



Legal Observer Report: Policing of the Land Forces Protests

21 June 2021

This report comments on events that took place on Jagera and Turrbal lands, over which sovereignty has never been ceded. We pay our respect to elders past and present and recognise that First Nations peoples have been at the forefront of taking action for police accountability for over 200 years.

This always was and always will be Aboriginal land.

About Action Ready

Action Ready is a grassroots collective made up of volunteer lawyers, law students and graduates, and persons interested in police accountability and protest law. We train and field legal observers in accordance with principles of independence and the overarching goal of protecting and enhancing the political space in which people have to engage in protest.

www.actionreadyqld.com for more information

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Introduction

Action Ready fielded a team of nine (9) Legal Observers for the three days of protests organised in response to the Land Forces 2021 Conference, which took place at the Brisbane Convention and Entertainment Centre (BCEC) in South Brisbane. The protest took place from Tuesday the 1st to Thursday the 3rd of June.

Legal Observers were present at the site and the central organising space a few hundred metres away from approximately 6.30am until midday and 4:30pm until 7:00pm each day, observing, monitoring, and recording police conduct and interactions with protesters. The team observed hundreds of Queensland Police Service members present at the protest, including the Public Safety Response Team (PSRT), who were deployed on each day of the protest, and witnessed multiple arrests.

This report is designed to reflect upon and assess the potential and actual impacts of police actions, tactics and approaches, in terms of human rights, health, and other impacts, as well as assisting all parties in their analysis and understanding of the Land Forces protest event itself. Importantly, it is based upon the first-hand observations of the team, photo/video evidence, and direct testimony either recorded by Legal Observers onsite or made available to the team since. A set of important, clear, and achievable recommendations to QPS and the Queensland Government stemming from these observations are included at the end (see page 16). This report is a public document and is provided to the media, the Queensland Police Service Ethical Standards Command (ESC), Crime and Corruption Commission (CCC), the Queensland Human Rights Commission (QHRC), legal and human rights agencies, Members of Parliament, Ministers and other agencies upon request. This report should be read in the context of deep-seated problems in the political and police response to peaceful assemblies in Queensland since the 1970s and to this very day.

We wish to thank the many Legal Observers who volunteered their time and those who provided us with testimony and photographic evidence of their experience with police at the Land Forces protests. This report does not include every incident or report provided to us, nor does it claim to be an exhaustive account of every incident over the three days. We do hope that it provides both a comprehensive analysis and a representative account.

We are also grateful for the feedback and assistance provided by Melbourne Activist Legal Support (MALS). The policing reports previously published by MALS were of great value to us in preparing this report.

Context and background

Action Ready has tracked the rise in excessive policing and crowd control tactics by QPS over the last several years at protest events in Queensland.¹ QPS's approach to protest policing has been characterised by intolerance toward disruption caused by peaceful assemblies, as indicated by unnecessarily aggressive arrests, questionable use of police powers, and an unnecessarily antagonistic attitude toward members of the public engaged in protest. This indicates a disregard for the civil rights and welfare of the public they are tasked to serve and protect. Given the complete repression of protest and police-led violence during the Bjelke-Petersen era in Queensland, it is vital that this ever-increasing trend of excessive policing be addressed immediately.² The *Peaceful Assembly Act 1992* (Qld) ('the PAA') was introduced in the wake of the Bjelke-Petersen era in order to ensure that future generations of Queenslanders 'may exercise the right to participate in public assemblies'. Action Ready are deeply concerned that the PAA and the civil and political rights it was intended to protect are being increasingly undermined by the QPS.

Melbourne Activist Legal Support (MALS) has previously reported that police in Victoria utilise a 'Strategic Incapacitation approach to policing' which involves 'multidimensional policing strategy characterized by the deployment of massive police presence, the use of barriers, 'preventative' arrests, selective use of force with an array of less-lethal weapons'.³ Action Ready considers that this description is also consistent with the approach taken by the QPS, suggesting cross-jurisdictional practices of concern. The approach does not accord with a police service that claims to 'champion' human rights.⁴

'Strategic incapacitation' serves policing imperatives by deliberately neutralising protest movements, limiting their growth, size and political effectiveness. The sheer number of police at events and ever-present threat of violence acts as intimidation and deters people from becoming involved in either organised groups or specific instances of public participation. It also serves to further the often conflictual and antagonistic attitude toward social movements from some sections of the wider public. By applying levels of force designed for riots against peaceful protests, police, in alignment with conservative and simplistic media reporting, can successfully reframe a peaceful protest as 'violent' thereby adding to the existing vilification of protest groups by some sections of the media and government.

The silencing and demonising of protestors at Land Forces is particularly concerning when bearing in mind that the Queensland Labor Government directly funded the Land Forces conference. Arguably, the Government may have, or be perceived to have, an invested interest

¹ <https://www.actionreadyqld.com/statements>

² <https://www.theguardian.com/australia-news/2019/sep/01/nothing-has-changed-why-queenslands-protest-battle-has-raised-joh-bjelke-petersens-ghost>

³ MALS; Gillham, Patrick F. 2011. "Securitizing America: Strategic Incapacitation and the Policing of Protest Since the 11 September 2001 Terrorist Attacks." *Sociology Compass* 5(7):633-652.

⁴ <https://mypolice.qld.gov.au/news/2019/07/24/qps-trains-human-rights-champions/>

in turning a blind eye to these police tactics.⁵ By permitting, encouraging or tolerating policing which undermines the civil and political rights enshrined in the *Human Rights Act 2019* (Qld) we risk reducing the vital political space we need to maintain and enhance an effective democracy.

Executive Summary

The police tactics, approaches and the behavior of individual police officers during the Land Forces protests demonstrated that QPS do not have the ability to manage peaceful protests of this nature without resorting to excessive levels of coercive force that exceed their lawful powers and obligations under the *Human Rights Act 2019* (Qld) ('Human Rights Act'). Moreover, the QPS response demonstrates a systemic culture of intolerance and antipathy for peaceful assembly and the members of the public engaged in peaceful assembly.

The protest activities that took place in the conference vicinity over the four days took various forms, including a smoking ceremony, marches, mock dinners, brass band concerts, public speeches, silent vigils, and a gathering or 'picket' at the main entrances to the conference centre. The picket at times involved protestors shouting at the conference attendees as they entered or exited the conference. Legal Observers witnessed that this would on occasion involve swearing or other language that may be considered offensive, however, it was observed to be non-violent at all times.

The Legal Observer team reported that the violent arrest of a protester not even an hour into the first day of the protests established a tone of hostility on the part of police officers toward participants. Over the next three days, the behaviour of individual officers and the tactics deployed en masse reflected this hostility, despite there being no real risk of harm posed by the protestors to any other individuals. Legal Observers witnessed, recorded and documented multiple incidents of excessive, unnecessary and potentially unlawful use of force, either as a coordinated crowd control tactic or by individual police officers. The Legal Observers comfortably assert that the only visible de-escalation of confrontations was done by participants in the peaceful assembly and not by police. A number of casual interactions between police officers and protestors demonstrated a lack of respect for members of the public and a high level of unprofessionalism. The policing had a series of obviously harmful physical, emotional and psychological effects on the individuals affected.

⁵ https://www.parliament.qld.gov.au/documents/hansard/2021/2021_05_12_WEEKLY.pdf

Excessive use of force

Excessive force in performing arrests

Police impact a person's rights and freedoms under the *Human Rights Act* when they are taken into custody. The QPS has an obligation to ensure that individuals in their custody are treated with humanity and with respect for the inherent dignity of the human person.⁶ Additionally, police officers and watchhouse officers are required to only use the minimum amount of force necessary to safely resolve an incident.⁷

Legal Observers witnessed three arrests which involved excessive levels of force. The first of these incidents occurred at approximately 7:40am on Tuesday the 1st of June when the police arrested a young male protestor. Observers noted that the police response in performing this arrest was immediately excessive and unnecessarily violent in the absence of resistance. The force exercised by officers would be inappropriate in any circumstance and risked serious injury. Police were observed pinning the young man to the ground, with an officer's hand placed on the back of his neck applying significant force downwards and squeezing at each side of his neck. This hold risks serious neck or spinal injuries, as well as loss of consciousness due to lack of blood supply and oxygen.⁸ The individual was immediately left scratched and bloodied on his back and hips from the force of the arrest. Footage has been published by ABC News at this [link](#). In the footage, one police officer attempts to knock away the phone, and another officer appears to remove his badge.



Screenshot from the video footage demonstrating excessive use of force and the use of a dangerous choke hold.

⁶ Human Rights Act s 30.

⁷ Queensland Police Service Operations and Procedures Manual ('OPM'), s 14.3; *Police Powers and Responsibilities Act 2000* (Qld) s 615 ('PPRA').

⁸ OPM 14.3.3.

A second violent arrest occurred on Wednesday the 2nd of June at about 8:30am. QPS officers were looking up licence plates of cars parked next to the protest site and speaking to the owners of those vehicles and their friends. Police then began telling individuals who had gathered to move away and without warning grabbed and arrested a young man. Again, this arrest was immediately excessive and unnecessarily violent in the absence of resistance. The officer was seen to rapidly hook his arm around the back of the arrestee's neck and use significant force to drag him to the ground. The arrested man can be heard saying "I'm not resisting". The officer remains with his arm firmly around the arrestee's neck, despite the fact he is completely immobilised on his knees and being handcuffed. At this point a QPS officer began telling those filming the incident that they must move in order to 'maintain a 1.5 metre distance', despite not having enforced the *Movement and Gathering Direction* at any other time over the course of the week.



Queensland police officer holds a protester who was not resisting arrest in a dangerous neck hold.

On Tuesday at about 8:30am protestors entered the BCEC through the open cafe entrance. One individual, a young man, was detained and removed from the BCEC with excessive force. A Legal Observer present at the time noted that he was pulled by the hair and head by one officer and pushed from behind by another. The individual was then pushed by one of the officers down the stairs leading into the building - landing on the railing. Again, the force exercised by these officers would be inappropriate in any circumstances and risked serious injury, both to the young man involved and bystanders on the stairway. The police officers involved were not wearing identification badges and refused to provide their identification details to the Legal Observer present when asked after this incident.



Police officer without a badge detained and aggressively removed from the building

Although not directly observed by a Legal Observer, Action Ready has verified that a woman who was arrested on the first day of protests had her arm broken by police at some point

between her forceful arrest and being placed in a cell at the Brisbane City Watch House. This individual has received medical treatment.

The level of force used in these incidents was more appropriately suited to circumstances where the arrestee posed a threat of serious physical harm.⁹ However, the individuals arrested and those participating in the Land Forces protests generally were peaceful and posed no physical threat to police. The physical force a QPS officer may use is limited by laws and guidelines and should only be used where:

- authorised;
- justified;
- reasonable/proportionate/appropriate;
- legally defensible; and
- tactically sound and effective.¹⁰

In deciding whether to exercise force against an individual, police are required to consider whether there are alternative ways to achieve the purpose of controlling the disruption caused by the person.¹¹ Alternative and less restrictive action that was open for police to undertake included negotiation, issuing warnings, giving move-on directions, and making an arrest using reasonable force.

The use of excessive force by the QPS indicates a lack of tolerance toward peaceful assembly and has the effect of infringing upon an individual's lawful right to participate in the peaceful assembly. The conduct witnessed at Land Forces undermines public trust in the QPS and individual officers' ability to effectively communicate, negotiate and mediate with protestors in order to facilitate peaceful assembly. It casts doubt on the QPS's ability to avoid escalation of violence and minimise conflict. Moreover, it indicates an inability or refusal to respond to peaceful assemblies in accordance with the Human Rights Act.

Use of handcuffs

Legal Observers witnessed multiple uses of metal handcuffs being used as constraints during arrests. Handcuffs can cause ligament, arm or shoulder injuries, circulatory problems and severe bruising, particularly when people are being carried or moved by police. One woman arrested at this protest informed police at the time of arrest that they had a shoulder condition but handcuffs and a painful compliance grip were still used. Another protester was told by police that he was "resisting arrest" while immobilised, and being held face down against the ground.

⁹ OPM s 14.3.1.

¹⁰ OPM s 14.3.2.

¹¹ OPM s 14.3.2.

The QPS Operations and Procedures Manual deem the use of handcuffs a 'use of force' option.¹² Consequently, the same laws and guidelines apply to their use as with other uses of force. We reiterate that in the circumstances there were no threats posed by the arrestees that warranted handcuffs being used. We do not consider the use of handcuffs to be justified in such circumstances and assert that handcuffs or zip ties should not be used for non-resisting arrestees.



Queensland police officer using handcuffs on a protestor

Excessively forceful crowd control tactics

In addition to these specific incidents of excessively forceful arrests, police were observed on numerous occasions grabbing and holding wrists, twisting arms in painful ways, and pulling and shoving protestors and Legal Observers. On many occasions this resulted in the individual falling over onto the concrete pavement or the roadway.

One such incident involved a police officer shoving a 12 year old girl who was holding a sign on the footpath. An attendee to the protest recalled experiencing the following: "Although all I did was chant and shout (I did not attempt to cross the police barrier), I was shoved by police officers quite a few times, hard enough to knock me to the ground on one occasion."

¹² OPM s 14.19.1.

Aggressive and rude manner

Legal Observers also witnessed police escalating incidents verbally on a number of occasions. This included a number of officers engaged in aggressive and tense verbal arguments with protesters. On one occasion during a peaceful march by a small group down Gray St an officer was observed pointing their finger in a protesters face and loudly shouting “you don’t want to test me buddy”. During the same peaceful march, an officer was observed telling a Southbank precinct security guard that if a young boy who was watching the protest “wanted to take a swing at [the protesters], [he] won’t stop him.” Another officer was observed to yell at a protester to “act like a human being” as they walked away from them. We also received reports that an officer threatened to report a young mother to ‘Child Safety’ for having her children at the protest.

These incidents are clearly inconsistent with the QPS’s commitment to ‘treat members of the public with courtesy and respect, be appropriate in our relationships with them, and recognise that others have the right to hold views which may differ from our own’.¹³ Moreover, it contributes to the overall tone of aggression and violence set by police at the Land Forces protests.

Removal or obfuscation of accountability measures

Legal Observers observed police officers removing their identification tags, using equipment such as radios, protective vests, and rain jackets to obscure their identification tags, and covering this tag with their hand when being photographed. This prevented identification of the officer and interfered with an important accountability mechanism. Moreover, it is inconsistent with order 12.10.1 of the QPS Management Support Manual which orders that “Police officers are to wear Service issue identification tags on all relevant uniform items including a load bearing vest”.¹⁴ It is obvious that if police officers cannot be identified, they can act with a high degree of impunity. Research suggests that police officers who wear identification tags are more conscious of the needs of the general public they are interacting with.¹⁵ Nametags, therefore, are an important safeguard that can help ensure individual police are held responsible for their actions.

¹³ Code of Conduct for the Queensland Public Service (2011), cl 1.5
<https://www.forgov.qld.gov.au/code-conduct-queensland-public-service> .

¹⁴ Queensland Police Service Management Support Manual, s 12.10.1.

¹⁵ E.g.

<https://www.theioi.org/loi-news/current-news/lack-of-identification-of-law-enforcement-officers-results-in-impunity>

It is also extremely concerning that during an interaction with protestors, one police officer removed his body camera. When questioned by protestors, a Legal Observer recorded the officer stating “it fucking broke you spastic” (another instance of an officer using antagonising language, as discussed above). The removal or failure to turn on body worn cameras interferes with important accountability mechanisms.



An officer is photographed without an ID badge



An officer is photographed obscuring his badge

On multiple occasions police were observed to fail or refuse to provide their name, rank and station to an individual after exercising a power as a public official in relation to that individual. This is contrary to the requirements set out in section 637 of the PPRA.¹⁶ Legal Observers witnessed police officers saying words to the effect of ‘I don’t have to’ or ‘give me your name and I’ll give you mine’ when asked for this information. The failure to display identification tags combined with refusal to provide identification information on request meant that in many instances individual accountability was virtually impossible. This is extremely concerning when viewed in the context of the excessive use of force and misuse of powers by police over the three days.

¹⁶ PPRA, s 637.

Treatment of Legal Observers

We are very concerned about the hostile and inappropriate treatment of independent Legal Observers by some members of the QPS. We remind the public and QPS that independent Legal Observers are classified as 'human rights defenders' and that under the United Nations Declaration of Human Rights Defenders, Legal Observers have a right to fulfill their role unhindered and without obstruction.¹⁷

A Legal Observer monitoring a protest in the South Bank precinct was given a 'move on order' along with a group of protestors, merely for filming the interaction between protestors and two PSRT members. The PSRT officer then threatened to arrest the Legal Observer for 'not complying' with the order when the Legal Observer attempted to explain that they were only there to observe and were not involved in the protest.

On two separate occasions Legal Observers had their mobile phones used for filming snatched out of their hands without any warning by members of the PSRT. In one of these instances the QPS member refused to give the phone back to the Legal Observer (a young woman) and another Legal Observer (a middle-aged male) had to approach the officer later in the day for it to be returned. In addition to this, there were many instances of Legal Observers being pushed, pulled, and sworn at by police while they were attempting to observe and film interactions.

When this treatment is considered in the light of the other interference with accountability mechanisms by QPS officers (as discussed above), it leads to an inference that the QPS is seeking to avoid any oversight or accountability for the exercise of their powers.



¹⁷ Declaration on Human Rights Defenders
<https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.



Legal Observer having their phone snatched by a QPS member.

Bail Conditions

Legal Observers independently verified that at least one individual who was arrested and charged with offences relating to their engagement in peaceful assembly were granted police bail on an undertaking which included a special condition preventing them from engaging in 'unlawful protests'. It is unclear what the QPS officer imposing this condition meant by an 'unlawful' protest, given peaceful protest on public land is inherently lawful. It is presumed they meant 'unauthorised' or without notice under the Peaceful Assembly Act.¹⁸ In any event, the condition evidently has the intention and effect of preventing the individual concerned from engaging in peaceful assembly.

This condition unreasonably limits several rights protected by the Human Rights Act, namely:

- (a) Freedom of movement (s 19);
- (b) Freedom of expression (s 21);
- (c) Peaceful assembly and freedom of association (s 22); and
- (d) The right to participate in public life (s 23).

In imposing conditions of bail, police officers must 'impose no greater limitation upon the liberty and human rights of the accused than the circumstances of the case require'.¹⁹ The legitimate objects of special conditions (i.e. ensuring the relevant individual appears for court at a future date, does not endanger the public, and does not commit further offences)²⁰ did not necessitate a condition prohibiting the relevant individual from engaging in protest activity. These purposes

¹⁸ PAA ss 5, 7.

¹⁹ *Woods v Director of Public Prosecutions* [2014] VSC 1 [65].

²⁰ Bail Act 1980 (Qld) s 11.

could have been achieved through merely imposing the mandatory conditions of a bail undertaking.²¹

We submit that the limitations imposed upon this individual's human rights as a result of this bail decision by the QPS officer were not reasonable and justifiable.²² Moreover, the imposition of this highly restrictive condition is further evidence of the hostility and intolerance towards peaceful assembly consistently demonstrated by the QPS in recent years. The imposition of the same or similar bail conditions on refugee activists protesting at Kangaroo Point was well documented and is currently the subject of a human rights complaint before the QPS.

Inappropriate use of directions, powers and threats

Legal Observers witnessed multiple instances of inappropriate use of police powers aimed at suppressing participation in protest action, including the use of noise abatement directions, threats of arrest for swearing, move-on orders, and searches and seizure of possessions. The use of directions and threats in this manner indicates an unwillingness by QPS to tolerate peaceful assembly.

I. Use of directions

Noise Abatement Directions

A significant amount of protest activity engaged in at Land Forces involved making noise. This conduct intends to convey a political message usually through singing, chanting and playing music. On 1 and 2 June 2021 several noise abatement directions were issued to individuals engaged in protest activity.²³ These included issuing a direction against the marching band Riff Raff to stop playing music, directions to specific individuals to stop chanting through megaphones, and directions to individuals using speakers to stop playing music. Police also confiscated and on many occasions broke items used to make noise.

The use of noise abatement directions and the confiscation of items had the effect of limiting individuals' ability to participate in peaceful assembly. These directions are typically exercised in relation to parties occurring in a residential setting and their use in relation to protests is very concerning. While the making of noise may be disruptive to individuals in the BCEC area, the right to engage in peaceful assembly includes conduct which may be disruptive and cause inconvenience. The QPS response to noise created by protesters demonstrates an intolerance

²¹ Ibid s 13, 20.

²² Human Rights Act s 13.

²³ PPRA ch 19, pt 3.

towards peaceful assembly and an inability to operate in a manner consistent with their obligations under the Human Rights Act.

Move on directions

On 2 June 2021, Legal Observers witnessed the use of move on directions against many individuals engaged in protest activity at the Southbank precinct.²⁴ These orders were given to groups at large, rather than in response to specific individual's behaviour. The use of move on directions against individuals engaged in peaceful assembly is very concerning and for this reason there is a higher threshold for QPS officers to be able to lawfully do so.²⁵ Action Ready has witnessed an increasing trend of QPS officers using move on directions against protestors where this threshold has arguably not been met.

II. Threats of directions and charges

Legal Observers also witnessed a significant number of threats by police officers that certain police powers would be used. This included threats that move-on directions, noise abatement directions, and public nuisance charges would be given. Where the police do not have grounds to use such powers, the threat to do so still has a limiting and damaging effect on the public's right to engage in peaceful assembly and their feelings of safety and trust in the QPS.

On multiple occasions witnessed by Legal Observers, protestors were threatened with a charge of public nuisance for swearing. On at least one occasion, verified by a Legal Observer, an individual was charged with public nuisance for yelling 'wife basher' at an officer. Additionally, a Legal Observer witnessed an officer actually attempt to arrest an individual for 'swearing' and then begin to complete the paperwork to issue that individual a notice to appear after they had failed to complete the arrest. A Legal Observer reported that a QPS officer said to them 'if you're a Legal Observer, why don't you tell them that's illegal?' while pointing at and referring to an individual who had just said 'fuck'.

Consistent with the High Court decision in *Coleman v Power*, charges and cautions relating to the use of "offensive" language cannot be used in the event of statements made in the course of exercising freedom of political communication. Charges and threats of charges in such circumstances are entirely inappropriate and we are very concerned that the QPS appear to be unaware of this or indifferent.

III. Searches and seizing of possessions

On 3 June 2021 approximately five protestors were stopped and searched upon approaching the BCEC. Police stated that the purpose of the searches was to check whether the individuals

²⁴ PPRA ch 1, pt 5.

²⁵ PPRA s 48(2) - must be reasonably necessary in the interests of: (a) public safety; or (b) public order; or (c) the protection of the rights and freedoms of other persons.

had any dangerous liquids or were carrying any "dangerous attachment devices" (lock-ons). Although expanded search powers under the newly introduced Dangerous Attachment Device laws mean searches are permitted without a warrant, police are still required to have reasonable suspicion that a person has a DAD in their possession. The searches were seemingly random and there was no apparent reason why a 'reasonable suspicion' was held in relation to these individuals. In the course of performing these searches, creative props used as part of the protests (e.g. cardboard tanks) were intentionally torn apart by police.

Of particular concern is police conduct towards Legal Observers and other protesters who were monitoring the searches. Police told Legal Observers recording the incident that they were not allowed to film and used their own phones to film Legal Observers in response. One police officer who participated in a search did not provide the individual being searched with their name, rank and station, contrary to the requirements set out in section 637 of the PPRA.²⁶

Recommendations

We recommend that:

- There are robust, thorough, and independent investigations of complaints arising from the policing at Land Forces highlighted in this report. This is essential in order for those officers who have acted unlawfully or outside QPS regulations to be held to account and to ensure that unlawful assault and the excessive use of force by police is not repeated or seen to be tolerated by QPS;
- The QPS enforce officer's requirement to display their badge number and name and obligation to provide identifying details to an individual when exercising a power;
- The QPS implement de-escalation training for all officers;
- The QPS implement training for officers around the *Peaceful Assembly Act* and their duties under the Human Rights Act;
- The QPS formally recognise and acknowledge its obligations under the UN Declaration on Human Rights Defenders to allow Legal Observer to carry out their role unhindered and without obstruction;
- The QHRC conduct an investigation and review of the issues raised in this report, including, but not limited to a review of:
 - the use of bail conditions to limit peaceful protest by QPS;
 - the misuse of powers and directions in response to protest action by QPS;
 - the hindering, obstruction, and mistreatment of Legal Observers by the QPS.

²⁶ PPRA s637.