



## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

# MEDIA RELEASE

28 APRIL 2008

## STATEMENT BY THE DIRECTOR OF PUBLIC PROSECUTIONS, NSW

### Direction

Today I have directed that there be no further proceedings on all charges against 11 persons involved in “The Chasers War on Everything” entry into a restricted area during the APEC Meeting in Sydney in September 2007: Julian Morrow, Charles (“Chas”) Licciardello, Nathan Earl, Giles Hardie, Lauren Howard, Geoffrey Lye, Alexander Morrow, Benson Simpson, Esteban Alegria, Mark Kordi and Rodrigo Pena.

The matters are listed for mention in the Local Court tomorrow, 29 April 2008, when the charges will be withdrawn.

In the unusual circumstances of this case I consider it appropriate to give some explanation for this course.

### Background

On Thursday 6 September 2007, during the APEC Meeting in Sydney, two presenting members of The Chasers War on Everything ABC comedy/satire team were charged, along with six Chasers crew and production team members and three hire car drivers, with entering a restricted area without special justification, contrary to section 19(1) of the *APEC Meeting (Police Powers) Act 2007*.

The legislation (which was in force from 4 July 2007 to 13 September 2007) provided for “declared areas” (setting in effect an outer perimeter of affected space) and “restricted areas” inside declared areas established around APEC Meeting venues and accommodation. The relevant areas for present purposes were along Macquarie Street, Sydney, north of King Street where a declared area was in place and north of a gate approximately 30 metres south of Bridge Street where a restricted area commenced.

### Short Facts

The Chasers created a fake “motorcade” consisting of, in order: two motorcycle outriders, a black 4WD vehicle, a black sedan and another black 4WD. Five male members of the team (including Morrow who was directing operations) walked alongside the motorcade. After reaching Bent Street the motorcyclists dropped to the rear.

The three vehicles had obviously bogus APEC identification stickers and Canada identification stickers on their windscreens. The sedan had Australian and Canadian national flags on its bonnet. All had tinted windows. The five runners also wore obviously bogus identification. One of the motorcyclists wore jeans.

Nine cameras were in operation, some fixed, some handheld and worn and some with audio recording. Recordings from those cameras have been taken into consideration.

At about 11.30 am on Thursday 6 September 2007 the fake motorcade approached along Macquarie Street from

the south and stopped at the intersection of Bent Street. One of the motorcyclists and Morrow pointed forward. Police waved the motorcade on and indicated in a northerly direction along Macquarie Street towards the restricted area. It then proceeded through an open gate further into the declared area.

The motorcade then stopped briefly before moving north again towards a second open gate which in fact marked the beginning of the restricted area (although police in the vicinity were unaware of that and the Chasers were uncertain where the restricted area began). The motorcade then stopped just short of the second gate. Morrow asked people with whom he was in contact about the restricted area and was given to understand that it commenced at Bridge Street. The motorcade then proceeded again through the second open gate towards the intersection of Macquarie and Bridge Streets. There was no attempt by police lining the route to inspect or stop it.

The motorcade then stopped short of the intersection of Bridge Street and Morrow told police that there had been a change of plans and that they needed to turn back. Morrow suspected that they had entered the restricted area, which he had not intended to do. Macquarie Street had been narrowed by fencing and barriers between Bent and Bridge Streets and it was necessary to advance into the intersection to turn around. Police waved the motorcade forward into the intersection to enable that to occur.

The motorcade then stopped in the turn, Morrow consulted with Licciardello and he (dressed as Osama Bin Laden) got out of the sedan and with Morrow started to walk south in Macquarie Street. Police then arrested the 11 accused and seized items. (The two motorcyclists rode away.)

The Chasers had carried out an examination of the area on 5 September 2007 when police procedures had been different from those followed on 6 September 2007. The Chasers had also conducted a planning session on the morning of 6 September 2007 and some video and audio recording of that has been considered.

The evidence establishes that the Chasers plan, in what was considered the unlikely event that they were allowed to pass through any gates, was to stop short of the restricted area and to get Licciardello out of the vehicle.

### **Referral to ODPP**

Police prosecutors were primarily responsible for the conduct of the prosecutions, they being for summary offences in the Local Court.

A large amount of evidentiary material was made available to the police prosecutors, along with representations on behalf of the accused and advice from senior officers and the Crown Solicitor.

Police could have prosecuted or withdrawn any or all of the charges. The case was first referred to the ODPP for the purpose of giving advice on 13 March 2008. On 14 March 2008 it was decided that the ODPP would conduct the matters and they were then taken over from police.

The matters have been assessed in this Office in the usual way for all briefs received. Regard has been had to the applicable law, the admissible evidence and the Prosecution Guidelines. There has been some urgency in the treatment of the matter by reason of the elapsed time since the events and the listing of the matters in court.

### **Reasons**

It was an offence to enter a restricted area without special justification. Special justification was defined in section 37 of the Act and included circumstances where a person was permitted to be in the area by a police officer and where the person was required to be in the area for a work-related purpose.

The offence is one of strict liability. Consequently, the defence of honest and reasonable mistake of fact is available to the accused. Put another way, it is a defence to establish, or to raise a reasonable doubt that there

existed, an honest and reasonable but mistaken belief in a set of facts which, if they had existed, would have rendered the conduct innocent.

In the cases of all 11 accused I am satisfied that on the evidence presently available the prosecution would not be able to negate, beyond reasonable doubt, the existence of an honest and reasonable (but ultimately mistaken) belief that they would not enter or be taken into the restricted area and that, when they did enter it, it was with the permission of police (given by waving them through the Bent Street intersection towards the first gate north along Macquarie Street, then allowing them through the second gate unhindered and then directing them to turn in the intersection of Bridge Street). Police permission in fact constitutes special justification for entry.

Accordingly, there is no reasonable prospect of conviction and for that reason the prosecutions should not proceed.

In the cases of Licciardello, the six crew and production staff members and the three hire car drivers a further defence may be available that they had special justification by reason of their requirement to be there for work-related purposes in the circumstances that unfolded. Morrow was directing the progress of all who were employed for the purposes of the stunt and they either followed or were swept along by the directions that he gave.

I am also satisfied that, if the prosecution proceeded against Morrow only on the basis that his situation could be distinguished from the rest, the court would be bound to find that the motorcade entered the restricted area in error and if the offence were otherwise proved (which I consider unlikely) it would be probable that a magistrate would dismiss the charge without conviction under section 10 of the *Crimes (Sentencing Procedure) Act 1999* (considering also Morrow's otherwise good character). That would provide an additional discretionary basis for not proceeding in Morrow's case, in accordance with the Prosecution Guidelines.