



LEGAL OBSERVER REPORT

no-WTO Protests

November 14 & 15, 2002

Sydney

Acknowledgments

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Introduction

This public report details the observations and conclusions of the Legal Observer Team that worked at the protests held against the World Trade Organisation (WTO) mini Ministerial meeting in Sydney on 14 & 15 November 2002.

The following report makes for some startling and horrific reading. Based on a plethora of witness statements and incident reports taken by the Legal Observer Team, the report details actions by NSW Police that have yet to be covered in the mainstream media surrounding the no-WTO actions. It outlines and critically examines the co-ordination of what was one of the biggest and most highly publicised public-order policing operations ever undertaken by NSW Police. It describes how NSW Police consistently and systematically breached protesters' legal rights during the two days of protests, and makes clear recommendations for changes to NSW law and policy to prevent these rights from continued abuse.

The no-WTO Legal Observer Team was set up by the UTS Community Law and Legal Research Centre soon after the public announcement that the WTO would be meeting in Sydney. From the outset, the aims of the no-WTO Legal Observer Team were threefold - to deter police from using excessive force during the demonstrations; to help reduce fear of protesting; and to provide community legal education for those attending the demonstration. The Legal Observer Team met with both protest groups and senior commanders from NSW Police to explain their role as independent observers and distribute their operational protocols prior to the protests.

By the time the Legal Observer Team met with NSW Police in early November 2002, however, the pre-policing of the protest had already begun. The NSW Police Minister, senior NSW Police and the NSW Police Media Unit had begun their 'hearts and minds' public relations campaign to shape public opinion against the WTO protests as early as September 2002. A single message on a self-published internet news site – which advocated the use of sling-shots and baseball bats against police – provided the initial trigger for the NSW Police Minister to publicly condemn the WTO protesters as 'ratbags' intent on inciting violence against police and causing 'maximum chaos' throughout Sydney. This 'threat of violence' was then cited as evidence by NSW Police to justify their supposed 'banning' of the protests. This report demonstrates, however, that the idea of 'illegal' protest is a misnomer. Both local and international laws exist to protect the right to free assembly from being criminalised.

Despite all of the media coverage of anticipated protester violence, it was actually police violence against protesters that made the first headlines. Within hours of the no-WTO actions commencing on 14 November, there was extensive media coverage of mounted police charging into and trampling upon protesters and bystanders – including a cadet journalist from The Australian newspaper who was later hospitalised with a suspected fractured pelvis. Use of police horses for crowd-control at protests has long been considered controversial. In 1990, for example, the then NSW Police Minister

banned the use of horses at demonstrations. Since then, however, mounted police have continued to be used with greater frequency to move on groups of people at protests. The Legal Observer Team believe that the use of horses as crowd-dispersal weapons is excessively dangerous and that both NSW law and police policy needs to be changed to clearly prohibit mounted police from being used at public demonstrations.

Approximately 55 people were arrested during the two days of no-WTO demonstrations. Almost all of the arrests were for minor summary offences. In the opinion of the Legal Observer Team, many of these arrests were completely unnecessary, as infringement notices should have been served instead. Most arrests were made by 'snatch squads' from the Operations Support Group (OSG) – an elite and paramilitary policing unit. This widely criticised arrest technique tended to amplify disorder and result in an excessive amount of force being used against targeted individuals and other 'persons of interest'. Some of the arrests by NSW OSG Police were so excessively violent that they clearly bordered on criminal assault. The Legal Observer Team believe that both the paramilitary OSG policing unit and the 'snatch squad' method of arrest that they deploy should be prohibited from routine use at public demonstrations.

Almost all of the people arrested during the no-WTO protests had a legal right to be released on bail. NSW Police, however, refused bail to all but 4 of those arrested. This denial of bail was undoubtedly the most serious breach of the law by the NSW police over the two days of no-WTO protests. It started a chain of events that ultimately led to a large number of people being unlawfully imprisoned for excessive periods of time. The right to contact a legal representative, seek medical attention, and use toilet facilities were then systematically denied to those held in custody. Those arrested and wrongfully detained on 15 November 2002 were subjected to the particularly humiliating ordeal of being strip-searched by correctional officers. The Legal Observer Team believe that NSW law needs to be changed to ensure that people who are unlawfully detained in this way have a right to take legal action against the NSW Police. In the interim, civil action may be one effective form of redress for those wrongly detained and assaulted.

The decision to hold the WTO mini-ministerial meeting at Sydney Olympic Park was strategic on the part of the government and police. In the lead up to the Sydney 2000 Olympic Games, police were given far-ranging powers to maintain public order and curb dissent in the name of Olympic security. The Homebush Bay Operations Act 1999 (NSW) created a swathe of new public order offences at and around the Homebush Bay Olympic site. Due to public criticism of these laws and the policing powers that they created, the NSW government agreed to repeal it after the Olympics were over. Yet in July 2001, just months before the Homebush Bay law was to expire, the government quietly passed the Sydney Olympic Park Authority Act 2001.

This new Olympic Park law recreates all of the same controversial policing powers and public order offences as before - creating 'protest-free' enclaves by giving police the power to arrest people for 'annoyance and inconvenience' and 'failing to comply with directions to leave' Sydney Olympic Park. The Legal Observer Team believes this law should be immediately reviewed and amended by the NSW government to ensure that extraordinary policing powers it creates are curtailed or repealed.

People have the right to freedom of assembly and peaceful protest. This report seeks to support these rights by exposing some of the most excessive and unlawful police actions in recent NSW history, and recommending changes to NSW law and policy to protect our legal and human rights from being arbitrarily abused by police.

Chronology of Events in the Lead-Up to and During the no-WTO Protests

- | | |
|-----------------------|--|
| 16 August 2002 | Federal Trade Minister Mark Vaile announces that Australia is to host a major meeting of WTO trade ministers on 14 & 15 November |
| 18 August | Anonymous individual posts a 'shopping list' for anti-WTO protesters on Indymedia websites in Sydney and Melbourne |
| 17 September | Reverend Fred Nile alleges in Parliament that Indymedia and other websites are inciting violence against police for the upcoming anti-WTO protests |
| 25 September | NSW Police Minister Michael Costa announces intention to shut down several of these websites, through a letter sent to Federal Communications Minister Senator Alston. The federal minister labels the sites "insidious, anti-democratic and interested in causing violence, mayhem and anarchy" and refers the websites to the Australian Broadcasting Authority to consider whether the sites could be closed down |
| 10 October | It is revealed that the Federal Minister for Trade's first choice of venue for the WTO protests is Double Bay. After criticism from Double Bay boutique owners, the Minister agrees to look for an alternative venue |
| 30 October | The Australian Broadcasting Authority concludes investigations into the Indymedia websites and finds that there is no reason to close the sites down because they do not incite violence |
| 30 October | The Federal Trade Minister announces the new venue for the WTO meeting: the Novotel, Sydney Olympic Park, Homebush |
| 6 November | Legal Observer Team representatives meet with senior officers from NSW Police at City Central Command |
| 13 November | The Daily Telegraph runs the headline 'The Police Batten Hatches for WTO Protests' |
| 13 November | NSW Police Minister Michael Costa appears on Alan Jones radio talk show and speaks about the upcoming demonstration |

13 November	NSW Police Minister Michael Costa informs Parliament that “people are coming here to have a violent confrontation with the police. Let me say to you: The police will be prepared and I will back the police in what they do
14 November	First Day of Protests – in Sydney CBD
7:00am	Legal Observer Team set up communications base in Wynyard Park in Sydney CBD
8:00	Small numbers of people begin to assemble in Martin Place
9:30	Rally has built up in Martin Place and begins moving along George Street, entering King St. It then turns back upon itself and enters Pitt Street
10:00	Some protesters gather outside of Australasian Correctional Management (ACM), corner of Market and Clarence Street
10:15	Five people reported arrested at ACM. Legal Observers are told that arrested people are being sent to Surry Hills
10:25 - 10:35	Protesters and bystanders trampled by horses at Market Street. Patricia Karvelas, cadet reporter from The Australian, is trampled by horse and ambulanceman diagnose a suspected fractured pelvis
11:10	Crowd numbers at Town Hall reported at being several thousands. March leaves, proceeding up Park Street en route to the US Consulate, Martin Place
11:35 - 11:50	Reports of arrests at Pitt Street Mall, Castlereagh Street and police ‘sweeping’ protesters into Hyde Park
11:50am	March proceedings along Castlereagh Street towards Centrepont
1:05pm	Legal Observer informed by police that protesters are being taken to Downing Centre Courts
1:15 - 3:00	Main rally takes place at Hyde Park
3:10	Protest marches to Elizabeth and Liverpool Streets
4:00-5:00	Up to 50 police officers surround a sound system in Hyde Park. Arrests occur
5:30pm	Police remain around the Hyde Park fountain while protesters leave
6:00 - 7:00pm	Legal Observers and Medical teams leave Hyde Park for debriefing
15 November	Second Day of protests – Sydney Olympic Park, Homebush
8:00am-9:00	Legal Observer Team commence first shift. Media start arriving at Sydney Park Olympic Stadium, to a heavily guarded area in front of the Novatel Hotel where the WTO ministers are meeting

- 10:30 -11:00 About 1-2,000 protesters march from Homebush Railway Station to the Stadium where a designated "Passive Protest Area" is set up
- 11:15 -1:00 Police begin arresting protesters. Those arrested are placed in vans and driven around the streets of Homebush for up to an hour before arriving at Silverwater Detention Centre. On arrival many are kept waiting in the vans for 2-5 hours
- 1:00-1:35 Back at the protest, police "close" the "passive protest area" and begin arresting people who remain in the are. About 12 are later charged with offences under the Sydney Olympic Park Regulations
- 1:35– 2:00 The protest disperses
- 1:30 – 3:00 The second lot of protesters arrested are taken back to Silverwater Detention Centre where many are again kept waiting in vans
- 3:00 – 6:00 Eventually all protesters are taken out of the vans, searched, then put into cells at Silverwater. Police refuse them access to phones or lawyers, do not inform them of their charges, and do not offer bail
- 6:00 – 11:00pm Protesters are driven in shifts to Parramatta Court, where they are strip searched and placed in cells administered by Correctional Services. Legal Aid Commission lawyers finally have access to those arrested. Magistrates in a specially-assembled session of Parramatta Court hear bail applications from 6:30pm onwards
- 16 November Ongoing**
- Police prosecute protesters. As at 21 February 2002, most protesters plead not-guilty and their cases have yet to be heard in court

no-WTO Legal Observer Project

Background

In September 2002, the UTS Community Law and Legal Research Centre began organising an independent Legal Observer Team for the no-WTO demonstrations. From the outset, it was anticipated that the no-WTO demonstrations would be some of the biggest anti-globalisation protests in Sydney's history. As a result, it was suspected that NSW Police would seek to quell the protests by deploying excessive public order management strategies that might infringe the civil, political and human rights of those present at the protest.

In these environments of potential conflict, the need for independent observation of police actions becomes more acute. Legal (or third-party) Observer teams have been used successfully for some time in divided societies such as Northern Ireland, and at many protests around the world – including the recent anti-globalisation demonstrations held in Seattle (USA), Prague (Czech Republic), and Melbourne. The Centre had previously organised small-scale Legal Observer teams for May Day 2002 demonstrations and a number of local Reclaim the Streets protests. The no-WTO Legal Observer Team was formed with the help of many people who had been involved in observing the September 2000 protests against the World Economic Forum in Melbourne. They included members of the S11 Legal Support Group and members of Pt'Chang Legal Observer Team.

Aims and Activities

The primary aims of the no-WTO Legal Observer Team were:

- To deter NSW Police from using excessive force – by closely observing police actions at the protests and reinforcing existing police accountability mechanisms
- To reduce fear of protesting – by maintaining a visible independent presence and providing a source of assistance to those threatened with or subjected to violent or coercive police activity
- To provide Community legal education – by distributing plain-English legal information about activists' rights and police powers to protest participants

To this end, the no-WTO Legal Observer Team:

- Recruited and trained a diverse group of volunteer lawyers, law students and others with community legal experience for Legal Observing from NSW, Victoria, and Western Australia. Legal Observer Training occurred concurrently in both Sydney and Melbourne
- Collectively developed a clear set of protocols defining the scope of our role at the protests (see below)

- Met and established communication with Local Area Commanders and senior officers from NSW Police responsible for managing operations at the no-WTO protests to explain our role and distribute our protocols to them prior to the protests (see below)
- Met and established communication with a number of different protest groups participating in the no-WTO Autonomous Network to explain our role and distribute our protocols to them prior to the protests
- Developed and widely distributed a plain-English Activists Rights' Guide with information about citizens' rights and police powers at protests

Conducted two public forums to discuss the role of the no-WTO Legal Observer Team, distribute copies of the Activists' Rights Guide, and address peoples' concerns about the extraordinary policing powers applicable under the Sydney Olympic Park Authority Act 2001 (NSW)

Protocols and Scope

An essential element of running an effective Legal Observer Team is to formulate and distribute a document that clearly sets out its roles and responsibilities at protests. To clearly affirm our independence and counter the common misconception that Legal Observers were protest participants and/or a police liaison group, the no-WTO Legal Observer Team distributed the following statement to all relevant parties (including NSW Police) prior to the demonstrations:

Role of the no-WTO Legal Observer Team

At the no-WTO actions on November 14-15 2002, the Legal Observer Team will observe, record and monitor arrests and the individual actions of NSW Police officers and private security personnel.

In particular the Legal Observer Team will:

- *Distribute information on legal rights to members of the public at the no-WTO protests*
- *Observe, monitor and record details of interactions between police/ security personnel and members of the public*
- *Take photos and/or video or arrests if they occur*
- *Make a detailed written account of the arrest*
- *Collect the name, number and/or a physical description of the arresting officer*
- *Find out the whereabouts or follow the arrested person to the police station*
- *Monitor, support, or contact the arrested person whilst in custody*
- *Provide assistance with following up any complaints against police after the action.*

Protocols of the no-WTO Legal Observer Team

- *Any information collected by the Legal Observer Team will be treated confidentially*
- *Legal Observers will treat all people with respect and courtesy during the no-WTO actions*
- *Legal Observers will not participate in protest actions whilst identified as part of the Legal Observers Team during the no-WTO actions*
- *Legal Observers will not interfere with or hinder police officers, including when arrests are being made. Legal Observers will seek the best possible vantage point to observe arrests and police-public interactions at all times*
- *If one or a few people become isolated in a potentially arrestable situation behind a police cordon, members of the Legal Observer team will seek police authority to accompany or remain with those people until their arrest or removal*
- *During the no-WTO actions, Legal Observers will not engage in liaison with Police on behalf of other groups or individuals*
- *While in communication with Police officers, Legal Observers will not discuss or disclose any details or information regarding any other individual, group or action*

Meeting with Police

On 6 November 2002, less than two weeks before the protests, representatives from the no-WTO Legal Observer Team met with senior officers from NSW Police at City Central Command. The purpose of the meeting was to brief NSW Police on the role of the Legal Observers, distribute our Protocols and Scope Statement, and discuss issues relevant to the operation of the Legal Observer Team at the protest.

Specifically, the no-WTO Legal Observers sought agreements from NSW Police that:

- Police officers on duty during the demonstrations would be briefed beforehand about the role of the Legal Observers and their obligation to provide identification to members of the public
- Legal Observers would have access to higher-ranking officers throughout the demonstration to facilitate finding out the identification details of individual officers, or in following up arrest or detention queries
- Legal Observers would have access to the Custody Managers at the relevant Police Stations to assist those who may be in detention
- Legal Observers would have access to people detained behind police lines to distribute legal support telephone numbers and to minimise the threat of violent situations developing
- Legal Observers would be able to perform their role unhindered and without interference from NSW Police

The senior officers present at the meeting, including three Superintendents directly responsible for co-ordinating and commanding the police response to the no-WTO protests, agreed to meet almost all of these requests. Contact details of relevant Custody Managers were not provided as the police maintained that they did not know where people were going to be detained. Legal Observer access behind police lines was to be negotiated with, and at the discretion of, senior officers on the day. While police agreed not to confiscate notes, they warned that Legal Observers could be arrested and charged with hindering police or inciting criminal activity if “they got in the way” or gave incorrect legal advice at the time incidents were occurring.

Logistics

The Legal Observer Team comprised of around 40 trained observers from a variety of legal backgrounds. These included law students, paralegal staff, and lawyers from the public, community, and private sectors, from NSW, Victoria, South Australia, and Western Australia. In addition, 4 cyclists worked with the team to transfer legal documents from Legal Observers in the field to legal support staff in secure locations offsite.

Legal Observers worked in pairs and were identified by distinctive red t-shirts with the Legal Observers logo displayed on them. Legal Observers carried clipboards, incident reports, legal support numbers (for distribution amongst protesters), video and/or disposable cameras (for recording incidents), and UHF handheld radios (to allow effective area coverage and co-ordination across the protest sites).

On 14 November, the Legal Observer Team established a communications base at Wynyard Park in the Central Business District of Sydney and staffed a roster that began at 7:00 am and finished at 7:00pm.

On 15 November, despite previous assurances, the Legal Observer Team were prevented by police from assembling a communications base anywhere in the vicinity of Sydney Olympic Park area. As a result, there was no central co-ordination point for Observers on that day. Nevertheless, the Legal Observer Team staffed a roster that began at 8:00am and finished at 4:00pm.

The Legal Observer Team made 177 reports and notes of incidents over the two days of the protest. These included victim statements, witness statements and Legal Observer reports and observations of incidents as they occurred. In addition, the Legal Observer Team contacted and took statements from approximately 27 of those arrested or subjected to violence throughout the demonstration.

Much of this report is based on information contained in these incident reports and/or victim/witness statements.

Pre-crime: Public Relations Policing Before the Event

Protesters will be out in force at the upcoming meeting of the WTO in Sydney, and so too will police... While the fundamentals of the police role remain the same, police tactics adapt to the contemporary social environment and changing technologies.

A 'hearts and minds' campaign against protesters is an important part of the modern day police strategy. In the lead up to the protests the police - aided by a conservative and compliant media - will vilify protesters in order to create a climate that attempts to justify any future violence against them.

It is likely that in the context on the 'war on terror' coverage will be manipulated to suggest that protesters are potential terrorists. If police use violence against protesters it is likely that media camera people and individual protesters attempting to record visual images of police violence will be deliberately targeted to minimise coverage.

Dr Jude McCulloch, 'Keeping the peace or keeping people down?',
24/09/2002.¹

Activists' Websites 'Banned'

NSW Police began their 'hearts and minds' strategy to shape public opinion around the WTO protests on 25 September 2002 when the NSW Police Minister Michael Costa and the Police Media Unit publicly announced their intention to shutdown a number of activists' internet sites prior to the protests.

The trigger for this media event occurred on 18 August 2002 when an anonymous individual posted a 'shopping list' for protesters attending the no-WTO demonstrations on Indymedia sites in Melbourne (www.melbourne.indymedia.org) and Sydney (www.sydney.indymedia.org). These self-publishing independent news sites have a relatively open structure allowing anyone to contribute a post or comment upon a story online. While the 'shopping list' post provided links to a variety of disposal stores for purchasing items such as goggles and gas masks, it also suggested that people could bring marbles and baseball bats to the protest, and provided links to sites explaining how to make slingshots and smoke bombs.

As soon as this post was published online, other Indymedia users identified it as spam and suggested it had been posted by a provocateur intent on catalysing police violence at the protest. Nevertheless, the 'shopping list' story provided the NSW Police Minister and his Media Unit with a rationale for publicly denouncing the planned no-WTO protests well before the event.

¹ sydney.indymedia.org/front.php3?article_id=20770

² 'Call for protest website shut down'
http://www.news.com.au/common/story_page/0,4057,5165734%255E15306,00.html

On 25 September the NSW Police Minister Michael Costa publicly attacked the Indymedia websites saying that:

*Comments and information on these sites are designed to incite violence against NSW Police ... These people have gone too far ... they intend to harm police and police horses and put community safety at risk ... That's why I have written to the Federal Government today asking them to shut down these websites or restrict access to them.*²

In referring the matter to the Federal Communications Minister Richard Alston and Federal Justice Minister Chris Ellison, the NSW Police Minister hoped to have the sites refused classification by the Australian Broadcasting Authority (ABA). Once refused classification, material can be banned – either through forced removal or adding the sites' addresses to internet-filtering software – under online content legislation if it contains “detailed instruction in crime, violence or drug use”³.

Yet well before the ABA investigation into the sites had been finalised, Richard Alston was publicly concurring with Costa in labelling the sites “insidious, anti-democratic and interested in causing violence, mayhem and anarchy”. At the same time, and on several occasions, Michael Costa addressed this issue in the NSW Parliament – citing the information contained on the single ‘shopping list’ post to conclude that “the sorts of people who are associated with the WTO protests [are] open about their actions: their views are on the web site... these people have signaled clearly that they are coming to Sydney to cause problems”⁴ and “they are coming here to have a violent confrontation with the police”⁵.

On 30 October, two weeks before the no-WTO protests, the ABA concluded their investigations and formally announced that none of the websites in question breached any government guidelines or regulations.⁶ The Office of Film and Literature Classification stated that “the criterion looked at was whether these sites incited people to commit violent offences and it was decided that it did not reach that threshold.”⁷ As a result, the activist sites continued to operate as they had done before Costa’s very public attempts to ban them.

Although the NSW Police Minister was unsuccessful in his attempts to ‘ban’ the no-WTO sites, he and his Media Unit were very successful in using the issue to generate considerable negative publicity about the protests well before they had occurred.

This was clearly part of the NSW Police Service’s policing strategy for the protests. A key to the development of policing strategies for protests can be found in the NSW Police Service Standing Operating Procedures for Public Order Management. These Procedures state that as soon as the police become aware that an event is being planned, an “Event Commander” is to be appointed. That Commander then must inform the Media Unit of the event’s details and appoint a media officer to work closely with the Commander “to provide advice on media plans and strategies”.⁸

³ Hayes, Simon. ‘Anti WTO web sites under legal Attack’ at <http://www.australianit.news.com.au> : 3.10.02. For power to restrict prohibited Internet content see s.216B, Sch. 5 Broadcasting Services Act 1992 (Cth)

⁴ Extract from the NSW Legislative Council Hansard of 13.11.02, p 6575

⁵ Extract from the NSW Legislative Council Hansard of 31.10.02, p 6300

⁶ Blisset, Luther “Police Minister Fails to Shutdown Anti-WTO Websites”, 30/10/2002 sydney.indymedia.org/front.php3?article_id=22010

⁷ Extract from the NSW Legislative Council Hansard of 12.11.02, p 6413

⁸ NSW Police Service, Standard Operating Procedures for Public Order Management, “Media (Event Commander)”, current as at 5/4/2002

⁹ NSW Police Media Policy, <http://www.police.nsw.gov.au/about/ftp/MediaPol%5FWEB%5F2002.pdf>

The NSW Media Policy further outlines ways in which police can work with the media in order to ensure that the policing strategies are fulfilled.⁹

In the lead-up to 14 & 15 November, Costa's attacks on the Indymedia sites allowed him to conflate the no-WTO protests with the motif of armed 'hooligans' coming to Sydney for violent clashes with police. This public relations policing strategy had two material effects on the way police handled the no-WTO protests. First, it provided police with a rationale for refusing permits for the demonstrations (see discussion below). Second, it served to justify a firm and potentially excessive police response to the protests well before they had even begun.

Choice of Venue

When the WTO meeting was first announced in August 2002 there was no venue given. Then, on 10 October 2002 it was revealed that the 5-star Stamford Hotel in Double Bay, one of Sydney's most exclusive and expensive suburbs, was the venue preferred by the Federal Minister for Trade, Mark Vaile.¹⁰ Several radio interviews with shop-keepers in the area however, raised concerns that protests could damage their boutiques and high-class restaurants.¹¹ An ABC radio news story on 10 October featured the NSW Police Minister and Police Commander criticising the Federal Trade Minister's choice of venue as a policing nightmare, with police commander Dick Adams stating "There are areas that we would be better able to prepare, areas that we are able to isolate from the general community and will have access and egress routes".¹² By the next day, the Federal Government had backed down on the choice of venue, although both the Federal and NSW governments were refusing to name the venue.¹³

¹⁰ The Australian 10/10/2002, "Trendy area to close over WTO"

¹¹ John Laws interview with Trade Minister Mark Vaile on 2UE, 10/10/2002; ABC radio programme The World Today, 10/10/2002, "Double Bay scheduled to host WTO meeting", <http://www.abc.net.au/worldtoday/s698386.htm>; ABC Radio programme PM, 10/10/2002, "WTO meeting causes trouble in Double Bay", <http://www.abc.net.au/pm/s698446.htm>.

¹² ABC Radio programme PM, 10/10/2002, "WTO meeting causes trouble in Double Bay", <http://www.abc.net.au/pm/s698446.htm>.

¹³ The Australian, "Federal Backdown on WTO venue", 11/10/2002

On 30 October the Federal Trade Minister Vaile finally announced the new venue: the Novotel at Sydney Olympic Park, Homebush. Of course this venue fitted Dick Adams' description as an ideal policing venue very neatly. As discussed later in the report, special legislation covering the Sydney Olympic Park area gave the police extended powers over public behaviour. Choosing the venue as Sydney Olympic Park was yet another strategy employed by the NSW Police to ensure their power to shut the protest down would be made as easy as possible.

Public Protests 'Banned'

Another central tenet of the police's media strategy surrounding the no-WTO demonstrations was the idea that the protests were 'banned'. This idea of 'illegal' protest was widely reported in the media and raised in NSW Parliament prior to and during the protests of 14 & 15 November.

For example, a Reuters international news article declared that "Australian police have banned protest marches in Sydney, fearing violence at this week's informal World Trade Organisation (WTO) mini-summit". The Sydney Morning Herald said of the first day of the protest that "the demonstrations were illegal after they were denied police permits earlier this week", and the Australian newspaper reported that the protests were "deemed illegal because police refused to issue a permit".

The NSW Police Minister also reproduced this idea of ‘illegal’ demonstrations in NSW Parliament upon a number of occasions. For example, in distancing Patricia Karvelas (a journalist who was injured by police horses on 14 November) from others at the no-WTO protests, Costa said that “she is obviously a person who was injured in the course of her work, as opposed to somebody who went there illegally to demonstrate”, and that Karvelas was covering the event “because an illegal demonstration was being conducted ... in the face of police, government and other concerns about the likely outcomes”. Again, Costa’s views were similarly reported in the Sydney Morning Herald :

The Police Minister Michael Costa criticised the demonstrators in [NSW] Parliament saying that the only reason Karvelas was injured by a police horse was that the protesters had decided to take part in a violent illegal demonstration designed to cause ‘maximum’ chaos in the CBD.¹⁶

16 as quoted by Margo Kingston in The Sydney Morning Herald, 14/11/2002, <http://www.smh.com.au/2002/11/14/1037080841619.html>

17 Extract from the NSW Legislative Council Hansard of 14/11/02, p 6755

18 Extract from the NSW Legislative Council Hansard of 12/11/02, p 6413

19 United Nations Declaration of Human Rights 1948, Article 20

20 International Covenant on Civil and Political Rights 1966, Article 21

21 The First Optional Protocol was signed by the Australian government in 1991, allowing direct (but time-consuming) complaints to the United Nations Human Rights Committee

22 s.23 Summary Offences Act 1988 (NSW)

23 The details have to be furnished on a prescribed form which includes the date of the assembly, the time of any proposed static assemblies, proposed march route, stopping places along the march, the ‘purpose’ of the march, the number of persons expected, and the name and address of a ‘person who takes responsibility for organising and conducting’ the assembly’ (section 23(1))

According to the Police Minister, the protests were ‘banned’ because “[the police] had evidence that there would be violent confrontation”¹⁷ – that is, “because of threats of violence that have emanated from an extreme element of the protest group [and] the risk to members of the public should protesters become violent”.¹⁸ In the absence of any other evidence of threatened violence, it was presumably the ‘shopping list’ post to the Indymedia sites that the NSW Police Minister and NSW Police referred to as evidence justifying the refusal of permits to the no-WTO protests.

However, this idea – raised by the Police Minister and the NSW Police – that the no-WTO protests were ‘banned’ or ‘illegal’ raises considerable concern. It is the view of the no-WTO Legal Observer Team that protests cannot be ‘banned’ by NSW Police and that protesters exercising their rights to free assembly cannot be made ‘illegal’.

International Law

A right to freedom of peaceful assembly is part of international law under the UN Declaration of Human Rights¹⁹ and the International Covenant on Civil and Political Rights (ICCPR).²⁰ The right to engage in participatory democracy “without unreasonable restrictions” is clearly acknowledged by the ICCPR (Article 25).

As Australia is a signatory to the ICCPR, Australian governments are required to comply with its Articles and report to the United Nations (UN) on how it has met its obligations. Since 1991, Australian citizens are also able to complain to the UN Human Rights Committee if their human rights are infringed.²¹

New South Wales Law

NSW law establishes the right to peaceful public assembly as part of Australia’s commitment to international law. Under the Summary Offences Act 1988 (NSW), a public assembly in NSW is ‘authorised’²² if a detailed ‘notice of intention’²³ has been served on the Commissioner of Police.

If a notice of intention is submitted and the Commissioner opposes the protest taking place, then the police must promptly notify the organiser of the public assembly. However, the demonstration cannot be opposed if the notice was served on the Commissioner at least seven days before the proposed date of assembly and it is not prohibited by a Court order.

If an authorised public assembly is held, then this provides limited protection to participants: “a person is not...guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person”.²⁴

24 s.24 Summary Offences Act 1988 (NSW).

“Unlawful assembly” in this context is defined in section 545C Crimes Act 1900 (NSW) as “any assembly of five or more persons whose common objective is by means of intimidation or injury to compel any person to do what the person is not legally bound to do or abstain from doing what the person is legally entitled to do.”

25 Commissioner of Police v Vranjkovic (SC(NSW)), Lee J 28 November 1980, unreported. This concerned a demonstration outside of the then Yugoslav Consulate and dealt with interpretation of similar sections under the Public Assemblies Act 1979.

26 Commissioner v Allen [1984] ACLD 339 ((SC)NSW 19 April 1984). This case involved a proposed demonstration on Anzac Day by the Sydney Women Against Rape Collective. It is another matter for the organiser of such a public assembly, as he or she would be acting in breach of a Court order, and therefore would be in contempt of Court.

27 However, conduct which may otherwise be unlawful (common law unlawful assembly, offensive conduct, etc.) may still be committed by protestors, and there may or may not be a statutory defence to those specific offenses, depending on whether the assembly has been ‘authorised’.

Effect of Authorisation

The wording of the legislation - which specifically uses the word ‘authorised’ may create unnecessary confusion amongst NSW Police and the media. That is, the wording might imply that taking part in an assembly that is ‘not authorised’ is a prohibited or illegal act. However, this is clearly not the case.

This issue of ‘unauthorised assembly’ and the right to protest has been the subject of some important court decisions. In a 1980 case, the NSW Supreme Court declared that an order prohibiting an assembly “does not operate of itself to prevent the procession being held or to make a procession illegal if it is held”.²⁵

This view was affirmed in a 1984 Supreme Court case which concluded that a prohibition order “does not of itself prohibit the holding of a public assembly or procession taking place, notwithstanding the order”.²⁶ In this case the court confirmed that police ‘authorisation’ did not ‘permit’ people to protest (as they already have that right, regardless of ‘authorisation’) but merely granted immunity in respect of conduct incidental to an ‘approved’ assembly (such as blocking traffic).

No Power to ‘Ban’ Protests

The above law makes it clear that ‘authorising’ a demonstration under the Summary Offences Act does not give the police the power to ‘permit’ or ‘ban’ protests. Despite the repeated and ill-informed assertions by the NSW Police Minister Michael Costa, NSW Police and media in the lead-up to the no-WTO protests, it is not illegal to participate in an ‘unauthorised’ demonstration.²⁷ Indeed, if NSW law permitted the banning of the right to demonstrate, Australia would be in breach of its international obligations under the ICCPR.

Conclusion

Policing of the no-WTO demonstration began well before protesters took to the streets on 14 & 15 November. The NSW Police Minister, senior NSW police, and the NSW Police Media Unit began their 'hearts and minds' media campaign to shape public opinion against the WTO demonstrations with their public attempts to shutdown Indymedia websites. By the time that the sites had been cleared of any legal wrongdoing by the Office of Film and Literature Classification, the idea of 'ratbags' arming themselves for 'violent confrontation' with the NSW Police at the WTO protests had already been given widespread public currency in the media.

This negative typecasting of the WTO protests continued with the NSW Police Minister and senior NSW Police Officers claiming to have 'banned' the demonstrations due to the threat of violent confrontation. Beyond the information contained on the controversial post to the Indymedia website, however, there was no evidence to demonstrate this violent intent.

The perpetuation of the idea that the protests were 'banned' was also an inaccurate representation of the law. Failure to gain 'authorisation' for an assembly does not make that assembly 'illegal' or 'banned'. The police cannot 'ban' protests as they do not have the legal power to do so. People have the right to freedom of assembly.

It is arguable that the police and the NSW Government simply misunderstood the effect of 'authorisation' under the Summary Offences Act. However, there is a suspicion on the part of the no-WTO Legal Observer Team that the NSW Police Minister and senior NSW Police relied on the ambiguity of this wording to make misleading and strategic media statements about the legality of protesting against the WTO.

Recommendations

1. That the Summary Offences Act 1988 (NSW) be amended to more clearly acknowledge citizens' rights to freedom of assembly.
2. That the Commissioner of Police and the Police Media Unit undertake to give a clear and precise public briefing in respect of the legality of protests as part of their media strategy before each protest. To additionally avoid the use of the words 'illegal protest,' 'police permit' etc as these have no basis in law.
3. That the NSW Police Minister be given a clear and precise briefing in respect to the legality of protests, and refrain from making misleading public statements about 'illegal demonstrations'.

Horses as Crowd Control Weapons

The horses were behind me now but I would never have thought to be wary of them, as I was just standing in the road. The next thing I knew I was underneath horses' hoofs. It was very scary and I thought I was going to die. It felt as though my head and body got banged around and I was pummeled about under the horses, it felt like about 10-15 seconds.

Statement to Legal Observer Team regarding no-WTO protest 14
November 2002.

One of the more horrific media images to come from the no-WTO protests was the sight of several people - including cadet reporter with The Australian newspaper Patricia Karvelas - being knocked to the ground and trampled by police horses only a couple of hours after the start of the demonstration on 14 November 2002.

The demonstration had stopped on Market Street, just below Clarence Street, Sydney CBD, at approximately 10am. Police horses formed a line across Clarence Street and several arrests were made on Market Street. A large crowd was standing on the pavement outside The Berkeley Hotel, when two police horses suddenly charged into them. A number of people were knocked over, including Ms Karvelas.

This became a major focus for media coverage of the demonstrations. Pictures of this horse charge were promptly distributed across a range of print and internet media outlets. Ms Karvelas was taken to hospital with a suspected fractured pelvis immediately after the incident. She was subsequently released from hospital with severe bruising, and was rostered off work duties indefinitely.

However Ms Karvelas was not the only person injured by police charges. At least one protester has made an Ombudsman complaint following injuries she sustained.²⁸

Careless or Calculated?

When the issue of this horse charge was raised in NSW Parliament on 14 November, the NSW Police Minister referred to "a news report [he] heard alleging that the demonstrators were slapping the horses and that this caused the horses to move forward" whilst asserting that "the people responsible [for the injuries sustained by Patricia Karvelas] are those who are running wild in the streets of Sydney".²⁹ The Police Minister refused to acknowledge that NSW Police had any part to play in leading a horse-charge into peaceful protesters.

28 Statement of P53

29 Extract from the
NSW Legislative Council
Hansard of 14.01.02, p 6758

Despite the Police Minister's assertions, the Legal Observer Team received several witness statements that indicated the horse-charge was not accidental – that in fact the horses were deliberately driven by the police into a pedestrian crowd occupying a footpath:

*'(I) saw (a) female Police Sergeant on horseback lift her right hand and point to the corner of Market & Clarence St outside the Berkley hotel. About 12 police (OSG) in a flying wedge charged into the crowd and immediately behind them were 2 mounted police, who were slightly to the right of the flying wedge. The first horse stood on a female casualty. The second horse kicked a stretcher that a medic was holding and galloped on his legs.'*³⁰

It is worth noting that despite media coverage of police horses assembling in anticipation of protests at Homebush on Wednesday 13 November³¹, mounted police were not deployed for the protests at Sydney Olympic Park on 15 November.

Horses Banned as Instruments of Crowd Control

The use of horses in this role has long been considered controversial. On 30 November 1990, Ted Pickering – the NSW Minister for Police and Emergency Services in the Greiner Coalition Government – made a clear commitment to the NSW Parliament to prohibit the use of horses as weapons for crowd control:

*The [Police] Commissioner and I agree that under no circumstances should the horses be used as instruments for crowd control. When I was overseas, I saw some particularly horrendous sights involving horses, particularly in London. Recently an old lady was run down by a squad of cavalry. That will not happen in this State. Police horses will be used on a beat patrol type program only....I admit that recently there was an occasion when police horses were used to control a small crowd but that will not happen again.'*³²

The Police Minister at that time had arrived at this decision following several complaints against the behaviour of mounted police during clashes between gay rights activists and Fred Nile's Festival of Light organisation in Kings Cross in 1990.

However, the current Labor Government does not share Ted Pickering's concerns regarding the potential danger of the use of mounted police for crowd control. The current NSW Police Service Standing Operating Procedures for Public Order Management advises Commanders responsible for policing demonstrations to "consider using the OSG, dog squad, and mounted police ... where confrontation is likely."³³ There are no further guidelines detailing how or when horses are to be deployed against protesters, nor any safeguards in place to minimise the risk of injury.

³⁰ Incident report by Legal Observer (DW), 14.02.02

³¹ See photo by Dallas Kilponen in Sydney Morning Herald 13.11.02, p 3

³² E.P. Pickering, Extract from NSW Legislative Council Hansard of 30.11.90

³³ NSW Police Service, Standing Operating Procedures for Public Order Management, "Strategies and Tactics (Event Commander)", current as at 5/4/2002

Horses as Unregulated Police Weapons

34 Mercer, Neil and Peter Munro, "May Day protest turns nasty as police call in horses", Sydney Morning Herald, 2/05/2002; Legal Observer's Project Media Release 01/05/2002, sydney.indymedia.org/print.php3?article_id=13768

35 <http://bulletin.ninemsn.com.au/bulletin/eddesk.nsf/All/7D2188FED8FE8A74CA256B910005769E?OpenDocument>

36 The Age, "Sydney protest turns to riot", 19/06/2001

37 A Reclaim the Streets demonstration on 18/03/2000; a mandatory sentencing demonstration in April 2000; a youth justice demonstration on 23/05/2000; a 10,000-member union demonstration on 5/06/2000; and an Aboriginal rights march on 15/09/2000 during the Olympics

38 Siggons, Eamon "New York joins world in war protest", Pipe Dream 18/02/2003, <http://www.bupipedream.com/021803/news/n1.htm>; also see <http://www.liberalslant.com/j5.htm>

39 See Press Release from 'Third Battle of Newbury' campaign group, 12/02/1997, <http://www.geocities.com/newburybypass/120297.html>

40 Melissa Noonan (registered psychologist) for pt'chang, "A Psychologists Report on the Post-Traumatic effects of Police Violence on Protestors at the World Economic Forum", submitted to the Victorian Ombudsman 20/12/2000

Police horses are routinely being used as weapons in protest or crowd control situations in NSW – that is, they are strategically directed to ride straight at/into crowds of protesters to make them disperse. At the May Day Protests in 2002, journalists and a Legal Observer Team recorded a charge by 8-10 horses onto the footpath without warning, resulting in numerous injuries to protesters who had nowhere to retreat.³⁴ A month earlier, mounted police broke up a demonstration outside the Israeli consulate in Sydney.³⁵ In June 2001 a union blockade outside NSW Parliament House was charged by about 12 mounted police.³⁶ In 2000, virtually all protests in Sydney were met by mounted police.³⁷ In fact, the presence of mounted police has been noted at many protests since the Labor Government was elected in 1995.

Injuries to protesters caused by horse charges have also been recorded in other Australian cities, notably in Perth at a May Day demonstration in 2001, and in Melbourne during the S11 demonstrations against the WTO, 11-13 September 2000.

International experience shows that use of mounted police for crowd control has the potential to cause serious injury. Most recently, on 15 February 2003, mounted police were reported to have trampled several protesters at the massive peace rally in New York.³⁸ During a protest against the Newbury Bypass (UK) in January 1997, mounted police charged several people, one of whom sustained severe spinal injuries.³⁹

Deploying horses in this way is a tactic similar to firing tear gas, rubber bullets or water cannons into a crowd, or using a line of police to make a baton charge into protesters. All of these weapons and techniques are designed to deploy force against groups of people to move them en masse, rather than subdue or restrain an individual who may have committed an offence. These are methods of intimidating people and are designed to prevent them from exercising their rights. A report by a psychologist after the s11 protests in Melbourne found that charges by mounted police, among other police tactics used there, caused serious trauma among participants in the protests.⁴⁰

As with other crowd dispersal weapons and techniques, police horses are very dangerous and/or potentially lethal when used indiscriminately to disperse crowds. When using horses as weapons in this way, the risk of people being kicked or knocked down and sustaining serious injury is heightened – as evidenced by the trampling of Patricia Karvelas and others at the no-WTO protest on 14 November.

Conclusion

Twelve years ago, the then-NSW Police Minister and NSW Police Commissioner made a commitment to prohibit the use of horses as instruments for crowd control. When horses are directed by police to charge indiscriminately into crowds of people they are in fact being used weapons – in much the same way as batons or rubber bullets.

Due to the heightened risk of personal injury to citizens participating in protest, the Legal Observer Team believe that this commitment should be promptly re-affirmed and that NSW Police again be prohibited from using horses as weapons in this way. If NSW Police are to use horses at all in public order management, stringent policy guidelines must be established to explicitly prohibit their use in crowd dispersal.

Recommendations

1. That the NSW Government prohibit the use of Mounted Police as instruments for crowd control.
2. That NSW Police Standing Operating Procedures for Public Order Management be amended to specifically prohibit the use of Mounted Police in public order management.
3. That stringent NSW Mounted Police policy guidelines be introduced clearly delimiting the role of police horses to general patrols, searches, and traffic control.

Arrest

Over the two days of demonstrations, at least 55 protesters were arrested and charged: 22 on the first day in the CBD, and 33 on the second day at Sydney Olympic Park. The Legal Observers Team is also aware of people who were arrested but later released without charge, so it is likely that the number of people arrested in total may be over 60.

In the opinion of the Legal Observers Team, many of the arrests made during the no-WTO protests were completely unnecessary, and many also involved unreasonable force.

The main charges laid against protesters were:

- 1) “Failing to comply with a reasonable request or direction given for the purpose of securing good order and management” – offence under clause 12 Sydney Olympic Park Regulation 2001 (NSW) – maximum penalty of 10 penalty units (\$1100)
- 2) “Obstruction of a person/traffic – failure to move on after being given a direction” – offence under section 28F Summary Offences Act 1988 – maximum penalty of 2 penalty units (\$220)
- 3) “Threaten unlawful violence with others” – an offence under section 11a (1) Summary Offences Act 1988 – maximum penalty of 10 penalty units (\$1100) or imprisonment for 6 months
- 4) “Resist or hinder police officer in the execution of duty” – offence under 546c Crimes Act 1901 – maximum penalty imprisonment for 12 months, a fine of 10 penalty units (\$1100), or both

Other charges included obscenity (laid against three nude protesters on 14 November), at least one charge of offensive language, one charge of possession of a knife (swiss army knife), and one person was charged with assaulting a police officer.

Most of these offences are minor summary offences – that is, they can be dealt with by way of fine or bond rather than imprisonment. Most can also be dealt with by way of issuing penalty notices. The Legal Observer Team believes that the fact that police chose not to follow this path is indicative of their determination to ‘punish’ protesters rather than actually manage public safety.

Some people also suffered injuries as a result of police arrests over the two days, and information received by the Legal Observers Team also indicates that the amount of force used for executing some arrests was excessive and unlawful. The Legal Team is of the opinion that the ‘snatch squad’ method of arrest used by the Operations Support Group (OSG) police throughout the protest was unnecessarily provocative and heightened the risk of personal injury for those present at the demonstration. In particular, a number of the injuries inflicted upon protesters by OSG police at Sydney Olympic Park verge on criminal assault.

International Norms

The United Nations Code of Conduct for Law Enforcement Officials states that “law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”⁴¹ and they “ may use force only when strictly necessary and to the extent required for the performance of their duty”.⁴² The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also include the following:

4. *Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.*
5. *Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*
 - (a) *Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
7. *Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law*

41 Article 2 Code of Conduct for Law Enforcement Officials

42 Article 3

43 S 352 Crimes Act 1901 (NSW) provides for a general statutory power of arrest for police officers.

44 see commentary, Annotated Criminal Statutes in NSW 2001/2002 by R N Howie QC and P A Johnson SC, Butterworths, para. 8S-352.1.

45 <http://www.police.nsw.gov.au/about/detail.cfm?ObjectID=233&SectionID=policy>

46 Code of Practices for CRIME, NSW Police, p 10

47 Code of Practice for CRIME, NSW Police, p 9

48 Christie v Leachinsky [1947]

49 Standing Operating Procedures for Public Order Management, NSW Police, p 6

50 Standing Operating Procedures for Public Order Management, NSW Police, p 8

NSW Law and Policies on Arrest

Under NSW law, police officers may arrest people who are committing an offence or who have just committed an offence.⁴³ Police officers are not obliged to arrest and must do so only where “it is necessary to assure the accused’s attendance before the court and only where a summons would not be appropriate”.⁴⁴ The NSW Police Service Code of Conduct and Ethics states that police officers should act in a manner which “preserves the rights and freedoms of individuals”.⁴⁵ The NSW Police Service Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME) states that when deciding whether or not to arrest, officers should be

*mindful of [the] competing requirement between the rights of individuals to be free and the need to use the extreme action of arrest so you can charge people who break the law. Do not, for the purpose of charging, arrest for a minor offence when it is clear a summons or court attendance notice will ensure attendance at court. Also keep in mind your ability to issue infringement notices for many offences.*⁴⁶

If a decision to arrest is made, police officers must inform the person in clear words that they have been arrested, what for and why,⁴⁷ unless the person has, by their conduct, made this disclosure impossible.⁴⁸

The Standing Operating Procedures for Public Order Management advises the supervising police officer at demonstrations to tolerate ‘minor offences which do not jeopardise public safety’.⁴⁹ The supervising officer must ensure that all officers under his or her command are briefed that ‘demonstrators have a right to free speech and peaceful demonstration.’⁵⁰

Method of Arrest: 'Snatch Squads' and other Paramilitary Techniques

Large stationary line of OSG Police assembled along RHS of Boulevard Ave [Sydney Olympic Park]. A number of individuals standing in front of the police line – between police and larger group of protesters. One person standing with back to police line. Without notice, senior OSG police officer [name withheld] ran and pushed into the back of the individual. Pushed him face first hard into the ground from behind. No notice. No provocation. Three other officers quickly grabbed the person, dragged him behind police lines and arrested him.

Incident Report by Legal Observer, 15.11.02

Almost all arrests witnessed by the Legal Observer Team over the two days of the protests were carried out by 'snatch squads' of OSG. Snatch squads are small arrest teams of police officers sent into a crowd of protesters to isolate, arrest and remove targeted individuals. Conventionally, police lines open to let the squad into the crowd, one or two officers perform the arrest whilst the others surround them to ward off any potential participation from other protesters, and the targeted individual is then promptly taken behind police lines.

A 2002 internal police document describing the training for OSG officers in relation to protests and demonstrations calls snatch squads 'arrest teams'.⁵¹ The document explains that if negotiations between the protest group and police have broken down, the event commander may give a general direction to the protesters to leave. Arrest teams then move into place, ready to target particular individuals who have failed to comply with the direction. The team leader should then say to the individual:

"You have been directed to leave by senior police. If you do not leave you will be arrested. Do you understand? Are you going to leave?"

If the person says they will leave, the team can escort them from the scene but cannot arrest them because they have complied with their direction. If however the protester refuses to leave "then they are arrested and as much force as is necessary will be used."

The document also explicitly states that during arrest, pressure points above the shoulders are not permitted, but that other "compliance techniques" such as wrist locks, back of the arm pinch, sternum rub, trapezium grip, and the "love handle grab" are permitted.

The use of 'snatch squads' is a key feature of paramilitary police units such as the NSW Operational Support Group. The tactics of the OSG are drawn directly from British crowd control units, which were themselves influenced by the British policing of Northern Ireland.⁵² The use of 'snatch squads' and the general pro-active policing of crowd control by paramilitary police units has come under heavy criticism in Britain because these tactics actually amplify disorder rather

51 NSW Police Service Operational Safety Training Unit, Draft Document, "Protests and Demonstrations", dated circa April 2002

52 Jude McCulloch, Blue Army: Paramilitary Policing in Australia, Melbourne University Press, Melbourne, 2001, p 186

than containing it. One critic divides paramilitary policing into 4 stages: preparation, controlling space, controlling the crowd, and clearance.

The amplifying elements of the [first] stage include the provocative appearance of large numbers of riot-equipped officers, their readiness for the worst case scenario, and the frustrations of long hours on standby. 'Controlling space', which necessarily entails moving some people, will cause resentment, the more so the more paramilitary executed. Once crowd resentment turns into active response, police expectations of trouble become confirmed, pre-emptive police action is undertaken, crowd expectations are confirmed and the self-fulfilling prophecy is underway. 'Controlling the crowd', if necessary by force, further heightens anger and confirms expectations. The release of snatch squads dramatically amplifies matters as the contrast between the protected police and the defenceless members of the crowd adds injustice to crowd anger. Injuries increase the anger. When the 'clearance' begins, an already angry crowd will become even more so...⁵³

The above quote perfectly describes the way in which the police acted on the second day of the protests, at Sydney Olympic Park.

Throughout the two days of no-WTO protest the Legal Observer Team witnessed numerable snatch squad arrests by OSG police. One protester describes their arrest as follows:

All of a sudden the police stormed into the crowd, targeting individual people... I was pushed forward, almost on top of about four protesters and two police officers, not actually making contact, then a police officer started pulling my left ear. I immediately went back with him and told him that I was not going to resist, so he let go of my ear and held me my arm... at no time did he tell me that I was being arrested, at no time did he read me my rights...⁵⁴

This protester was placed into a police van, detained for the whole day, and finally charged with "failure to comply with reasonable direction".

On none of the occasions observed did police inform the individual that they were being arrested or give them the opportunity to comply with the request to leave prior to arrest. This led many to suspect that police were arresting first then deciding what charges to lay at a later date.

53 Jefferson, Tony, *The Case Against Paramilitary Policing*, Open University Press, Philadelphia, 1990, p134

54 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 15/11/2002

I asked on several occasions what we were being arrested for and if we were being charged. (I was being held in a police van). After almost an hour later a [description withheld] police officer responded saying 'you're not being arrested. It's a breach of the peace. You'll be released.'⁵⁵

55 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 15/11/2002

Despite this assurance, this protester was later charged with offences under the Summary Offences Act, as was the following protester:

*I was not told what I was arrested for... I did not know the charge and this police officer asked the officers who searched me if they knew and they said no. The unknown policeman said 'I'll put trespass down, that's what everyone else has'. He then wrote on a charge sheet.'*⁵⁶

One protester who was not informed of her charges at the point of arrest was eventually charged with possession of a pocket knife found in her bags only after she was searched by police.⁵⁷

All the protesters who were arrested on Friday 15 November were eventually issued with pro-forma charge sheets which had the same informant, Inspector David Darcy, and provided very little detail about the individual circumstances of their arrest. This further confirms the Legal Observer Team's suspicions that the police strategy was to arrest first and figure out charges later.

On 15 November the Legal Observer Team also observed police snatching people who were not even part of the main body of the protest at the time.

*I saw a line of police in overalls [OSG officers] punch through a block of protesters. They (the police) were in a solid line. They grabbed a tall man... who was just standing there as part of a loose grouping of people. There seemed to be no provocation for them grabbing him. Then they removed him directly and took him to the van. There were somewhere between ten and fifteen police involved in grabbing him.'*⁵⁸

Unreasonable and Excessive Force

International and NSW policies dictate that arrests by law enforcement officials must be carried out with minimum force.⁶⁰ This applies to individuals as well as to the policing of the demonstration as a whole.⁶¹ However the Legal Observer Team witnessed many instances of police violence used during the arrests. The following statement from a protester provides a graphic description:

I was held down by a male police officer whose badge read [details withheld]. Officer [details withheld] had bent the wrist of my left hand over and was pushing my hand into my arm. The pain was so strong I felt like I was going to pass out, like my whole body was paralysed, I couldn't move. Officer [details withheld] bound my arms together behind me at the wrist and pushed me into a kneeling position pressing our faces up against the fence. An officer behind the fence came up and took our photos individually... we were held like that for a long time, over half an hour...

Eventually they must have decided to move us as they pulled us into standing positions. Officer [details withheld] then grabbed hold of my arms and pushed me in front of him – holding me there as a buffer between himself and the rest of the demonstration.

56 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 15/11/2002

57 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 15/11/2002

58 Legal Observer Report on 15/11/2002

60 Refer to the International and NSW Codes of Conduct detailed above

61 Standing Operating Procedures for Public Order Management, NSW Police, p 6

It was incredibly painful because he was twisting my hand, another male officer [description withheld] standing beside him then looked at me and raised his arm and drove his elbow down into my chest while the other officer held me up, preventing me from lowering myself to avoid the elbow which was very painful....⁶²

Another protester's experience was as follows:

I arrived at the convergence in Martin Place [on Thursday] at approximately 8.30am and met up with a couple of my friends. We were all committed to a non-violent protest and peaceful demonstration against the WTO....

As we were trying to find our way through the crowd to the top of the street, I became separate from my friends. From behind me, a long line of police charged through the crowd knocking into me. I was pushed from behind into another protester and we held onto each other to steady ourselves. As we were holding each other, police grabbed the other protester. Without warning a police officer grabbed me around the throat and pushed me backward into another group of police.

Two police grabbed my wrists and bent them back while another police officer still held me by the throat. I have been told not to resist or struggle in this situation and so I tried to be as compliant and relaxed as I could in the situation.

Then another police officer punched me in the stomach, and I doubled over. At this point, the two officers holding my wrists started pulling me toward the police truck...I was still not resisting police as they dragged me along the ground. The officers pulling me toward the truck...

While still having my wrists being bent back, one officer grabbed my head and hit my forehead on the ground repeatedly. I could not see properly, or control my body. I felt paralysed, somewhat. Then I could move and I walked with the officers toward the truck...the officers seemed unsure as to whether they wanted to put me in the truck or pull me out of it by my backpack. Eventually one side of their struggle won over and I was forced into the truck the door was slammed. [he was then taken to a police station and processed]

Not during this whole period was I informed that I was being arrested, and upon what charged I was being arrested. Nor as I given any medical attention for my head, a phone call or informed as to what my rights were.⁶³

62 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 15/11/2002

63 Statement given to the Legal Observer Team re: no-WTO Protest 15 November, arrested on 14/11/2002

64 Statement by P17, arrested 15/11/2002

And yet another statement:

Suddenly the police began attacking the crowd, striking people with their fists and knees... right in front of me I witnessed a young woman with a video camera [name withheld], grabbed by the police and have her head bashed on the concrete before being dragged off.

I began taking photos of this assault. ...as I took the camera away from my face I was stuck a blow on the head by a police officer in blue overalls...

I fell to the ground...one elbowing me in the back of the head, then grabbing me around the neck in a choke hold and punching me repeatedly in the face until I blacked out. I recall three punches. This resulted in bleeding from the right eye, both nostrils and mouth....[held by police officers]...

I asked for medical attention which they refused....

...after being searched I was picked up by the officers and thrown into the back of a van which contained about 8 other protesters . The others appeared very concerned for me and began shouting for medical attention for me, which was refused again.

While inside the van I kept having brief blackouts, nausea and 'dizzy spells'. ...we were driven to Silverwater prison....I was yelled at by police because I was asking for medical attention.....

I was then taken to an interview room where I was seen by an ambulance medic. The medic checked for broken bones in my face and neck, cleaned up the blood on my face, and gave me a cold compress for me eye which had now closed over....⁶⁴

The media also witnessed several instances of violence during arrests.

The Australian yesterday [Thursday] witnessed a [police] officer punching a woman and another dragging a woman along the ground by her hair... many officers were also seen shoving protesters in the back and verbally abusing them...⁶⁵

The Australian approached NSW police to comment on particular incidents they had witnessed on 14 November 2002 but the Police 'declined to comment on the matter.'⁶⁶

⁶⁵ The Australian,
15/11/2003

⁶⁶ The Australian,
November 16-17, 2002.

The following protester suffered injuries not just during his arrest but afterwards, when removed from the police van at Silverwater Correctional Centre:

Two overalled police officers approached me diagonally from behind me. One of the officers grabbed on the left arm on my left side, the other pushed me into the fence. I tried to step away from the fence.

I said "I'm going where they told me to go"

Then the officer who was on my right hand side punched me in my right shoulder. As he punched me I pushed his arm away. When I did that he gave me a push in the forehead with an open left hand.....my head was pushed into the ground twice. I was taken to a prison van. [I was driven around in the van, allowed out of the van and] at this time two other officers came and pushed me in the side of the van from a distance of two to three meters. The two officers held me against the side of the van. The cuffs were then cut from my wrists. I was still yelling to let me go. I felt a knee in the back of my right leg 3 times.then the officer who was directly behind punched me twice in the right side of my ribs. Then the officer on the right side of me kneed me in my right thigh....

As a result...I have sore ribs on my right hand side, grazes on either side of my eyebrows and a bruised on the back of my thigh bruising on my knees and some small cuts on my right wrist....⁶⁷

Conclusion

International and NSW Codes of Conduct for police make it clear that police must respect the human rights of all people when carrying out their duties. In the context of protests, this means considering whether arrest may be in conflict with the right to freedom of assembly. It also means using a minimum amount of force.

During the no-WTO protests, the NSW Police, particularly the OSG, used paramilitary techniques such as 'snatch squads' which are deliberately aggressive forms of crowd control. It is the contention of the Legal Observer Team that such methods are completely unnecessary to control what were in reality very small protests.

Finally, the amount of violence used during the arrests was completely unacceptable and could amount to criminal assault by police on protesters.

Recommendations

1. That NSW Police do not routinely deploy the OSG in protest situations.
2. That paramilitary techniques such as 'snatch squads' be avoided as these do not minimise disruption, and are in fact an inflammatory tactic.
3. That the NSW Police Ombudsman conduct a review into the use of violence during the no-WTO protest.

⁶⁷ Statement given to the Legal Observer Team re: no-WTO Protests on 15/11/2002

No Bail! Go [in]directly to Gaol

Bail is the release of a prisoner from legal custody on their undertaking to return to court and face their charges at a later date. People have the basic right to liberty of person and freedom from detention⁶⁸. The purpose of bail is to protect this right from abuse by allowing freedom of movement in all but the most serious of circumstances.

Police are authorised to grant bail to people held in their custody. However, during the two days of the no-WTO protests, police routinely refused bail to virtually every person arrested. The Legal Observer Team is aware of only four people who were granted bail by the police throughout the demonstration. They were arrested near Hyde Park at approximately 4:30pm on Thursday 14 November – probably too late to be conveniently brought before a Magistrate at the nearest Local Courts, the Downing Centre. Apart from these four people, all persons accused of offences were detained in custody until they were charged and brought before a Magistrate, who then granted bail (subject to conditions, in some cases) to every single person charged.

Police's blanket refusals of bail had particularly serious consequences on Friday 15 November. As a result of being wrongfully denied bail by police, everyone arrested on that day was delivered into the custody of Corrective Services Staff. Correctional Officers have significant powers to search 'inmates' in their custody. Therefore everyone arrested on 15 November was also subjected to the particularly humiliating punishment of being strip-searched prior to appearing before a Magistrate later that day.

The Right to Bail: Denied

Police have authority to grant bail to people arrested and held at police stations or other places of arrest processing.⁶⁹ Many minor criminal offences (such as numerous summary offences) carry an automatic right to bail.⁷⁰ This right entitles a person to be released from custody (with or without conditions attached) once they have been charged, in return for an undertaking to appear in court when required. When people are charged with a minor summary offence, police must grant bail and ensure that they are released from custody as soon as possible.

This right to bail existed in respect of most offences with which people were charged over the two days of the no-WTO demonstrations. For example, there is a right to bail in respect of:

- offences where no term of imprisonment is prescribed as a penalty – this includes all of the arrests made under the Olympic Park laws.
- offences under the Summary Offences Act 1988 (NSW) which prescribe a term of imprisonment.

There are very few exceptions to this right to bail for minor offences. They include situations where it is believed the person arrested is incapacitated by intoxication or injury, is in physical danger or in need of physical protection, or where the person has previously failed to comply with a bail condition or bail

68 Article 3, Universal Declaration of Human Rights; Article 9, Universal Declaration of Human Rights

69 s 17 Bail Act 1978 (NSW).

70 Minor summary offences are those that can be dealt with by a Magistrate and do not carry a term of imprisonment (except in default of payment of a fine).

71 s 8(2) Bail Act 1978 (NSW).

undertaking⁷¹. However, despite most of the 55 people arrested and charged during the no-WTO protests having a legal right to be released on bail by the police under s 8 of the Bail Act 1978 (NSW), bail was categorically refused by the police to almost all of those arrested and detained. There is no evidence to suggest that any of these exceptions applied in the circumstances.

The Presumption in Favour of Bail: Denied

All of the other offences with which people were charged during the no-WTO demonstrations carried a presumption in favour of bail⁷². This means that the arrested person must be released from custody unless the police believe that refusal of bail is justified after considering:

- the probability of whether the person will appear in court
- the interests of the person
- the protection of certain people,
- the protection and welfare of the community.⁷³

No one who was arrested with a presumption in favour of bail at the no-WTO protests was released from custody by the police. It is the belief of the Legal Observer Team that none of the special considerations listed above applied to those arrested throughout the no-WTO protests, and that none of those considerations justified NSW police's decision to deny people's entitlements to release on bail.

The Right to be Informed about Bail: Denied

Enjoying a right depends upon knowing that it exists. When someone is charged and held in custody, NSW law requires police to give the accused person written information that they are entitled to bail⁷⁴. Police are also required to sign a prescribed form acknowledging that this information has been given to the accused person.⁷⁵ However, NSW Police failed to even mention bail entitlements to anyone arrested throughout the no-WTO demonstrations, let alone inform them of their rights in relation to it.

⁷² s 9 Bail Act 1978 (NSW)

⁷³ s 32 Bail Act 1978 (NSW)

⁷⁴ s 18(1)(a) Bail Act 1978 (NSW)

⁷⁵ s 18(1)(a) Bail Act 1978 (NSW)

⁷⁶ s 19(1) Bail Act 1978 (NSW)

⁷⁷ s 20 Bail Act 1978 (NSW)

Procedure on Refusal of Bail

Once police have decided to refuse someone release on bail, they are legally required to inform them that they have a right to communicate with a lawyer in connection to their bail entitlements.⁷⁶ Police are also required to bring an arrested person before a court for a further determination of bail to be made as soon as practicable.⁷⁷

On both days of the no-WTO demonstration those arrested were only given access to legal advice immediately prior to appearing before a Magistrate. They were not given access to legal representation at the time that their bail was refused by police. The Legal Observers Team is informed that all requests made to communicate with a lawyer while in detention were firmly denied (see discussion in Detention below).

Furthermore, the length of time that people spent in custody on Friday 15 November raises serious doubts about whether those arrested were brought before a court as soon ‘as practicable’.⁷⁸ As discussion in the following chapter details, many of those arrested on 15 November were detained and held in Silverwater Correctional Centre for inordinately long periods.

Breach of Rights to Bail: Turning Protesters into Inmates

As a result of being wrongfully denied bail by police, everyone arrested on 15 November was handed over into the custody of officers of the NSW Department of Corrective Services. Correctional Officers have significant powers to conduct intrusive searches of ‘inmates’ in their custody – far more than the police themselves have.

Strip-searches, for example, can only be performed by police in the most serious and urgent circumstances if they reasonably suspect the arrested person is concealing critical evidence, a dangerous item, or a tool to help them escape from custody.⁷⁹ However, Corrective Services Officers can strip-search inmates in correctional facilities as “directed” or as they “consider appropriate”.⁸⁰

As a result, everyone who was arrested at the no-WTO protest on 15 November was subjected to the humiliating punishment of being strip-searched by correctional officers in the holding cells of Parramatta Local Court. The Legal Observers Team has been told by many of those arrested and strip-searched that when people protested, they were told by correctional officers that strip-searching was ‘standard practice’ and was required of all prisoners ‘as a matter of course’.⁸¹

78 This does not apply in relation to Thursday 14 November - a day when accused persons experienced shorter periods in custody, even though they should have been bailed by the police and released.

79 Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence)

80 s.46 Crimes (Administration of Sentences) Regulation 2001 (NSW)

81 from statements given to the Legal Observer Team immediately after the no-WTO actions.

Conclusion

In the opinion of the Legal Observer Team, the virtually blanket denials of bail to those who were entitled to be released constitute the most serious breach of the law perpetrated by the NSW Police over the two days of the no-WTO actions. In denying bail, the police deprived arrested persons of their liberty and initiated a chain of events that they must have known would ultimately lead to a large number of people being unlawfully detained and subjected to the humiliation of strip-searching.

In failing to inform people of their rights to bail, or granting bail to those who were arrested for minor offences, NSW Police clearly breached sections 8, 9 and 19 of the Bail Act 1978 (NSW). Whilst breaches of the Bail Act 1978 (NSW) by police are not punishable as criminal offences⁸², other remedies are available for those whose rights were infringed – including internal police disciplinary procedures, Ombudsman complaints, or civil actions against NSW Police.

It is possible that NSW Police simply forgot to perform their statutory obligations (by acknowledging people's bail entitlements) due to adverse working conditions throughout the two days of no-WTO protests. However, the Legal Observer Team considers that the refusal of bail by police is more likely to have provided a way of keeping people away from the protests for substantial periods of time. It also arguably facilitated the delivery of summary punishment to persons who had not been found guilty of any offence in a court of law. The Legal Observers Team is concerned that such punitive and illegal methods for addressing dissent endanger the rule of law, lower public confidence in the NSW police's impartiality, and are inconsistent with the fundamental tenets of a democratic society.

Recommendations

1. Section 66 of the Bail Act 1978 (NSW) be amended to provide a legal remedy for people unlawfully detained because of a breach of the Act by the police.
2. Possibilities for civil action be investigated – and if appropriate, commenced – against NSW Police for the unlawful detention and assault of those arrested at the no-WTO protest on 15 November 2002.

⁸² s 66 Bail Act 1978 (NSW)

Unlawful Detention

The story goes like this. To start off with they did not notify me what I was being arrested for, nor did they give me prior warning, also no rights were read. We were put in the corrective services van, then drove around in circles for 45 minutes on that little 'tour'... When we arrived at the holding cell [at Silverwater Correctional Centre] we were put in with eight other people. They also took my little legal aid card (supplied by you guys), so I had no way of contact. They denied us legal representation of any kind, they did not question us, they did not allow for phone calls ... The estimated time of release was 15 minutes. Well about four and something hours later I was released. I had no money so I could not afford to catch the bus. They would not make any other transport options for me. Also they would not let me go and see my mum who was working next door. They denied me to call her ... So I walked in the rain for a few hours to get to the nearest railway station. The other striking thing was I was a minor. I am 17. They illegally took me to an adult holding cell, which is not meant to be used for minors. In fact we were not supposed to be there at all. All in all they treated us like shit, denied me my legal rights as a minor, and violated human rights acts (of what I am aware of).

Statement made to Legal Observer Team re: no-WTO protest 15 November 2002.⁸³

I was in the van for almost 3 hours. I then got led inside [Silverwater Correctional Centre], where they took all my possessions, and I continually asked what I was being charged with. On every occasion, I was either ignored or told that I'd find out soon. I was in the gaol cell with other protesters for another hour and a half, (maybe two) during which time I both individually and collectively (for the whole group of us) asked to speak to a lawyer, make a phone call, have a glass of water, have some food and to know what I was being charged with. On every occasion, my request was denied, usually with a "shut the fuck up", or "stop whinging". I was then taken out of the cell and when I asked where I was going, a female officer told me I was going to court, when I asked what I'd been charged with, she told me that I'd find out soon.

Statement made to Legal Observer Team re: no-WTO protest 15 November 2002

⁸³ The person who made this statement was arrested on 15 November 2002 and subsequently released without charge later that day.

⁸⁴ s 356C Crimes Act (NSW) 1901

⁸⁵ s 356N Crimes Act (NSW) 1901

⁸⁶ s 356T Crimes Act (NSW) 1901

⁸⁷ s 356U Crimes Act (NSW) 1901

Being arrested and detained in police custody can be a traumatic experience. Extensive laws and police guidelines are in place to ensure that police officers perform their duties properly and people's rights in custody are acknowledged and respected.

When arrested, a person is only to be held in custody for a reasonable time.⁸⁴ During detention, police must allow an arrested person to communicate with a lawyer,⁸⁵ as well as providing medical attention,⁸⁶ toilet facilities, and food and water as reasonably required.⁸⁷ Additional special requirements and

police obligations exist for those people who are deemed to be particularly 'vulnerable' in custody – including indigenous people⁸⁸ and children.⁸⁹

Information and statements received by the Legal Observers Team from people arrested clearly indicate that NSW Police routinely abused people's rights in custody during the no-WTO protests.

As discussed in the previous chapter, NSW Police wrongfully denied bail to almost all people arrested throughout the protests. If the police had followed the law and acknowledged people's legal rights and presumptions in favour of bail, no one who was arrested would have actually been detained in police or correctional services custody throughout the entire no-WTO protests. The Legal Observer Team believes that this clear breach of law by NSW Police directly caused approximately fifty people to be unlawfully detained. The seriousness of this unlawful detention was exacerbated by the fact that:

- most persons arrested were held in custody beyond the four-hour limit imposed by law⁹⁰, with many experiencing substantial unexplained delays in being transported to police stations for processing
- most persons arrested were systematically denied their legal rights (to legal representation, medical attention, and toilet facilities) whilst in custody
- everyone arrested and detained on 15 November 2002 was eventually subjected to the unnecessary and humiliating ordeal of being strip-searched by correctional officers.

Detention Beyond Reasonable Time Limits for Reasons other than Investigation

After arrest, police are only allowed to detain a person for a period of up to four hours for the purposes of investigation⁹¹. This time period commences at the time of arrest⁹², but can be extended by 'time out' periods – for example, the period of time taken to move the arrested person from the place of arrest to the nearest place where investigation can occur, or the period of time the arrested person spends talking with a lawyer.⁹³ An arrested person can be held in custody for up to an additional 8 hours. However, an application must be made to an authorised justice⁹⁴ to extend the detention time for that long.

It is important to emphasise that detention after arrest is meant for the purposes of investigating whether the arrested person has committed the offence⁹⁵. Normally, investigation would involve interviewing the arrested person, as well as undertaking forensic procedures such as searches of the clothing or body, or fingerprinting – though arrested persons enjoy a right to silence and do not have to participate in an interview.

⁸⁸ Code of Practice for CRIME : p. 17-19

⁸⁹ Code of Practice for CRIME : p. 13 & 33.

The Legal Observers Team is aware of no instance throughout the no-WTO protests where police actually attempted to interview people they arrested during detention. Instead, numerous statements made to the Legal Observer Team indicate that the police flagrantly abused the legal time limits for

detention. Many of those arrested over the two days were driven around and held in police vans for hours prior to processing. Others were charged and then held in custody in police vans and/or cells at either Surry Hills Police Station or Silverwater Correctional Centre for periods well in excess of four hours, until being brought before a Magistrate later on the day of their arrest. In addition, most of those arrested on 15 November were held in maximum-security detention facilities for periods well in excess of the 4 hours permissible at law.

One individual who gave a detailed statement to the Legal Observer Team was arrested on Friday November 15 for ‘failing to comply with a reasonable request given to secure good order and management’ of Sydney Olympic Park. He was then held in the custody of police and corrective officers for approximately 7 hours. This detention period included a period of approximately 1.5 hours during which he was supposedly driven in a police van from Sydney Olympic Park to Silverwater Correctional Centre. The distance between Silverwater Correctional Centre (which is within the Sydney Olympic Park Development Area) and the site of his arrest was less than 2 kilometres.

Another person was arrested for a minor offence around 1:00 pm on 15 November in the designated ‘Passive Protest Area’ at Sydney Olympic Park and was not released until about 9:00 pm that night. She reported to the Legal Observers Team that:

After being searched [upon arrest] I was questioned by an unknown police officer as to my personal details, and the charge. I did not know what the charge was and this police officer asked the officers who searched me if they knew, and they said no. The unknown police officer said “I’ll put trespass down, that’s what everyone else has got”.

90 s 356C Crimes Act 1900 (NSW)

91 See s. 356C Crimes Act 1900 (NSW).

92 s 356D Crimes Act 1900 (NSW); Code of Practice for CRIME : p.10

93 Code of Practice for CRIME; Procedures associated with arrest, detention and investigation. Field Operations. 5 August 2002.

94 s356G(3) Crimes Act 1900 (NSW); Code of Practice for CRIME : p.10.

95 Code of Practice for CRIME : p.10

96 s. 356C Crimes Act 1900 (NSW)

97 Director of Public Prosecutions v Nicholls (2001) NSW SC 523

This woman was then driven to Silverwater Correctional Centre and held in a police van in a car park there until approximately 6:00 pm. After she was finally taken out of the van, she was pat-searched and put in a cell on her own. An hour later she was driven from Silverwater Correctional Centre to Parramatta Local Court where she was taken into the police holding cells and strip-searched by correctional officers. Finally, more than 7 hours after her arrest, she was given access to a lawyer and told that her offence was that she ‘failed to comply with a reasonable request given to secure order the good order of Sydney Olympic Park’. This is a minor offence that carried an automatic right to bail and in fact one in respect of which police may simply issue an on-the-spot penalty notice. She was taken before a Magistrate just before 9:00 pm and released from custody shortly after.

‘The Least Expeditious Procedure’: Access to Courts and Lawyers Unacceptably Delayed

After the police have refused to release an arrested person on bail, they are legally required to bring them before a Magistrate for a further determination of bail either within the 4 hour period or “as soon as practicable” after the end of the 4 hour period.⁹⁶ This means that the police must use the most expeditious procedure possible⁹⁷ to give the arrested person the opportunity to apply for bail in court. It is not acceptable for the police to delay this procedure for the purpose of further

investigations.⁹⁸ Any undue delay in this process means that a person has been unlawfully detained by police.

On 15 November, for example, bail was denied to all of those arrested during the no-WTO protests. Parramatta Local Court is less than 8 kilometres from the Silverwater Correctional Centre. A conservative estimate of the expected travel time between the two locations would be approximately 30 minutes. Given the highly publicised size of the policing operation during the no-WTO protests, and the relatively low number of arrests, it is unbelievable that there insufficient police and/or correctional officers available to transport those arrested to Parramatta Local Court ‘as soon as practicable’. However, as discussed above, none of those arrested were promptly conveyed to the nearest Court, and all of those detained were held at Silverwater Correctional Centre for periods well in excess of four hours.

It is the belief of the Legal Observer Team that the NSW Police breached their legal obligation to bring those arrested during the no-WTO protests before a Magistrate as soon as practicable. Lengthy detentions after arrest were not warranted as the distance between Silverwater and Parramatta Court was relatively short, and there were clearly enough police available to convey people there. As a result of this breach, scores of people were unlawfully detained for excessive periods of time during the no-WTO demonstrations.

Denial of Rights in Custody: Use of Facilities

A person held in custody for over four hours between the time of arrest and their first court appearance is entitled to certain facilities⁹⁹. These include facilities for the accused person to wash, shower, bathe, change clothing and where applicable, to shave¹⁰⁰. Police must also ensure that people detained in custody are given “reasonable access to a telephone so that the prisoner can telephone one of the following: a relative, a solicitor of their choice, someone to arrange bail; if necessary, a doctor of their choice”.¹⁰¹

It is clear from statements made to the Legal Observer Team by people arrested on 15 November that police denied arrested persons access to essentials such as water, toilets, medical assistance and sanitary facilities. Access to working telephones – points of contact for legal representation – was also denied.

One person who gave a statement to the Legal Observer Team was arrested at approximately 11:00 am on 15 November and kept in custody for 10 hours. She was locked up in a police truck for two hours, during which she and two other women in custody asked repeatedly for access to bathroom facilities in order to change tampons. The police officers ignored the requests. At one point, a female officer told her to change tampons in the truck. When she was finally taken to Silverwater Correctional Centre she was pat-searched and required to shake out her underwear before she was allowed access to the toilet. There was no sanitary disposal unit in the toilet. When she asked where she could dispose of the soiled tampon, a police officer insisted that she put it in a clear plastic bag and take it back to the truck with her. When she refused

⁹⁸ *Williams v The Queen* (1986) 161 CLR 278 F.C. 86/049, Brennan and Mason JJ at 295.

⁹⁹ s. 21 Bail Act 1987 (NSW)

to do this, pointing out to the police officer that this was unhygienic and offensive, the bag and the tampon were eventually taken away from her and disposed of.

The Legal Observer Team received many statements corroborating these events and indicating that the denial of basic rights in custody was routine and systematic. One person that gave a statement to the Legal Observer Team, for example, was arrested on 15 November and detained for more than 6 hours without access to food, water or toilet facilities. Repeated requests to use toilets during his detention were denied. During that time he witnessed a number of other detained protesters urinating, out of necessity, through the windows of police vehicles.

Denial of Rights in Custody: Vulnerable Persons and Children

Both NSW law and internal police policy¹⁰² set out special provisions for the treatment of people in custody who may be particularly vulnerable in a prison environment.

In general, NSW law and policy require police to take “immediate steps to contact a support person”¹⁰³ if they suspect that the person being detained is a ‘vulnerable person’. ‘Vulnerable persons’ include Aboriginal and Torres Strait Islanders, and young people under the age of 18.

The Legal Observer Team are aware of at least two incidents during the no-WTO protests where police infringed the rights of vulnerable persons in custody.

One person who gave a statement to the Legal Observer Team is Aboriginal. He was arrested on 14 November for offensive language and taken to Surry Hills Police Station for processing. When an Aboriginal person is brought into custody, police are required to “inquire whether a representative from an Aboriginal legal aid organization has been notified. If a legal aid representative has not been contacted, take immediate steps to do so and tell the person of the steps taken.”¹⁰⁴ When a member of the Legal Observer Team contacted police at Surry Hills Police Station to ensure that his rights in custody were being upheld – in response to a telephone call from a concerned relative of the man who had seen him being taken into a police van – she was informed that the Aboriginal Legal Service would not be contacted as this Indigenous individual was “no more vulnerable than anyone else”.¹⁰⁵

Another person who gave a statement to the Legal Observer Team is 17 years old. When a young person under the age of 18 is arrested, police must take steps to “contact the child’s parent or guardian immediately”¹⁰⁶. Similarly, “when a child is brought to a police station, parents, guardians or a support person for the child should be notified”¹⁰⁷. Young people must not be put in a cell with other adults unless it is necessary for the well being of the young person (in exceptional circumstances).¹⁰⁸ Upon arrest on 15 November, this young person was incarcerated in a cell with at least eight adults at Silverwater Correctional Centre. During this time, he was repeatedly denied requests to contact his mother who worked nearby, and/or a legal representative. After more than four hours in detention, he was released without charge.

100 s.7 Bail Regulations 1999 (NSW)

101 s. 356N Crimes Act 1900 (NSW) and Code of Practice for CRIME : p. 21 - 22

102 p.17 Code of Practice for CRIME.

103 Code of Practice for CRIME : p. 19

104 Code of Practice for CRIME : p. 20

105 Statement given to the Legal Observer Team : 14.11.02

106 Code of Practice for CRIME : p.11

107 Code of Practice for CRIME : p.13

108 Code of Practice for CRIME : p.33

Denial of Rights in Custody: Medical Attention

NSW law and policy requires police to assess and provide for the health of those detained in custody. In particular, prisoners should be allowed to take their prescribed medication in custody,¹⁰⁹ and medical assistance should be immediately provided to any person who is injured.¹¹⁰

One person who gave a statement to the Legal Observer Team was detained in a holding cell at Silverwater Correctional Centre on 15 November. She informed the police that she had a medical condition that required her to take prescription painkillers and anti-depressants. In a humiliating incident witnessed by others in her cell at the time, the police questioned her as to why she took anti-depressants and called her a “troublemaker”. Police later removed the other protesters from her cell and left her in solitary confinement for up to one hour. When she asked the police for further assistance, they told her to ‘shut up’ and threatened that they could keep her detained overnight in the cells if need be.

Another person who gave a statement to the Legal Observer Team was arrested for a minor offence on 15 November. He was assaulted about the head by police during his arrest and denied medical attention - despite the fact that he was clearly and profusely bleeding from the eye, mouth and nostrils. After some time, a medic at Silverwater Correctional Centre examined him, gave him an ice compress for his head and told him that he’d be “fine”.

A corrections officer was placed in the cell to supervise him as he continued to periodically lose consciousness. During his detention he repeatedly requested that he be taken to a hospital for medical treatment, as well as requesting a phone call for legal assistance and food and water. However, all of these requests were denied, and he was detained without proper medical assistance for more than 7 hours. The next day, he was diagnosed by his GP as having received significant head and neck injuries, including concussion, and was x-rayed for a suspected nasal fracture.

Strip-Searching

We were then told we were to be strip searched.. I objected on the grounds that we still hadn't been told what the charges against us were.. The custody officer explained that it was part of their procedure when prisoners were admitted, that it would have to be done and that we would then have a chance to see Legal Aid personnel. I was then strip searched in front of three women in a cell complete with a camera.

Statement given to the Legal Observer Team re: no-WTO protests
on 15 November

¹⁰⁹ See p.42.

¹¹⁰ See p.41; also s356U Crimes Act 1900 (NSW).

Two corrections officers came in the cell and told us it was standard procedure for all prisoners to have a complete strip search . They did not tell us why . I was taken out of the cell and into another cell with two corrections officers in . One stood in front of me with the other standing behind. I was ordered to obey every word of the officer in front of me, look straight forward and

under no circumstance look at the officer behind me. I was instructed to remove all garments of clothing one at a time and when naked had all orifices of my body examined [visually] by the officers. I was not told what they were looking for and talking was forbidden... I believe the conduct of the police, both at the protest site and in the prison (including the grossly unnecessary and degrading strip search) was intended to produce terror in the minds of the protesters.

Statement given to the Legal Observer Team re: no-WTO protests
on 15 November

Everyone arrested at Sydney Olympic Park and detained at Silverwater Correctional Centre on 15 November was strip-searched in the holding cells below Parramatta Local Court. It is important to note that it was not police but corrective services officers that performed these humiliating and invasive searches. As noted earlier in this report, corrective officers have far greater powers to search inmates than police do to search arrested persons.

NSW Police, for example, cannot strip-search as a matter of policy. Strip-searches can only be conducted by police in serious and urgent circumstances if they reasonably suspect the arrested person is concealing critical evidence, a dangerous item, or a tool to help them escape from custody.¹¹¹ However, Corrective Services Officers can strip-search inmates in their custody “as directed” or as they “consider appropriate”.¹¹²

No reasons were given for strip-searching other than that it was ‘standard practice’, and required of all prisoners ‘as a matter of course’. Most of the strip-searches were conducted several hours after arrest, raising serious doubts about the urgency of the circumstances supposedly justifying the search. Nothing was present in the circumstances to suggest that any of the victims may have been concealing any dangerous items or tools for escape – in fact, most of those strip searched had already been padded down during processing at Silverwater Correctional Centre. Statements provided to the Legal Observer Team indicate that many of those detained were unnecessarily strip-searched in front of a number of people and in areas where CCTV cameras were filming.

NSW Police co-ordinated the policing of the no-WTO protests with Corrective Services well before their commencement. In working closely with Corrective Services at Sydney Olympic Park this way, the NSW Police effectively created a situation where protesters could be easily turned into ‘inmates’ upon arrest. By breaching the law and categorically refusing to release people on bail, and then handing those arrested into the custody of Corrective Services, NSW Police were directly responsible for the unnecessary, humiliating and invasive strip-searches that were conducted on 15 November 2002. The Legal Observer Team suspect that this dangerous operational structure – with the expectation of unlawful detention and strip-searching - was created by NSW Police well in advance of the actual no-WTO protests.

111 Code of Practice for
CRIME, Annexure A : p.30

112 s.46 Crimes
(Administration of
Sentences) Regulation 2001
(NSW)

Conclusion

The Legal Observer Team believe that NSW Police clearly and systematically breached NSW law and police policy on rights in custody during the no-WTO protests.

First, bail was wrongfully denied to approximately 50 people, all of whom were unlawfully detained as a result. Second, almost all of those incarcerated were held for periods well in excess of the 4-hour time period, without any reasonable explanation. Third, whilst in custody, rights to use facilities (such as toilets), make phone calls for legal assistance, and special safeguards for 'vulnerable persons', were continually denied or ignored. Finally, at the end of their excessive and unlawful detention, those detained on 15 November were unnecessarily subjected to the humiliation of being strip-searched before being released.

Recommendations

1. The Standing Operating Procedures on Public Order Management be amended to prohibit the use of Correctional Centres and Corrective Services staff in public order management by NSW Police.
2. NSW Police conduct an internal investigation to identify officers responsible for breaching rights guaranteed by law to persons in custody during the no-WTO protests and take appropriate disciplinary action against the individual officers concerned.
3. The possibilities for civil action be investigated – and if appropriate, commenced – against NSW Police for the unlawful detention and assault of those arrested at the no-WTO protest on 15 November 2002.

The Sydney Olympic Park Laws: Creating 'No-Protest' Enclaves Within Public Space

...this legislation is another expression of the law and order philosophy that permeates too much of the policy framework of both Government and Opposition. It is becoming obvious that there is a sea change in the way that peaceful protests are being viewed within the Police Services and the Government. Recent experiences in Sydney point to a confrontational attitude from the police not seen since the worst days of the Askin Government.¹¹³

Greens MLC Lee Rhiannon, speaking in opposition to the Olympics Arrangements Bill 2000 (NSW), 12/04/2000

History of the Sydney Olympic Park Laws

November 15, day two of the no-WTO demonstrations, was a litmus test for the use of legislation passed amid much controversy in preparation for the Sydney Olympic Games. At the time of their creation, the NSW Government argued that the powers contained in the Homebush Bay Operations Act 1999 (NSW) and the associated regulations were necessary to ensure the smooth running of the Olympic Games. Many critics objected to the laws, arguing that these constituted the 'thin-end-of-the-wedge' and raising concerns that the Olympics were being used as an excuse to give NSW Police, government rangers and private security guards draconian powers to police behaviour in public space.

The no-WTO protests showed that these fears were well founded. A fine-tuned version of the Olympic regulations was employed on November 15 2002 to arrest at least 12 protesters for nothing more than an alleged failure to obey an order to move on¹¹⁴ – an offence that, outside Sydney Olympic Park, cannot be used anywhere in NSW against participants in an “apparently genuine demonstration”. The consequences of those arrests are discussed elsewhere in this report and include unlawfully lengthy periods of detention, and humiliating and intrusive searches. It is clear now that such laws and regulations have become an integral part of the NSW government’s attempts to undermine the right to protest. The Legal Observers Team believes that the Olympic laws restrict people’s access to and use of public spaces. They are inappropriate in a resilient democracy, and they require revision to bring them into line with those laws governing public space across the rest of NSW.

113 The NSW Askin Government was a Liberal Government during the Vietnam War days, infamous for introducing the first Summary Offences Act 1970 (NSW) which gave police powers to disrupt protests

114 Cl 12(1)(e) Sydney Olympic Park Regulation 2001 (NSW): “failure to comply with a reasonable request given to secure order”

115 Sydney Harbour Foreshore Authority Act 1998 (NSW), Centennial Park and Moore Park Trust Regulations 1999 (NSW)

The Sydney Olympic Park Authority Act 2001 (NSW) and the Sydney Olympic Park Regulation 2001 (NSW)

In their previous incarnation, these laws were called the Homebush Bay Operations Act 1999 (NSW) and the Homebush Bay Operations Regulation 1999 (NSW). The passage of the Homebush Bay Operations Act 1999 (NSW) was explicitly tied to the stated need of tighter control and security of Sydney Olympic Park in the lead-up to the Sydney Olympic Games. This Act was part of a raft of laws¹¹⁵ concerning the policing and security of areas in which Olympic events would be held. These were broad in scope, giving the Government the

power to create Regulations concerning issues such as “ensuring the proper conduct and safety of persons”¹¹⁶ on specific areas of land, and providing for the “removal of trespassers and persons causing nuisance or annoyance to others”.¹¹⁷ Controversially, the laws extended powers to control personal behaviour in public places beyond members of the NSW Police to persons authorised by various statutory authorities, such as the Olympic Co-ordination Authority¹¹⁸ and the Sydney Harbour Foreshore Authority.

At the time of their passage, the Homebush Bay laws incited substantial and heated debate. During the second reading of the Olympics Arrangements Bill 2000 (NSW), which extended the Olympic Co-ordination Authority’s powers under the Homebush Bay laws into all other Olympic event sites, Greens MLC Ian Cohen pointed out that the Bill constituted back-door extension of police powers:

The bill, via the regulation, creates a raft of new public order offences in the geographical areas in which they operate... The Greens are concerned that the regulation will prevent peaceful protests from taking place in these two areas [those under the Sydney Harbour Foreshore Authority Act 1998 (NSW) and those under the Homebush Bay Operations Act 1999 (NSW)] during the Olympics, although holding a peaceful protest is a basic right in a democratic society...¹¹⁹

116 s 82(2)(g) Sydney Olympic Park Act 2001 (NSW); s 46(2)(h) Sydney Harbour Foreshore Authority Act 1998 (NSW); compare this to the moralistic “securing decency and order on the land”, s 31(2)(e) of the now-repealed Homebush Bay Operations Act 1999

Other members of Parliament responded to these criticisms by arguing that the Olympics was a special event requiring management of huge crowds, and that greater control of public space and personal behaviour was justified. For example, the conservative Christian Democrats MLC Reverend Fred Nile argued that:

The Olympic Games 2000 are perhaps one of the most complex activities to be held in Sydney. We accept that there is a need for such legislation. We do not believe that it is draconian, but that it is reasonable and justified in the circumstances.¹²⁰

117 Section 82(2)(h) of Sydney Olympic Park Act 2001; s 46(2)(i) Sydney Harbour Foreshore Authority Act 1998; compare this to s 31(2)(c) and (f) of the Homebush Bay Operations Act 1999 which explicitly allowed regulations regarding the admission or banning of persons to the land or any part of it

118 s 17 Homebush Bay Operations Act 1999 (NSW)

119 Hansard extract 12 April 2000

120 Hansard extract 12 April 2000

121 s 32 Homebush Bay Operations Act 1999 (NSW)

In response to these public interest concerns, a ‘sunset clause’ was introduced into the legislation to end its operation on 31 March 2002¹²¹. However, before its expiry date, the NSW Government performed a sleight-of-hand manoeuvre which ensured the continuance of draconian policing powers created for the special security challenge of the Sydney Olympic Games. In a quiet, largely undebated legislative change in June 2001 the Homebush Bay site was renamed Sydney Olympic Park, and the Sydney Olympic Park Authority took over the functions of the Olympic Coordinating Authority. Passed as a schedule to the Sydney Olympic Park Authority Act 2001 (NSW) was the Sydney Olympic Park Authority Regulation 2001 (NSW) (‘the Olympic Park Regulation’) – none other than the Homebush Bay Operations Regulation bearing a different name.¹²² In other words, the new Authority was given the same powers in relation to controlling behaviour and public space, without any justification via the Olympics, and without any sunset clause.

Paramilitary Powers: Sydney Olympic Park Laws and the Overpolicing of Public Space and Dissent

The Olympic Park Regulation contains detailed and lengthy powers to control public behaviour within Sydney Olympic Park, including the power to prohibit or limit categories of people authorised to enter the site¹²³, the power to close any part of the land to the public¹²⁴, and the power to dictate certain forms of personal conduct,¹²⁵. This includes the proscription and policing of:

- (a) indecent, obscene, insulting or threatening language
- (b) offensive or indecent behaviour
- (c) disorderly conduct causing “serious alarm or affront” to a person
- (d) obstruction of a person in the performance of that person’s work or duties
- (e) failing to comply with a reasonable request or direction given for the purpose of securing good order and management and enjoyment of the [relevant lands] or any part of such land by [the Authority], a person authorised by [the Authority] or a police officer.
(Maximum penalty: 10 penalty units.)¹²⁶

Police and other persons authorised by the Sydney Olympic Park Authority also have the right to ask someone who they suspect of having committed an offence under the regulations to give their name, address and proof of age (if a relevant issue).¹²⁷ They can also photograph people removed from sportsgrounds within the Park¹²⁸.

Despite these extensive powers, it was only the NSW Police (and not ‘authorised persons’) that exercised these powers on 15 November 2002 during the no-WTO protests. The only Olympic Park offence actually used to justify the arrest and charge of a number of people at the demonstration was “fail to comply with a reasonable request or direction given for the purpose of securing good order and management” at Sydney Olympic Park¹²⁹. The NSW Police’s ability to use this particular offence to arrest, charge and detain protesters highlights how the Sydney Olympic Park laws mark a substantial departure from pre-Olympics powers to control public space.

Conventional police powers in public space, applicable across NSW, are found in the Summary Offences Act 1988 (NSW) as amended by the Crimes Legislation Amendment (Police and Public Safety) Act 1998 (NSW). Since 1998, NSW police have been empowered in certain circumstances to give a reasonable direction “to move people on to prevent obstruction, harassment or intimidation”¹³⁰.

Police are not empowered, however, to issue such an order to break up demonstrations, protests, public assemblies or industrial disputes.¹³¹ This safeguard had been introduced to counter public criticisms that the laws could lead to police targeting particular groups discriminatorily (eg young people) or could be used to inhibit the right to protest. These two crucial and much fought-for protective clauses are completely absent from the Sydney Olympic Park Authority Act and Regulation¹³².

122 Sections 83 and 84 provide for the Homebush Operations Regulations to become regulations to the Sydney Olympic Park Act, with specific amendments to the name of the site and the Authority.

123 Cl 5 Sydney Olympic Park Regulation 2001

124 Cl 4 Sydney Olympic Park Regulation 2001 (NSW)

125 Cl 12 Sydney Olympic Park Regulation 2001 (NSW) – which is identical to Cl 12 of the Homebush Bay Operations Regulation 1999 (NSW)

126 1 penalty unit presently = \$110, so this is a maximum penalty of \$1100

127 Cl 21 Sydney Olympic Park Regulation 2001 (NSW) and the now-repealed Homebush Bay Operations Regulation 1999

128 Cl 18 Sydney Olympic Park Regulation 2001 (NSW)

129 Cl 12(1)(e) Sydney Olympic Park Regulation 2001 (NSW)

130 ss 28F(1)-(3) Summary Offences Act 1988 (NSW) – maximum penalty is 2 penalty units (\$220)

131 ss 28G Summary Offences Act 1988 (NSW)

132 Public Interest Advocacy Centre “Olympics Liberty and Security Issues”, February 2000

In addition, the Olympic Park Regulation creates much larger penalties for those found guilty of an offence: \$1100 maximum for a failure to obey an order given by police or an authorised person¹³³. This compares to \$220 for a failure to move on according to an equivalent direction given under the Summary Offences Act¹³⁴. In addition, if people cause “annoyance and inconvenience”, breach the regulations, or trespass on areas closed to the public, the Authority can order them to leave and if they refuse to do so they are committing an offence penalised at twice the amount prescribed for the standard offence.¹³⁵

133 At the current rate of \$110 per penalty unit: see cl 12(1) Sydney Olympic Park Regulations 2001 (NSW)

134 s 28F Summary Offences Act 1988 (NSW)

135 Cl 22 Sydney Olympic Park Regulations 2001 and the now-repealed Homebush Bay Operations Regulations 1999 - maximum penalty is 20 penalty units (\$2200). Indeed, the size of the penalties under the Olympic Park Regulation exceed those for trespass on private lands: s 4 of the Inclosed Lands Protection Act 1901 (NSW) provides for a penalty of 5—10 penalty units (\$550-\$1100).

136 Australian Catholic Movement for Intellectual and Cultural Affairs, “WTO Venue Announced: Novotel, Sydney Olympic Park”, Press Release 01/11/2002, http://www.acmica.org/media_news011102.htm

137 The Centennial Park and Moore Park Trust Act was passed in 1983 while the current Regulations, which introduced the public space powers, were gazetted on 27 August 1999. Cl 9 allows the Trust to close part or all of the lands to the public; Cl 22 is identical to Cl 12 of the Sydney Olympic Park regulations, details of which are given later in this Chapter.

138 Cl 5 of the Sydney Harbour Foreshore Harbour Regulations 1999

Conclusion: Against the Creation of ‘No-Protest’ Zones

It is difficult to avoid the conclusion that once Double Bay was discarded as a potential conference venue, the choice of Sydney Olympic Park for the WTO meeting was an overtly strategic one – guided, above all, by the availability of extraordinary powers to control public behaviour beyond than those available in public spaces anywhere else in NSW. As one social justice group commented at the time:

*The Sydney Olympic Park is specially constructed to make crowd controlling easy, and a quick perusal of NSW statutes suggests that some of the fascistic police powers at the Park created for the Olympics continue to be effective under the Sydney Olympic Park Regulation 2001 (eg cls. 12,22). One wonders whether they were planning this all along.*¹³⁶

The Legal Observer Team is concerned that the use of the Sydney Olympic Park laws to punish dissent at the no-WTO demonstrations provides a precedent for convening other controversial meetings at Sydney Olympic Park, or other sites governed by analogous regulations. The Centennial Park and Moore Park Trust Regulations 1999 (NSW) provided the prototype for the Olympic Park laws giving police and authorised people extensive powers to control “personal behaviour”¹³⁷, and similarly regulate behaviour in the bulk of central Sydney’s parklands. The Sydney Harbour Foreshore Harbour Regulations 1999 (NSW) explicitly demand that public assemblies must be authorised by the Authority.¹³⁸ The area covered by these Regulations now extends to substantial parts of Pyrmont and Ultimo, Circular Quay, Woollomooloo Bay, Walsh Bay, Millers Point, and even the Australian Technology Park in Redfern. Such laws enable instant ‘no-protest’ areas where police and authorised persons can order people off public land, declare certain sections of public space ‘off-limits’, and dictate personal behaviour.

It seems that there is little to stop the NSW Government giving over even greater tracts of land to specially-created statutory authorities which then also enjoy – via tailor-made regulations, passed with a minimum of public debate – increased powers to aggressively police public gatherings. The Sydney Olympic Park site merely adds to the large swathes of land regulated under the Centennial Park and Moore Park Trust Regulations and the Sydney Harbour Foreshore Harbour Regulations. In the future, will we see Hyde Park under management of the Hyde Park Authority which has the power to declare Hyde Park a ‘no-protest’ zone? Or to declare Macquarie Street a ‘no-protest’ zone? People’s ability to use public spaces effectively in

communicating dissent provides one test of the efficacy of the democratic state. The Legal Observer Team believes that the preservation of free and unfettered access to all public spaces is crucial to the maintenance of fundamental human rights guaranteeing freedom of expression and assembly.

Recommendations

1. That the NSW Government cease the practice of putting public space and 'move-on' powers into Regulations rather than into Acts, as this subverts public discussion and parliamentary debate about important human rights issues, namely, the right to freedom of assembly
2. That the Sydney Olympic Park Regulation 2001 (NSW) be amended in line with s 28G of the Summary Offences Act 1988 (NSW) to ensure that the power to give requests for good order and management, cannot be exercised in relation to "an apparently genuine demonstration, industrial dispute, procession or assembly".
3. That similar amendments also be made to the Sydney Foreshore Authority Act 1988 (NSW) and Regulations, the Centennial Park and Moore Park Authority Act 1983 (NSW) and Regulations and any similar laws which give police greater powers than those granted in the Summary Offences Act 1988 (NSW) and the Crimes Act 1900 (NSW).
4. That the maximum penalties for 'move-on' offences under the Sydney Olympic Park Authority Act 2001 (NSW) and Regulation, Sydney Foreshore Authority Act 1998 (NSW) and Regulations, Centennial Park and Moore Park Authority Act 1983 (NSW) and Regulations be no more than 2 penalty units, as provided in the 'move-on' offences of the Summary Offences Act 1988 (NSW).
5. That the NSW Ombudsman conduct a review into the use of the Sydney Olympic Park Authority Act 2001 (NSW) and Regulation during the no-WTO protests on 15 November 2002, considering particularly whether this Regulation (and other similar regulations) breach the right to freedom of assembly.

Conclusion

This report has critically outlined and examined what was one of the biggest and most highly publicised public-order policing operations ever undertaken by NSW Police. By going beyond the mainstream media coverage of the demonstrations and drawing information from those who directly witnessed or were subjected to violence, this report has exposed some of the most excessive and unlawful police actions in recent NSW history.

There were three key elements in the strategy used by the NSW Police against the no-WTO protests. First, a sophisticated media strategy was used by the NSW Police Minister, NSW Police and the Police Media Unit to shape public opinion against the WTO protests well before the demonstration began. This 'hearts and minds' public relations campaign commenced as early as September 2002 when the NSW Police Minister began condemning the protesters as violent agitators and very publicly attempted to shut down the no-WTO activist websites. By the time the sites had been cleared of any legal wrongdoing by the Office of Film and Literature Classification, the idea of 'ratbags' arming themselves for 'violent confrontation' with the police had already been firmly planted into public opinion. This motif was then used by police as a justification for 'banning' the protests – despite the fact that local and international laws exist to prevent the right to free assembly from being abused in this way. By developing a media campaign based on purported threats of violence and the criminalisation of dissent, the Legal Observer Team believe that the NSW Police aided in creating a climate of fear and a context that allowed for an excessive police response at the no-WTO protests.

The policing strategy used against these protests was also paramilitary in nature. Extraordinarily large numbers of specialist OSG police were proactively deployed, 'snatch squads' were routinely used to target and arrest particular individuals, and mounted police were sent in to indiscriminately disperse crowds of people. The paramilitary nature of the WTO policing operations is consistent with both national and international trends in the policing of protest – where force is used to disperse groups or crowds of people rather than apprehend individuals who may have committed an offence. However, the Legal Observer Team believe that these paramilitary policing tactics amplified the potential for disorder and result in an excessive amount of force being used against those at the protest. To minimise further risk of personal injury, both the paramilitary OSG policing unit and the 'snatch squad' method of arrest that they deploy should be prohibited from routine use at public demonstrations.

The policing of the no-WTO protests was also marked by the disproportionate number of potentially unlawful actions by NSW Police. People were generally arrested for minor summary offences that carried a legal right to be released on bail. NSW Police, however, consistently and wrongfully denied bail to almost all of those arrested. This clear and serious breach of law started a chain of events that led to a large number of people being unlawfully detained for excessive periods of time, systematically denied their rights (to phone calls, medical attention, toilet facilities) while in custody, and unnecessarily subjected to the humiliating ordeal of being strip-searched

before being released. The Legal Observer Team believe that NSW law needs to be changed to make sure that those who are unlawfully detained in this way can take action against the NSW Police. In the interim, civil action may provide an effective form of redress for those wrongfully detained and send a clear message to the NSW Police that our rights and freedoms cannot be arbitrarily abused.

Since November 2002, the Legal Observer Team has continued to monitor the police strategy in relation to prosecution of those arrested at the no-WTO protests. Virtually all of those charged have pleaded not guilty. A special police Task Force was set up in January 2003 to review the police video and CCTV footage from the protests and find the evidence needed to proceed with prosecution. Legal Observers attending the Downing Centre Local Court have already witnessed one case dismissed by a Magistrate because the police failed to meet court orders to supply their evidence on time. It remains to be seen how many other cases will be similarly dropped for lack of evidence in the near future.

The rationale of this report is that people have the right to free assembly and peaceful protest, irrespective of the immediate 'law and order' politics of the government of the day. The police are not meant to be used as an electioneering tool, but rather as a tool to maintain the balance between freedom and responsibility. By continuing to scrutinize their actions, the legal observer team hopes to protect these rights from further abuse.

Annexure A: Recommendations

Pre-crime: Public Relations Policing Before the Event

1. That the Summary Offences Act 1988 (NSW) be amended to more clearly acknowledge citizens' rights to freedom of assembly.
2. That the Commissioner of Police and the Police Media Unit undertake to give a clear and precise public briefing in respect of the legality of protests as part of their media strategy before each protest. To additionally avoid the use of the words 'illegal protest,' 'police permit' etc as these have no basis in law.
3. That the NSW Police Minister be given a clear and precise briefing in respect to the legality of protests, and refrain from making misleading public statements about 'illegal demonstrations'.

Horses as Crowd Control Weapons

4. That the NSW Government prohibit the use of Mounted Police as instruments for crowd control.
5. That NSW Police Standing Operating Procedures for Public Order Management be amended to specifically prohibit the use of Mounted Police in public order management.
6. That stringent NSW Mounted Police policy guidelines be introduced clearly delimiting the role of police horses to general patrols, searches, and traffic control.

Arrest

7. That NSW Police do not routinely deploy the OSG in protest situations.
8. That paramilitary techniques such as 'snatch squads be avoided as these do not minimise disruption, and are in fact an inflammatory tactic.
9. That the NSW Police Ombudsman conduct a review into the use of violence during the no-WTO protest.

No Bail! Go [in]directly to Gaol

10. Section 66 of the Bail Act 1978 (NSW) be amended to provide a legal remedy for people unlawfully detained because of a breach of the Act by the police.
11. Possibilities for civil action be investigated – and if appropriate, commenced – against NSW Police for the unlawful detention and assault of those arrested at the no-WTO protest on 15 November 2002.

Unlawful Detention

12. The Standing Operating Procedures on Public Order Management be amended to prohibit the use of Correctional Centres and Corrective Services staff in public order management by NSW Police.
13. NSW Police conduct an internal investigation to identify officers responsible for breaching rights guaranteed by law to persons in custody during the no-WTO protests and take appropriate disciplinary action against the individual officers concerned.
14. The possibilities for civil action be investigated – and if appropriate, commenced – against NSW Police for the unlawful detention and assault of those arrested at the no-WTO protest on 15 November 2002.

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15. That the NSW Government cease the practice of putting public space and 'move-on' powers into Regulations rather than into Acts, as this subverts public discussion and parliamentary debate about important human rights issues, namely, the right to freedom of assembly
16. That the Sydney Olympic Park Regulation 2001 (NSW) be amended in line with s 28G of the Summary Offences Act 1988 (NSW) to ensure that the power to give requests for good order and management, cannot be exercised in relation to "an apparently genuine demonstration, industrial dispute, procession or assembly".
17. That similar amendments also be made to the Sydney Foreshore Authority Act 1988 (NSW) and Regulations, the Centennial Park and Moore Park Authority Act 1983 (NSW) and Regulations and any similar laws which give police greater powers than those granted in the Summary Offences Act 1988 (NSW) and the Crimes Act 1900 (NSW).

18. That the maximum penalties for 'move-on' offences under the Sydney Olympic Park Authority Act 2001 (NSW) and Regulation, Sydney Foreshore Authority Act 1998 (NSW) and Regulations, Centennial Park and Moore Park Authority Act 1983 (NSW) and Regulations be no more than 2 penalty units, as provided in the 'move-on' offences of the Summary Offences Act 1988 (NSW).

19. That the NSW Ombudsman conduct a review into the use of the Sydney Olympic Park Authority Act 2001 (NSW) and Regulation during the no-WTO protests on 15 November 2002, considering particularly whether this Regulation (and other similar regulations) breach the right to freedom of assembly.

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