

“Use of Force Law Reform in Northern Australia”

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Use of force laws affect millions of people that have in the past been arrested and the millions yet to be arrested in the criminal justice system. The limitation to using force upholds the presumption of innocence to treat accused persons as if they have not yet been convicted.

The Police Powers Responsibilities Act 2000 Qld allows a police officer to use force deemed reasonable in the circumstances, however there are limited to no prescriptive definitions of what reasonable is. This is similar in other states such as Western Australia Section 609 of the Police Force Regulations 1979 which again provides limited prescriptive factors as to how reasonable use of force operates.

Section 27 and 28 of The Northern Territory Criminal Code attempts to address use of force in a different way with “justification for the use of force” it provides “adequate time to comply” before certain force can be justified. Prescriptive factors like this need to be included in a uniform way to the use of force laws generally. However, they are especially required in the Northern States of Australia where more vulnerable indigenous persons live and where relations with police are limited and accidents keep occurring.

In the North of Australia force is used disproportionately against indigenous persons. The Queensland Operating Procedure Manual provides more prescriptive factors such as using the “minimum force required” for a lawful purpose. This is an ideal standard but it is unrealistic and unenforceable for lawyers and decisions makers as they are internal rules.

The lack of detail in the use of force laws frequently lead to miscarriages of justice whereby public lawyers advise defendants to plead guilty in cases where the matter should be dismissed. There are a range of reasons for this.

1. Dismissal requires complex litigation with a summary trial lawyer, which is often not accessible to the defendant in communities where the lawyers are often circuiting.
2. Being inferior jurisdiction indictable matters they are heard in Magistrates Courts usually with inexperienced counsel that are not willing or able to run a summary trial.
3. Public funding models are aimed at “preventing unnecessary litigation”, it is common for Publicly funded Solicitors to never run a summary trial, often times due to a lack of merit assessment to do so internally within their own organisation. Merit cannot be granted fairly without more prescriptive use of force law

There are limited or no guiding principles in the legislative instruments that regulate use of force. Lawyers rely on complex case law and the opinions of all parties reviewing the material. The accessibility of the right to dismiss a case for unlawful use of force is largely inaccessible yet it is critical to regulate use of force accidents. Often times convictions are sought against a defendant where unreasonable force is used to prevent the defendant from suing the police force for assault.

Case Studies:

In Queensland Peter O’Keefe was walking across a hot bitumen road in Doomadgee when he was detained without charge. He simply tried to get his thongs. The police officer pushed Mr Okeefe in the chest leading into a cascading escalation of force that resulted in his tibial head and fibular being broken, his ACL and MCL ligaments being torn, the injuries led to permanent disfigurement. Mr O’Keefe’s case was ultimately dismissed for unlawful use of force at summary

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trial but not without significant litigation stress to him and over 10 in person court appearances. The extent of the litigation required to have these cases dismissed prevents the law from functioning properly with defendants often pleading guilty prior to summary trial or breaching bail and pleading guilty to all matters to be released. Such matters would be best dealt with as an early pre-trial motion / hearing to dismiss without the defendant's presence required.

Around 2018 a similar failed use of force by a young officer with no cultural training resulted in the death of Neil Banjo in Normanton Queensland. Both of these tragedies were completely preventable with better training and laws.

In the **Northern Territory** Officer Zachary Rolfe shot 19 year old Kumanjai Walker 3 times and a prosecution against the officer failed.

In **Western Australia** there have been commissions into the unlawful use of force.

Legislative amendments proper consideration is given to the overall circumstances by the officer before applying force, including but not limited to the **persons culture, age, health, disability or any other needs**.

Our laws should permit **force that is proportionate to the risk faced by any police officer in any given situation**. Proportionate force is the standard available to a private citizen for the purposes of self-defence and is a standard that most people expect police are already held to.

Subjective views on what is reasonable force should be rescinded for objective standards.

DRAFT AMENDMENTS UNDERLINED BELOW

Police Powers and Responsibilities Act 2000 QLD

615 Power to use force against individuals

- (1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

Example— A police officer may use reasonable force to prevent a person evading arrest.

- (2) Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.
- (3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

Additional Amendments Sought

- (4) Any force applied should be proportionate to the risk faced by a police officer in any given situation.
- (5) Any force used must be necessary to achieve a legitimate purpose and must be the minimum force required as perceived by the officer at the time.
- (6) Proper consideration must be given to the overall circumstances before applying force which include but are not limited to the persons culture, age, health, disability or any other needs.
- (7) Adequate time must be provided for a person to comply with directions.
- (8) Police officers must attempt to comply strictly with sections 1-8.

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