

# legal observers handbook



## **Acknowledgements**

The booklet was originally compiled by the Legal Observers for the no-WTO demonstrations 2002 and the UTS Community Law and Legal Research Centre.

However, most of this paper has been written elsewhere before. In particular, much of the paper is taken directly from Pt' chang information booklet by Anthony Kelly entitled *How to Organise a Legal Observer Team: Citizen initiated, third-party interventions for civil and political rights* [and the Quebec Legal Collective's *Legal Defense for Activists at the FTAA Protests in Quebec City, April 2001*

## **About Melbourne Activist Legal Support**

Melbourne Activist Legal Support ('MALS') is a volunteer organisation that provides legal support to groups and communities exercising their right to undertake grassroots political action.

MALS is establishing itself with the long term aim of providing direct protest support services at major demonstrations: monitoring police engagement with protesters, providing basic legal information to persons at risk of being arrested, and coordinating litigation support in conjunction with law firms and community legal centres.

MALS advocates for an informed and robust civil society, and seeks to enable activists to defend their own civil and political rights through the provision of legal observer training, free resources and up to date information regarding the right to protest at law in the State of Victoria.

[www.melbourneactivistlegalsupport.org](http://www.melbourneactivistlegalsupport.org)

[www.facebook.com/MelbourneActivistLegalSupport](https://www.facebook.com/MelbourneActivistLegalSupport)

## Introduction

This publication is designed as a resource booklet for Legal Observers – primarily to assist in legal observer training but also as reference material for others looking to organise legal observers in their locality.

As public order policing becomes increasingly paramilitary – by deploying violence and force against groups of unarmed people – so the need for independent Legal Observing and counter-surveillance of police actions become more acute.

Legal (or third-party) Observer teams have been used for many decades in places like Northern Ireland, and also more recently in many large scale demonstrations around the world – including the anti-globalisation protests held in Seattle, Prague, Quebec, Washington, London, Melbourne and Sydney.

Legal Observer Teams aim to provide a level of independent and impartial scrutiny at community protests and political events that serves to deter police from using violence against citizens. The deterrence effect of a Legal Observer Team can include the simple effect of being observed, the threat of future civil legal sanctions against police, the reinforcement of existing police accountability mechanisms or the possible application of domestic civil rights or international human rights mechanisms.

This form of third-party observation or 'presence' can also serve to reduce the level of fear experienced by activists when faced with violent or coercive police responses. Both the deterrence effect and the reduction of fear are important objectives of the Legal Observers Project.

Most people are alienated from the law, obscure legal language, and the decisions that are made in courts and parliaments. At the same time, protestors are disproportionately targeted by the state and police authorities and disproportionately entangled in the law and criminal justice system.

By assisting protestors to give statements and making complaints against police abuses, Legal Observers help people to use the law to assert their rights, and - in so doing – help give people more control over their own lives.

## Objectives of Legal Observing

The goal of a Legal Observer Team is to ensure and enhance the political 'space' within which people protest. The highly visible presence of independent citizens with cameras, notebooks, working in organised teams helps to ensure that abuses of the civil, legal or human rights of citizens at the hands of Police or private agents (such as security guards) do not go unnoticed.

The presence of Legal Observers should reduce the probability of police abuses or may assist in ensuring that arrests are carried out in a less violent way. Legal Observers therefore act as a viable form of deterrence of police violence.



One role of a Legal Observer Team is to 'reinforce', both practically and symbolically, the range of domestic and international legal, ethical and political constraints on police behaviour which already exist.

These constraints, which include international human rights covenants, public and media scrutiny and opinion, the threat of legal sanctions and civil litigation against individual police, and current Police ethical standards, protocols and standing orders, will not prevent the police nor private agents abuse power nor will they prevent gross violations of people's rights occurring. But Legal Observers can serve to reinforce the limited effectiveness of these constraints on police behaviour by ensuring that incidents are accurately recorded and followed up.

Significantly, the presence of Legal Observers can also serve to reduce the fear experienced by activists when facing highly repressive police responses. The presence of Legal Observers serves to undermine the two main tenets upon which the abuse of police powers rely: secrecy and fear.

Some activists experience a sense of alienation from legal knowledge and legal processes. This feeling can be engendered by activists' experiences of the negative sanctions of the law (for example, arrest, conviction and sentence) and a corresponding lack of experience of the protections that the law and even the Police are supposed to offer.

The presence of Legal Observers, and the provision of follow-up support, aims to demystify the law and empower activists to use the tools that legal processes offer to increase pressure on the law to treat all people and interests equally.

Using the law or official accountability channels to hold Police accountable for their transgressions at demonstrations increases the likelihood that at later actions, police will behave toward activists with a greater degree of restraint.

So, in monitoring incidents at mass actions and assisting activists to follow up complaints arising out of such incidents, Legal Observers/legal support crew can help activists help themselves.

## Who Are Legal Observers?



Legal Observers are typically, but not exclusively, law students, legal workers (for example, paralegals or employees of a community based organization that works on legal issues) and lawyers who may or may not have practicing certificates locally.

Some sort of Legal Observer Training and appropriate legal briefings is a basic requirement despite any legal skills or qualifications.

## The Scope and Protocols of a Legal Observer Team

Before each action, it's important to define the scope of Legal Observers' role at the action.

Jobs done by Legal Observers at the action may differ from action to action, depending on the type of action, the numbers of Legal Observers, and the capacity to provide legal support afterwards.

It is useful to draft a scoping statement outlining exactly *what* Legal Observers will do at the action, and the ways in which they will perform their role. The scoping statement is distributed to other groups involved in the protest well beforehand, so that if there are objections or comments these can be addressed prior to the action.

If the Legal Observers Team is seeking access to arrestees behind police lines, or to protesters detained in police lock-ups, a copy of the scoping statement is also given to Police representatives in meetings prior to the action.

This informs Police of the functions to be performed by the Legal Observers and increases the likelihood that Police will consent to the presence of Legal Observers in contentious situations.

As an example:

*The Legal Observer Team will observe, record and monitor arrests and the individual actions of Victorian Police officers and private security personnel.*

*In particular the Legal Observer Team will:*

- *Distribute information on legal rights to members of the public at the protests;*
- *Observe, monitor and record details of interactions between police/security personnel and members of the public;*
- *Take photos and/or video or arrests if they occur;*
- *Make a detailed written account of the arrest;*
- *Collect the name, number and/or a physical description of the arresting officer;*
- *Find out the whereabouts or follow the arrested person to the police station;*

- *Monitor, support, or contact the arrested person whilst in custody;*
- *Provide assistance with following up any complaints against police after the actions.*

Protocols guide Legal Observers in how to perform their role. They cover issues like confidentiality, independence, and communication.

As an example:

- *Any information collected by the Legal Observer Team will be treated confidentially.*
- *Legal Observers will treat all people with respect and courtesy during the actions.*
- *Legal Observers will not participate in protest actions whilst identified as part of the Legal Observers Team during the actions.*
- *Legal Observers will not interfere with or hinder police officers, including when arrests are being made. However, Legal Observers will seek the best possible vantage point to observe arrests and police-public interactions at all times.*
- *If one or a few people become isolated in a potentially arrestable situation behind a police cordon, members of the Legal Observer team will seek police authority to accompany or remain with those people until their arrest or removal.*
- *During the protest actions, Legal Observers will not engage in liaison with Police on behalf of other groups or individuals.*
- *While in communication with Police officers, Legal Observers will not discuss or disclose any details or information regarding any other individual, group or action.*

## Independence

The perceived and actual independence of Legal Observers is a critical aspect of its ability to perform its role.

Legal Observers perceived by police to be a part of the activist or protest group are more likely to be targeted for arrest, treated as part of the action which will hamper and prevent the roles and functions of the Legal Observation.

If Legal Observers are perceived to be part of the activist group or to have political bias toward the goals of the activist group by media then they are less likely to be treated as a credible source of information by media and community.

Legal Observers should remain focused upon the civil and political rights of those present and remain silent on the political demands and issues of the particular protest event. By doing so, the role of human rights protection is enhanced.

Keep in mind that if one Legal Observer acts without independence then other Legal Observers may be affected through adverse police attention.

Independence can be established and maintained in a number of ways:

- non-partisan: as a group, the Legal Observers are politically and financially independent of all groups and organisations involved in the protests;
- open communication: both in the lead up to, and during, the demonstrations Legal Observers will be meeting and communicating with all relevant groups about our role – including the Police Service (from Local Area Commanders to Duty Managers at relevant stations), and the protest groups
- confidentiality: firm confidentiality protocols have been established that prevented legal observers from discussing or disclosing information about one group to another. The Legal Observers role is not one of mediation or to assist in communication.
- non-interventionist: Legal Observers have been instructed not to engage in protest actions or civil disobedience whilst on duty. Observers have also been instructed not to interfere with or hinder police officers and to ensure that they try to maintain a reasonable distance from potentially arrestable situations.





## Logistics

### Training

All of the legal Observers will have participated in legal Observer training prior to the protest. The training is an important time to discuss the role of observers – including confidentiality and independence - and to teach basic knowledge of the relevant laws that may apply during the event.

Many of the observers may not have been exposed to protest situations before, so the training is a good opportunity to share experiences and skills with those who have been legal observers in the past. It's also an important time for observers to meet each other and work out roster times.

### Identification

Legal Observers should work in pairs, and be identified by the Legal Observer T-shirts, vests or caps. Other identification options include armbands or a combination of these.

The Legal Observer team in Prague, for example, used individualised, laminated photo identification badges for each Legal Observer.



### Equipment

Necessary equipment includes clipboards, incident report forms, cameras, dictaphones, and mobile phones. See below (*The Role of Legal Observers*) for more discussion on the equipment needed for effective observation.

### Site coverage and Communications

Legal Observers patrol the entire protest site ensuring a constant presence throughout the event.

The main form of communication between observers will be via mobile phone. Observers are encouraged to make sure their phones are fully charged (or carry a spare battery or recharger) and have credit to make calls during the demonstrations.

Teams may also use UHF radios to communicate during the protest. Ideally, a UHF network consisting of a base radio and at least six portable hand-held units could be used. If radios are to be used, we will ensure that observers are trained in how to operate them prior to the event.

### **Incident Reports** (see Appendix 2: *Incident Report*)

Incident reports are the most important documents that legal observers can complete and make up the bulk of the Legal Observers job. The Legal Observer Team at S11 in Melbourne 2001,, for example, collected 202 Incident Reports over the three days - including victim statements, witness statements and Legal Observer reports of incidents directly after they occurred.

It is important for observers to familiarise themselves with the incident reports prior to the protest so that they know exactly what is needed to complete them effectively.

Incident Reports are an easy and effective way to record the time, date and location of incidents, the name and signature of the Legal Observer and designated a reference number if possible.

Incident Reports should also collect the key features of the incident, identification of the officer(s) involved, the charges (if any), a record of any first aid or medical intervention or legal support, a record of photo or video evidence available and the name and contact details of any witnesses to the incident.

## The Role of Legal Observers



The Legal Observer monitors and collects information on incidents, arrests, and misconduct of the Police or private agents, in order to become a credible witness in the case of a potential criminal court case and to compile public reports after the event. Nevertheless, the primary advantage of Legal Observers' presence in protest situations is that the mere fact of their presence tends to reduce the probability of police abuses - or, at the very least, to encourage arrests to be conducted in a less violent way.

The Legal Observer needs to adapt to the circumstances of each protest or event. In a case where police officers allow observers to talk with people who have been arrested, the observer may inform protesters of their legal rights, check their well being and provide an 'arrest-support' role. Otherwise, in the event that the protest became violent, and that there were mass arrests, the job of the observer becomes much more difficult and the risk of the observer becoming arrested increases. It is possible also that the observer cannot take down specific information, but manages only to make a general statement of what happened.

The Legal Observer must have rudimentary knowledge of the charges that may be used against protesters, and of the procedure which occurs when someone is arrested.

### **1. Objectivity of the Observer**

The observer must stay removed from the disorders (except when this becomes impossible) yet remain close enough to collect information efficiently. The observer

can be called upon to testify in court, in the cases of those who have been arrested. The material s/he accumulates and information s/he collects is for the defence of the protesters. Information and material collected should not incriminate protestors - that's the well-resourced role of the police.

The observer is not there to control the crowd, or to be the media spokesperson of any group. She/he may not disrupt the arrest procedure. Make clear to the media and/or the police that you are not a representative of the protesters, and that you do not speak in their name.

## **2. Rights of the Observer**

The observer has the same rights as any citizen (but not more!)

Unless there has been prior agreements with police regarding access to prisoners etc.). In the case of mass arrests, the observer is therefore just as liable to be arrested as demonstrators. Observer notes, film or equipment can be confiscated so it is important to get this information to a safe space as soon as possible. In this respect, it is important to know your own rights well, and their limits.

Nevertheless, it must be noted that if there are charges of illegal assembly, the observer may be able to prove that s/he did not belong to the common goal of the demonstration.

## **3. Interaction with Police**

Legal Observers should remain courteous and respectful of police officers at all times. This courtesy can sometimes help when asking for names and badge numbers or for information from police officers. At all times state clearly that you are acting as part of an independent and impartial Legal Observer Team and are not part of the demonstration. You could also say that you are concerned about everybody's safety at the event. Not all police officers or security guards would have been briefed by their superior's regarding our role. Take every opportunity to brief individual officers of our role.

Be prepared for a range of responses from individual police - from hostile and abusive to friendly.

When interacting with the police, observers should keep in mind these guidelines:

- if asked questions about the action or about demonstrators, state clearly that you are not part of the event and either do not know or cannot answer that.
- be aware that everything you say or indicate could be used and interpreted by the police and will be passed on to the command officers.
- keep hands visible to police officer.

- avoid sudden movements.
- don't go behind any officers.
- don't touch police equipment (car, equipment, animals, etc).
- make note of what was discussed between you.

## Collection of Information

The observer must take notes or incident reports on the general situation of an event as well as certain details pertinent to a violation of rights.

In order to convey a general portrait of any given situation, it is important to note the following:

### *The event*

- the goal of the event
- the place and the start time
- the number of people present
- the attitude of the participants



### *The police/private agents*

- the number of visible police officers
- their role [traffic control, identification cameramen, riot squad, etc].
- their attitude
- are they wearing their identification badge?

### *Incidents/arrests*

- get closer to incidents, while keeping sufficient distance to have a global view of the situation.
- become familiar with Incident Report forms, so that you understand what needs to be taken into account and in order to be able to fill them out more quickly.
- note the time of the start of the incident
- note the number[s] of the police officer[s], their names and badge numbers. If these are unavailable, describe them physically [see Incident Report sheet].

- what type of officers are present [State, Federal, Special] and approximately how many.
- who is commanding the operations.
- what warnings are given, who is giving them, what s/he is saying, how many times they are repeated.
- what is the protesters' reaction to them ?
- what parts of the area/building are blocked [streets and times]
- what media are present, if any, & how they are treated
- what arrest methods are used [encirclement, individual interpellation, etc]. describe what type of weaponry and/or equipment used by the police. Detailed description of article can aid identification later.
- describe protester behaviour during the arrest
- record the number of protesters and police officers, as well as their behaviour.

### **Using an audio recorder**

Using a digital audio / voice recorder can be more efficient than manual note-taking. To audio-record someone, it is not necessary to ask their permission; the apparatus must simply be clearly visible to the person being recorded. [Remember to have spare batteries].

### **Other evidence**

Write down at which point the observer used binoculars or other instruments [to add credibility to the testimony].

Note location of any CCTV cameras which may have captured the incident for later retrieval.

Gather objects which could serve as evidence - such as capsicum spray canisters, pieces or shards of wood - and conserve in ziploc bags. Pick up evidence with gloves or tissue paper, label bags, with date & time of pick-up.

Return to the site in order to complete notes while the incident is still fresh in your head. Reread notes after the incident to be certain that they are understandable and that they will be clear even after several weeks or months, because it can be several months before the case is heard. One has to remember and record the facts clearly.



If you do not know the answer to any question on the incident form leave that box blank.

Do not attempt to guess the answer. One single false statement can ruin the entire report, because it is in general taken for granted that if one answer is incorrect, they could all be.

## Use of photos and video cameras



*Observing anti and Pro-Bank demonstrations, Czech Republic  
September, 2000*

Pictures can be used in court to prove certain facts, and identify those responsible for abuses of power. Taking pictures also has a powerful deterrence effect and can discourage the police/private from acts that they might otherwise commit.

Always remember that if video footage is to be taken as evidence before a judge, it cannot have undergone any editing. Therefore, it may be preferable under certain circumstances not to document incidents that are not part of the Legal Observer scope. For instance, if the role of the Legal Observers is to observe and document actions of the police, then do not record actions of members of the public.

This will reduce the likelihood of Legal Observer video or photo evidence being used against people engaged in acts of civil disobedience.

Announce your intention to film; in case of doubt, ask permission.

### Advice

- be sure the camera is in focus
- film the street names at the very beginning.
- get closer and be visible when taking pictures
- agree with the other photo or video-camera observers who are with you, so that one person is recording the general scene while the others cover from another, closer point of view.
- regularly say what time it is.



- take down the names or nicknames of the witnesses in order to be able to contact them to gather their version of the facts.
- do not waste time trying to film helicopters
- change cards / tapes immediately after filming police brutality and send the card /tape to the Legal Tent.
- Anticipate what is going to happen. Try to estimate when the police are going to act. Generally speaking, they regroup and do not act spontaneously.

### **Technical Advice for Cameras**

- check batteries regularly
- be assured that the date and time on the camera are correct. If they are not on the image, say them regularly: for example, "Sydney, Corner Pitt and Liverpool Streets, it is November 14, 2014, 6:03 PM..."
- remember to record the sound while filming.
- label cards or tapes with date, time, place, and your name. Do this immediately - don't wait and forget!
- take a lot of spare batteries !!

### **Capture:**

- license plates
- police people dressed as civilians and in uniform. This could be used to identify those who abused their power.
- people whom you think could be police officers. You might see them again under different circumstances.
- any incident, including arrests

### **From a Legal Point of View**

Always remember that lawyers may ask to have access to everything that was filmed, or to all photographs (with negatives). For a document to be usable in court the author must be known in order to identify the pictures. Ideally, one should film continuously in order to follow the series of events clearly. This enables the real people responsible for it to be identified.

Therefore, first, film the scene in general, identify the place, then film the incidents. In court, in order that visual proofs be taken into account, one has to demonstrate 'continuity'. That's to say that the person in possession of the video camera between the moment they were taken and the time of the hearing did not falsify them.

## Leaving the Observer role

It is possible for the observer to quit her/his functions, because s/he no longer feels safe in a situation or because s/he decides to commit an act outside of her functions as observer (for example, helping a protester).

In this case, the Observer should remove observer identification (t-shirt/clipboards) and return to base to officially finish shift and debrief and hand in notes to another observer in order not to lose the information. It is vitally important for the impartiality of the Legal Observers that individual observers are not seen to be engaging in protest action after playing the role of a Legal Observer.

## Preparation

Have on you:

- authorisation (if relevant)
- copies of Incident Reports
- mobile phone
- Legal Observer clipboard and pens
- ziploc bags
- clothing identifying you as an observer: High visibility vest / t-shirts or the cap which all observers wear
- be dressed conservatively,
- raincoat
- money for transport / food etc
- telephone number of the Legal Support Group or Community Legal Centre for advice

Useful stuff to bring includes:

- binoculars
- flashlight
- first aid material

## **Safety of the Observer**

If you know you are going to observe an event that is likely to involve serious police response, or be out and about for hours at a time, the following advice could be useful:

### **Working in pairs**

Always work in pairs and remain together as support and back-up, stay close together in crowds and remain in sight at other times

### **Physical safety**

- badminton or carpentry glasses can help protect eyes from projectiles. Diving goggles create suction that can help protect against gases.
- make sure you eat and drink well before the protest. Food and refreshment will also be provided at or around the Legal Tent during the demonstrations.
- have enough water on you so as not to become dehydrated. Water bottles should be part of the equipment list
- wear a hat or cap for protection from the sun.
- make sure you have regular breaks, (every two hours) and shifts should be no more than fours in total.

### **Debriefing**

This is an important part of the Legal Observing project and a crucial part of looking after each other during and after the event. Gathering to debrief with a view to collating and sharing information and learning that arose out of the actions is useful after each shift or event.

Remember that protests can be quite stressful events. For your own health and safety it is important to share your experiences with other observers both during and after the demonstrations (in debrief).

## Further reading & Resources

Activist rights website by the Fitzroy Legal Service.

<http://www.activistrights.org.au>

Human Rights *Observer Report* on the G20 Protests In Melbourne 2006 – run by Pt'chang and the Federation of Community Legal Centres Victoria

[www.fclc.org.au/public\\_resource\\_details.php?resource\\_id=1189](http://www.fclc.org.au/public_resource_details.php?resource_id=1189)

National Lawyers Guild Legal Observer Training Manual

[https://www.nlg.org/sites/default/files/LO\\_Manual.pdf](https://www.nlg.org/sites/default/files/LO_Manual.pdf)

Legal Observers | Netpol | Network for Police Monitoring

<https://netpol.org/legal-observers/>

International Human Rights Standards for Law Enforcement

<http://www.ohchr.org/documents/publications/training5add1en.pdf>



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