

The policing of Beeliar protests



A Report investigating community attitudes and experience of policing during protests against Roe 8 from December 2016 – March 2017

"As a Coolbellup resident, I feel like my relation to the police has fundamentally changed. While police were lining our streets to allow bulldozers to destroy our urban bush there was a distinct lack of engagement with locals and their concerns."

By CounterAct & Beeliar Legal Support
May 2017

THE POLICING OF BEELIAR – A report examining the patterns of policing and issues during protests against the Roe 8 project.

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ACKNOWLEDGEMENT OF COUNTRY

This report was written on Whadjuk country, Nyoongar boodja and we pay our respects to the traditional custodians of this land, and to all traditional custodians standing up for country. We are grateful to the leadership demonstrated by traditional custodian over three decades of this long-standing campaign and we also note that Aboriginal people are broadly subject to discriminatory and racialised policing, and this was evident during the period that this report covers.

SUMMARY

This report examines the policing of Roe 8 protests that occurred over a three-month period, from early December 2016 to mid-March 2017. The protest/s, which took place near Coolbellup, Perth, were related to the construction of the 'Perth Freight Link' and the 'Build Roe 8 Project'.

The incidents, as documented by a Legal Observer team and citizen media, have been compiled to highlight a pattern of unreasonable and arguably unlawful use of force, and demonstrate patterns of policing that appear to target community activists in a punitive manner. Both sources reported elevated levels of distress and fear in response to escalating policing practices and the constriction of space to express political dissent, limits to freedom of assembly and an increase in physical injury by police. Specific issues included:

- Over policing – the use of public order teams, horse-mounted police in confined spaces, large numbers of deployed police officers.
- Misrepresentation – police not being open and honest with protesters or Legal Observers about procedures, protester rights, and police responsibilities; police intentionally hiding or covering their names, and police restricting Legal Observers access to arrested activists.
- Violence – the use of OC or 'capsicum/pepper' spray against protesters, inappropriate and abusive comments to activists and Legal Observers, excessive use of force to move activists or restrain activists, use of horses in a manner that endangered protesters, use of dogs for intimidation, and threats to use tasers on peaceful community members.

A community survey has further shown deep levels of distress and mistrust related to the policing of the Beeliar protests, and we believe these findings will need to be addressed for police to regain the trust of the community in the Coolbellup, Fremantle and extended regions. A summary is at [Appendix 1](#), and the full report is [available online](#)¹.

The extent and the seriousness of this series of reported experiences are symptomatic of a widespread problem with policing of community protest in Western Australia. While this report highlights a range of incidents that need to be reviewed, this must be viewed in a broader political/legal context. The overall culture of policing that allows, and can implicitly support, these behaviours is the greater issue.

An entire community with mainstream and widely held concerns was essentially criminalised, and treated as hostile, whilst a heavy police presence, dogs and razor wire guarded the machines that were overseeing the politically motivated destruction of local bushland and wetlands.

We are calling for a thorough investigation, into the broader issues, as well as individual breaches recorded. We would like to see reform to the management of police complaints, as well as various policy and procedural changes to reframe how police interact with non-violent community protest.

Recommendation 1:

As a result of these findings, we are calling for an independent inquiry to be established with the active participation of civil society representatives, that interrogates and determines:

¹ <http://counteract.org.au/revealed-community-survey-policing-beeliar/>

- Decision-making related to the culture of policing and level of force used during the protest/s, including the use of move on notices, directives regarding use of force and deployment of animals and less lethal weapons.
- Accountability and disciplinary processes for individual officers who are the subject of complaints regarding unnecessary, unreasonable or disproportionate force, and for complainants to be advised of clear outcomes.
- Policy and procedural reforms around the policing of peaceful community protest as per individual recommendations.

Recommendation 2:

We also reiterate calls made by the community legal sector nationwide for an independent police complaints mechanism in each State, and note the ongoing concerns shared interstate with the current deeply inadequate complaints process which still sees police investigating police, and very rarely finding in favour of complainants. We would support similar recommendations for Western Australia as are outlined in this Policy Briefing Paper from Victoria, *Independent Investigation into Complaints Against Police*.²

A community survey ([Appendix 1](#)) has further shown deep levels of distress and mistrust related to the policing of the Beeliar protests, and we believe these concerns will need to be addressed for police to regain the trust of the community.

Recommendation 3:

- Legislation is amended to mandate that police wear badges, and are required to identify themselves on request, with sanctions introduced if they do not comply.
- Internal procedures and/or physical capacity to ensure that badges can be easily moved from shirts to other vests, and additional badges supplied so they can be worn on both. Or badges to be permanently affixed to each uniform piece.

Recommendation 4:

- Investigation into why dogs were not muzzled according to police protocol (12/1/17 and subsequent incidents) given there was no threat of bodily harm.
- Dogs not to be deployed during non-violent crowd control; or at least to remain muzzled as per protocol.

Recommendation 5:

- Current policy should be amended to specifically state that tasers are not to be used for compliance purposes.
- Tasers should not be used, nor be threatened to be used, in non-violent community protest situations.
- Police officers should be further trained in non-violent, de-escalation techniques.
- Threats to use tasers (threatening assault) should be investigated and the officers sanctioned.

Recommendation 6:

- Police involved in deployment of pepper spray (#170216) to be sanctioned for inappropriate use of force, and receive training regarding appropriate deployment of OC spray and de-escalation skills.
- OC spray should not be deployed in non-violent community protest situations.

Recommendation 7:

- Police to be educated about the appropriate deployment of handcuffs and use of force.
- Report of use of handcuffs during the campaign period, and justifications for use.

² http://www.policeaccountability.org.au/wp-content/uploads/2015/11/CLCpaper_final.pdf

Recommendation 8:

- There should be a review of section 27 of the *Criminal Investigation Act 2006* to formulate appropriate amendments to the section to ensure that move-on notices are not used to prevent picketing and protests, and are not used in a way that unnecessarily impacts on indigenous people.

Recommendation 9:

- Investigation into cases when people were kept in custody overnight.
- Investigation into strip search (Ref: 170206) and unlawful arrest.

Recommendation 10:

- Earthmoving and construction work should cease on sites where protesters are attached to machines, or trees.
- Police to be educated about OHS guidelines in relation to contractors they are working with.
- Clear points of contact/liasion officers should be established on work sites to communicate with protesters.

Recommendation 11:

- Liaison points established between police and Aboriginal custodians where requested.
- Cultural awareness training to be increased within the police force.
- Further dialogue between police and Aboriginal representatives as appropriate.

All recommendations are supported by Rethink the Link, the Beeliar Legal Support team, Wetland Defenders, Flemington Kensington Community Legal Centre, Conservation Council (WA), Friends of the Earth (Australia), Australian Nonviolence Projects and the National Police Accountability Project.

INTRODUCTION

Ultimately at stake is the civilian right to protest. The proposed road projects have been contested in their various forms for more than thirty years, and have involved a wide coalition of civil society groups, local governments, political parties, Save Beeliar Wetlands, Rethink the Link, and Nyoongar traditional custodians.

Concerns were widespread and included issues with the flawed business case, the economics of the project³, the lack of due process and transparency, or government adherence to their own policy and laws, as well as concerns regarding the destruction of sensitive ecosystems, wetlands, community amenity and Aboriginal sacred sites. Further detail of the project background is available in [Appendix 2](#).

Numerous interventions were attempted over many years, from wide scale public awareness raising, petitions, marches, rallies and concerts, to significant legal challenges proceeding through Supreme Court (Court of Appeal) and Federal Court, a Senate inquiry, and attempts to raise heritage and Aboriginal site concerns at State and Federal levels. All other avenues of response thus being exhausted, and in the context of the current legislation and government policy failing to address environmental and cultural concerns, the local community were left with no other option than non-violent protest in an attempt to delay the destruction until the 2017 state election.

It is widely acknowledged that the clearing work was accelerated in late 2016 by the then Liberal government for political reasons, despite the Main Roads Department providing recommendations for less destructive and damaging alternatives.

Mr McGowan attacked the former Barnett government after a leaked briefing memo showed it could have started the Roe 8 construction more cheaply and without causing as much damage to the environmentally sensitive wetlands. "They [the former Liberal-National government] decided to go for

³ <https://www.themonthly.com.au/issue/2017/march/1488421058/david-whish-wilson/perth-freight-link-stranger-fiction>

the harshest, meanest, nastiest and most expensive option," Premier Mark McGowan said. "They should be condemned for this."⁴

The demographics of the people attending the protest were genuinely diverse. Concerned citizens came from across the metropolitan area and involved people from many professions, including academics, accountants, trades people, doctors, lawyers, as well as diverse age demographics, and many local families. (A survey that outlines demographic data and experiences of arrest and policing is at [Appendix 1](#))

Despite the mainstream nature of the participants, the community was regularly misrepresented in the mainstream media by Premier Colin Barnett and other Ministers. This is consistent with patterns of vilification of Human Rights Defenders noted by the Special Rapporteur for Human Rights Defenders, who, in a visit to Australia last year, "...called on government officials and politicians to refrain from calling environmentalists "eco-criminals, traitors and green radicals"⁵

The non-violent defence of the wetlands by protesters has been vindicated since the election of the ALP government who ceased work on the project on the day they took office. Furthermore, high profile lawyer, John Hammond has argued that the charges applied to protesters should be dropped as they are not in the public interest:

Now that Roe 8 is not proceeding, I don't see that it would be in the public interest for those charges to proceed. I really think it is time now for the new government and the WA Police to say "look, Roe 8 is over, this is something in the past, and the charges against the various protesters should be dropped".⁶



Fremantle councillor, Samuel Wainwright, who was arrested during the protests said, "I am actually more concerned about the laws that were potentially broken by the individuals and government agencies in this great big effort to try and get as much clearing done as part of an election stunt basically".

There has been broad speculation in the community as to whether there was a political directive to the WA Police to 'go in hard' as the police response was disproportionate and harsh. Large numbers of police were deployed from early stages, and there was very little discretion demonstrated from the beginning of the civil disobedience phase of the campaign. This was demonstrated by the sheer size and scale of the police response, as well as early trespass charges for people walking on the site – when typically, warnings would be given, and discretion applied.

Distress was experienced by the community in relation to not only the environmental and cultural damage, and loss of amenity, but also the way in which the project was policed. We believe it is imperative that these concerns are taken seriously, and in the future no community should ever again be subject to this level of over-policing and systemic aggression.

It is vital to note that Nyoongar and other Aboriginal people who participated in these protest actions consistently experience different standards of policing in their everyday lives, and that numerous survey

⁴ <http://www.afr.com/news/policy/wa-labor-premier-mark-mcgowan-moves-to-kill-off-roe-8-highway-20170330-gv9t91>

⁵ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E>

⁶ <http://www.watoday.com.au/wa-news/wa-election-2017/wa-state-election-roe-8-protester-charges-may-be-dropped-after-labor-win-20170312-guwc4d.html>

respondents, and protest participants shared sentiments similar to “now we understand more what Aboriginal people go through”.

ABOUT US

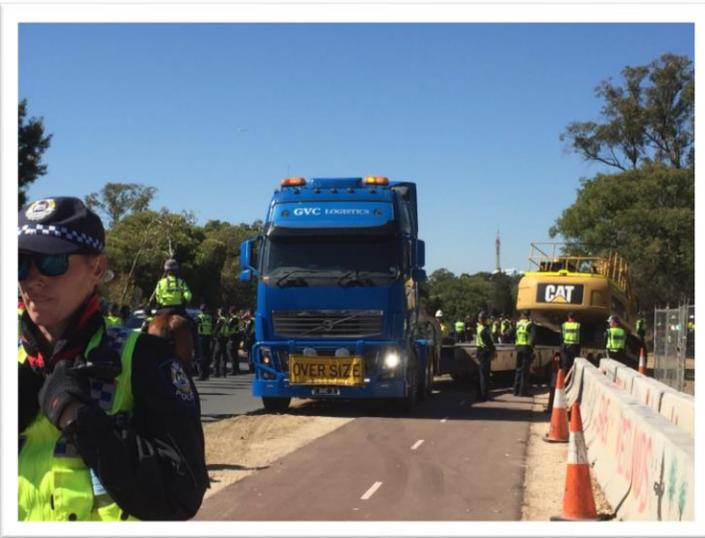
The Legal Support Team that provided assistance during the campaign included lawyers, law students, civil society representatives, and community members from a range of occupations acting as citizen Legal Observers. Legal Observers and Police Liaison were on the ground for many of the mass actions, identified variously in bright pink, or orange high visibility vests.

The Legal Support Team supported the community activists to defend their own civil and political rights through the provision of Legal Observer training, ‘Know Your Rights’ training, free resources and up-to-date information on the rights to protest in the State of Western Australia, education about dealing with Court processes, and referral to lawyers for pro bono advice and representation for criminal charges. Twenty-three lawyers assisted protesters on a pro bono basis. Police Liaison representatives negotiated and advocated for the interests of the protesters, while the Legal Observers played a documentary role. Both roles involved the tracking and monitoring of arrests.

This report was completed by the Legal Observers team with legal advice.

ABOUT THE POLICE

During the campaign, there was a consistently large police presence. Officers were deployed from across the metropolitan area, from Rockingham to Joondalup. Most days the police force numbers were up to 100 officers, and there were estimates of more than 120 police officers on occasion. On a number of days, they significantly outnumbered protesters. As well as regular police, there was also the Regional Operations Group, which provides WAPOL “with a specialist public order capability”.



as were specialist teams for the removal of equipment from machines. Undercover detectives and intelligence gathering officers were also evident.

A report published on 11 April 2017 revealed that the policing presence cost taxpayers \$1.5 million and averaged 100 officers per day.⁷

SOURCE MATERIAL

Source material includes both video and written witness statements and notes gathered by Legal Observers over January-March 2017, as well as witness statements gathered after incidents (that occurred prior to the commencement of organised legal observation) Video has also been

sourced from numerous witnesses, some of which has been publicly available, and some which will be public for the first time.

Names of individual officers (where we were able to obtain them), have been redacted in some instances and pseudonyms used for protesters.

⁷ <http://iview.abc.net.au/programs/abc-news-wa/NN1708W086S00#playing>

ONE DAY – TIMELINE OF MASS ACTION – 12th January 2017

This timeline was prepared by the Legal Observer team on site on the day of one of the largest protest actions. In this timeline, and throughout the document, pseudonyms have been used, and some identifying particulars removed. Some of these times are estimations.

Police numbers were difficult to accurately track because there were several access points and Legal Observers were denied site entry. This timeline tracks only some arrivals. It is estimated that over 120 police would have been deployed over the day.

Malvolio Rd Coolbellup

5.15 am Protesters are starting to arrive at the park, adjacent, Malvolio Rd. Two police vans arrive and Legal Observers can see two police officers inside the perimeter fence along Malvolio Rd.

5.55 am Two more police vehicles arrive with four police officers.

6.00 am There are now 5 police vehicles parked along Malvolio Rd.

6.00 am Police officer assists the two women who are locked on to the bulldozer in the inner compound by taking in a cushion and rug. There is a security dog guarding the inner compound near to one of the women locked on.

6.10 am A crowd of approximately 100 protesters has built up by this time. A spokesperson announces that there are women locked on to the bulldozer and that there is a woman in a tree. Protesters line up along the perimeter fence along Malvolio Drive. A spokesperson makes a speech about conducting a peaceful protest.

6.20 am The number of protesters is steadily increasing to approximately 200. Legal Observers can see 18 police officers inside the perimeter fence and more arriving.

6.30 am Legal Observers can now see 26 police inside the perimeter. The number of protesters has increased to about 500. The protesters are peaceful; some are singing. A spokesperson addresses the group speaking about non-violent action and arrest situations and asks if the protesters want to join the lock-on's inside the fenced area. There is lots of support for this suggestion.

6.45 am There is more singing and the crowd increases to about 1000 people.

6.52 am Two mounted police officers arrive inside the perimeter from the Eastern End. The fences are pushed down by protesters. Protesters stream inside the downed perimeter fence. They surround the inner compound.

6.55 am Police and mounted police make a line around the fence of the bulldozer compound. Legal Observers can see two mounted police officers on horseback. Protesters start to sit around compound perimeter.

7.00 am Alice arrested by PC No [redacted] who treats her well. Peter is behind Alice on the ground, handcuffed with two PCs. The cuffs are later removed. Police assist him to search for something he lost in the bush. Object found. He comes out of perimeter, and is given a move-on notice.



7.20 am Pauline speaks to the crowd inside the restricted area and asks them to sit down, trying to calm them. She tells police officers that she is a community liaison person and would like to speak to a senior officer. An officer approaches Pauline and invites her to walk away from the crowd, saying that the officer in charge can speak to her now. After walking away with the police officer, Pauline is arrested.

7.40 am Legal Observers see six police officers move purposefully towards northern side of compound. They confiscate a megaphone belonging to a woman. The reason given was 'inciting violence'. Legal Observers had not witnessed any incitement to violence. Police tell woman she will be phoned when the item is ready to be returned. No arrest.

8 am A woman tells Legal Observers that she has been stood on by a police horse earlier in the morning. She receives medical treatment to her foot.

8.05 am Legal Observers see two mounted police officers pushing people towards fence line. One police officer asks people to move back.

8.15 am Woman who was locked on is freed. Police increase numbers along western end of compound.

8:20 am Four police cars arrive with dogs. They are parked on the opposite side of Malvolio Rd east of the park.

8.24 am Second woman who was locked on is freed.

8.41 am Police on megaphone tell protesters to leave the area and move back behind the fence line at Malvolio Rd within 15 minutes. Police assemble in a U formation around the compound.

8.45 am Police officers move into the bush with two dogs.

8.54 to 9.15 am Many of the protesters start leaving the fenced area. Observers see at least two mounted police officers at eastern end of bulldozer compound move towards the west, one police officer yelling at people to leave. There are at least six police officers on foot at the east end of bulldozer compound. Three protesters are on a mound at the eastern end. The police dogs are barking. People move to join the three on the mound. The mounted police officer coming from the eastern end pushes the crowd towards the west. The mounted police officer yells "Move". Another mounted police officer comes to the same area. At least one of the horses makes contact with people. The police officer yells again "Move on". A TV cameraman is part of the crowd of people being pushed. Everyone is being pushed to the opening in the fence opposite the park.

The mounted police officer keeps yelling "Move", "Keep moving", "Move back". Police officers grab a woman. Two police officers on foot move slowly in front of the two horses as they form a wedge to push the crowd. People are pushed into bushes and against trees. One woman is injured with severe bruising and a suspected broken rib by being pushed against people and a tree as a result of horses moving towards the group. Observers see at least four mounted police officers around the dozer compound. The TV cameraman is standing on the fence line. Four police officers approach the cameraman. Two police officers escort a woman who is visually impaired out from the fenced area.

There are more shouts of "Move" from a mounted police officer. There are six mounted officers along the fence line. Police officers are also yelling at people to get back over the fence line and back over the fire break.

9.13 am There is a boy on the ground just at the fence line who has an injured leg. His mother is with him. A doctor comes to attend to the boy. His mother says that the boy was injured by one of the police horses. Police (at least three standing close by) do not offer any assistance to this boy. The police instead tell the doctor treating the boy to move back, although they are not trespassing and there is clear space around them.

9.15 am Police officers stand in formation on the outside of the perimeter fence, along the fence line. Protesters sit approximately 15 metres deep inside fence line. A police officer on a megaphone instructs protesters to move back beyond the fence line. Protesters chant, "Where's the fence?" A police officer tells crowd, "If you don't want to get injured move now".

9.17 am Police officers start picking out people from along the fence line and taking them back into the restricted area. A man wearing a green shirt is pushed to the ground, with four police officers around him.

9.18 am A police officer dressed in grey/black t-shirt and vest pulls a woman who is outside the fence line into the restricted area. A woman with a sign is escorted by police officers from outside the fence line into the restricted area.

9.20 am Two police officers escort a woman with a straw hat to the bulldozer enclosure.

9.21 am A man with a blue hankie on his head is taken by police officers to the bulldozer enclosure.

9.20 am One male protester wearing a striped, black and white hoodie is carried from outside the perimeter into the restricted area by police officers. Inside the perimeter, another man with a long reddish beard and wearing a green t-shirt is handcuffed and carried towards the police vehicles on other side of dozer compound. A female protester is carried by police officers from outside the perimeter into the restricted area. She was unsure if she was being arrested.

9.25 am Five police officers come out from the restricted area and arrest a man who has been playing guitar and singing.

9.30 am Four mounted police officers are in formation facing the crowd of protesters who are along the downed fence. There are an estimated 50 police officers along the inside of the downed fence. An Aboriginal woman speaking out about destruction of cockatoo's habitat is arrested.

Legal Observers are told that Karl and Cisco were just picked out the crowd and arrested. Janice is arrested.

9.47 am Woman arrested. No details.

9.49 Legal Observers see two mounted officers and about 17 other police officers at the main gate. Nine contractors are escorted through the gate into the fenced area by police officers and they start fixing the fence.

10.00 am Dee given a move-on notice.

10.00 am There is a large group of people sitting and standing along the fallen down fence with a line of police officers attempting to push them back off the fence line. One sergeant is talking aggressively to a few middle-aged women who are sitting on the ground. George is arrested when he trips on the fallen down fence. He is grabbed by a number of police officers and thrown to the ground in front of the crowd of protesters with several officers pinning him down. He is then taken roughly by police officers further into the fenced area.

10.00 am Darren is given a move-on notice. He has been talking to the police officers about his native title rights. A police officer says that he has also been saying something to one of the contractors. Police Officer (PO) more concerned with the contractor and his rights than with any other member of the public. PO is very insistent that no one films his discussion with said contractor.

10.25 am Legal Observers see six mounted police officers inside the fenced area and 28 police officers on foot along fence line west of the gate area.

10.28 am Two Nyoongar men are in process of giving details for move-on notices.

10.45 am West of the main gate a woman on a horse rides up with a child behind her who has a helmet on. There are two mounted police officers near her. One mounted police officer asks her to leave. One of the mounted officers looks at the child and says something like "Do you think it's safe to have a child here". The two mounted officers follow the woman on horse as she rides west along Malvolio. She stops and a woman takes the child from the horse. A mounted officer takes the horse rider's details. Female police officer asks a Legal Observer to move. The Legal Observer asks if she can see what is happening to the woman on the horse as an independent Legal Observer. PO says no. She moves her horse so it is a barrier between the Legal Observer and the woman. PO says to the horse rider that she is free to leave. As she rides away the two mounted police officers follow her.

During this incident, a woman is standing next to the horse rider. A police officer on foot walks up to her and asks her to leave. The woman says that she knows her rights and does not have to leave. The police officer grabs her by the shoulders and pushes her a few times but she stands her ground.

11.11 am At the main gate opposite the park Legal Observers see two mounted police officers and six police officers on foot. About 30 people are at the fence line watching. The bulldozer is moving, pushing over a tree. Two mounted police officers arrive. Two more mounted police are just east of the area where there is still no fence up. There are police dogs inside the fenced area.

11.13 am Another police vehicle arrives. There are four mounted police in front of the gate at the park. Protesters are pushing on the fence.

11.15 am PO with dog comes through some bush area towards the cleared area in front of the gate. On the way, he pulls the muzzle off the dog, throws it into a bush and comes to the gate area, towards the fence. This PO aggressively thrusts the dog at the fence and orders people away from the fence.

11.30 am Seventeen police officers are having a break at the western end of Malvolio Cres near Coolbellup Ave. There are eight police vans parked near them.

11.35 am The 17 police officers finish their break, form into two lines with their leader, and march east along Malvolio Ave.

12:00pm Most people have gone. Heavy police presence still evident. Police officers are stationed along the fenced area along Malvolio Rd, Coolbellup Avenue and Forrest Rd standing approximately ten metres apart. Bulldozer active with the sound of smashing trees and the air thick with dust.

Forrest Rd - Jayne in the tree

11.40 am There is a break in the fence along Forrest Rd just west of where the housing estate starts. Four officers in unmarked beige uniforms go into the fenced area. There are four police officers in uniform inside the restricted area along the fence line, which is down. A Legal Observer asks one of the police officers if 2 Legal Observers could go inside the restricted area and observe the woman in the tree. He says that he did not think his OIC would agree but we could ask him ourselves. The Legal Observer asks where Sergeant OIC is and the officer says Sergeant OIC is inside with the woman but will be coming out soon. There are a few other people waiting by the roadside.

11.47 am Ten fencing contractors come to put the temporary fencing back up. Police Officer says to the Legal Observer that he asked Sergeant OIC who said that the Legal Observers could not go inside. The fence is now up.

12.20 am Two police vehicles arrive, the second one a plain police van. Five police officers go inside fence line. Two mounted police officers arrive. A handful more people have arrived to see what is happening with the woman in the tree.

12.26 am Ambulance arrives and two more police vans. Ambulance officer says to people who are asking him questions that he is not here "as a precaution". Two ambulance officers go inside the fenced area then come out.

12.41 am Three more police officers arrive.

12.49 am Another police vehicle arrives with two police officers.

12.52 am A police van leaves. There are now two police vehicles in area and the ambulance. Another six police officers arrive on foot and stand along fence line. There are approximately 20 people waiting outside the fenced area.

1.03 am Jayne comes through the fence accompanied by four police officers. She is smiling and seems to be walking OK. Four police officers stand outside the ambulance while Jayne goes into ambulance with ambulance officers. A number of people are waiting for her and sing and cheer.

1.12 am An ambulance officer comes out of the ambulance and talks to the police officers waiting outside the ambulance for a while.

1.24 am Jayne is taken to the police van to be taken to police station.

Community rights

In their dealings with the Western Australia Police, members of the community have a right to:

- Be treated honestly and openly
- Be treated fairly and with respect
- Request that police officers identify themselves
- Communicate or attempt to communicate with a friend, relative or legal practitioner if they are detained in custody
- Be cautioned prior to being formally questioned as an offender
- Be fully informed of all charges preferred
- Only be detained for as long as is lawfully necessary
- Have their safety and welfare needs met where detained, including the right to necessary medical attention
- Have their concerns acknowledged and responded to in a professional manner.

FIGURE 1 - EXCERPT FROM WA POLICE WEBSITE, COMMUNITY RIGHTS

REFUSAL TO IDENTIFY OR WEAR NAME BADGES

There was very inconsistent response from police regarding requests to confirm their identification. It was common to observe police failing to show their badge name and number. There were mixed responses given when this information was requested, and it was sometimes refused.

I saw police not wearing identification numbers and saying they had left them at home when asked for them. ~ Survey respondent

This is a clear breach of the community rights listed above, and does little to instil trust in the police. There have been longstanding community concerns with this practice during assemblies and protests. In a report following the World Economic Forum protests in 2000, the Victorian Ombudsman stated:

The failure of a significant number of police to wear name tags is of concern. Although it is not a breach of the law but merely a breach of police instructions, it raises some serious issues of accountability and discipline. There is no evidence that the widespread failure to display identity was sanctioned or condoned by senior police. Indeed, the available evidence suggests that when senior police became aware of the issue attempts were made to do something about it. It is clear, however, that the removal of nametags could not have gone unnoticed by the officers and sub-officers supervising police at the barricades. It seems to me that the most disturbing aspect of this issue is that it demonstrates a wilful and apparently widespread disregard for a clear instruction. This should be a matter of serious concern for Police Command if it is concerned to maintain a disciplined and professional Force.⁸

Recommendation 3

- Legislation is amended to mandate that police wear badges, and are required to identify themselves on request, with sanctions introduced if they do not comply.

⁸ <https://www.ombudsman.vic.gov.au/getattachment/b96e14fd-2629-4f53-b8ca-a68e6187911e>

- Internal procedures and/or physical capacity to ensure that badges can be easily moved from shirts to other vests, and additional badges supplied so they can be worn on both. Or badges to be permanently affixed to each uniform piece.



USE OF EXCESSIVE FORCE - BREACHES OF POLICE PROCEDURE REGARDING USE OF FORCE

Any use of force must be reasonably necessary in the circumstances and members will be individually accountable for such force. – COPS Manual

Over the documented period December 2016 to March 2017 there was a level of force used by police officers which was unnecessary, and disproportionate to the requirements of community policing of a peaceful protest.

The Legal Observer team documented numerous instances that arguably demonstrate excessive force by police officers, which took place while maintaining the perimeter fencing, attempting general crowd control and during arrest.

There were documented incidents of:

- Excessive force (Ref FR01.01 Use of Force, COPS manual)
 - Use of force where none is needed
 - Using more force than was needed
 - Using force or a greater level of force after the necessity for it has ended
- Use of handcuffs where circumstances did not require them
- Use of unmuzzled dogs
- Use of and threats to use pepper spray
- Threats to use tasers
- Assaults during arrest and while in custody

Certainly, a number of these individual incidents require investigation, However, there is an even greater concern that the cumulative impact of the sizeable number of documented breaches of force, demonstrates a systemic pattern of unlawful use of force, and over-policing.

The manner in which police deploy force must be proportional, and done in a manner consistent with both police procedures, international and local laws. Disproportionate or unnecessary use of force may constitute a violation of these provisions.

Not only is Australia a signatory to the **International Covenant on Civil and Political Rights, 1976**, but is also bound to International standards. Two important international documents set guidelines around the police use of force. These are:

- The Code of Conduct for Law Enforcement Officials; and

- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁹

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”.

It also stipulates that the use of force should be used as a last resort. Under the Code, police may use force only “when strictly necessary and to the extent required for the performance of their duty”.

Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 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, 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”.

USE OF EXCESSIVE FORCE

There were numerous incidents documented over the campaign, including:

Incident #170130

A young man was outside the perimeter fence on 30/1/17. A number of witnesses saw him grabbed roughly whilst on public land (not trespassing) INSERT VIDEO

I was watching people who were locking on and walked along the fence line to where a part of the fence had fallen over. Some people had been tackled by the police and I moved toward them to check that they were okay. I leaned on the fence a little but it did not move. I began taking photos of people who were holding placards and chanting "No Roe 8". The Sergeant arrested me after grabbing and pushing me inside the fence. I shouted, "I have committed no crime you cannot arrest me". ~ Kyle

They were yanking him over the fence line for no apparent reason. They were incredibly rough, and people were yelling at them to stop. Then they slammed him into the ground and pinned him down with knees in the back. As far as I could see he hadn't even touched the fence, as it was already down. ~ Barry

He was then slammed to the ground on the inside of the fence-line. There was no indication that he had committed any offence. ~ Wendy

Incident #170112-1

Witnesses state that George was standing on the verge, outside but near the fallen fence. He tripped on the fence and fell on top of it. A police officer roughly dragged him off the fence and into the prohibited area where police assaulted him while he was lying on the ground. An officer then arrested him and strong-armed him into the woodland. Witnesses were shocked by the violence of an unprovoked attack on an Aboriginal man who was dragged into the prohibited area by police. ~ Legal Observer incident report. Four witnesses named. 12/1/17

I was sitting just off the fallen fence along with many other people. George was still standing on the fence and a police officer told him to get off it. He looked around at the sea of people many of whom were sitting on the ground and asked the officer where he was supposed to stand because there wasn't any room left.

The officer insisted that he get off the fence and I saw George stumble slightly on the uneven fence. In the next moment George was approximately six metres from where he had been standing being

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

pushed onto the ground by three police officers.

George was due for an operation that afternoon and I do not believe he was capable of travelling the distance to where the police pushed him onto the ground unaided. I believe he stumbled and the police officer pulled him to a clear spot where he was pushed onto the ground and held there by three officers while he was handcuffed. George appeared to be fairly frail and was presenting no threat to police. Neither had I seen him show any indication that he intended to go back into the fenced area. I believe he was targeted because he is Aboriginal and that it was excessive for three officers to hold him immobile on the ground.” – Witness 1

[This video](#) demonstrates the officers on top of *George.

Incident #170112-2

The following incident was widely reported on local TV news. A male protester near the internal compound fence line was tackled to the ground by police, and then police officers pushed his head into the ground, while he was restrained by three officers. The protester calls out in pain, and people watching call out to police to stop using excessive force.

This appears to be an example of using more force than is necessary, for a longer duration than necessary.¹⁰

We have also included other examples of excessive force in the section below and elsewhere.

DUTY OF CARE AND CUSTODY

You must try to ensure that persons in custody or care are prevented from suffering illness, injury or death and be alert to your duty of care as a result of your actions. Any use of force must be lawful and proportionate to any threat.

You are also required to take reasonable care of your own health and safety while on duty, and avoid endangering the health and safety of others through any act or omission. ~ WA Police Manual 2010

Case law holds that when a person gains the impression that should they wish to leave, they will be prevented, then they are in custody. ~ Police Operational Manual – use of force

Community members will often use tactics to delay work by physically attaching themselves to machinery such as bulldozers or other earth moving or support vehicles, as well as trees, or even barrels or concrete buried in the ground. This is achieved variously by locking their thumbs or wrists into pipes attached to the machinery or concrete. This renders them vulnerable and unable to use their hands

It was common for police officers to form a group surrounding activists who had locked on to machinery, preventing people from coming close to the activist locked on, and preventing the activist from leaving without arrest. Having taken control of the vicinity in this way, the police should extend to the activist the same rights due to people held in custody, despite the fact that they are not yet formally arrested.

It has been a longstanding protocol during peaceful protest around the country where community members have negotiated for someone to remain with the person ‘locked on’ as a buddy. Their role is to facilitate care, and ensure they can eat, drink, and discreetly toilet if required. During this campaign, the police refused to allow buddies and so in many instances, people, including numerous minors, were left with police who were arbitrary in their treatment – often not allowing access to toilet or water.

Standard protocol in response to lock-ons includes the involvement of a secondary unit of police – often referred to as search and rescue. These are police that are specifically trained to remove people from life threatening and high-risk situations, and who generally have a reputation of being professional in their dealings with protesters.

¹⁰ <http://www.abc.net.au/news/2017-01-12/roe-8-protest-premier-backs-trespass-charges/8177580>

During this campaign, however, the police departed from protocol and despite significant resources at hand, regular rank and file police officers— untrained in appropriate removal techniques— were used to try and remove people from equipment.

At least 20 people were removed from “thumb locks” by simply pouring detergent into the locks, and using physical force to pull people from devices. This was an unsafe practice that caused pain and distress, and resulted in bruises, cuts and swelling. In some instances, people’s thumbs swelled up in such a way that made it impossible to remove the devices without cutting through them. Several people were sent home from custody still attached to equipment.

There have been numerous instances documented where people were denied food, water, assistance or privacy to toilet.

In many cases police did not arrest the person until they had been removed by the specialist team. However, they often gathered details such as name and address, and asked to confirm and sight identification prior to people being removed. Activists have speculated that they were not formally arrested so the police did not have a duty of care.

Our argument is that for all intents and purposes, these people were not able to leave and were in custody, and as such, should be treated with the respect and duty of care that entails.

This would include respecting basic human rights such as access to food, water, medication, and ability to toilet in a discreet manner, despite their physical circumstance.

Incident #170117 – Legal Observer report

A young man was resident in a ‘tree sit’ for ten days, more than 20 metres from the ground in a pine tree. He has described being refused access to food, and water numerous times.

In one incident, he was stung more than ten times by bees as a nest was disturbed during clearing. The tree that the bees were in was just a few metres from his tree and had been cleared by bulldozers. Being concerned for his welfare, his ground support team called an ambulance. The ambulance officers attended the site; however, ambulance officers found it difficult to assess, and police did not allow protesters to pass on anti-histamines or other medical care. Photos and evidence demonstrated significant swelling, so extreme as to obscure his vision. When he came down to check on supplies he was tackled heavily by a security guard and pinned down until police came to arrest him.

Another protester was arrested for trespass simply for trying to get food and water to him.



SWELLING AROUND EYES DUE TO BEE STINGS

He remained in the tree for another several days.

Incident #170209, Legal Observer incident log
On 9 February 2017, I was acting as Legal Observer at the Roe 8 protests. I arrived just after 9 am at the Wetlands Education Centre and went to Bibra Drive with another Legal Observer. We walked along the south side of the fence line from Bibra Drive towards the west. Just past the area that was being cleared by the bulldozer in an area with trees and bush there was a woman named Freya sitting in a tree.

At about 10.30 am I walked along the fence line towards the east with Danny and Gina's mother, whose name I don't know, back to the area adjacent to Bibra Drive where the bulldozer was clearing. Sergeant 8131 was near the fence, perhaps one hundred metres from Bibra Drive. Gina's mother called out to him and he came over to the fence. Gina's mother said something like "Can we organise to get food and water to Freya?" Sergeant 8131 said something like "No, that can't happen. You can tell Freya that she can come down from that tree as they won't be clearing in that area. She can find somewhere else to go".

Incident #170216-2

I was locked to a tree. The police quickly decided to cut my tree down little by little above my head. I had a sheet-like blanket thrown over my head and a chainsaw was used to cut the tree above my head. This was a very scary experience as I could not see and was held down by the police men around me. Pieces of wood hit me and I could hear the whirring chainsaw as well as voices. Eventually the blanket was removed and I was picked up and over the remainder of the tree by my lower legs and then dropped from quite a height to the ground. This was painful as my legs were weak from standing and I still held the added weight of my lock on device. ~ Ashleigh

On the morning of 16/2/17 I arrived at Sebastian Cres at around 6.30 am. I saw some parked police cars and parked nearby. There were no other witnesses. At the Roe 8 fence line I could see two girls locked on to a tree and then further down I saw Ashleigh. They covered her head with a blanket and proceeded to chop the tree down from above her... By the time I got to the police wagon Ashleigh was stepping into the police wagon. A lady (Nina) was standing there being talked to by a policeman. She looked visibly upset. The police officer had confiscated her phone. He said it was due to her having evidence of a crime on it. My understanding is that Nina had been walking/cycling up Sebastian Cres and saw Ashleigh being placed into the police wagon. As there were no other witnesses (I was still at the fence line and she didn't know I was there) she asked Ashleigh her name and took photos of her to try and ascertain who she was and who needed to be contacted on her behalf. Ashleigh didn't respond as the police had told her not to speak. Ashleigh said the police told Nina she was not allowed to ask Ashleigh questions or take photos while they were arresting her. Nina was trying to calmly ask [redacted] why he took her phone. He just kept repeating that it had evidence of a crime. I am assuming the reference was to the crime of trespassing by Ashleigh but the photos taken were only of Ashleigh being placed into the wagon - well away from the fence line. When I got my phone out to check the time he asked me if I wanted him to take my phone too. I said "No". He told me that if I used my phone he would confiscate it too. He wouldn't listen or discuss anything with us he just kept saying the same thing. His manner was aggressive and bullying. I felt very intimidated by him. ~ Kate

Additional observations – during February it appeared that the police numbers reduced, and this seemed to coincide with a lack of discipline and more rough handling than had been experienced prior. For example, on the 16th of February 2017, one woman was pepper sprayed, others were threatened, one woman experienced pain after being manhandled with her lock on device, as well as having tree limbs sawn off with a chainsaw fall on her head, several minors experienced rough handling whilst attached to 'barrel lock ons' and a phone was unlawfully confiscated.

Incident #170123

Two women were locked to the gate of WA Limestone (a contractor supplying bulldozers to the project), and police did not intervene when the supervisor behaved in a way that could injure the women. Sergeant 10972 did not step in to stop an irate supervisor at WA limestone from shaking Krissy and Eleanor's elbow lock. The police liaison representative said to the Supervisor who was shaking the lock on pipe, "No, don't do that, it's going to hurt" and called over Sergeant 10972, who said "He has the right to do what he wants". Police liaison replied, "Actually he doesn't have the right to injure them."

Eleanor and I were both physically, and verbally abused by [WA Limestone employee] and we were verbally abused by many of his staff. We were subjected to very intimidating behaviour and words by

very angry men. Eleanor and I sustained bruises to our arms. After the incident where he assaulted us, Eleanor was visibly shaking and crying.

We would like to file a complaint against Sergeant 10972. We became very worried that a police sergeant gave a worker licence to physically harm us. ~ Krissy

The supervisor is subsequently seen threatening to remove the gate with a forklift. The protesters found it frightening that police did nothing to intervene when they were physically assaulted by a worker, and appeared to condone the worker's action to injure the protesters who were vulnerable as they were immobilised in the lock-on devices.

The police liaison representative is on video concerned at the absence of any duty of care offered by Sergeant 10972.

In a subsequent meeting between the Legal Support Team and the Senior Officer in Charge (8131) he confirmed that, police have a duty of care to people when they are locked on and are effectively in police custody.

[VIDEO OF INCIDENT](#)

Incident #170217

On the 17th February 2017, a man approached a group of protesters with a chainsaw running. The people it was directed at considered him hostile and a direct threat to their safety. The police spoke to him; however, they did not give him a move-on notice. A Legal Observer who spoke to Sergeant 8131 was advised that someone needed to call the police station to put in a complaint. Many people noted that the man who was potentially threatening severe injury was treated in a much gentler manner than peaceful protestors, receiving no formal caution or charges that were evident.

Police appeared to have a different approach in dealing with people hostile to protesters during the campaign in a variety of instances.

[VIDEO OF INCIDENT](#)

USE OF EXCESSIVE FORCE AND THREATS TO REMOVE 'LOCK ONS'

The Legal Support Team and the community were shocked by the unsafe treatment and excessive force applied to some people who had 'locked on' to equipment. Incidents were widespread and included large numbers of verbal threats to injure, people being injured and bruised in the process of removal, as well as a significant departure from standard protocol which saw people pulled with extreme force out of devices, instead of being cut off.

Incident #170130-1

A woman, 34, was locked to a tree using thumb locks and a metal guard which covered the locks. During the campaign, it was a common occurrence during these protests for police officers to not remove these devices with a grinder, as is standard police practice, but to instead use force and detergent to pull hard on the peoples' thumbs to remove them. This caused pain and distress in numerous instances. In this instance, they did not even use detergent or lubricant of any type, and instead tried to remove her hand using brute force.

The reason I had locked onto the tree was that it was a very significant and sacred tree (Xmas tree or Moodja) to the local Nyoongar people. The defenders had been told it would be protected and it had previously been surrounded by white tape – which indicated it should be protected. That morning they had put yellow tape around it (indicating it would be removed) and so I locked myself to it.

Four ROG officers were standing around me including the Senior OIC... They tried to twist the thumb lock device, which caused me pain. One said, "If it comes down to it we are going to have to break your thumbs, or cut the tree." I said, "you can't do either. This tree is supposed to be protected".

They grabbed the thumb lock on the opposite side of the trunk from me, and they pulled me up and over the trunk. My full weight was off the ground and was being held by my thumbs. They were trying

to twist and break it while it held my weight. They pushed it so hard it broke. I was screaming, and crying, yelling at them to stop. I was bawling my eyes out. People observing were shouting for them to stop. They refused to allow me food and water while I was there. I had been standing more than five hours.

They tried one more time. They never used dishwashing detergent. They threatened again to cut the tree and after I got an agreement that they would not, I removed myself and was arrested. ~ Ann

Incident #170130-2

In another instance a 60-year-old woman was lifted up and over a tree branch that she was locked to, while police used a saw to cut the tree branch *while she was still attached*.

Legal Observer report (excerpt):

At 6.45 Police crew returned. ROG officer used detergent to manipulate getting thumbs out. They were gentle at first but got more severe which made Ellen's thumbs swell up and took skin off her thumbs. Ellen started to cry as it hurt so much. Police went away and returned at 6.51 am. They did not explain what they were going to do. They wrapped a blanket around her, put ear muffs on her and safety glasses. They then proceeded to saw off the top of the tree. They then lifted her off and carried her to the paddy wagon."

"I was lifted up by Sergeant 8131 over the tree. Other officers tried to get me off the tree but I started crying and they stopped trying then. I still had my thumb locks on at the station. I managed to get them off at the police station. There were no female police officers. The police officers wrapped me in a blanket with an eye mask on when they cut the top off the tree that I was locked on to. ~ Ellen

POWER TO USE ANIMALS

An officer who uses an animal to assist in exercising a power must take all reasonable measures to ensure the animal does not injure any person. COPS Manual, Use of animals

USE OF DOGS

In a meeting between the Senior Officer in Charge (8131) and the Legal Support Team on 23rd January 2017, Legal Support questioned the use of dogs. The Sergeant advised:

"They are a deterrent. They should be muzzled in this operation."

When the officer was questioned as to why a muzzle was removed from a dog on the 12th January 2017 he advised "They are a last resort and should always be muzzled when the protesters are 'mainstream'. They are not directed to bite unless there is a serious threat to police of a level of bodily harm."

PHOTO

I saw the use of unmuzzled dogs used to control crowds and the siting of unmuzzled dogs near locked on protesters. They (appeared) positioned with the intention of threatening the person's safety should they move position, close enough so the person was vividly aware of the dog's presence, but unable to view the dog's exact location or know whether the handler was in control of the dog. ~ Survey respondent

There is not significant data regarding the use of dogs in policing; however, the Queensland report, *The Queensland Police dog squad – A CMC review of complaints and bite incidents* highlights a number of concerns with the use of dogs, including how they can best be managed in crowd situations.¹¹

¹¹ <http://www.ccc.qld.gov.au/research-and-publications/publications/police/the-queensland-police-dog-squad-a-cmc-review-of-complaints-and-bite-incidents.pdf>

Our primary concern is that the use of dogs was intimidating to non-violent protestors and given the lack of risk to assets (there was no recorded damage to machines during the campaign) and absence of violence by protestors, they were not appropriate.

Recommendation 4:

- Investigation into why dogs were not muzzled according to police protocol (12/1/17 and subsequent incidents) given there was no threat of bodily harm.
- Dogs not to be deployed during non-violent crowd control; or at least to remain muzzled as per protocol.

USE OF HORSES

Although I understand that mounted police may have some role within policing...in my view... mounted police were used inappropriately in some circumstances leading to unnecessary injury of peaceful protesters. ~ Survey respondent

The Legal Support Team fielded significant levels of inquiries and concerns regarding the use of horses during this protest, and at least one incident is the subject of an ongoing investigation, and was the subject of widespread media reporting.¹² In the community survey into police behaviour 86.6 per of respondents¹³ said they witnessed horses being used in a way that could cause injury.

Particularly during the mass protest on the 12th January 2017, and also on other dates, horses were used in an unsafe way, being directed to move quickly straight into crowds of hundreds of people when there were limited options to move away from them, such as when people were adjacent to fences or next to dense bushes. They were also used unnecessarily on public land to push crowds in an aggressive manner.

At the second lot of protests before Christmas when the fence was pushed over and the site occupied, the group I was in was pushed back through thick bush by four mounted cops. I was next to an elderly woman who stumbled and fell as we were being pushed back. The cops did not stop, we all ended up falling on top of her. She was mashed up against a tree and couldn't get away even though she was moving back with the rest of us. ~ Survey respondent

One officer (Female officer, PO 14538) was the focus of a large number of inquiries and concern, with accusations of verbal abuse, and numerous instances of handling her horse in a way that was dangerous and caused injury.

On the 12th January 2017 one person suffered suspected broken ribs, and several others were injured, including an eleven-year-old boy¹⁴ and two people were trampled on 19th January, with one person receiving a facial scar he will be left with for life. Numerous others tripped and were injured as a result of interactions with horses, over several weeks.

Incident #170119

I was sitting down my back to the fence with a handful of others around me. A police officer standing next to us told me it was okay to sit there as long as I was not against the fence. While remaining seated I started moving forward; however, another police officer on horseback charged into me without warning while shouting "Move". With the fence directly behind me, I had no chance to get out of the way.

I attempted to get up but received a hard blow to the left of my face as the horse surged forward on top of me, knocking me back down to the ground. The horse was right on top of me. It was very scary and I had no means of escape. I felt trapped.

12 <http://www.watoday.com.au/wa-news/police-horses-trample-roe-8-protesters-20170119-gtufj8.html>

13 <http://counteract.org.au/revealed-community-survey-policing-beeliar/>

14 <https://www.facebook.com/tennewsperth/videos/1623548727662284/>



When the horse backed off I scrambled away. As I moved away from the fence I saw another police officer on horseback close by trampling another guy dressed in white wearing a hat. The guy was flat on his back and I actually saw the horse hoof step on him in his stomach area.” ~ Bob

I was next to a friend when he got trampled over by a police horse. He got an injury on top of his eye. We both were in a place outside of the fence where we were allowed to stay. Even the policeman told us we were allowed to be there and sit, just not to touch the fence. So, we did. We sat down when the police on the horse came towards us. I tried to stand up but I fell and someone helped me to stand up. I looked next to me and my friend was literally under the horse. The front legs were on top of him. He didn't have time to move. The horse has clearly been used as a weapon. ~ Sarah

Incident #170112-3

At around 9.15 am this morning Beelihar protectors were being pushed through bush area towards Malvolio Road [from compound] by about four police officers on horseback and several officers on foot. At one point our group's movement was blocked by a tree and shrubs, yet the police line kept pushing us and then after one of their collective police surges I was pushed forward onto others by a police officer on horseback as we were pushed up against the tree with a horse head right above. During this incident, I hurt my sternum and had respiratory difficulties and chest pain.

Shortly after this (around 9.25am), I reported it to the medical doctor attending a young boy nearby who had been wounded in the foot. The doctor recommended monitoring my health and speculated that the resulting sternal pain when breathing is from the trauma of being crushed and pain is due to bruising to sternum and upper chest area. There is pain in my sternum with each breath I take. ~ Greta

[Evidence example #170112 video 1](#) – Horses pushing crowd at mass action, general footage

Incident #170112-4

The fencing had just been knocked down by the mass community. Two large police horses quickly tried to barricade the area where I was standing and where the fence had fallen. As people began walking and entering the area one of the policewomen on the horse yelled at me to get out and even kicked my friend Bruce in the chest.

As we peacefully continued walking the large horse trampled on my left foot causing me to fall to the ground. A volunteer helped to bandage and check my wounded foot, which I was very grateful for. ~ Natalie

USE OF TASERS

Legal Observers are not aware of any incidents where a police officer discharged a taser during the Roe 8 demonstrations; however, at least four people have reported incidents of police threatening to use a taser against protesters, including several involving the Senior Officer in charge of the operation (8131). Two of these incidents involved people under 16.

Incident #161207

I was under the truck where someone else was attempting to lock themselves to equipment.¹⁵ Sergeant 8131 grabbed me by the legs and said, "If you don't let go in ten seconds I will taser you." I was scared of being tasered so I let go. I was pulled out from underneath it where I was pinned to the ground by my throat. I was then handcuffed and put in a paddy wagon where I was later issued a move-on notice, and released. ~ Barry, 7/12/16

Incident #170216-3

I saw [redacted] get tackled by the police and I ran to try and lock onto a tree. I could hear my mum shouting and heard Officer 8131's booming voice. I turned around and he was squatting pointing a taser at me. I was scared and turned around to get away from it and then there was a horse charging at me. I threw my hands in the air and told the lady I wouldn't do anything but she started running fast tight circles around me on the horse. I could feel the horses fur and then she grabbed the top of my shirt and because she was going in circles I got strangled and I couldn't breathe properly. Then I was sent over to Officer 8131 and I lay down like they told me and they cuffed me ~ Shani, 14

I saw several people jump over the fence and police officers tackled a male and a female very hard. They were pinned down to the ground. A young girl had also jumped the fence and we heard Officer 8131 say in a very loud voice, "Stop, or I will shoot". I remember it clearly because I was so shocked and several of us looked at each other in surprise (additional witnesses available). He seemed to be referring to a taser but I'm not sure. Then I saw the young girl looking very distressed as she was circled by the police horse. The rider had come in very fast. Later that day I saw her neck and there were large red marks on it ~ Witness 1

Incident #170311

On the 11th of March between 6.15 - 6.30am my husband and I went to the Stock Rd overpass to put up the PUT LIBS LAST signs up again and some police driving by saw us and yelled out "Fuck!" "Get off the bridge" and pulled over under the bridge on the eastern side. They hopped out of the paddy wagon and the older one yelled "get off the fucking bridge! get off the fucking bridge now!" Whilst he was rushing up he had pulled his taser out of his holster and was holding it ready to go. I yelled out "calm down chill out its a Saturday morning no need to be so agro". By the time they got to the top we were heading off the bridge as I didn't want to risk being tasered. When they got to where we were he said "oh is that all it is" and yelled at me "hey get the fuck back here are take this shit off". ~ Narelle

INSERT PICTURE OF POLICE WITH TASER

According to Police Policy FR-01.01.1 (*Reporting Use of Force - Taser - Justification for Use, Reporting Protocols, Guidelines and Procedures*) a taser can be drawn to reduce a threat and gain control of a subject where the member **reasonably suspects there is a risk of serious injury to any person.**

In none of the incidents reported was there a risk of serious injury, and therefore the threat to use a taser was inappropriate, if not unlawful.

The police policy for use of force with a taser FR 1.6 was amended following a report by the Crime and Corruption Commission into Taser use in 2010.¹⁶ The policy was improved in that there now must be a risk of

¹⁵ <http://www.perthnow.com.au/news/western-australia/perth-freight-link-five-roe-8-protesters-arrested/news-story/984df4f4341244d0ad9b6759703cdca7>

¹⁶ <https://www.ccc.wa.gov.au/sites/default/files/Summary%20of%20Report%20-%20Use%20of%20Taser%20Weapons%20by%20WAPOL.pdf>

‘serious’ injury to justify the use of a taser, not just a risk of injury. But the previous policy stated that tasers **are not to be used for compliance purposes**, and the current policy no longer specifically contains this prohibition. The current policy should be amended to specifically state that tasers are not to be used for compliance purposes.

Tasers have been controversial and numerous concerns have been raised regarding their use across the country, with deaths and injuries relating to their deployment outlined in this fact sheet by the Federation of Community Legal Centres, *Alternatives to Lethal force -Tasers are not the answer*¹⁷

Furthermore, as the above report references, The United Nations Human Rights Committee noted concerns about mission creep in Australia and elsewhere and has stated that tasers should only be used in situations “where greater or lethal force would otherwise have been justified”. It is therefore highly inappropriate that tasers should be considered for non-violent protest situations, and threats to deploy them are unconscionable.

In three of these instances the officer threatening use of the taser for compliance purposes was the Senior Officer in Charge (8131) on site, with overall responsibility for the operation, setting completely inappropriate standards for all officers working with him.

Recommendation 5:

- Current policy should be amended to specifically state that tasers are not to be used for compliance purposes.
- Tasers should not be used, nor be threatened to be used, in non-violent community protest situations.
- Police officers should be further trained in non-violent, de-escalation techniques.
- Threats to use tasers (threatening assault) should be investigated and the officers sanctioned.

PEPPER SPRAY (OC SPRAY)

Saw the young cop who peppered sprayed that woman. He totally lost his cool, let the anger and adrenaline take over and escalated tensions and aggravated people when he could have just stayed calm and silent.

The COPS Manual Use of Force provisions states that OC spray should be deployed only when there exists “**an imminent risk of bodily injury**”.

Both OC Spray and tasers have been introduced over the last fifteen years to law enforcement, as ‘less than lethal’ tools to minimise the risk of people being killed.

It has been the experience of Human Rights Defenders and protesters around the country that these tools are now being increasingly used in an indiscriminate manner, and to force compliance on subjects. Given the threats and violence deployed against defenders over this campaign, we remain concerned that usage will escalate to involve more extreme situations such as was documented in New South Wales where a grandmother was pepper sprayed at point blank range while immobile, and locked to a machine¹⁸, or examples of indiscriminate spray of protesters and street medics administering first aid in Melbourne¹⁹.

On 16 February 2017, an incident was documented where a 65-year-old woman was tackled by Officer 15138. In the process of tackling her, pepper spray was deployed.

¹⁷http://www.communitylaw.org.au/cb_pages/images/Tasers%20and%20Police%20Fact%20Sheet%20August%202009.pdf

¹⁸ <http://www.smh.com.au/environment/police-in-rare-use-of-pepper-spray-in-antisantos-csg-fight-protesters-say-20160202-gmjo49.html>

¹⁹ <https://www.theguardian.com/australia-news/2015/jul/20/reclaim-australia-rally-victoria-police-defend-officer-pictured-with-anti-islamic-protester>

Incident #170216-1 Witness Statement

The bulldozer was already working inside the boundary fence. There was also a roped-off exclusion zone 5-10 m from the boundary fence. Only two police officers were between the boundary fence and the exclusion rope, plus about six Wilsons security guards. There was concern among protesters because a number of people had very recently gone through the fence to try to lock on, and were thought to be in danger from the bulldozer. The two police officers did not respond or act when told repeatedly that new people had gone inside the fence. Two or three people ran at the fence, one got through, but another was attacked by police and security guards. At that moment, many of us ran through the rope to assist the others. Police officer 15138 grabbed me by the upper arms/ shoulders from behind and threw me to the ground. As I was trying to get up he pepper sprayed my face at close range. He called out "Spray!" at the same time as he sprayed. There was no PRIOR warning. He called out "Spray!" again after he had sprayed me, maybe to warn others. I could not open my eyes and fellow protesters immediately assisted me. We were all shouted at and shoved repeatedly until we were back behind the exclusion rope. About 40 minutes later another police officer arrived with an anti-spray kit and treated my face and neck and gave me advice. I was told that the officer who sprayed me had left the area. ~Karen

As the woman was moving away from the officer at the time she was tackled, there was clearly no risk of injury. The delay in rendering assistance is also concerning. A subsequent video shows the same officer threatening pepper spray on two other people. (INSERT LINK/VIDEO)

There are also other documented incidents where the use of pepper spray was threatened.

A policeman tried to get me moving and for me to push others along. When I refused to push others away he said (very aggressively) that my dog was a dangerous animal and started to get out his pepper spray to spray her. This certainly moved me on! ~ Survey respondent

Significant concerns have been raised around the country in relation to inappropriate deployment of pepper spray, according to the police guidelines, it is clearly unacceptable to be used in non-violent community protest situations.

Recommendation 6:

- Police involved in deployment of pepper spray (#170216) to be sanctioned for inappropriate use of force, and receive training regarding appropriate deployment of OC spray and de-escalation skills.
- OC spray should not be deployed in non-violent community protest situations.

HANDCUFFS

FR-01.07.1 Use of Handcuffs and/or Other restraints states that handcuffs are to be used as a tactical option to "reduce a threat and gain control of a subject" where the member reasonably suspects there is a risk of

- Bodily injury to any person
- Escape from arrest or detention
- Damage to property

Handcuffs were used in numerous incidents during the period of the campaign in contravention of the guidelines above. The campaign was explicitly and publicly non-violent and there is no physical evidence or pattern of assaults or injury to officers, nor damage to property. In many instances, there were large numbers of police, up to 100 officers on many days, making the prospect of escape from custody unlikely.

"When they arrested me they had me bent forward with an officer on each arm. The handcuff was grinding into my wrist bone, as a consequence I received massive bruising. I asked them to loosen it. When I was back at the police station they asked "Have you been injured in the last 24 hours".... I said yes and pointed to my wrist... there was a deep indent in my wrist and they said in a dismissive tone "Oh it's just a mark". I went to the doctor the same day to document my injuries. I went back to the doctor also two days later when I noticed bruising on my chest as a result of being roughly pushed into the paddy wagon." ~ Rachel

Recommendation 7:

- Police to be educated about the appropriate deployment of handcuffs and use of force.
- Report of use of handcuffs during the campaign period, and justifications for use.

MOVE-ON NOTICES

Article 21 - The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society²⁰

Move-on notices were used by the police at the Roe 8 demonstrations for instances of behaviour that were expressions of protest, or in circumstances where the offences were so minor that police action was unwarranted.

Move-on notices are given by police officers under section 27 of the *Criminal Investigation Act 2006* to order a person to leave a specified area for up to 24 hours. The criteria for giving the order are extremely broad and include when the officer “reasonably suspects” the person “intends to commit an offence”, the person is committing a breach of peace or is hindering, obstructing or preventing a lawful activity.

By their very nature, move-on notices are likely to be used in a way that is highly discretionary and can appear arbitrary to the point of being a misuse of police powers. The move-on laws are difficult to challenge and can be used to prevent members of the community exercising their right to protest.

In a debate on the Criminal Investigation Bill 2005, the Hon. Giz Watson MLA highlighted the potential impact on political protest of the move-on provisions. Ms Watson suggested that the Bill contain similar provisions to the ACT Crime Prevention Powers Act 1998, so that move-on notices could not be given to a person who is:

- (a) picketing a place of employment; or*
- (b) demonstrating or protesting about a particular issue; or*
- (c) 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.*

The Aboriginal Legal Service of Western Australia (ALSWA) has argued that move-on laws are used in a discriminatory manner against Aboriginal people. ALSWA has repeatedly called for the repeal of move-on provisions.²¹

In December 2013, the former Attorney General Jim McGinty stated that police use of the move-on laws was an “abuse of power” against Aboriginal people. Forty per cent of the 22,500 move on orders issued in the 12-month period to November 2013 were against Aboriginal people, who constitute just 3% of the population.²²

Legal Observers at the protests noted that move-on notices were used in a highly arbitrary way. People given a move-on notice would often be acting in an almost identical way to other people who did not get a notice. On the mass action day of January 12, a disproportionate number of move-on notices noted by Legal Observers were given to Aboriginal people when they were not acting in a way that was more obstructionist than many other non-Aboriginal people. Legal Observers on January 12 noted that on three occasions Nyoongar people were given move-on notices after giving impassioned speeches about the disregard of their rights to the land. Non-Aboriginal people in the area were often singing and chanting protest songs but were not given notices.

On another occasion, a Legal Observer saw a police officer run across the road and grab a young Aboriginal man by the throat and push him behind a large police truck. When the Legal Observers got across the road to see what was happening, the Aboriginal youth was being given a move-on notice. The police officers present

²⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

²¹ <http://www.austlii.edu.au/au/journals/IndigLawB/2006/62.html>

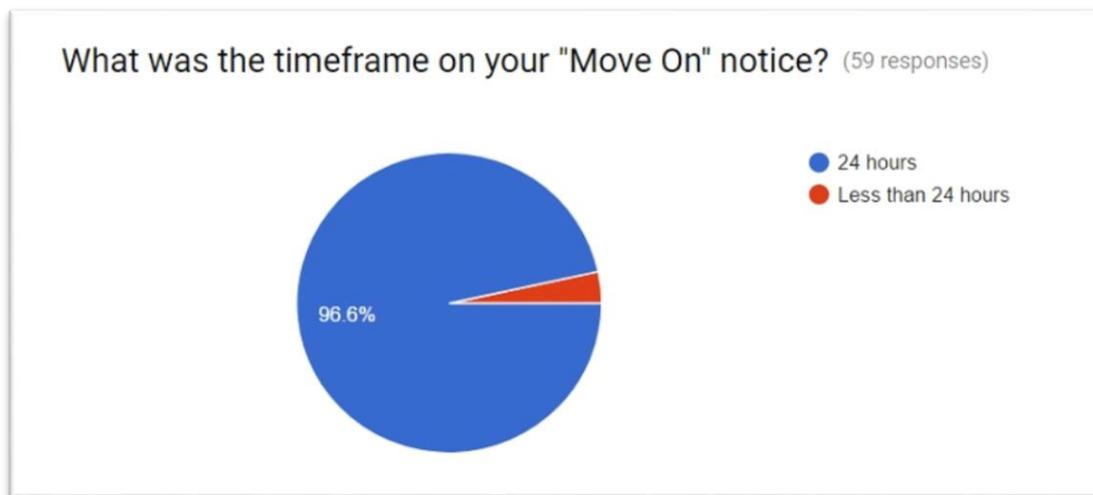
²² <http://www.abc.net.au/local/stories/2013/12/03/3904348.htm> Accessed 19 April 2017

did not respond to questions from the Legal Observers about the reason for the notice, or respond to questions about the violence used by the police officer, but the youth's friends advised the Legal Observers that he had yelled at a bogged driver in jest about his driving skills and "used the F word". When the youths used swear words to describe what was going on, a police officer told them to stop, or they would also get a move-on notice.

In 2006 WA Police representatives gave evidence to a parliamentary committee about the need for police to be trained in the use of move-on notices, specifically not automatically applying the maximum 24-hour period and the need to consider the area (referred to in Hansard Legislative Council, 19 October 2006, 7309-7310). Police officers at the Roe 8 demonstrations do not appear to have benefited from this training.

Most of the move-on notices were for 24 hours, the maximum period allowed by section 27. Again, this shows the arbitrary way that the notices were used by the police, as there appeared to be no consideration given to whether a lesser time would be appropriate.

In the community survey ([Appendix 1](#)) of 209 people surveyed, 59 respondents received a move on notice, with 96% of them for 24 hours.



The designated area specified in the notice was initially excessive, including the whole of Coolbellup. Being prevented from entering such a large area was an unnecessary restriction on these people's freedom, particularly given the trivial reasons for the notices. (Ref: [APPENDIX 3](#))

Local residents, including senior citizens received notices²³ and had their movements limited, and in some instances people were excluded from areas they resided part-time, including someone who was excluded from being able to visit a de facto partner.

Bail conditions were initially set to prohibit entering the same area as move-on notices. The conditions were described by a magistrate as "onerous", and after they were challenged in court, the police officers in general specified a smaller area in the bail conditions. At times notices with the smaller area still had a considerable impact on the person's life because they lived in the restricted area.

Police do not appear to have given adequate consideration to section 27(3) which requires them to take into account the impact on the person, including factors such as the person's place of residence or work. The notices that restricted people from going home, or from leaving their home, clearly had a disproportionate effect on the person compared to the behaviour that led to the notice.

²³ <http://www.abc.net.au/news/2016-12-08/85yo-val-oliver-not-deterred-from-roe-8-fight-by-move-on-notice/8105038>

Recommendation 8:

- There should be a review of section 27 of the *Criminal Investigation Act 2006* to formulate appropriate amendments to the section to ensure that move-on notices are not used to prevent picketing and protests, and are not used in a way that unnecessarily impacts on indigenous people.

INAPPROPRIATE CHARGES

Several cases are ongoing in the criminal courts, so a subsequent public record will detail further some charges that are being challenged.

Article 9 of the ICCPR provides:

*Everyone has the right to liberty and security of person. **No one shall be subjected to arbitrary arrest or detention.** No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The prohibition on arbitrary arrest and detention requires that any arrest and detention is in accordance with law. Arrest or detention is unlawful where an individual is arrested or detained on grounds which are not clearly established by law or which are contrary to law. Arrest or detention is arbitrary where it is disproportionate, unjust or unpredictable.

Examples include:

Incident #170112-5

A musician being charged for obstruction. This person was playing outside the fence line (not trespassing) and regularly advocating for calm and peaceful responses to police. The police arrested him for “obstruction” then attempted to unlawfully confiscate his speakers.

I assumed his role and intention was to de-escalate a potentially flammable situation. Some of his statements were, “We are peaceful people, please don’t yell at or abuse the police” “Be peaceful, sit down...just sit down... don’t fight”

I saw a policeman speak to Ellis and then heard Ellis say into the microphone “Ok folks, please sit down behind the fence line.” When I heard this, I guessed that the policeman had said that they were trying to put the fence back up and people were sitting down on the fence and thus preventing them from lifting it. The policeman left and Ellis continued to encourage the crowd to sit down behind the fence line. About 10 minutes later, I saw a policeman come toward Ellis, say something to him and then Ellis handed his guitar to someone and went with the policeman without resistance. The police then attempted to remove microphones and speakers.” ~ Witness 1, 12th January 2017

His charges were dropped without explanation in April 2017.

Incident #170206 – Legal Observer report

Karen was arrested for trespass in January 2017.

On 6th February 4.45 am Karen stopped her car and parked on the roadside adjacent to the entry gates to the Wetlands Centre. She was intending to drop off some flags but the gates were closed.

Three Police Officers in a car stopped and advised her that vehicles were being checked. One Police Officer recognised her and informed Karen that she was in breach of bail and was under arrest.

Karen was taken to Fremantle Police Station and was transferred to the magistrate’s holding cell at 9.00am. She was strip searched by a female Serco employee and female police officer and questioned regarding her mental health. She did not receive an adequate explanation as to why she was strip searched, and did not appear before the magistrate until 3.00pm. The magistrate informed police that she should not have been arrested and released her immediately. A lawyer later advised her it was an illegal arrest and she should make a complaint.

Karen had her car searched five times after this date.

Incident #170207

A protester who was a regular at the site was arrested for obstruction and assault after inquiring as to the wellbeing of someone who was receiving a move-on notice. The incident was clearly recorded, drew widespread condemnation, and was shared widely with over 75 000 views. [VIDEO](#)

Incident #170209

Annette is arrested for breach of bail at around 10am in the morning for being too close to the fence line. She was awaiting court for an obstruction charge. She was not released. She was taken to Bandyup women's prison, and then was told they had made a mistake, and then taken to Perth lock up where she spent the night.

"I was asked questions about who was organising things, and who was making devices. It was the middle of the night, and they would wait until I was close to nodding off and then come and take me to the interview room to answer questions. They did this at least six times even though I was answering no comment every time." ~ Annette

There were several other similar incidents where protesters who had been arrested for minor charges such as trespass and obstruction were kept in custody overnight. Given there was never a likelihood of people receiving custodial sentences for these charges it is highly inappropriate people were kept in lock up, or in prison situations.

Although it is difficult to demonstrate intent in these instances, it has been speculated that some of the people who were subject to arguably arbitrary or unnecessary arrest, and whose charges are being contested, were targeted as they played visible roles, or were perceived to be leaders.

Other people who were regular at the protest site were pulled over numerous times, searched on spurious grounds, had police visit their houses, or found police in their yards appearing to search without warrants.

A police car came to a grinding halt outside my house, two officers leapt out but proceeded to go to my neighbours who wasn't home. They entered the back yard and remained there for approx 15 mins. My daughter and I who were engaged in protest tasks were terrified. The neighbour's dog barked the whole time. My daughter eventually stood on a chair and looked over the fence as the Police exited my neighbour's yard and took off. Later, she told my neighbour who was very annoyed to find out Officers had been on his private property without his knowledge. My daughter's friend was pulled over twice and issued with a yellow sticker after leaving the protest site. ~ Survey respondent

In addition, defenders who were regularly vocal, advised people of their legal rights, or who advocated for informed civil disobedience were threatened multiple times with incitement, and were told they were advocating violence, despite there being no such evidence and their role being expressly for the purpose of supporting people participating in a calm manner.

Recommendation 9

- Investigation into cases when people were kept in custody overnight.
- Investigation into strip search (Ref: 170206) and unlawful arrest.

SEARCHES, RANDOM BREATH TESTS AND SPEED TRAPS

Police have power to search a vehicle if they reasonably suspect that the car will be used to facilitate an offence of help someone leave after committing an offence. We are aware of incidents where cars were searched for no clear reasons, and when challenged the police advised it was their right to do so.

A number of the regular 'Wetlands Defenders', as the nonviolent protesters described themselves, said they had been the subject of numerous traffic stops by police. Local residents also complained about speed cameras and random breath tests increasing during the period December 2016-March 2017.

The community survey data ([Appendix 1](#)) showed a small increase in respondents' experience of the above police activities.

Random breath tests – A significant majority of the respondents (141 out of 209) said they never experienced a random breath test during trips to the protest sites. Only six respondents said they experienced it once a week.

Speed cameras – A total 81 respondents said they never saw a speed camera during the campaign period. (December 2016-March 2017) The number of people who saw a speed camera once a week increased from 13 before the campaign, to 31 during the campaign. And those who saw a camera twice a week increased from 2 (before) to 13 during.

Pulled over by police – 159 respondents said they were never pulled over during the campaign; 26 said they were pulled over once; 10 were pulled over twice; six were pulled over 3 to 4 times; three were pulled over five times and four were pulled over by police 10 or more times.

Car searches – 190 respondents said they had never had their searched by police in the area before the campaign... to 159 who never did during the campaign period ... 18 once a month, seven once a week, and five twice a week.

It appears that a minority of the respondents did experience significant police interest in them but the vast majority were not directly impacted by an increase in police presence.

However, the following comments by survey respondents indicate community members were fearful and concerned by the extent of the police presence, even if they were not themselves pulled over:

"There was an observable shift in police behaviour and demeanour over the period of months. After the protest on Malvolio Road, there was a noticeable toughening up of police behaviour, with frequent reports of unprovoked harassment by police on various levels. I did not personally have my car searched, but I also avoided the area when I heard reports that random vehicle checks by the police were occurring."

"Whilst I didn't personally get pulled over and searched, I know of several people who were pulled over and searched for no given reason other than being a suspected protestor - which is not illegal! Also know of friends who were followed often, even back to their house. Police 'staking' out their house, etc."

"During the Roe8 protest, there was a massive police presence in the community, felt like they just kept doing laps of PWS, St Pauls and Bibra Lake. Felt very intimidating and oppressive, like they were out to catch anyone they could. The only benefit I saw was they slowed cars down at school times near PWS."

SECURITY GUARDS

Despite common misperceptions, often encouraged by themselves, security guards have no greater powers of arrest than an average person, to affect a citizen's arrest. They are only able to use "reasonable force" to detain someone until police arrive.²⁴

There were several incidents documented where security guards were very rough in the execution of their duties, and denied people in vulnerable positions access to food and water.

²⁴ <http://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/securityOfficers/Pages/SecurityGuardsBouncers.aspx>

Incident: #170201 Legal Observer Incident Report

At about 12 pm I was walking east of the turtle track along the fence line with [redacted]. We came to an area of paperbarks and other trees that had not been cleared. There was a group of about ten people at a spot near a woman who was inside the fenced area and locked on to a tree. A young woman in the group told us that the woman locked on to the tree was Jane. She also said that the security guards had refused to give her any water and that Jane could not get to her water which was in a Camelback on her back. She said that Jane could not reach the mouthpiece. It was a very hot day, perhaps in the mid-to-high thirties.

There were two male security guards on the fence line near Jane. There were no police officers. At about 12.15 pm I asked one of the security guards, a fairly short pale skinned man with glasses and a black hat, whether he would help Jane get her water. He said something like "No I can't give her anything. I've been told by my bosses and [inaudible] I can't give her anything". I took footage of some of this conversation. At about 12.30 pm I approached this security guard again. I said something like "You won't give her any water?" and he said "No".

OCCUPATIONAL HEALTH AND SAFETY

WA POLICE CHARTER, Excerpt: Occupational Safety and Health Act 1984 and OSH Regulations 1996 require employers and employees to ensure a safe and healthy workplace.

As an employee, you are required to:

- Take reasonable care for your own safety and health at work;
- Avoid adversely affecting the safety or health of any other person at work;
- Report any potential hazards, incidents or injuries to your manager/supervisor;
- Follow safe work practices;

Police are not only bound to a duty of care to people who are in custody, but also have a requirement to adhere to occupational health and safety standards in the work place.

Numerous incidents were documented of unsafe work practices by both contractors and police (also documented in [Duty of Care](#)) committed during the protests. These include:

- Driving a bulldozer within two metres of a minor who was locked into a concrete barrel.
- Driving a bulldozer and felling trees within 5-10 m of people who were suspended in 'tree-sits' ([News report](#) video referencing asbestos and trees being bulldozed next to tree sits.)
- Driving a bulldozer on a site where people were located locked onto trees.

"Three protesters occupying the top of trees within the clearing site were also left there by police as work continued around them." ~ Courier Mail, 19/1/17²⁵

Of relevance is the Occupational Health and Safety act and Safe Work Australia codes of practice.²⁶ Construction work and excavation that happened during the protests is arguably in breach of Section 20 & 26 of the act and a breach of the employer's duty of care from the regulations.

[From the Occupational Safety and Health Act 1984](#)

²⁵ <http://www.couriermail.com.au/news/national/roe-8-protester-hit-by-police-horse-as-tensions-again-boil-over-perth-freight-link/news-story/00e4bcd48f80a301263fa594d9ff2f3b>

²⁶ <https://www.safeworkaustralia.gov.au/ppe>

20. Duties of employees

(1) An employee shall take reasonable care —

(a) to ensure his or her own safety and health at work; and

(b) **to avoid adversely affecting the safety or health of any other person through any act** or omission at work.

26. Refusal by employees to work in certain cases

(1) Nothing in section 25 prevents an employee from refusing to work where he or she has reasonable grounds to believe that to continue to work would expose him or her or any other person to a risk of imminent and serious injury or imminent and serious harm to his or her health.

Occupational Safety and Health. Regulations 1996

1.4. Employer, extent of duty of care

Unless the contrary intention appears, where an employer has a duty under a provision of these regulations to do or not do something in relation to a workplace, the employer's duty —

(a) relates only to a matter over which, and the extent to which, the employer has control or can reasonably be expected to have control having regard to the workplace and the work done or caused to be done by the employer or his or her employee; and

(b) is limited to himself or herself and to any other person who is —

(i) his or her employee; or

(ii) **any other person** who may be affected wholly or in part as a result of the work done or caused to be done by the employer or his or her employee.

Hierarchy of Controls OHS laws and regulations are based on a risk assessment approach known as the 'hierarchy of controls'²⁷. It is incumbent on those in charge of a work site to manage risk, and the highest preference for the hierarchy is

1. Design or reorganise work to eliminate the hazard from the workplace: Try to ensure that hazards are 'designed out' when new materials, equipment and work systems are being planned for the workplace.

2. Remove or substitute the hazard: Where possible, remove the hazard or substitute it with safer materials, equipment or substances.

This was clearly not complied with in numerous instances at Beeliar – with people having bulldozers working within metres of them in vulnerable positions (unable to move due to being locked on). Rather than designing, or re-organising work, or removing hazards, work instead continued and people's lives and limbs were put at risk. The possibility of machine malfunction or an accident that may have impacted the root structure of trees, or knocked trees towards people in tree sits was entirely possible.

In typical workplace situations, this kind of cavalier approach to safety would be condemned – the fact that people were committing acts of civil disobedience should not preclude them from having their human rights and safety respected.

In addition, representatives of the campaign also made numerous complaints to Worksafe, and made contact with the Police Union to express concern for the police, contractors and security guards who were being exposed to asbestos.

[Footage online](#)

Recommendation 10:

- Earthmoving and construction work should cease on sites where protesters are attached to machines, or trees.
- Police to be educated about OHS guidelines in relation to contractors they are working with.

²⁷ <http://workplaceohs.com.au/risk-management/hazard-control-measures/hierarchy-of-hazard-controls>

- Clear points of contact/liason officers should be established on work sites to communicate with protesters.

TARGETING OF ABORIGINAL PEOPLE

As was noted in the [move-on section](#), there appeared to be more likelihood of traditional custodians being arrested, or moved on, simply for stating their connection to country, and asserting their cultural rights to protect the environment.



This clearly contravenes Article (2) of the ICCPR which provides: **Everyone has the right to freedom of expression; the right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers...either orally, in writing, or in print, in the form of art, or through any other media of his or her choice.**

In particular, there were significant sacred sites that were set to be destroyed, that were important to local custodians and as they expressed concern and distress, they

were often targeted.

There appeared to be a higher likelihood of receiving both move-on notices, and arrest for Aboriginal people.

"It seems like we are always targeted, and always watched. When we went down to the first protest last year they tried to trip Coral out of her wheelchair.

When they arrested me they didn't need to force my thumb out of the lock ... It really did hurt when they yanked it out with dish detergents

I was arrested and in the lock up, myself and Jayne were separated from the others. The rest of my team noticed it, but no explanation was given.

On the day of another big action I noticed such a change in the in the aggression toward all protestors... no smiles, not nothing, just aggression. I was also with my very dear friend who is obviously Aboriginal and she could wait to leave due to the atmosphere." ~ Nyoongar participant

Numerous survey respondents referenced the experiences of Aboriginal people they witnessed. This was unprompted as no direct question was asked relating to discrimination.

What negative interactions did you witness:

"Indigenous people being targeted first."

"Intimidation of Noongar woman protester...General lack of capacity to engage well with community."

"I would say the extremely large deployment of police in itself to be threatening... Saw indigenous people targeted for arrest."

"Racism! Swooping in on an old Aboriginal man as they thought he broke a move on notice, but wrong man."

“I think I knew intellectually that the WA police was poor but my experience during the protests really cemented for me the culture of the organisation and what minority groups like Aboriginal people face daily in their interactions with police.”

“That Aboriginal woman who was man-handled and shouted at in a very intimidating way by an agitated and aggressive male police officer has been on my mind, and I'd be very willing to corroborate her account should she come forward.”

“I saw an elderly aboriginal man being arrested for simply tripping on the fence that was already down.”

“Communication was poor to the point of misinformation. I have an inkling how nyoongar people are treated by police. I used to think they were my police force as a citizen; no more. I watched while key campaigners were arrested while they were negotiating with authorities, while they were managing the volatile crowd, as if police wanted to escalate the situation deliberately.”

“Over the years I had a perception that the negative interaction between Indigenous peoples to the police was excessive, now I fully understand why they have such a high distrust; if anything I think that they have been well restrained in their actions.”

“I viewed an Aboriginal woman grabbed by the neck by a police officer through the window of her car as she slowed to honk in support of the protesters. He shouted at her and behaved very aggressively, gave her a fine for using a warning device inappropriately...”

~ Various survey respondents. ([Appendix 1](#))

Recommendation 11:

- Liaison points established between police and Aboriginal custodians where requested.
- Cultural awareness training to be increased within the police force.
- Further dialogue between police and Aboriginal representatives as appropriate.

Whilst we collated and witnessed a range of inappropriate and arguably racist examples of policing the report writers are not Aboriginal and would prefer direct engagement is undertaken where wanted.

CITIZENS NOT SUSPECTS – an unhealthy culture

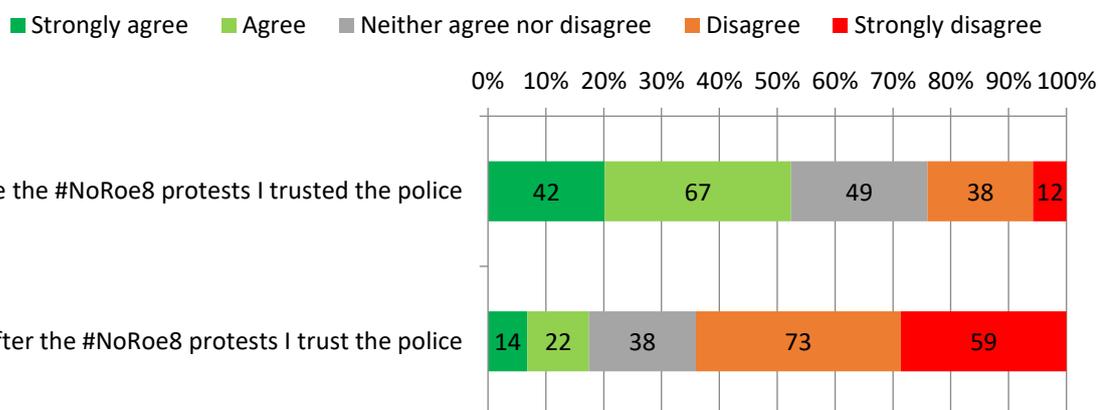
A survey into community responses to the policing of the Beeliiar protests was distributed to people connected to the community campaign in April 2017. A summary of the survey responses is available here ([Appendix 1](#)) 209 people involved with the campaign filled out the survey.²⁸

A selection of community reactions to interactions between police and community members demonstrated a high level of concern regarding:

- Use of taxpayer resources and the amount of police deployed to the protest site/s
- Loss of trust in the police
- Significant amounts of ‘negative interactions’ with police
- Concern regarding witnessing or experiencing allegedly unreasonable force

²⁸ https://docs.google.com/forms/d/e/1FAIpQLSdLUo8Q5bF8foq7OpOdm1w7_nukq3EtxAk4G0r3-QZOzKxt6w/viewform?c=0&w=1

Trust of Police before and after #NoRoe8 protests



While there were incidents that demonstrated goodwill from police to protesters, such as distributing water, or sunscreen on occasion, there was a broad sense that overall people were not given the benefit of the doubt, treated with suspicion, disdain and often in a negative manner by police.

The majority of the responses in the survey indicate that a lack of trust now exists between those members of the community and the WA police force.

EXCERPTS

People are shocked when I tell them what it was actually like on the protest line. My son keeps asking me 'are police good or bad' and when we see a police car he wants to know if it's a good or bad policeman. ~ Fiona

I have lost a lot of respect for the police force. I appreciate that they are members of the community who have a very difficult job to do, but I witnessed a lot of unnecessary 'heavy handedness' on their part, and particularly from the thuggish TRG. I question the need (and expense) of bringing a specialised unit such as the Tactical Response Group in to deal with a peaceful protest. I go out of my way to avoid any dealings with the police now as I perceive them as being untrustworthy. ~ Chris

"I saw a number of examples of quite 'robust' policing directed by senior officers yelling and literally pushing the rank '& 'file to be more aggressive towards protesters" ~ James

I've been to enough protests not to be completely surprised at elements of violence. I'm well aware that it is a lived reality for many, if not most Indigenous citizens. Having said that, I was shocked at three particular points: very early on at Malvolio when a group attempted (unsuccessfully) a lock-on to a machine. The police used unnecessary force against a young woman and kept it up despite pleas from people to not be so rough. Two of my friends suffered injuries from horses. Another suffered bruising and a cracked rib from being pushed by police. And the pepper-spraying incident horrified me. ~ Lily

"I had tons of respect for them before the protests. Now I see them differently and have lost the trust I had" ~ Annabel

Me and my dog were in a large crowd charged by five mounted police, I couldn't believe they could use such potentially risky force. I am still shocked that police of the state can be paid day after day in such high numbers to guard one privately owned dozer or a fence. Police are supposed to protect us not the interests of a company or government clearing bush. ~ Kelly

HUMAN RIGHTS AND INTERNATIONAL LAW

Relevant international law related to non-violent community protest includes the **International Covenant on Civil and Political Rights, 1976** to which Australia is a signatory, and states:

Article 2 - Everyone has the right to freedom of expression; the right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers...either orally, in writing, or in print, in the form of art, or through any other media of his or her choice.

Article 7 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9 - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 21 - The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.²⁹

LEGAL OBSERVERS AS HUMAN RIGHTS DEFENDERS

Both the non-violent community protesters and the Legal Observers documenting their activity fit the criteria of Human Rights Defenders as specified by the United Nations.

To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.

Human rights defenders address any human rights concerns, which can be as varied as, for example, summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment. Defenders are active in support of human rights as diverse as the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination.

*People educating communities on HIV/AIDS, **activists for the rights of indigenous peoples, environmental activists** and volunteers working in development are also playing a crucial role as human rights defenders.³⁰*



Furthermore, the Special Rapporteur specifically **defines Environmental Human Rights Defenders³¹** as individuals **and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.**

²⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

³⁰ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

³¹ https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf

POLICING CULTURE/ATTACKS ON HUMAN RIGHTS DEFENDERS

In a country report visit to Australia last year the United Nations Special Rapporteur on Human Rights reported deep levels of concern with the attacks and vilification of environmental Human Rights Defenders.

[I am] astounded to observe what has become frequent public vilification of rights defenders by senior government officials, in a seeming attempt to discredit, intimidate and discourage them from their legitimate work. The media and business actors have contributed to stigmatization. Environmentalists, trade unionists, whistle-blowers and individuals like doctors, teachers, and lawyers protecting the rights of refugees have borne the brunt of the verbal attacks.

I also call on government officials and politicians to refrain from attempts to vilify environmentalists, likening them to eco-criminals, traitors and green radicals. Not only those verbal attacks de-legitimize valid environmental concerns in policy debate and protect business interests linked to environmental harm, but they are also not in line with the responsibility of the State to respect the rights of human rights defenders and support their work.³²

These patterns were also documented during this campaign, with baseless claims³³ made by the Premier and Deputy Premier seeking to disparage and marginalise the genuine and widespread concerns of thousands of people, including exhortations to 'get a job' to a diverse constituency that included doctors, lawyers, teachers and accountants who often visited the protest site/s before work.

While this was beyond the remit of the police, the broader context of is likely to have contributed to a level of hostility and disdain shown towards the protesters and impacted the way in which police engaged with them.

Among a range of recommendations, the UN Rapporteur recommended the Government of Australia:

- Restore an atmosphere of trust and confidence with human rights defenders and consider adopting a national action plan on human rights, through meaningful consultation with civil society;
- Publicly scrutinise and condemn the violations of the rights of human rights defenders and raise awareness of their legitimate role in the protection and promotion of all human rights;
- Ensure prompt and impartial investigations into alleged threats and violence against human rights defenders and trade unionists and bring to justice direct perpetrators and those that participated in the commission of crimes;

Given that all legal remedies had proved deeply inadequate, the government was not bound to follow its own laws, the defence of the ecosystem/s and Aboriginal sacred sites was then taken up by civilian defenders who sought to delay and intervene in work through frontline documentary evidence-gathering and delay of work through non-violent action.

This work was in the public interest, and as such, should be treated with respect, and we call on the State and Federal Governments to acknowledge the vital role of Human Rights Defenders and consider the recommendations of the UN Special Rapporteur.

COMMUNICATION BETWEEN POLICE AND COMMUNITY

A key principle of non-violent direct action is to encourage clear communication and respectful dialogue between police and community activists. This is facilitated by community roles such as police liaison, and 'peace keepers' and roles such as Legal Observers.

While the distress felt by the community and the loss of local environment was often visible, and often provoked passionate responses, there was still an ongoing attempt to calm heated situations, and maintain a calm approach when large numbers of protesters and police were interacting.

32 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E>

33 <http://www.news.com.au/national/western-australia/premier-colin-barnett-accuses-roe-8-protesters-of-defecating-in-vehicles/news-story/3406970e867178dd1ebf6f7b3818afc6>

Traditionally when non-violent protest campaigns are in a civil disobedience phase, there is an attempt to maintain ongoing dialogue between police and protesters. Whilst there was a regular dialogue between a Save Beeliar Wetlands representative who was organising fauna and compliance monitoring – this person was updated with (limited) information about work plans. On the whole, however, the attempts to maintain clear communication between the frontline protesters (referred to as Wetland Defenders) through police liaison and to monitor rights and arrests, through Legal Observers, was often stymied.

When such a contentious project is in play and there has been a clear commitment to civil disobedience – that is, breaking the law for moral or ethical reasons, and being willing to accept the consequences, it is useful for clear communications with police to track the welfare and ensure rights are upheld for people who are risking arrest.

Members of the Legal Support Team met with the Senior Officer in Charge (8131) on two occasions as a group, and on a one-on-one basis numerous times. Despite the best efforts of the community to establish clear protocols or ‘rules of engagement’, these were consistently ignored, with the police significantly withdrawing from useful communications in February.

Requests to update the Legal Support Team when Aboriginal people were in custody were ignored, access was limited to even document names of arrestees, there was often conflicting information given as to which stations people were being taken to, and which charges were being applied.

Recommendation 12:

- Legal Observers to be recognised as playing an important human rights role and allowed access on site/s, and this to be advised to all officers attending the site.
- Clear lines of communication established, and maintained between police and community protest representatives.
- Specific protocols to be developed in conjunction with ATSI representatives where necessary for custody monitoring (until a formal custody monitoring protocol is established in the State).

CONCLUSIONS

Community perceptions and reactions to interactions between police and community members as demonstrated in the survey results indicate there is a high level of concern regarding among community members who participated in the Roe 8 protests in relation to:

- Use of taxpayer resources and the amount of police deployed to the protest site/s
- Loss of trust with police
- Concern regarding witnessing or experiencing allegedly unreasonable force

There needs to be a serious investigation into the patterns of excessive force demonstrated, and a commitment to better management of contact and ongoing liaison, with agreed protocols with community groups in future protest situations. These concerns are something that the Western Australian Police must address at all levels.

The election of a new ALP government and the appointment of a new police commissioner this year allows the WA Government to properly address these issues and rewrite how police interact with community protest.

THANKS

Kate Davis, Kate Thresher, all lawyers involved in pro bono criminal representation, all people who acted as Legal Observers, Wetland Defenders, survey respondents and witnesses, all photographers and videographers who provided footage, Louise Corteen, Christine Duckham, Mal Christenson, Marc Thornley, Liana Christensen, Eloise Dortch, Renee Pettitt-Schipp, Nicola Paris, CounterAct, Conservation Council WA, Friends of the Earth, Save Beeliar Wetlands, Rethink the Link, and anonymous contributors to Beeliar Legal Support who asked not to be named.

Special thanks to the people whose work has come before this, and informed this project – Human Rights Observer report G20, Occupy Melbourne Legal Support, Melbourne Activist Legal Support, Flemington and Kensington Legal and National Police Accountability Network

APPENDIX 1 – SURVEY SUMMARY

Significant data and a picture of widespread community distress was received as part of the community survey into police behaviours. We have included a summary here, however the full report of the survey is available online.³⁴

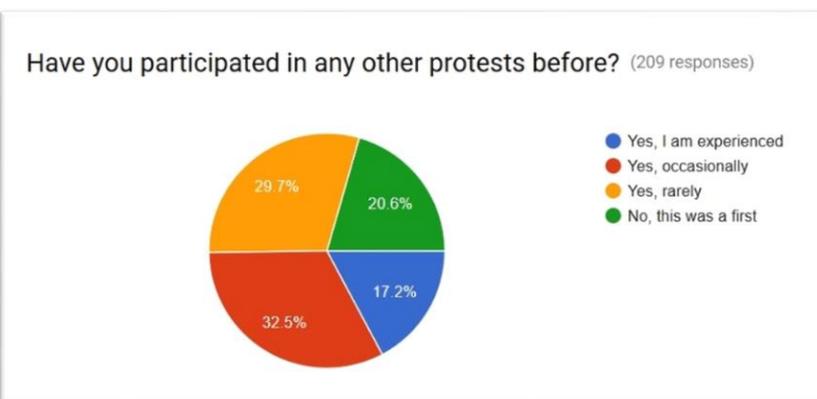
WHO WERE THE FRONTLINE PROTESTERS?

The survey questions were circulated during April 2017 to a database of people who signed up to the Rethink the Link website (3000+), as well as through various private channels, facebook, email, and messaging applications that were used by the campaign.

The target group was people who had been active in the frontline aspect of the campaign to stop Roe 8 and save the Beeliar Wetlands, i.e. those who were active in the nonviolent direct action phase of the campaign, predominantly occurring at the clearing sites during late 2016 and early 2017.

The total 209 respondents represented a diverse range of occupations, with many from suburbs in the vicinity of the Wetlands. There was strong female participation at 71.4 per cent of respondents, and a large number of respondents had been active in visiting the clearing sites on a regular basis. The biggest age group represented was 45-54 years (32 per cent), followed by 35-44 years (21.8 per cent) and 55-65 year (20.9 per cent).

The occupations of respondents were diverse with more than 80 different occupations represented, including academics, 12 school teachers, others involved in education and academia, 10 retirees, seven students, an



author, biomedical engineers, builders, cabinetmaker, carer, community development professional, dental therapist, engineers, gardeners, architects, a psychologist, retail workers, writers and youth workers. While there was a high level of participation by people from nearby suburbs, respondents came from nearly 40 different postcodes from across the metropolitan region.

51 per cent lived less than five kilometres from the protest sites, 29 per cent lived 5-10 kilometres away, and the remainder more than 10 kilometres.

PROTEST EXPERIENCE

In response to the question 'have you ever participated in protest before?' only 17 per cent of respondents said they were experienced in peaceful protest. Nearly 30 per cent said they had rarely participated, 32.5 per cent had participated occasionally and 20 per cent said it was their first time. This indicates a significant proportion were locally impacted people who hadn't been politically active previously.

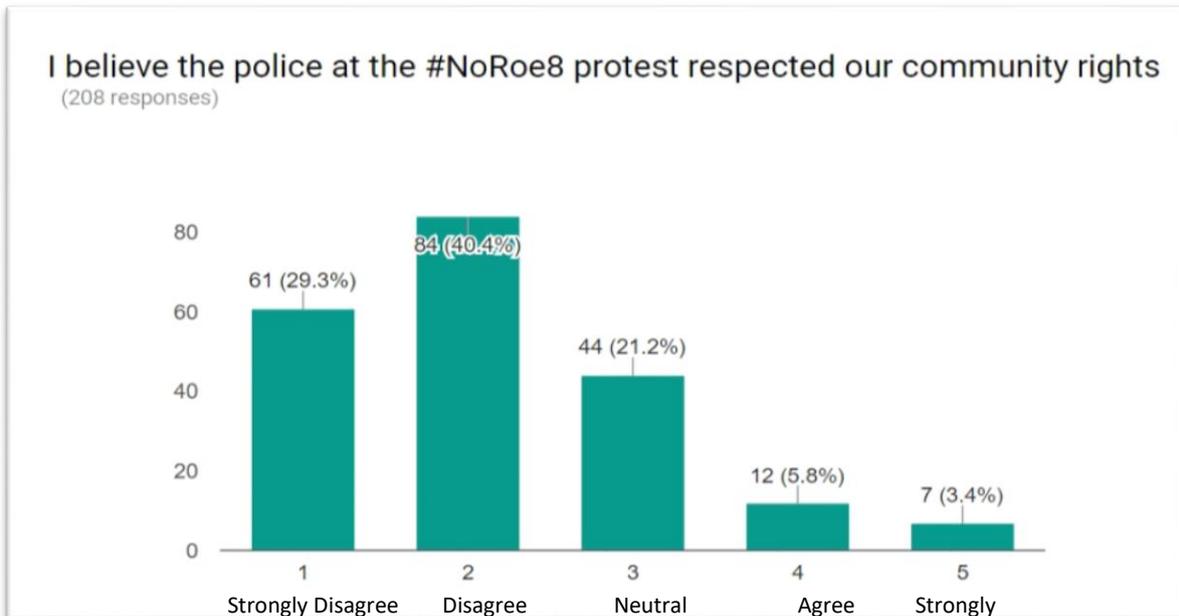
Attendance at the protests was quite variable with only 9 per cent on site every day. The majority were on site more than once a week.

³⁴ <http://counteract.org.au/revealed-community-survey-policing-beeliar/>

Our Mission:

To enhance the quality of life and well-being of all people in Western Australia by contributing to making our State a safe and secure place.

- 95.1 per cent of respondents felt that the police did not fulfil this mission
- The vast majority (89 per cent) of respondents said that policing during the campaign was not an appropriate expenditure of taxpayer resources.
- Community rights as referenced on the WA Police website were not considered to have been respected, with only 3.4 per cent strongly agreeing, and 5.8 per cent agreeing.



NEGATIVE INTERACTIONS WITH POLICE

*"I was raised to respect and trust police and had never had any negative experiences. This has completely changed. During my time protesting I would look at them wondering how all this fitted in with their mission "to protect and serve". I now see a police uniform and am scared and intimidated. I no longer trust that they are here to look after our interests and I don't know whether I ever will again. **How I can speak to my grandchildren about police in a positive way again, I have no idea.** The huge police presence and their attitude to the public they were meant to be serving was way over the top."*
~ Survey respondent

The following police behaviours were witnessed and experienced by survey respondents:

People being arrested for reasons unclear	74.6% (150)
People being directed to move for reasons unclear	76.6% (154)
Horses being ridden towards people in a way that could injure	86.6% (174)
Police being verbally aggressive	69.2% (139)
Police being physically aggressive	70.1% (141)
Police threatening pepper spray	9.5% (19)
Police deploying pepper spray	9% (18)
Police threatening taser	7.5% (15)
Police deploying taser	0
Other	22.9% (22)

Did police actions fit the definition of misconduct for the Corruption and Crime Commission?

Police typically investigate their own complaints. Occasionally they are referred onto the [Corruption and Crime Commission](#) (CCC).

Serious misconduct as defined by the CCC does not generally apply to the incidents we are discussing as part of the Beeliar protests, however minor misconduct is defined below:

Minor misconduct, as defined by section 4(d) of the [CCM Act](#), occurs if a public officer engages in conduct that:

- adversely affects the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
- involves the performance of functions in a manner that is not honest or impartial; or
- involves a breach of the trust placed in the public officer; or

The overwhelming majority (75 per cent) of respondents indicated that they witnessed incidents that fit the definition of minor misconduct. Along with other evidence presented in this survey, the extended report to be released, **we argue this makes a strong case for calling an independent investigation into policing of the Beeliar protests.**

APPENDIX 2 - PROJECT BACKGROUND

Aspects of road planning for Roe 8 and associated infrastructure have been contested by the local community for over thirty years. Funding for the Perth Freight Link was announced by the Commonwealth Government on 19 May 2014 as part of the Infrastructure Growth Package in the 2014-15 Budget.³⁵ A further \$260.8 million was committed by the Commonwealth on 12 April 2016 for constructing tunnels as part of the Perth Freight Link's route.³⁶ The Department of Infrastructure and Regional Development provided a broad overview of the Freight Link project on its website:

The project will provide a direct free flowing connection between the Roe Highway and the Port of Fremantle providing improved capacity for heavy vehicle freight movements to and from the Port. The project will complement the Australian Government investment in projects such as Gateway WA and NorthLink WA (which includes the Tonkin Highway Grade Separations and the Swan Valley Bypass). Together, these substantial network improvements will establish the Roe Highway as the preferred east-west freight route into the Port of Fremantle. This in turn will remove the number of heavy vehicles using the Leach Highway which will reduce commuter congestion on this route.³⁷

The Freight Link project was scheduled to be delivered in three stages:

- Section 1 – Roe Highway Extension;
- Section 2 – Stock Road and Leach Highway upgrade; and

³⁵ 'Infrastructure Growth Package - addition to the Infrastructure Investment Programme for new investments' in Commonwealth Budget 2014-15: Budget Paper No. 2: Expense Measures, p. 175.

³⁶ The Hon Malcolm Turnbull, 'Perth Freight Link to improve road safety and ease port access' Media release, 12 April 2016.

³⁷ Department of Infrastructure and Regional Development, 'Perth Freight Link' at

http://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=052776-14WAPKG (accessed 20 October 2015).

- Section 3 – Roe Highway pinch point widening.³⁸

The Business Case Executive Summary states that the first stage of the project, the Roe 8 extension, would be constructed over 2016-17, with the other sections of the project scheduled to be completed over 2018-19.³⁹

The planned Roe 8 stage of the Freight Link was a 5.2-km extension of the Roe Highway from its current terminus at the Kwinana Freeway in Jandakot, to Stock Road in Coolbellup (see Figure 1). This link was to be a four-lane dual carriageway and include several interchange connections.⁴⁰ Section 2 ended in East Fremantle well short of the Fremantle Port and on the wrong side of the river. Controversially, it would have required the resumption and demolition of homes in Palmyra, and O'Connor. Businesses would also be taken or severely disrupted.

Following the 2013 election, which saw his government returned to office, the Hon Colin Barnett, the Western Australian Premier, stated that the Roe 8 extension would not be undertaken during the 2013-17 term of office.⁴¹

However, it was reported in early December 2015 that the Turnbull government had approved \$300 million to be provided to the State government to start construction on the Roe 8 stage of the Freight Link.⁴²

In late October 2015, the Western Australian Government awarded the contract for the Roe 8 highway stage of the Freight Link (stage 1) to the consortium headed by Leighton Contractors, which also includes civil infrastructure company the Georgiou Group, as well as GHD, AECOM, WA Limestone, and the civil and structural engineering consultant's BG&E.

Infrastructure Australia noted risks to the Perth Freight Link, particularly regarding environmental approvals and lack of community support: Major risks for the project included costs, environmental approvals and community support. The most contentious component of the project from an environmental and community perspective was cited to be **the extension of Roe Highway across the Beelihar Regional Park, which encompasses two significant chains of wetlands.**⁴³

Indeed, this was the case, and when the project commenced in late 2015 with a group of protesters being issued move-on notices at Baker Square⁴⁴. This initial work was halted following a successful Supreme Court action in December 2015 by Save Beelihar Wetlands challenging the validity of the EPA approval⁴⁵. "The EPA took no account of its own published policies at the time it made its decision and provided its report to the minister," Chief Justice Martin said.

The Western Australian Government appealed the Supreme Court decision, and in late 2016 the Court of Appeal overturned the decision. Save Beelihar Wetlands applied for leave to appeal to the High Court. In December 2016 work recommenced on Roe 8 after the application for leave to appeal was unsuccessful. Approximately 100 police were deployed for the recommencement of the works.⁴⁶ This report focuses on the policing since that time.

³⁸ Perth Freight Link: Business Case Executive Summary (December 2014), p. 3.

³⁹ Perth Freight Link: Business Case Executive Summary (December 2014), p. 3.

⁴⁰ Department of Infrastructure and Regional Development, Submission 71, p. 9. Rural and Regional Affairs and Transport References Committee, Decision to commit funding to the Perth Freight Link project, May 2016.

⁴¹ 'Premier Colin Barnett says contentious Roe Highway extension will not be built in this term of government', ABC Online, 16 Oct 2013 at www.abc.net.au/news/2013-10-16/roe-highwaydelay/5026812 (accessed 16 December 2015).

⁴² Joe Spagnolo, 'Roe 8: Turnbull Government agrees to \$300 million deal' in The Sunday Times, 6 December 2015 <http://www.perthnow.com.au/news/western-australia/roe-8-set-to-proceed-after-commonwealth-agrees-to-300m-deal/news-story/74607184a1dfaa77c2b065af932bfafa> (accessed 7 December 2015).

⁴³ This assessment was made before conditional environmental approval for the Freight Link was granted by Western Australia. Infrastructure Australia, 2014-2015 Assessment Brief: Perth Freight Link, p. 4.

⁴⁴ <http://www.abc.net.au/news/2015-11-24/drilling-begins-in-wetlands-for-controversial-roe-8-extension/6968966>

⁴⁵ <http://www.watoday.com.au/wa-news/supreme-court-rules-epa-approval-of-roe-8-invalid-20151216-glor7u.html>

⁴⁶ <http://www.abc.net.au/news/2016-12-06/move-on-notices-issued-to-roe-8-protesters-at-beelihar/8096134>

APPENDIX 3 – MOVE ON NOTICE

