality and the Los Angeles Police Department* (University of Minnesota Press, 1996).

⁶¹ Michael Keith, *Race, Riots and Policing: Lore and Disorder in a Multi-Racist Society* (UCL Press, 1993). See also Steve Herbert, ‘Policing Contested Space: On Patrol at Smiley and Hauser’

proposed by both Michael Keith and Steve Herbert, police knowledges about the areas where they have experienced historical (and ongoing) antagonisms with racialised and marginalised communities inform the allocation of police resources and affect police practices.⁶² In short, policing is a form of social action comprised of interactions between people and institutions, and often mediated by the social construct of space.⁶³

Those areas where racialised and other marginalised communities reside are often delineated by the police as crime-prone, ‘no-go areas’ or ‘anti-police areas’ and saturated with officers, owing to an ‘imperative of geopolitical control’.⁶⁴ This imperative is sometimes communicated by the police and the media in the refrain of ‘taking back the streets’. Geopolitical control is not simply a matter of individual officers visiting ‘no-go’ and ‘anti-police’ areas in pursuit of ‘action’ and excitement,⁶⁵ but is also mandated by senior officers and features in institutional-level policies and strategies.⁶⁶ As articulated by Herbert, the police formulate ‘organised measures to reclaim a sense of tactical superiority’,⁶⁷ which might include the work of police squads proactively patrolling localities with large populations of racialised and marginalised people.⁶⁸ Territorial policies and practices then feed back into local histories and ‘collective memories’⁶⁹ of targeted, aggressive and hostile policing, and may well transpire into acts of resistance by members of racialised and other marginalised communities.⁷⁰

In Chapters IV and V of this thesis, I fold Keith and Herbert’s above observations into the suspect community thesis to identify three interconnected ways in which police territorial practices – and especially those of police squads – contribute to the creation and maintenance of suspect communities. First, police territorial practices bring

in Nicholas R Fyfe (ed), *Images of the Street: Planning, Identity and Control in Public Space* (Routledge, 1998) 220, 227.

⁶² Keith, above n 61; Herbert, above n 61.

⁶³ Herbert, above n 60, 10, 21.

⁶⁴ Keith, above n 61, 125, 193, 215; Herbert, above n 61, 226.

⁶⁵ But see Herbert, above n 60, ch 5.

⁶⁶ Keith, above n 61, 214–16.

⁶⁷ Herbert, above n 61, 226.

⁶⁸ Keith, above n 61, ch 2; Herbert, above n 60; Herbert, above n 61.

⁶⁹ Mike Brogden, “‘All Policing Is Conning Bastards’ - Policing and the Problem of Consent’ in Bob Fryer et al (eds), *Law, State and Society* (Croom Helm, 1981) 202, 221.

⁷⁰ Keith, above n 61; Herbert, above n 60, 81–82, 147–48.

members of racialised communities into relation with police *because of where they are* in a given city, and not because they have engaged in offending behaviour. Secondly, resistance to territorial practices creates opportunities for the police to criminalise uncooperative behaviour by members of racialised communities, even though the original conduct that brought them to police attention (occupying a certain locality) was probably not in violation of the law.⁷¹ And finally, these acts of resistance are often racialised as being indicative of disorder and disrespect for police authority within particular racial or ethnic communities,⁷² thereby providing an apparent justification for further police intervention into and surveillance of those communities and the localities where they tend to reside; despite resistance to policing being borne out of antagonistic historical relations with the police.

A further point of note is that the policies and practices described in this section are regularly animated by the pre-emptive outlook of pre-crime. Jude McCulloch and Dean Wilson have drawn the following distinction between crime prevention and pre-crime: crime prevention seeks to anticipate crime by compiling risk profiles based on previous offending behaviour, while pre-crime seeks to pre-empt crime and does not treat past offending as an indicator or predictor of future behaviour.⁷³ Under the pre-crime outlook that has burgeoned since the 11 September 2001 attacks in the United States, individuals are selectively and pre-emptively policed as would-be (but not necessarily imminent) offenders, owing to factors like their race, ethnicity, class, and associations.⁷⁴ In this way, pre-emptive policing creates criminal identities by acting against individuals because of no more than the following speculative assessment: they

⁷¹ An exception to this observation would be if the individual in question was subject to a place restriction order or some other legal condition which prohibited him or her from occupying a designated area. However, legal conditions of this kind did not emerge as a relevant consideration in this study.

⁷² Keith, above n 61, 216.

⁷³ Jude McCulloch and Dean Wilson, *Pre-Crime: Pre-Emption, Pre-Caution and the Future* (Routledge, 2016) ch 1. See also Jude McCulloch and Sharon Pickering, 'Pre-Crime and Counter-Terrorism: Imagining Future Crime in the "War on Terror"' (2009) 49(5) *British Journal of Criminology* 628; Lucia Zedner, 'Pre-Crime and Post-Criminology' (2007) 11(2) *Theoretical Criminology* 261; Diana Wendy Fitzgibbon, 'Institutional Racism, Pre-Emptive Criminalisation and Risk Analysis' (2007) 46(2) *The Howard Journal* 128.

⁷⁴ McCulloch and Wilson, above n 73, 10, 19–29; McCulloch and Pickering, above n 73, 630, 633, 635; Fitzgibbon, above n 73, 131, 134.

belong to a category of person which suggests that they might offend at some point in the future.⁷⁵

Pre-crime is most discernible in respect of counter-terrorism policy and policing, where speculative assessments about would-be offenders are seen to be acceptable drivers of police and other authorities' decision-making processes and actions, given the potentially-catastrophic outcomes of a terrorist attack.⁷⁶ However, for McCulloch and Wilson, pre-crime 'also spreads and intensifies as it is recycled and revised to address a broader range of threats'.⁷⁷ As such, the pre-crime outlook structures police responses to threats aside from terrorism, including organised crime and anti-social behaviour.⁷⁸ Indeed, the traditional criminal law has, in some ways, pre-emptively criminalised members of marginalised communities for hundreds of years, meaning that the uptake of pre-crime can perpetuate the historical criminalisation of 'the usual suspects'.⁷⁹ In short, pre-crime can drive suspect community formation by warranting the pre-emptive policing of people with criminalised identities and associations in anticipation of wrongdoing.

It is also important to note that the policing policies, strategies, and practices discussed above do not merely arise out of the behaviour of some recalcitrant, racist officers; they are animated by broader, institutional-level imperatives to over-police particular racialised communities. In the next section, I introduce the concept of institutional racism, which is one scholarly approach used to explain the way that race structures institutional and occupational aspects of policing.

Suspect Communities and Institutional Racism

Historically, the dominant approach to explaining racism and discrimination in policing has been to speak of 'bad apples'. According to those who subscribe to the Bad Apple thesis, it is probable that any given police organisation will contain a share

⁷⁵ McCulloch and Wilson, above n 73, 24, 30, 46–49, 138; McCulloch and Pickering, above n 73, 629.

⁷⁶ McCulloch and Wilson, above n 73, 58–61; McCulloch and Pickering, above n 73, 632.

⁷⁷ McCulloch and Wilson, above n 73, 163.

⁷⁸ Ibid 20, 24; Fitzgibbon, above n 73, 129–30.

⁷⁹ McCulloch and Wilson, above n 73, 21; McCulloch and Pickering, above n 73, 636; Fitzgibbon, above n 73, 130; Zedner, above n 73, 264.

of racist individuals, like any other public body. However, racism is not to be found amongst most officers, meaning that the solution to eliminating racism from a police organisation is, quite simply, to remove the few ‘bad apples’ from the police organisation.⁸⁰ As illustrated below, this approach to explaining racism and discrimination in policing is inadequate because it is too individualistic and fails to acknowledge that racist views can be shared within police organisational cultures and sustained by police practices.

Hillyard saw the discriminatory policing of Irish people under the PTA as ‘patterned’ and institutional, rather than simply stemming from the actions of ‘bad apples’:

While stereotypes certainly play a part, the abuse of stereotypes by examining officers should not be over-emphasised. From all the evidence gathered from this study, it appears that the operation of the PTA is much more systematic and targeted than is generally assumed ... [S]tereotypes may well play a part in constructing the suspicion; for example, if the occupation recorded is incongruent with the style of dress. But what gives rise to suspicion is much more likely to be a product of a set of policies determined by the higher echelons within the security services.⁸¹

Hillyard therefore held that the policing of Irish people under the PTA constituted institutional racism.⁸²

The term ‘institutional racism’ was first used by activist Stokely Carmichael and academic Charles Hamilton amid the civil rights movements in the United States in the 1960s.⁸³ The concept of institutional racism is contested, but is often used to draw attention to policies, cultures, and practices within an institution that systematically disadvantage people of a racial or ethnic minority background.⁸⁴ Significantly, this discrimination can be either direct or indirect: meaning that it is not necessary to

⁸⁰ Bowling and Phillips, above n 22, 156. See also Maurice Punch and Stan Gilmour, ‘Police Corruption: Apples, Barrels and Orchards’ (2010) 79(1) *Criminal Justice Matters* 10.

⁸¹ Hillyard, above n 26, 60.

⁸² Ibid 33.

⁸³ Stokely Carmichael and Charles V Hamilton, *Black Power: The Politics of Liberation in America* (Vintage Books, 1967).

⁸⁴ Garner, above n 20, ch 6.

demonstrate a conscious aim to discriminate on racial grounds in order to speak of institutional racism.⁸⁵ As explained by Mike Rowe, the ‘key distinction between individual racism and institutional racism is that [institutional racism] places greater emphasis on the outcomes and effects, rather than intent’.⁸⁶ Policing practices that do not set out to disadvantage minority groups may still be considered institutionally racist if they result in unfairness or inequity for the communities in question.⁸⁷

Contemporary scholarship has questioned the merit of the concept of institutional racism. One of the most common criticisms of the concept is that any discriminatory act or omission and any disadvantaging outcome that is perceived to be racist by a victim could be labelled institutional racism.⁸⁸ In this way, institutional racism loses its analytic utility, because it fails to clearly demarcate what constitutes racism and what does not.⁸⁹ At the same time, institutional racism also suffers from conceptual under-development. Because institutional racism is identified by its outcomes and effects, it can be difficult to specify the exact location from which discrimination originates in a given institution.⁹⁰

Institutional racism was a key point of deliberation in both the Scarman Report (1981) and the Stephen Lawrence Inquiry (1999), each commissioned by the British government to consider problematic relationships between the police and ethnic minority communities.⁹¹ Sir William Macpherson’s acceptance of the term institutional racism in the Stephen Lawrence Inquiry renewed interest in the policing of minority communities and was central to mobilising police action, with police leaders realising the need to work (or appear as though they were working) to remedy

⁸⁵ Michael Rowe, *Policing, Race and Racism* (Willan, 2004) 10.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid 12; Anna Souhami, ‘Institutional Racism and Police Reform: An Empirical Critique’ (2014) 24(1) *Policing and Society* 1, 7.

⁸⁹ Rowe, above n 85, 12; Souhami, above n 88, 7.

⁹⁰ Souhami, above n 88, 6–7.

⁹¹ Lord Leslie George Scarman, *The Scarman Report: The Brixton Disorders 10-12 April 1981: Report of an Inquiry* (1982); Sir William Macpherson of Cluny, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (1999).

the issue.⁹² It is important to note, however, that the concept of institutional racism has not been as prominent in the Australian context as it has been in Britain.⁹³

Ali Rattansi points out that scholarship on institutional racism illuminates processes of racialisation within institutions:

Whether this is explicitly acknowledged or not, the concept of institutional racism functions primarily as a mode of understanding the reproduction of racism via racialization processes over time and in specific sites ... it should be clear that what is being analysed is not so much institutional racism *tout court*, but the workings of processes of racialization within institutions, with variable outcomes for racialized populations.⁹⁴

For Rattansi, racism is rigid, in that it operates in a binarized fashion: actors, policies, processes and institutions are either racist, or they are not. In contrast, the lure of racialisation as an analytic tool is that it focuses on the processes through which racism is animated, and how it intersects with other variables, such as class, gender, and so on. Thinking in terms of institutional racialisation rather than institutional racism helps scholars to navigate around the conceptual closures of racism and avoid giving ‘the impression of monolithic racism in [institutional] practices and identities’.⁹⁵ I do not agree with Rattansi’s insistence that racialisation is ‘parasitic’ of racism for its meaning,⁹⁶ because, as explained in Part II (above), I do not believe that processes of racialisation are necessarily intertwined with racism. However, since this study considers a range of policing functions carried out by several departments within the New South Wales Police Force, I see value in Rattansi’s acknowledgement that diverse and divergent processes of racialisation may be traced within a single organisation.

⁹² Souhami, above n 88, 1–2; Rowe, above n 85, 12.

⁹³ Sentas, above n 21, 44.

⁹⁴ Ali Rattansi, ‘The Uses of Racialization: The Time-Spaces and Subject-Objects of the Raced Body’ in Karim Murji and John Solomos (eds), *Racialization: Studies in Theory and Practice* (Oxford University Press, 2005) 271, 288–89.

⁹⁵ Ibid 283, 290.

⁹⁶ Ibid 272.

In summary, this study is not concerned with individualistic explanations of racism and discrimination in policing. In its traditional form, the suspect community thesis draws attention to how police institutionally act upon collective identities, and bring members of racialised communities into the ambit of policing because of who they are, rather than how they have behaved. The focus in this study is therefore on how police institutional structures, policies, practices and knowledges action race, and the effects on the people of Middle Eastern background and appearance who are policed as a Middle Eastern suspect community.

There remains one final fundamental aspect of the suspect community thesis that requires further consideration: namely, the meaning of the term ‘community’.

‘Community’ and Collective Attribution

The meaning of the term ‘community’ in the scholarship on suspect communities is contested and somewhat ambiguous.⁹⁷ In this section, I do not set out to resolve the contests over the meaning of the term. Rather, I intend to identify some of the prominent conceptualisations of ‘community’ in the relevant scholarship and discuss how these conceptualisations relate to my study.

In the suspect communities literature, the term ‘community’ is used as a shorthand to refer to groups of people who are the collective subjects of policing. A primary tension in the literature is the question of whether extraordinary policing is enacted upon groups of people who already share communal relations and collective identities, or if those relations and identities are formed because common experiences and solidarities are borne out of extraordinary policing.⁹⁸

The Middle Eastern suspect community at the centre of this thesis is expansive. In some instances, its members are targeted by the police upon the basis of their familial, friendship and broader associations, meaning that communal bonds pre-exist police intervention. However, given the breadth of the suspect community, members do not

⁹⁷ Indeed, the term ‘community’ is contested in other bodies of literature, too. See, eg, Collins et al, above n 25, 231–34.

⁹⁸ For a fuller discussion of this conceptual tension, see Ragazzi, above n 51, 729–30.

necessarily share any communal relations or affinity: indeed, they may not even know one another. Moreover, given that some of the policing strategies discussed in this thesis are enlivened by police reading people's bodies as Middle Eastern, some people policed as members of the Middle Eastern suspect community are likely misidentified, and have no such heritage.⁹⁹ As such, this thesis takes a minimalist approach to the concept of community; in other words, the term 'community' in this study serves as a shorthand to refer to the diverse groups of people mentioned above.

However, it is important to bear in mind that the concept of 'community' can facilitate collective attribution and modes of regulation and criminalisation. For Sentas, 'community' conceptually patches over the diversity that invariably exists within racialised groups and can also homogenise many different racialised groups into a larger collective.¹⁰⁰ As explained by Sentas, '[t]he idea of community ascribes group characteristics and meanings to religion and ethnicity. Collectively formed identities are reified as community, constructing commonality among ethnic or racialized lines'.¹⁰¹ The alleged transgressions of members of racial and ethnic minority communities are often attributed to other people of the same racial or ethnic background '*en bloc*' through racialised media and political discourses, and consolidated by racialised practices on the part of police and other authorities.¹⁰² For example, as foregrounded in the discussion of community policing above, 'community' can function as a form of regulation when individuals are responsibilised to combat crimes allegedly committed by other individuals of the same race, ethnicity, or religion, even when those individuals previously shared no relations, and are probably quite different from one another.

In their 2000 book *Kebabs, Kids, Cops and Crime*, which is the only extended work to have considered the policing of Middle Eastern background communities in New South Wales, Collins et al. provide a further illustration of how the idea of community can facilitate collective attribution and criminalisation. Though they do not make use of the term 'collective attribution' in their study, Collins et al. trace how Sydney's

⁹⁹ See also Heath-Kelly, above n 46.

¹⁰⁰ Sentas, above n 21, 53–54, ch 5.

¹⁰¹ Ibid 53.

¹⁰² Mythen, above n 47, 414; Sentas, above n 21.

many diverse Lebanese communities were homogenised and framed as being innately criminal in the aftermath of two crimes that took place in Sydney's south-western suburbs in late 1998. The crimes in question were the fatal stabbing of teenager Edward Lee and the firing of shots at a nearby police station a fortnight later.¹⁰³

Following these crimes, police spokespeople, radio broadcasters, newspaper columnists and local and state politicians denounced 'Lebanese gangs' for their involvement, even though no suspects had been identified in relation to either crime.¹⁰⁴ At the same time, these public commentators implored Lebanese communities to demolish so-called 'walls of silence' and cooperate with police; implying that a single Lebanese community was maintaining secrecy about crimes allegedly committed by their youths, and therefore complicit in the criminal behaviour in question.¹⁰⁵ As discussed in Chapter IV, these processes of collective attribution were not merely a matter of rhetoric, but also tied in with over-policing in the form of stop and search 'crackdown' operations in localities home to sizeable populations of Lebanese people.¹⁰⁶

Though this thesis is primarily concerned with how policing policies and practices contribute to suspect community formation, the above example provides support for the trite observation that policing does not occur in a political or social vacuum. As such, the next part of this chapter considers the role of the news media in making collective attributions and buttressing suspect community formation.

IV. 'Police Talk' and the Media: Fortifying the Suspect Community

In recent years, scholars have developed new methodological approaches to explore how public discourses contribute to the maintenance of suspect communities. In short,

¹⁰³ Collins et al, above n 25, 1.

¹⁰⁴ Ibid 3–6, 180. Chapter IV of this thesis details how these cases have developed since Collins et al published their work.

¹⁰⁵ Ibid 50–54. On so-called 'walls of silence', see also David Dixon and Lisa Maher, 'Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market' (2002) 12(2) *Policing and Society* 93, 104–07.

¹⁰⁶ Collins et al, above n 25, 41–42, 236.

these scholars have sought to look beyond policing practices to consider how the media presents information about suspect communities and defines those communities as being at odds with national values, and the effects on the everyday lives of members of those suspect communities. These studies have been carried out in respect of both the ‘old’ (Irish) and ‘new’ (Muslim) suspect communities.¹⁰⁷

In his original formulation of the suspect community thesis, Hillyard focused on the operation of counter-terrorism law and policing, and therefore devoted little ink to discussing media discourses. However, he did note that the police played a decisive role in determining whether information about PTA arrests was given to the press and characterised the reporting of PTA arrests as ‘sensationalist’.¹⁰⁸ Hillyard was specifically concerned that the press would only announce the nationality of PTA arrestees when they were Irish. The press was also reticent to acknowledge that the police released most PTA arrestees without charge. As such, by Hillyard’s estimation, the police selectively afforded reporters with information about the operation of the PTA, which likely reinforced public perceptions of the Irish as terrorist suspects.¹⁰⁹

Similarly, the police in New South Wales provide reporters with much of their information about crime and policing.¹¹⁰ Previous research by Alyce McGovern and Murray Lee has documented how the Police Force’s media liaison team (known as the Police Media Unit or PMU) filters information to the press, and incentivises acquiescent reporting of police knowledge claims and ‘party lines’ (or ‘police talk’) by providing compliant reporters with ‘exclusives’.¹¹¹ As explored further in Chapters

¹⁰⁷ Hickman et al, ‘*Suspect Communities*? Counter-Terrorism Policy, the Press, and the Impact on Irish and Muslim Communities in Britain’, above n 46; Nickels et al, ‘Constructing “Suspect” Communities and Britishness: Mapping British Press Coverage of Irish and Muslim Communities, 1974-2007’, above n 46; Nickels et al, ‘De/constructing “Suspect” Communities: A Critical Discourse Analysis of British Newspaper Coverage of Irish and Muslim Communities, 1974-2007’, above n 46. For a discussion of similar issues in respect of Muslim communities in Australia, see Adrian Cherney and Kristina Murphy, ‘Being a “Suspect Community” in a Post 9/11 World – The Impact of the War on Terror on Muslim Communities in Australia’ (2016) 49(4) *Australian & New Zealand Journal of Criminology* 480.

¹⁰⁸ Hillyard, above n 26, 145.

¹⁰⁹ Ibid 145, 147.

¹¹⁰ Alyce McGovern and Murray Lee, ‘“Cop[y]ing It Sweet”: Police Media Units and the Making of News’ (2010) 43(3) *The Australian and New Zealand Journal of Criminology* 444; Murray Lee and Alyce McGovern, ‘Force to Sell: Policing the Image and Manufacturing Public Confidence’ (2013) 23(2) *Policing and Society* 103.

¹¹¹ McGovern and Lee, above n 110, 453.

III and V, the Police Force's media liaisons and its stringent control over external researchers' access to police-held information and police employees has allowed the police organisation to shape public knowledge about the (alleged) criminal capacities of people of Middle Eastern background. In detailing my attempts to negotiate research access with the Police Force, Chapter III provides an original contribution to the suspect communities literature by conceptualising police institutional censorship and image management practices as modes of power that contribute to suspect community formation, by allowing the police organisation to fashion and insulate public knowledge claims about racialised and marginalised communities. This contribution may be of use in future scholarship about suspect communities whether the scholarship in question focuses on police institutional practices or on the formation of public discourses about suspect communities (see Chapter III).

As one aspect of their layered seminal work *Policing the Crisis*, Hall et al. traced how the British press transformed information given to them by authoritative sources (or 'primary definers') like the police into newsworthy reports.¹¹² More specifically, Hall et al. were concerned with how the behaviour of 'mugging' had become a racialised catch-all for a range of social anxieties about black people, robberies, and other threatening behaviours, despite containing no substance as a legal term.¹¹³ The processes and discourses through which mugging was imbued with racialised meaning were multifaceted, overlapping, and complex. However, Hall et al. identified the reporting of the Metropolitan Police's 'police talk' as a key factor which heightened public awareness and concern about 'mugging'.¹¹⁴ At the same time, the oppressive policing of black people for 'mugging' by 'elite', 'specialist' squads – even before public concern about mugging reached its ascendancy – was virtually glossed over in reporting.¹¹⁵

In Chapters IV and V of this thesis, I build on the above insights to illustrate how the reporting of the police's public knowledge claims about people of Middle Eastern

¹¹² Stuart Hall et al, *Policing the Crisis: Mugging, the State and Law & Order* (Palgrave Macmillan, 35th anniversary edn, 2013) 60.

¹¹³ Ibid 22–31.

¹¹⁴ Ibid 40–45.

¹¹⁵ Ibid 45–55.

background have undergirded suspect community formation by framing Middle Eastern identity as a ‘crime type’. Specifically, the police in New South Wales have used the term ‘Middle Eastern organised crime’ (MEOC) to denote a range of criminal and anti-social behaviours that have no common element other than the alleged offenders’ Middle Eastern heritage. Second, by venerating the police’s ‘battle stories’ and self-descriptions of their efforts to grapple with MEOC, the reporting of ‘police talk’ has justified the need for the continued, aggressive policing of racialised Middle Eastern communities.

V. Conclusion

This chapter has set out the conceptual framework for this study. I use the conceptual tool of the suspect community to explore how police institutional policies and practices act upon collective identities and criminalise and regulate people of Middle Eastern background and appearance in New South Wales.

Though the suspect community thesis was first formulated in the context of counter-terrorism policing, it is amenable to studies (such as the present) which consider policing for non-terrorism-related matters, because the core contention of the framework is not inherently concerned with counter-terrorism policing. Rather, the suspect community thesis is concerned with how racialised communities are brought into relation with the police upon the basis of their identity and status, rather than their conduct, to make a larger community ‘suspect’. As per Hillyard’s original formulation, the suspect community thesis calls into question the institutionalised policies and practices which give rise to the over-policing of racialised and marginalised communities. As discussed in Part II, suspect community formation pivots on collective attributions, wherein the alleged transgressions of members of a particular racial or ethnic background are racialised and attributed ‘*en bloc*’ to other people of the same background.¹¹⁶

This chapter has also suggested how the suspect community thesis might be developed to help make sense of the Police Force’s approaches to policing people of Middle

¹¹⁶ Mythen, above n 47, 414.

Eastern background and appearance in New South Wales. Specifically, the chapter has foregrounded the following policies, strategies and practices as being relevant to the creation of a Middle Eastern suspect community in New South Wales: the formation of institutional units (or police squads) as apparatuses for over-policing; police territorial practices, wherein police enact suppression and surveillance in localities where racialised and marginalised communities tend to reside; the disproportionate or targeted use of formal legal powers; and the extension of surveillance and regulation by way of ‘soft’, community-based policing. As suggested above, the roles of police squads and the use of territorial tactics are two specific lines of inquiry that are underdeveloped in the literature on suspect communities, but which are discussed at length in this thesis.

This chapter has also outlined how police institutional censorship, image management practices, and liaisons with the media undergird suspect community formation. They do so by framing public knowledge about the criminal capacities of suspect communities and by attesting to the need for extraordinary policing of those communities.

These insights about censorship, image management, and media liaisons are considered in further depth in the following chapter of this thesis, which discusses this study’s methodology and methods, and my attempts to gain research access to the NSW Police Force.

Chapter III

The View from Below the Tall Blue Wall: Methodology and Methods

I. Introduction

The title of this chapter is metaphoric and is intended to encapsulate the chapter's main themes and preoccupations. The 'Tall Blue Wall' is my appropriation of the term 'Blue Wall of Silence'. 'Blue Wall of Silence' is a phrase most commonly used in the United States. Essentially, police are said to have erected a Blue Wall of Silence when they close ranks and refuse or neglect to report other officers' corruption, misconduct, or missteps.¹ There is evidence documenting how police in many jurisdictions have historically closed ranks in this manner.² Indeed, scholars have found that maintaining the code of silence is an informal occupational rule amongst police officers which stems from elements of police culture that encourage comradery and loyalty.³

The Tall Blue Wall is somewhat different from the Blue Wall of Silence. It impedes independent academic researchers from inquiring into the inner workings of police organisations. Of course, many researchers do scale the Tall Blue Wall with the assistance of gatekeepers, including senior police officers and employees of police research units.⁴ However, others (including myself) are prevented from doing so. The Tall Blue Wall – like the Blue Wall of Silence – evidences (and is maintained by) police non-transparency and can act to shelter the police from public scrutiny and

¹ See, eg, Jerome Skolnick, 'Corruption and the Blue Code of Silence' (2002) 3(1) *Police Practice and Research* 7; Jerome H Skolnick and James J Fyfe, *Above the Law: Police and the Excessive Use of Force* (Free Press, 1993) 110–12; John Kleinig, 'The Blue Wall of Silence: An Ethical Analysis' (2001) 15(1) *International Journal of Applied Philosophy* 1; John Kleinig, *The Ethics of Policing* (Cambridge University Press, 1996) 182, 224.

² For example, Skolnick lists several public inquiries that have revealed police codes of silence. See Skolnick, above n 1, 7. One of the inquiries listed by Skolnick is the Royal Commission into the New South Wales Police Service, which is considered at length in Chapter IV of this thesis.

³ Ibid 8; Skolnick and Fyfe, above n 1, 110–12; Kleinig, 'The Blue Wall of Silence: An Ethical Analysis', above n 1, 5–6; Kleinig, *The Ethics of Policing*, above n 1, 224.

⁴ However, once a research project is formally approved by institutional gatekeepers, researchers will also need to informally negotiate access with the individuals participating in the study. See, eg, Michael Rowe, 'Researching Diversity in Policing: A User's Guide to Philosophy and Practice' in Mark Brunger, Stephen Tong and Denise Martin (eds), *Introduction to Policing Research: Taking Lessons from Practice* (Routledge, 2016) 175, 176–78.

criticism. In the first sense, then, the term ‘view from below’ in this chapter’s title refers to my experience of trying to negotiate research access and peer over the Tall Blue Wall to little avail. This lack of access was not merely a matter of methods, but intrinsic to the phenomena studied in this thesis: the Police Force’s institutional control of research access and practices of informal censorship and image manipulation have allowed the organisation to control and shape public information about the Middle Eastern suspect community and how that suspect community is policed.

The ‘view from below’ also takes on a second meaning in this chapter. Scholars sometimes use the phrase ‘view from below’ as a shorthand for the experiences and perceptions of those who have been policed.⁵ In the last three decades, some scholars have attempted to systematically analyse the experiences and perceptions of those people who are subject to police attention, to provide ‘a less “cop-sided” view of policing’.⁶ In this study, I sought to integrate data about members of the Middle Eastern suspect community’s experiences of policing. I did so by conducting interviews with lawyers and community workers, and by collecting court judgments and tribunal decisions detailing interactions between the police and the policed. I also conducted interviews with members of the Police Multicultural Advisory Council and retired police officers and analysed a range of documents aside from the court judgments and tribunal decisions. As such, I was able to generate insights about police policies, strategies, and practices, even though the Police Force declined to participate in my study.

This chapter proceeds as follows. In Part II, I situate my study within the body of empirically-grounded critical research about the policing of ethnic minority communities. In Part III, I explore my research paradigm, research design, and research questions. It outlines how I intended to carry out this study and why. In Part

⁵ Paddy Hillyard, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993) xiii. As noted by Reiner, sociological research in the 1960s was commonly concerned with the ‘view from below’. See Robert Reiner, ‘Police Research in the United Kingdom: A Critical Review’ (1992) 15 *Crime and Justice* 435, 487.

⁶ Lisa Maher et al, *Anh Hai: Young Asian Background People’s Perceptions and Experiences of Policing* (UNSW Faculty of Law Research Monograph Series, 1997) 1. ‘Cop-sided’ is a term coined by Reiner to describe conservative (and largely uncritical) histories of professional policing in Britain.

IV, I describe my largely-unsuccessful attempts to negotiate research access with the NSW Police Force, and the view of police non-transparency that I formed from below the Tall Blue Wall. As such, Part IV describes some of the setbacks that I experienced which meant that I was unable to carry out some aspects of my study as it was initially conceived. More broadly, Part IV also explains the significance of my insights about police censorship and image management for studying suspect communities. In Part V, I describe my methods, the source material that I used, and the data I generated in the study. The chapter concludes in Part VI.

II. Studying the Police and Their Practices

Policing is a highly-contested area of research. Most influential policing scholarship in Australia has drawn on the British tradition of police research. However, carrying out police research tends to be far more difficult in Australia than in Britain, where stronger partnerships exist between police organisations and academic researchers. Moreover, British police organisations tend to collect and publish data more systematically than their Australian counterparts, which means that there is more data about policing on the public record for British policing scholars to utilise and scrutinise, compared to what is available in Australia.

Robert Reiner and Tim Newburn discern five stages in the development of policing research as an area of academic inquiry in Britain.⁷ The first of these stages was the ‘consensus stage’, which occurred in the 1960s. During the ‘consensus stage’, most policing research was complimentary of the police.⁸ However, by the late 1960s, against the context of rising concerns about police deviance and the inefficacy of policing policies and practices in controlling crime, policing became more

⁷ Robert Reiner and Tim Newburn, ‘Police Research’ in Roy D King and Emma Wincup (eds), *Doing Research on Crime and Justice* (Oxford University Press, 2008) 343. See also Robert Reiner, *The Politics of the Police* (Oxford University Press, 4th ed, 2010) 8–14; Trevor Jones, Tim Newburn and Robert Reiner, ‘Policing and the Police’ in Alison Liebling, Shadd Maruna and Lesley McAra (eds), *The Oxford Handbook of Criminology* (Oxford University Press, 6th ed, 2017) 769; Jennifer Brown, ‘Police Research: Some Critical Issues’ in Frank Leishman, Barry Loveday and Stephen P Savage (eds), *Core Issues in Policing* (Longman, 1996) 177, 177–79; Garry Thomas, Colin Rogers and James Gravelle, ‘Research on Policing: Insights from the Literature’ in *Researching Police in the 21st Century: International Lessons from the Field* (Palgrave Macmillan, 2014) 1, 1.

⁸ Reiner and Newburn, above n 7, 349.

controversial and politicised. In this stage of research, dubbed the ‘controversy stage’, researchers began to question the extent to which policing policies and practices shape crime, rather than simply envisioning police officers as actors that react to criminal behaviour.⁹ The increasingly critical police research carried out during the ‘controversy stage’ laid the foundations for the ensuing ‘conflict stage’, which emerged amidst the widespread urban disorder and riots in Britain during the early and mid-1980s. Perhaps the most notable development during this stage was the growing scholarly interest in questions of police accountability.¹⁰

During the earlier stages of police research, studies were almost exclusively conducted by academic researchers, who sought to examine policing as a mode of state control and governance.¹¹ The upheavals in police politics from the 1960s coincided with the rapid development of academic disciplines such as criminology, sociology, and law, and with it questions about the nature and social effects of police power.¹² However, since the 1980s, the Home Office, local government bodies, and police organisations have assumed prominent roles in funding, conducting, and shifting the agendas of British police research to align with the preoccupations of ‘administrative criminology’.¹³ This has contributed to British police research generally becoming less critical and more policy-oriented, as has been evident in the two most recent stages of police research.¹⁴

By the end of the 1980s, a new stage of policing research began to emerge in line with the development of co-existing (and perhaps competing) streams of criminological research. These streams included the ‘left realism’ of Jock Young and his colleagues, and the ‘administrative criminology’ heavily influenced by the empiricism of scholars from the United States including James Q. Wilson, and Lawrence W. Sherman.¹⁵ During this stage of research, referred to by Reiner and Newburn as the ‘contradiction stage’, policing scholars began to call for evidence-based and intelligence-led crime

⁹ Ibid.

¹⁰ Ibid 350.

¹¹ Ibid 346.

¹² Ibid.

¹³ Ibid 347.

¹⁴ Ibid.

¹⁵ Ibid 350.

control, crime prevention, and investigation strategies, as exemplified in the then-emergent ‘problem-oriented policing’ and ‘community policing’ paradigms.¹⁶ According to Reiner and Newburn, in the wake of the ‘contradiction stage’ of policing research, ‘critical and theoretical research has been eclipsed by the rapid growth of policy-oriented research on crime control by the police’ (the ‘crime control stage’). The ‘crime control stage’ has encouraged an ongoing research capacity within policing organisations, and closer collaboration between police organisations and policy-oriented researchers.¹⁷

Despite the apparent marginalisation of theoretically-underpinned critical policing research in Britain, debates about police treatment of minority communities and racism have retained their critical edge and remained at the forefront of police research agendas in English-speaking police jurisdictions throughout the last thirty years.¹⁸ The endurance of critical research about policing, race and racism in Britain was buoyed by William Macpherson’s conclusion that policing in London was institutionally racist,¹⁹ and has also been apparent in the United States, where an upturn in critical police research has occurred alongside the Black Lives Matter movement.²⁰

In Australia, police organisations have not often cooperated or collaborated with critical researchers or welcomed their findings. Take, for example, the following frank observations about critical police research from David Bradley, a Victoria Police

¹⁶ Ibid 350–51.

¹⁷ Ibid 351–53.

¹⁸ For examples of critical research about police racism and police-community relations in Britain after the Stephen Lawrence Inquiry, see Michael Rowe, *Policing, Race and Racism* (Willan, 2004); Michael Rowe (ed), *Policing Beyond Macpherson: Issues in Policing, Race and Society* (Willan, 2007); Simon Holdaway and Megan O’Neill, ‘Where Has All the Racism Gone? Views of Racism within Constabularies after Macpherson’ (2007) 30(3) *Ethnic and Racial Studies* 397. For examples of Australian research that has considered comparable issues, see Lisa Maher et al, above n 6; Janet BL Chan, *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press, 1997); Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000); Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001); David Dixon and Lisa Maher, ‘Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market’ (2002) 12(2) *Policing and Society* 93; Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014).

¹⁹ Reiner and Newburn, above n 7, 352–53, 360–61.

²⁰ See, eg, Sandra E Weissinger and Dwayne A Mack (eds), *Law Enforcement in the Age of Black Lives Matter: Policing Black and Brown Bodies* (Lexington Books, 2017); Alex S Vitale, *The End of Policing* (Verso, 2017); Jordan T Camp and Christina Heatherton (eds), *Policing the Planet: Why the Policing Crisis Led to Black Lives Matter* (Verso, 2016).

Research Fellow, and Christine Nixon, a former Assistant Commissioner of the NSW Police Service and former Chief Commissioner of Victoria Police:

To the extent that critical police researchers want access to police organisations, they have to contend with senior officials acting as gate-keepers and, predictably, they have not been exactly welcomed with open arms ... Unsurprisingly, what we can say with certainty is that, confronted by sustained criticisms of the police that constitute the core of its findings, police leaders came to be very defensive and often deeply unhappy about the spirit and tenor of the critical academic voice.²¹

Indeed, my study, which seeks to generate empirically-grounded critical research about the policing of people of Middle Eastern background and appearance in New South Wales, was – to adopt Bradley and Nixon’s terminology – not ‘exactly welcomed with open arms’ by the NSW Police Force. Before detailing my negotiations with the Force’s research gatekeepers (see Part IV of this chapter), I will elaborate on the methodology and design of my study.

III. Methodology, Research Design, and Research Questions

Social Construction, Social Process, and Subject Position

As explained in Chapter II, I draw heavily on the concepts of racialisation and criminalisation in this thesis. The concepts I draw on inform (and, in turn, are informed by) my methodological approach. I adopt the social constructivist approach that race does not have an objective biological basis, but that it is constructed through various social, cultural, economic, and psychological processes and is therefore historically and contextually contingent. Throughout this study, I use the framework or paradigm

²¹ David Bradley and Christine Nixon, ‘Ending the “Dialogue of the Deaf”: Evidence and Policing Policies and Practices. An Australian Case Study’ (2009) 10(5–6) *Police Practice and Research* 423, 426–27. See also David Bradley, Christine Nixon and Monique Marks, ‘What Works, What Doesn’t Work and What Looks Promising in Police Research Networks’ in Jenny Fleming and Jennifer Dawn Wood (eds), *Fighting Crime Together: The Challenges of Policing and Security Networks* (UNSW Press, 2006) 170, 171–73.

of racialisation to explore how policing knowledges, policies, and practices ‘construct and sustain race as a meaningful phenomenon’.²² I also take the view that crime is not a static or objective concept, but that it is created through law-making, public policy decisions and the policies and practices of criminal justice institutions, including those of the police.²³ Drawing on these approaches to race and crime, I set out to interrogate various policing policies and practices targeted towards people of Middle Eastern background and appearance in New South Wales and argue that these have created a suspect community.

There are two aspects of my research paradigm that are essential to my approach to policing race. First, I approach policing as a form and practice of social action consisting of the interactions between institutions and people. Second, constructivists emphasise that since ‘reality’ is socially constructed, knowledge claims are contingent upon individual experiences and social interactions.

Since the structure and organisation of my research inquiry and design all involve value claims, I have attempted to reflect on how my values and experiences have affected my research processes and findings. In doing so, I have kept in mind a passage from Janet Chan’s seminal work *Changing Police Culture*, which I extract at length below:

Researchers in ‘race relations’ topics are often confronted with the question ‘Whose side are you on?’ It is therefore important for me to declare my position. Many in Australia would argue that it is impossible to de-politicise social research, especially research on oppressed minorities. I agree with this view in the sense that all research workers carry with them particular personal and political perspectives. To the extent that a clear distinction can be drawn between the ‘two sides’ – the oppressed minorities and the racist police – my answer to the question ‘Whose side are you on?’ is

²² Simon Holdaway, ‘Some Recent Approaches to the Study of Race in Criminological Research - Race as Social Process’ (1997) 37(3) *British Journal of Criminology* 383, 396.

²³ Luke McNamara, ‘Criminalisation Research in Australia: Building a Foundation for Normative Theorising and Principled Law Reform’ in Thomas Crofts and Arlie Loughnan (eds), *Criminalisation and Criminal Responsibility in Australia* (2015) 33, 39–40.

unequivocally that I am on the side of the oppressed. However, I believe that researchers can be on the side of the oppressed without losing their independence. I cannot see how the interests of the oppressed can be served by a dogmatic acceptance of ideological stereotypes or a systematic avoidance of empirical evidence contrary to such stereotypes ... I also make no pretence that my work is more valid simply because I am female and belong to a visible minority group ... My gender and ethnicity may have been a constraint in some situations but they can be a resource in others.²⁴

Several aspects of Chan's statement resonate with me. It is important that I acknowledge that my paternal grandmother is a Maronite Lebanese woman who originates from a village near Tripoli, the second largest city in Lebanon. She arrived in Sydney in 1957, nearly two decades before large-scale Lebanese migration to Australia began in line with the Lebanese Civil War (1975–90).²⁵ However, despite my Lebanese heritage, I have never been to Lebanon, and my ability to speak Arabic is limited to greetings and other everyday phrases.

I have always lived in the Bankstown and Liverpool Local Government Areas in Sydney's south-west, among large populations of Lebanese-Australians. Many of my close friends are second and third-generation Lebanese-Australians; while some are Christians, others are Muslims. Given that I am from south-west Sydney, the fieldwork that I conducted during this study was often close to home, and the addresses mentioned in the court judgments and news reports that I compiled for documentary analysis were invariably familiar to me (see Part V for a discussion of the methods used in this study). When I ask myself the question 'Whose side are you on?' in the context of this research, like Chan, I would answer that I am on the side of those who are policed. However, while I can appreciate the lineage of the question 'Whose side are you on?' as a call to action for social researchers,²⁶ I also agree with Chan's view

²⁴ Chan, above n 18, 10–11.

²⁵ IH Burnley, 'Lebanese Migration and Settlement in Sydney, Australia' (1982) 16(1) *The International Migration Review* 102; Trevor Batrouney, 'Lebanese' in James Jupp (ed), *The Australian People: An Encyclopedia of the Nation, Its People and their Origins* (Cambridge University Press, 2001) 554.

²⁶ See Howard Becker, 'Whose Side Are We On?' (1967) 14(3) *Social Problems* 239.

that taking the side of the policed should not entail excluding evidence that does not confirm one's initial views or hypotheses about the 'other side' (that is, the police).

I now consider my methodology. As stated in Part II, in this study I view the field from a critical perspective. Critical criminology is a 'large, diverse and fluid field'.²⁷ In an attempt to distil the essence of critical criminology, Thalia Anthony and Chris Cunneen explain that '[c]ritical criminology seeks to locate and understand the reasons for crime within wider structure and institutional contexts'.²⁸ Critical criminological studies are often undergirded by the view that crime and crime control do not exist independently of one another; instead, they are shaped reciprocally, in specific historical, political, economic, cultural, and institutional contexts.²⁹

Julie Stubbs further identifies fifteen aims and motivations that critical criminological studies tend to share. Several of these characteristics stand out to me as being relevant to my study, including: 'challenging official definitions and statistics of crime and crime control; rejection of positivist methodologies; disavowal of the criminologist as a neutral scientific expert; a critical posture towards agents, systems and institutions of social control; emphasizing the effects of social power and inequality as underlying offending, victimisation and criminalisation; and valuing the view from below'.³⁰ These endeavours relate to a broader 'methodological imperative' for scholars to pay due consideration to the complex interplay between people's lived experiences of criminal justice processes, historical structures, and social structures like race and class.³¹

My study of how racialised policing in New South Wales has constructed a Middle Eastern suspect community aligns with the preoccupations of critical criminology

²⁷ Julie Stubbs, 'Critical Criminological Research' in Thalia Anthony and Chris Cunneen (eds), *The Critical Criminology Companion* (Hawkins Press, 2008) 6, 6. Given the breadth of research endeavours that might be characterised as 'critical criminology', Stubbs uses the label 'critical criminology/ies' throughout her chapter.

²⁸ Thalia Anthony and Chris Cunneen, 'Introduction' in Thalia Anthony and Chris Cunneen (eds), *The Critical Criminology Companion* (Hawkins Press, 2008) 1, 1.

²⁹ Anthony and Cunneen, above n 28.

³⁰ Stubbs, above n 27.

³¹ Chris Cunneen, 'Criminological Research and the Search for Meaning' in Lorana Bartels and Kelly Richards (eds), *Qualitative Criminology: Stories from the Field* (Hawkins Press, 2011) 167, 168.

articulated by Stubbs, Anthony and Cunneen above. Some of the lines of inquiry in this study include: when, how and why police institutional discourses and knowledges about so-called ‘Middle Eastern organised crime’ (MEOC) emerged (Chapters IV and V); the extent to which the work of police squads with mandates of controlling and preventing MEOC has shaped the idea of MEOC (Chapter IV and Chapter V); why police use the legal resources of Random Breath Testing powers and Firearms Prohibition Order search powers against people of Middle Eastern background and appearance, and the effects on those policed (Chapter VI); and the extent to which community-based policing initiatives extend the reach of policing in racialised Middle Eastern background communities (Chapter VII). Throughout the thesis, I seek to account for historical and political context and lived experiences of policing wherever possible. As explored further below, I adopted a qualitative approach to do this.

Research Design and Research Questions

This study’s research design involved a triangulated approach. I compiled and analysed a dataset of documentary sources and conducted 23 semi-structured interviews (see Part V). The study therefore involved both ‘data triangulation’ (the use of multiple sources of data), and ‘method triangulation’ (the use of distinct methods). Gathering and analysing data about police practices from multiple sources allowed me to generate insights across my four research questions (below), and to develop a deeper and more robust account of the Police Force’s approaches to policing the Middle Eastern suspect community in New South Wales.

The research questions that structured this study are as follows:

- What institutional structures, policies, practices, and knowledges shape diverse police interventions against people of Middle Eastern background and appearance in New South Wales?
- What was the particular role of the Middle Eastern Organised Crime Squad (MEOCS) in policing people of Middle Eastern background and appearance in New South Wales?
- What can interviews with lawyers and employees of community organisations tell us about policing and the relations between the police and

people of Middle Eastern background and appearance in New South Wales?

- What explanatory value does the ‘suspect community thesis’ offer for understanding the policing of people of Middle Eastern background and appearance in New South Wales?

When I first formulated this study’s research questions, I had hoped that I would be able to draw data from both the police and the policed, because of two insights in the policing literature.

Firstly, gaining access to data remains a fundamental and systemic difficulty in conducting police research.³² Police organisations may attempt to prevent outsiders from prying into and exposing their inner mechanisms (or, from peering over what I have called the ‘Tall Blue Wall’).³³ Controlling access allows the police to regulate images of their work and occupational culture, and can help to shelter the organisation from criticism. I anticipated from the outset of this project that gaining research access to the NSW Police Force was going to prove difficult. However, I also understood the process of negotiating police research access to be an integral source of data on how the police generate and protect their knowledge claims about suspect communities.

Secondly, academic researchers are increasingly realising the need for policing literature which is attentive to the perceptions and experiences of those who are policed, and which thereby provides ‘less “cop-sided” view[s] of policing’.³⁴ Seeking out the views and experiences of those who are policed (or the ‘view from below’) demonstrates a commitment to understanding the world from the perspective of those

³² See, eg, Alyce McGovern, ‘Negotiating Access to the NSW Police Force Media Unit: A Personal Research Experience’ in Lorana Bartels and Kelly Richards (eds), *Qualitative Criminology: Stories from the Field* (Federation Press, 2011) 51; Didier Fassin, *Enforcing Order: An Ethnography of Urban Policing* (Polity Press, 2013) 13–33.

³³ Maurice Punch, *Conduct Unbecoming* (Tavistock Publications, 1985) 209–19; Maurice Punch, ‘Researching Police Deviance: A Personal Encounter with the Limitations and Liabilities of Field-Work’ (1989) 40(2) *The British Journal of Sociology* 177; David Dixon, ‘The Normative Structure of Policing’ in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 69, 94.

³⁴ Maher et al, above n 6, 1. See also Hillyard, above n 5; Satnam Choongh, *Policing as Social Discipline* (Clarendon Press, 1998); Sentas, above n 18; Elizabeth Comack, *Racialized Policing: Aboriginal People’s Encounters with the Police* (Fernwood Publishing, 2012); Cunneen, above n 18.

who are powerless. However, while I had intended to integrate the views of the policed in this study, I experienced considerable difficulties recruiting the people most heavily affected by policing for research interviews.

It became clear to me as I carried out this study that, for a range of reasons, those who are policed might be hesitant or unwilling to share their experiences in a research interview. In a conversation with a close friend who is involved in a Muslim community organisation in Sydney's south-west, I was given to understand that my (lack of) standing as a researcher, as well as the paucity of critical social research in this area, may have caused people who have been policed to feel some reluctance about participating in my study. As straightforwardly explained by my friend, people at her community centre failed to see how my 'school project' could 'stop them from being pulled over in their cars and harassed by police all the time'.³⁵ Perhaps this view is unsurprising – not only am I student and a woman in my mid-twenties, but in the last two decades, there have been very few (if any) prominent examples of academic researchers (of any pay grade) having collected the testimony of members of the Middle Eastern suspect community to lobby for changes to policing policy and practice. Nevertheless, despite the scepticism relayed to me by my friend, it is my view that researchers can and should work alongside the policed and others with different skill sets and knowledge bases, like lawyers and community workers, to stage interventions against the policies and practices involved in racialised over-policing.³⁶ This should include collaborating (or at least consulting) with those who are policed to determine the nature of the interventions to be staged.³⁷

I anticipate that it will take several years for me to build relationships with those who are policed and others who are motivated to critique, resist, and challenge the over-

³⁵ See Chapters IV, V and especially Chapter VI for discussions of the centrality of proactive vehicle stops in the Police Force's approaches to policing the Middle Eastern suspect community.

³⁶ This is not to imply that critical social research is a panacea for racialised over-policing. However, see Clarke et al on the potential for critical researchers to join others in critiquing, challenging and changing police practice. Becky Clarke, Kathryn Chadwick and Patrick Williams, 'Critical Social Research as a "Site of Resistance": Reflections on Relationships, Power and Positionality' (2017) 1(2) *Justice, Power and Resistance* 261.

³⁷ However, as noted by Clarke et al, those who are policed may choose to remain silent in demonstration of their resistance. Ibid 270, 273.

policing of the Middle Eastern suspect community in New South Wales. While conducting this study, I was able to start building important research relationships and networks by interviewing lawyers who have advised and represented clients of Middle Eastern background in matters involving the police, and community and youth workers attached to community-based not-for-profit organisations in Sydney's south-western and western suburbs. I also collected court judgments describing police interactions with people of Middle Eastern background and appearance (my methods and data sources are detailed in Part V). Despite not constituting the voices of 'the policed', these interviews and judgments about the policed provided compelling alternative 'windows' into policing and helped to piece together pictures of institutional police practices.

Put differently, gathering data from sources other than the police provides opportunities to question institutional or dominant 'truths' about policing. The policies, practices and knowledges involved in the policing of people of Middle Eastern background and appearance are often hidden and may be contested as unlawful, discriminatory, or otherwise unreasonable by those who are policed. The data that I obtained about the policed (from interviews with lawyers and community workers, and court judgments) assisted in piecing together a more holistic picture of the often-opaque practices of the police. In combination, my interviews and my analyses of documentary sources generated accounts which complemented, challenged, and extended one another, and improved the scope, depth, and consistency of the knowledge produced.

Having outlined this study's research design and research questions, I now discuss my attempts to negotiate research access with the NSW Police Force. I aim to draw attention to the Force's institutional non-transparency and its attempts to manage its organisational image through its respective research and media liaison units. The following part of this chapter provides an original contribution to the literature on suspect communities by conceptualising these aspects of the police organisation's work as practices that contribute to suspect community formation. I contend that these practices have allowed the Force to fashion (and insulate) knowledge claims attesting to the criminal capacities of the Middle Eastern suspect community, and the need to

aggressively police that suspect community. The discussion below extends Paddy Hillyard's observation that the police's liaisons with the press had allowed them to mediate public perceptions about the Irish suspect community (see Chapter II). The ensuing discussion may also have conceptual purchase in other studies, as it signals the need for a broad conception of the police organisational practices that contribute to suspect community formation which includes, but is not limited to, the practices of operational police officers.

IV. My Attempts to Scale the Tall Blue Wall

If police organisations are not open and honest – or, in other words, transparent – about their policies and practices, it can be difficult for the public to know what they are doing and to hold them to account for their actions. Transparency can significantly affect the relationship between the police and the public and can influence peoples' trust, cooperation, and voluntary engagement with the police.³⁸ Of course, police organisations are not equally transparent; as articulated by Joshua Chanin and Salvador Espinosa, 'transparency is the product of a unique constellation of factors within [police] agencies that lead certain departments to share more than others'.³⁹ However, as acknowledged by Chanin and Espinosa, the factors that bear on police transparency have been almost entirely overlooked by researchers.⁴⁰

If transparency essentially involves police communicating information about their policies and practices to the public, then it can take many different forms. One of those forms is cooperation or collaboration with researchers. Scholars have provided reflections on how personal characteristics like their gender have affected their negotiations with police gatekeepers and their resultant ability to gain access to police institutions and carry out their research.⁴¹ Researchers have also indicated that police

³⁸ Joshua Chanin and Salvador Espinosa, 'Examining the Determinants of Police Department Transparency: The View of Police Executives' (2016) 27(5) *Criminal Justice Policy Review* 498, 499–500.

³⁹ Ibid 500.

⁴⁰ Ibid 440.

⁴¹ Jyoti Belur, 'Status, Gender and Geography: Power Negotiations in Police Research' (2014) 14(2) *Qualitative Research* 184; McGovern, above n 32; Rebecca Horn, 'Not "One of the Boys": Women Researching the Police' (1997) 6(3) *Journal of Gender Studies* 297; David Dixon, 'Light

organisations are more likely to grant research access to police officers (both serving and former). For example, in the context of her work on the policing of Left Wing Extremism in India, Jyoti Belur has noted that being a former high-ranking police officer helped her to negotiate ethics approval, likely because research gatekeepers believed that she would be sympathetic to the exigencies of police work.⁴²

To expand on Belur's observations, police gatekeepers' deliberations may be influenced by their anticipation of how critical proposed research will be. Indeed, Bradley and Nixon's sentiments about critical police research in Part II of this chapter provide support for this contention.⁴³ Aversion to criticism has meant that police organisations the world over have traditionally attempted to limit opportunities for outsiders to scrutinise their internal mechanisms.⁴⁴ Though police organisations in some jurisdictions are currently demonstrating greater willingness to forge partnerships with university researchers,⁴⁵ gatekeepers will likely attempt to prevent researchers from inquiring into policing policies and practices if the police cannot control the research agenda and if the findings are expected to cause controversy.⁴⁶ My experience certainly suggests that gatekeepers are reticent to allow critical researchers to scale the Tall Blue Wall.

In this study, I attempted to negotiate research access with two separate Police Force departments. The first of these departments was the Police Force's Research Coordination Unit (RCU). These negotiations related to my proposal to conduct interviews with, and observations of, various police employees (including both sworn

and Shadow: Comparative Fieldwork in Policing' in Lorana Bartels and Kelly Richards (eds), *Qualitative Criminology: Stories from the Field* (Federation Press, 2011) 230.

⁴² Belur, above n 41, 188–90.

⁴³ See also Dixon, above n 33, 94.

⁴⁴ But see Dixon's discussion of his reception by police when carrying out research in England and Australia. Significantly, Dixon notes that police in England welcomed his research as a way to communicate their discontent about legislative changes. See Dixon, above n 41. See also Punch, *Conduct Unbecoming*, above n 33, 209–16; Mark Brunger, Stephen Tong and Denise Martin (eds), *Introduction to Policing Research: Taking Lessons from Practice* (Routledge, 2016).

⁴⁵ Reiner and Newburn, 351–53. But see Fassin, 13–33.

⁴⁶ John Topping, 'Policing in Northern Ireland: Research, Meaning and Lessons from a Contested Landscape' in Mark Brunger, Stephen Tong and Denise Martin (eds), *Introduction to Policing Research: Taking Lessons from Practice* (Routledge, 2016) 71, 77.

officers and civilian staff). My discussions with the RCU spanned the two years between December 2015 and December 2017.

I also attempted to obtain data enumerating the arrests, charges and prosecutions that arose from the work of the (now-defunct) MEOCS. I requested this data from the Police Force's External Information Access Unit (EIAU) by applying under the *Government Information (Public Access) Act 2009* (NSW) (GIPAA). Like freedom of information (FOI) laws in other jurisdictions, GIPAA allows members of the public to access government information in New South Wales.

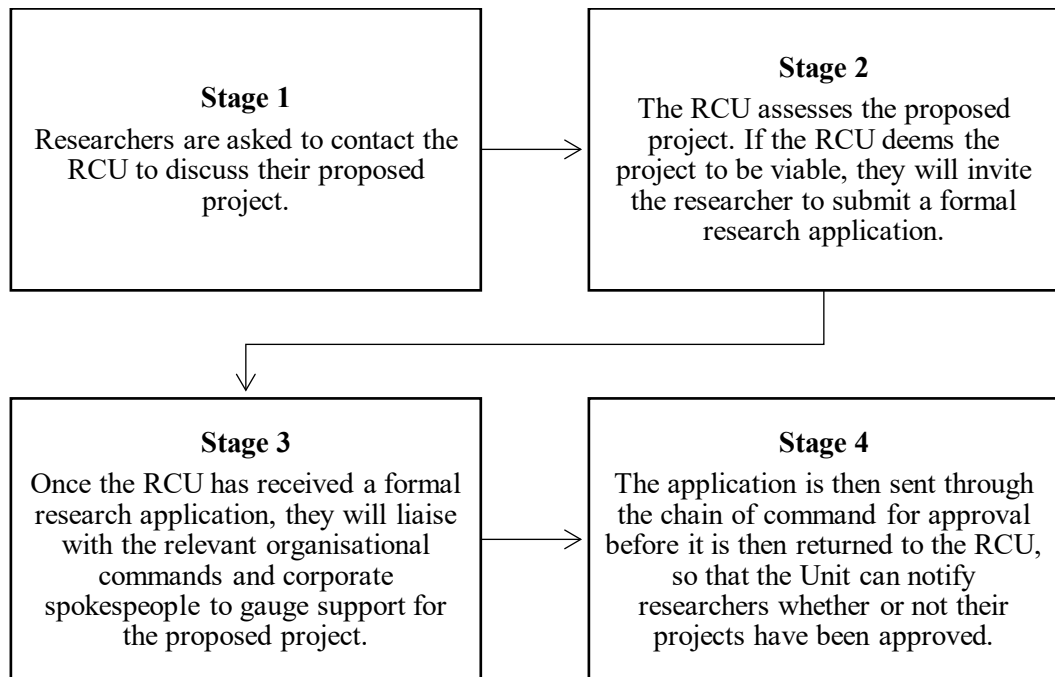
As detailed below, I had mixed success in negotiating research access with the Force. Though the RCU denied me access, after much persistence, the Force eventually provided me with the information that I requested in my GIPAA Application.

The Research Coordination Unit

The employees of the Police Force's RCU are the gatekeepers responsible for vetting external researchers' proposals to conduct research involving the Force's employees. As described on the Force's website,⁴⁷ the RCU's gatekeeping work typically involves four sequential stages of deliberation.

Researchers are first asked to contact the RCU and discuss their proposed project informally. Next, the RCU assesses the proposed project and evaluates whether it aligns with the Force's strategic direction and Corporate Plan. If the RCU considers the project to be viable, they will invite the researcher to submit a formal research application. Once the RCU has received the application, they will consult with the organisational commands and corporate spokespeople who are prospective research participants to gauge whether they are willing to participate in the research. Next, the RCU sends the application through the chain of command. Once the application has been returned, the RCU will notify the researcher whether their proposed research will go ahead. The process of negotiating access with the RCU is depicted in **Figure 3.1**, overleaf.

⁴⁷ NSW Police Force, *Research With NSW Police Force* <https://www.police.nsw.gov.au/safety_and_prevention/policing_in_the_community/research_with_nsw_police_force>.

Figure 3.1: The Research Coordination Unit's Gatekeeping Work

Source: *Research with the NSW Police Force* <https://www.police.nsw.gov.au/safety_and_prevention/policing_in_the_community/research_with_nsw_police_force>.

My negotiations with the RCU progressed in the sequence depicted above, but they were protracted. Negotiations began in December 2015 and carried on without resolution until December 2017. During this time, I had contact with the Manager of the RCU and a Research Officer working within the RCU. The Manager and the Research Officer were civilian employees, and both held doctorates.

Following some initial discussions over email, I sent the RCU a short research proposal in May 2016. The proposal was approximately four pages long (see **Appendix 2**). I proposed to interview police employees and observe their work, including rank-and-file officers and civilian Multicultural Community Liaison Officers (MCLOs) from two or three of the following Local Area Commands (LACs), which each have a large population of Middle Eastern background residents: Bankstown, Liverpool, Green

Valley, Parramatta, Fairfield, and Campsie.⁴⁸ I also requested interviews with 20-25 officers working in various roles in the above LACs or in the MEOCS.

As stated above, the RCU assesses whether proposed research aligns with the Force's Corporate Plan before deciding whether to invite the researcher(s) to submit a formal research application. Bearing this in mind, I appended a table to my application outlining how my research could help the Police Force to achieve aims described in its Corporate Plan. The table was intended to illustrate how the Corporate Plan aligned with the core components of procedural justice and the aims of my research.

Given the emphases on managerialism, efficiency, and cost-effectiveness in contemporary policing, it is somewhat unsurprising that the Force asks external researchers to demonstrate that their proposed projects relate to corporate priorities before support is given to those projects.⁴⁹ However, the problematic corollary of this situation is that the Force can vet critical (and potentially controversial) research by simply stating that the project does not fulfil its corporate policies and priorities. As a public institution, the Police Force should be held to a higher standard of transparency and public access, which includes participating in research projects beyond those deemed to be organisationally valuable to the police by the police.

Close to four months passed before the Research Officer emailed with feedback on my research proposal in September 2016. She stated that the Police Force would not approve projects that required ethnographic or observational methods and attributed this policy to the Australian National Terrorism Threat Level. I am not certain how the National Terrorism Threat Level relates to my research, which considers policing for non-terrorism-related matters. However, I surmise that the RCU's concerns may have stemmed from the shooting of civilian police employee Curtis Cheng outside the NSW

⁴⁸ LACs are now called Police Area Commands (PACs). In 2017, Liverpool and Green Valley LACs were amalgamated to form Liverpool City PAC, and Fairfield LAC was amalgamated with Cabramatta LAC to form Fairfield City PAC. For a full listing of PACs, see NSW Police Force, *Regions, Commands, Districts* <https://www.police.nsw.gov.au/about_us/regions_commands_districts>.

⁴⁹ See Monique Mann, 'New Public Management and the "Business" of Policing Organised Crime in Australia' (2017) 17(4) *Criminology & Criminal Justice* 382.

Police Force headquarters in 2015,⁵⁰ and related concerns about the safety and wellbeing of researchers who accompany police in public while they carry out their duties. In any case, by implying that concerns about terrorism were the reason for the embargo on ethnographic and observational research, the RCU gave me the impression that the embargo was non-negotiable.

I was, however, frustrated to hear that the RCU would not allow researchers to carry out observational research, because restrictions on observational methods did not appear to extend to journalists writing about police work. In early 2016, former News Corp associate editor John Lyons and photographer Gary Ramage were granted considerable access to the MEOCS. Lyons and Ramage conducted three weeks' worth of ride-alongs and interviewed officers attached to the Squad. The 'exclusive' report that Lyons produced after conducting this fieldwork was published in May 2016 while I was awaiting the Research Officer's feedback on my proposal.⁵¹ When writing his 2016 book about the MEOCS, News Corp reporter Yoni Bashan was also permitted interviews with MEOCS officers 'upon request, and on a case-by-case basis', and was given a tour of the Squad's offices.⁵² Lyons' report and Bashan's book both exalt the Squad and its officers and I suspect that I was not granted access to interview the Squad's officers because the RCU was wary that my research might not be quite so complimentary.

Where external researchers negotiate with the RCU, reporters deal with the Police Media Unit (PMU). The PMU is the Police Force's 'dedicated media liaison team'.⁵³ As detailed in Chapter V, Alyce McGovern and Murray Lee have previously described how the PMU exerts considerable sway over the reporting of policing matters in New South Wales, and sometimes rewards complicit journalists with 'scoops' or

⁵⁰ Then-Police Commissioner Andrew Scipione linked the attack to terrorism in direct statements to the media. See, eg, Simon King, 'Sydney Shooting Has Terror Links, Police Chief Says', *The Australian* (Online), 4 October 2015 <<https://www.theaustralian.com.au/news/sydney-shooting-has-terror-links-police-chief-says/news-story/01b9a648f70d12d60c68cdc52467ae23>>.

⁵¹ John Lyons, 'Elite Crimebusters on Sydney's Mean Streets', *The Australian* (online), 27 May 2016 <<https://www.theaustralian.com.au/news/inquirer/meocs-elite-crimebusters-of-sydneys-mean-streets/news-story/dce53b6a9d031d62c933ff27a5d59467>>.

⁵² Yoni Bashan, *The Squad* (HarperCollins, 2016) 303.

⁵³ Alyce McGovern and Murray Lee, "'Cop[ying] It Sweet": Police Media Units and the Making of News' (2010) 43(3) *The Australian and New Zealand Journal of Criminology* 444, 448.

‘exclusives’ (see also Chapter V).⁵⁴ These practices are in stark contrast to the rigour of the gatekeeping processes carried out by the RCU in its consideration of researchers’ applications to work with the Force. Together, the respective gatekeeping practices of the PMU and the RCU maintain tight control of the Force’s public image.

In her correspondence in September 2016, the Research Officer invited me to submit a formal research application on the condition that I removed the proposed observational components from my study. Approximately nine months after commencing initial discussions with the RCU, I was finally permitted to formally apply for research access. I submitted my formal application in late October 2016, roughly six weeks after the Research Officer invited me to do so. Preparing my application involved re-working the content from my research proposal to fit within a standardised application form.⁵⁵

I heard from both the Manager of the RCU and the Research Officer shortly after I submitted my research proposal. In the next two months, they issued me with three separate requests for further information. These requests included: confirmation of the title of my proposed study; a separate summary of my theoretical framework; a copy of my University of New South Wales ethics application; and a copy of my honours thesis. I provided the Manager and the Research Officer with all the requested information by March 2017, but there was radio silence on the status of my application over the next seven months.

I sent follow-up emails in May and August 2017, but the responses I received from the Manager did not inform me whether my application had progressed. These delays may well have been the result of ‘dilatory tactics’.⁵⁶ For example, in response to my email in May, the Research Manager informed me that my research application had not progressed because he was seeking clarification about whether I could carry out my proposed observations of liaison officers. However, I had not asked to observe any police employees in my application – as stated above, the Manager’s colleague had

⁵⁴ Ibid 453. See also Murray Lee and Alyce McGovern, ‘Force to Sell: Policing the Image and Manufacturing Public Confidence’ (2013) 23(2) *Policing and Society* 103.

⁵⁵ To review the application form, see NSW Police Force, above n 47.

⁵⁶ Belur, above n 41, 188.

invited me to submit my application on the condition that I erased the observational components from my initial proposal.

As luck would have it, I ran into the Research Officer at a training course that we both attended in October 2017. I approached her and explained that I was awaiting a reply email from the Manager. The Research Officer advised me to try to contact him again. I agreed to email him and said that I would follow up with her when we attended the second session of the course the following week. I had not received a reply email from the Manager when I arrived at the second session. The Research Officer explained that she and the Manager planned to discuss my project at a meeting a few days later and that I should try to reach him after that. I called the Manager the following week and he promised to try to resolve my application promptly.

A month later, I was standing on the grounds of the New South Wales Police Force Academy in Goulburn, New South Wales, when I received an email on my telephone. The email was from the Manager, and it contained formal notification about the outcome of my research request. It was quite a coincidence that I finally received long-awaited word about my research application that day; I had just attended a friend's Attestation Parade, and it was the first time that I had ever visited the Academy. The Manager is based at the Academy and was probably somewhere close by when he sent me the email. Attached to the email was a letter which read as follows:

I apologise for the delay in finalising your research request. For much of this year the NSW Police Force has been engaged in a re-engineering process which has impacted on both the command structures and operational strategies relevant to your topic. As explained on the phone, however, these have been resolved and commanders appointed in most of the commands who would be stakeholders in your proposed research. I have therefore been able to carry out internal consultation in relation to your proposal and we have reached a decision. Unfortunately, we have decided not to participate in the research. Nonetheless, I wish you well with the

project, and hope to be able to read the completed PhD thesis in due course.⁵⁷

I was disappointed to receive this news from the Manager. I had – perhaps naively – hoped that the RCU’s slow deliberations meant that there was some internal support for my project and that I would be given the opportunity to conduct some of the proposed interviews. A fortnight later, I sent the Manager an email asking for further information about why the Police Force was not willing to support my proposed research. I explained that I was hoping for feedback so that I could compile a more compelling application if I carried out further police research in the future. Unfortunately, I did not hear back from the Manager.

The External Information Access Unit

The EIAU is a division of the Police Force’s InfoLink Unit, which is in place to ‘respond to [external parties’] requests for information in accordance with legislation and manage objections to the release of information when applicable’.⁵⁸ My negotiations with the EIAU related to an application for police-held information that I made under GIPAA in June 2018. GIPAA contains provisions which allow members of the public to request access to government information which has not been proactively released by a government agency.⁵⁹ There is a presumption in favour of requested information being released, unless ‘there is an overriding public interest against disclosure’.⁶⁰ Scholars across the world are increasingly using FOI laws like GIPAA to try to access information about policing policies and practices, but the extent to which these laws provide a valuable research tool varies across jurisdictions and remains a matter of debate.⁶¹

⁵⁷ Letter from Research Manager to Author, 8 December 2017.

⁵⁸ NSW Police Force, *Requesting Information* <https://www.police.nsw.gov.au/online_services/requesting_information>.

⁵⁹ *Government Information (Public Access) Act 2009* (NSW) s 9.

⁶⁰ *Government Information (Public Access) Act 2009* (NSW) div 2. For example, requested information might be withheld from the applicant if it reveals the identity of an informant or otherwise endangers a person’s security.

⁶¹ Sarah Kingston, Amy Elliot and Terry Thomas, “‘Cost’ Calculations as a Barrier to Gaining Information under the Freedom of Information Act 2000 from the Police in England and Wales” [2018] *Policing and Society* 4–5 <DOI:10.1080/10439463.2018.1424156>.

My GIPAA Application requested the following data:

1. The total number of arrests made by the MEOCS for each year (2006-2017, inclusive).
2. The total number of charges laid by the MEOCS for each year (2006-2017, inclusive).
3. A breakdown of charges laid by the MEOCS for each year according to the category of offence (2006-2017, inclusive).
4. The total number of successful prosecutions resulting from charges laid by the MEOCS for each year (2006-2017, inclusive).
5. A breakdown of the charges found guilty in the successful prosecutions in point 4.⁶²

The EIAU responded on 2 July 2018 and refused to provide me with the information I had requested. The EIAU's Notice of Decision explained that the information was no longer available, because the respective historical records of the MEOCS and the Gangs Squad had been merged when those two squads were amalgamated to form the Criminal Groups Squad in December 2017 (see Chapter V). As stated in the Notice of Decision:

I have applied the public interest test and considered the above sections of the Act. The advice received from State Crime Command – Criminal Gangs Squad [sic] indicates that as a result of the re-engineering process, the Gangs Squad and MECOS [sic] historical data has been merged into the Criminal Gangs Squad [sic] data and the data of the two former squads cannot be separated. As outlined in Section 75(2)(a; b & c) an agency is not required to update, verify or create a new record of information held by the agency.

⁶² Application under *Government Information Public Access Act 2009* (NSW) from Author to NSW Police Force External Information Access Unit, 26 June 2018.

Accordingly, it is unreasonable to produce this information for release.⁶³

In late July 2018, I applied for an internal review of the Notice of Decision.⁶⁴ The internal review application (see **Appendix 4**) involved three key lines of argument. First, while the Police Force is not required to create a new record in response to a GIPAA Application, it is not prevented from doing so. Second, it was unclear from the wording of the Notice of Decision whether the historical data of the MEOCS and the Gangs Squad had been irreversibly conflated. And, finally, merging the historical data of two defunct squads (the MEOCS and the Gangs Squad) into the records of a new squad (the Criminal Groups Squad) and declining to separate that data back out breached the Force's statutory obligation to make and keep full, accurate, and readily-retrievable records of its activities.⁶⁵

My application for an internal review was 'deemed refused' in mid-August 2018. A 'deemed refusal' means that the Force could not resolve the application by the due date, but that it would issue a 'late Notice of Decision' thereafter. At the end of August, while I was awaiting my late Notice of Decision, I applied to the Information and Privacy Commission New South Wales (IPC) for an external review of the police's original decision.⁶⁶ The IPC advised that it was not possible to undertake an external review of the original Notice of Decision because the Police Force had informed the IPC that a late Notice of Decision was forthcoming.⁶⁷ After receiving this frustrating news from the IPC, I began to develop concerns that the police would continue to drag the process along by promising that a late Notice of Decision was going to be issued.

⁶³ Notice of Decision from NSW Police Force External Information Access Unit to Author, 2 July 2018.

⁶⁴ *Government Information (Public Access) Act 2009* (NSW) pt 5.

⁶⁵ *State Records Act (1998)* NSW s 12.

⁶⁶ *Government Information (Public Access) Act 2009* (NSW) s 89. The IPC is an independent statutory authority which 'promotes and protects privacy and information access rights in New South Wales and provides information, advice, assistance and training for agencies and individuals on privacy and access matters'. See Information and Privacy Commission New South Wales, *What We Do* <<https://www.ipc.nsw.gov.au/about-us/what-we-do>>.

⁶⁷ Email from Information and Privacy Commission New South Wales Intake and Inquiry Officer to Author, 31 August 2018.

However, in mid-September, I received a phone call from a police officer who informed me that he was working on my internal review application and had sent numerous emails to his colleagues. He sounded apologetic for the delay and promised to keep working on my request and update me on his progress. Shortly afterwards, the same officer sent me an email containing most of the data I had requested (the data appears in Chapter V).⁶⁸ I was very appreciative for his work in chasing up his colleagues. If not for his efforts, I would likely have been forced to choose between abandoning my GIPAA Application or applying to the New South Wales Civil and Administrative Tribunal (NCAT) for a review of the Force's decision, which would have only drawn the process out further. Indeed, I would have discontinued with the process if faced with the prospect of fronting the NCAT – which may well have been the police's expectation and rationale for withholding the requested data from me.

Censorship and Image Manipulation: Creating and Conserving Knowledge Claims about Suspect Communities

The experiences I have relayed above reveal practices of censorship that were employed by the NSW Police Force to obstruct my efforts to generate an independent account of the Force's approaches to policing people of Middle Eastern background and appearance. The police organisation does not uniformly impose such censorship. The existence of multiple information access routes – and especially the overlapping work of the RCU and the PMU – has allowed the Force to shape public knowledge about the Middle Eastern suspect community and the way that community is policed.

Put differently, reporters including Bashan and Lyons were granted generous access to write sensational accounts about MEOC that celebrated the policing of the Middle Eastern suspect community (especially by the MEOCS). I was simultaneously denied police ethics approval to interview MEOCS officers and other police employees. As explored in subsequent chapters, the narratives fashioned by Bashan and others have

⁶⁸ Email from Police Officer in NSW Police Force InfoLink Unit to Author, 19 September 2018. I was supplied with the total number of arrests made and charges laid by the MEOCS for each year that it operated (2006-17), as well as a breakdown of charges laid according to the category of offence. However, the officer was unable to provide me with court results, which would have required manually checking each of the database entries corresponding with a MEOCS charge.

been taken up with enthusiasm in New South Wales and, alongside broader compliance in the reporting of ‘police talk’ (see Chapter II), have contributed to abiding public discourses about Middle Eastern criminality. The above description of the Force’s practices of censorship and image manipulation therefore provides an analytic frame for understanding how the police organisation fashions and hedges its knowledge claims about the Middle Eastern suspect community (as elaborated in Chapters IV and V).

Police institutional practices of censorship and image manipulation have been almost entirely overlooked in the existing research on suspect communities. One possible reason for this is that most studies of suspect communities have been carried out in the United Kingdom, where (as mentioned in Part II, above) there is more publicly-available data for academic scrutiny, which can reduce the need for researchers to apply to police organisations for research ethics approval and submit FOI requests for data under FOI laws. Moreover, as mentioned in Chapter II, much of the recent scholarship on suspect communities has considered public discourses about suspect communities and the real-life effects of being suspect, rather than focusing on police practices. However, as shown above, police work – albeit the work carried out by research and media units, rather than operational police – can influence how suspect communities are viewed by the public. As such, considering police institutional censorship and image management as practices that contribute to the creation and maintenance of suspect communities may have analytic value in future research about suspect communities, whether those studies are focused on policing or on public discourses.

Though my attempts to negotiate research access provided me with valuable data about how the police have generated and protected their knowledge claims about the Middle Eastern suspect community, the extensive delays that I experienced also caused me to revise and adjust my methodology and methods. The seeming likelihood that the RCU would not approve my research request meant that I had focused my attention on gathering evidence from sources aside from the police long before I submitted my GIPAA Application. However, because my research design had been built with the difficulties of gaining police research access in mind, I was still able to generate data

to answer each of my research questions. The specific methods that I employed are discussed further in the next part of this chapter.

V. Methods

Document Analysis

Compiling a Documentary Dataset

When compiling my documentary dataset, I consulted with my supervisors and other Faculty members, and librarians from my university library and the State Library of New South Wales to identify documentary sources that I could collect and analyse. It is important, however, not to overstate the level of planning involved in compiling my documentary dataset. Some of the most valuable documents in my dataset were recommended and provided to me by interviewees, and others were discovered serendipitously.⁶⁹

I also produced some documentary sources throughout this study. In 2015, I drafted a series of questions about MEOC which were placed on notice by a Member of the New South Wales Legislative Council during that year's Police Budget Estimates hearing. The answers to those questions were subsequently published in Hansard in September 2015.⁷⁰ Drawing on insights from critical cartography,⁷¹ I also used details from news articles about the MEOCS to create a 'counter-map' which illustrates the geographic dispersal of the Squad's work throughout its eleven-year tenure (see Chapter V).

I outline my documentary dataset below by dividing the documents into six categories according to their authorship.

⁶⁹ On locating and collecting documents, see William J Gibson and Andrew Brown, *Working With Qualitative Data* (Sage Publications, 2011) ch 5.

⁷⁰ General Purpose Standing Committee No 4, New South Wales Legislative Council, *Budget Estimates 2015-16 - Supplementary Questions* (2015), 49, [314]–[319].

⁷¹ Theo Kindynis, 'Ripping up the Map: Criminology and Cartography Reconsidered' (2014) 54(2) *British Journal of Criminology* 222.

NSW Police Force Publications

This collection of documents includes: police Annual Reports between 1985 and 2018 (inclusive);⁷² special reports including the Hazzard Report and the report into Strike Force Enoggera, which were both commissioned by the police organisation in the aftermath of the Cronulla Riots; policy documents such as the *Multicultural Policies and Services Plan*, *Crime Prevention Policy* and *Ethnic Community Liaison Officer Handbook*; in-house employee communications including *Police Service Weekly* and *Police Weekly* magazines; and police promotional material, including brochures for MCLOs and the Community Awareness of Policing Program. Most of the sources contained details and official ‘party lines’ about the institutional policies, practices, strategies, and knowledges underpinning police work in New South Wales.

Police Oversight Bodies’ Publications

This collection consists of reports published by the former Police Integrity Commission and the former Police Division of the Office of the Ombudsman.⁷³ The collection includes Annual Reports, issues papers, and special reports, such as the Ombudsman’s 2016 special reports into the Police Force’s use of consorting laws. These documents incorporated data about the use of specific police powers, and the internal policies relating to the use of those powers. These sources also provide broader insights into the interactions between police and politicians in New South Wales, and the expansion of the criminal law and police powers as a public policy mechanism.

Other Government and Statutory Body Publications

This collection includes excerpts from the New South Wales Parliament Hansard; the Interim and Final Reports of the Royal Commission into the New South Wales Police

⁷² This period was selected to account for institutional priorities both before and after the ‘two major waves of reform’ that have swept over the police organisation in the last four decades. See Janet Chan and David Dixon, ‘The Politics of Police Reform: Ten Years After the Royal Commission into the New South Wales Police Service’ (2007) 7(4) *Criminology & Criminal Justice* 443.

⁷³ The PIC and the Police Division of the Office of the Ombudsman have been merged to form the Law Enforcement Conduct Commission (LECC), which began operations in mid-2017. See Law Enforcement Conduct Commission, *Our History* <<https://www.lecc.nsw.gov.au/what-we-do/who-we-are-and-what-we-value/our-history>>.

Service; and special reports from the New South Wales Bureau of Crime Statistics and Research. The sources in this collection often contained details about the relationships and interactions between police and politicians in New South Wales, which was helpful in contextualising the introduction of certain police powers and institutional structures (such as police squads).

Published Judgments and Decisions

This collection includes published court judgments and tribunal decisions that relate to matters involving people of Middle Eastern background (and their associates) and the police. Lawyers who participated in this study directed me to relevant cases, and I was also able to locate relevant cases through database searches and by ‘snowballing’, (that is, following up citations in the judgments or decisions). These documents revealed details about the nature and extent of diverse interventions by the New South Wales Police Force against people of Middle Eastern background. Some judgments also illuminate details about the working relationships between units in the Police Force. The narratives that unfolded in the published judgments and decisions provided a valuable source of data for examining and evaluating the institutional policies, practices, strategies, and knowledges that guide police interactions with people of Middle Eastern background and helped to understand the effects of these interactions on the policed.

Biographies and Autobiographies.

This collection included biographies and autobiographies of former senior NSW police officers.⁷⁴ These sources provide perspectives on police working knowledges and policies, and the historical relationships and exchanges between senior police officers and politicians in New South Wales.

⁷⁴ Sue Williams, *Peter Ryan: The Inside Story* (Viking, 2002); Christine Nixon and Jo Chandler, *Fair Cop* (Victory Books, 2011); Roger Coombs, *Lessons Life Has Taught Me: The Story of Former New South Wales Police Commissioner John Avery* (Barton Books, 2015).

Media Sources

In compiling this collection, I conducted systematic searches of the Dow Jones news database Factiva. These searches mostly pertained to units and squads within the Force, such as the MEOCS and Task Force Gain. Like any other type of document, it is necessary to use news reports cautiously when conducting academic research. This is particularly the case with news reports given that reporters do not always share the ‘concerns with methodological rigour found in academic work’ and reports are ‘typically politically charged’.⁷⁵

I use media sources in divergent ways throughout this thesis. First, drawing on William J. Gibson and Andrew Brown’s observation that ‘[a]s a device for finding out about contemporary events, newspapers are extremely valuable’,⁷⁶ I make use of news sources to describe past events about which there exists a dearth of information. Secondly, I use news sources in instances where they include statements made by representatives of the Police Force (usually senior police officers) about MEOC. My rationale for examining these discourses is to map shifts in public rhetoric about MEOC and to examine the extent to which media discourse converged with ‘police talk’ to contribute to the construction of MEOC as a ‘type’ of crime requiring extraordinary police attention. Finally, I use news sources to examine media and political lobbying for police powers.

Document Analysis and Interpretation

My approach to analysing and interpreting documents in this study is adapted from John W. Creswell’s description of the qualitative data analysis process.⁷⁷ Once I had collected a document and prepared it for analysis, I read through it to ‘obtain a general sense of the information and reflect on its overall meaning’.⁷⁸ I also kept in mind Glenn

⁷⁵ Gibson and Brown, above n 69, 75.

⁷⁶ Ibid.

⁷⁷ John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Sage Publications, 3rd ed, 2009) 185.

⁷⁸ Ibid.

A. Bowen's advice to consider the original purpose of the document and its target audience.⁷⁹

I then coded the document. My approach to coding was inductive and incorporated aspects of content analysis and thematic analysis. As described by Bowen, 'content analysis is the process of organising information into categories related to the central questions of the research'⁸⁰ (for example, the broad category of 'search powers'). Meanwhile, thematic analysis is 'a form of pattern recognition within the data, with the emerging themes becoming the categories for analysis' (for example, the broad category of 'search powers' can be further thematised according to types of search powers).

While coding the data, I considered how the data would be represented in the thesis. In most instances, this involved me producing narrative passages and thick descriptions about events, issues, policies, and practices detailed in the documents. These thick descriptions are the primary means through which people's experiences of being policed are communicated throughout this thesis. I also represented data in other ways, which included compiling figures and tables, and my map of the MEOCS's work (see Chapter V).

As I coded and (re)presented the qualitative data, I also interpreted that data with respect to my personal experiences, and the broader literature and theories on policing, race, and crime.⁸¹

The analysis of the documents in my documentary dataset was a crucial component of my attempts to generate data to answer my research questions. This was particularly the case with my first and second research questions, which concern the institutional structures, policies, practices and knowledges that shape police interventions against people of Middle Eastern background and appearance, and the specific role of the former MEOCS, respectively.

⁷⁹ Glenn A Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27, 33.

⁸⁰ Ibid 32.

⁸¹ Creswell, above n 77, 189–90.

To deepen my understanding of how these structures, policies, practices, and knowledges are operationalised, and the effects on those policed, I also conducted face-to-face qualitative interviews.

Interviews

Conducting Interviews

I conducted 23 face-to-face qualitative interviews in this project. The sampling of interviewees was purposive: interview participants were sought out because of their occupation, expertise, or knowledge about the policing of people of Middle Eastern background and appearance in New South Wales. As elaborated below, these interview participants can be divided into four categories, as determined by their occupation or expertise.

The specific qualitative interview technique used in this project was semi-structured interviewing. Interview guides were prepared which listed open-ended questions relevant to the occupations and expertise of each category of participants (see **Appendix 3**). By using these interview guides, I was able to ensure some level of comparability across the interviews. However, interviews were flexible, in that the emphasis was ‘on how the interviewee frames and understands issues and events ... what the interviewee sees as important in explaining and understanding events, patterns, and forms of behaviour’.⁸² I departed from the interview guide to ask follow-up questions and probing questions in response to particular insights shared by interviewees.⁸³ I also allowed interviewees to ‘go off on tangents’ and talk about subjects that I had not anticipated we would discuss when I first formulated the interview guides.⁸⁴ In doing so, I believe that I gained a greater insight into the events, issues, policies, and practices that the interviewees considered to be significant.

⁸² Alan Bryman, *Social Research Methods* (Oxford University Press, 3rd ed, 2008) 438.

⁸³ Ibid 446.

⁸⁴ Ibid 437.

Interview Participants

Community Workers and Members of the Police Multicultural Advisory Council

I interviewed 10 community workers, including employees of community-based not-for-profit organisations, migrant resource centres, and Police Citizens Youth Clubs (PCYCs). These individuals work closely with vulnerable community members and provide them with support services and referrals.

My intention to interview community workers drew on the approaches of other scholars who have interviewed community workers in research about encounters between police and ethnic minority communities.⁸⁵ An insight I gained from these studies is that community workers are attuned to the broader socio-economic and cultural contexts of police-community relations. Community workers often develop systemic insights into the interactions between young people of ethnic minority backgrounds and the police, and are familiar with the effects of these encounters on the policed. Migrant resource centres are also often the first line of referral to community legal centres. Six of the community workers that I interviewed were of Middle Eastern backgrounds, and two of them had been heavily policed as young men.

To recruit community workers for interviews, I conducted internet searches to identify community-based not-for-profit organisations, migrant resource centres, and PCYCs across Sydney's western, south-western, and south-eastern suburbs, and contacted those organisations via email. Once I had commenced interviewing, I was sometimes able to 'snowball', as interview participants referred me to other organisations and individuals who they thought would be able to assist me with my research.

I also interviewed four of the 18 members of the Police Force's Police Multicultural Advisory Council (PMAC, see Chapter VII). The PMAC is an 'executive level consultative body' created by the Police Force to identify emerging policing priorities amongst culturally and linguistically diverse communities.⁸⁶ Two of the council members that I interviewed are members of Middle Eastern background or Muslim

⁸⁵ See, eg, Collins et al, above n 18; Chan, above n 18.

⁸⁶ NSW Police Force, *Police Multicultural Advisory Council (PMAC) Reflections 2013-15* (2015) 2.

communities. To recruit members of the PMAC I consulted the list of PMAC members on the Police Force's website and searched the internet to determine if those individuals had publicly-listed email addresses.

Lawyers

I interviewed six lawyers who have previously advised or represented clients of Middle Eastern background. These lawyers worked across legal aid, community legal centres (CLCs) and in private practice. They were primarily based in Sydney's south-western suburbs and the Sydney central business district. Legal practitioners have a unique and systemic understanding of police practices and the workings of the criminal justice system. Lawyers' perspectives were particularly relevant to answering my first and third research questions, which consider the institutional structures, policies, practices, and knowledges that shape police interactions with people of Middle Eastern background in New South Wales, and the lived experiences of the policed, respectively.

I used two strategies to recruit lawyers for interviews. Firstly, I consulted the websites of Community Legal Centres NSW and Legal Aid NSW to locate CLCs and Legal Aid offices in Sydney's western, south-western, and south-eastern suburbs, and emailed details of my project to those offices. Secondly, as I began to analyse published court judgments and tribunal decisions, I took down the names of the legal representatives identified in the judgments and decisions. If those legal representatives had publicly-listed email addresses I contacted them with details about my study.

Retired Police Officers

I also interviewed three retired police officers. Two of the interviewees were recommended to me by one of my PhD supervisors, and I then used the snowball sampling technique to recruit the third interviewee.

I sought interviews with former police officers because I hoped to gain an understanding of police operational practices, and how police officers interpret and re-interpret official policies and discourses in the conduct of their work. The data obtained in these interviews was particularly helpful in answering my first and second research

questions, which concern the institutional structures, policies, practices, and knowledges that shape diverse police interventions against people of Middle Eastern background in New South Wales, and the MEOCS, respectively.

Data Analysis and Interpretation

Like the document analyses that I conducted, my approach to analysing and interpreting my interview data was adapted from Creswell's description of the qualitative data analysis process.⁸⁷

It was necessary to first prepare raw data for analysis. This preparation involved transcribing interview recordings or typing up interview notes. Next, I read through the notes and transcripts to 'obtain a general sense of the information and reflect on [the] overall meaning'.⁸⁸ Though I had personally conducted each of the interviews in this study, reading the transcripts in their entirety enhanced my understanding of the meaning of the events and issues discussed by participants.

I then coded the transcripts. As with the document analyses, my approach to coding was inductive and incorporated aspects of content analysis and thematic analysis. The triangulated design of this study meant that the codes developed in the analysis of the documentary dataset were sometimes applied to the content of the interviews, and vice versa.⁸⁹ The coded data from the interview transcripts and notes were then represented through narrative passages and thick descriptions.

VI. Conclusion

Though I had initially intended for this study to draw data from both the police and the policed, I had very little success in scaling the Tall Blue Wall. The Police Force's primary research gatekeepers, the RCU, eventually denied my research application after two years of negotiations. The specific reason(s) why the Force declined to participate in my study were not communicated to me. I do, however, suspect that the RCU or their superiors were concerned that my study would be too critical of the

⁸⁷ Creswell, above n 77, 185.

⁸⁸ Ibid.

⁸⁹ Bowen, above n 79, 132.

Force's work in policing people of Middle Eastern background and appearance, and potentially controversial. Reporters have been allowed to write on some of the same topics that I proposed to investigate but, as discussed in Chapters IV and V, those reporters' accounts were sensationalist and venerated the police's work.

My attempts to obtain data about the MEOCS from the Police Force's EIAU under the GIPAA Act were also protracted. My perseverance and the support of a champion within the Police Force meant that I was eventually able to obtain the data requested in my GIPAA Application. Scholars have debated the utility of FOI laws as a tool in police research. My experience shows that FOI can help to access information that the organisation does not voluntarily release. However, the police were reticent to provide me with the data I requested, even under the auspices of the GIPAA Act. The outcome would likely have been very different if a police employee had not persisted in seeking out the data that I had requested.

This chapter has contributed to the literature on suspect communities by conceptualising the police's institutional non-transparency, censorship, and image management practices as modes of police power that contribute to the creation and maintenance of suspect communities. These practices contribute to suspect community formation by allowing police organisations to claim greater stake in shaping public knowledge about suspect communities and the ways that those communities are policed. In the context of this study, my observations about non-transparency, censorship and image maintenance provide a crucial analytic frame for understanding the police's knowledge claims about the apparent criminal capacities of people of Middle Eastern background (see Chapters IV and V). More broadly, though, my observations speak to the need for scholars of suspect communities to adopt broader views of the types of police work that contribute to the creation and maintenance of suspect communities, which extend beyond the work of operational police to research and media units and other gatekeepers of information. My insights may also be of analytic utility to the scholars of suspect communities who have focused on public discourses rather than policing, as I have identified how police censorship and image management can contribute to the framing of public discourses about suspect communities.

Though the Police Force declined to participate in this study, I was still able to generate insights across my four research questions because my study was always structured to draw data from sources aside from the police. The following four chapters of this thesis (Chapters IV through VII) bear out these insights. I begin in Chapter IV by establishing the foundations for the Police Force's contemporary approaches to policing the Middle Eastern suspect community, which I contend were laid in the aftermath of the Wood Royal Commission (1994-97).

Chapter IV

'Gangs', Guns, and Task Force Gain

I. Introduction

Many people have an opinion on why the police weren't containing the [Middle Eastern organised crime] situation [in the early 2000s], but the majority view is that everything traced back to the shakeup of police tactics after the Wood Royal Commission of the mid 1990s. Led by Justice James Wood, the Royal Commission into the then NSW Police Service exposed a toxic culture of graft and corruption ... The [C]ommission took a blowtorch to the organisation, applying heat to everyone. Clean officers, the good guys, were ordered to give evidence against their colleagues and grilled over basic law enforcement tradecraft, long-standing tactics that had been abused by bad eggs and were now considered suspicious ... Paranoia reigned ... At the time, Middle Eastern organised crime was still a fledgling industry, but in this demoralised law enforcement environment, gangs and crime began to thrive in vulnerable areas where police were MIA ... [T]he public got their first taste of [Middle Eastern organised crime] – a new wave of criminal, more aggressive and more daring ... Crimes weren't getting solved, and as a law enforcement agency, the police had become impotent.¹

The quotation above is from the book *The Squad*, written by News Corp crime reporter Yoni Bashan. *The Squad* centres on the NSW Police Force's Middle Eastern Organised Crime Squad (MEOCS) and is the only detailed investigation into the MEOCS published to date. In describing the origins and the work of the MEOCS, Bashan intended to 'give people a landscape of organised crime within Sydney's Middle Eastern community'.²

Bashan takes the Wood Royal Commission (1994-97) as the chronological starting point for his account of the emergence of so-called 'Middle Eastern organised crime' (MEOC) in New South Wales. He rehashes criticisms of the Royal Commission that

¹ Yoni Bashan, *The Squad* (HarperCollins, 2016) 7–8.

² Ibid ix.

have previously been offered by other journalists and former police officers.³ Principally, such criticisms revolve around the idea that the Commission's exposure of pervasive corruption throughout the Police Service was counterproductive, because skilful (albeit sometimes corrupt) investigators were subsequently purged from the Service. Meanwhile, those officers who retained their employment were purportedly unwilling or unable to engage in tried and tested policing practices which had been misused by some recalcitrant officers and rendered dubious by the Royal Commission. The account provided in *The Squad* therefore begins from the 'majority view'⁴ that the Wood Royal Commission hamstrung the police in New South Wales in the late 1990s, creating opportunities for Middle Eastern background criminals to carry out unprecedented acts of crime and aggression. A new type of crime, MEOC, is said to have flourished.

The purpose of this chapter is to provide an alternative account of the origins of MEOC and the MEOCS. Like Bashan and other commentators,⁵ I also contend that the foundations for MEOC and the MEOCS were laid in the aftermath of the Wood Royal Commission. However, I set out to contest the received narrative that the Royal Commission incapacitated the Police Service and thereby allowed serious and organised crime – including MEOC – to thrive.

In this chapter, I argue that the term MEOC does not denote a discrete 'type' of criminal behaviour. Rather, MEOC is a catch-all label which is used to describe any criminal or anti-social behaviour committed (or allegedly committed) by a person of Middle Eastern background. The police in New South Wales do not publish systematic data about the race or ethnicity of those people arrested, charged, and/or convicted of crimes. As such, assertions that MEOC burgeoned in the aftermath of the Wood Royal

³ Tim Priest, 'The Rise of Middle Eastern Crime in Australia' in *Quadrant*, (2004), retrieved from: <<http://www.icjs-online.org/indarch.php?article=684>>; Tim Priest, *Enemies of the State* (New Holland Publishers, 2009) 27-43. See also Janet Chan and David Dixon, 'The Politics of Police Reform: Ten Years after the Royal Commission into the New South Wales Police Service', *Criminology and Criminal Justice* (2007) 7(4) 459.

⁴ Bashan, above n 1, 7. Bashan does not clarify who the 'majority' is, but he does explain in his 'note on sources' that he was permitted interviews with serving MEOCS officers and that he had more than 100 conversations (both on- and off-the-record) with serving and former employees of the Police Force. His account is therefore heavily influenced by police views and narratives.

⁵ See, eg, Tim Priest, 'The Rise of Middle Eastern Crime in Australia', above n 3; Tim Priest, *Enemies of the State*, above n 3, 27-43.

Commission are entirely reliant on police knowledge claims that are impossible to verify. However, the creation of the Middle Eastern suspect community in New South Wales over the last two decades has allowed these claims to become ‘real’.

MEOC *did* emerge in the aftermath of the Wood Royal Commission, but in a somewhat different sense than is claimed in the received narrative. I introduce four original case studies in this chapter to explore how MEOC began to be discursively framed as a ‘problem’ in the late 1990s in convergent authoritarian law-and-order political, police, and media discourses. At the same time, as the Police Service turned to (rather than away from) an agenda of proactive ‘crime-fighting’ in the wake of the Wood Royal Commission, proactive policing was positioned and practised as the ‘solution’ to the MEOC ‘problem’. As traced in the case studies, the framing and policing of MEOC in this period eventually saw the creation of several institutional units (that is, police squads of varying descriptions) to police people of Middle Eastern background and appearance. The period 1997-2005 therefore marked a watershed moment in the criminalisation of Middle Eastern collective identities in New South Wales.

The case studies in this chapter explore a range of policing and discursive practices that contributed to the formation of the Middle Eastern suspect community in the aftermath of the Wood Royal Commission, though key themes are discernible. In addition to an ongoing readiness on the part of the police organisation to establish squads to police people of Middle Eastern background and appearance, the police also acted territorially to repress and conduct surveillance of people Middle Eastern background and appearance in Sydney’s south-west. The police also proactively regulated and disciplined people of Middle Eastern background and appearance for anti-social behaviour and framed those interventions as a way of suppressing and disrupting more serious offending in the future. All the while, powerful discourses about MEOC as a category of serious, violent offending began to pick up traction, leading to calls for a permanent, centralised squad to police Middle Eastern criminality. Eventually, in direct response to the Cronulla Riots, the MEOCS was established.

The remainder of this chapter is divided into four parts. In Part II, I introduce the Wood Royal Commission and sketch the Police Service's shift to proactive crime-fighting in its post-Royal Commission reform efforts. In Part III, I provide four case studies which illustrate how MEOC was 'made' at the intersection of proactive police practices and the discursive practices of the police and other actors. In Part IV, I then explore how the Cronulla Riots became the stated impetus for the creation of the MEOCS. The chapter concludes in Part V.

II. Policing After the Wood Royal Commission

In May 1994, Justice James Wood of the Supreme Court of New South Wales was granted Letters Patent to investigate the NSW Police Service by way of a Royal Commission, formally known as The Royal Commission into the New South Wales Police Service. The Royal Commission's principal concern was to determine whether 'systemic and entrenched' corruption existed within the Police Service. The Commission was also required to evaluate the Police Service's mechanisms for investigating corruption.⁶

It is now common knowledge that the Wood Royal Commission found that 'the only conclusion open on the evidence called ... is that a state of systemic and entrenched corruption existed within the Service'.⁷ In gathering the evidence that was called the Royal Commission invited oral and written submissions and received oral evidence from witnesses at public sittings.⁸ The Royal Commission also proactively collected evidence of police corruption.⁹ For example, Detective Sergeant Trevor Haken from Kings Cross was famously 'rolled over' by the Royal Commission and covertly filmed

⁶ Royal Commission into the New South Wales Police Service, *Final Report Volume I: Corruption* (1997), [1.1], [4.1] ('Wood Royal Commission, *Final Report Volume I: Corruption*').

⁷ Ibid [4.4]. The 'systemic and entrenched' corruption uncovered by the Royal Commission included: process corruption (elsewhere called 'Noble Cause Corruption'); gratuities and improper associations; substance abuse; fraudulent practices; assaults and abuse of police powers; compromise or favourable treatment in respect of prosecutions; theft and extortion; protection of the drug trade, club and vice operators, and gaming and betting interests; drug trafficking; interference with internal investigations and a 'code of silence' of the kind discussed in the Introduction of Chapter III. See *ibid* [2.3], [4.3], [4.5].

⁸ Ibid [1.45].

⁹ Ibid [4.1], [6.42].

his interactions with other corrupt police officers and criminals.¹⁰ According to David Brown, the sensational footage captured by Haken ‘achieved international media cult status ... and created a strong public and political demand for reform’.¹¹

Though the Wood Royal Commission’s findings may well have enlivened support for police reform amongst politicians and the public, the identification of corruption within the Service was not novel, nor were internal reform efforts without precedent. As acknowledged in the Royal Commission’s *Final Report*:

The picture that has been consistently presented before this Royal Commission is that the period prior to the Lusher Inquiry in 1980-1981¹² constituted the ‘bad old days’ when there was corruption, scandal, and a number of ineffective inquiries; yet the period after the Lusher Report, in conjunction with the Avery¹³ reforms, following the appointment of the latter as Police Commissioner in 1984, was one when considerable reform was achieved.¹⁴

As elaborated in Chapter VII, John Avery’s term as Police Commissioner occurred at a time when police organisations in English-speaking jurisdictions were forced to acknowledge that features of a particular model of police professionalism had contributed to crises in public confidence, which were often punctuated by the occurrence of urban disorders.¹⁵ Police organisations across the English-speaking

¹⁰ David Dixon, ‘Reform, Regression and the Royal Commission into the NSW Police Service’ in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 138, 142; David Brown, ‘Breaking the Code of Silence: The Wood Royal Commission into the New South Wales Police: A Brief Overview’ (1997) 22(5) *Alternative Law Journal* 220, 221; David Brown, ‘The Royal Commission into the NSW Police Service: Process Corruption and the Limits of Judicial Reflexivity’ (1998) 9(3) *Current Issues in Criminal Justice* 228, 229.

¹¹ Brown, ‘The Royal Commission into the NSW Police Service’, above n 10, 229.

¹² Justice Edwin Lusher was appointed to carry out A Commission of Inquiry into the NSW Police Administration (‘the Lusher Inquiry’) in 1979. Lusher delivered his final report in 1981. The Inquiry’s broad terms of reference required Lusher to investigate the structure, organisation and management policies of the Police Force and the Police Department, respectively (at the time, the Police Force held responsibility for operational matters, whilst the Police Department was responsible of administration and policy matters). The Inquiry’s terms of reference also required Lusher to investigate the relationship between the Police Force and the Executive Government.

¹³ John Avery was the NSW Police Commissioner from 1984 until his retirement in 1991.

¹⁴ Wood Royal Commission, *Final Report Volume I: Corruption*, above n 6, [3.73].

¹⁵ See, eg, Nigel Fielding, *Community Policing* (Clarendon Press, 1995) ch 2; Leslie George Scarman, ‘The Scarman Report: The Brixton Disorders 10-12 April 1981: Report of an Inquiry’ (1982); David Bull and Erica Stratta, ‘Police-Community Consultative Committees: A Response

world – including the police in New South Wales – responded to the crises of public confidence that accompanied the ‘bad old days’ by promising to practise community-based policing and improve police accountability (see Chapter VII). Indeed, Avery is best remembered for his attempts to reorient the NSW Police Force’s organisational strategy from law enforcement and peace-keeping towards community policing.¹⁶ Avery also introduced many other reform measures that he believed would help to control corruption, which included devolving authority and flattening the police’s hierarchy through a process of ‘regionalisation’, as well as restructuring police training and recruitment.¹⁷

Notwithstanding a decade’s worth of internal reform efforts, the Royal Commission found that corruption pervaded the Police Service and that Avery’s vision had not been successfully implemented.¹⁸ The Royal Commission recommended that the Police Service should cease pursuing an agenda of ‘crime-fighting’ through law enforcement and traditional policing strategies and practices, and engage the wider public in a ‘full and frank ... discussion about what is effective policing and what is not’.¹⁹ Citing David Bayley’s seminal work *Police for the Future*,²⁰ the Royal Commission rebuked police services, police unions and politicians for perpetuating ‘common sense policing myths’, and for encouraging the thinking that more police with more resources

to Paramilitary Policing?’ (1995) 31(3) *Journal of Sociology* 67; Justin Hansford, ‘Community Policing Reconsidered: From Ferguson to Baltimore’ in Jordan T Camp and Christina Heatherton (eds), *Policing the Planet: Why the Policing Crisis Led to Black Lives Matter* (Verso, 2016) 215, 218.

¹⁶ During Avery’s tenure as Police Commissioner the name of the police organisation was changed from NSW Police Force to NSW Police Service in keeping with the thrust of Avery’s reform efforts, which emphasized the need for improved police-community engagement. Avery had detailed his vision for policing prior to being appointed Police Commissioner in a book that he authored. See John Avery, *Police, Force or Service?* (Butterworths, 1981).

¹⁷ Wood Royal Commission, *Final Report Volume I: Corruption*, above n 6, [3.77]; Dixon, ‘Reform, Regression and the Royal Commission into the NSW Police Service’, above n 10, 150–51; Janet BL Chan, *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press, 1997) 129–36.

¹⁸ Wood Royal Commission, *Final Report Volume I: Corruption*, above n 6, [3.119].

¹⁹ New South Wales Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform* (1997), [3.44] (‘Wood Royal Commission, *Final Report Volume II: Reform*’).

²⁰ David Bayley, *Police for the Future* (Oxford University Press, 1994). The Commission’s views were also influenced by research that it sought out from Janet Chan, Mark Finnane and David Dixon. See David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999).

practising ‘primary policing strategies’ like randomised patrolling can better control crime and satisfy public demands for safety, law-and-order.²¹

Research has indicated that some police officers in New South Wales were left demoralised and weary by the Wood Royal Commission’s condemning findings and the ensuing reform process. Chan et al. conducted a longitudinal study which ‘roughly coincided’ with the Wood Royal Commission.²² In their study, Chan et al. followed a cohort of 150 NSW Police Service recruits for two years, from their time at the NSW Police Academy through their probation (that is, through their first year working as police officers). The purpose of Chan et al.’s study was to examine socialisation processes within the police organisation by applying (and refining) the sophisticated analytical model of police culture that Chan had developed in her earlier work.²³

Drawing on the work of Pierre Bourdieu, Chan et al.’s study showed that the Wood Royal Commission had considerable bearing on the field (or the social and structural context) of policing.²⁴ Notable changes to the field brought about by the Royal Commission included the introduction of: a three-year-long continuing review process, also known as the Qualitative and Strategic Audit of the Reform Process, which was sharply critical of Peter Ryan’s reform agenda;²⁵ an external police oversight body called the Police Integrity Commission;²⁶ ‘Commissioner’s Confidence’ provisions which allowed the Police Commissioner to dismiss officers who demonstrated ineptitude or misconduct;²⁷ and integrity testing which could be

²¹ Wood Royal Commission, *Final Report Volume II: Reform*, above n 19, [3.37]–[3.42].

²² Janet BL Chan with Chris Devery and Sally Doran, *Fair Cop: Learning the Art of Policing* (University of Toronto Press, 2003) 43. In their study, Chan et al. made use of both quantitative and qualitative methods, including surveys, interviews, observations, and document analyses.

²³ Ibid 3–4, 45.

²⁴ Ibid 43, 269–75.

²⁵ David Dixon, “‘A Transformed Organisation’? The NSW Police Service Since the Royal Commission’ (2001) 13(2) *Current Issues in Criminal Justice* 203.

²⁶ As early as February 1996 the Royal Commission had sought to ensure that police officers continued to ‘look over their shoulders’ by recommending that a Police Corruption Commission (PCC) independent from the Police Service should be established to continue investigating police corruption and serious misconduct. The Commission, which was instead named the Police Integrity Commission (PIC), began its work on January 1, 1997. See New South Wales Royal Commission into the New South Wales Police Service, *Interim Report February 1996* (1996), [5.30]–[5.53].

²⁷ *Police Service Act 1990* (NSW). See Chan, Devery and Doran, 270–71; Janet Chan and David Dixon, ‘The Politics of Police Reform: Ten Years After the Royal Commission into the New South Wales Police Service’ (2007) 7(4) *Criminology & Criminal Justice* 443, 454–55.

targeted at specific officers.²⁸ In this context, some of Chan et al.'s study participants assessed the Royal Commission in negative terms:²⁹

The perceived effects [of the Wood Royal Commission] included loss of public respect for the police, a drop in police morale, excessive accountability, that police had become too scared of complaints to do their job, and that management had become afraid to make decisions or back the workers up.³⁰

It also appears that some strains of this negativity towards the Royal Commission were enduring: a decade after the Royal Commission's *Final Report* was published Chan and Dixon remarked that '[a] common complaint is that the NSW Police's investigative capacity was weakened by the Royal Commission driving out officers who were good "thief-takers"'.³¹

This abiding police lament has formed the basis of reporters' and former police officers' allegations that the Wood Royal Commission constrained the Service's willingness and ability to investigate crimes; thereby allowing MEOC to thrive.³² As discussed above, Yoni Bashan makes one such allegation in his book *The Squad*. Similar claims have also been made by former police officer Tim Priest. Take, for example, the following extract from an article written by Priest for the conservative journal *Quadrant*:

In 1996 with the arrival of Peter Ryan, and the continued public humiliation of the New South Wales Police through the Wood Royal Commission, a chain of events began that have affected the police so deeply and so completely that, as far as ensuring community safety is concerned, I fear it will take at least a generation to regain the lost ground ... When the Middle Eastern crime groups emerged in the mid-to-late 1990s no alarms were set off. The Crime Intelligence unit was asleep ... In many of the key areas that were

²⁸ Chan, Devery and Doran, above n 22, 271, 311.

²⁹ Ibid 229, 230–31, 271.

³⁰ Ibid 271.

³¹ Chan and Dixon, above n 27, 459.

³² The terms 'Middle Eastern crime' and 'Middle Eastern organised crime' appear to be interchangeable.

experiencing rapid rises in Middle Eastern crime, these new leaders became more concerned with relations between the police and ethnic minorities than with emerging violent crime ... With no organised crime function, no gang unit except for the South-East Asian Strike Force, the New South Wales Police turned against every convention known to Western policing in dealing with organised crime groups. In effect the Lebanese crime gangs were handed the keys to Sydney.³³

Bashan and Priest's narratives about the Wood Royal Commission's effect on policing directly channel the disillusionment and cynicism that police officers felt towards the Royal Commission. In *The Squad*, Bashan acknowledges that much of the information contained in his book is drawn from interviews and off-record conversations with police officers.³⁴ Meanwhile, as stated previously, Priest is a former police officer. He forged a post-policing career out of providing the public with an 'insider's view' of policing and claimed to be speaking on behalf of the police. Priest was also hired as an advisor to the Police Ministry in the early 2000s.³⁵ However, he has since been forced to concede that his above statements about 'Middle Eastern crime' were fabricated,³⁶ and many of his other claims have also been shown to be inaccurate and ill-informed.³⁷ Of course, leaving Priest aside, police officers hold unique and valuable understandings about police operational practices and are best placed to explain how they interpret official policies and discourses in the conduct of their work. Nevertheless, there is good reason to treat officers' accounts of post-Wood Royal Commission policing with caution. As explained by Chan:

³³ Tim Priest, 'The Rise of Middle Eastern Crime in Australia', above n 3.

³⁴ Bashan, above n 1, 301–05.

³⁵ New South Wales, *Parliamentary Debates*, Legislative Council, 21 March 2002, 908-10 (Michael Costa, Minister for Police).

³⁶ Stephen Gibbs, 'Tall Tales from a Whistleblowing Ex-Cop', *The Sydney Morning Herald* (Online), 20 February 2006 <<https://www.smh.com.au/national/tall-tales-from-a-whistleblowing-ex-cop-20060220-gdn035.html>>.

³⁷ David Dixon, 'From Service to Force? Policing New South Wales' (2003) 15(2) *Current Issues in Criminal Justice* 193; Stephen Gibbs, 'Stretching the Truth a Rank Offence for a Self-Made Detective' *The Sydney Morning Herald* (Online), 22 February 2006 <<https://www.smh.com.au/national/stretching-the-truth-a-rank-offence-for-a-self-made-detective-20060222-gdn01z.html>>.

The negative publicity generated by the corruption scandals uncovered by the Royal Commission challenged their personal identity as police officers as well as the identity of the organisation. This set off a new focus and necessity for sensemaking.³⁸

Chan's use of the term 'sensemaking' is a direct reference to the work of organisational theorist Karl E. Weick. Chan draws on Weick's work to define sensemaking as 'an ongoing process members of organizations engage in to explicate their world'.³⁹ Put simply, sensemaking is a social process through which members of organisations mutually shape the meaning of their collective experiences. In this context, sensemaking provided police officers in New South Wales with a 'coping strategy' to deal with the disturbances and police and public disillusionment which accompanied the Wood Royal Commission.⁴⁰ As explained by Chan, 'sensemaking is *driven by plausibility rather than accuracy*'.⁴¹ Acknowledging this feature of sensemaking is crucial to problematising Bashan and Priest's narratives about the emergence of Middle Eastern crime. Intuitively, it follows that demoralised officers might have been reticent to investigate crime in the aftermath of the Royal Commission. However, while it is plausible, this perspective is de-historicised and difficult to reconcile with scholarly accounts of the institutional policies and practices that gained traction after the Royal Commission.

Scholars who have critically analysed the Police Service's reform agenda have emphasised that, institutionally, the Service became animated by a renewed enthusiasm for crime-fighting and crime reduction, contrary to the Royal Commission's recommendations. The Service's newly-appointed Police Commissioner, Peter Ryan, was vested with considerable authority and autonomy to direct the Service's post-Royal Commission reform efforts,⁴² and he was committed

³⁸ Janet Chan, 'Making Sense of Police Reforms' (2007) 11(3) *Theoretical Criminology* 323, 341.

³⁹ Ibid 325.

⁴⁰ Ibid 341.

⁴¹ Chan, above n 17, 327 (emphasis in original).

⁴² Jenny Fleming and Colleen Lewis, 'The Politics of Police Reform' in Tim Prenzler and Janet Ransley (eds), *Police Reform: Building Integrity* (Hawkins Press, 2002) 83, 88. See also Dixon, 'Reform, Regression and the Royal Commission into the NSW Police Service', above n 10; Dixon, "'A Transformed Organisation"? The NSW Police Service Since the Royal Commission', above n 25.

to implementing an organisational agenda oriented towards crime-fighting.⁴³ As elaborated by David Dixon, the Service's crime-fighting agenda under Ryan shifted policing priorities and 'conceptual foundations from certainty/individual/guilt/rights/reactive response to flexibility/group/risk/safety/proactive intervention'.⁴⁴ Dixon has also noted that police proactivity in the late 1990s was assessed in Operations and Crime Reviews (OCRs), which were primarily concerned with the police's use of stop and search powers, move-on powers, and the like.⁴⁵ Far from being impotent,⁴⁶ asleep,⁴⁷ or otherwise docile in the period after the Wood Royal Commission, like many other police organisations around the world,⁴⁸ the police in New South Wales turned towards proactive 'performance-measure driven crime-fighting' at the turn of the twenty-first century.⁴⁹

Though the Wood Royal Commission provided the impetus for the Police Service's shift towards proactive 'performance-measure driven crime-fighting', the Service's agenda was also shaped by other factors. In the first instance, Dixon has observed that the Service's enthusiasm for crime-fighting and crime reduction under Commissioner Ryan was encouraged by the apparent successes of the New York Police Department (NYPD) in tackling crime. According to Dixon, the NYPD's successes comprised three key elements: the deployment of dedicated units to police risky places and people at risky times, determined through analyses of criminal intelligence and statistics; managerial reform and intensified supervision of rank-and-file officers; and the use of information technology to collect, map and analyse crime statistics, and subsequently

⁴³ Fleming and Lewis, above n 42, 92.

⁴⁴ David Dixon, 'Broken Windows, Zero Tolerance, and the New York Miracle' (1998) 10(1) *Current Issues in Criminal Justice* 96, 104; See also David Dixon, 'Beyond Zero Tolerance' in Tim Newburn (ed), *Policing: Key Readings* (Willan, 2005) 483, 498; Chan and Dixon, above n 27, 463.

⁴⁵ Dixon, "'A Transformed Organisation'? The NSW Police Service Since the Royal Commission', above n 25, 208–10. OCRs were modelled on the New York Police Department's CompStat.

⁴⁶ Bashan, above n 1, 8.

⁴⁷ Priest, 'The Rise of Middle Eastern Crime in Australia', above n 33.

⁴⁸ David Dixon, 'Why Don't the Police Stop Crime?' (2005) 38(1) *Australian & New Zealand Journal of Criminology* 4, 9–13; Dixon, 'Beyond Zero Tolerance', above n 44, 485–97; Mike Maguire, 'Policing by Risks and Targets: Some Dimensions and Implications of Intelligence-Led Crime Control' (2000) 9(4) *Policing and Society* 315.

⁴⁹ Dixon, "'A Transformed Organisation'? The NSW Police Service Since the Royal Commission', above n 25, 216.

hold senior police to account for those statistics, in a process called CompStat (which provided the model for the NSW Police Service's OCR).⁵⁰

The Police Service's crime-fighting agenda was also buoyed by a government and popular media highly sensitive to law-and-order issues,⁵¹ and later bolstered by the New South Wales Legislative Council's dubious affirmation that the police were to thank for 'cleaning up' a prolific heroin market in Cabramatta, in Sydney's south-west.⁵² However, as the 'gloves off' policing practised in Cabramatta had been accompanied by promises of increased police funding and expanded police powers,⁵³ the Legislative Council's endorsement meant that the police were soon looking for a new law-and-order issue to justify the funding and powers in question. It is no coincidence that Tim Priest, who first came to prominence as a public commentator on policing in Cabramatta, turned his attention to so-called 'Middle Eastern crime' when the politicisation of policing in Cabramatta abated.

Building on these observations, the following part of this chapter illustrates that there were racialised dimensions to the police's post-Royal Commission proactive crime-fighting agenda, which gave rise to the over-policing of people of Middle Eastern background and appearance. As the police oriented their work towards anticipating and proactively targeting risky people and places, people of Middle Eastern background and appearance became firmly fixed in their sights. Though the Wood Royal Commission had identified the entrenchment of behaviours including alcohol abuse, improper associations and peer pressure within the 'elite' squads of the former Criminal Investigation Branch as foremost factors that had spread corruption throughout the Police Service, the Royal Commission declined to interfere with the

⁵⁰ Dixon, 'Why Don't the Police Stop Crime?', above n 48, 9–13; Dixon, 'Beyond Zero Tolerance', above n 44, 485–97; Dixon, "'A Transformed Organisation'? The NSW Police Service Since the Royal Commission', above n 25; Lisa Maher and David Dixon, 'The Cost of Crackdowns: Policing Cabramatta's Heroin Market' (2001) 13(1) *Current Issues in Criminal Justice* 5, 14.

⁵¹ Dixon, "'A Transformed Organisation'? The NSW Police Service Since the Royal Commission', 216–17; Dixon, 'Reform, Regression and the Royal Commission into the NSW Police Service', 138–40. See generally Russell Hogg and David Brown, *Rethinking Law and Order* (Pluto Press, 1998).

⁵² Maher and Dixon, above n 50. See also David Dixon and Lisa Maher, 'Containment, Quality of Life and Crime Control: Policy Transfers in the Policing of a Street Heroin Market' in Tim Newburn and Richard Sparks (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan, 2004) 234.

⁵³ Maher and Dixon, above n 50, 6.

Service's authority to create police squads.⁵⁴ In line with their post-Royal Commission turn to proactivity, the Police Service therefore deployed a number of police squads to police people of Middle Eastern background and appearance – and particularly those in Sydney's south-west – between 1997 and 2003. This extraordinary allocation of police resources was decisive in the formation of the Middle Eastern suspect community, and, in conjunction with the discursive framing of a MEOC 'problem' by the police, politicians, and the media, was ideational in rendering Middle Eastern identity as a crime type.

III. Making 'Middle Eastern Organised Crime'

Strike Forces Mask and Lancer

As noted in Chapter II, the over-policing of people of Lebanese background and appearance has previously received scholarly attention. For example, in *Kebabs, Kids, Cops and Crime*, Collins et al. analysed several actors' responses to two events that took place in south-western Sydney in late 1998 – the murder of 14-year-old Edward Lee, who was stabbed after a fight broke out on Telopea Street, Punchbowl, on 17 October 1998, and the drive-by shooting of the nearby Lakemba Police Station a fortnight later.⁵⁵ Collins et al. argued that a moral panic began in the aftermath of these events, wherein members of the news media, politicians and senior police officers made unsubstantiated public accusations that 'Lebanese gangs' were responsible for both crimes.⁵⁶ With a state election impending, these racialised, media-fuelled moral panics triggered a watershed in public discourses about Middle Eastern criminality and encouraged political and police responses that emphasised the apparent need to be 'tough on crime'.⁵⁷ When *Kebabs, Kids, Cops and Crime* was published, nobody had

⁵⁴ The Royal Commission's Final Report is replete with references to the depth and dispersion of corruption to be found amongst squads and task forces across New South Wales. See Wood Royal Commission, *Final Report Volume I: Corruption*, above n 6, [3.65], [3.80], [3.93], [4.111]–[4.1113], [4.130]–[4.132], [5.62]–[5.68], [5.83]–[5.92] and [6.4]–[6.11].

⁵⁵ Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000).

⁵⁶ Ibid 2–6.

⁵⁷ Ibid 4–5, 211.

been convicted of Edward Lee's murder or the Lakemba Police Station shooting. This case study updates and extends Collins et al.'s account.

On 1 June 1999 police attempted to execute a search warrant at a house in Belfield, a suburb thirteen kilometres south-west of Sydney. The house belonged to the Lebanese-Christian Kanaan family. When police arrived, Samira Kanaan, her sons Najieh and Michael, and three other young men were inside the house, and they refused to leave. Police had obtained the search warrant as Michael Kanaan, the younger of the two Kanaan brothers, was suspected of being involved in a conspiracy to supply a commercial quantity of cocaine and the ongoing protection of a drug syndicate.⁵⁸ At the time, Michael Kanaan was confined to a wheelchair and on bail on charges of attempting to murder two police officers, as he had been injured after exchanging fire with police at the White City tennis complex in Rushcutters Bay on 23 December 1998.⁵⁹ When Kanaan finally vacated the premises after a two-day siege, he was charged with threatening injury to prevent a police investigation, as police alleged that he had threatened to stab any officer who entered his home.⁶⁰

The police had called an extraordinary press conference several months before Kanaan's arrest to allege that the White City shoot-out was connected to a series of other crimes.⁶¹ Strike Forces Mask and Lancer were assembled to investigate the crimes. Strike Force Mask assumed responsibility for investigating: the Lakemba Police Station shooting on 1 November 1998; the murders of Adam Wright and Michael Hurle and the malicious wounding of Ronald Singleton at Five Dock on 17 July 1998;⁶² and the manslaughter of Edward Lee on 17 October 1998.⁶³ Kanaan was

⁵⁸ Les Kennedy, 'Siege Follows Raid for Drugs', *The Sydney Morning Herald* (Sydney), 2 June 1999, 2; Lisa Power, 'Siege Stab Threat to Police', *The Daily Telegraph* (Sydney), 4 June 1999, 2; Stephen Gibbs, 'Siege Man Made Stab Threat', *The Sydney Morning Herald* (Sydney), 4 June 1999, 6.

⁵⁹ The circumstances surrounding the White City shoot-out are discussed in more detail in Collins et al, above n 55, 8.

⁶⁰ Kennedy, 'Siege Follows Raid for Drugs', above n 58; Power, 'Siege Stab Threat to Police', above n 58; Gibbs, 'Siege Man Made Stab Threat', above n 58.

⁶¹ Charles Miranda, 'Courting Danger - How an Officer Was Shot on Duty', *The Daily Telegraph* (Sydney), 30 November 1999, 4.

⁶² See *Regina v Kanaan* [2001] NSWSC 959.

⁶³ The investigation into Lee's manslaughter was originally the responsibility of Strike Force Martinsberg. See Les Kennedy, 'They All Know Edward's Killer but Won't Talk', *The Sydney Morning Herald* (Sydney), 5 November 1999, 1.

convicted of the murders of Wright and Hurle, and the malicious wounding with intent to do grievous bodily harm of Singleton.⁶⁴ He also pleaded guilty to being an accessory after the fact to the malicious wounding of Edward Lee, as he had helped Mustapha Dib, the young man who had stabbed Lee, to create an alibi.⁶⁵

Meanwhile, Strike Force Lancer was responsible for investigating the murder of Danny ‘DK’ Karam on 13 December 1998,⁶⁶ and drug distribution in Kings Cross.⁶⁷ Though ballistics tests had indicated that the same firearms had been used in some of the crimes mentioned above,⁶⁸ the police and the prosecution cases relied mostly on evidence given by three men before the New South Wales Crime Commission and the courts. Like Kanaan, one of those men, who was assigned the pseudonym Alan Rossini, was a member of the gang DK’s Boys (that is, Danny Karam’s boys). The other men, given the pseudonyms Peter and Oscar Laycock, were Rossini’s cousins. The three men had each been arrested on drug supply charges after Karam’s murder and had agreed to give evidence to have the charges against them withdrawn.⁶⁹ Several other young Lebanese-background men associated with Kanaan were also charged and convicted of a variety of serious, organised, and violent crimes relating to the activities above,⁷⁰ though it is worth noting that those responsible for the Lakemba Police Station shooting have yet to be apprehended at the time of writing.

The prosecution of Kanaan and his associates therefore revealed that, in a short period, a single group of young men had committed several crimes which had attracted considerable public concern. Though the New South Wales Premier, news media and police spokespeople had received criticism from members of Lebanese communities for alleging that ‘Lebanese gangs’ were involved in Edward Lee’s manslaughter and the Lakemba Police Station shooting before any charges were laid in relation to either crime, Kanaan and most of his associates were of Lebanese background. In this way,

⁶⁴ *Regina v Kanaan* [2001] NSWSC 959.

⁶⁵ See *Regina v Dib* [2003] NSWCCA 117, [13]–[25].

⁶⁶ See *Kanaan & Ors v Regina* [2006] NSWCCA 109.

⁶⁷ Kennedy, above n 58.

⁶⁸ Morgan Ogg, ‘When Death is a Way of Life’, *The Daily Telegraph* (Sydney), 19 March 1999, 22.

⁶⁹ *Kanaan & Ors v Regina* [2006] NSWCCA 109, [6].

⁷⁰ See *Kanaan & Ors v Regina* [2006] NSWCCA 109.

Kanaan and his associates' actions seemingly substantiated some of the links that had been drawn between Lebanese communities, youth gangs, and serious crime by the Premier, news media, and NSW Police Service.

At the same time, the overwhelming majority of Lebanese-background people in Sydney were unconnected with Kanaan and his associates' activities. Indeed, anticipating that the culprits of the Lee manslaughter and the Lakemba shootings might be Lebanese, Collins et al. argued that 'these criminals are a very small minority of the Lebanese community in Sydney ... [w]hen imputations move from the criminality of a few to the criminality of a culture, we have a case of crude stereotyping'.⁷¹ As argued in Chapter II, 'crude stereotyping' of this type, in which entire community groups are charged with responsibility for the crimes of some of their members '*en bloc*',⁷² constitutes collective attribution.

Collective attributions are not merely a matter of rhetoric, but underpin suspect community formation; put differently, collective attributions serve to homogenise racialised groups such that collective identities then attract police surveillance and intervention (see Chapter II). For instance, the collective attribution discussed by Collins et al. not only meant that members of Lebanese communities were compelled to reveal the culprits of Edward Lee's manslaughter and the shooting of the Lakemba Police Station, but also translated into the aggressive policing of young men of Lebanese background and appearance in Sydney's south-west.⁷³ This is not to say that people of Middle Eastern background and appearance were not over-policed before 1998,⁷⁴ but their over-policing nevertheless intensified after the events detailed in this section of the chapter, in line with the Police Service's shift towards an agenda of proactive policing after the Wood Royal Commission.

In what remains of Part III, I provide three case studies of proactive, aggressive street policing targeted at people of Middle Eastern background and appearance in the late 1990s and early 2000s. Though it is impossible to determine the full extent of the over-

⁷¹ Collins et al, above n 55, 10.

⁷² Gabe Mythen, "'No One Speaks For Us': Security Policy, Suspected Communities and the Problem of Voice' (2012) 5(3) *Critical Studies on Terrorism* 409, 414.

⁷³ Collins et al, above n 55, 41–42, 236.

⁷⁴ Ibid, ch 6.

policing of people of Middle Eastern background and appearance in this period upon the basis of public records,⁷⁵ the case studies below demonstrate that the aggressive street policing practices discussed by Collins et al. did not occur in isolation and carried on into the 2000s. The first of the three case studies discussed is the so-called ‘Menai Massacre’, which concerns an incident in April 1998 in which police employed territorial street policing practices to try to contain young men of Middle Eastern background and appearance in Sydney’s south-western suburbs. As detailed below, territorial practices are a prominent mode of racialised policing which has contributed to the demarcation and preservation of the Middle Eastern suspect community in New South Wales.

The ‘Menai Massacre’

Late in the evening on 4 April 1998, a large group of young men of Middle Eastern appearance was gathered at a McDonald’s restaurant in Menai, 29 kilometres south of Sydney.⁷⁶ In what was later branded a ‘series of poor policing decisions’ by Magistrate Lilian Horler, police instructed the young men to move on from the restaurant and its car park.⁷⁷ One of the young men was arrested after remarking ‘fuck, let’s go’ to a friend. The situation then escalated, leading to the arrests of a further eighteen young men aged between 16 and 22. The young men were subsequently charged with offences including offensive language, resist arrest, assault police, and violent disorder. Up to 40 police arrived on the scene, as did two police dogs; one of which bit a young man and dragged him along the car park pavement.⁷⁸ Magistrate Horler later dismissed all charges against the young men. She found that police had ‘baited’ the young men by proactively intervening against them and issuing them with directions to move on when ‘no crime had been committed, there had been “no visible

⁷⁵ Not least because pre-arrest contacts are not systematically recorded.

⁷⁶ Geesche Jacobsen, ‘Ombudsman to Monitor Inquiry into Menai Arrests’, *The Sydney Morning Herald* (Sydney), 1 December 1999, 4.

⁷⁷ Ibid.

⁷⁸ Ibid; Heath Gilmore, ‘The Car Park Brawl That Won’t Go Away’, *The Sydney Morning Herald* (Sydney), 13 May 2001, 4.

provocations, incipient assaults, damage, or threats to property or persons” and the young men were not affected by alcohol’.⁷⁹

According to one young man present at the scene, the incident at Menai contributed to a pattern of routine harassment which had undermined his confidence in the police. As asserted by that young man: ‘[t]hey hit us and set the dogs on us. How can we trust these cops again? Every week they stop us in cars and just harass us’.⁸⁰ Nevertheless, a two-year-long police internal affairs inquiry into the event, Task Force Percival, concluded with no adverse findings against any of the police officers involved.⁸¹ For their part, the police at Menai ruefully dubbed the incident the ‘Menai Massacre’ – not because of the violence that broke out on 4 April 1998, but because seven officers resigned from the Police Service or requested discharges as a result of the events that night.⁸²

The so-called ‘Menai Massacre’ provides a stark illustration of police territoriality. As defined by Steve Herbert, the term ‘police territoriality’ denotes ‘a spatial strategy to affect, influence, or control resources and people, by controlling area’.⁸³ In the Menai Massacre, the police were trying to assert control over the young men and their use of public space by moving them along from the McDonald’s restaurant. By their very definition, move-on powers give police licence to proactively seize control of public spaces by regulating and restricting the movements of individuals and groups whom they deem to be threatening or otherwise objectionable.⁸⁴ As summarised by Brown et al., over the last two decades, the New South Wales Ombudsman’s reports on the police’s use of move-on powers have continually attested to the disproportionate use

⁷⁹ Jacobsen, above n 76.

⁸⁰ Gilmore, above n 78. Chapters IV, V, and especially Chapter VI consider vehicle stops as a key mode of proactive policing apparent in the policing of the Middle Eastern suspect community.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Steve Herbert, *Policing Space: Territoriality and the Los Angeles Police Department* (University of Minnesota Press, 1996) 3.

⁸⁴ David Brown et al, *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales* (The Federation Press, 6th ed, 2015) 554. Note, though, that move-on powers are presently contained in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which was introduced after the ‘Menai Massacre’.

of those powers against those people most vulnerable to public order policing strategies, including Aboriginal and Torres Strait Islander peoples and young people.⁸⁵

The police territoriality displayed in the ‘Menai Massacre’ is significant not merely because the police sought to control the movements of young men of Middle Eastern appearance, but because the police sought to move those young men *out of Menai*. Police officers involved in the Menai Massacre candidly relayed to Magistrate Horler that their use of move-on powers was part of a concerted effort to ‘drive the wogs out of the Menai area’.⁸⁶ As noted above, Menai is situated in Sydney’s south, in the Sutherland Shire local government area (LGA) (‘the Shire’). According to Melinda Norquay and Danielle Drozdewski, ‘the Sutherland Shire is one of the richest, most well-educated, *and* least ethnically diverse LGAs in Sydney’.⁸⁷ Moreover, there are strong legacies of whiteness and nationalism in the Shire, as vividly displayed in the Cronulla Riots of 2005 (see Part IV of this chapter).⁸⁸ While the Cronulla Riots demonstrated that people of Middle Eastern background and appearance are unwelcome in the Shire, the ‘Menai Massacre’ shows that this insularity and exclusivity pre-existed the Riots and had been actively enforced by the police.

The young men involved in the events at Menai McDonald’s were ‘out-of-place’. In other words, the young men came to police attention because they were situated on the outskirts of a ‘white’ locality. In their attempts to drive the young men out of Menai, the police were attempting to move them back into the Bankstown LGA in Sydney’s south-west. As depicted on the map in **Figure 4.1** (below), Menai is close to the Georges River, which separates the Shire from the Bankstown LGA.⁸⁹ Alford’s Point Road – which connects the Shire and the Bankstown LGA, and which runs past Menai McDonald’s – is the only direct route (and is therefore the main thoroughfare) for anybody travelling between Bankstown and the Shire and vice versa. As illustrated in **Figure 4.1**, if the police had successfully deployed their move-on powers to clear the

⁸⁵ Ibid 560.

⁸⁶ Jacobsen, above n 76.

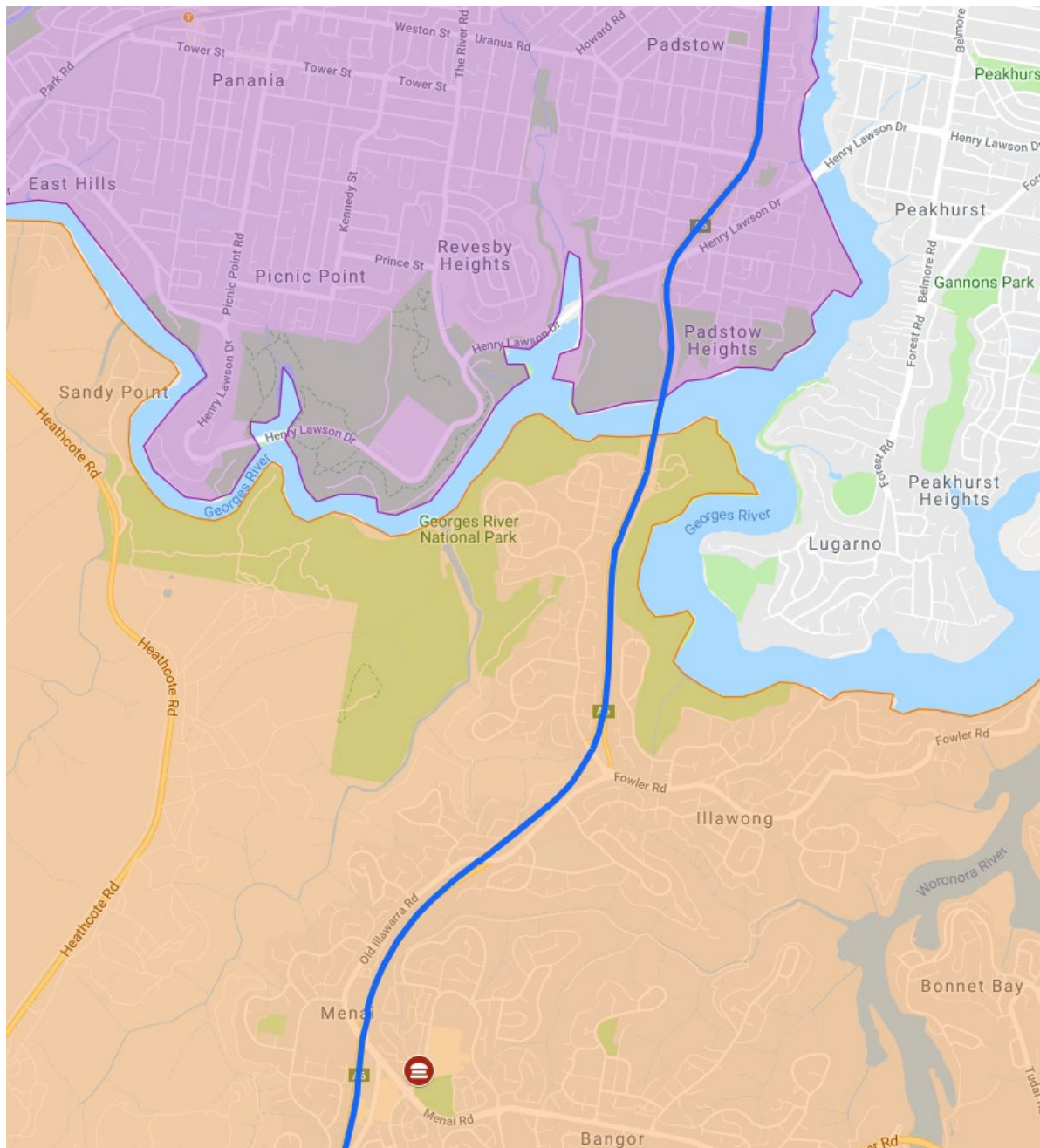
⁸⁷ Melinda Norquay and Danielle Drozdewski, ‘Stereotyping the Shire: Assigning White Privilege to Place and Identity’ (2017) 38(1) *Journal of Intercultural Studies* 88, 89 (emphasis in original).





⁸⁸ Ibid 91–92.

⁸⁹ The Bankstown LGA encompasses the south-western Sydney suburbs of Punchbowl and Lakemba, discussed above.

young men from Menai McDonald's, there are essentially two directions in which they could have travelled: either towards Bankstown, in south-western Sydney, where large Middle Eastern background communities reside, or deeper into the Shire, towards Cronulla.

Figure 4.1: The 'Menai Massacre'



Key			
	Bankstown LGA		Alford's Point Road
	Sutherland Shire LGA		McDonald's Menai

Previous research has explored the role of the media in drawing racialised links between the south-west Sydney region, and ‘ethnic gangs’ (and especially ‘Lebanese gangs’).⁹⁰ As observed by Poynting et al., south-west Sydney came to be dubbed ‘Gangland’ by the popular media in the late 1990s and early 2000s. According to Poynting et al.:

Gangland was a place [supposedly] ruled by ‘organised ethnic gangs’ (of Arab, Asian and other backgrounds) ... This imagining of a place called Gangland provided a tangible entity on which we could project our anxieties, giving them a concrete, spatial character.⁹¹

Put simply, ‘Gangland’ became a byword for not only the sizeable Middle Eastern background communities and other working-class migrant communities who live in Sydney’s south-west, but also the ‘ethnic gangs’, crime, and violence allegedly dispersed throughout the region. What the example of the Menai Massacre shows, though, is that young men of Middle Eastern background and appearance have been actively corralled into Gangland by the police. By criminalising members of racialised groups when they appear to be ‘out-of-place’, police practices such as those on display during the Menai Massacre contribute to the delineation and preservation of racialised geographies, as they work to constrain racialised communities within particular localities in a given city. In other words, Gangland is not merely an ideological construct, because racialised, territorial policing has made it ‘real’.

However, corralling members of racialised communities into certain localities is only one side of the territorial policing coin; police also work to exercise control over those localities by suppressing and surveilling their residents. As I will elaborate throughout this thesis, aggressive street policing and surveillance in Sydney’s south-western suburbs are recurrent motifs in the racialised policing that has forged the Middle Eastern suspect community in New South Wales over the last two decades. Continuing from these observations, the following case study inverts the focus of the ‘Menai

⁹⁰ Collins et al, above n 55; Scott Poynting et al, *Bin Laden in the Suburbs: Criminalising the Arab Other* (Sydney Institute of Criminology, 2004).

⁹¹ Poynting et al, above n 90, 16.

Massacre’ by considering territorial policing practices experienced by people of Middle Eastern background and appearance’ in *‘Gangland’*.

Operation Pericos

In October 1999, the Police Service initiated a high-visibility proactive policing operation in the Bankstown LGA called Operation Pericos. Charles Miranda and Naomi Toy, writing for the *Daily Telegraph*, reported in February 2000 that:

More than 30 uniformed officers and sniffer dogs [working as part of Operation Pericos] last night patrolled the streets in Sydney’s south west where two warring ethnic gangs trying to control the drug trade and prostitution have been involved in a rash of shootings. Senior police officers revealed two gangs of Middle Eastern men from the Bankstown/Punchbowl region were engaged in the territorial war ... Commander [Ike] Ellis said police intelligence had identified the Middle Eastern battleground as being over street prostitution and drug distribution ... “It’s a selective group of people who are outwardly displaying their criminal activity and that’s why we are addressing it with these proactive operations” ... Mr Ellis said Operation Pericos, operating in the Bankstown area since last October, had charged 229 people with almost 600 offences including drug possession and break and enters.⁹²

Miranda and Toy’s description of Operation Pericos utilises war imagery to draw metaphoric battle lines between the police attached to Operation Pericos and ‘gangs of Middle Eastern men’ in the Bankstown LGA. As noted by Poynting et al., the use of war imagery is common in the reporting of violent crimes, especially when those crimes are allegedly committed by members of ethnic minority communities.⁹³ The ‘key effect’ of such imagery, according to Poynting et al., ‘is to enhance the violence of the threat posed, and to extend it to a general pervasive threat, akin to a warring

⁹² Charles Miranda and Naomi Toy, ‘Police Bid to Regain the Streets’, *The Daily Telegraph* (Sydney), February 2000, 13.

⁹³ Poynting et al, above n 90, 54–55.

enemy’.⁹⁴ Concerning Operation Pericos specifically, the use of war imagery also ties into Poynting et al.’s observation (in their previous collective work) that experiences of war in the Middle East have been identified as one source of the alleged violence and criminality that is said to pervade Middle Eastern communities in Sydney.⁹⁵

That the above description of Operation Pericos’ work exaggerated the threat of the behaviours being policed becomes more apparent when considering alternative descriptions of its mandate. As explained in June 2000 by Alan Ashton, the former Member of the New South Wales Legislative Assembly for the East Hills electorate (which encompasses several suburbs in the Bankstown LGA), ‘Operation Pericos [is] an ongoing policing strategy targeting break and enter, drug dealing, and anti-social behaviour’.⁹⁶ This description of Operation Pericos’ mandate helps to contextualise Miranda and Toy’s above statement that, because of Pericos’ work, 229 people had been charged with close to 600 offences including break and enters and drug possession.⁹⁷ At first blush, this information is difficult to reconcile with the narrative fashioned in Miranda and Toy’s article about Pericos targeting ‘warring’ Middle Eastern gangs in the ‘battleground’ of south-west Sydney. Nevertheless, the narrative created the impression of a pressing need for ‘proactive operations’ in areas of south-west Sydney where large Middle Eastern background communities reside.

Properly viewed in the context of the Police Service’s shift towards NYPD-inspired ‘performance-measure driven crime-fighting’,⁹⁸ Pericos’ proactive policing of behaviours such as drug possession and anti-social behaviour was likely rationalised as an effective means to prevent more serious criminality, akin to that described in Miranda and Toy’s article. As noted by Dixon, the NYPD was itself partially inspired by broken windows theory and the associated conception that the ‘discretionary, order-maintenance role of patrol officers’ is to act upon on incivility and minor crimes before

⁹⁴ Ibid 55.

⁹⁵ Collins et al, above n 55, 10.

⁹⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 1 June 2000, 6432 (Alan Ashton, Member for East Hills).

⁹⁷ Charles Miranda and Naomi Toy, ‘Police Bid to Regain the Streets’, *The Daily Telegraph* (Sydney), February 2000 13.

⁹⁸ Dixon, “‘A Transformed Organisation’? The NSW Police Service Since the Royal Commission’, above n 25, 216.

they escalate into more serious problems.⁹⁹ Linked to proactive policing is intelligence-led policing, and the view that police should anticipate and prevent crime by overt surveillance, displacement, and interference through street policing tactics.¹⁰⁰ However, while intensive street policing may be justified as being necessary to assert (or, in Miranda and Toy's view, 'regain') control over the streets, aggressive, territorial policing can also generate conflict between the police and the policed, as explored further below.

On 9 March 2000, two uniformed police officers were conducting a vehicle patrol as part of Operation Pericos. Allegedly, when the officers travelled down Telopea Street, Punchbowl, 'two or three shots were fired "in the vicinity"' of their marked police vehicle.¹⁰¹ The street was subsequently sealed off to allow police to conduct a search, but no bullets were recovered.¹⁰² At this point, Telopea Street had already attracted state-wide notoriety as the street where Edward Lee was killed (discussed above). In the immediate aftermath of Lee's manslaughter, Telopea Street had been the site of a law-and-order crackdown, and the street's residents had also been collectively chastised by police and politicians for erecting a 'wall of silence' and failing to come forward with information about the murder.¹⁰³ As such, Telopea Street was not just a 'no go' or 'anti-police' area in the police's figurative directory of policing localities in Sydney,¹⁰⁴ but a 'symbolic location'. Put differently, Telopea Street was a specific location in south-western Sydney that had gained a police and public reputation as an area where policing was resisted and allegedly obstructed by residents, and where the police needed to reassert their authority.¹⁰⁵

Closely resembling their responses to Lee's manslaughter in 1998, the Police Commissioner and the Premier (who was less than three weeks from contesting an

⁹⁹ Dixon, 'Why Don't the Police Stop Crime?', above n 48, 16.

¹⁰⁰ Maguire, above n 48.

¹⁰¹ Malcolm Brown, 'Ryan: We've Rattled the Evil Gangs', *The Sydney Morning Herald* (Sydney), 11 March 2000, 13; Les Kennedy, 'They All Know Edward's Killer, But Won't Talk', above n 63.

¹⁰² Brown, above n 101; Kennedy, above n 63.

¹⁰³ Collins et al, above n 55, 50–54.

¹⁰⁴ Or, in Micael Keith's terms, the police's 'authoritative policing geography'. See Michael Keith, *Race, Riots and Policing: Lore and Disorder in a Multi-Racist Society* (UCL Press, 1993) 19–20. See also Chapter II.

¹⁰⁵ See PAJ Waddington, *Policing Citizens: Authority and Rights* (Routledge, 1999).

election), both responded to the alleged attempt to shoot the Pericos officers by promising that extra resources would be made available in the local area to ‘crack the gang warfare plaguing Sydney’s south west’.¹⁰⁶ In other words, the Police Commissioner and the Premier vowed to reassert the police’s geopolitical control over the south-west Sydney region.¹⁰⁷ Given that the intensive street policing of racialised and other marginalised communities has contributed to resistance against the police and the outbreak of urban unrest and violence the world over, Police Commissioner Ryan’s observation that ‘police tactics in the area had led to these “payback” attacks on officers’¹⁰⁸ appeared insightful. However, Ryan’s cognisance that Pericos’s policing practices had seemingly encouraged retributive violence did not inform meaningful changes in police practice.

Rather, as demonstrated by the case study of Task Force Gain, the police continued to carry out aggressive street policing in Sydney’s south-west and other areas with large populations of Middle Eastern background communities into the 2000s. Like Operation Pericos, much of Gain’s work targeted anti-social behaviour and minor offending. However, those behaviours were discursively framed and racialised as serious by the police and the government, leading to the emanation of the neologisms ‘Middle Eastern crime’ and ‘Middle Eastern organised crime’ in line with Gain’s work. Put simply, the substantial allocation of police resources to Task Force Gain, and the emergent knowledges about ‘Middle Eastern crime’ and ‘Middle Eastern crime’, constituted a pivotal moment in the extraordinary, sustained, and self-perpetuating policing of the Middle Eastern suspect community.

Task Force Gain

Task Force Gain was established in October 2003, in the aftermath of two shooting incidents in which three people were murdered. The incidents occurred in the south-western Sydney suburbs of Lakemba and Greenacre. The first incident was the murder

¹⁰⁶ ‘NSW - Evil Gangs Behind Violence in Sydney’s South-West - Ryan’, *Australian Associated Press*, 10 March 2000.

¹⁰⁷ See Steve Herbert, ‘Policing Contested Space: On Patrol at Smiley and Hauser’ in Nicholas R. Fyfe (ed), *Images of the Street: Planning, Identity and Control in Public Space* (Routledge, 1998) 220.

¹⁰⁸ ‘NSW - Evil Gangs Behind Violence in Sydney’s South-West - Ryan’, above n 106.

of Ali Abdul Razzak on 29 August 2003. Abdul Razzak was shot as he sat in his car, near the Lakemba Mosque.¹⁰⁹ Then, on 14 October 2003, Abdul Razzak's nephew Ziad 'Ziggy' Razzak and Mervat 'Melissa' Nemra were both murdered when 100 rounds were discharged into the house that Nemra shared with her husband Ali Hamka, on Lawford Street, Greenacre.¹¹⁰ The shooting of Razzak and Nemra is often referred to as the 'Lawford Street shooting'.

Leaving aside a short-lived 'peaceful resolution',¹¹¹ the Razzak family had been in violent conflict with another Lebanese-background family, the Darwiche, since at least 2001. Members of both families were allegedly involved in the supply of drugs and in dispute over 'drug turf', which culminated in a series of shootings of members and associates of both families.¹¹² At some point between August and October 2003, Adnan 'Eddie' Darwiche learned that brothers Gehad and Ziad Razzak were staying at the Lawford Street home of their friend Ali Hamka because the attacks on members of their extended family had caused them to become concerned about their safety.¹¹³

Upon learning the Razzak brothers' whereabouts, Darwiche and his associates Naseam 'Erdt' El-Zeyat, Ramzi 'Fidel' Aouad, and a man named 'Mohammed' fired at the Lawford Street home, killing Ziad Razzak and Nemra. Hamka was also home at the time of the shooting but escaped uninjured.¹¹⁴ Darwiche, El-Zeyat, Aouad, and their driver Abass Osman were later convicted of the murders of Ziad Razzak and Nemra.¹¹⁵ Darwiche was also charged with the murder of Abdul Razzak. Abdul Razzak had been married to Darwiche's sister Khadjie, though they were divorced at the time that Abdul

¹⁰⁹ *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [63]; *Regina v Darwiche & Ors* [2006] NSWSC 929, [54]; *Regina v Abdul Darwiche* [2006] NSWSC 848, [45].

¹¹⁰ *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [22]; *Regina v Darwiche & Ors* [2006] NSWSC 1167, [21].

¹¹¹ *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [18]–[22]; NSW Police Force, NSW Police, *Annual Report 2004-05* (2005) 41.

¹¹² *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [18]–[22]; NSW Police, *Annual Report 2004-05* (2005) 41.

¹¹³ *El-Zeyat v R; Aouad v R; Osman v R* [2015] NSWCCA 196, [26]; *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA, [22], [114].

¹¹⁴ *El-Zeyat v R; Aouad v R; Osman v R* [2015] NSWCCA 196, [30]; *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [22]–[23].

¹¹⁵ *El-Zeyat v R; Aouad v R; Osman v R* [2015] NSWCCA 196, [67]; *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [93], [101], [113]; *Regina v Darwiche and Ors* [2006] NSWSC 1167, [43]–[44], [61]–[65], [80]–[81]; *Osman v R* [2006] NSWCCA 196, [2]–[3].

Razzak was murdered.¹¹⁶ At trial, the jury was unable to reach a unanimous verdict as to whether Darwiche was responsible for Abdul Razzak's murder.¹¹⁷

Believing that the events in Lakemba and Greenacre were connected, the police established Task Force Gain to investigate the three murders simultaneously. Task Force Gain began work on 23 October 2003, and soon claimed 160 employees, including crime investigators, uniformed police, intelligence analysts, interpreters, and administrative staff.¹¹⁸ Soon after, a strike force attached to Task Force Gain commenced an investigation into the murder of Ahmed Fahda, which occurred on 30 October 2003.¹¹⁹ Fahda was an associate of the Razzaks and was murdered at a service station in Punchbowl, a suburb close by Lakemba and Greenacre.¹²⁰ El-Zeyat and Aouad – who had been married to Fahda's sister Donna – were later convicted of Fahda's murder,¹²¹ though their respective convictions for Fahda's murder were quashed in 2011.¹²² Darwiche was also charged with being an accessory both before and after the fact to Fahda's murder but was acquitted on both counts.¹²³

Speaking about the mandate of the Task Force he had been appointed to lead, Detective Superintendent Bob Inkster explained that Gain was investigating 'a small group of criminals who are seeking retribution in their own way'.¹²⁴ Around the time of Inkster's statement, Gain assumed responsibility for investigating the murder of Dimitri Debaz, which had taken place in the suburb of Sefton (which is also located in the Bankstown LGA) in December 2002.

¹¹⁶ *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [67]; *Regina v Darwiche & Ors* [2006] NSWSC 929, [87]; *Regina v Abdul Darwiche* [2006] NSWSC 848, [46].

¹¹⁷ *Darwiche v R; El-Zeyat v R; Aouad v R; Osman v R* [2011] NSWCCA 62, [10].

¹¹⁸ Les Kennedy and Nick O'Malley, 'Ring of Steel to Shut Down the Drive-by Gunmen', *The Sydney Morning Herald* (Sydney), 23 October 2003, 4; 'A Special Squad to Fight Crime', *Canterbury Bankstown Express* (Sydney), 28 October 2003, 2; 'Taskforce Formed', *Fairfield Advance* (Sydney), 29 October 2003, 7.

¹¹⁹ *Aouad and El-Zeyat v R* [2011] NSWCCA 61, [321].

¹²⁰ *Ibid* [3].

¹²¹ *Ibid* [2]; *El-Zeyat v R; Aouad v R; Osman v R* [2015] NSWCCA 196, [36]; *Regina v Darwiche & Ors* [2006] NSWSC 1167, [48]; *Regina v Darwiche and Ors* [2006] NSWSC 1167, [2], [45], [63], [66].

¹²² *Aouad and El-Zeyat v R* [2011] NSWCCA 61. A retrial was ordered, but the Director of Public Prosecutions dropped the charges in respect of Fahda's murder on 1 June 2012. See *El-Zeyat v R; Aouad v R; Osman v R* [2015] NSWCCA 196, [6].

¹²³ *Aouad and El-Zeyat v R* [2011] NSWCCA 61, [2].

¹²⁴ 'Gun Culture', *The Daily Telegraph* (Sydney), 9 December 2003, 3.

Despite earlier assurances that Gain was investigating a small number of individuals who were involved in a series of related murders, police spokespeople stated that they did not believe that the murder of Debaz was related to the conflict between the Darwiches and Razzaks.¹²⁵ The same spokespeople also stated that police suspected that Raphael ‘Hussony’ Joseph and Raymond Youmaran had murdered Debaz. Joseph and Youmaran were publicly identified by police as Assyrians, and calls were made for the Assyrian community to assist the police in locating the two men.¹²⁶ As argued by Collins et al., calls for members of ethnic minority communities to provide the police with information about crimes allegedly committed by other members of those communities assumes that those communities are homogenous, and that community members have closed ranks and concealed (and are therefore complicit in) the behaviour;¹²⁷ thereby extending responsibility for the alleged criminal behaviour to the entire community through a process of collective attribution (see also Chapter II). The Secretary of the Assyrian Universal Alliance Fairfield Chapter Hermiz Shahan publicly expressed his concerns about collective attribution when he took to the local newspaper to criticise the police for identifying Joseph and Youmaran as Assyrians, explaining that: ‘[j]ust to label these men Assyrian has caused damage for the whole Assyrian community ... It’s giving the Assyrian community a really bad name’.¹²⁸

The police sought to quell further concerns about Task Force Gain by organising a meeting with members of the Arabic-speaking media in Bankstown. At the meeting, Superintendent Stuart Wilkins from Task Force Gain explained:

Task Force Gain is not a campaign against Arabic-speaking people, but an intense effort to stop gang-related crime ... We are not targeting any ethnic group. We are targeting those criminals specifically involved in these crimes.¹²⁹

¹²⁵ ‘Murder Arrest’, *The Daily Telegraph* (Sydney), 19 November 2003, 3; ‘Arrested in Raids’, *Liverpool Leader* (Sydney), 3 December 2003, 5; Rhett Watson, ‘Man Had Gun “For Defence” – Link to Shootings’, *Sunday Telegraph* (Sydney), 7 December 2003, 27.

¹²⁶ ‘Police Upset Assyrians’, *Fairfield Advance* (Sydney), 10 December 2003, 3.

¹²⁷ Collins et al, above n 55, 10.

¹²⁸ ‘Police Upset Assyrians’, above n 126.

¹²⁹ “‘No Ethnic Target” in Crime Attacks’, *Canterbury Bankstown Express* (Sydney), 25 November 2003, 5.

With his reference to ‘these crimes’ Wilkins was identifying each of the above murders as the immediate focuses of Gain’s investigations. However, despite his assurances that Task Force Gain was not a campaign against ‘Arabic-speaking people’, Wilkins provided the phone number of a hotline staffed by Arabic interpreters and appealed for the public to provide information about the crimes Gain was investigating, insinuating in direct comments to the media that members of the Arabic-speaking communities of Sydney had been withholding information about the murders from the police.¹³⁰ At the same time, despite earlier calls for members of the Assyrian community to help police locate Joseph and Youmaran, the police did not provide a similar hotline staffed by interpreters capable of speaking Assyrian.

In early 2004, a spokesperson for then-Police Minister John Watkins reiterated Superintendent Wilkins’ public assurances but explained that there was a geographic dimension to Gain’s work. According to the spokesperson, ‘Task Force Gain isn’t a Middle Eastern crime squad, it is investigating serious and violent crime within a certain geographical area within Sydney’s south-west’.¹³¹ The Minister’s spokesperson did not specify the parameters of the geographic area that Gain was supposed to be working within. However, media reports indicated that like Operation Pericos, Task Force Gain was working in the south-western suburbs of Greenacre, Lakemba, and Punchbowl in the Bankstown LGA.¹³² Gain’s activities also stretched further afield to other suburbs with sizeable Middle Eastern background communities, including Greenfield Park in Sydney’s west, and Barden Ridge, Brighton Le Sands, and Hurstville in Sydney’s south.¹³³ It was also reported that while Gain was not a ‘Middle Eastern crime squad’, then-Police Commissioner Ken Moroney was to decide

¹³⁰ Ibid.

¹³¹ ‘Arabs “Not Task Force Targets”’, *Illawarra Mercury* (Sydney), 20 January 2004, 5.

¹³² Ibid; Melissa Jenkins, ‘Brothers Arrested in Gang Raids’, *Australian Associated Press* (Sydney), 16 January 2004.

¹³³ ‘Ten Arrested in Drug Swoop’, *The Daily Telegraph* (Sydney), 29 September 2004, 2; ‘Gun Violence Spreads on Sydney Streets’, *Illawarra Mercury* (Sydney), 9 December 2003, 11; Les Kennedy, ‘Ten Dead So Far as Feud Flares, Putting Bystanders in Line of Fire’, *The Sydney Morning Herald* (Sydney), 9 December 2003, 2.

whether he would ‘make Task Force Gain a permanent squad to address Middle Eastern crime’ by March 2004.¹³⁴

No information was offered forward to explain what the mandate of a ‘Middle Eastern crime squad’ might entail, or, more fundamentally, what constituted ‘Middle Eastern crime’. Police Minister Watkins later told Parliament that Gain was targeting serious, violent and repeat offenders involved in ‘violent crime, extortion, intimidation, drug offences and car rebirthing’, primarily in Sydney’s south-west.¹³⁵ However, soon after, it became clear that the Gain was not only policing serious, organised, and violent crimes, as it was reported that Gain had executed a ‘crackdown’ on anti-social behaviour, and that ‘six men, aged between 18 to 23, have been charged with a variety of offences, including assault police, resist arrest, intimidation, and hinder police’.¹³⁶ The breadth in the behaviours policed by Task Force Gain suggests that rather than denoting a specific type of criminal behaviour, ‘Middle Eastern crime’ encompassed a range of disparate criminal and anti-social behaviours unified only by the Middle Eastern identities of the ‘offenders’.

Accounting for the broadening of Gain’s activities to include the policing of anti-social behaviour, Superintendent Wilkins explained that Gain’s charter involved proactive practices, and ‘target operations aimed at identifying and dismantling criminal activity’.¹³⁷ It is possible that the police saw target operations as a method to trawl for information.¹³⁸ However, far from ‘*dismantling*’ criminal activity, proactive and targeted police interventions against anti-social behaviour do not await the commission of criminal offences. Instead, they target ‘problematic’ classes of people as being potential offenders.¹³⁹ Moreover, aggressive and repressive policing of this kind may well lead to resistance and, in turn, create occasions for the criminalisation

¹³⁴ Candace Sutton, ‘Secret Reports into Gangs Go Missing’, *The Sydney Morning Herald* (Sydney), 25 January 2004, 40.

¹³⁵ New South Wales, *Parliamentary Debates*, Legislative Assembly, 31 March 2004, 7856-57 (John Watkins, Minister for Police).

¹³⁶ ‘Six Arrested in New Gain Operation’, *Australian Associated Press*, 7 April 2004.

¹³⁷ ‘12 Charged with drug offences after dawn raids’, *Australian Associated Press*, 28 September 2004.

¹³⁸ See Paddy Hillyard, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993) 31.

¹³⁹ Maguire, above n 48, 324.

of uncooperative behaviours, which can then be framed as offences like ‘resist arrest’.¹⁴⁰ In any case, Gain’s focus on anti-social behaviour was reiterated by Police Minister Watkins in Parliament on 3 June 2004.¹⁴¹

While Gain was in operation, its ‘achievements’ were often reported by the Police Minister and the police organisation in terms of the number of charges laid by its officers, with no information subsequently offered forward about the number of convictions secured from those charges.¹⁴² For example, in its 2004-2005 *Annual Report*, the NSW Police stated that during the reporting year Gain had laid 1730 charges, and expanded on the nature of the charges:

Of the 1730 charges, 84 were related to violence and 70 were related to firearms. Drug related charges totalled 369, while 256 were theft/fraud related. Eight hundred and one (801) traffic related charges and 150 other charges were laid. During the reporting period, Task Force Gain seized drugs with an estimated street value of \$1.5 million and approximately \$80,000 in cash. A range of firearms, ammunition and knives were also seized by the Task Force officers.¹⁴³

On 15 September 2005, less than a year after the Police’s 2004-2005 *Annual Report* was published, the Police Minister updated the above figures:

Task Force Gain's achievements in its first 20 months of operation have been impressive and include 1,297 arrests and 3,134 charges being laid, 67 operations and 74 controlled operations being undertaken, 145 search warrants being executed, 37 weapons and more than 3,600 rounds of ammunition being seized, nine people

¹⁴⁰ As noted by Chris Cunneen in his research on the policing of Indigenous Australians, charges laid for assault police, resist arrest and hinder police often arise out of police-initiated interventions against those charged, in which the ‘victim’ of the offence was most likely a police officer. See Chris Cunneen, ‘The Criminalization of Indigenous People’ in Tania Das Gupta et al (eds), *Race and Racialization: Essential Readings* (Canadian Scholars’ Inc Press, 2007) 266, 266; For a parallel argument, see Collins et al, above n 55, 91.

¹⁴¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 3 June 2004, 9609-10 (John Watkins, Minister for Police).

¹⁴² New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 September 2005, 17875-77 (John Watkins, Minister for Police).

¹⁴³ NSW Police, *Annual Report 2004-05* (2005) 41.

having been charged with murder or attempted murder and 54 people having been charged with shooting offences.¹⁴⁴

Despite claims of a focus on serious, organised, and violent crimes, close to half of Gain's work – at least in 2004-05 – involved charging individuals with traffic offences. The significance of traffic-related police powers in providing police officers with a tool to proactively intervene against people of Middle Eastern background and appearance will be further explored in Chapters V and VI.

Though he had previously denied that the work of Task Force Gain was targeting people of Middle Eastern background, the Police Minister further claimed that the provision of Arabic-speaking telephone operators within Task Force Gain was a positive decision that had helped the police to achieve 'close communication' with policed communities.¹⁴⁵ It is questionable whether the nominal provision of a hotline staffed by Arabic interpreters was sufficient to foster 'close' communication with Middle Eastern background communities – particularly given that leaders of the communities in question had voiced concerns that people of Middle Eastern background were being unfairly targeted both before and after Task Force Gain was established. It is also worth noting that many Middle Eastern background communities do not speak Arabic.

In a context where the Opposition Leader had badgered the government for being 'soft' on 'Middle Eastern thugs',¹⁴⁶ Watkins also went on to announce that Task Force Gain would indeed become a 'Middle Eastern crime squad' in due course:

Gain stage three will pave the way for a permanent State Crime Command squad, targeting the same types of crime that led us to establish Task Force Gain 12 months ago. That squad—currently

¹⁴⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 September 2005, 17875-77 (John Watkins, Minister for Police).

¹⁴⁵ Ibid.

¹⁴⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 5 April 2006, 22147 (Peter Debnam, Leader of the Opposition).

slated as the Middle Eastern Organised Crime Squad—will become the tenth State Crime Command specialist unit.¹⁴⁷

Watkins' explanation that a 'specialist' MEOCS would eventually assume responsibility for the 'types' of crime that Task Force Gain had been policing warrants further attention. The terms 'Middle Eastern crime' and 'Middle Eastern organised crime' are best understood as racialised neologisms which first emerged in accordance with the work of the police squads discussed in this chapter – and especially Task Force Gain. As stated above, these neologisms function as discursive, catch-all labels for the broad range of anti-social and criminal behaviours policed by those squads, which are unified only by the alleged involvement of people of Middle Eastern background. That the category 'Middle Eastern' is itself a catch-all label only serves to further broaden the potential uses (and misuses) of the terms 'Middle Eastern crime' and 'Middle Eastern organised crime'.

If 'Middle Eastern crime' or 'Middle Eastern organised crime' emerged after the Wood Royal Commission, as is claimed by commentators like Bashan and Priest, it is because police practices and political and media discourse combined to racialise, oversimplify and collectively attribute knowledge about Middle Eastern background communities, 'gangs', firearms-related crimes, drug distribution other serious crimes in the late 1990s and early 2000s. In this way, the police, politicians and media began to discursively construct the 'problem' of 'Middle Eastern organised crime' for which Task Force Gain was the answer. Though Task Force Gain policed both anti-social behaviour and minor offences as well as more serious offending, the creation of an institutional unit to police so-called 'Middle Eastern crime' cemented the notion that the violence and criminality of Sydney's many diverse Middle Eastern background communities was of sufficient seriousness to warrant concerted, proactive police attention.

The case studies in this part of the chapter have therefore illustrated that the Middle Eastern suspect community was first constructed between 1997 and 2005, at the

¹⁴⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 October 2004, 11950-51 (John Watkins, Minister for Police).

juncture of authoritarian law-and-order rhetoric about Middle Eastern criminality, which itself fed off (and fed into) the extraordinary, proactive policing of people of Middle Eastern background and appearance. This proactive policing was mandated by institutional-level policies and the provision of extensive police resources, which were often used to form police squads of varying descriptions. These developments eventually culminated in the creation of permanent infrastructure to police the Middle Eastern suspect community, in the form of a ‘specialist’ MEOCS. However, the MEOCS was not immediately forthcoming after Police Minister Watkins’ above statements, with the government waiting over twelve months before finally moving to establish the MEOCS in direct response to the Cronulla Riots of December 2005.

IV. The Cronulla Riots

On 4 December 2005, it was reported that two young Caucasian surf lifesavers at Cronulla Beach in the Sutherland Shire had been attacked by a group of young men of Middle Eastern background.¹⁴⁸ Reports held that the young men of Middle Eastern background had repeatedly harassed the surf lifesavers throughout that afternoon and that they had used their mobile phones to ‘call in reinforcements’, leading a large group of young Middle Eastern men to converge on the beach, and later punch and kick the young lifesavers unconscious. However, police officers who responded to the incident reported that an argument had started after one lifesaver and one young man of Middle Eastern background had each objected to the other staring at him and that there was provocation and indecent remarks made by both parties.¹⁴⁹

Over the next week, the incident on the beach was the subject of extensive news reporting. However, recounts of the events were heavily distorted and were later described as ‘colourful, exaggerated and inaccurate’ by Strike Force Neil, which was established by the Police Force to conduct a systematic review into the Riots (known as the Hazzard Report).¹⁵⁰ Radio shock jocks stirred up public concern about Middle Eastern background communities and called for a ‘community show of force’ against

¹⁴⁸ NSW Police Force Strike Force Neil, *Cronulla Riots: Review of the Police Response, Report and Recommendations* (2006) 7.

¹⁴⁹ Ibid 7–8.

¹⁵⁰ Ibid 6–8.

people of Middle Eastern background.¹⁵¹ All the while, people of Middle Eastern background were accused of having continuously affronted Cronulla's residents, even before the 4 December 2005 fight on the beach.¹⁵²

Inflammatory text messages were circulated to organise the 'community show of force' that the radio shock jocks had called for.¹⁵³ Take, for example, the following text message that was reproduced in one of Sydney's most widely circulated tabloids, the *Daily Telegraph*:

This Sunday every Aussie in the Shire get down to North Cronulla to help support Leb and Wog bashing day ... Bring your mates and let's show them that this is our beach and they are never welcome ... Let's kill these boys.¹⁵⁴

On 11 December 2005, around 5,000 Anglo-Australians gathered at Cronulla. Violence was enacted on any person in Cronulla perceived to be of Middle Eastern appearance, though many victims did not have Middle Eastern heritage.¹⁵⁵ The following evening, groups of men of Middle Eastern background retaliated in so-called 'reprisal attacks' in beach-side suburbs in Sydney's south and south-east.¹⁵⁶

Reporting on its review into the Riots, Strike Force Neil attributed the racist and nationalistic actions of the Anglo-Australian mob at Cronulla to the development of a 'mob mentality'. As explained by Strike Force Neil:

When crowd members become highly emotional or aggressive their visible behavior can spread and become regarded as acceptable by those around them. It can be an opportunity for an anti-social minority to influence and mobilise others around them.¹⁵⁷

¹⁵¹ Scott Poynting, 'Scouring the Shire' in Greg Noble (ed), *Lines in the Sand: The Cronulla Riots, Multiculturalism and National Belonging* (Institute of Criminology Press, 2009) 44, 45–46. See also *Ekermawi v Jones and Harbour Radio Pty Ltd* [2011] NSWADT 280, [13].

¹⁵² NSW Police Force Strike Force Neil, above n 148, 32–33. *Ekermawi v Jones and Harbour Radio Pty Ltd* [2011] NSWADT 280, [13].

¹⁵³ NSW Police Force Strike Force Neil, above n 148, 35–36; Poynting, above n 151.

¹⁵⁴ *Ekermawi v Jones and Harbour Radio Pty Ltd* [2011] NSWADT 280, [13].

¹⁵⁵ NSW Police Force Strike Force Neil, above n 148, 8, 38.

¹⁵⁶ *Ibid* 9, 45–50.

¹⁵⁷ *Ibid* 68.

Significantly, this explanation was void of reference to the ethnic background of the Anglo-Australian mob who had gathered at Cronulla on 11 December 2005, and also overlooked the victimisation of people of Middle Eastern appearance.

In contrast to their explanation of the behaviour of the Anglo-Australian mob, Strike Force Neil delivered a racialised – and far more critical – appraisal of the attacks and property damage enacted in the ‘reprisal attacks’. In the words of Strike Force Neil:

There is evidence of a significant level of violent criminality being committed by a small element of the Middle Eastern community. These criminals have shown that they have the means to form a large group of people with Middle Eastern background who have little or no criminal records to engage in activity that is referred to as the ‘reprisal’ attacks. This criminal element has no respect for authority and engages in intimidation of police and members of the community.¹⁵⁸

As has been argued throughout this chapter, there already existed a readiness to overstate the level of crime and disorder within Middle Eastern background communities, and to dedicate extraordinary attention and resources to policing those communities. The stated rationale for establishing the MEOCS reveals a continuity in this trend.

As acknowledged in the Hazzard Report, most of the men of Middle Eastern background involved in the ‘reprisal attacks’ were people ‘who [had] little or no criminal records’.¹⁵⁹ Moreover, when Strike Force Neil later carried out a statistical analysis of COPS event records and recorded crime statistics, they did not find that people of Middle Eastern appearance from western or south-western Sydney were markedly involved in crime and disorder around Cronulla,¹⁶⁰ despite the Anglo-

¹⁵⁸ Ibid 56.

¹⁵⁹ Ibid.

¹⁶⁰ ‘COPS’ stands for Computerised Operational Policing System. COPS is the primary computer system used by the NSW Police Force to record and retrieve operational information. For a given incident or ‘event’ a police officer can record information under any or all of the following categories: date, time, location, offence detected (where relevant), and the details of suspects or offenders and victims. There is also a field where officers can enter a narrative description of the event. Detail obtained from NSW Ombudsman, *Emergency Powers to Prevent or Control Disorder Review* (2007) 4.

Australian mob instigating the Riots because of the alleged transgressions of people of Middle Eastern background in Cronulla. Indeed, according to Strike Force Neil's analysis, most crime in the area were committed by local people of 'white/European' appearance from the Shire.¹⁶¹

Nevertheless, during the investigation into the Riots, the Commissioner of Police finally gave Task Force Gain permanent standing in the State Crime Command as the MEOCS, effective as of 1 May 2006.¹⁶² As stated in the Hazzard Report, the MEOCS was established by the Commissioner in the hopes of strengthening the capacity of the NSW Police to prevent further reprisal attacks and violent acts of crime being committed by people of Middle Eastern background.¹⁶³ However, the Commissioner did not establish a similar crime squad to contain the crimes of those Anglo-Australians who instigated the large-scale violence which began on 11 December 2005, had carried out premeditated violence upon innocent people who they perceived to be of Middle Eastern appearance, and had caused significant property damage in Cronulla.

V. Conclusion

This chapter set out to unsettle the received narratives about the emergence of so-called MEOC and the MEOCS in New South Wales. While commentators have contended that the Wood Royal Commission demoralised and incapacitated the Police Service and allowed MEOC to thrive, this chapter has problematised both the notion that the Royal Commission inhibited the Service and the notion that MEOC is a discrete or coherent category of criminal behaviour.

Instead, the chapter has argued that MEOC emerged because of the coalescence of authoritarian law-and-order political, police, and media discourses, and the demarcation and sustained policing of the Middle Eastern suspect community between

¹⁶¹ NSW Police Force Strike Force Neil, above n 148, 6, 18–22.

¹⁶² Bashan, above n 1, 9–11; Anne Davies and Justin Norrie, 'And Still No Gain in the Crackdown on Crime', *The Sydney Morning Herald* (Sydney), 7 April 2006, 1; Andrew Clennell, 'Middle Eastern Gangs to Be Stalked by a Stronger Nemesis', *The Sydney Morning Herald* (Sydney), 25 February 2006, 1.

¹⁶³ NSW Police Force Strike Force Neil, above n 148, 65.

1997 and 2005. Fundamentally, the Middle Eastern suspect community was formed because the police organisation dedicated extraordinary resources to the proactive policing of Middle Eastern collective identities, which included the establishment of police squads. As outlined in this chapter, police territoriality was one prevalent mode of proactive policing that contributed to the formation of the Middle Eastern suspect community in this period. This territoriality included policing practices that constrained the movements of people of Middle Eastern appearance to try to corral them into Sydney's south-west, as well as intensive street policing and surveillance within that region.

This chapter has also identified a disconnect between the policing of the Middle Eastern suspect community and the 'police talk' and public discourses about the policing that was being carried out. The case studies in this chapter have shown that in their policing of the Middle Eastern suspect community the police targeted a range of behaviours, encompassing crimes of varying severity and also anti-social behaviours. In the early 2000s, the ascendant 'police talk' and broader public discourses began to draw these diverse behaviours together under the banner of MEOC, but invariably characterised MEOC as a type of serious, organised, or violent crime.

The endurance of discourses about MEOC resulted in self-perpetuating policing, in that calls were eventually made for a permanent squad to police the apparent (and exaggerated) threat of MEOC. After the Cronulla Riots of 2005, the police organisation announced that a 'specialist' MEOCS was going to be established. The MEOCS is the subject of the next chapter of this thesis.

Chapter V

The Middle Eastern Organised Crime Squad

HIS nickname is Slasher and the legendary squad he set up cut a swath through Middle Eastern organised crime. The Middle Eastern Organised Crime Squad (MEOCS), which grew out of the 2005 Cronulla riots, has locked up some of the city's toughest and most dangerous crooks ... However, retired assistant commissioner Ken "Slasher" McKay yesterday warned the war against the mainly Lebanese crime families is far from over as MEOCS is wound up and absorbed into the Gangs Squad.¹

I. Introduction

Established in May 2006, the NSW Police Force's Middle Eastern Organised Crime Squad operated for over a decade before being amalgamated with the Force's Gangs Squad in December 2017. The Police Force publicly framed the Squad's multifaceted work as a 'specialist' response to so-called 'Middle Eastern organised crime' (MEOC). The overarching aim of this chapter, which provides the first academic study of the MEOCS, is to examine the Squad's specific role in policing people of Middle Eastern background and appearance in New South Wales.

This chapter problematises two interrelated police knowledge claims: first, that MEOC is a distinct 'type' of serious or organised crime, and second, that a specialist squad (that is, the MEOCS) was needed to police MEOC. As argued in Chapter IV (and expanded below), MEOC is an imprecise catch-all label used to describe any crime or anti-social behaviour allegedly committed by a person of Middle Eastern background. At the same time, the Police Force has conceded that it is impossible to determine on the public record whether the persons policed by the MEOCS were indeed Middle Eastern (see Part II, below). Moreover, the Squad's work was often difficult to reconcile with its stated mandate and could likely have been carried out by other squads or police from Local Area Commands (LACs). Nevertheless, the MEOCS provided the Police Force with an apparatus that could be deployed to target people of

¹ Janet Fife-Yeomans, 'Fearsome Crim Reapers', *The Daily Telegraph* (Sydney), 2 December 2017, 36.

Middle Eastern background and appearance, and especially those residing in localities in Sydney's south-western and western suburbs that have been racialised as Middle Eastern (see Chapter IV). Below, I trace how the deployment of the Squad in this manner constituted over-policing.

As set out in Chapter II, the over-policing of racialised collective identities drives suspect community formation. Over-policing is not merely a referent for extensive police intervention but also draws attention to the forms that police intervention takes.² Throughout this chapter, I identify several co-existing modes of racialised policing that were apparent in the MEOCS's work, which each underpinned suspect community formation by delineating collective Middle Eastern identities as suspicious and acting on those identities. Accordingly, the Squad's activities sustained the Middle Eastern suspect community first formed in New South Wales in the late 1990s and early 2000s (see Chapter IV).

Officially, the Squad's mandate spoke in imprecise terms of policing 'Middle Eastern criminal groups' and the 'networks' and 'associates' of those groups. In practice, the Squad did investigate and apprehend some groups involved in serious, organised, and violent crimes, but its mandate of policing 'Middle Eastern criminal groups' also amounted to the targeted policing of certain Middle Eastern background families. The Squad's imprimatur to police individuals because of their associations with alleged members of 'Middle Eastern criminal groups' broadened the scope and reach of the police's interventions in racialised Middle Eastern communities, and, in turn, expanded the parameters of the Middle Eastern suspect community.

The Squad also engaged in sweeping, proactive street policing operations in Sydney's south-western and western suburbs. In this respect, the Squad assumed the mantle of Task Force Gain and other units that had proactively and territorially policed people of Middle Eastern background and appearance in the 1990s and early 2000s (see Chapter IV). However, in keeping with the Police Force's increasing adoption of intelligence-led policing strategies throughout the 2000s, much of the Squad's

² Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) 85.

proactive work came to be premised on trawling for information and disrupting criminal behaviour. Accordingly, the Squad's work was somewhat distinct from the Force's approaches to policing people of Middle Eastern background and appearance in the 1990s, which had generally taken the form of 'broken windows'-type aggressive street policing (as illustrated in Chapter IV).

While it was not always clear whether the Squad was policing Middle Eastern people, its targets were squarely racialised in police talk and broader public discourses. Inaccurate and dramatised media portrayals of the Squad bolstered suspect community formation by defining Middle Eastern identity as a 'crime type' and venerating the Squad's work in policing so-called MEOC. However, the fickleness of the public rhetoric surrounding MEOC and the MEOCS was brought into sharp relief when the Squad was abruptly subsumed into the Force's Criminal Groups Squad (CGS) in December 2017, with the Police Commissioner rationalising that ethnicity no longer determined the 'lanes' in which organised criminals operated.³

It is worth noting here that the NSW Police Force maintains close links with other Australian police and intelligence organisations.⁴ As such, the MEOCS sometimes participated in multi-agency investigations and operations. Indeed, some of the case studies in Part III of this chapter indicate that the MEOCS received information about its targets from other Australian police and intelligence organisations. However, there is little information on the public record attesting to the nature or extent of the Force's cooperation and collaboration with other organisations. As such, while the Squad's participation in multi-agency policing is an important area for future research, the focus of this chapter is firmly on the Squad's place within the NSW Police Force and its work in policing the Middle Eastern suspect community in New South Wales.

This remainder of this chapter is divided into five parts. In Part II, I describe the establishment of the MEOCS and outline the Squad's stated mandate. Part III then

³ Evidence to Portfolio Committee No 4 on Legal Affairs, New South Wales Legislative Council, Sydney, 31 August 2017, 2 (Michael Fuller, New South Wales Police Commissioner).

⁴ For instance, as part of the NSW Joint Organised Crime Group (JOCG) the Police Force contributes to multi-agency investigations into organised crime alongside the NSW Crime Commission, Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC, formerly known as the Australian Crime Commission) and Australian Border Force (ABF). See, for eg, NSW Crime Commission, *Annual Report 2017-18* (2018) 13.

provides five case studies of the Squad's work that I compiled from court judgments and media sources. Part III also includes a 'counter map' of the MEOCS's work that I created using a mapping application. The 'counter map' attests to the Squad's territoriality by illustrating that its activities were heavily concentrated in Sydney's south-western and western suburbs. Moving on from the practices of operational police, Part IV turns to consider the collusion between the media, the Force's media unit, and the MEOCS's top officers, who, together, undergirded suspect community formation by shaping powerful public narratives about MEOC and the MEOCS. Part V discusses the amalgamation of the MEOCS and the Gangs Squad to form the CGS in December 2017. The chapter concludes in Part VI.

II. The Establishment of the Middle Eastern Organised Crime Squad

When it commenced work on 1 May 2006, the MEOCS was allocated a substantial body of police staff. The Squad was a multidisciplinary team consisting of over 100 police employees including detectives, intelligence analysts, uniformed general duties officers, and highway patrol officers.⁵ As illustrated in **Figure 5.1** (below), these employees were divided between a Criminal Investigation Team, a Target Action Group,⁶ and a Uniformed Branch.⁷ The MEOCS was also supported by civilian staff who provided Arabic translation services.⁸ It is uncommon for the police organisation in New South Wales to explicitly devote such resources to policing particular ethnic minority communities. Before the MEOCS was formed, the police organisation had only ever created an 'ethnic titled squad'⁹ with such resources once before, when the

⁵ Yoni Bashan, *The Squad* (HarperCollins, 2016) 9–11; Anne Davies and Justin Norrie, 'And Still No Gain in the Crackdown on Crime', *The Sydney Morning Herald* (Sydney), 7 April 2006, 1; 'New Squad to Fight Violence', *The Canterbury Bankstown Express* (Sydney), 11 April 2006, 3; 'Middle Eastern Distraction Squad', *The Sydney Morning Herald* (Sydney), 8 April 2006, 36.

⁶ *Inquest into the Death of William Crews* (2015) State Coroner's Court of New South Wales, 2010/236872 (21 September 2015) [17] (Michael Barnes, State Coroner); Bashan, above n 3, 11.

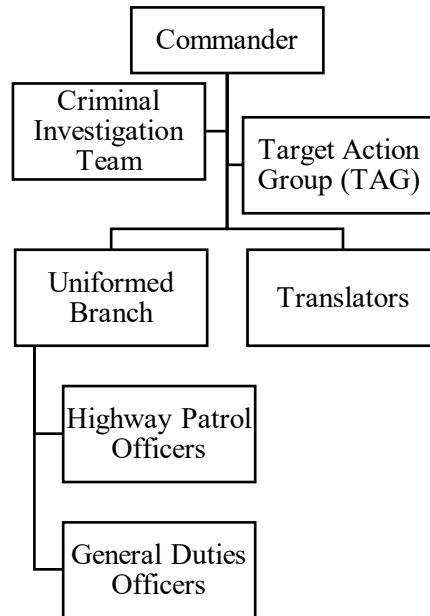
⁷ *Inquest into the Death of William Crews*, above n 6, [17]; Bashan, above n 3, 11.

⁸ Bashan, above n 3, 11.

⁹ Peter J El Khouri, *Keeping Up 'Appearances': Australia 2013: Ancestry and Ethnic Descriptors - After the Cronulla Riots* (Social Justice Publications, 2012) 110.

South East Asian Crime Squad was established in the State Crime Command (SCC) in the early 2000s.¹⁰

Figure 5.1: The Structure of the Middle Eastern Organised Crime Squad



Source: Adapted from *Inquest into the Death of William Crews* (2015) and Bashan (2016).

Indeed, the exceptional nature of the MEOCS was not merely a matter of the Squad's extensive resources but also stemmed from the Squad's placement in the SCC. The SCC is a centralised division of the Police Force that consists of 'elite' specialist squads tasked with 'investigating serious and organised crime and criminal gangs'.¹¹ Each squad within the SCC carries out targeted investigations into particular 'types' of crime.¹² As elaborated by the NSW Ombudsman in 2016, the SCC's squads each:

¹⁰ For a comprehensive discussion of the policing of Indo-Chinese communities in Sydney in the 1990s and 2000s, see David Dixon and Lisa Maher, 'Containment, Quality of Life and Crime Control: Policy Transfers in the Policing of a Street Heroin Market' in Tim Newburn and Richard Sparks (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan, 2004) 234. There is, however, a dearth of scholarship on the Asian Crime Squad.

¹¹ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900* (2016) 28.

¹² NSW Police Force, *State Crime Command* <https://www.police.nsw.gov.au/about_us/organisational_structure/units/state_crime_command>.

... have a state-wide remit, conduct overt and covert investigations into their specialist areas, and provide operational support and intelligence to [Local Area Commands] as needed.¹³

The Police Service briefly turned away from employing a centralised criminal investigation and intelligence department in the wake of the Wood Royal Commission. As detailed in Chapter IV, the Royal Commission had publicly exposed the corruption that pervaded the specialist squads of the Police Service's former Criminal Investigation Branch (CIB).¹⁴ When the SCC was established in 2002, five years after the Royal Commission's *Final Report* was handed down, it bore clear resemblances to the CIB.¹⁵ Recognising this, Deputy Commissioner Dave Madden tried to assuage concerns about the potential for corruption within the SCC in direct statements to the media. In doing so, Madden reverted to an individualistic, bad-apples-style account of police corruption of the kind that had been thoroughly problematised by the Royal Commission, stating: '[s]quads are not corrupt, people are ... Not everything about the squads is bad'.¹⁶

Since the SCC's squads conduct specialist investigations into serious and organised crime, situating the MEOCS within the SCC carried an implicit claim about the status of MEOC as a distinct category of serious or organised crime. However, as argued in Chapter IV, the Police Force's public rhetoric has consistently papered over the inherent ambiguity of the term MEOC since it first gained currency in the late 1990s. As is further elaborated in Part IV of this chapter, MEOC is properly understood as a catch-all label for a range of crimes and anti-social behaviours allegedly committed by persons of Middle Eastern background. Nevertheless, by establishing a 'Middle Eastern Organised Crime Squad' in the centralised institutional structure of the SCC,

¹³ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 11, 28.

¹⁴ The Wood Royal Commission held that corruption within the CIB and its subsidiary squads eventually led to the dispersal of corruption throughout the entire police organisation. See Royal Commission into the New South Wales Police Service, *Final Report Volume I: Corruption* (1997), [3.64], [3.71], [3.80], [6.4]–[6.12]. Nevertheless, the Royal Commission declined to interfere with the police organisation's authority to create squads.

¹⁵ See, eg, Kara Lawrence, 'Putting the Force Back into NSW Policing', *The Daily Telegraph* (Sydney), 8 November 2002, 9.

¹⁶ Angela Kamper, 'Police Open New Front in Crime War', *The Daily Telegraph* (Sydney), 8 November 2002, 9.

the Police Force conveyed to the public that MEOC was of sufficient seriousness to necessitate the exceptional allocation of police resources and attention.

Despite creating a squad dedicated to policing MEOC, the Police Force conceded that it was impossible to determine on the public record whether the suspects charged by the MEOCS were indeed Middle Eastern. In the Police Budget Estimates Hearing on 22 October 2007, then-Police Commissioner Andrew Scipione was probed about the MEOCS by John Ajaka, a Lebanese-Australian Liberal Member of Parliament (MP). Scipione took a number of Ajaka's questions on notice, including: whether it was possible for the Police Force to know how many of the people that the MEOCS had arrested were of Middle Eastern background; how an officer would know that somebody who they had arrested was of Middle Eastern background; and whether somebody would be classified as Middle Eastern if they were born in Australia, or if only one of their parents was from the Middle East.¹⁷ The Police Force later responded that:

Police use ethnic descriptors, along with physical descriptors, in the pre-arrest phase only. The ethnicity of persons charged is not recorded on police information systems, and, as such, the ethnic breakdown of persons arrested by the MEOCS is not available ... MEOCS investigates suspects based on their membership or association with organised criminal groups, rather than their ethnicity.¹⁸

Consistent with the competitive law-and-order political bidding that has taken place in New South Wales in recent decades,¹⁹ Ajaka's questioning led Labor MPs to allege

¹⁷ General Purpose Standing Committee No 3, NSW Legislative Committee, *Examination of Proposed Expenditure for the Portfolio Area Police, Illawarra*, 22 October 2007, 6619 (John Ajaka, Member of the Legislative Council).

¹⁸ General Purpose Standing Committee No 3, NSW Legislative Committee, *Examination of Proposed Expenditure for the Portfolio Area Police, Illawarra - Answers to Questions on Notice*, 5 December 2007, 6619 (David Campbell, Minister for Police).

¹⁹ David Dixon, 'Reform, Regression and the Royal Commission into the NSW Police Service' in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 138, 138–40. See generally Russell Hogg and David Brown, *Rethinking Law and Order* (Pluto Press, 1998).

that the New South Wales Liberals did not support the Police Force and its MEOCS.²⁰ Ajaka countered with the following:

... the Middle Eastern Organised Crime Squad was formed, purporting to target Middle Eastern organised crime networks ... It seems strange to me that, as an inclusive multicultural society, we are prepared to single out one or two ethnic communities as the source of more trouble than is any other. Yet, when asked to define who falls within a specific ethnic community or how many of those specified as charged fall within a specific ethnic community, neither the Minister for Police nor anyone in his department is able to do so clearly.²¹

Ajaka's questions of the Police Commissioner and his subsequent speech to the Legislative Council therefore mounted a rare internal challenge to the New South Wales Labor and Liberal parties' bipartisan support for the extraordinary policing of Middle Eastern background communities, as has been evident since the late 1990s (see Chapter IV). The Police Force's response to Ajaka was also valuable in that it exposed deficiencies in police recording systems that destabilise the basis for any claim that people of Middle Eastern background are disproportionately involved in crime in New South Wales.

However, focusing solely on the ability (or inability) of the Police Force and the government to determine the ethnic backgrounds of persons charged by the MEOCS precludes critical analysis of several other related issues. For instance, it is important to question how and why individuals came to the attention of the MEOCS before they were charged with offences; the circumstances of those individuals' arrest (where an arrest occurred); and the nature of the offences with which they were charged. Answering these additional questions is crucial to understanding the Squad's objectives and practices. The following section draws out some of the key elements of the Squad's stated objectives, beginning with a discussion of its official mandate.

²⁰ New South Wales, *Parliamentary Debates*, Legislative Council, 9 April 2009, 6619-20 (John Ajaka, Member of the Legislative Council).

²¹ Ibid 6620.

Policing ‘Middle Eastern Criminal Groups’: Disruption, Intelligence-Gathering, and the Policing of Associations

The Middle Eastern Organised Crime Squad’s Mandate

Throughout its tenure, official descriptions of the MEOCS’s mandate reiterated that the Squad had been tasked with targeting ‘Middle Eastern criminal groups’ and the ‘networks’ and ‘associations’ of those groups. In April 2006, a month before the MEOCS began its work, Detective Superintendent Ken McKay (the Squad’s inaugural Commander) asserted that the Squad would proactively ‘target Middle Eastern criminal groups at all levels, including those lower down in the gangs’, adding that ‘I really think we need to get right in their face’.²² The following year, in response to John Ajaka’s questions at the 2007 Police Budget Estimates Hearing, the Police Force declared that the MEOCS investigated ‘suspects based on their membership or association with organised criminal groups, rather than their ethnicity’.²³ In 2015, in a coronial report, State Coroner Michael Barnes explained that the charter of the MEOCS was to ‘[c]onduct multi-level investigations into Middle Eastern Organised Crime Groups’ involved in serious, organised, and violent crimes.²⁴ Then, in 2016, the New South Wales Ombudsman restated that ‘[t]he MEOCS targets “Middle Eastern Organised Crime groups including those who have a propensity for violence”’.²⁵

In New South Wales, ‘criminal groups’ are defined in statute. Legislation criminalising participation in criminal groups was introduced to the New South Wales Legislative Assembly in 2006 as one component of the Crimes Legislation Amendment (Gangs) Bill (‘the Bill’).²⁶ According to Andreas Schloenhardt, the Bill was introduced by the

²² Davies and Norrie, above n 5; Andrew Clennell, ‘Middle Eastern Gangs to Be Stalked by a Stronger Nemesis’, *The Sydney Morning Herald* (Sydney), 25 February 2006, 1.

²³ General Purpose Standing Committee No 3, NSW Legislative Committee, *Examination of Proposed Expenditure for the Portfolio Area Police, Illawarra - Answers to Questions on Notice*, 5 December 2007, 6619 (David Campbell, Minister for Police, Member for the Illawarra); New South Wales, *Parliamentary Debates*, Legislative Council, 9 April 2009, 6620 (John Ajaka, Member of the Legislative Council).

²⁴ *Inquest into the Death of William Crews*, above n 6, [18].

²⁵ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 11, 28.

²⁶ Andreas Schloenhardt, ‘Mafias and Motorbikes: New Organised Crime Offences in Australia’ (2007) 19(3) *Current Issues in Criminal Justice* 259, 261; David Brown et al, *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales* (The Federation Press, 6th ed, 2015) 1217–19.

government in a bid to demonstrate that action was being taken against an apparent upsurge in organised crime; though no evidence was produced to demonstrate that levels of organised crime were rising.²⁷ Relevantly, Tony Stewart, the Parliamentary Secretary and Member for Bankstown (in Sydney's south-west), cited firearms-related crimes and drug trade carried out by 'criminals of Middle Eastern origin' as one of the government's impetuses for introducing the Bill.²⁸ It is worth reiterating here, though, that the government had actively encouraged public worrying about so-called Middle Eastern 'crime syndicates' or 'criminal groups' for several years before introducing the Bill (see Chapter IV).

As presently defined in s 93S of the *Crimes Act 1900* (NSW) ('the *Crimes Act*'):

"criminal group" means a group of three or more people who have as their objective or one of their objectives:

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence,²⁹ or
- (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, or
- (c) committing serious violence offences,³⁰ or
- (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.³¹

As such, in New South Wales, a 'criminal group' is a group of three or more people that endeavours to generate a profit by carrying out serious offending, and/or to carry

²⁷ Schloenhardt, above n 26, 261.

²⁸ Ibid 261–62.

²⁹ The *Crimes Act* defines a serious indictable offence as 'an indictable offence that is punishable by imprisonment for life or a term of 5 years or more'. See *Crimes Act 1900* (NSW) s 4.

³⁰ The *Crimes Act* defines a serious violence offence as 'an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves: loss of a person's life or serious risk of loss of a person's life; serious injury to a person or serious risk of serious injury to a person; serious damage to property in circumstances endangering the safety of any person; or perverting the course of justice in relation to any conduct, that, if proved, would constitute a serious violence offence'. See *Crimes Act 1900* (NSW) s 93S.

³¹ *Crimes Act 1900* (NSW) s 93S.

out serious violence.³² It is an offence under s 93T of the *Crimes Act* to participate in a criminal group.³³

While the *Crimes Act* defines the term ‘criminal group’, it does not establish what a ‘Middle Eastern criminal group’ is. It is unclear who is considered Middle Eastern and how many members of a criminal group would need to be Middle Eastern for that group to be classified a ‘Middle Eastern criminal group’. Despite these ambiguities, so-called ‘Middle Eastern criminal groups’ were singled out for extraordinary policing by the MEOCS. In addition, the Squad was also mandated to police the broader ‘networks’ and ‘associations’ of ‘Middle Eastern criminal groups’.

As such, the MEOCS was given an imprimatur to police people in instances where they were not suspected of any substantive wrongdoing, but where they had associated with alleged members of a ‘Middle Eastern criminal group’, irrespective of the nature of the associations in question. It follows that the net of people who could potentially be policed by the Squad was cast very widely, beyond members and alleged members of ‘Middle Eastern criminal groups’ to their families, friends, and acquaintances. Given the breadth and imprecision of the Squad’s stated remit, this chapter endeavours to shed some light on the nature of the associations that were policed by the Squad, how those associations were policed, and what the intended purpose of policing those associations was.³⁴ As will be illustrated in Part III of this chapter (and in Chapter VI), the targeting of familial and other associations has been a key mode of racialised policing that has dispersed police intervention broadly throughout Middle Eastern background communities, and thereby contributed to the creation of the Middle Eastern suspect community in New South Wales.

Fundamentally, the Force’s approaches to policing ‘Middle Eastern criminal groups’ and their ‘networks’ and ‘associations’ must be viewed in the context of the rise to prominence of proactive and intelligence-led policing.

³² Schloenhardt, above n 26, 262.

³³ *Crimes Act 1900* (NSW) s 93T.

³⁴ This follows a line of thinking advanced by Vicki Sentas. See ‘Policing the Diaspora: Kurdish Londoners, MI5 and the Proscription of Terrorist Organizations in the United Kingdom’ (2016) 56(5) *British Journal of Criminology* 898.

Proactive and Intelligence-Led Approaches to Policing Criminal Groups

As discussed in Chapter IV, there has been a paradigmatic and practical shift towards proactive, ‘performance measure driven crime-fighting’³⁵ in New South Wales since the mid-1990s, as has also been the case in other English-speaking policing jurisdictions. These shifts have seen police organisations increasingly focus their attention and resources on identifying, anticipating, and targeting people, places and behaviours understood to be ‘risky’ – as opposed to reactively investigating, detecting, and pursuing the prosecution of offenders of crimes that have already been carried out.³⁶ Simultaneously, ‘[t]he activities of suspects are increasingly understood as being structured by forms of criminogenic organisation’.³⁷ This is not to suggest that police no longer investigate, apprehend, and pursue the successful prosecutions of individual offenders. However, other long-standing policing objectives, such as disruption and intelligence-gathering,³⁸ have increasingly come to the fore in contemporary policing; particularly in respect of the policing of ‘groups’ and ‘networks’ of suspected offenders.³⁹

Indeed, related to proactive policing has been the adoption of the forward-looking rationalities and methodologies of intelligence-led policing. According to a leading proponent, Jerry Ratcliffe, intelligence-led policing comprises:

[A] business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption, and prevention through

³⁵ David Dixon, “‘A Transformed Organisation’? The NSW Police Service Since the Royal Commission’ (2001) 13(2) *Current Issues in Criminal Justice* 203, 216.

³⁶ David Dixon, ‘Broken Windows, Zero Tolerance, and the New York Miracle’ (1998) 10(1) *Current Issues in Criminal Justice* 96; David Dixon, ‘Beyond Zero Tolerance’ in Tim Newburn (ed), *Policing: Key Readings* (Willan, 2005) 483, 485–91; David Dixon, ‘Why Don’t the Police Stop Crime?’ (2005) 38(1) *Australian & New Zealand Journal of Criminology* 4, 9–13; Mike Maguire, ‘Policing by Risks and Targets: Some Dimensions and Implications of Intelligence-Led Crime Control’ (2000) 9(4) *Policing and Society* 315; Martin Innes and James WE Sheptycki, ‘From Detection to Disruption: Intelligence and the Changing Logic of Police Crime Control in the United Kingdom’ (2004) 14(1) *International Criminal Justice Review* 1.

³⁷ Innes and Sheptycki, above n 36, 22.

³⁸ Mike Maguire, ‘Criminal Investigation and Crime Control’ in Tim Newburn (ed), *Handbook of Policing* (Willan, 2nd ed, 2008) 430, 433.

³⁹ Innes and Sheptycki, above n 36.

both strategic management and effective enforcement strategies that target prolific and serious offenders.⁴⁰

Scholars have noted that intelligence-led policing presents police with an attractive and pragmatic alternative to traditional, reactive investigation and prosecutorial strategies, which are labour- and resource-intensive.⁴¹ Proactive and intelligence-led policing strategies are more often concerned with managing perceived crime problems through surveillance, intelligence-gathering, disruption, and displacement than with traditional criminal justice responses like charge and prosecution.⁴² These approaches have been ratcheted up since the 11 September 2001 attacks in the United States, and applied not only to the policing of terrorism, but also organised crime and ‘everyday crime’.⁴³ Ultimately, police organisations will calibrate their proactive and intelligence-led strategies and practices in different ways, as they are policing identified ‘threats’ or ‘risks’ in different contexts. As indicated above, disruption policing, intelligence-gathering and the targeting of associations have been significant components of the Police Force’s proactive and intelligence-led approaches to policing the Middle Eastern suspect community in New South Wales.

Disruption policing sets out to ‘modify and amend the conduct of particular individuals, to reduce some perceived risk’ by staging interventions into those individuals’ lives.⁴⁴ Disruption is usually carried out with a broader view to encumbering the operations of criminal groups and networks by inhibiting or eliminating those groups’ and networks’ ‘key players’ and resources (but see below Vicki Sentas’s alternative account of the animating logics of disruption policing).⁴⁵

⁴⁰ Jerry Ratcliffe, *Intelligence-Led Policing* (Willan, 2008) 6.

⁴¹ Ratcliffe, above n 40, ch 2; Innes and Sheptycki, above n 36; Maguire, above n 36, 317–19.

⁴² Ratcliffe, above n 40, 166–73; Innes and Sheptycki, above n 36; Maguire, above n 36.

⁴³ Ratcliffe, above n 40, 5–6, 22, 32, 227.

⁴⁴ Martin Innes, Colin Roberts and Trudy Lowe, ‘A Disruptive Influence? “Prevent-Ing” Problems and Countering Violent Extremism Policy in Practice’ (2017) 51(2) *Law & Society Review* 252, 267.

⁴⁵ See, eg, Innes and Sheptycki, above n 36; Innes, Roberts and Lowe, above n 44; Stuart Kirby and Nicki Snow, ‘Praxis and the Disruption of Organized Crime Groups’ (2016) 19(2) *Trends in Organized Crime* 111; Nick Tilley, ‘Intelligence-Led Policing and the Disruption of Organized Crime: Motifs, Methods and Morals’ in Thierry Delpuech and Jacqueline E Ross (eds), *Comparing the Democratic Governance of Police Intelligence: New Models of Participation and Expertise in the United States and Europe* (Edward Elgar Publishing, 2016) 153; Ratcliffe, above n 40, 171–73.

Disruption can take many forms, but prominent examples of disruptive interventions staged by the NSW Police Force in its policing of the Middle Eastern suspect community have included raids, arrests for minor offences, and vehicle stops and searches (see Part III, below, and Chapter VI).

As conceptualised by Martin Innes and James W. E. Sheptycki, disruption interventions fall into one of two broad categories: ‘the entrepreneurial use of legal powers’ or the ‘extralegal form of disruption’. Police sometimes try to effect disruption and incapacitate criminal groups by having group members arrested and prosecuted for crimes other than those under immediate investigation (‘the entrepreneurial use of legal powers’).⁴⁶ However, police often carry out disruption policing with no intention of arresting or pursuing the prosecution of suspected offenders (‘the extralegal form of disruption’).⁴⁷ Both ‘entrepreneurial’ and ‘extralegal’ approaches to disruption licence police to intervene against suspects in instances where they have developed intelligence about a potential risk or threat, but where they do not think it possible or desirable to gather the requisite evidence to pursue a prosecution for the behaviour under investigation.⁴⁸

Accordingly, disruption policing usually entails a broad-ranging, proactive approach to collecting and analysing information, which the police can then develop into an intelligence product. As emphasised by Innes and Sheptycki, the police actively process information into intelligence, and may then use that intelligence to justify action and intervention:

Intelligence is an informational construct. It can be defined as information that is organisationally encoded in such a way as to make evident the need for, or to enable the conduct of, acts of social control at some point in the future.⁴⁹

Innes and Sheptycki further add that police frequently use their intelligence to assist with disruption practices by creating ‘network charts, which map relations between

⁴⁶ Innes and Sheptycki, above n 36, 14–15.

⁴⁷ Ibid 15–16.

⁴⁸ Ibid 16, 18–19.

⁴⁹ Ibid 5.

offenders and market profiles'.⁵⁰ The intelligence used in such analyses is derived from a broad range of information sources, including victims', witnesses', informants', and suspects' statements to police, police undercover activities, surveillance and telephone intercepts, and published court judgments.⁵¹

Information-gathering and disruption practices extend beyond those individuals suspected of being engaged in criminal activity; they stretch to broader 'patterns of communication, exchange, friendship, trust, cooperation or kinship within an organisation or community'.⁵² Accordingly, the 'operative logics' of disruption mean that individuals become susceptible to police attention upon the basis of their associations, even in the absence of any criminal conduct (or suspected criminal conduct).⁵³

Significantly, though, previous research has suggested that individuals are not equally likely to be subjected to disruption and intelligence-gathering practices, and has instead drawn attention to the politicised and racialised dimensions of police practices related to disruption and the policing of associations.⁵⁴ For example, in her work on the policing of Kurdish Londoners, Vicki Sentas has shown that disruption practices provide a tool for 'behaviour management' and intervention against members of racialised communities, wherein race is understood to be a proxy for criminality and subversive or extremist political ideologies.⁵⁵ Accordingly, while the normative literature on disruption policing pivots on the notion that police should aim to reduce flows of information and resources throughout criminal groups to reduce those

⁵⁰ 'Analytical products' of this kind are also variously referred to as 'network analyses', 'link analyses' and, more recently, 'social network analyses'.

⁵¹ See, eg, Steven J Strang, 'Network Analysis in Criminal Intelligence' in Anthony Masys (ed), *Networks and Network Analysis for Defence and Security* (Springer International Publishing, 2014) 1, 3; David A Bright, Caitlin E Hughes and Jenny Chalmers, 'Illuminating Dark Networks: A Social Network Analysis of an Australian Drug Trafficking Syndicate' (2012) 57(2) *Crime, Law and Social Change* 151, 154–59.

⁵² Strang, above n 51, 5.

⁵³ Sentas, 'Policing the Diaspora: Kurdish Londoners, MI5 and the Proscription of Terrorist Organizations in the United Kingdom', above n 34; Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014) ch 7.

⁵⁴ Sentas, 'Policing the Diaspora: Kurdish Londoners, MI5 and the Proscription of Terrorist Organizations in the United Kingdom', above n 34.

⁵⁵ Ibid. On 'behaviour management' or 'behavioural influencing', see Innes, Roberts and Lowe, above n 44.

networks' decision-making processes and activities, Sentas's work highlights that police might also seek to disrupt racialised social identities and legitimate political activities. As elaborated below, Sentas's analytical approach helps to make sense of the MEOCS's efforts to disrupt Middle Eastern familial relations and the everyday activities of individuals living in localities in south-western and western Sydney that have been racialised as Middle Eastern.

Continuing from this discussion of the MEOCS and its mandate, the following part of this chapter presents five case studies of the Squad's work. As illustrated below, the Squad's practices did not always align neatly with its stated mandate but sustained the extraordinary policing of people of Middle Eastern background and appearance that first forged the Middle Eastern suspect community in the 1990s and early 2000s (see Chapter IV). Indeed, the Squad's work displayed clear continuities from the proactive, territorial policing carried out by the institutional units that preceded it (including Task Force Gain). However, as indicated above, the Squad's work was somewhat distinct from the 'Broken-Windows'-type street policing practised by its forbearers, in that greater emphasis was placed on disruption, intelligence-gathering, and the policing of associations, in keeping with the increasing prominence of intelligence-led policing. However, in some respects, the adoption of these intelligence-led strategies meant that the MEOCS intensified the policing previously carried out by its predecessors, rather than deviating from their work.

Ultimately, the case studies below demonstrate that understanding the MEOCS's role in policing the Middle Eastern suspect community is a complex undertaking, given that the Squad employed several co-existing strategies and practices to police people of Middle Eastern background and appearance, and localities racialised as Middle Eastern.

III. The Work of the Middle Eastern Organised Crime Squad

The case studies below do not provide a representative picture of the MEOCS's work. Indeed, the sheer number of MEOCS-affiliated strike forces and operations created

during the Squad's eleven-year tenure (2006-17), and the variation between each of those units' objectives and practices, makes it impossible to do so.⁵⁶ Moreover, very little information exists on the public record about most MEOCS strike forces and operations, with news reports and published court judgments providing the bulk of what is known. Accordingly, the following strike forces and operation were selected as case studies primarily because it was possible to obtain information about their work on the public record.

While analysing news articles about the MEOCS, I collated and tabulated information to create a repository of each reported MEOCS strike force (see **Appendix 5**).⁵⁷ In all, I identified 53 MEOCS strike forces. Broadly speaking, these strike forces policed either the supply of illicit drugs, public-place shootings, 'Middle Eastern crime groups' certain Middle Eastern background families, or a combination of the four. Of course, this does not mean that these behaviours and people were the Squad's only (or even main) preoccupations. Ultimately, the police decide what information to release to reporters and can achieve expressive, reassurance-related objectives by announcing that they have formed a strike force in response to a serious, violent or organised crime (I provide a reading of the media's portrayal of the MEOCS in Part IV of this chapter).⁵⁸ Indeed, the very term 'strike force' conveys that the police are taking swift, decisive action against an identified crime, threat, or risk.

However, the MEOCS did not only police serious, organised, and violent crimes. As part of the original research that I carried out for this chapter, I made a formal

⁵⁶ MEOCS strike forces and operations essentially constituted squads within a squad; that is, they were groupings of MEOCS officers who were assigned a specific task. There is no explanation on the public record as to the difference between strike forces and operations, but it appears that operations are carried out for a preordained length of time, whereas strike forces are not given a deadline for their assigned task.

⁵⁷ I obtained the news articles by entering 'Middle Eastern Organised Crime Squad' as a search term into the Dow Jones news database Factiva. I restricted the results by using the date parameters of 1 January 2006 to 1 December 2017 (the Squad operated between 1 May 2006 and 1 December 2017, but its establishment had been announced after Cronulla Riots in December 2005). I omitted 'identical' duplicates from my search, which returned 1,627 results. It is not my contention that the repository I created is a complete listing of MEOCS strike forces. Rather, Appendix 5 is the product of my attempts to store data about each *reported* MEOCS strike force in a single location.

⁵⁸ See Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993) 145–47.

application under the *Government Information (Public Access) Act 2009* (NSW) (GIPAA) for data about the arrests, charges and prosecutions arising out of the Squad's work (as detailed in Chapter III). The data subsequently provided to me by the Police Force revealed that just over one-third (33.75 per cent) of the charges laid by the MEOCS during its eleven-year tenure were for traffic-related offences.

Like its predecessor Task Force Gain, the MEOCS devoted considerable time and resources to policing traffic-related offences and anti-social behaviour, primarily in Sydney's south-western and western suburbs. As discussed in Chapter IV and elaborated below, institutional imperatives to police traffic offences and anti-social behaviour have sustained the Middle Eastern suspect community by granting police licence to proactively intervene against members of the suspect community with a view to disrupting crime and gathering intelligence. Moreover, the concentration of the Squad's work in Sydney's south-western and western suburbs reaffirmed the racialisation of those regions as Middle Eastern and extended the territorial control and surveillance that first forged the Middle Eastern suspect community in the late 1990s and early 2000s (see Chapter IV).

The case studies below aim to explore how people of Middle Eastern background and appearance became collectively subject to policing by the MEOCS, and the foremost policing knowledges, policies, and practices that brought them into relation with the Squad. As illustrated below, many people were policed by the Squad because of who they were, who they had associated with, or the locality they occupied, rather than their conduct. However, this is not to suggest that people of Middle Eastern background and appearance do not commit crimes. Indeed, one rationale for including the first case study below (Strike Forces Skelton and Sitella) is that, unlike the other four case studies in this part of the chapter, it focuses on two MEOCS strike forces that policed serious, organised, and violent crimes committed by men of Middle Eastern background. Additionally, the case study of Strike Forces Skelton and Sitella provides some insight (albeit limited) into the nature of Squad's cooperation and collaboration with other agencies and illustrates the centrality of disruption to the MEOCS's work.

Strike Forces Skelton and Sitella

Between 1 May 2008 and 11 June 2008, Strike Force Skelton intercepted thousands of telephone calls made by Bassam Hamzy. Hamzy is second-generation Lebanese.⁵⁹ He was incarcerated at the Lithgow Correctional Centre when Strike Force Skelton began to monitor his calls, which were made from an unauthorised mobile telephone.⁶⁰ Speaking to reporter Yoni Bashan, Detective Inspector Angelo Memmolo explained that the MEOCS was alerted that Hamzy was in possession of a telephone by the Australian Crime Commission (ACC),⁶¹ which became aware of the telephone when a call involving Hamzy was intercepted during the course of an ACC investigation into members of the Finks Outlaw Motorcycle Gang (OMCG) in South Australia.⁶² The MEOCS then made arrangements with Corrective Services New South Wales to prevent Hamzy's telephone from being seized so that his calls could be monitored by officers attached to Strike Force Skelton.⁶³

While being monitored by Strike Force Skelton Hamzy used the unauthorised telephone to make around 460 calls per day.⁶⁴ Most of the calls related to the workings of a drug supply syndicate operating between Sydney and Melbourne. The syndicate also involved Hamzy's father Khaled Hamzy, his younger brother Ghassan Amoun, and his cousin Mohammed Hamze, amongst other people.⁶⁵ On 4 December 2008, acting on intelligence gathered from Hamzy's telephone calls, police raided twelve properties in New South Wales and four properties in Victoria, and arrested seven men

⁵⁹ *Regina v Bassam Hamzy* [2002] NSWSC 128, [40].

⁶⁰ *Hamzy v R* [2014] NSWCCA 223, [8]; Kara Lawrence, 'Cell Drug Bust Began with a Good Call – Dial S for Strife', *The Daily Telegraph* (Sydney), 5 December 2008, 4. Hamzy was in Lithgow for: murdering Kris Toumazis; maliciously wounding Nicholas Lambos with intent thereby to do grievous bodily harm; maliciously discharging loaded arms with intent to do grievous bodily harm to Arthur Kazas; threatening to use an offensive weapon (a firearm) with intent to prevent or hinder lawful apprehension; conspiracy to murder Khaled Hammoud; and cocaine importation. See *Regina v Bassam Hamzy* [2002] NSWSC 128.

⁶¹ The ACC was established in 2002 to collect and analyse criminal intelligence, investigate federal criminal offences, and participate in investigations and operations with state- and territory-based police and intelligence organisations. The ACC was replaced by the Australian Criminal Intelligence Commission (ACIC) in 2016.

⁶² Yoni Bashan, 'Brilliant Mind Dealt in Evil from a Cell', *The Sunday Times* (Perth), 24 July 2016, 36.

⁶³ Lawrence, above n 60; Bashan, above n 62.

⁶⁴ *Hamzy v R* [2014] NSWCCA 223, [9].

⁶⁵ *Ibid* [10]–[15].

including Khaled Hamzy and Ghassan Amoun.⁶⁶ Those arrested were charged with ‘80 significant drug supply offences’ and, ‘under new legislation, with participation in criminal groups’.⁶⁷

In late 2013, Strike Force Sitella was formed to investigate several offences related to a group called the Brothers for Life (BFL),⁶⁸ which was allegedly founded by Bassam Hamzy.⁶⁹ By 2013 there existed two ‘factions’ of the BFL: the BFL Bankstown, led by Hamzy’s cousin Mohammed ‘Little Crazy’ Hamzy,⁷⁰ and the BFL Blacktown, led by Farhad ‘The Afghan’ Qaumi, and his younger brothers Mumtaz and Jamil.⁷¹ Conflict between the two factions of the BFL resulted in several shootings in late 2013.⁷² Members of both BFL factions were also convicted of drug-related crimes.⁷³

The work of Strike Force Sitella was premised on limiting the functioning of the BFL, primarily by means of ‘legal entrepreneurial’ style disruption.⁷⁴ For example, when the Qaumi brothers were arrested in January 2014 for their involvement in the previous year’s shootings, the Australian Associated Press stated that ‘police say the arrests will seriously disrupt the gang’s “criminal agendas”’.⁷⁵ In his reporting of the police’s comments about the Qaumi brothers’ arrests, Bashan used the idiom ‘cut[ting] the head off the snake’ to explain that the arrests were an attempt by the Police Force to disrupt the BFL’s functioning by targeting its leaders and diminishing their capacity to direct

⁶⁶ Lawrence, above n 60.

⁶⁷ ‘Mastermind Ran Drug Ring by Phone From Jail Cell’ *Australian Associated Press General News* (Sydney), 4 December 2008.

⁶⁸ Sometimes alternatively styled as the ‘Brothers 4 Life’ and abbreviated to ‘BFL’ or ‘B4L’.

⁶⁹ ‘Bassam Hamzy: Brothers 4 Life Founder’s Life of Crime’, *Australian Broadcasting Corporation (ABC) News*, 12 December 2014.

⁷⁰ *R v Farhad Qaumi, Mumtaz Qaumi & Jamil Qaumi (Sentence)* [2017] NSWSC 774, [1]; Yoni Bashan, ‘Cops Grab Gang Boss’, *The Daily Telegraph* (Sydney), 9 January 2014, 1.

⁷¹ *R v Farhad Qaumi, Mumtaz Qaumi & Jamil Qaumi (Sentence)* [2017] NSWSC 774, [1].

⁷² The victims of the shootings were almost exclusively members of the BFL Bankstown. The shooting events included: the manslaughter of Mahmoud Hamzy and the grievous bodily harm of Omar Ajaj in Revesby Heights on October 29, 2013; the attempted murder of BFL Bankstown member Michael Odisho on November 3, 2013; the grievous bodily harm of a thirteen-year-old girl whose brother was a member of the BFL Bankstown on November 4, 2013; the attempted murders of alleged BFL Bankstown associate Abdul Abu-Mahmoud and two men in his company on November 7, 2013; and the ‘drive-by’ shooting of a home in Greenacre, New South Wales on November 28, 2013. See *R v Farhad Qaumi, Mumtaz Qaumi & Jamil Qaumi (Sentence)* [2017] NSWSC 774.

⁷³ *Ibid.*

⁷⁴ See Innes and Sheptycki, above n 36, 14–15. See also Part II, above.

⁷⁵ ‘NSW: Three Gang Members Nabbed: Police’, *Australian Associated Press*, 9 January 2014.

other members of the group.⁷⁶ However, Assistant Commissioner Mark Jenkins expressed some doubt that the Qaumi brothers' arrests had impeded or dismantled the BFL, explaining that 'whether [or not] we've interrupted the Brothers for Life gang at this stage there still are members that are out there, there are still members that we're working on'.⁷⁷

Jenkins' statement speaks to the inherent tension in establishing the precise outcomes of disruption interventions.⁷⁸ As explored further in Chapter VI, since disruption practices are anticipatory and seek to foreclose opportunities for criminal groups to carry out criminal enterprises, police cannot gauge their success with any certainty. While the case study of Strike Forces Skelton and Sitella intuitively suggests that 'entrepreneurial' disruptions might yield value in forestalling criminal groups' activities, successful disruption policing is ultimately premised on non-events, and it is impossible to guarantee how the police's targets would have acted had they not intervened.⁷⁹

The case study of Strike Forces Skelton and Sitella also provides a point of comparison and contrast to the disruption carried out by MEOCS Strike Force Felix, and Operation Apollo (discussed below). In testament to the fact that the MEOCS's work was comprised of distinct (but co-existent) strategies and practices, the disruptive interventions staged by Strike Force Felix and Operation Apollo were quite different from those practised by Strike Forces Skelton and Sitella, in that Felix and Apollo's disruptions are more appropriately described as 'extralegal' than 'entrepreneurial', in keeping with Innes and Sheptycki's classification (outlined in Part II, above).⁸⁰ Felix and Apollo's 'extralegal' disruptions were carried out to conduct surveillance, gather intelligence and 'behaviour manage' members of racialised communities upon the basis of their identity, associations, or presence in a racialised locality. In combination,

⁷⁶ Bashan, above n 70.

⁷⁷ Sean Rubinsztein-Dunlop, 'Two Alleged Brothers For Life Gang Members Charged with Murder of Standover Man', *Australian Broadcasting Corporation (ABC) News* (Online), 21 January 2014 <<https://www.abc.net.au/news/2014-01-21/alleged-brothers-4-life-member-charged-over-gun-possession-and-/5210790>>.

⁷⁸ See Ratcliffe, above n 40, 172.

⁷⁹ Ibid. See also Jude McCulloch and Dean Wilson, *Pre-Crime: Pre-Emption, Pre-Caution and the Future* (Routledge, 2016) 26, 37, 51.

⁸⁰ See Innes and Sheptycki, above n 36; Innes, Roberts and Lowe, above n 44.

then, the case studies of MEOCS Strike Forces Skelton and Sitella, Strike Force Felix, and Operation Apollo highlight that while the value of disruption policing as a crime control or crime prevention tool is never certain, is it also questionable whether disruption policing is always *intended* to control and prevent crime, or whether it is social identities and inter-personal relationships that the police are seeking to disrupt (see also Chapter VI on this point).

Strike Force Felix

As demonstrated by the case study of Strike Force Felix, one of the focal points of the MEOCS's work was alleged associations between men of Middle Eastern background and OMCGs. Strike Force Felix was formed in October 2011 in response to six shootings that occurred in the western Sydney suburbs of Merrylands, Granville, Guildford, Holroyd, and Canley Heights over four days.⁸¹ Strike Force Felix consisted of officers from the MEOCS and the Force's Gangs Squad, which was also a State Crime Command squad at that time. The Gangs Squad had a stated mandate of policing gang-related crime, with a focus on OMCGs or 'bikie gangs'.⁸²

OMCGs have been the source of much public consternation in New South Wales over the last decade. This was particularly the case in 2008 and 2009, when, according to Morgan et al., 'the media summarised a series of violent attacks including murders, as amounting to warfare between rival gangs'.⁸³ This included the high-profile manslaughter of Anthony Zervas, the brother of a Hells Angel, during a brawl between members of the Hells Angels and Comancheros at Sydney Airport in March 2009.⁸⁴

OMCGs have frequently been characterised as criminal enterprises and as prominent players in Australia's organised crime landscape by the media and police and

⁸¹ Melanie Kembrey, 'Four Days, Six Shootings', *The Parramatta Sun* (Sydney), 2 November 2011; Yoni Bashan, 'Botched Hit Began Gang War in West', *The Sunday Telegraph* (Sydney), 6 November 2011, 28.

⁸² NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 11, 3.

⁸³ George Morgan, Selda Dagistanli and Greg Martin, 'Global Fears, Local Anxiety: Policing, Counterterrorism and Moral Panic Over "Bikie Gang Wars" in New South Wales' (2010) 43(3) *Australian & New Zealand Journal of Criminology* 580, 583.

⁸⁴ Ibid 584–85.

intelligence agencies.⁸⁵ The former ACC played a leading role in defining the Australian ‘bikie’ problem and produced consistent reports attesting to the burgeoning violence and criminality of OMCGs.⁸⁶ However, as the ACC was Australia’s national criminal intelligence agency, the information that formed the basis of its reports was not open to public scrutiny.

Morgan et al. have previously noted the tendency of high-ranking police officers in New South Wales to racialise ‘bikie gangs’ as Middle Eastern to further exaggerate the threat that they pose. Having examined media coverage of OMCGs in New South Wales in 2008–09, Morgan et al. argued that that senior police officers in New South Wales purposely associated OMCG violence with terrorism and ‘an outlaw Middle Eastern masculinity’ to tap into public fears and, ultimately, to help the Police Force lobby for expanded powers.⁸⁷

Senior police officers’ public statements about Strike Force Felix did indeed draw links between OMCGs and Middle Eastern background communities. For example, when announcing the formation of Strike Force Felix, Assistant Commissioner Dave Hudson declared that the shootings under investigation were related to OMCG activity. Hudson also asserted that there existed a relationship between OMCGs and MEOC:

There are crossovers between the outlaw motorcycle gangs involved and the Middle Eastern organised criminal environment ... The offences have been targeted at peripheral members of family groups. It is correct to say that wider families are being targeted.⁸⁸

After making this claim, Hudson and other senior police officers admonished residents of western Sydney – and especially those of Middle Eastern background – for erecting a ‘wall of silence’ and hampering Strike Force Felix’s attempts to identify the

⁸⁵ Ibid 585–86; Mark Lauchs, Andy Bain and Peter Bell, *Outlaw Motorcycle Gangs: A Theoretical Perspective* (Palgrave Macmillan, 2015).

⁸⁶ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 11, 48.

⁸⁷ Morgan, Dagistanli and Martin, above n 83, 592.

⁸⁸ Di Bartok, ‘Relatives Targets in Gang War: Code of Silence Hampers Police Investigations’, *Parramatta Advertiser* (Sydney), 2 November 2011, 5.

shooters.⁸⁹ As such, despite Hudson's declaration that OMCGs and Middle Eastern background families were involved in the shootings under investigation by Strike Force Felix, it does not appear that the police had identified any formal suspects in relation to the shootings.

As argued in Chapters II and IV, the police allegation that racialised Middle Eastern communities erect 'walls of silence' is hackneyed. However, in this instance, the allegation also shifted suspicion, blame and complicity for the shootings being investigated by Strike Force Felix onto entire communities, and, in this case, unnamed Middle Eastern background families (see also Chapters II and IV).⁹⁰ Indeed, the racialised collective attribution of the 'wall of silence' provided the police with a justification to deploy Task Force Felix in Sydney's western suburbs to conduct surveillance, impose police authority, and coerce information from residents by way of intensive street policing.

Speaking to reporters, then-MEOCS Commander Deb Wallace explained that Strike Force Felix would engage in an 'all-out proactive response specifically targeting locations, people and vehicles who are regarded as able to progress the investigation' because its officers had been unable to make headway in their investigations.⁹¹ However, Wallace did not explain what would lead police to believe that a given individual would be able to assist with Felix's investigations. Nevertheless, Arthur Katsogiannis, then-Director of the SCC's Organised Crime Directorate, reiterated Wallace's sentiments and added that Felix was actively monitoring targets: 'we will be like their shadow ... every time they turn around we'll be behind them, waiting for them to do something wrong, and then we'll pounce'.⁹² Though Wallace and Katsogiannis did not label their interventions as disruptions, their sentiments seemingly speak to a variety of 'extralegal' disruption premised on intense, overt

⁸⁹ Ibid; Deborah Snow, 'Tit-for-Tat Shootings Blamed on Bikie Row', *The Sydney Morning Herald* (Sydney), 7 November 2011, 5; Tyron Butson, 'Fear, Silence Hinder Shooting Probe', *Parramatta Advertiser* (Sydney), 9 November 2011, 3.

⁹⁰ See also Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000) 50–54; David Dixon and Lisa Maher, 'Anh Hai: Policing, Culture and Social Exclusion in a Street Heroin Market' (2002) 12(2) *Policing and Society* 93, 104–07.

⁹¹ Snow, above n 89.

⁹² Yoni Bashan, 'Inside the Feud that Started Drive-By Shooting War', *Sunday Telegraph* (Sydney), 6 May 2012, 11.

surveillance of targeted individuals. Hypothetically, such interventions might constrain the targeted individual's behaviour (for as long as they remained under surveillance). However, as indicated above, questions remain about the appropriateness of the police's target selection.

It was later confirmed that the police's public statements had overstated the involvement of OMCGs, 'Middle Eastern organised criminals', and Middle Eastern background families in the shootings investigated by Strike Force Felix. Several months after Strike Force Felix was formed, Katsogiannis informed the media that Felix's investigations had determined the shootings were related to a conflict between 'three or four individuals within the Hells Angels/Nomads'.⁹³ One of those individuals was Wissam ('Danny') Amer, who, according to police, was a cousin of the high-profile Lebanese-background Ibrahim family.⁹⁴ The Ibrahim family were long-standing targets of the Police Force and had previously been proactively targeted by at least one MEOCS strike force which was given the codename Bellwood.

The chapter now turns to consider Strike Force Bellwood, to further elaborate how the proactive policing of Middle Eastern familial relations was a prominent strain of racialised policing that sustained the Middle Eastern suspect community.

Strike Force Bellwood

The MEOCS formed Strike Force Bellwood in February 2009. Early reports described Strike Force Bellwood as an investigation into 'alleged Middle Eastern organised criminal groups',⁹⁵ though reporters later clarified that Bellwood was concerned with members of the Ibrahim family. Two of the six Ibrahim siblings, Hassan ('Sam') and Michael, had both been convicted of serious crimes prior to April 2009.⁹⁶ However, it does not appear that the MEOCS formed Strike Force Bellwood in response to specific information or intelligence that members of the Ibrahim family were engaged in

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Kara Lawrence and Lisa Davies, 'Ibrahim Kill Plot – Fadi Charged Over Payback Murder Conspiracy', *The Daily Telegraph* (Sydney), 25 September 2009, 3; Dylan Welch, 'Youngest of Ibrahim Brothers in Court on Conspiracy Charge', *The Sydney Morning Herald* (Sydney), 1 October 2009, 2.

⁹⁶ See, eg, *Regina v Ibrahim* [2005] NSWSC 1028; *R v Ibrahim* [2008] NSWSC 268.

criminal wrongdoing. On the contrary, Yoni Bashan has claimed that Strike Force Bellwood was formed speculatively, in the hopes of uncovering information about criminality within the Ibrahim family. According to Bashan:

[Strike Force Bellwood] was an intelligence probe much like the cold start [a MEOCS] team had tried on the Kalache family a year earlier – the idea was to gather information and then look for angles into the targets.⁹⁷

In June 2009, the scope of Strike Force Bellwood's investigation was given a more precise focus when one of the Ibrahim brothers, Fadi, and his then-fiancé Shayda (née Bastani Rad) were both shot by an unidentified person as they sat in Fadi's car outside their home. Strike Force Bellwood assumed responsibility for investigating the shootings and worked alongside MEOCS Strike Force Proudfoot, which was created in response to the shootings.⁹⁸ In September 2009, police charged Fadi and Michael Ibrahim and their associates Rodney 'Goldie' Atkinson, Amergio Gerace, and Jim Said Habkhouk with conspiracy to murder John Macris. Police alleged that the Ibrahim brothers thought that Macris was the individual who had shot Fadi and Shayda, and that they therefore intended to murder Macris in retaliation.⁹⁹ There are scant details about the trial on the public record, but Bashan states in *The Squad* that Fadi Ibrahim was ruled unfit to stand trial, while his co-accused were each acquitted.¹⁰⁰

Police had also arrested Shayda Ibrahim as she attempted to board a flight at Sydney airport in July 2010, alleging that she was involved in the conspiracy to murder Macris.¹⁰¹ Ibrahim was pregnant at the time but was nevertheless held on remand for nearly two days before being granted bail. At her bail hearing, Magistrate Robert

⁹⁷ Bashan, above n 5, 213.

⁹⁸ Dylan Welch, '\$65,500 Gift to Cover Ibrahim's Protection', *The Sydney Morning Herald* (Sydney), 30 June 2009, 5; Lisa Davies and Janet Fife-Yeomans, 'Airport Arrest for Ibrahim's Fiancée', *The Daily Telegraph* (Sydney), 13 July 2010, 4; Dylan Welch, 'I didn't Shoot Ibrahim, Says Murder Target', *The Sydney Morning Herald* (Sydney), 28 September 2009, 3.

⁹⁹ See *R v Ibrahim* [2009] NSWSC 1181, [4]–[7].

¹⁰⁰ Bashan, above n 3, 236–38.

¹⁰¹ Angela Kamper, 'Shayda Bastani Gets \$1.1M Bail but Money Can't Buy Look of Love', *The Herald Sun* (Online), July 14, 2010 < <https://www.heraldsun.com.au/news/shayda-bastani-gets-11m-bail-but-money-cant-buy-look-of-love/newsstory/54b682406c59ac42ba7c3d00ca517039?sv=550378972479f5f629ae8771d38d53bd>>; Nick Ralston and Dylan Welch, 'Ibrahim's Wife Set to be Cleared', *The Sydney Morning Herald* (Sydney), 30 September 2010, 5.

Williams reportedly commented that the police allegations against Ibrahim suggested that she had little involvement in the alleged conspiracy to murder Macris, though it is not clear what the police allegations in question were.¹⁰² The Director of Public Prosecutions then dropped the charge against her three months later.¹⁰³

In 2014, Ibrahim successfully sued the State of New South Wales for wrongful arrest, false imprisonment, and malicious prosecution.¹⁰⁴ She maintained that the police had purposely humiliated her by leading her through the front door of the police station after her arrest, knowing that news reporters and photographers were awaiting her arrival.¹⁰⁵ Crucially, she also maintained that the police knew that she was not involved in the alleged conspiracy to murder Macris, but that an officer attached to Strike Force Bellwood had attempted to intimidate her into revealing information about Fadi and his associates by threatening to take away her baby if she did not provide such information.¹⁰⁶

Several aspects of Ibrahim's arrest and subsequent detention resonate with observations in the suspect communities literature about the dispersal of suspicion and police intervention throughout suspect communities. It does not appear that the police's decision to arrest Shayda Ibrahim was motivated by any real suspicion that she was involved in the alleged conspiracy to murder Macris, or by a desire to see her prosecuted for such behaviour. Instead, in Paddy Hillyard's terms, Shayda Ibrahim became a 'suspect through association', as she became jointly subject to police intervention and investigation because police suspected that her husband had engaged in substantive wrongdoing.¹⁰⁷ Moreover, while she was a suspect through association, Shayda Ibrahim was brought into the ambit of decidedly coercive policing practices, with MEOCS officers arresting, humiliating, and threatening her to coerce her into providing information about the activities of her fiancé, his brother, and their associates.

¹⁰² Kamper, above n 101; Ralston and Welch, above n 101.

¹⁰³ Ralston and Welch, above n 101.

¹⁰⁴ Brenden Hills, 'Dob on Fadi or We'll Take Baby', *The Daily Telegraph* (Sydney), 27 July 2014, 5.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Hillyard, above n 58, 197, 203.

Seemingly, then, the case of Strike Force Bellwood suggests that the MEOCS's methodology of policing associations was animated by a desire to gather (and force) information out of people who share relationships with targeted members of the Middle Eastern suspect community. Indeed, this contention is given greater weight in the following case study, and in Chapter VI. More broadly, though, the policing of the family members and other associates of members of people of Middle Eastern background and appearance acts upon collective identities and significantly broadens the parameters of the suspect community; albeit that members of the suspect community may be policed differently from one another.

Strike Force Kirban

Like Shayda Ibrahim, Iktimal Hage-Ali successfully sued the State of New South Wales after being unlawfully arrested by a MEOCS strike force. Hage-Ali alleged that her arrest by Strike Force Kirban and subsequent detention was unlawful because there was no basis for the arrest and because she was improperly questioned while arrested so that police could obtain information about the supply of cocaine.¹⁰⁸ Hage-Ali also maintained that she was humiliated, threatened, and intimidated by Kirban's officers after her arrest.¹⁰⁹

Hage-Ali was arrested by officers attached to Strike Force Kirban in November 2006. The MEOCS formed Strike Force Kirban earlier that year to investigate mid-level cocaine supply in south-west Sydney and had lawfully intercepted telephone calls and SMS messages which suggested that Hage-Ali was purchasing cocaine from one of the suppliers under investigation, Mohammed 'Bruce' Fahda.¹¹⁰ The conversations between Fahda and Hage-Ali also suggested that Hage-Ali was then supplying some of the cocaine that she was purchasing from Fahda to others.¹¹¹ The police subsequently arrested Hage-Ali for the supply of cocaine and detained her at Bankstown Police Station for three-and-a-half hours before releasing her without

¹⁰⁸ *Hage-Ali v State of New South Wales* [2009] NSWDC 266, [4].

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid* [6]–[7].

¹¹¹ *Ibid* [37].

charge.¹¹² Hage-Ali cooperated with police and participated in an Electronically Recorded Interview of a Suspected Person (ERISP),¹¹³ where she admitted that she had occasionally used cocaine in the period from 2004 until 2006 and that she had used cocaine frequently thereafter.¹¹⁴ However, Hage-Ali denied that she had supplied cocaine, and stated that she had given Fahda the impression that she was supplying cocaine to others so that she could obtain extra drugs from him on credit.¹¹⁵

Several aspects of the evidence given in court by officers attached to Strike Force Kirban suggest that Hage-Ali was arrested to gather information about Fahda and his associates, and not because the officers intended to charge her with drug supply or possession. In court, police described a methodology of trawling for ‘small fish’ (like Hage-Ali), to collect intelligence about ‘bigger fish’ (in this case, Fahda).¹¹⁶ Police also obtained Hage-Ali’s telephone when they arrested her under the pretence of minding her belongings, but then downloaded information from the phone.¹¹⁷ Officers also conceded that the ERISP given by Hage-Ali after her arrest had strengthened their case against Fahda.¹¹⁸ In short, while Hage-Ali’s drug-taking behaviour constituted a crime, the police arrested her because they were engaged in an attempt to trawl for information about more serious offending.

Elkaim DCJ agreed that there was ‘a strong flavour of the arrest being made for the purpose of obtaining evidence against [Fahda]’.¹¹⁹ However, His Honour did not consider there to be sufficient evidence to make a positive finding that Hage-Ali’s arrest was for the collateral purpose of advancing the police investigation into Fahda.¹²⁰ Nevertheless, His Honour was not satisfied that Hage-Ali’s arrest was justified, and therefore awarded her \$18,705 in damages for her wrongful arrest.¹²¹

¹¹² Ibid [3].

¹¹³ Ibid [8].

¹¹⁴ Ibid [32]–[33].

¹¹⁵ Ibid [35].

¹¹⁶ Ibid [138]–[139].

¹¹⁷ Ibid [40], [152].

¹¹⁸ Ibid [153].

¹¹⁹ Ibid [213].

¹²⁰ Ibid.

¹²¹ Ibid [259].

Hage-Ali was a prominent public figure. She was a member of then-Prime Minister John Howard's Muslim Community Reference Group advisory committee and was awarded the NSW Young Australian of the Year Award shortly after her arrest; though she relinquished her award in December 2006 when reports broke that she had been arrested by Strike Force Kirban.¹²² Though Hage-Ali had asked Kirban officers whether she would be able to 'keep [her] name out of the media' when she was arrested,¹²³ a police officer later gave evidence that information about Hage-Ali's arrest had been deliberately leaked to the media by the Police Force.¹²⁴ These media leaks provided the basis for Hage-Ali's claim that the police had intentionally humiliated her.

Pragmatically, it seems that MEOCS officers kept the threat of publicity about Hage-Ali's arrest in waiting as a means of demeaning her and coercing her into providing information. Indeed, there are clear parallels between the coercive practices of the MEOCS officers who arrested Hage-Ali in 2006, and those who alerted the media to Shayda Ibrahim's arrest nearly four years later (see the case study of Strike Force Bellwood, above). It may also be the case that the police provided information of the women's arrests to the press to trade on their high profiles and public visibility and draw attention to the Squad's apparent successes in crime detection and control.

Indeed, when the press reports that a member of a suspect community has been arrested, there is no requirement for them to subsequently inform the public whether charges are laid and proven against those arrested. As such, the reporting of arrests can encourage members of the public to engage in 'speculative leaps' and form the view that those policed as members of racialised suspect communities are guilty of substantive wrongdoing.¹²⁵ The case studies of MEOCS Strike Force Bellwood and Strike Force Kirban demonstrate that the bases for such 'speculative leaps' can be unstable. While Hage-Ali was indeed guilty of using and possessing cocaine, she was principally arrested by in the hopes that she could assist the MEOCS with an investigation into more serious offending. Meanwhile, the MEOCS also arrested

¹²² Ibid [1]–[2], [99].

¹²³ Ibid [44].

¹²⁴ Ibid [161].

¹²⁵ See Hillyard, above n 58, 145–47.

Ibrahim because of her associations, and even though officers did not believe that she was guilty of committing a criminal offence. In turn, the MEOCS's methodology of policing of individuals who were primarily (or solely) suspects through association broadened the parameters of the Middle Eastern suspect community.

Operation Apollo

In February 2013 the MEOCS took control of Operation Apollo. Operation Apollo was focused on reducing firearms-related crimes in Sydney's south-west. Public-place shootings, and particularly those carried out in Sydney's south-west, have been the subject of extensive media coverage and political rhetoric in New South Wales throughout the last two decades.¹²⁶

There appears to have been some disquiet within the MEOCS about assuming control of Operation Apollo. Fairfax reporters claimed that MEOCS officers had spoken to them off-the-record to express their discontent about the police organisation's decision to narrow the Squad's focus to firearms-related crimes.¹²⁷ Acting Chief Superintendent Arthur Katsogiannis attempted to reassure critics by responding with a public statement that downplayed the extent of the changes to the Squad's mandate:

Nothing will take a back burner ... What we are talking about here is the same individuals that are responsible for organised crime – that is, drug distribution, firearms manufacture and distribution – are the same individuals that the Middle Eastern crime squad ... are already focusing on.¹²⁸

At first blush, Katsogiannis's statement collectively attributed all drug distribution, firearms-related crimes, and organised crime in Sydney to Middle Eastern background communities. As was the case with Task Force Gain (see Chapter IV), spokespeople for Middle Eastern community organisations responded to the Police Force's

¹²⁶ NSW Ombudsman, *The Consorting Law: Report on Part 3A, Division 7 of the Crimes Act 1900* (2016) 15; NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996* (2016) 3, 14.

¹²⁷ Lisa Davies and Nick Ralston, 'Fears of Rise in Organised Crime', *The Sydney Morning Herald* (Sydney), 7 February 2013, 4.

¹²⁸ Ibid.

announcement of Operation Apollo swiftly, and voiced their concerns that placing the MEOCS at the head of Operation Apollo implied that people of Middle Eastern background were responsible for all of Sydney's firearms-related crimes.¹²⁹ However, it remains unclear whether Katsogiannis's above statement attested to a police working knowledge that people of Middle Eastern background committed the brunt of the above-listed types of crime, or whether his statement was an admission that there was nothing essentially 'Middle Eastern' about the behaviours policed by the MEOCS.

Officers attached to Operation Apollo engaged in proactive and high-visibility policing practices, particularly in 'trouble spots' or 'hot spots' in Sydney's south-west. Specifically, officers raided licensed premises and conducted vehicle stops.¹³⁰ The rationale behind these practices was explained by Detective Chief Superintendent Mal Lanyon, the Commander of Operation Apollo: '[t]his is about police being highly-visible, about stopping and speaking with people in key hotspots and putting pressure on those we suspect of criminal activity'.¹³¹ Lanyon also labelled these practices as 'disruption or preventative activities'.¹³² Accordingly, in resemblance to the disruptive interventions staged by Strike Force Felix, Operation Apollo was tasked with overtly monitoring and intervening in the lives of its targets in order to impose police authority and unsettle targeted individuals' opportunities to commit crimes.

Operation Apollo also sought to trawl south-western Sydney for intelligence about a range of criminal activities. Lanyon asserted that Apollo's activities were 'intelligence-driven, but also valuable in terms of gathering further intelligence to assist in our investigations and, of course, planning future operations'.¹³³ However, as had been the case with Strike Force Felix, little information was offered forward to

¹²⁹ Rachel Olding, 'Gun Crime Squad Angers Middle Eastern Leaders', *The Sydney Morning Herald* (Sydney), 8 February 2013, 7; Mark Morri, 'Muslim Fury at Crime Gang Link', *The Daily Telegraph* (Sydney), 13 February 2013, 18.

¹³⁰ Jessica Clement, 'Attack on Gun Culture: Tough-Talking Police Launch Operation Apollo', *The Canterbury Bankstown Express* (Sydney), 12 February 2013, 5; Sally Lee, 'Tip-Off Nets Guns, Drugs', *Fairfield City Champion* (Sydney), 12 February 2013, 14; Yoni Bashan, 'Blood on Our Streets: Police Gunning for Arms Dealers', *The Sunday Telegraph* (Sydney), 17 March 2013, 14; '14 Arrested in Sydney Crime Crackdown', *ABC News* (Online), 25 March 2013 <<https://www.abc.net.au/news/2013-03-25/14-arrested-in-sydney-crime-crackdown/4591870>>.

¹³¹ '14 Arrested in Sydney Crime Crackdown', above n 130.

¹³² 'NSW: Round-Up of People Linked to Syd Gun Crime', *Australian Associated Press General News* (Sydney), 25 March 2013.

¹³³ '14 Arrested in Sydney Crime Crackdown', above n 130.

explain how individual targets and target areas were selected or prioritised for police intervention, aside from the assurance that Apollo's practices were 'intelligence-driven'. As stated above, intelligence is ultimately a police informational construct: it is not objective nor is it impervious to bias, which might stem from the ways that police collect and process their information. A significant related concern is that intelligence animates police action and can provide a justification for the aggressive policing of targets, like the residents of particular localities or 'hot spots' in Sydney's south-west. 'Hot spots' and the MEOCS's territoriality are discussed further in the next section of this chapter.

Crucially, despite Operation Apollo's stated purpose, most of the arrests and charges arising out of its work were unrelated to firearms-related crimes and did not relate to any other type of organised crime either. In June 2013, Bashan criticised the government for extolling Apollo's virtues in policing alleged 'gang members' and reducing public-place shootings, revealing that Apollo's targets had mainly been charged with minor offences:

A gun-crime taskforce praised by Premier Barry O'Farrell for arresting "hundreds" of offenders has actually charged only five people over shooting incidents ... Despite government figures boasting of 245 arrests by Operation Apollo since February ... Most Operation Apollo arrests have been made during disruption operations in which police pull over their cars, search their homes or visit them at work in a bid to make them paranoid about the police presence. As a consequence, many are charged with minor offences, such as traffic or drug-related matters.¹³⁴

As acknowledged by Bashan, Apollo's officers were likely engaged in a policing methodology of attempting to effect disruption by alerting targeted individuals that they were under police surveillance. However, as explained in the case study of Strike

¹³⁴ Yoni Bashan, 'Barry's Gun Crime Miss Taskforce Has Only Charged Five', *Sunday Telegraph* (Sydney), 2 June 2013, 21.

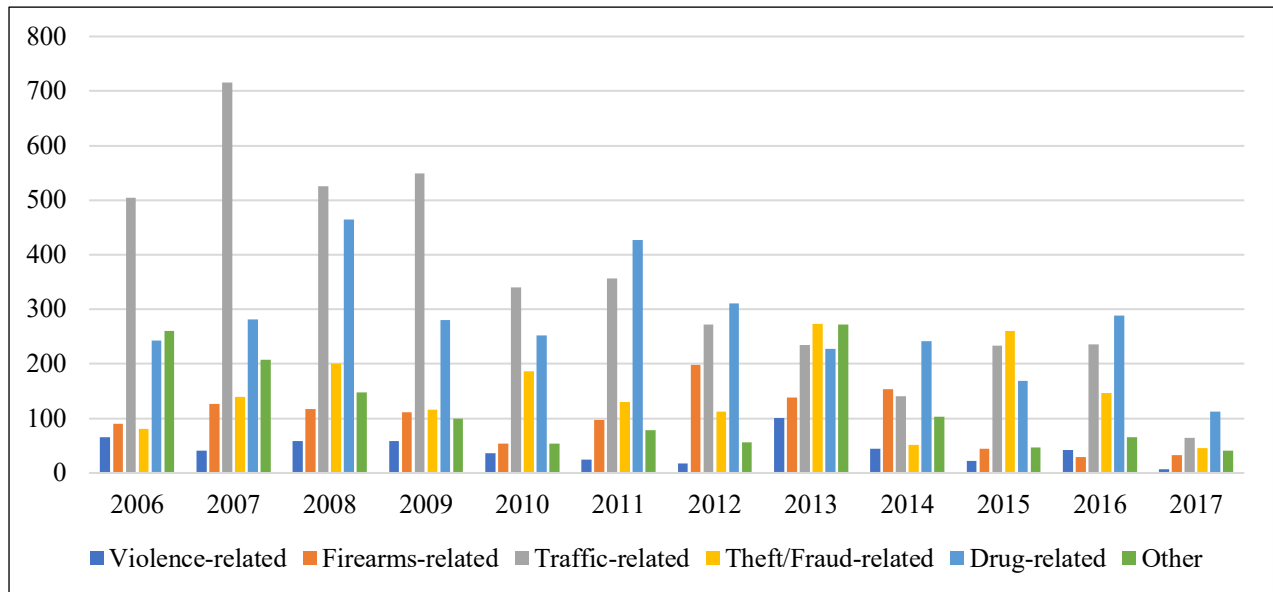
Forces Skelton and Sitella (above), it is challenging to determine the success or otherwise of most, if not all, police attempts at disruption.

The disjuncture between Operation Apollo's stated aims and practices mirrored a similar disjuncture between the aims and practices of the MEOCS in its entirety. As stated above, in 2018 I submitted a GIPAA application requesting information about the arrests, charges, and prosecutions arising from the MEOCS's work. The information that the Police Force provided about the charges laid by the Squad is tabulated (**Table 5.1**) and graphed (**Figure 5.2**) below. Though the charges have been divided between six broadly-construed categories which obscure the precise nature of the charges laid, **Table 5.1** and **Figure 5.2** illustrate that traffic-related charges were a significant component of the Squad's work throughout its tenure.

Table 5.1: Charges Laid by the MEOCS (2006-17) by Offence Type (Tabulated)

Total number of charges	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Violence-related	65	41	58	58	36	24	17	101	44	22	42	7	515
Firearms-related	90	126	117	111	54	97	198	138	154	44	29	33	1191
Traffic-related	504	716	526	549	340	356	272	234	141	233	236	64	4171
Theft/fraud-related	81	140	201	116	186	130	112	273	52	260	147	45	1743
Drug-related	243	281	465	280	252	427	311	227	241	169	288	112	3296
Other	260	207	148	99	54	79	56	272	103	47	66	41	1432
	1242	1511	1515	1223	922	1113	966	1245	735	775	808	302	12357

Source: Provided to the author by the NSW Police Force in 2018 in response to a request for information made under the auspices of the *Government Information (Public Access) Act 2009* (NSW). Please note, data for 2017 was only recorded to 30 June 2017.

Figure 5.2: Charges Laid by the MEOCS (2006-17) by Offence Type (Graphed)

Source: Provided to the author by the NSW Police Force in 2018 in response to a request for information made under the auspices of the *Government Information (Public Access) Act 2009* (NSW). Please note, data for 2017 was only recorded to 30 June 2017.

Overall, traffic-related charges made up just over one-third (33.57 per cent) of the entirety of the Squad's work in the eleven years that it was in operation. I will return to the significance of proactive vehicle stops in the policing of the Middle Eastern suspect community in Chapter VI. However, it is worth noting that like the MEOCS, the bulk of the charges laid by Task Force Gain were also traffic-related (see Chapter IV).

There is clear political mileage to be gained from publicly framing proactive, high-visibility units and operations like Task Force Gain and Operation Apollo as effective mechanisms to reduce firearms-related crimes. Indeed, the government and the police continued to frame Operation Apollo in such terms in the months after Bashan's above piece was published.¹³⁵ The slippage between the behaviours policed by the MEOCS and the discursive framing of MEOC is given further consideration in Part IV, below.

¹³⁵ New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 August 2013, 22549 (Bryan Doyle, Member for Campbelltown); New South Wales, *Parliamentary Debates*,

Mapping the Middle Eastern Organised Crime Squad

In Chapter IV, I provided case studies attesting to the proactive, territorial policing of people of Middle Eastern background and appearance in Sydney's south-western suburbs throughout the late 1990s and early 2000s. I argued that this territorial policing had contributed to the racialised ideological framing of south-west Sydney as a tract of serious, organised, and gang-related crime. In this way, the emergent public knowledge attesting to the (alleged) criminality of the formative Middle Eastern suspect community, captured in the byword MEOC, was given a firm geographic locus in the suburbs of Sydney's south-west. As noted in Chapter I (see also **Appendix 1**), though south-western Sydney is a diverse area, the region as a whole is socio-economically disadvantaged.

The racialisation and criminalisation of Sydney's south-west through proactive policing in the 1990s and early 2000s was also tautological. As police practice delineated south-west Sydney and its resident Middle Eastern background communities as dangerous and crime-prone, the apparent need for further police intervention to tackle MEOC in the region was affirmed; eventually culminating in the formation of the MEOCS.

As discussed above, Strike Force Felix and Operation Apollo both intensively policed localities in Sydney's south-west and west. Senior police classified Strike Force Felix as an 'all-out proactive response specifically targeting locations, people and vehicles who are regarded as able to progress the investigation',¹³⁶ with Felix's officers operating primarily in western Sydney. Meanwhile, Operation Apollo set out to reduce firearms-related crime in Sydney's south-west through proactive, high-visibility policing and practices of disruption, including 'stopping and speaking with people in key hotspots and putting pressure on those suspected of criminal activity'.¹³⁷ Many of the other MEOCS strike forces listed in **Appendix 5** also carried out their work in localities in Sydney's south-west and west.

Legislative Assembly, 10 September 2013 23173 (Greg Smith, Attorney General and Minister for Justice).

¹³⁶ Snow, above n 89.

¹³⁷ '14 Arrested in Crime Crack Down', above n 130.

The imperative to target policing activity towards ‘risky places’ is a key component of the proactive and intelligence-led approaches to policing that rose to prominence in English-speaking jurisdictions around the turn of the twenty-first century. Technologically, the imperative to police ‘risky places’ has shared a close relationship with the development of computerised crime mapping technologies, which have been used to map the spatial distribution of crimes recorded by police (of course, not all crimes are recorded by police).¹³⁸ Though police spokespeople attached to Strike Force Felix and Operation Apollo did not expressly refer to computer mapping technologies, the NSW Police Force has previously used software to map so-called ‘crime hotspots’,¹³⁹ or, in other words, areas or localities in which there is said to be a high concentration of crime.¹⁴⁰

Proceeding from these insights, I used a computer mapping application to create a MEOCS ‘counter map’. As explained by Theo Kindynis, counter-mapping involves using maps ‘to reframe the world in such a way as to challenge the dominant power structures and to articulate alternative, progressive, and even radical interests’.¹⁴¹ While the police can use computer mapping technologies to illustrate the ostensible dispersal of crime throughout cities to assist them in determining and justifying the deployment of police resources in particular localities, there is also potential for mapping technologies to be used inversely, to illustrate the concentration of police resources and social control in particular localities.¹⁴² Put differently, if it is accepted that crime and crime control are mutually constitutive, then, methodologically, counter maps can be used to depict the relationship between ‘crime-prone areas’ and the deployment of police resources.

¹³⁸ Theo Kindynis, ‘Ripping up the Map: Criminology and Cartography Reconsidered’ (2014) 54(2) *British Journal of Criminology* 222; Spencer Chainey and Jerry Ratcliffe, *GIS and Crime Mapping* (Wiley, 2005) ch 6.

¹³⁹ See, eg, Mick Goodwin, ‘Fighting Crime from a Computer’ (1994) 6(16) *Police Service Weekly* 6; Ed Davis, *Operations and Crime Reviews in the New South Wales Police Service: An Analysis of their Effectiveness* (2002) 5–6, 12.

¹⁴⁰ Chainey and Ratcliffe, above n 138, 145–46.

¹⁴¹ Kindynis, above n 138, 228.

¹⁴² Kindynis, above n 138; John Lowman, ‘The Geography of Social Control: Clarifying Some Themes’ in David J Evans and David T Herbert (eds), *The Geography of Crime* (Routledge, 1989) 228.

I mapped the distribution of the MEOCS's work across New South Wales, hypothesising that the Squad's activities were likely to be concentrated in Sydney's south-western and western suburbs. I recorded each instance where a news article in my documentary dataset named an address and/or suburb where officers attached to the MEOCS had carried out a search or raid, conducted an arrest, or commenced an investigation into a crime.¹⁴³ In total, I identified 310 distinct incidents or 'events', which I plotted on a map of New South Wales (see **Figure 5.4**, below). I do not contend that the 310 events plotted on the map in **Figure 5.4** account for the entirety of the Squad's activity throughout its eleven-year tenure. Indeed, a limitation of my MEOCS 'counter map' is that it does not account for many pre-arrest contacts, which are unlikely to make the news. Nevertheless, the map does indicate that the Squad's activities were heavily concentrated in the south-western and western suburbs of Sydney, and especially in the suburbs of Bankstown, Punchbowl, Auburn, Fairfield, and Merrylands. At the very least, the map indicates that most *reports* about the MEOCS focused on the Squad's activities in Sydney's outlying south-western and western suburbs – the significance of which is explored further in Part IV, below.

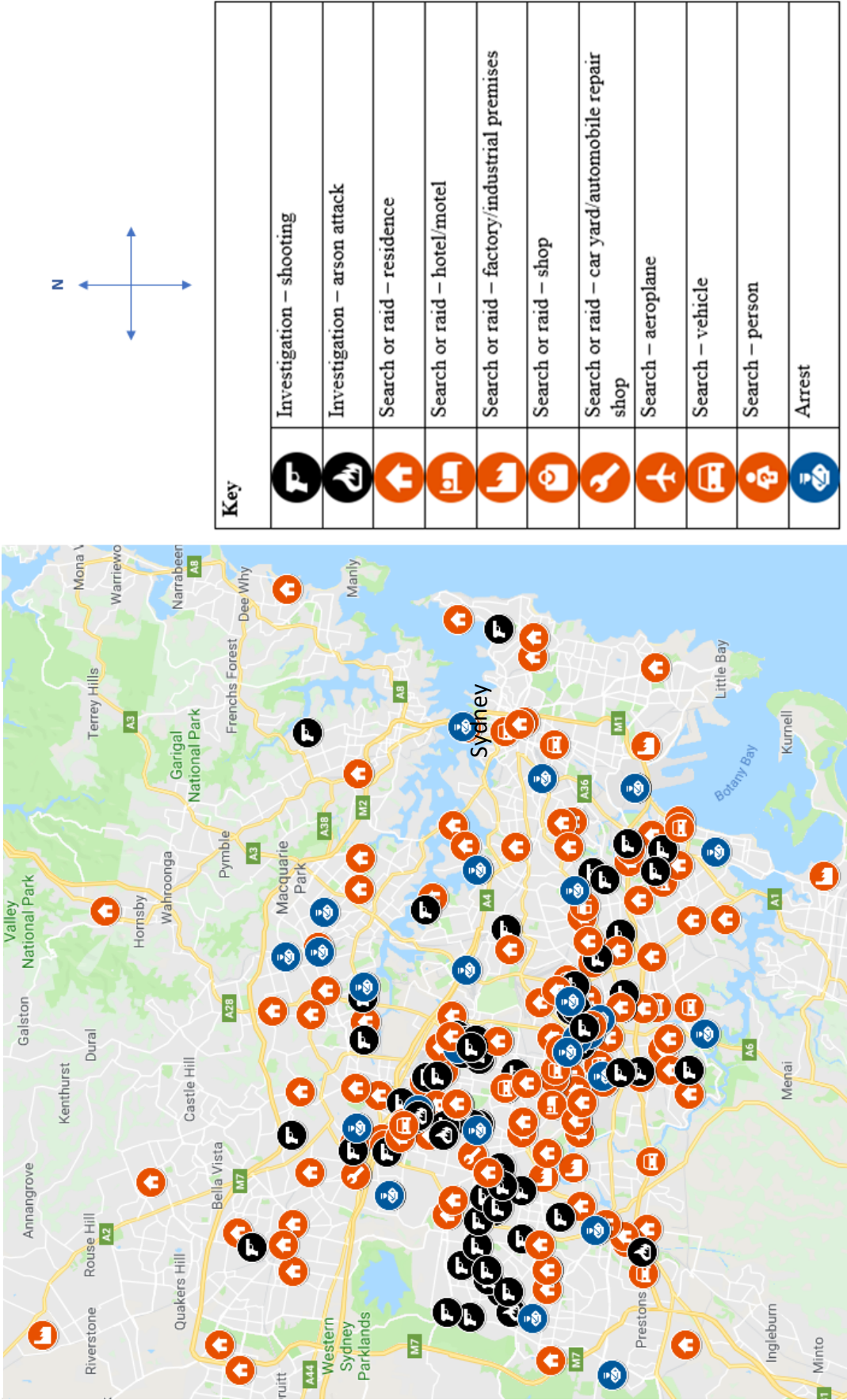
Like the police squads discussed in Chapter IV, the MEOCS practised police territoriality and sustained the Middle Eastern suspect community materially and symbolically. The MEOCS provided the police with a well-resourced, permanent apparatus that could be deployed in areas where sizeable Middle Eastern background communities resided. Given the breadth of behaviours policed by the MEOCS, deploying the Squad was not the only response open to the Police Force. In other words, while MEOC was framed as a discrete crime type requiring a specialist response, the behaviours policed by the MEOCS were disparate and could likely have been addressed by other squads in the SCC (and, in many instances, by police at the local level). Deploying the MEOCS to carry out a diverse policing tasks across Sydney's south-western and western suburbs racialised an array of crimes and anti-social behaviours in those localities as Middle Eastern; thereby sustaining the

¹⁴³ As noted above, I obtained the news articles by entering 'Middle Eastern Organised Crime Squad' as a search term into the Dow Jones news database Factiva. I restricted the results by using the date parameters of January 1, 2006 and August 31, 2017 and I omitted 'identical' duplicates from my search. This search returned 1,627 results.

reputation of violent criminality that has been imposed on the Middle Eastern background communities of Sydney's south-western suburbs since at least the 1990s (see Chapter IV).

In short, the infrastructure of the MEOCS advanced the criminalisation of localities racialised as Middle Eastern, and where large populations of Middle Eastern background people reside. The deployment of the MEOCS was therefore crucial in maintaining the territorial work of police squads that was crucial in forging the Middle Eastern suspect community in the late 1990s and early 2000s. Moreover, as discussed in the next part of this chapter, the collusion of the Police Force and the media in lauding the Squad's work in Sydney's south-western and western suburbs likely reaffirmed the need for the MEOCS and attested to the public value of the police's crime control credentials.

Figure 5.3: Mapping the Middle Eastern Organised Crime Squad



IV. The Middle Eastern Organised Crime Squad and the Media

It is not uncommon for ‘elite’ specialist police squads to draw media attention.¹⁴⁴ As noted by Mike Maguire in his work in the United Kingdom, publicising the investigative and crime-fighting successes of police squads helps police organisations to achieve goals related to public reassurance: ‘that is, in efforts to convince the public that the police are “beating crime” and protecting them from the worst offenders’.¹⁴⁵ However, Maguire also speculates that the portrayals of these squads need not necessarily accurately represent the squads’ work to achieve reassurance-related goals, as ‘the impression created is arguably as important as the actual level of performance’.¹⁴⁶

Throughout its eleven-year tenure, the MEOCS was revered by the popular media in New South Wales. Police-sanctioned accounts of the MEOCS portrayed the Squad as a hyper-masculine, elite unit charged with policing firearms-related crimes, drug-related crimes, and other serious, organised, and violent crimes said to pervade Middle Eastern background communities in Sydney’s south-western and western suburbs. In tracing media reporting about the MEOCS below, I contend that inaccurate and dramatised media portrayals of the Squad bolstered the work of the Squad in policing the Middle Eastern suspect community in two interrelated ways. First, the media played a key role in defining MEOC as a ‘type’ of crime. Second, the popular media legitimated the Squad’s practices by venerating its work and attesting to the (apparent) need for a dedicated Squad to police MEOC. In short, through these interrelated processes, the popular media legitimated the exceptional policing of the Middle Eastern suspect community by the MEOCS.

The New South Wales Police Force has actively sought to control how its image is portrayed in the news media for several decades. As explained by Alyce McGovern and Murray Lee, the New South Wales police organisation first created a branch

¹⁴⁴ Maguire, above n 38, 433.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

dedicated to fostering ties with media organisations and reporters in the mid-1960s, in an attempt to counterbalance the ‘crises’ of public confidence that the organisation was beginning to experience.¹⁴⁷ The current iteration of this media branch is the Police Media Unit (PMU), which is a ‘dedicated media liaison team’ that negotiates police involvement in commercial ‘reality’ television programs, works around the clock responding to media enquiries, and sporadically issues information to journalists in the form of short, written statements or ‘media releases’.¹⁴⁸ Lee and McGovern argue that the work of the PMU is animated by the thinking that media engagement is crucial to legitimating and building community trust in policing, and the PMU has accordingly developed a proliferation of strategies to increase the police’s engagement with media outlets.¹⁴⁹

As argued in Chapter III, the PMU works in tandem with the Force’s Research Coordination Unit to tightly regulate public knowledge about policing and the policed. The PMU’s exertion of control over reportage about policing and the policed has been facilitated by the decline of the traditional media,¹⁵⁰ including ‘[d]windling media budgets, reduced resources ... and the proliferation of generalist reporters’ who uncritically accept and reproduce information disseminated by the PMU.¹⁵¹ The Force’s assumption of control over reportage about the police and the policed is also a result of the PMU incentivising unquestioning reporting of police knowledge claims by ‘reward[ing] particularly helpful reporters with “scoops” or “exclusives”’.¹⁵² According to McGovern and Lee, these developments have allowed the police to use the media as a platform to communicate apparent successes in crime control by feeding on the abiding ‘law-and-order’ rhetoric in New South Wales and extolling the virtues of punitiveness and targeted interventions against marginalised groups.¹⁵³

¹⁴⁷ Alyce McGovern and Murray Lee, “‘Cop[ying] It Sweet’: Police Media Units and the Making of News’ (2010) 43(3) *Australian & New Zealand Journal of Criminology* 444, 447–48.

¹⁴⁸ Ibid 448–50.

¹⁴⁹ Murray Lee and Alyce McGovern, ‘Force to Sell: Policing the Image and Manufacturing Public Confidence’ (2013) 23(2) *Policing and Society* 103, 113–14.

¹⁵⁰ McGovern and Lee, above n 147, 453.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid 457.

In this climate, reports venerating the MEOCS's attempts to curb MEOC abounded. Reporters attached to some of the country's most popular newspapers were given generous access to the Squad and its staff, and they produced favourable but sensationalised and misleading pieces about the MEOCS (see Chapter III). These pieces appeared in newspapers, on television, and on the radio. As noted in Chapters III and IV, News Corp journalist Yoni Bashan also authored a book about the MEOCS which was published in 2016.

Though journalistic accounts of the MEOCS perpetuated the use of the neologism Middle Eastern organised crime, they failed to clearly delineate what constituted MEOC. For example, in *The Squad*, which was written at the suggestion of MEOCS officers,¹⁵⁴ Bashan introduced the concept of MEOC by narrating Inspector Michael Ryan's opening address to the Squad when its officers reported for their first day of duty in May 2006. Bashan's ensuing description of MEOC tied together a range of disparate criminal behaviours:

Middle Eastern Organised Crime was a new beast in this arena. Whatever had come previously was no match. One of Ryan's slides had the word "MEOC" written in the middle of it and a series of straight lines sticking out, each one joining with a sub-heading – rape, serious assault, murder, arson, explosives, extortion, prostitution, money laundering, immigration offences, insurance fraud, identity fraud, terrorism, car rebirthing, weapons offences.¹⁵⁵

As described by Bashan, MEOC does not appear to have any distinguishing features or attributes. Rather, to reiterate a contention from Chapter IV, the term MEOC is a racialised catch-all label for a range of behaviours that are unified only by the alleged involvement of people of Middle Eastern background. Moreover, while Bashan identifies MEOC as consisting of a range of serious, organised, and violent crimes, in practice, the Middle Eastern Organised Crime Squad and its predecessors were also involved in policing anti-social behaviour, and targeting people because of their identity, status, and associations, rather than their participation in criminal

¹⁵⁴ Bashan, above n 5, 301.

¹⁵⁵ Ibid 16–17.

wrongdoing. As argued in Chapter IV, while police practices that criminalise people of Middle Eastern background and appearance have purchase for understanding how MEOC is constituted, media representations aid in this process of suspect construction, by defining Middle Eastern identity as a ‘crime type’.

The platform of the popular media gave senior police an outlet to make unsubstantiated assertions that MEOC was expanding and worsening, and that a dedicated squad was therefore necessary to police this ‘type’ of crime. Take, for example, the feature ‘Crime Busters on Mean Streets’ written by News Corp journalist John Lyons in 2016. As explained in Chapter III, Lyons was provided considerable access to the MEOCS when the Police Force granted him an ‘exclusive’. As part of his ‘exclusive’, Lyons undertook three weeks’ worth of ride-alongs and interviewed officers attached to the MEOCS. In the article that he wrote at the conclusion of his fieldwork, Lyons reported that then-MEOCS Commander, Detective Superintendent Peter McErlain, had claimed to possess evidence demonstrating that MEOC was ‘burgeoning’.¹⁵⁶ However, it is not clear what evidence McErlain possessed to substantiate his claim; as noted in Part II (above), it is not possible for the police in New South Wales to determine, on the public record, the racial or ethnic backgrounds of individuals charged with crimes.

At the same time, in attempting to explain that MEOC was growing and evolving, McErlain only served to further convolute the meaning of the term:

So why is there a Middle East crime unit? “It’s a question I get asked quite regularly out in the community, particularly in the Middle Eastern community,” says McErlain. “And my answer is there is overwhelming evidence and information to suggest that Middle Eastern crime or Middle Eastern organised crime is not dwindling, it’s a burgeoning crime ... They operate outside their usual constraints, their family constraints, they operate with other crime families, with other ethnic crime gangs, they operate with the outlaw

¹⁵⁶ John Lyons, ‘Elite Crimebusters on Sydney’s Mean Streets’ *The Australian* (Online), 27 May 2016 <<https://www.theaustralian.com.au/news/inquirer/meocs-elite-crimebusters-of-sydneys-mean-streets/news-story/dce53b6a9d031d62c933ff27a5d59467>>.

motorcycle gangs, so it's not quite the same as it was 10 years ago".¹⁵⁷

Like Bashan's description of MEOC, the above quotation fails to adequately define MEOC, or convincingly explain why a 'specialist' Squad was required to police this 'type' of crime.

In the quotation above, Lyons had also quoted McErlain as claiming that Middle Eastern background criminals had traditionally operated within their family units, but that Middle Eastern background 'crime families' were beginning to collaborate with other groups (see Part V, below, for a discussion of comparable claims made by current Police Commissioner Michael Fuller). In *The Squad*, Bashan similarly claimed that Middle Eastern background families in Sydney's south-west (and particularly the men in those families) had passed on the knowledge and means to commit serious, organised, and violent crimes intergenerationally; thereby resulting in the propagation of MEOC throughout the region. As claimed by Bashan:

The concept of MEOC, as it would become known, had been germinating across the suburbs of southwestern Sydney for years, eventually manifesting in a tentative criminal strata, a world of dog-eat-dog where drug dealing and car rebirthing had become their own industries, and were treated like trade skills that could be handed down within families – father to son, brother to brother, cousin to cousin.¹⁵⁸

In this way, the accounts above both racialised and deterministically inscribed Middle Eastern background familial relations with criminality. And indeed, it appears that this racialisation was not merely a matter of discourse, but also evinced police institutional knowledge and animated police practices, given the MEOCS's targeted investigations of Middle Eastern background families, described above (see also Chapter VI).

In other reports, the MEOCS was described in hyper-masculine terms, and its ostensible attempts to grapple with Sydney's most prolific criminals were revered.

¹⁵⁷ Ibid.

¹⁵⁸ Bashan, above n 5, 3.

Take, for example, the following quotation from an article written for the *Daily Telegraph*:

THEY are a police squad like no other ... the Middle Eastern Organised Crime Squad (MEOCS) has over time become its own type of gang, a tribal unit handling the biggest criminal investigations in NSW and dealing with the most dangerous criminals. The squad's ranks have always been filled with hardmen — this was how its inaugural commander, Ken McKay, wanted it to be: a mix of rough-hewed veterans, tattooed strongmen, and young guns burning to make an impact.¹⁵⁹

By framing the MEOCS as an exceptional Squad 'filled with hardmen', journalistic accounts implied that the MEOCS had overcome the impotence allegedly wrought on the police organisation by the Wood Royal Commission (see Chapter IV). A further implication of descriptions such as those above is that the Squad was well placed to confront the criminality allegedly being spread throughout Middle Eastern background families in south-western Sydney by the men in those families.

Those targeted by the Middle Eastern Organised Crime Squad did not passively accept its existence, activities, or the publicity that it received. In one noteworthy demonstration of resistance, several men allegedly belonging to the BFL appropriated the acronym MEOC to show that they had been targeted by the MEOCS: some had 'MEOC' and images of MEOCS Highway Patrol vehicles tattooed on their bodies, while others purchased 'MEOC' vehicle registration plates.¹⁶⁰ This resistance to the over-policing of Middle Eastern background communities was soon seized upon by the media and racialised as evidence of the men's disregard for police and the rule of law.¹⁶¹ For example, news reporters defended the MEOCS and criticised the men for what was deemed to be a 'perverse form of peacocking'.¹⁶² The Police Force also

¹⁵⁹ 'Squad to Reckon with the Criminals', *The Daily Telegraph* (Sydney), 24 July 2016, 13.

¹⁶⁰ Deborah Snow and Lucy Cormack, 'End of Middle Eastern Organised Crime Squad as Police Shake-Up Targets "Silent Crimes"', *The Sydney Morning Herald* (Online), 30 September 2017 <<https://www.smh.com.au/national/nsw/end-of-middle-eastern-organised-crime-squad-as-police-shakeup-targets-silent-crimes-20170929-gyrcda.html>>.

¹⁶¹ Lyons, above n 156.

¹⁶² Snow and Cormack, above n 160.

publicly called on Roads and Maritime Services New South Wales (RMS) to recall the vehicle registration plates insisting that they were ‘unsuitable’, and the RMS promptly obliged.¹⁶³

However, as discussed in the next part of this chapter, the fickleness of the public discourse surrounding MEOC and the MEOCS was brought into sharp relief when the MEOCS was abruptly amalgamated with the Force’s Gangs Squad in December 2017, with the Police Commissioner declaring that ethnicity was no longer a factor significantly influencing the activities of organised crime groups.

V. Disbanding the Middle Eastern Organised Crime Squad: ‘Business as Usual’

On 1 December 2017, the Middle Eastern Organised Crime Squad was merged with the Gangs Squad to form a new CGS within the SCC. The amalgamation of the squads occurred in the context of the Police Force ‘re-engineering’ the SCC following the appointment of a new Police Commissioner earlier in the year. The new Commissioner, Michael Fuller, had suggested that the MEOCS might be disbanded in the Police Budget Estimates Hearing in August 2017:

The re-engineering of State Crime Command is about ensuring that the command itself is flexible and has the ability to meet the needs of the community through changing crime types. If you go back 20 years, criminals stayed in their lanes – if you stole only cars then stealing cars was your job. We know that different cultures would often stay within their own culture regarding crimes. That is certainly not the case now ... [Y]ou could expect to see some consolidations of commands, being that criminals now do not stay within their lanes. They will sell guns one day and sell drugs the next. The Vietnamese will deal with Middle Eastern groups one day and then they will shoot each other the next. For mine, it is about

¹⁶³ Jim O’Rourke, ‘Deadline for MEOC Gang Rego Plates – Hand Them In, Police Demand’, *The Daily Telegraph* (Online), 1 November 2013
<<https://www.dailytelegraph.com.au/news/nsw/deadline-for-meoc-gang-rego-plates-hand-them-in-police-demand/news-story/bcb226a305f2cc2f8a715353fd2708cd>>

ensuring that we have a group of people who are flexible and who can move in and out of different crime types to ensure that we are meeting the needs of the community, particularly in relation to organised crime.¹⁶⁴

Despite Fuller's instance of the need for greater flexibility within the SCC to assist police in addressing 'changing crime types', the CGS appears to have simply assumed the mandates and practices of its predecessors. Indeed, Detective Superintendent Deb Wallace, the inaugural Commander of the CGS (and one-time Commander of both the MEOCS and the Gangs Squad), publicly articulated her intentions for the CGS to continue the work of the MEOCS. Immediately after the MEOCS was subsumed into the CGS, the CGS staged a proactive operation that was premised on intervening in the lives of former MEOCS targets using proactive search powers that the MEOCS was heavily reliant upon (the powers in question are discussed further in Chapter VI). As Wallace explained to the media, the CGS 'carried out 24 firearm prohibition searches on 24 premises of known Middle Eastern criminals and their associates just to make sure those groups and families don't think they can relax ... To us, it's business as usual'.¹⁶⁵

If the amalgamation of the MEOCS and the Gangs Squad has resulted in little substantive change to police practice, what other goal or purpose did merging the squads serve? One explanation offered by Deputy Commissioner Dave Hudson is that there existed 'significant crossovers' between MEOCS and Gangs Squad investigations, meaning that amalgamating the squads and 'merg[ing] their investigative components' was a pragmatic decision. This sentiment reiterates the police knowledge, introduced above in the case study of Strike Force Felix, that there is a high level of collaboration between so-called 'Middle Eastern crime groups' and the OMCGs that the Gangs Squad was tasked with policing. While it is true that some OMCGs claim members of Middle Eastern background, the extent of the collaboration between 'Middle Eastern crime groups' and OMCGs is unknown and has been

¹⁶⁴ Evidence to Portfolio Committee No 4 on Legal Affairs, New South Wales Legislative Council, Sydney, 31 August 2017, 2 (Michael Fuller, New South Wales Police Commissioner).

¹⁶⁵ Mark Morri, 'Raids Put Targets in Sights of New Squad', *The Daily Telegraph* (Sydney), 18 December 2017, 16.

obscured by the Police Force's purposeful racialisation of OMCGs as Middle Eastern to amplify the level of the threat that they pose (as discussed above).¹⁶⁶

A second potential explanation for the amalgamation of the MEOCS and Gangs Squad is that in merging the squads, and thereby erasing the title 'Middle Eastern Organised Crime Squad', the Police Force was attempting to achieve a goal related to legitimisation. In other words, by disbanding (or at least renaming) its last 'ethnic titled squad'¹⁶⁷ the Force sought to portray itself as a liberal and tolerant organisation. This explanation aligns well with Hudson's concession that '[i]f the community leaders are happy, if they've got some benefit out of us moving in that direction, that's a good thing'.¹⁶⁸ Indeed, at least one Lebanese Muslim spokesperson, Dr Jamal Rifi, publicly expressed his satisfaction that the Police Force had put an end to the MEOCS, explaining that the Squad should 'never have been established in the first place – or at least not been given such a terrible title. Criminals are criminals and you fight the crime itself, you don't fight the ethnic background of the crime'.¹⁶⁹

However, despite Rifi's optimism, Fuller's above statements about 'the Vietnamese' and 'Middle Eastern groups' were crude and indicated that the racialised police institutional knowledge that Middle Eastern background communities are markedly engaged in firearms-related crimes and drug distribution has likely persisted. The methodological upshot of this supposition is that police knowledge claims about race, crime, and policing should be balanced, wherever possible, with empirically-grounded research about racialised policing practices. Put differently, racialised policing knowledges, policies and practices are not necessarily revealed by police public rhetoric, and indeed, can be obscured by that rhetoric,¹⁷⁰ meaning that it is important to pay due consideration to institutional practices as well as institutional knowledge claims.

¹⁶⁶ Morgan, Dagistanli and Martin, above n 83.

¹⁶⁷ El Khouri, above n 9, 110.

¹⁶⁸ Snow and Cormack, above n 160.

¹⁶⁹ Ibid.

¹⁷⁰ See Vicki Sentas, 'Beyond Media Discourse: Locating Race and Racism in Criminal Justice Systems' in Monish Bhatia, Scott Poynting and Waqas Tufail (eds), *Crime, Media, Racism* (Palgrave Macmillan, 2018) 359.

VI. Conclusion

This chapter presented the first scholarly analysis of the establishment and work of the MEOCS. The overarching aim of the chapter was to determine the MEOCS's specific role in policing people of Middle Eastern background and appearance in New South Wales. However, as explored above, the MEOCS did not have *a specific* role in policing people of Middle Eastern background and appearance. Rather, the Squad's work was complex and multifaceted, and comprised co-existing policies, strategies, and practices. Fundamentally, the MEOCS provided the police with a well-resourced, centralised squad to carry on with the racialised over-policing that first forged the Middle Eastern suspect community in the late 1990s and early 2000s, as detailed in Chapter IV. However, at the same time, the Squad's work frequently aligned with the rationalities and methodologies of intelligence-led policing and was therefore somewhat different from the work of the Squad's predecessors, which tended to resemble a more 'Broken-Windows'-style of aggressive policing. What follows is a thematic summary of the key modes of racialised policing apparent in the work of the MEOCS, as traced throughout this chapter.

First, the Squad's charter spoke in imprecise terms of policing Middle Eastern criminal groups and the 'networks' and 'associates' of those groups. In some instances, the Squad did investigate and apprehend some groups involved in serious, organised, and violent crimes, as demonstrated by the case study of Strike Forces Skelton and Sitella. However, there was a slippage between the Squad's mandate of targeting criminal groups and its attempts to target and disrupt Middle Eastern familial and social relations, as demonstrated by the case study of Strike Force Bellwood. The disruption of Middle Eastern familial relations remains a key methodology in the Force's approaches to policing the Middle Eastern suspect community, as explored further in Chapters VI and VIII.

Disruption policing was also central to the Squad's work in a broader sense. As demonstrated by the case studies of Strike Forces Skelton and Sitella, Strike Force Felix, and Operation Apollo, much of the Squad's work was premised on seeking to forestall future wrongdoing by staging interventions against suspects. Strike Force

Sitella carried out arrests and prosecutions in an ‘entrepreneurial’ use of legal powers aimed at destabilising a criminal network. However, the disruption policing evident in the case studies of Strike Force Felix and Operation Apollo was oriented towards staging persistent, ‘extralegal’ interventions against targets for purposes related to intelligence-gathering, overt surveillance, and authority imposition. As indicated above (and elaborated in Chapter VI), the MEOCS often carried out these disruptive interventions by stopping targeted vehicles and pressing charges for traffic-related offences. However, it was not always clear that the individuals policed by the Squad were indeed Middle Eastern, or on what basis they were targeted by the Squad. Nevertheless, the Squad’s targets were invariably racialised as Middle Eastern in police, political, and media discourse.

Indeed, the MEOCS was venerated in police talk, and political and media rhetoric throughout its eleven-year tenure. Favourable accounts of the Squad’s work often arose out of collusion between the Police Force and news reporters and overstated the extent to which the Squad was policing serious, organised, and violent crimes, but attested to the need for a dedicated Squad to police apparently-worsening Middle Eastern criminality. Given the breadth of behaviours encompassed by the term MEOC, and that these behaviours are unified only by the alleged involvement of ‘offenders’ of Middle Eastern background, these public discourses contributed to suspect formation by defining Middle Eastern identity as a ‘crime type’.

The Middle Eastern Organised Crime Squad was disbanded in December 2017, with the Police Commissioner declaring that ethnicity was no longer a factor that significantly influenced the activities of organised and violent criminals. However, this does not mean that the racialised institutional knowledge underpinned the MEOCS and its work does not endure. Indeed, the Squad that replaced the MEOCS appears to have sustained the Squad’s work by targeting the same people using the same powers. Building on this observation, the following chapter exploring how police have used these powers (or ‘legal resources’) in their proactive policing of Middle Eastern background communities and the effects on those policed.

Chapter VI

The Use of Legal Resources in Proactive Policing

For those [Middle Eastern Organised Crime Squad] cops working General Duties, each shift started with a printout of names and addresses: criminals on bail, parolees with curfews, repeat offenders and fugitives wanted for anything from car theft to assault. The idea was to find as many of them as possible and disrupt their routine. Catch them buying milk, or driving to their girlfriend's house. If they weren't wanted for arrest, the objective was to search them for weapons, ask questions, make them feel paranoid about being watched. In this way the MEOCS brand itself became a powerful tool, a passive crime deterrent, creating the impression of an all-seeing, all-knowing Squad with endless resources for close surveillance ... It was the same routine for the [Middle Eastern Organised Crime Squad] Highway Patrol – constant interaction.¹

I. Introduction

This chapter is concerned with the use of legal resources in the proactive policing of people of Middle Eastern background and appearance in New South Wales. It focuses on two legal resources: random breath test (RBT) provisions, which are contained in the *Road Transport Act 2013* (NSW), and Firearms Prohibition Orders (FPOs) and the attendant FPO search powers, contained in the *Firearms Act 1996* (NSW). In short, these legal resources have contributed to the maintenance of the Middle Eastern suspect community by licencing the police to intervene against people of Middle Eastern background and appearance upon the basis of their identity (or perceived identity) and associations, irrespective of whether they have formed legally-articulable suspicion that the people in question have engaged in substantive wrongdoing.

I do not contend that RBT and FPO powers are the only powers used to police the Middle Eastern suspect community, nor do I suggest that these powers are only used

¹ Yoni Bashan, *The Squad* (HarperCollins, 2016) 22–23.

in the policing of the Middle Eastern suspect community. On the contrary, RBT and FPO powers are part of a ‘suite’ or ‘toolkit’ of powers available to all police officers in New South Wales. Nevertheless, in providing these case studies, I intend to illustrate that the police in New South Wales have developed deliberate strategies of using RBT and FPO powers as legal resources to target members of the Middle Eastern suspect community as ‘the usual suspects’, in line with the operational shifts towards proactive and intelligence-led policing that have been evident in New South Wales over the last two decades.

Extending my original research, I sketch how RBTs and FPOs are being used to stage proactive, aggressive, and targeted policing interventions in furtherance of objectives including conducting surveillance, gathering intelligence, effecting disruption, and imposing authority. In doing so, I aim to strengthen and deepen the claims made in Chapters IV and V about the centrality of proactive policing rationalities and methodologies to the Police Force’s approaches to policing the Middle Eastern suspect community. In particular, the case studies in this chapter support the contention in Chapters IV and V that much of the work of squads tasked with policing the Middle Eastern suspect community has involved targeting drivers and laying charges for traffic-related offences.

The chapter proceeds as follows. In Part II, I establish the meaning of the term ‘legal resources’ and situate the term in the relevant bodies of literature on street policing. In Part III, I focus on the legal resource of the RBT, before turning to consider FPOs and FPO search powers in Part IV. The chapter concludes in Part V.

II. Legal Resources, Police Proactivity, and Social Ordering

My choice to use the term ‘legal resources’ in this chapter stems from two interrelated observations about ‘street policing’ or ‘patrol policing’ in the relevant literature – and especially in the writings of Egon Bittner, Michael Chatterton, Richard V. Ericson and

David Dixon.² First, a fundamental insight of the sociological tradition of police research, begun in the 1960s, was that while police work sometimes involves law enforcement, the police mandate is not reducible to law enforcement. Rather, police work is preoccupied with reproducing social order, and law enforcement is merely one component of the police's social ordering work.³ Second, police officers may use procedural and substantive criminal laws as 'legal resources' (or 'tools') in their attempts to reproduce social order, but they also have alternative resources at their disposal, as explored further below.⁴

The police mandate of reproducing social order has a strong historical basis in English-speaking policing jurisdictions.⁵ This is particularly the case in New South Wales, given that the state was once a penal colony. As explained by Dixon, 'policing in the early colonial period [in New South Wales] has to be understood as a general enterprise of social ordering from which the responsibilities of a professional police only gradually emerged as a distinct area'.⁶ In continuance of this colonial legacy, expansive 'powers of discipline and surveillance' remain firmly rooted in the functions of the New South Wales police organisation.⁷ It is important to acknowledge here that the police's imprimatur to discipline, surveil, control and 'order' the population has always borne most heavily on Aboriginal and Torres Strait Islander peoples, given the police's prominent, institutionalised, and ongoing role in colonialism in Australia.⁸

² Egon Bittner, 'The Police on Skid-Row: A Study of Peace Keeping' (1967) 32(5) *American Sociological Review* 699; Michael Chatterton, 'Police in Social Control' in Joan FS King (ed), *Control Without Custody? Papers Presented to the Cropwood Round-Table Conference, December 1975* (University of Cambridge Institute of Criminology, 1976) 104; Richard Ericson, *Reproducing Order: A Study of Police Patrol Work* (University of Toronto Press, 1982); David Dixon, *Law in Policing: Legal Regulation and Policing Practice* (Clarendon Press, 1997); David Dixon et al, 'Reality and Rules in the Construction and Regulation of Police Suspicion' (1989) 17 *International Journal of the Sociology of Law* 185.

³ Robert Reiner, 'Police Research in the United Kingdom: A Critical Review' (1992) 15 *Crime and Justice* 435, 458–60; Bittner, above n 2, 699–701; Ericson, above n 2, 51; Dixon, above n 2, 20, 11–13, 51, 58, 63, 78–80, 98, 103–04.

⁴ Bittner, above n 2, 710; Chatterton, above n 2, 5, 114–15; Ericson, above n 2, 9, 12–13, 16, 20, 196–97; Dixon, above n 2, 12, 31, 78–79.

⁵ Bittner, above n 2, 706–14; Ericson, above n 2, 6–7, 18–19, 137, 203–05; Dixon, above n 2, 49–64; Satnam Choongh, *Policing as Social Discipline* (Clarendon Press, 1998) 50–59.

⁶ Dixon, above n 2, 63.

⁷ Ibid 59.

⁸ Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) ch 3.

What, though, is the ‘social order’ that the police in New South Wales and elsewhere reproduce, and how do they do it? Some themes can be drawn out from the international literature. According to Ericson, the order that police are mandated to reproduce is ‘the existing order ... Their sense of order and the order they seek to reproduce [is] that of the status quo’.⁹ In practice, police impressions or understandings of the ‘status quo’ are mediated by police institutional knowledges which distinguish ‘respectable’ people from those who are ‘disreputable’ or otherwise troublesome.¹⁰ Traditionally, members of socially marginal groups, including ethnic minority communities, have tended to fall into the latter categories.¹¹ Controlling and disciplining people who are disreputable and troublesome – and especially those people’s uses of public space – are tasks that are inextricable from the police mandate of reproducing social order.¹² As summed up by Ericson, ‘[p]atrol officers have a mandate to reproduce civilization in this form, maintaining the boundaries of deviant ghettos and in keeping the streets clean of those who are, at the most, offensive rather than offenders’.¹³

In addition to drawing distinctions between ‘respectable’ and ‘disreputable’ people, street police also reproduce social order by distinguishing those who are ‘normal’ or ‘expected’ from those who are ‘incongruent’ or ‘out-of-place’. Determining whether an individual ‘fits in’ with the ‘variable contexts of activity, place and time considered by officers to be normal’ within their patrol areas, ‘according to criteria such as age, sex and class’ is a quintessential street policing task.¹⁴ When police determinations about incongruity interact with suspicions that relate to a person’s identity (for example, because that individual belongs to a socially marginal group), police may well act on that suspicion by stopping the person in question to make inquiries. For instance, the earlier examples of Omar Bensaidi and his friends being stopped and questioned in Sydney’s eastern suburbs (Chapter I), and the Menai Massacre (Chapter IV), provide good illustrations of interactions initiated by police because young men

⁹ Ericson, above n 2, 7.

¹⁰ Ibid 137; Dixon et al, above n 2, 186; Chatterton, above n 2, 115–16.

¹¹ Dixon et al, above n 2, 186–87.

¹² Ericson, above n 2, 6.

¹³ Ibid 18–19.

¹⁴ Dixon et al, above n 2, 186–87; Ericson, above n 2, 8, 18–19, 149.

with racialised physical features were determined to be incongruent or out-of-place in predominately ‘white’ and affluent Sydney localities.

In interactions with members of the public, police ‘suspicion is built up and dispersed’ – while police may wish to take further action against the individual, thereby lengthening the process of the interaction, they may also decide that no further intervention is necessary.¹⁵ It is through these interactions that police seek to maintain the status quo; however, for Ericson, ‘order is not simply transmitted in an unproblematic manner but is worked at through processes of conflict, negotiation and subjection’ between the police and those who are policed.¹⁶ It is for this reason that it is more appropriate to consider police interventions as attempts to reproduce social order than to speak of order being preserved or maintained.

The term ‘legal resources’ draws attention to the fact that police officers use the law at their discretion in pursuance of their own institutional objectives. As summed up by Chatterton, it is necessary to turn away from ‘the conventional idea that laws are things to be enforced, and [think] of them instead as resources to be used to achieve the ends of those who are entitled or able to use them’.¹⁷ It is important to stress that police officers do not always make use of legal resources in the course of their work; for example, it is well established in the literature that police officers will often try to secure a suspect’s ‘consent’¹⁸ to interventions such as searches, and thereby effectively side-step the deployment of legal powers.¹⁹ Nevertheless, as explained by Ericson, the law can provide the police with useful tools:

The criminal law is always there as a background resource, part of the officer’s ‘office’... Its enabling provisions (e.g. regarding checks and searches after proactive stops on suspicion) provide an excuse to intervene in the lives of people who are deemed to be in need of a reminder of their place within the ‘order of things’. This ‘ordering’

¹⁵ Dixon et al, above n 2, 189.

¹⁶ Ericson, above n 2, 7.

¹⁷ Chatterton, above n 2, 114.

¹⁸ Dixon, above n 2, 91.

¹⁹ Dixon, above n 2, ch 3; Dixon et al, above n 2, 190, 195, 203; Ericson, above n 2, 147–48. However, it is important to note that consent often functions as a legal power when it is explicitly formulated in statutes.

is the goal, although from the officer's perspective, in some circumstances, the product can be enriched by getting a charge against the offensive person.²⁰

As acknowledged by Ericson in the above passage, legal resources are not only used for law enforcement, and can be useful to police in staging proactive interventions against those who are socially marginal and/or out-of-place, with a broader view to reproducing social order.

The literature discussed in this section pre-dates the concerted organisational shifts towards proactive policing that began to rise to prominence in New South Wales and other jurisdictions around the turn of the twenty-first century. As sketched in Chapters IV and V, the intensified use of low-level legal resources like stop and search powers to intervene against disorderly conduct (or so-called anti-social behaviour) and minor offending is central to these proactive policing agendas.²¹ These practices have stemmed from the logic, generally associated with 'Broken Windows' theory, that acting against disorder and minor crimes prevents more serious offending in the future.²² As detailed in Chapter V, police organisations in English-speaking jurisdictions have also adopted forward-looking rationalities and methodologies of intelligence-led policing. In keeping with proactive and intelligence-led policing strategies, police are generally more concerned to anticipate, disrupt, and displace crime than they are to pursue traditional criminal justice responses such as charge and prosecution.²³

²⁰ Ericson, above n 2, 197.

²¹ David Dixon, 'Broken Windows, Zero Tolerance, and the New York Miracle' (1998) 10(1) *Current Issues in Criminal Justice* 96, 104; David Dixon, 'Beyond Zero Tolerance' in Tim Newburn (ed), *Policing: Key Readings* (Willan, 2005) 483, 498; David Dixon, 'Why Don't the Police Stop Crime?' (2005) 38(1) *Australian & New Zealand Journal of Criminology* 4, 9–13; Mike Maguire, 'Policing by Risks and Targets: Some Dimensions and Implications of Intelligence-Led Crime Control' (2000) 9(4) *Policing and Society* 315.

²² Dixon, 'Broken Windows, Zero Tolerance, and the New York Miracle', above n 21; Dixon, 'Beyond Zero Tolerance', above n 21, 485–91; Dixon, 'Why Don't the Police Stop Crime?', above n 21, 9–13.

²³ See, eg, Martin Innes and James WE Sheptycki, 'From Detection to Disruption: Intelligence and the Changing Logic of Police Crime Control in the United Kingdom' (2004) 14(1) *International Criminal Justice Review* 1; Maguire, above n 21.

Taking these shifts in policing logics and strategies as a point of departure, the following two parts of this chapter explore the NSW Police Force's use of two different legal resources in its policing of the Middle Eastern suspect community. While controlling and ordering socially marginal groups has always been key to the police mandate, I trace how the police in New South Wales have developed deliberate strategies of using legal resources to target members of the Middle Eastern suspect community as 'the usual suspects' in line with operational shifts towards proactive and intelligence-led policing.

The legal resources discussed below are 'suspicionless' powers. This means that police are not required to form any level of legally-articulable suspicion that a crime has been committed before deploying the stop and search powers provided to them under the RBT and FPO regimes.²⁴ Though scholars have previously noted that police officers can circumnavigate legal requirements when invoking powers that require them to first form reasonable grounds for their suspicion,²⁵ suspicionless powers provide police with hugely permissive and enabling legal resources. As explored below, these resources have facilitated the aggressive and targeted policing of the Middle Eastern suspect community in various ways, as they have assisted the police to conduct surveillance and collect information on the movements of people and vehicles, to engage in disruption policing, and to communicate police authority. Overall, the police's use of these resources is not principally oriented towards securing charges or prosecutions, but towards asserting and reproducing order.

III. Random Breath Testing

Random Breath Testing Provisions in New South Wales

Since December 1982, police officers in New South Wales have been empowered to stop motor vehicles to test whether drivers are driving under the influence of alcohol,

²⁴ In the case of RBT provisions, police are licenced to perform suspicionless vehicle stops. Meanwhile FPO search powers allow for suspicionless stops and searches of FPO subjects and vehicles and premises owned or occupied by FPO subjects. On suspicionless search powers generally, see Ben Bowling and Estelle Marks, 'The Rise and Fall of Suspicionless Searches' (2017) 28(1) *King's Law Journal* 62.

²⁵ Dixon et al, above n 2; Dixon, above n 2, ch 3; Ericson, above n 2, 147–48.

or ‘drink-driving’. Such tests are generally referred to as ‘random breath tests’ (RBTs).²⁶ During an RBT, a police officer will instruct the driver of a vehicle that has been stopped to talk into a mobile device that can detect whether alcohol is present on the driver’s breath. If the mobile device indicates that there is alcohol on the driver’s breath, the driver will be instructed to blow into a ‘breath analysing instrument’, or ‘breathalyser’, which is a portable device used to determine the concentration of alcohol present in an individual’s breath.²⁷ If the breathalyser displays a reading which indicates that the level of alcohol present in the driver’s system exceeds the legal limit, police will arrest the driver and submit them to a third test at a mobile breath testing station or a police station.²⁸ During the third test police officers use a testing device that is capable of providing a more accurate reading than the portable devices used in roadside testing.

The authority conferred on police to conduct RBTs is contained in the *Road Transport Act 2013* (NSW) (*‘Road Transport Act’*), which states that:

- (1) A police officer may require a person to submit to a breath test in accordance with the officer's directions if the officer has reasonable cause to believe that:
 - (a) the person is or was driving a motor vehicle on a road, or

²⁶ NSW Police Department, *Report of the New South Wales Police Department, 1 June 1982 to 30 June 1983* (1984) 42–43. On occasion, groups of police officers will conduct operations in which they cordon off an area by the side of a road (an ‘RBT station’) and direct successions of vehicles traveling on that road to pull over so that each driver can be subjected to an RBT. The discussion in this chapter does not focus on the use of RBT powers in dedicated RBT operations, because, in theory, any person driving through a specific geographic area has an equal chance of being stopped if an RBT operation is in place in that area (of course, this does not necessarily mean that RBT operations are evenly dispersed throughout the state of New South Wales). In any case, the discussion in this chapter focuses on the police’s purposeful use of the RBT provisions to stop targeted vehicles.

²⁷ In NSW there are defined thresholds (or ‘legal limits’) which set out the maximum concentration of alcohol a person can have in their system whilst they are driving a vehicle. See Transport for New South Wales, *Blood Alcohol Limits* <<https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholanddrugs/drinkdriving/bac/index.html>>.

²⁸ A mobile breath testing station is usually a bus or van that has been converted into mobile alcohol testing facility, which is sometimes colloquially referred to as a ‘booze bus’.

(b) the person is or was occupying the driving seat of a motor vehicle on a road and attempting to put the motor vehicle in motion, or

(c) the person (being the holder of an applicable driver licence) is or was occupying the seat in a motor vehicle next to a learner driver while the driver is or was driving the vehicle on a road.²⁹

There are limited circumstances in which an individual can refuse to take a breath test.³⁰

In 1984, the Police Department explained that the primary objective of introducing random breath testing powers was to deter people from drink-driving by increasing the likelihood that individuals who chose to drink-drive would be detected.³¹ As stated by the Police Department shortly after the introduction of random breath testing, the overarching goal of the RBT regime was to preserve life and reduce vehicular accidents: ‘the success of Random Breath Testing must be assessed in terms of death and accident rates rather than in terms of offenders apprehended’.³² Some research has indicated that breath testing powers did result in an initial decline in vehicle accidents,³³ though the rate of the decline is said to have slowed somewhat by the early 1990s.³⁴

The RBT provisions contained in the *Road Transport Act* are more permissive than other legislative provisions that empower police officers in New South Wales to

²⁹ *Road Transport Act 2013* (NSW) sch 3 div 1 cl 2.

³⁰ A breath test cannot be carried out if: it might compromise an individual’s health; if individual is at home; or if the ‘relevant period’ in which to conduct a test has expired. As stated in *Road Transport Act 2013* (NSW) sch 3 div 1 cl 2 sub-cl (2)(a), the relevant period in which police can conduct a breath test expires two hours after the individual last drove a vehicle, though a blood, oral fluid or urine assessment may be conducted thereafter. See *Road Transport Act 2013* (NSW) sch 3 div 1 cl 2.

³¹ NSW Police Department, *Report of the New South Wales Police Department, 1 June 1982 to 30 June 1983*, above n 26, 43.

³² *Ibid.*

³³ *Ibid*; Ross Homel, Peta McKay and John Henstridge, ‘The Impact on Accidents of Random Breath Testing in New South Wales: 1982-1992’ (Paper presented at 13th International Conference on Alcohol, Drugs and Traffic Safety, Adelaide, 1995) <<http://casr.adelaide.edu.au/T95/paper/s29p6.html>>.

³⁴ Homel, McKay and Henstridge, above n 33.

conduct vehicle stops. The police's primary vehicle stop powers are contained in s 36A of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ('LEPRA'), which requires police to suspect on reasonable grounds that they have the right to search or arrest an occupant of a vehicle before stopping that vehicle.³⁵ As set out in *R v Rondo*, which is the case law authority for defining the meaning of 'reasonable suspicion' (and itself a case which involved a vehicle stop), reasonable suspicion is:

... [l]ess than a reasonable belief but more than a possibility ... A reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.³⁶

As explained by Vicki Sentas and Camilla Pandolfini, 'reasonable suspicion is not arbitrary, and an officer must be able to show some factual basis for the suspicion'.³⁷ In determining whether an officer possessed reasonable grounds for their suspicion it is necessary to pay regard to the information borne in mind by the officer at the time that he or she invoked his or her powers.³⁸ In short, the requirement that an officer must form reasonable suspicion before deploying s 36A LEPRA powers means that those powers are more restrictive of police discretion than the breath testing powers in Schedule 3 of the *Road Transport Act*.

Despite the stated rationale for introducing random breath testing in the 1980s, RBT provisions do not require police to suspect that a driver is (or has been) drink-driving before they initiate a vehicle stop. Indeed, police officers need not suspect that the driver of a vehicle, or any of his or her passengers, has committed *any offence* before stopping the vehicle for the purpose (or the ostensible purpose) of administering a breath test. As noted above, police only need to show that an individual was driving a vehicle, or supervising a learner driver who was driving a vehicle, to stop that vehicle

³⁵ *Law Enforcement Powers and Responsibilities Act 2002* (NSW) s 36A. LEPRA s 37 also allows police to stop a vehicle belonging to establish roadblocks and conduct stops at the roadblocks, and LEPRA s 87J-K empowers police to stop a vehicle on designated 'target roads' or 'target areas' in the uncommon circumstance that emergency public disorder powers have been authorised.

³⁶ *R v Rondo* [2001] NSWCCA 540, [53(a)].

³⁷ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan. A Report of the Youth Justice Coalition NSW* (2017) 16.

³⁸ *Ibid.*

using their RBT powers.³⁹ Moreover, there are no checks or balances in place to ensure that vehicle stops carried out using random breath testing powers are genuinely random.⁴⁰ RBT provisions therefore provide police in New South Wales with a ‘suspicionless’ power, and with a powerful legal resource to carry out proactive and targeted (that is, *non-random*) vehicle stops.

The 2016 District Court matter of *R v Buddee* illustrates how police officers use RBT provisions as a legal resource to proactively stop vehicles for purposes that they consider to be important, including conducting surveillance and gathering information and intelligence. In October 2015, Michelle Buddee was driving a vehicle in Merrylands, a suburb 25 kilometres west of Sydney.⁴¹ Buddee was accompanied by a passenger, Kalil Baysari.⁴² Buddee and Baysari were followed by four police officers travelling in a police vehicle for ‘some time’ before the officers initiated a vehicle stop.⁴³

One of the officers involved in the vehicle stop gave evidence that he decided to stop Buddee’s vehicle to conduct an RBT, but the court later determined that he did not actually administer the breath test in question.⁴⁴ After stopping Buddee and Baysari and searching their vehicle, the police charged Buddee on indictment with supply of a prohibited drug based on her alleged possession of methylamphetamine.⁴⁵ Her lawyer later challenged the legality of the stop in court.⁴⁶

McClintock DCJ ruled to exclude the evidence obtained in the search of Buddee’s vehicle because the police did not carry out the RBT stop to conduct a random breath test. His Honour inferred that the police more likely stopped the car out of a desire to proactively investigate Baysari, who had previously been convicted of drug possession.⁴⁷ In His Honour’s words, ‘the totality of the evidence inevitably leads to

³⁹ *Road Transport Act 2013* (NSW) sch 3 div 1 cl 2.

⁴⁰ *Road Transport Act 2013* (NSW) sch 3 div 1 cl 2 sub-cl 3.

⁴¹ *R v Buddee* [2016] NSWDC 422, [1].

⁴² *Ibid* [10], [25], [35], [39].

⁴³ *Ibid* [9].

⁴⁴ *Ibid* [10].

⁴⁵ *Ibid* [1].

⁴⁶ *Ibid* [2].

⁴⁷ *Ibid* [42], [44], [70].

the conclusion that the road safety power to pull people over randomly for a breath test was in fact being selectively relied upon to pull people over on a hunch or mere suspicion that they might be involved in crime'.⁴⁸ His Honour also expressed his concern that the police's conduct in *Buddee* was not merely an aberration, as he estimated that the police had developed a systematic, proactive methodology of using the legal resource of the RBT to pull vehicles over and subsequently investigate their drivers, as discussed further below. Indeed, as noted by McClintock DCJ, the police officers that stopped Buddee and Baysari were involved in a proactive policing operation codenamed Operation Lightfingers which was targeting anti-social behaviour and stealing offences in the Merrylands area.⁴⁹

In considering the legality of the police stopping Buddee's vehicle, His Honour drew on Bell J's judgment in the Supreme Court of Victoria matter of *DPP v Magnus Kaba*,⁵⁰ and held that 'liberty is only to be curtailed by specific provisions of law'⁵¹ and that '[a]ny action [police] take must be justified by law, they must act in a *bona fide* exercise of a power and not for an ulterior purpose'.⁵² Carrying these principles into his interpretation of the RBT provisions contained in the *Road Transport Act*, His Honour held that random breath testing powers provide police with a tool to help ensure that drivers are not 'drink-driving' in the interests of road safety management, and that Parliament did not intend for the powers to be used for criminal investigation. As such, McClintock DCJ held that the vehicle stop in *R v Buddee* was unlawful, as were the detentions of Buddee and Baysari while licence checks were carried out,⁵³ and that their questioning was improper.⁵⁴

His Honour further noted that he had previously considered matters in which RBT powers were used in furtherance of criminal investigation and that he had sought advice as to whether he could take those matters into account as being indicative of

⁴⁸ Ibid [81].

⁴⁹ Ibid [7].

⁵⁰ *DPP v Magnus Kaba* [2014] VSC 52.

⁵¹ *R v Buddee* [2016] NSWDC 422, [88].

⁵² Ibid [89].

⁵³ Ibid [112]–[113].

⁵⁴ Ibid [113].

systemic misconduct or ‘as a routine abuse of power’.⁵⁵ His Honour was ultimately persuaded not to take judicial note of the previous matters,⁵⁶ though the reasons why are not made clear in the judgment. While McClintock DCJ’s judgment in *R v Buddee* expressed disapproval of the widespread use of RBT provisions by police as a legal resource for proactively pursuing goals related to criminal investigation and surveillance, *Buddee* is but one case. His Honour’s judgment and his decision to exclude the evidence obtained in the search of Buddee’s car do not alter RBT provisions and the police’s capacity to use those provisions as a legal resource in furtherance of criminal investigation and other ends aside from road safety management. This is especially so if other judges and magistrates are reticent to take the same stance as McClintock DCJ, as was claimed by one lawyer who participated in an interview for this project (discussed below).⁵⁷

Though RBT provisions provide police with a legal resource to stop any driver in New South Wales, lawyers whom I interviewed indicated that their clients of Middle Eastern background and appearance are often pulled over for RBTs. As described by those lawyers, RBT provisions grant police broad discretion to stop drivers, and a driver’s Middle Eastern appearance often ‘triggers’ or prompts police to exercise this discretion. It was suggested that this is because Middle Eastern identity is understood by police as being a predictor of an individual having a propensity for criminal behaviour. It is important to note that these findings were drawn from a small number of interviews (n=3), making it difficult to draw robust conclusions or generalisations without first gathering further data. Nevertheless, the data that has been collected indicates that police have developed a strategy of using RBT powers as a legal resource to proactively stop vehicles driven by people of Middle Eastern appearance for the purposes of criminal investigation and authority imposition. In this way, the RBT provision facilitates suspect construction by providing officers with a tool to police

⁵⁵ Ibid [117].

⁵⁶ Ibid [118].

⁵⁷ It is also not clear how regularly (or reliably) decisions such as McClintock DCJ’s are disseminated throughout the police organisation by police lawyers. On this point, see David Dixon, ‘Issues in the Legal Regulation of Policing’ in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 36, 46.

people based not on their conduct, but because of their presumed Middle Eastern identity, as determined by racial markers.

‘Driving While Arab’: Random Breath Tests and Police Proactivity

Like McClintock DCJ, lawyers interviewed for this project observed that breath testing powers are a key tool used by police officers in New South Wales in furtherance of proactive policing objectives. Lawyers whom I interviewed indicated that police breath testing powers are amongst the most common powers used by police in their policing of people of Middle Eastern background and appearance. For example, Nathan explained that:

A typical tactic would be to pull [people of Middle Eastern background and/or appearance] over on an RBT ... because you can be pulled over for whatever reason. If your job is a highway patrol officer you can't just sit around, so they get pulled over.⁵⁸

Of course, the specific institutional role of highway patrol officers relates to traffic law enforcement and the maintenance of road safety, so it is somewhat unsurprising that highway patrol officers use RBT provisions in their work. However, as described by a second lawyer, Charlie, the use of RBT powers as a legal resource for initiating proactive vehicle stops is pervasive throughout the police organisation. Charlie's clients of Middle Eastern background and appearance are stopped using RBT provisions with such frequency that he has appropriated the terminology ‘Driving While Arab’ from the pejorative term ‘Driving While Black’, which has gained widespread currency for describing racialised traffic stops in the United States. In Charlie's words:

... it's very frequent to see RBT powers used to stop vehicles ... and some people talk about, sort of, adopting and modifying the expression ‘Driving While Black’ to ‘Driving While Arab’.⁵⁹

⁵⁸ Interview with Nathan (Lawyer). In this chapter, I have used pseudonyms in place of interviewee's names.

⁵⁹ Interview with Charlie (Lawyer).

The term ‘Driving While Black’ is connected to concerns about racial profiling. The concept of racial profiling rose to prominence in the United States in the 1990s, and draws attention to the role that race plays in providing a basis for police suspicion of wrongdoing.⁶⁰ The American bodies of literature on the criminalisation of the behaviour of ‘Driving While Black’, and on racial profiling more broadly, have raised important conceptual concerns about racialised policing practices. I have, however, chosen to leave much of the American literature on racialised traffic stops and racial profiling aside in this chapter, primarily because of the vast differences between the Australian and American legal systems, histories, constitutions, and constitutional cases. Nevertheless, as explained below, the American concept of the ‘pretext’ (or ‘pretextual’) traffic stop is useful in conceptualising the NSW Police’s use of RBT as a legal resource to proactively initiate vehicle stops for criminal investigation.

Conceptualising Targeted Breath Test Stops as Pretext Stops

In essence, ‘pretext stops’ occur when police carry out a traffic stop in pursuance of an ulterior motive or objective for which they lack the legal basis to act. As expanded by May et al.:

Pretext stops occur when police officers temporarily detain an individual for particular reasons, but then use that stop to search or question him [sic] in relation to offenses for which the officers have neither reasonable suspicion nor probable cause. The stops are “pretextual” in the sense that the purported reason for the stop is not the real reason for which the officers are acting. Using pretext legal justifications is a common and efficient tool that allows police officers to engage in investigations that they would not otherwise be justified in performing.⁶¹

⁶⁰ See, eg, David A Harris, ‘Driving While Black and All Other Offences: The Supreme Court and Pretextual Traffic Stops’ (1997) 87(2) *Journal of Criminal Law and Criminology* 544; David A Harris, ‘The Stories, the Statistics and the Law: Why “Driving While Black” Matters’ (1999) 84(2) *Minnesota Law Review* 265; John Lamberth, ‘Driving While Black: A Statistician Proves That Prejudice Still Rules the Road’ in Stephen K Rice and Michael D White (eds), *Race, Ethnicity and Policing: New and Essential Readings* (New York University Press, 2010) 31.

⁶¹ Jeff D May, Rob Duke and Sean Gucco, ‘Pretext Searches and Seizures: In Search of Solid Ground’ (2013) 30(2) *Alaska Law Review* 151, 153.

Though pretext stops have a well-established history in American policing practice,⁶² and vehicle stops have long been linked to police proactivity,⁶³ the use of pretext stops by American police intensified following the advent of the so-called ‘war on drugs’.⁶⁴ According to David A. Harris, ‘amongst other depredations’, the war on drugs has ‘spawned racist profiles of supposed drug couriers. On our nation’s highways today, police ostensibly looking for drug criminals routinely stop drivers based on the color of their skin’.⁶⁵ Pretext stops were sanctioned by the United States Supreme Court decision of *Whren v. United States*,⁶⁶ which effectively authorised police officers to stop any person who commits any traffic violation, no matter how minor the violation in question.⁶⁷ Scholars have since argued that, by extension, *Whren* has authorised the police to stop, question, and perhaps search drivers with certain racialised physical features – and especially those who appear to be African Americans or of Hispanic background – under the pretext of acting against a driving violation.⁶⁸

There is a strong resonance between the literature on pretext stops in the United States and how lawyers interviewed for this project described the use of RBT powers by police in New South Wales. In short, Nathan, Charlie and Joshua all stated that young men of Middle Eastern background and appearance are susceptible to proactive vehicle stops that are initiated by the police under the pretext of administering a breath test. This was explained succinctly by Charlie, who used the term ‘Lebanese’ as a shorthand

⁶² Harris, ‘Driving While Black and All Other Offences: The Supreme Court and Pretextual Traffic Stops’, above n 60, 559.

⁶³ Charles R Epp, Steven Maynard-Moody and Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* (The University of Chicago Press, 2014) 8–9, 31–32, 153.

⁶⁴ Michael C Gizzi, ‘Pretextual Stops, Vehicle Searches and Crime Control: An Examination of Strategies Used on the Frontline of the War on Drugs’ (2011) 24(2) *Criminal Justice Studies* 139; Epp, Maynard-Moody and Haider-Markel, above n 63, 33–34.

⁶⁵ David A Harris, *Driving While Black: Racial Profiling on Our Nation’s Highways: An American Civil Liberties Union Special Report* (1999) <<https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways>>. See also Epp, Maynard-Moody and Haider-Markel, above n 63, 33–34.

⁶⁶ *Whren v. United States*, 517 U.S. 806 (1996).

⁶⁷ Epp, Maynard-Moody and Haider-Markel, above n 63, 34–35; Harris, ‘Driving While Black and All Other Offences: The Supreme Court and Pretextual Traffic Stops’, above n 60; Harris, ‘Driving While Black: Racial Profiling on Our Nation’s Highways: An American Civil Liberties Union Special Report’, above n 65.

⁶⁸ Harris, ‘Driving While Black and All Other Offences: The Supreme Court and Pretextual Traffic Stops’, above n 60; Harris, *Driving While Black: Racial Profiling on Our Nation’s Highways: An American Civil Liberties Union Special Report*, above n 65; Epp, Maynard-Moody and Haider-Markel, above n 63, 35.

for ‘Middle Eastern’, and who also explained why it is imprudent to attempt to determine a person’s racial or ethnic background by reading their body:

Anecdotally, you’re a lot more likely to be pulled over ... if you fit a certain profile, or if you fit certain profiles plural, and, that’s regularly if you’re a young Lebanese-looking male. I say Lebanese-looking because the cops don’t really know, in that his parents could be from a range of different countries ... Irony is probably the wrong word, but it’s noteworthy that, at least in my experience, that Lebanese youth are a lot less likely to be driving whilst under the influence of alcohol, but [RBT powers are] used very frequently.⁶⁹

To reiterate an earlier sentiment, Charlie’s observations indicate that ‘random breath testing’ is a misnomer, because the deployment of RBT powers in this manner is not random: it is targeted. Why, though, does looking Middle Eastern make a person susceptible to targeted, proactive vehicle stops? As explained by Joseph Pugliese in his consideration of what it means to be ‘of Middle Eastern appearance’, individuals ‘of Middle Eastern appearance’ are liable to attract police attention, surveillance, and intervention, because their physical appearances signal a potential proclivity for crime, irrespective of their conduct or whether they do indeed possess Middle Eastern heritage.⁷⁰ In providing police with a pretext and legal resource to proactively initiate vehicle stops, the RBT regime contributes to the maintenance of the Middle Eastern suspect community by facilitating police interventions that target people upon the basis of their (presumed) Middle Eastern heritage, rather than their conduct.

Nathan, Charlie and Joshua all believed that police use their RBT powers to initiate pretextual vehicle stops in situations where they do not have grounds to use their LEPPRA powers. They rationalised that police proactively sought to stop vehicles

⁶⁹ Interview with Charlie (Lawyer). It is worth noting here that the police possess RBT ‘recording sheets’. See *R v Buddie* [2016] NSWDC 422, [36]. However, it is not clear whether police record RBTs systematically, and whether the sheets in question allow officers to note a person’s racial or ethnic background or perceived racial or ethnic background.

⁷⁰ Joseph Pugliese, ‘The Locus of the Non: The Racial Fault-Line of “of Middle Eastern Appearance”’ (2003) 2(3) *Borderlands e-journal* <http://www.borderlands.net.au/vol2no3_2003/pugliese_non.htm>; Joseph Pugliese, ‘Biotypologies of Terrorism’ (2008) 14(2) *Cultural Studies Review* 49.

driven by people of Middle Eastern background and appearance using RBT powers with a view to subsequently searching those vehicles. The experiences that lawyers relayed resembled McClintock DCJ's observations about police using RBT powers as a legal resource to enable them to engage in 'ulterior' objectives that were related to criminal investigation, rather than road safety. Take, for example, the following comments from Charlie:

The majority of cases that I have that involve the police stopping a vehicle and then subsequently searching it, the initial basis, or I should say purported basis because I don't accept that it's the real basis, is that they wish to subject the driver to a random breath test ... I would suggest that they're perhaps abusing it in order to provide a justification for stopping a vehicle where one otherwise wouldn't exist.⁷¹

Though RBT powers do not confer authority on police to conduct vehicle searches, Nathan provided further insight into how police officers might justify exercising their ss 36 and 36A LEPRA powers to search a vehicle that they had stopped under the pretext of administering a breath test:

... and then [once the vehicle is stopped, police] will say something like, there will be a claim that there's a strong smell of cannabis, or the guy would be a bit nervous, especially if he did have drugs in his car, but then, that in and of itself is probably not enough. Then they'll get searched.⁷²

Nathan's observations attest to the need to view police suspicion as an emergent quality of police interactions with members of the public, like stops and searches. As noted by Dixon et al., police interventions like stops and searches are a social process, in which 'suspicion is built up and dispersed', rather than (as the law sees it), a single event in which police either do or do not possess grounds for suspicion.⁷³

⁷¹ Interview with Charlie (Lawyer).

⁷² Interview with Nathan (Lawyer).

⁷³ Dixon et al, above n 2, 189.

Lawyers further explained that, in addition to facilitating criminal investigation and information gathering by creating an opportunity to conduct a vehicle search, pretextual RBT stops also allow police to impose their authority upon members of the Middle Eastern suspect community. Taken together, these objectives of investigation, intelligence-gathering, and authority imposition contribute to a broader social ordering agenda of reminding people of the status quo.⁷⁴ Joshua's observations were particularly illuminating in this regard and will be discussed below.

Proactive Vehicle Stops and Social Ordering

Joshua stated that he had developed the impression that police officers 'revel' in the idea that they can 'pick off the criminal element' of Middle Eastern background communities by using RBT powers. He also believed that those police officers felt that it was defensible for them to utilise their RBT powers to facilitate speculative, pretext stops of drivers of Middle Eastern background and appearance because it was appropriate to take a proactive approach to policing the Middle Eastern suspect community. As elaborated by Joshua, '[p]olice say "we'll miss a lot of crime if we don't do that" ... "Nobody is telling us [what is going on], so we'll get every car"'.⁷⁵ While stops of the kind described by Joshua are speculative, they are ultimately conducted in pursuance of an agenda of social ordering. As observed by Ericson, while there are 'fewer sources of information' in proactive encounters like pretext vehicle stops because they tend to be triggered by officers' hunches or intuitions, the stop itself constitutes a detention, and, by extension, an imposition of the police's authority. At the same time, such a stop allows police to conduct checks (such as licencing checks) and conduct informal questioning in furtherance of investigation and intelligence-gathering.⁷⁶

Joshua also pointed out that the young men that tend to get 'caught up' in RBT stops and vehicle searches are not usually part of the 'criminal element' that police set out to target. Instead, they are more often tradespeople who take out sizeable loans on

⁷⁴ See Ericson, above n 2, 138.

⁷⁵ Interview with Joshua (Lawyer).

⁷⁶ Ericson, above n 2, 139.

luxury cars. For the young men in question, luxury cars have symbolic value as a status item. For police, seeing a young man of Middle Eastern background driving a luxury car signals incongruity and arouses suspicion that the driver may have engaged in illegal activities, like drug distribution.⁷⁷ This example is a classic illustration of the kind of assessments that police make regarding whether individuals are ‘out-of-place’.⁷⁸ In recognition of this fact, and of the normalisation of police attention in the lives of young men of Middle Eastern background and appearance, Joshua added that he often advises his clients to buy common, relatively inexpensive cars in the hopes that they will ‘fit in’ and evade police attention.⁷⁹

Vehicle stops and vehicle searches are not simply a minor inconvenience in the lives of those policed. As an example, Joshua recalled an incident in which one of his clients, who was a young man of Lebanese background, was travelling in a vehicle with three other young men of Lebanese background when they were stopped by police who stated that they wished to submit the driver to a breath test. Shortly after, police commenced a search of the vehicle in which they saw fit to disassemble the interior panels of the vehicle’s doors. Despite damaging the young man’s car, the police uncovered no illegal behaviour. Joshua further recalled that when the young men challenged the legality of the search, they were verbally abused by the police, who, from his recollection, called the young men ‘Muslim dogs’ and ‘inbred bastards’.⁸⁰ Again, this demonstrates the police desire to assert their authority over the young men, which was likely amplified by the young men’s lack of deference. The police may also have been attempting to provoke a response from the young men, to justify further intervention against them.⁸¹

The lawyers interviewed for this study also agreed that when police did detect offences in vehicle searches that arose out of RBT stops, it was difficult to challenge those search events in court. Joshua perceived that the judiciary feels that ‘criminals will be emboldened’ if they seek to limit police RBTs powers, so the judiciary does not see fit

⁷⁷ Interview with Joshua (Lawyer).

⁷⁸ Dixon et al, above n 2, 186–87; Ericson, above n 2, 8, 18–19, 149.

⁷⁹ Interview with Joshua (Lawyer).

⁸⁰ Interview with Joshua (Lawyer).

⁸¹ Ericson, above n 2, 17.

to act to constrain the powers in question.⁸² These observations run counter to McClintock DCJ's position in *Buddee* that RBT powers should not be used to facilitate criminal investigation, and suggest that police will continue to use RBT powers as a legal resource and as a pretext for stopping vehicles driven by members of the Middle Eastern suspect community.

Having explored how RBT powers provide police with a legal resource to proactively intervene against people of Middle Eastern background and appearance, I turn now to discuss FPOs and FPO search powers in New South Wales. Like the RBT regime, the FPO regime provides police in New South Wales with legal resources which can be used to investigate and collect information about members of the Middle Eastern suspect community. However, where the use of RBT powers appears to be primarily triggered by officers reading an individual's physical features as being Middle Eastern, I argue below that the police's use of FPOs and FPO search powers is more intelligence-led and geared towards carrying out disruption policing by staging persistent interventions against members of particular Middle Eastern background families and their associates. These interventions also communicate police authority to the police's targets.

IV. Firearms Prohibition Orders

The New South Wales Police Commissioner has been authorised to issue an FPO against any person he (or she) sees as unfit to possess a firearm 'in the public interest' since 1973.⁸³ Before October 2013, FPOs simply prohibited subjects from owning or using firearms, and they were issued sparingly.⁸⁴ However, the amendment of the *Firearms Act 1996* (NSW) ('*Firearms Act*') in October 2013 expanded the FPO regime by prohibiting FPO subjects from possessing firearms parts and ammunition, and by

⁸² Interview with Joshua (Lawyer).

⁸³ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996* (2016) 13. According to the NSW Ombudsman, '[t]he Commissioner has formally delegated his authority [to issue Firearms Prohibition Orders] to any police officer of or above the rank of Inspector'.

⁸⁴ Before the *Firearms Act* was amended in late 2013, only 62 FPOs were active in New South Wales. See Andrew Clennell and Alicia Wood, 'Hammer Drops Hard', *The Daily Telegraph* (Sydney), 8 November 2013, 4.

introducing suspicionless search powers for use against FPO subjects.⁸⁵ As explored in this part of the chapter, the Police Force – and especially the former Middle Eastern Organised Crime Squad – has since made concerted use of FPO search powers as a legal resource in its policing of the Middle Eastern suspect community.

FPO search powers were created in response to heightened public concerns about criminal gangs and firearms-related crimes. As outlined by the New South Wales Ombudsman, political and media rhetoric about ‘gangs’ committing ‘drive-by shootings’ and other firearms-related crimes has abounded in New South Wales over the last two decades, with concerns centring on Sydney’s south-western and western suburbs, and the alleged activities of Outlaw Motorcycle Gangs (OMCGs) and the Brothers for Life (see also Chapter V).⁸⁶ Public concerns about firearms-related crimes were seemingly validated in late 2012 when the NSW Bureau of Crime Statistics and Research (BOCSAR) stated that there had been a two-fold increase in drive-by shootings in New South Wales between 1995 and 2011.⁸⁷ However, an issues paper published by BOCSAR in April 2013 clarified that there had not been a statistically significant increase in the overall number of non-fatal shootings in New South Wales during that period.⁸⁸

Nevertheless, throughout 2013 the Liberal Government, Labor Opposition and Police Force all sought to demonstrate that they were acting against ‘gangs’ and firearms-related crimes. In February 2013, Operation Apollo was established to combat firearms-related crimes in Sydney’s south-west, with the Middle Eastern Organised Crime Squad at its helm (see Chapter V). Several months later, Operation Apollo was merged with a second gun crime squad, Operation Spartan, to form Operation Talon.⁸⁹

⁸⁵ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 24.

⁸⁶ Ibid 14; NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900* (2016) 15.

⁸⁷ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 86, 15; NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 3, 14.

⁸⁸ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 86, 15; NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 14.

⁸⁹ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 14.

Towards the latter end of the year, the New South Wales Government and the Labor Opposition competed to introduce a Bill to the Legislative Assembly that would attach warrantless search powers to FPOs. Expanding police powers in this manner has a communicative function; as spelled out by David Dixon, '[a]n extension of police power is one of the clearest ways in which politicians can signify that they take public concerns seriously'.⁹⁰

In August 2013, then-Opposition Leader John Robertson publicly declared his intention to introduce a Bill that would create FPO search powers.⁹¹ Meanwhile, he and other Labor MPs rebuked the Liberal Government for 'fail[ing] to do what is required when it comes to ending gun crime'.⁹² Not to be outdone, then-Premier Barry O'Farrell took to the media the same day that Robertson announced his plans, and retorted that the Minister for Police and the Attorney-General had already begun to develop a Bill that would create FPO search powers.⁹³ After opposing the Labor Opposition's Firearms Amendment (Prohibition Orders) Bill 2013,⁹⁴ the O'Farrell Liberal Government introduced the (largely-comparable) Firearms and Criminal Groups Legislation Amendment Bill. The Government's Bill attracted little opposition and passed through Parliament.⁹⁵

FPO search powers therefore joined an ever-expanding list of 'legislative responses' introduced in New South Wales since the mid-2000s to 'increase the number of tools and strategies available to police to tackle organised crime and criminal gangs'.⁹⁶ Another legislative response introduced to this end, discussed in the previous chapter of this thesis, was the amendment of the *Crimes Act 1900* (NSW) to criminalise participation in criminal groups.⁹⁷ As detailed in Chapter V, one of the chief goals of

⁹⁰ Dixon, above n 2, 85.

⁹¹ 'NSW Opposition Plan to Search Criminals Without a Warrant', *Australian Broadcasting Corporation (ABC) News*, 20 August 2013.

⁹² Ibid.

⁹³ Ibid. See also New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 September 2013, 23544 (Barry O'Farrell, Premier).

⁹⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 September 2013, 23407 (Brad Hazzard, Minister for Planning and Infrastructure).

⁹⁵ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 16-17.

⁹⁶ NSW Ombudsman, *The Consorting Law Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*, above n 86, 13.

⁹⁷ See *Crimes Act 1900* (NSW) s 93T.

legislators and the police in targeting so-called ‘criminal groups’ or ‘criminal organisations’ has been to disrupt the functioning of those groups. Moreover, criminalising associations between alleged members of criminal groups, and between alleged members and their broader social networks (including family members and friends), has been a key technique or method by which police have attempted to effect disruption.⁹⁸ Following on from these observations, the subsequent section of this chapter will explore how police have operationalised FPO search powers as a legal resource for disrupting ‘criminal groups’ and especially ‘Middle Eastern criminal groups’ and their associates. First, though, it is necessary to establish the nature of FPO search powers and how they differ from other police search powers in New South Wales.

As set out in the *Firearms Act*, FPO search powers permit police to:

- (a) detain a person who is subject to a firearms prohibition order, or
 - (b) enter any premises occupied by or under the control or management of such a person, or
 - (c) stop and detain any vehicle, vessel or aircraft occupied by or under the control or management of such a person,
- and conduct a search of the person, or of the premises, vehicle, vessel or aircraft, for any firearms, firearm parts or ammunition.⁹⁹

FPO search powers are subject to the following condition:

The powers of a police officer under this section may be exercised as reasonably required for the purposes of determining whether a

⁹⁸ See, eg, NSW Ombudsman, *The Consorting Law: Report on Part 3A, Division 7 of the Crimes Act 1900* (2016), above n 86; Alex Steel, ‘Consorting in New South Wales: Substantive Offence or Police Power?’ (2003) 26(3) *University of New South Wales Law Journal* 567; Andrew Dyer, ‘Pre-Crime Control Measures: Anti-Associations Laws’ in Thomas Crofts and Arlie Loughnan (eds), *Criminalisation and Criminal Responsibility in Australia* (Oxford University Press, 2015) 261.

⁹⁹ *Firearms Act 1996* (NSW) s 74A (2).

person who is subject to a firearms prohibition order has committed an offence under section 74A (1), (2) or (3).¹⁰⁰

As stated above, under s 74 it is a criminal offence for FPO subjects to acquire or possess firearms, parts of firearms, and/or ammunition, and it is also an offence for FPO subjects to use firearms.¹⁰¹

FPO search powers are far more permissive than the powers that police already possessed to search for firearms, firearm parts, and ammunition under LEPR. According to LEPR s 47, police can apply to ‘an eligible issuing officer’ for a warrant to search premises if they reasonably suspect to find ‘things’ associated with an offence.¹⁰² LEPR s 23 also authorises police to search individuals that they have arrested. If police have not made an arrest, they are further authorised under LEPR to search an individual or vehicle in a public place. With respect to person searches, LEPR s 21 stipulates that the police must reasonably suspect that an individual is in possession of stolen or unlawfully obtained goods, a dangerous article or a prohibited plant or drug, or that they otherwise possess an item intended to be used in the commission of an indictable offence, before stopping and searching that person.¹⁰³ Meanwhile, as stated in Part III, in the case of vehicle searches, LEPR s 36 requires police to reasonably suspect that a vehicle has been used in connection with certain offences, or that they have grounds to arrest or search an occupant of that vehicle, before searching.¹⁰⁴ Alternatively, if an individual consents to police searching his or her premises, vehicle, or person, then the police do not need to exercise their LEPR powers to conduct such a search.

Unlike the LEPR powers described above, FPO search powers are subject to the unique stipulation that they can be deployed by police ‘as reasonably required’.¹⁰⁵ The Police Compliance Branch of the NSW Ombudsman,¹⁰⁶ which was required to review

¹⁰⁰ *Firearms Act 1996* (NSW) s 74A(1).

¹⁰¹ *Firearms Act 1996* (NSW) pt 7

¹⁰² *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 47.

¹⁰³ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 21.

¹⁰⁴ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 36.

¹⁰⁵ *Firearms Act 1996* (NSW) s 74A (1).

¹⁰⁶ The Police Compliance Branch of the NSW Ombudsman and the Police Integrity Commission (‘PIC’ – discussed in Chapter Four) were merged to form a new Law Enforcement Conduct

the Police Force's use of FPO search powers for the first two years of their operation,¹⁰⁷ found that the Police Force did not create any policies or guidelines to assist officers in determining whether an FPO search was 'reasonably required'.¹⁰⁸ The Ombudsman therefore welcomed submissions from key stakeholders about the meaning of a search being 'reasonably required' during its review period. Stakeholders were divided in their opinions of whether police needed to form suspicion that an FPO subject had committed an offence against their Order before deploying their FPO search powers, or if police could reasonably use their FPO search powers to investigate whether FPO subjects had engaged in *any* offending behaviour.¹⁰⁹ Police themselves were also at odds about the meaning of conducting an FPO search 'as reasonably required'. Having reviewed police records and spoken to operational police, the Ombudsman reported that while some police held that it was necessary to suspect that an offence had been committed before using their FPO search powers, others viewed FPO search powers as 'roving', suspicionless powers.¹¹⁰

In *Director of Public Prosecutions (NSW) v Shaba*,¹¹¹ Fagan J of the Supreme Court of New South Wales affirmed that FPO search powers are indeed suspicionless powers.¹¹² In September 2016, Dilan Shaba was driving a vehicle in Warwick Farm, 30 kilometres south-west of Sydney, when he was stopped by a police officer who wished to submit him to an RBT.¹¹³ The police officer who stopped Shaba conducted checks on his licence, and became aware that Shaba 'had in the past been convicted of serious offences involving violence' and that there existed 'intelligence holdings which associated him with "Assyrian organised crime drugs"'.¹¹⁴ The officer also

Commission (LECC) in 2017. See Law Enforcement Conduct Commission, *Our History* <<https://www.lecc.nsw.gov.au/what-we-do/who-we-are-and-what-we-value/our-history>>.

¹⁰⁷ The *Amendment Act* stipulated that the NSW Ombudsman would review the police's use of FPO search powers from 1 November 2013 until 31 October 2015. See *Firearms Act* s 74B(1). In November 2014 it was reported that the Police Force was refusing to release relevant information to the Ombudsman. See Kristy Needham, 'NSW Police Resist Oversight, Says Ombudsman', *The Sydney Morning Herald* (Sydney), 9 November 2014, 4.

¹⁰⁸ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 48-49.

¹⁰⁹ *Ibid* 48-49.

¹¹⁰ *Ibid*.

¹¹¹ *Director of Public Prosecutions (NSW) v Shaba* [2018] NSWSC 811.

¹¹² *Shaba* is the highest precedent to date concerning the police's use of FPO search powers.

¹¹³ *Director of Public Prosecutions (NSW) v Shaba* [2018] NSWSC 811, [9].

¹¹⁴ *Ibid*.

became aware that Shaba was subject to an FPO, and that he had altered the registration details of his vehicle the same day that he was issued the FPO.¹¹⁵ The officer inferred that Shaba had changed the car's registration details because he was trying to evade the police's attention,¹¹⁶ and therefore felt that it was reasonable to search Shaba and his vehicle to ensure that he was complying with the terms of his FPO.¹¹⁷ When searching Shaba's vehicle the police officer located cannabis, and Shaba was subsequently arrested and charged.¹¹⁸

On 8 November 2017, a magistrate in the Liverpool Local Court held that the search of Shaba's vehicle was unlawful, because the officer who searched Shaba had conceded that he did not believe on reasonable grounds that Shaba had committed an offence under s 74A of the *Firearms Act* when he exercised his FPO search powers.¹¹⁹ The magistrate therefore excluded the evidence that had been uncovered during the search.¹²⁰ On appeal, Fagan J held that the magistrate had erred in law, reasoning that the *Firearms Act* does not stipulate that police officers must suspect or believe that an FPO subject has contravened the terms of their Order (that is, acquired a firearm, firearm part or ammunition or used a firearm) when deploying their FPO search powers.¹²¹

Fagan J further endorsed Parliament's decision to authorise police to search FPO subjects at will:

By allowing such a power to be exercised without the relevant police officer holding a suspicion as to the commission of an offence Parliament has not effected any broad or substantial erosion of civil liberties. It is an understandable policy choice that the power of search should be relatively untrammelled in the interests of public safety, at the expense of a limited and highly directed intrusion upon

¹¹⁵ Ibid [8], [10].

¹¹⁶ Ibid [10]–[12].

¹¹⁷ Ibid [11].

¹¹⁸ Ibid [1], [12].

¹¹⁹ *Director of Public Prosecutions (NSW) v Shaba* [2018] NSWSC 811, [10], [13].

¹²⁰ Ibid [2].

¹²¹ Ibid [42].

the privacy of the inherently small class of persons against whom firearms prohibition orders are made.¹²²

His Honour's assertion that FPO search powers should be 'relatively untrammelled' so that police can ensure public safety by intervening against the 'small class' of FPO subjects appears to be premised on two, interrelated assumptions about the FPO regime: that the Police Commissioner (and the Commissioner's delegates) will issue FPOs sparingly, and only against those people most likely to partake in firearms-related crimes. These underlying assumptions and the discretion afforded to the police in issuing FPOs and deploying FPO search powers are problematised in the next section of this chapter.

As shown below, political and police institutional priorities and pressures have resulted in a considerable increase in the number of FPOs issued. Moreover, FPOs have been issued to individuals who have never committed or been connected to firearms-related crimes. This is because police are using the powerful legal resources provided by FPOs and suspicionless FPO search powers to carry out overt surveillance and target associations in the hopes of disrupting so-called 'criminal networks'. In doing so, the Police Force has made a concerted effort to utilise FPO search powers to police so-called 'Middle Eastern criminal groups'.

The Police Force's Use of Firearms Prohibition Orders and Firearms Prohibition Order Search Powers

One of the Liberal Government's stated objectives in attaching warrantless search powers to FPOs was to increase the number of FPOs issued by the Police Force.¹²³ To this end, the Government involved senior police officers in the development of the Firearms and Criminal Groups Legislation Amendment Bill 2013.¹²⁴ While police organisations and police unions often lobby for alterations and increases in police

¹²² Ibid [27].

¹²³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 September 2013, 23544 (Barry O'Farrell, Premier).

¹²⁴ Ibid. See also Kerri-Anne Hellier, 'Gun Search Powers Boosted', *Fairfield City Champion* (Sydney), 18 September 2013, 5.

powers,¹²⁵ in this instance the police organisation was able to exert influence over the development of the laws governing its powers.

As had been hoped by the Government, the number of FPOs issued by the Police Force proliferated after the *Firearms Act* was amended to create FPO search powers. Before the introduction of FPO search powers on 1 November 2013, 62 people in New South Wales were subject to an FPO.¹²⁶ By the end of January 2014, less than three months after the new FPO search powers were introduced, the police had reportedly issued a further 185 FPOs.¹²⁷ Then, in early 2016, having filed an application under the *Government Information (Public Access) Act 2009* (NSW) ('GIPAA'), Ava Benny-Morrison of Fairfax Media reported that 'just over 250 FPOs were issued in 2014 and 520 were handed out the following year'.¹²⁸ The figures reported by the NSW Ombudsman at the end of 2016 were even more substantial. According to the Ombudsman, between 1 November 2013 and 31 October 2015, 1317 people in NSW were served with a Firearms Prohibition Order.¹²⁹ Axiomatically, then, a vast amount of people became vulnerable to the use of FPO search powers.

As sketched in the previous section, the Government asserted that FPO search powers would provide an effective mechanism to police firearms-related crime in New South Wales. For example, when introducing the Firearms and Criminal Groups Legislation Amendment Bill 2013 to the Legislative Assembly, then-Premier Barry O'Farrell stressed that '[t]his legislation will concern those who are involved in criminal activities involving guns'.¹³⁰ However, despite the extensive use of FPO search powers by the Police Force during the Ombudsman's two-year review period, FPO searches uncovered very few firearms, firearm parts, or ammunition.

¹²⁵ Dixon, above n 2, 86.

¹²⁶ Clennell and Wood, above n 84.

¹²⁷ Mark Morri, 'Taskforce Targeting Gunmen of Sydney', *The Daily Telegraph* (Sydney), 24 January 2014, 11.

¹²⁸ Ava Benny-Morrison, 'Police Firearm Orders Rise as Gun Crime Falls', *The Sydney Morning Herald* (Sydney), 17 October 2016, 8.

¹²⁹ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 5.

¹³⁰ *Ibid* 16, 38.

In the first 22 months of the Ombudsman's review period, police used FPO search powers to conduct 2571 searches of 634 people, which were grouped into 1343 discrete interactions or 'search events'. During those search events, police seized merely 35 firearms, nine firearm parts, and 26 lots of ammunition: meaning that a firearm, part of a firearm, or ammunition was uncovered in just two per cent of all FPO searches conducted during the Ombudsman's review period.¹³¹ This is a very low hit rate, especially given that FPO powers are supposed to be targeted powers. Moreover, according to the Ombudsman, merely 15 of these 1343 search events resulted in a charge for committing a firearms-related offence, and the charges laid were proven for just eight of the search events in question.¹³²

However, in deploying their FPO search powers, police set out to do more than seize firearms, firearm parts, and ammunition and pursue prosecutions. Senior police officers have publicly explained that the drastic increase in the number of FPOs issued by the Police Force is attributable to a 'deliberate strategy' of utilising FPO search powers as a legal resource to proactively target and disrupt the activities of 'emerging crime figures'.¹³³ These 'crime figures' are principally 'Middle Eastern organised crime targets' and members of OMCGs.¹³⁴ As articulated by the NSW Police Force's Organised Crime Director, Detective Chief Superintendent Ken Finch, FPOs provide police with:

... tools we can actually utilise to try and disrupt and prevent gun-related violence ... [However] notwithstanding the extraordinary nature of the powers ... We exercise them judiciously and responsibly.¹³⁵

Given the police's stated intention of using FPO search powers to police 'Middle Eastern organised crime targets', it is unsurprising that the MEOCS was the most

¹³¹ Ibid 113.

¹³² Ibid 36.

¹³³ Benny-Morrison, above n 128. See also Matt Wordsworth, 'Interview: Frank Mennilli, NSW Police Acting Deputy Commissioner', *Australian Broadcasting Corporation Transcripts*, 17 November 2016.

¹³⁴ Benny-Morrison, above n 128.

¹³⁵ Ibid.

frequent user of FPO search powers during the Ombudsman's review period,¹³⁶ and that half of all searches conducted during the review period took place in Sydney's south-west.¹³⁷ As explored in Chapter V, the Middle Eastern Organised Crime Squad's official mandate was to target and disrupt 'Middle Eastern organised crime groups', and much of the Squad's work took place in Sydney's south-western and western suburbs (though, as detailed in Chapter V, the Squad's work extended beyond the bounds of its official mandate). As noted at the end of Chapter V, the Middle Eastern Organised Crime Squad and Gangs Squad were merged to form the Criminal Groups Squad (CGS) in December 2017. The first order of business for the new CGS was to carry out a series of raids using FPO search powers, 'on 24 premises of known Middle Eastern criminals and their associates just to make sure those groups and families don't think they can relax'.¹³⁸

Crucially, as noted in a submission provided to the NSW Ombudsman by the NSW Bar Association, the Police Force's criteria for issuing an FPO does not hinge on a person having a firearm.¹³⁹ Indeed, during its review, the Ombudsman found that three-quarters of the people searched using FPO search powers had not been convicted of a firearms-related offence.¹⁴⁰ Moreover, FPOs were regularly issued based on untested police intelligence, and allegations that an individual was fraternising with members of criminal groups.¹⁴¹ At first blush, then, there appears to be a disjuncture between the stated aims and the effects of the FPO regime: people who have not been linked with firearms-related crimes are being issued with coercive Orders that prohibit them from possessing firearms, on the basis of their associations. However, given senior police officers' explanations that FPOs are being used for purposes related to disruption, it is not surprising that FPOs are being issued to people upon the basis of their associations with alleged members of criminal groups. The police's methodology

¹³⁶ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 32-33, 112.

¹³⁷ Ibid 31.

¹³⁸ Mark Morri, 'Raids Put Targets in Sights of New Squad' *The Daily Telegraph*, 18 December 2017 16.

¹³⁹ NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83.

¹⁴⁰ Ibid 73.

¹⁴¹ Ibid.

of targeting associations to effect disruption was discussed in Chapter V, but will also be examined and problematised further below.

The purpose of the next section is to sketch how the Force has used FPO search powers as a legal resource in its attempts to disrupt the activities of alleged members of ‘Middle Eastern crime groups’ and their networks and associations. The discussion in the following section concentrates on the case study of *Hamid v Commissioner of Police*,¹⁴² though additional examples from recent news reportage about FPOs are subsequently provided. The section problematises three key aspects of the police’s FPO regime that are discernible in *Hamid*, which are: the primacy that was afforded to police suspicion, intelligence, and risk profiles in determining Hamid to be an appropriate FPO subject because of her associations; the pre-emptive outlook inherent in the police’s issuance of the FPO; and the notion that using FPO search powers to stage frequent interventions against Hamid would disrupt future firearms-related crimes despite her unblemished criminal record.

The following section draws upon a small dataset. In reviewing the police’s use of FPO search powers between 2013 and 2015, the Ombudsman was able to draw upon systematic data about FPO stops and searches. However, as noted in Chapter III, the NSW Police Force does not publish data about stops and searches, and FPO searches are no exception. Given this institutional non-transparency, it is not clear to what extent the issues raised in the next section are also apparent in other cases. Further research should be conducted to provide greater insight into how the Police Force uses FPOs and FPO search powers, which might include issuing the police with a GIPAA Application for data about the deployment of FPO search powers.

It is worth noting, though, that the examples discussed below strengthen the argument advanced in Chapter V that the policing of Middle Eastern background familial associations has become a prominent mode or process of racialised policing through which the police in New South Wales act on collective Middle Eastern identities. As discussed in Chapter V, the police in New South Wales have characterised many Middle Eastern background families as ‘Middle Eastern criminal groups’ and

¹⁴² *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43.

practically and rhetorically treated Middle Eastern familial relations as a potential source of criminality. Accordingly, police have used FPO search powers as a legal resource to intervene against certain Middle Eastern background families and their associates. In turn, the FPO regime has broadened the parameters of the Middle Eastern suspect community, given that FPOs are being used as a legal resource to police people because they have Middle Eastern families and associates, and not because they have engaged in substantive wrongdoing.

Hamid v Commissioner of Police

Hamid v Commissioner of Police is one of two reviews of an FPO carried out by the NSW Civil and Administrative Tribunal (NCAT)¹⁴³ that has been published since FPO search powers were introduced.¹⁴⁴ Amany Hamid was issued a Firearms Prohibition Order by a delegate of the Police Commissioner in May 2017.¹⁴⁵ Soon after, Hamid applied to NCAT for a review of her FPO, hoping that the Tribunal would revoke the FPO.¹⁴⁶ However, the Tribunal ultimately affirmed the Police Force's decision to issue Hamid with the FPO.¹⁴⁷

As conceded by the Tribunal, 'viewed in isolation, [Hamid] is not an appropriate subject for an FPO'.¹⁴⁸ When she was issued with her FPO, Hamid had no criminal history and had never been charged with a criminal offence.¹⁴⁹ Moreover, Hamid had never been interviewed or cautioned about a firearms-related offence, and she had never applied for a firearms licence.¹⁵⁰ Nevertheless, she was issued with a Firearms Prohibition Order, and became susceptible to the use of FPO search powers, which, as noted above, were ostensibly introduced to help police ensure that FPO subjects are

¹⁴³ Avenues to appeal an FPO are very limited. After being served an FPO, an individual has 28 days to apply to the Police Force for a review of the decision. If this review process is unfavourable, some FPO subjects can apply to the NCAT and request a further review. NSW Ombudsman, *Review of Police Use of the Firearms Prohibition Order Search Powers: Section 74A of the Firearms Act 1996*, above n 83, 29.

¹⁴⁴ The other is *Dalziel v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 79, which also affirmed the Police Force's issuance of the FPO.

¹⁴⁵ *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43, [1].

¹⁴⁶ *Ibid* [1].

¹⁴⁷ *Ibid* [69].

¹⁴⁸ *Ibid* [58].

¹⁴⁹ *Ibid* [13], [58].

¹⁵⁰ *Ibid*.

compliant with the terms of their Orders (that they have not acquired a firearm, a firearm part, or ammunition and that they have not used a firearm).

After she was issued with her FPO, Hamid was stopped and searched frequently. In the eight-and-a-half-month period between Hamid being issued the FPO and her review in the NCAT,¹⁵¹ her vehicle was stopped approximately once a week, and her home raided twice.¹⁵² Officers attached to the now-defunct MEOCS gave evidence that they were involved in some of these search events, but it is not clear from the Tribunal decision whether police officers attached to other squads or commands also used FPO search powers to search Hamid, her vehicle or her home.¹⁵³

The Tribunal's decision in *Hamid v Commissioner of Police* acknowledges the profound effects that the intensive use of FPO search powers can have on an FPO subject. In the Tribunal's own words, the police's use of FPO search powers against Hamid 'ruined her life'.¹⁵⁴ Hamid's relationships with her mother and three siblings deteriorated after she was issued with an FPO and began to be persistently searched by police.¹⁵⁵ Every member of Hamid's immediate family witnessed police carrying out an FPO search,¹⁵⁶ and Hamid's mother also requested that Hamid leave their family home after the home was raided by police because the raid caused her anxiety and depression.¹⁵⁷ Searches of Hamid's home and vehicle also dissuaded her friends from associating with her.¹⁵⁸ When the Tribunal handed down its decision, Hamid was also searching for a job and was concerned that she would not be able to pass working with children checks or obtain a security licence if she attempted to gain certain types of employment.¹⁵⁹ She further believed that a prospective landlord would evict her if it became apparent that police had raided premises she was occupying.¹⁶⁰ However,

¹⁵¹ Hamid was issued the FPO on 18 May 2017 and her review was heard in the NCAT on 2 February 2018. Ibid [1].

¹⁵² Ibid [16], [17].

¹⁵³ Ibid [27].

¹⁵⁴ Ibid [17].

¹⁵⁵ Ibid [12], [18].

¹⁵⁶ Ibid [12].

¹⁵⁷ Ibid [18]. See also Ava Benny-Morrison, 'I Was Trying to Attack Myself Not the Police', *The Daily Telegraph* (Sydney), 27 May 2018, 14.

¹⁵⁸ *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43, [20].

¹⁵⁹ Ibid [19].

¹⁶⁰ Ibid [3], [4], [59].

despite recognising that Hamid had no criminal record and that the use of FPO search powers had caused her significant detriment, the Tribunal declined to revoke her FPO.

According to the Tribunal, Hamid was issued with an FPO because of her associations with two men of Middle Eastern background ‘well known to the police’.¹⁶¹ The associations in question were Hamid’s respective relationships with the two men. The first relationship was between Hamid and her ex-husband, Ahmed Alameddine. Hamid and Alameddine share a daughter.¹⁶² At the time that Hamid was issued with an FPO, Alameddine was incarcerated, and Hamid was not in contact with him.¹⁶³ Hamid had also previously taken out Apprehended Violence Orders against Alameddine.¹⁶⁴ The second relationship was between Hamid and her de-facto partner, Esam Elkodat.¹⁶⁵ Hamid and Elkodat were still in a relationship at the time of the Tribunal hearing. Elkodat and Alameddine were both subject to FPOs when Hamid was issued with her FPO.¹⁶⁶

As explained by the Tribunal, Hamid was issued with an FPO because the police felt that her associations with Alameddine and Elkodat could potentially threaten public safety:

[Hamid] contends that she herself has never been accused of doing anything wrong and that it is unfair that she should be subjected to an FPO solely because of her associations. But *it is her associations that create the danger to public safety* with which the [NSW Police Commissioner] is concerned. Her successive involvement with two men who have criminal records and are subject to FPOs presumably results from her own voluntary choices, and she has never suggested otherwise.¹⁶⁷

¹⁶¹ Ibid [3], [59].

¹⁶² Ibid [3], [13].

¹⁶³ Ibid [13].

¹⁶⁴ Ibid [3], [13].

¹⁶⁵ Ibid [4].

¹⁶⁶ Ibid [4], [59], [63].

¹⁶⁷ Ibid [65] (emphasis added).

The Tribunal elaborated on the police's assessment that Hamid's associations with Alameddine and Elkodat could jeopardize public safety:

[Hamid] has been closely involved with two men who are well known to the police, have significant criminal histories ... and have FPOs against them ... It is well known that criminal organisations often seek to make use of persons who have no criminal record in the furtherance of their criminal activities. One of the forms that can take is arranging for such persons to store prohibited firearms on behalf of gang members ... The applicant's obviously genuine preoccupation with her young daughter's welfare makes it seem unlikely that she would willingly cooperate with any plan to store firearms at her house in preparation for some kind of gang warfare ... Given her connections, however, it is not impossible that she could be coerced into doing so.¹⁶⁸

According to the Tribunal, the police issued Hamid with an FPO and staged frequent interventions into her daily life using FPO search powers because they anticipated that she *might* store a firearm for one of her associates (that is, her estranged ex-husband or her de-facto partner) at some point in the future, stating: '[i]t is well known that criminal organizations often seek to make use of persons who have no criminal record in the furtherance of their criminal activities'.¹⁶⁹ The Tribunal did not provide any evidence in support of this claim.¹⁷⁰ The implication of the Tribunal's above reasoning is that being a cleanskin is itself grounds for suspicion if you associate with suspects.

As noted by Hamid's former legal representatives in written submissions to the Tribunal, even if criminal networks do seek to involve so-called 'cleanskins' in their activities, 'the fact that [Hamid] is in a de-facto relationship with a person with a significant criminal history does not give any reason for her to be in possession of firearm'.¹⁷¹ Moreover, it can be inferred from the Tribunal's decision that Hamid was not fully informed of the information that police relied upon in issuing her FPO. For

¹⁶⁸ Ibid [60], [63].

¹⁶⁹ Ibid [60].

¹⁷⁰ Ibid [60].

¹⁷¹ Ibid [42].

example, she expressed her concern that intelligence relating to Elkodat may have formed part of the decision to issue her with the FPO, but that ‘she could not defend herself against evidence and submissions that were confidential’.¹⁷²

In short, the police were reliant on intelligence, risk assessments, and speculation because they were attempting to anticipate Hamid’s future behaviour. As the police’s suspicion of Hamid was dissociated from her prior conduct and any evidence that she had engaged in substantive wrongdoing, the issuance of her FPO is more accurately characterised as having pre-empted that she would store a gun for Elkodat or Alameddine than as having prevented her from doing so. As pre-emptive frames take on greater significance in contemporary policing and criminal justice (see Chapter II), intelligence also takes on greater significance because evidence of wrongdoing is scant.¹⁷³ This is because police are acting to forestall future crimes that have not occurred and which *may not* occur.¹⁷⁴ Like other policing processes and practices, intelligence-gathering and intelligence-led policing can reveal and sustain dynamics of racialisation. Above all else, intelligence-led policing is animated by the desire to act on risky and threatening people, behaviours, and places. *Hamid v Commissioner of Police* provides a stark illustration of how intelligence-led policing efforts are liable to zero in on racialised identities and associations, which are treated as proxies for criminality, deviance, and risk. Moreover, in acting on their racialised intelligence products, pre-empting that Hamid would engage in future crimes and policing her accordingly, the police effectively ‘pre-enacted’ Hamid’s wrongdoing.¹⁷⁵

The realisation of the police’s forecast of Hamid’s future offending (as articulated by the Tribunal) is contingent on three circumstances eventuating. First, ‘gang warfare’ would have to break out; second, Elkodat and/or Alameddine would have to be involved in that warfare; and third, Hamid would have to store a gun for one of them. Indeed, the Tribunal further predicted that Hamid would likely resist pressure to store a prohibited firearm but that she could potentially be coerced into doing so by either

¹⁷² Ibid [47].

¹⁷³ Jude McCulloch and Dean Wilson, *Pre-Crime: Pre-Emption, Pre-Caution and the Future* (Routledge, 2016) ch 6.

¹⁷⁴ Ibid 26, 37, 51.

¹⁷⁵ See ibid 67–71.

Elkodat or Alameddine.¹⁷⁶ The unfortunate irony is that because of the police and Tribunal's conjecture that Hamid might be coerced into offending by Elkodat or Alameddine in the future, she was deemed worthy of being subjected to highly coercive police interventions with FPO search powers to forestall or undermine her propensity for future offending by disrupting her everyday routine.

As noted in the previous section, a senior police spokesperson candidly explained that the police use FPO search powers in their efforts to disrupt 'Middle Eastern organised crime targets' and firearms-related crimes.¹⁷⁷ As explored in Chapter V, the normative literature generally describes disruption policing as being motivated by a desire to degrade the functioning of criminal networks by staging interventions that remove or incapacitate key actors and resources.¹⁷⁸ Though FPO search powers are a powerful tool for staging constant interventions against FPO subjects because of their nature as suspicionless search powers, there is no suggestion in the NCAT decision that police believed Hamid was an active player in a criminal network. What, then, does the police's use of FPO search powers in *Hamid v Commissioner of Police* reveal about disruption policing? In short, *Hamid* affirms Sentas's observation that disruption may be aimed at social identities and associations, rather than criminal behaviour.¹⁷⁹ It is probable that in disrupting Hamid's day-to-day life the police set out to achieve several goals, including carrying out surveillance and gathering intelligence about Elkodat's movements,¹⁸⁰ and imposing and communicating authority to Hamid and her family and associates. In any case, a problematic corollary of the disruption practised in this case is that Hamid was alienated from her (non-criminal) family and friends and likely pushed closer towards her criminal associations by the police's interventions.

¹⁷⁶ *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43, [63].

¹⁷⁷ Benny-Morrison, above n 128.

¹⁷⁸ See, eg, Stuart Kirby and Nicki Snow, 'Praxis and the Disruption of Organized Crime Groups' (2016) 19(2) *Trends in Organized Crime* 111; Nick Tilley, 'Intelligence-Led Policing and the Disruption of Organized Crime: Motifs, Methods and Morals' in Thierry Delpuech and Jacqueline E Ross (eds), *Comparing the Democratic Governance of Police Intelligence: New Models of Participation and Expertise in the United States and Europe* (Edward Elgar Publishing, 2016) 153.

¹⁷⁹ Vicki Sentas, 'Policing the Diaspora: Kurdish Londoners, MI5 and the Proscription of Terrorist Organizations in the United Kingdom' (2016) 56(5) *British Journal of Criminology* 898.

¹⁸⁰ Indeed, the police questioned Hamid about Elkodat's whereabouts when they raided her home. See *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43, [16].

Firearms Prohibition Order Search Powers as a Legal Resource for Criminalising Associations

Of course, *Hamid v Commissioner of Police* is but one case. However, the key themes that have been traced in *Hamid* are also discernible in some reportage about the use of FPOs and FPO search powers against Youseff Hamze, Ahmad ‘Rock’ Ahmad, and Arken Abdull Rahim Sharrouf, respectively.

Youseff Hamze is related to Bassam Hamzy and alleged members of the Brothers for Life (discussed in Chapter V).¹⁸¹ In December 2015, in a newspaper article on FPOs that appeared in *The Sydney Morning Herald*, Hamze detailed his experience of being an FPO subject. He explained that:

Wherever I would go, I would be pulled over ... They searched my car and the family in my car ... It was embarrassing, especially for someone who didn’t do anything wrong, being pulled over and searched on the street ... Sometimes it was twice a day.¹⁸²

Hamze’s FPO was eventually revoked after a review by the NCAT in which his lawyers argued that he was a ‘fit and proper person’.¹⁸³

Ahmad Ahmad was issued with an FPO in September 2016 after his brother Walid ‘Wally’ Ahmad was killed in a highly-publicised public-place shooting at a shopping complex at Bankstown, in Sydney’s south-west.¹⁸⁴ Ahmad’s house was raided eleven times between September and December 2016.¹⁸⁵ Ahmad was arrested after one such raid in December 2015 and charged with possession of an unauthorised pistol and acquire a pistol subject to an FPO but pleaded not guilty to both charges. Reports about Ahmad’s appearance in court elaborated that the pistol he had been charged with possessing was, in fact, a toy:

¹⁸¹ Benny-Morrison, above n 128.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Laura Banks, ‘Rocky Days for Brother of Slain Crim’, *The Daily Telegraph* (Sydney), 16 December 2016, 35; ‘NSW: Brother of slain gangland kingpin arrested’, *Australian Associated Press General News*, 15 December 2015.

¹⁸⁵ Banks, above n 184.

The prosecution told the court that a ballistics examination had been carried out on what turned out to be a toy gun found on top of a pile of children's toys, and investigators had deemed it to be an 'imitation firearm' ... Photographs submitted to the court showed the alleged weapon had a green and black trigger and an orange tip. Police will allege that part of the gun had been painted black.¹⁸⁶

Arken Abdull Rahim Sharrouf was issued an FPO on 24 April 2017. The following day, Sharrouf's family home was raided by police, and he was subsequently arrested for allegedly hindering police. Arken Sharrouf is the brother of Khaled Sharrouf, who travelled to territory controlled by the Islamic State of Iraq and the Levant.¹⁸⁷ Arken Sharrouf challenged the lawfulness of the raid on his home, and the Police Force's decision to issue him with an FPO. Sharrouf's lawyer was confident that the police had issued him with an FPO because of his familial association with Khaled Sharrouf, stating '[t]he reality is, had it not been for his affiliation with his brother Khaled, I've got no doubt this wouldn't have happened'.¹⁸⁸ Sharrouf's lawyer also added that '[u]nfortunately, this is a circumstance of guilty by name association'.¹⁸⁹

Like *Hamid v Commissioner of Police*, the three examples above indicate that people of Middle Eastern background are being categorised as suspicious based on their family ties and associations, rather than their conduct, and issued with FPOs as a result. Though the police have publicly stated that they use FPOs and FPO search powers to disrupt 'Middle Eastern organised crime targets', Middle Eastern background families are not tantamount to organised crime groups, and each of the examples above demonstrates that the police's use of FPO search powers more often disrupts everyday life than criminal enterprise. Nevertheless, by providing police with a legal resource with which they can disrupt the daily lives and routines of people of Middle Eastern background, FPOs and FPO search powers assist the police in their social ordering

¹⁸⁶ Ibid.

¹⁸⁷ Sam Buckingham-Jones and Paul Maley, 'Terrorist Khaled Sharrouf's Brother Charged', *The Australian* (Online), 17 May 2017 <<https://www.theaustralian.com.au/news/nation/terrorist-khaled-sharroufs-brother-charged-after-anzac-day-raid/news-story/ad92249770224d85d6e27baa4e3dbf2a>>; Brenden Hills, 'Sharrouf's Sibling's Cop Raid Ranting', *The Daily Telegraph* (Sydney), 17 May 2017, 9.

¹⁸⁸ Buckingham-Jones and Maley, above n 187.

¹⁸⁹ Hills, above n 187.

agenda. FPOs and FPO search powers not only licence police to carry out surveillance and collect information about people and their movements, but persistent FPO searches also assist police in communicating their presence and authority to targeted individuals and their families and associates. Moreover, given that the FPO regime has rendered people of Middle Eastern background and their associates susceptible to coercive police intervention in instances where they are not genuinely suspected of having engaged in substantive criminal wrongdoing (let alone firearms-related crimes), the FPO regime greatly expands the parameters of the Middle Eastern suspect community.

V. Conclusion

Conducting original research for this chapter has been complicated by the Police Force's recording practices and its non-transparency in publishing the figures that it does record about its officers' deployment of formal legal powers. Accordingly, it has been necessary to seek out other sources of information about RBTs and FPOs, such as interviews with lawyers and published court and tribunal judgments. While there is a need for further research to explore how the Police Force use their formal legal powers in proactive policing, this chapter has provided sufficient data to suggest that RBTs and FPO search powers facilitate police interventions against people of Middle Eastern background and appearance upon the basis of factors including their identity (or perceived identity), family backgrounds, and broader associations. These factors do not amount to criminal wrongdoing, but nevertheless bring people of Middle Eastern background and appearance into contact with the police.

Though there are considerable differences between the RBT and FPO regimes in New South Wales, the legal resources discussed in this chapter are effectively 'suspicionless' powers. This chapter has illustrated that the police in New South Wales have developed deliberate strategies of using RBTs, FPOs, and FPO search powers as legal resources to target the Middle Eastern suspect community. These strategies have been developed in keeping with the rationalities and methodologies of proactive and intelligence-led policing, which have become ever-more prominent since the turn of the twenty-first century. As illustrated throughout the chapter, police have deliberately used RBTs and FPOs as tools in pursuit of various aims in their policing of the Middle

Eastern suspect community. The most prominent of these aims have included conducting surveillance, gathering intelligence, effecting disruption, and imposing authority. More specifically, while RBT powers are often used as a resource for targeting drivers (and especially young men) ‘of Middle Eastern appearance’, police have used FPOs in their attempts to disrupt the daily lives and routines of members of particular Middle Eastern background families and their associates.

It seems likely that police will continue to use these legal resources to police the Middle Eastern suspect community in the manner described in this chapter, given that the courts and NCAT have effectively authorised them to do so.

Chapter VII

Community Policing and Community Engagement

I. Introduction

This final substantive chapter considers the mediating role of community policing and community engagement in institutionalising the policing of the Middle Eastern suspect community. The NSW Police Force has articulated a desire for the initiatives described in this chapter to be inclusive and participatory and to build community trust in the police. As discussed below, there are indications that some success has been achieved in these regards. Nevertheless, drawing on Vicki Sentas's research on the community policing of Muslims for counter-terrorism, this chapter argues that the initiatives in question have contributed to suspect community formation.¹ They have done so by designating Middle Eastern background and Muslim communities in New South Wales as the rightful subjects of policing, and by extending the scope and reach of coercion, regulation, and surveillance within those communities.

In considering how community policing and community engagement have contributed to the maintenance of the Middle Eastern suspect community, this chapter follows two subsidiary lines of inquiry. First, the chapter aims to map the processes through which Middle Eastern background and Muslim communities in New South Wales are designated and normalised as the subjects of community policing and community engagement. Second, the chapter examines the extent to which community policing and community engagement work with Middle Eastern background and Muslim communities in New South Wales is inclusive and participatory, and whether such work has produced trust and confidence in the police.

Any number of activities can be categorised as community policing and community engagement. I have confined the discussion in this chapter to the Police Force's two most prominent initiatives for engaging culturally and linguistically diverse (CALD)

¹ Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014) ch 5.

communities in New South Wales: Multicultural Community Liaison Officers (MCLOs), and the Police Multicultural Advisory Council (PMAC).² Although MCLOs were the subject of some research in the late 1990s and early 2000s,³ the PMAC is yet to be considered by scholars. In continuance of my original research, much of the data in this chapter is drawn from interviews that I conducted with community workers and members of the PMAC. Specifically, the chapter includes data from eleven interviews conducted between late 2016 and mid-2018. It also incorporates data from several police policy documents and reports relating to MCLOs, the PMAC, and the police's broader organisational approach to policing CALD communities.

The chapter proceeds as follows. Part II sets out the meaning of the terms 'community policing' and 'community engagement' and establishes the relationship between the two. Part III then outlines the Police Force's current Executive direction and policy position on the role of community policing and community engagement in policing CALD communities. Parts IV and V then examine the work of MCLOs (Part IV) and the PMAC (Part V). The chapter concludes in Part VI.

II. Community Policing: A 'Post-Scarmanist Policing Orthodoxy'

Defining 'Community Policing' and 'Community Engagement'

The term 'community policing' is common currency in discussions of policing policy and practice. It can be used to describe both a policing philosophy and a range of organisational strategies, and takes on different meanings across national and international jurisdictions.⁴ Accordingly, there is little consensus about what the term

² NSW Police Force, *Cultural Diversity* <https://www.police.nsw.gov.au/safety_and_prevention/your_community/cultural_diversity>.

³ Janet BL Chan, *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press, 1997) 140–43; Scott Poynting, 'Accounting for Cultural Diversity: The Recent Record of the NSW Police Service' (2000) 12(2) *Current Issues in Criminal Justice* 223, 224. Chan and Poynting refer to MCLOs by their former title, Ethnic Community Liaison Officers.

⁴ Nigel Fielding, *Community Policing* (Clarendon Press, 1995) ch 2; Victor E Kappeler and Larry K Gaines, *Community Policing: A Contemporary Perspective* (Routledge, 7th ed, 2015) ch1.

‘community policing’ signifies.⁵ More fundamentally, community policing evades definition and lacks precise content because it is essentially a mirror concept: community policing reflects – and was borne out of a desire to reverse – crises of public confidence brought about by the professional model of policing (discussed further below). Accordingly, as articulated by Justin Hansford, “‘community policing’ denotes nothing in particular, but hints at positive values such as community control and police de-escalation’.⁶

Community policing shares a close relationship with community engagement. In broad brush strokes, community engagement involves police attempts to secure and maintain the public’s trust (and the police’s legitimacy) by proactively initiating liaisons, associations, and partnerships with members of the public.⁷ Proponents have claimed an array of benefits for community policing and community engagement including improved police-community relations, enhanced public security through crime prevention, and increased police accountability.⁸

Community policing and community engagement are sometimes categorised as ‘soft’ policing functions.⁹ As described by Martin Innes, the primary distinction between ‘soft’ policing on the one hand, and ‘hard’ policing on the other is the degree of coercion applied by the police. While ‘soft’ policing relates to ‘the non-coercive aspects of police-led social control encompassing the provision of a visible presence of authority, persuasion, negotiation and community interaction’,¹⁰ ‘hard’ policing

⁵ Kappeler and Gaines, above n 4, 3–4.

⁶ Justin Hansford, ‘Community Policing Reconsidered: From Ferguson to Baltimore’ in Jordan T Camp and Christina Heatherton (eds), *Policing the Planet: Why the Policing Crisis Led to Black Lives Matter* (Verso, 2016) 215, 217.

⁷ Sentas, above n 1, 173.

⁸ Fielding, above n 4, ch 2.

⁹ In the context of the suspect communities literature, see, eg, Christina Pantazis and Simon Pemberton, ‘From the “Old” to the “New” Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation’ (2009) 49(5) *British Journal of Criminology* 646, 659; Francesco Ragazzi, ‘Suspect Community or Suspect Category? The Impact of Counter-Terrorism as “Policed Multiculturalism”’ (2016) 42(5) *Journal of Ethnic and Migration Studies* 724, 727–29; Arun Kundnani, ‘Spooked! How Not to Prevent Violent Extremism’ (2009) 10; Stefano Bonino, ‘Policing Strategies Against Islamic Terrorism in the UK after 9/11: The Socio-Political Realities for British Muslims’ (2012) 32(1) *Journal of Muslim Minority Affairs* 5, 17.

¹⁰ Martin Innes, ‘Why “Soft” Policing Is Hard: On the Curious Development of Reassurance Policing, How It Became Neighbourhood Policing and What This Signifies about the Politics of Police Reform’ (2005) 15(3) *Journal of Community & Applied Social Psychology* 156, 157.

relates to the ‘direct implementation of a coercive form of power’.¹¹ However, it can be unhelpful to treat ‘hard’ and ‘soft’ policing as though they are dichotomous; as argued by Innes, ‘hard’ and ‘soft’ forms of policing co-exist in policing policy and practice.¹² Although Innes makes this observation in respect of policing in the United Kingdom, it is also the case that ‘hard’ and ‘soft’ forms of policing exist side-by-side in New South Wales: indeed, the ‘soft’ policing initiatives described in this chapter have taken place simultaneously with ‘hard’ policing of the Middle Eastern suspect community, as described in Chapters IV through VI.

The above distinction between ‘hard’ and ‘soft’ policing also forecloses consideration of the coercive potential of ‘soft’ community policing and community engagement work, which ultimately stems from the police’s institutional power. Drawing on the thinking of Antonio Gramsci, Sentas has argued that consent and coercion are intricately bound together in police practice, reciprocally shaping the police’s relations with the policed.¹³ For example, Sentas demonstrates that even if community policing and community engagement initiatives are intended by the police to be democratic and participatory, it remains the case that those who participate may well do so for fear of arousing police suspicion, inquiry and investigation (see also Part IV, below).¹⁴ In concurrence with Sentas’s observations about the dynamic relationship between consent and coercion in policing practice, I argue that the community policing and community engagement initiatives described in Parts IV and V of this chapter cannot be classified as non-coercive, despite typifying the sorts of policing that tend to be deemed ‘soft’.

Consent is also intrinsic to community policing in a broader sense.¹⁵ As intimated above, community policing emerged because features of a particular model of police professionalism had contributed to crises in public confidence which required police organisations to try to (re)negotiate social consent to policing.¹⁶ Racially

¹¹ Ibid.

¹² Ibid 157, 164–65.

¹³ Sentas, above n 1, 30–4; See also Ragazzi, above n 9, 732–34.

¹⁴ Sentas, above n 1, 173–74.

¹⁵ Ibid 30.

¹⁶ Fielding, above n 4, ch 2.

discriminatory policing practices and the use of paramilitary tactics were specific sites of concern in the United States and the United Kingdom.¹⁷ According to Hansford, the impetus for community-based policing practice emerged in the United States in the 1960s: ‘[a]fter generations of state repression produced racial unrest in Detroit, Watts and other cities across the country, police recognized the need for a change of tactics’.¹⁸ Describing the situation in the United Kingdom, Robert Reiner has argued that in the aftermath of the 1981 Scarman Report on the Brixton disorders, the ‘post-Scarmanist orthodoxy’ of community policing became the predominant policing philosophy amongst British chief constables.¹⁹

Meanwhile, in New South Wales, the police were involved in ongoing conflicts with protesters attached to social movements including the Vietnam moratorium protests, and the Aboriginal rights, women’s liberation, and abortion law reform movements between the 1960s and 1980s.²⁰ The police organisation had also failed to grapple with rising crime rates and persistent allegations of malpractice and corruption, especially regarding the policing of drugs, prostitution, and gambling.²¹ As described in Chapter IV, the Wood Royal Commission eventually determined that these allegations of malpractice and corruption had substance.

¹⁷ See, eg, David Bull and Erica Stratta, ‘Police-Community Consultative Committees: A Response to Paramilitary Policing?’ (1995) 31(3) *Journal of Sociology* 67; Lawrence W Sherman and John E Eck, ‘Policing for Crime Prevention’ in David P Farrington et al (eds), *Evidence-Based Crime Prevention* (Routledge, 2002) 295, 298; Fielding, above n 4, 26–27, 36–37.

¹⁸ Hansford, above n 6, 218.

¹⁹ Robert Reiner, *The Politics of the Police* (Oxford University Press, 4th ed, 2010) 142, 245. Before Lord Scarman was commissioned to conduct his inquiry into the events at Brixton, John Alderson, the Chief Constable of Devon and Cornwall police, had promoted objectives for the police that extended beyond the traditional emphasis on law enforcement in his book *Policing Freedom*. *Policing Freedom* was one of many submissions available to Lord Scarman when he conducted his Inquiry.

²⁰ Mark Finnane, ‘From Police Force to Police Service? Aspects of the Recent History of the New South Wales Police’ in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 6, 13–28. See also Bull and Stratta, above n 14, 74–75.

²¹ Finnane, above n 20, 14–18. In 1981, John Avery, then an inspector in the NSW Police Force, authored a book called *Police, Force or Service?* In his book, Avery set out a vision for policing that was directly in line with John Alderson’s writings in *Policing Freedom*. Avery was appointed NSW Police Commissioner in 1984 and instituted a series of reforms to try and re-orient the police organisation’s philosophy and activities toward community-based policing. It was during this period that the NSW Police Force was rebranded the NSW Police Service. However, as described in Chapter IV, the Wood Royal Commission later determined that Avery’s reforms had not substantively changed the police organisation.

Police organisations across the English-speaking world responded to these crises of public confidence by promising to make policing more accountable and democratic through increased police-community engagement. In New South Wales, Chan and Dixon have termed the period from the mid-1980s to the mid-1990s, characterised by a palpable enthusiasm for the ideals and rhetoric of community policing, the first ‘major wave of reform’ in the recent history the New South Wales police organisation.²² However, for the most part, the experience of community policing in New South Wales – and across the rest of the country – has been a story more of rhetoric than of substantial organisational change.²³ In short, police organisations in Australia have tended to practice community policing by implementing a handful of conventional, piecemeal initiatives to augment more traditional policing practices.²⁴ Moreover, some initiatives commonly associated with community policing, such as Neighbourhood Watch and locally-based community consultative committees, have seemingly declined in popularity in recent years.²⁵

In any case, the NSW Police Force continues to publicly affirm its multicultural approach to community policing. Relatedly, police organisations in many developed, multicultural states across the world have made formal institutional commitments to recognising and valuing cultural diversity. All Australian police organisations have developed cultural diversity policies which are perceived as central to police legitimacy, positive community relations and inclusive social policy, and therefore have a close relationship to community policing.²⁶ The application of these policies tends to vary between jurisdictions, and within jurisdictions at the local level.

²² Janet Chan and David Dixon, ‘The Politics of Police Reform: Ten Years After the Royal Commission into the New South Wales Police Service’ (2007) 7(4) *Criminology & Criminal Justice* 443, 445.

²³ Jenny Fleming and Juani O’Reilly, ‘The “Small-Scale Initiative”; the Rhetoric and the Reality of Community Policing in Australia’ (2007) 1(2) *Policing* 214.

²⁴ Ibid 217, 220.

²⁵ Or, some instances, moved to online platforms, like the NSW Police Force’s virtual Neighbourhood Watch. See Murray Lee and Alyce McGovern, *Policing and Media: Public Relations, Simulations and Communications* (Taylor & Francis, 2013) 132–34.

²⁶ See, eg, Western Australia Police Force, *Community Diversity and Substantive Equality* <<https://www.police.wa.gov.au/Our-Community/Community-Diversity-and-Substantive-Equality>>; Tasmania Police, *Multicultural Policing* <<https://www.police.tas.gov.au/what-we-do/multicultural-policing/>>; Victoria Police, *Valuing Diversity* <<https://www.police.vic.gov.au/diversity#cultural-and-linguistic-diversity>>.

In the following part of this chapter, I outline the Police Force's current Executive direction and policy position on cultural diversity, community engagement, and community policing. As argued by Sentas in her work on community policing for counter-terrorism, it should not be assumed that the police's community policing and community engagement work necessarily bears any resemblance to the rhetoric contained in the policy documents discussed below; 'the implication is not that these policies drive practice or that in reading themes in policy we can presuppose the existence of a particular set of practices'.²⁷ Rather, my rationale for outlining these policies is to explore the 'authorising context' in which the police assume a role in carrying out community policing and pursuing community engagement with CALD communities,²⁸ including Middle Eastern background and Muslim communities.

III. The Police Force's Executive Direction and Policy Framework for Policing Cultural Diversity

In recent decades, the Police Force dispersed its corporate policies for policing CALD communities throughout a handful of policy documents. At the time of writing, the Police Force has consolidated the relevant policies within its *Multicultural Policies and Services Program* (MPSP). The MPSP was published for the first time in 2006 as a component of the Force's *NSW Police Priorities for Working in a Culturally, Linguistically and Religiously Diverse Society* policy document,²⁹ and later replaced the Ethnic Affairs Policy Statement.³⁰

The *Priorities for Working in a Culturally, Linguistically and Religiously Diverse Society* policy document and the MPSP were initially supposed to operate over a three-year planning cycle. However, the Police Force extended the remit of the 2006-2009 documents to last through to the end of 2010,³¹ and in early 2017 the 2011-2014

²⁷ Sentas, above n 1, 150. See also Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) 212–13 on the potential gap between police corporate objectives and strategic plans and practices at the local level.

²⁸ Sentas, above n 1, 150–51.

²⁹ NSW Police Force, *NSW Police Force Priorities for Working in a Culturally, Linguistically and Religiously Diverse Society and Multicultural Services and Policies Program (MPSP) Forward Plan 2011-14* (2011) 16. ('MPSP Forward Plan 2011-14')

³⁰ NSW Police Force, *NSW Police Force Annual Report 2005-06* (2006) 26.

³¹ Ibid 11–12.

documents had not been updated. In mid-2017, the Police Force published a new MPSP for 2017-2020 on its website but did not update the *Priorities for Working in a Culturally, Linguistically and Religiously Diverse Society* document.³² The Force also published reports outlining the programs implemented under the auspices of the MPSP in 2011-12, 2012-13, and 2013-16, respectively.³³ To date, no further MPSP Implementation Reports have been made available to the public.

The current MPSP asserts the value of the police seeking to foster community engagement with CALD communities. As articulated in the MPSP, community engagement involves a ‘strong focus on effective and sustainable engagement, built on participation and consultation’.³⁴ More broadly, the MPSP sets out an inclusive, participatory, and communicative community-based framework for policing CALD communities. Specific goals listed in the MPSP include facilitat[ing] feedback from CALD communities through community satisfaction surveys;³⁵ collaborat[ing] with CALD communities on crime prevention initiatives at the local level;³⁶ and explor[ing] diverse and innovative technologies to enhance communication with CALD communities,³⁷ amongst many others.

Police Area Commands (PACs) are the ‘hubs’ that facilitate most community engagement work and community policing programs.³⁸ PACs are ‘encouraged to build the Multicultural Policies and Services Plan into their business plans’.³⁹ As will be discussed in the following subsections of this chapter, these priorities are usually implemented through narrowly-conceived conventional means, like employing liaison

³² NSW Police Force, *NSW Police Force Multicultural Policies and Services Plan (MPSP) 2017-20* (2017) 2 (‘MPSP 2017-20’).

³³ NSW Police Force, *NSW Police Force Multicultural Policies and Services Program (MPSP) Implementation Report 2011-12* (2013) (‘MPSP Implementation Report 2011-12’); NSW Police Force, *NSW Police Force Multicultural Policies and Services Program (MPSP) Implementation Report 2012-13* (2014) (‘MPSP Implementation Report 2012-13’); NSW Police Force, *NSW Police Force Multicultural Policies and Services Program (MPSP) Implementation Report 2013-16* (2017) (‘MPSP Implementation Report 2013-1’).

³⁴ MPSP 2017-20, above n 32, 4.

³⁵ Ibid 13.

³⁶ Ibid 14.

³⁷ Ibid 13.

³⁸ Ibid 4.

³⁹ Ibid 5.

officers (MCLOs), consultative councils (the PMAC), and *ad hoc* sport and recreation activities with young people, and especially those from ethnic minority communities.⁴⁰

In the current MPSP, the Police Force does not prioritise any specific racial, ethnic, cultural, or religious communities for its community engagement work.⁴¹ However, the 2011-2012 MPSP Implementation Report prioritised proactive community engagement work with ‘leaders’ of Middle Eastern background and Muslim communities, in the hopes of building trust and lines of communication between the police and the communities in question. As explained in the Implementation Report:

Global issues including the Arab [S]pring in the Middle-East, [and] the continuing war in Iraq and Afghanistan ... have had an adverse impact on the morale of communities in Australia. Recent protests in Sydney⁴² and the subsequent strong community engagement with community leaders are an indication of vastly improved and positive working relations between the police and the community compared to past events such as the Tempe Park Riots in 1993⁴³ and Cronulla Riots in 2005 ... A good example of this was the landmark joint press conference held by NSWPF and Muslim religious community leaders and the media address by Deputy Commissioner Kaldas in both English and Arabic. This is an indication that as an organisation the NSWPF has reached new heights of communication.⁴⁴

⁴⁰ Many such sporting programs are delivered by Police Citizens Youth Clubs (PCYCs).

⁴¹ However, the Police Force has identified ‘emerging focus areas’, including: refugee communities, countering violent extremism and international students. See *MPSP 2017-20*, above n 32, 9.

⁴² This is a reference to the so-called ‘Hyde Park Riots’ in Sydney in September 2012. Though the circumstances surrounding the ‘riots’ are contested, most reports agree that a few hundred (mostly Salafi) Muslims gathered in Sydney to protest a controversial short film about the prophet Muhammad called *Innocence of Muslims*. Up to 150 police arrived at the scene of the protests and violent clashes broke out between the police and protesters, leading to several arrests.

⁴³ In October 1993, over 30,000 people attended an annual Arabic festival at Gough Whitlam Park in Tempe, in Sydney’s inner-west. Late in the day, conflict erupted between police and some attendees, which was later followed by a barrage of sensationalist and anti-Islamic reporting. For more information on the ‘Tempe Park Riots’, see David Fraser, Moha Melhem and Mirna Yacoub, ‘Violence Against Arab Australians’ in Chris Cunneen, David Fraser and Stephen Tomsen (eds), *Faces of Hate: Hate Crime in Australia* (Hawkins Press, 1997) 75, 86–88.

⁴⁴ *MPSP Implementation Report 2011-12*, above n 33, 5.

The Arab Spring divided political opinions, and the wars in Syria and Iraq would certainly have adversely ‘impacted the morale’ of some people of Middle Eastern background and some Muslims in New South Wales. However, violence and public disorder such as that seen after the Cronulla Riots are not the only way in which community discontentment can be expressed. Nevertheless, as indicated in the above passage, Middle Eastern background and Muslim communities have been identified as targets of increased community engagement work and framed as rightful subjects of policing – albeit ‘soft’ policing – because of legitimate political concerns held by some members of the community.

Moving on from this outline of the Police Force’s policy position on community policing and community engagement with CALD communities, the subsequent parts of this chapter explore the police’s community policing and community engagement work with Middle Eastern background and Muslim communities in New South Wales. The discussion in the following sections draws primarily on data obtained in interviews that I conducted with community workers and members of the PMAC, but also integrates information from policy documents and, to a lesser extent, academic literature. As elaborated below, the Police Force’s community policing and community engagement work in New South Wales has been mobilised to intervene in racialised Middle Eastern background and Muslim communities and has diffused regulation and surveillance throughout those communities. A prominent theme in this racialised policing has been the responsibilisation of Middle Eastern background and Muslim civilian police employees and volunteers to self-police through ‘soft’ means.

IV. Multicultural Community Liaison Officers

Police Auxiliaries in Australia

The term ‘auxiliary police’ is used to refer to civilians who assist attested police officers in delivering various policing services. While some auxiliary police work on a volunteer basis, others carry out their tasks on a paid basis.⁴⁵ The roles and

⁴⁵ Trevor Jones, ‘Auxiliary Police’ in Alison Wakefield and Jenny Fleming (eds), *The SAGE Dictionary of Policing* (Sage Publications, 2009) 8, 8.

responsibilities of police auxiliaries differ across national and international policing jurisdictions, but police auxiliaries do not generally possess the same statutory powers as sworn police officers.⁴⁶ Nevertheless, Trevor Jones notes that auxiliary police often perform a range of tasks relating to law enforcement, order maintenance, and public reassurance, which might include conducting visible patrols and issuing fines, amongst other duties.⁴⁷

Across Australia, police organisations employ auxiliary ‘liaison officers’ with a view to improving their organisational capacity to communicate and engage with certain vulnerable and marginalised groups.⁴⁸ In most cases, the police organisation will have historically experienced strained or fractured relations with the groups in question, suggesting that at least part of the rationale for employing auxiliary liaison officers is to negotiate greater consent to policing within particular community groups. Concerning CALD communities, it is envisaged that liaison officers can improve consent to policing by ‘provid[ing] feedback to police services on numerous issues including strategies for effective communication in culturally diverse communities’.⁴⁹ In keeping with this rationale, police organisations in Australia have employed civilians to liaise with Aboriginal and Torres Strait Islander and ethnic minority communities for the last three decades.⁵⁰

Australian police organisations tend to point to their liaison officers as evidence of their commitment to community-oriented and culturally-sensitive policing practice.

⁴⁶ Ibid; Adrian Cherney and Wing Hong Chui, ‘Police Auxiliaries in Australia: Police Liaison Officers and the Dilemmas of Being Part of the Police Extended Family’ (2010) 20(3) *Policing and Society* 280, 280; Adrian Cherney and Wing Hong Chui, ‘The Dilemmas of Being a Police Auxiliary - An Australian Case Study of Police Liaison Officers’ (2011) 5(2) *Policing* 180, 181; Les Johnston, ‘From “Community” to “Neighbourhood” Policing: Police Community Support Officers and the “police Extended Family” in London’ (2005) 15(3) *Journal of Community & Applied Social Psychology* 241, 243; Les Johnston, “Keeping the Family Together”. Police Community Support Officers and the “Police Extended Family” in London’ (2007) 17(2) *Policing and Society* 119, 119.

⁴⁷ Jones, above n 45, 8–9. See also Johnston, ‘From “Community” to “Neighbourhood” Policing’, above n 46.

⁴⁸ Cherney and Chui, ‘Police Auxiliaries in Australia’, above n 46, 281–83; Cherney and Chui, ‘The Dilemmas of Being a Police Auxiliary’, above n 46, 181–82. See generally Fleming and O’Reilly, above n 20, 217.

⁴⁹ Fleming and O’Reilly, above n 23, 217.

⁵⁰ Cunneen, above n 27, 216–19; Cherney and Chui, ‘Police Auxiliaries in Australia’, above n 46, 282–83; Cherney and Chui, ‘The Dilemmas of Being a Police Auxiliary’, above n 46, 181.

However, as pointed out by Adrian Cherney and Wing Hong Chui, very little scholarly attention has been directed at understanding how auxiliary police are perceived by the community groups with whom they engage.⁵¹ Rather, studies concerning auxiliary police have tended to consider: whether auxiliary policing roles are clearly defined; whether appropriate levels of occupational support and resourcing are provided to auxiliary police by police organisations; how auxiliary police have negotiated the conflicting expectations of the police organisations that employ them and those of the local community groups with whom they are expected to engage; and whether auxiliary police have successfully integrated into police organisations and thereby ‘fit in’ to the so-called ‘police extended family’.⁵²

The following sections go some way to answering each of the above questions concerning one type of liaison officer employed by the NSW Police Force, called MCLOs. I begin by reviewing the mandate and occupational activities of MCLOs (formerly known as Ethnic Community Liaison Officers or ECLOs). As explained below, shifts in the MCLO mandate have corresponded with the police’s uptake of an organisational agenda of proactive crime-fighting at the turn of the twenty-first century (as mapped in Chapter IV). While MCLOs are tasked with engaging ethnic minority communities through inclusive, ‘soft’ practices that aim to build community trust in the police, they are also expected to actively contribute to the Police Force’s attempts to gather community intelligence for both the reactive investigation of crimes and the prevention of future crimes. As explored below, these community engagement and intelligence-gathering objectives are not hermetic and cannot be considered in isolation from one another.

The Mandate of Multicultural Community Liaison Officers

Beginning in the late 1970s, when restrictions on non-European migration to Australia were lifted, rapid increases in the migration of people of non-English-speaking background (NESB) significantly altered the social environment of New South

⁵¹ Cherney and Chui, ‘Police Auxiliaries in Australia’, above n 46, 281.

⁵² Ibid.

Wales.⁵³ Following a Ministerial directive for police to enhance their capacity to communicate with NESB migrants in New South Wales, the Police Force appointed four civilians as ECLOs in the south-western Sydney suburbs of Cabramatta and Fairfield, as part of a year-long pilot program that began in 1987.⁵⁴

It is somewhat unsurprising that Cabramatta and Fairfield, which are situated close to one another, were chosen as the sites of the ECLO trial. Throughout the post-war period, Cabramatta was the site of a sizable Migrant Hostel which provided for a considerable number of southern European migrants and later developed into a notably diverse community.⁵⁵ By 1987, when the Police Force trialled the ECLO program, large numbers of migrants displaced in the aftermath of the wars in Indochina had settled in Cabramatta, Fairfield, and surrounding suburbs.⁵⁶

When the trial of ECLOs was first commissioned, the Police Department articulated a desire for the ECLOs to play ‘a major role in establishing dialogue and facilitating understanding between police and the large multicultural community in the area’ of Fairfield and Cabramatta.⁵⁷ However, over the next fifteen years, the ECLO role was poorly coordinated and resourced by police management. In her seminal publication *Changing Police Culture*, Janet Chan explained that the Police Department had not distilled the above desire into a clear statement of duties for ECLOs. As a result, when the ECLO positions were first filled, ‘no one really knew what they were supposed to do’.⁵⁸ ECLOs were given no training but took the initiative to consult community groups and community workers to identify local concerns about crime and disorder.

⁵³ Eric Richards, *Destination Australia: Migration to Australia Since 1901* (UNSW Press, 2008) ch 9.

⁵⁴ Chan, above n 3, 140; *MPSP Forward Plan 2011-14*, above n 29, 76.

⁵⁵ James E Coughlan, ‘The Changing Spatial Distribution and Concentration of Australia’s Chinese and Vietnamese Communities: An Analysis of 1986-2006 Australian Population Census Data’ (2008) 25(2) *Journal of Population Research* 161, 170.

⁵⁶ Ibid; Nancy Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia* (Melbourne University Press, 1984).

⁵⁷ NSW Police Department, *Report of the NSW Police Department 1985-86* (1986) 65; NSW Police Department, *Annual Report 1986-87* (1987) 81–82.

⁵⁸ Chan, above n 3, 141.

The tasks that ECLOs set for themselves included ‘marketing’ the police and encouraging people from NESB communities to report crimes to the police.⁵⁹

Chan observed that by the early 1990s ECLOs had made progress in supporting ethnic minority community members to report crime. This success was largely driven by the ECLOs’ ability to speak community languages. However, because of these language skills, many Patrol Commanders utilised ECLOs primarily as interpreters.⁶⁰ Time spent interpreting would also detract from the ECLOs’ attention to their other duties, which had been more clearly formulated by 1993. ECLOs were expected to:

Establish effective communication between police and the local ethnic community; act as a mediator in disputes involving police and ethnic groups; establish and maintain close personal rapport with the leaders of the ethnic community; assist relatives concerning procedures for visiting ethnic prisoners; actively market the functions and aims of the police service to the ethnic community; and attend interviews involving juvenile members of the ethnic community.⁶¹

In 2000, Scott Poynting found that the capacity of ECLOs to achieve the outcomes listed above was minimal because most police officers did not have contact with an ECLO and could therefore not enlist their assistance. Meanwhile, many other sworn officers continued to mistake ECLOs for interpreters.⁶²

Fifteen years after ECLOs were first employed in Cabramatta and Fairfield, a NSW Legislative Council General Purpose Standing Committee reviewing policing in Cabramatta found that the usefulness of ECLOs to local Indochinese communities had been nullified by poor resourcing and police uncertainties about the ECLO role. Accordingly, the Committee recommended that the police abolish the ECLO

⁵⁹ Ibid.

⁶⁰ Ibid 142.

⁶¹ New South Wales, *Questions and Answers Paper 25*, House of Representatives, 8 September 1993, 1032 (Terry Griffiths, Police Minister).

⁶² Poynting, above n 3, 224.

position.⁶³ It was around this time that the police in New South Wales made a public commitment to pursuing a crime-fighting agenda.⁶⁴ As noted in Chapter IV, the police's crime-fighting agenda was, in turn, bolstered by the Committee's dubious affirmation that the police had 'cleaned up' Cabramatta's prolific heroin market through aggressive street policing practices including 'crackdown' operations in the late 1990s.⁶⁵

The Police Service might have been expected to abandon the ECLO role considering the Committee's recommendations and its renewed organisational enthusiasm for crime-fighting. However, the ECLOs' cultural capacities and engagement with CALD communities meant that they were well placed to gather community intelligence, which can help stage crime-fighting interventions. Accordingly, the police persisted in employing ECLOs, albeit with some alteration to the ECLO position description.

The police's focus on crime-fighting had seeped into the ECLO mandate by the early 2000s. As stated in a handbook for ECLOs disseminated to Local Area Commands (LACs) in 2002,⁶⁶ ECLOs were still expected to partake in community engagement work, and play an 'important role in promoting a positive image of NSW Police and strengthening links between local police and their culturally diverse communities'.⁶⁷ However, the police had also integrated an explicit emphasis on crime control and crime prevention functions into the ECLO position description. Take, for example, the following statement from the ECLO handbook:

It is up to the LAC as well as the individual ECLO to make effective links between the crime reduction and crime prevention work of the

⁶³ General Purpose Standing Committee No 3, New South Wales Legislative Council, *Review of Inquiry into Cabramatta Policing* (2002) 65–67.

⁶⁴ David Dixon, "'A Transformed Organisation'? The NSW Police Service Since the Royal Commission' (2001) 13(2) *Current Issues in Criminal Justice* 203.

⁶⁵ David Dixon and Lisa Maher, 'Containment, Quality of Life and Crime Control: Policy Transfers in the Policing of a Street Heroin Market' in Tim Newburn and Richard Sparks (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan, 2004) 234; Lisa Maher and David Dixon, 'The Cost of Crackdowns: Policing Cabramatta's Heroin Market' (2001) 13(1) *Current Issues in Criminal Justice* 5.

⁶⁶ LACs were rebranded 'Police Area Commands' (PACs) in 2017.

⁶⁷ NSW Police, *NSW Police Ethnic Community Liaison Officers Handbook for Local Area Commands: Roles and Responsibilities* (2002) 3.

police at the LAC and the work of the ECLO ... [ECLOS] [f]unction as part of the Local Area Command Crime Management Unit.⁶⁸

Though ECLOs previously suffered from a lack of Executive direction, in recent years the Police Force has been explicit about its expectations of ECLOs – who, since 2008, have been re-branded MCLOs.⁶⁹ These expectations are congruent with the appointment of MCLOs to Crime Management Units (CMUs). CMUs were created in July 1999 to support the police’s organisational shift towards proactive crime-fighting, and today each PAC has its own CMU. As explained by then-Police Commissioner Peter Ryan, who spearheaded the police’s crime-fighting agenda:

Crime Management Units in the [Area Commands] will improve our intelligence gathering and analysis by precisely identifying and targeting the small number of repeat offenders, victims and locations that are the key factors in the crime equation.⁷⁰

MCLOs are therefore expected to create conduits for the exchange of information and intelligence between the police and ethnic minority communities throughout their work. According to the Police Force’s website, there are 33 MCLOs working across 25 PACs.⁷¹ These MCLOs are each expected to enhance the Police Force’s operational capacity in terms of:

Crime reduction and prevention; the identification and arrest of offenders; the location of persons of interest with warrants against them; gathering community intelligence; high visibility policing operations; and individual group case work with ‘at-risk’ young offenders and their families.⁷²

It is therefore clear that despite being introduced as a ‘soft’ policing function, the mandate of MCLOs has been augmented, and now has a more overtly coercive edge.

⁶⁸ Ibid 4.

⁶⁹ *MPSP Forward Plan 2011-14*, above n 29, 76.

⁷⁰ *Crown Employees (Police Officers – 2009) Award* [2012] NSWIRComm 23, [290].

⁷¹ NSW Police Force, *Multicultural Community Liaison Officers* <https://www.police.nsw.gov.au/safety_and_prevention/your_community/cultural_diversity/cald/multicultural_community_liaison_officers>; see also *MPSP Implementation Report 2013-16*, above n 33, 11.

⁷² *MPSP Forward Plan 2011-14*, above n 29, 11.

While MCLOs continue to be involved in community groups and inclusive, ‘soft’ policing initiatives, there also exists an organisational expectation for MCLOs to contribute to the work of CMUs by gathering community information and intelligence. As acknowledged above, it is certainly the case that ‘soft’ community engagement and intelligence-gathering objectives can overlap; indeed, proponents of community-based policing have long argued that ‘soft’ policing can help to forge trust between the police and the policed, which, in turn, can pay dividends through the creation of flows of information and intelligence.⁷³ In effect, as members of ethnic minority communities, MCLOs are responsibilised to self-police and help solve apparent problems of crime and disorder in ethnic minority communities by creating these flows of information. However, while they are members of ethnic minority communities, MCLOs are also police employees, which suggests that power imbalances may exist between MCLOs and the community members with whom they work.

In the following sections, I draw on interviews with eight community workers and two members of the PMAC to further explore the duties and activities of MCLOs, and how community members perceive their work.⁷⁴ Specifically, I aim to explore the kinds of activities that MCLOs undertake as part of their community engagement work, and the extent to which community engagement is inclusive, participatory, and allows community members to provide input and feedback about policing priorities and strategies. As discussed below, most interviewees were supportive of the MCLO role and expressed confidence in their local MCLOs. However, some concerns were expressed about whether MCLOs can disperse their work throughout entire PACs (which can span considerable distances), and whether they can reach those community members who are most affected by proactive policing.

While many interviewees expressed positive sentiments about MCLOs, this positivity often stemmed from interviewees distinguishing between the ‘soft’ work of MCLOs and the ‘hard’ work of sworn police. As the extraordinary policing of Middle Eastern

⁷³ Fielding, above n 4, ch 9; Marie Segrave and Jerry Ratcliffe, *Community Policing: A Descriptive Overview* (2004) 12 <<https://aic.gov.au/publications/archive/community-policing--a-descriptive-overview>>.

⁷⁴ I have replaced interview participants’ names with pseudonyms.

background and Muslim communities has become normalised in New South Wales in recent decades (see Chapters IV through VI), interviewees implicitly accepted that the communities in question would experience police contact and described situations in which they thought it preferable for community members to be policed by MCLOs and through other ‘soft’ mechanisms. However, as elaborated below, instead of debating whether ‘soft’ or ‘hard’ policing interventions are more appropriate or desirable in the policing of Middle Eastern background communities, an alternative consideration is whether police interventions – including the work of MCLOs – are necessary at all. In keeping with this line of inquiry, the interview data below is also used to assess whether the work of MCLOs constitutes a form of racialised over-policing that has played a role in fortifying the Middle Eastern suspect community.⁷⁵

Multicultural Community Liaison Officers and Middle Eastern Background Communities

Democratisation and Participation

Two participants noted that MCLOs are generally better at creating community relationships built on affinity and trust than operational police are, because MCLOs are civilians, and usually members of ethnic minority communities themselves.⁷⁶ As explained by Peter:

[The MCLO] herself, she works for the police, but outside the police, she is involved in, you know, the Lebanese community because of her background.⁷⁷

Participants positively appraised MCLOs for creating working relationships with community groups and community organisations in a way that most operational police do not.⁷⁸ In Belinda’s words:

⁷⁵ Sentas, above n 1, 172–78.

⁷⁶ Interview with Peter (Member of PMAC); Interview with Henry (Community Worker). See also *MPSP Implementation Report 2013-16*, above n 33, 11.

⁷⁷ Interview with Peter (Member of PMAC).

⁷⁸ Interview with Belinda (Member of PMAC); Interview with Peter (Member of PMAC); Interview with Jessica (Community Worker); Interview with Henry (Community Worker).

MCLOs build great networks and contacts. The challenge is, you know, if you've got 'Mohammad' and he's the MCLO at [one PAC], and he goes, who else in that station has nurtured those relationships as well? ... So how do you translate the knowledge that that MCLO has and the networks and their competencies around engaging CALD communities, so do other key police in that LAC sort of engage with them so they can have them as well as the Commander?⁷⁹

Belinda's concerns about police officers' community networks and cultural competencies map onto Cherney and Chui's observation that sworn police officers can fall into the habit of passing on all 'ethnic jobs' to a liaison officer.⁸⁰ Put simply, if it is the case that police officers leave community engagement work and 'networking' with CALD communities to MCLOs, they may be limiting the opportunities that they have to develop their skills in communicating with people from CALD communities.

Despite Belinda's apprehensions, Peter explained that his local MCLO works to create opportunities for operational police to communicate with members of Middle Eastern background and Muslim communities. For example, Peter recounted a situation in which the manager of the community organisation where he works was approached by a Muslim woman who held concerns about 'racism and religious issues' affecting herself and others in the local area. Peter, his manager, and the local MCLO then organised a consultation involving '20 or 30' Muslim women to record the women's concerns and forward them to the PMAC (discussed further below). As explained by Peter:

When we had the consultation here with the Islamic ladies to try and figure out what we can do to try and help them out, I brought [the MCLO], and she even brought one of her inspectors or sergeants from the police to sit down and listen to the issues we were discussing.⁸¹

⁷⁹ Interview with Belinda (Member of PMAC).

⁸⁰ Cherney and Chui, 'Police Auxiliaries in Australia', above n 46, 281.

⁸¹ Interview with Peter (Member of PMAC).

This is a level of non-emergency contact with a senior police officer that community members would be unlikely to experience without the facilitation of the MCLO. For Peter, the MCLO's willingness and ability to organise such an audience with senior police showed that she was 'good at her work'. He perceived that having senior police in attendance was reassuring to the Muslim women who participated in the consultation because it gave them the impression that their concerns were being registered by the police, even in advance of a response from the PMAC.⁸²

Community workers also reported that MCLOs listened to and empathised with community concerns about crime and anti-social behaviour and organised educational programs that directly responded to those concerns. According to Jessica:

The MCLO is happy to come whenever we ask the police to come provide some information about particular issues, like how to be safe, and yeah ... it's easy to access them for this.⁸³

Henry, a youth worker, also stated that he often asks a MCLO to come and speak with the young Middle Eastern background men that he case manages and counsels:

He's brilliant ... I've known him for a long time so I'll get him to come in and work ... the work he does is actually running sessions, he'll come in and talk to the boys, and he's upfront. Which I love about him. He's a straight shooter, he makes it clear to the boys about you know, responsibilities, and you own up to stuff, and consequences, stuff like that ... he speaks the language, he will look them straight in the eye and he's an alpha male, but a good role model.⁸⁴

However, Jacob drew on his experience as a youth worker to identify two issues that he sees as compromising the usefulness of MCLOs to local community groups. The first of these issues is related to geography; some PACs are expansive, which makes it difficult for MCLOs to carry out comprehensive engagement work within those PACs:

⁸² Interview with Peter (Member of PMAC).

⁸³ Interview with Jessica (Community Worker).

⁸⁴ Interview with Henry (Community Worker).

In terms of the multicultural liaison officers, there are those liaison officers, but you've got to be mindful that there's only one liaison officer, one or two, within that whole ... those large areas, you know? And they try to mediate between police and community, but their presence is not enough, you know? Like they'll build a relationship between community leaders and police, but there's a lot of stuff happening at a grass-roots level that they can't keep up with, you know?⁸⁵

Jacob then expanded on his concern that MCLOs more often engage with so-called 'community leaders' than those community members who are most affected by policing:

It's quite complex, but I find from my experience working in the sector, even my personal experience, the community leaders don't have a real connection with the communities at a grass-roots level. There's quite a gap there, so as long as these multicultural liaison officers are engaging the community leaders, the leaders or the multicultural liaison officers don't even have a real connection at a grass-roots level, and those communities that are being impacted from the police.⁸⁶

The nature and status of 'community leaders' in the delivery of community policing and community engagement is further problematised in Part V, below. However, it is worth emphasising here that failure to engage and communicate with those most affected by policing, like young men from ethnic minority communities, gravely undermines any claim that community policing and engagement work are genuinely participatory and democratic.⁸⁷

In seeming confirmation of Jacob's misgiving that MCLOs are not always able to engage with the full range of community organisations in their PACs, four community

⁸⁵ Interview with Jacob (Community Worker).

⁸⁶ Interview with Jacob (Community Worker).

⁸⁷ See Hansford, 219–20.

workers interviewed for this project were not in contact with a MCLO.⁸⁸ One of those individuals, Joseph, was an employee of a Police Citizens Youth Club (PCYC). Each PCYC in New South Wales houses two police officers from the Police Force's Youth Command,⁸⁹ which may lessen the direct contact between PCYC employees and police employees attached to PACs, where MCLOs are situated. However, three other community workers, Isabelle, Kevin, and Isaac, did not have any contact with MCLOs either.⁹⁰ This was despite Kevin and Isaac having worked extensively with policed individuals (especially young people), and having visited local police stations where MCLOs are situated.⁹¹

The Policing of Collective Identities: Community Policing, Police Suspicion, and Information Gathering

As stated above, MCLOs work within CMUs and are expected to assist in gathering community information and intelligence.⁹² According to Belinda, the work of MCLOs can contribute to, and improve, the police organisation's ability to gather information and intelligence in two ways. First, Belinda felt that MCLOs could take a proactive approach to recording information provided to them by the community leaders with whom they had formed relationships. More broadly, she also believed that if CALD communities formed confidence in their MCLO, then community members would voluntarily report crime and pass on community intelligence to the MCLO. As explained by Belinda:

I think you need to be able to somewhere have a database where your stakeholders, your leaders and so on can be there and you can put in the latest contact you've had with them and any issues that have come up. And I think that's important in terms of intelligence and hot spots that have come up and places of concern that might

⁸⁸ Interview with Joseph (Community Worker); Interview with Isabelle (Community Worker); Interview with Kevin (Community Worker); Interview with Isaac (Community Worker).

⁸⁹ Police Citizens Youth Clubs (PCYC) NSW, *Police Programs*.

⁹⁰ Interview with Kevin (Community Worker); Interview with Isaac (Community Worker).

⁹¹ Interview with Kevin (Community Worker); Interview with Isaac (Community Worker). The Police Force publicly lists the locations of its MCLOs on its website. See NSW Police Force, above n 71.

⁹² *MPSP Forward Plan 2011-14*, above n 29, 11.

flare up. And a good example of that is in [a PAC in metropolitan Sydney] when we were having high numbers of the Syrian-Iraqi [refugee] cohort come in and the [local Commander] was very interested in having MCLOs carry out community engagement strategies ... It's about building trust and relationships so that if people do hear of things that shouldn't be happening that they're confident to approach police.⁹³

It is vital that people who are not able to speak English (or who lack confidence in their English language skills) have an outlet for communicating and sharing their concerns about crime and safety with a police employee. However, Belinda's above example reveals an underlying rationale whereby collective identity serves as a basis for police intervention through community engagement.⁹⁴ There is no indication that members of the Syrian-Iraqi refugee cohort consider themselves to be a coherent or unified community, but Syrian and Iraqi refugees are racialised *en bloc* as being potentially non-conformist and uncooperative: only some groups are subjected to oversight, regulation and management to ensure that they report to the police if they 'hear of things that shouldn't be happening'. In turn, this institutionalised rationale of mobilising MCLOs and other 'soft' policing mechanisms to anticipate and prevent crime by managing and regulating certain racialised communities facilitates the creation and maintenance of suspect communities, because it embeds police attention and intervention in the lives of 'community members' on account of their identity, irrespective of their conduct.⁹⁵

It is also worth explicitly stating that increased police-community engagement does not necessarily produce trust, confidence, or amicability.⁹⁶ This was acknowledged by Chiara, who described MCLOs as 'shock absorbers'.⁹⁷ To elaborate, Chiara explained that MCLOs are an awkwardly placed buffer between operational police and Middle Eastern background communities, given the perceptions of some community members that they are the targets of racism and unfair and disproportionate police treatment.

⁹³ Interview with Belinda (Member of PMAC).

⁹⁴ Sentas, above n 1, 181.

⁹⁵ Ibid ch 5; Ragazzi, above n 9, 732–34.

⁹⁶ Sentas, above n 1, ch 5.

⁹⁷ Interview with Chiara (Community Worker).

Chiara also explained that some Middle Eastern background community members have reservations about declining to participate in MCLO programs, for fear of being perceived as uncooperative or as though they have something to hide from police, which could therefore serve to arouse police suspicion anyway. Chiara's sentiments echo two of Sentas's observations in her work on the community policing of Muslim communities for counter-terrorism: first, that consent and coercion are intricately linked in police interactions with community members;⁹⁸ and second, that a person's willingness (or otherwise) to engage with police factors into police assessments of which individuals are 'moderates', which are 'extremists', and, more broadly, who the appropriate subjects of policing are.⁹⁹

Multicultural Community Liaison Officers, Community Policing and Over-Policing

As described by interviewees, the rationale for much of the work performed by MCLOs hinges on the supposed desirability of engaging members of ethnic minority communities through 'soft' policing practices. Interviewees provided examples of instances where MCLOs had facilitated consultation between community members and operational police officers and delivered *ad hoc* information sessions to members of Middle Eastern background and Muslim communities in response to community workers' requests.

Viewed from one perspective, the work of MCLOs is inclusive and responsive to community needs; MCLOs work to deliver grass-roots services to members of ethnic minority communities that align with the concerns and priorities of those communities, as identified by community workers. However, while MCLOs and community workers are often members of CALD communities themselves, it is not clear to what extent other community members can provide input into the sorts of services that they expect from the MCLO, or the police organisation more broadly. For example, with respect to the educational programs discussed by Jessica and Henry above, it is difficult to tell whether the content and form of these sessions were shaped by community input

⁹⁸ Sentas, above n 1, 30–34.

⁹⁹ Ibid ch 4.

(bottom-up), or whether they effectively served as channels for the police to communicate their expectations to community members (and whether the educational sessions were therefore top-down and *done to* community members).

The sections above have also highlighted the existence of abiding tensions between carrying out community policing for trust building through community engagement, and community policing for crime prevention. One of the animating frames of MCLOs' work, according to their mandate, is to gather community information and intelligence. This occupational expectation appears to be founded on the rationale that 'soft' community policing builds trust and confidence, which opens conduits for information exchange. As discussed above, it is important not to assume that increased police-community contact generates consent to policing or police legitimacy. However, interviewees noted that because MCLOs are civilians and members of ethnic minority communities, they are usually better placed to build community trust and confidence and consent to policing than operational police.

However, it remains the case that MCLOs are police employees, which creates a power imbalance that differentiates them from most other members of ethnic minority communities. As described above, the Police Force uses MCLOs as bulwarks and responsabilises them to participate in the social ordering of ethnic minority communities by such means as collecting community intelligence to help anticipate and prevent crime. As such, it is impossible to determine the extent to which MCLOs are advancing police interests, and to what extent they are advancing community interests. Indeed, it may be impossible to definitively capture and evaluate this fundamental ambivalence in the MCLO role beyond noting that MCLOs walk a fine line between the police and ethnic minority communities with whom they interact.¹⁰⁰

Irrespective of their intentions, MCLOs institutionalise and normalise the self-policing of CALD communities. As suggested by Belinda and Chiara above, community policing and community engagement initiatives led by MCLOs have been broadly and systematically targeted at Middle Eastern background and Muslim communities upon

¹⁰⁰ See Cunneen, above n 27, 216–19; Cherney and Chui, 'Police Auxiliaries in Australia', above n 46; Cherney and Chui, 'The Dilemmas of Being a Police Auxiliary', above n 46.

the basis of their collective ethnic, cultural, and religious identities. Moreover, as described by Belinda and Chiara, such police-community contact is routinised in the lives of members of Middle Eastern background and Muslim community members, including those who have no desire to engage with MCLOs or the police more broadly.

In turn, Belinda and Chiara's observations suggest that MCLOs' work might be considered a form of racialised over-policing which contributes to the delineation and preservation of suspect communities. As argued by Sentas in her work on the community policing of Muslim communities for counter-terrorism, though the police may intend for community engagement to be positive and inclusive, and though community engagement practices do not criminalise people, if it is the case that police scrutiny is routinely targeted at certain ethnic, cultural, and religious communities through community policing and community engagement work, then that work can be classified as over-policing.¹⁰¹ In turn, such over-policing undergirds suspect community formation, in that exceptional policing is mobilised to act upon collective identities upon the basis of collectively attributed (but not necessarily legally articulable) suspicions of wrongdoing within certain racialised communities.

V. The Police Multicultural Advisory Council

Community Consultative Committees

Creating community consultative committees (CCCs) is one of the most common ways in which police organisations in Western policing jurisdictions have attempted to deliver community policing. CCCs were first established in New South Wales amongst Aboriginal Australian communities in Taree, Forster, and Walgett before a patrol-based model was implemented throughout the state more widely in 1987.¹⁰² In keeping with the patrol-based model, CCCs were convened in particular police command areas and variously comprised police employees, council members, business owners, community workers, and residents from those areas. As stated in the NSW Police's

¹⁰¹ Sentas, above n 1, 176–78.

¹⁰² New South Wales Police Department, *Report of the NSW Police Department 1985-86*, above n 57, 65; New South Wales Police Department, *Annual Report 1986-87*, above n 57, 7; See also Bull and Stratta, above n 17, 75.

Annual Report 1986-1987, patrol-based CCCs were intended to provide a forum for participatory, community-based decision-making about police priorities, by ‘bring[ing] Police closer to the community they serve ... to deal with the issues which are of most concern to the community’.¹⁰³

CCCs are usually supposed to reflect the demographic profile of the ‘community’ to which the committee is catering. This remains the case whether CCCs are targeted at particular groups, such as Indigenous Australian peoples, or whether the CCC is patrol-based. However, a common observation across policing jurisdictions has been that CCCs are vulnerable to influential individuals and ‘community representatives’, assuming control of proceedings.¹⁰⁴ These individuals are not necessarily democratically appointed, nor do they necessarily represent coherent communities. As such, the ability of CCCs to determine the priorities of community groups may be compromised, and in some circumstances CCCs ‘may simply provide a forum for co-opting sections of minority groups to an apparent consensus’.¹⁰⁵ Chan has also noted that deteriorating interest on behalf of the police and/or committee members can contribute to the decline of CCCs.¹⁰⁶

The Wood Royal Commission gave CCCs some consideration.¹⁰⁷ The Royal Commission recommended that the police convene CCCs to advise the police about specific issues and that the committees should be comprised of experts with knowledge bases relevant to the issue under consideration. In the Royal Commission’s words, CCCs should consist of:

... a pool of people with expertise in relevant fields ... from which separate committees could be formed on a needs basis, chaired by the Commissioner or his representative, to address particular issues.¹⁰⁸

¹⁰³ New South Wales Police Department, *Annual Report 1986-87* (1987) 79.

¹⁰⁴ Cunneen, above n 27, 208; Bull and Stratta, above n 17, 74–75.

¹⁰⁵ Cunneen, above n 27, 208.

¹⁰⁶ Chan, above n 3, 149–50.

¹⁰⁷ New South Wales, *Royal Commission into the New South Wales Police Service*, Final Report Volume II: Reform (1997) [5.49] – [5.75].

¹⁰⁸ Ibid [5.62].

In 2013 the NSW Police Force established the PMAC, which is an advisory council of the kind described above.¹⁰⁹ Below, I draw on data obtained in interviews that I conducted with three members of the PMAC to explore the Council's mandate and activities.

The Mandate of the Police Multicultural Advisory Council

The PMAC is an 'executive level consultative body'.¹¹⁰ It is expected that members of the PMAC will work in partnership with employees of the Police Force – ranging from the Commissioner to MCLOs – to identify emerging policing priorities relevant to policing CALD communities.¹¹¹ Eighteen individuals selected for their 'expertise, skills and ability to contribute to the NSW Police Force's work with all communities',¹¹² were appointed to the Council's core membership for an initial term of two years,¹¹³ though the specific bases for selection to the PMAC are not clear. Several of the initial core members of the PMAC self-identified as being of Middle Eastern background, and some were Muslims.

Nevertheless, one of the PMAC members whom I interviewed, Sarah, expressed uneasiness that by accepting membership of the PMAC she may have simultaneously proclaimed herself to be a 'community leader'. Echoing concerns that have been expressed widely in the relevant bodies of literature, Sarah acknowledged the slipperiness of the term 'community' and described the difficulties inherent in locating cohesive communities with internal infrastructures strong enough to allow for genuine 'community engagement' with the police (see Chapter II). Moreover, as noted in Part IV, above, despite its inclusive overtones, the concept of 'the community' in community policing does not always include those people who are most affected by policing. As explained by David Dixon, CCCs 'reflect local power imbalances, with their membership reflecting local political, organisational, and commercial

¹⁰⁹ Between 1996 and 2002 the police operated a similar committee called the Police Ethnic Communities Advisory Council. See NSW Police Force, *Police Multicultural Advisory Council (PMAC) Reflections 2013-15* (2015) 2. ('PMAC Reflections 2013-15').

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Letter from former Police Commissioner Andrew Scipione to PMAC Members, 20 March 2013. On file with author.

¹¹³ *PMAC Reflections 2013-15*, above n 109, 2.

interests'.¹¹⁴ Put plainly, the PMAC and other CCCs do not necessarily provide a forum for addressing community concerns about crime and policing.

From its establishment, the core objectives of the PMAC have aligned with the Force's desire to foster community-based crime prevention and create fluid police-community information exchanges. The PMAC is expected to:

Inform the NSW Police's approach and priorities with respect to delivering culturally responsive policing services across New South Wales; identify significant emerging issues capable of affecting relations between the NSW Police Force and non-Aboriginal communities from diverse cultural, religious and linguistic backgrounds; lead and facilitate partnerships between police and non-Aboriginal communities from diverse cultural, religious and linguistic backgrounds that contribute to reducing crime and antisocial behaviour and the perception and fear thereof; and facilitate open, direct and two-way communication between the NSW Police Force Executive and external stakeholders on identified issues relating to culturally responsive policing.¹¹⁵

PMAC members were also made responsible for raising emerging issues with the Executive and asked to be available for consultation out of session.¹¹⁶ However, there is no obligation for the Police Force to change its policies or practices in response to the advice of the PMAC.¹¹⁷ In this way, despite being held up by the Police Force as a foremost example of its commitment to community engagement with CALD communities,¹¹⁸ the PMAC does not go so far as to enact the devolution and decentralisation of police power often held to be hallmarks of community policing.¹¹⁹

¹¹⁴ David Dixon, 'Reform, Regression and the Royal Commission into the NSW Police Service' in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press, 1999) 138, 155.

¹¹⁵ *PMAC Reflections 2013-15*, above n 109, 2.

¹¹⁶ Letter from Police Commissioner to PMAC Members, above n 112.

¹¹⁷ This is not necessarily a bad thing. As an example, see the Dixon's discussion of 'community representatives' chosen to contribute to the Legislative Committee's Cabramatta Inquiry and the veracity of their claims in "A Transformed Organisation"? above n 64, 212.

¹¹⁸ *PMAC Reflections 2013-15*, above n 109.

¹¹⁹ See, eg, Kappeler and Gaines, above n 4, 523, 525.

The Work of the Police Multicultural Advisory Council in Middle Eastern Background Communities

In its initial term, the PMAC assisted the Police Force's Executive team in its attempts to rectify concerns about crime and policing. As an example, search raids involving more than 800 police officers from the NSW Police Force and the Australian Federal Police (AFP) sparked backlash against the police, with some Muslim community groups holding that the targets of the raids had been racialised as Muslims in an attempt to exaggerate the apparent threat posed by those who were raided.¹²⁰ The Police Force later acknowledged the 'perception arising in some [Muslim] communities that the police could have used a less rigorous response'.¹²¹ PMAC members were responsibilised by the police to try to counter the de-legitimation that accompanied the raids by publicly performing consent to policing, mainly through media engagements.¹²²

In addition to publicly performing consent to policing, PMAC members were responsibilised by the Police Force to adopt the personas of 'good Muslims' and explicitly distance themselves and other Muslims from extremist violence and terrorist organisations.¹²³ Council members carried out community engagement work by organising a barbecue, providing support to families of individuals whose family members have travelled to Iraq and Syria as so-called 'foreign fighters', and initiating a press conference involving Muslim and Christian 'Arab faith leaders' denouncing the Islamic State of Iraq and the Levant (ISIL).¹²⁴ However, it is not clear what, if any, effect these public performances of consent to policing had in rectifying community members' objections to the police's heavy-handed raids and other policing policies and practices.

¹²⁰ *PMAC Reflections 2013-15*, above n 109, 9; Jason Om, 'Counter-Terrorism Raids: AFP Used Extraordinary Powers for First Time to Detain People without Charge', *Australian Broadcasting Corporation (ABC) News* (Online), 19 September 2014 <<https://www.abc.net.au/news/2014-09-19/afp-used-extraordinary-powers-to-detain-people-without-charge/5757546>>.

¹²¹ *PMAC Reflections 2013-15*, above n 109, 9.

¹²² See Marie Breen-Smyth, 'Theorising the "Suspect Community": Counterterrorism, Security Practices and the Public Imagination' (2014) 7(2) *Critical Studies on Terrorism* 223, 237.

¹²³ *Ibid.*

¹²⁴ *PMAC Reflections 2013-15*, above n 109, 9–10.

PMAC members whom I interviewed had also been charged with carrying out community consultations to identify further crime and policing issues relevant to community members on behalf of the police. Some concerns that Council members identified included violence against women wearing Islamic religious headdresses, the police's use of ethnic descriptors, the policing of Middle Eastern youths in public spaces, and the effect of media reporting on radicalisation as issues of concern to Middle Eastern background communities.¹²⁵

Opinions were divided amongst the PMAC members whom I interviewed about how willing the Police Force is to accept and integrate the advice of PMAC members into crime prevention policies and broader approaches to policing. Peter believed that the Force is willing to listen to the PMAC, but also intimated that buy-in from senior police is essential to the PMAC being able to meet its stated objectives:

To be honest with you, they were taking *most* issues on board. I keep going back, especially when [former Deputy Commissioner Nick Kaldas] was the chair – because he was the chair for a long time – nothing he would put behind. He would follow everything ... Because see the caucus is normally chaired by the Commissioner himself, for the first half to an hour, and then if he's got something on he will leave and his deputy will take over. So I have not met [Police Commissioner Michael Fuller] yet but I'm sure it will be on the same level as it was before.¹²⁶

Belinda also believed that the police were willing to listen to the PMAC's advice about most policing issues because integrating the advice of the PMAC into policing practice can help to negotiate community consent to policing, or at least avoid complaints:

... what I find that's really good is that they want to sort of apply the things that they hear in ... they need assistance in terms of 'if that's the issue, how would you then operationalise a response to it? How can we apply the resources and the powers that we have?' Because

¹²⁵ Interview with Belinda (Member of PMAC); Interview with Peter, (Member of PMAC); Interview with Sarah (Member of PMAC).

¹²⁶ Interview with Peter (Member of PMAC). At the time of my interview with Peter, Michael Fuller had been Police Commissioner for just under two months.

at the end of the day, they want, you know, Commanders and the general executive want a very strong, well-resourced, you know work force that is doing the right thing by the community and building confidence and of course you don't want complaints and you don't want grievances ... So I think they certainly understand that you know collaborating and listening to different perspectives and approaches is a good thing. So generally, yes I think they're very open and interested, but I think there are also areas that they feel are no-go, or sometimes that they're just too established or too rigid that they ... I don't think they can see a shift.¹²⁷

However, Sarah felt that the PMAC was a nominal 'checkbox exercise' that allows the Force to state that it delivers culturally appropriate policing services while retaining primacy in determining crime prevention strategies and policing priorities. As explained by Sarah:

Everything is just done on this regimented police basis, you know, the presentations [at PMAC meetings] are done on a regimented basis, and done in a manner which was ... 'well we're here to tick boxes, here's this particular issue, so now that we've given you all the facts and figures we've obviously done it and therefore you can all walk away and go back to your communities and report that this has been done.'¹²⁸

Though it may stifle the input of PMAC members, the top-down approach described by Sarah aligns with the Force's emphasis on using community policing as a mechanism to create conduits of information that flow not only from the community to the police but also in the opposite direction. Sarah's description suggests that this flow of information from the police to the community is intended to increase the responsibility of the community for exercising informal social control mechanisms and self-policing. By convening PMAC meetings in the manner described by Sarah, the

¹²⁷ Interview with Belinda (Member of PMAC).

¹²⁸ Interview with Sarah (Member of PMAC).

police are also able to maintain primacy in setting the agendas of those meetings, and policing policies and practices more generally.

The Police Multicultural Advisory Council and Community Engagement

The extent to which the PMAC helps to ‘build strong relations between communities and police’¹²⁹ is contested and questionable. While some members of the PMAC believed that the police integrate the PMAC’s advice into their policies and practices, the police are not obliged to do so. At the same time, it is impossible to determine the precise reasons why individuals are selected for the PMAC. Accordingly, it is unclear whether PMAC members possess the relevant expertise to advise the police about concerns held by members of CALD communities in respect of crime and policing.

By my assessment, some of the individuals on the PMAC do regularly interact with individuals from vulnerable, marginalised, and racialised communities that experience high levels of police contact. Electing such individuals to an advisory council like the PMAC could provide a channel for presenting the police with viewpoints and narratives that challenge dominant police knowledges. However, as stated above, there is no guarantee that the police will listen to such views or integrate them into their practices. At the same time, as discussed below, it appears that some PMAC members may be selected because they possess a prominent public platform and have assumed a role as a ‘leader’ or ‘spokesperson’ of a particular racial, ethnic, or religious community.

There are several issues associated with appointing individuals to advisory bodies like the PMAC upon the basis that they are ‘community leaders’. As explained by Hansford, ‘meetings with handpicked civic or religious leaders become, at best, opportunities to gain additional community buy-in to already entrenched conservative ideals and, at worst, sites for law enforcement propagandising’.¹³⁰ Moreover, those individuals who tend to be described as ‘community leaders’ are not democratically elected, and it is unreasonable and unrealistic to expect that they can speak on behalf

¹²⁹ *PMAC Reflections 2013-15*, above n 109, 13.

¹³⁰ Hansford, above n 6, 222.

of each member of the community or communities that they are said to represent. Of course, it is not a coincidence that police seek out the views of ‘community leaders’; the endorsements of ‘community leaders’ can help to disguise sectional and police interests involved in decision-making processes, and, in turn, ‘community leaders’ can ‘use the tool of community policing for their own professional self interests’.¹³¹

While the PMAC does not possess the same institutional standing as MCLOs, a significant similarity exists between their work, in that they are both expected to self-police and assist the Police Force in ordering ethnic minority communities. Two forms of self-policing can be traced in the above discussion of the work of Middle Eastern background and Muslim members of the PMAC. First, members of the PMAC create conduits for the exchange of information and intelligence between the police and targeted communities. These conduits flow in two directions: while PMAC members are asked to advise the police on community structures and so on, they are also expected to exert any public influence that they might have by communicating police priorities and expectations to members of racial and ethnic minority communities. Second, members of the PMAC are also expected to perform consent to policing and engage with members of ethnic minority communities in order to assist in negotiating and maintaining police legitimacy in those communities.

It would be an overstatement to claim that the community engagement work of the PMAC contributes to the maintenance of the Middle Eastern suspect community to the same extent as the work of MCLOs. However, in selecting Middle Eastern background and Muslim communities for police-community engagement, information exchanges and other interventions upon the basis of their racialised collective identities, the work of the PMAC plays a limited role in bringing members of racialised Middle Eastern and Muslim background communities into contact with the police. Although the PMAC’s role in maintaining the Middle Eastern suspect community is not as prominent as the other policing policies and practices discussed throughout this thesis, these policies and practices are not mutually exclusive; instead, they often overlap (or at least occur simultaneously).

¹³¹ Ibid; See also Cunneen, above n 27, 208.

VI. Conclusion

This chapter set out to explore how community policing and community engagement policies and practices have contributed to the institutionalisation of the policing of the Middle Eastern suspect community in New South Wales. The chapter has argued that that the work of MCLOs and the PMAC have contributed to suspect community formation by designating Middle Eastern background and Muslim communities as the rightful subjects of policing, and extending the scope and reach of coercion, regulation, and surveillance within those communities.

MCLOs institutionalise the self-policing of CALD communities by members of those communities. Some community workers interviewed for this project explained that they played an active role in shaping the work of MCLOs by requesting certain information from MCLOs or asking them to facilitate a session or workshop with community members. However, there is also an organisational expectation incumbent on MCLOs to collect community intelligence in the course of their work. As suggested by two interviewees, community policing and community engagement initiatives led by MCLOs are broadly and routinely directed at Middle Eastern background and Muslim communities upon the basis of collective ethnic, cultural, and religious identities. If the work of MCLOs is indeed routinely targeted at Middle Eastern background communities by the police, in a way that exceeds the attention applied to other ethnic, cultural, and religious communities, it constitutes over-policing.

Meanwhile, the PMAC also appears to responsibilise members of Middle Eastern background and Muslim communities to self-police. In respect of self-policing, members of the PMAC are expected to create conduits of information that flow from the police to community members by such means as coordinating community consultations on behalf of the police. Meanwhile, when heavy-handed hard policing practices have compromised the legitimacy of the police in the eyes of members Middle Eastern background and Muslim communities, PMAC members have been tasked with publicly expressing their confidence in the police by participating in press conferences and organising community events like barbeques in an effort to re-negotiate community consent to policing.

The Police Force's criteria for selecting who is asked to sit on the PMAC is also unclear. This makes it difficult to assess whether each of the PMAC members possesses the relevant expertise to advise the police about CALD community members' views on crime and policing. In any case, the police are not obliged to act on PMAC members' advice, and interviewees expressed differing opinions about whether the police are willing to listen to what PMAC members have to say.

Chapter VIII

Conclusion

Middle Eastern crime families were reminded they are in the sights of a beefed-up Strikeforce Force Raptor [sic]¹ with a series of raids on homes and businesses over the weekend. Until this week, the strike force had targeted only bikie gangs. But a recent restructure saw the Middle Eastern Organised Crime Squad merged with the Gangs Squad to form the Criminal Groups Squad. “Over the weekend we carried out 24 firearm prohibition searches on 24 premises of known Middle Eastern criminals and their associates just to make sure those groups and families don’t think they can relax”, Criminal Groups Squad head Detective Superintendent Deborah Wallace said. “If you are a member of a criminal group and drive or operate a business, Raptor will use traffic infringements, compliance to council laws, taxation laws and consorting laws to disrupt any illegal activities”, she said.²

I. Policing People of Middle Eastern Appearance

At the time of writing, the NSW Police Force’s racialised over-policing of people of Middle Eastern background and appearance shows no signs of abating. On the contrary, the quotation above testifies to the Force’s intention for its Criminal Groups Squad (CGS) to continue policing ‘Middle Eastern crime groups’ and Middle Eastern families using many of the same strategies and practices elaborated throughout this thesis. Specifically, the quotation outlines the police’s intention to utilise squads

¹ Strike Force Raptor was the Gangs Squad’s most prolific strike force. Though the codenames of strike forces are supposed to be randomly allocated, it is unlikely that Raptor was named after a bird of prey coincidentally. After the Gangs Squad and the Middle Eastern Organised Crime Squad were amalgamated to form the Criminal Groups Squad, Strike Force Raptor was incorporated into the Criminal Groups Squad. It had, however, already developed a considerable public reputation of its own. As stated by Deputy Commissioner Dave Hudson, Raptor was retained after the merger of the Gangs Squad and Middle Eastern Organised Crime Squad because ‘we [did not] want to hurt that brand, it’s got a pretty good name’. See Mark Morri, ‘Raids Put Targets in Sights of New Squad’, *The Daily Telegraph* (Sydney), 18 December 2017, 16.

² Ibid.

(including the CGS and its subsidiary Strike Force Raptor) and legal resources like Firearms Prohibition Order (FPO) search powers for purposes related to disruption, overt surveillance, and authority imposition (see Chapters IV through VI). Of course, police rhetoric or ‘police talk’ does not necessarily reveal police practice, but the findings of this thesis give reason to believe that the quotation attests to genuine policing strategies and tactics. Not only has the CGS succeeded the former Middle Eastern Organised Crime Squad (MEOCS) (see Chapter V), but the courts and the NSW Civil and Administrative Tribunal have authorised the police to use legal resources (including FPO search powers) for disruption and other police-defined objectives (see Chapter VI).³

Aside from this thesis, there is very little scholarship about the Force’s approaches to policing people of Middle Eastern background and appearance in New South Wales for non-terrorism-related matters (see Chapters I and II).⁴ It may be objected that this is because the distinction between counter-terrorism policing and the policing of non-terrorism-related matters is somewhat artificial or difficult to determine: particularly since that this study considers the policing of people of Middle Eastern background and appearance, and it is well documented that Muslim and Arab communities have been intensely policed through a range of ‘soft’ and ‘hard’ methods in many English-speaking jurisdictions since the 11 September 2001 attacks in the United States (‘9/11’).⁵ However, people of Middle Eastern background in New South Wales were aggressively policed for non-terrorism-related matters before 9/11, and this policing has since been sustained by a proliferation of policies, practices, and institutional

³ *Director of Public Prosecutions (NSW) v Shaba* [2018] NSWSC 811; *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43.

⁴ But see Jock Collins et al, *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime* (Pluto Press, 2000); Rob White, ‘Policing the Other: Lebanese Young People in a Climate of Conflict’ in James Jupp, John Peter Nieuwenhuysen and Emma Dawson (eds), *Social Cohesion in Australia* (Cambridge University Press, 2007) 70.

⁵ See, eg, Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing, and Race* (Oxford University Press, 2014); Christina Pantazis and Simon Pemberton, ‘From the “Old” to the “New” Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation’ (2009) 49(5) *British Journal of Criminology* 646; Arun Kundnani, *Spooked! How Not to Prevent Violent Extremism* (2009); Arun Kundnani, *The Muslims Are Coming! Islamophobia, Extremism and the Domestic War on Terror* (Verso, 2014).

units.⁶ Policing practices have also coalesced with abiding public discourses about ‘Middle Eastern organised crime’, which is said to constitute a distinct type of serious and organised crime in New South Wales (see Chapters IV and V).⁷ As such, it is too simplistic to treat the policies and practices described in the preceding chapters as a mere outgrowth of racialised counter-terrorism policing post-9/11. This thesis has therefore sought to reduce the above-mentioned gap in the literature by examining the Force’s approaches to policing people of Middle Eastern background and appearance, for non-terrorism-related matters, between 1998 and 2018.

More specifically, I have employed and developed the conceptual tool of the ‘suspect community’ to make sense of the Force’s over-policing of people of Middle Eastern background and appearance in New South Wales, contending that this policing has created a Middle Eastern suspect community. This contention has been informed by data from interviews conducted with lawyers, community workers, members of the Police Multicultural Advisory Council (PMAC) and former police officers. It has also been informed by my analyses of a range of original documents, including published court judgments and tribunal decisions, police policy documents, the NSW Parliament Hansard, and news articles, amongst other documentary sources (see Chapter III).

However, this is not to suggest that the contributions of this thesis are merely empirical, as they are also conceptual. The suspect community thesis has typically been applied in studies of counter-terrorism policing, but the core contention of the framework is not inherently concerned with counter-terrorism policing: instead, it draws attention to how members of racialised communities are brought into relation with the police upon the basis of their identity, rather than their conduct, to make a larger social group (or ‘community’) ‘suspect’. Accordingly, I have combined insights from the broader literature on racialised policing and data generated in this study to suggest how the suspect community thesis might be usefully augmented and applied in the context of the NSW Police Force’s approaches to policing people of Middle Eastern background and appearance. As elaborated below, this study’s research

⁶ However, it is important to note that the Force’s policing of the Middle Eastern suspect community has been animated by proactive, intelligence-led and pre-crime frames, and that these frames have been ratcheted up since the advent of the War on Terror.

⁷ See, eg, Yoni Bashan, *The Squad* (HarperCollins, 2016).

findings and development of the suspect community thesis may be helpful in analysing the over-policing of racialised communities in other contexts.

This final chapter thematically summarises the empirical and conceptual contributions of this thesis (Part II). It also highlights the limitations and implications of this research, as well as opportunities for further scholarship (Part III).

II. The Creation of a Middle Eastern Suspect Community: A Thematic Summary of Findings

The suspect community thesis was first introduced by Paddy Hillyard in 1993. As noted above, suspect communities are formed when individuals from a section of the population become collectively subject to over-policing and concerted surveillance upon the basis of their identity, status, or associations, rather than legally-articulable police suspicion that they have engaged in specific criminal wrongdoing (see also Chapter II). In this thesis, I have adopted the view that police knowledges, policies and practices reflect and reconstitute ideas about race (or, in other words, that they are racialised). I have used the suspect community thesis to help make sense of how racialised policing constitutes suspect populations.

There are two fundamental aspects of the suspect community thesis that require attention. First, for Hillyard, the policing of suspect communities is patterned and institutionalised, and not simply the result of misconduct on the part of recalcitrant officers.⁸ Secondly, the concept of ‘community’ has been the subject of considerable debate and contest in the literature on suspect communities. With respect to racialised groups, imputed ‘communities’ or communal affiliations can facilitate collective attributions, wherein the alleged transgressions of people of particular racial or ethnic backgrounds are attributed *en bloc* to other people of the same racial or ethnic background.⁹ Collective attributions of this kind, which are commonly made in ‘police

⁸ Paddy Hillyard, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993) 33, 60.

⁹ Gabe Mythen, “‘No One Speaks For Us’: Security Policy, Suspected Communities and the Problem of Voice” (2012) 5(3) *Critical Studies on Terrorism* 409, 414–16.

talk’, and in political and media discourses, licence the policing of collective identities, and thereby underpin suspect community formation.

In the sub-sections that follow, I summarise the specific institutionalised policing policies, strategies, and practices that contributed to the construction and maintenance of the Middle Eastern suspect community in New South Wales, as traced throughout Chapters IV to VII. Policing strategies, practices, and technologies are context-specific and ever-changing. The social construct of race is also best understood in its time and place. Nevertheless, these observations do not preclude the potential for parallels to be drawn between the racialised policing discussed in this thesis, and that seen elsewhere. This is especially the case given the prevalence of policy transfer between policing jurisdictions (see also Part III, below).¹⁰ As such, it is hoped the insights from this thesis can be adopted (or perhaps adapted) to help make sense of racialised policing elsewhere, and in other periods.

It is worth stating that many of the policies and practices discussed below are typical of proactive and intelligence-led approaches to policing. As discussed in Chapters IV through VI, these approaches began to take root in New South Wales in the late 1990s, in the aftermath of the Royal Commission into the New South Wales Police Service (the ‘Wood Royal Commission’).¹¹ Of course, these approaches were contemporaneously adopted in other jurisdictions and remain prominent today. More recently, though, there has been growing scholarly attention to pre-crime and pre-emptive outlooks, which have driven pre-emptive policing practices in a number of arenas, including organised crime and anti-social behaviour.¹²

While proactive and intelligence-led policing approaches are animated by risk assessments based on previous behaviours and occurrences, pre-crime and pre-emptive approaches are animated by speculative forecasts of potential threats. Nevertheless, proactive, intelligence-led, and pre-emptive approaches are similarly

¹⁰ Trevor Jones and Tim Newburn, *Policy Transfer and Criminal Justice: Exploring US Influence Over British Crime Control Policy* (Open University Press, 2007) ch 5.

¹¹ David Dixon, “‘A Transformed Organisation’? The NSW Police Service Since the Royal Commission’ (2001) 13(2) *Current Issues in Criminal Justice* 203.

¹² See, eg, Jude McCulloch and Dean Wilson, *Pre-Crime: Pre-Emption, Pre-Caution and the Future* (Routledge, 2016).

liable to reveal and sustain the dynamics of racialisation in policing, as race, status, and associations often serve as proxies or indicators of an individual's propensity for criminal wrongdoing. In turn, proactive, intelligence-led and pre-emptive approaches can contribute to suspect community formation by directing police to zero in on those people with racialised and criminalised identities and associations, in an attempt to intervene against and forestall anticipated future wrongdoing.

The Creation of Institutional Units

In Chapters IV and V, I identified the creation of dedicated institutional units (or police squads) as one of the most prominent motifs in the NSW Police Force's policing of the Middle Eastern suspect community. These institutional units have variously included centralised squads, task forces, strike forces, and operations. The most noteworthy of these squads were Task Force Gain, created in 2003, and its predecessor the MEOCS, which operated for over a decade between 2006 and 2011. As noted above, the MEOCS's mantle was taken on by the CGS in late 2017.

The roles, responsibilities, and modes of racialised policing inherent in each of these squads' work were many and varied, though some themes can be drawn out. In the 1990s and early 2000s, squads frequently carried out intensive street policing operations in certain Sydney localities; a point to which I will return in the following subsection. While these operations may have facilitated the collection of low-level intelligence, the policies and practices of these early squads do not appear to have involved coordinated intelligence-led approaches to identifying risky places, people, behaviours, and times, because the fledgling paradigm of intelligence-led policing had not yet been fully embraced and implemented in New South Wales. Rather, upon the basis of the information on the public record, it appears that the early squads were primarily created to impose authority and engage in high-visibility shows of force, while also using low-level legal resources to carry out 'Broken Windows'-style policing.¹³ A crucial component of this work, which remains prevalent at the time of writing, has been the targeted policing of drivers and traffic-related offences.

¹³ See David Dixon, 'Why Don't the Police Stop Crime?' (2005) 38(1) *Australian & New Zealand Journal of Criminology* 4, 9–11.

While Task Force Gain, the MEOCS, and many of the MEOCS' subsidiary strike forces carried on with this intensive street policing, their work also incorporated coordinated, intelligence-led policing.¹⁴ For example, the MEOCS gathered (and coerced) information and intelligence from its targets to direct its attempts at disrupting and otherwise policing Middle Eastern familial relations and broader social associations. As indicated in the quotation above, the CGS will continue to do so; suggesting that the account of the MEOCS provided in Chapter V can be of some use in conceptualising the work of the CGS and its subsidiary strike forces, including Strike Force Raptor.

In all, the squads discussed in this study have contributed to, and sustained, suspect community formation by ensuring the allocation of infrastructure and resources for the over-policing of people of Middle Eastern background and appearance; and especially those who reside in Sydney's south-western and western suburbs. Indeed, the MEOCS 'counter-map' that I created (see Chapter V) supports this contention by depicting the heavy concentration of the MEOCS' work (or at least, the MEOCS' reported work) in Sydney's south-western and western suburbs. This observation leads to a related point: namely, that a prominent way in which the Police Force – and especially its squads – has created a Middle Eastern suspect community is through territorial policing.

Territoriality

In the first instance, the territorial policing of the Middle Eastern suspect community has involved the police containing people of Middle Eastern background and appearance in Sydney's south-western and western suburbs, as most starkly illustrated by the example of the Menai Massacre in Chapter IV. Territorial policing has also involved police attempts at suppression and surveillance within localities in Sydney's south-western and western suburbs, as exemplified by Operation Pericos and Task Force Gain (see Chapter IV) and many of the MEOCS's strike forces and operations, including Strike Force Felix and Operation Apollo (see Chapter V and **Appendix 5**).

¹⁴ The work of the MEOCS also involved multi-agency investigations and operations, but, for reasons explained in Chapter V, this thesis focuses on the MEOCS' place in the NSW Police Force and its role in policing the Middle Eastern suspect community in New South Wales.

In Chapters IV and V of this thesis, I discussed three interrelated ways in which police territorial practices have contributed to suspect community formation and maintenance. Fundamentally, territorial police practices have brought people of Middle Eastern background and appearance into contact with the police because of where they are located in Sydney, and not because they are suspected of involvement in specific criminal wrongdoing. Secondly, resistance to police territorial practices creates opportunities for the police to criminalise uncooperative behaviour by members of racialised communities. Finally, as exemplified by Operation Pericos in Chapter IV, acts of resistance against territorial policing are racialised as being indicative of disorder and respect for authority within certain racial or ethnic communities; in turn providing an apparent justification for further police intervention, surveillance, and authority imposition.

How, specifically, do the police stage these interventions and surveillance? As discussed below, legal resources can be useful to police in achieving such objectives.

Suspicionless Powers

In Chapter VI, I provided two case studies of legal resources used in the proactive policing of people of Middle Eastern background and appearance in New South Wales. The legal resources were random breath test (RBT) provisions, which are contained in the *Road Transport Act 2013* (NSW), and FPOs and the attendant FPO search powers, contained in the *Firearms Act 1996* (NSW). RBT and FPO powers are both ‘suspicionless’ powers, and part of a toolkit of powers available to all police officers in New South Wales. Nevertheless, the police have developed deliberate strategies of using RBT and FPO powers as legal resources to target members of the Middle Eastern suspect community, their families, friends, and associates.

In Chapter VI, I sketched how RBTs and FPOs have been used to stage proactive, aggressive and targeted policing interventions against members of the Middle Eastern suspect community in furtherance of police objectives including conducting surveillance, gathering intelligence, effecting disruption, and imposing authority. Chapter VI extended the claims made in Chapters IV and V about the centrality of proactive policing rationalities and methodologies to the Police Force’s approaches to

policing the Middle Eastern suspect community. Chapter VI particularly supported the contention in Chapters IV and V that the squads tasked with policing the Middle Eastern suspect community frequently targeted drivers, issued infringement notices, and laid charges for traffic-related offences. The legal resource of the FPO is also explicitly mentioned in the quotation at the beginning of this chapter as a constituent part of the CGS's approaches to disrupting so-called 'Middle Eastern crime gangs'.

In summary, these legal resources have contributed to the maintenance of the Middle Eastern suspect community by licencing police intervention against people of Middle Eastern background and appearance upon the basis of their identity, appearance, familial relations or broader associations, irrespective of whether the police have formed legally-articulable suspicion that the people in question have engaged in substantive wrongdoing.

Community-Based Interventions

In addition to the policing policies and practices discussed above, 'soft' and ostensibly benign community policing and community engagement initiatives have also brought members of the Middle Eastern suspect community into contact with the police in New South Wales.¹⁵ Though any number of activities can be categorised as community policing and community engagement, Chapter VII focused on the police's most prominent initiatives for engaging culturally and linguistically diverse communities: Multicultural Community Liaison Officers (MCLOs), and the PMAC.¹⁶

As explored in Chapter VII, the Police Force has articulated a desire for the community policing and community engagement initiatives described in this chapter to be inclusive and participatory and to build community trust in the police. Interviews with community workers and members of the PMAC indicated that some success has been achieved in these regards. However, as argued by Vicki Sentas, community policing and community engagement initiatives can constitute over-policing, irrespective of a

¹⁵ See Sentas, above n 5, ch 5; Francesco Ragazzi, 'Policed Multiculturalism? The Impact of Counter-Terrorism and Counter-Radicalization and the "End" of Multiculturalism' in Christopher Baker-Beall, Charlotte Heath-Kelly and Lee Jarvis (eds), *Counter-Radicalisation: Critical Perspectives* (Routledge, 2015) 156, 163.

¹⁶ NSW Police Force, *Cultural Diversity* <https://www.police.nsw.gov.au/safety_and_prevention/your_community/cultural_diversity>.

police organisation's stated intentions for those initiatives to be participatory, inclusive, and democratic.¹⁷

Drawing on Sentas's thinking, Chapter VII argued that MCLOs and the PMAC have contributed to suspect community formation by designating Middle Eastern background and Muslim communities as the rightful subjects of policing, and by extending the scope and reach of coercion, regulation, and surveillance within those communities.

'Police Talk' and Public Discourses about Middle Eastern Organised Crime

In Chapters IV and V, I argued that the reporting of police knowledge claims or 'police talk' in the media can buttress suspect community formation. As the police are authoritative sources of public information about crime, the reproduction by the media of 'police talk' that marks out certain racial, ethnic and religious communities as being inherently criminal can serve to turn racialised identities into 'crime types'.¹⁸

For example, the police in New South Wales have used the term 'Middle Eastern organised crime' to denote a range of criminal and anti-social behaviours that have no common element other than the alleged offenders' Middle Eastern heritage (see Chapters IV and V). In New South Wales, where authoritarian law-and-order rhetoric has been dominant for more than two decades, these discourses have coalesced with the proactive policing of the Middle Eastern suspect community to justify the need for further aggressive and targeted policing of racialised Middle Eastern communities. Moreover, as discussed further below, the practices of the Police Media Unit and Research Coordination Unit (RCU) have simultaneously worked to insulate the Police Force's knowledge claims about the Middle Eastern suspect community (see also Chapters III and V).

¹⁷ Sentas, above n 5, ch 5.

¹⁸ See Stuart Hall et al, *Policing the Crisis: Mugging, the State and Law & Order* (Palgrave Macmillan, 35th anniversary edn, 2013).

III. Limitations and Directions for Future Research

Though this study has provided a number of original insights, there is significant room for further critical, empirically-grounded research about the racialised policing of people of Middle Eastern background and appearance in New South Wales. As explored in this thesis, the strategies, policies and practices that have comprised the Police Force's approaches to policing people of Middle Eastern background and appearance throughout the last two decades have been many, varied, and carried out by police employees positioned across several institutional units and commands. The complexity of this regime of racialised policing, and its effects on those policed, signals the need for further critical scrutiny; particularly given that the policing of the Middle Eastern suspect community is, by all indications, ongoing.

In a handful of instances, interviewees expressly stated that they hope that this research will assist in mounting substantive challenges to policing policies and practices in New South Wales. In these discussions, interviewees spoke of a need for us to combine our respective skills and knowledges and to work together in critiquing and challenging policing policies and practices.¹⁹ For example, Isaac – who is a community worker of Middle Eastern background and was heavily policed as a teenager – explained that he can provide a role model for the young boys that attend his community centre. He also advises them about how to avoid and de-escalate conflict situations with police. However, he said that his work would be much easier if certain proactive street policing policies and practices were rolled back, and he saw critical research studies like this thesis as a crucial component of lobbying or pushing for such changes.²⁰

While I have included the above anecdote to suggest that there is a place for critical, empirically-grounded research about the policing of people of Middle Eastern background and appearance, it is not my intention to suggest that carrying out such research is straightforward. Policing policies and practices are often opaque, and police non-transparency deliberately maintains this opacity (see Chapter III and below).

¹⁹ See Becky Clarke, Kathryn Chadwick and Patrick Williams, 'Critical Social Research as a "Site of Resistance": Reflections on Relationships, Power and Positionality' (2017) 1(2) *Justice, Power and Resistance* 261 on how and why researchers should build alliances with campaign groups to create 'sites of resistance'.

²⁰ Interview with Isaac (Community Worker).

Moreover, while policing policies and practices may be challenged as unlawful or discriminatory by those who are policed, it should not be assumed that those affected by policing are willing to share their experiences with researchers.²¹ Indeed, the main limitations of this research relate to the scope of data that I was able to collect in this study, as explored further below.

Research Limitations

Generating data about the Police Force's everyday practices in policing the Middle Eastern suspect community, and the suspect community's everyday experiences of that policing, was a difficult undertaking. In all, the data generated for this study cannot be said to provide a comprehensive or unequivocal picture of policing practices.

My attempts to generate data in this study were complicated by the Police Force's non-transparency and stringent gatekeeping of research access. As detailed in Chapter III, the Police Force's RCU declined to allow me to carry out research involving Police Force employees. However, journalists from mainstream, conservative-leaning media outlets were granted access to much of the same information that I had requested (and subsequently produced favourable accounts of policing). It is my view that the Force and its RCU disallowed me from scaling what I have termed the 'Tall Blue Wall' of research access because they were concerned that I would be critical of their policies and practices.

However, this lack of access was not merely a matter of methods; it was intrinsic to the phenomena studied in this thesis and provided valuable analytic frames for understanding suspect community formation. Put differently, the Police Force's institutional control of research access and practices of informal censorship and image manipulation have allowed the organisation to control and shape public information about the Middle Eastern suspect community. As contended in Chapter III, this observation signals the need for a broad conception of the police organisational practices that contribute to suspect community formation which includes, but is not limited to, the practices of operational police officers.

²¹ Clarke, Chadwick and Williams, above n 19, 273.

Moreover, while interviewing and observing police employees would have been useful in generating insights across my research questions, the police are not the only people who are able provide information about police practices. As explained in Chapter III, I take the stance that gathering data from sources aside from the police – including representatives of those who are policed – allows researchers to generate valuable accounts that extend and challenge knowledge claims that originate from within the police institution.

It is worth noting here that it is impossible to determine the population of people policed as part of the Middle Eastern suspect community. Pre-arrest contacts are not routinely recorded, and details about people policed through community-based initiatives are not recorded in any accessible form either. Meanwhile, systematic records of the ethnicity of those charged and arrested, or officer perceptions of those people's ethnicities, are not made publicly available by the NSW Police Force. Further, as stated above, those who are policed may not wish to share their experiences with researchers. While each of these factors made it difficult to locate and recruit people who have been policed for interviews, these difficulties were not insurmountable. Interviews with lawyers and community workers were sought out because they provided insights into the systemic workings of policing and police-community relations. While these interviews ultimately represented views *about* those policed, rather than the views *of* the policed, they nevertheless provided 'less cop-sided' accounts of policing that challenged and extended the views put forth by the police in public discourse and policy documents.

While I acknowledge the limitations of this study, taking a triangulated approach (involving both data triangulation and method triangulation) enabled the development of a deep, robust and detailed account of the NSW Police Force's approaches to policing people of Middle Eastern background and appearance in New South Wales. It is my hope that this account will help to inform future research in this area.

Opportunities for Further Research

During this research, related topics and points of comparison emerged which were beyond the scope of this project, but which each present opportunities for further research. I have selected two such opportunities to explore at further length below.

Proactive Policing in New South Wales: A Patchwork of Policies, Strategies, and Practices

This thesis has outlined the rise of proactive policing in New South Wales in the late 1990s in the aftermath of the Wood Royal Commission. It has also discussed the emergence of intelligence-led and, increasingly, pre-emptive approaches to policing in New South Wales. These policing paradigms are not one and the same, but they each encourage police to anticipate risks (or, in the case of pre-emptive policing, the lower threshold of threats) and act in anticipation of future wrongdoing. As evidenced by Detective Superintendent Deborah Wallace's statements in the quotation at the beginning of this chapter, the police talk openly about anticipating and intervening against crime through such means as disruption policing (see also Chapters V and VI). This thesis illustrates that race, ethnicity, associations, class, and other variables related to an individual's status or identity often stand in as proxies for wrongdoing and licence proactive, intelligence-led, and pre-emptive policing.

Rigorous and impactful research is currently being carried out to investigate proactive policing in New South Wales. One prominent example is Sentas and colleagues' work around the NSW Police Force's Suspect Targeting Management Plan (STMP). Providing further evidence of the Police Force's non-transparency, the STMP remained secret for almost two decades until it was uncovered by Sentas, who then co-authored a report about the STMP which was published in late 2017.²² In essence, the STMP is akin to a 'blacklist' of individuals who are deemed to be at risk of recidivism, and who each become liable to proactive policing practices aimed at disrupting their everyday lives. As determined by Sentas and colleagues, over half of the individuals

²² Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan. A Report of the Youth Justice Coalition NSW* (2017).

on the STMP are Indigenous Australian peoples, and many of them are under the age of 25.²³

When the STMP came to public recognition I was close to completing my fieldwork. In one interview, a lawyer suggested that people of Middle Eastern background are also liable to be policed under the STMP.²⁴ This suggestion presents one avenue for further research.

More broadly, there exists significant scope to interrogate the patchwork of policies and practices that comprise the Police Force's proactive and intelligence-led policing approaches. There is also significant scope to explore how those policing approaches are experienced by racialised and other marginalised communities. In summary, the STMP and the proactive and intelligence-led strategies and practices discussed in this thesis are constituent elements of a broader regime of proactive policing in New South Wales,²⁵ and this regime should be subject to further exploratory and critical scholarship.

International Comparative Work on the Proactive Policing of Racialised Communities

In addition to extending and deepening our understandings of proactive policing in New South Wales, there is also scope to carry out comparative work on the proactive policing of racialised communities across Australia and between international jurisdictions. For example, the trend of criminalising and policing associations is not unique to New South Wales,²⁶ and has become a key mode of policing that has brought racialised communities into disproportionate contact with the police in other Australian jurisdictions and in other parts of the world.²⁷ A further mode of policing

²³ Ibid; See also Evidence to Portfolio Committee No 4 on Legal Affairs, New South Wales Legislative Council, Sydney, 9 November 2017, 6–7 (Michael Fuller, Police Commissioner).

²⁴ Interview with Nathan (Lawyer).

²⁵ This was acknowledged by Police Commissioner Michael Fuller in the 2017-18 Police Budget Estimates Hearing. See 'Evidence to Portfolio Committee No 4', above n 23, 7–10.

²⁶ See, eg, Andrew Dyer, 'Pre-Crime Control Measures: Anti-Associations Laws' in Thomas Crofts and Arlie Loughnan (eds), *Criminalisation and Criminal Responsibility in Australia* (Oxford University Press, 2015) 261.

²⁷ See, eg, Patrick Williams and Becky Clarke, *Dangerous Associations: Joint Enterprise, Gangs and Racism: An Analysis of the Processes of Criminalisation of Black, Asian and Minority Ethnic Individuals* (2016).

that has brought racialised communities into the ambit of the police in various jurisdictions, but which remains under-researched, is the work of police squads, or ‘gang and gun’ units as they are sometimes known.²⁸ In all, proactive policing has been a site of significant international policy transfer.²⁹ As such, comparative work can help to both historicise and contextualise proactive policies and practices on a local level, to anticipate future policy transfer across jurisdictions, and to engage in broader theorising about the scope, proper limits and effects of proactive approaches, including those that impact racialised and other marginalised communities.

International comparative work also presents opportunities to consider how best to challenge and change these policies. Redress measures might include (but should certainly not be limited to) policy changes enacted by police institutions. Comparative work might also advance scholarship by drawing researchers’ attention to innovative methodologies for investigating and lobbying against those policing strategies and practices that adversely affect racialised and other marginalised communities. Scholars, activists, and those who have been policed can also draw inspiration from demonstrations of resistance, riots and other manifestations of social unrest, and more sustained social movements formed in response to racialised policing in other jurisdictions. In short, we should look to other jurisdictions to develop ways of resisting, critiquing, challenging, and changing racialised policing.

IV. Conclusion

This thesis has provided a case study of the NSW Police Force’s policing of people of Middle Eastern background and appearance in New South Wales for non-terrorism-related matters over the last two decades. The thesis has engaged in critical and empirically-grounded analyses of a range of policing policies, strategies, and practices that have contributed to the over-policing of people of Middle Eastern background and appearance in this period. The overarching argument of the thesis is that the extraordinary policing of people of Middle Eastern background and appearance in New South Wales has created and maintained a Middle Eastern suspect community.

²⁸ See, eg, *ibid* which identifies several such units in the United Kingdom.

²⁹ Jones and Newburn, above n 10.

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Appendices

Appendix 1 – Some Basic Demographic Data

This Appendix provides basic demographic data of relevance to this study. It illustrates the localities in New South Wales where sizeable populations of Middle Eastern background people reside and provides some information about the socio-economic standing of those localities, as compared to other localities in Sydney. The data was obtained from the Australian Bureau of Statistics (ABS) and was collected in the 2011 Australian Census of Population and Housing.

Data limitations are discussed further below, but it is worth noting that it is beyond the scope of this project to delve into socio-demographic detail about ‘Middle Eastern’ people in New South Wales. Indeed, as noted in Chapter I, the term ‘Middle Eastern’ is imprecise, which makes the undertaking of collecting and presenting data about ‘Middle Eastern’ people fundamentally difficult and problematic. The data in this Appendix is merely intended to help contextualise the targeted policing of people of Middle Eastern background in Sydney’s south-western and western suburbs, which is a recurrent theme throughout this thesis.

Table A1 and Figure A1

When completing the 2011 Census, respondents were asked to self-identify their ‘ancestry’, as far back as their grandparents (that is, two generations). Respondents were able to identify two ancestries.¹ The table below (**Table A1**) presents the number of individuals who, as their first response (‘ANC1P’) identified that they had ancestry from the Middle East and North Africa (MENA) region (including ‘North African and Middle Eastern’, ‘Arab’, ‘Jewish’, or ‘Other North African and Middle Eastern’). This

¹ The ABS advises that ‘[d]epending on the number of responses given, some people are recorded with one ancestry while others have two. This means that the number of responses for a particular ancestry for a geographic area may be greater than the number of people in that area’. See Australian Bureau of Statistics, *2901.0, Census Dictionary, 2011* < <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Chapter602011> >.

Appendices

data is displayed by the region ('SA4')² where those people with ancestry from the MENA region usually reside in New South Wales. The highlighted SA4s are the five most heavily populated by people who self-identify as having ancestry from the MENA region.

Table A1: Place of Usual Residence (New South Wales) for people with Ancestry from the Middle East and North Africa Region (ANC1P by SA4)

ANC1P	North African and Middle Eastern	Arab	Jewish	Other North African and Middle Eastern	Total
SA4					
Capital Region	0	455	15	121	591
Central Coast	9	770	33	301	1119
Central West	0	335	16	140	489
Coffs Harbour - Grafton	0	104	19	37	157
Far West and Orana	3	161	8	31	202
Hunter Valley exc Newcastle	4	236	14	62	316
Illawarra	21	2447	18	1802	4285
Mid North Coast	0	233	7	69	311
Murray	0	158	10	45	212
New England and North West	12	348	9	76	448
Newcastle and Lake Macquarie	14	805	33	299	1151
Richmond - Tweed	8	270	45	247	558
Riverina	0	335	10	224	566
Southern Highlands and Shoalhaven	5	194	21	100	318

² SA4 regions are sub-State regions delineated by the Australian Bureau of Statistics. The ABS advises that 'SA4s provide the best sub-state socio-economic breakdown in the [Australian Geography Standard]'. See Australian Bureau of Statistics, *1270.0.55.001 - Australian Statistical Geography Standard (ASGS): Volume 1 - Main Structure and Greater Capital City Statistical Areas, July 2011* <<http://www.abs.gov.au/ausstats/abs@.nsf/0/B01A5912123E8D2BCA257801000C64F2?opendocument>>.

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Sydney - Baulkham Hills and Hawkesbury	33	4454	34	2433	6958
Sydney - Blacktown	74	8594	24	4952	13641
Sydney - City and Inner South	64	4191	696	3157	8100
Sydney - Eastern Suburbs	102	2746	4593	2271	9713
Sydney - Inner South West	291	65767	123	3289	69473
Sydney - Inner West	71	8134	114	1788	10109
Sydney - North Sydney and Hornsby	44	2668	1151	3614	7473
Sydney - Northern Beaches	18	846	85	654	1605
Sydney - Outer South West	17	4621	14	673	5326
Sydney - Outer West and Blue Mountains	21	3083	27	1208	4347
Sydney - Parramatta	207	44819	35	11946	57010
Sydney - Ryde	44	2927	116	1371	4452
Sydney - South West	873	25823	9	21402	48098
Sydney - Sutherland	11	2694	36	407	3146
Migratory - Offshore - Shipping (NSW)	0	3	0	0	4
No Usual Address (NSW)	3	180	11	73	264
Total	1955	188390	7312	62778	260434

Source: Australian Bureau of Statistics, Census of Population and Housing, 2011, TableBuilder

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A map (**Figure A1**) is provided below, which illustrates that the five highlighted SA4s are in Sydney's south-western or western suburbs (or, in the case of Sydney – Blacktown, in the north-western suburbs).

Figure A1: SA4s with Highest Populations of People with Ancestry from the Middle East and North Africa Region

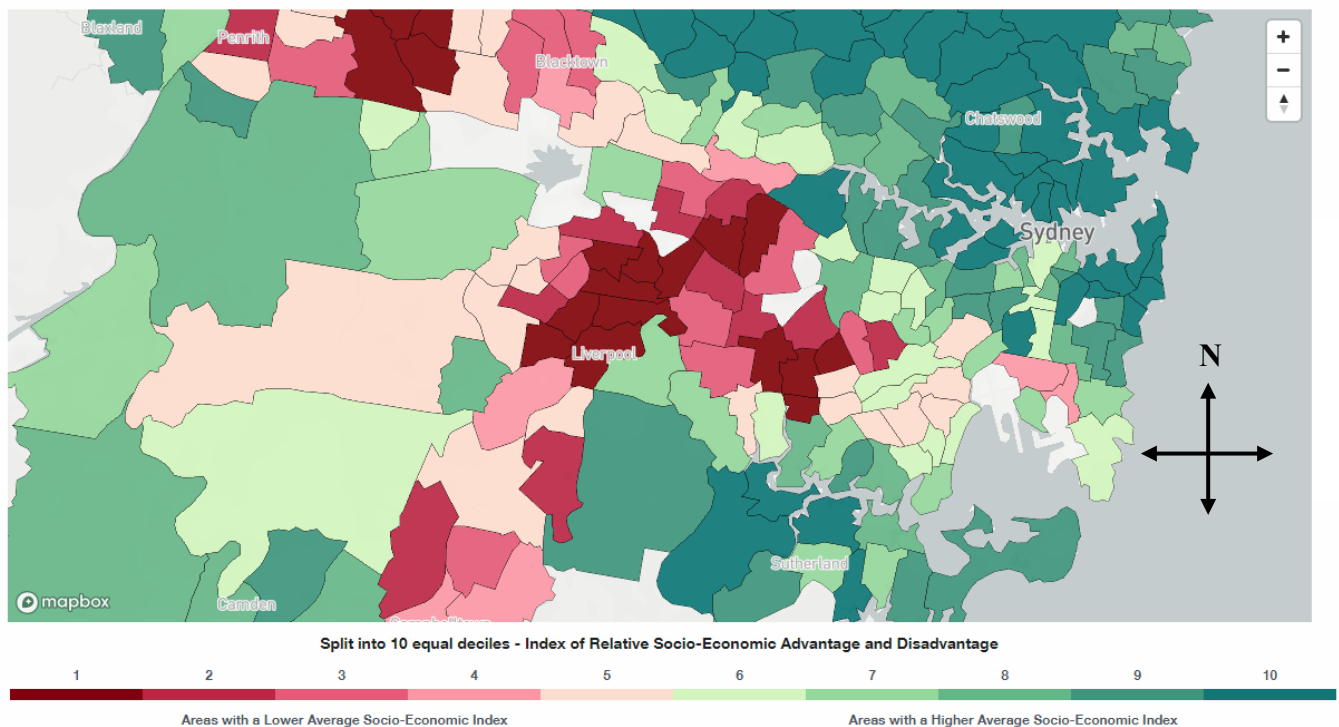


Source: Brian Pink, Australian Statistician, *Australian Statistical Geography Standard (ASGS) Volume 1 – New South Wales Maps*, July 2011, New South Wales Inset 2 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1270.0.55.001July%202011>>. Highlighting added.

Figure A2

Figure A2, sourced from the SBS, draws on 2011 Census data to illustrate socio-economic advantage and disadvantage across Sydney using the Index of Relative Socio-Economic Advantage and Disadvantage (IRSAD). Broadly speaking, IRSAD collates data about people's income, education levels, and occupational status,³ providing a general indication of the relative socio-economic (dis)advantage across an area or locality. As illustrated below, Sydney's south-western and western suburbs, where most respondents of self-identified MENA ancestry tend to reside, are socio-economically disadvantaged, as per the IRSAD.⁴

Figure A2: Sydney, Index of Relative Socio-Economic Advantage and Disadvantage



Source: SBS <<https://www.sbs.com.au/interactive/2017/struggle-street/>>.

³ For a full listing of the variables considered as indicators of (dis)advantage, see Australian Bureau of Statistics, 2033.0.55.001 - Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA), Australia, 2016 <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2016~Main%20Features~IRSAD~20>>. See also SBS, Interactive: Find Out How Your Neighbourhood Compares to the Rest of Australia, 28 November 2017 <<https://www.sbs.com.au/interactive/2017/struggle-street/>> for a discussion of the strengths and weaknesses of the IRSAD.

⁴ Of course, this does not mean that everybody living in Sydney's south-western and western suburbs is socio-economically disadvantaged. As stated above, the IRSAD provides a general indication of socio-economic (dis)advantage across an area or locality.

Appendix 2 – Research Proposal for NSW Police Force Ethics Application

Brief Summary of Research

This study aims to examine the approaches of the New South Wales Police Force in its policing of people of Middle Eastern background: primarily as persons of interest, but also as non-suspect members of the community.⁵ Fundamentally, this study aims to contribute to the small body of literature that focuses on the institutional strategies, policies and practices that contribute to shaping police interactions with Middle Eastern background communities in New South Wales. In doing so, it will be possible to suggest how police-community relations with Middle Eastern background constituencies in New South Wales might be improved.

I will draw upon literature pertaining to procedural justice and police legitimacy, as well as the Police Force's *Corporate Plan 2012-2016*, in order to frame and orient my analysis of the empirical data about Police Force policies and practices that I propose to collect in this study. As such, this study will build on the conceptual insights of 'procedural justice', which is generally considered to be the key antecedent to achieving police legitimacy by policing scholars. The prominent bodies of literature pertaining to procedural justice and police legitimacy in contemporary policing research suggest that improving police-community relations is central to cementing public views of the police as procedurally just, and ultimately encouraging notions of the legitimacy and effectiveness of policing.⁶

⁵ My approach to identifying 'Middle Eastern' background individuals and communities in this study is derived from the classification used by the Australian Bureau of Statistics (ABS), which names six primary source countries of birth: Lebanon, Iraq, Turkey, Iran, Israel and Syria. My approach encompasses people who were born in 'the Middle East', or who have a family background from any of the countries previously listed.

⁶ Jason Sunshine and Tom R. Tyler, 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing' in *Law and Society Review* (2003) 37(3), pp. 513-548; Tom R. Tyler and Jeffrey Fagan, 'Legitimacy And Cooperation: Why Do People Help the Police Fight Crime in Their Communities?', in *Ohio State Journal of Criminal Law* (2008) 6, pp. 231-275; Adrian Cherney and Kristina Murphy, 'Understanding the Contingency of Procedural Justice Outcomes', in *Policing* (2011) 5(3), pp. 228-235; Lorraine Mazerolle, Sarah Bennett, Jacqueline Davis, Elise Sargeant and Matthew Manning, *Legitimacy in Policing: A Systematic Review* (The Campbell Collaboration, 2013).

In this study, I intend to examine a range of policing functions and objectives deployed by the New South Wales Police Force across diverse institutional units. My rationale in doing so is to provide a holistic analysis of the Police Force's approaches to policing Middle Eastern background people in New South Wales, and the ways in which the Force's strategies, policies and practices align with, or could be improved by, insights from the procedural justice literature. These insights could be of use to the Force in achieving many of the goals set forth in the *Corporate Plan 2012-2016*, which involve increasing community engagement, and faith and confidence in the Police Force.⁷ I will discuss the potential benefits of this study to the Police Force in further depth in section 3.

Firstly, this study will examine the policing of Serious and Organised Crime, and the approaches of relevant units in the Police Force's State Crime Command (SCC), such as the Middle Eastern Organised Crime Squad (MEOCS), to crime prevention and detection. Secondly, this study will examine the policing of people of Middle Eastern background with regard to problems of public order and anti-social behaviour, through to the prevention and detection of a range of common summary and indictable offences. In doing so, this study aims to examine the use of police powers, and particularly those exercised by officers from Local Area Commands (LACs) such as stop and search, move on directions, and arrest. Finally, this study will examine the New South Wales Police Force's cultural diversity policies and practices, including the approaches of Multicultural Community Liaison Officers (MCLOs) in LACs, and also community policing programs delivered to Middle Eastern background communities, conceived more broadly.

Research Questions

The following research questions will guide this study:

⁷ New South Wales Police Force, *NSW Police Force Corporate Plan 2012-2016* (2012) <http://www.police.nsw.gov.au/__data/assets/pdf_file/0017/142640/Corporate_Plan_2012-2016_combined.pdf>.

- What institutional structures, policies, practices and knowledges shape diverse police interventions against people of Middle Eastern background in New South Wales?
- What is the particular role of the Middle Eastern Organised Crime Squad (MEOCS) in the policing of people of Middle Eastern background in New South Wales?
- What is the experience of police officers in engaging with policing Middle Eastern background communities in Sydney?
- What is the experience of Middle Eastern background communities in engaging with police in Sydney?

Method

My research questions are structured in order to draw data from both the police and from those who have come into contact with the police. This study's research design involves a triangulated approach. Interviews will be conducted with Middle Eastern background individuals who have been the subject of policing in New South Wales, as well as community leaders, youth and social workers. Community Legal Centres have also provided their in principle support to assist with my research, which will give me access to conduct interviews with legal practitioners. I will also draw on different types of official documents in my analysis, such as NSW Ombudsman Special Reports, published judgements in matters against the Police Force, and excerpts from the New South Wales Parliament Hansard. As such, I seek to obtain data from interviews with police officers and the observation of police work, in order to be able to provide a balanced account of police interactions with people of Middle Eastern background in New South Wales.

I seek to observe the work of MCLOs and rank-and-file officers from 2-3 LACs which have a high population of Middle Eastern background residents, including Bankstown, Liverpool, Green Valley, Parramatta, Fairfield and Campsie. I propose to spend approximately two months in each LAC, and to complete a handful of shifts in each week of a given month. My rationale for observing police work stems from the

established methodological tradition of researchers conducting police observations in order to obtain a rich understanding of the special knowledge and skills and the ways of thinking and working that are specific to police work.⁸

Police observation is a particularly appropriate methodology for the proposed study, which aims to understand what police ‘do’, or, more explicitly, the dynamic institutional practices, strategies and knowledges that are employed in the policing of people of Middle Eastern background in New South Wales, that cannot be fully appreciated through conversation with officers. As such, I intend to accompany these officers as they conduct their typical duties on shift, whilst taking brief notes that will help me to reconstruct what I have seen and heard at a later date. My methodological approach to observation field work is a two-way process of interaction, and I am committed to open dialogue with the officers that I would be observing, including sharing my field work notes. Any discussions with officers about my initial reflections will form part of my observation notes, and the resulting analysis.

During the course of this project I will also seek to interview approximately 20-25 officers from the New South Wales Police Force attached to each of the 6 LACs identified above. I will seek to interview MCLOs at each LAC, as well as the Commander of each LAC (or his or her representative), and the Manager of each LAC’s Crime Management Unit (CMU). Additionally, I will seek to conduct interviews with 3-5 officers attached to the MEOCS. My rationale in conducting each of these interviews is to account for police officers’ unique perspectives and expertise in this area, and in the hopes of gaining a qualitative understanding of their day-to-day practices that will complement the data obtained through my observation of police work.

Semi-structured interviewing will be used in this project, and an interview guide comprised of a series of open-ended questions will be used in each interview.

⁸ For examples of scholars that have used police observation as a method, see: Janet Chan, Sally Doran and Chris Devery, *Fair Cop: Learning the Art of Policing* (University of Toronto Press, 2003); David Dixon, ‘Light and Shadow: Comparative Fieldwork in Policing’ in Lorana Bartek and Kelly Richards (eds.) *Qualitative Criminology: Stories from the Field* (Hawkins Press, 2011); Michael Rowe, ‘Tripping Over Molehills: Ethics and the Ethnography of Police Work’ in *International Journal of Social Research Methodology*, (2007) 10(1).

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However, as is characteristic of semi-structured interviews, particular themes and responses that emerge during conversation with the participant will be explored. During interviews the questions which appear on the interview guide will regularly be followed by further questions which are responsive to, probe, and clarify the unique insights that are shared by interviewees.

Appendix 3 – Interview Guides

Police Employees

Officers from Local Area Commands (LACs)

- Can you tell me what a typical day looks like in your role? What kinds of duties do you regularly partake in during the course of your work?
- During the course of your work, how often are you in contact with individuals of Middle Eastern background? Who do you consider to fit within the category of being ‘Middle Eastern’?
- In your experience, do people of Middle Eastern background pose any particular crime concerns? Can you please explain your understanding of the terms ‘Middle Eastern Crime’ and ‘Middle Eastern Organised Crime’?
- In your professional opinion and experience, what are the best ways to address the offending behaviour of Middle Eastern background people in New South Wales?
- One of the New South Wales Police Force’s main aims for the period 2012-2016 is to increase community engagement. Why is this aim important? Can you suggest any way that the New South Wales Police Force has sought to strengthen its engagement with Middle Eastern background individuals and communities?

Commanders of Local Area Commands (LACs) and Managers of Crime Management Units

- Can you tell me what a typical day looks like in your role? What kinds of duties do you regularly partake in during the course of your work?
- During the course of your work, how often, and in what capacity, are you in contact with individuals of Middle Eastern background? Who do you consider to fit within the category of being ‘Middle Eastern’?
- In your experience, do people of Middle Eastern background pose particular crime concerns? Can you please explain your understanding of the terms ‘Middle Eastern Crime’ and ‘Middle Eastern Organised Crime’?

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- What are some of the strategic directions towards crime prevention that you are implementing or have recently implemented in this LAC?
- In what capacity do you communicate with the State Crime Command, and how would you characterise your contact with officers from the State Crime Command?
- In your professional opinion, what are the best ways to address the offending behaviour of Middle Eastern background people in New South Wales?
- One of the New South Wales Police Force's main aims for the period 2012-2016 is to increase community engagement. Why is this aim important? Can you suggest any way that the New South Wales Police Force might strengthen its engagement with Middle Eastern background individuals and communities?

Interview Guide – Multicultural Community Liaison Officers (MCLOs)

- Can you tell me what a typical day looks like for an MCLO? What kinds of duties do MCLOs regularly partake in during the course of their work?
- The New South Wales Police Force's website states that MCLOs work with communities and police to facilitate communication and interaction between police and culturally and linguistically diverse communities. In your view, why is this an important mandate?
- Can you tell me some of the key aims or strategies that your LAC has put in place for working with Middle Eastern background communities? Who do you consider to fit within the category of being 'Middle Eastern'?
- What are the challenges in your role?
- In your professional opinion, what are the best ways for the Police Force to achieve stronger relationships and better communication and interaction between police and Middle Eastern background communities?

Interview Guide – Officers from the Middle Eastern Organised Crime Squad (MEOCS)

- What is your understanding of "Middle Eastern organised crime"?

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- Can you tell me what a typical day looks like for an officer working within the Middle Eastern Organised Crime Squad? What kinds of duties do MEOCS officers partake in?
- Designating an entire specialist Squad within the New South Wales Police Force's State Crime Command (SCC) to police Middle Eastern organised crime undoubtedly leaves officers within the Squad with room to develop particular skills and expertise. Can you tell me about the skills, expertise and resources that are necessary to tackle Middle Eastern organised crime?
- What impact do you think that the Middle Eastern Organised Crime Squad has upon the occurrence of crime in New South Wales?
- In your professional opinion, can you suggest any way to address Middle Eastern organised crime in New South Wales, other than the Middle Eastern Organised Crime Squad?

Lawyers

- During the course of your work, how often, and in what capacity, do you advise individuals of Middle Eastern background about matters involving the Police? Have you ever represented a person of Middle Eastern background in court with regard to a matter involving the Police?
- Who do you consider to fit within the category of being 'Middle Eastern'? Can you please explain your understanding of the terms 'Middle Eastern Crime' and 'Middle Eastern Organised Crime'?
- In your experience, can you identify any particular powers that police tend to use in interactions with Middle Eastern background people?
- Would you say that your clients are more often in interactions with officers from Local Area Commands, or with officers from particular units, such as units in the State Crime Command?

- Can you identify any common or recurrent reasons that people of Middle Eastern background come to police attention or find themselves in contact with Police Officers?
- In your opinion, how would you categorise the opinions of your Middle Eastern background clients towards the Police Force and its officers? Do you find that their opinions are often positive, negative, or perhaps varied? Why might this be the case?

Community Workers

- Can you tell me what a typical day looks like in your role? Do you often come into contact with individuals 'of Middle Eastern background'?
- Who do you consider to fit within the category of being 'Middle Eastern'?
- In your professional experience, do people of Middle Eastern background often come into contact with police? If so, can you suggest why this might be the case?
- Can you identify any particular powers or strategies that police often use in interactions with Middle Eastern background people?
- Are you able to provide any examples of police strategies or programs that have been implemented to encourage Middle Eastern background community members to interact and engage with the police?
- In your opinion, how would you categorise the opinions of Middle Eastern background people who you work with towards the Police Force? Do you find that their opinions are often positive, negative, or perhaps varied? Why might this be the case?

Appendix 4 – GIPAA Internal Review Request

I am writing to request an internal review of GIPAA Application **2018-3176** pursuant to Part 5 of the *Government Information (Public Access) Act 2009* (NSW). I attach my original Application **2018-3176** dated 26 June 2018, and your Notice of Decision dated 2 July 2018.

I respect that the Police Force is not required under s 75(2) of the GIPA Act to update, verify or create a new record of information pertaining to my above request. However, at the same time, s 75(1) of the Act expressly states that agencies are not prevented from making and providing access to a new record of information.

Further to this, it is not apparent from the information provided in the Notice of Decision why the merged Middle Eastern Organised Crime Squad ('MEOCS') and Gangs Squad historical data cannot be separated to provide me with the requested information. In other words, it is not clear from the wording of the Notice of Decision whether the Force is unwilling to separate the data for an unspecified reason, or whether the act of merging the historical data pertaining to the MEOCS and the Gangs Squad has irreversibly conflated the historical records of those respective squads. However, I should also note that I have spoken with a Team Leader from the External Information Access Unit on the telephone, and I understand that the State Crime Command did not clarify why the information cannot be separated when they provided the External Information Access Unit with advice about my GIPA Application.

As such, I am writing to respectfully request that, if possible, the Force reconsider its previous decision not to separate the squads' historical data and provide me with the information requested in GIPAA Application **2018-3176**. As I will explain further below, separating the historical records of the respective squads and providing me with the requested data would be consistent with the Force's obligations under the *State Records Act 1998* (NSW) and the GIPA Act, and the Force's recognition of the importance of efficient, effective and accountable records and information management, as captured in its [Records and Information Management Policy](#).

Section 1 of the Force's Records and Information Management Policy explains that the Policy is in place to uphold the police organisation's responsibility to 'make and keep full and accurate records' of its business activities under s 12 of the *State Records Act 1998* (NSW). The importance of record management to preserving the Force's corporate memory and its ability to meet its business and accountability requirements is then explained in Section 4 of the Policy:

Records are essential parts of the NSWPF's information resources and corporate memory. They are an asset crucial in meeting business, accountability and audit requirements, and like any asset, they need to be managed efficiently and effectively. The creation, transmission, maintenance, use and retention/disposal of records must be in accordance with this policy.

Section 6 of the Policy further explains that the Force's records and information management program is in place to ensure that records are competently managed, readily-retrievable, and preserved for historical and research enquiries:

1. NSWPF has the records it needs to support ongoing business activities and customer services, meet accountability requirements and community expectations.
2. These records are managed efficiently and effectively.
3. These records can be readily retrieved when required.
4. Records relating to critical NSWPF activities are preserved for historical and research reasons.

Section 8 of the Policy then explains that the Force is obliged to the people of New South Wales to competently manage records of its business activities, which includes maintaining historical records:

All records created by NSWPF personnel in the course of their duties are considered public records of the NSW Government. The NSWPF therefore has an obligation to the people of New South Wales to ensure that the principles of records management are implemented. This ensures that:

1. Business communications and decisions are captured as official records.
2. The evidentiary chain is kept intact.
3. Information is available for ongoing business purposes.
4. Storage costs are minimised through accountable records disposal.

5. An historical record of the NSWPF is maintained.

Section 12 of the GIPA Act articulates that there is “a general public interest in favour of the disclosure of government information”. Examples of public interest considerations in favour of disclosure in the Act include instances where “disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance” (s 12 (a)), and “where the “disclosure of the information could reasonably be expected to inform the public about the operations of agencies” (s 12 (b)).

It does not appear consistent with the Force’s obligations under the *State Records Act* for the Force to subsume the historical data of the MEOCS and the Gangs Squad into the records of the new Criminal Groups Squad so soon after the MEOCS and Gangs Squad ceased operating.⁹ It is also surprising that the Force would subsequently be unwilling or unable to enumerate the arrests, charges, and prosecutions resulting from the work of either squad during their considerable tenures.¹⁰

There are three related issues that stem from the Force managing the data pertaining to the MEOCS and Gangs Squads in this manner, which form the basis of my request for an internal review of the decision made in relation to GIPA Application **2018-3176**:

1. Firstly, merging the historical data of two defunct squads (the MEOCS and the Gangs Squad) into the records of a squad that did not previously exist (the Criminal Groups Squad), and declining to separate the data back out, is a breach of the Force’s obligation to the people of New South Wales to make and keep full, accurate and readily-retrievable records of its activities. As outlined above, these obligations are clearly detailed in the Force’s Records and Information Management Policy, which, in turn, supports the Force’s attempts to meet its obligations under the *State Records Act*.

⁹ According to News Corp reporters, both squads ceased operating less than eight months ago, as the Criminal Groups Squad began work in the first week of December 2017. See, for example, Ava Benny-Morrison, ‘Top squad looks into shooting’, *The Daily Telegraph*, 3 December 2017, 25; ‘Strike Force Raptor hits Middle East Gangs’, *The Daily Telegraph*, 19 December 2017.

¹⁰ While the Middle Eastern Organised Crime Squad was in place for 11 years (2006-2017), the Gangs Squad appears to have operated continuously for 15 years between 2002 and 2017.

2. It is not in the public interest for members of the New South Wales public who wish to consult the historical records of the MEOCS and the Gangs Squad be prohibited from doing so by the Force's act of merging the squads' respective historical data. There is a public interest in access to these records; as noted above, the MEOCS and the Gangs Squad both had significant tenures, and there appears to have been considerable public interest in the Squads and their work. Indeed, in previously granting a number of exclusives about the work of the MEOCS and Gangs Squads to Fairfax and News Corp journalists, the Force seems to have implicitly acknowledged the healthy public interest in both squads.¹¹ Given that both squads ceased operating less than eight months ago, it is not a sound decision to dispose of the squads' respective historical records by irreversibly merging their historical data. This is particularly the case given that the importance of preserving historical records (for research and other purposes) is explicitly acknowledged in the Force's Records and Information Management Policy, as extracted above.
3. Finally, the Force's unwillingness or inability to separate out the historical data for the Middle Eastern Organised Crime Squad and Gangs Squad impedes the public's ability to conduct open, informed debate and conversation about the recently-disbanded squads, in contrary to the public interest considerations articulated in s 12 of the GIPA Act.

For these reasons, I again respectfully request that you separate the historical data for the Middle Eastern Organised Crime Squad and the Gangs Squad to provide me with the information requested in GIPAA Application **2018-3176**.

Thank you for your consideration.

¹¹ See, as examples, Dan Box, 'Islamic leaders join war on guns – exclusive', *The Australian*, 30 January 2013, 1; Yoni Bashan, 'My hell after I shot mate dead', *Sunday Telegraph*, 11 August 2013, 9; Emma Partridge, 'Hells Angel arrest as police bust drug ring', *The Sydney Morning Herald*, 15 August 2013, 9; Yoni Bashan, 'How public housing hid a cache of weapons', *Daily Telegraph*, 11 September 2013, 11; John Lyons, 'Exclusive: The war on organised crime', *The Australian*, 27 May 2016; John Lyons, 'Crimebusters on mean streets', *The Australian*, 28 May 2016.

Appendix 5 – Repository of Middle Eastern Organised Crime Squad Strike Forces

MEOCS Strike Forces		
Codename	Year Formed	Mandate
Strike Force Crotty	2006	To investigate the supply of illicit drugs.
Strike Force Dawed	2006	To investigate the supply of illicit drugs.
Strike Force Kirban	2006	To investigate the shooting of Bilal Fatrouni by Mohammed ‘Blackie’ Fahda. Fahda was also at that time engaged in conflict with his cousin Mohamad ‘Bruce’ Fahda. Strike Force Kirban then discovered that Bruce was selling cocaine to his friend Iktimal Hage Ali. Hage Ali was a nominee for NSW Young Australian of the Year and a member of (then) Prime Minister John Howard’s ‘Muslim Community Reference Group’. Hage Ali was later awarded damages (\$18,705 plus costs) after Elkaim DCJ found that she had been wrongfully arrested by officers attached to Strike Force Kirban.
Strike Force Mallinson	2006	To investigate a series of shootings, including a fatal shooting at the Babylon Café in Fairfield, New South Wales.
Strike Force Mccawley	2006	To investigate three shootings in Auburn, New South Wales. Strike Force McCawley was a partnership between

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		the MEOCS and officers from the (then) Flemington Local Area Command.
Strike Force Torpy	2006	To investigate the theft of ten rocket launchers belonging to the Australian Army.
Strike Force Olympian	2007	To investigate motor vehicle rebirthing. A partnership between the NSW Police Force and the (then) Roads and Traffic Authority (RTA), Motor Traders Association of New South Wales (MTANSW) and the NSW Office of Fair Trading. Police staff were drawn from the State Crime Command (including the MEOCS), Forensic Services Group (FSG), Public Order and Riot Squad, and the South West Metropolitan Region.
Strike Force Orcan	2007	To investigate the supply of illicit drugs and tobacco in south-west Sydney.
Strike Force Salway	2007	To investigate Robert Sadek and his associates who were alleged to be involved in the manufacture and supply of illicit drugs.
Strike Force Cartella	2008	To investigate the manufacture and supply of illicit drugs.
Strike Force Colbee	2008	To investigate the shooting of Todd O'Connor in Tempe, New South Wales. A partnership between officers from the MEOCS, Homicide Squad, Gangs Squad and the (then) Newtown Local Area Command.

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Strike Force Deeble	2008	To investigate car rebirthing.
Strike Force Kialoa	2008	To investigate so-called 'Assyrian crime figures'.
Strike Force Skelton	2008	To investigate members of the Kalache family. Later, when the Australian Crime Commission alerted the MEOCS that Bassam Hamzy was organising a drug syndicate from inside of his cell at the Lithgow Correctional Centre using a mobile phone, Strike Force Skelton turned its attention towards Hamzy.
Strike Force Tapiola	2008	To investigate the supply of illicit drugs.
Strike Force Bellwood	2009	To gather information about members of the Ibrahim family.
Strike Force Proudfoot	2009	To investigate the attempted murder of Fadi Ibrahim in Castle Cove, New South Wales.
Strike Force Caramana	2010	To investigate the manufacture of illicit drugs.
Strike Force Gradwell	2010	To investigate the supply of cocaine.
Strike Force Bairstowe	2011	To investigate the shooting of John Ibrahim's home in Dover Heights, New South Wales.
Strike Force Centre	2011	To investigate the supply of illicit drugs and the modification and sale of firearms.
Strike Force Felix	2011	To investigate five shootings connected to feuding between the Hells Angels and Nomads Outlaw Motorcycle Gangs (OMCGs). The shootings took place in the suburbs of Merrylands, Granville,

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		Canley Heights and Holroyd, New South Wales.
Strike Force Restore	2011	To investigate shootings in Merrylands, New South Wales and Fairfield, New South Wales.
Strike Force Snaidero	2011	To investigate the sale of firearms.
Strike Force Gantry	2012	To investigate the shooting of Peter Younan in a home on Sherwood Street, Revesby, New South Wales, and a shooting on Mimosa Road, Greenacre, New South Wales.
Strike Force Glanfield	2012	To investigate the supply of ecstasy and other illicit drugs.
Strike Force Lowland	2012	To investigate the supply and distribution of illicit drugs and two shootings: one in Arncliffe, New South Wales and the other in Auburn, New South Wales.
Strike Force Merchant	2012	To investigate the supply of the illicit drugs ecstasy and nexus.
Strike Force Sevenoak	2012	To investigate a shooting in Old Guildford, New South Wales.
Strike Force Doust	2013	To investigate the shooting of Bassil Hijazi in a car park on Albyn Street, Bexley, New South Wales. A partnership with officers from the (then) St George Local Area Command.
Strike Force Henning	2013	To investigate a crime syndicate involved in fraud offences.
Strike Force Locker	2013	To investigate the shooting of Maha Hamze at the front door of her home on

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		Auburn Road, Auburn, New South Wales.
Strike Force Maloney	2013	To investigate the shooting of a man outside the Aarows nightclub on Bridge Street, Rydalmere, New South Wales.
Strike Force Roxana	2013	To investigate the murder of Mahmoud Hamzy and the attempted murder of Omar Ajaj on Bardo Circuit, Revesby Heights, New South Wales.
Strike Force Sitella	2013	To investigate the Blacktown chapter of the Brothers 4 Life ('B4L')/'BFL') organised crime group, including several shootings and assaults connected to that group.
Strike Force Whitfield	2013	To investigate the supply of firearms and illicit drugs between New South Wales and Tasmania.
Strike Force Calibre	2014	To investigate the manufacture of methamphetamines in Bilpin, New South Wales.
Strike Force Deray	2014	To investigate the activities of a drug syndicate with links to Wollongong, New South Wales.
Strike Force Marten	2014	To investigate a group called the 'Afghani Murderers' (also known as the 'Afghani Mafia Family').
Strike Force Rinis	2014	To investigate the supply of illicit drugs.
Strike Force Amarina	2015	To investigate the supply of illicit drugs.
Strike Force Benwerrin	2015	To investigate the supply of methamphetamines and cannabis.

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Strike Force Dials	2015	To investigate the supply of crystal methamphetamine in collaboration with the Far North Queensland Drug Squad (Queensland Police Service).
Strike Force Silverbirch	2015	To investigate the supply of heroin and cocaine.
Strike Force Barcom	2016	To investigate violent acts including shootings. Included arrests of men allegedly attached to the gang DLSTHR ('The Last Hour' – formerly known as The Assyrian Kings). A partnership with police from the (then) Fairfield Local Area Command.
Strike Force Deave	2016	To investigate the supply of cocaine.
Strike Force Kentgrove	2016	To investigate cocaine distribution and potential retaliation attacks in the aftermath of the shooting of Wally Ahmad.
Strike Force Margaretta	2016	To investigate the supply of heroin.
Strike Force Osprey	2016	To investigate eight murders.
Strike Force Woodalla	2016	To investigate the supply of cocaine.
Strike Force Nymcoola	2017	To investigate the supply of cocaine.
Strike Force Mirimiar	2017	To investigate the supply of cocaine in Sydney's south-west