



HIGH COURT OF AUSTRALIA

17 June 2026

CULLEN v STATE OF NEW SOUTH WALES
[2026] HCA 19

Today, the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned the scope of the duty of care owed by police to bystanders when intervening to address a perceived risk at a protest march, and whether that duty had been breached. The issue arose as the appellant, a bystander at an Invasion Day march in Sydney in 2017, suffered serious injuries after being knocked to the ground while police were effecting an arrest on a participant who had assaulted an officer following police intervention to address a perceived threat to public safety. The parties agreed that, if the State was liable, the appellant's injuries entitled her to \$800,000 in damages.

The New South Wales Police Force had not opposed the march, subject to conditions including that "there will be no flag or effigy burning". The "Operational Orders" directing police operations for the march required "immediate and appropriate action to prevent or respond to a serious incident where a ... serious risk to public safety or property [was] imminent". Those orders identified flag burning as conduct capable of endangering public safety.

The march proceeded through Sydney until it made an unplanned stop, at which a speaker addressed the crowd. Police were informed that the speaker might light a flag and had been seen with what appeared to be lighter fluid. Police twice requested that a march organiser ensure that the protest remained peaceful. The speaker concluded his address by stating, "I am going to do something about it", before squirting liquid onto an Australian flag approximately the size of a pillowslip. Police intervened, discharging at least one fire extinguisher, and a melee ensued. These events were being filmed by an officer approximately 15 metres away, and a participant struck that officer's arm. Another officer witnessed the assault and attempted to arrest that participant. In the ensuing struggle, the arresting officer and the participant collided with the appellant on a median strip, leading to her injuries.

The primary judge held that the officers owed a duty of care to the appellant as a person at the rally, that the officers breached that duty, and that the officers' conduct culminated in the appellant's injuries. Judgment was entered for the appellant. The Court of Appeal allowed an appeal by the respondent and set aside the primary judge's orders. The majority of the Court of Appeal held that the officers owed a duty to persons in the immediate vicinity of an operational response during the protest march, but that the duty was not breached as the officers acted reasonably in the circumstances.

The High Court held that the officers owed a duty to exercise reasonable care in undertaking crowd control to avoid physical injury to members of the crowd and bystanders, including the appellant, who were foreseeably at risk of physical injury resulting from such police operations. However, the appellant's postulated alternative precautions would not have been effective to address the perceived threat to public safety, such that the appellant did not demonstrate that the officers breached their duty of care.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.