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# Arrest watch

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Mary Heath

## *How can lawyers help in mass protests?*

*The state's coercive apparatus, which we may choose to obey or to oppose, does not define our rights, but it may influence how we choose to express them.<sup>1</sup>*

During Easter 1993, about 700 people expressed their opposition to Australia's continuing involvement in militarism and the on-going presence of United States bases in Australia by going to the national peace protest at Nurrungar. I co-ordinated legal information for the protest as part of the organising collective for the campaign.<sup>2</sup> This article is about the process of planning the legal information for the protest and about some of the things learned in the process.

### **Background**

When I began to collect the legal information necessary for Nurrungar 1993, it was with the memory of the protest opposing the Australian International Defence equipment Exhibition (AIDEX) 1991, still very firmly in my mind. (AIDEX 1991, held in Canberra, was an arms fair displaying and selling a wide array of military technology.) I could clearly remember the extreme police violence I witnessed there, the hundreds of complaints laid against police, and the assault and resist arrest charges laid against protesters who had been bashed by police. I felt very motivated to make sure there was good, clear, useful legal information for people going to Nurrungar.

The US missile tracking station at Nurrungar is on Commonwealth land within the boundaries of South Australia which has been leased to the US Government. It was used during the Gulf War, and again when the US bombed Baghdad recently. The base is situated on the Nurrungar Prohibited Area,<sup>3</sup> a large piece of Commonwealth land adjacent to the Woomera Prohibited Area, which is about 800 km long and takes up an area of approximately 130,000 square kilometres, or about the size of England.<sup>4</sup> The traditional owners of the land, the Kokatha people, have been dispossessed by the theft of their land, on which Nurrungar, the Woomera Rocket Range and the nuclear weapons test site at Maralinga have all been built.<sup>5</sup>

### **The legislation**

The prohibited area is patrolled by Australian Protective Services (a special force, usually made up of Australian Federal Police officers, set up under the *Australian Protective Services Act 1987*) and, during the protest, large numbers of South Australian police and Australian Army personnel were also in attendance. This year, there was no direct contact between the Army and the protest, other than an Army helicopter which repeatedly 'buzzed' the peace camp during the first night of the demonstration. The legality or otherwise of the Army's presence at Nurrungar is questionable. The Army's role has aroused further concern since parts of its secret procedures manual on *Aid to the Civil Power* were made public recently in the *Sunday Age* (6.6.93 by Brian Toohey, p.1) and *Green Left Weekly* (23.6.93 by Greg Ogle, p.6). The manual would be applicable to a situation such as that at Nurrungar where the Army is called out to assist civilian police. It contains procedures for firing on unarmed protesters and shows no understanding or acceptance of non-violent protest as a democratic right.

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The protest potentially involved both State and Commonwealth legislation. It posed additional legal questions because Nurrungar is a 'special defence undertaking' within s.6 of the *Defence (Special Undertakings) Act 1952* (Cth). This is a particularly draconian piece of legislation which covers every US military installation on Australian soil. Among other things, it gives wide powers to police and Commonwealth officers to arrest and search anyone inside or 'in the neighbourhood' of a prohibited area (ss.20-23). It also allows hearings in camera, suppression of publication of proceedings, and the removal of documentation about hearings under the Act from court files and records (s.31). No cases under the Act are listed in the Commonwealth Statutes Annotations.

The maximum penalty for failure to give your name and address on request if you are '... in, or in the neighbourhood of a prohibited area' is two years imprisonment (s.23(2)). The maximum penalty for being in a prohibited area without a permit or making '... a photograph, sketch, plan, model, article, note or other document of, or relating to, a prohibited area...' is seven years imprisonment (s.9). In theory, this section presumably criminalises not only trespass on the base, but the creation of the poster and information leaflets for the protest, including all of the legal materials and this article itself, in which case your copy of the *Alternative Law Journal* may be liable to be forfeited to the Commonwealth under s.25.

The variety of applicable legislation<sup>6</sup> made it difficult to give people straightforward advice about their legal rights and to prepare materials in advance. During police liaison closer to the protest, we were told that anyone who crossed the fence would be charged with trespass under the *Commonwealth Crimes Act*, but this information came too late to form the basis of the materials we prepared and there was always the question of whether the police would do what they had said, and whether Commonwealth and Army officers would take the same view as the State police with whom we were talking.

## Preparation

Once I had begun to collect information, it soon became clear to me that I did not know as much as I needed to. What information would we want and need? Should I simply compile a list of relevant legislation or should I also be attempting to think and write about other matters relating to arrest in the course of planned civil disobedience such as non-violence theory, bail solidarity and gaol solidarity?

Getting information from activists who had been at previous protests seemed the obvious way to work out what would be necessary, so I asked members of the Collective to tell me what they knew, to read what I was producing and say what they thought of it. Very few people thought they had anything important to tell me.

There could be any number of reasons for this, including the fact that we all had a lot to do in the lead up to the protest and our meetings were frequently long and often frustrating. But I suspect that a lot of it has to do with the nature of the material. Law is an isolationist discipline. Through jargon, complex rules and regulations, customs and even clothing, law and lawyers set themselves apart from the general population, and intimidate 'outsiders'.<sup>7</sup> Very few people have the option of being outside the sanction of the law in this society. Conveniently enough, however, there is a common perception that the law is capable of being understood only by the specially trained, and that mere mortals should not even attempt to

understand it, let alone criticise it, or *claim to know anything about it*. Although this stands in complete contradiction to the political views and actions of peace activists, who probably question social structures more than many other people, it clearly affected the actions of most of my co-workers.

Class adds a further dimension to this issue. As a tertiary graduate, I am clearly middle class, as are most lawyers and legal workers. This functions to make me intimidating and difficult to understand to some people. It also makes me someone who has never had ongoing contact with the police and the legal system on the receiving end of the criminal law.

This means that the people who have the most information about what to prepare for when dealing with police and the courts are those least likely to feel they can lay claim to knowledge about the legal system and the law. They are also unlikely to have found that legal workers are people who may want and need *their* advice. As I did not see myself as an expert, I found this frustrating and isolating.

I also thought that talking to legal practitioners would be a useful thing to do. However, I found it hard to track down lawyers who had been involved in past demonstrations. I also found it difficult to believe that they might want to discuss the issues with me. I was unwittingly acting out the ideas about lawyers being conservative, expert and intimidating that other peace workers were directing toward me. I was having difficulty picturing lawyers who would commit time to talk this over – lawyers who might be politically committed, as I am.

After much thought, and whatever consultation I was able to manage, I decided that I would create legal materials at several levels. The first was a reasonably comprehensive manual for people who would be staffing the legal information tent. This included summaries of all the relevant legislation grouped into two main headings: arrest information and offences information. The next was a condensed version which set out arrest information. It was printed in the activist handbook given to everyone who registered. Protesters registered by paying a fee made up of an infrastructure levy and a component which was later paid as rent to the Kokatha People's Committee. Finally, we produced a back pocket guide to being arrested called 'Your (Quick) Guide to Being Arrested'. It took the form of a flow chart. On it, we included suggestions on how to behave when being arrested, information about arrest, being held in custody, processing, bail, release, court appearances, legal aid, and where to get further information.

In addition to these materials, the Legal Information Tent was set up in the main meeting area of the camp to provide a place for legal information to be made available in written form, and from legal workers who staffed the tent during each day of the protest. It also formed a contact point for discussion of legal issues and exchange of information about things like the arrest watching forms (discussed below). It proved valuable to have a separate legal tent in terms of the amount of room available, and because the general information tent was already carrying out a large number of functions. We stocked the legal tent with copies of relevant Commonwealth and State legislation, cases, annotations, legal aid application forms, information on how to make a police complaint, and other legal information and materials.

## Police complaints and arrest watching forms

After AIDEX 1991, during which enormous numbers of complaints about police violence were laid, many concerns were expressed by peace activists about the consequences of mak-

ing complaints. Some complainants were subjected to police harassment, sometimes by the officer they had complained about. The Australian Federal Police (AFP) shared information about people who had been arrested with the Department of Social Security, with the result that some were investigated by the DSS and had their benefits cut off.<sup>8</sup> Concerns were expressed about the quality of the investigation of complaints by the Internal Investigations Division of the AFP and the extremely low number of complaints that were found to be substantiated. Although the Ombudsman has recently completed a report into the complaints concerning police violence at the AIDEX 1991 protest, she has not released it to the public, and there is considerable doubt about whether it will be released at all.

I decided that activists needed to be informed about the possible outcomes of laying a police complaint – negative and positive. Instead of simply making it possible to make a complaint by providing the appropriate forms and witnesses, I wrote an information sheet about how to make a complaint and things to consider before making one.

Discussions with other activists and my own experience of laying a police complaint after AIDEX indicated that one of the major problems with having police complaints upheld and in some cases with having fabricated charges dropped, was the fact that witnesses were very hard to find afterwards and that there was usually no mechanism for collecting the necessary information about what had happened and who had been present. It seemed a good idea to address this. I drafted an arrest watch form to record the information likely to be relevant, including contact details of witnesses, people who had taken photographs and any media present at the time.

The forms were taken up with enthusiasm: we kept a list of people prepared to act as arrest watchers and encouraged groups to ask someone from the list to be their arrest watcher if no-one from their group was prepared to take it on. The forms have not been used a great deal after the action, probably because the level of violence at Nurrungar was much lower than it had been at AIDEX. However, they were used as a contact point at the protest, with people coming to the legal tent to take down contact details after they had been bailed.

### On site legal advice

By the time the protest began, we had succeeded in getting the help of several lawyers as well as a number of interested law students and a legal academic. We were usually able to have someone with some form of legal training present at the legal tent as well as having a legal worker or two present outside the police station when there were activists being held there for processing.

Despite this, most legal information was passed on in briefings at meetings. It was this information that proved most useful, as the police would not allow legal workers inside the police station until everyone who was prepared to accept bail in each major block of arrestees had done so. Therefore, most decisions about whether to be arrested and whether to accept bail were made on the basis of information people already had when they were arrested. In the lead-up to the protest, we had discussed briefings, but not understood how crucial they would be. We had therefore placed more emphasis on getting

lawyers on site than on preparing briefings. In the event, none of the legal briefings were given by lawyers.

Sitting outside the police station, the 'us and them' issue in relation to the role of legal workers at the protest came up again. People coming out of custody often would not think to talk to the legal workers outside the police station, not realising that many of them had not been able to attend actions because they were needed at the legal tent, liaising with police, or outside the police station; but that they were as interested in and as committed to the protest as any other activist.

I began to address this problem after noticing it on the first day there were a large number of arrests, and began trying to



break down the isolation that I and other legal workers were experiencing. During legal briefings I spoke about the fact that many of the legal workers were foregoing other activities to provide information and support, and that this work, like the work of facilitating meetings, digging toilets, and cooking dinner was as important as getting arrested, and simply inviting people to talk to us and tell us how the actions had gone. This worked very well, producing a noticeable difference in the way legal workers were treated over the following days.

### What we learned

We did not take the possibility of mass arrests seriously enough. We did manage to make sure there would be lawyers there, but we did not pre-plan arrestees' meetings to take place after the protest in major cities. After the protest was over, it was impossible to contact many of those who had been arrested, and in spite of our best efforts, many organised the details

of their cases in isolation and without information that would have been helpful.

We could have used much better practical information about transferring cases from Port Augusta to capital cities. We could have used clear information about appearing in court, and the effect of non-attendance and of conviction. Defence information was also thought about too late for it to be easily organised. It would also have been useful to have integrated more information about applying non-violent direct action ideas and solidarity principles to the arrest situation with legal information. Although prior to the protest I had felt cautious about 'advising' people about these issues, at the protest it was clear that many activists were keen to hear about and discuss possible responses to the arrest situation.

And then there were the things that you cannot find out from police liaison or a textbook, like the fact that the very best legal briefings and consultation apart from briefings at the camp had nothing to do with the access we had negotiated with the police but took place inside the compound when a lawyer was arrested along with dozens of others. By shouting back and forth over the police station fence and through the windows of the buses in which arrestees were held before processing we were able to have minors processed first and people with injuries taken out of the buses and treated, as well as giving more straightforward legal information.

Many success stories came out of the arrests – people singing, meditating and supporting each other in the vans and buses, people collectively refusing bail in order to get their comrades out of solitary, and one activist being allowed out of the van in order to negotiate with protesters who were blocking the road for it to be cleared so that arrestees could be taken into Woomera for processing rather than being held in vehicles in the hot sun.

### The campaign in the courts

In all, 277 protesters were arrested and charged with trespass under the Commonwealth *Crimes Act* after crossing over a fence set up outside the double fence of the base, which was apparently constructed specifically for the protest. It extended several hundred metres to either side of the gate and then stopped.

The fence turned out not to be the only arbitrary aspect of the situation. Arrestees were processed by State police in Woomera. Although they had brought in a prosecutor and a public relations office specifically for the protest, no attempt was made to verify the identity of arrestees and it was immediately clear that, with few exceptions, the real interest of the police was in processing people as quickly as possible. Everyone was offered \$300 bail and released after accepting a condition not to re-enter the prohibited area by crossing the fence again.

The first major appearance date in Adelaide was the focus for a rally and a symbolic 'cutting of the lease'. The Magistrates Court was filled to overflowing, with people sitting all over the floor and activists calling out pleas or requests for adjournment from wherever they stood or sat.

To date, protesters have been fined between \$25 and \$100 with court costs of between \$114 and \$140. It is not possible to impose a fine without recording a conviction under the *Crimes Act*, and no magistrate has so far been prepared to accept a request to give a bond with no conviction recorded.

Many activists are adjourning their cases pending a test case being co-ordinated by Melbourne protesters, while others

have either pleaded guilty and explained their actions, pleaded guilty but disputed the facts alleged by the police, or pleaded not guilty and await their trial dates. The Melbourne group is planning to run a defence based on necessity, and on the basis that they had an honest and genuine belief that they had permission to enter the land from the true owners. Members of the Construction, Forestry, Mining and Energy Union who were arrested at the protest are running their defence on the basis that they were denied access to potential members involved in building work inside the base.

The court cases have been alienating for many people, who have once again found themselves in the hands of officials and other professionals who regard the law as their domain. However, arrestees' meetings were held after the protest where sympathetic legal workers explained the options to activists and made it clear that it is not necessary to be represented in many cases. These meetings gave at least some protesters access to information allowing informed choices about how they might go about their engagement with the legal system.

In the wake of the *Mabo* decision in particular, the Nurrungar protest has brought about a lot of discussion among activists about how the peace movement can engage with the legal system in ways that attempt to address the underlying concerns of the movement. Defendants who engage in arrestable, non-violent, direct action do so knowing that they will be arrested and convicted. Defences that address some of the reasons why we might choose to break the law, such as arguments based on land rights or the necessity of preventing war, make much more sense in this context than defences based on legal technicalities.

Information and strategies coming out the protest at Nurrungar and the court cases following it will be put to good use in the future, including during the peace camp at Pine Gap proposed for 1995.

### References

1. Activists Defence Network, *Activists Rights Handbook: New South Wales and Federal Edition*, Activists Defence Network, P.O. Box K365, Haymarket, 2000, April 1993, 6.
2. The Peace Action Collective, formerly Stop Arms for Export and Anti-Bases Campaign (S.A.) Inc., GPO Box 1025, Adelaide, SA 5001, 1991.
3. See s.7 *Defence (Special Undertakings) Act 1952* (Cth).
4. Anti-Bases Campaign (S.A.), *Weapons in the Wilderness: The Exploitation of the North-West of S.A.*, Anti-Bases Campaign (S.A.) Inc., 24, 31-33.
5. The protest took place with the permission of the Kokatha People's Committee, who issued visas to protesters attending the peace camp.
6. Including State legislation such as the *Criminal Law Consolidation Act 1935* (SA), *The Criminal Law (Sentencing) Act 1988* (SA), and the *Summary Offences Act 1953* (SA); and Commonwealth legislation including the *Crimes Act 1914*, and the *Australian Federal Police Act 1979*.
7. See Kennedy, Duncan, 'Legal Education As Training for Hierarchy', in Kairys, David (ed.), *The Politics of Law: A Progressive Critique*, Pantheon, New York, 1982.
8. This action resulted in an investigation by the Privacy Commissioner, *Advice and Report to Ministers: Disclosure of Arrest Details of AIDEX Demonstrators: Australian Federal Police and Department of Social Security* (June 1992). It was found that the AFP's actions had amounted to a breach of s.13 of the *Privacy Act* (at 14).