# *'Public Order' Policing and the Value of Independent Legal Observers*

Tamara Walsh*

***Abstract***

This article examines the nature and effectiveness of the legal observer model developed for, and implemented at, the Brisbane G20 in 2014. 'Independent' legal observers ('ILOs'), who were all admitted lawyers, recorded interactions between police and members of the public, with a view to encouraging peaceful relations in public spaces during the event. Few arrests were made, and police were praised for their restraint. The relationship between the 'negotiated management' approach of police and the presence of the legal observers is discussed, drawing on group interviews undertaken with participating ILOs. Aspects of the Brisbane ILO model are analysed, and implications for the policing of public spaces more broadly are suggested.

**Keywords:** independent legal observer – public order – policing – protest – community law – G20

## Introduction

'Public order policing' is an ambiguous phrase, encapsulating many different situations, and conjuring up many different images (see generally Kratcoski, Verma and Das 2001). Its scope ranges from the policing of large protest events to the everyday policing of public spaces. Of course, the policing methodologies applied to large-scale protest events are very different from the approaches taken to maintain an everyday level of 'order'. A great deal of planning, negotiation and collaboration is required to manage planned protest events, particularly where the protest activity is ancillary to another major event, including gatherings of international leaders.

In 2014, the Queensland Police Service ('QPS'), in collaboration with the federal Government, interstate police services and international security personnel, was charged with the task of providing security at the Brisbane G20. Maintaining 'order' at this event was a multifaceted exercise, with the safety and security of foreign leaders and dignitaries being the overriding consideration. Access to roads and buildings needed to be carefully

* Associate Professor of Law, TC Beirne School of Law, The University of Queensland, St Lucia, Qld 4072 Australia. Email: t.walsh@uq.edu.au. The author wishes to thank Caxton Legal Centre for their support of, and assistance with, this research. Thanks also to Evania Johns and Kathryn Thomas for their excellent research assistance.

limited and managed, necessitating a virtual shutting down of the Brisbane central business district ('CBD').

The G20 was expected to attract a significant amount of protest activity. Despite existing legislation granting wide discretionary powers to police to maintain 'order' in public spaces, the Queensland Government passed additional laws to expand police powers significantly during the G20 weekend, particularly those related to search, seizure and arrest. The potential impacts on Brisbane residents, particularly people who lived in public spaces, were significant.

In response to this, Caxton Legal Centre established the Independent Legal Observer ('ILO') Project. The ILO Project employed a group of volunteer lawyers to watch and record the interactions of police with members of the public during demonstrations, protests and public events at the G20. Their role was to record and report on any law enforcement behaviour that unduly restricted individuals' legal rights to protest or be present in public space.

The expectation among the legal community was that large numbers of people would be arrested and charged with offences arising out of incidents at the G20. However, this did not occur. Few arrests were made, and police were praised for their restraint and tolerance towards protesters (Caxton Legal Centre 2015:4).

This article examines some of the circumstances that contributed to this 'soft' approach to policing at the Brisbane G20. In particular, it focuses on the use of ILOs to 'police the police'. Through the use of empirical research, it examines the role that the ILOs played in promoting accountability and encouraging peaceful relations between police and protesters. It also identifies broader lessons that might be learned from the manner in which the Brisbane G20 was policed, and discusses whether the ILO model might be applied more generally to other 'public order' contexts.

## G20 in Brisbane: The legal and policing context

### *The legal context*

The *G20 (Safety and Security) Act 2013* (Qld) ('*G20 Act*') was introduced to the Queensland Parliament in August 2013, some 15 months prior to the event itself.

The stated objectives of the legislation were to promote the safety and security of persons attending the G20, to prevent terrorism, to regulate traffic and pedestrian movement, and to protect members of the public and property from acts of 'civil disobedience' (s 2). These are all reasonable objectives; however, there was significant public outcry regarding the manner in which these goals were operationalised in the Act.

First, police powers related to search were expanded considerably. Police officers were permitted to perform frisk searches of any person entering or leaving a 'declared' or 'restricted' area (ss 23(2), 24(2)).[1] Indeed, the *G20 Act* empowered officers to conduct strip searches in circumstances where an officer reasonably suspected that a person *may* have

[1] 'Frisk search' was defined to include a search conducted by quickly running the hands over the person's outer clothing: *G20 Act*, s 21. 'Declared areas' comprised the entire Brisbane CBD, and surrounding areas, from Kangaroo Point to Bowen Hills: s 9(1). 'Restricted areas' included the areas and roads around many of Brisbane's major hotels, as well as the Brisbane Convention and Exhibition Centre, Suncorp Stadium and the Royal National Association Showground: s 11.

been in possession of a prohibited item without lawful excuse (ss 23(3), 24(3)). Strip searches could be conducted by a police officer of another sex if a police officer of the same sex was not immediately available, or where there was otherwise a serious threat posed to a person's safety (s 28). Further to this, the Act did not contain many of the safeguards that usually apply to protect the dignity of persons being subjected to strip searches, such as the provision of reasonable privacy, conducting the search as quickly as reasonably practicable, and not making contact with the person's genital area. Such protections exist under the *Police Powers and Responsibilities Act 2000* (Qld), s 630. Note that s 4(1) of the *G20 Act* explicitly states that that Act prevails, to the extent of any inconsistency, over the *Police Powers and Responsibilities Act 2000* (Qld).

Second, the range of prohibited items seemed unduly broad. The list of 'prohibited items' included such things as glass bottles or jars, metal cans or tins, eggs, chains and cables, laser pointers, floatation devices, kites, and remote controlled toy cars (*G20 Act*, s 59; Sch 6). Of particular concern to potential protesters was the limitations placed on placards. Placards or banners to which a timber, metal or plastic pole was attached were prohibited, and banners more than 100 cm high by 200 cm long were also prohibited (Sch 6, cl 4).

Third, the *G20 Act* significantly restricted the rights of individuals to engage in peaceful assembly. It formally suspended the operation of the *Peaceful Assembly Act 1992* (Qld), which (at s 5) confers on individuals a legal right to assemble peacefully with others in a public place subject to necessary and reasonable restrictions, mirroring art 21 of the *International Convention on Civil and Political Rights* (*G20 Act*, s 17). Assemblies were permitted in 'declared areas' only if notice was given to the Commissioner at least 48 hours prior so that location, date and time could be negotiated (ss 18, 19). Notably, two-way radios and loud hailers were listed as prohibited items, further limiting protesters' capacity to mobilise and organise themselves (s 59; Sch 6).

Fourth, the *G20 Act* provided for expanded powers in relation to arrest and detention. Persons who failed to comply with police directions, or possessed prohibited items, without lawful excuse could be issued with an 'exclusion notice' and removed from the area (s 55(1), (3)–(6)). The Act established a range of offences related to prohibited conduct, and empowered police officers to arrest people without a warrant if they reasonably suspected the person had committed, or was committing, an offence against the Act (s 78). The *G20 Act* allowed for excluded persons and arrested individuals to be detained for a reasonable time for the purpose of being identified or charged (ss 57(1)(b), 79(2)). Further, it provided for a presumption against bail where a person was charged with an offence that involved (among other things) damage to property or disruption of any part of the G20 meeting (s 82).

### *The policing strategy employed*

Legrand and Bronitt (2015:9) remark that, ultimately, none of this 'had much impact on the policing strategy that was employed'. They explain that the model of policing applied by the QPS was focused on 'dialogue, engagement and liaison' (2015:10), rather than coercion and control. Yet this 'dialogue' approach was reflected in some provisions of the *G20 Act*. Section 19 detailed the process for organising proposed assemblies and stated that the Commissioner *must* make a liaison officer available to consult with protest organisers to negotiate the most suitable location, date and time for the proposed assembly. Importantly, the provision stated that failure of an organiser to give notice of a proposed assembly was not an offence, and neither was a refusal to change the planned date and time of the assembly. This seems to suggest that the act of negotiation was being encouraged and valued, as opposed to taking a punitive approach.

Drawing on discussions with Assistant Commissioner Katarina Carroll, who assumed operational command over the G20 policing strategy, Legrand and Bronitt (2015:10) identify two important features of the QPS approach to policing the G20. First, and as reflected in the legislation, QPS employed a strategy based on engagement with protest groups, fostering trust and understanding. This involved the appointment of police negotiators who, prior to and during the event, worked closely with protest groups to help plan and facilitate their protest activities. Second, it was emphasised to police officers that upholding the human rights of protesters was of utmost importance, and that lawful protest should be facilitated, regardless of the noise and discomfort caused by the message. Legrand and Bronitt (2015:10) conclude that the emphasis was, therefore, on ensuring safety and security 'by public consent rather than police compulsion'.

This approach seems to reflect a 'negotiated management' style of policing, which is now considered best practice in managing planned protests and maintaining public order at large-scale events.[2] The 'negotiated management' approach is juxtaposed against the traditional 'escalated force' model of policing (see della Porter and Reiter 1998; McPhail, Schweingruber and McCarthy 1998). While 'escalated force' relied on 'rigid law enforcement' and the use of force, the 'negotiated management' approach emphasises peacekeeping, cooperation and containment (Baker 2008:10–11). The application of 'negotiated management' has made the policing of protests less violent, as police seek to work with protest groups to facilitate their freedom of expression while also negotiating reasonable limits on their activities through the use of permits and persuasion (see further Baker 2010). By implementing a strategy of cooperation rather than confrontation, police are able to limit the number of arrests they make at the time of the event.

In his report on the Melbourne World Economic Forum Protests in 2000, the Victorian Ombudsman emphasised the importance of making prior contact with protest organisers and initiating ongoing communication with them for the purpose of facilitating individuals' right to protest, while also ensuring community safety (Perry 2001). With a view to implementing this recommendation, at the Melbourne G20 in 2006, Victoria Police appointed 'Crowd Safety Officers' selected from a pool of 'mature and experienced' officers to liaise and communicate with protest groups, facilitate safe protest participation, and 'diffuse the situation' where interactions became confrontational (Human Rights Observer Team 2007:12). A similar model is used in Sweden in the form of 'Dialogue Police Officers', whose role it is to forge a link between protesters and the police command at public demonstrations (Holgersson 2010).

At the Brisbane G20, QPS appointed 'Liaison Officers' to undertake a similar role to Victoria Police's 'Crowd Safety Officers'. These officers were trained police negotiators, and acted as a point of contact for protest groups, having engaged with them as early as 18 months prior to the event. The QPS Liaison Officers worked with protest groups to negotiate when and where safe protests could occur, and monitored the actions of other police officers in instances where protesters' rights to assemble were at risk of being encroached upon.

---

[2] Note, however, that it is not without its critics. Lamb (2012) questions the extent to which the new 'negotiated management' policing approaches to protest events are truly recognising individuals' rights to protest. He considers this kind of methodology to be more of a 'pacification project'; that is, by working 'collaboratively' with protesters, police gain control over their activities while appearing to be collegial and permissive (2012:19–21). Lamb considers preparatory communications with protest groups to be 'intelligence gathering' by police, and liaison with legal observers to be a form of 'infiltration' that assists police to more accurately assess the 'degree of anticipated criminality' (2012:110, 169).

Despite the broad legislative powers, and the sense of trepidation about the potential for their abuse expressed by some commentators and the legal community (Rogers 2013), the 'negotiated management' style policing strategy employed at the Brisbane G20 did result in fewer arrests, and less heavy-handedness, than was expected. There were more than 6000 police officers from eight jurisdictions in Brisbane for the G20, but only 16 arrests were made and only 27 exclusion notices were issued (Legrand and Bronitt 2015:9, 10; citing Carroll 2014).

One of the questions to be addressed by the research reported on here is whether or not the ILO Project contributed in any way to the implementation, and success, of the negotiated management policing strategies applied in this context.

## Independent Legal Observers

### *Legal observers: An overview*

Teams of legal observers have been deployed at large-scale events in Queensland (Clarke 2009) and around the world for decades. In the United States ('US'), the National Lawyers Guild established its legal observer program in 1968 in New York City in response to anti-war and civil rights demonstrations (National Lawyers Guild 2016). 'Legal observers' have been deployed in the US by political parties on election day to 'advise' voters on their rights. Unlike other legal observers, these volunteer 'poll watchers' are invariably practising lawyers (Hayward 2007; Birg 2004/5). Legal observers were utilised at the London, Toronto and Melbourne G20 events, and at the Melbourne World Economic Forum protests (see Noonan et al 2002). They were also deployed during the 'Occupy' campaign at various locations around the world (Yoder 2011/12). The 'Freedom Rider' campaign in Los Angeles (Narro and Gregor 2006), discussed below, offers a unique example of the use of legal observers.

While there is vast literature documenting the policing methods employed to deal with protesters at these events, the role played by legal observers is often only mentioned as an aside. There is limited literature available that details the manner in which legal observers have been used, the nature of their role, and the extent of their effectiveness. What is clear, however, is that legal observation can take various forms, and different models exist that are unique to particular situations.

Legal observer teams are most often volunteers, coordinated and trained by non-profit organisations — either community-based advocacy groups or community legal centres. For example, 'legal observers' at the Melbourne World Economic Forum protests in 2000 were provided by Pt'chang, an all-volunteer, not-for-profit community group that organises community safety projects. 'Human rights observers' at the Melbourne G20 in 2006 were coordinated by the Federation of Community Legal Centres. Legal observers usually 'patrol' in shifts as pairs.

The aim of legal observation is invariably to contribute to the safety of those attending protest events and to facilitate the rights of individuals to engage in peaceful protest (Yoder 2011/12:594). This community safety objective is achieved by equipping legal observers with devices that enable them to observe, record and monitor the actions of law enforcement officials. Early legal observers took handwritten field notes and recorded detailed accounts of incidents as they arose (Human Rights Observer Team 2007). More recently, legal observers carry digital video cameras so they can record real-time footage of interactions

between police and members of the public and any arrests that take place. They are expected to maintain a reasonable distance from any incident that does occur, and to refrain from hindering police (Noonan et al 2002:11).

Legal observers are generally provided with distinctive attire, such as colourful caps, vests or shirts, labelled 'legal observer' so that they are easily identifiable. The hope is that their mere presence will serve to keep a check on police behaviour, encouraging a tolerant approach and discouraging the excessive use of force (Noonan et al 2002:29).

## *Legal observation models*

There are two main points of distinction between different legal observer models. One is the extent to which legal observers are able, or required, to provide members of the public with legal advice on police powers and the legality of police officers' actions. The second is the qualifications of the legal observers themselves.

### 'Independence' and legal observation

Most contingents of legal observers are unashamedly partisan in their allegiance; that is, they are almost always present to observe the behaviour of the police, and to keep police accountable. Most often, legal observers do not concern themselves with the behaviour of protesters or other members of the public. Indeed, they consider their role to be the protection of protesters' and public space users' legal rights.[3] To this end, it is not uncommon for legal observers' responsibilities to include the provision of legal information to protesters. Legal observers often distribute pamphlets, cards or other informative materials outlining the legal rights of protesters and the limitations of police powers at protest events (see Noonan et al 2002:11; Human Rights Observer Team 2007:37). The role of some legal observers may go beyond this to include the provision of advice to members of the public, or making referrals for legal support (Human Rights Observer Team 2007:40). Some legal observers accompany arrested individuals to the police station and provide support to the person while he or she is in custody (Noonan et al 2002:11). Some legal observers are required to collect victim and witness statements for the purpose of defending any prosecution that may arise (see Noonan et al 2002:13; Human Rights Observer Team 2007:9).

### The qualifications of 'legal' observers

Most often, legal observers are not practising lawyers. They are generally law students, paralegal professionals, professionals from other backgrounds, or other 'non-violent peacekeepers' (see Noonan et al 2002:12; Human Rights Observer Team 2007:4). Legal observers frequently work in consultation with a team of volunteer lawyers; for example, legal observers may relay information between members of the public and the lawyers, or may work alongside lawyers in the performance of their observer duties (Noonan et al 2002:11).

One example of this model was developed to support the immigrants' rights movement in Los Angeles (Narro and Gregor 2006). The Los Angeles Chapter of the National Lawyers Guild in the US coordinated a 'Freedom Rider' campaign whereby 900 activists in 18 buses travelled to ten major cities to educate communities on immigrant rights issues, such as gaining legal status, citizenship, and family reunification (Shaw 2008:223). The activists

[3] In their reports, they may note the behaviour of protesters in passing. For example, the legal observer report from the World Economic Forum protests in Melbourne 2000 states: 'Whilst the role and mandate of the Legal Observer Team was not to observe actions or behaviours of members of the public present at the event … it is worth noting that the only aggressive behaviour from protesters observed over the three day event actually occurred immediately after these highly coercive police actions' (Noonan et al 2002:8).

were accompanied by 18 'legal observers', many of whom were law students and college graduates (Narro and Gregor 2006:69). Their role was to deliver legal advice to the activists with the support of 89 volunteer lawyers with whom they communicated throughout the journey via a 24-hour phone hotline. They also acted as lay advocates and mediators between the activists and local authorities, particularly in stressful situations where arrests seemed likely. The organisers concluded that this experience 'served as a testimony of the true essence of people's lawyering' where the law was used in a manner that built solidarity and protected the civil rights of the activists involved (Narro and Gregor 2006:74).

### *Relations between legal observers and police*

Documented instances of legal observer use have stressed the importance of briefing senior police regarding the presence and role of legal observers to ensure the safety of the legal observers and to minimise their own chances of being arrested (Noonan et al 2002:29; Human Rights Observer Team 2007:8). Regardless of any briefing that has taken place, the manner in which legal observers have been received by police officers has varied considerably between events. The legal observer team at the Melbourne World Economic Forum protests in 2000 reported that officers in charge refused to talk to them, and their attempts to report excessive uses of force to superior officers were ignored (Noonan et al 2002:6). They also reported being 'pushed and man-handled' by police officers (Noonan et al 2002:29).

The Melbourne G20 'human rights observer' team reported instances where police officers asked them to move away, and where a superintendent took a retaliatory photograph of the human rights observer who was observing him having a conversation with two protesters (Human Rights Observer Team 2007:36). Similar interactions are reported by Wilson (2012:4) in his paper on 'video activism'. It is also common for legal observers to report instances of police officers removing their badges to ensure they cannot be identified in any footage taken of them (Wilson 2012:5; G8 Legal Support Group 2005; Noonan et al 2002:29).

### *Caxton Legal Centre's ILO Project*

Consistent with other legal observer models, all 50 of the Caxton ILOs were volunteers, wore clearly labelled clothing, carried digital cameras and worked in shifts as pairs. However, the Caxton ILOs differed from most other legal observers in two important respects.

First, all of Caxton's ILOs were admitted lawyers. The decision was made not to recruit any law students or paraprofessionals because admitted lawyers' primary duty is to the court. This provided an additional layer of assurance regarding their conduct and understanding of the importance of remaining independent.[4]

This relates to the second unique characteristic of Caxton's ILOs: that they were required to act as 'independent third parties' (Caxton Legal Centre 2014:4). Their role was to monitor the interactions between police and members of the public. They were not permitted to provide advice, legal or otherwise, to protesters, public space users or police officers. Rather, their role was to 'watch and record' interactions between police officers and members of the public, and not to intervene in any way. They were instructed to maintain independence from protesters and protest activities, and it was understood that any evidence they collected could be subpoenaed by either side, should any prosecution eventuate (Caxton Legal Centre 2014:4–5).

---

4 Interview with Caxton Legal Centre staff (Caxton Legal Centre, 25 August 2015).

The likelihood of ILOs being required to give evidence to a court underpinned both the requirement of independence and the requirement that they be admitted lawyers. The organisers did not want the ILOs to be put in a position where they had offered advice to protesters and were then required to give evidence in respect of the conduct of those same protesters. This could undermine the quality of any evidence they gave to the court. It could also put them in a position of conflict, compromising their ethical obligations.[5]

Research questions for this study, therefore, were whether the particular legal observer project developed by the Caxton Legal Centre for the Brisbane G20 was viewed by the ILOs to be effective, and whether the ILOs agreed that they needed to be admitted lawyers, and act as independent third parties.

## The current study

### *Methods*

In 2015, three focus groups were held with men and women who acted as ILOs during the Brisbane G20. A total of 12 people participated in these focus groups, five men and seven women. This comprised around one-quarter of the total number of men and women who acted as ILOs during the Brisbane G20.

At these groups, participants were asked to reflect on their experience as an ILO at the G20. In particular, they were asked whether they felt their presence had any impact on the behaviour of police officers and protesters, whether they believed ILOs played an effective role at the G20, and whether they thought ILOs might have a role to play at other events or in other contexts more generally.

### *Results*

#### Key themes

The focus groups were transcribed and thematic analysis was undertaken applying the methods of Miles and Huberman (1994): recurring patterns and themes were coded and then analysed. Focus group discussions with the ILOs crystallised around six key themes:

- policing methods applied during the G20;
- the role of ILOs at the G20 and the extent to which they influenced the policing approach taken;
- the ‘independence’ of the ILOs;
- the qualifications of ILOs;
- broader applications of the policing methods used during G20; and
- broader applications of the ILO model beyond G20.

#### Policing of the Brisbane G20: Tolerance and restraint

Overall, the participants in this research spoke positively of their interactions with police officers during the G20 event, and the policing behaviour they observed there. A number of participants said they thought the police at the Brisbane G20 were on ‘their very best behaviour’. One participant stated, ‘in spite of the legislation, they did a good job’.

---

5 Interview with Caxton Legal Centre staff (Caxton Legal Centre, 25 August 2015).

Many participants said police officers exercised a significant amount of restraint, and that there was a degree of self-monitoring going on both within and among police officers. Comments along these lines included:

> I saw evidence of the police tolerating more than they might … We all know how great their powers were and there were times when technically they could have searched somebody or pulled them to one side, [but instead] you saw them maybe take a breath and take a step back.

> They certainly were prepared to let the small things slide.

One participant related the following incident:

> On the Sunday, the protesters were trying to be very provocative so they're actually facing the police saying 'Fuck the pigs. Why are you doing this? Why are you wasting your life?' And there were a lot of obscenities, face to face, coming right up close, shouting in their face. And I thought, something is going to snap here. But the cops just stony-faced, just ignored them.

Only one incident of 'heavy-handedness' was described by the participants in this study. This particular incident was discussed at all three of the focus groups, and the participants who witnessed it agreed that the police officers did overreact at first, and tensions were high. However, they then went on to describe how the 'police negotiator' (QPS Liaison Officer) had come in and convinced the officers in question to stand back, and the officers followed this direction.

Other than this one incident, the police were described by participants as 'restrained', 'tolerant' and even 'chatty'. Notwithstanding, some of the participants noted that the threat of force was ever-present, and that the 'muscle' in the background may have contributed to the success of this conciliatory approach. This 'muscle' took the form of armed police officers in riot gear who stood back from the crowds. As one participant commented: 'The police negotiators were very much taking the lead … but 10 metres behind was the muscle. The threat of muscle was always there as well.'

### *Impact of ILOs on policing at the Brisbane G20*

As for whether or not the presence of the ILOs contributed to the tolerant and restrained approach of the police, participants tended to agree that 'the knowledge that they were being watched and that [their behaviour] could be videoed' did influence the actions of police officers. Some went so far as to say that they 'definitely saw police behavior change' when the police officers became aware of the ILOs' presence. Participants remarked:

> I got a distinct impression that the police knew that they were being watched and that that somehow fed into the way they reacted when we were there.

> They [the police] were very interested if you were writing any notes, taking photographs … so they were obviously very conscious of our presence which did have an effect on their behaviour, perhaps.

> My own experience suggests that the police behaved very differently when the eyes are on them and the video cameras make a world of difference to not only their behaviour at the time, but to whether they would be held accountable for misbehaviour.

One participant provided an example:

> [A man] was coming out of the train station with a backpack on his back. He looked a bit lost, maybe he was homeless. I don't know, that kind of stereotype … They asked him to empty his backpack, which he did. They found uncapped needles in his backpack. The police said to him

> that uncapped needles were unsafe … had a bit of a chat to him about where he was off to, and let him go on his way. I actually don't think that would've happened normally … they said to us as legal observers, 'How did we go?' when they finished that interaction.

### *The 'independence' in ILO*

It was clear from all the focus groups that the participants took their role as independent third parties very seriously. One participant said: 'I believe in the freedom to demonstrate, but I also felt I was there to help any hard-working police officer.'

They remarked that they deliberately resisted 'buddying up' with either the police or the protesters. Regardless of any 'friendly' interactions they may have had with the police, they did not consider themselves to be 'collaborating' or 'working with' the police — 'they did our job and we did ours'.

A majority of the participants believed that their independence and impartiality impacted positively on their interactions with police. Two of the participants remarked:

> Looking back on it, I think that [the independence of the role] was a very good thing for the profession. That the public were seeing lawyers who were giving up their time, and were prepared to go out in public wearing silly clothes to achieve some sort of social end.

> I think the whole purpose of observing is that you calm the situation, so it's not actually to take notes of the drama that unfolds, it's actually to be a preventative to the drama.

Three participants said they were uncomfortable with the independent nature of their role, particularly as it meant they might be required to give evidence in support of the police. They made comments including:

> My initial thought about what it was, having been to other protests, was it would be more of providing advice to the protesters … I did feel somewhat uncomfortable with the potential role of taking evidence that could be used against the participants in the protest.

> I would be incredibly uncomfortable with that. That was my biggest worry — that the police would call me to give evidence for the prosecution, actually.

> I just didn't want to be another arm of authority. The protesters are already being surveilled by the police, I just didn't want to be another extension of that necessarily, and that's just my personal ethical quandary.

There was a division of opinion regarding how the protesters reacted to the independence of the ILOs. Participants said:

> I did get one or two protesters sort of saying, 'do you think I'm allowed to do this – I wanna give it a go'. And you're like, 'look, I'm not here to advise you, I'm just watching.' And I think that told them enough and they'd go back and didn't do the things they might have been thinking of doing.

> I had a protester who was very, very active — one of the few people wearing the Anonymous masks — come up to me on the Friday and say 'Where are you guys going to be tomorrow? Tomorrow's going to be a big day. How many of you are there? We need as many ILOs here as possible.' So I think that's a very positive comment coming from a protester.

However, one participant related a negative interaction with protesters:

> During an incident, some people were like 'are we allowed to do this?' and I had to tell them I couldn't comment. And then afterwards, more pressure after the incident, people were saying

> 'what can we do about that? What if that happens again? Can we do all of this?' And I couldn't say anything. And they were like 'you're a lawyer. What good are you doing here?' That happened and that was pretty uncomfortable.

Reflecting on this incident, two of the participants wondered if it would have been helpful to have both ILOs and legal advisers present, so that an ILO 'could say "don't ask me, ask the lady over there in the red jacket, that's what she's here to do"'. Another suggested that pamphlets with legal information, agreed to by the police, could have been distributed to protesters and public space users.

### *Qualifications of ILOs*

Participants were not unanimous in their views on what qualifications ILOs should have. In particular, participants were divided on whether ILOs needed to be admitted lawyers or not.

Some of the participants agreed it was important that ILOs be admitted legal practitioners because their specialised knowledge of evidence allowed them to better judge what kinds of interactions to observe and record. However, other participants believed that non-lawyers could undertake the role just as effectively. Two participants said they felt that law students could undertake the role, but others noted that they would not 'have the same respect from police'. One participant stated:

> I don't think students is a good idea, but professionals of some kind is a good idea … It's not legal so much as knowing the person's rights or the limits of police force and a bunch of stuff that you could train someone pretty easily.

A participant noted that legal practitioners do accept some risks when undertaking this kind of work. As one participant noted:

> There is a possibility that you could be taken up with a group of protesters and if the police aren't briefed as well as the police were briefed for the [Brisbane] G20, you could find yourself being arrested. And there are ramifications that flow from that for a practitioner.

### *Beyond the Brisbane G20: Learning from the policing methods*

Some of the participants expressed hope that the approach taken by the police at the G20 might have broader implications for community policing in Brisbane in the future. One stated:

> I was hopeful that the whole week demonstrated a change in attitude by the police in a way that you just wouldn't have seen, even ten years ago, so if they see it as an opportunity to actively engage with the community, adopt a community policing model, then I think that's a fantastic thing.

Participants in all three focus groups praised the work of the 'police negotiators'. One participant said that while he was 'not a great fan' of QPS, the police negotiators were 'one of the best parts' of the organisation, that they had successfully 'developed rapport' with the protest groups and were able to 'bring their people [other police officers] into line'. Another participant said that because the police negotiators were 'trained for conflict resolution' they had 'the right people skills' to deal with situations without resorting to the use of force.

A number of participants noted the potential for improvement in relationships between police and Indigenous people in Brisbane, particularly as a result of certain gestures made by senior QPS representatives during the G20 event. One said:

> She [the Assistant Police Commissioner] was taking part in a smoking ceremony with [Indigenous] elders and it was very peaceful and it was after the big protest day in the

> afternoon. And me and other people were around watching and it was really moving, and there seemed to be genuine relationships being forged there. And that was really nice and pretty bizarre in a way to think that after Brisbane's biggest protest day ever, to think that the police commissioner and one of the largest protest groups in that park could have that type of interaction.

Others disagreed, explaining that they felt that the tolerance and restraint exercised by police at the G20 was unique to the circumstances of that particular event, and was not generalisable to policing more broadly. One participant said:

> The context is completely unique — all eyes were on Brisbane … They exercised their discretion not to use those powers a lot of the time. Then two weeks after the G20 event, there was that awful situation where the double amputee in his wheelchair was clobbered by police. Really, once the global lens is removed, everybody goes back to their ordinary business of conventional policing.

### *The potential for a broader application of the ILO model*

There was marked division among participants regarding whether or not the ILO model could be 'rolled out' to other events and settings. Some participants believed that ILOs could be useful in monitoring the use of police powers anywhere 'where there's going to need to be a police presence'. Other events these participants suggested as appropriate for ILO deployment were sporting events, cultural events (such as NAIDOC week), 'schoolies' week and 'community riots'. One participant said:

> First thing that I think of is taking it to The Valley [Brisbane's nightclub district] on Friday and Saturday nights where you've got a lot of confrontation between young people fuelled by alcohol and police fuelled by testosterone.

In one exchange, participants remarked:

> Participant A: Maybe where there are a lot of interactions between police and homeless people — there might be a proper role [for ILOs] that would interest people.
>
> Participant B: I think you could have a permanent ILO underneath the Kurilpa Bridge [a historic meeting place for Aboriginal people], for example. There's always stuff going on down there.

Other participants were less enthusiastic about deploying ILOs in other settings. One noted that the independence of the ILOs may be difficult to maintain other settings because it might be 'difficult not to take sides', for example, where policing is directed towards Indigenous people or people experiencing homelessness. In another focus group, a participant said 'where there's lots of alcohol, I don't know how it would go in that kind of context'.

One participant believed that since crowds at other events are treated differently by police, ILOs are less necessary:

> I would not be so interested in being an ILO at a football game because I think that people who attend football matches are not as marginalised as others, and secondly, they don't have the stigma that protesters do. The police are probably more considerate when dealing with people like that anyway.

Concerns were also raised regarding resourcing:

> I think there's lots of places [where ILOs could be used]. It's just so resource intensive. All the volunteer hours, all the Caxton hours that went into building those relationships and doing the briefings and things. Who's paying for it? You can't expect community legal centres to fund it.
>
> I think you'd run out of ILOs too. I've got better things to do with my Saturday night. I think the G20 pulled a lot of people because it was seen to be a very important event.

Some participants suggested ways around this; for example, three participants suggested that ILO hours could be considered pro bono work, and counted towards law firms' pro bono commitment, and that the training could count towards practitioners' Continuing Professional Development ('CPD') points. However, other participants disagreed, commenting that:

> I think for a lot of people it really goes against the grain because they want to advocate, they want to take a side, get involved, so I think it's against solicitors' training.
>
> It would require a bit of a look at the definition of what constitutes pro bono work because it doesn't really fit — you're not giving advice, it's not community legal education…

## Discussion

As the participants identified, a multitude of factors combined to influence the approach and behaviour of police at the G20. It seems likely that the presence of the ILOs had some influence on the manner in which police officers exercised their discretion on some occasions. This is consistent with the reports of other legal observer teams. The Melbourne G20 Human Rights Observer Report stated that there was 'a high level overall of police discipline and restraint' (Human Rights Observer Team 2007:8) and the Melbourne World Economic Forum legal observers felt that police officers were 'noticeably less abusive' when legal observers were present (Noonan et al 2002:29).

Consistent with this, studies have indicated that when police are being observed for the purposes of research, 'reactivity' occurs — police officers do change their behaviour because of the presence of the observer (Spano 2006:522, 524; Schulenberg 2014:315). Notably, these studies have also concluded that this 'reactivity' or 'impression management' effect (see Schulenberg 2014:318) gradually reduces over time as the subject becomes accustomed to the presence of the observer, and as the observer develops rapport with the subject (Spano 2006:524; Schulenberg 2014:315). Of course, in the context of policing research, observers want to reduce this reactivity effect so they can obtain authentic data. The aim of deploying ILOs is actually to elicit this reactivity effect. Based on Spano's and Schulenberg's research, it seems possible that any permanent ILO presence could become less effective over time. If the reactivity effect is to be maintained, the ILOs would need to ensure that they did not develop rapport or trust with the police officers they were observing.

The findings of this research do not provide a clear indication as to whether or not ILOs could or should be deployed in settings other than large-scale protest events. The participants in this research did make suggestions as to how the resourcing issues could be addressed, but, overall, participants were ambivalent about the general idea. The broader use of ILOs was attractive to some participants merely because of its potential to enhance relationships between vulnerable groups and police officers, and to discourage unnecessary arrests.

However, there are a number of reasons why the deployment of ILOs more generally might not have this effect. First, if practising lawyers acted as ILOs within their own neighbourhoods, this may conflict with the role they play as legal practitioners, or may give the appearance of a conflict.

Second, other roles exist that are specifically aimed at strengthening and managing community-police relations. One is the 'Police Liaison Officer' ('PLO').[6] Police Liaison Officers were introduced in Queensland in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and their role is to act as intermediaries between Aboriginal people and police (Recommendations 217 and 231). They accompany police officers in their duties, and assist with communication by explaining cultural differences and providing advice in relation to the use of police powers. In their review of the use of PLOs in Queensland, Cherney and Chui (2009) concluded that PLOs 'help break down language and cultural barriers, facilitate greater levels of community collaboration in addressing crime and safety problems, and encourage people to identify issues of local concern and become involved in working towards solutions' (Cherney and Chui 2009:6). The role of the PLO is obviously much more interventionist than that of the ILO, and at least has the appearance of partisanship, as PLOs are partnered with patrolling police officers. However, like ILOs, the ultimate purpose of the PLO role is to foster cooperation, safety and understanding between the police and individuals and communities who are being policed. Perhaps they are better placed to do this, having come from diverse communities themselves.

The broader deployment of 'police negotiators' (or 'liaison officers') is a more distinct recommendation that emerged from this research. The work of the QPS liaison officers in calming situations down, working collaboratively with protesters and public space users, and building relationships with Indigenous people was widely praised by the participants in this research.

Third, technology may be able to achieve the same outcomes as ILOs. Although one participant in this study noted that 'the individual follows the action and CCTV never does', the availability of CCTV footage and the widespread use of handheld video recording devices does mean that evidence of interactions between police and members of the public can be captured in real time. Technology has played an important role both in bringing about the 'negotiated management' approach to policing, and making it viable. Ericson and Doyle (1999:590) note that the increased use of video cameras has led to increased scrutiny of police officers, particularly at large-scale events that attract extensive, worldwide media coverage. The increase in investigations and complaints against police is supported by the proliferation of recording technology. Baker (2008:10) states that this has refocused police efforts on maintaining legitimacy and accountability. In addition to this, the existence of surveillance technology enables arrests to be made after the fact, which minimises the need for immediate police intervention and enables a 'softer' approach to be taken in the moment (Baker 2008:12). As one of the participants in this research remarked, CCTV does often miss 'the important bits', but ILOs cannot be deployed everywhere.

Fourth, and perhaps most importantly, the success of the Brisbane G20 may actually demonstrate that, in order for the deployment of ILOs to be effective in encouraging police restraint, this must be matched by a commitment on the part of police officers to undertake a negotiated management approach to everyday policing. How this might be achieved is an

[6] Cherney and Chui note that different terminology is used to denote similar roles in other jurisdictions; for example, 'Ethnic Community Liaison Officers' in New South Wales, and 'Multicultural Liaison Officers' in Victoria, South Australia, Western Australia and the Australian Capital Territory (see Cherney and Chui 2009:6).

avenue for further research, and is not something to which lawyers can contribute much advice, except to say that the approach of the police officers on patrol during the Brisbane G20 attracted a significant amount of praise from both the community generally and the legal profession. Since the legal profession has not traditionally been police officers' 'biggest fan', this deserves further reflection by those with operational command in QPS.

## Conclusion

Media reports in relation to the G20 laws seemed to imply that any person within the Brisbane CBD during the G20 weekend would be vulnerable to arrest, yet few arrests actually occurred, and police demonstrated a significant amount of tolerance and restraint in their interactions with protesters and other public space users. Precedents exist for this in other settings. Ericson and Doyle (1999:602–3) note that legislation that enables and legitimises coercive control in large-scale protest situations often exists alongside of 'negotiated management' approaches to policing. Waddington (1998:119) notes that, despite their existence, these expansive police powers are actually rarely invoked these kinds of settings.

The Melbourne G20 Human Rights Observer report (2007:7) states that '[t]he treatment of independent human rights monitors is an indication of a state authority's willingness to respect rights'; however, this may be an over-simplification, particularly against a backdrop of coercive legislation. Baker (2008:11) argues that better-educated, more media-savvy police leaders have contributed substantially to the change in approach to policing protest in Australia, as they have brought with them a greater respect for civil rights, as well as better planning and training. However, legislation that drastically expands police powers and limits individuals' rights to protest may undermine this.

Regardless, the extent to which the positive aspects of Brisbane G20 policing, and the success of the Caxton ILO project, can be expected to persist beyond this particular event is questionable. Ericson and Doyle (1999:604) state that the policing of protest at international events is a 'distinctive category' of study that 'cannot simply be situated within national political and policing cultures'. Many of the participants in this research agree. Yet, some held out hope of a better, fairer future for those who are the subject of 'public order policing' in its broadest, everyday sense. Certainly there are lessons to be learned, but time will tell whether, in the aftermath of the Brisbane G20, relations between the police, public space users and the legal community can continue to be improved.

## Legislation

*G20 (Safety and Security) Act 2013* (Qld)

*Peaceful Assembly Act 1992* (Qld)

*Police Powers and Responsibilities Act 2000* (Qld)

## International materials

*International Covenant on Civil and Political Rights*, 999 UNTS 171, opened for signature 16 December 1966, entered into force 23 March 1976

## References

Baker D (2008) 'Paradoxes of Policing and Protest', *Journal of Policing, Intelligence and Counter Terrorism* 3(2), 8–22

Baker D (2010) '"Switch off Hazelwood": Policing Protest and a "Polluting Dinosaur"', *Current Issues in Criminal Justice* 22(1), 45–62

Birg EC (2004/5) 'Lawyers on the Road: The Unauthorized Practice of Law and the 2004 Presidential Election', *Texas Review of Law and Politics* 9, 305–23

Carroll K (2014) 'G20:20 Hindsight', Public address, 1 December 2014, Brisbane

Caxton Legal Centre (2014) *Independent Legal Observer Project — ILO Information Guide*

Caxton Legal Centre (2015) *Review of the G20 (Safety and Security) Act 2013 (Qld): Report to the Crime and Corruption Commission*, April 2015 <https://caxton.org.au/pdfs/G20%20Review%20submission.pdf>

Cherney A and Chui WH (2009) *Review of the Police Liaison Officer Program in Queensland* <http://espace.library.uq.edu.au/view/UQ:178788/AC_EC_Final_report_PLO_project.pdf>

Clarke E (2009) *Guardian of Your Rights: Queensland Council for Civil Liberties, A History 1966–2007* <https://qccl.org.au/guardian-of-your-rights/>

della Porter D and Reiter H (eds) (1998) *Policing Protest: The Control of Mass Demonstrations in Western Democracies*, University of Minnesota Press

Ericson R and Doyle A (1999) 'Globalisation and the Policing of Protest: The Case of APEC 1997', *British Journal of Sociology* 50(4), 589–608

G8 Legal Support Group (2005) *Legal Support Group Statement on the Policing of the G8 Protests* <www.indymedia.org.uk/en/2005/07/318170.html>

Hayward AR (2007) 'Election Day at the Bar', *Case Western Reserve Law Review* 58(1), 59–96

Holgersson S (2010) *Dialogue Police: Experiences, Observations and Opportunities*, Swedish National Police Board

Human Rights Observer Team (2007) *Human Rights Observer Team: Final Report:G20 Protests*, Federation of Community Legal Centres (Vic) Inc <www.fclc.org.au/public_resource_details.php?resource_id=1189>

Johnston E (1991) *Royal Commission into Aboriginal Deaths in Custody: National Report Volume 5* <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/>

Kratcoski K, Verma A and Das D (2001) 'Policing of Public Order: A World Perspective', *Police Practice* 2(1/2), 109–43

Lamb N (2012) *The Pacification of Radical Dissent: A Security Analysis of the Toronto G20 Joint Intelligence Group*, Master of Arts, Legal Studies, Thesis, Carleton University

Legrand T and Bronitt S (2015) 'Policing the G20 Protests: "Too Much Order with Too Little Law" Revisited', *Queensland Review* 22(1), 3–14

McPhail C, Schweingruber D and McCarthy J (1998) 'Policing protest in the United States: 1960-1995' in D della Porter and H Reiter (eds), *Policing Protest: The Control of Mass Demonstrations in Western Democracies*, University of Minnesota Press, 49–69

Miles MB and Huberman M (1994) *Qualitative Data Analysis*, Sage

Narro V and Gregor D (2006) 'People's Lawyering on the Bus: How a Small Band of NLG Members Became the Legal Vanguard for Immigrant Freedom Riders', *Guild Practitioner* 63, 65–72

National Lawyers Guild, *NLG Legal Observer Program* <www.nlg.org/resources/legal-observing>

Noonan M, Padgham L, Shields D and Kelly A (2000) *Legal Observer Team Report: World Economic Forum Protests*, Pt'chang Nonviolent Community Safety Group Inc

Perry BW (2001) *Investigation of Police Action at the World Economic Forum Demonstrations, September 2000: Report of Ombudsman* <https://www.ombudsman.vic.gov.au/getattachment/b96e14fd-2629-4f53-b8ca-a68e6187911e>

Rogers D (2014) 'G20: Police Powers and Dissent' <http://www.robertsonogorman.com.au/media/4783/G20-SPEECH-BY-DAN-ROGERS.pdf>

Schulenberg JL (2014) 'Systematic Social Observation of Police Decision-making: The Process, Logistics and Challenges in a Canadian Context', *Quality & Quantity* 48(1), 297–315

Shaw R (2008) *Beyond the Fields: Cesar Chavez, the UFW and the Struggle for Justice in the 21st Century*, University of California Press

Spano R (2006) 'Observer Behaviour as a Potential Source of Reactivity: Describing and Quantifying Observer Effects in a Large-scale Observational Study of Police', *Sociological Methods in Research* 34(4), 521–53

Waddington PAJ (1998) 'Controlling Protest in Contemporary Historical and Comparative Perspective' in D della Porter and H Reiter (eds), *Policing Protest: The Control of Mass Demonstrations in Western Democracies*, University of Minnesota Press, 117–40

Wilson D (2012) 'Counter-surveillance, Protest and Policing', *Plymouth Law and Criminal Justice Review* 1, 33–42

Yoder T (2011/12) 'A Tale of Two (Occupied) Cities: Policing Strategies at Occupy Wall Street and Occupy Philadelphia', *University of Pennsylvania Journal of Law and Social Change* 15, 593–615