



# OCCUPY POLICING

A Report into the Effects and Legality of the Eviction  
of Occupy Melbourne from City Square on 21 October 2011



## **Acknowledgement of Land**

This report was written and published on the land of the Wurundjeri people of the Kulin Nations. The events narrated in this report also took place on the lands of the Wurundjeri People. We recognise that Indigenous sovereignty over the lands and waters of Australia has never been ceded and that Indigenous struggles for sovereignty continue. We commit to working in solidarity with movements asserting Indigenous sovereignty and opposing the racist effects of policing.

## **Who is the OMLST?**

The Occupy Melbourne Legal Support Team formed a week before the Occupation of City Square was launched on the 15 October 2011. The Legal Support Team consisted of qualified legal practitioners and as well as paralegal volunteers. We sought to provide legal information to Occupy Melbourne and co-ordinated workshops on legal rights concerning protest, arrests, the potential legal consequences of taking political action and legal basis for police powers during the week (15 – 20 October 2011) where City Square was transformed into a vibrant social space experimenting with a particular form of direct democracy. Legal observers attended Occupy events, building on a long tradition of such as World Economic Forum in 2001.

**Authors:** Alejandra Seguel González, Rhys Aconley-Jones and David Adam

**Editors and Coordinators:** Sara Dehm, Erin Buckley and Julia Dehm

**Design:** Julia Dehm and Sara Dehm

**With thanks to:** Meghan Fitzgerald, David Vakalis, Matt Wilson, Esther Bohmer, Jacob Grech, Danya Jacobs and the Federation of Community Legal Centres.

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This Report is not legal advice and should not be relied upon as such. If you are seeking legal advice, the authors suggest that you contact your local community legal centre.

Front cover images: Jessie Boylan

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Contact email: [occupymelbournelegal@gmail.com](mailto:occupymelbournelegal@gmail.com)

# Forewords

"This Report contributes to an important conversation about freedom of speech and public protest in the City of Melbourne. The analysis of this report and the protestor voices that it foregrounds demonstrate the critical importance of an independent inquiry into the forced eviction of Occupy Melbourne from City Square on 21 October 2011. While this Report allows us to better understand

the events that occurred around the Occupy Melbourne eviction, more accountability for decisions made and actions taken by Melbourne City Council is required. It is on the record that I have previously called for an independent inquiry. I therefore welcome and reiterate the key recommendation of this report."

~ **Councillor Cathy Oke, Melbourne City Council**

"The continuing failure of Victoria's systems of accountability to prevent, investigate, and punish police officers who abuse their powers as well as hold their commanding officers to account leaves all Victorians vulnerable to human rights abuses. The accounts set out in this pivotal report by the Occupy Melbourne Legal Support Team highlights how human rights abuses can happen to any of us. The abuses documented in this report reveal concerning conduct not just about individual officers involved in policing the protesters, but also deeply flawed decision-making from the highest level of command down.

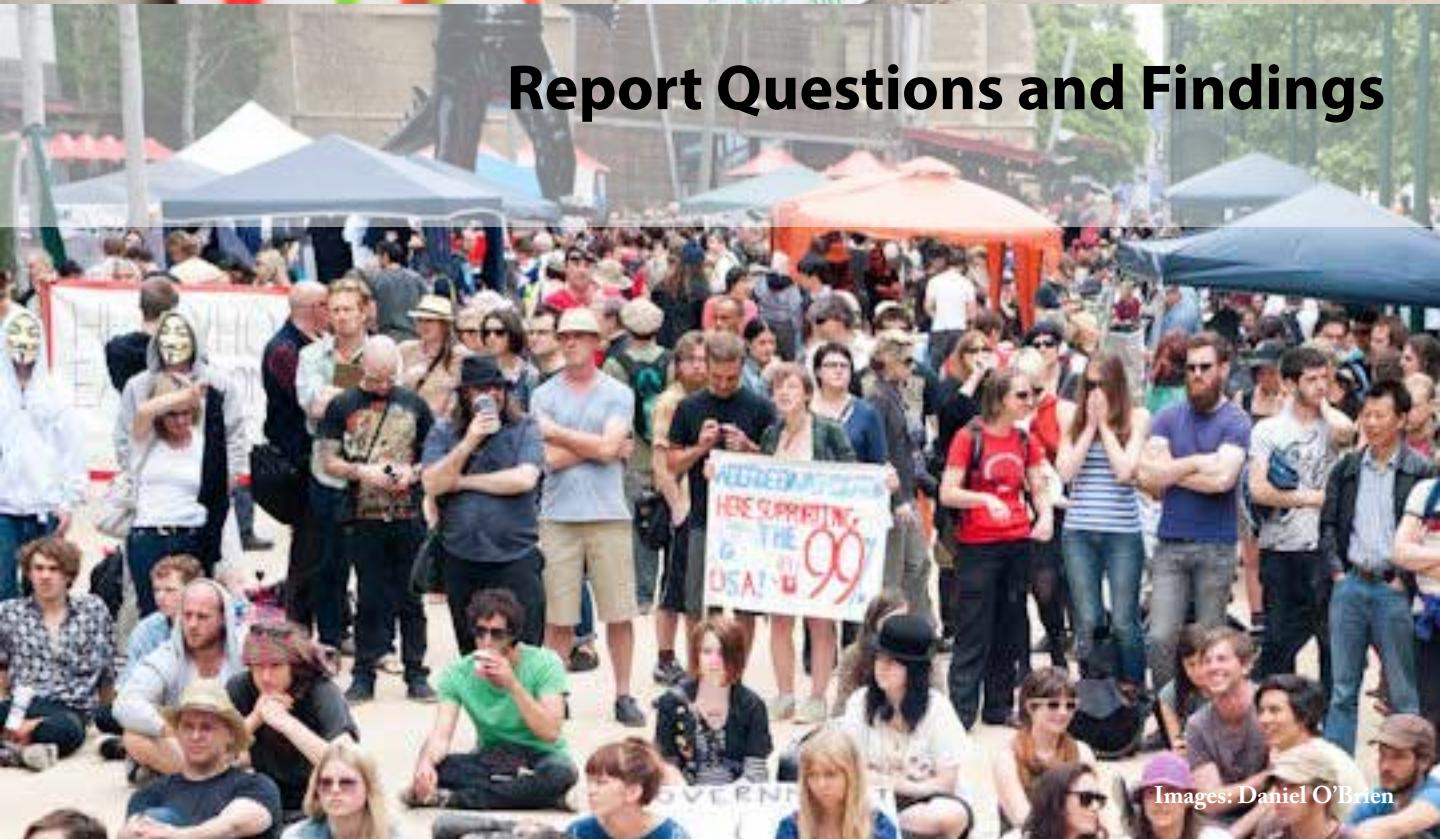
The widespread and public inquiry called for by the Occupy Melbourne Legal Support Team to look at all levels of decision-making into the policing of the protest is not only necessary to restore the community's faith that the rule of law still operates in Victoria, but is required under international human rights law where allegations of human rights abuses have been made.

The National Police Accountability Network and the Flemington & Kensington Community Legal Centre endorse this report and call on the Victorian Government to implement its recommendations."

~ **Tamar Hopkins  
Convenor, National Police Accountability Network; and  
Principal Solicitor, Flemington and Kensington Community Legal Centre**



## Report Questions and Findings



Images: Daniel O'Brien

This Report documents the personal experiences of those who participated in the Occupy Melbourne protests and their stories of policing and the forcible removal of Occupy Melbourne protesters from City Square on 21 October 2011. These stories demonstrate the effects that the forcible removal of Occupy Melbourne protesters and the manner in which this was carried out had on an emerging political movement and the individuals participating in it.

This Report complements these personal stories with an account of the relevant law, addressing three central interrelated questions:

- 1. What are the effects and consequences of the policing of Occupy Melbourne on individual protesters and on the rights to freedom of assembly and political expression?**
- 2. What was the legal basis for the forceful removal of Occupy Melbourne protesters from the City of Melbourne?**
- 3. Were the tactics used by Victoria Police and Melbourne City Council against protesters lawful? Or in other words, was their use of force legally justified in the circumstances?**

**On the basis of the qualitative data of this report, the Occupy Melbourne Legal Support Team (OMSLT) finds that:**

The policing operation to forcibly remove Occupy Melbourne protesters was harmful. It had harmful physical, emotional and psychological effects on the individuals affected. The policing operation creates problems of legitimacy for the police. Violent policing tactics also have harmful social effects, impacting upon peoples' ability and willingness to exercise their rights and engage in political activity.

The legal bases of the actions of Victoria Police and Melbourne City Council in forcibly removing Occupy Melbourne protesters from City Square raise serious and as yet unresolved questions of law. The multiple legal bases for the eviction may have included: breaches of local law; trespass in a public place; common law 'breach of the peace' powers, and; controversial statutory 'Move-On' powers. It is the qualified opinion of the OMSLT that none of these bases are substantiated and that the forceful removal of Occupy Melbourne protesters by Victoria Police and Melbourne City Council appears unlawful.

There was extensive use of force against Occupy Melbourne protesters during the removal from City Square and throughout 21 October 2011. People experienced assaults and were restrained or detained simply for being there. This happened regardless of their motivations or their behaviour. Statements collected by the OMLST demonstrates that people who were uninvolved with the movement simply taking their lunch breaks on Swanston Street were also detained by police. The force used by Victoria Police on 21 October was excessive, unnecessary and disproportionate. Victoria Police arguably acted outside of their own use of force guidelines.

Approximately 100 protesters were detained on 21 October 2011. Protesters were taken to police stations including St Kilda, Heidelberg, St Kilda Road, North Melbourne, Moonee Ponds, Altona, Melbourne Custody Centre and Moorabbin. Others protesters were held for shorter periods. Some protesters were driven away from the Central Business District and released in seemingly random locations. A large proportion of protesters were held in custody for many hours, both in bawler vans and at police stations across Melbourne. The conditions of confinement were inadequate. It is the qualified opinion of the OMLST that police were arguably acting outside of their legitimate power and internal guidelines in detaining people pursuant to ‘breach of the peace’ powers. It is the qualified opinion of the OMLST that the actions of police in detaining approximately 100 people on 21 October 2011 may well have exceeded their lawful powers and constituted false imprisonment.

Private and communal property was confiscated and destroyed by the authorities who authorised and carried out the forcible removal of Occupy Melbourne protesters from City Square. These actions arguably breached the guidelines and processes outlined in Melbourne City Council *Activities Local Laws*.

There are barriers to proper police accountability. These include the failure of police to wear name badges; the failure of police to recognise Legal Observers, and; the lack of redress through police complaint procedures.



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**"Why wouldn't an independent inquiry clear the air if you're so sure everything was done that was absolutely proper and appropriate?"**

**Radio presenter Jon Faine to Lord Mayor Robert Doyle in relation to the Occupy Melbourne eviction**

**"As recently as this week, more than nine months after the police action, the Lord Mayor is still refusing to engage in questions associated with the eviction... it's the responsibility of the Lord Mayor to be accessible, and transparent in her or his decision making."**

**Greens Lord Mayor candidate Dr Alison Parkes**

**"As a City of Melbourne Councillor I seconded the motion to support the Occupy Melbourne protestors call for an independent inquiry into their eviction and spoke in favour of Council support. Further, I also supported a request for a report detailing the chronology of the key City of Melbourne actions and decisions leading up to the eviction in order to clearly understand the facts and to set the record straight. My position has not altered."**

**Jennifer Kanis MP State Member for Melbourne**

**"I wholeheartedly support the call for an independent inquiry into the eviction of Occupy Melbourne from City Square. An independent inquiry could investigate the appropriateness and legality of the police and local government response, what led to these responses, the extent to which these responses increased or decreased public peace and order, and how things could be improved in the future. An independent enquiry could hopefully also investigate the wider contexts surrounding this event: such as issues surrounding the nature of Victoria Police training, police approaches to protests more broadly, as well as the impact of increasing privatisation of Melbourne city space on citizen access to public democratic space."**

**Dr Peta Husper-Malins,  
Lecturer in Legal Studies, School of Social Sciences, La Trobe University**

# Report Recommendations

This Report reiterates the calls for an Independent Inquiry into the forcible removal of Occupy Melbourne from City Square as well as the policing of protesters on 21 October 2011.

**We call for an Independent Inquiry that documents and assesses:**

- the legal bases of the forcible removal of Occupy Melbourne protesters;
- the decision-making processes within Melbourne City Council and Victoria Police prior to the forcible removal; and
- the legality of the use of force and tactics used by Victoria Police in forcibly removing and policing Occupy Melbourne protesters on 21 October 2011.

**In order to make findings on these issues and authorise clear outcomes including (but not limited to):**

- accountability processes for the individuals and organisations who authorised the forcible removal of Occupy Melbourne from City Square;
- accountability processes for police officers who acted unlawfully or used unnecessary, unreasonable and disproportionate force, whether through internal disciplinary processes or otherwise;
- compensation processes for protesters who were unlawfully detained, who experienced demonstrable injuries or other adverse effects during the forcible eviction of Occupy Melbourne from City Square; and
- compensation processes for protesters whose property was confiscated or destroyed during the forcible eviction of Occupy Melbourne from City Square.

**This Report reiterates previous calls for an independent police complaints mechanism. Such a mechanism must provide:**

- independence and impartiality in the investigation of complaints;
- prompt, competent and thorough investigation of alleged violations;
- the opportunity for the victim to participate in the investigative process;
- a level of public scrutiny to enable transparency, accountability, and public confidence;
- prompt responses to complaints and findings; and
- an effective remedy (including redress and reparations) for victims.

## Report Aims

This Report aims to:

- Empower the Occupy Melbourne protest movement by providing a space for protesters to share their personal stories and reflections;
- Generate discussion around the way protests and protesters are dealt with under law, and on the place of dissent and public demonstration in a robust democracy; and
- Complement these stories and discussions with legal arguments in favour of an Independent Inquiry.

This Report will be provided to the Office of Police Integrity, Melbourne City Council, the Honourable Peter Ryan, Minister for Police, the Victorian Equal Opportunity and Human Rights Commission and the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR).

Several calls have been made, including a formal motion to Melbourne City Council, for an independent investigation into the policing on 21 October 2011.<sup>1</sup> This Report reiterates these calls and documents the pressing need for such an investigation.

## Scope

This Report collates data relating to protester experiences of 21 October 2011, particularly in relation to protester experiences of policing. This Report complements these experiences with a legal analysis of the justifications put forward by Melbourne City Council and Victoria Police for their actions in forcibly removing and policing of Occupy Melbourne protesters on 21 October 2011. This Report does not examine policing of Occupy Melbourne protesters by Melbourne City Council or Victoria Police after 21 October 2011.

A representative action brought by members of Occupy Melbourne is currently awaiting judgment in the Federal Court of Australia. This action challenges enforcement approaches taken in relation to local laws by Melbourne City Council and Victoria Police against Occupy Melbourne protesters in public spaces. It argues on behalf of the plaintiffs that the enforcement approaches used, particularly in public gardens in the Central Business District, were not compatible with either the implied right to political communication under the *Australian Constitution* or the *Charter of Human Rights and Responsibilities Act 2006* (Vic). This case is unlikely to provide relevant precedent for the issues raised in this Report, which will require a different forum for determination, whether through public debate, court processes or an independent inquiry.

## Methodology and Source Data

This Report is based on a body of data collected by the OMLST over the course of a year (October 2011 – October 2012). This data includes:

- **Legal Observer records:** The Occupy Melbourne Legal Support Team coordinated a team of Legal Observers on 21 October 2011. The Legal Observers were on the ground as the events of the day unfolded, taking photographs, capturing digital video footage, making notes, and providing support to protesters. Legal Observers aimed to collect the details of all people arrested. This information was relayed to a temporary legal support office and collated. Protesters who had experienced police violence attended the temporary legal support office to make statements to the OMLST volunteers, obtain first aid and referrals.
- **Statements:** In the days and weeks following the forcible removal of Occupy Melbourne protesters, the OMLST operated an email account and 24 hour mobile phone help-line receiving constant communications with Occupy Melbourne protesters about their experiences. Together with Fitzroy Legal Service the OMLST also coordinated a series of evening legal clinics for protesters to attend and give detailed statements of their experiences of policing on 21 October 2011. Paralegal volunteers and qualified legal practitioners co-ordinated the clinics. Over 100 people attended the clinics between October 2011 and January 2012.
- **Survey Data:** In August – September 2012, OMLST conducted an online survey. Respondents were invited to participate via email and social media to provide their experiences of policing on the day of the forcible removal of Occupy Melbourne protesters.
- **Other sources:** The Report also draws on material in the public domain, including news reports, broadcasted material, blog posts, digital video footage and digital photographs.

Of the approximately 100 people who provided information to the OMLST, 38 people gave consent for their accounts to be used and quoted for this Report. Of these, some people gave their consent to be identified, whilst others preferred to remain anonymous. In the interests of client privacy and consistency, pseudonyms have been universally used throughout this Report; however, where possible, ages and genders have been retained.

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# Background to Occupy Melbourne



Inspired by the global call for action by the *Indignados* movement in Spain, the protests and revolutions across the Arab World and the Occupy Wall Street protests in New York City, activists organised to launch Occupy Melbourne in City Square on 15 October 2011.

Occupy Melbourne sought to transform City Square into a 'common' space of political demonstration where people could learn, discuss and demonstrate about issues of concern. In particular, the abuses of political and corporate power, globalised neo-liberalism, the imposition of austerity, and the privatisation of public services.

During the week that Occupy Melbourne protesters were based in City Square (15 – 20 October), the square buzzed with activity. In endeavouring to exemplify their politics in action, a kitchen served three free meals a day to anyone gathered, facilitated a library, free education workshops (including legal rights workshops run by the OMLST), first aid services, children's activities and childcare.

Occupy Melbourne was an experiment in direct democracy and collective decision-making. General Assemblies, which were held once a day, provided a forum for everyone to have a say in the operation of the protest and the maintenance of the protest site. Hundreds of protesters attended City Square during the day to participate in conversations, activities and General Assemblies, while smaller numbers of protesters slept in tents overnight. The Occupy Melbourne Indigenous Working Group established a tent that provided a space for asserting Indigenous sovereignty to land and waters and for discussing the necessity for Australian social movements to place Indigenous sovereignty at the centre of organising.

Six days later, in the early hours of Friday 21 October 2011, Occupy Melbourne protesters were requested by Melbourne City Council to leave City Square. Many protesters remained in the City Square, and others joined them in asserting the 'public' nature of the Square and the right to be in and create open spaces for political demonstration and communication. The Square was fenced off from protesters, and later that morning around 100 Occupy Melbourne protesters were forcibly removed from City Square by Victoria Police. Communal and private property was removed from the site.

Through the course of the morning much larger numbers of Melbournians gathered in the Central Business District. Some gathered to support, some to observe, and some to demonstrate against the forcible removal and policing of Occupy Melbourne. Legal observers, bystanders, protesters and media observed an extraordinarily and seemingly unprecedented response to the demonstrators whose protest had been, and appeared to remain non-violent in nature. Many protesters were injured in the policing operation, which included use of capsicum spray; police cordons to push protesters through the streets; use of police horses to divide the protest, and; systematic 'snatch' arrests, with around 90 people placed in custody and released later without charge on direction not to return.

Following the forcible removal from City Square, smaller Occupy Melbourne protests sprung up and continued at various places including the State Library of Victoria, Treasury Gardens, Flagstaff Gardens, and a South Melbourne Church Parish. In 2012 meetings, workshops, 'Occupy Fridays' and 'Global Noise' have continued to provide a space for activists to discuss and organise as part of the Occupy Together movement. At the time of writing, an ongoing protest and demonstration site — similar to what was originally occurring during October 2011 — is not in place.

The impact of the global Occupy movements on public debate has been significant. It has provoked debate on issues of inequity, corporate influence on political governance, and the central importance of political protest and dissent to democracy. The forcefulness of policing responses to Occupy protesters both globally and locally has played a significant role in attracting public attention to the movement.

# Timeline of Events on 21 October 2011

- 7AM Melbourne City Council issues some Occupy protesters with printed material requesting they vacate the Square by 9AM, such that those failing to do so 'may be subject to further enforcement proceedings and/or trespass.'
- 9AM Temporary fencing is erected around City Square, fencing in around 100 people. Police surround the fenced area and manage the perimeter, effectively 'kettling' Occupiers protesters within the area. Some protesters report not being permitted to enter the area or walk near the perimeter, being told that such an act will constitute a breach of the peace.
- Police read an announcement over a megaphone regarding trespass.
- Occupiers surround the kitchen and Indigenous tent with linked arms, whilst a large number of operational and Public Order Response Team police members congregate.
- 10AM A crowd of several hundred gathers in the surrounds of City Square.
- 11AM Mounted police use horses to push protesters away from City Square and towards the adjacent side of Swanston Street.
- Police lines are used to push members of the public gathered at the east side of City Square (between the Square and shops such as Starbucks) back to the North of the Square. Some protesters are physically removed by police from their sitting positions on the road. One of the effects of the operation is the removal of access and viewing of events within City Square by protesters and public.
- A protest of several hundred supporters is contained by police and private security to the North of City Square.
- Large numbers of the Public Order Response Team rapidly enter City Square, and form a line at the North end of the Square, holding batons and shields.

- 11:30AM Public Order Response Team officers in groups of 4–6 officers advance towards Occupiers and physically remove them one by one, carrying or dragging them out of City Square. Occupiers who have linked arms are wrenched out of that formation. Occupiers are then released on Swanston Street. Many Occupiers sustain injuries in the process. Over 100 people are removed in this way from City Square.
- 11:40 AM 17 truck-loads of property are taken from City Square: of these, approximately 14 truck-loads are taken to the tip and 3 truck-loads are taken to Melbourne City Council's waste depot in West Melbourne. The majority of this property has not been recovered or, if recovered, was damaged beyond use or repair.
- City Square is emptied of Occupiers.
- 12PM A large protest of thousands forms at the intersection of Swanston Street and Collins Street in support of the Occupy Melbourne protest.
- Police make several 'snatch' arrests from the protest, evidently targeting people who appear to be 'organisers'.
- 2PM Police assemble in various formations (including lines and V shapes) to push the protest north to the intersection of Swanston Street and Bourke Street. Mounted police and the Dog Squad provide reinforcement.
- Occupy Melbourne protesters sit down in the intersection of Swanston Street and Bourke Street to chant slogans.
- Snatch arrests of members of the protest continue.
- Police push the protest further North along Swanston Street and around the corner into Lonsdale Street.
- 4PM The police continue to push the protest along Lonsdale Street and up Russell Street towards Trades Hall. Inside the Trades Hall car park, a General Assembly is held while several hundred police stand guard at the corner of Victoria Street and Lygon Street.
- Approximately 100 people are taken into police custody between 11:30AM and approximately 4PM.
- 6PM The protesters gradually disperse, agreeing to rally the following weekend.

The above times are approximations only and used to give an indication of the flow of events on the day. They are not to be relied upon as a definitive statement of the timing of events.



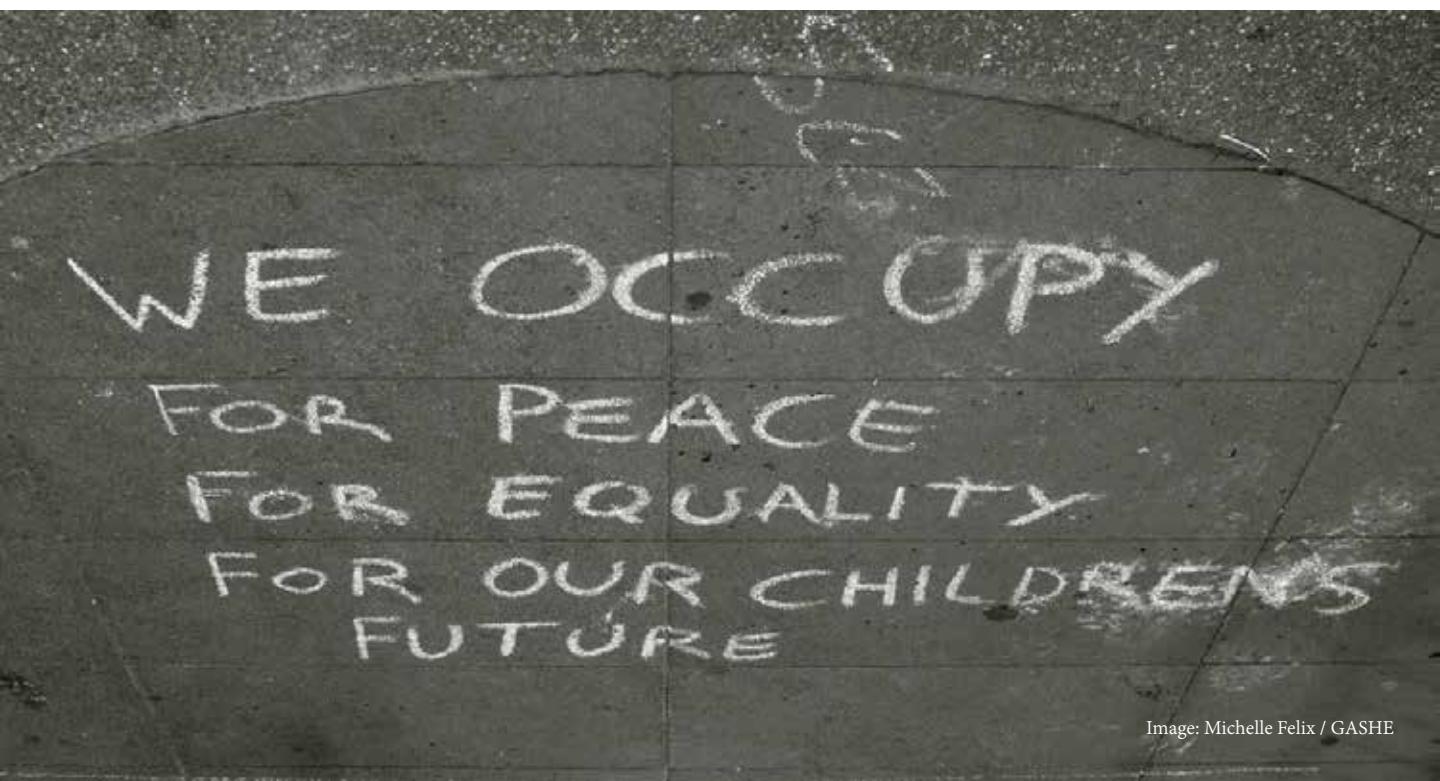
## Law and Protest – The Right to Public Space?

## Occupy as Protest

Protest forms an important part of how people engage politically. Protesting in public spaces is a method of bringing attention to an issue, expressing public opposition to government or corporate actions, sharing ideas and information that can impact on political processes, and putting pressure on institutions for reform or demanding radical change.

Political protest movements have won significant progressive victories in the past. Public demonstrations by community members play a vital component of social movements for change and reform. Although the Australian media and general public often depict protesters as fringe groups that are disengaged with the mainstream,<sup>2</sup> the reality is that protests have enjoyed popular support at key moments in the development of Australian society.

The public nature of political demonstration is integral to its power and effectiveness as a way to express views that are not accommodated by the mainstream and which do not find traction within mainstream media. While public protests and symbolic acts of civil disobedience initially presented a serious challenge to the status quo and were quite effective at provoking political responses, they have over the last half-century become a normal part of democratic civic engagement.<sup>3</sup> As certain forms of protest become mainstreamed, activists search for new ways to express dissent in a manner that resonates with the political objectives that they are endeavouring to progress.



This has presented a problem to protesters who would like to continue to challenge the status quo. Traditional methods of protest are made routine and seen as a form of spectacle or political theatre,<sup>4</sup> rather than presenting the intended fundamental challenge.

Occupations have been a tactic utilised in many political struggles.<sup>5</sup> ‘Occupying’ public space was used by Occupy Melbourne to create a ‘common’ space to experiment with forms of direct democracy and non-market modes of engagement and relating to one another. By occupying, many protesters sought to demonstrate that representative politics does not offer an effective response or solution to the complex problems of neo-liberal globalisation and corporate consumerism. The occupation also sought to create a ‘common’ space in which people could meet, exchange ideas and take direct action to address the problems they believed needed addressing. ‘Occupying’ takes the protest away from the notion of a mere spectacle and transforms it into an ongoing experiment and demonstration of change.

## **Police, Protest and the Law**

‘There is no question that the right to protest in a sensible, organised and orderly fashion is part of the Australian culture and way of life. One would have expected the police to be accommodating in their attitude to the protesters and prepared to bend the rules, provided that there was no real harm to life or property.’

— Justice Anderson, *Beverley Mine Protest Case*<sup>6</sup>

Australian law is built around a system of representative government that relies on certain freedoms in order to be functional – freedom of association, freedom to express and share political views, and freedom to assemble. However, the relationship between law, policing and protest is complex. While law can be used to enable social change and realise progressive demands, it can also be a barrier to change and used to reinforce the power relations of the status quo.

Police have a complex role in democratic society. The justification for the police force is that they serve and protect the ‘public’, maintain order and enforce laws. However, *enforcing* the law necessarily takes on a coercive dimension, with police and the military being the coercive arms of the state.<sup>7</sup>

Police are afforded a great deal of discretion in how to go about carrying out their role.<sup>8</sup> Whereas the military typically engages maximum threat against external ‘enemies’, police are expected to use the minimum force necessary to deal with ‘citizens’ that find themselves tangled in the law.<sup>9</sup> Academic commentators have drawn attention to the increasing militarisation of the police force following September 11, 2001. They trace the investment in counter-terrorism and highlight the

transfer of tactics, knowledge and equipment between these organisations.<sup>10</sup> For example, David Vakallis and Jude McCulloch argue that since 2001 the trend towards more militarised policing at protests has escalated such that the clatter of riot shields and the acrid sting of capsicum spray have become something to expect from police at protests.<sup>11</sup>

'Today my whole perception of what freedom means to me in Australia was turned on its head as I witnessed the scariest brutality I have ever seen police conduct.'  
– Emily, 37:

Protesting is not illegal, but laws are often used to place limits on its form, duration and location. Many protest movements have recognised the need to challenge these limits. For example, civil disobedience movements have deliberately broken laws in an attempt to challenge the law's legitimacy and make the underlying politics of the law obvious.

Australia does not have a bill of rights that guarantees freedom of political expression and assembly. However, the High Court of Australia has recognised an implied freedom of political communication in the Australian Constitution.<sup>12</sup> The constitutional protection covers 'false, unreasoned and emotional communications', 'irrational or illogical reasoning,' and 'true, reasoned and detached communications'.<sup>13</sup> The High Court believes that all kinds of political communication should be protected no matter the content; if the government becomes involved in regulating political speech, it would have a 'chilling effect' on political debate.<sup>14</sup> If a law is passed that restricts someone's ability to communicate about 'political issues',<sup>15</sup> it may be found to be invalid unless that law somehow promotes representative democracy.<sup>16</sup> Laws that prevent incitement to violence have been seen as appropriate, whereas a strict interpretation of public trespass has not.<sup>17</sup> Laws that protect public safety are also seen as furthering a representative democracy. Freedom of political communication and assembly is protected in the Australian Constitution and must be reasonably respected by law enforcement.

The Victorian *Charter of Human Rights and Responsibilities 2006* (Vic) enumerates several rights relating to freedom of speech and assembly.<sup>18</sup> Melbourne City Council and Victoria Police as 'public authorities' are required to act in accordance with the rights recognised in the Charter.<sup>19</sup> The recent *Max Brenner* case has confirmed that the Charter provisions give people a lawful right to conduct a political protest or demonstration, subject to legislative restrictions.<sup>20</sup>

## Protest as Time-Limited?

Prior to the forcible removal of Occupy Melbourne protesters, Lord Mayor Doyle claimed that the protesters had a ‘right to protest’ but that this right was time-restricted. ‘A week’, claimed Doyle, ‘was a reasonable time for their mindless shriek of protest’.<sup>21</sup> Assistant Commissioner Fontana was reported as saying: ‘They’ve [protesters] had more than ample time to make their point in terms of what their protest is about and I think it’s time to give the City Square back to the citizens of Melbourne.’<sup>22</sup>

If it is to be meaningful, the ‘right to protest’ should protect how protesters make their point. Continuous protest in the form of an ‘occupation’ was central to the mode of protest that the Occupy Movement took. Placing time restriction on this defeats the specific objective of the global Occupy movement. Applying the logic of ‘time-restricted’ protest risks reducing ‘legitimate’ protest to a mere spectacle that can be seen but is incapable of challenging structural power relations.

*‘It became clear to me that we were being evicted in two hours, and that we were expected to have all our stuff packed up by 9am. This was impossible because of the sheer size of the camp.’ – Gavin, 44.*

It has been reported that Melbourne City Council claimed that they acted at all times in good faith by negotiating with protesters.<sup>23</sup> Cr Doyle stated that there were continual negotiations with Melbourne City Council officers, police and protesters throughout the week.<sup>24</sup> Limited discussions between authorities and protesters evidently occurred.<sup>25</sup> Protesters claim they were told that they would be given ‘plenty of notice’ before they were evicted, yet the protesters were given a mere few hours warning of the forcible removal. An opportunity to engage in discussion and decision making at the General Assembly would have been of assistance given the horizontal and purposefully ‘leader-less’ structure of Occupy Melbourne.



# Who Evicted Occupy Melbourne?

## Melbourne City Council

**'Everything was done appropriately.'**<sup>26</sup>

– Lord Mayor Robert Doyle.

Melbourne City Council played a central role in the decision-making and logistics of evicting Occupy Melbourne.<sup>27</sup> The notice to vacate City Square was issued and authorised by the Melbourne City Council. Officers authorised by Melbourne City Council used megaphones on the morning of 21 October 2011 to tell Occupy Melbourne protesters to leave and warned of enforcement procedures or potential legal consequences if they did not.

On 19 October 2011 (two days prior to the forcible removal from City Square), the Lord Mayor of Melbourne, Cr Robert Doyle, stated on radio that he would ask police to remove the Occupy Melbourne protesters. He did not state an exact deadline, but when asked when such an action would occur, he said: 'I would think days'. Doyle stated that the protesters had 'made their point' and were losing public goodwill.<sup>28</sup> Following the forcible removal of protesters, Cr Doyle defended police and Council actions. In defending Council actions to request police assistance, Cr Doyle asserted that Occupy Melbourne posed a 'risk' to public safety, public health and welfare.

Cr Doyle also sought to discredit the protest by claiming that some members of Occupy Melbourne were 'well known to police', 'looking for trouble' and 'simply wanted to fight police'.<sup>29</sup> He declared that there were 'elements of professional protesters' that put up 'organised resistance'. He has characterised the protesters as 'arrogant liars' who deceived police when they told them earlier in the week that they would move peacefully if required to.<sup>30</sup> He labelled the protests the most pointless he had seen in Melbourne, stating that Occupy Melbourne protesters simply wanted their 'little self-indulgent moment in the sunshine'.<sup>31</sup>

Cr Doyle has repeatedly rejected calls for an independent inquiry into the forcible removal of the Occupy Melbourne protesters. He has stated that the reasons for the forcible removal of Occupy Melbourne protesters are well known and that police behaved in a manner that 'upheld the law'.<sup>32</sup>



Image: Jessie Boylan

## **Victoria Police**

The forcible removal of Occupy Melbourne protesters from City Square was overwhelmingly effected by members of Victoria Police.

On 21 October 2011, Victoria Police was under the command of Acting Chief Commissioner Ken Lay. He was then permanently appointed Chief Commissioner of Victoria Police just one month later on 22 November 2011. It is reported that over 400 police were involved in the forcible removal of Occupy Melbourne protesters from City Square and subsequent policing of the protest in the Central Business District.<sup>33</sup>

Victoria Police has specially trained units to react to ‘critical incidents’, including protest situations. These units include the Special Operations Group (SOG) and the Force Response Unit (FRU), which comprises of the Critical Incident Response Team (CIRT) and the Public Order Response Team (PORT). The PORT was instrumental in evicting Occupy Melbourne as it was primarily PORT officers who dragged Occupiers from City Square and effected ‘snatch’ arrests later in the day.<sup>34</sup> PORT members are distinctive and recognisable by their dark blue uniforms.<sup>35</sup> PORT has existed since mid-2011. At their launch then police Chief Commissioner Simon Overland stated ‘What it gives us is a great capacity to actually get highly trained, properly equipped police to high-end public disorder issues happening right across the metropolitan area.’<sup>36</sup> The current Chief Commissioner Ken Lay has since committed additional funds to PORT for the training of 105 members by July 2012 and anticipates that within two years the squad will have doubled in size.<sup>37</sup>

The Mounted Branch and Dog Squad of Victoria Police were also actively deployed in the forcible removal of Occupy Melbourne protesters. These divisions operate primarily to provide operational or mounted support to all areas of Victoria Police.<sup>38</sup> The Mounted Branch commonly assists in crowd control situations including demonstrations, sporting events and other major events.

## Victorian Government

It is unclear what role the State Government played in decision-making around the policing of the Occupy Melbourne protest and commentary from Government officials was limited. The Police Minister, Peter Ryan, expressed support for the actions of Victoria Police on 21 October 2011, stating that the police ‘worked within the law to remove protesters and they’re continuing to work within their powers to keep peace and good order within the CBD’.<sup>39</sup>

## Spotless Services

Spotless Services is an international services company specialising in outsourced facility management. They are contracted by Melbourne City Council to, amongst other things, run the Council’s waste management including street sweeping. Spotless Services assisted in removing the property of Occupy Melbourne protesters from City Square. Much of this property was either taken to the Council Tip or stored at the Melbourne Depot in West Melbourne.



Images Jessie Boylan

## Private Security Guards

Private security guards from SecureCorp were present during the forcible removal of Occupy Melbourne protesters and worked with Victoria Police and Melbourne City Council to effect the removal. SecureCorp personnel formed a perimeter around City Square, guarding the temporary fencing and blocking access to the Square. The use of private security guards to perform police functions is of concern. Private security guards are not subject to the same regulatory provisions and public accountability as police. They claim exemption from public and parliamentary scrutiny on the grounds of their engagement being a commercial agreement. It is not confirmed whether SecureCorp were engaged or hired by Victoria Police or Melbourne City Council nor how much they were paid. The increased role of private security guards in policing is arguably symptomatic of trends towards treating protest as a 'security' issue, as well as trends towards privatisation of the State and its core functions.



Image: Oceana Setaysha



## Effects of Policing

The effects of violence can be traumatising. Many protesters at Occupy Melbourne were new to activism and had no previous experiences of the violence inflicted in the name of 'public order'. Protesters' statements speak of the terror experienced from policing operations, including mounted police charging through the protest and the use of dog squads. This section documents the harmful effects on individuals and makes comment on community impacts more generally.

'I was shaking and crying and saying 'Why? Why? I'm a person for god's sake, I'm a human being! My rights as a human were not respected. For a long time, and even still now, I did not feel safe in my own city.'

– Robert.

## Psychological Effects

'Short term I experienced shock and trauma ... long term it has contributed to my anxiety and having fear about engaging in direct actions.' – Habeebah, 19.

When confronted with violence in a charged atmosphere, protesters can endure serious psychological damage such as post-traumatic stress disorder.<sup>40</sup> Protester statements detail experiences of increased anxiety, sleeping disorders, panic attacks, nightmares and a heightened sense of nervousness as a result of their experience of policing which manifested at times as spontaneous crying, anger and feelings of helplessness. This is exacerbated where individuals have other latent mental health issues such as anxiety, bipolar or schizophrenic illnesses.<sup>41</sup>

The long term psychological effects of the events of 21 October 2011 on the health and wellbeing of protesters, police and council workers are not currently known and may take some years to manifest fully.

'For a while I would feel a wave of anxiety/panic come over me whenever I walked past or saw a police officer.' – Sasha, 25.

## Physical injuries

The majority of the physical injuries sustained during the forcible removal of Occupy Melbourne protesters were what is commonly referred to as 'superficial' — cuts, grazes and bruises. Some individuals experienced more serious injuries including broken noses, black eyes and back injuries.



Image: Oceana Setaysha



Image: Kenji Wardenclyffe

## Political effects

Repressive and disproportionate responses to protest can make people less willing to demonstrate their views publicly, and can facilitate a form of self-censorship that is unhealthy for democracy.

The ability to assist protesters to clearly navigate rights and responsibilities, and to facilitate informed choice around civil disobedience, has been central to the work of legal support in the activist environment. Difficulty experienced by protesters in predicting the occurrence, severity or effects of police interventions, can act as an inhibitor to participation, and places legal support crews in a difficult position.

'I am afraid that the events of that day will be repeated if I attend a protest.' – Robert.

After the forcible removal of Occupy Melbourne protesters on 21 October 2011, many protesters expressed a fear of subsequent police intervention. For many, this fear was a barrier to re-engaging with Occupy Melbourne as a protest movement.

'It also made me nervous about police, I had never experienced police force or violence before, and since then I have...chosen to legal observe at direct actions rather than be involved.' —Habeebah, 19.

Violent responses to political demonstrations generate a perception of criminality around protest. The effect is that protesters are perceived as unnecessarily disruptive or as acting in opposition to the 'public good'.<sup>42</sup> These impacts can make it difficult for protest movements to build a broad support, and to comfortably use public spaces to share ideas and garner support.

Being subjected to violence or aggression because of your political views can harden political resolve, create greater 'insight' into systems of power and coercion, and ultimately, lead to political radicalisation.<sup>43</sup>

## Police Culture

Policing operations marked by high-level use of force and an absence of traditional accountability mechanisms (e.g. investigation by oversight bodies, charges that can be tested in court) may have significant impacts on what becomes normative and acceptable policing culture.

In recent times, Victoria Police has emphasised more ‘traditional’ approaches to policing, such as greater police numbers and quicker response times.<sup>44</sup> It has been reported that one officer said on the day, ‘no more Christine Nixon stuff’.<sup>45</sup> Academics have noted that dominant police culture has an ‘us-versus-them’ attitude to working with the public, where anyone challenging police authority is perceived as a threat.<sup>46</sup>

‘They looked aggressive and itching for a fight’ – Ben, 28.

Academics have suggested ‘traditional’ police culture assists police to feel more secure in their own group, as well as sending a message of strength to any non-police persons.<sup>47</sup> However, it is vital that policing is checked by legal-defined principles of proportionality and clear principles of law. The policing operation on 21 October 2011 in using physical force to remove protesters from City Square reinforced an ‘us-and-them’ culture that shocked many participants, commentators and the public.

‘People have spent time and energy during that week to keep the protest in City Square in a peaceful manner. It was not the way police [are] supposed to treat their own citizens. I would expect something like this to happen in my home country Iran, but not in Australia.

I was not expecting anything like that [brutality]. If something like this happened in Syria now, or back in my home country Iran, it is acceptable as it is legal for the Syrian or Iranian regime to do something like this, even to kill the person. But in Australia I wasn’t expecting anything like this.’ - Ahmed, 45.

## Public Trust in Police

'I lost all faith I had previously had in the police force, and what I viewed as their role in being an organisation that was meant to protect innocent people against harm' – Sasha, 25.

Explicit shows of violence against protesters created a gap between police action and legitimacy. Many bystanders who witnessed the use of force by police were shocked by the level of violence. They saw police punch, subdue and set dogs on protesters in the middle of the city.<sup>48</sup> Some people who were not involved in the protest also found themselves the target of police aggression.

'I rode up to the first police officer to ask if it was OK for me to continue my journey down Swanston St, or if there was an alternative route they'd prefer me to take. The officer glared at me and snarled 'Get off the road or I'll have you forcibly removed!'...It was apparent that this police officer wanted to take me on. I have no idea why. I was shaken.' – Anthony, 54.

Similarly, use of force by police served the purpose of unilaterally asserting their authority, which added to the legitimacy problem. Research indicates that a main source of distrust of the police force is their tendency to assert their authority in a potential conflict situation rather than collaborate with parties to achieve a resolution.<sup>49</sup>

The public justification for the use of force — that Occupiers were 'trespassing' on council property and that police had 'no choice' but to respond to the Melbourne City Council's requests that they be removed<sup>50</sup> — was widely criticised. Eye witnesses and commentators found it difficult to accept the response as proportionate to the central articulated concern of convenience and amenity. As one protester put it, 'injustice has a face now.' The lack of clarity of the legal basis for the forcible removal and policing of protesters further undermines public confidence in the police and accountability.

## Financial Cost to Public

The final financial cost of the forcible removal of Occupy Melbourne protesters is still unclear, as there may be compensation claims for protesters that were injured or had their property taken by police and Council workers.<sup>51</sup> The immediate cost of the extra police, overtime, security personnel, fencing and cleaning of City Square has amounted to over \$175,000 of extra costs.<sup>52</sup>



# **'Whose Square?' Trespass in Public Places & the Legal Basis for the 'Eviction'**

The legal basis of the actions of Victoria Police and Melbourne City Council in forcibly removing Occupy Melbourne protesters from City Square raises serious and as yet unresolved questions of law. The discussion below details the problematic nature of the various justifications relied upon by Melbourne City Council and Victoria Police to authorise their actions.

Both Victoria Police and Melbourne City Council have consistently maintained that they were acting in accordance with the law and within their legally-authorised powers.<sup>53</sup> However, they have been inconsistent in articulating the legal basis relied upon to justify the forcible removal of Occupy Melbourne protesters.

This Report examines the following possible legal bases for the forcible removal of Occupy Melbourne protesters from City Square:

- Breaches of local laws;
- Trespass in a public place;
- Common law 'breach of the peace' powers; and
- Controversial statutory 'Move-On' powers.

Liberty Victoria President Spencer Zifcak publicly critiqued these legal grounds as 'flimsy' and 'uncertain' as a result of:

- (a) the view of protesters that they had a fair and reasonable belief they could be there;
- (b) the exemptions available to people demonstrating in engaging common law breach of the peace; and
- (c) the legislative protection affording rights in the Victorian Charter of Human Rights and Responsibilities.

This analysis suggests that Victoria Police and Melbourne City Council may have been acting in accordance with *political* rather than *legal* considerations when they authorised the forcible removal of Occupy Melbourne protesters. The emergence of a social movement which sought to challenge the authority of existing institutions and the distribution of wealth, power and resources in society may have appeared threatening to powerful interests. The global nature of the Occupy movement may have highlighted the perception of this threat. The Queen's visit to Melbourne, scheduled for the Wednesday following the forcible removal, may arguably have provided political impetus to remove the protest from the centre of the city.

I am an authorised officer of the Melbourne City Council.

I direct all persons in the City Square who are, in my opinion, failing to comply with the Council's Activities Local Law 2009 by:

- camping in the City Square; and
- hanging or placing objects and things on or over the City Square,

both without a permit, to

- leave the City Square; and
- remove all items, goods and equipment including tents and associated infrastructure which the person owns or is responsible for,

**by 9am on Friday 21 October 2011.**

If you do not comply with this direction in the time provided we will be referring the matter to the Victoria Police and you may be subject to further enforcement proceedings and/or trespass.



CITY OF  
MELBOURNE

## Local Laws

Melbourne City Council alleged that Occupy Melbourne protesters breached the *Activities Local Laws 2009*. Melbourne City Council cited local law breaches prohibiting tents and infrastructure (not people) as the justification for the imposition of trespass laws on public spaces.

The Notice issued to Occupy Melbourne protesters on the morning of 21 October 2011 stated that the Council believed that protesters were breaching local laws ‘by camping in the City Square; and hanging or placing objects and things on or over the City Square’ without a permit.

The Notice required protesters to ‘leave the City Square’ and remove all items from City Square. It stated that if protesters did not do this by 9am on 21 October 2011 the matter would be referred to Victoria Police.

Police do not have direct enforcement powers under local law. Power to enforce the Melbourne City Council *Activities Local Laws* is given to ‘authorised officers’ and not to Victoria Police.<sup>54</sup> Victoria Police may be deemed ‘authorised officers’ if this power is specifically delegated. With respect to Melbourne City Council, Victoria Police has delegated power with respect to specific sections of the *Local Laws* (namely public drinking). However, it does not appear that at the relevant time there was a global delegation of power to Victoria Police to enforce other sections of the *Activities Local Laws* such as the no-camping provisions.

There is no power to arrest people found to be in breach of provisions of the *Activities Local Laws*. In fact, the *Crimes Act 1958* (Vic) specifically prohibits the arrests by police officers for breach of a council local law.<sup>55</sup> Authorised Officers are only empowered to take actions such as issuing infringement notices to people found breaching provisions.<sup>56</sup>

No protesters were issued with infringements under the *Activities Local Laws 2009* on 21 October 2011.

As such, with regards to all of the above, the report finds that the alleged breaches of local laws by Occupy Melbourne protesters should not have provided a basis for the removal of protesters from City Square or the arrest of protesters.

## Trespass in City Square

Melbourne City Council and Victoria Police stated that, in remaining in City Square after being requested to leave, the Occupiers were trespassing. They argued that the forcible removal of Occupy Melbourne protesters was justified in order to prevent this trespass from continuing.<sup>57</sup> This Report argues that the use of trespass laws against political protest is extremely concerning and necessarily brings the notion of 'public space' into question. It raises key political questions about who does or should feel entitled to be in and use public space.

Trespass is the offence of being in a place without permission to be there. In order for someone to be found guilty of trespassing in a public place, they need to be:

- Wilfully present in a place;
- Warned to leave by the owner/occupier of the space or someone authorised by the owner/occupier to do so; and
- Neglect or refuse to leave after being warned.<sup>58</sup>

Occupy Melbourne protesters were in City Square, which is commonly understood as a public place,<sup>59</sup> some protesters were warned to leave, and some refused to do so.



The recent *Max Brenner* case looked at the relationship between wilful trespass and public demonstration.<sup>60</sup> This is the first case to look at trespass laws in public places in light of the *Victorian Charter of Human Rights and Responsibilities*. In applying Charter considerations to the Summary Offences Act, it was decided that:

- For trespass action to be considered ‘wilful’, it requires **something more** than being in a public space without the permission of the owners/occupier of that space;<sup>61</sup>
- It is not wilful trespass to enter an area for the purpose of conducting a **political demonstration**;<sup>62</sup>
- Protesters have a **lawful right to enter public places**, such as City Square, and to conduct a peaceful political demonstration;<sup>63</sup>
- The right to protest can only be restricted if the protest constitutes a **threat to public order** or a significant breach of the peace;<sup>64</sup>
- This must be **more than behaviour** that might cause some inconvenience to other members of the public.<sup>65</sup>

No court has made a determination about whether a political occupation in City Square would constitute trespass. However, to do so, a court would need to engage in a weighing exercise, balancing the right to freedom of political communication and assembly against threats to public order, peace and inconvenience to the public. This Report argues that these considerations should be resolved in favour of enabling political protest given the public nature and purpose of City Square and the importance of protest within democratic society.

As far as OMLST is able to ascertain, only one Occupy Melbourne protester was formally charged with trespass.<sup>66</sup> These charges were then dropped by State prosecutors before they could be contested in court. In the absence of criminal charges, testing the legality of this particular enforcement approach is likely to depend on civil proceedings initiated by members of the public.



Image: Corey Oakley

## Breach of the Peace

Police have the power to both stop and prevent a breach of the peace. Police claimed to rely upon breach of the peace powers to ‘move’ protesters on 21 October 2011. It is unclear to OMLST whether this refers to the forcible removal of Occupy Melbourne protesters from City Square or to the subsequent policing of the protest in the CBD. It is also unclear at what stage Victoria Police made decisions to rely on breach of the peace as a source of power to enable the forcible removal of protesters.

Breach of the peace as a legal framework is relevant both to the trespass powers used in the ‘eviction’ of City Square (see ‘Trespass in the City Square’ above) and to the arrest and detention of Occupy Melbourne protesters throughout the day (see arrest and detention below). This section considers the applicability of breach of the peace powers to the forcible removal of Occupy Melbourne protesters from City Square.

### a. What is a breach of the peace?

Legal experts note that there is a ‘lack of authoritative definition’ for breach of the peace.<sup>67</sup> Police powers to stop or prevent a breach of the peace come from common law.<sup>68</sup> The common law has held that a ‘breach of the peace’ occurs ‘whenever harm is done or is likely to be done to a person or in his [sic] presence to his [sic] property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.’<sup>69</sup> Police have a duty to stop an actual breach of the peace occurring and/or prevent an anticipated breach of the peace.<sup>70</sup>

Breach of the peace is a public order scenario that is not defined in legislation. The Victoria Police Manual's understanding of breach of the peace as 'any disturbance to public order' is also considerably broad.<sup>71</sup> This means that what constitutes a breach of the peace and when police can invoke it is somewhat unclear. This lack of clarity gives police wide discretion to invoke these powers.<sup>72</sup>

From a perspective of police accountability, this wide discretion is concerning because exercise of such power is not subject to proper review or limitations. The lack of clarity and consistency in the law and its application also presents challenges to legal teams supporting activists in developing a clear understanding of their rights and responsibilities. It has been argued that this ambiguity 'lies at the heart of the policing function'.<sup>73</sup> It gives police discretion to decide how to balance the tension between civil liberties and public order in particular situations.<sup>74</sup> In effect, it means that breach of the peace can be used by police to instigate 'order' and suppress dissent, especially because these laws are difficult to challenge on the spot. There are numerous international instances where breach of the peace powers have arguably been used in such a way. For example:

- In 1961, over 300 people acting as part of the civil rights movement's Freedom Rides in the United States were arrested under 'breach of the peace' provisions.<sup>75</sup>
- In 2000, anti-uranium protesters at the Beverley Uranium Mine in South Australia were detained pursuant to breach of the peace powers. (Protesters subsequently successfully sued the police for civil damages).<sup>76</sup>
- In 2003, three buses (120 people) were stopped, surrounded and turned around by the London Metropolitan Police to prevent passengers attending an anti-war protest against the invasion of Iraq because of an 'anticipated breach of the peace'.<sup>77</sup>

The common law does, however, provide some guidance on what may be considered a breach of the peace. Common law courts (in Australia and the United Kingdom) have held that the following do not, in themselves, constitute breaches of the peace:

- 'Mere refusal of a trespasser to leave [a] premises',<sup>78</sup>
- 'Mere disobedience of a police direction',<sup>79</sup> and
- 'Peaceful and non-violent' protest, even if an activist is 'loud and assertive'.<sup>80</sup>

Police are obliged to exercise all of their powers with reference to the Victorian *Charter of Human Rights and Responsibilities*. The Charter recognises the right to freedom of expression and assembly.<sup>81</sup> The recent *Max Brenner Case* held that what constituted a ‘threat to public order’ needed to take the rights of protesters to express their political beliefs into consideration.<sup>82</sup> A colourful, loud, active protest that attracts public interest and generates robust discussion may be lawful and legitimate even if it causes inconvenience to the public.

### b. Was the Occupation of City Square a ‘breach of the peace’?

The tactic used by Occupy Melbourne protesters was to maintain a continuous protest occupation. The most frequent argument made against the Occupy Melbourne protesters was that it was negatively impacting on nearby businesses and the ability of ‘office workers’ to enjoy their lunch break in City Square.<sup>83</sup> These ‘inconveniences’ should not, in themselves, be sufficient to characterise Occupy Melbourne as a breach of the peace.

In addition, Occupier statements demonstrate an affirmation of the strategic use of non-violent protest tactics:

- ‘During the whole time I was there the protesters were resistant but not violent’ – Joshua, 23.
- ‘My participation in the protest had been entirely peaceful’ – Matthew, 16.
- ‘I had no intention of being violent or aggressive towards the police.’ – Name withheld.

This sentiment is confirmed by various media reports, with *The Age* characterising Occupy Melbourne as ‘an entirely peaceful protest’.<sup>84</sup>

This Report argues that the behaviour of protesters at City Square, in itself, should not be characterised as a breach of the peace.

### c. Was the Occupation of City Square an anticipated 'breach of the peace'?

Police are also under a duty to *prevent* a breach of the peace. This means that they may exercise powers when they anticipate a breach of the peace. They can only take action if there is a 'reasonable apprehension of imminent breach of the peace'.<sup>85</sup> This means there must be a 'real' and 'not remote' possibility of a breach of the peace.<sup>86</sup> There is no clear definition about what makes an anticipated breach of the peace 'reasonably imminent'. Common law courts have been reluctant to define 'imminent', and have stressed it needs to be understood in a flexible manner based on the circumstances.<sup>87</sup>

Courts have held that a 'reasonable and imminent' apprehension of a breach of the peace exists where:

- Violence is a natural consequence of the trespass or presence of protesters in a particular location;<sup>88</sup> and
- Protesters are obstructing a thoroughfare or an entry that others are legally entitled but prevented from using,<sup>89</sup> and there is a possibility of violent reaction from those whose rights to access property are restricted.<sup>90</sup>

This Report argues that these conditions were not met during the peaceful occupation of City Square. Occupy Melbourne protesters did not appear to be obstructing the public from entering City Square. The protest was designed to be a welcoming space for the public, with an Information Tent for interested people to engage with the core issues of the protest or join the occupation.

## No Charges for Trespass or Other Offences, nor for Breaches of Local Laws

As far as the OMLST has been able to ascertain, no charges relating to protester violence have proceeded to court arising from 21 October 2011. There have also been no effective prosecutions for trespass, breach of the peace, or breaches of local laws. The OMLST is aware of two cases – one involving the drawing of a peace sign on a police vehicle, and one of offensive language, which have been actively pursued against Occupy Melbourne protesters. Another protester was charged with trespass, assault police and hinder police. These charges were withdrawn by the prosecution before they could be contested in court.

## 'Move On' Powers

Police additionally have no power to give move-on directions in relation to political protests. Police or Protective Service Officers may give a direction to a person or a group of people to move on from a public place if:

- The person is or is likely to breach the peace;
- The person is or is likely to endanger the safety of other people; or
- The behaviour of the person is likely to cause injury to a person, to property or otherwise cause a risk of public safety.<sup>91</sup>

Failure to move on without reasonable excuse constitutes an offence.

However, the legislation especially states that it does not apply to people who are:

- Picketing a place of employment; or
- 'Demonstrating or protesting about a particular issue'; or
- 'Speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue'.<sup>92</sup>

Police therefore are not authorised to use their statutory move on powers in relations to a political demonstration such as the Occupy Melbourne protest.

They shouted "MOVE, MOVE, MOVE" and pushed those of us at the back against the people in front of us. Ahead, protesters were blocked by the traffic stuck in the Bourke Street intersection, so the crowd had slowed to a crawl. I remember yelling "I'm moving as fast as I can". When someone grabbed the backpack of the person to my right, I reached out towards him. Instantly, another officer grabbed my arm, twisting it behind my back. Another protester shouted "let him go you'll break his arm" and a voice behind me shouted "I fucking hope so".

<https://nicocoinicon.wordpress.com/2011/10/24/a-firsthand-account-of-being-arrested-for-protesting/>



## **'The Whole World is Watching!': Police Use of Force**

The use of force in forcibly removing Occupy Melbourne protesters from City Square and policing the subsequent protest in the CBD shocked the national and international community. Occupy Melbourne protesters were the first in the Occupy movement globally to be subjected to a violent policing intervention. This section explores the parameters of the legitimate use of force by Victoria Police against the principles of proportionality and necessity, referencing Victoria Police Manual guidelines, domestic law, and international law and human rights law.

Victoria Police officers have a range of options available in dealing with the public and negotiating outcomes. Reflecting community expectations and law, use of force is to be relied upon as a last resort.



Victoria's (then) Acting Chief Commissioner Ken Lay has rejected claims that police were heavy-handed. He reportedly claimed that police tried to evict the protesters as peacefully as possible.<sup>94</sup> Police Minister Peter Ryan told ABC local radio that police acted appropriately. 'I thought they were magnificent. I thought they were professional. I thought that they conducted themselves very responsibly,' he is reported to have said.<sup>95</sup>

OMLST observed during the policing operation against Occupy Melbourne protesters on 21 October 2011 the following tactics to remove and disperse protesters from the City of Melbourne: use of bodily force, use of horses and dogs, use of capsicum spray, use of verbal directions and threats, use of crowd control strategies, use of discretionary tactics, use of arrest & detention powers. Around 400 police were deployed in the operation.

## Escalation in Police Tactics

In its 2009 *Review of the Use of Force By and Against Victoria Police*, the Office of Police Integrity (OPI) found Victoria Police was failing to properly manage risks associated with use of force.<sup>96</sup> The OPI made findings that senior managers had not 'not demonstrated a commitment to building a culture that is based on safety first and a culture of success that is based on avoiding or minimising the use of force.'<sup>97</sup> The OPI was unable to ascertain whether police in Victoria were using force more often than previously due to widespread underreporting.<sup>98</sup>

Previous Chief Commissioner Christine Nixon has been described as emphasising community policing and collaboration over more heavy-handed tactics.<sup>99</sup> However, during the last election period, tough on crime and 'law and order' rhetoric dominated political discourse, and both major political parties when in power have invested in increased police numbers despite overall dropping crime rates.

Of particular relevance to protest movements globally and locally, academics have documented a worldwide trend in ‘advanced democracies’ of increased use of police force accompanied by a restriction on many civil liberties since the events on September 11, 2001.<sup>100</sup>

During the forcible removal of Occupy Melbourne protesters, specialist squads like the Force Response Unit (FRU), mounted branch and dog squad were used to disperse the peaceful demonstration, despite the absence of any tangible risk to persons or damage to property caused by the protesters.

The use of these ‘high-force’ units is consistent with the observed militarisation of police in other democracies, and military tactics in general. The FRU has been used in response to protest actions before, but it seems the use of the unit to forcibly remove protesters on the basis of council by-laws is a first. Academics suggest the specific ‘high-force’ tactics police used to evict protesters involves an escalation in the use of force as compared with what was previously considered appropriate for protesters.<sup>101</sup>

The use of ‘worst case scenario’ rhetoric in the ‘war on terror’ has pervaded military and domestic action, justifying everything from invading sovereign nations<sup>102</sup> to large-scale investment in state of the art body scanners.<sup>103</sup> Units like the FRU (and others such as the Special Operations Unit and the Security Intelligence Group) have been rationalised as a response to the threat of terrorism, but have overwhelmingly been used against citizens in non-terror contexts. The permeation of counter terrorism rhetoric into practices and training of police is observable in the sense that protesters are increasingly dealt with as a threat to be subdued and disabled.<sup>104</sup> In a climate of heightened fear, aggression and suspicion, it is more likely that protesters may be perceived as ‘enemies’, justifying highly repressive force.<sup>105</sup> Such trends should be of great community concern.

# The Use of Force

The police's right to use force is not absolute. It is limited by international law, Victorian legislation and common law, and guided by the standing orders published in Victoria Police Manual.

## International Law

International law provides normative guidelines for minimising police use of force.

### a. International Covenant on Civil and Political Rights (ICCPR)

This ICCPR limits the use of force by guaranteeing important human rights, including:

- The right not to be 'arbitrarily deprived of his [or her] life' (article 6).
- The right not to be 'subjected to torture or to cruel, inhuman or degrading treatment or punishment' (article 7).

Disproportionate or unnecessary use of force may constitute a violation of these provisions, particularly if the level of force used amounts to 'cruel, inhuman or degrading treatment'. Australia is a signatory to the ICCPR, and has committed itself to take all necessary legislative and other measures to give effect to the rights recognised in the ICCPR (see article 2(2)).

### b. International Standards

Two important international documents set guidelines around the police use of force. These are:

- The Code of Conduct for Law Enforcement Officials;<sup>106</sup> and
- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>107</sup>

The Code of Conduct for Law Enforcement Officials states that 'in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons'.<sup>108</sup>

It also stipulates that the use of force should be as a last resort.<sup>109</sup> Under the Code, police may use force only 'when strictly necessary and to the extent required for the performance of their duty'.<sup>110</sup> This means that the use of force must be proportionate to the legitimate objectives sought.<sup>111</sup>

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that governments should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for differentiated use of force.<sup>112</sup>

Principle 4 states that ‘law enforcement officials … shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result’. The Principles reaffirm the right of all persons to participate in lawful and peaceful assemblies,<sup>113</sup> and state that ‘in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary’.<sup>114</sup>

## **Victorian Legislation and Common Law**

Victorian law provides that police officers may only use force in certain circumstances, primarily in effecting arrest for criminal offences under specific circumstances.

Relevantly, force may be used to effect arrest:

where a person has committed any **offence**, and arrest is considered necessary to ensure the accused person attends court, doesn't continue to commit the offence, in order to preserve public order, or to ensure the safety of the public or the accused.  
*(Crimes Act, section 459)*

Force may also be used to prevent the commission of an indictable (serious) offence. (*Crimes Act*, section 462A). In order for the use of force to be legal, force must always be **reasonable, necessary and proportionate** to the circumstances.

Victoria Police are also bound as a public authority to act in a manner compatible with human rights protected by the Charter of Human Rights and Responsibilities.<sup>115</sup> Protected rights to which consideration must be given include: freedom from torture and cruel, inhuman or degrading treatment, freedom of expression, the right to peaceful assembly and the right to liberty. Although the Charter admits limitations of those rights, such limitations must be **reasonable and justifiable** within a free and democratic society based on principles of human dignity, equality and freedom.<sup>116</sup>

## **Victorian Police Manual**

The Victoria Police Manual provides that use of force and ‘serious confrontation’ must be avoided. When using force, the Victoria Police Manual stipulates that only ‘minimum amount reasonable necessary’ may be deployed.<sup>117</sup>

In the context of **protest** and **crowd control**, the Victoria Police Manual provides that police need ‘to consider the rights of members of the public to exercise free speech, peaceful assembly, protest and industrial action’. The Victoria Police Manual also states police have an obligation to take action, using the minimum amount of force necessary, when ‘the actions of those taking part in such activities either become unlawful or infringe upon the rights of others’;

The Victoria Police Manual specifically states that force may not be used against non-violent refusal to cooperate (including linking arms).

The Victoria Police Manual states that use of force in the context of breach of the peace powers is subject to severe limitation.

‘Breach of the peace powers can only be exercised with the cooperation of the person who is subject to the powers. There is no power to use force as part of the exercise of the powers.’<sup>118</sup>

The Victoria Police Manual guidelines on the use of OC spray and/or foam only allows its use when members believe on reasonable ground that it is necessary:

- In situations of violence and serious physical confrontation;
- In situations where a member believes on reasonable grounds that a violent or serious physical confrontation is imminent;
- In situations where a person is involved in violent or other physical conduct likely to seriously injure themselves or result in suicide; or
- To deter attacking animals.

## Use of Bodily Force

Statements of legal observers and protesters provided to the OMLST suggest unnecessary and excessive force. These statements document that the police use of *bodily force* included:

- Grabbing and dragging protesters by the neck, legs, arms;<sup>119</sup>
- Throwing and pushing protesters to the ground;<sup>120</sup>
- Punching and kicking protesters, including in the face;<sup>121</sup>
- Use of chokeholds and pressure points;<sup>122</sup> and
- Kneeling protesters in the face and groin.<sup>123</sup>

This Report argues that there is ample evidence available as a matter of public record of excessive and unnecessary use of force. Whilst police continue to claim that the use of force was appropriate and proportionate, this Report argues that the use of this force is harmful and that police must be held accountable for this use of force and its effects.



On the day I witnessed many instances of police driving their horses into the crowd, snatching people violently out of the crowd with headlocks, assaulting both activist[s] and passers by, by regular pushing and shoving, punching or more violent behaviour ... I reacted non-violently to overwhelming police force, as did every single person I witnessed being assaulted or arrested that day' – Emily, 37.

'One protester said that after two cops reduced him he dropped to knees and then 4 police attacked him, kicking and slammed his head into the concrete. They grabbed around his head and slammed 3 or 4 times. Also the first cop who grabbed him punched in his face. Once he was on the ground he couldn't move and the[re] were 6 cops on top him' – Ethan, 36.

'[An]other protester who was linking arms with others around the tent said that police began forcefully removing protesters. A police officer in overalls standing 2 metres away pointed threateningly at me and said something like 'you're gone'. Then he pulled my head down and kneed me in the nose (PHOTO). I started bleeding and he was then dragged by the feet by about 2 officers along the ground with my shirt pulled up and bare skin against the gravel for about 15m' – Michael, 31.

'The protesters in front of me were trying to move as slowly as possible, but the police were yelling at me and the people around me to move whilst pushing us with all of their body weight. ... Shortly after that a police[person] jumped from behind me and put one of his arms over each of my shoulders and pulled me to the ground. I wasn't able to see him because he jumped on me from behind and he didn't allow me to see his face or his badge' – Matthew, 16.

'then my memory jumps to me being walked away from the protesters with my arm twisted behind my back. I kept saying it's ok I'll come peacefully you don't have to hurt my arm. It felt like they could break my arm if they just twisted a little bit more' – Name withheld.

'We were both at the ground at this point and to make my right hand release grip of the left hand a riot policeman repeatedly 'karate-chopped' my upper arm whilst standing over me ... I eventually had to release [my] grip when I felt as though my arm was going to break from the force of his blows. ... I was then dragged out on my back by one and then two policeman ... When they first started dragging me one policeman had a chunk of my hair in their hand which was very painful ... One was using my clothing to drag me which made me strangled around my neck' – Name withheld.

'Either one or two police officers came up behind me. One grabbed my pony tail and lifted me off the ground. He then carried me, lifting me by my hair. Two police officers were carrying me by my legs' – Name withheld.

'I also saw one particular riot officer (male, very large) grab a protester who was non-violent who was at the front of the line by the throat and push him (the protester) back into the crowd. Then I saw the same police officer forcefully and with a closed fist punch a male protester who was facing away the police officer in the back of the head. The protester then fell into the crowd...' – Joshua, 23.

'... pulled me out locked my hands behind me and pushed my head down and one of them kicked me in the face, in the nose [This resulted in a broken nose]. ... Also got chocked around the neck by a cop right before they dragged out' – Aiden, 22.

A person acting that day as a legal observer said: 'I was the only person between the police line and the barricades peacefully standing there, simply taking a photo. A line of police (5–10) came charging towards and pushed me back into the barricades. I lost my footing and was hauled forward away from the barricades by 1 or 2 police officers' – Emily, 37.

## Chokeholds

Police claim that they did not use chokeholds.<sup>124</sup> Statements made to the Occupy Melbourne Legal Support Team contradict this claim by describing the use of chokeholds:

'[A] male police officer standing about an arm length in front of me grabbed me by the throat with his right hand. I moved my neck to remove his grip, however he began to squeeze my throat very forcefully, making it difficult to breath ... I was held in this way for long enough to feel out of breath and extremely panicked. I started coughing and choking. At this stage the officer let go. He immediately punched me hard with his right closed fist. The punch landed on my right chest area.' – Matthew, 16.

'In the process of moving from the raised area, I was grabbed by the throat by a police officer ... He then grabbed another person by the throat...' – Name withheld.

'I was then choked by a police officer standing in front of me. He reached out with a hand and grabbed me tightly by the neck. ... At the same time as the police officer went to choke me a fellow protester standing next to me was punched in the face by another police officer' – Name withheld.



Image: Oceana Setaysha



Image: Rubydoomsday

## Use of Horses

During the forcible removal of Occupy Melbourne protesters from City Square, horses were used as part of police ‘crowd control’ tactics. Several participants in Occupy Melbourne protest reported large numbers of horses pushing the protest and provoking fear.<sup>125</sup> One statement details being hit in his head by a horse’s teeth.<sup>126</sup>

Other participant said: ‘As we were being pushed down Swanston Street I noticed that in the middle of the protest line horses were pushing into the protest crowd. They were breaking with the police line and going into the protest crowd. There would have been at least 8, perhaps 12 horses’ – Joshua, 23.

The Mounted Branch is one of the specialised areas within the Victoria Police and it has been used to provide operational support to all areas and particularly in crowd control at demonstrations, sports events and large public gatherings.<sup>127</sup> During protests horses are used to push groups of protesters away to clear an area or as containment lines to prevent access.<sup>128</sup>

There is a real risk when horses are used in crowd control situations that they will become unwieldy and dangerous.<sup>129</sup> This risk exists notwithstanding the experience and training of members of the Mounted Branch. Generally, when horses are directed against a protest they cause panic and fear amongst those present.<sup>130</sup> People can easily fall when pushed by horses and hooves can cause serious injuries.<sup>131</sup>

## Use of Weapons

Victoria Police used a variety of weapons to effect the forcible removal of Occupy Melbourne protesters from City Square. Of particular concern was the repeated use of OC or Capsicum Spray.

### Oleoresin Capsicum (OC) Spray/Foam

During the forcible removal of Occupy Melbourne protesters, Victoria police used Oleoresin Capsicum (OC) Spray/Foam on Occupiers at close range. Such use of OC spray breaches the guidelines in the Victoria Police Manual. This raises serious questions about the proportionality and necessity of the way OC spray was used.

Some of the participants said in their statements:

'I remember seeing the police firing capsicum spray onto us ... I saw someone I know get it in the eyes so badly his [w]hole face went blood red and yet no-one was being violent or resisting the police' – Name withheld.

I was thrown to the ground I had one knee in my back & another on the back of my head pressing my face into the ground, I was not resisting and was completely restrained. At this point a third policeman bent down and sprayed me in my right eye point blank' – Name withheld.

'I saw some riot police officers (jump suits and leather gloves) use Pepper spray on particularly resistant but not violent protesters. The spray was aimed directly at the protesters' faces.' – Joshua, 23.

'As the group was being pushed northward up Swanston St, I witnessed a number of people being pepper sprayed...' – Matthew, 16.

'I assisted at least 2 or 3 people who had been pepper sprayed.' – Emily, 37.

OC spray or foam is not generally a lethal weapon, however, it is an inflammatory agent for the human body and should be avoided, or only used as a last resort. Victoria Police started using OC spray in the mid 1990s. Victoria Police considered it to be a 'very effective less-than-lethal force option'.<sup>132</sup> Its use was initially restricted to members of the Special Operations Group,<sup>133</sup> but over the years OC spray became more widely used. In 2007, Victoria Police extended the authority to use capsicum foam to all qualified personnel.<sup>134</sup>

Recent statistics suggest that OC spray is increasingly being used as a ‘first resort’ measure. Three-quarters of all Victorian Police use of force incidents involve the use of OC spray or foam.<sup>135</sup>

A provision on the Victoria Police Manual which explicitly stated that OC spray/foam should not be used when ‘a person is passively resisting eg. hanging limp or refusing to comply with instructions’ was removed from the Manual in February 2010. This provision has recently been re-instated. Although this explicit instruction was not present in the Manual in October 2011, the general Police Manual guidelines imply that OC spray/foam should not be used in situations where people are passively resisting. It is extremely concerning that OC spray was used against people passively resisting the forcible removal of Occupy Melbourne protesters from City Square. This is especially so given that OC spray/foam was used at close range. The dangers of using OC spray in protest situations are especially acute given that bystanders may also be affected,<sup>136</sup> and there is less capacity to monitor the impacts of its use.

The use of OC spray in these circumstances breaches the directions in the Victoria Police Manual. Its use served no legitimate purposes and was unduly punitive, seeking to punish, disorientate and cause pain to protesters.

This Report has documented the use of force against Occupiers and protesters during the forcible removal of Occupy Melbourne from City Square. People experienced assaults and were restrained or detained simply for being there. This was regardless of their motivations or their behaviour. Statements collected by the OMLST demonstrates that people who were uninvolved with the movement, but simply on Swanston Street during their lunch breaks were also detained by police.



## Detention and Arrest

Around 100 Occupiers were removed from City Square by teams of Public Order Response Team members and then carried or dragged to Swanston Street. These protesters were released from police custody on Swanston Street without having their names or details taken by police.

Between 11:45 and approximately 5pm, a further 100 people were taken into police custody. These protesters were involved in demonstrations primarily on Swanston and Lonsdale Streets. Some of these protesters were:

- Temporarily detained and then released again in the near vicinity;
- Detained in police brawlers vans and driven to various locations where they were released; and
- Detained in police brawlers van and taken to various police stations (these include: St Kilda, Heidelberg, St Kilda Road, North Melbourne, Moonee Ponds, Altona, Melbourne Custody Centre, Moorabbin).

This section of the Report discusses police detention and arrest of protesters. It canvasses the use of 'snatch squads' to effect arrests of Occupy Melbourne protesters from Swanston and Lonsdale Streets, the legal framework around their forcible removal, and details conditions of arrest, custody and release.

## 'Snatch Squads'

'Snatch Squads' were widely used by police to arrest and/or detain protesters after the forcible removal of Occupy Melbourne protesters from City Square. 'Snatch squad' is a term used to describe several police officers – usually in protective riot gear – who rush forward in formation into a protest with the objective of snatching one or more individuals out of the protest. OMLST spoke to some protesters who believed they had been targeted because they were leading chants, had made speeches, or would otherwise be perceived to be influencing the protest. Other protesters could not understand why they had been singled out.

The police carrying out such 'snatchings' from the protest were primarily members of the Public Order Response Team (PORT); however, members of the OMLST observed that they acted in close co-ordination with operational members of police. PORT, as well as operational police, appeared to have specifically trained for and planned these tactics.<sup>137</sup>

Statements by people targeted described excessive and disproportionate force used in implementing this policing tactic:

'I then saw a riot squad officer wearing a blue overalls and leather gloves run into the crowd from in front of me and push the person next to me out of the way and tackle a woman to the ground. (...) I went forward to try and see what was going on, I was concerned for the woman's safety. At that point I was grabbed by two other riot police officers by the arms and shoulders and carried behind the police line. Once I was passed on by the riot police to the 'ordinary' police officers (fluoro vests) they moved me in the direction of a Divisional van (...)’ – Joshua, 23.

'[A] line of police officers grabbed me and pulled me out by the hair (...) I was forcibly dragged out' – Aiden, 22.

'I cried out to the masses around the square to help us. This seemed to make me the target of the next wave. My right arm was pried loose when an officer pulled back my thumb. He then used it to punch me in the face...' – Ethan, 36.

Another protester (Michael, 31) said that another person heard police officers pointing him out to be targeted and that shortly after 'the overall police burst through the crowd' and dragged him out in the process attempting to knee him in the head again.

## Police Powers to Arrest or Detain

Statements from people detained demonstrate that they believed or were told that they were being detained pursuant to breach of the peace powers.

'When I was ejected on the other side of the fence I asked what I was under arrest for and they said breaching the peace. I asked how I was breaching the peace and didn't get an answer. The woman who processed me did not give me any further information, but said I wasn't being charged with breaching the peace, as I was no longer breaching the peace. I said I didn't understand that and didn't know how I was breaching the peace in the first place.' – Emily, 37.

'I asked what I was being charged with and they said breach of the peace.' – Name withheld.

'He then drove us to an intersection of ... and told us we had been arrested for breach of the peace and that they weren't pressing charges.' – Name withheld.

Police only have the power to arrest without a warrant in circumstances set out in the *Crimes Act*,<sup>138</sup> that is, where someone is found committing an offence.<sup>139</sup> The *Crimes Act* explicitly overrides any common law power to arrest without a warrant.<sup>140</sup>

Breach of the peace is not an offence, but creates conditions that activate police powers. The Victoria Police Manual reiterates that because there is no charge for breach of the peace per se, any arrest must be for a relevant State or Commonwealth offence.<sup>141</sup>

Police powers to stop or prevent a breach of the peace are limited. Case law suggests that police may 'restrain, detain or even forcibly remove from an area' persons in breach or anticipated breach of the peace<sup>142</sup> for a reasonable time until the threat to the peace has passed.<sup>143</sup>

The Victoria Police Manual lists a much more restrictive range of police powers to stop or prevent a breach of the peace, being the power to remove items, issue directions and enter premises.<sup>144</sup> The Victoria Police Manual does not list the power to detain people as a power police can exercise to stop or prevent a 'breach of the peace'.<sup>145</sup> Additionally, under the *Summary Offences Act*, police have power to issue directions to prevent a breach of the peace. However, these are not to be engaged where people are engaged in political expression and not breaking other laws.<sup>146</sup> As such are arguably acting outside of their legitimate power and internal guidelines in detaining people pursuant to 'breach of the peace' powers.



Image: Jessie Boylan

Further, even if the police have breach of the peace powers to detain people, this Report argues it is improper to characterise the protest on Swanston and Lonsdale Street on 21 October 2011 as constituting either an actual or anticipated ‘breach of the peace.’ Protester reports speak of a strategic and disciplined commitment to non-violent tactics.<sup>147</sup> The gathering of people to demonstrate peacefully (if determinedly) their opposition to the policing tactics witnessed earlier in the day and support for the Occupy Movement as an actual or potential ‘breach of the peace’ impermissibly restricts the rights to freedom of assembly and expression in the *Charter*. The absence of charges against members of Occupy Melbourne relating to 21 October 2011 supports the view that the Occupy Melbourne protesters were not committing any offences.<sup>148</sup>

As such, this Report argues that actions of police in detaining approximately 100 people on 21 October 2011 may well have exceeded their lawful powers and constituted false imprisonment.

## Experiences of Detention

A large proportion of protesters were held in custody for many hours, both in brawler vans and subsequently at police stations across Melbourne.<sup>149</sup> Protesters were taken to police stations including St Kilda, Heidelberg, St Kilda Road, North Melbourne, Moonee Ponds, Altona, Melbourne Custody Centre and Moorabbin. Others protesters were held for shorter periods, some being driven away from the Central Business District and released in seemingly random locations.

Protester statements describe being taken to various police stations around Melbourne. For example, one protester said that he was taken to the riot van where the doors were closed between 2 – 2.30. He was held in the truck for 2 or 2.5 hours. Then the van was taken to Heidelberg Police Station where all the protesters detained were removed from the truck and put in a holding cell. They were released one by one ‘at about 8 pm’ (6 hours later). He was not told why he had been detained even when he asked. No charges were made against him.<sup>150</sup>

Another protester states:

‘I was arrested at around 3 pm on the 21<sup>st</sup> of October 2011 ... I was put into a police truck that contained 18 of us ... We were driven around in the truck for around 1.5 hours until we finally stopped. After sometime we were finally let out and taken to the Heidelberg Police Gaol. We were left here until we were released without charge at 7.30’ – Name withheld.

Other protester statements detail being in detentions briefly before being released:

‘They didn’t say they were charging me with anything. ... I was released after 15 min’ – Aiden, 22.

Further, protester statements describe being taken into police custody and then driven to disorientating locations (including a paddock in Altona) before being released raise significant duty of care concerns. The practice, sometimes referred to as ‘starlighting’, of police taking individuals into custody without charge, and effectively dumping them in random locations has not been commonplace in Victoria. The death of Mr Paul Wayne Carter in Mildura, who was hit by a truck on a highway outside of Mildura after being released from police custody and left at side of the highway, demonstrates how extremely dangerous such practices can be.<sup>151</sup>

'We were then told that we would be let out in 5 minutes (after series of checks up on us) and not be taken to the station. He then drove us to an intersection of [location removed] and told us we had been arrested for breach of the peace and that they weren't pressing charges' – Name withheld

'After an about 1 hour and 40 minutes we were let out one by one and given our things. It took a while to work out where but we were somewhere in North Melbourne. Half an hour from the city where we had been abducted.' – Name withheld.

'When the door (of the van) was opened, we were not interviewed or charged. We were let out into the streets of St Kilda. I was disoriented and managed to take a tram going the wrong way' – Sophia, 27.

'I was arrested when we were walking down Lonsdale street around half way in between Swanston and Russel St ... He then put me into the back of the police van by myself ... It was now around 4.30 pm. We were driven around (but mostly stayed still) and being checked on every around 30 min. We were then told we would be let out in 5 minutes ... He then drove us to the intersection of Queensbury St and Howard St and told us we had been arrested for a breach of the peace' – Name withheld.

## Length and Conditions of Detention

Protesters also provided concerning reports regarding the duration and conditions of their custody. Many protesters detail lengthy detention in both police vans and police cells. For example, William (22) said that he was detained in a police van with closed doors in the afternoon and held there for around 2 or 2.5 hours. Similarly, Christopher (49) reports being detained for approximately 6 hours during which he was moved between several police cells. During this period he was not allowed to make any phone calls.

Further protester statements detail concerning conditions in custody.

'I have never been in a police van before. I shared mine with six other women. It was uncannily like being in a sauna ... there is no oxygen, everything is humid, there are no windows. We were driven for twenty minutes, then left for fifty minutes with the van's engine off, the lights off and the doors closed. All of us started to get panicky and anxious' – Sophia, 27.

'In the cell they used temperature to tire us out and break us. First they heated the cell until we were all lying on the floor in silence exhausted. They then swapped and cooled us right down, and we suddenly all got up, pacing around the room to keep warm. Just as suddenly, they would then make it unbearably hot again, leaving us weaker than before' – Name withheld.

'the heating /cooling system kept moving from blowing hot to cold air and back in a way that we believe was designed to annoy us' – Name withheld.

According to *White v State of South Australia* '[a]ny imprisonment, in any conditions, should at least provide fresh air, light and water as basic human requirements'.<sup>152</sup> The Victoria Police Manual regulating Crowd Control situation also states that prisoner transport vehicles should not be used to hold prisoners for any length of time at crowd control situations.<sup>153</sup>

## Release Conditions

When released from police custody, many protesters described being provided with a document banning them from returning to City Square or anywhere within the part of the CBD bounded by Queen Street, La Trobe Street, Spring Street and Flinders Street for the next 48 hours. As protesters had not been charged, the document was not a bail condition, yet consent seems to have been used as condition of release. The wording of the document implies that these conditions were being imposed pursuant to police common law breach of the peace powers. It is questionable whether such a power to issue directives exists.<sup>154</sup> Moreover, this Report has previously argued that it is improper to characterise the events of 21 October 2011 as an actual or anticipated breach of the peace.

[name of the detained person handwritten]

I, [name removed] a Senior Sergeant of Police have formed the view that if you return to the City Square (corner of Collins and Swanston Streets) or its environs within 48 hours there is likely to be a Breach of the Peace.

Accordingly, pursuant to my authority at common law I direct you to attend within the precinct bordered by Queen Street, La Trobe Street, Spring Street and Flinders Street Melbourne.

This direction is to remain in force until 8.30 pm [handwritten] on 23 October, 2011.

A failure to comply with this direction may result in your arrest as an obstruction of the police in the execution of their duty.

Signed ..... [Signature]

[Name removed]

NB. A copy of this signed direction is to be handed to person under notice

Protester statements describe the process of being asked to sign such documents. Their statements indicate high levels of confusion surrounding the status of these documents and police power. The statements also show a lack of protester awareness about their rights in relation to signing these documents.

'Then I was taken over to a front desk, told to stand on a red line and told by a male police officer I had not seen before (in front of 4 other people: 2 guards, 1 police officer and a plain clothes woman) the following read from a piece of paper . . . He asked if I understood what he had said, I said 'I think so' he then looked at me and I said 'Yes'. In fact I was unsure whether he had the power under common law to issue me with this directive, but I didn't say anything because I didn't want to be a smart arse and I didn't know either way' – Joshua, 23.

'After sometime we were finally let out and taken to the Heidelberg Police Jail. We were left here until we were released without charge at 7.30. We were all given the following piece of paper...' – Logan, 28.

'After a few more hours they opened the door and asked for me specifically. I went to the desk where they told me I was banned from City Square and environs until Sunday evening ... At first I thought I was being told to sign an agreement, so I asked what would happen if I didn't agree. They told me that I would have to see what the Governor said, which meant waiting in the cell until Monday' – Tyler, 21.

'At the end of the evening we were called out one by one to receive a note ... The police made it clear I was not being charged with anything for Friday but they believed I would commit a crime if I went back there' – Dylan, 26.

These conditions impacted on protesters sense of safety and capacity to travel through the city in order to return home or to places of employment. Many people who attended the OMLST clinics in the weeks following the eviction reported feeling extremely anxious about the ongoing implications of these conditions as well as their reluctance to enter the Central Business District.

## Confusion Regarding Legal Basis of Arrests

The OMLST Legal Observers were concerned that many police officers were unable to clearly articulate why people were being detained as the events of 21 October 2011 unfolded. This is particularly concerning because the evidence suggests that protesters were being randomly arrested and without proper justification. This was considered improper in a recent South Australian case concerning police accountability for use of force against protesters.<sup>155</sup> In this case Justice Anderson expressed concern that the majority of police did not seem to know the difference between arrest for breach of the peace and arrest for trespass.<sup>156</sup> This suggests structural failures in how operational police officers are informed about their powers, especially in relation to protest situations.

This Report argues that the precise legal basis for their action prior to the forcible removal of Occupy Melbourne protesters from City Square appear to have been either not adequately determined nor communicated to police.



## **Experiences of Discriminatory or Targetted Policing**

A number of reports were made to the OMLST wherein community members alleged either direct or indirect discrimination through the policing operation on 21 October 2011. Discrimination occurs when a person is treated unfavourably because of a specific attribute they possess, such as race, age, gender, sexual orientation or political affiliation.<sup>157</sup> The underlying principle, enshrined in common law, and in international and domestic human rights and equal opportunity laws, is that all people should be equal before the law and entitled to equal protection under the law. Specific protections exist to prevent discrimination partially because the law and its operation must be fair and must promote principles of fairness to have legitimacy. Discriminatory policing tactics also violate the Victorian Police Professional and Ethical Standards.<sup>158</sup>

## Derogatory Language Directed at Protesters

Many protesters provided accounts to the OMLST that included allegations they had been sworn at and threatened by police officers. One protester told of the police ‘constantly yelling abusive language at us. I recall hearing the words: ‘hippies, cunts, dickheads, etc’.<sup>159</sup> After being detained for six hours, another protester reported being told by a police officer, ‘Don’t say a fucking word’.<sup>160</sup> A further protester alleged he was put in an arm lock by a police officer and then told ‘You should have left when we gave you the chance dipshit’.<sup>161</sup> Yet another protester recalled being told to ‘Get the fuck up you cunt’ and ‘get out of here you cunt’.<sup>162</sup>

Another protester gave the following account:

‘a man came up to me and started yelling in my face ‘those horses are going to crush your skull’ and ‘when I see you in the back of the van I’m going to fuck you up’ ... I looked him up and down [and] I realised he was a cop in plain clothes’ – Tyler, 21.

This Report argues that such language suggests contempt and aggression directed towards the protesters because of their involvement in political protest.

## Homophobic and Racialised Policing

The OMLST received a report from one male protester who described being singled out for police action within moments of kissing his male partner in the presence of police officers. Shortly after kissing the male protester and his partner alleged they were ripped apart, hit and dragged by police, and taunted by police officers who told them, ‘You’re next girls!’<sup>163</sup> This targeting of a homosexual couple can be seen as an instance of homophobic policing.

The OMLST also received a report from a protester who had his belongings taken off him when he was taken into police custody. When his property was returned to him after spending approximately 6 hours in police custody, he noticed that the police had identified him by his first name followed by the word ‘Asian’ (see section cover image). He was disturbed and appalled to have been identified on the basis of ‘race’ particularly since all his fellow protesters who had been detained appeared to have their belongings labelled with their full name.

## Gendered Policing and Sexual Harassment

Gendered policing occurs when police officers single out protesters because of their gender, or when policing tactics are engaged that disproportionately affect a particular gender. Gendered policing may be in contravention of anti-discrimination laws, and, in some circumstances, may constitute sexual harassment.<sup>164</sup>

The OMLST received reports as follows:

One female protester reported that she was forcibly removed from the protest in such a way that her pants fell down. Once this occurred, the police tried to take a photo of her, and one of the officers joked ‘why don’t you take a photo of her arse’.<sup>165</sup>

Another female protester alleged an officer placed his leg between her crotch, causing her to feel extremely uncomfortable.<sup>166</sup> When the female protester and her nearby female friend complained, they were unable to get the officer’s name.

*‘A policeman put his left in between my legs to clear some rubbish that I was standing on ... I was standing with my legs 40 cm apart. Our bodies were facing each other and his thigh came very close to touching my crotch. It was extremely inappropriate and the woman who I was linking arms with told him so’ – Chloe.*

A protester detained in the Occupy Melbourne Eviction reported overhearing another woman saying that a male police officer had squeezed and twisted her nipple – Sophia, 27.

The impact of gendered policing tactics can be to discourage female participation in protests, and restricts their rights to freedom of expression<sup>167</sup> and peaceful assembly.<sup>168</sup> Gendered policing is also an impediment to participation in political protest.

## Indirect Discrimination

Police are under a positive obligation to take into account any mental or physical disability when determining what would be ‘reasonable force’ to make an arrest.<sup>169</sup> Police must provide medical attention, or medications, or seek medical advice if a person in custody requires it.<sup>170</sup> There were allegations that police failed to properly ensure the safety of disabled protesters at the Melbourne G20 protests in 2006.<sup>171</sup>

One female OMLST Legal Observer required a walking stick to move,<sup>172</sup> and advised a police member who was positioned in front of her that she was not physically able to walk backwards. The OMLST Legal Observer alleges the officer made no acknowledgment of this but continued to push her backwards. After a few steps backwards, she reported her ‘leg started to feel paralysed’, she fell backwards onto the ground, and her walking stick flew off to the side. After falling she described, ‘the feeling of all these legs being on top of me. I can distinctly remember feeling [a] footprint on my stomach, side and hips. It felt like I was on a conveyer belt, with me going in one direction and the police legs going in the other direction...It felt like a stampede’. The Legal Observer felt shocked at her treatment because she had clearly identified herself as a Legal Observer, and told the police officer of her walking disability.

Aggressive protest dispersal tactics by police can disproportionately affect protesters who may have decreased mobility or other specific vulnerability to harm. Promoting the equal rights of all Victorians to engage in peaceful demonstration is a further reason for restricting the use of police force in protest situations to very exceptional and limited circumstances.

Similarly, duty of care issues in relation to arrest and custody arise where detainees have specific vulnerabilities. For example, minors may be more disorientated than an adult in being ‘dumped’ in random locations, and higher duties of care may attach where persons who have physical or psychiatric disabilities. Another incident involved a protester being denied access to her medications inside her tent in City Square. The protester was on Swanston Street and urgently sought to negotiate such access with police. She had a condition which required frequent medication in order to prevent seizures. She explained this to police and informed them of the consequences of not taking the medication. Members of the OMLST attempted to negotiate on her behalf but were unsuccessful.



## Above the Law?: Accountability Issues

There has been a lack of accountability for the manner of policing on 21 October 2011. This includes a lack of accountability for the damage and destruction of private and communal property during the forcible removal. This Report discusses questions regarding property confiscation and documents the following barriers to accountability of police and the authorities who authorised and effected the forcible removal of protesters and their property from City Square:

- a. Failure of numerous police officers to wear identification badges during on 21 October 2011;
- b. Failure of members of police to recognise the legitimate role of legal observers;
- c. Limitations on investigation / complaint mechanisms initiated by individuals.

## 'Taking Our Stuff': Property Confiscation and Destruction

'I placed my belongings (bag including wallet ipod etc, bedding, instruments) on the pile under one of our tarps as the council people directed us to do so, saying that if we had more than we could carry it would be better to let them take it all to a location where we could later pick it up ...all tents and equipment in the now fenced-off sleeping area were removed by council officers and I saw it being thrown into trucks. I later learned that it was taken to the tip.' – Robert.

During the eviction, personal and shared property (tents, sleeping bags, computers, generators, kitchen equipment, books and other personal items) were removed from City Square by police and placed in large dump trucks. Reports have been made that a number of trucks took property belonging to Occupy Melbourne protesters to be crushed,<sup>173</sup> whilst other property was available to be claimed some days afterwards.<sup>174</sup> OMLST Legal Observers are aware that by the time property was able to be retrieved, many items were damaged or broken.

Authorised council officers may remove and hold property under local laws when someone has ignored a direction from an authorised officer.<sup>175</sup> However, the officer must serve a written notice on the owner as soon as it is reasonably practicable to do so.<sup>176</sup>

The Victoria Police Manual instructs officers that they are authorised to 'temporarily take articles ... if reasonably necessary to prevent a breach of the peace' but there is no power 'to permanently confiscate the articles except as part of State or Commonwealth law.' Further that a register confiscated property must be documented and held in a property store that is overseen by a property keeper,<sup>177</sup> and returned in due course to its rightful owners.

Demands have been made of Melbourne City Council to return or account for some of the lost and damaged property, and compensation may be awarded for these limited claims. Many people who lost property during the forcible removal have not made legal claims because of the cost of litigation, or a newfound lack of faith in the justice system.<sup>178</sup>

## Failure of Police to Wear Identification Badges

During the forcible removal, there were numerous reports of police officers failing to wear name badges.<sup>179</sup> Observations of Legal Observers, survey results and statements provided to the OMLST included allegations that a large number of police officers had either forgotten or removed their badges.

'I asked him for his name many times, and he reluctantly showed me his name badge saying '[Name withheld]'. He then quickly put it back into his pocket and said to me there is no requirement for him to have it on display.' – Jared.

By their own regulations, police are required to wear nametags as part of their uniforms. Wearing nametags promotes accountability and reduces the dangers of anonymity; research suggests that police officers who wear nametags are more conscious of the needs of the general public they are interacting with.<sup>180</sup> Further, research suggests that police typically do not report the misbehaviour of their workmates.<sup>181</sup> Therefore nametags are an important safeguard that ensures individuals are held responsible for their actions.

'Heaps of the police didn't have badges on. I kept trying to take pictures of them. I was shocked, one police officer on a horse, he didn't have a name tag on and he must have noticed that I was trying to take a pic, he kept turning around to try and make sure his chest wasn't visible to my camera. I asked other police officers for their names, some refused.' – Juliet, 28.

Evidence taken via survey and legal statements suggests that a large number of officers had either forgotten or removed their badges.<sup>182</sup> Failing to wear a name badge poses problems for accountability, as officers are not easily identifiable by members of the public. By foregoing a nametag, policemen are able to assume the power of a collective identity without exposing their individuality. This is a process known as de-individuation, and can lead to higher instances of negative or socially irresponsible behaviour.<sup>183</sup>

'I tried to avoid the police without name badges, it seemed clear to me that they were more prepared to be aggressive. I witnessed one police officer without a badge punching a protester in the face.' – Jing, 27.



## Failure of Police to Recognise Legal Observers

Members of the OMLST acted as ‘Legal Observers’ on the day of the eviction. Legal Observers play an important role in supporting protesters to feel safe by their presence, recording incidents of note, and in monitoring arrests to ensure that anyone in police custody is offered legal support if necessary.<sup>184</sup> All Legal Observers at the Occupy Melbourne protest were clearly identifiable in orange fleuro vests and had received training as Legal Observers.

Prior to the forcible removal of Occupy Melbourne from City Square, members of the OMLST who were acting as Legal Observers sought to negotiate with police to remain inside the Square. In response they were told that only lawyers, not legal observers, would be recognised by the police and anyone inside the Square would be treated as a protester. When legal practitioners arrived to act as Legal Observers they too were told they would not be recognised and arrested if they entered the Square.

At times police did not allow Legal Observers to approach people detained by police to request their name and details of any special needs the detainee might have. However, as the day progressed many police members did allow Legal Observers greater access to detainees to collect name and details.



Image: Corey Oakley

## Limitations of Investigation or Complaint Mechanisms

The OMLST is aware that complaints have been lodged by protesters affected by the policing actions with the Ethical Standards Division within Victoria Police and the Office of Police Integrity. No satisfactory outcome has been reported from these complaints.

Further, the scale of the operation, the numbers of police members involved, the responsibilities and accountabilities of operational command require an independent inquiry of a comprehensive nature.

Whilst individuals may pursue their own accountability mechanisms, including for example, through complaints and civil actions, there are limitations on the level of scrutiny brought to bear by such processes. Additionally, such processes put all responsibility and risk on the protesters affected, for example, by potentially exposing them to costs if they pursue civil actions.

'I'm able to reflect on the faults we had as a movement, the immaturity we had, the lack of direction, the sheer brilliance of bringing ordinary people with no social activism background together to try and build a dialogue...I'm able to do this now, the one thing I can't get closure on or reflect upon is the Government and Police actions. Their behaviour and social schema is inexcusable and needs to be put under a microscope to really help us all move forward' – Alexandra, 24.

## Appendix: Types of Law

The legality of the forcible removal of Occupy Melbourne from City Square and the policing of the subsequent protest along throughout the CBD is layered by different types of law. These stem from a variety of jurisdictions. These include:

**Common Law:** The body of law developed through court decisions and customs. Some offences in Victoria are still defined with reference to common law such as breach of the peace.

**Victorian Legislation:** Regulates police powers and the use of public spaces, as well as defines what constitutes summary and indictable offences in Victoria (see for example *Summary Offences Act 1966* and *Crimes Act 1958*).

**The Charter of Human Rights and Responsibilities 2006 (Vic) or ‘The Charter’:** An Act of the Victorian Parliament that requires all public authorities — including police and local councils — to consider rights when exercising their authority. Some of the fundamental rights guaranteed by the Charter are the freedom of expression and the right of peaceful assembly.

**Local Laws** (or delegated legislation): Are laws made by local municipal councils under powers granted by the *Local Government Act 1989* (Vic). For example, the Melbourne City Council *Activities Local Law 2009* regulates permits for street signs and public events.

**Victorian Police Manual (VPM):** An internal Victoria Police document that consists of (a) policy rules that are mandatory and sets minimum standards; and (b) procedures and guidelines that suggest interpretation and application of rules as good practices in policing. They are issued under the *Police Regulation Act 1958* (Vic).<sup>185</sup> They do not have the force of statute, though breaches of Victoria Police Manual do not necessarily ‘invalidate any action taken by the officer’ or give rise to liability for damages, may result in internal disciplinary procedures.<sup>186</sup>

**International Law:** Treaties, customs and decisions of international bodies such as the Human Rights Committee, the Human Rights Council and the International Court of Justice. International norms are only treated as persuasive unless they are expressly incorporated as domestic law.

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- <sup>2</sup> Fiona Donson, Graeme Chesters, Ian Welsh and Andrew Tickle, 'Rebels with a Cause, Folk Devils without a Panic: Press Jingoism, Policing Tactics and Anti-Capitalist Protest in London and Prague' (2004) *Internet Journal of Criminology*, <<http://www.internetjournalofcriminology.com>>.
- <sup>3</sup> Samuel Henry Barnes and Max Kaase, *Political Action: Mass Participation in Five Western Democracies* (Sage Publications, 1979).
- <sup>4</sup> Hank Johnson, *Culture, Social Movements and Protest* (Ashgate Publishing, 2009) 7.
- <sup>5</sup> Dave Sherry, *Occupy! A Short History of Workers Occupations* (Bookmarks, 2010).
- <sup>6</sup> *White v South Australia* (2010) 106 SASR 521 at 24 (Anderson J)
- <sup>7</sup> Mark Finnane, *Police and Government: Histories of Policing in Australia* (Oxford University Press, 1994).
- <sup>8</sup> Frank J Remington, 'The Role of Police in Democratic Society' (1965) *Journal of Criminal Law, Criminology & Police Science* 361, 363; Mary Heath, 'Policing and Self-Policing in the Shadow of the Law: Negotiating Space for Public Dissent' (2000) 17(1) *Law in Context* 15.
- <sup>9</sup> Office of Police Integrity, Victoria, *Review of the Use of Force by and against Victoria Police* (2009) 21.
- <sup>10</sup> Jude McCulloch, *Blue Army: Paramilitary Policing in Australia* (Melbourne University Press, 2001).
- <sup>11</sup> David Vakalis and Jude McCulloch, 'Something Old, Something New, Something Borrowed, Something Blue: Militarised Policing and Occupy Melbourne' (2001) 1 *Overland Literary Journal*, <http://overland.org.au/previous-issues/issue-occupy/feature-jude-mcculloch-and-david-vakalis>.
- <sup>12</sup> *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.
- <sup>13</sup> *Coleman v Power* (2004) 220 CLR 1, [324] (Heydon J).
- <sup>14</sup> *Evans v New South Wales* (2008) 250 ALR 33, 87.
- <sup>15</sup> Known as 'representative and responsible government' as required by the constitution: see *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1, 72 (Deane and Toohey JJ).
- <sup>16</sup> *Lange v Commonwealth* (1996) 186 CLR 302, [559]–[561], [567] (McHugh J).
- <sup>17</sup> *VPol v Anderson* (Unreported, Magistrates Court of Victoria, 23 July 2012) (hereafter 'Max Brenner').
- <sup>18</sup> The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (hereafter 'Charter') includes rights to freedom of movement (section 12), freedom of thought, conscience, religion or belief (section 14), freedom of expression (section 15), peaceful assembly and freedom of association (section 16), taking part in public life (section 18).
- <sup>19</sup> Charter section 38(1) states that 'it is unlawful for a public authority to act in a way which is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right'. The definition of 'public authority' in the *Charter* includes Victoria Police (section 4(1)(d)) and local councils (section 4(1)(e)).
- <sup>20</sup> *Max Brenner* (Unreported, Magistrates Court of Victoria, 23 July 2012).
- <sup>21</sup> Peter Munro and Deborah Gough, 'Doyle Unrepentant as Protesters Consider Action', *The Sunday Age*, 23 October 2011, <[http://newsstore.fairfax.com.au/apps/viewDocument.acj;sessionid=89BEC0D95BD81B64CD750A10AED472F2?sy=afr&pb=all\\_ffx&dt=selectRange&dr=1month&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=brs&cls=1211&clsPage=1&docID=SAG111023KQ6KP7IVR7V](http://newsstore.fairfax.com.au/apps/viewDocument.acj;sessionid=89BEC0D95BD81B64CD750A10AED472F2?sy=afr&pb=all_ffx&dt=selectRange&dr=1month&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=brs&cls=1211&clsPage=1&docID=SAG111023KQ6KP7IVR7V)>.
- <sup>22</sup> Cited in Megan Levy and Benjamin Preiss, 'Protesters Arrested as Chaos Descends on the CBD', *The Age*, 21 October 2011, <<http://www.theage.com.au/victoria/protesters-arrested-as-chaos-descends-on-cbd-20111021-1mb07.html>>. Then Federal Minister for Financial Services, Bill Shorten, also supported the police action arguing that protesters had had a 'fair go' and that it was time for them to 'move on'. Editorial, 'Occupying a Legitimate Place in a Peaceful Democracy', *The Age*, 23 October 2011, <<http://www.theage.com.au/opinion/editorial/occupying-a-legitimate-place-in-a-peaceful-democracy-20111022-1mdox.html#ixzz2ABGDQ0Mr>>.
- <sup>23</sup> Peter Munro, Deborah Gough and Mark Russell, 'Doyle Defiant as Protesters Plan Legal Action', *The Age*, 23 October 2011, <<http://www.theage.com.au/victoria/doyle-defiant-as-protesters-plan-legal-action-20111022-1mdvu.html>>; 'Occupy Melbourne: Who Was in the Wrong?', 774 *ABC Radio Melbourne*, 24 October 2011, <<http://www.abc.net.au/local/stories/2011/10/24/3346719.htm>>.
- <sup>24</sup> Peter Munro, Deborah Gough and Mark Russell, 'Doyle Defiant as Protesters Plan Legal Action', *The Age*, 23 October 2011, <<http://www.theage.com.au/victoria/doyle-defiant-as-protesters-plan-legal-action-20111022-1mdvu.html>>.
- <sup>25</sup> Ibid.
- <sup>26</sup> ABC Radio, 'Jon Faine Interview with Robert Doyle', 8 November 2011, <<http://blogs.abc.net.au/files/robert-doyle-8th-nov-cut>>.

mp3>.

<sup>27</sup> Police Chief Commissioner Ken Lay reportedly claimed that the police were acting on a complaint made by the City of Melbourne in forcefully removing the protest. See 'Occupy Melbourne: Who Was in the Wrong?', *774 ABC Melbourne*, 24 October 2011, <<http://www.abc.net.au/local/stories/2011/10/24/3346719.htm>>.

<sup>28</sup> Carolyn Webb, 'Campers Happy, Traders Not', *The Age*, 20 October 2011, <<http://www.theage.com.au/victoria/campers-happy-traders-not-20111019-1m86p.html#ixzz281mZZBtS>>.

<sup>29</sup> Ibid.

<sup>30</sup> Benjamin Preiss and Reid Sexton, 'Doyle Accused of Heavy-Handedness in Halting Occupation', *The Age*, 22 October 2011, <<http://www.theage.com.au/victoria/doyle-accused-of-heavyhandedness-in-halting-occupation-20111021-1mc9.html#ixzz281q61jni>>; Robert Doyle, 'Selfish Rabble Got What It Deserved', *Herald Sun*, 23 October 2011, <<http://www.heraldsun.com.au/news/victoria/selfish-rabble-got-what-it-deserved/story-fn7x8me2-1226174052823>>.

<sup>31</sup> Ibid.

<sup>32</sup> ABC Radio, 'Jon Faine Interview with Robert Doyle', 8 November 2011, <<http://blogs.abc.net.au/files/robert-doyle-8th-nov-cut.mp3>>.

<sup>33</sup> Benjamin Preiss and Reid Sexton, 'Doyle Accused of Heavy-Handedness in Halting Occupation', *The Age*, 22 October 2011, <<http://www.theage.com.au/victoria/doyle-accused-of-heavyhandedness-in-halting-occupation-20111021-1mc9.html#ixzz281q61jni>>.

<sup>34</sup> Victoria Police, *Annual Report 2011-2012* (2012), <<http://www.police.vic.gov.au/annualreport/files/assets/basic-html/page43.html>> 43.

<sup>35</sup> According the Victoria Police's *Annual Report*, PORT generally operate on Thursday, Friday and Saturday night and Sunday afternoon. They operate primarily in the Melbourne CBD, Stonington and Port Melbourne. They claim that between June 2011 and June 2012 PORT members spoke to more than 15,000 people, arrested more than 700 people for various offences and issued 3000 crime and traffic penalty notices. The team has 10 specially-marked vehicles, two brawler vans and more than 70 Operations Response Unit members with PORT qualifications. Stephanie Wilson, 'Victoria Police's Public Order Squad Turns One', *Melbourne Leader*, 8 June 2012, <<http://melbourne-leader.whereilive.com.au/news/story/victoria-polices-public-order-squad-turns-one>>.

<sup>36</sup> Nino Bucci, 'Strong Arm of the Law: Overland's Armour-Clad Swat Squads to Tackle Urban Troublemakers', *The Age*, 9 June 2011, <<http://www.theage.com.au/victoria/strong-arm-of-the-law-overlands-armourclad-swat-squads-to-tackle-urban-troublemakers-20110609-1fv70.html#ixzz27kYmirqc>>.

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<sup>41</sup> Ibid 5.

<sup>42</sup> John Wilson, 'Social Protest and Social Control' (1977) 24 *Social Problems* 469, 474.

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<sup>45</sup> Andrew Rule, 'The Day Police Took Back our City from Occupy Melbourne Protesters', *Herald Sun*, 22 October 2011, <<http://www.heraldsun.com.au/news/victoria/boot-out-protesters-says-businesses/story-fn7x8me2-1226173507860>>.

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<sup>47</sup> William Terrill, Eugene A Paoline and Peter K Manning, 'Police Culture and Coercion' (2003) 41 *Criminology* 1003, 1008.

<sup>48</sup> André Dao, '#OccupyMelbourne — An Eyewitness Account of Overwhelming Police Force', *The Conversation*, 25 October 2011 <<http://theconversation.edu.au/occupymelbourne-an-eyewitness-account-of-overwhelming-police-force-3985>>.

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<sup>50</sup> 'Occupy Melbourne: Who Was in the Wrong?', *774 ABC Radio Melbourne*, 24 October 2011, <<http://www.abc.net.au/local/stories/2011/10/24/3346719.htm>>.

<sup>51</sup> Peter Mickelburgh and Mark Buttler, 'True Cost of Occupy Melbourne Protest Yet to Be Felt', *Herald Sun*, 22 October 2011, <<http://www.heraldsun.com.au/news/victoria/true-cost-of-occupy-melbourne-protest-yet-to-be-felt/story-fn7x8me2-1226173495188>>.

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<sup>54</sup> *Activities Local Law 2009* (Melbourne City Council) part 14.

<sup>55</sup> *Crimes Act 1958* (Vic) section 458(2).

<sup>56</sup> *Activities Local Law 2009* (Melbourne City Council) part 14.

<sup>57</sup> Ibid; Rafael Epstein, 'Interview with Ken Lay, Acting Police Chief Commissioner' (Radio Interview, 24 October 2011).

<sup>58</sup> *Summary Offences Act 1966* (Vic) section 9(1)(d).

<sup>59</sup> The Victorian law of trespass distinguishes between 'public places', 'scheduled public places' and 'private places'. City Square, the site of the occupation, is best characterised as a 'public place' as defined by section 3 of the *Summary Offences Act 1966* (Vic). City Square is owned and managed by the Melbourne City Council and is included in the list of 'parks and reserves' on the Melbourne City Council website. It fits within the category of 'any park, garden, or other place of public recreation' under s 3 of the *Summary Offences Act 1966* (Vic). It is both a public thoroughfare, a 'park garden reserve or other place of public recreation or resort' as well as an open place to which the public are permitted to have access (section 3). It is also a public thoroughfare and an area that the public are permitted to access, in the same way as QV laneways and square were characterised in the *Max Brenner* case.

<sup>60</sup> *Max Brenner* (Unreported, Magistrates Court of Victoria, 23 July 2012). As a Magistrates Court case, it has limited precedential value, but it is significant as it is the first case to examine trespass laws in public places in light of the *Charter*.

<sup>61</sup> Ibid [54].

<sup>62</sup> Ibid [70].

<sup>63</sup> Ibid.

<sup>64</sup> Ibid [69].

<sup>65</sup> Ibid.

<sup>66</sup> This is as far as the OMLST through extensive enquiries have been able to ascertain. We note that proceedings for trespass, as a summary offence, generally need to be commenced within 12 months after the date on which the offence is alleged to have been committed. At the time of writing, 12 months from 21 October 2011 have elapsed. *Criminal Procedure Act 2009* (Vic) section 7(1).

<sup>67</sup> Nick O'Neill, Simon Rice and Roger Douglas, *Retreat from Injustice: Human Rights Law in Australia* (Federation Press, 2004) 288.

<sup>68</sup> *R v Howell (Errol)* (1981) 1 QB 416; *White v South Australia* (2010) 106 SASR 521.

<sup>69</sup> *R v Howell (Errol)* (1981) 1 QB 416, 427 (Watkins LJ), cited in *White v South Australia* (2010) 106 SASR 521, 587 (Anderson J); cited in *Brander v Lovegrove* (No 2) (1982) 103 LSJS 304, 310 (White J).

<sup>70</sup> *Commissioner of Police for the State of Tasmania; Ex Parte North Broken Hill Ltd* (1992) 61 A Crim R 390.

<sup>71</sup> Victoria Police Manual and Standing Orders 'Guidelines – Preventative action', 1.

<sup>72</sup> Victorian Ombudsman, *Investigation of Police Action at the World Economic Forum Demonstrations: September 2000* (Report, June 2011) 44.

<sup>73</sup> Lord Scarman, *The Brixton Disorder*, quoted in Nick O'Neill, Simon Rice and Roger Douglas, *Retreat from Injustice: Human Rights Law in Australia* (Federation Press, 2004) 289.

<sup>74</sup> Donald Thompson, 'Civil Liberties and Public Order' in Pat Carlen and Mike Collison (eds), *Radical Issues in Criminology* (Martin Robertson, 1980) 40.

<sup>75</sup> Eric Etheridge, Roger Wilkins and Diane McWhorter, *Breach of Peace: Portraits of the 1961 Mississippi Freedom Riders* (Atlas, 2008).

<sup>76</sup> *White v South Australia* [2010] SASC 95.

<sup>77</sup> *R (Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55.

<sup>78</sup> *Jordan v Gibbon* (1863) 8 LT 391, cited in *White v South Australia* (2010) 106 SASR 521 [399].

<sup>79</sup> *R v Reid* (No 2); *Forbutt v Blake* (1981) 2 A Crim R 28, cited in *White v South Australia* (2010) 106 SASR 521 [399].

<sup>80</sup> *Percy v Director of Public Prosecutions* [1995] 1 WLR 1382.

<sup>81</sup> *Charter* sections 15–16.

<sup>82</sup> Ibid.

<sup>83</sup> Cr Doyle was reported to have claimed that traders were suffering and that events planned for City Square had been disrupted. Megan Levy and Benjamin Priess, 'Protesters arrested as chaos descends on CBD', *The Age*, 21 October 2011, <<http://www.theage.com.au/victoria/protesters-arrested-as-chaos-descends-on-cbd-20111021-1mb07.html>>. Cr Doyle also was quoted as saying 'They bleat about their rights. What about the rights of the 800,000 people who use the city every day?': Peter Munro, Deborah Gough and Mark Russell, 'Doyle unrepentant as protesters consider action', *The Sunday Age*, 23 October 2011, <[http://newsstore Fairfax.com.au/apps/viewDocument.ac;jsessionid=89BEC0D95BD81B64CD750A10AED472F2?sy=afr&pb=all\\_ffx&dt=selectRange&dr=1m](http://newsstore Fairfax.com.au/apps/viewDocument.ac;jsessionid=89BEC0D95BD81B64CD750A10AED472F2?sy=afr&pb=all_ffx&dt=selectRange&dr=1m)>.

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- <sup>85</sup> *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105, 114 (Lord Brown of Eaton-under-Heywood), quoted in *White v South Australia* (2010) 106 SASR 521 [404].
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- <sup>87</sup> *R (Hannah McClure and Joshua Moos) v Commissioner of Police* [2012] EWCA Civ 12 [36], citing *R (Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55.
- <sup>88</sup> *Percy v Director of Public Prosecutions* [1995] 1 WLR 1382; *Commissioner of Police for the State of Tasmania; Ex Parte North Broken Hill Ltd* (1992) 61 A Crim R 390, 392; *Forbutt v Blake* (1981) 51 FLR 465, 471, 472.
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- <sup>94</sup> 'Ombudsman asked to investigate alleged police violence', *ABC News*, 24 October 2011, <<http://www.abc.net.au/news/2011-10-24/ombudsman-asked-to-investigate-alleged-police-brutality/3597144>>.
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- <sup>98</sup> Ibid.
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- <sup>101</sup> David Vakalis and Jude McCulloch, 'Something Old, Something New, Something Borrowed, Something Blue: Militarised Policing and Occupy Melbourne' (2001) 1 *Overland Literary Journal*, <http://overland.org.au/previous-issues/issue-occupy/feature-jude-mcculloch-and-david-vakalis>.
- <sup>102</sup> David Hastings Dunn, 'Myths, Motivations and 'Misunderestimations': The Bush Administration and Iraq' (2003) 79(2) *International Affairs* 297, 294.
- <sup>103</sup> AAP, 'Australian Airports to Get Body Scanners', *Herald Sun*, 15 August 2012, <<http://www.heraldsun.com.au/travel/news/australian-airports-to-get-body-scanners/story-fn328911-1226450943695>>.
- <sup>104</sup> For example, see James Crown, *Australia: The Terrorist Connection* (Sun Books, 1986) 90.
- <sup>105</sup> Ibid.
- <sup>106</sup> Adopted by UN General Assembly Resolution No 34/169 (17 December 1979).
- <sup>107</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (27 August to 7 September 1990). The term 'law enforcement officials' refers to all officers of the law (appointed or elected), who exercise police powers, especially the powers of arrest or detention.
- <sup>108</sup> *Code of Conduct for Law Enforcement Officials*, Article 2.
- <sup>109</sup> Protest and Assembly Rights Project, *Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street* (New York, 2012), <<http://www.chrgj.org/projects/suppressingprotest.pdf>> 65.
- <sup>110</sup> *Code of Conduct for Law Enforcement Officials*, Article 3.
- <sup>111</sup> *Code of Conduct for Law Enforcement Officials*, Article 3 commentary.
- <sup>112</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 2.
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- <sup>115</sup> *Charter* section 38(1).
- <sup>116</sup> *Charter* section 7.2.
- <sup>117</sup> Victoria Police Manual, 'Operational Safety Principles: Instruction 101-1'.
- <sup>118</sup> Victoria Police Manual, 'Preventative Action', section 1.3.
- <sup>119</sup> Participant 'Olivia'.
- <sup>120</sup> Participants 'Ethan', 'Michael, 31', 'Chloe' and 'Mia'.
- <sup>121</sup> Participant 'Ethan', 'Isabella', 35 and 'Emily'.

- <sup>122</sup> Participants 'Joshua', 'Daniel' and 'Aiden'.
- <sup>123</sup> Participants 'Matthew', 'Mia' and 'Ella'.
- <sup>124</sup> Participants 'Michael, 31' and 'Aiden'.
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- <sup>126</sup> Participant 'Michael, 31'.
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- <sup>129</sup> Ibid.
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- <sup>131</sup> Federation of Community Legal Centres, *Human Rights Observer Team Final Report: G20 Protests November 17–19, 2006, Melbourne Australia* (2007) 13.
- <sup>132</sup> Victoria Police, *OC Spray & Foam Review*, (Corporate Management Division, 2007) 2 <[http://www.fclc.org.au/cb\\_pages/files/OC%20spray%20review%20foi%20release%2031jan2011.pdf](http://www.fclc.org.au/cb_pages/files/OC%20spray%20review%20foi%20release%2031jan2011.pdf)>.
- <sup>133</sup> Ibid.
- <sup>134</sup> Office of Police Integrity, Victoria, *Review of the Use of Force by and against Victorian Police* (July 2009), 74.
- <sup>135</sup> Human Rights Law Centre, *Upholding Our Rights: Towards Best Practice in Police Use of Force* (Final Report, September 2011), 4.
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- <sup>137</sup> Michael Clayton-Jones, 'Police Practise Crowd Control', *The Age*, 26 May 2012 <<http://www.theage.com.au/photogallery/victoria/police-practise-crowd-control-20120526-1zbe7.html>>.
- <sup>138</sup> *Crimes Act 1958* (Vic) sections 458 and 459.
- <sup>139</sup> *Crimes Act 1958* (Vic) section 458(1)(a).
- <sup>140</sup> *Crimes Act 1958* (Vic) section 457.
- <sup>141</sup> Victoria Police Manual and Standing Orders, 'Guidelines — Preventative Action', 2.
- <sup>142</sup> *Bander v Lovegrove (No 2)* (1982) 103 LSJS 304, 310 (White J).
- <sup>143</sup> *White v South Australia* (2010) 106 SASR 521 (Anderson J).
- <sup>144</sup> Victoria Police Manual and Standing Orders, 'Guidelines — Preventative Action', 2.
- <sup>145</sup> Victoria Police Manual and Standing Orders, 'Guidelines — Preventative Action'.
- <sup>146</sup> *Summary Offences Act 1966* (Vic) section 6.
- <sup>147</sup> Participants 'Joshua' and 'Matthew'; see also James Pollard, 'For Democracy and Discipline: A Plea to Occupy Melbourne', *Libcom.org*, 26 October 2011 <<http://libcom.org/news/democracy-discipline-plea-occupy-melbourne-26102011>>.
- <sup>148</sup> To the best knowledge of the OMLST knowledge, only two people were charged with offences relating to the events of 21 October 2011. One protester was charged with and pleaded guilty to criminal damage after drawing a peace sign on the bonnet of a police van with nail polish. Another protester was charged with trespass, resisting arrest and hinder police. These charges were dismissed by the prosecution before they could be contested in court.
- <sup>149</sup> On the basis of information provided by legal observers, legal practitioners tracking arrests, and reports provided by Occupy Melbourne protesters to OMLST.
- <sup>150</sup> Participant 'William'.
- <sup>151</sup> Simon Mann 'Policemen Criticised over Aboriginal Man's Death', *The Age*, 13 May 2009, <<http://www.theage.com.au/national/policemen-criticised-over-aboriginal-mans-death-20090513-b2to.html>>.
- <sup>152</sup> *White v South Australia* (2010) 106 SASR 521.
- <sup>153</sup> Victoria Police Manual and Standing Orders, 'Guidelines — Preventative Action'.
- <sup>154</sup> Moreover, the power to issue such direction raises questions of law around the *Charter* obligations on Victoria Police as a public authority, and the interaction between the *Summary Offences* 'move on' directions and common breach of the peace powers.
- <sup>155</sup> *White v South Australia* (2010) 106 SASR 521.
- <sup>156</sup> Ibid.
- <sup>157</sup> *Equal Opportunity Act 2010* (Vic) section 8(1).
- <sup>158</sup> Victoria Police Manual, 'Professional and Ethical Standards — Code of Conduct' (22 February 2010).
- <sup>159</sup> Participant 'Brandon'.

<sup>160</sup> Participant ‘Christopher, 49’.

<sup>161</sup> Participant ‘Ryan, 21’.

<sup>162</sup> Participant ‘Joseph, 34’.

<sup>163</sup> ABC News, ‘Protesters Occupy New Camp in City Garden’, *7.30 Report*, 29 October 2011 (Josie Taylor) <<http://www.abc.net.au/news/2011-10-29/protesters-occupy-new-camp-in-city-garden/3607732>>

<sup>164</sup> *Equal Opportunity Act 2010* (Vic) section 92.

<sup>165</sup> Participant ‘Jackson 39’.

<sup>166</sup> Participant ‘Chloe’.

<sup>167</sup> *Charter* section 15.

<sup>168</sup> *Charter* section 16

<sup>169</sup> *Crimes Act 1958* (Vic) section 462A; Victoria Police Manual ‘Policy Rules — Arrest and Preventative Action’ (22 February 2010); *Mental Health Act 1986* (Vic) section 10(2)(b)

<sup>170</sup> Victoria Police Manual, ‘Procedures and Guidelines — Taking Persons into Police Care or Custody’ (22 February 2010) 1–2.

<sup>171</sup> Federation of Community Legal Centres (Vic), ‘Final Report: G20 Protests’ (2007), 20.

<sup>172</sup> Participant ‘Olivia, 48’.

<sup>173</sup> James Crafti, ‘Get Them Out and Worry about the Details Later!’ (2012) 37 *Direct Action* <[http://directaction.org.au/issue37/get\\_them\\_out\\_and\\_worry\\_about\\_the\\_details\\_later](http://directaction.org.au/issue37/get_them_out_and_worry_about_the_details_later)>

<sup>174</sup> Occupy Melbourne, ‘Missing Property from Eviction’ (Media release, uncategorised, 22 October 2011) <<http://occupymelbourne.org/2011/10/22/missing-property-from-eviction>>

<sup>175</sup> *Activities Local Law 2009* (Melbourne City Council ) part 14.

<sup>176</sup> *Activities Local Law 2009* (Melbourne City Council) regulations 14.21–14.24.

<sup>177</sup> Victoria Police Manual, ‘Property Management’, 4.

<sup>178</sup> As one participant said; ‘I lost all faith I had previously had in the police force, and what I viewed as their role in being an organisation that was meant to protect innocent people against harm’ – Emily.

<sup>179</sup> André Dao, '#OccupyMelbourne, An Eyewitness Account of Overwhelming Police Force', *The Conversation*, 25 October 2011 <<http://theconversation.edu.au/occupymelbourne-an-eyewitness-account-of-overwhelming-police-force-3985>>.

<sup>180</sup> An Tien Hsieh and Shu-Hui Hsieh, ‘Dangerous Work and Name Disclosure’ (2010) 38 *Journal of Criminal Justice* 417.

<sup>181</sup> W. Heck, ‘Police who Snitch: Deviant Actors in a Secret Society’ (1992) 13 *Deviant Behavior* 253.

<sup>182</sup> André Dao, '#OccupyMelbourne, An Eyewitness Account of Overwhelming Police Force', *The Conversation*, 25 October 2011 <<http://theconversation.edu.au/occupymelbourne-an-eyewitness-account-of-overwhelming-police-force-3985>>

<sup>183</sup> L. Festinger, A Pepitone and B Newcomb, ‘Some Consequences of Deindividuation in a Group’ (1952) 47 *Journal of Abnormal and Social Psychology* 382, 386.

<sup>184</sup> Fitzroy Legal Service’s ‘Activist Rights’ website further describes the role of legal observers: ‘Legal or human rights observers act as an independent third party, observing police behaviour in order to keep police accountable for their actions. Legal observers can write incident reports describing police violence and misbehaviour and compile reports after the event. As observers, they are more removed and thus better able to objectively and independently describe events’ <<http://www.activistrights.org.au/handbook/ch03s02s07.php>>.

<sup>185</sup> *Police Regulation Act 1958* (Vic) section 17.

<sup>186</sup> *Slaveski v Victoria* [2010] VSC 441 (1 October 2010) [206]–[208].

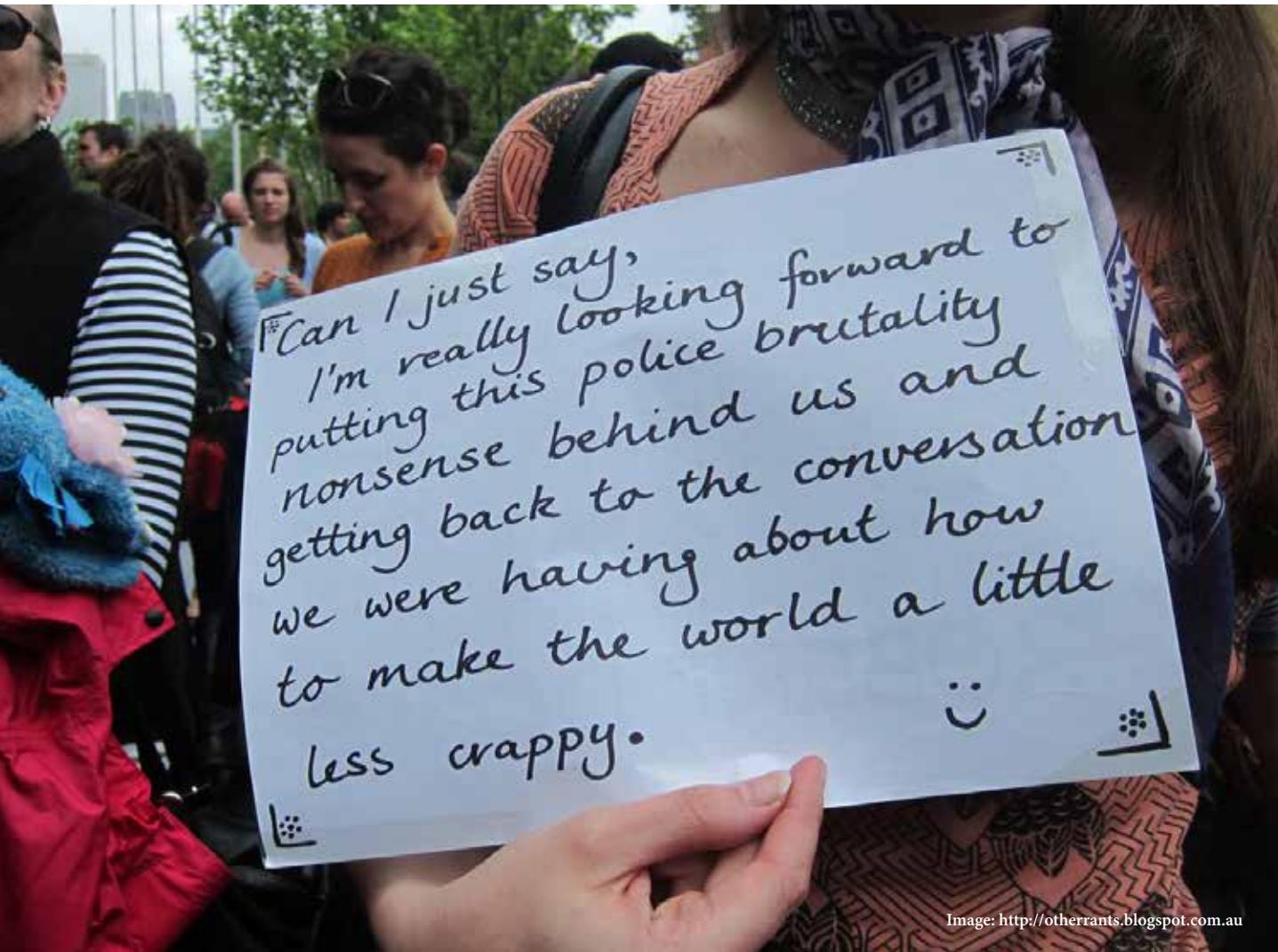


Image: <http://otherrants.blogspot.com.au>

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