

## “THERE IS NO NEED FOR ANYONE TO BE CONCERNED”: THE DISCURSIVE LEGITIMATION OF COERCIVE POLICE POWERS DURING THE COVID-19 PANDEMIC<sup>1</sup>

Elyse Methven\*

### Abstract

A number of countries have placed police officers in charge of policies aimed at suppressing the transmission of COVID-19. While scholarly attention has been paid to the legitimacy of a law enforcement response to the pandemic, less attention has been paid to the discursive techniques used by state officials when attempting to represent controversial policies as uncontroversial. This article examines the role of discourse in the rationalization of a law enforcement approach to the COVID-19 pandemic in NSW, Australia. I conduct a critical analysis of the language of policing officials in press conferences, interviews, and media releases to identify discursive strategies of *authorization*, *moral evaluation*, and *rationalization*, as described in Van Leeuwen’s analytical framework of legitimation (2007, 2008). I argue that the use of discursive techniques to depict punitive sanctions as desirable and effective, and public health rules as clear and of equal application to all, helped to naturalize a coercive response in the application of public health measures. The naturalness of this police-led approach is deconstructed by drawing on alternative accounts to show how COVID-19 rules were complicated and poorly communicated, and policed in an uneven, and at times, overzealous fashion.

**Keywords:** legitimation; COVID-19; public health policy; discursive techniques; coercive police powers; critical discourse analysis.


## “NINGÚ NO S’HA DE PREOCUPAR”: LA LEGITIMACIÓ DISCURSIVA DELS PODERS COERCITIVS DE LA POLICIA DURANT LA PANDÈMIA DE LA COVID-19

### Resum

*Diversos països han situat oficials de policia al càrrec de polítiques orientades a contenir la transmissió de la COVID-19. Així com s’han fet recerques sobre la legitimitat d’una resposta policial a la pandèmia, han rebut menys atenció les tècniques discursives emprades per les autoritats en l’intent de representar polítiques controvertides com si no ho fossin. Aquest article examina el paper del discurs en la racionalització d’un enfocament policial de la pandèmia de COVID-19, a Nova Gal·les del Sud, Austràlia. Duc a terme una anàlisi crítica del llenguatge dels representants policials en conferències de premsa, entrevistes i comunicats de premsa, per identificar estratègies discursives d’autorització, avaluació moral i racionalització, com descriu el marc analític de legitimitat de Van Leeuwen (2007, 2008). Argumento que l’ús de tècniques discursives per representar sancions punitives com a desitjables i efectives, i normes de salut pública com a clares i d’aplicació igual a tothom, ha contribuït a naturalitzar una resposta coercitiva en l’aplicació de les mesures de salut pública. La naturalitat d’aquest enfocament policial es desconstrueix recorrent a relats alternatius, per demostrar com les normes relacionades amb la COVID-19 han estat complicades i mal comunicades, i aplicades de manera incoherent i, de vegades, amb excés de zel.*

*Paraules clau:* legitimitat; COVID-19; política de salut pública; tècniques discursives; poders coercitius de la policia; anàlisi crítica del discurs.

<sup>1</sup> This research addresses the role of discourse in criminal law and criminal justice policy.

\* Elyse Methven, Senior Lecturer at the Faculty of Law, University of Technology Sydney. [Elyse.Methven@uts.edu.au](mailto:Elyse.Methven@uts.edu.au),  0000-0002-3428-3905

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## 1 Introduction

On 11 March 2020, the World Health Organization (WHO) assessed COVID-19 to be a global pandemic, and implored countries to “take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact”. At the same time, the WHO acknowledged: “All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights” (World Health Organization, 2020). State leaders were thus posed with the challenge of how best to respond to this rapidly unfolding crisis.

Countries have adopted a variety of responses to suppress the transmission of, and reduce illness and mortality from, COVID-19 – an infectious disease caused by the SARS-CoV-2 virus. These responses have included restricted travel requirements and quarantine rules, stay-at-home orders, physical distancing requirements, curfews, vaccination mandates, and mask-wearing requirements. While the use of a state’s police force is not the only avenue to encourage or enforce compliance with public health measures, several jurisdictions placed police officers in charge of enforcing COVID-19 restrictions. Powers given to police to enforce public health orders have ranged from the ability to compel someone to return home, with the use of reasonable force where “necessary”, to the issuing of penalty notices for alleged breaches of COVID-19 rules (Warren et al., 2020). Fixed fine amounts for breaching public health orders have varied from £60 in Wales and Scotland to up to A\$5,000 in New South Wales (NSW), Australia ([Public Health Regulation](#), 2012, schedule 4; UK Metropolitan Police, 2021). Some countries, such as Canada, New Zealand, Italy, and Australia, deployed national military personnel to work alongside police to patrol streets and assist in the provision of food hampers, door knocking, and vaccination efforts. In some cases, military personnel were also given the power to enforce public health orders (Davies & Martin, 2021; Warren et al., 2020; Government of Canada, 2020; New Zealand Defence Force, n.d.). In Spain, the Government imposed strict lockdown measures including a nationwide curfew by declaring a “state of alarm” in March 2020, which was extended in October 2020 (Spanish Royal Decree No 926/2020). Following challenges to the measures brought by the far-right party Vox, the Spanish Constitutional Court declared them to be unconstitutional (Spanish Court Judgement No. 183/2021).

The imposition of coercive regimes to control behaviour during the pandemic has been accompanied by the political challenge of generating and maintaining public support for such measures. It was neither natural nor inevitable that criminal sanctions be attached to breaches of public health orders during the pandemic, nor that police assume a central role in enforcing such orders. States could have implemented (and indeed, some did implement) alternative models, such as the use of non-legally-binding guidelines that encouraged citizens’ cooperation (White & Fradella, 2020).

For countries that *did* choose to institute a police-led approach to public health order compliance, governments placed varying emphases on education, building community trust, coercion, and punishment. The UK Metropolitan Police, for example, instituted what it labelled the ‘4 Es’ approach: “Engage. Explain. Encourage. Enforce.” According to the Metropolitan Police, this approach prioritized engaging with a person, explaining how police thought the person was breaking the rules, encouraging them to change their behaviour to reduce the risk to public safety and health, and, if those strategies failed, the use of coercive powers such as penalty notices and the dispersal of persons (UK Metropolitan Police, 2021). By contrast in Australia, a federal legal system where the majority of public health responses were determined at a state level, public officials at various stages during the pandemic directed police to give precedence to more punitive sanctions over educative and diversionary measures under the pretext that a “strong” approach would deter non-compliant behaviour (7 News, 2021).

So, how did a policing approach to the pandemic become a taken-for-granted, common sense response to this public health emergency in NSW, Australia? And what role did discursive strategies play in legitimizing heavy-handed law enforcement measures? Rules and policies to enforce stay-at-home orders, physical distancing, and other public health measures were linguistically communicated to the public via interviews, press conferences, and media releases. Through these mediums, government officials not only described the regulations that bound the populace, but also attempted to garner widespread public acceptance for the rules and measures adopted to enforce them by representing them as normal, necessary, effective, and desirable. As Chilton and Shäffner (2011, p. 312) have recognized, in Western liberal democracies: “political actors [...] cannot act by

physical force alone [...] Reasons for being obeyed have to be communicated linguistically, whether by overt statement or by implication." Discursive strategies therefore played an important role during the pandemic for public officials generating and maintaining public support for, and co-operation with, the enforcement of public health orders by police.

This article identifies discursive strategies of legitimization employed by state officials to justify and naturalize coercive law enforcement responses to the COVID-19 pandemic. Using as a case study the state of New South Wales (NSW), the most populous state in Australia, it traces how state officials rhetorically justified law enforcement-led responses to the problem of rising coronavirus case numbers at various stages during the pandemic from 26 March 2020 to 30 September 2021. Part Two provides context to the argument by situating the analysis of discursive strategies of legitimization within broader critiques of the coercive approach to public health order compliance adopted in NSW. The methodology of critical discourse analysis which informs the analysis of legitimization employed by state officials is then elucidated. I undertake an analysis of discursive strategies guided by Van Leeuwen's analytical framework (2008, pp. 105–106) for identifying and denaturalizing legitimization in discourse. Within this framework, instances of authorization, moral evaluation, and rationalization are used for their explanatory power to decipher how politicians and policing officials discursively justified controversial approaches to rulemaking and policing public behaviour during the pandemic. I argue that discursive strategies served to depict the state's approach as transparent, fair, and productive of positive health outcomes. These depictions are set against counter-narratives to show how COVID-19 rules were poorly communicated and policed in an uneven, heavy-handed, and sometimes unlawful fashion.

## 2 Case study: Policing the pandemic in NSW

Until the arrival of the Omicron variant in NSW in December 2021, the combination of quarantine, border control, and movement restrictions undertaken in the state had been comparatively successful at suppressing COVID-19 case numbers and deaths, with many months of zero community transmission (Australian Institute of Health and Welfare, 2021). From March 2020 the state of NSW had, however, experienced several 'waves' of the coronavirus pandemic, with each successive rise in case numbers accompanied by orders restricting residents' movement and gathering. Attached to these orders was the threat of criminal sanction for non-compliance, in the form of a fixed penalty notice or criminal charge (Capon et al., 2021).

The literature documents how the law enforcement approach adopted in NSW in response to the coronavirus pandemic was accompanied by an intensification of existing police powers and an addition of new ones. These powers were implemented primarily through executive power in the form of delegated legislation, rather than via parliamentary processes, which in turn undermined the ability to hold governments to account. Through their analysis of COVID-19 case studies in the Australian states of NSW and Victoria, Boon-Kuo et al. (2021) showed how the interaction of new COVID policing rules and powers with existing powers and practices 'securitized' public health, reinforcing the framing of the pandemic through a 'criminalization' paradigm rather than a 'public health' one. The NSW Bureau of Crime Statistics and Research analysed police data relating to the 36,597 breaches of public health orders recorded between 26 June 2021 and 31 August 2021, when some of the severest restrictions on gathering and movement were in place in NSW (Rahman, 2021). Consistent with Boon-Kuo et al.'s findings, the Bureau found that a high proportion of detected breaches involved people who had experienced previous interactions with police, and in many instances, police also conducted searches of the person (Rahman, 2021; Boon-Kuo et al., 2021). From the data, the Bureau observed that COVID-19 policing did not accurately reflect "underlying patterns of non-compliance" across the state but instead was largely determined by internal law enforcement objectives, including increased enforcement activity at select times and locations (Rahman, 2021, pp. 1, 14).

Analysis of police enforcement of the public health orders at various stages during the pandemic has also raised concerns about the operation of racial bias and racial profiling in the policing of public health measures, and the disproportionate impact of sanctions for non-compliance with COVID-19 restrictions on vulnerable community members, particularly those from migrant backgrounds and First Nation Australians (Faruqi, 2020; Lelliott et al., 2021; Waight et al., 2021). The significant number of public health infringement notices issued during the pandemic, and fines of up to A\$5,000 attached to them, were criticised for being unjust for their

failure to account for individual circumstances, and potentially unlawful given that police decisions to issue infringement notices were rarely subject to judicial review (Patty, 2021). Further, the suitability of infringement notices as a mechanism to sanction public health order breaches has been called into question in circumstances where "coronavirus regulations [were] neither straightforward nor easily understood either by those who have to obey them or the police who have to enforce them" (Siddique, 2021). Finally, infringement notice fines, and enforcement sanctions arising from their non-payment, have been critiqued for their immiserating effect by compounding the disadvantage already experienced by vulnerable individuals in a time of heightened economic precarity (Knaus, 2021; Siddique, 2021).

While acknowledging that some leeway must be given to governments to make mistakes when implementing emergency measures, Maher and Murphet (2020, p. 114) have argued that a lack of coordination, and unclear and rushed communication strategies employed by Australian governments in the early stages of the COVID-19 outbreak contributed to a "trust deficit between Governments and the public". Alongside an erosion of trust, legal academics and members of the legal profession have raised human rights and civil liberties concerns about public health orders and criminal sanctions attached to them both in Australia (Human Rights Law Centre, n.d.; Knaus, 2021; Legal Observers NSW, 2021) and globally (BBC News, 2020). Critics pointed to how public health order rules were drafted in broad and often ambiguous terms, criminalizing behaviour that, in non-pandemic times, was considered acceptable and even desirable, with exercise, outdoors recreation, socializing, and religious worship being just some examples of prohibited conduct. According to Lelliott et al. (2021), attaching criminal justice sanctions to public health measures may have been counterproductive by reducing the willingness of people to cooperate with public health officials in relation to vaccination and contact tracing. The authors deduced that in a public health emergency, criminal punishments should "only be utilised in the most severe circumstances and only if other, less intrusive means are proven to be non-effective" (Lelliott et al., 2021, p. 168).

Unlike parliament-made law, which garners much of its legitimacy through the democratic process, the NSW government rules that restrained activities during the pandemic were enacted using emergency legislation, by virtue of which public health orders were exempted from ordinary democratic principles and oversight. Public health orders restricting movement and gatherings, prohibiting entry from other states, and requiring returned travellers to enter 14-day quarantine were realized via executive power in the form of non-disallowable delegated legislation, with the NSW Health Minister, Bradley Hazzard, signing the orders into existence. The swift passing of public health orders and their frequent amendment as the pandemic unfolded resulted in a communication gap between the texts of the public health orders, government advice regarding their content, and the policing approach being undertaken. The problem of unclear communication was compounded by the rapidly shifting content of the rules, with the public health orders changing over 70 times in approximately 18 months (Ryan, 2021). And being non-disallowable, the NSW Parliament could not annul the orders if its members adjudged the rules to be undesirable (Boughey, 2020).<sup>2</sup> This article is situated within this broader research that has evaluated the NSW approach to the pandemic as one characterized by executive overreach and securitization of public health. However, it shifts its focus to the discursive dimension by investigating techniques used by state actors to discursively justify a law enforcement-driven approach. The analysis uncovers official attitudes towards the response, while also seeking to understand how discursive representations might shape and naturalize social behaviour and attitudes.

### 3 Data corpus and methodology

State officials, including the NSW Premier, the Minister for Health, the Minister for Police and Emergency Services, the Chief Health Officer, and the Police Commissioner, played leading roles in communicating the content of new, far-reaching public health orders to the public, as well as attempting to establish public acceptance and trust in the operation of pandemic policing powers. To analyse strategies of legitimization employed by state officials, I undertook a critical discourse analysis of a sample of texts that communicated and justified the NSW policing response to the pandemic dating from 26 March 2020 to 1 September 2021. During this period, the State Premier, accompanied by public health and/or policing officials, held press conferences

<sup>2</sup> State and Territory Parliaments in Australia have the power to disallow regulations and some forms of delegated legislation (Boughey, 2020, p. 170).

to update the community on COVID-19 case numbers, the content of public health orders, the state's approach to policing these, and to describe examples of alleged community non-compliance. Press conferences were held on a daily basis with the exception of periods where there was no recorded community transmission.

Nineteen texts were selected on the basis of the inclusion of discursive justifications for significant changes in NSW law enforcement policy, as well as the presence of one or more law enforcement officials rationalizing the policing approach undertaken – the NSW Police Commissioner, Deputy Police Commissioner, and the Minister for Police and Emergency Services. Significant policy changes in pandemic policing practices were identified as including the government decision in March 2020 to use NSW Police as the primary agency through which to enforce and sanction breaches of the public health orders; decisions to create more severe restrictions for, and focus law enforcement on, specific Sydney locations; and the decision to deploy the Australian Defence Force to assist law enforcement efforts. The data corpus comprised ten press conferences, seven commercial television news interviews, a ministerial press release, and a speech from the NSW Police Commissioner instructing the NSW Police Force on the approach he expected them to undertake during 'Operation Stay at Home'. In these texts, the speakers not only relayed information about the content of public health orders and how they would be policed, but also justified the orders and the law enforcement approach undertaken. Interviews and press conferences were accessed on YouTube, transcribed, and a coding analysis was conducted where the texts were analysed for their descriptive content and to identify techniques of legitimization via a process which involved "looking at choices of words and grammar in texts in order to discover the underlying discourse(s) and ideologies" they naturalized (Machin & Mayr, 2012, p. 20) while also considering how discursive practices served to rationalize the imposition of power. The integrated framework for analysis drew upon the varied tools and ideas of critical discourse analysis on the assumption that such tools provide valid grounds for the critical evaluation of "the social construction of normative (as well as resistant) representations and legitimations of social reality" (Van Leeuwen, 2018, p. 141). Lexical choices were identified, as were discursive components including modality, abstraction, nominalization, negative 'other' representation, and construction of causality (Fairclough, 1989, 1992; Van Leeuwen, 2008). The more salient examples of legitimization were selected, qualitatively analysed, and their relevance to dominant constructions of normative social practices, and resistance to these constructions, explained.

The analytical framework was sourced primarily from Van Leeuwen's theorization of legitimations of social practices (2007, 2008, chapter 6, 2018). Legitimation is understood as the process by which speakers attempt to justify or endorse a social practice or (in)action. The word *legitimation* "often entails the semantics of 'justification'" (Reyes, 2011, p. 782). Legitimizations answer the question of 'why' a certain practice or rule should exist, or 'why' a practice should be performed in a certain fashion (Van Leeuwen, 2007, p. 93; Simonsen, 2019, p. 505).

Many properties of the texts fit within the four categories of legitimization established by Van Leeuwen (2007, 2008), namely *authorisation* – legitimization by reference to the authority of tradition, law and/or persons in whom institutional authority is vested; *moral evaluation* – legitimization by reference to value systems, which can be oblique; *rationalization* – legitimization "by reference to the goals and uses of institutionalized social action, and the knowledges that society has constructed to endow them with cognitive validity"; and *mythopoesis* – legitimization conveyed through narrative (Van Leeuwen 2008, p. 105–106). The analysis draws primarily on the first three categories, which were more prevalent in the texts.

Van Leeuwen's grammar of legitimization and the sub-categories within this framework offer helpful analytical tools to investigate how state actors discursively justified coercive policing approaches to control public behaviour during the pandemic, and the role of discourse in naturalizing the idea that the state's selected approach was the appropriate one. Two types of *authorization* are identified in the texts: personal authority legitimization and impersonal authority legitimization. *Personal authority legitimization* includes where the legitimacy is based on a person's status or role in a particular institution (for example, their position as head of a government agency), their expertise ("Dr X is a Professor in Epidemiology"), or where a person is constructed as a role model either through being ascribed desirable qualities (e.g. "the *experienced* police officer") or their attainment of a certain celebrity status. Sources of *impersonal authority* legitimization include law, rules, custom, or what Van Leeuwen (2007, p. 96) calls "the authority of conformity" – where an action is justified because all or the majority of a group are supposedly doing it. *Moral evaluation legitimization* is

“based on moral values, rather than imposed by some kind of authority without further justification” (Van Leeuwen, 2007, p. 97). It can be asserted through evaluative adjectives that ascribe positive or negative qualities to something or someone, such as when the Police Minister described non-compliance with public health orders as “not only reckless and stupid, but potentially deadly” (Elliott & Koch, 2020). *Abstractions* which transform practices into (un)desirable qualities (for example, the transformation of lawful behaviour a speaker believes should be prohibited into the abstraction ‘loophole’), as well as *analogies* (comparisons to other activities associated with positive or negative values) also fall into the category of moral evaluation legitimization.

Van Leeuwen distinguishes between two main types of rationalization. *Instrumental rationalization* legitimates practices by reference to their goals, uses, and effects, such as when the Police Commissioner justified a zero-tolerance approach to policing public health order breaches by stating: “this is all about getting out of lockdown” (7 News, 2021). *Theoretical rationalization*, on the other hand, explicitly legitimates practices by reference to the natural order of things – because that’s just “the way things are” (Van Leeuwen, 2007, pp. 101, 103). The Police Minister employed theoretical rationalization when justifying the use of Australian defence personnel to assist police compliance operations, stating: “This is not something that the Government wants to do; it’s something that the community needs” (NSW Police Force, 2021a). In this example, the linking word *is* signals that the Minister has used the form of theoretical legitimization that Van Leeuwen (2007, p. 104) terms *definition*, in which “one activity is defined in terms of another, moralized activity”, in this case, that the deployment has a utilitarian value – it *is* necessary for the community.

Van Leeuwen’s final category of legitimization, *mythopoesis*, is achieved through storytelling. A kind of ‘cautionary tale’ features regularly in the NSW COVID-19 press conferences, during which it became regular practice for policing officials to tell anecdotes of persons who had breached the public health orders and consequently been punished. In one example, the Deputy Police Commissioner described:

An office suite where clearly there had been a party with six other people, seven people in a small office suite – birthday cake, alcoholic drinks, birthday food and a person passed out on the floor. No evidence of any mask wearing. No good reason to be in that office suite. No good reason to have a party. Seven infringement notices issued and those people directed back to their residence where they actually live. A really, really good example again of where crime stoppers, uh NSW police will take action where people clearly breach public health orders. (ABC News, 2021a)

The story serves several purposes: to show that those who breached the public health orders would be apprehended and suffer consequences; to reinforce the message that a minority of people in the community were breaking the rules; and, in turn, to underscore the necessity for the law enforcement approach undertaken. The analysis that follows locates forms of legitimization, separately and in combination, within their social and political contexts. It sets the reality that they attempt to construct against broader critiques of state policies and practices during the pandemic, and the unequal power relations they sustained and intensified.

## 4 Findings: Analysis of discursive legitimization strategies

### 4.1 Moral evaluations depicting the health orders as fair and simple

On 26 March 2020, with the total number of coronavirus cases in NSW reaching just over 1,400, the NSW Government announced that police would be given the power to issue A\$1,000 on-the-spot fines for individuals and A\$5,000 for corporations not complying with COVID-19 ministerial directions. According to a NSW Government press release, fines would be issued “as part of a state-wide crackdown on reckless behaviour to slow the spread of the virus”. In addition, police would no longer “require a warrant to arrest an individual breaching a public health order” (NSW Government: Police and Justice, 2020). In the week that followed, the NSW Health Minister, Bradley Hazzard, created a number of criminal offences via executive direction. The offences empowered police to proceed against individuals for outdoor gatherings of more than two persons and for leaving their homes without a reasonable excuse. Reasonable excuses included, but were not limited to, such things as obtaining food or other goods and services; travelling for the purposes of work or education if unable to do so at home; exercise; and medical or caring reasons ([Public Health \(COVID-19 Restrictions](#)

[on Gathering and Movement\) Order 2020](#)). The detection of breaches, and the question of which enforcement action to pursue – ignoring the behaviour, caution, infringement notice, charge, and/or arrest – was a matter for police discretion. If police officers decided to proceed by way of criminal charge, an individual could be convicted and liable for up to six months imprisonment, a fine of up to A\$11,000, or both ([Public Health Act, 2010](#), secs. 10, 70).

A legitimization strategy present in the press release of 26 March 2020, and identified in the policing rhetoric about the public health orders in the data corpus, is a form of moral evaluation legitimization which references a central liberal democratic principle, that all persons should be equally governed by the law, which should be easily accessible and able to be followed. The NSW Minister for Police and Emergency Services, David Elliott, described and rationalized the new public health orders and police powers attached to them in the following terms (NSW Government: Police and Justice, 2020): “The rules are clear and they apply to everyone. No one is above the law. If you decide to ignore a direction, you will be caught, and you may very well find yourself slapped with a hefty fine.”

In this short extract, “the rules”, “the law”, and “a direction” each represent a form of abstract, impersonal authority according to which police exercise their powers. The use of the definite article *the* in the first two sentences – “*the* rules” and “*the* law” – triggers the existence of a presupposition (Fairclough, 1992, p. 120) and, when combined with the evaluation *clear* in the declarative high modality statement “The rules are clear”, implies that a transparent set of rules were already in existence. By framing each of these propositions objectively in the present tense, the speaker depicts their perspective to be a factual and universal one (Fairclough, 1992, p. 159).

By making reference to the abstract moral concepts of equality and fairness, this example falls within the category of *moral evaluation legitimization*. Van Leeuwen (2008, p. 110) has argued that discourse analysts can only recognise moral evaluations “on the basis of our common-sense cultural knowledge”. Drawing on this knowledge, the refrain “No one is above the law” is one that the Australian audience is likely to be familiar with, being a democratic principle that the nation’s system of governance is purportedly based upon. The legitimization techniques therefore have resonance for the Minister’s audience, which culturally values the rule of law principle.

#### 4.2 The use of high modality statements and negation to counter alternative viewpoints

The coupling of high modality statements with abstract concepts of high moral value, such as fairness and equality, features elsewhere in the data corpus. Examples from policing officials when justifying the use of law enforcement and the Australian Defence Force to enforce public health orders include the Minister for Police and Emergency Services stating: “No one suburb will be targeted. There will be ADF Personnel deployed alongside police right across the city” (NSW Police Force, 2021c); Deputy Police Commissioner Worboys saying: “The Police Commissioner has been very clear that we will adopt a firm but fair approach to enforcing these public health orders” (NSW Police Force, 2021a); and Police Commissioner Fuller stating: “I can assure you we’re policing the health orders equally across the state” (NSW Police Force, 2021c).

Unlike the first of these statements, in which the Minister adopts an objective, categorical modality, the Police Commissioner and Deputy Commissioner use the exclusive *we*, identifying and expressing solidarity with the NSW Police officers enforcing the orders. The Police Commissioner references his personal authority by coupling the subjectively framed: “I can assure you [...]” with the categorical statement: “[...] we’re policing the health orders equally across the state” to assure the audience that, as a leader and knowledge-holder within the police force, his version represents the truthful state of affairs.

Also of note in these discursive legitimations of police power is the use of negation in the clauses “no one is above the law” and “no one suburb will be targeted”. According to Fairclough: “negative sentences carry special types of presupposition which [...] work intertextually, incorporating other texts only in order to contest and reject them” (1992, p. 122). The statement “no one suburb will be targeted” acknowledges and persuades its audience to reject a competing viewpoint in other text or texts – being that one or more suburbs might be specifically targeted by police.



### 4.3 Accounts which challenge the discourse of fair and equal treatment

By employing the discursive technique of negation, the Police Minister implicitly acknowledged alternative accounts that challenged his normative representation of equal treatment. Reports have documented how areas in Sydney's west and southwest, which experience disproportionate socioeconomic disadvantage and have large migrant and refugee populations, received a disproportionate number of infringement notices for alleged public health breaches. Furthermore, rural towns with large Indigenous Australian populations, who also experience significant socioeconomic disadvantage, received the most fines per capita of any NSW suburb between 1 July 2020 and 1 October 2021 (Rachwani & Evershed, 2022; Faruqi, 2020; Rachwani, 2021b). The pattern of over-policing these populations during the pandemic was largely consistent with policing trends and objectives established prior to the pandemic, and bore no apparent relationship with coronavirus case numbers or public health priorities (Kerin, 2021; Rahman, 2021).

Unequal policing of NSW residents was manifest during the 'fourth wave' of the virus in NSW, which commenced with the detection of the Delta variant in the community in June 2021. Prior to that month, NSW had experienced no reported cases of community transmission for several weeks and restrictions on gathering and movement had eased considerably. The Delta variant was first detected in small numbers in Sydney's wealthier Eastern suburbs. However, when larger case numbers were detected in the more disadvantaged west and southwest of Sydney, the NSW Government instituted a "two-tier" system (Kaye & Gralow, 2021) whereby these 'areas of concern' were subject to more severe restrictions and intensified 'police compliance operations'.

These operations reached their peak when so-called "Operation Stay at Home" was launched by NSW Premier Gladys Berejiklian on 14 August 2021. Residents in 'areas of concern' were subject to heightened restrictions which imposed an "invisible wall" (Khalil, 2021) around that part of Sydney. These restrictions included a 9 pm to 5 am curfew which prevented residents from leaving their homes, a limit of one hour of exercise per day and mandatory mask wearing requirements while outdoors. Authorized workers from areas of concern were required to carry a permit. To police these restrictions, the Government deployed "specialised commands [...] including riot squad, highway patrol and increased presence more broadly [...] 500 extra Australian defence officers on the ground following a request from NSW Police [...] and] enhanced random check points" (7 News, 2021). Alongside the heightened police presence and stricter rules, the Government substantially increased fines attached to infringement notices. Simply put, the discursive attempts to legitimise a policing approach to the pandemic by reference to the established democratic ideal of the law applying equally to all were at odds with how the orders discriminated between residents based on postcode, and how they were unequally policed.

### 4.4 Moral evaluation legitimization by reference to clarity and simplicity

Furthering the depiction of public health order rules and policing approach as legitimate, and tied to the 'rule of law' concept that the law, to be valid, must be knowable by the citizenry, is the regular coupling by state officials of the adjectives *clear* and *simple* with the orders and the official communication of their content. Examples identified in the texts include the Minister for Police and Emergency Services David Elliott stating: "Our message to the community is *simple*: be vigilant, be sensible, and stay up to date with the latest health advice" (NSW Government: Police and Justice, 2020); Deputy Police Commissioner Worboys stating: "I want to send a *very clear message* [...] The message is *quite clear*" (NSW Police Force, 2021b); and Police Commissioner Fuller stating: "The operation that will kick off on Sunday night is Stay at Home. Which is a *simple message* that you need to give to everyone as you are writing a ticket for breaching the health orders" (Thompson, 2021).

These statements each contain moral evaluations. The speakers transform the content of the public health orders, or the policing officials' interpretations of them, into the noun *message* coupled with the evaluative adjectives *simple* and *clear*, both of which are positively valued concepts in law-making and political communication. The purposes which the legitimations serve are threefold. First, they help to garner public approval of the rules and the public officials responsible for making them. Second, they shift the blame from the rule makers to the public for any confusion or misunderstanding which results in non-compliance (given that, if rules and official explanations of them are clear and simple, it is the citizens' fault if they fail to comply

with the law). Third, they delegitimize alternative accounts that the public health orders were complex and confusing.

That there was a clear set of rules that the public could readily access and follow is at odds with other texts' accounts and the rushed implementation of the public health orders. The ever-changing content of the orders proved to be a source of confusion for the public, and even police and review bodies interpreting them (Rachwani, 2021a). To illustrate their rapidly shifting nature, the contents of public health orders restricting gatherings and movement changed six times between 16 and 26 March 2020. Lacking legal training on how to access and interpret legislation, the general public's understanding of the rules came not from the text of the legislation itself, but from government officials recontextualizing the orders via daily coronavirus press conferences, government website updates, NSW Health statements released via press releases, and social media (or journalists, interpreters, and community members further recontextualizing these statements). These representations transformed, however so subtly, the content of the rules. Keeping abreast of the content of rules was particularly difficult for residents with low levels of English literacy such as those from a migrant background, or individuals with a cognitive or mental impairment.

While the representation of rules as clear and simple legitimized the rules themselves, such depictions also had the propensity to encourage overzealous policing by creating the impression that public health orders created clear boundaries of illegal and legal conduct. A stark example of the oversimplification of the orders was when Police Commissioner Fuller, during a direct address to NSW Police Force employees in mid-August 2021, instructed officers:

The operation that will kick off on Sunday night is 'Stay at Home'. Which is a simple message that you need to give to everyone as you are writing a ticket for breaching the health orders: the message is 'Stay at Home' ... I am asking you to put community policing aside for a short period of time – for 21 days I will head this operation. You need to take a strong approach to enforcement. I have said before, if you write a ticket and you get it wrong, I understand and I won't hold you to account for that. (Thompson, 2021)

In this excerpt, the abstract moral concept "a strong approach to enforcement" is positively evaluated and juxtaposed against the negatively evaluated activity "community policing", which, when read with the other texts, signifies an approach whereby police make greater use of community education, informal warnings, and official cautions. By contrast, a "strong approach" is explained by the Commissioner to be one where police officers should issue penalty notices or charge individuals for any suspected public health order breaches. This message and the discursive techniques used to employ it was consistent with when the Police Commissioner announced "Operation Stay at Home" on 14 August 2021 during a press conference, with the Commissioner informing the public: "We've given ample warnings and cautions. That time has gone" (7 News, 2021). Here, the Commissioner draws on his personal authority to assert that it is "time" for a different approach, with the "time summons" (Van Leeuwen, 2007, p. 94) signalling that this hard-line approach is compelled by the temporal context. Like the internal police communication extract above, in the press conference, the orders and policing approach undertaken were transformed using metaphors of strength, such as when the Police Commissioner stated: "Some of the strongest laws. Some of the strongest police action coming. I'm not apologetic" (7 News, 2021). This messaging accords with prevailing "law and order common sense" (Hogg & Brown, 1998) that has pervaded political discourse on criminal justice problems in NSW for decades – the logic that a tough or strong policing approach is preferable to a weak or conciliatory one. Having attained the status of logical common sense, it is especially difficult for those who wish to argue against 'strong' approaches, for such dissenters must first unpack the logic that automatically attributes qualities of weakness to alternative proposals.

Consistent with the messaging that the rules were underpinned by a simple idea – "Stay at Home", and rhetoric which equated a "strong" policing approach with one where police could issue sanctions without accountability, police recorded 25,934 public health order breaches in NSW in August 2021. This was more than double the number of breaches recorded in the previous month. The vast majority (eighty-nine per cent) of suspected breaches were dealt with via infringement notice (Rahman, 2021, pp. 5, 7). Legal advocates raised concerns that the rushed drafting of unclear rules, coupled with insufficient police training, meant that fines

were being issued in circumstances where a court would have determined the conduct to be lawful. The public health orders provided an inclusive list of “reasonable excuses” for leaving one’s home, including recreation, exercise, medical care, and shopping for foods and services. Excuses could fall outside of the legislated examples, provided they could be interpreted as “reasonable” ([Public Health Act](#), 2010, sec. 10). The use of broad nominalizations in the public health orders, which prohibited conduct such as “gathering” in groups of more than two persons, and excused conduct such as “exercise” and “recreation”, resulted in confusion, with members of the public unsure if activities such as fishing, sunbathing, or reading in a park were lawful or unlawful. The media cited examples of people receiving infringement notices for eating while standing in an outdoor market or sitting in a park away from others (Chrysanthos & Thompson, 2021; Redfern Legal Centre, 2021). These counter-narratives point to the message of simplicity and clarity being a misleading one. Further, Mostyn and Kimchin’s analysis of police enforcement of public health orders (Mostyn & Kimchin, 2021, p. 476) found that police officers were interpreting the “reasonable excuse” provisions too narrowly, resulting in fines being issued unlawfully. Their analysis underscores how the Commissioner’s top-down messaging, which legitimized a zero-tolerance policing approach and eschewed accountability, encouraged overzealous and even unlawful policing approaches.

#### 4.5 Linking coercive policing to positive public health outcomes via rationalizations

A number of the legitimations provided by policing officials fall into the category of *rationalization*, including *instrumental rationality*, which legitimises practices “by reference to their goals, uses and effects” and *theoretical rationality*, which legitimizes practices “by reference to a natural order of things” (Van Leeuwen, 2008, p. 113). When NSW Police Commissioner Fuller implored police officers to take a ‘stronger’ approach during Operation Stay at Home, the Commissioner stated: “And if you look at Fairfield, finally we are seeing a decline in the positive COVID cases. And why? Because police have been out in the field enforcing the health orders” (7 News, 2021). In this excerpt, Commissioner Fuller uses the logical connector *because* (Fairclough, 1989, p. 131) to explicitly link the reduction in coronavirus cases to police practices, representing this as reality without citing evidence to establish causation between these two propositions. This message appears numerous times in the texts – that coronavirus case numbers are being mitigated *because of* the ‘strong’ policing approach adopted in NSW.

Theoretical legitimations in the texts also take the form of *predictions*. Van Leeuwen (2008, p. 116) writes: “Although predictions have a ring of authority about them, they are meant to be based not on authority, but on expertise [...] they can therefore be denied by contrary experience, at least in principle”. When a party took place on Bondi beach in January 2021, with more persons attending than the permissible 30-person limit for outdoor gatherings, Commissioner Fuller justified a law enforcement response to the conduct by predicting on talkback radio that:

If we don’t take those types of complaints seriously then we’ll get complacency in the community. People won’t wear masks. They won’t do the right thing and, you were talking about the UK stats earlier. They’re alarming stats. And we don’t want to be that. (Sky News, 2021a)

In this example, “[not] tak[ing] complaints seriously” is predicted to produce a result that most of the listening audience, having endured months of public health messaging, would correlate with negative public health behaviour in a pandemic – “[not] wear[ing] masks”. It is also predicted to produce a negatively evaluated abstract activity – people “[not] do[ing] the right thing”. By referencing “the UK stats” the Commissioner draws an analogy, a form of moral evaluation, to a jurisdiction then known to have high numbers of coronavirus cases and deaths. The UK functions here as a warning to the audience about what could eventuate in NSW if police do not use mechanisms such as penalty notices to enforce compliance.

Predictions were also used as a legitimating device by the Commissioner when he directed NSW Police Force officers to “take a strong approach to enforcement” as part of Operation Stay at Home, with the Commissioner stating: “we’ll only get compliance if you start writing tickets; if you start future CAN-ing people for breaching the health orders”.<sup>3</sup> In this example, the Commissioner uses the linking word ‘if’ to represent positive future public health behaviour as conditional upon police using coercive actions.

<sup>3</sup> A future-CAN is the issue of a court attendance notice, which is the equivalent of charging a person with a criminal offence so that

The following example of a discursive legitimization technique combines a prediction with an analogy. Minister for Police and Emergency Services David Elliott legitimized the introduction of the public health orders by telling the television interviewer (Elliott & Koch, 2020): “If we don’t go ahead with these new laws and flatline the number of cases, David, we will find ourselves with something like, certainly more cases of coronavirus than we lost soldiers in the First World War.”

Van Leeuwen (2008, p. 111) writes that “comparisons in discourse almost always have a legitimating or delegitimizing function”, and in this instance, Elliott draws on a familiar nation-building trope of conservative Australian political rhetoric – the idea that Australia lost a disproportionately large number of soldiers’ lives compared to its population in the First World War – to justify the creation of new public health offences. Although the Minister, like the Commissioner, has no expertise in epidemiology, this confidently conveyed assertion, which draws on a war analogy to predict a highly negative consequence should the government’s approach not be implemented, justifies the creation of police-enforced public health orders.

#### 4.6 Discursive constructions of normality through moral evaluations

A policy that generated significant debate and some resistance from members of the NSW community was the decision to use the Australian Defence Force to assist police operations. On 2 August 2021, a joint press conference was held by Police Minister David Elliott, Police Commissioner Fuller and National Commander, Operation COVID-19 Assist Brigadier Mick Gallaway, to announce the deployment of 300 members of the Australian Defence Force to work alongside police and NSW Health as part of the state’s response to the coronavirus pandemic. The Police Minister rationalized the use of the Defence Force by attempting to discursively control the narrative around what is, and is not, ‘normal’:

There is nothing new in this. There is no need for anybody to be concerned. This is a normal defence aid to the civil power protocol. These protocols have been around for decades. We’ve seen them used currently in other states [...] There is no need for anyone to be concerned. This is still a civilian police-led operation. And of course, the police-led operation is responding to the rules set out by the democratically elected government. There is no need for anybody to, to carry on as if this is some sort of move away from the Government’s response to COVID-19 [...] These are established working protocols. There is nothing unusual about this operation. And of course, if it’s going to mean that we can get our lives back and that we can shred those public health orders, and ease the city of its restrictions, well then I think that the community will agree with it. (NSW Police Force, 2021c)

In this excerpt, the Minister is at pains to stress that the use of the Australian Defence Force to assist policing operations is a normal and natural occurrence; and to counter any suggestions that this practice might be politically or culturally unusual. This is lexically achieved through the Minister attaching the moral adjectives *normal* and *established* to modify the nominalizations *defence aid* and *working protocols* in order to represent the defence force’s deployment as part of the natural order of things. The choice of the lexical item *protocol* is also ideologically significant, being near synonymous with the term *convention*, the word *protocol* itself signals that something ordinary is being undertaken. By prefacing the shift in operation with negations – “nothing new” and “nothing unusual” – and attaching the attribute *around for decades* to “the protocols”, a form of *naturalization* legitimization that references time to replace a moral order with the ‘natural order’ occurs (Van Leeuwen, 2007, p. 99), with the language triggering the values of custom and normality and creating the impression that the use of defence personnel in this context is an ordinary response. Through repeated negations, and by stating that the operation would be ‘civilian police-led’, the Minister presupposes and denies any alternate realities asserted in other texts, for instance, that the use of the military to assist the policing of a civilian population would be a new, abnormal, and concerning development in a Western liberal democracy. One such alternate view was presented by the Australian Lawyers Alliance (ALA), which had released a statement a few days prior to the press conference launching Operation COVID-19 Assist. In the statement, the ALA argued that the use of the defence force to enforce lockdown measures “sets a dangerous precedent” and called on the government to “urgently explain the nature of the request to the defence force” (Australian Lawyers Alliance, 2021). An additional concern was that the increased military presence might retraumatize communities with higher levels of refugees and migrants who may have escaped war-torn

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the person appears before a court.

countries and oppressive authoritarian regimes (Khalil, 2021). From the dense occurrence of negations in this excerpt we see that an important part of legitimizing the deployment of the defence force to assist police was countering and replacing alternative narratives such as that put forward by the ALA, which, if accepted, might have the public instead believe that the deployment of the military in a non-wartime setting was an extraordinary development that had the potential to contribute to an authoritarian atmosphere.

#### 4.7 Deligitimizing the 'other' through the authority of conformity

The final salient technique of discursive legitimization identified in the data corpus is a type of *authorization* – “the authority of conformity”. In this instance “the answer to the ‘why’ question is not ‘because that’s what we always do,’ but ‘because that’s what everybody else does’ or ‘because that’s what most people do’” (Van Leeuwen, 2008, p. 109). Delegitimizing the conduct of the minority is an ‘essential counterpart’ of this type of legitimization, with negative adjectives, low and high frequency modality (e.g. “a small minority of ...”, “the majority of ...”) as well as “ideas of difference and boundaries, and speech acts of blaming, accusing, insulting, etc.” being some examples of techniques to present individuals or groups and their actions in a negative light (Chilton & Schäffner, 2011, p. 312; Van Leeuwen, 2007, pp. 97–98).

Within the texts there are several instances where a “handful” of people doing the wrong thing is juxtaposed with the majority of people “doing the right thing”. An example is when Police Minister David Elliott (NSW Police Force, 2021c) gave the following message: “To the people that live around the Eastern beaches – instead of congregating at the beach, just do what everybody else in metropolitan Sydney is doing when going for exercise and walk around the block”.

In this excerpt, the Minister attributes the behaviour of “congregating at the beaches” to a group of people based on their geographical orientation, which is contrasted to the majority of the population – “everybody else”. This legitimization combines the authority of conformity (Van Leeuwen, 2007, p. 97) with what Van Leeuwen (2008, p. 46) has termed *spatialization* – “a form of objectivization in which social actors are represented by means of reference to a place with which they are, in the given context, closely associated.” The reason provided by Elliott for denouncing the behaviour of this group of people is not because their behaviour is likely to lead to higher rates of coronavirus transmission, but because it did not conform to the supposed behaviour of the majority of the Sydney population. Notably, there was nothing in the Public Health Orders that forbid residents in Sydney’s Eastern suburbs from exercising on or engaging in recreation at local beaches, provided they adhered to the two-person gathering limit.

Nonetheless, Eastern suburbs beachgoers became a focal point of negative press during the lockdowns, as if by going to the beach people were breaching an unwritten moral code. Beaches themselves became heavily regulated sites, with police dispersing or moving on people from the beach, and issuing fines to people for swimming or sunbathing at the beach (Allman, 2020). The message that people undertaking recreation at the beach was a public health concern was repeated a number of times during the press conferences and in interviews, with Police Commissioner Fuller ascribing this as “the great challenge”:

Look, the great challenge with the enforcement of the health orders, particularly on sunny days, is that we see big numbers at our beaches and that causes community concern, not just in Western Sydney, but I get more complaints about the beaches and the numbers of people on the beaches than I do about any other single health order breach. (NSW Police Force 2021c)

In this passage, those who go the beach are collectivized and impersonalized (Van Leeuwen, 2008, p. 46) through the term *big numbers*, and this group is designated to be the cause of concern to another abstracted group – the “community”. The media perpetuated depictions of beachgoers as undesirable through the collectivization of people by reference to place, and disassociating these two groups, Bondi and Western Sydney, with depictions such as that in the headline: “Sydney’s west lash out at residents of Bondi for flouting COVID rules” (Sky News, 2021b). Conformity legitimization, which privileges the activities of the majority, delegitimizes the minority, and creates a binary opposition between these two groups, is also exemplified in the following statements from the Minister for Police and Emergency Services: “It’s quite clear from the overwhelming number of people that are doing the right thing that same overwhelming number of people have had a gutful of their fellow residents doing the wrong thing” (ABC News, 2021b); from Police Commissioner

Fuller: "I'm encouraged that most members of the community are taking this issue seriously and adhering to government advice" (ABC News, 2021b); from the Minister for Police and Emergency Services: "Despite the majority of people doing the right thing, we are still seeing reckless and irresponsible behaviour that endangers the lives of others" (NSW Government: Police and Justice, 2020); and from Premier Gladys Berejiklian: "We note that it only takes a handful of people to do the wrong thing and I know that the vast majority of people are doing the right thing" (7 News, 2021).

In a number of these examples, high frequency modality, such as in "the *majority of people*", "the *overwhelming number of people*" and "the *vast majority of people*", is used to attach positive value to the abstracted moralized action "doing the right thing", and to explicitly link the concepts of conformity and virtue. As legitimation "always involves delegitimizing of the 'other'" (Simpson & Mayr, 2010, p. 46), the message that the obedient majority resent "their fellow residents doing the wrong thing", and the marginalization of this group helps to convey to the intended audience the message that they – the majority – do not have to fear being subject to punitive policing practices which target only a small minority of wrongdoers, provided they keep doing "the right thing". As has been already established, this sits uncomfortably with the large number of fines issued during the pandemic, sometimes for relatively innocuous behaviour, with unclear public health orders blurring the line between right and wrong.

## 5 Conclusion

This article has analysed discursive strategies of legitimation to understand how a coercive policing approach to the coronavirus pandemic was rhetorically justified by NSW state officials, and how this approach assumed the character of ideological common sense. It has made a theoretical contribution to law and language scholarship by showing how discursive depictions can legitimize law-making and policing approaches in a fashion that encourages overzealous and potentially unlawful policing practices. By setting the discursive analysis against the political and social context of police-led pandemic management policies and practices in NSW, the study has also contributed to the literature which assesses the appropriateness of various approaches used by states to manage public behaviour during a global pandemic.

The analysis found that legitimation techniques were ideologically significant for state officials depicting coercive law enforcement measures and punitive sanctions as necessary, effective, and desirable. The strategy of *moral evaluation* helped to naturalize official accounts that public health orders were clearly drafted, simple to understand, and equally enforced by police. High-modality statements and negation were deployed to dispel alternative interpretations of the rules as complex and confusing, and the policing approach as disproportionately punitive towards disadvantaged minority populations. The representation of 'equal enforcement of the law' constructed by state officials was at odds with the two-tier system of law enforcement that created hyper-policed zones during the pandemic.

The transformation of the policing approach into metaphors of strength rendered it difficult for those arguing against such measures, who were forced to counter the common sense logic that an approach that employed less coercive means to policing public health behaviour was a 'weak' one. This endorsement of a strong approach was also reinforced by instrumental rationalization, which posited that the orders and enforcement of penalty notices and charges attached to them were effective at suppressing coronavirus case numbers. Further, evaluative adjectives such as *ordinary* and *normal*, and negation were used to dismiss allegations that the use of the military alongside police to manage civilian behaviour during the pandemic was an extraordinary approach of authoritarian character. Finally, it was argued that the legitimation technique of *authorization*, in the form of the authority of conformity, unfairly attributed desirable and undesirable behaviours to groups to promote public identification with the supposed majority of law-abiding citizens and justify the continued punishment of the supposed minority of wrongdoers.

A risk that arises from the naturalization of these depictions and the state actions they justify is that, if accepted as reality, they can embed a culture that accepts a heavy-handed law enforcement response to be the appropriate one when faced with escalating public health crises. This risk underscores the continued importance of the work of critical discourse analysis in unpacking dominant discourses and highlighting how they sustain ideologies and unequal power relations.

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