



5 August 2024

Our Ref: 2612

The Proper Officer
Law Enforcement Conduct Commission
Level 3, 111 Elizabeth Street
Sydney NSW 2000

By email: contactuus@lecc.nsw.gov.au;
engage@lecc.nsw.gov.au

Dear Sir/Madam,

**RE: Bail Compliance Checks in NSW – Issues Paper (May 2024)
Call for Public Submissions**

We understand that in light of the above-named report, the Commission is calling for public submissions and case studies addressing the effectiveness and appropriateness of the NSW Police Force approach to conducting bail compliance checks.

Accordingly, with the consent of our clients, we **enclose** for your review, the Statement of Claim of Carly Coleman, Andrew Hopkins, and Albert Coleman ('the Plaintiffs') in a matter currently on foot against the State of NSW, acting on behalf of the NSW Police Force.

The matter concerns circumstances where Albert, a 15-year-old Indigenous boy, was granted bail in criminal proceedings subject to conditions where he had a curfew and was required to be at an authorised address ('the dwelling') between the hours of 7pm and 7am. There was no enforcement condition attached. In the period of just over one month, NSWPF officers attended upon the dwelling where Albert resided a total of seven times. On each occasion, the NSWPF officers climbed over a locked gate, forcefully knocked on the front door, shone their torches into the faces of Andrew and Carly, who also resided at the dwelling, demanded Albert be woken up to present himself at the door, and even entered the dwelling themselves to shine a torch on Albert as he was sleeping unclothed in his bedroom with his partner. In their attempt to justify these excessive and intrusive compliance checks, the NSWPF officers are seeking to rely on the doctrine of implied licence.

Further aggravating this claim and the injustice faced by our clients, is the fact that after four bail compliance checks took place, a revocation letter was sent to the District Office of the local police station clearly outlining that any implied licence relied upon by the NSWPF officers had been terminated. Despite this, the officers conducted a further three bail compliance checks.

In summary, the claim being made against NSWPF is two-fold:

1. A trespass to land claim for Andrew and Carly who had exclusive possession of the authorised address, as legal occupiers.
2. An assault claim for Albert, as given he was not a named party to the Residential Agreement, he is unfortunately restricted from a trespass to land claim.

To ensure that what our clients underwent never happens again, we would be seeking clarity on the following salient issues:

1. Lack of Enforcement Condition

As noted above, Albert's bail conditions did not include an enforcement condition. Despite this, the NSWPF officers conducted multiple bail compliance checks at late hours and in an intrusive, high-handed manner, with no reasonable grounds to suspect that Albert had breached, or was about to breach, his bail conditions, as per s 77 of the Bail Act.

The question must therefore be addressed, as to whether a bail compliance check can in fact be lawfully conducted in the absence of a court ordered bail enforcement order, and further, in the absence of reasons to believe that there would be non-compliance with the bail conditions. We note this question was raised in the case of *State of NSW v Dargin* [2019] NSWCA 47, but left unanswered by the Court of Appeal, due to the question being determined as "inappropriate to answer".¹

2. Trespass Requirement to be a Legal Occupier

Even if there was an amendment to require an enforcement condition, this in itself would not resolve the issue that people who are not true legal occupiers, i.e. in our case Albert, and other co-residents not on a lease cannot sue in trespass.

Additionally, bailees and other co-residents who are not on the lease or are owners arguably cannot revoke an implied licence under the current common law. See *New South Wales v Dargin* [2019] NSWCA 47. This needs addressing.

Further to this point, it is understood, as per Bell JJ and Gageler JJ in *Roy v O'Neill*,² that the choice lies with the occupant as to whether they wish to respond to the demands of the police officers. This does not address instances where the bailed person is not the legal occupant.

3. Revocation Letter on behalf of the Occupier

In our case, a letter was sent to the local police district office by Legal Aid on behalf of Carly Coleman, a legal occupier of the dwelling, advising that any implied licence relied upon by the NSWPF officers had been officially revoked, in respect of their curfew checks on Albert. The position of the relevant person at the police was that they would notify their officers at Wellington LAC and not undertake further curfew checks.

¹ *State of New South Wales v Dargin* [2019] NSWCA 47, [47] (Lemming JA).

² *Roy v O'Neill* (2020) 272 CLR 291, 307-308 [34-35] (Bell and Gageler JJ).

[REDACTED]

Touched on briefly in *NSW v Dargin*,³ where similar circumstances took place concerning a revocation letter, it was noted at [45] that:

“...the State at one stage contended that because it was written on behalf of the First Plaintiff, it was insufficient to revoke the authority impliedly conferred by the Second Plaintiff.”

Whilst this contention was abandoned, it calls into question the restraints that the State seeks to infer on the revocation of implied licence.

[REDACTED]

We would thus submit that further clarification on the revocation of implied licences and their scope is required.

We confirm that our clients have indicated that, if so required, they are willing to publicly give evidence of their experience.

Should you require any further information, please do not hesitate to contact us on (02) 9261 4281.

Yours faithfully,



O'BRIEN CRIMINAL & CIVIL SOLICITORS

Stewart O'Connell

Per Megan Kirk, Solicitor

³ *State of New South Wales v Dargin* [2019] NSWCA 47.

