

## ANZSOG CASE PROGRAM – TEACHING NOTE

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### Beyond a joke: friendlyjordies and the Fixated Persons Investigation Unit (Teaching Note)

**An ANZSOG Teaching Note by Marinella Padula.**

**Keywords:** NSW Police Force, Law Enforcement Conduct Commission, policing, counter-terrorism, extremism, ethics, integrity, accountability, transparency, political environment, political influence, oversight, free speech, citizen journalism, new media, cyber bullying, satire, social licence, corruption, probity.

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#### Summary

In June 2021, Kristo Langker, a producer for popular satirical YouTube channel friendlyjordies was arrested in dramatic scenes at his Sydney home by the Fixated Persons Investigations Unit (FPIU) for allegedly stalking and intimidating NSW Deputy Premier John Barilaro. At the time, Barilaro was in the process of suing his employer, Jordan Shanks, for defamation. He had been the subject of several unflattering videos which packaged allegations of misconduct with low-brow insults and ethnic slurs.

The arrest immediately sparked a high-profile outcry. Why did the NSW Police Force send counter-terrorism officers to apprehend someone who had approached the Deputy Premier in public for comment but who had never

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threatened, nor committed, violence against him? Many commentators viewed the incident as an attempt to silence comedian and journalist Shanks, one of the government's most vocal critics.

Under questioning in parliament, senior police defended the arrest on the basis that Langker was part of an ongoing harassment campaign against Barilaro. However, they struggled to explain why counter-terrorism police were necessary. They also revealed that the FPIU investigation had deviated from standard investigative practice.

Although the criminal charges against the friendlyjordies producer were eventually dropped and Barilaro's civil case against Shanks ended effectively in a stalemate, the situation highlighted many issues including the policing of free speech, the protection of public officials, political influence on public agencies and oversight of law enforcement.

### **Suggested audience**

This case could be used with undergraduates, post-graduate students or professionals undertaking public policy, administration and ethics related subjects. The story touches on many areas but is particularly relevant to discussions on integrity, oversight and accountability.

### **Learning objectives**

Readers of this case should be able to identify several options NSWPF had for handling the friendlyjordies case and how the chosen approach affected public trust or perceptions of integrity. They should be able to discuss attempts to scrutinise Police actions, why they were not entirely successful and implications for ensuring that powerful public organisations are accountable. Readers should also be able to comment on some of the challenges in protecting public officials from abuse and harassment and preventing fixated individuals from acting out, whilst not unduly impinging upon civil liberties.

### **Possible Teaching Approaches**

#### **1. Integrity in law enforcement**

Integrity has become an increasingly salient issue for Australian governments and agencies. A 2019 Griffith University/Transparency International report, observed a distinct downward slide in Australia's corruption rankings since 2012, slipping from 7<sup>th</sup> to 13<sup>th</sup> place in the world.<sup>1</sup> Although, Australia was still a relatively 'low corruption' nation in global terms, it was not a cause for complacency. Concerns about 'grey corruption' and 'undue influence' were most prevalent amongst Australians, which can include cronyism and questionable decision-making.<sup>2</sup>

A lack of perceived integrity has a negative impact on trust and public trust in police agencies has declined in the last decade, especially in NSW which had the lowest levels in Australia. Productivity Commission research found that the NSW public's belief that 'police treat people fairly and equally' fell from nearly 80% in 2014-2015 to just under 62% in 2020-2021.<sup>3</sup> This decline predated the COVID-19 pandemic. During 2020-21, NSW Police paid out \$33 million across 398 successful claims for police misconduct. This was a sharp rise from the 298 successful claims in 2019-20, costing \$24 million.<sup>4</sup>

As former Prime Minister Kevin Rudd noted in the case, police agencies are acutely aware of their reliance on government, even though they are meant to apply the law without fear or favour. For this reason, Rudd argued, police needed to be extra vigilant in ensuring they operate, and are seen to operate, at arm's length from government in order to maintain public confidence.

While there was no evidence that the Deputy Premier or his office had specifically requested the FPIU's involvement, the lack of clarity around how the friendlyjordies case was allocated and prioritised raises questions.

<sup>1</sup> [Governing-for-Integrity-Australia-2nd-NIS-Assessment-DRAFT-REPORT-April2019.pdf](https://www.griffith.edu.au/research/governing-for-integrity-australia-2nd-nis-assessment-draft-report-april-2019) (griffith.edu.au) p.4

<sup>2</sup> [Governing-for-Integrity-Australia-2nd-NIS-Assessment-DRAFT-REPORT-April2019.pdf](https://www.griffith.edu.au/research/governing-for-integrity-australia-2nd-nis-assessment-draft-report-april-2019) (griffith.edu.au) pp.12-13

<sup>3</sup> <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.pc.gov.au%2Fongoing%2Freport-on-government-services%2F2023%2Fjustice%2Fpolice-services%2F202306-partc-section6-police-services-data-tables.xlsx&wdOrigin=BROWSELINK>

<sup>4</sup> <https://www.criminaldefencelawyers.com.au/blog/kristo-langker-friendly-jordies-sues-nsw-police-after-being-charged/>

Throughout the parliamentary hearings, senior police and government representatives appeared evasive, often failing to address the question asked or pleading ignorance. Standard investigative practices were not followed. Requests for documents were not always fulfilled. Even assuming the NSWPF had acted independently and pursued the case in good faith, the absence of answers to many important questions do not inspire trust. Nor does the fact that the results of the internal investigation into the friendlyjordies arrest were not made public.

While the Law Enforcement Conduct Commission (LECC) did oversee the NSWPF investigation into Langker's arrest, it had limited capacity to rein in police overreach or misconduct. Poorly resourced from the beginning, the LECC could only investigate a small percentage of complaints and was not guaranteed access to all relevant information. Furthermore, the NSWPF was not automatically compelled to act on adverse LECC findings or release those findings publicly.

Whatever the LECC or NSWPF eventually concluded, it appears as though the FPIU was brought to heel by effectively reabsorbing the unit into the NSWPF Counter-terrorism Command. However, nothing is mentioned about fidelity to the fixated-persons model, i.e. ensuring police liaise with NSW Health to assess risk.

### Discussion prompts:

Either as a classroom or in small groups, students can explore some of the following questions:

- What are some of the ways 'Grey corruption' or 'undue influence' manifest in public organisations?
- How can public organisations/statutory agencies manage their relationships with the executive to avoid politicisation or the appearance of it?
- How can organisations better guard against behaviors that might not directly contravene laws or regulations but nonetheless undermine public trust?
- What particular challenges do law enforcement agencies like NSWPF present?
- Could/should the LECC be reconfigured to better investigate police misconduct? In what ways?
- What lessons does the case offer in setting up effective oversight agencies?
- Would additional or more prescriptive rules or guidelines at NSWPF have made much difference? Was this episode more about individuals and/or organizational culture?
- What kind of checks and balances can be applied to pre-emptive policing to ensure certain people/groups aren't unfairly targeted?
- How should NSWPF reorganise the FPIU?
- How can public office holders be better protected from harassment and abuse without curtailing freedom of expression or giving powerful people/entities more ways to shut down legitimate scrutiny?

### Additional resources:

South Australia's Independent Commission Against Corruption surveys different definitions of public integrity to extract the key themes.

See [Public integrity is great, but what is it? | Independent Commission Against Corruption SA \(icac.sa.gov.au\)](https://www.icac.sa.gov.au/public-integrity-is-great-but-what-is-it/)

This ANZSOG paper proposes a framework for the Australian Public Service to address ways public sector organisations can not just avoid integrity failures but foster a robust pro-integrity environment.

See [Being-a-trusted-and-respected-partner-the-APS-integrity-framework\\_final.docx \(live.com\)](#)

This Griffith University/Transparency International report surveys Australia's integrity system and makes recommendations for improvement.

See [Governing-for-Integrity-Australia-2nd-NIS-Assessment-DRAFT-REPORT-April2019.pdf \(griffith.edu.au\)](#)

The NSW Public Service Commission's guide to ethical conduct (August, 2022).

[Behaving Ethically: A guide for NSW government sector employees](#)

See [https://www.psc.nsw.gov.au/assets/psc/documents/nsw\\_psc\\_behaving\\_ethically\\_2022.pdf](https://www.psc.nsw.gov.au/assets/psc/documents/nsw_psc_behaving_ethically_2022.pdf)

Paper examining most effective interventions to reduce/prevent behavioural breaches.

See [Effective management of serious police misconduct: A machine learning analysis \(aic.gov.au\)](#)

## 2. Social licence and the police

Related to issues of integrity and trust is the concept of social licence or social licence to operate (SLO). Emerging from the resources sector, SLO is the idea that companies need more than just official approval and permits for a project but also community acceptance which cannot be simply legislated or brokered in a formal agreement. Applied to government agencies, social licence or SLO is the ongoing acceptance or approval of an agency's operations by the community and affected stakeholders. Social licence is not fixed, it often fluctuates over time and is easily lost. Communication, patience, transparency, integrity, and reciprocity are some of the ways organisations can establish and maintain such acceptance. Social licence is described as having three components: legitimacy, credibility, and trust.

*Legitimacy: this is the extent to which an individual or organisation plays by the 'rules of the game'. That is, the norms of the community, be they legal, social, cultural, formal or informal in nature.*

*Credibility: this is the individual or company's capacity to provide true and clear information to the community and fulfil any commitments made.*

*Trust: this is the willingness to be vulnerable to the actions of another. It is a very high quality of relationship and takes time and effort to create.<sup>5</sup>*

Failure to obtain, or revocation of, social licence to operate has serious implications for organisations. As Kirby and Webbe (2019) explain, when the perceived public integrity of an organisation is low, trust declines while resistance, cynicism and suspicions tend to grow.<sup>6</sup> Over time this can severely hamper organisational performance. It is not hard to imagine how, in certain cases, it could also lead to a withdrawal of social licence. Using NSWPF as an example, a complete revocation of social licence is unlikely. However, if enough people believe police are prone to abusing their enormous authority (via racial profiling, wrongful arrests etc.) it can result in citizens refusing to report crime, calls for defunding or demands for government overhaul.

Trust in NSW police has been tested in recent years. The NSWPF's approach to issuing COVID-19 fines was criticized for being heavy-handed in disadvantaged areas and unfair towards vulnerable populations.<sup>7</sup> Misuse of strip-search laws and the Suspect Targeting Management Plan has also damaged community relations and undermined faith in police.<sup>8</sup> The Plan was used to identify and preemptively police potential offenders or reoffenders (including children). It was under investigation for intrusive, excessive and discriminatory practices, particularly towards Aboriginal and Torres Strait Islander youth.<sup>9</sup> A number of high-profile events involving police killing or injuring at-risk individuals have further chipped away at public trust.

### Discussion prompts

Either as a classroom or in small groups, students can explore some of the following questions:

- Using the three components (legitimacy, credibility, trust) in what way could the FPIU friendlyjurdies arrest be seen to damage the NSWPF social licence?
- How can organisations restore a weakened social licence?
- Many government agencies have a genuine need to keep certain activities or information from the public - how can they ensure secrecy provisions aren't misused to hide embarrassing, scandalous or inconvenient information?
- At what point does concealing potentially damaging information to maintain public confidence in an institution cross over into unethical conduct? Or is it always unethical?
- What are the limits of social licence as a concept?

<sup>5</sup> <https://ethics.org.au/ethics-explainer-social-licence-to-operate/>

<sup>6</sup> [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fanzsog.edu.au%2Fapp%2Fuploads%2F2022%2F06%2FBeing-a-trusted-and-respected-partner-the-APS-integrity-framework\\_final.docx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fanzsog.edu.au%2Fapp%2Fuploads%2F2022%2F06%2FBeing-a-trusted-and-respected-partner-the-APS-integrity-framework_final.docx&wdOrigin=BROWSELINK)

<sup>7</sup> Cross, R. (2023, May 14). Policing the pandemic didn't work: report shows where COVID fines went wrong. Unsw.edu.au. <https://www.unsw.edu.au/newsroom/news/2023/03/policing-the-pandemic-didn-t-work--report-shows-where-covid-fine>

<sup>8</sup> McGowan, M. (2022c, August 20). NSW police strip-searched more than 100 children as young as 13 in two-year period. The Guardian. <https://www.theguardian.com/australia-news/2022/aug/21/nsw-police-strip-searched-more-than-100-children-as-young-as-13-in-two-year-period>

<sup>9</sup> Rose, T. (2023b, October 30). "Highly intrusive": NSW police dump proactive policing of children after watchdog warns it could be unlawful. The Guardian. <https://www.theguardian.com/australia-news/2023/oct/30/nsw-police-dump-suspect-targeting-management-plan-children-proactive-policing-lecc-potentially-unlawful>

### Additional resources

The following materials contain more information explaining the concept of social licence.

- [Social License To Operate - Ethics Explainer by The Ethics Centre](#)
- [Understanding the social licence to operate - Law Futures Centre Blog \(griffith.edu.au\)](#)
- [Social License | SpringerLink](#)
- [Clarifying the current role of a social licence in its legal and political context: An examination of mining in Western Australia - ScienceDirect](#)
- [Paradox of the social license to operate \(smh.com.au\)](#)

### More resources

More analysis and commentary on the friendlyjordies case.

- [Friendlyjordies producer arrest: what is the NSW Police Fixated Persons Investigations Unit and when is it used? \(theconversation.com\)](#)
- [Kristo Langker Friendly Jordies Sues NSW Police After Being Charged - Criminal Defence Lawyers Australia](#)
- [Fixing fixations by arresting Friendlyjordies' Kristo \(independentaustralia.net\)](#)

### Feedback on Teaching Note use

To assist with continual improvement, if you've used this Teaching Note, we'd greatly appreciate your feedback and suggestions for improvement. To do so, please email [caselibrary@anzsog.edu.au](mailto:caselibrary@anzsog.edu.au) with the name of the case and your comments. Many thanks in advance.

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