Responses in Policy and Practice to Radical Environmental Protest Targeting
Key Parts of the Civil Infrastructure in Australia and the United Kingdom

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Submitted in fulfilment of the requirements of the degree of Doctor of Philosophy

September 2015

Abstract

In advanced liberal democracies, proportionately responding to radical environmental protest that targets lawful business operations including those considered key parts of the civil infrastructure (such as those essential services involved in energy production) is a "wicked problem" that poses ongoing challenges, not least in attempting to balance rights of protest and free speech against securing essential services. The policing of protest continues to be controversial.

Environmentalism and environmental activism is multi-faceted and diverse; it is no one thing and comes with a rich history. The repertoire of environmentally-motivated activism rests on a spectrum that spans lawful advocacy, protest and dissent through to violent acts of direct action protest (instrumental law breaking) considered prejudicial to the security of nation states and the safety of its communities and people. The scholarship focused on environmentalism, environmentally-motivated activism and environmentally-motivated protest is diverse and is situated in different bodies of literature including the social movement literature, political science, security and criminology. This reflects a broad philosophical and ideological base, a breadth of activism as well as different political, policy and policing responses to it across time and across jurisdictions. It is a sharply contested scholarship that evidences the conflicting and powerful narratives of (1) well-intentioned direct action protest against "corporate criminals" driven by genuine and deeply held environmental concerns, and (2) serious criminality that poses significant challenges to policymakers and police.

The purpose of this historical-comparative study is to contribute to understanding responses in policy and practice to radical environmentally-motivated protest that targets key parts of the civil infrastructure in Australia and the United Kingdom (UK). Using a qualitative case study approach, policy and policing responses to five radical direct action protests collectively spanning some 40 years are comprehensively examined in the contexts in which they occurred.

This study identifies that in both Australia and the UK, there are clear contemporary questions for policymakers and police about precisely how and where to "draw the line" between mainstream environmental activism, activism that may "push the legal envelope" and be noisy and annoying, and more radical forms of direct action protest. As this study shows, this is a contested policy space with sharp lessons to be learned from policy overreach. The study then expands to examine if and to what extent the threat to domestic security from radical environmental protest that seeks to disrupt essential services is reflected in contemporary critical infrastructure policy (a sub set of national security policy). The study finds that as a result of markedly different policy antecedents, threat to essential services in Australia is reflected expansively (and includes threat from radical environmental protest), while in the UK threat to essential services is reflected more narrowly (and excludes threat from radical environmental protest). However, when policing responses are considered, the study shows that this sharp policy distinction is not evident in practice. Rather, responses to radical environmental protest occur in broad political, policy and policing contexts that may not always be readily discernible yet when revealed, impact upon how responses can be explained and understood.

Looking beyond the immediate responses to radical environmental protest from the constabulary (as first responders to radical environmental protest), this study finds a complex morass of bodies involved in policing. When the bodies involved in the policing of the case study protest events are isolated and individually assessed against Jean-Paul Brodeur's 'Integrated Model of Policing' (2010, p. 306), a multiplicity of hybridity that defies existing categorisation is revealed. The findings of this study identify that hybrid policing, rather than being marginal or exceptional is ubiquitous in nature and can and ought to be judged from a more substantive manner than the current scholarship reflects to date.

Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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Acknowledgements

I wish to express my sincere thanks to my supervisors, Professor Simon Bronitt, Professor Janet Ransley and Associate Professor Jacqui Ewart. You each brought your considerable experience, knowledge, patience and care to this project. You all kept a tiller on the direction of the research, individually and collectively guiding it from a kernel of an idea. I also wish to express my sincere thanks to Professor Philip Stenning, Professor Mark Finnane and Dr Bill Metcalf. Your time and guidance so generously offered and given, was always gratefully received.

I am indebted to the Energy Sector Group and its members as well as the Australian Research Council (ARC) Centre of Excellence in Policing and Security (CEPS) for supporting this research. Funding provided through CEPS enabled my participation in Energy Security Group meetings, Trusted Information Sharing Network meetings and the Australian Government's critical infrastructure conferences.

I place on record, my immense sense of gratitude to one and all, who directly or indirectly, have lent their hand and guided me in this venture.

Special thanks must go to Roger Holdich and John Lines. I have enormously enjoyed our talks and am the richer for getting to know you. Thank you.

This project would not have been possible without the love and support of my family and friends. Thank you Michael, Dad, Tess, John, Lyndal, Sophie and the extended cheer squad. You have always been there right there next to me.

To Trish and Terry, thank you for introducing us to the good life in New Zealand's Bay of Plenty.

Abbreviations and Acronyms

9/11	11 September 2001
ACC	Assistant Chief Constable
ACPO	Association of Chief Police Officers
ACT	Australian Capital Territory
AFP	Australian Federal Police
ALF	Animal Liberation Front
ANZ	Australia and New Zealand Banking Group Ltd
ANZCTC	Australian and New Zealand Counter Terrorism Committee
ASIC	Australian Securities and Investments Commission
ASIO	Australian Security Intelligence Organisation
ASIO Act 1979	*Australian Security Intelligence Organisation Act 1979* (Cth)
ASX	Australian Securities Exchange
BTP	British Transport Police
CCA	Camp for Climate Action
CCTV	Closed Circuit Television
CIB	Criminal Investigation Branch
CJPOA	*Criminal Justice and Public Order Act 1994*
COMPOL	Commonwealth Police
CPF	Commonwealth Police Force
CPI	Consumer Price Index
CPNI	Centre for the Protection of National Infrastructure
CPS	Crown Prosecution Service
CSNF	Campaign to Save Native Forests
DCI	Detective Chief Inspector
DCS	Deputy Chief Superintendent
DPP	Director of Public Prosecutions
EF!	Earth First!
ELF	Earth Liberation Front
ESG	Energy Sector Group
FBI	Federal Bureau of Investigation
FLAC	Front Line Action on Coal
FOI Act	*Freedom of Information Act 2000*
GAA	*Government Agreements Act 1979* (WA)

HMIC	Her Majesty's Inspectorate of Constabulary
ICT	Information and communication technology
IMG	Issue Motivated Group
IPCC	Independent Police Complaints Commission
MCSSS	Metropolitan Civil Staff Superannuation Scheme
MOU	Memorandum of Understanding
MP	Member of Parliament
MPS	Metropolitan Police Service
NAA	National Archives of Australia
NCTC	National Counter Terrorism Committee
NDEDIU	National Domestic Extremism and Disorder Intelligence Unit
NDET	National Domestic Extremism Team
NETCU	National Extremism Tactical Coordination Unit
NGO	Non-government organisations
NPCC	National Police Chiefs' Council
NPOIU	National Public Order Intelligence Unit
NSW	New South Wales
PCSPS	Principal Civil Service Pension Scheme
Prout	Proutist Universal Organisation
PSCC	Protective Security Coordination Centre
RIPA	*Regulation of Investigatory Powers Act 2000*
SAC-PAV	Standing Advisory Committee on Commonwealth-State Co-operation for Protection Against Violence
SDS	Special Demonstration Squad
SOCPA	*Serious Organised Crime and Police Act 2005*
SSCS	Sea Shepherd C conservation Society
TISN	Trusted Information Sharing Network
UCO	Undercover Officer
UK	United Kingdom
US	United States of America
VI	Vital Installations
WA	Western Australia
WHC	Whitehaven Coal

An Introductory Note on Terminology

As will be identified in the literature review and analysis that follows, the terms and their respective definitions that describe actors associated with environmental protest are divisive and complex and the question of what constitutes violence is contested. Eminent scholars Remy Cross and David Snow (2011, p. 118) define a radical activist as 'a social movement activist who embraces direct action and high-risk options, often including violence against others, to achieve a stated goal'. For the purpose of this thesis, the terms radical environmental activism and radical environmental protest have been adopted. The intent is to consistently apply terms that convey unlawful direct action protest associated with criminality, the focus of this thesis.

1. INTRODUCTION AND THESIS STRUCTURE

Responding to radical environmental protest in advanced liberal democracies is a "wicked problem" that has vexed policymakers and police for decades (Baker, 2013; Eagan, 1996; HMIC, 2012; Millett, 2013; Scarce, 1990; Standing Committee of Attorneys-General, 2009, p. 8; U.S. Department of Justice, 2010; Western Australia Legislative Council, 1978, pp. 967-968; 1979a, p. 5916). When radical environmental protest is focused on disrupting lawful business operations including those with a role in delivering essential services (such as energy production), questions over what are (or should be) limits on the democratic right to protest, how public order is maintained, how protest should (or should not be) policed, the limits of "political will" and the adequacy of related legislative and policy frameworks are brought to the fore (Button & John, 2002; Marks & Tait, 2015; Messinger, 2015; Standing Committee of Attorneys-General, 2009, p. 8; Waddington, 2015). In this respect, activists, policymakers, police, police oversight bodies, the businesses targeted as well industry groups and their advisors can hold vastly different views (Arnold, 1983, 2007; HMIC, 2012; Lubbers, 2012; Potter, 2011; U.S. Department of Justice, 2010). These different views spill into how protests and protesters are reflected in colloquial, activist, policy and policing discourse. Sharp differences are evident in the terms that have been applied over time to radical environmental protest and the relative enthusiasm with which different terms are either adopted, promoted or eschewed by different actors.

The centrality of discourse to the study of radical environmental protest is evidenced in that much of the focus of the scholarship in describing the threat posed, has related to the appropriateness or otherwise of the terminology applied (Carson, LaFree, & Dugan, 2012, p. 296). At one extreme both in policy and practice, radical animal rights and radical environmental protest has been equated with terrorism (see for example Arnold, 1983, 2007; Buell, 2009; Lovitz, 2007; Potter, 2011; U.S. Department of Justice, 2010). Consistent with this narrative, the controversial and divisive term "eco-terrorism" and its corollary "eco-terrorist" emerged in political and policy discourse and refer to both radical animal rights and radical environmental protest (see for example, Arnold, 1983; Potter, 2011; Vanderheiden, 2005, 2008). The competing narrative is one of an over-stated threat from non-violent political protest that poses no threat to nation states or the safety and security of their citizens (Manes, 1990; Nocella, 2011). Policy responses to the terrorist attacks in

the United States of America (US) on 11 September 2001 (9/11) sharpened the potential implications of these contrasting narratives (Potter, 2011; Smith, 2008). This is because policing of radical environmental protest occurs in a far broader political and policy context that includes consideration of the impact protest may have on the continued operation of essential services (Potter, 2011; Smith, 2008; Standing Committee of Attorneys-General, 2009, p. 8).

1.1   Critical Infrastructure Policy Frameworks – Introductory Comments

In the immediate aftermath of 9/11 and in addition to military responses, the governments of both Australia and the United Kingdom (UK) intensified policy attention on national security (Commonwealth of Australia, 2013c; HM Government, 2010). In the near decade and a half since, national security remains a core policy focus of the respective national governments (Commonwealth of Australia, 2013c; HM Government, 2010). Within national security policy frameworks in both Australia and the UK, 9/11 was a triggering event that among other things intensified a policy focus on protecting critical infrastructure (considered the most vital of civil infrastructure assets) from terrorism (Commonwealth of Australia, 2010b; HM Government, 2010). This built on both the existing national security and critical infrastructure policy frameworks (however termed over time) that have complex and inter-connected histories. In the years since 9/11 in both Australia and the UK, as a sub set of national security policy, critical infrastructure policy has continued to evolve and remains a key priority (Cabinet Office, 2011; Commonwealth of Australia, 2015a, 2015b).

With a common contemporary policy focus now centred on the goal of "critical infrastructure resilience", the evolution of critical infrastructure policy can be viewed as extending the core focus beyond the threat to the infrastructure assets from terrorism to include a focus on a far broader range of threats and hazards (Cabinet Office, 2011; Commonwealth of Australia, 2015a, 2015b). In contemporary critical infrastructure policy frameworks in both Australia and the UK, although expressed differently, risk and threat are considered expansively (Cabinet Office, 2011; Commonwealth of Australia, 2015a, 2015b). In Australia this is evidenced in the adoption of a critical infrastructure policy focus on 'resilience in the face of all hazards' (Commonwealth of Australia, 2010b, p. 8). In the UK

this is evidenced in the adoption of a critical infrastructure policy focus on resilience in the face of both terrorism and natural hazards (Cabinet Office, 2011; HM Government, 2011).

1.2   Environmental Protest and Policing – Introductory Comments

Environmental activism is multi-faceted and sophisticated (Waddington, 2007). It includes legal and illegal events, above and below ground organisations, single events and long term campaigns, as well as small and large scale public protest (see for example Baker, 2011; Brulle, 2000; Button, John, & Brearley, 2002; Liddick, 2006; Long, 2004; Scarce, 1990). Environmental activism combines increasingly professionalised and sophisticated tactics (such as making extensive use of websites, guidance manuals and media influence) alongside "ecotage" (sabotage in the name of the environment) (Waddington, 2007, p. 16). The spectrum of activism to highlight environmental concerns expanded in the last decades of the twentieth century (Eagan, 1996; Fritsvold, 2009; Hays, Esler, & Hays, 1996; Manes, 1990; Shevory, 1996; Taylor, 1995). An expansion into more radical forms of protest was driven by the perception that mainstream environmentalism was slow and ineffective at achieving the fundamental change activists believe is necessary to save a planet in crisis and at imminent risk (Brulle, 2000; Dowie, 1996; Foreman & Haywood, 1987; Liddick, 2006; Long, 2004; Love, 1971; Manes, 1990).

Environmental advocacy, pressure and protest groups and their strategies and tactics are not homogeneous and can be considered as falling on a continuum of legality, goals and underpinning philosophies (see for example Button et al., 2002; Hernandez, 2007; Liddick, 2006; Manes, 1990; Scarce, 1990; Taylor, 2002). At one end of the continuum rest "mainstream" environmentalists who pursue their varied goals through democratic and peaceful political processes. Their actions are legal, come with a complex and rich history, and in eschewing violence directed at humans, non-human animals and property, engage in activity such as: joining and participating in powerful worldwide non-government organisations (NGOs) such as Greenpeace, Friends of the Earth, the Worldwide Fund for Nature and the World Wildlife Fund; building community and political awareness; political lobbying to influence the policy process; supporting "green" political parties; influencing electoral candidates; petitioning; and lawful advocacy, protest and dissent (see for example Brulle, 2000; Cooper, 2009; Doyle, 2000; Rootes, 1999). Lawful actions, even those that may

"push the envelope" to the boundaries of legality are not the focus of this thesis. Further along the continuum of environmentally-motivated protest is criminal law breaking that includes activity such as billboard defacement, super-gluing locks, lock outs, minor vandalism, small scale "sit-ins", and "tree-ins" (see for example Direct Action: A Handbook, n.d.; Love, 1971; Manes, 1990; Petersen, 1984). There are also more serious forms of criminality and instrumental law breaking with potential serious consequences where strategies and tactics can include: sabotage; targeted and serious vandalism; property destruction; lock-ons to plant and equipment to hinder or shut down business operations, that risk the safety of activists and responders; and occupations of infrastructures such as power stations aimed at shutting down operations and preventing energy production (see for example Ball, 2013; Direct Action: A Handbook, n.d.; Foreman & Haywood, 1987; Millett, 2013; Mortimer, 2007, p. 433). This end of the spectrum is the focus of this thesis.

Where environmental activism crosses to more extreme and radical tactics, the diversity of the groups involved, their extensive and innovative range of tactics, their coalitions of support and use of the news and social media pose significant challenges to policing responses (Baker, 2010, 2011; Button et al., 2002). Waddington (2007, p. 16) argues that the extent of this challenge, renders traditional public order policing strategies obsolete. In support of this, Waddington (2007, p. 16) explains that as police are unable to predict the number or tactics of protestors, police 'are actively pursuing "intelligence-led" strategies involving surveillance of key activists, monitoring communications, cultivating informants and deploying undercover officers'. In western democracies, protracted surveillance by both public actors (for example by intelligence agencies and the police) and private actors (for example private intelligence organisations) has been identified as a feature of the policing response to radical environmental protest (see for example Button et al., 2002; HMIC, 2012; House of Commons Home Affairs Committee, 2013; Lubbers, 2012; U.S. Department of Justice, 2010; Walby & Monaghan, 2011). Button and John (2002, p. 112) also identify plural policing as a hallmark of the policing of environmental activism that involves a combination of private security, private investigators, hybrid policing agencies and the police themselves. It has resulted in a 'complex coalition of agencies' that are involved in policing environmental activism (Button & John, 2002, p. 112).

1.3   Research Gap

The literature review that follows in the next Chapter demonstrates the body of literature collectively relating to environmentalism and radical environmental protest is extensive, diverse and at times emotive and divisive. Social movement scholars della Porta and Diani (2006, p. 1) identify the study of grassroots activism as both relevant and urgent. Recent and noteworthy studies focused on grassroots activism include: examining geographies of radical environmental protest (Webb, 2010); rational choice and deterrence theory (Carson, 2010); how radical environmental activists are stigmatised (Nocella, 2011); the classification of acts of protest by radical environmental activists (Carson et al., 2012); police-protestor dialogue (Baker, 2013); the policing of climate camps (Baker, 2011; Saunders & Price, 2009); the tactical innovations of protesters and the impact on the policing of protest (Gillham & Noakes, 2007); and the repression of protest and social movements by state and non-state actors (Earl, 2003; Earle, Soule & McCarthy, 2003; Lubbers, 2012, 2015).

The body of literature includes a focus on the validity (or otherwise) of appending pejorative labels such as "terrorism" and "eco-terrorism" to acts of radical animal rights and radical environmental protest and the influence appending such labels may have on the policing of activists and protest (Carson, 2010; Smith, 2008). In recent years, scholars have also sought to quantify and categorise different forms of radical environmental protest through different lenses including terrorism (Beck, 2007; Carson, 2010; Carson et al., 2012; Webb, 2010). The work of Carson et al. (2012), in analysing radical environmental protest within the rubric of terrorism (using data from the Global Terrorism Database) is a significant contribution to, and extension of the scholarship. Recent studies of the direct action group Camp for Climate Action (CCA) that operated in the UK between 2006 and 2011 identify a shift in the focus of radical environmental protest towards the 'root causes of climate change' that itself poses new policing challenges (Schlembach, 2011, p. 195; Schlembach, Lear, & Bowman, 2012). Yet there remains only 'a handful of academic works studying the CAA' (Schlembach et al., 2012, p. 813). This is despite the recognition that policing of protest linked to climate change is seen as a 'long-term challenge' (Baker, 2013, p. 96).

Social movement and policing scholars identify police responses to protest vary significantly (Earl et.al 2003; Waddington, 2007). However, della Porta and Fillieule (2007, p. 217) point out 'empirical research on the relationship between police and protest is still limited'. This should be viewed in the context that the "policing" protest by the constabulary is only one form of suppressing protest (Earl et al., 2003). This should also be viewed in the context that the policing scholarship is itself continuing to shift from an earlier more narrow focus on public uniformed police to include far broader considerations of who engages in policing and what it means "to police" (Brodeur, 2010; Council of Canadian Academies, 2014). Even in respect of the former, public policing itself is insufficiently explored (Brodeur, 2010, p. 35) as is the 'internal diversity' of public police forces (Brodeur, 2010, p. 9). In this context and despite the expansion of the policing scholarship, research has been skewed towards consideration of public uniformed police and in particular patrolling rather than covert or specialised investigation units (Brodeur, 2010, pp. 99, 105, 140). While the literature on radical environmental protest identifies a pluralist policing response, limited literature has been identified that examines the overall policy and policing responses to protest in an integrated way including considering the internal diversity of public policing. This is despite, as Eagan (1996, p. 14) notes, the focus of government institutions (notably the US Federal Bureau of Investigation and the UK's Scotland Yard) on surveilling the actions of radical environmental activists. In respect of surveilling radical environmental protest, Eagan (1996, p. 14) argues 'little scholarly or analytic attention has been paid to this field' of policing and that further research is needed in this area.

In their examination of national models of counter-terrorism policing, Bayley and Weisburd (2011) identify the extent to which many democracies engage in "high policing" (broadly speaking covert political policing) and "low policing" (broadly speaking overt criminal policing) is not well researched. Brodeur (2007, pp. 26-28) suggests high policing in particular is under researched. A notable exception, empirically based if ethically dubious, is David Lowe's (2010) covert participant-observer research focused on his colleagues while a serving officer at the UK's Integrated Special Branch that largely focused on the *process* of his research. The recent work by Eveline Lubbers (2012) from an activist perspective makes a significant contribution to how public and private intelligence gathering has focused on activists, including environmental activists. Considered in the context of the broader policing scholarship, Brodeur (2010, p. 10) argues high policing is still emerging as 'a

legitimate field of study for policing scholars' yet cautions (2007, pp. 26-28) that research into high policing must not rely wholly on 'extrapolations from published literature'. The dearth of research and the still emerging field of study should be considered in the context of an increasing role of high policing in democracies (Brodeur, 2010, p. 223).

The policing scholarship is also beginning to broaden to include a specific empirical focus on the policing of protest targeting key parts of the civil infrastructure. Baker's (2010, 2011, 2013) examinations of protest focused towards energy infrastructure in Australia and the UK is a significant contribution to the scholarship. It highlights the complexities of effective dialogue with unstructured protest groups and bureaucratic police organisations, variations in policing climate camps, and tensions between the police and industries targeted. The complexities and challenges are also revealed in a recently published handbook for police, that draws academics and practitioners together, to explore police decision-making in complex cases and scenarios (Waddington, P.A.J., Kleinig, J., & Wright, M., 2015). While the examples are hypothetical, they do draw out the complexities in striking a balance between maintaining a functioning energy supply in the face of protest targeting a nuclear power plant, and facilitating peaceful protest (Marks & Tait, 2015; Messinger, 2015; Waddington, 2015). However, while this scholarship reflects a focus on the policing of protest targeting key parts of the civil infrastructure, it does not specifically consider how radical activism may be considered within critical infrastructure or national security policy frameworks. This means that to date, and despite an expanding scholarship, the broader domestic security policy context in which responses to radical environmental protest targeting key parts of the civil infrastructure occur, remains under explored. As will be shown, critical infrastructure policy frameworks (a sub set of national security policy) are significant to understanding how different types of threats can be understood and explained which in turn aids understanding responses to radical environmental protest.

1.4   Research Questions and Contribution

The aim of this thesis is to contribute to understanding responses in policy and practice to radical environmental protest that targets key parts of the civil infrastructure in Australia and the UK.

With an empirical focus on radical environmental protest, critical infrastructure policy frameworks and policing practice in Australia and the UK, the purpose of this work is twofold. The preliminary purpose is to describe and interpret contemporary terminology (through examining key terms as well as their genealogies and contemporary meanings) and critical infrastructure policy as it relates to radical environmental protest. In this respect, the aim is to establish and understand the policy context in which the policing of radical environmental protest occurs. The second and more substantive purpose is to assess policing responses to radical environmental protest. In this respect, the aim is to ascertain if Jean-Paul Brodeur's theory of policing articulated in *The Policing Web* and reflected diagrammatically in an 'Integrated Model of Policing' (2010, p. 306), offers a way of explaining and understanding the policing of radical environmental protest.

The study has been designed to answer the following research questions.

What have been the responses in policy and practice to radical environmental protest targeting infrastructure in Australia and the United Kingdom?

RQ 1: How can radical environmental protest be understood in the context of contemporary (a) policy and policing discourse and (b) critical infrastructure policy frameworks in Australia and the UK and what explains this?

RQ 2: Can the policing of radical environmental protest targeting infrastructure be explained and understood using Jean-Paul Brodeur's Integrated Model of Policing?

This thesis makes several original contributions to distinct, yet at times interrelated, bodies of literature: social movements; security and critical infrastructure policy; and policing. First, it makes a contribution to the scholarship on grassroots activism. Its original contribution is to map out and assess policy and policing responses to a varied repertoire of protest over time and across jurisdictions. Secondly, the original contribution to the security and critical infrastructure policy literature is that it identifies revised genealogies and contemporary meanings of the key terms "eco-terrorism" and "Domestic Extremism" and identifies the genealogy and contemporary meaning of the term "Issue Motivated Groups". Finally this thesis also makes a number of original contributions to the policing literature. In doing so, it contributes a timely and fresh perspective on the historiography of the UK policing body the Association of Chief Police Officers (ACPO), and the policing units

involved in covert policing in the UK. This thesis also makes a contribution to, and extends the scholarship in respect of hybrid policing. It is the first known study to systematically assess each aspect of Jean-Paul Brodeur's Integrated Model of Policing and the theoretical base on which it is built.

1.5   Structure and Chapter Overview

The next two Chapters set the foundations for this thesis. A literature review traversing three distinctly different bodies of literature is set out in Chapter 2. It canvasses: the social movement literature to situate the environmental movement and its "radical fringe"; labelling theory to situate the discussion on the different ways radical environmental protest has been characterised and framed in the scholarship and in practice; and the policing literature to situate the different ways police and policing can be understood. Discussed in more detail in Chapters 7 and 8, in this Chapter, Brodeur's Integrated Model of Policing is briefly introduced and explained. The methods and justification for the qualitative case-study approach employed in this study are then set out in Chapter 3.

Chapter 4 shifts the thesis to its empirical focus. This Chapter sets out narrative descriptions of the five protest events that are drawn on in the Chapters that follow. Consistent with the historical-comparative approach underpinning this thesis, the protest events considered collectively span some 40 years. The Chapter begins by setting out key aspects of the policing contexts for both Australia and the UK. The justification for the selection of the five protests follows. Finally, key details of the five case studies are set out in turn. The cases reflect a broad repertoire of environmentally-motivated protest, all targeting business operations that form different parts of the civil infrastructure (port facilities, mining operations, the Australian financial market, a power station and a transport operation). In all cases, varied policy and policing response are evident.

Chapters 5 and 6 answer RQ 1. In answering RQ 1(a), Chapter 5 examines how and why radical environmental protest is reflected in the way it is in contemporary policy and policing discourse in Australia and the UK. Similarities and marked differences are identified. The research findings that emerge in this Chapter reflect that different concepts

of risk and threat to domestic security, underpinned how and why the terms "Issue Motivated Groups" in Australia and Domestic Extremism" in the UK emerged when they did. Further, after the terms emerged, their original meanings shifted over time. Examining these shifts evidence ongoing (albeit different) tensions about the breadth with which their contemporary meanings are drawn. Through examining one of the case studies in depth (where a significant discourse disconnect is evident), a theme that emerges and is developed in Chapter 6, is that understanding the interplay between the terms, their varied applications and contemporary policy frameworks provides a useful way of viewing and understanding responses in policy and practice to radical environmental protest.

In answering RQ 1(b), Chapter 6 examines how and why actual or potential disruptions to key parts of the civil infrastructure from radical environmental protest can be understood in the context of contemporary critical infrastructure policy frameworks. Again, similarities and marked differences are identified. A key finding that emerges in this Chapter is that in Australia and the UK, there are common conceptions of critical infrastructure and a common policy goal of "critical infrastructure resilience". However, in a stark policy difference, while actual or potential disruptions to essential services from radical environmental protest can be considered within Australia's critical infrastructure policy framework, this is not the case in the UK. The antecedents of the policy frameworks explain this sharp difference. As Chapters 7 and 8 go on to demonstrate, responses to radical environmental protest in practice belie this sharp policy difference.

Chapters 7 and 8 assess policing responses to radical environmental protest and answer RQ 2. The analytical approach employed is a deductive analysis of Brodeur's (2010, p. 306) Integrated Model of Policing (the Model). Chapter 7 begins the deductive analysis by isolating and systematically assessing the diversity of policing responses to protest identified in the case studies. In this Chapter, conflicting preliminary findings emerge. On the one hand, the analysis reinforces the value of the Model in explaining and understanding different forms of domestic policing, policing bodies, bodies with policing functions and their interactions and blurred boundaries. On the other hand, through the identification of distinctly different forms of hybrid policing (hybrid high policing and hybrid low policing), the analysis begins to challenge the way hybrid policing is reflected by Brodeur in the Model. Chapter 8 continues and finalises the deductive analysis. The

analysis further challenges the way hybrid policing has been reflected in the Model. The findings from Chapters 7 and 8 opens up the space for a wider array of hybridity than the Model reflects. With distinctly different forms of hybrid policing isolated in the analysis, this limits the value of the Model in explaining and understanding the policing of radical environmental protest overall. In concluding, Chapter 9 discusses the overall findings of the study, reflects on the study's challenges and limitations and suggests a future research focus.

2. LITERATURE REVIEW

The literature review is set out in six parts. It begins (2.1) by assessing the social movement literature, to distinguish mainstream environmentalism from radical environmental protest, the latter being the empirical focus of this thesis. The next part of this Chapter (2.2) focuses on the labelling of radical environmental protest. It begins with a brief examination of labelling theory to contextualise the examination of the literature as it relates to the labelling of radical environmental protest as both terrorism and eco-terrorism that follows. This part of the Chapter then examines the different ways violence has been characterised, highlighting its centrality to understanding the different ways radical protest (including radical environmental protest) is framed. This part of the Chapter provides context for the assessment of (1) the labels appended to radical environmental protest that follows in Chapter 5, and (2) the policy assessment that follows in Chapter 6. Brief concluding comments on the diverse environmentally-motivated protest scholarship are offered (2.3) before the Chapter shifts its focus to policing. Part 2.4 of this Chapter begins by discussing the challenges posed in policing radical environmental protest. Then theories of policing relating to high and low policing, public and private policing, plural policing and hybrid policing are all examined. Next, (2.5) Jean-Paul Brodeur's Integrated Model of Policing is introduced. Parts 2.4 and 2.5 of this Chapter contextualise the assessment of the policing responses to radical environmental protest that follows in Chapters 7 and 8. The literature review concludes (2.6) with brief comments on the diverse police and policing scholarship.

2.1   The Environmental Movement and the "Radical Fringe"

As a social movement, the environmental movement is diverse and complex (see for example Brulle, 2000; Dowie, 1996; Doyle, 2000; Manes, 1990; Oelschlaeger, 1991; Rootes, 1999, 2004; Scarce, 1990; Taylor, 2010). It 'is no one thing' (Oelschlaeger, 1991, p. 309) and comes with a complex history (see for example Brulle, 2000; Dowie, 1996; Doyle, 2000; Dunlap & Mertig, 1992; Liddick, 2006; Long, 2004; Oelschlaeger, 1991). Australian political scientist and environmental scholar Timothy Doyle (2000, p. XVIII) explains the environmental movement comprises 'individuals, networks, informal groups, formal organisations, institutions, and corporations' that operate in public and private spheres. Importantly, it has institutional and non-institutional elements (see for example Cotgrove &

Duff; Doyle, 2000; Liddick, 2006; Long, 2004; Rootes, 2004). In this context, Doyle (2000, p. XIX) highlights the complexity of understanding the environmental movement; on the one hand, parts of it function wholly within the state and work within political and democratic processes and with corporations (such as NGOs and political parties), while on the other hand, parts of it are entirely separated from institutions, political parties and corporations. In further identifying the complexity of understanding the environmental movement, Doyle (2000, p. XIX) explains that its breadth and focus has included:

> … global warming, nuclear disarmament, global security and sustainable peace, pollution, energy consumption, population control, workplace and domestic environments, air and water quality, cultural and biological diversity, gender relations, poverty, social justice, democracy, the rights of indigenous peoples, the rights of non-human nature, the preservation of wilderness, the re-establishment of communities in urban areas, permaculture and other agricultural techniques, alternative lifestyles and non-violence.

Within this broad diversity, the environmental movement is described as developing in "waves" (Brulle, 2000; Dowie, 1996; Saunders, 2012). In the detailed analysis by Robert Brulle (2000) of the US environmental movement from a critical theory and social learning perspective, waves of environmentalism are explored through discourse analysis. Brulle (2000, pp. 286-288) identifies nine specific environmental discourses: manifest destiny (or wise use); wildlife management; conservation; preservation; reform; deep ecology; environmental justice; ecofeminism; and ecotheology. In this context, Brulle (2000, pp. 195-235) identifies the latter four discourses as 'alternate voices' in which he locates the "radical fringe" of the environmental movement. While this aids understanding of the emergence of radical environmental protest over time, concepts of the "radical fringe" can also be understood in terms of dissatisfaction with the mainstream environmental movement, the splintering of environmental groups, and the nature and form of environmentally-motivated protest activity (see for example Brulle, 2000; Manes, 1990; Scarce, 1990). The distinctions between, on the one hand environmental activists working with the state, and on the other hand, engaging in protest (polite or otherwise) is highlighted in the manual the *Earth Tool Kit* that lays out a continuum of tactics that can be employed in pursuit of environmental goals (Love, 1971). At one end of the continuum environmental activists working with the state engage in activity such as building awareness, political lobbying, influencing electoral candidates, petitioning, and pursuing law suits (Love, 1971. p. 43-62). Further along the continuum, at times pushing the boundaries of legality, environmental activists challenge

corporations and police through boycotts, pickets, marches and rallies (Love, 1971, p. 81-90). At the other end of the continuum (noting the boundaries are not sharp), environmental activists engage in "creative harassment" (with the purpose of causing delays or inconvenience to industry), "perturbance of systems" (finding and exploiting industry and business vulnerabilities), and if they fail, intervention through civil disobedience or direct action (Love, 1971, p.92-102).

The profiles of individual members of environmental protest groups as well as the groups themselves are also not homogeneous (see for example Button et al., 2002; Hernandez, 2007; Manes, 1990; Saunders, 2012; Scarce, 1990; Taylor, 2002). Saunders (2009, p. 2) points out that even within the same social movement network, activists adopt different strategies. Environmental protest groups include worldwide and highly organised NGOs (such as Greenpeace, Friends of the Earth, the Worldwide Fund for Nature and the World Wildlife Fund) through to local grassroots issue-specific groups that operate across a spectrum of legality (Button et al., 2002, p. 21). Button et al. (2002, p. 19) argue that the burgeoning public interest and concern about environmental issues has led to increasing diversity in both protesters and their tactics. The lack of homogeneity is supported by den Hond and de Bakker (2007, p. 903) who describe a continuum of activist groups from loosely organised networks through to highly organised and professional organisations employing a range of tactics in pursuit of their goals. While Button et al. (2002) distinguish between each of these groups (primarily on the basis of their respective organisational structure, motives, and tactics), such a fine distinction is rarely made elsewhere in the literature and groups including Greenpeace, Earth First! (EF!)[1] and the Earth Liberation Front (ELF) are frequently identified collectively as radical environmental groups (see for example Liddick, 2006; Long, 2004; Mortimer, 2007). As Cross and Snow (2011, p. 116) note, the conceptual ambiguity in understanding what is radical is at least partly due to the fact that 'radicalism and radicals are often defined by their context'. For Saunders (2012, p. 832) noting a blurring of boundaries (through mix and match strategies), it is the shift from "polite activism" combined with a focus on direct action, together with the shunning of organisational structures that situates radical environmental activism.

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[1] Exclamation mark mandatory.

Protest and criminality arising from radical environmental protest is international, disparate and a largely modern phenomenon that gathered momentum in the last decades of the twentieth century in response to the perceived failures of mainstream environmentalism (Eagan, 1996; Fritsvold, 2009; Hays et al., 1996; Love, 1971; Love & Obst, 1972; Manes, 1990; Saunders, 2012; Shevory, 1996; Taylor, 1995). Ackerman (2003b, p. 186) argues the development of radical environmental protest has mirrored social protest groups of the 1960s including the civil rights movement and anti-Vietnam war protest, demonstrating a transition from legal protest to non-violent civil disobedience, to property destruction. However, as Dowie (1996, p. 3) explains, environmentalism was not forged from oppression, as were the labour, civil rights and women's movements. Unlike these movements which emerged 'essentially radical', the environmental movement emerged from a conservative base (the conservation and preservation waves of environmentalism highlighted above), forged by 'mostly white, middle-class, male leaders' and developed a radical fringe (Dowie, 1996, p. 28). This is acutely illustrated through understanding that the emergence of radical groups EF! in 1980, the Sea Shepherd Conservation Society (SSCS) in 1981 and the ELF in 1992, were all driven by a desire to undertake increasingly illegal and criminal direct action protest in pursuit of what was seen as pressing and urgent environmental goals (Dowie, 1996; Hernandez, 2007; Leader & Probst, 2003; Liddick, 2006; Long, 2004).

Fritsvold's (2009, p. 801) perspective on direct action protest is that it 'is an expansive concept that contains ideological, structural, and tactical elements' and is used by activists as part of 'a wide ranging tactical arsenal that includes some actions that involve relatively significant forms of instrumental lawbreaking'. Vanderheiden (2008, p. 301) explains the breadth of actions and tactics that fall within the scope of direct action (equated with "ecotage"[2] and "monkeywrenching"[3]) includes minor (yet at times costly) nuisance harm such as pulling up survey stakes and disabling machinery through to major acts of vandalism such as arson or the sinking of whaling ships. As Doyle (2000, p. 45)

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[2] The US based environmental group Environmental Action coined the term ecotage in 1971 after identifying 'no phrase existed' that could draw together the diversity of environmental activists (Love & Obst, 1972, p. 13). After considering both ecotage (a combination of ecology and sabotage) and sabotology (a combination of sabotage and ecology) they settled for ecotage on the basis that it gave primacy to their focus on ecology (Love & Obst, 1972, pp. 13-14).
[3] A term popularised in Edward Abbey's (1975) *The Monkey Wrench Gang.* Monkeywrenching is frequently used interchangeably with ecotage.

explains, any individual or network can embark on direct action protest, it needs no formal approval from any organisation corporation, or institution. The modus operandi of the ELF is illustrative. Taking its cue from the Animal Liberation Front (ALF), the ELF was formed to promote a radical political agenda whose guiding principles include causing as much economic damage as possible to industry seen as destroying the environment (taking all precautions against harming human life) and educating the public (Grubbs, 2010; Parson, 2007, p. 9). The structure of the ELF is an underground leaderless resistance movement comprising autonomous individuals or groups of people who carry out direct action according to ELF guidelines and in the name of the ELF (Engelhardt, 2007; Leader & Probst, 2003, p. 38). As the ELF does not have a formal organisational structure, members are encouraged to form their own cells (rather than seek to join existing ones), and proclaim membership by self-reporting attacks on those who seek to destroy the environment (Leader & Probst, 2003, p. 39).

In the Chapters that follow, a varied repertoire of radical environmental protest, across time and in different jurisdictions with distinctly different actors and philosophical motivations are described and assessed.

2.2   Labelling and Radical Environmental Protest

Direct action protests commonly include sabotage and other forms of vandalism (Mortimer, 2007, p. 433). For radical environmental activists, a central tenet is that these and other direct actions are non-violent (Devall, 1992, p. 58). Radical environmental protest proliferated after the formation of EF! in 1980 (Taylor, 1998, p. 1). Taylor (2010, p. 101) argues that radical environmental activists 'have been both feared and harshly criticised', and that the critiques have 'religious, secular, and ethical dimensions'. The literature suggests that in the last decades of the twentieth century, radical environmental activists were labelled as "terrorists" and "eco-terrorists" (see for example Liddick, 2006; Long, 2004; Taylor, 2010). Groups including the SSCS, EF!, and the ELF as well as individuals associated with them, have been the subject of such labelling (see for example Anderson & Sloan, 2002; Liddick, 2006; Long, 2004; Manes, 1990). Golder and Williams (2004, pp. 271-272) identify the 'serious legal, political, social, cultural and economic consequences of labelling someone as a terrorist, or an action as terrorism'. This is reinforced by Smith (2008, pp.

564-569), who in her detailed examination of the economic and political framework behind what she identifies as the brand "eco-terrorist", argues that linking environmental activism with terrorism and through the widespread adoption and acceptance of the term eco-terrorist, three very specific and serious consequences flow: increased government surveillance; increased penalties and convictions for acts of protest; and investigation of mainstream environmental groups. To contextualise the discussion about the labels terrorism, eco-terrorism and violence that follow in this Chapter, this section of the Chapter firstly briefly discusses labelling theory.

2.2.1 Labelling Theory

With its antecedents in the nineteenth century, a labelling theory of crime began to emerge in the 1930s through the work of Frank Tannenbaum (Scherer, 2010, p. 935; Schrag, 1971; Vold, Bernard, & Snipes, 2002, p. 211). In 1938, Tannenbaum's seminal work *Crime and the Community* helped lay the foundation for labelling theory through the introduction of the concept of the dramatization of evil (Scherer, 2010, p. 935; Sumner, 1994, pp. 124-126). For Tannenbaum, crime could be viewed as a product of a labelling process where acts are defined as evil or criminal and that once the labelling process has begun, it is difficult to reverse (Scherer, 2010, p. 935). The labelling process was considered by Edwin Lemert who in 1951 posited that a strong social reaction to deviance causes further deviance (Rosenberg, 2010, p. 550). Lemert expanded the scholarship by introducing the concept of primary and secondary deviance (Rosenberg, 2010, pp. 551-553; Schrag, 1971, p. 89). In this dichotomy, primary deviance was viewed as the initial criminal or deviant act while secondary deviance was viewed as further criminal or deviant acts in response to the social reaction (Rosenberg, 2010, pp. 551-553). Considered this way, the social reaction from the initial criminal or deviant act drives further criminality or deviance because the opportunities to avoid it are removed (Curran & Renzetti, 2001, p. 175). By the 1960s and through the work of Becker, Erikson and Kitsuse, a 'fully fledged labelling approach' emerged (Muncie, 2001, p. 159). Labelling theory evolved to offer a way of considering deviance and criminality through a "system" rather than "offender" perspective (Scherer, 2010, p. 935; Wellford, 1975, p. 332) and focuses on the processes of how behaviour comes to be considered deviant (Muncie, 2001, p. 160). As Curran and Renzetti (2001, p. 173) point out, when it emerged, labelling theory was 'a bold new approach to explaining crime'.

Its point of difference was a shift from an absolutist view of crime to a relativist view of crime (Curran & Renzetti, 2001, p. 173; Wellford, 1975, p. 334). This relativist view is grounded in the belief that 'an act becomes criminal or deviant only when it is defined as such by group of observers' (Curran & Renzetti, 2001, p. 173). The labelling perspective 'flowered in the 1960s', and through the work of Howard Becker in the 1970s, the labelling perspective of deviance became popularised (Sumner, 1994, pp. 202, 231).

Labelling theory is concerned with the stigma of being labelled deviant and the behaviours and social reactions, including amplified offending, that follows. Labelling theory posits that what is considered criminal or deviant (including at law) changes over time and place (Curran & Renzetti, 2001, pp. 173-174). However, for Wellford (1975, p. 334), serious criminality (which he identifies as acts involving injury, theft or damage) is proscribed temporally and cross-culturally. These different perspectives highlight an underlying feature of labelling theory; that 'it is the audience which determines whether or not any behaviour comes to be defined as deviant' (Muncie, 2001, pp. 159-160). This is irrespective of whether the labelled behaviour actually breaches legal or moral mores, or is more of matter of being tactically or politically convenient (Sumner, 1994, p. 233). Discussed next, the labelling of radical environmental protest as terrorism and eco-terrorism by a range of actors (including those in the law enforcement, political and corporate spheres) occurs against this theoretical backdrop.

2.2.2 Labelling Radical Environmental Protest as Terrorism

Terrorism is 'a semantic, terminological, and conceptual minefield' and inherently difficult to define (Duyvesteyn, 2004, p. 440). No precise, single or uniform definition of terrorism has been adopted by academics, policymakers, the United Nations (or its predecessor the League of Nations) or at international law (Anderson & Sloan, 1995, 2002, 2009; Bottomley & Bronitt, 2012; Golder & Williams, 2004; Jenkins, 1980; Lentini, 2008; Levitt, 1986; Mullins & Thurman, 2011; Rose & Nesbrovska, 2005; Schmid, 2011a, 2011b; Staniforth, 2012; Tiefenbrun, 2002; Walker, 2011). Rather, definitions of terrorism exist in different casual, colloquial, political and legal contexts and discourses (Tiefenbrun, 2002, p. 358). The implications of the lack of consensus on a legal definition of terrorism are considered by Bottomley and Bronitt (2012, p. 404) who argue, that because there remains

'a lack of international consensus over meaning and scope (of terrorism) … domestic states … develop their own approaches to defining the problem'. Golder and Williams (2004, p. 294) point out that overly broad legal definitions including in the UK and the Northern Territory in Australia, 'are dangerous because they may extend to acts of public protest and industrial action'. Further, Schmid (2011b, p. 5) points out as significant, the broad and changing definitions of terrorism that capture political violence other than terrorism, which he identifies as including blockades, property damage, sabotage and arson.

Anderson and Sloan (1995, pp. 17-18), in offering a typology of terrorism and in drawing from the work of Richard Schultz and Paul Wilkinson, identify three main types of terrorist actors. These are: 'state actors', identified as governments and their agencies who act against their own people; 'revolutionary actors' who seek to fundamentally change or overthrow a regime; and 'entrepreneurial actors' who hire themselves out to regimes on a contract basis or who pursue 'an agenda of limited goals distinct from any nationalistic or revolutionist program' (Anderson & Sloan, 1995, pp. 17-18). Anderson and Sloan (2002, p. 22) recognise the inherent limitations of any typology of terrorism, noting the difficulty in capturing all cases, and pointing to anarchist leftists and state co-opting groups as examples. Anderson and Sloan's typology of terrorism (1995, p. 20) identifies animal rights groups (of which they include the ALF and the Animal Rights Militia, a British splinter group of the ALF) as falling within the rubric of terrorism in the form of entrepreneurial actors. In their later work, Anderson and Sloan (2009, pp. xx-xxi) have continued to identify animal rights groups as falling within the terrorism rubric and have drawn environmental activists within the frame terrorism through equating them to entrepreneurial actors.

Jenkins (1980, p. 1) argues, the issue of defining terrorism is exacerbated by terrorism becoming a 'fad word used promiscuously and often applied to a variety of acts of violence which are not strictly terrorism by definition' and one used by the media 'to heighten the drama surrounding any act of violence'. The result, Jenkins (1980, p. 2) argues, is 'the sloppy use of a word that is rather imprecisely defined to begin with'. However, in the context of the present study, in Australia, the definition of "terrorist act" is found at s100.1 Part 5.3 of the *Criminal Code Act 1995* (Cth) and in the UK, the definition of "terrorism" is found in s1 of the *Terrorism Act 2000*. In Australia and the UK, a terrorist act or terrorism is therefore defined by law. Prima facie this suggests legislative barriers in

Australia and the UK to the linking of radical protest (including radical environmental protest) with terrorism. However, these legal definitions have been subject to criticism for their potential overreach (see for example Bottomley & Bronitt, 2012; Gani, 2008; Golder & Williams, 2004; Walker, 2011).

2.2.3 Labelling Radical Environmental Protest as Eco-terrorism

The complexity of defining and conceptualising terrorism clouds how the term eco-terrorism is defined and conceptualised; its use is contested (Eagan, 1996, p. 1). As Lovitz (2007, p. 87) argues 'how can there be any accuracy in such a term (eco-terrorism) when the foundational subject, "terrorism" is so egregiously misunderstood?' The concept of eco-terrorism is further clouded by its levelling by the 'right – in order to stigmatize radical activists – and from the left, in order to stigmatize authoritarian state and corporate mistreatment of environment and/or animals' (Buell, 2009, p. 156). Further, the term eco-terrorist has been applied to radical environmental activists and radical animal rights activists as well environmental polluters (see for example Lovitz, 2007; Walker, 2007). In the broad context of this thesis, it is noteworthy that the US has enacted specific legislation directed towards animal rights and environmental activism (see for example Grubbs, 2010; Salter, 2014; Smith, 2008). It is in the context of the US legislation that much of the literature on eco-terrorism is situated. Here the scholarship includes a focus on legislative frameworks including examinations of the US *Animal Enterprise Protection Act 1992*, the *Animal Enterprise Terrorism Act 2006*, and the model Animal and Ecological Terrorism Act (see for example Engelhardt, 2007; McCoy, 2007; Salter, 2014; Smith, 2008; Walker, 2007).

Unsurprisingly therefore, the literature is sharply divided over the application of the term and concept of eco-terrorism both in the scholarship and in practice. Some parts of the scholarship condemn the term and the conflation of animal rights or environmental activism with terrorism (see for example Ackerman, 2003a; Buell, 2009; Goodman, 2008; Johnson, 2007; Loadenthal, 2014; Nocella, 2011; Plows, Wall, & Doherty, 2004; Salter, 2014; Smith, 2008; Sorensen, 2009; Taylor, 1998; Vanderheiden, 2005; Vanderheiden, 2008). Others argue some forms of action do equate to terrorism (Carson et al., 2012; Grubbs, 2010). Some scholars also accept (at times passively) that the terms terrorists and eco-

terrorists are apt in their description of, and application to, some radical animal rights or radical environmental activists and their actions (Liddick, 2006; Long, 2004).

Section Chief of the Counter Terrorism Division at the US Federal Bureau of Investigation (FBI), James Jarboe (2002, p. 50), explained to a US Congressional Committee that eco-terrorism has been operationally defined by the FBI as 'the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally-oriented, subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of symbolic nature'. Yet the term eco-terrorism in its colloquial use is clearly understood by both its proponents and detractors to apply to animal and environmental activists alike (see for example Glasser, 2011; Liddick, 2006; Long, 2004; Lovitz, 2007). As Webb (2010, p. 19) points out, the FBI definition of eco-terrorism excludes direct reference to action by radical animal rights activists and, as Amster (2006) identifies, it inherently includes acts against property that do not harm humans. While Webb (2010, p. 19) offers a definition of eco-terrorism as 'the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally or animal rights oriented subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of a symbolic nature', she does so for convenience and without engaging with the literature on either terrorism or violence. Similarly, while Mortimer (2007, p. 435) describes eco-terrorism as 'violent, radical, direct action environmentalism' (with no reference to the terrorism literature), and notes clear legal and social issues with being labelled a terrorist, he goes on to accept and adopt the FBI definition ostensibly on the basis of convenience and brevity. Similarly, Nilson and Burke (2002, p. 1) proffer their definition of eco-terrorism as 'any direct or indirect use of force, wilful damage, or violence against persons, groups, or property that is used to terminate, prevent, or minimize human alteration to any part of the natural environment or its animal species'. However, this is also done with no evident attempt to engage with the terrorism literature or legal definitions.

Amster (2006, p. 289) argues the inclusion of acts against property within the concept of terrorism has the effect of 'lowering the threshold for terrorism'. In his detailed assessment of whether animal rights extremists are correctly labelled terrorists, Hadley (2009, p. 375) argues that the characterisation of an act as terrorism may only be levelled

accurately in very limited circumstances. Clouding the scholarly debate, with at best a cursory engagement with terrorism literature, Arslan (2008, p. iv) contends '(t)he radical environmental and animal rights movement … have been responsible for thousands of acts of terrorism and extremist activities in the name of the environment and animal rights since the 1980s'. Similarly, Mullins and Thurman (2011, p. 47) state that 'since 1996, ALF and ELF have engaged in over six hundred terrorist acts'. However, in contrast to Arslan (2008), this contention is made in the context of the aetiology of terrorism, yet remarkably is also made without reference to either a working or legal definition of terrorism.

The extent to which radical activism has become enmeshed with concepts of terrorism in the US is highlighted in the way the FBI currently describes the threat to domestic security from radical activism. By way of example, the FBI currently identifies animal rights and environmental extremists as 'a significant domestic terror threat' and in 2009 included on its list of most wanted terrorists (that had also included Osama Bin Laden), animal rights activist Mr Daniel Andreas San Diego (Federal Bureau of Investigation, 2009, n.d.). Mr San Diego is wanted for allegedly bombings two buildings in the San Francisco area in 2003, he remains at large and remains on the FBI's list of most wanted terrorists (Federal Bureau of Investigation, n.d.). Ackerman's (2003a) threat assessment of the ELF identifies that while the ELF has caused millions of dollars of property damage, it has not intentionally or unintentionally harmed human life and it is misguided to characterise it as one of the most serious domestic terrorist threats in the US. Beck (2007, p. 174) argues that on the premise that as actions of radical environmental activists have trended towards 'more diffuse and less damaging incidents without increasing militancy', the threat posed is hardly what the US government has made it out to be. Taylor (1998, p. 24) cautions that while radical environmental activists have threatened 'business as usual in western industrial societies', the nature of the threat must be accurately determined and that this is not achievable 'if the exaggerated and ill-informed perceptions of the violent tendencies in these movements become conventional beliefs'.

Smith (2008, p. 564) asserts that the term eco-terrorism has been widely accepted because of 'repeated official pronouncements from the (US) government, the complicity of the mass media, and the campaigning of industry groups'. Further, Smith (2008, p. 564) suggests that the use of the term eco-terrorism has led to a more general acceptance of the

assertion that radical environmental activists are in fact terrorists. Smith (2008, p. 570) cautions that the term terrorist should not be used to describe crime such as 'trespass, vandalism, or other interferences with profits which result in no human injury'. For Smith (2008) this is because it diminishes the true meaning of terrorism,such characterisation is likely to stifle political dissent, and, created by powerful elites is being applied to protect their economic interests to the detriment of the environment. Taylor (1998, pp. 24-25) goes further than merely rejecting the conflation of radical environmental protest with terrorism by calling for scholars to 'refuse the temptation to sensationalize the environment-related conflicts'. Taylor (1998, pp. 24-25) further calls for scholars to challenge definitions of terrorism that do not incorporate key elements such as: abandonment of conventional and moral restraint; a distinction between combatants and non-combatants; appropriate and inappropriate targets; and legitimate and illegitimate methods.

2.2.4 The Question of What Constitutes Violence

Within the environmental movement, disputes over whether ecotage is violent and 'whether even discussing such tactics violates the predominant nonviolence principles of the movement' have occurred regularly since at least the formation of EF!' (Taylor, 2002, p. 57). Although non-violence is a 'central norm for radical environmentalism', what is noteworthy is that 'there are various interpretations of this norm' (Devall, 1992, p. 58). In analysing the justification for ecotage, Turner (2006, p. 226) dismisses the core question of whether property destruction is a form of violence, on the basis it is a 'terminological issue' that can be set aside along with the question of whether "eco-sabotage" is a kind of terrorism. However, Shevory (1996, p. 194) identifies as both complex and crucial the question of whether property destruction (where humans are neither injured nor threatened) constitutes an act of violence. Adding to the complexity of the question of what constitutes violence, Hadley (2009, p. 374) posits 'whether threats of violence amount to violence in themselves'. As Plows et al. (2004, p. 209) note, 'definitions of violence remain contentious' and as Taylor (2002, p. 36) points out, among the revolutionary rhetoric and the call for non-violence, 'it is difficult for radical environmentalists to resolve their feelings about violence or achieve consensus about it'. Highlighting that the question of violence for radical environmental activists has application in practice, Devall (1992, p. 58)

points out it was an 'interpretation of nonviolence' that resulted in Greenpeace expelling one of its co-founders.[4]

In the social movement literature, arson is considered violent (Glasser, 2011, p. 47). However, both the ALF and the ELF defend arson as a non-violent tactic (Taylor, 2002, p. 34). The ALF believes its campaign that includes tactics such as arson, releasing of animals, supergluing of locks, pouring paint stripper on motor vehicles and the breaking and etching of windows to be non-violent (Monaghan, 1999, pp. 160-161). Former prominent ALF activist and spokesperson Ron Coronado, sees the 'tactical destruction of property as an escalation of the nonviolent sit-ins, boycotts, strikes, and marches employed by the Reverend Dr. Martin Luther King Jr. and King's hero, Mahatma Gandhi' (Kuipers, 2009, p. 4). This is based on the belief that 'violence can only be perpetrated against sentient beings, that is to say beings which are capable of suffering and enjoyment' and therefore property damage is not violence (Monaghan, 1999, p. 160). Similarly, radical activists do not necessarily consider property damage as violence (Taylor, 2010, Ch 4). Adopting a "bodily injury" concept of harm that excludes (1) causing fear, and (2) creating economic loss, Nocella (2011, p. 91) argues that while actions such as trespassing, vandalism and arson are crimes, they should be considered non-violent because they harm no one. Dave Foreman, one of the founders of EF!, contends that the destruction of machinery is also not an act of violence (Shevory, 1996, p. 194). At the other end of the spectrum, some claim the destruction of property used to damage the environment is in fact the converse of violence and can be alternatively described as "property enhancement" (Shevory, 1996, p. 194).

For Mahatma Ghandi, sabotage was a form of violence, albeit a modified form (Scarce, 1990, p. 11). Scarce (1990, p. 54) notes that for prominent NGO Greenpeace, 'property destruction is violence, plain and simple' even if the property is used as a tool of environmental destruction. The empirical study by Carson et al. (2012), where data on 1,069 criminal incidents perpetrated by radical animal rights activists and radical environmentalists in the US in the period 1970 to 2007 were analysed, demonstrates that the core issue of how violence is considered remains contested. Of the incidents analysed, 17 per cent (187) were classified as terrorism (Carson et al., 2012, p. 295). The threshold

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[4] Paul Watson was expelled from Greenpeace and went on to found the SSCS (Manes, 1990, p. 109).

definition of terrorism applied was one underpinning the Global Terrorism Database; namely 'the threatened use or actual use of illegal force and violence to attain a political, economic, religious or social goal through fear, coercion or intimidation' (Carson et al., 2012, p. 297). By definition then, the 187 criminal incidents classified as terrorist, feature violence. However Carson et al. (2012, p. 310) classify as terrorist incidents those involving 'the pouring of various acids (including muriatic and sulphuric) on researchers' equipment'. This is done without either addressing the definitional question of how attacks on inanimate objects meet their benchmark definition of terrorism, which must include violence or explaining how this conduct falls within their definition.

Without specifically addressing a priori definitional question of what constitutes violence, Mullins and Thurman (2011, p. 47) argue 'groups like ALF ... and ELF ... have become the most violent domestic terrorists in America'. Howeverin her more considered assessment in the context of the legal definition of terrorism, Tiefenbrun (2002, p. 364) gives direct consideration to the question of violence. Specifically Tiefenbrun (2002, p. 364) notes 'there is a broad spectrum to the definition of violence' and that violence 'has many forms and degrees of severity'. In her analysis Tiefenbrun (2002, p. 364) explains that 'some courts have held that violence is not limited to physical contact or injury, but may include picketing in a labor dispute conducted with misleading signs, false statements, erroneous publicity, and veiled threats by words and acts' and concludes that 'an act is violent only if it causes harm to persons and things'. In his considered examination, legal scholar Clive Walker (2011, p. 35) explains that property destruction can be considered as violence, in common parlance and in legal parlance. However, noting it is a vexed legal question, Walker (2011, p. 35) goes on to argue that 'without accompanying human terror', it is doubtful that property destruction alone 'should qualify as terrorism'.

As Smith (2008, pp. 564-569) points out, labels and their respective meanings actually matter in practice. In the Chapters that follow, the significance of labels in understanding responses to radical environmental protest in Australia and the UK are explored.

2.3 Concluding Comments: Environmentally-Motivated Protest Scholarship

The scholarship focused on environmentalism, environmentally-motivated activism and environmentally-motivated protest is diverse and is situated in different bodies of literature including the social movement literature, political science, security and criminology. This reflects a broad philosophical and ideological base, a breadth of activism as well as different political, policy and policing responses to it across time and across jurisdictions. It is a sharply contested scholarship that evidences the conflicting and powerful narratives of (1) well-intentioned direct action protest against "corporate environmental criminals" driven by genuine and deeply held environmental concerns, and (2) serious criminality that poses significant challenges to policymakers and police. This contested scholarship frames the present study. The scholarship highlights that as a social movement, the environmental movement is multi-faceted, complex and diverse. Precisely how and where to "draw the line" between mainstream environmental activism, activism that may "push the legal envelope" and be noisy and annoying, and more radical forms of direct action protest is inherently challenging. Here, those on the different sides of the protest fence hold vastly different views. Even on the same side of the protest fence, there is not consensus.

As this part of the Chapter has highlighted, a considerable amount of the contemporary literature is focused on the appropriateness or otherwise of (1) the use of the label "eco-terrorism" to describe protest action, and (2) legislative and policy frameworks that link terrorism to radical animal rights and radical environmental protest. In this respect, the literature is US-centric and reflects responses in policy and practice over time to radical environmental protest. With a broader empirical base well beyond the US, the question of what constitutes violence is divisive and central to the literature. Where the literature does converge in respect of radical environmental protest, is that (albeit for different reasons) labels and the respective definitions of terrorism and ecoterrorism actually matter in practice. They frame how protest is described and understood. They also influence responses to radical environmental protest.

2.4   The Police and Policing

As this study includes a focus on the policing of radical environmental protest, the final parts of this literature review turn to examine the policing scholarship. The discussion begins with identifying the relevance and nuanced challenges of the policing of radical environmental protest, where illegal and clandestine direct action is frequently its raison d'être. To provide further context for the way policing has been considered in this thesis, the core questions of "what is policing?" and "who polices?" are then considered. Then theories of policing relating to high and low policing, public and private policing, plural policing and hybrid policing are all examined. Underpinning the analysis set out in Chapters 7 and 8, the literature review concludes by introducing Brodeur's theory of policing set out in *The Policing Web* and reflected diagrammatically in his 'Integrated Model of Policing' (2010, p. 308).

2.4.1   Policing and Radical Environmental Activism

Environmental activism is multi-faceted and sophisticated (Waddington, 2007, p. 16). It includes legal and illegal events, above and below ground organisations, single events and long term campaigns, as well as small and large scale public protests (see for example Baker, 2010, 2011, 2013; Brulle, 2000; Liddick, 2006; Long, 2004; Scarce, 1990). As Waddington (2007, p. 16) explains, environmental activism is increasingly professionalised and activists make use of sophisticated tactics (such as making extensive use of websites, guidance manuals and media manipulation) along with ecotage. The diversity of protesters and their tactics poses significant challenges to the policing response (Baker, 2010, 2013; Button et al., 2002; Waddington, 2007). Waddington (2007, p. 16) argues that the extent of that challenge renders traditional public order policing strategies 'obsolete'. In support of this Waddington (2007, p. 16) posits that as police are unable to predict the number or tactics of activists, police 'are actively pursuing "intelligence-led" strategies involving surveillance of key activists, monitoring communications, cultivating informants and deploying undercover officers'.

In western democracies protracted surveillance by both public and private actors has been identified as a feature of the policing response to radical animal rights and radical

environmental protest (see for example Button et al., 2002; Lubbers, 2012, 2015; Walby & Monaghan, 2011). Button et al. (2002, p. 29) argue that the accurate gathering of intelligence has become one of the most important strategies of the policing response to protest. This is supported by Baker (2008, p. 11) who points out while 'superior numbers' had historically been the 'key to police victory … information gathering, intelligence (and) covert surveillance' are now part of the policing arsenal. Walby and Monaghan (2011) argue this extends to include the sharing of intelligence in networked systems involving public and private intelligence bodies. Button and John (2002, p. 112) note the hallmark of the policing of environmental activism is a combination of private security, private investigators, hybrid policing agencies and the police themselves. It has resulted in a 'complex coalition of agencies' that are involved in policing environmental activism (Button & John, 2002, p. 112). The very nature of protest activity by activists on privately owned land brings this to the fore. In this context, Button and John (2002, p. 114) identify a key challenge of the myriad of policing actors as 'reconciling their various tactical, functional (and philosophical) priorities.' Earl (2003, p. 46) points out that state and non-state repress protest and social movements and they as well as their tactics are not homogeneous. Rather, state actors may be tightly or loosely connected with political or military elites while non-state actors may operate entirely independently of the state (Earl, 2003, p.47).

2.4.2   Understanding "the Police" and "Policing"

The very questions of "what is policing?" and "who polices?" have occupied policing scholarship for decades (Brodeur, 2010; Stenning & Shearing, 2012, p. 265). In this context, what is meant by "the police" and "policing" is still evolving (Brodeur, 2010; Council of Canadian Academies, 2014; Mawby, 2008). Manning (2012, para 6) explains that there exists a 'multiplicity of types of policing and types of police organisations'. In distinguishing "the police" from "policing" and in drawing from the work of Robert Reiner, Button (2002, p. 6) explains the former as a particular organisation and the latter as a 'social process of which the former and other phenomena are a part'. Brodeur (2010, p. 18) argues the very term police is 'laden with several layers of meaning throughout history'. In their recent examination of the future of policing in Canada, the Council of Canadian Academies (2014, p. xi) argues the question of who polices ought to be very widely drawn to include bodies beyond constabularies including 'private security, local health professionals, community and

municipal groups, and other government organizations that interact with one another and with police'.

In their examination of the shifting boundaries of policing, Stenning and Shearing (2012) point out that earlier scholarship on policing focused narrowly, viewing the police and policing as being inextricably linked to the state (to the exclusion of non-state actors) and the exercise of state power by the constabulary. The paradox is that seventeenth century conceptions of what it meant "to police" were very broad and 'chiefly meant the governance of a territory in all its aspects' (Brodeur, 2010, p. 62). From this broad based governance perspective, policing came to mean a more narrow form of governance; namely 'crime control and the preservation of order' (Brodeur, 2010, p. 77). The 1990s saw theoretical concepts of police and policing expand, and the state was viewed as just one part of a far broader and more complex network of policing (Brodeur, 2010, Ch 2; Stenning & Shearing, 2012, p. 265). For Brodeur (2010, p. 65) this was somewhat of a rediscovery. Notwithstanding, as Stenning and Shearing (2012, p. 269) establish, the contemporary orthodoxy is that policing is no longer considered to be the exclusive mandate of the state. Rather, the concept of plural policing recognises policing occurs beyond the constabulary and moreover, beyond the state (Loader, 2000). In drawing the distinction between "the police" (the constabulary) and state-sponsored policing agencies, Stenning (2009, p. 23) points out the latter (while ever growing) includes regulatory agencies, national security and intelligence agencies, as well as service delivery agencies (for example postal workers). In this diverse bricolage therefore public or state police (the constabulary) are best considered as one part (albeit a significant part) of an extended policing family (Stenning, 2009).

In advanced liberal democracies, policing is performed by an almost dizzying array of domestic and supra-national, state and non-state actors (Brodeur, 2010; Council of Canadian Academies, 2014; Crawford, 2008; Jones & Newburn, 2006a). Notwithstanding their significant overlaps, Loader (2000) explains that the provision of policing can be conceptualised as being provided by, through, above, beyond, and below the state. Within this rubric, Loader (2000) sets out: policing by the state is through domestic policing constabularies; policing through the state can include the engagement by the state of private security; policing above the state can include supra-national agencies such as Interpol; policing beyond the state can include in-house private security; and policing below

the state can include the engagement of citizens in various ways (such as Neighbourhood Watch programs and citizen patrols).

Policing is multi-dimensional, fragmented and diverse (Brodeur, 2010; Button, 2002, Ch 1; Crawford, 2008; Jones & Newburn, 1998, Ch 7) and is made up of a 'patchwork of agencies' (Jones & Newburn, 1998, p. 28). Many organisations other than constabulary bodies are engaged in policing (Button, 2002, p. 6; Council of Canadian Academies, 2014; Crawford, 2008). Policing can be understood as being undertaken by 'public policing bodies, "hybrid" policing bodies, and by private security and voluntary organisations' (Button, 2002, p. 1). It can further be understood in terms of "third party policing" where the constabulary mobilises other parties and makes use of their resources including those powers available to police and the plural partners (Mazerolle & Ransley, 2006). Further, the multi-dimensional nature of policing involves complex relationships with policing bodies in the public and private sectors (Button, 2002; Council of Canadian Academies, 2014; Jones & Newburn, 2006b; Prenzler & Sarre, 2006, p. 188). Of note is that constabulary powers are in no way required for a body to have a policing function (Brodeur, 2010, Ch 7-9; Button, 2002, Ch 1; Johnston, 1992, p. 115; Stenning, Shearing, Addario, & Condon, 1990). More broadly, Brodeur (2010) argues by taking an expansive view of policing as social control, actors such as the media, whistleblowers, parents and even criminal enterprises such as the Mafia "police". In his analysis of the trajectory of political policing in the US since 1970, Churchill (2004) expertly identifies the long history of private (including private-high policing) in the protection of business interests and their interfaces with public policing.

2.4.3 The Public-Private Policing Dichotomy

In considering contemporary changes in public and private policing, Johnston (1992, p. 205) argues 'public and private domains relate to each other in complex, dynamic, contradictory, and sometimes ambiguous ways'. Although a neat distinction is inherently problematic, and while they never wholly supplant each other, a key and useful distinction to be made in considering police and policing, is that of public and private policing (Bayley, 1987, pp. 6-7; Brodeur, 2010, Ch 5-8; Button, 2002; Jones & Newburn, 1998, Ch 2; Rigakos, 2005). However, the value of the public-private dichotomy arises not because the boundaries are sharp (they are not) but that through the public-private frame, policing can

be better understood (Brodeur, 2010, Ch 7-8; Jones & Newburn, 1998, p. 200). Marx (1987) argues that while a simple distinction between public and private policing is popular, it is manifestly insufficient. As the analysis by Rigakos (2005, p. 260) of public and private policing highlights, the public-private binary is 'becoming a less and less effective conceptual rubric from which to mount serious intellectual inquiries into policing'. Importantly, the concepts of public and private policing rest within the broader theoretical debate over the precise meanings of public and private (Button, 2002, p. 8; Jones & Newburn, 1998, p. 29; Marx, 1987).

A 'complex range of factors' impacts on how policing can be categorised within the public-private dichotomy (Button, 2002, p. 8). In this context, Jones and Newburn (1998, Ch 2 & Ch 7) suggest the public-private policing dichotomy can be better understood in terms of the following dimensions: sectoral (whether the policing body is the public or private market sphere); spatial (where the policing is carried out); legal (the powers available and the extent of their use); and functional (what police do). Even then, the distinction is not self-evident, rather the public police-private police dichotomy is complex and blurred (Brodeur, 2010, Ch 7-8; Button, 2002; Jones & Newburn, 1998, 2006a; Marx, 1987). In this context, Button (2002, p. 16) argues that policing bodies vary in their degrees of "publicness" and "privateness" and can be considered to rest along a spectrum. At one end rests private security with 'the deepest degree of privateness' and the other rests constabularies with 'the deepest degree of publicness' (Button, 2002, p. 16).

Public Policing

Britain is credited with providing a template for public policing in the nineteenth century through the establishment of London's New Police in 1829 (Brodeur & Leman-Langlois, 2006, p. 191; Lévy, 2012, p. 4). However, what should not be overlooked is that this built on a complex history of private policing that has continued to evolve and develop (Brodeur, 2010, Ch 2; Johnston, 1992, Ch 1). Brodeur (2010, p. 22) argues that public policing agencies form the largest part of what he calls the 'policing assemblage'. The term policing assemblage is considered expansively and is adopted in recognition of the fact that the range of actors involved in policing (in its broadest sense) requires no formal or informal coordination (Brodeur, 2010, p. 350). Button (2002, p. 23) states that in most western

democracies, people employed in the private security industry outnumber those employed by the public police. However, for Brodeur (2010, p. 139), the public police make up the largest part of the policing assemblage with in turn the uniformed constabulary constituting their dominant core. Irrespective of the primacy of public or private policing in size, public police departments that comprise uniformed police officers, plain clothes detectives as well as support and administrative staff, are the main components of public policing (Brodeur, 2010, p. 23). As Brodeur (2010, p. 23) points out in respect of public police departments, their jurisdiction, machinery, size and scope vary internationally and can include national, regional and municipally based departments. However, overall the public police in the form of the constabulary are 'the primary body employed to patrol streets, to maintain order, to deal with crime and to undertake other social service-type functions' (Button, 2002, pp. 16-17). Further, the public police are actors authorised 'to use diverse means prohibited to the rest of policed society in order to uphold a particular kind of socio-political order' (Brodeur, 2010, p. 139).

Earlier policing scholarship focused narrowly on this aspect of the police and policing (Jones & Newburn, 1998, p. 2). However, public policing is not the exclusive domain of the constabulary (Jones & Newburn, 1998, p. 19). Rather, public police departments also co-exist with specialised public agencies with authority "to police" (Brodeur, 2010, pp. 23-24; Jones & Newburn, 1998, p. 19). Miller and Luke's study in 1977 of policing bodies in the UK (as cited in Button, 2002, p. 13) identifies a vast array of public sector regulatory units or inspectorates with authority "to police" that included environmental health officers, driving examiners, wages inspectors, transit police, and special forces such as parks police and market police. In the later study centred on the Dutch welfare system, Hoogenboom (1991, pp. 22, 26-27) identified between 40 and 45 regulatory bodies that drew their authority "to police" from 'extensive administrative and civil powers' some of which are intrusive and some of which are not even available to the constabulary without a court order. These include bodies of social control that cover 'education, labour matters (safety, working hours), environment (permits to dump toxic waste), social security (unemployment benefits) and economics (transportation rules, import and export regulations)' (Hoogenboom, 1991, p. 22). Military police with their focus on 'policing military personnel' that form part of the armed forces of nation states along with intelligence agencies, border police (whether situated within police departments or in a separate body) and international

peace keeping forces are all also considered part of the public policing assemblage (Brodeur, 2010, pp. 22-27).

Private Policing

Until the pioneering work in the 1980s by Philip Stenning and Clifford Shearing, policing scholarship was focused more narrowly, as something "done" by the public police, rather than on broader notions of policing as social control that occurred well beyond the public police (Bayley, 1987; Button, 2002, p. 1; Jones & Newburn, 1998, pp. 250-251; Marx, 1987, p. 172). This represents a conceptual shift from policing being considered narrowly, as an institution, to policing being considered more broadly, as an action able to be undertaken by an array of actors. Private policing has a long and complex history (Brodeur, 2010, Ch 2; Johnston, 1992; South, 1987). It is pervasive, corporatised and internationalised (Jones & Newburn, 1998; Shearing & Stenning, 1987; Weiss, 1987). It operates domestically within nation states, and transnationally (Button, 2002). South (1987, p. 104) points out that any consideration of what the police have been, are and might be, is wholly inadequate without considering private policing. For over a decade, Stenning (2009, p. 25) has argued 'it is now almost impossible to identify any function or responsibility of the public police that is not, somewhere and under some circumstances, assumed and performed by private police in democratic societies'. Further, there is an interweaving of public and private police work through mechanisms including: joint investigations; the state hiring or delegating authority to private police; the private sector hiring public police; organisational forms that traverse the public-private divide; and the circulation of personnel (Marx, 1987).

While Jones and Newburn (1998, p. 213) suggest private policing bodies are defined as 'profit-making bodies selling services in a competitive market', this limits the way private policing is conceptualised. In his examination of private policing, Button (2002) identifies a diversity of organisations and actors beyond those involved in profit making that engage in private policing. In his analysis of the activities undertaken by policing actors in the private sphere, Johnston (1992, Ch 5) identifies four key themes that can unite private policing: guarding and protection of property and people; surveillance and intelligence gathering (including surveilling environmental activists); preventive action (including loss prevention); and specialised investigative activity. Importantly, this is not limited to a domestic focus and

accommodates the concept of transnational private policing, which as Button (2002, pp. 25-26) identifies, is a growth business. While private policing through private security is considered an inherent part of the policing assemblage (Brodeur, 2010, Ch 8; Gill & Hart, 1999, p. 246), there are inherent challenges in defining the boundaries of private policing (Johnston, 1992, p. 71). To add further complexity to understanding what is (and is not) private policing, the 'knowledge industry' is identified as a key component of private policing (Brodeur, 2010, p. 28). Brodeur (2010, p. 28) views the knowledge industry as central to the understanding of private policing. By this, he refers to the fact not only that former intelligence officers are employed in private corporations, but that private corporations themselves 'are involved in the development of data banks in relation to various aspects of security' (Brodeur, 2010, p. 28). In support of this, Brodeur (2010, pp. 28-29) points to the databanks held by the Pinkerton Agency[5] and the RAND Corporation[6] being merged for the use by the US government. The effect is extending access to privately-acquired intelligence to public agencies.

2.4.4 The High-Low Policing Dichotomy

In 1983 Brodeur 'established the fundamental distinction between high and low policing' (O'Reilly & Ellison, 2005, p. 641). Historically, the term and concept of "low" policing has been used to equate to overt criminal policing (Brodeur, 1983, p. 512). In simple terms, "high policing" can be considered covert political surveillance and the policing of the general order of the state, whereas low policing can be considered order maintenance, law enforcement and the policing of the specific order of the state (Anderson et al., 1995, p. 167; Brodeur, 2007; 2010, p. 183; Brodeur & Leman-Langlois, 2006, p. 171; Marenin, 1996, pp. 8-9; O'Reilly & Ellison, 2005, p. 649). The core focus of low policing is the maintenance of order, the suppression of crime and the prosecution of criminals (O'Reilly & Ellison, 2005, p. 641). It can be understood and distinguished from high policing through its visibility, focus on traditional forms of delinquency and the fact that it is 'formally and practically a constituent part of the criminal justice system' (Brodeur, 2010, pp. 229, 252). Brodeur (2010, Ch 7) has identified and described nine key features of high policing, namely: it is absorbent - soaking up intelligence and information as its currency; its

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[5] Acquired by Securitas AB in 1999, now Securitas Security Services USA, Inc. (Securitas, n.d.).
[6] The RAND Corporation is a US based not-for profit research organisation.

prime focus is not to uphold or enforce the law; the protection of the state rather than the protection of the community from law breakers is its focus; the state can be the intended victim (through politically motivated offences); it makes extensive use of undercover agents and paid informants (including criminals); it is shrouded in secrecy; deceit is part of its "tradecraft"; there is a conflation of legislative, judicial and executive power; and extra legality is not shunned. Several but not all of these features are required to categorise policing as high policing (Brodeur, 2010, p. 224). As Lévy (2012, para 14) notes, the distinction between high and low policing can be considered akin to 'two contrasting ways of operating'.

In developing a theory of policing, in *The Policing Web*, Brodeur (2010, Ch 7, Ch 8) seeks among other things, to address the lacunae in his earlier theorising identified by O'Reilly & Ellison (2005); that high policing extends well beyond public policing and the boundaries between public and private, high and low policing are blurred. Bayley and Weisburd (2011, p. 83) point out that high policing is not limited to public policing, rather a range of specialist companies which they identify as including 'ArmorGroup, Control Risks Group, Kroll, and Risk Advisory Group', provide specialist high policing services. In the policing scholarship, private high policing is an accepted orthodoxy (see for example Brodeur, 2007, 2010; O'Reilly & Ellison, 2005). For Ocqueteau (2012), distinguishing public high policing from private high policing can be done on the basis of distinguishing and understanding the focus of its customer base. While the customer base of public high policing is focused on the defence of the political regime, the customer base of private high policing is focused on the defence of corporations and their business operations (Ocqueteau, 2012). However, as Ocqueteau (2012, p. 3) points out, this is not a sharp distinction and the 'various customers of private high policing could in fact share certain objectives with the state … while still pursing interests that would diverge from those of the (state)'.

A core function of high policing bodies is the collection of data, its transformation into intelligence and its distribution on a "need to know" basis (Brodeur, 2010, p. 227). It is the scope and nature of data collected and how it is used that offers a fundamental distinction between high and low policing (Brodeur, 2010, p. 228). Police forces (constabularies) collect information and use intelligence for the purpose of directing

investigative resources and pursuing prosecutions in the criminal sphere (Brodeur, 2010, p. 228). Their key focus is on the criminal justice system (Brodeur, 2010, p. 306). On the other hand, security services have a seemingly unlimited appetite for information and intelligence and treat its collection and analysis to some degree as an end in itself (Brodeur 2010, p. 228). This is the distinction between criminal intelligence (the focus of low policing) and security intelligence (the focus of high policing) (Brodeur, 2010, p. 228). In this sense, high policing is described as 'quiet policing', where distancing surveillance from punishment means the information collected is not necessarily used in public prosecutions (Brodeur & Leman-Langlois, 2006, p. 181). However, Bayley and Weisburd (2011, p. 82) also argue that the primary goal of high policing is crime prevention through the application of its tradecraft of 'covert intelligence gathering, surveillance, and disruption'. In this sense, intelligence is gathered and used in the prevention of crime rather than the prosecution of crime.

Despite technological advances such as CCTV and electronic surveillance, human sources (informants) and undercover operatives (also evident in low policing) are particular hallmarks of high policing (Brodeur 2010, p. 229). High policing is predicated on surveillance (Brodeur, 2010, p. 304). While low policing also makes use of human informants, these are usually in the form of citizens or witnesses who can, and are, summonsed to testify in court (Brodeur 2010 p. 229). This again stands in sharp contrast to high policing where the very existence of informants and operatives is to be kept secret (Brodeur, 2010, pp. 244-247). In their analysis of the development of high policing literature, O'Reilly and Ellison (2005, p. 645) caution against focusing narrowly on the techniques of high policing rather than its underlying ideological rationale. Bayley and Weisburd (2011, p. 82) offer a way of identifying and describing high policing by focusing on its substantive focus and its methods. Bayley and Weisburd (2011, p. 82) identify high policing as being framed within the context of national security by contrasting 'microcrimes that affect only individuals' (the focus of low policing), to 'macrocrimes' or crimes 'considered threats to society in general' (the focus of high policing). These practical conceptualisations hold significant currency when the raison d'être of high policing is considered as being the protection of the dominant political regime (Brodeur, 2010, p. 226).

Marx (2014, p. 2) too offers a way of understanding high policing and distinguishing it from low policing that recognises high policing is not the sole domain of intelligence

agencies. He does so by identifying three themes: location (linkages with the state); ethos (a focus on national security); and methods (Marx, 2014). Marx (2014) identifies location as referring to where the policing apparatus links with the state, with high police being linked to the state at the very top. However, high policing does not directly equate to the intelligence community *per se* and their links to the state. Rather, Brodeur (2010, p. 225) points out that as their functions include intelligence gathering, most sizeable police forces themselves have a component of high policing. When "forces within forces" such as Special Branches are considered, the reliance by Marx (2014) on location being a core factor that distinguishes high policing must be considered broadly. In this sense, links to the state "at the very top" are not solely identifiable by examining machinery-of-government arrangements, but by considering how the subjects of high policing by low policing agencies are identified. In describing ethos as a characteristic that distinguishes high and low policing, Marx (2014, p. 1) argues that high policing can be conceptualised as being located within the frame of national security. Finally, for Marx (2014, p. 1) the policing methods employed set high policing apart from low policing. In particular, that its methods of data collection, intelligence gathering and pursuit of information are 'swathed in secrecy and deception' some of which can teeter on, even fall over, the bounds of conventional morality. Bayley and Weisburd (2011, p. 82) suggest, the practices of high policing are 'less transparent, less accountable, and less careful with respect to human rights' than the practices of low policing. Such issues are at the core of the still ongoing official inquiries into historical and contemporary covert policing of activists in the UK and are discussed in the Chapters that follow (Creedon, 2013, 2014a, 2014b; Ellison & Morgan, 2015; Evans & Lewis, 2013; HMIC, 2012, 2013; House of Commons Home Affairs Committee, 2013; May, 2015; Rose, 2011).

2.4.5 Hybrid Policing

Jones and Newburn (1998, p. 39) argue Les Johnston first postulated the existence of hybrid policing bodies in 1992. However, in his earlier analysis of the interweaving of public and private policing, Marx (1987, p. 186) identified the existence of 'hybrid organizational forms'. More accurately, Johnston (1992, Ch 6) identified that policing occurs in the space between the public and private spheres. Notwithstanding, in this earlier contemporary scholarship, Johnston (1992, Ch 6) viewed hybrid policing bodies expansively, as somewhat

of a "catch-all" for policing bodies that did not neatly fit the public-private policing dichotomy. Since then, as Button's analysis (2002, pp. 8-19) shows, the scholarship centred on hybrid policing has expanded. Button (2002, pp. 9-16) points out a number of scholars have developed taxonomies of hybrid policing underpinned by the distinction between public and private policing. Although sharp differences (including different criteria) are identified, a common theme is the degree of "publicness" or "privateness" (however measured). However, as Johnston (1992, p. 205) has explained, concepts of "publicness" and "privateness" are not normative and can and do vary within different cultural contexts.

Where there is consensus is that hybrid policing bodies do not neatly fit into the public-private policing dichotomy and that there are distinct challenges and complexities in categorising hybrid policing (Button, 2002, pp. 8-19; Johnston, 1992, Ch 6; Jones & Newburn, 1998, p. 200; Marx, 1987, p. 187). The sectoral dimension alone (whether in the public or private sphere) is inadequate to distinguish between public and private policing bodies (Jones & Newburn, 1998, p. 204). Rather, the concept of hybrid policing recognises policing occurs between the public police and private security (Button, 2002, p. 10; Johnston, 1992, p. 114). Brodeur (2010, p. 125) argues hybridity can be understood in terms of 'alternatives in between public and private policing'. Further, hybrid policing bodies operate 'in the public sphere, in the private sphere, or across both' (Johnston, 1992, p. 115).

Johnston (1992, pp. 115-116) describes hybrid policing as comprising 'a complex morass of agencies' where, as their structures and responsibilities cross the public-private divide, they generate complexity and therefore classifications have been ambiguous. At one end of the continuum, agencies hold powers akin to constabulary powers, while at the other end, agents of agencies hold more targeted and specific powers (Johnston, 1992, pp. 115-116). Button's (2002, p. 12) assessment of the scholarship on hybrid policing describes it as policing by 'public and private bodies that are neither the public police, private security or some form of voluntary initiative'. In respect of the latter, this includes policing by a range of actors including special constables, vigilantes and paramilitary (Button, 2002, p. 18). Then, in presenting a classification of police, Button (2002, p. 16) sharpens the distinction by applying the factors of (1) orientation (public or private), (2) funding source (public or private), and (3) relationship and status, to distinguish hybrid policing (public and private) from private security and voluntary poliicng. With this framework, voluntary policing is

considered neither hybrid, public nor private policing. However, the model highlights that hybrid policing is found in both public and private policing. For Jones and Newburn (1998, p. 39), the range of policing bodies and the connections between them have important implications for the way policing, in particular hybrid policing, is theorised. The current orthodoxy is that hybrid policing is an integral part of the policing assemblage (Brodeur, 2010).

2.5   Jean-Paul Brodeur's Theory of Policing

A number of scholars have sought to classify the diversity of actors involved in policing (Button, 2002, p. 10). As Jones and Newburn (1998, p. 39) argue, the very existence of various kinds of policing and their interactions have serious implications for how policing is theorised. Johnston (1992, pp. 6-7) offers a frame of public-private, formal-informal, and central-local. Loader (2000) offers an alternate frame of policing of, by, through, above, beyond and below government. In critiquing the diverse and prolific scholarship, Button (2002, pp. 10-19) identifies the question of how to deal with hybrid policing is a core issue. One way of making sense of the bricolage of actors "that police", which does integrate the concept of hybrid policing, is through Brodeur's (2010, p. 306) theory of policing developed in his treatise *The Policing Web* and reflected diagrammatically in the 'Integrated Model of Policing' (the Model) (Figure 1 below). Of Brodeur's treatise, Stenning (2012, para 5) argues, it is 'the first serious attempt by a mainstream policing scholar to develop a 'theory of policing'. In developing his theory, Brodeur (2010, p. 104) was cognisant of Egon Bittner's seminal works *The Function of the Police in Modern Society* as well as *Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police*, which he argued were 'the closest thing' to date to 'an explicit theory of the police'.

The Model was developed by Brodeur (2010, p. 306) from a synthesis of his decades of empirical research into policing and from the policing scholarship. It highlights a multiplicity of actors and the complexity of the relationships within the policing assemblage. Further, the Model reflects distinct policing types reflected in the scholarship and discussed in this Chapter; namely high and low policing, public and private policing and hybrid policing. Of particular note for the present study is that in *The Policing Web*, Brodeur defines neither police nor policing. Rather, Brodeur (2010, p. 130) offers a tentative

definition of 'policing agent' (the more expansive term he prefers to police) in the following terms:

> Policing agents are part of several connected organizations authorized to use in a more or less controlled ways diverse means, generally prohibited by statute or regulation to the rest of the population, in order to enforce various types of rules and customs that promote a defined order in society, considered in its whole or in some of its parts.

While Brodeur (2010) returns to consider the tentative definition throughout his treatise, and while he alludes otherwise, a final form is never resolved. However, a key theme underpinning *The Policing Web* is an expansive and still evolving concept of both police and policing (Brodeur, 2010). As the Chapters that follow attest to, this impacts on how the Model can be understood.

Figure 1: Brodeur's Integrated Model of Policing
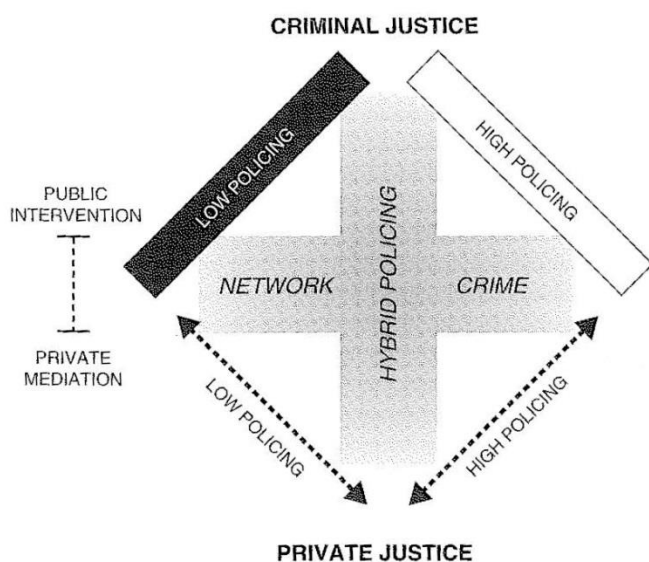
Figure 8.1 An Integrated Model of Policing

Source: Brodeur, 2010, p. 306

Developed in two parts (Brodeur, 2010, Ch 7-8), the Model has three distinct components: policing types; orientation to justice; and social interventionism. The Model situates public and private policing and high and low policing and also situates hybrid policing. By situating hybrid policing within the Model as he has, Brodeur (2010, p. 307) argues it acts as a reminder that 'there are interfaces between high and low policing and between public and private policing'. Discussed in more detail in the analysis that follows, this explanation of how and why hybrid policing is reflected in the Model in the way it is,

contrasts sharply with the more expansive way hybridity is considered in the theorising that underpins it. The descriptor 'network crime' in the Model is intended to reinforce that in policing crimes such as organised crime, gang-related crime and terrorism), there are areas of overlap (Brodeur, 2010, p. 307). Overall the Model reflects five distinctive policing types: public low policing; public high policing; private low policing; private high policing; and hybrid policing.

The second component of the Model orients it to the nature and strength of different relationships to "justice" which Brodeur (2010, p. 306) views as 'the most basic difference between public and private policing'. For public policing, Brodeur orients this relationship to justice towards the criminal justice system (where low policing is reflected as having a direct and institutionalised relationship and where high policing is reflected as having a somewhat weaker link). This is intended to differentiate between the different goals of public low policing and public high policing identified earlier in this Chapter. For private policing, Brodeur orients the relationship to justice towards private justice (where corporate decisions can drive discretion in private policing responses that may still shift to the criminal justice system). In its narrowest of forms, private justice is where 'private persons initiate lawsuits to detect, prove, and deter public harms' (Bucy, 2002, p. 4). However, the nature, form and focus of private actions vary, can be considered expansively and can be criminal or civil (Bucy, 2002, p. 7). Brodeur (2010, Ch 8) takes this more expansive view beyond simply private prosecutions. For Brodeur (2010, pp. 76, 265), private justice also incorporates concepts such as mediation and non-coercive problem solving. Private justice can also be viewed as 'justice by default' where 'charges are dropped for reasons of expediency or justice becomes corporatized' (Brodeur, 2010, p. 306). Against this backdrop, the relationship of private policing to private justice is depicted in the Model as much weaker than the relationship of public policing to the criminal justice system. For Brodeur (2010, p. 307), this is reflective of both a reliance on informal sanctions 'and a growing formalisation of justice'. However, Brodeur (2010, pp. 307-308) cautions that the respective orientations to justice, on the one hand public policing and the criminal justice system, and on the other hand private policing and private justice, are not uniform. Rather, the relationship to the criminal justice system in public policing (for both public low policing and public high policing) is stronger and more formalised (Brodeur, 2010, p. 308).

The third and final aspect of the Model is what Brodeur has called social interventionism (2010, p. 306). In *The Policing Web*, Brodeur's explanation of the concept of social interventionism is scant and more subtly embedded rather than overtly described. For Brodeur (2010, p. 307), its overall contribution to the Model is to seek to further contrast public and private policing and its usefulness is described as being able to 'generate further contrasts'. In respect of the concept of social interventionism, Brodeur (2010, p. 306) orients public policing to the concept of 'public intervention' and private policing to the concept of 'private mediation'. For Brodeur (2010, p. 307) interventionism characterises public policing and mediation characterises private policing. Brodeur (2010, p. 307) cautions the words intervention and mediation 'should not be interpreted in their normative sense'. Rather, they represent that the public police (because of their statutory and symbolic powers) can 'openly practice various forms of social interventionism' (Brodeur, 2010, p. 307). It is 'this emphasis on potentially disruptive action' that Brodeur (2010, p. 307) views 'separates public from private policing'. It is in using statutory and symbolic powers as a form of intervention to potentially disrupt action, that Brodeur (2010, p. 307) argues is a distinction between public policing and private policing. For Brodeur (2010, p. 307), the latter (while at times holding considerable statutory authority) is less focused on using it, preferring to adopt a 'wait and see attitude'. The placement of this component of the Model adjacent to low policing (public and private) indicates it is not applicable to high policing (public or private).

Importantly for the present study, Brodeur's Integrated Model of Policing depicts public and private policing, high and low policing, hybrid policing and different orientations to justice and social interventionism that can be tested empirically. It is the theoretical framework used in the present study to analyse policing responses to radical environmental protest. Tested in the Chapters that follow, the Model seeks to (1) depict "the who" and "the what" of policing, (2) identify interfaces between different types of policing actors, and (3) generate contrasts that aim to better distinguish between public and private policing. Also tested in the Chapters that follow, is that while hybrid policing is theorised more expansively by Brodeur, the Model situates it only in the spaces between high and low policing and public and private policing.

2.6   Concluding Comments: the Police and Policing Scholarship

Contemporary policing scholarship focused on the police and policing is diverse and sharply illustrates that the questions of (1) who polices, and (2) what it means to police are complex both in theory and in practice. Earlier policing literature was focused predominately on uniformed police officers – "the Bobby on the beat". This is despite early forms of "policing" having a far broader focus on social control and societal governance. However, the scholarship has expanded and the accepted orthodoxy in contemporary policing scholarship is that policing is done by a myriad of actors, well beyond the constabulary and well beyond the state. In this respect and while the boundaries are blurred, different forms of policing are evident and able to be described. This literature review highlights that the ways in which the scholarship "makes sense" of the diversity of policing actors and their interfaces, overlaps and respective mandates, is still evolving and is inherently challenging.

The literature review established that policing radical environmental protest in advanced liberal democracies is complex and challenging. Part of that complexity and challenge relates to (1) the tactics employed by radical environmental protesters, (2) an increasing reliance by police on intelligence, and (3) the complex and at times loose coalition of agencies that play a role in policing.   As the Chapters that follow go on to reinforce, these are all relevant factors in assessing responses to radical environmental protest.

3.   METHODS

Research into the policing of radical environmental protest that seeks to examine high and low policing as well as public, private and hybrid policing in the context of critical infrastructure policy (a sub set of national security policy) raises a number of fundamental challenges. Not the least is that policing agencies engaged in high policing and with a role in national security have been reluctant to open their doors to academic enquiry (Brodeur & Dupont, 2006; Lowe, 2010). High policing is, after all, 'an exercise in covering up' (Brodeur, 2010, p. 226). Further challenges to researching the policing of radical environmental protest also include:

- the potential (intended or unintended) to make useful information from targeted organisations available to activists (Button et al., 2002, p. 18);

- that activists have engaged, or intend to engage in illegal activity (Fritsvold, 2009);

- the difficulty in non-participants gaining access to actors within a social movement (Blee & Taylor, 2002, p. 98); and

- ethical issues including maintaining the confidentiality of actors participating in this type of research (Scarce, 2005).[7]

In addition to these specific challenges researching in this field identified in the literature, in the course of the present study (reflected on in Chapter 9) a number of other difficulties and challenges were encountered. This included reluctance on the part of organisations in the resources and energy sector as well as policing bodies to formally participate in the study. In respect of policing bodies, this included the constabulary and intelligence bodies. The underlying reasons were that participating in the study could reveal how risk and threats are perceived and managed as well as reveal security planning and possible responses to protest. Further, attempts to recruit protesters or their official spokespeople linked to the case studies were largely unsuccessful. A notable exception is evident in Chapter 6. In respect of the historical cases, the passage of time made it difficult to identify the current contact details of protesters to attempt to recruit them to the study. In respect of the contemporary cases, direct communication to protesters seeking to recruit them to the study all went unanswered.

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[7] In 1993, sociologist Professor Rik Scarce was jailed for 17 months for contempt of court for refusing to testify to a United States federal grand jury about details of his research related to radical environmental protest (Scarce, 2005).

Social movement scholars Koopmans and Rucht (2002, p. 231) explain that protest can be studied in a range of ways including by examining individual cases as well as the context in which they occur; namely the broader campaigns. In consideration of this and the challenges identified above, the qualitative research methodology employed in this thesis draws from historical-comparative research theory, a form of research 'in a past historical era or across different cultures' that 'combines theory with data collection' (Neuman, 2003, p. 39). A key focus of historical-comparative research is its use of a 'mix of evidence, including existing … documents … and interviews' (Neuman, 2003, p. 39). Consistent with an historical-comparative approach, this thesis is both descriptive and interpretive and began with what Neuman (2003, p. 39) has described as 'a loosely formulated question' that was refined and elaborated on during the course of the study; namely how and why is environmentally-motivated protest targeting critical infrastructure policed in the way it is? The qualitative approach utilised in the study was selected to enable the policing of protest events to be considered within the complexity of the overall situation in which it occurred including different critical infrastructure policy frameworks over time. Creswell (2009, p. 4) points out that taking a qualitative rather than quantitative approach enables flexibility to be employed throughout the research, allowing emerging issues to be incorporated if relevant. In this context, the present study was conducted contemporaneously with the release of information about the policing of protest in the UK by whistleblowers, the media and through official reports. Further, the study was concluding when in mid-May 2015, Australia released a revised critical infrastructure policy framework (Commonwealth of Australia, 2015a, 2015b). The research design allowed both to be considered.

Yin (2009, p. 19) points out that case studies are suitable for both qualitative and quantitative research. Case studies are also suitable for examining events in depth (Creswell, 2009, p. 13). While case study research can 'have a detailed focus', it can (as the present study reinforces) also 'tell a larger story' (Neuman, 2011, p. 42). In assessing case studies as a valid research method, Yin (2009, pp. 19-20) identifies four distinct applications of case study research: it can explain causal links; it can describe a real life intervention and the context in which it occurred; it can be illustrative; and it can enlighten. Research questions that are suitable for case study research include those focused on if, how, to what

extent and why phenomenon can be observed (Stake, 1995). Case study research cannot rule out alternative explanations, rather it acts to describe and interpret what was observed in the particular cases (Bouma & Ling, 2004, p. 90). While case study research does not allow generalisations to be made directly to a population, it does allow generalisations to be made to a theory or model (Sarantakos, 2005, p. 216; Snow & Trom, 2002, p. 163). As identified earlier, in analysing policing responses to radical environmental protest, this is Brodeur's (2010, p. 306) theory of policing reflected diagrammatically in the Integrated Model of Policing.

3.1   Empirical Focus of the Study

As highlighted in Chapter 1, the empirical component of this thesis is centred on radical environmental protest in Australia and the UK targeting key parts of the civil infrastructure and the policy contexts in which such protest was policed. Underpinning this is that an enduring focus of environmental protest internationally includes infrastructures in the resources extractive and energy sectors, such as forestry, mining and energy production (see for example Brulle, 2000; Button et al., 2002; Dunlap & Mertig, 1992; Foreman & Haywood, 1987; Manes, 1990; Scarce, 1990). In both Australia and the UK, the focus on radical environmental protest targeting these infrastructures is both evident and expected to continue (see for example Extreme Energy Action Network, n.d.; Garvin, 2013; Hepburn, Burton, & Hardy, 2011; Lock the Gate Alliance, n.d.; No Dash for Gas, n.d.). The empirical focus on Australia and the UK was also influenced by: the common language; similar cultures; similar institutional political models; similar systems of government; similar laws governing policing; similar human rights traditions including acknowledgement of the democratic right to protest; and similar legal and policing traditions (Anderson et al., 1995, pp. 167-168; Findlay, 2004; Sturma, 1987). In addition, in both Australia and the UK, the majority of critical infrastructure is privately owned or operated on a commercial basis (Commonwealth of Australia, 2010b, p. 4; CPNI, n.d.-c). These similarities are intended to make comparisons informative.

Through a multiple case study approach (discussed further below) this thesis examines the response in policy and practice to radical environmental protest targeting key parts of the civil infrastructure in Australia and the UK. In both Australia and the UK, civil

infrastructures are considered to deliver essential services that are critical to national security and economic well-being (Commonwealth of Australia, 2010b, 2013c; CPNI, n.d.-b; HM Government, 2010). The empirical focus on the broader resources extractive and energy sectors reflect that that while the lists of what is considered critical infrastructure is tightly held, the sector groupings themselves (including their potential upstream and downstream interdependencies) are in the public domain.

3.2   Research Perspective

The present study largely draws from the methods used by Button et al. (2002) in conducting primary research with the organisations targeted for protest. As Baker (2011, 2013) points out, as a stakeholder group the organisations targeted have largely been neglected in the literature of protest policing. Taking this approach reflects my former senior role in transport security policy and current role as a participant member of Australia's Energy Sector Group (ESG) that forms part of Australia's national critical infrastructure resilience committee arrangements under the auspices of the Trusted Information Sharing Network (TISN). Undertaking the present study while simultaneously being a member of the ESG offered both opportunities and limitations. The opportunities included the opportunity to identify potential participants for the study. The limitations related to constraints on me due to strict and enforceable confidentially requirements that govern the information gained within and tangential to the TISN.

Button et al. (2002) recognised the potential bias in conducting primary research with the organisations targeted for protest and balanced it with reviewing literature produced by radical environmental protest and through interviews. This approach guided the present study. As noted above interviews with protesters directly involved in the protests used as case studies were sought. Where interviews with protesters were unable to be secured (four cases), protester perspectives were identifiable from the news media coverage of the protests (where directly quoted), and from related court decisions and submissions. Using the approach highlighted by Button et al. (2002), the literature produced by radical environmental activists (including on web sites and through media releases) was also accessed and was a rich source of information on protester perspectives relevant to the specific cases.

3.3   Case Studies

The present study utilised an exploratory case study approach. Bouma and Ling (2004, p. 90) identify this approach enables researchers to undertake 'a broad look at the phenomenon being investigated' and enables the researcher to 'build a description of what is going on'. Case study research can involve either single, multiple, synecdochial or revelatory cases (Snow & Trom, 2002, pp. 160-163). The present study examines multiple non-nested cases. This approach, Snow and Trom (2002, p. 162) point out, facilitates a 'more nuanced assessment of variation among the cases' and as Yin (2009, p. 53) explains, provides a more robust overall study. The focus on multiple cases also:

- assisted to mitigate the risk that Brodeur's Integrated Model of Policing may not have been able to be robustly assessed as part of the overall study;

- enabled comparisons to be made across cases, time and jurisdictions; and

- facilitated multiple data sources and therefore provided project contingency for the overall study.

Snow and Trom (2002, p. 157) identify four types of cases that should be understood in case study research: typical or normal cases that are representative; critical cases that are ideal for assessment; deviant cases that are an exception to a pattern; and extreme or unique cases. An initial pool of ten possible case studies (specific protest events in Australia and the UK targeting civil infrastructure) was identified. Of the initial case studies, six (three in Australia and three in the UK) were initially selected for in-depth analysis. During the course of the study, as the revelatory aspects of one of the UK case studies examined in depth merely reinforced the involvement of public policing (evident in more detail in the remaining five), it was not further considered. The final selection of five cases (discussed in more detail in Chapter 4) was made on the basis that: they could identify similar results (typical cases); they could identify contrasting results (deviant cases); there was prima facie a pluralist policing response evident; significant detail of the event was in the public domain; and where any policing response and legal action had been brought to a conclusion. A focus on past events maximised potential data that could be considered. Further, outcomes were known to the range of actors involved, any potential illegal activity had already been identified and any legal proceedings (including appeals) were finalised. The focus on past events where the final legal outcomes were known, addressed the potential ethical issues in

undertaking this type of research identified by Fritsvold (2009), Button et al. (2002) and Scarce (2005) highlighted earlier.

Consistent with comparative case study research design (Neuman, 2011; Stake, 1995; Yin, 2009) and to accommodate the inherent limitations of a Ph.D thesis, two protest events were examined in depth (one each in Australia and the UK) and revelatory aspects of three additional protest events (two in Australia and one in the UK) were examined in depth. The final combination of different protests collectively spanning some 40 years, each with markedly different policing responses and policy contexts, sought to balance diversity with what could reasonably be achieved in a Ph.D.

3.4   Analytical Approach

Both the descriptive and analytical components of this thesis required the examination of rich text-based information. This included: official reports; court decisions; media reports; media releases; Government gazettes; official files; administrative arrangements orders; web sites and activist literature. Non text-based information examined included audio files, videos and photographs. For the policy related aspects of the present study, the analytical approach employed was an inductive thematic analysis. For the policing aspects of the present study, the initial analytical approach was also an inductive thematic analysis. Thematic analysis is a widely used method for identifying and reporting patterns and themes in data (Braun & Clarke, 2006, p. 77). The key benefits of using an inductive thematic analysis was its flexibility, and its usefulness in making sense of rich, detailed, complex and at times contradictory data (Braun & Clarke, 2006, p. 78). Then, in respect of the policing of protest, the analytical approach employed was a deductive analysis of Brodeur's Integrated Model of Policing using the evidence from the five case studies. The purpose of a deductive analysis is to test theory against evidence (Kraska & Neuman, 2011, p. 65; Neuman, 2011, pp. 69-70).

3.5   Data Sources

Having selected the final five cases, additional and more detailed source material directly relevant to them was identified such as: legislation and regulation; government

policies; government documents; independent reviews; annual reports; official reports; speeches; parliamentary transcripts (Hansard); official newsletters; media reports; recordings (audio and visual); photographs; protester-generated documents; court submissions and decisions; media releases; published statements; and accounts by the various actors involved. Where potential documents were not in the public domain, requests for either administrative access to them or access via freedom of information legislation were made. Six requests for access to documents via freedom of information legislation were ultimately progressed. While not all requests were granted, this approach significantly extended the primary source material created by security and intelligence agencies in Australia and in respect of covert policing in the UK. Further primary source material was also identified by reviewing the freedom of information disclosure logs published by agencies and then accessing specific documents that had already been released to earlier applicants under freedom of information legislation. This also further expanded the source material.

Burgess-Limerick (1998) identifies conversational interviews as being a valid data collection technique in multiple-case research. Twelve Semi-structured elite conversational interviews were ultimately able to be conducted with a spectrum of actors. Unsuccessful attempts were made to recruit additional activists, intelligence agencies as well as current and former politicians in both Australia and the UK to the study. A breakdown of the cohort of interviewees is set out in Table 1 and includes the focus areas of their contributions.

Table 1: Cohort of Interviewees

DESCRIPTOR	NUMBER	FOCUS AREA
Activists	2	Case study 1 Policing protest
Industry executives	2	Case study 3
Current or former public (civil) servants	6	Case study 3 Critical infrastructure policy Policy responses to protest
Private intelligence personnel	1	Policing protest
Private security personnel	1	Case study 2

Twelve semi-structured interviews were conducted with actors with knowledge of the respective historical or contemporary policy contexts, direct knowledge of the policing of protest or knowledge of the specific cases. Blee and Taylor (2002, p. 98) identify the central role of interviews in social movement research and highlight semi-structured interviews in particular as providing a rich source of data in terms of participants 'experience and interpretation of reality'. Initial potential interviewees were identified through reviewing primary source material in the public domain and then through my existing policing, policy and industry networks. Additional interviewees were then identified by using the non-probability snowball sampling technique, which has specific relevance when research is conducted into 'interconnected network of people or organizations' (Neuman, 2003, p. 214). Potential participants were sought from both sides of the protest fence. Face-to-face (six) as well as telephone interviews (six) were conducted at various times and locations agreed with interviewees. All interviewees had the option of (1) having the interview recorded and transcribed or not recorded and a summary made, and (2) having their contributions attributed to them or their contributions anonymised. Interviewees were provided with either a transcript of the interview or a summary of the interview for their review and endorsement.

After establishing successful contact with the potential interviewee, preliminary discussions were held to enable me to explain the study. This afforded the opportunity to also discuss the areas where the prospective interviewee's lived experiences may contribute to the study. Where agreement to proceed to an interview was reached, either a face-to-face or telephone interview was scheduled. A telephone interview was only utilised when it was not feasible to conduct a face-to-face interview. Ahead of each interview I identified key open-ended questions to guide (yet not restrict) the scope and direction of the particular interview. Consistent with the conversational interview technique (Burgess-Limerick, 1998, p. 64), the focus of each interview was on the stories and personal narratives of the interviewees. Burgess-Limerick (1998, p. 64) points out that stories are shaped by context. In the present study the context covered during interviews included what side of the protest fence the interviewee sat. It also included policy frameworks applicable at the time, perceptions about the environmental cause being championed by protesters and perceptions about the adequacy (or otherwise) of the policy and policing responses. Data collected through interviews identified key information not identified in

source documents. It also enabled data to be cross-referenced against source documents to identify potential discrepancies warranting further examination.

In addition to these formal interviews, five current or former senior police as well as three journalists agreed to participate in the study by responding to targeted open-ended questions emailed to them.   These participants also had the option of having their contributions attributed to them or their contributions anonymised. This significantly broadened the data able to be accessed in the present study. In a process Stake (1995, pp. 115-116) calls member checking, all participants were provided with drafts of how potentially sensitive input was being incorporated into the overall study. Its benefit to the present study is that it generated further points of discussion with a number of participants.

Ethical clearance for the study was granted in 2013 by Griffith University's Human Research Ethics Committee (ethics protocol reference CCJ/08/13/HREC). This included approval of the requisite information package and consent forms used during the study.

4.   CASE STUDIES – NARRATIVE DESCRIPTIONS

4.1   Introduction and Chapter Outline

The purpose of this Chapter is to set out a narrative description of the cases on which the present study is based. It is set out in nine parts. After this introduction the second and third parts of this Chapter (4.2 and 4.3) provide brief contexts to further situate the policing aspects of the case studies. As it directly relates to the analysis of the case studies that follow in later Chapters, the focus is establishing the organisation of police forces in Australia, and the context for the covert policing of protest in the UK. The fourth part of this Chapter (4.4) identifies the significance of each of the case studies and why each was selected for inclusion in the present study. The remaining parts of this Chapter (4.5 – 4.9) are the narrative descriptions of the case studies. Key facts and revelatory aspects of each case are identified and described.

4.2   Policing Context for the Australian Case Studies

Australia's contemporary constabulary structures should be viewed in light of Australia's model of federalism (Chappell & Wilson, 1969, Ch 1). Prior to federation (1 January 1901), each of the six Australian colonies had their own distinct and separate police forces and corresponding police powers modelled along lines inherited from Britain and Ireland (Bryett, Harrison, & Shaw, 1994, p. 105). Federation was never intended to subordinate the States to the Commonwealth, and each of what became States already had police forces with their own legal competences (Bryett et al., 1994, p. 106; Chappell & Wilson, 1969, p. 26). After federation, States retained primary responsibility for domestic policing, with an initially limited role for the Commonwealth government.

Until the formal transfer of the Territories to the Commonwealth in 1911 (the Northern Territory, and the Australian Capital Territory excised from New South Wales), the policing of the Territories was undertaken by the South Australian and New South Wales police respectively (Bryett et al., 1994, p. 108; Chappell & Wilson, 1969, p. 27). At the time of transfer of the Territories to the Commonwealth, the policing of the Territories became a Commonwealth responsibility (Chappell & Wilson, 1969, p. 27). The first Commonwealth Police Force (CPF) in Australia was formed in 1917 amid a growing body of Commonwealth

criminal law and strained intergovernmental relations (Bryett et al., 1994, p. 108; Byrnes, 2007, p. 34). The remit of the CPF was to enforce Commonwealth laws and when it was disbanded in 1919, 'its functions were transferred to the newly created Commonwealth Investigations Branch (CIB)' (Byrnes, 2007, p. 36). The focus of the CPF between 1917 and 1919 (that never numbered more than 40) was 'surveilling politically subversive activities' (Byrnes, 2007, p. 36).

The later formation of the Commonwealth Police (COMPOL) in 1960 through the merger of the Commonwealth Investigation Service (that in 1945 superseded the CIB) and the Commonwealth Peace Officer Guard represents a later iteration of a national police force (Bryett et al., 1994, p. 107; Chappell & Wilson, 1969, p. 27). As with the CPF before it, the formation of COMPOL preserved the State forces (Chappell & Wilson, 1969, p. 27). As part of the Commonwealth government's response to the bombing outside the Hilton Hotel in Sydney on 13 February 1978 (discussed in Chapter 6), Sir Robert Mark (then the recently retired Commissioner of London's Metropolitans Police Service) was appointed to review the organisation of police resources in Australia (Commonwealth of Australia, 1978). Sir Robert's recommendations included the creation of a federal police force to be formed by amalgamating and refocusing the existing COMPOL and the Australian Capital Territory (ACT) Police (Commonwealth of Australia, 1978, pp. 71-72). In making this recommendation, Sir Robert indicated he gave 'due regard to the sovereignty of the States comprising the Commonwealth of Australia' (Commonwealth of Australia, 1978, p. 1). In recommending the formation of the Australian Federal Police (AFP), Sir Robert noted there is 'wrongdoing which transcends State jurisdictions and affects the interest of the Commonwealth as a whole' (Commonwealth of Australia, 1978, p. 2). Sir Robert's view was that it would 'be perfectly possible' to establish a police system that comprised the 'autonomous state forces and a national investigative agency' (Commonwealth of Australia, 1978, pp. 2-3).

When formed in 1979, the AFP was an amalgamation of COMPOL, the ACT Police that had formed in 1927, and the Federal Narcotics Bureau that had formed in 1969 (Bryett et al., 1994, pp. 107, 112). The AFP is Australia's national police force, it became operational on 19 October 1979 and its role and remit is set out in its enabling legislation, the *Australian Federal Police Act 1979* (Cth) (Australian Federal Police, 1999, p. 1). The

boundaries of the State and Territory police forces and the AFP belie the complexity of Australia's jurisdictional relationships (Bryett et al., 1994, p. 105). In respect of the organisation of policing in Australia and in particular the model of federalism, Findlay (2004, p. 1) observes 'the jurisdictions of policing … are diverse, complex and often interrelated'. Importantly, as Munro (1989, p. 84) notes, the AFP does not usurp the operational autonomy of the State and Territory police in respect of local criminal laws. Rather, the organisation of Australian policing, where significant operational autonomy rests with the State and Territory police, is a product of 'the UK tradition (and) the nature of the Federal system' (Munro, 1989, p. 84).

Two of the Australian case studies pre-date the formation of the AFP and one post-dates it. Relevant to the present study is that despite the existence over time of different federal police forces in Australia, the State and Territory police forces retained their autonomy.

4.3   Policing Context for UK Case Studies

Unlike Australia, the UK does not have a national police force (Association of Chief Police Officers, 2012). There are over 60 different geographic and non-geographically based police forces operating in the UK (Brodeur, 2010, p. 11). In respect of the constabulary, there are 43 separate geographic forces each headed by a Chief Constable (Association of Chief Police Officers, 2012, p. 3; National Police Chiefs' Council, 2015a). In respect of the variety of police forces and their complex histories, Reiner (2010, Ch 7) points out the authority "to police" is derived from a complex morass of statute law and common law. With no national police force, the UK does have 'national policing units, agencies and projects' (National Police Chiefs' Council, 2015c). Since 1 April 2015 these national policing units have been overseen by the National Police Chiefs' Council (NPCC) (National Police Chiefs' Council, 2015c). With its role in co-ordinating national police responses in the UK, the NPCC replaced the former Association of Chief Police Officers (ACPO) that was formally wound up on 31 March 2015 (National Police Chiefs' Council, 2015b). Another context for the UK case studies is the contemporary "crisis of policing" that began to emerge in late 2010 with the "outing" of former undercover officer (UCO) Mark Kennedy. What followed revealed much about the tactics and tradecraft of covert policing units in the UK dating back

to the late 1960s. Understanding the "outing" of Kennedy and the official reviews and inquiries that followed (focused on the organisation of police resources geared towards policing protest), are necessary pre-cursors to the analysis of the policing responses to radical environmental protest that follows and as such are discussed in detail.

In October 2010 and after living deep undercover for seven years, committed green anarchist "Mark Stone" was outed by fellow activists as UCO Mark Kennedy (Indymedia UK, 2010). In the immediate aftermath of Kennedy's outing, the trial of six protesters accused of attempting to shut down the Ratcliffe-on-Soar power station in Nottinghamshire in 2009 collapsed as it was due to commence (HMIC, 2012, p. 5). Discussed in detail later in this Chapter, this triggered the first of a series of still ongoing official reviews and inquiries into covert policing and the collection of intelligence relating to activism and protest in the UK (Creedon, 2013, 2014a, 2014b; Ellison & Morgan, 2015; HMIC, 2012, 2013, 2014b; Home Affairs Committee, 2013; Independent Police Complaints Commission, 2012; May, 2015; Rose, 2011). As well as identifying serious legal, governance and ethical issues relating to covert policing, these reviews and inquiries identify specific issues with the policing of radical environmental protest in the UK that are explored below.

4.3.1 Mark Kennedy and the Exposé of the Undercover Policing of Activism and Protest

In 2002 Mark Kennedy of the Metropolitan Police Service (MPS) was authorised to join the then highly secretive covert policing team the National Public Order Intelligence Unit (NPOIU) as part of Operation Pegasus (Evans & Lewis, 2013, p. 280). The NPOIU's Operation Pegasus has been described by the Independent Police Complaints Commission (IPCC) (2012, p. 5) as an operation 'related to the infiltration of various domestic extremist groups'. After creating a credible "legend" (or back story) as Mark Stone, when deployed in the field in 2003, Kennedy was provided with documentation in the name of Mark Stone including a passport, a driver licence, bank accounts, and a credit card (Evans, 2011; Graham, 2011). Kennedy was embedded deep undercover into a community of activists for seven years (Graham, 2011). In his undercover persona, Kennedy worked to establish himself within the broader activist community and over time attended and participated in major demonstrations in the UK including the G20 protest in London in 2009 (Evans & Lewis, 2011). Over time Kennedy also became "the go-to man" for people staging large protest

camps and forms of clandestine radical protest (Evans & Lewis, 2011). During his deployment, through his employer, Kennedy had ready access to cash and other resources including transportation. He was nicknamed "Flash".

In September 2009 after being deployed continuously undercover for seven years, Kennedy was given three weeks' notice by his handlers that his undercover deployment was to end (Graham, 2011). Kennedy (as cited in Graham, 2011) explained that he made a swift exit from his deployment under the ruse of 'feeling burned out' and visiting his brother in the US indefinitely. Kennedy (as cited in Graham, 2011) has also explained he handed back his Mark Stone passport, driver licence and credit card and left the house in Nottingham where he had been living. In January 2010 amid intense acrimony with his employer, Kennedy resigned his post with effect from March 2010 (Graham, 2011). While he was no longer a police officer, in the guise of his former UCO persona Mark Stone, Kennedy re-entered the activist community in Nottingham where he had lived and operated (Graham, 2011). Of this decision, Kennedy (as cited in Graham, 2011) has explained it was to exit the activist community in a more credible way; he did not inform his former employer. In July 2010 a member of the activist community that Kennedy had re-joined, discovered a passport in the name of Mark Kennedy sparking suspicion, enquiries and his ultimate outing as a former UCO (Graham, 2011; Indymedia UK, 2010).

On 21 October 2010 a statement was issued on Indymedia UK 'from a group of people who (had) considered Mark Stone a friend for the last decade' (Indymedia UK, 2010). The statement accompanied by multiple photographs of "Mark Stone" publicly outed him as a police officer and read:

> Mark 'Stone' has been an undercover police officer from 2000 to at least the end of 2009.
> We are unsure whether he is still a serving police officer or not. His real name is Mark
> Kennedy. Investigations into this identity revealed evidence that he has been a police officer,
> and a face-to-face confession has confirmed this. Mark claims that he left the police force in
> late 2009, and that before becoming an undercover officer he was a Metropolitan police
> constable.
>
> Please pass this information on to anyone who may have been in contact with Mark in the
> last decade, both in the UK and abroad (Indymedia UK, 2010).

On 19 December 2010 the UK based newspaper *The Sunday Times* ran a story that headlined '*7-year snitch: 'Flash' the activist is a secret cop: A police officer spent seven years*

undercover living as a hippie and environmental activist to infiltrate peaceful protest groups' (Rayment & Lake, 2010). This was followed on 9 January 2011 by the first of a series of stories by investigative journalists Rob Evans and Paul Lewis with the UK based newspaper *The Guardian* that headlined '*Undercover officer spied on green activists: Guardian investigation reveals details of PC Mark Kennedy's infiltration of dozens of protest groups'* (Evans & Lewis, 2011). These two early mainstream and highly credible news reports publicly revealed to a national and international audience that Mark Kennedy, a police officer with the NPOIU had lived for seven years deep undercover in the environmental movement. Sustained and highly credible media reports dominated by Lewis, Evans and *The Guardian* and informed by well-placed sources followed, revealing Kennedy had infiltrated dozens of protest groups, that he had operated in the UK and in other countries, and that his actions went well beyond that of a passive spy (Evans & Lewis, 2013; Lewis & Evans, 2011b). The immediate impact of Kennedy's outing as a former UCO described below included the collapse of a trial of environmental protesters and the announcement of official reviews into aspects of covert policing.

Discussed further in 4.8 of this Chapter, on 7 January 2011, the trial of six people charged with conspiracy to commit aggravated trespass for their part in the planned attempt in April 2009 to shut down the Ratcliffe-on-Soar power station at Nottinghamshire in the UK collapsed (Rose, 2011). The collapse of the trial was the direct result of a clear failure on the part of the Crown to disclose evidence collected by Kennedy that could exonerate those whose trial was due to commence on 10 January 2011 (Rose, 2011). In January 2011, consistent with its role inspecting and reporting on the efficiency and effectiveness of police forces, Her Majesty's Inspectorate of Constabulary (HMIC) announced it would investigate police infiltration of the protest movement (HMIC, 2011).

Detailed information about the targets and tradecraft of covert policing dating back decades cascaded into the public domain through Kennedy, whistleblowers, official reports and official statements as well through investigative journalists and the news media. Controversially it included that undercover police officers had engaged in long-term intimate and sexual relationships with those surveilled and that in some circumstances children were born to some of those relationships (Creedon, 2013, 2014a; House of Commons Home Affairs Committee, 2013). Raising the ire of an increasingly incredulous

public impatient for answers, what was also revealed is that as part of building their "legends", police officers appropriated and built on the identities of dead children (Creedon, 2013, 2014a, 2014b; House of Commons Home Affairs Committee, 2013). Further, it was revealed that police officers gave evidence in court under assumed identities without the court's knowledge (including as defendants) and police officers acted as agents provocateur (Ellison & Morgan, 2015; Evans & Lewis, 2013; HMIC, 2012, 2013; House of Commons Home Affairs Committee, 2013; Lewis & Evans, 2011b; Rose, 2011). In respect of the intimate and sexual relationships, eight women commenced still ongoing legal action for 'assault, deceit, negligence and misfeasance in public office, after being deceived into intimate relationships with five different undercover officers' (Police Spies Out of Lives, 2014). On 21 August 2014, in respect of the sexual relationships formed by four UCOs while deployed, the Crown Prosecution Service (CPS) announced that while misconduct proceedings were still a possibility, 'there is insufficient evidence for a realistic prospect of conviction for any offences against any of the officers' (Evans, 2014b). As legal scholars Hyland and Walker (2014, p. 555) so laconically observe, 'the use of undercover police officers … has experienced a chequered history in recent years'.

Amid rising political and public ire from the revelations about covert policing (in particular adopting the identities of dead children and sexual relationships with those surveilled), announcements of additional official reviews and formal inquiries into aspects of historical and contemporary covert policing followed in quick succession (House of Commons Home Affairs Committee, 2013. Ev 37; Lewis & Evans, 2011a; Metropolitan Police Authority, 2011). The official reviews and formal inquiries primarily, although far from exclusively, have centred on the organisational and governance arrangements, targets, operations and the tradecraft of the covert policing units the Special Demonstration Squad (SDS) and the NPOIU that were formed within the MPS in 1968 and 1999 respectively (Creedon, 2013, 2014a, 2014b; Ellison & Morgan, 2015; HMIC, 2012, 2013; House of Commons Home Affairs Committee, 2013; Independent Police Complaints Commission, 2012; Rose, 2011). Key among these reviews and relevant to the present study are (1) Operation Herne which remains ongoing, and is primarily examining historical aspects of covert policing in the UK, and (2) an inquiry into covert policing established under the *Inquiries Act 2005* headed by Lord Justice Pitchford, that is just commencing at the time of writing and is expected to report in three years (Creedon, 2013, 2014a, 2014b; Ellison &

Morgan, 2015; Evans, 2015a; Home Office, 2015; May, 2015). On 18 January 2011, in the context of what by then had become intensive media reporting about "undercover spies" and the collapsed trial of the Ratcliffe-on-Soar protesters, Nick Herbert the then Minister of State for Policing and Criminal Justice, announced that ACPO would lose control of covert policing teams involved in the policing of domestic extremism (Travis, Lewis, & Wainwright, 2011). This reportedly brought forward to January 2011 the already planned "rebranding" of the covert policing teams and their shift from ACPO to the MPS, scheduled to have occurred by the following summer (London Evening Standard, 2010). In late January 2011, the NPOIU along with the National Domestic Extremism Team (NDET) and the National Extremism Tactical Coordination Unit (NETCU) were moved from ACPO to the MPS under a lead force arrangement (Creedon, 2013; HMIC, 2012; Metropolitan Police Service, 2011). In respect of the scale of operations, the MPS has indicated that at the time of transfer to the MPS, 'the level of staffing across the three units … (was) about 100 staff of which two thirds are police officers and one third … police staff' (Metropolitan Police Service, 2011). The operations were renamed and refocused, and housed within the Counter-Terrorism Command, and since 1 April 2015 have been overseen by the NPCC (Creedon, 2013; HMIC, 2012; Metropolitan Police Service, 2011; National Police Chiefs' Council, 2015c). As it is a necessary precursor to discussing the significance of this shift in organisational and governance arrangements and the analysis of hybrid policing that follows, the focus, roles and remits of ACPO, the SDS and the NPOIU are briefly described next.

4.3.2   The Association of Chief Police Officers (ACPO)

ACPO was formed in 1948 to enable coordinated input into the future of the service from Chief Constables from the separate police forces (that now number 43) (Reiner, 1991, pp. 362-367). Since its formation, ACPO's role evolved and its reach, professionalisation, politicisation and influence expanded before sharply declining in the wake of the recent and ongoing controversy surrounding covert policing (Home Office, 2010; Reiner, 1991, pp. 362-367; Savage, Charman, & Cope, 1996; The Association of Chief Police Officers of England, Wales & Northern Ireland, 1997-2012; The Association of Chief Police Officers of the United Kingdom, 2013, 2014). As noted above, ACPO was formally wound up on 31 March 2015.

Throughout its history, ACPO, although never a police force, drew its membership from the policing elite from England, Wales and Northern Ireland (Association of Chief Police Officers, 2011b; Reiner, 1991, pp. 362-367; The Association of Chief Police Officers of England, Wales & Northern Ireland, 1997-2012; The Association of Chief Police Officers of the United Kingdom, 2013, 2014). Between 2003 and 2015, ACPO employed a full-time President, who held the rank of Chief Constable under the *Police Reform Act 2002*, while the remaining members of ACPO are described as holding "day jobs" in their respective police forces (Association of Chief Police Officers, 2011a; House of Commons Home Affairs Committee, 2009; The Association of Chief Police Officers of the United Kingdom, 2014). On 1 April 1997 as part of its evolution, ACPO became incorporated as a private company limited by guarantee (The Association of Chief Police Officers of England, Wales & Northern Ireland, 1997). ACPO was first registered pursuant to the then *Companies Act 1985* in England and Wales as *The Association of Chief Officers of England, Wales and Northern Ireland* (The Association of Chief Police Officers of England, Wales & Northern Ireland, 1997) and then later, pursuant to the *Companies Act 2006*, as *The Association of Chief Police Officers of the United Kingdom* (Companies House, 2013). Discussed in detail in Chapter 7, that ACPO became a private company limited by guarantee is a key factor in the assessment of policing responses to radical environmental protest. As will be shown, the shift in ACPO from being a "band of volunteers" to being a private company limited by guarantee, underpins how and why different forms of hybrid policing have been able to be identified and described as part of the present study.

4.3.3 The Special Demonstration Squad (SDS)

The SDS was established within the MPS Special Branch in 1968 in response to the threat posed by anti-Vietnam War from protest in London's Grosvenor Square (HMIC, 2012, p. 37). When formed, it was supported by the Home Office with secret and dedicated funding until 1989 when its funding source became the MPS (Taylor, 2015, p. 6). Originally called the Special Operations Squad until renamed sometime between November 1972 and January 1973, its role was 'to gather information about public order problems and to build knowledge of extremist organisations' and the individuals associated with them (Creedon, 2014a, p. 8; HMIC, 2012, p. 14). Renamed in 1997, the Special Duties Section, the Unit was disbanded in 2008 (Creedon, 2013, p. 4; HMIC, 2012, p. 14). In its three iterations, the SDS

was highly secretive and employed as its core tactic, the long term infiltration of protest groups by its UCOs to gather intelligence (Creedon, 2013; Ellison & Morgan, 2015; Taylor, 2015). While the early efforts of the SDS were directed towards "subversives", the focus of the SDS extended over time to include the infiltration and intensive surveillance of a broad spectrum of campaign and protest groups, from the extreme left to the extreme right (BBC World News World Edition, 2002; Churcher, 2013; Evans & Lewis, 2013; HMIC, 2012). In 1983 the SDS was infiltrating or monitoring 48 groups which by 1986, had risen to 63 groups (Taylor, 2015, p. 17). A recent official report identifies that over its lifetime, officers from the SDS 'infiltrated several hundred activist groups' (Ellison & Morgan, 2015, p. 14). In terms of its size, during its 40 year lifetime, 'over one hundred police officers are believed to have served undercover in the (SDS)' (Ellison & Morgan, 2015, p. 14). The SDS operated within the confines of London, while from its inception its sister unit the NPOIU, took a national and, although to a lesser extent, an international focus (Ellison & Morgan, 2015; HMIC, 2012).

4.3.4 The National Public Order Intelligence Unit (NPOIU)

The NPOIU was established in 1999 within the MPS specifically to gather and coordinate intelligence about public protest (Creedon, 2013; Ellison & Morgan, 2015; HMIC, 2012). It operated alongside the SDS, drawing, at least initially, on its experience and tradecraft (Creedon, 2013; Evans & Lewis, 2013; HMIC, 2012). When the NPOIU was first proposed, it was welcomed by HMIC (HM Inspectorate of Constabulary, 1999, p. 18). As with the SDS, the NPOIU employed as its core tactic, the long term infiltration of campaign and protest groups by UCOs (Ellison & Morgan, 2015; HMIC, 2012). According to HMIC (2012, p. 14), for both the SDS and the NPOIU, the undercover deployments lasted years and were designed to gather intelligence rather than gather evidence for potential use in criminal prosecutions (the latter considered the role of the constabulary).

When formed in 1999 the initial focus of the NPOIU was animal rights groups (which had been first infiltrated by the SDS in April 1983), and soon after its focus extended to environmental groups (Creedon, 2013; Evans & Lewis, 2013, p. 34; HMIC, 2012). What distinguished the NPOIU from the SDS when it was established was that unlike the SDS with its interest in perceived threats to the state from "subversives", the NPOIU was focused on

protecting businesses and research institutions targeted by animal rights activists (Evans &

Lewis, 2013; HMIC, 2012). The establishment of the NPOIU as a national unit was ostensibly

to enable the central collection of intelligence and 'to facilitate the development of a

national picture and the coordination of investigations' (*Catt v The Commissioner of Police of*

the Metropolis, 2012, para 5(ii)). The House of Commons was told in 2009 that as a national

unit, the employees of the NPOIU (police officers and civilian staff) were all 'seconded from

local police forces' (House of Commons Hansard, 2009, column 339W). When it was

formed, officers were drawn from police forces to form part of the NPOIU within the Special

Branch of the MPS. In 2006, the SDS and the NPOIU were operationally 'moved to ACPO'

(HMIC, 2012, p. 30). The impact of this move meant that according to HMIC (2012, p. 31),

both the SDS and the NPOIU were then 'run by ACPO'. This meant that covert policing units

were housed within, and as a result run by, a private company limited by guarantee. In the

analysis of the UK case studies, this point is explored in detail.

4.4   Case Study Selection

The selection of case studies for this thesis was undertaken against the Australian

and UK contexts described in the previous section. It was also undertaken against the

backdrop of the significant challenges inherent in this form of research which goes to the

heart of organisations' risk and security planning and interactions with policing and

intelligence bodies. In the present study specific challenges included difficulty in securing

access and data. This included access to policing and intelligence bodies, protesters and

private organisations. Some "backgrounding" was offered (and accepted) on the basis it

would not form part of the research. In some of these cases a Deed of Confidentiality was

required to be executed prior to backgrounding proceeding. While the cases that could

have been selected are extensive, key drivers in the final selection of the cases were (1) the

extent to which multiple sources of data were available which could be tested and

triangulated (2) based on access and data, the extent to which a case could be robustly

assessed and analysed using the Brodeur Model and (3) where a variety of protests as well

as their corresponding policy and policing responses could be elicited. A limitation of the

present study (discussed further in Chapter 9) is that despite the literature and activists

identifying the repression of social movements by private agents as well as private

intelligence gathering is a feature of the policing of activism and protest (Earl, 2003;

Lubbers, 2012; Lubbers, 2015; Vidal, 1998), data on this form of policing was inaccessible. The difficulties accessing this type of data in particular is noted in the literature (Brodeur & Dupont, 2006; Lowe, 2010). Initially it appeared that some forms of policing undertaken by the UK policing body ACPO (as it was a private company limited by guarantee) would fall within the category of private high policing. However, as the analysis goes on to show ACPO has been assessed as a highly nuanced hybrid policing body.

As set out earlier, two primary case studies (one each in Australia and the UK) were selected from the initial pool of ten and examined in depth and revelatory aspects of an additional three case studies (two in Australia and one in the UK) were examined in depth. Consistent with the historical-comparative approach underpinning this study, the two case studies examined in depth were: in Australia, the occupation of land in May 1979 at Wagerup in the Australian State of Western Australia (WA) to impede the expansion of bauxite mining (with historical and contemporary policing and critical infrastructure policy relevance); and in the UK, the attempt in 2009 by environmental activists to shut down the Ratcliffe-on-Soar power station at Nottinghamshire that was thwarted by police through the use of pre-emptive arrests (with contextual historical and contemporary policing relevance). These two protests were selected for in-depth analysis because they both can be assessed in the context of critical infrastructure policy frameworks and exhibit sharp differences in the policing of protest. A further factor in the selection of the Wagerup occupation is that it led to the introduction of new offences and penalties for acts of protest in WA (including that directed towards critical infrastructure) that remain in force today. Further factors in the selection of the Ratcliffe-on-Soar protest are that: it enabled an in-depth analysis of high policing in the UK using official data only recently in the public domain; it enabled diversity within public policing to be explored; the power station has been publicly identified as critical infrastructure; and its prosecutorial outcome was a triggering event relevant to the second UK case study.

The three additional case studies selected from the initial pool were chosen on the basis that different legal, policy and policing responses than those in the two primary case studies were prima facie evident. The two additional Australian case studies are: the bombing in 1976 of port infrastructure in the town of Bunbury in WA (on the basis the then Premier of WA considered it an act of terrorism and it enables competing discourse to be

analysed); and a hoax media release in January 2013 that saw the market capitalisation of publicly listed mining company Whitehaven Coal Limited (WHC) temporarily plummet approximately $300 million (on the basis the policing role was not undertaken by the constabulary). A further factor in the selection of the two additional Australian case studies was that I had no classified or sensitive information relating to them arising from my former position in transport security or my role in the ESG. The additional UK case study is the occupation in 2008 of a supply freight train loaded with coal on its way to the Drax power station in Yorkshire. It was selected on the basis the Drax power station has been publicly identified as a piece of critical infrastructure and it involved covert policing by Kennedy.

As identified in Chapter 3, an inductive thematic analysis was conducted to identify the key aspects of the cases that would guide the in-depth analysis. This was done with a view to identifying features and themes that could shed light on the critical infrastructure policy contexts in which the protest occurred and how the protest was policed. It formed the basis for how the key protest details and specific aspects of the protests are now presented. The major themes structuring the analysis of the case studies relate to the nature and form of the protest, the motivations of the protesters, the policy and policing responses and the prosecutorial outcomes.

4.5   Case Study 1: The Wagerup Occupations, Western Australia 1979

The first Australian case study is the occupation of land in May 1979 at Wagerup in WA to impede the expansion of bauxite mining. This case represents the second site occupation to impede resources development in Australia (the first had occurred in February 1979 and is discussed to provide context). As a result of what at the time was considered legal loopholes, the prosecutions of protesters ultimately failed. Discussed in detail in Chapter 6, the political response to the site occupation and failed prosecutions included the introduction of new legislation (the *Government Agreements Act 1979* (WA) (the GAA). The GAA was specifically introduced to create new offences and harsher monetary penalties for obstructing major infrastructure and resources projects. The legislation is expansive in its scope, remains in force today and since 1979 (among other key civil infrastructures), has applied to the energy installations located in the North West Shelf off the coast of WA. As Chapter 6 discusses, well before their considerable expansion in the

decades that followed, these energy installations were considered of significant national importance. Also discussed in Chapter 6, is that from their earliest days, planning to protect them took what would now be called an "all hazards" approach which included a focus on illegal activity.

4.5.1 Context and Key Protest Details

In late 1978 in the context of the expansion of bauxite mining in native forests in WA, the environmental campaign group Campaign to Save Native Forests (CSNF) began to hold meetings, workshops and training focused on non-violent civil disobedience as a means of protesting the destruction of the Jarrah native forests (Chapman, 2011, p. 181). The CSNF had formed in WA in early 1975 as a 'dedicated forest protest organisation', in response to concern 'at the destruction of forests' in the Manjimup area in WA from wood chipping (Chapman, 2011, p. 108). Formed by a small group of student activists, the CSNF quickly expanded (in terms of people and its environmental focus), and with this expansion it attracted affiliates with political interests including in communism (Chapman, 2011, p. 108) and the Proutist Universal Organisation (Prout) associated with the Ananda Marga (NAA, barcode 13130381, folio 11). By way of context, the Ananda Marga had formed in 1955 in India 'as a spiritual and social movement' (Hocking, 1993, p. 133). Within the Ananda Marga, Prout advocated revolutionary violence (NAA, barcode 3340041, Series A1838). Prior to the Wagerup occupations, the Ananda Marga and Prout were already of keen interest to the WA Police Special Branch and the Australian Security Intelligence Organisation (ASIO) - Australia's domestic intelligence agency (Hocking, 1993, pp. 132-137).

The CSNF drew interest from WA Police's Special Branch and ASIO from at least August 1978 until at least 1980 (NAA, barcode 13130381, folios 1-4, 20). The ASIO records released to me in response to my records access application, show that interest in the CSNF from WA's Police's Special Branch and ASIO was tangential and related more directly to individuals also affiliated with the Communist Party of Australia and/or Prout (NAA, barcode 13130381, folios 1-20). Mr Neil Bartholomaeus, at the time an activist with CSNF and later their media spokesperson, has explained that CSNF meetings were held weekly with approximately 15 to 30 people in attendance (N. Bartholomaeus, personal communication, May 15, 2014). In respect of possible police surveillance, Mr Bartholomaeus (personal

communication, May 15, 2014) has indicated that informers 'may have attended meetings' as the CSNF 'was certainly an annoyance to the State Government'.

In February 1979 and May 1979 as part of a broader campaign to protect forests, protesters from CSNF entered and occupied the site of the US-based alumina company Alcoa's proposed bauxite refinery at Wagerup in the Darling Ranges in WA (Chapman, 2011, pp. 181-183). The catalyst was the approval by the WA Government for the refinery (Johnston & French, 1980, p. 86). Mr Bartholomaeus (personal communication, July 16, 2013) has explained that both occupations at Wagerup were months in the planning, were non-violent and only happened 'after a huge amount of conventional action' aimed at protecting the environment from an expanding bauxite and alumina industry in WA. In this regard, 'the Wagerup occupations didn't come out of the blue' (N. Bartholomaeus, personal communication, July 16, 2013). Both occupations were openly planned, and Mr Bartholomaeus recalls (personal communication, May 15, 2014), 'we certainly advised the media at the time'.

As a form of protest, the site occupations at Wagerup in February 1979 (Figure 2) and May 1979 (Figure 3) were influenced by a number of non-violent protests including the actions of the US based Clamshell Alliance, who since 1976 had protested the construction of a nuclear reactor in New Hampshire (Bonyhady, 1993; Chapman, 2008). The first occupation at Wagerup began on 3 February 1979 when 'sixteen members of the CSNF entered the site of Alcoa's proposed refinery' before preparatory work had commenced (Chapman, 2011, p. 181). Observed but undisturbed by the WA Police over the weekend, the occupation ended on Monday 5 February 1979 with the arrest and removal of 12 people who were charged under the then "obstruction provisions" in the *Police Act 1892* (WA) (Bonyhady, 1993; Chapman, 2008, 2011). The second occupation at Wagerup began on Saturday 26 May 1979 when protesters entered the site after preparatory work had commenced (Johnston & French, 1980, p. 86). On 21 May 1979 detail of the planned protest was noted by ASIO in an intelligence file and on 25 May 1979 an advertisement for the second occupation appeared in *The West Australian* newspaper (NAA, barcode 13130381, folios 17-18). As with the February occupation, protesters at the May occupation were observed but were left undisturbed by the WA Police over the weekend (Bonyhady, 1993; Chapman, 2008, 2011). The second occupation ended on Monday 28 May 1979 after

23 protesters formed a human blockade aimed at preventing work on site and were arrested (Chapman, 2011, p. 182). They too were charged under the obstruction provisions in the *Police Act 1892* (WA) and became known as the Wagerup 23 (French, 2010). In terms of the policing response, looking back, Mr Bartholomaeus (personal communication, October 18, 2014) does not recall a private security response but does recall the WA Police were the responders and were assembled nearby. He elaborates:

> I can't recall any significant 'private security' used by Alcoa. WA Police Service were the respondents when we went in front of the bulldozer in second occupation. The Police were already nearby in Yarloop (N. Bartholomaeus, personal communication, October 18, 2014).

After the Wagerup occupations, in the early 1980s the CSNF escalated its campaign against bauxite mining drawing the political ire of both the WA and federal governments (Chapman, 2008, pp. 161-167). In this escalated campaign, Mr Bartholomaeus played 'a prominent role' (Chapman, 2008, p. 137). In what became known as the Jarrah Class Action, the CSNF commenced legal action in the US aimed at curtailing bauxite mining in WA (Chapman, 2008, pp. 161-167). The Jarrah Class Action was considered by Doug Anthony then Australia's Deputy Prime Minister, as 'an attack on the sovereignty of this country' (Anthony, 1981, p. 336). For Sir Charles Court the then conservative Premier of WA, 'it had the potential to challenge not only the sovereignty of Western Australia but also that of the nation' (Chapman, 2008, p. 167). As Chapman's (2008) analysis attests, after the Wagerup occupations, the CSNF became a "political pariah".[8]

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[8] For a detailed account of the Jarrah Class Action see Chapman 2008.

Figure 2: Protest at Wagerup WA, February 1979

Source: The West Australian Syndication - supplied and reproduced with permission solely for the purpose of this thesis.[9]

Figure 3: Protest at Wagerup WA, May 1979

Source: The West Australian Syndication - supplied and reproduced with permission solely for the purpose of this thesis.

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[9] These images of the Wagerup occupations are not to be further reproduced without express authorisation by The West Australian Syndication.

4.5.2   Prosecutions, Sentencing and Appeals

At the time of the Wagerup occupations and unlike other Australian States and Territories, WA did not have general laws of criminal trespass (Western Australia Legislative Council, 1979a, p. 5916; 1980, p. 2428). Rather, the protesters who were arrested were charged under s67(4) of the *Police Act 1892* (WA) for 'obstructing somebody from doing something pursuant to an authorisation issued under a law of the State' (French, 2010, p. 5). These obstruction provisions were introduced in 1978 after off-shore anti-whaling protest by Greenpeace interfered with 'the legitimate operation of the Cheynes Beach Whaling Company', based at the town of Albany in WA (Western Australia Legislative Council, 1978, pp. 967-968; 1979a, p. 5916). At the time, whaling was Albany's oldest industry and the Cheynes Beach Whaling Company was operating a lawful business under a Commonwealth government licence (Discovery Bay, 2014; Western Australia Legislative Council, 1978, pp. 967-968; 1979a, p. 5916). Through the introduction in 1978 of the obstruction provisions, the WA police hoped the maximum monetary penalty of $1,500[10] would do two things: 'frighten off the protesters'; or intimidate them into inaction through being 'punished so heavily' (Bonyhady, 1993, p. 43).

The charges against the 12 protesters arrested at the February 1979 occupation were dismissed on the basis that while Alcoa had been given verbal permission by the WA government to proceed with the project at Wagerup, it 'had not received written authorisation for its operations', a factor essential to trigger the obstruction provisions (Chapman, 2008, p. 138). On the premise written authorisation was subsequently and duly given, the Wagerup 23 were also prosecuted under s67(4) of the *Police Act 1892* (WA) for 'obstructing somebody from doing something pursuant to an authorisation issued under a law of the State' (French, 2010, p. 5).

The Wagerup 23 were found guilty in the WA Magistrates Court, fined, and appealed to the WA Supreme Court (Johnston & French, 1980, p. 86). The Crown similarly appealed as 'the Commissioner of Police was aghast at the penalties imposed', namely $20 despite

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[10] Approximately $6,800 in 2015 dollars adjusted for inflation using the Australian Bureau of Statistics Consumer Price Index Inflation Calculator. Available at:
http://www.abs.gov.au/websitedbs/d3310114.nsf/home/consumer+price+index+inflation+calculator.

there being a maximum of $1,500[11] (1.3% of the maximum available monetary penalty) (Western Australia Legislative Assembly, 1979a, pp. 5841, 5850). The appeals by the Wagerup 23 were upheld by the Full Court on the basis of deficiencies in the written agreement between the WA Government and Alcoa (Johnston & French, 1980, p. 86; Western Australia Legislative Council, 1979a, pp. 5911, 5913). Mr Bartholomaeus (personal communication, July 16, 2013), explains that when the prosecutions of the Wagerup 23 failed and their appeal succeeded, 'it was big news' and in his capacity as the media spokesperson for CSNF, rang the WA based newspaper the *Daily News*. That afternoon, the *Daily News* ran the headline 'It was sobering for our power drunk Premier that his signature didn't amount to anything in court' (N. Bartholomaeus, personal communication, July 16, 2013). This referred to how the agreement between the WA Government and Alcoa, signed by Sir Charles was made. This was at the crux of the legal argument and failure to sustain the charges against the Wagerup 23 under s67(4) of the *Police Act 1892* (WA) (Western Australia Legislative Council, 1979a, p. 5913).

The political, policy and policing responses to the Wagerup occupations are discussed in detail in Chapter 6. The analysis centres on the enactment of the GAA to introduce new offences and harsher monetary penalties for protest targeting lawful business operations and its application in practice.

4.6   Case Study 2: The Bunbury Bombing, Western Australia 1976

The additional historical Australian case study is the bombing in 1976 of port infrastructure in town of Bunbury WA to disrupt the newly emerging wood chipping industry. In context, wood chipping began in WA in 1975 in the nearby town of Manjimup (Jamieson, 2011, p. 274). Discussed in Chapter 5, this case is considered a violent act of protest and at the time was labelled 'a gross act of terrorism' by the then Premier of the WA, Sir Charles Court (as cited in The West Australian, 1976b). Also discussed in Chapter 5, is that that the Bunbury bombing occurred at a time when policy frameworks aimed at protecting key parts of the civil infrastructure from terrorism in peacetime were only just emerging in Australia.

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[11] Approximately $90 and $6,800 respectively in 2015 dollars.

4.6.1 Context and Key Protest Details

In the early hours of 19 July 1976, intent on disabling port infrastructure used directly in the export of wood chips, Mr Michael David Haabjoern and Mr John Robert Chester drove to Bunbury from Yanmar near Manjimup in a stolen car fitted with false number plates (*R v Michael David Haabjoern and John Robert Chester*, 1976, p. 23; Western Australia Police, 2006, p. 17). After cutting through fencing, they entered the site of the W.A. Woodchip and Pulp Company's export port terminal at Bunbury (Western Australia Police, 2006, p. 17). The sole nightwatchman was Mr Trevor John Morritt (*R v Michael David Haabjoern and John Robert Chester*, 1976). Not stationed on site full time, Mr Morritt (personal communication, 24 February, 2015) was making his rounds of the site when he encountered the men, initially mistaking them for contractors who would have been there legitimately. Mr Morritt was bound at the arms and held at gunpoint by Mr Chester in an on-site office for approximately 25 minutes, while Mr Haabjoern planted three home-made bombs with timing devices that were set to explode concurrently at 5:30 am (Bonyhady, 1993, p. 40; Guhl, 1976; *R v Michael David Haabjoern and John Robert Chester*, 1976, pp. 3, 9-10; Skehan, n.d.; Western Australia Police, 2006, p. 17).

When encountered by Mr Morritt (personal communication, 24 February, 2015), both men were wearing balaclavas and he could see one had a rifle. While held at gunpoint, at one point Mr Morritt did fear for his life and worried for the safety of his family. Mr Morritt has explained that despite both men wearing balaclavas, he had seen one of them before at Manjimup, and recognised him from the distinctive jumper we was wearing. He elaborates:

> I did (feel threatened) at the start because Chester was very agitated. He was sort of a loose cannon. Haabjoern was fairly cool and calm. But because I was left with Chester I just didn't feel very certain about what he was going to be doing. And then when they said they were going to take me out and drop me somewhere, I didn't know whether they were going to drop me, shoot me or what they were going to do. And that was why I was a bit worried that he recognised me from being down in Manjimup because all my family's from there (T. Morritt, personal communication, February 24, 2015).

The bombs themselves were made from part of the cache of 363 kilograms of gelignite and associated detonating equipment Mr Haabjoern and Mr Chester had earlier stolen from the Bell Bros Quarries Propriety Limited explosives magazine in the WA city of Perth (*R v Michael David Haabjoern and John Robert Chester*, 1976, p. 2; Rinaldi, 1977; The

West Australian, 1976d). After ascertaining from Mr Morritt that the regular train and its personnel delivering wood chips had already passed through the site, when exiting the site after the bombs were planted, Mr Haabjoern and Mr Chester placed signs warning of the existence of explosive devices (*R v Michael David Haabjoern and John Robert Chester*, 1976, p. 16). The three men exited the site in two cars: Mr Chester drove Mr Morritt's car (with him still bound in it); and Mr Haabjoern drove the car they had arrived in (T. Morritt, personal communication, February 24, 2015). Of Mr Chester driving his car, Mr Morritt has explained this was because he had raised concern about its possible destruction. He recalls:

> (Chester) said, "We'll take you out in the car and we'll drop you off somewhere. And then by the time you get back to where you can get help, we'll be in Perth." And I said, "Well, what's going to happen to my car?" And he said, "It's going to stay here." And I said, "Well, it's actually my wife's car. If anything happens to that she'll kill me." And he said, "Oh." So then they decided he'd drive my car (T. Morritt, personal communication, February 24, 2015).

Of the three bombs planted, the only one that exploded was set at the base of the stacker tower (Rinaldi, 1977; The West Australian, 1976b). As a result of fused wires, the remaining two bombs set at the base of the main loading gantry (the main target) failed to detonate and were defused by Sergeant "Jack" Billing of the WA Police (Skehan, n.d.; The West Australian, 1976b; Western Australia Police, 2006, pp. 17-18).

Figure 4: Two Timing Devices Retrieved From Base of Loading Gantry, Bunbury WA July 1979

Source: The West Australian Syndication - supplied and reproduced with permission solely for the purpose of this thesis.[12]

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[12] These images of the Bunbury bombing are not to be further reproduced without express authorisation by The West Australian Syndication.

The magnitude of the single bomb that did explode sent metal flying into a nearby housing estate and broke windows 500 metres away (The West Australian, 1976b). The bomb was heard at least 15 to 20 kilometres away (T. Morritt, personal communication, 24 February 2015). While damage was estimated (at its upper end) at $300,000,[13] as the main loading gantry was not impacted, the explosion had little overall impact on wood chipping operations and the export of wood chips continued (Guhl, 1976; Western Australia Police, 2006).

Figure 5: Damage to the Stacker Tower, Bunbury WA July 1979

Source: The West Australian Syndication – supplied and reproduced with permission solely for the purpose of this thesis.

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[13] Approximately $1.8 million in 2015 dollars.

Figure 6: Damage to Stacker Tower with Loading Gantry in Background, Bunbury WA July 1979

Source: The West Australian Syndication – supplied and reproduced with permission solely for the purpose of this thesis.

4.6.2 Prosecutions and Sentencing

The Bunbury bombing was and remains unprecedented in Australia (Bonyhady, 1993; Chapman, 2008). By bombing the W.A. Woodchip & Pulp Company's export port terminal, Mr Haabjoern and Mr Chester sought to delay the export of wood chips for up to two years, which they viewed as long enough to generate a groundswell of opposition to wood chipping and a resultant change in the law to prevent it (*R v Michael David Haabjoern and John Robert Chester*, 1976, p. 22). They were motivated by both environmental and anti-capitalist concerns (*R v Michael David Haabjoern and John Robert Chester*, 1976, p. 22). Both men acted in isolation from the broader environmental movement that quickly, strongly and has consistently denounced the bombing as both illegal and violent (Bonyhady, 1993, pp. 40-41; Chapman, 2008; Guhl, 1976; The West Australian, 1976b).

Mr Haabjoern and Mr Chester were arrested by WA police on 26 July 1976 (State Records Office of Western Australia, Item AG1976/043, folio 42). After their arrests, both men assisted police find and recover the remnant gelignite from the earlier theft that had not been used to make the three bombs (*R v Michael David Haabjoern and John Robert Chester*, 1976). On 23 November 1976 both men pleaded guilty in the WA Supreme Court to four offences:

  (1) breaking, entering and stealing;
  (2) causing an explosion likely to cause serious injury to property;
  (3) placing an explosive substance in a place likely to cause serious injury to property; and
  (4) unlawfully detaining a person against his will (*R v Michael David Haabjoern and John Robert Chester*, 1976; Supreme Court Criminal Indictment Register, 1977; Western Australia Police, 2006, pp. 17-18).

The offences carried a maximum penalty of life imprisonment with hard labour (Bonyhady, 1993, p. 41). On 22 December 1976, Mr Haabjoern and Mr Chester were both sentenced to serve concurrent prison sentences of three years, seven years, five years and twelve months for the respective charges with a minimum term of ten months to be served before becoming eligible for parole (Supreme Court Criminal Indictment Register, 1977). With time served, the minimum term of imprisonment was to have been fifteen months (Rinaldi, 1977, p. 170). The WA Supreme Court when faced with a guilty plea, in considering sentence mitigation, noted the characters and environmental motivations of the men (Bonyhady, 1993, p. 41). Driven by the perceived leniency of the sentences and the WA government's commitment to the development of the resources industry, the Crown appealed the sentences (Bonyhady, 1993, p. 42; Rinaldi, 1977). In a 2:1 majority decision, the WA Court of Criminal Appeal allowed the Crown's appeal increasing the minimum non-parole period to three and a half years (Rinaldi, 1977; Supreme Court Criminal Indictment Register, 1977).

The political, policy and policing responses to the Bunbury bombing are discussed in detail in Chapter 5. At a time when Australia had no terrorism laws on the books, this centres on the discord between Sir Charles' contention that the bombing was a gross act of terrorism and the policing and policy responses that reflected it was considered "just a crime", albeit a very serious one.

4.7   Case Study 3: The Whitehaven Coal Hoax, New South Wales 2013

The final and contemporary Australian case study relates to the false media release circulated by anti-coal protester Jonathan Moylan on 7 January 2013 that saw the temporary reduction in the market capitalisation of Whitehaven Coal Limited (WHC) of approximately $300 million. WHC is an Australian coal mining company limited by shares that has been listed on the Australian Securities Exchange (ASX) since 2007[14] (*R v Moylan*, 2014, para 6). The ASX is 'one of the world's leading financial market exchanges' (ASX, 2014a) and operates within national and international regulatory frameworks (ASX, n.d.). As discussed in Chapter 6, in contrast to the critical infrastructure policy contexts of the earlier Australian cases, this protest action occurred in a policy environment that envisaged a broad range of threats to critical infrastructure. This includes both the energy sector (coal being part of the energy supply chain) and the banking and finance sector (that incorporates the ASX as a financial market).

4.7.1   Context and Key Protest Details

In June 2012 the Australian activist group Front Line Action on Coal (FLAC) established a small blockade camp in the Leard State Forest near Maules Creek in the Australian state of New South Wales (NSW) (Front Line Action on Coal, n.d.; Ker & Bloomberg, 2013). FLAC, 'a loose coalition of activists', was co-founded by anti-coal protester Mr Moylan and drew a range of supporters (R v Jonathan Moylan - Statement of Facts, 2014, para 14).[15] The establishment of the camp was to protest against plans by WHC to expand its black coal mining operations at Maules Creek (ABC NEWS, 2013; ASX, 2014d; Front Line Action on Coal, n.d.; Moylan, 2014). According to FLAC, the camp was established 'after years of local action by farmers and environmentalists to protect the land, water, prime agricultural farms and the global ecosystem from massive open-pit coal mines' (Front Line Action on Coal, 2012). The controversial Maules Creek Project is centred on 'one of the largest coal deposits in Australia with 362Mt of recoverable reserves' (Whitehaven Coal, n.d.). In December 2012, WHC completed a $1.2 billion loan facility with the Australia and New Zealand Banking Group Ltd (the ANZ) (Cubby & Ker, 2013). This replaced an

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[14] Shares in WHC trade on both the ASX and Chi-X.
[15] A copy of the Statement of Facts was accessed after application to the New South Wales Supreme Court Registry – copy on file with author.

existing debt facility and the funds were intended to be spent on the Maules Creek Project and for general corporate purposes (Behrmann, 2013). As would be expected, this price sensitive information was announced on 8 November 2012 via the ASX company announcement platform (*R v Moylan*, 2014, para 8). At 11:44 am on 7 January 2013, Mr Moylan emailed a media release he had created to '306 recipients at 104 different organisations including 295 recipients at 98 media organisations' (*R v Moylan*, 2014, para 4). The media release purportedly from the ANZ and bearing the ANZ logo, announced ANZ was divesting from the Maules Creek Project and had withdrawn its $1.2 billion loan facility.

Figure 7: False Media Release, 7 January 2013

Media Release

ANZ

For Release: 7 January 2013

ANZ divests from Maules Creek Project

ANZ today announced it has withdrawn its $1.2 billion loan facility to Whitehaven Coal, which was primarily intended to develop the Maules Creek Coal Project.

The decision is related to volatility in the global coal market, expected cost blow-outs and ANZ's Corporate Responsibility policy.

ANZ Group Head of Corporate Sustainability, Toby Kent, said: "We want our customers to be assured that we will not be investing in coal projects that cause significant dislocation of farmers, unacceptable damage to the environment, or social conflict. The decision to withdraw our loan facility has been made after a careful analysis of reputational risks and analysis of the returns on this mine in the current climate of high volatility in the coal export market."

Whitehaven Coal has been consulted in relation to the decision and the withdrawal of the loan facility became effective yesterday afternoon. The loan facility, which was drawn up on December 21, generated significant customer feedback and will no longer be enforceable.

ANZ is currently undertaking a review of coal and gas investments on productive agricultural lands and areas of high biodiversity.

For media enquiries contact:

Toby Kent   Joanne McCulloch
Group Head of Corporate Sustainability   Media Relations Advisor
Tel: 0431 289 766   Tel: 86551388 or 0481 002989
Email: media@anzcorporate.com   Email: joanne.mcculloch@anz.com

Source: R v Jonathan Moylan - Statement of Facts, 2014, Annexure A.

In planning the protest, Mr Moylan "did his homework". As part of the preparations, Mr Moylan familiarised himself with background material needed to successfully execute the hoax. In this respect, Mr Moylan accessed and read material about WHC's ANZ debt facility and how WHC shares reacted to positive and negative news (*R v Moylan*, 2014). Mr Moylan also examined background material relevant to the legal frameworks he viewed as relevant to the hoax; namely, the *Criminal Code Act 1995* (Cth) and the *Crimes Act 1900* (NSW) (*R v Moylan*, 2014). In his final preparations before circulating the false media release he had created, Mr Moylan established the mechanisms that would maximise the likelihood the hoax would be believed. In this respect he purchased the internet domain name anzcorporate.com for $27 (using his personal details as part of the purchase), established and tested the email account media@anzcorporate.com, and finally set up his mobile phone's voicemail message identifying himself as Toby Kent from the ANZ (*R v Moylan*, 2014).

Among the recipients of the false media release sent at 11:44 am, were the media outlets 'Fairfax Media, News Limited, Australian Associated Press, various regional newspapers as well as the five principal television channels' (*R v Moylan*, 2014, para 26). While it would be expected with an announcement of this significance, there was no associated price sensitive information about WHC published via the ASX company platform (*R v Moylan*, 2014, para 27). Beginning at approximately 11:55 am and ending at approximately 12:34 pm, various credible journalists and media outlets reported on the information in the false media release as if it were genuine (*R v Moylan*, 2014, para 27). This included the Australian Associated Press, the Australian Financial Review and Bloomberg (*R v Moylan*, 2014, para 27). Extending the reach of the media release's initial circulation, the reports from Australian Associated Press were circulated further by a provider of services to financial market participants (*R v Moylan*, 2014, para 27(b)). After journalists began to discover the media release was false, the first corrections began to appear in the media at 12:05 pm (*R v Moylan*, 2014, para 27). However, by then the information in the false media release had been acted upon as if it were genuine and had already induced people in Australia to offload WHC shares (*R v Moylan*, 2014, paras 28-35). This included 'individual investors, brokers acting for clients such as self-managed super funds, managed funds and other wholesale investors' (R v Jonathan Moylan - Statement of Facts, 2014, para 26).

At approximately 12:18 pm the share price of WHC began to slide and plunged 8.7% from $3.515 to $3.21 wiping approximately $300 million off WHC's market capitalisation (*R v Moylan*, 2014, p. 29). By 12:30 pm ANZ was advising journalists the media release was a hoax (Manning, 2013; White & Main, 2013). At 12:41 pm the ASX announced the securities of WHC were placed in a pre-open phase 'pending the release of an announcement by the Company' and unless the ASX determined otherwise, would remain so until 9 January 2013 or until the release of the announcement (Australian Securities Exchange, 2013). A pre-open phase enables orders to be submitted but prevents their execution (R v Jonathan Moylan - Statement of Facts, 2014, para 24). At 12:56 pm the securities of WHC were placed in a trading halt (R v Jonathan Moylan - Statement of Facts, 2014, para 27). At 1:04 pm through the ASX, WHC announced in the following terms, the media release was false:

> Whitehaven Coal Limited has been made aware of a hoax media release suggesting ANZ has withdrawn its recently announced $1.2 billion banking facility to Whitehaven.
> There is no substance to the hoax media release. ANZ has confirmed the release is a hoax (R v Jonathan Moylan - Statement of Facts, 2014, para 27).

At 1:05 pm Mr Moylan issued a second media release on behalf of FLAC titled 'ANZ Caught By Spoof' admitting the earlier release had been put out by opponents of the Maules Creek mine (R v Jonathan Moylan - Statement of Facts, 2014, Annexure D). At 1:30pm WHC securities resumed trading at $3.53 and at the close of trading on 7 January 2013, were $3.50 (R v Jonathan Moylan - Statement of Facts, 2014, para 28). While some investors were able to largely mitigate their losses, others were not (R v Jonathan Moylan - Statement of Facts, 2014, para 32). At 4:00 pm the Australian Securities and Investments Commission (ASIC - Australia's corporate, markets and financial services regulator) announced it would investigate whether there had been a breach of the *Corporations Act 2001* (Cth) (White & Main, 2013).

4.7.2 Prosecution and Sentencing

According to ASIC Commissioner Ms Cathie Armour 'the honesty and integrity of the financial markets is of the utmost importance' (ASIC, 2014). In this context, Ms Armour has pointed out the significance of the capital markets to Australia and that 'many Australians (own) shares either directly or indirectly particularly through their superannuation funds' (ASIC, 2014). ASIC's investigation began almost immediately and ASIC took possession of Mr Moylan's laptop and mobile phone during an unannounced visit to the protest camp by an

ASIC investigator (Walker & Cubby, 2013). Ms Cassandra Michie, a Partner with PriceWaterhouseCoopers (personal communication, October 9, 2014), believes ASIC was entirely correct in moving as quickly as it did. Ms Michie (personal communication, October 9, 2014) has explained that the market is 'sensitive to unknown information' and that 'market reacts adversely until the cause is known and understood'. This is because unknown information 'can create a contagion of fear that cascades through the market' (C. Michie, personal communication, October 9, 2014). This in turn 'increases the share price risk and volatility for that company and can have an ongoing effect on all companies' share prices (C. Michie, personal communication, October 9, 2014).

A spokesperson for ASIC (personal communication, 2 & 15 October, 2014) has explained the key focus of ASIC 'was not with the motivations of Mr Moylan (about which ASIC was agnostic) but market integrity and the potentially very serious consequence of damaging market integrity'. In July 2013 ASIC initiated a prosecution against Mr Moylan for contravening section 1041E of the *Corporations Act 2001* (Cth) (false or misleading statement) 'for allegedly disseminating false information to the market earlier this year' (ASIC, 2013). Specifically it was alleged:

> …. that on 7 January 2013 Mr Moylan disseminated a false media release which stated the ANZ Banking Group Ltd (ANZ) had announced that it had withdrawn its $1.2 billion loan facility to Whitehaven Coal which was primarily intended to develop the Maules Creek Coal Project (and that) ANZ had not made any such announcement (ASIC, 2013).

While ASIC had the policing role, the Commonwealth Director of Public Prosecutions (DPP) prosecuted the matter (ASIC, 2013). Mr Moylan has stated he was the first individual prosecuted under s1041E of the *Corporations Act 2001* (Cth) (#standwithjono, 2014). However, a spokesperson for ASIC (personal communication, October 2, 2014) has advised this is not the case and cited a number of 'other cases that also involved charges under s. 1041E (or its predecessor, s.999)'.[16] Section 1041E of the *Corporations Act 2001* (Cth) is 'one of a number of *market misconduct* offences contained in chapter 7 of the Corporations Act' (R v Jonathan Moylan - Crown Submissions on Sentence, 2014, p. 5).[17]

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[16] By way of examples, earlier prosecutions include*: R v Rechner* [2007] WADC 155; *R v Loiterton [*2005] NSWSC 905; *R v Manners* (2005) (Melbourne County Court, Justice White, 4 October 2005); *R v Adler* [2005] NSWSC 274; and *R v Hourmouzis* (2000) (Melbourne Country Court, Justice Scott, 30 October 2000).
[17] A copy of the Crown Submissions on Sentence was accessed after application to the New South Wales Supreme Court Registry – copy on file with author.

The academic analysis and media reporting in the days and weeks after the hoax identified the possible penalties facing Moylan for allegedly breaching s1041E of the *Corporations Act 2001* (Cth) were very serious, 10 years imprisonment (increased from five years in 2010) or a maximum fine of $495,000 (Adams, 2013; Hamilton, 2013; Ker, 2013; Quilter, 2013; Rimmer, 2013; Sky News, 2013; White & Main, 2013). However, this did not take account of what Beveridge (2013) has described as 'one of the important, but lesser reported, (legislative) changes for 2013 … an increase to the value of the Commonwealth penalty unit'. The Commonwealth penalty unit increase became effective on 28 December 2012 and increased penalty units from $110 to $170. This meant Mr Moylan faced a maximum penalty of 10 years imprisonment, a fine of up to $765,000 (as opposed to $495,000), or both (ASIC, 2013).

On 23 July 2013 Mr Moylan appeared before the Downing Centre Local Court in Sydney NSW was not required to enter a plea, did not enter a plea, was granted unconditional bail and the matter was stood over for mention (ASIC, 2013). On 24 September 2013 bail was continued and Mr Moylan 'was committed to stand trial in the NSW Supreme Court' (ASIC, 2013). On 1 November 2013 Mr Moylan pleaded not guilty in the NSW Supreme Court 'to one charge of making a false or misleading statement', bail was continued and a trial (scheduled to last three weeks) was set to commence on 30 June 2014 (ASIC, 2013). On 23 May 2014 and before his trial was due to commence, Mr Moylan changed his plea to guilty and admitted to one count of breaching s1041E of the *Corporations Act 2001* (Cth) (Janda, 2014). Specifically, Mr Moylan pleaded guilty to the following offence:

> On about 7 January at Maules Creek in the State of New South Wales he did disseminate information which was false in a material particular and the information was likely to induce persons in Australia to dispose of financial products, namely shares in Whitehaven Coal Limited, and when he disseminated the information he knew or ought reasonably have known that it was false in a material particular (*R v Moylan*, 2014, para 1).

Bail was continued and Mr Moylan's sentencing hearing was held in the NSW Supreme Court on 11 July 2014 (Davey, 2014b; Janda, 2014). At the sentencing hearing Mr Moylan's submissions centred on his motivations, specifically that he was not motivated by financial gain but by the impact of what he viewed as a "dirty project" on the environment and the surrounding population (Davey, 2014b). In a written apology read on behalf of Mr

Moylan to the Court, he apologised to investors who had lost money as a result of the hoax (Davey, 2014a). Mr Moylan's apology acknowledged that 'those who traded on that day have every right to feel deceived and angry about the consequences of (his) actions' (J. Moylan, letter, July 11, 2014).[18]

For Mr Moylan, a key submission at sentencing was that his motivations were not driven by a desire to manipulate the share market and he did not consider the impact on shareholders to be a possible consequence of his actions (Davey, 2014a). Rather, Mr Moylan's submissions focused on his environmental motivations by seeking publicity for his cause and the hope that pressure could be placed on ANZ in respect of their dealings with WHC (*R v Moylan*, 2014, p. 62). For its part the Crown did not seek a full-time custodial sentence and its submissions focused on the fact that Mr Moylan knew the information in the media release was false and had taken steps to make it more likely than not that the information would be acted upon (Davey, 2014a). The Crown also acknowledged Mr Moylan's guilty plea, his unusual motivations and the fact he did not seek financial advantage (Aird & Magann, 2014; Davey, 2014a). On 25 July 2014 Mr Moylan was sentenced to imprisonment for 20 months and was released after 'entering into a recognisance of $1,000 to be of good behaviour for two years' (ASIC, 2014). Of his sentence, Mr Moylan (2014) said it 'reflects the need for investors to be fully and correctly informed in order for the share market to work'. While in his submission to the sentencing court, Mr Moylan identified that 'wantonly causing harm or loss to others in no way forms part of (his) commitment to nonviolence' (J. Moylan, letter, July 11, 2014), he also later indicated that 'taking the piss with a purpose is part of a long tradition of creative mischief' (Moylan, 2014).

4.8   Case Study 4: The Ratcliffe-On-Soar Protest, Nottinghamshire 2009

The first UK case study is the attempt in 2009 by environmental activists to shut down the Ratcliffe-on-Soar power station in Nottinghamshire that is owned and operated by power company E.ON. This attempt was thwarted by police through the use of pre-emptive arrests supported by intelligence supplied by Mark Kennedy, at the time working

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[18] A copy of the letter was accessed after application to the New South Wales Supreme Court Registry – copy on file with author.

undercover with the NPOIU as Mark Stone. Chapter 6 discusses that this occurred at a time when a policy focus on protecting critical infrastructure from threats beyond terrorism was just being extended to consider threat from natural hazards. However as discussed above in terms of policing, by 2009 a key focus for the NPOIU for a decade had been threats to business operations from radical protest, including radical environmental protest.

4.8.1 Context and Key Protest Details

On 5 November 2008 as part of Operation Pegasus run by the NPOIU, Assistant Chief Constable (ACC) Ackerley of the Nottinghamshire Police authorised a request from an NPOIU Detective Chief Inspector (DCI) 'to consider an application for the use, conduct and participation in criminal activity of a UCO' (Independent Police Complaints Commission, 2012, p. 5). The authorisation was made pursuant to the *Regulation of Investigatory Powers Act 2000* (RIPA) which provides the legislative framework for covert surveillance and investigation in the UK (Independent Police Complaints Commission, 2012, p. 5). That UCO was Mark Kennedy (Independent Police Complaints Commission, 2012, p. 5) who as noted earlier, since 2003 had been part of Operation Pegasus. The request was in response to the NPOIU becoming aware of a protest being planned that would target a power station in Nottinghamshire (Evans & Lewis, 2013, p. 274). Internal NPOIU documents described by investigative journalists Rob Evans and Paul Lewis reveal the concern was the protest activity could bring 'a severe economic loss to the United Kingdom and have an adverse effect on the public's feeling of safety and security' (NPOIU as cited in Evans & Lewis, 2013, p. 274).

In late 2008 to protest against climate change, a core group of five activists began to formulate a plan to recruit around 100 others to enter and occupy the Ratcliffe-on-Soar power station with the intention of shutting it down for a week (Evans & Lewis, 2013, pp. 269-270, 274). The Ratcliffe-on-Soar power station was chosen because it emits around 150,000 tonnes of carbon into the atmosphere each week (*R v Barkshire and Others*, 2011, para 2). When planning the protest, the core group presumed it and other activists would be under police surveillance (physical and electronic) and engaged in elaborate counter-espionage precautions to avoid detection (Evans & Lewis, 2013, pp. 270-272).

Two months into planning, the core group identified the need for a scoping visit to the power station (Evans & Lewis, 2013, p. 271). To do so and on the basis a driver was needed to take them to the power station, a sixth person was recruited to the core group (Evans & Lewis, 2013, p. 271). According to one of the activists (as cited in Evans & Lewis, 2013, p. 271), the group was told 'we were going to get driven up to the power station by this guy called Flash'. Established earlier is that Flash (Mark Stone) was UCO Mark Kennedy. On 10 January 2009, Kennedy in the guise of Mark Stone drove four of the activists to the site of the power station with the objective of undertaking reconnaissance and taking photographs of the infrastructure to assist with further planning the protest (Evans & Lewis, 2013, p. 272). Two weeks later in one of a series of very detailed intelligence reports submitted to his handler, Kennedy reported 'the precise time and date the protesters planned to occupy the plant' (Evans & Lewis, 2013, p. 274). Approximately two weeks before the protest (by then scheduled for Easter 2009), Kennedy learned the precise detail of the plan when he was approached to take part in the direct action protest (Evans & Lewis, 2013, p. 275; Independent Police Complaints Commission, 2012, p. 5).

The intelligence gathered by Kennedy was passed back to the NPOIU and from there to the Nottinghamshire Police Special Branch and then to ACC Ackerley (Rose, 2011, p. 18). The resultant police investigation led by the Nottinghamshire Police into the planned Ratcliffe-on-Soar protest, became Operation Aeroscope (Independent Police Complaints Commission, 2012, p. 5). On 7 April 2009 ACC Ackerley authorised Operation Aeroscope which included the ongoing authorisation of Kennedy in the earlier terms detailed above (including criminal conduct) and extended the authorisation to include that Kennedy use an audio-recording device (Independent Police Complaints Commission, 2012, p. 5). This second authorisation also specifically included that Kennedy's handler 'liaise with the Crown Prosecution Service' in the event Kennedy was arrested (*R v Barkshire and Others*, 2011, para 11).

Over the Easter weekend in 2009, activists gathered at the Iona Independent School in Nottingham which was closed for the Easter break (Evans & Lewis, 2013, pp. 268, 277). Activists had come from all over the country 'in furtherance of or to consider participation in a sophisticated plan to enter and occupy the power station for a week' (*R v Barkshire and Others*, 2011, para 2). The gathering of activists at the school was under a ruse of

conducting an ecological sustainability workshop replete with fake flyers as part of a cover story (Evans & Lewis, 2013, pp. 277-278). The majority of activists that gathered at Iona School over the Easter weekend knew something was planned but had no idea of the nature of the planned protest, which was still tightly held by a group of around a dozen people which by that stage included Kennedy (Evans & Lewis, 2013, p. 278). The detail of the protest was only revealed beyond the group once people had gathered at the school (Evans & Lewis, 2013, p. 278).

The plan devised to occupy and shut down the power station had four interconnected parts: one group would lock on to machinery to immobilise the coal conveyors; the second group would climb, enter and suspend from one of the chimney flues; the third group would attach themselves to the chimney; and the fourth group would seek to prevent police and security from entering the site (*R v Barkshire and Others*, 2011, para 2). To facilitate the protest, transportation, rations, and equipment had been organised that included climbing equipment, safety helmets, maps, mobile phones and walkie-talkies (*R v Barkshire and Others*, 2011, para 2). Images of the protest were to have been streamed on the internet (Evans & Lewis, 2013, p. 276).

On the evening of Saturday, 11 April 2009, 'activists … began to grow concerned that police knew about their plan' (Evans & Lewis, 2013, p. 279). Some of the dozen or so activists at the school decided to undertake a further reconnaissance drive around the power station (Evans & Lewis, 2013, p. 279). They reported back (including to Kennedy) that three police cars were parked in what appeared to be strategic spots around the power station (Evans & Lewis, 2013, p. 279). One of the original five activists (as cited in Evans & Lewis, 2013, p. 279) said 'Oh, no! Oh fuck! They know about it! … all of the work we had put in over the months and now it seemed there were police there guarding the station'. While discussion followed as to whether to abandon the protest and shift it to target the Kingsnorth power station, this possible alternative was abandoned based on the practicalities of the form of protest planned (Evans & Lewis, 2013, p. 279). The police cars remained all night and on the morning of Easter Sunday, 12 April 2009, Kennedy 'told activists he would make one last visit to the power station to see whether police were still guarding the facility' (Evans & Lewis, 2013, p. 279). Kennedy left the school and informed his superiors that the protest would be abandoned if police remained on-site (Evans &

Lewis, 2013, p. 279). Returning approximately 90 minutes later, Kennedy (as cited in Evans & Lewis, 2013, p. 279) told the activists 'they've gone … there are no police there. No cars. No nothing'. For the activists, this meant the protest was back on.

At 10:06 am on Sunday, 12 April 2009, consistent with is authorisation under the RIPA, Kennedy (as cited in Evans & Lewis, 2013) began audio-recordings of his description of the status of the planned protest and his intent 'to record briefings that subsequently take place throughout the day' which he duly went on to do (*R v Barkshire and Others*, 2011). People continued to arrive at the school and by Sunday evening '114 activists were gathered in one room … to hear a briefing about the planned protest' (Evans & Lewis, 2013, p. 281). That briefing was recorded by Kennedy (Evans & Lewis, 2013, pp. 281-282). A key aspect of the briefings was that 'those present were advised that they did not need to get involved if they did not wish to' (*R v Barkshire and Others*, 2011, para 15). The protest was to begin at 03:00 am on Easter Monday, 13 April 2009, when activists were due to move to their allocated vehicles that would take them to the power station (Evans & Lewis, 2013, p. 282). The protest was thwarted when 200 officers from the Nottinghamshire Police and surrounding forces raided the Iona Independent School and in the early hours of 13 April 2009, arrested all 114 activists present (including Kennedy) 'for conspiracy to commit aggravated trespass and criminal damage' (Association of Chief Police Officers of England, Wales & Northern Ireland, 2009, p. 2). A further individual was later arrested taking the total number of arrests to 115 (Association of Chief Police Officers of England, Wales & Northern Ireland, 2009, p. 2). All were bailed (Association of Chief Police Officers of England, Wales & Northern Ireland, 2009, p. 2). Kennedy (as cited in Hill, 2011) has described the raid and the arrests in the following terms:

> Just after midnight, the police raided. They went through the whole school and
> smashed every door. We were all put in a big room. I was sat next to a guy that
> I knew really well. He says I'd like to get my hands on the person that grassed us
> up and I just sat there thinking, yeah (Kennedy as cited in Hill, 2011).

4.8.2 Failed Prosecutions: the "Justifiers" and the "Deniers"

Of those arrested, 26 were 'ultimately charged with conspiracy to commit aggravated trespass' (Rose, 2011, p. 3). The offence of aggravated trespass is set out in s68(1) of the *Criminal Justice and Public Order Act 1994* (CJPOA). While he had been

arrested and a case was subsequently prepared against him, Kennedy was not charged. This occurred just a week before the remaining 26 protesters were charged, which in retrospect Kennedy (as cited in Hill, 2011) viewed as contributing to his later outing. He elaborates:

> … they prepared the case against 27 people. Right at the very end, a week before everybody was going to be charged, they dropped the case against Mark Stone right out of the blue. No one else got their cases dropped. Just me.

Of the 26 people charged, 20 ultimately admitted being party to the conspiracy, putting forward the defence that their conduct was necessary to prevent a greater harm (damage to the planet from climate change) garnering them the label "the Justifiers" (Rose, 2011, p. 3). The remaining six denied being party to the alleged conspiracy on the basis that at the time of the arrests 'they had not yet made a decision to take part in the protest' (Weymouth, 2012, p. 10). They were labelled "the Deniers" (Rose, 2011, p. 3). The trial of the Justifiers before a jury in the Nottingham Crown Court began on 22 November 2010 (Independent Police Complaints Commission, 2012, p. 16) and on 14 December 2010, the 20 Justifiers were convicted of conspiracy to commit aggravated trespass (Rose, 2011, p. 3). At the trial, the prosecution evidence against the Justifiers was unchallenged and their individual involvement was not questioned (*R v Barkshire and Others*, 2011). While this did follow the outing of Kennedy by activists, it predated the media storm that followed from early January 2011.

Eighteen of the Justifiers were sentenced on 5 January 2011 and the remaining two were due to be sentenced later in January 2011 (Lewis & Evans, 2011b; Lewis & Parakash, 2011). Having been convicted of conspiracy to commit aggravated trespass, the Justifiers faced a maximum penalty of three months' imprisonment, a £2,500 fine, or both (Lewis & Parakash, 2011). At sentencing the Crown counsel Ms Gerry who prosecuted the case, sought each defendant be ordered to pay £5,000 costs, described as a fraction of the approximately £20,000 it cost per defendant to prosecute the case (BBC News, 2011). In sentencing, the trial judge gave conditional discharges ranging between 18 months and two years to 13 of the activists, due to their prior convictions while five were ordered to do unpaid community work of between 60 and 90 hours (Lewis & Parakash, 2011). Of the 18, two 'were judged to have sufficient means to incur fines', one received a penalty of £500

and the other a penalty of £1,000 (Lewis & Parakash, 2011). The trial judge specifically noted the Justifiers had acted with 'the highest possible motives' (Evans & Lewis, 2011).

The trial of the six Deniers was due to commence in the Nottingham Crown Court on 10 January 2011 (*R v Barkshire and Others*, 2011; Rose, 2011, p. 3). This trial too was to be prosecuted by Ms Gerry (Independent Police Complaints Commission, 2012, p. 16). However, in the lead up to the trial and after being outed, Kennedy agreed to act as a witness for the defence, something he later retreated from (Evans & Lewis, 2011; Independent Police Complaints Commission, 2012). For their part, the Deniers by then had a two pronged legal defence to the charge (1) that they had not yet decided to participate in the planned attempt to shut down the power station (their original defence), or in the alternative, (2) that the conduct of Kennedy had incited and facilitated the offence and the trial should be stopped as an "abuse of process" (Evans & Lewis, 2011; Independent Police Complaints Commission, 2012; Weymouth, 2012).

On 3 January 2011 ahead of the scheduled trial, lawyers acting for the Deniers 'submitted another claim to the prosecution for disclosure of all evidence that related to the case' (Weymouth, 2012, p. 10). According to Weymouth (2012, p. 10) one of the Justifiers, what the Deniers were looking for was any form of report that Kennedy may have made that would support the testimony of the Deniers that they had not at the time of arrest, made a decision as to whether to participate in the protest or not (the crux of their defence on the conspiracy charge). On 5 January 2011 and likely in response to the defence request for additional disclosure, a file box of sensitive material was supplied to Ms Gerry to read (Independent Police Complaints Commission, 2012, p. 16; Rose, 2011, p. 21). Among other documents, the file box contained a draft witness statement by Kennedy and a draft transcript of the audio-recordings taken by him that had both been prepared in April 2009 (Independent Police Complaints Commission, 2012, p. 16; Rose, 2011, p. 11). Kennedy had signed his witness statement on 23 September 2009 and its contents were crucial to the defence (*R v Barkshire and Others*, 2011, para 17). Between April 2009 and January 2011, the documents in the file box had been 'continually in the possession and control of the police' (Rose, 2011, p. 11).

On 5 January 2011 and after reading material provided to her at that point, Ms Gerry formed a view that it supported the defence of the Deniers that they had not at the time of arrest made a decision whether to participate in the protest or not (Independent Police Complaints Commission, 2012, p. 16; Rose, 2011, p. 22). After speaking with the CPS it was agreed no evidence would be offered in the prosecution of the Deniers, effectively discontinuing the prosecution case and clearing the way for a not guilty verdict (Independent Police Complaints Commission, 2012, pp. 16, 25). On 7 January 2011 the solicitors for the Deniers were informed of this in the following terms:

> Previously unavailable material that significantly undermines the prosecution's case came to light on Wednesday 5 January. In light of this information, the Crown will not proceed with the trial and are discontinuing the case. We shall be offering no evidence on Monday 10th January (*R v Barkshire and Others*, 2011, para 21).

Further material was provided to Ms Gerry on 10 January 2011; namely 'Kennedy's notebooks and statement, an amended transcript of the recording and intelligence logs of information supplied by Kennedy' (Rose, 2011, p. 21). Of this further material, the most significant was the transcript of the audio-recordings made by Kennedy between 12 and 13 April 2009 (Rose, 2011, p. 22). On 17 January 2011, Ms Gerry documented advice which among other matters identified the significance of the transcript of the audio-recordings in terms of the safety of the convictions and subsequent sentences of the Justifiers (Rose, 2011, p. 22). Ms Gerry's advice specifically dealt with the recordings showing that many of the people that attended Iona School ahead of the protest 'did not know what the action was going to be and were persuaded to take part in it' (Rose, 2011, p. 27). The question of whether the Justifiers had been induced to participate in the protest was for Ms Gerry itself 'a triable issue (and) a matter for primary disclosure' that also had relevance for an abuse of process argument (Rose, 2011, p. 28). Ms Gerry went on to advise that 'the pocket notebook, witness statement, recordings and transcript should be disclosed (to the Justifiers) immediately' (Rose, 2011, p. 28).

On 28 January 2011 the then DPP Mr Keir Starmer QC appointed Miss Clare Montgomery QC to review the case of the Justifiers (Crown Prosecution Service, 2011). The advice provided to him questioned the safety of the convictions and included advice that as a result of the non-disclosure by the Crown, appeals by the Justifiers could not be

successfully resisted (Rose, 2011, p. 7). However, save for very limited circumstances not met in this case, the prosecution could not initiate an appeal against the convictions (Crown Prosecution Service, 2011). As a result, having determined that the safety of the convictions was a matter that could only be dealt with by the Court of Appeal, the then DPP announced on 18 April 2011 he had written to the lawyers representing the Justifiers inviting them to appeal their convictions (Crown Prosecution Service, 2011). The Justifiers appealed and on 19 July 2011 their convictions were quashed by the Court of Appeal Criminal Division (*R v Barkshire and Others*, 2011). This was on the basis of 'non-disclosure to the defence of sensitive material in the prosecution's possession relating to the role and activities of Mark Kennedy' (Rose, 2011, pp. 3-4). The Court of Appeal further accepted the submission by the Justifiers that Kennedy played 'a significant role in assisting, advising and supporting … the very activity for which (the justifiers) were prosecuted' (*R v Barkshire and Others*, 2011, para 13). For both the Justifiers and the Deniers, material that ought to have been disclosed by the Crown under the *Criminal Procedure and Investigations Act 1996* amended by the *Criminal Justice Act 2003* was not (Rose, 2011, p. 4). That material included information about the role and activities of Kennedy while operating deep undercover (Rose, 2011, p. 4).

4.9   Case Study 5: The Drax Train Occupation, Yorkshire 2008

The second UK case study is the occupation by protesters of a freight train laden with coal on its way to the Drax Power Station in Yorkshire in 2008. Because of its role in energy supply, the Drax Power Station is considered a critical piece of the nation's civil infrastructure (Joint Committee on Human Rights, 2009, Ev 135 - 136). Chapter 6 discusses that this protest occurred before a national policy focus on protecting critical infrastructure from threats beyond terrorism had been extended to consider natural hazards. However in a similar vein to the Ratcliffe-on-Soar protest, at the time of this protest a key focus for the NPOIU was the threat to business operations from radical environmental protest.

4.9.1   Context and Key Protest Details

Drax Power Station owned by Drax Power Limited in Yorkshire, is the largest coal-fired power station in the UK, supplying approximately 7-8% of the UK's electricity (Drax, 2014a). At 08:00 am on 13 June 2008, 29 environmental activists stopped, boarded and occupied a 21 wagon freight train laden with coal on its way to the Drax Power Station

(Drax, 2014a, 2014b; Joint Committee on Human Rights, 2009, Ev 34; Schlembach, 2011). It was a well-planned operation and the protesters, equipped with food, water and a portable lavatory, planned to occupy the train for several days (Joint Committee on Human Rights, 2009, Ev 135). The target of the protest was Drax Power Station and protesters planned to interrupt coal delivery to prevent it being burned and releasing CO_2 into the atmosphere (Joint Committee on Human Rights, 2009, Ev 135). On 7 June 2008 after being approached for assistance in hiring a van to drive some of the protesters to a rendezvous point, Kennedy (working undercover as Mark Stone) agreed to participate in the protest and became responsible for arranging the transportation needed as part of the protest (*R v Bard (Theo) and Others*, 2014). On the night of 12 June 2008, Kennedy was present at the final pre-protest briefing and on the morning of the protest, was the sole driver who drove protesters to the railway line (*R v Bard (Theo) and Others*, 2014, para 14; Statewatch, 2014). As far back as 29 January 2007, Kennedy had been authorised under the RIPA to operate undercover by the 'Chief Constable of the West Yorkshire Police and the Acting Chief Constable of the Yorkshire Police' (*R v Bard (Theo) and Others*, 2014, para 7).

On 13 June 2008, the train stopped on a girder bridge over the River Aire when two protesters posing as railway workers and consistent with standard railway safety procedures, used red flags in a precise sequence to signal the driver to make an emergency stop (*R v Bard (Theo) and Others*, 2014, para 1; Wainwright, 2008a). After the train stopped and was boarded by protesters, the train driver was told politely they were taking over his cargo and that 'he was free to stay or leave' (*R v Bard (Theo) and Others*, 2014, para 1). Protesters attached a banner to the bridge that read *Leave it in the Ground* in reference to the freight train's cargo of coal (Evans, 2014a; Wainwright, 2008a). Some of the protesters locked themselves onto the train while others shovelled the Drax Power Station's coal from the freight wagons onto the railway line (Joint Committee on Human Rights, 2009, Ev 135). The British Transport Police (BTP) (personal communication, January 27, 2015) 'dealt with this incident and the arrests of the individuals concerned'. The first BTP arrived around 30 minutes after the train was stopped 'after calls from motorists stuck at a level crossing which was closed as a safety precaution' (Wainwright, 2008a). The occupation of the train lasted 16 hours until the last of the protesters had been cut free, arrested and led away (Wainwright, 2008b).

On the day of the protest, while the policing response was localised at the site of the occupied train, and on the basis of concern the protest could shift to the site of the power station, Drax sought a High Court injunction aimed at deterring protesters from entering the site to shut down the power station (Joint Committee on Human Rights, 2009, Ev 136). By way of context, the strategy of using an injunction had been planned at meetings between Drax and the North Yorkshire Police two years earlier in the lead up to the 2006 Climate Camp mass protest that targeted the power station (Joint Committee on Human Rights, 2009, Ev 135). The legal effect of the injunction made pursuant to the *Protection From Harassment Act 1997*, was that any one entering the power station without Drax's permission, or causing or encouraging others to do so, committed the offence of "contempt of court" (Joint Committee on Human Rights, 2009, Ev 135). In the UK, as trespass is a civil tort and not a criminal offence, it was thought the strategy of using an injunction 'might help the police respond to mass trespass on the site' and give the constabulary 'more authority to direct protesters off the land' (Joint Committee on Human Rights, 2009, Ev 135).

High Court injunctions made pursuant to the *Protection From Harassment Act* are controversial and made on the basis that 'protesters are "alarming" or distressing" employees' (Equality and Human Rights Commission, 2010, p.409; Lewis & Evans, 2009). The use of an injunction should be viewed in light of the fact that the Drax Power Station, while identified as a piece of critical energy infrastructure, was not (and is currently not) either a protected or designated site under s128 of the *Serious Organised Crime and Police Act 2005* (SOCPA) which would otherwise make trespass a criminal offence (Home Office, 2007; Joint Committee on Human Rights, 2009, Ev 136; legislation.gov.uk, 2005). In September 2008 in evidence to the Joint (Parliamentary) Committee on Human Rights, Drax proposed 'the site of the power station (excluding the public footpath) should be made a designated or protected site under s128 of the (SOCPA)' (Joint Committee on Human Rights, 2009, Ev 136). In evidence to the same Committee, the Association of Electricity Producers and noting nuclear sites are covered by SOCPA, proposed that 'gain(ing) access to power stations without the operator's consent' should be an offence of criminal trespass' (Joint Committee on Human Rights, 2009, Ev 92).

Figure 8: The Drax Train Occupation in Yorkshire, June 2009 (view 1)

Source: Photograph by John Giles/PA (Evans, 2014a).

Figure 9: The Drax Train Occupation in Yorkshire, June 2009 (view 2)

Source: Photograph by Martin Wainwright (2009).

Figure 10: The Drax Train Occupation in Yorkshire, June 2009 (view 3)

Source: Photograph by John Giles/PA Wire (Wainwright, 2008a).

4.9.2   Prosecutions, Initial Sentencing and Quashing of Convictions

All 29 protesters were charged under section 36 of the *Malicious Damage Act 1861* with one count each of obstructing an engine using a railway (*R v Bard (Theo) and Others*, 2014). They faced a maximum sentence of two years imprisonment and a maximum fine of £5,000 (The Crown Prosecution Service, 2009).[19] Of the 29 protesters, five entered guilty pleas in June 2009, 22 were convicted on 3 July 2009 following a four day trial at Leeds Court, and two pleaded guilty after this trial verdict was known (*R v Bard (Theo) and Others*, 2014; The Crown Prosecution Service, 2012b). The protesters were all sentenced between 4 September 2009 and 1 March 2010 (*R v Bard (Theo) and Others*, 2014). The sentences varied between conditional discharges (for six and twelve months), payment of compensation to Network Rail and 60 hours of community work (*R v Bard (Theo) and Others*, 2014). The 29 were convicted and sentenced without the role of Kennedy being disclosed and before Mark Stone had been publicly outed as UCO Mark Kennedy.

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[19] See also s2 of the *Magistrates Court Act 1980.*

On 3 July 2012 the then DPP, Mr Starmer invited the 20 protesters to appeal against their convictions (The Crown Prosecution Service, 2012b). In context, it followed the outing Kennedy and the subsequent collapse of the trial in January 2011 of the Deniers involved in the Ratcliffe-on-Soar protest. The attendant risk raised by the lawyers for the Drax 29 in their letter to the DPP dated 17 August 2011, was that their convictions too could be unsafe (Gillett, 2014). Internal pressures on the CPS also mounted. A detailed case review provided to the then DPP on 3 April 2012 raised serious concerns about the convictions of the Drax 29 (The Crown Prosecution Service, 2012b) and the MPS itself concluded 'it (could not) be categorically stated that the event would or would not have taken place with (Kennedy)'s involvement' as he was the 'sole driver' (*R v Bard (Theo) and Others*, 2014, para 14).

The protesters' subsequent appeal was not contested by the CPS (*R v Bard (Theo) and Others*, 2014). At appeal it emerged that before, during and after the protest, detailed records were kept by Kennedy about it and reports were made by him to his handler who in turn passed information to 'the most senior officers in the West Yorkshire Constabulary' (*R v Bard (Theo) and Others*, 2014, p. 8). On 21 January 2014 the convictions of the Drax 29 were quashed. The Court of Appeal ruled that 'the applicants were all convicted without disclosure having been made of the role of Mark Kennedy' and that 'there was a complete and total failure, for reasons that remain unclear, to make a disclosure fundamental to the defence' (*R v Bard (Theo) and Others*, 2014, p. 19). The Court of Appeal noted 'it appears this was either the fault of the (West Yorkshire Police) or someone in the (CPS), or possibly counsel involved at the time' noting each have given 'a different account' (*R v Bard (Theo) and Others, 2014*, p. 19).

4.9.3   Policy Response

After the identification of Kennedy's involvement in the Drax train occupation that led to the quashing of the convictions of the Drax 29, the then DPP signed a Memorandum of Understanding (MOU) with police and other investigative agencies (HMIC, 2014b, p. 107; The Crown Prosecution Service, 2012b). The MOU was signed in June 2012 by the DPP and on behalf of the now defunct ACPO, the Serious Organised Crime Agency (now the National Crime Agency), and Her Majesty's Revenue and Customs (The Crown Prosecution Service,

2012b). The purpose of the MOU was to ensure the 'consistent and thorough handling of cases involving (UCOs) where there may be a criminal prosecution' (HMIC, 2014b, p. 107). Further, it aims to 'ensure information about undercover officers is shared between investigators and prosecutors and disclosed to the defence when required in future cases' (The Crown Prosecution Service, 2012b). The MOU was to have been reviewed after six months to enable its implementation and impact to be assessed (The Crown Prosecution Service, 2012a). A spokesperson for the CPS advised that when it was undertaken, the review was 'short and relatively informal' (CPS spokesperson, personal communication, 28 April 2014). Following the review 'no amendments were made to the MOU' on the basis 'the intention of achieving early co-operation between investigators and CPS was being achieved' (CPS spokesperson, personal communication, 28 April 2014). For the signatories, the 'benefits from closer working are being secured as was envisaged when the MOU was signed' (CPS spokesperson, personal communication, 28 April 2014). In 2014, HMIC (2014b, p. 107) found 'broad compliance' with the MOU. The MOU itself is protectively marked at the classification level of restricted and is not in the public domain (HMIC, 2014b, p. 107). Therefore, it has not been able to be accessed as part of the present study.

4.10   Chapter Conclusion

This Chapter has set out narrative descriptions of five case studies which are drawn on in the Chapters that follow. Each protest has been described in terms of its key features, its broad context, and key aspects relating to its policy context and the policing of the protest. These cases collectively represent a broad repertoire of environmentally-motivated protest over time that occurred within defined sovereign boundaries. These cases highlight a range of different touch points between radical environmental protest, policy and policing over time and in different jurisdictions. By examining radical environmental protest targeting different parts of the civil infrastructure and how protest has been policed, the cases have reinforced that radical environmental protest has posed significant challenges to policymakers and police for decades.

These cases also highlight some of the key themes identified in the literature review. In respect of the environmental and social movement literature, the cases reinforce that while non-violent direct action can be considered a central norm, there can be vastly

different interpretations of this norm and there are tensions within social movements over the legitimacy of violent direct action. In respect of the policing literature, these cases sharply illustrate examples of plural policing. Through identifying and describing the policing responses to the protest activity, the diffuse nature of the boundaries between public and private as well as high and low policing is highlighted. While the literature that considers the policing of radical environmental protest in the context of the relative criticality of the civil infrastructure targeted is only just emerging, these cases hint at the relative criticality of the infrastructure as being a factor, although far from the sole factor, in policing and policy responses to radical environmental protest. These themes are all explored further in the Chapters that follow.

5.   RADICAL ENVIRONMENTAL PROTEST – POLICY AND POLICING DISCOURSE

5.1   Introduction and Chapter Outline

The central aim of this thesis is to contribute to understanding responses in policy and practice to radical environmental protest that targets key parts of the civil infrastructure in Australia and the UK. The literature review has identified that the terminology applied to radical environmental protest is central to the scholarship, is contested, divisive and can influence (1) the way criminality is perceived and labelled, and (2) political, policy and policing responses to protest. In this respect the scholarship reflects that a spectrum of labels have been applied to radical environmental protest. Further, these labels have emerged over time and have distinctly different origins. The terms and their respective meanings demonstrate different philosophical and ecological perspectives on the one hand and different political, legal, policy and commercial contexts and drivers on the other. At one end of the terminological spectrum, radical environmental protest is framed as terrorism or eco-terrorism. In this powerful narrative, protest is portrayed as a serious threat to national security, community safety or the continuity of essential services. However, the literature review has also highlighted that the framing of radical environmental protest as terrorism and eco-terrorism occurs against the backdrop that internationally, consensus definitions of both remain elusive. As noted, the framing of radical environmental protest as terrorism or eco-terrorism by scholars is at times dissociated from the broader security literature and consideration of relevant and applicable legal frameworks. At the other end of the terminological spectrum, radical environmental protest is framed as somewhat of a "victimless crime" that harms neither humans nor non-human animals. Resting along the terminological spectrum, radical environmental protest is also framed as civil disobedience and non-violent direct action. In this framing, the literature review has highlighted terms such as ecotage, monkeywrenching and perturbance of systems are all applied.

The five case studies have reinforced the breadth of the terminological spectrum. At one extreme, in 1976 the then Premier of WA Sir Charles Court was quick to frame the Bunbury bombing as 'a gross act of terrorism' (as cited in The West Australian, 1976b). Noted earlier and discussed later in this Chapter is that at a time when Australia had no terrorism laws on the books, the alternate narrative was that the Bunbury bombing was

considered "just a crime", albeit a very serious one. At the other end of the terminological spectrum, Mr Moylan the perpetrator of the WHC hoax in 2013, although acknowledging his crime did harm investors and went against his commitment to non-violence, he nevertheless also described it as 'creative mischief' and 'taking the piss with purpose' (Moylan, 2014). In all cases including the Wagerup occupations, the Ratcliffe-on-Soar protest and the Drax train occupation, the competing narratives of (1) serious criminality, and (2) well-intentioned direct action, driven by genuine and deeply held environmental concerns are evidenced.

The focus of this Chapter is to answer RQ 1(a); how can radical environmental protest be understood in the context of contemporary policy and policing discourse in Australia and the UK and what explains this? In doing so, it lays the foundation for the analysis in Chapter 6 that assesses if, how, to what extent and why in Australia and the UK, the threat posed from radical environmental protest can be understood in the context of critical infrastructure policy frameworks. This Chapter is set out in three parts. After this introduction, the second part of this Chapter (5.2) identifies and discusses how and why radical environmental protest is framed in contemporary policy and policing discourse in Australia and the UK in the way it is. To provide context and contrast, 5.2 begins by discussing and expanding on the currently accepted genealogy of the term eco-terrorism and identifies its current meaning in US policy. It does so as this study has identified a revised genealogy of the term that highlights how labels can be co-opted to advance particular political or policy objectives. Then, similarities and sharp differences in how protest is framed in contemporary policy and policing discourse in Australia and the UK are identified and discussed. This part of the Chapter then sets out that the term eco-terrorism has been eschewed in both Australia and the UK, and the terms adopted are respectively Issue Motivated Groups and Domestic Extremism. The present study identifies that both terms were coined within policing bodies and when coined their meanings had specific links to threat to domestic security from protest. However, the analysis also identifies that in different ways and for different reasons, the meanings of these terms have expanded to become "umbrella terms", used to describe a broad spectrum of advocacy, pressure, dissent and protest groups. For different reasons, there remain contemporary unresolved tensions over the reach and application of both terms. As this Chapter shows, this impacts how

protest including radical environmental protest can be understood in contemporary policy and policing discourse.

The final part of this Chapter (5.3) examines the different political, policy and policing responses to the Bunbury bombing. In this case the strong competing narratives evident are assessed against policing and policy responses. The analysis shows that responses to radical environmental protest can occur in complex policy and policing contexts that are not always readily discernible, yet when revealed aid understanding. The overarching theme that emerges from examining this case study is that understanding the interplay between the terms, their varied applications and contemporary policy frameworks provides a useful way of viewing and understanding responses in policy and practice to radical environmental protest. This theme is further developed in Chapter 6.

5.2   Radical Environmental Protest and Key Terms

5.2.1 Eco-Terrorism: Genealogy and Contemporary Meaning

Eco-terrorism is an expansive and pejorative term. Vanderheiden (2008, p. 299) contends the term eco-terrorism was 'coined and championed by anti-environmental activists with a keen sense for the propagandistic power of language'. Anti-environmental activist Mr Ron Arnold associated with the US based right-wing think-tank the Centre for the Defense of Free Enterprise, claims he coined the term eco-terrorism for a series of articles for *Reason* magazine in 1983 (Arnold, 2007). In doing so, Arnold (1983, p. 32) equated ecotage (sabotage in the name of the environment) to eco-terrorism by describing eco-terrorism as the 'deliberate destruction of the artefacts of civilization in the name of environmental protection'. Mr Arnold's claim he coined the term eco-terrorism in 1983 holds wide currency (see for example Gibson, 2011; Kuipers, 2009; Potter, 2011; Smith, 2008; Vanderheiden, 2008). However, this study establishes the term eco-terrorism emerged earlier and when published in the book review section of the Canadian based newspaper *The Globe and Mail* on 23 August 1980, referred to the destruction of species.

On 23 August 1980 the book review section of *The Globe and Mail* headlined 'Fear on the high seas, a coven of octogenarian joggers and eco-terrorism' (Martin, 1980). By way of context for the headline, the review is of three books, the third and the reference to eco-

terrorism being Christopher Hyde's fictional work *The Wave*.[20] Of *The Wave*, journalist

Sandra Martin (1980) wrote it 'is an intelligent thriller that combines international

conspiracy with ecological terrorism, nuclear disaster and environmental catastrophe'. In

The Wave, Hyde (1979) uses neither the term ecological terrorism nor eco-terrorism or any

derivative thereof. Of her use of the term ecological terrorism, Ms Martin (personal

communication, November 16, 2012) has explained it was a journalistic turn of phrase that

was intended to convey the destruction of species. She elaborates:

> … thinking back … I can only say that it was a "writerly" decision. I wanted
> something specific to the destruction of species as opposed to the
> environment and that's how I thought of ecological terrorism (S. Martin,
> personal communication, November 16, 2012).

While Ms Martin wrote the book review, the headline itself was crafted by *The Globe*

and Mail's then Book Editor, Mr Jack Kapica (personal communication, November 17, 2012).

Of his use of the term eco-terrorism, Mr Kapica (personal communication, November 17,

2012) has explained this was a combination of editorial procedures at the time (where

editors crafted the headlines) and Ms Martin's turn of phrase in using the term ecological

terrorism. He recalls:

> … our procedure then was … that the editor would write the headline. So (Ms
> Martin's) column was submitted … and it was I who wrote the headline. So
> "ecological terrorism" is hers, and "eco-terrorism" is mine, but my contribution
> was based on her turn of phrase (J. Kapica, personal communication,
> November 17, 2012).

This study therefore finds that when devised by Mr Kapica based on Ms Martin's

turn of phrase and published in 1980 in *The Globe and Mail*, the term eco-terrorism was not

devised as the literature suggests with any sense of linguistic propaganda to describe in

pejorative terms radical animal rights or environmental protest. More precisely, it was the

"re-coining" or co-opting of the term eco-terrorism in the US in 1983 by Mr Arnold to refer

to animal rights and environmental activism that was done with a view to overtly linking

radical animal rights and radical environmental protest to terrorism (Arnold, 1983, 2007).

Reflecting on his interviews with Mr Arnold over the years, US based investigative journalist

Mr Dean Kuipers (2009, p. 50) explains of Mr Arnold, he 'never lets me forget that he coined

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[20] Hyde's *The Wave* (1979) is complex. It includes three protagonists who seek to enter a nuclear reactor (two to draw attention to environmental issues) and one (unknown to the others) to bomb the facility, and an unrelated and unfolding human-induced disaster that sees the collapse of multiple dams leading to catastrophic damage in Canada and the US.

the term *eco-terrorist'* and takes credit for turning the radical activist groups EF! and the ALF into terrorists in the eyes of the public.

Although the term eco-terrorism is evident in US political and policy discourse in the 1980s where it applied specifically to radical animal rights and radical environmental activism, it remained on the US's political and policy fringe well into the 1990s (Potter, 2011, p. 55). The extent of the shift from the political and policy fringe into mainstream political and policy discourse is seen in the 1998 US House of Representatives Subcommittee on Crime's hearing, *Acts of Ecoterrorism by Radical Environmental Organizations* (Potter, 2011, p. 56). The use of the term eco-terrorism in security policy in the US escalated post-9/11 (Potter, 2011, p. 56). As the literature review has identified, soon after 9/11 the FBI defined eco-terrorism for policy purposes as 'the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally-oriented, subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of symbolic nature' (Jarboe, 2002, p. 50). In this narrative, violence and criminality are key factors.

Investigative journalist Mr Will Potter[21] (personal communication, June 19, 2014) suggests the term eco-terrorism was strategically employed in the US post-9/11 to reframe animal rights and environmental protest in the discourse of homeland security. According to Mr Potter (personal communication, June 19, 2014), this reframing of criminality was a necessary first step to enable state and federal law enforcement agencies to gain access to a portion of the millions of dollars allocated to counter-terrorism and homeland security programs in the post-9/11 security environment. He elaborates:

> I think in the US this framing has been shaped by government funding: there have been millions of dollars available for state and local law enforcement through "counter-terrorism" and homeland security programs, and in order to qualify for that money it's of course necessary to classify these groups under that framework (W. Potter, personal communication, June 19, 2014).

Although controversial, the term eco-terrorism and its corollary eco-terrorist are part of contemporary political and policy discourses (see for example Berkowicz, 2011;

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[21] Mr Potter is a Washington DC based independent investigative journalist whose expertise in animal rights and environmental social movements is recognised by the US Congress.

Eagan, 1996; Jarboe, 2002; Liddick, 2006; Loadenthal, 2014; Long, 2004; Mortimer, 2007; Potter, 2011; Smith, 2008; Vanderheiden, 2005; Wagner, 2008; Walker, 2007). However, in Australia and the UK the terms have been eschewed, and the terms Issue Motivated Groups (IMG) and Domestic Extremism are dominant. As will be shown, both apply to a broad range of people and groups, motivations and ideologies, and ways of expressing dissent (both legally and illegally). Further, what will also be shown is that the underlying issue reflected in the US of precisely where to "draw the line" in describing different forms of criminality is also evidenced in the Australian and UK experiences.

5.2.2   Issue Motivated Groups: Genealogy and Contemporary Meanings

In Australian policing and policy circles, the term IMG is common parlance referring to a range of activist and protest groups with a broad range of ideological motivations that operate across a spectrum of legality and criminality (Bronitt, 2011, p. 13; Commonwealth of Australia, 2011a, p. 7; 2011b, p. 148). Former Australian Federal Police (AFP) Commissioner Mr Mick Keelty AO APM (personal communication, June 17, 2014) has explained the term IMG emerged to reflect the reality that demonstrations and protesters were frequently not confined to single issues. In this context when it emerged, the term IMG provided a common nomenclature for ASIO (Australia's domestic intelligence agency) and police forces to discuss the potential threat from specific groups within their respective policing remits. Mr Keelty (personal communication, June 17, 2014) elaborates on the term's emergence and purpose:

> … ASIO used the term issue motivated groups as it evolved over time that demonstrations and protesters often crossed from one issue to another and it became important to understand why people were demonstrating and then find out their capacity to disrupt …

In respect of its emergence in Australia, the term IMG first appeared in ASIO's annual report to the federal parliament in 2000 and in the Australian Federal Police's (AFP) annual report to the federal parliament in 2002 (Commonwealth of Australia, 2000, p. 15; 2002a, p. 53).[22] In the 2000 ASIO annual report, while the term IMG is not defined, what is evident is at the time IMGs were viewed by ASIO as 'providing some unity of purpose for previously

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[22] ASIO produces two versions of its annual reports: a classified version with limited circulation; and an abridged version for tabling in Parliament (Commonwealth of Australia, 2002b, p. ix). The AFP produces one unclassified annual report for tabling in Parliament (Australian Federal Police, n.d.).

disparate interests' (Commonwealth of Australia, 2000, p. 15). In the 2000 ASIO annual report to the federal parliament, the term IMG was used in the context of ASIO's considerations of the threat to domestic security from politically motivated violence in the lead up to the Olympic Games held in in Sydney in 2000 and the World Economic Forum held in Melbourne in 2000 (Commonwealth of Australia, 2000, p. 15). At the time, ASIO's consideration of threat to these two key world events was in the broader context of local (domestic) politically motivated violence which at the time also included millennium cults (Commonwealth of Australia, 2000, p. 15). This usage reinforced the meaning of the term was underscored by the concept of threat to domestic security. Whereas for ASIO in 2000 the term IMG was used in the context of the threat posed from politically motivated violence, for the AFP in 2002 the term IMG was used to describe legitimate stakeholder groups consulted as part of the development of a plan to protect the environment in Tasmania from crime (Commonwealth of Australia, 2002a, p. 53). In this instance for the AFP, the application of the term IMG had no connotation of either threat to domestic security or violence. Rather, IMG was used as a term to broadly describe advocacy groups who legitimately had a seat at the policy negotiating table. With this sharp discord, from its earliest days tensions in the scope and application of the term are evident.

A review of ASIO and AFP annual reports to the federal parliament since 2000 and 2002 respectively, identifies the term IMG (with no corresponding definition) has appeared only periodically and when used, has been used in a number of different contexts. For ASIO the use of the term IMG has remained inherently linked to different threat contexts: infrastructure protection including protection of the national information infrastructure; the protection of ASIO's capabilities and information; security of major events; the remit of ASIO's Business Liaison Unit; and politically motivated violence (Commonwealth of Australia, 2001, p. 16; 2002b, p. 20; 2006, p. 49; 2008, p. 7; 2009, p. 12; 2010a, p. 37; 2013a, p. 22). After its initial usage by the AFP in its annual reports to the federal parliament in the 2002, the term IMG is used only twice; in 2004 in the context of protest directed towards a visit by then US President Bush (Commonwealth of Australia, 2004, p. 58) and in 2014 in reference to cyber threats (Commonwealth of Australia and Australian Federal Police, 2014, p. 63). Although used sparingly in these official documents, this closer orientation towards the threat to domestic security from criminality and protest is more reflective of the original intent of the term.

When appearing before a Senate Estimates Hearing in 2011, Mr David Irvine the then Director-General of Security (head of ASIO) described the term IMG, while expressly noting the complexities in providing a "firm definition" to this key parliamentary committee (Commonwealth of Australia, 2011b, p. 148). In explaining the meaning of IMG, Mr Irvine noted a spectrum of IMGs exist where some express dissent legally and non-violently and others violently, and in ways prejudicial to security (Commonwealth of Australia, 2011b, p. 148). Mr Irvine's evidence to the parliamentary committee included his explanation of the term IMG:

> Issue motivated groups is a term we use within ASIO to describe those groups who conduct activities that might lead to violence or to activities that are prejudicial to security. We look at a number of groups – and I am not going to say which ones – and in most cases we can be confident that they are going to express their advocacy, their protest, their dissent or express their views in ways that are lawful but in particular in ways that are not violent and not prejudicial to security. It is very hard then to give you a firm definition that covers all of the groups, including those who may not be involved in violent activity or protest (Commonwealth of Australia, 2011b, p. 148).

In Australia, the term IMG is not defined at law. Nor, as is evident from Mr Irvine's testimony to the parliamentary committee, is it formally operationally defined in an agency so central to its emergence. Beyond ASIO and the AFP, the meaning of the term IMG has evolved to the extent that in contemporary Australian policy discourse it is used as somewhat of an "umbrella term" to describe a wide range of advocacy, pressure, dissent and protest groups including but far from limited to those with environmental motivations (see for example Australian Government, n.d.; Bronitt, 2011; CERT Australia, n.d.; Commonwealth of Australia, 2011a, p. 7; Whitford, 2013). As Mr Irvine's testimony to the parliamentary committee illustrates, in defining the term IMG, how and where to "draw the line" between lawful advocacy, protest and dissent and protest that could be violent and prejudicial to security is inherently challenging (Commonwealth of Australia, 2011b, pp. 147-149). Bronitt (2011, p. 13) points out this is a sensitive policy space for politicians, officials and senior police who are eager in practice to distinguish protest from terrorism. In this respect, while US policy and policing discourse sharply contrasts with Australia, the underlying issue of precisely where to "draw the line" in describing different forms of criminality is similarly evidenced.

Mr Irvine's evidence to the parliamentary committee also shows that while the term IMG has a more expansive meaning in practice, ASIO's interest in IMGs is underscored by a dual focus on activity that might lead to violence or could be prejudicial to security. This should be viewed in light of the contemporary legislative remit of ASIO set out in its enabling legislation, the *Australian Security Intelligence Organisation Act 1979* (Cth) (the ASIO Act 1979). The ASIO Act 1979 restricts ASIO's remit to matters relevant to security (which includes considerations of politically motivated violence) (at s17(1)(a)) and excludes matters relating to lawful advocacy, protest and dissent (at s17A). However, this should also be viewed in light of the fact that since 1986 ASIO's remit has also included the more expansive mandate of providing advice on protective security (s17(1)(d)). In its broad meaning, a focus on protective security is a focus on 'physical, information and personnel security measures' (Centre for the Protection of National Infrastructure, n.d., p. 13). In the Australian security policy context, protective security is defined as 'a combination of procedural, physical, personnel, and information security measures designed to protect information, functions, resources, employees and clients with protection from security threats' (Commonwealth of Australia, 2011c, p. 15). ASIO's remit in providing advice on protective security (facilitated by s17(1)(d) of the ASIO Act 1979) is unshackled from its otherwise more narrow remit (provided at s17(1)(a) of the ASIO Act) that its functions be relevant to security, which is expressly defined (ASIO, 2013, p. 1). In practice, consistent with its remit provided at s17(1)(d) of the ASIO Act, ASIO provides protective security advice that includes advice about IMGs to businesses including but not limited to owners and operators of key parts of the civil infrastructure (ASIO, 2013; Australian Security Intelligence Organisation, 2014, p. xv; Commonwealth of Australia, 2013a, p. 22; 2014). This can include broad based protective security risk reviews that are unrelated to either domestic security or violence (ASIO, 2013).

Mr Irvine's evidence to the parliamentary committee, when considered against the backdrop of ASIO's legislative remit, suggests distinguishing between different types of IMGs is essential in practice yet finding the right pivot spot is elusive. On the one hand, Mr Irvine's testimony identifies ASIO's interest rests only with IMGs whose actions may be violent or may be prejudicial to security. However, business units within ASIO that provide advice about IMGs are not curtailed by a legislative remit focused on matters relevant to security (ASIO, 2013, p. 1). As used by ASIO, the term IMG has been applied broadly

(Commonwealth of Australia, 2011b, pp. 147-149). While this is consistent with how the meaning of the term evolved, concerns about the discourse disconnect have spilled into the political arena (Commonwealth of Australia, 2011b, pp. 147-149). In 2011 Greens Party Senator Lee Rhiannon pointed out that the lack of clarity in how ASIO described IMGs left questions about the limits (or otherwise) on ASIO's surveillance of protest groups (Commonwealth of Australia, 2011b, pp. 147-149). These contemporary discourse tensions have the effect of blurring the distinction between lawful advocacy, protest and dissent and protest that is violent or prejudicial to security in a single term. A finding of this study is that the original intent of ASIO and policing bodies that the term IMG provide a common nomenclature to discuss the potential threat from specific groups not confined to single issues has been frustrated.

5.2.3 Domestic Extremism: Genealogy and Contemporary Meanings

In the Australian policy and policing discourse the term IMG, although poorly delineated, is common parlance. In contrast in the UK the term Domestic Extremism has been operationally defined and formally adopted in policy and policing discourse (HMIC, 2012, pp. 11-13). Gibson (2011, p. 142) contends the term Domestic Extremism began to be applied to animal rights and environmental protesters after Climate Camp action in the UK. In context, the first camp for Climate Action was held in the UK in 2006 (van der Zee, 2011). However, this study identifies a revised and more precise genealogy of the term Domestic Extremism that pre-dates the first Climate Camp and an expansive meaning well beyond animal rights and environmental protest. Each discussed in turn, the term Domestic Extremism and its contemporary meaning needs to be understood in light of (1) the underlying terrorist threat and concurrent extreme violence and criminality by animal rights activists that existed at the time of its emergence, (2) its later expansion in scope, and (3) the contemporary unresolved tensions over its reach and application.

Term Emergence and Scope Expansion

This study finds the term Domestic Extremism was coined in 2002. Its emergence and initial meaning has been explained by former Chief Constable of the Thames Valley Police, Mr Peter Neyroud CBE QPM (personal communication, June 23, 2014) who in 2002 was one of the Chief Officers responsible for establishing the team created specifically to

counter extremism. Mr Neyroud (personal communication, June 23, 2014) recalls that when coined, the term Domestic Extremism was controversial and was intended to specifically and clearly differentiate between terrorism (international and domestic) and the extreme violent actions of the animal rights movement considered at the time to be very serious, almost akin to the harms caused by terrorism. He elaborates:

> The original tag was designed to differentiate between international and domestic terrorism (especially Irish terrorism) and the "extreme" activities of the animal rights movement. At that stage, in 2002, there was a wave of very violent attacks on businesses connected with animal testing and several types of farming.
>
> However, the expanded definition was controversial and we were careful to draw a distinction between "terrorism" and "extremism", even though at times the actual harms were identical (P. Neyroud, personal communication, June 23, 2014).

While the term Domestic Extremism was coined in the UK to describe and differentiate between terrorism (international and domestic) and extreme, violent domestic protest by animal rights activists, over time it too became a much more expansive concept (see for example HMIC, 2012, p. 11; Police National Legal Database & Staniforth, 2009, pp. 131-135; 2010, pp. 148-152; Police National Legal Database & Staniforth, 2013, pp. 83-88). Mr Neyroud (personal communication, June 23, 2014) has explained of the term Domestic Extremism, that once it had been adopted into policy and policing discourse, 'the tag stuck and (it) has subsequently been used to embrace a much wider group of potential harms'. ACPO in its former role in providing a strategic lead for policing and a collective voice for the different forces, from at least 2006 until October 2013 expansively defined Domestic Extremism in the following way:

> Domestic extremism and extremists are the terms used for activity, individuals or campaign groups that carry out criminal acts of direct action in furtherance of what is typically a single issue campaign. They usually seek to prevent something from happening or to change legislation or domestic policy, but attempt to do so outside of the normal democratic process (HMIC, 2012, p. 11).

It was this expansive definition that was in play when ACPO had operational control of covert policing units during 2006 and January 2011. In its review of covert policing in the UK (launched in response to the collapse of the trial of the Deniers in the Ratcliffe-on-Soar protest), HMIC (2012, pp. 29-30) noted that Domestic Extremism is not defined at law and

was highly critical of ACPO's operational definition for its overreach and its potential impact on policing practice. HMIC (2012, p. 11) specifically noted the breadth with which the ACPO definition was drawn afforded 'limited guidance to authorising officers applying the RIPA[23] (whatever its merits for other purposes)'. Further, HMIC (2013, p. 12) cautioned the broad nature of the ACPO definition could 'lead to protestors and protest groups with no criminal intent being considered domestic extremists by police'. This undermined the intent of defining Domestic Extremism to provide guidance to operational policing (HMIC, 2013, p. 12). In strongly pressing the case for change, HMIC (2012, p. 11) indicated the very notion of Domestic Extremism should be reserved only for 'threats of harm from serious crime and serious disruption to the life of the community arising from criminal activity'. HMIC (2012, p. 29) called for policing bodies to 'reserve this potentially emotive term for serious criminality'. As discussed above, this is entirely consistent with the intent of the architects of the term.

As part of its review of covert policing, in 2012 HMIC called for (among other things) a "tightening" of the definition of Domestic Extremism to better reflect a focus on national security, and in 2013 was highly critical of the lack of progress in this regard (HMIC, 2012, p. 40; 2013, p. 12). In context, this occurred in an environment of escalating political and public ire that is still yet to plateau[24] about the still emerging revelations relating to covert policing in the UK dating back decades (Creedon, 2013, 2014a, 2014b; Ellison & Morgan, 2015; Evans, 2015c; Evans & Mason, 2014; HMIC, 2012; Home Affairs Committee, 2013; May, 2015; Taylor, 2015). The lack of progress in "tightening" the operational definition of Domestic Extremism was attributed to difficulties with the Home Office and ACPO reaching consensus (HMIC, 2013, p. 12).

Contemporary Policy Tensions

In October 2013 and in direct response to criticism in 2012 and 2013 from HMIC, a revised operational definition of Domestic Extremism was very quietly settled in the UK (Hogan-Howe, 2014; Jones, 2014). That a revised definition had been settled in October

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[23] As noted previously, the *Regulation of Investigatory Powers Act 2000* provides the legislative framework for covert surveillance and investigation in the UK and was used to authorise Kennedy's deployments.
[24] At the time of writing the inquiry being undertaken by Lord Justice Pitchford and established under the *Inquiries Act 2005* into covert policing by the SDS and the NPOIU, is yet to either invite submissions or call witnesses.

2013 was only revealed in a letter dated 11 March 2014 signed by the Commissioner of the MPS, Sir Bernard Hogan-Howe that was sent to Baroness Jones (Green Party MP Jenny Jones) (Hogan-Howe, 2014). It followed questions she put to him at the London Assembly[25] earlier that month (Hogan-Howe, 2014). The revised definition of Domestic Extremism provided to Baroness Jones in March 2014 by Sir Bernard, was settled in terms of (1) planning to commit, or (2) committing serious criminality driven by ideological or political motivation. The revised definition was settled in the following way:

> Domestic Extremism relates to the activity of groups or individuals who commit or plan serious criminal activity motivated by a political or ideological viewpoint (Hogan-Howe, 2014).

The intent of this revised and narrowed definition of Domestic Extremism needs to be viewed in light of later interpretations of it outlined by senior police in official correspondence to Baroness Jones in respect of the type of criminality envisaged (Greany, 2014; Hogan-Howe, 2014; Jones, 2014). On 11 March 2014 Sir Bernard clarified that the revised definition of Domestic Extremism would not '*usually apply*[26] to low levels of civil disobedience such as civil trespass or minor obstruction' (Hogan-Howe, 2014). Prima facie this leaves the door open for the revised definition of Domestic Extremism to incorporate the very types of minor criminality it was specifically redrawn to excise. Later in March 2014 and in responding on behalf of Sir Bernard to a request for further clarification from Baroness Jones, Detective Chief Superintendent (DCS) Christopher Greany of the National Domestic Extremism and Disorder Intelligence Unit (NDEDIU) (NPOIU housed within the MPS), offered further clarification about the revised definition of Domestic Extremism. This was specifically in the context of the offence of aggravated trespass under s68 of the CJPOA (the offence relied on to make the pre-emptive arrests in the Ratcliffe-on-Soar case). The clarification provided to Baroness Jones was that the offence of aggravated trespass 'would not meet the threshold for the definition unless there was serious criminality' (Greany, 2014). While serious criminality is now at the core of the definition of Domestic Extremism, the clarifications provided to Baroness Jones about the definition suggests there are variations on how it can be interpreted in practice.

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[25] The London Assembly is a forum designed to hold the Mayor of London to account (London.gov.UK, n.d.).
[26] Emphasis added.

In his correspondence to Baroness Jones dated 8 August 2014, DCS Greany also explained that the revised definition of Domestic Extremism had been withheld from circulation pending certain administrative actions (Greany, 2014, p. 1). These included 'amending internal processes, updating the national police network and working with ACPO particularly around updating the definition on the ACPO website' (Greany, 2014, p. 1). The stated intent of not circulating the revised definition of Domestic Extremism was to 'avoid confusion' (Greany, 2014, p. 1). It was nevertheless by this stage the working definition being used by the NDEDIU (Greany, 2014, p. 1). By the time ACPO was dissolved in March 2015, its website did not house the revised definition of Domestic Extremism and at the time of writing, nor does the website of ACPO's replacement the NPCC. This is despite (as was pointed out in Chapter 4) that the NPCC now has oversight of the unit that replaced the NPOIU. In this sense, the settling of a revised operational definition of Domestic Extremism was somewhat hidden, revealed only in correspondence made public through political activism and freedom of information requests made by activists.

While the two ACPO definitions of Domestic Extremism have been in play, since at least 2009 a further powerful narrative has also been in play in the UK; one that overtly draws the "extreme fringe" of social movements specifically within the rubric of terrorism. The *Blackstone's Counter-Terrorism Handbook* is now in its third edition (Police National Legal Database & Staniforth, 2009, 2010, 2013). Its overarching purpose is to provide operational guidance to counter-terrorism practitioners in the UK and in this respect (1) is a considered a "ready reckoner", and (2) has been 'designed specifically for all police officers and their counter terrorism training needs' (Oxford University Press, 2013). In all three editions, the *Blackstone's Counter-Terrorism Handbook* has included advice and guidance on the policing of domestic extremism (Police National Legal Database & Staniforth, 2009, Ch 3; 2010, Ch 3; 2013, Ch 3).

In this alternate policy and policing narrative, since at least 2009, Domestic Extremism has referred to a number of "-isms" and social movements including anarchism, fascism, environmentalism, anti-globalisation, anti-capitalism and anti-war (Police National Legal Database & Staniforth, 2009, Ch 3; 2010, Ch 3; 2013, Ch 3). In this framing, an extreme environmentalist is someone 'who would advocate unlawful activity to sustain the management of resources and stewardship of the natural environment through changes in

policy or individuals or group direct action' (Police National Legal Database & Staniforth, 2013, p. 85). This concept of an extremist is expansive, capturing even those who may not engage in unlawful activity but may merely advocate it. Although in a different jurisdiction, the definition of an extreme environmentalist in this narrative would arguably capture Australian politician Lee Rhiannon who on 8 January 2013 in the follow terms, took to twitter to congratulate WHC hoaxer Jonathan Moylan - 'CONGRATS to Jonathan Moylan, Frontline Action on Coal, for exposing ANZ investment in coalmines. http://bit.ly/UEgZrX @MaulesCreek' (The Australian, 2013). While this narrative is counter-balanced by a moderating narrative that threat from Domestic Extremism may not reach the threshold test of terrorism, it is nonetheless situated in operational guidance for police on countering terrorism (Police National Legal Database & Staniforth, 2013, p. 83). In this discourse, the very serious criminality the architects of the term Domestic Extremism considered so important, which has re-emerged to an extent in the 2013 ACPO definition, has been overshadowed. Despite the recent quiet recalibration of the definition of the term Domestic Extremism, advocacy of criminality and potentially very low level criminality is currently drawn along with serious criminality, into the frame of counter-terrorism policing (Police National Legal Database & Staniforth, 2013, pp. 83-87). In this sense, unresolved tensions over where precisely to "draw the line" between social movements, their "radical fringe" and terrorism remain evident.

5.2.4 Summary

This part of the Chapter has traversed a diverse terrain tracing the genesis and meanings over time of the terms eco-terrorism, IMGs and Domestic Extremism. As this analysis has shown, the terms IMG and Domestic Extremism share marked similarities but also sharp differences. Both terms were coined by policing bodies for specific yet different purposes and when coined, their meanings had links to different concepts of threat to domestic security. By the time both terms were coined, while the term eco-terrorism had already emerged in the US, it had yet to take the policy hold it later gained and has sustained. While the term eco-terrorism gained traction in the US in the wake of 9/11 to become an entrenched part of political, policy and policing discourse it has not been adopted in Australia or the UK. Rather, a broad range of protest is couched in terms of the

seemingly more benign term IMG in Australia and the more controversial term Domestic Extremism in the UK.

From their genesis grounded in threat to domestic security from radical protest, the meanings of both terms also quickly expanded to become "umbrella terms" and their original conceptions have been casualties. This should be viewed in the context that the terms are both undefined at law and have been inherently difficult to define operationally. In practice in both Australia and the UK, both apply to protest well beyond radical environmental protest, and tensions are evident over the breadth with which the terms can or should be defined. The tensions arise from unresolved discord between (1) potential or actual legislative or policy overreach, and (2) providing genuine guidance for policing protest. In the case of the latter, this is underpinned by the fact that protest activity falls on a continuum between lawful advocacy and dissent and serious criminality that can be viewed as threatening the security of nation states. What should not be overlooked is that in the policy and policing context in which the terms IMG and Domestic Extremism emerged and their meanings evolved, there are also strong counter-narratives of radical environmental protest as civil disobedience, ecotage, and non-violent direct action. In the social movement and environmental literature and in practice, these narratives remain strong and relevant (della Porta & Diani, 2006; Doherty, Plows, & Wall, 2007; Potter, 2011; Rootes, 2004; Wapner, 2009). Here, the underlying question of what constitutes violent protest remains relevant and contested.

Using the Bunbury bombing as a case study, the next part of the Chapter examines competing narratives (terrorism, sabotage and crime) and the political, policy and policing contexts in which they were applied. What emerges in this analysis is that responses in policy and practice to radical environmental protest occur in a broad context, the significance and reach of which is not always immediately evident. Understanding the interplay between the terms, their varied applications and contemporary policy frameworks provides a useful lens through which to view and understand responses in policy and practice to radical environmental protest. This theme is further developed in Chapter 6 when critical infrastructure policy contexts are considered.

5.3   Case Study - The Bunbury Bombing

In the immediate aftermath of the Bunbury bombing, the then Premier of WA Sir Charles Court was quick to characterise the bombing as 'a gross act of terrorism' (as cited in The West Australian, 1976b). In a sharp distinction, the media consistently characterised the Bunbury bombing as an act of sabotage and Mr Haabjoern and Mr Chester themselves as either "bombers" or "saboteurs" (Guhl, 1976; The Canberra Times, 1976; The West Australian, 1976a, 1976b, 1976c). The immediate public characterisation of Bunbury bombing as "terrorism" by Sir Charles and Mr Haabjoern and Mr Chester as "terrorists" by Rinaldi (1977) in the legal reporting that followed their convictions, was done in the absence of specific anti-terrorism laws in Australia and therefore, without a specific Australian legal definition of terrorism or terrorists. In Australia it was not until 1983 in the case of the Northern Territory, and until the wave of legislation sparked by the events of 9/11, that specific terrorism offences were enacted (Williams, 2011, p. 1140). Before this, an act of politically motivated violence was dealt with using the ordinary criminal law (Williams, 2011, p. 1140).

For the WA police, and consistent with the prevailing view of policing bodies in Australia at the time, the Bunbury bombing was considered a "just a crime", albeit a very serious one. A spokesperson for the WA police (spokesperson 1, personal communication, October 12, 2013), identifies that for police, the Bunbury bombing was 'considered a "one-off" and consequently … had no real impact on security considerations at the time'. The emergence of WA's enhanced emergency and counter-terrorism capability that occurred soon after the Bunbury bombing was entirely unrelated to it. As a spokesperson for the WA Police (spokesperson 1, personal communication, October 12, 2013), has explained that the 'Criminal Investigation Branch (CIB) Emergency Squad was established in 1976 (but) in response to a Royal visit scheduled for 1977'. While this Emergency Squad 'over time has morphed into the Tactical Response Group' (WA's counter-terrorism capability), its establishment 'had no connection to the Bunbury woodchip bombing' (spokesperson 1, personal communication, October 12, 2013). The formation of the CIB Emergency Squad occurred concurrently with, but independently of, the Bunbury bombing.

While the WA Premier labelled the bombing as an act of terrorism, the lack of direct impact on security considerations in WA at a state level was mirrored at a federal level in the way the newly formed federal Protective Security Coordination Centre (PSCC) with its core policy focus on terrorism and security, gave consideration to the bombing. The PSCC was formed in July 1976 in the context of a 'changing security situation' (Commonwealth of Australia, 1979b, p. 317). In reflecting on the Bunbury bombing, Mr John Lines (personal communication, October 12, 2013) who was a member of the Counter-Terrorism Branch in the PSCC between 1978 and 1992, explains the Bunbury bombing at best had little strategic or operational impact on the way terrorism was perceived within the PSCC or on its policy focus and direction. This is because in 1976, the PSCC was still in 'a recruiting and creation stage which required that something operational was up and running by Christmas 1977 ready for the Commonwealth Heads of Government Regional Meeting the following February' and that there is 'doubt any of the very few officers involved could have afforded the apparent luxury of reviewing the Bunbury incident' (J. Lines, personal communication, October 12, 2013). As Mr Lines explains (personal communication, October 12, 2013) 'it would still be several years before State Police accepted that terrorism was anything more than acts of violence committed by criminals'. This was because in Australia 'the political dimension (of crime) was not generally accepted in 1976' (J. Lines, personal communication, October 12, 2013). The view of the Commonwealth Government that terrorism both warranted and required a far broader policy approach beyond that of the police focus on "catching and locking up criminals" was not realised until the early 1980s (J. Lines, personal communication, August 9, 2013).

Two later official reports and an official paper relating to terrorism and security in Australia that list acts of terrorism and/or politically motivated violence are instructive as to how the Bunbury bombing was considered in retrospect. The Bunbury bombing was not identified in Justice Hope's 1979 *Protective Security Review* (Commonwealth of Australia, 1979a, p. 475) undertaken in the aftermath of the Hilton Hotel bombing in 1978, that lists terrorist incidents during the period 1970 to 1985 (reproduced in Hocking, 1993, pp. 202-204). Nor was the Bunbury bombing identified as an act of terrorism or politically motivated violence in Australia in the much later review of national security-related committee arrangements that lists such incidents during the period 1970 to 1993 (SAC-PAV Review Team, 1993, Annexe 6). Similarly, the Bunbury bombing is not listed in the research paper

prepared by the Parliamentary Library on terrorism in Australia that contains a list of terrorist events in the period 1970 to 1992 (Commonwealth of Australia, 1995, Annex B).

Terrorism is a powerful and often pejorative label that continues to elude both academic consensus and international legal definitions (Saul, 2012; Schmid, 2011a; Sheehan, 2012). In its broader political context, the Bunbury bombing occurred against the backdrop of an imminent state election in WA (Australian Electoral Commission, 2014) and when Sir Charles' pro-development reputation forged when Minister for Industrial Development in the earlier Brand government was already well established (Jamieson, 2011; The Liberal Party of Australia - West Australia Division, 2013). It also occurred at a time when the WA forest protest movement established in the 1890s was transitioning from an earlier focus on "polite activism" to direct action (Chapman, 2008, p. 5, Ch 4). Whether Sir Charles believed he was being technically correct in characterising the Bunbury bombing as a gross act of terrorism or believed he was being politically astute in pushing a pro-development agenda ahead of a looming election is perhaps beside the point. Sir Charles levelled the label "terrorism" at an act of violent protest decades before governments in Australia reached consensus about how a terrorist act should be defined at law (Williams, 2011). As noted earlier, in Australia a terrorist act is now defined at law in s100.1 of the *Criminal Code Act 1995* (Cth). While not without its critics for its actual and potential overreach (Bottomley & Bronitt, 2012; Gani, 2008), this definition now provides a useful starting point with which to assess political, policy and policing narratives that was not available at the time of the Bunbury bombing. As to whether the Bunbury bombing would now meet the criteria of an act of terrorism provided for in s100.1 of the *Criminal Code Act 1995* (Cth) is also perhaps beside the point. The Bunbury bombers were prosecuted using the ordinary criminal law.

The analysis of the Bunbury bombing has shown that the powerful political narrative of "terrorism" impacted neither policing practice nor security policy. In policing and policy circles, the Bunbury bombing was "just a crime", albeit for the WA Police a very serious one. This case shows that in practice responses to radical environmental protest occur in political, policy and policing contexts that may not readily be discernible. In this case, the strong political narrative of terrorism was levelled by a pro-development political leader

heading into an election campaign. It also occurred some years before Australian State and Territory police viewed terrorism as something more than "just a crime" that warranted specific policy and policing attention. In policy circles, the Bunbury bombing was not classified as an act of terrorism, or in any event soon faded from corporate memory. Official records accessed in this study reveal it has not been categorised as a terrorist act. However, what should be borne in mind and is set out in the next Chapter is that the Bunbury bombing also occurred some years before a security policy focus on protecting key parts of the civil infrastructure from a range of hazards had emerged.

5.4   Chapter Conclusion

The literature review shows that although expansive in its scope, the term eco-terrorism has, since its emergence in US policy, been limited in its application to animal rights and environmental protest. In contrast, this study finds that when the terms IMG and Domestic Extremism were coined by policing bodies in Australia and the UK respectively, they were both limited in their intended scope to protesters who posed a threat to domestic security. In the context of potential threat to domestic security, the term IMG was coined in 2000 in recognition that demonstrations and protest were frequently not confined to single issues. In contrast, when coined in 2002 the reach and scope of the term Domestic Extremism, was specifically intended to be limited to the violence and serious criminality associated with animal rights protest. Despite these distinctly different aetiologies, over time both terms have been liberally applied in practice with the attendant effect of extending their application to a wider range of protest motivated by a broad range of ideologies.

In both Australian and the UK contemporary policy and policing discourse, competing narratives are evident. In Australia the term IMG is undefined and difficult to describe. The recent "forced" policy conversation in the UK stemming from scrutiny of covert policing is instructive. This is because it highlights the very real difficulties of using a single term to describe a broad spectrum of protest. The expansive ACPO definition of Domestic Extremism in play from at least 2006 until October 2013 has been recently redrawn to conform more closely to its original intent. This represents a shift from the situation described by HMIC where protesters (irrespective of their specific ideology or

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motivation) with no criminal intent being potentially considered Domestic Extremists to one where violence and serious criminality are core considerations. This recalibration of the term Domestic Extremism should however also be viewed in light of (1) the difficulties in describing the intended limits of violence and serious criminality, and (2) that in one of the leading operational police guidance manuals (*Blackstone's Counter-Terrorism Handbook*), it is clear that a broad range of "-isms" including environmentalism fall within the rubric of counter-terrorism policing.

The purpose of this Chapter has been to answer RQ 1(a). The literature review has highlighted on the one hand in respect of radical environmental protest, labels and their definitions matter (see for example Buell, 2009; Carson et al., 2012; Eagan, 1996; Lovitz, 2007) and, on the other hand, labels and their definitions can be considered a 'terminological issue' that can be set aside (Turner, 2006, p. 226). This analysis has shown that understanding the labels applied to radical environmental protest and their evolving meanings across time and in different jurisdictions, provides a valuable aide in understanding responses in policy and practice. However, labels should not be considered merely in their normative sense. Rather, as this analysis has shown, the labels come with a complex history and can be applied in different political, policy and policing contexts that can be highly nuanced. The case of the Bunbury bombing is illustrative. In this case, the label terrorism was levelled at a time when a pro-development Premier was soon to face the electorate, an act of terrorism was not defined at law and when a specialised policy and policing focus on terrorism while budding, were yet to fully emerge.

6. RADICAL ENVIRONMENTAL PROTEST – CRITICAL INFRASTRCTURE POLICY FRAMEWORKS

6.1   Introduction and Chapter Outline

The literature review and case studies identify a diverse repertoire of protest activity over time that has targeted key parts of the civil infrastructure and the businesses that own and operate them. In all five cases, an underlying driver of the protest was to draw political or public attention to environmental concerns and effect either short term or long term policy change. Each protest targeted lawful business operations and reflective of the different tactics employed, exhibited a diverse range of criminality. When radical environmental protest is focused on disrupting lawful business operations questions over what are (or should be) limits on the democratic right to protest, how public order is maintained, how protest should (or should not be) policed, the limits of "political will" and the adequacy of related legal and policy frameworks are brought to the fore (Button & John, 2002; Marks & Tait, 2015; Messinger, 2015; Standing Committee of Attorneys-General, 2009, p. 8; Waddington, 2015). As the literature review, cases and analysis so far show, this is highly contested territory and contrasting perspectives on these questions spill into scholarly, colloquial, activist, political, policy and policing discourse. Also identified so far is that these contrasting perspectives extend to the different ways the actual or potential risk or threat posed to national security, community safety and business operations from radical environmental protest is portrayed. At one end of the spectrum, radical environmental protest is portrayed as a serious or potentially serious threat to national security and community safety, while at the other end of the spectrum, the threat from radical environmental protest is grossly exaggerated by actors with vested interests (Carson et al., 2012; Foreman & Haywood, 1987; Nocella, 2011; Police National Legal Database & Staniforth, 2013, Ch 3). Taking up the question of the threat posed by radical environmental protest to key parts of the civil infrastructure, this Chapter now shifts the analysis to consider critical infrastructure policy frameworks (a sub set of national security policy). The purpose of the Chapter is to answer RQ 1(b); how can radical environmental protest be understood in the context of contemporary critical infrastructure policy frameworks in Australia and the UK and what explains this?

This Chapter is set out in four parts. After this introduction, the second part of this Chapter (6.2) is contextual and briefly sets out the contemporary meaning of critical infrastructure and how it can be broadly understood. The next part of this Chapter (6.3) identifies and assesses radical environmental protest in the context of contemporary critical infrastructure policy frameworks. As the two historical Australian case studies pre-date more contemporary frameworks, this part of the Chapter (6.3.1) begins by canvassing Australia's critical infrastructure policy landscape in the 1970s – 1990s. Drawn on later in the Chapter, this analysis sets out the emergence of Australia's first formal policy program centred on protecting key parts of the civil infrastructure in peacetime, and the impact in practice of how different conceptions of risk and threat underpinned that program. Next at 6.3.2, the similarities and differences in how critical infrastructure has been defined in contemporary policy frameworks in Australia and the UK are identified and discussed. This part of the Chapter sets out a preliminary finding that while the terms and their respective definitions appear different, the strong similarities establish a foundation for meaningful comparison. In extending the policy comparison, 6.3.3 considers how the common policy goal of "critical infrastructure resilience" is expressed and understood, and the different ways risk and threat to critical infrastructure have been articulated. While there are marked similarities, the key difference is that in Australia, risk and threat to critical infrastructure from radical environmental protest clearly falls within contemporary policy frameworks, while in the UK this is not the case. The analysis will show that the different policy antecedents explain this sharp policy difference.

Using the Wagerup occupation as a case study, the fourth part of this Chapter (6.4) describes and discusses the different policy and policing responses evident. Examining the interplay between political intent, policy and practice illustrates the complex legislative legacy of the Wagerup occupations and its contemporary relevance. The analysis strengthens the theme that emerged in the previous Chapter; that responses to radical environmental protest can occur in complex political, policy and policing contexts that are not always readily discernible, yet once revealed, significantly aid understanding. In this context, this reveals a stark juxtaposition between political intent, policy and practice.

6.2   Context

While the term critical infrastructure is relatively new in the modern national security policy context emerging in the US in the 1980s, the concept of critical infrastructure has a much longer pedigree (Brown, 2006; O'Donnell, 2013). In my analysis of the emergence of the term critical infrastructure in Australian policy, I point out that since its emergence in the US as a term, critical infrastructure is now 'firmly part of the modern scholarly, political and policy lexicon' (O'Donnell, 2013, p. 13). While precise definitions vary internationally, critical infrastructure broadly refers to essential services and their networks and supply chains that support national security, economic prosperity and social and community well-being (O'Donnell, 2013, p. 12). However, the description and definitions that are reflected in national security and critical infrastructure policy internationally, belie the complexity of networked and interdependent sectors and systems that collectively comprise the critical infrastructure of nation states (O'Donnell, 2013, p. 19). With relative consistency internationally, critical infrastructure is drawn from broad business sectors such as: energy; banking and finance; communications; food chain; health; transport; water services; and the energy supplies and information and communication technology (ICT) on which they depend (Cabinet Office, 2010; Commonwealth of Australia, 2010b; Department of Homeland Security, 2009; Her Majesty the Queen in Right of Canada, 2009; The Council of the European Union, 2008). In both Australia and the UK the majority of critical infrastructure is privately owned or operated on a commercial basis (Commonwealth of Australia, 2015b, p. 4; HM Government, 2011, p. 80).

The Australian and UK governments in 2013 and 2010 respectively, released national security strategies that were both described as "policy firsts" (Commonwealth of Australia, 2013c, p. ii; HM Government, 2010, pp. 6,9). In the case of Australia, *Strong and Secure - A Strategy for Australia's National Security* is identified as 'Australia's first National Security Strategy' and in the case of the UK, *A Strong Britain in an Age of Uncertainty: The National Security Strategy* is described as the first 'full' and 'proper' national security strategy (Commonwealth of Australia, 2013c, p. ii; HM Government, 2010, pp. 6,9). Of Australia's national security strategy O'Donnell and McLean (2015, p. 18) point out that its framing as a "policy first" is both 'curious' and a 'remarkable example of terminological pedanticism' that 'deftly swept aside a rich and complex national security policy history'. The same can be

said of the framing of the UK's 2010 national security strategy as a "policy first". In the case of the UK, the earlier 2008 national security strategy was also framed as "policy first", more specifically 'the first National Security Strategy' (Cabinet Office, 2008, p. 3). Yet in both Australia and the UK, contemporary national security policy frameworks have built up over decades in response to shifting and evolving risks and threats (Cabinet Office, 2008; Commonwealth of Australia, 2013c; HM Government, 2010). As this Chapter shows, in policy and practice this has included a focus on shifting and evolving risks and threats to critical infrastructure.

6.3   Critical Infrastructure Policy Frameworks

6.3.1 Australian Historical Context

Wright-Neville (2006, p. 1) contends Australia's approach to countering terrorism 'evolved in several waves, each following high-profile terrorist attacks overseas' identifying the attacks in the US on 9/11, the bombings in Bali in 2002 and 2005, the bombing of Madrid commuter trains in 2004, and the London underground bombings in 2005. While this is the case, what this overlooks is that Australia's approach to national security policy and countering terrorism is rooted in much earlier domestic and international terrorist events: domestic Croatian terrorism during the 1960s and 1970s; the Munich Olympics massacre in 1972; and the bombing outside the Hilton Hotel in Sydney in 1978 (Finnane, 2013, 2014; Hocking, 1993). These much earlier events triggered substantial national security policy reviews and structural and operational policy responses from the federal government (Finnane, 2013, 2014; Hocking, 1993; O' Donnell & Bronitt, 2014; O'Donnell, 2011).

Specifically relevant to the development of Australia's contemporary federal critical infrastructure policy, was the policy response to the Hilton Hotel bombing (O'Donnell, 2013). As part of the federal government's policy response to the bombing, then Prime Minister Malcolm Fraser appointed Justice Robert Marsden Hope to conduct a wide ranging protective security review (Commonwealth of Australia, 1979a). In my assessment of Australia's critical infrastructure policy frameworks, I highlight that in his report, Justice Hope advocated a program focused on protecting key parts of the civil infrastructure in peacetime (O'Donnell, 2013, p. 17). Identifying the UK's Vital Points Program designed to

protect key civil infrastructures in peacetime and noting Australia had nothing similar, Justice Hope recommended Australia implement a comprehensive Vital Points Program and set out a blueprint for its development and implementation (Commonwealth of Australia, 1979a, pp. 152-153). The policy response by the federal government to Justice Hope's recommendation was the formation not of a Vital Points Program, but a Vital Installations (VI) Program (O'Donnell, 2013; Sheldrick, 1986). Its intent and focus was 'protecting key parts of the civil infrastructure in peacetime' (Sheldrick, 1986, p. 512).

The VI Program was established in September 1980 and became operational in early 1981 (J. Lines, personal communication, May 21, 2013). Mr Lines has explained (personal communication, June 10, 2014), that the focus of the VI Program was on what is now termed critical infrastructure although the program itself did not survive long enough to warrant a nomenclature change. The term critical infrastructure only began to gain traction in policy documents and narratives in Australia in the late 1990s (O'Donnell, 2013). By then, the VI Program had effectively lapsed (O'Donnell, 2011, p. 28). The VI Program was nevertheless the precursor to contemporary critical infrastructure policy and arrangements. Mr Lines elaborates:

> From the outset, the Vital Installations Program had much in common with contemporaneous 'critical infrastructure' developments in the US. The Australian program did not survive long enough to require a change in bureaucratic nomenclature but arguably 'vital installations' and 'critical infrastructure' had closely similar frameworks and the former would eventually morph into the latter (J. Lines, personal communication, June 10, 2014).

Central to the VI Program was the concept of the relative criticality of infrastructure. This is evidenced through the categorisation of significant civil infrastructures into two tiers; Vital Installations and Vital National Installations. While Vital Installations were defined in terms of their significance to communities and public safety, Vital National Installations were defined in terms of the interests and responsibilities of government and/or their national economic importance. For the purposes of the VI Program, they were defined and distinguished in the following way:

> A Vital Installation (VI) is a facility, installation or resource, the loss of the products or services of which would severely disrupt the orderly life of the community, or which, if damaged, would cause a major public hazard.

> A Vital National Installation (VNI) is a vital installation in which the Commonwealth and one or more State/Territory Governments have substantial interests and responsibilities, and/or the installation is of major national economic importance (Sheldrick, 1986, p. 516).

The distinction between Vital Installations and Vital National Installations was significant. This is because the policy focus for Vital Installations was their protection from terrorism while the policy focus for Vital National Installations was their protection from a much broader range of potential risks and threats (O'Donnell, 2011, p.60). In 1985 and 1986 the then Deputy Secretary of the Department of the Special Minister for State, Mr Roger Holdich AM conducted a review of Australia's counter-terrorism capabilities and the administrative and financial arrangements that supported them.[27] In reflecting on the nature and scope of his review and on his report, Mr Holdich (personal communication, July 25, 2011) has explained that although his review was strongly focused on aviation security, he did give specific consideration to what is now called critical infrastructure, noting that in the 1980s the term had not as yet emerged. He elaborates:

> The review did include a focus on what is now called critical infrastructure (although the term wasn't being used at the time). The review also included a specific and greater focus on aviation security (R. Holdich, personal communication, July 25, 2011).

Mr Holdich (personal communication, July 25, 2011) also explained that the identification of a Vital Installation as a Vital National Installation (that brought with it the attendant policy focus of protection of the infrastructures from risks and threats beyond terrorism) was made with the agreement of the federal government and the relevant state or territory government where the asset was located. Mr Holdich (personal communication, July 25, 2011) recalls that by the late 1980s there were three Vital National Installations identified under the auspices of the VI Program. In a reflection of the significance of the energy sector to Australia at the time, all three Vital National Installations were energy installations and they were located at Bass Strait, the North West Shelf off the coast of WA and Moomba. Mr Holdich elaborates:

> Where a vital installation was identified as being of major national economic importance, with the agreement of the relevant state government, it would be identified as a vital national installation. At the time of the review, three

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[27] To date the Holdich report has not been made public.

installations (all energy related) had been identified as vital national installations.

They were located at Bass Strait, the North West Shelf and Moomba. The planning to protect vital national installations was what would now be termed the 'all-hazards' approach to contingency planning. It included development of contingency plans for natural and accidental hazards, damage mitigation, alternative supply of products, restoration of supply following loss or impairment of functions and counter-terrorist protective and reactive measures (R. Holdich, personal communication, July 25, 2011).

Further discussed later in this Chapter, understanding the early security arrangements for the energy installations located at the North West Shelf is instructive in the way concepts of risks and threats to the infrastructure beyond terrorism were considered at the time. While its genesis lies in the 1950s and 1960s and the granting of exploration permits to the resources company Woodside in 1963, construction of the North West Shelf Project began in 1980 as the Vital Installations Program was only just emerging (Allen, 1986, p. 203). By the time the VI Program was operative and the North West Shelf Project was identified as a Vital National Installation, security planning had already been a key part of the project (Allen, 1986). Linked to its projected scale as well as its economic and domestic significance, from the outset security planning included planning to prevent disruptions to the infrastructure from climatic factors (associated with its location) as well as disruption from illegal activities (Allen, 1986). In terms of its contemporary scope and scale, the North West Shelf Project is Australia's largest oil and gas resources development, represents an investment of more than $27 billion, and accounts for more than one third of all oil and gas production in Australia (Woodside, n.d.-a, n.d.-b). It is categorised as critical infrastructure (Briggs, 2010, pp. 1-2).

6.3.2   Critical Infrastructure Definitions: Comparative Perspectives

In contemporary national security policy frameworks the term critical infrastructure has been adopted in Australia while the terms national infrastructure and critical national infrastructure (a sub set of national infrastructure) have been adopted in the UK (Cabinet Office, 2010; Commonwealth of Australia, 2015a, 2015b; CPNI, n.d.-b). The terms and their respective definitions are set out in Table 1 below. Although expressed differently, the definitions both reflect consideration of physical assets, supply chains and enabling infrastructures and the ICT on which they all rely. A common focus is on describing the

types of civil infrastructures considered of critical importance to the security, functioning and social and economic wellbeing of the respective nation states.

Table 2: Critical Infrastructure Definitions

AUSTRALIA	UNITED KINGDOM
Critical Infrastructure 'Those physical facilities, supply chains, information technologies and communication networks which, if destroyed, degraded or rendered unavailable for an extended period, would significantly impact on the social or economic wellbeing of the nation or affect Australia's ability to conduct national defence and ensure national security. In this context, "significantly" means an event or incident that puts at risk public safety and confidence, threatens our economic security, harms Australia's international competitiveness, or impedes the continuity of government and its services.'	**National Infrastructure** 'The UK's national infrastructure is defined by the Government as: those facilities, systems, sites and networks necessary for the functioning of the country and the delivery of the essential services upon which daily life in the UK depends. There are certain "critical" elements of national infrastructure that if lost would lead to severe economic or social consequences or to loss of life in the UK. These critical elements make up the critical national infrastructure (CNI).'
	Critical National Infrastructure 'The Government defines CNI as: "Those infrastructure assets (physical or electronic) that are vital to the continued delivery and integrity of the essential services upon which the UK relies, the loss or compromise of which would lead to severe economic or social consequences or to loss of life".'
Source: Commonwealth of Australia, 2015b, p. 2	Source: Cabinet Office, 2010, p.8

Reviewing the definitions above, it appears that a key policy difference is that the UK has two tiers of significant civil infrastructure where two threshold tests are applied (to first identify national infrastructure and secondly to identify critical national infrastructure), and Australia has one tier of significant civil infrastructure where one threshold test is applied (to identify critical infrastructure). However, when the Australian definition of critical infrastructure is considered in its broader national security policy context, it too accommodates different categories of infrastructure based on assessments of "relative criticality" (National Counter Terrorism Committee, 2011, p. 4). As identified earlier, relative criticality (through two tiers of infrastructure) was a policy feature of the earlier VI Program that saw the planning to protect key energy assets take a focus beyond their protection from terrorism to include a focus on protection from, among other things, criminality. Contemporary security policy frameworks in both Australia and the UK incorporate the notion that some civil infrastructure assets and their supply chains are more critical than

others. In Australia this is reflected in national security policy where five categories of critical infrastructure are identified and described. In the UK, as noted above, this is reflected in critical infrastructure policy where relative criticality is reflected in the definition of critical infrastructure and where six categories of critical infrastructure are identified and described (Cabinet Office, 2010, p. 25; National Counter Terrorism Committee, 2011, pp. 3-4). Tables 2 and 3 below set out the criticality levels and their respective definitions.

Table 3: Australian Federal Criticality Levels and Associated Descriptions

CRITICALITY LEVELS	DESCRIPTION
Vital	Alternative services and/or facilities cannot be provided nationally or by States or Territories. Loss or compromise will result in abandonment or long term cessation of the asset.
Major	If services and/or facilities are severely disrupted, major restrictions will apply and the service/facility will require national assistance.
Significant	Services and/or facilities will be available but with some restrictions and/or less responsiveness and/or capacity compared to normal operation. The service may be provided within the State or Territory but reliance may also be placed on other States or Territories.
Low	Services and/or facilities can be provided within the State, Territory or nationally with no loss of functionality.
Unknown	Insufficient data is available for evaluation.

Source: National Counter Terrorism Committee, 2011, p. 4.

Table 4: UK Criticality Levels and Associated Descriptions

CRITICALITY LEVELS	DESCRIPTION
Cat 5	This is infrastructure the loss of which would have a catastrophic impact on the UK. These assets will be of unique national importance whose loss would have national long-term effects and may impact across a number of sectors. Relatively few are expected to meet the Cat 5 criteria.
Cat 4	Infrastructure of the highest importance to the sectors should fall within this category. The impact of loss of these assets on essential services would be severe and may impact provision of essential services across the UK or to millions of citizens.
Cat 3	Infrastructure of substantial importance to the sectors and the delivery of essential services, the loss of which could affect a large geographic region or many hundreds of thousands of people.
Cat 2	Infrastructure whose loss would have a significant impact on the delivery of essential services leading to loss, or disruption, of service to tens of thousands of people or affecting whole counties or equivalents.
Cat 1	Infrastructure whose loss could cause moderate disruption to service delivery, most likely on a localised basis and affecting thousands of citizens.
Cat 0	Infrastructure the impact of the loss of which would be minor (on national scale).

Source: Cabinet Office, 2010, p. 25

While there are clear differences in both the nomenclature of the criticality levels and their respective descriptions, there are common themes. First, both the criticality scales take into account the impact and consequences if the infrastructure is degraded or destroyed. Secondly, both focus on identifying and describing the relative criticality of individual infrastructures irrespective of the sectoral group from which they are drawn. However, a key difference in the criticality scales is how the impact of degraded or destroyed critical infrastructures is measured. In Australia a key factor in assessing relative criticality is the extent to which national assistance may need to be provided to ensure the continued operation of critical infrastructure. This reflects Australia is a federal state (Commonwealth of Australia, 2015a, p. 5; Council of Australian Governments, 2002). However in the UK, a key factor in assessing relative criticality is the extent to which whole populations or whole countries may be impacted. This reflects the application of the policy across multiple administrative units (Cabinet Office, 2011, p. 25).

There is now reasonable international consensus on the definition and concept of critical infrastructure internationally (O'Donnell, 2013, p. 14). Against this backdrop, the comparison of definitions and criticality scales in contemporary policy in Australia and the UK set out above highlights similarities in how critical infrastructure is defined, conceptualised and categorised. This provides a strong foundation to make meaningful further comparisons about policy frameworks and determine if, how, to what extent and why, they may accommodate risk and threat posed by radical environmental protest. To do so, the key policy narratives of risk and threat as well as resilience are now assessed.

6.3.3 Key Policy Narratives: Comparative Perspectives

In both Australia and the UK, contemporary critical infrastructure policy is a sub set of national security policy and has developed from an earlier core focus on protecting key parts of the civil infrastructure from terrorism, to a core focus on the continued operation of what is now termed critical infrastructure, in the face of a range of hazards (Cabinet Office, 2010, 2011; Commonwealth of Australia, 2010b, 2015a, 2015b). In 2015 and 2010 respectively, the Australian federal government and the UK government released strategic critical infrastructure policies focused on the continued operation of a broad range of essential services (Cabinet Office, 2010; Commonwealth of Australia, 2015a, 2015b). In the

case of Australia, the federal government released the *Critical Infrastructure Resilience Strategy* in two parts: a Policy Statement; and a Plan (Commonwealth of Australia, 2015a, 2015b). It replaced the 2010 *Critical Infrastructure Resilience Strategy* that had earlier formalised a policy focus on critical infrastructure resilience, and moreover a policy goal of critical infrastructure resilience in the face of all hazards (Commonwealth of Australia, 2010b, 2015a, 2015b). In the case of the UK, the *Strategic Framework and Policy Statement on Improving the Resilience of Critical Infrastructure to Disruption from Natural Hazards* was released as an interim policy with the intent it be superseded in 2011 by a National Resilience Plan for Critical Infrastructure that would consider a broad range of risks and threats (Cabinet Office, 2010, p. 4). In 2011 the UK's policy was superseded. However, it was not replaced by the expansive National Resilience Plan for Critical Infrastructure foreshadowed, but by *Keeping the Country Running: Natural Hazards and Infrastructure,* a policy focused on the continued operation of critical infrastructure in the face of natural hazards (Civil Contingencies Secretariat Cabinet Office, personal communication, July 28, 2014). This focus on risk and threat to critical infrastructure in the face of natural hazards is more narrowly focused than was foreshadowed. The sharply different policy antecedents explain these distinct differences. Understanding the policy antecedents aids understanding the different risk and threat as well as resilience narratives reflected in them. As the analysis that follows shows, these different narratives are key to understanding how radical environmental protest can be understood in the context of contemporary critical infrastructure policy frameworks.

Australian Critical Infrastructure Policy Antecedents

As part of the Australian Government's response to 9/11, and in recognition that the majority of Australia's key civil infrastructures were by then, privately owned or operated on a commercial basis, counter-terrorism efforts were immediately and actively focused towards greater information sharing with government and industry and within and across industry (Business Government Taskforce on Critical Infrastructure, 2002; Commonwealth of Australia, 2002c; Protective Security Coordination Centre, 2002).

Following 9/11, the Australian government established the Business Government Taskforce on Critical Infrastructure. Its focus was to give business input into the design of

arrangements to protect key parts of the civil infrastructure. One of the recommendations of the Taskforce was that formal consultative structures be established to facilitate policy and operational information sharing between government and industry, and between industries. This approach was endorsed by Government. Mr Mike Rothery First Assistant Secretary, National Security Resilience Policy Division, Attorney-General's Department (personal communication, December 19, 2012) has explained that in the wake of 9/11, both government and industry recognised information sharing relevant to industry sectors (such as transport, banking and finance, health and energy) was a 'key priority'. In 2003, the Trusted Information Sharing Network (TISN) was formed to provide a formal and structural mechanism to facilitate information sharing with industry (TISN for Critical Infrastructure Resilience, 2013). Mr Rothery (personal communication, June 30, 2011) has explained that embedded in the Cabinet decision made in 2002 to establish the TISN, was that from the outset it would take an all hazards approach, with an initial focus on counter-terrorism. He elaborates:

> The decision to form the TISN was taken by Cabinet and arose from the recommendations of the Business Government Taskforce that met in 2002. Built into the TISN model approved by Cabinet was an 'all hazards' focus.
>
> The TISN has, since its inception, has taken an 'all-hazards' approach albeit with an initial focus on counter-terrorism (M. Rothery, personal communication, June 30, 2011).

The policy focus of the TISN that considered risks and threats to infrastructure from all hazards contrasted with the remit of the newly forming National Counter Terrorism Committee (NCTC) with its sole focus on terrorism (O'Donnell, 2011, pp. 30-31). Mr Rothery (personal communication, June 30, 2011) has explained the differences in the following terms:

> Built into the TISN model approved by Cabinet was an "all hazards" focus.
>
> In effect, this meant there were 2 parallel programs with "the same label on the tin": the TISN with a sector/all hazards focus and the NCTC with an asset protection/counter terrorism focus.

The significant distinction to be drawn is between (1) a broader policy goal of critical infrastructure resilience which encompasses consideration of threat and risk from all hazards, the remit of the TISN, and (2) a policy goal of critical infrastructure protection which in contemporary Australian policy discourse means 'actions or measures undertaken

to mitigate against the specific threat of terrorism', the remit of the then named NCTC[28] (Commonwealth of Australia, 2015b, p. 1). In practice, contemporary critical infrastructure policy has developed consistent with the broader remit of the TISN, that being an all hazards approach (Commonwealth of Australia, 2010b).

The release in 2010 of the (now superseded) *Critical Infrastructure Resilience Strategy* represented a formal shift in strategic critical infrastructure policy in Australia to a core focus on critical infrastructure resilience in the face of all hazards (Commonwealth of Australia, 2010b). However, this was not a sharp policy shift and should be seen in light of an evolving and developing policy environment that since 2007 had begun to embed resilience thinking (O'Donnell, 2013, pp. 22-23). This evolutionary shift in Australia (reinforced in 2015) towards a policy focus on critical infrastructure resilience in the face of all hazards is not evident in the UK policy context. Rather, the devastating flooding in England in the summer of 2007 that impacted 48,000 households and 7,300 businesses was the key triggering event that led to a re-examination of critical infrastructure policy, distinct from the protection of critical infrastructure from terrorism (Cabinet Office, 2010, p. 4; Centre for the Protection of National Infrastructure, n.d.; CPNI, n.d.-a; HM Government, 2010, p. 31).

UK Critical Infrastructure Policy Antecedents

In his official review that followed the 2007 floods in the UK, Sir Michael Pitt identified 'a gap in the Government's policy-making and delivery towards the protection of critical infrastructure from severe disruption caused by natural hazards' (Cabinet Office, 2010, p. 4). In his report, Sir Michael recommended (among other things) that the UK develop a program to improve the resilience of critical infrastructure and essential services in the face of disruption from natural hazards (Cabinet Office, 2010, p. 4). This finding and related recommendation were primary drivers in the extension of critical infrastructure policy beyond (and separate to) an existing focus on resilience in the face of threats from terrorism, espionage, cyber-attacks, organised crime and the proliferation of weapons of mass destruction, the policy domain of the Centre for the Protection of National Infrastructure (the CPNI) (Cabinet Office, 2010, p. 4; CPNI, n.d.-a, n.d.-b). The CPNI is an

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[28] The NCTC has been renamed the Australia-New Zealand Counter-Terrorism Committee.

inter-departmental body that reports to the Director-General of the Security Service (Security Service MI5, 2013). The policy extension was to include a new policy focus beyond these threats and beyond the remit of the CPNI on terrorism, to include a focus on the threat from natural hazards, specifically flooding (Cabinet Office, 2010, p. 4). The policy response set out in the interim *Strategic Framework and Policy Statement on Improving the Resilience of Critical Infrastructure to Disruption from Natural Hazards* while focused on threat to infrastructure from flooding, flagged a future policy extension to consideration of threat from a broader range of natural hazards (Cabinet Office, 2010, p. 4). Already on a policy trajectory focused on resilience in the face of flooding, the disruption to infrastructure caused by the Cumbrian floods in 2009, the "big freeze" in January 2010 and the eruption of the Eyjafjallajokull volcano in Iceland in April 2010 were influential in shaping current policy with its core focus on critical infrastructure resilience in the face of natural hazards (Cabinet Office, 2011, p. 5).

Contemporary Resilience, Risk and Threat Narratives

In both Australia and the UK, critical infrastructure policy frameworks reflect a common strategic policy goal of critical infrastructure resilience (Cabinet Office, 2010, 2011; Commonwealth of Australia, 2015a, 2015b). While the concept of critical infrastructure is now settled internationally, the same is not true of the concept of critical infrastructure resilience (O'Donnell, 2013, p. 14). Rather, the concept of critical infrastructure resilience is diverse and its precise meaning remains elusive and malleable (Boone & Hart, 2012, n.d.; O'Donnell, 2013, pp. 20-21). This reflects that resilience itself has become somewhat of a "catch-all" term and defining it is inherently challenging (Gibson & Tarrant, 2010; McAslan, 2010a, 2010b; Ridley, 2011). Since entering the English language in the seventeenth century to refer to the rebound properties of timber, the term resilience has been adopted into a diverse scholarship and discourse including materials science, ecology and the environment (McAslan, 2010a). While the scholarship focused on resilience is still developing, and while a consensus definition is elusive, in practice resilience 'suggests the ability of something or someone to cope in the face of adversity - to recover and return to normality after confronting an abnormal, alarming, and often unexpected threat' (McAslan, 2010a, p. 1). McAslan (2010a, p. 1) argues resilience encompasses 'the concepts of awareness, detection, communication, reaction (and if possible avoidance) and recovery' as well as suggests 'an

ability and willingness to adapt over time to a changing and potentially threatening environment'. In contemporary scholarship and policy, the term resilience has been adopted 'liberally and enthusiastically' (McAslan, 2010a, p. 1). This includes its adoption into contemporary critical infrastructure policy frameworks in both Australia and the UK (Cabinet Office, 2010, 2011; Commonwealth of Australia, 2010b, 2015a, 2015b).

Within contemporary critical infrastructure policy, in the case of Australia the two-part 2015 *Critical Infrastructure Resilience Strategy* and in the case of the UK *Keeping the Country Running: Natural Hazards and Infrastructure,* the resilience narratives are expansive and multi-dimensional (Cabinet Office, 2011; Commonwealth of Australia, 2015a, 2015b). In the case of both Australia and the UK, the common and dominant resilience narrative is expressed in terms of the strategic policy goal of critical infrastructure resilience (Cabinet Office, 2011, pp. 5-11; Commonwealth of Australia, 2015b, p. 2). In addition, the resilience narratives reflect a common focus on recovery from infrastructure disruption and the resumption of services provided or enabled by the specific assets. In the case of Australia this is expressed in terms of 'the continued operation of critical infrastructure in the face of all hazards' (Commonwealth of Australia, 2015b, p. 2) and in the UK this is expressed in terms of 'a fast and effective response to and recovery from disruptive events' (Cabinet Office, 2011, p. 16).

The resilience narratives also reflect a shared position that resilience can be developed and contextualised in terms of the organisations (public and private) that own or operate critical infrastructure assets. In the case of Australia, this is expressed in terms of building resilience capacity and capabilities within organisations, and in the case of the UK in terms of building resilience including within and between organisations (Cabinet Office, 2011, pp. 16, 19-51; Commonwealth of Australia, 2015a, 2015b). While expressed differently, the similarities in resilience narratives that are evident broadly reflect policy similarities. As identified previously, this includes similarities in: definitions (critical infrastructure); sector groups (such as energy, banking and finance, communications, food chain, health, transport, water services); and that the majority of critical infrastructure is privately owned or operated on a commercial basis.

A subtle yet significant distinction in the resilience narratives is that infrastructure design standards (the structures themselves and the networks supporting them) are an inherent part of the concept of resilience in the UK, which is expressed in terms of infrastructure reliability (Cabinet Office, 2011, p. 15). Reliability is in turn expressed in terms of the infrastructure itself being 'designed to operate under a range of conditions and hence mitigate damage or loss from an event' (Cabinet Office, 2011, p. 15). As I have identified, in Australian critical infrastructure resilience policy, infrastructure and system design has been far more tangentially reflected because it is viewed as a policy outcome (O'Donnell, 2013, pp. 27-28). Where the respective strategic policies are also divergent and discussed next, is how risk and threat to critical infrastructure can be considered.

As noted earlier, in the case of Australia the dominant risk and threat narrative in contemporary critical infrastructure policy is the expansive concept of all hazards (including terrorism). In contrast, in the UK the dominant risk and threat narrative in contemporary critical infrastructure policy is terrorism and natural hazards (Cabinet Office, 2011, p. 5; Commonwealth of Australia, 2015b, p. 2). The attendant effect is that in Australia risk and threat to critical infrastructure from radical environmental protest falls within contemporary policy frameworks, while in the UK this is not the case. What is noteworthy is that in respect of the UK's critical infrastructure policy, a shift to incorporate critical infrastructure resilience in the face of a broader range of hazards (expressed as an all-risks approach) beyond terrorism and natural hazards is seen as a desirous future policy state (Cabinet Office, 2011, p. 22).

6.3.4 Summary

This part of the Chapter has identified that with common concepts of critical infrastructure, Australia and the UK also share a common strategic policy goal of critical infrastructure resilience. While expressed differently, there is a common focus on articulating the complexity of networked, interdependent critical infrastructure and a focus on anticipating, planning for and recovering from disruptive events. However despite this commonality, the resilience, risk and threat narratives embedded within the respective policies act to moderate the way critical infrastructure resilience as a policy objective can be understood. As the analysis has shown, this is because in the case of Australia the

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overarching policy goal is focused on critical infrastructure resilience in the face of all hazards (including but far from limited to terrorism), while in the case of the UK the overarching policy goal is primarily on critical infrastructure resilience in the face of (1) terrorism – the policy domain of the CPNI, and (2) natural hazards.

In the case of Australian contemporary critical infrastructure policy frameworks, the threat of disruption to critical infrastructure from radical environmental protest can be considered one of but many possible hazards facing critical infrastructure owners and operators. The response to the WHC hoax by the ASX and ASIC (discussed in detail in the Chapters that follow) does accord with the hoax being played out in the financial market, part of the banking and finance sector. However, in critical infrastructure policy in the UK, unless protest activity meets the benchmark of terrorism and is therefore of interest to the CPNI, this is not the case. However, as the UK case studies have illustrated, political, policy and policing responses to radical environmental protest do take account of the relative criticality of the civil infrastructures targeted. From its inception in 1999, the focus of the NPOIU included protecting businesses and research institutions targeted by animal rights activists and this quickly expanded to protecting businesses (public or private) from radical environmental protest (Evans & Lewis, 2013; HMIC, 2012). A finding further highlighted in Chapters 7 and 8, this reflects a clear disconnect in the UK between the scope of critical infrastructure policy and the policing responses to protest.

Discussed next is a less evident disconnect in the Australian context between political and policy intent and practice. Analysing the responses to the Wagerup occupations illustrates that policing responses to radical environmental protest occur in a broad policy context, the significance of which is not always immediately evident. The analysis focuses on the failed prosecutions of the protesters, the legislative policy response and its complexity that existed from the outset and has exacerbated over time.

6.4   Case Study – the Complex Policy Legacy of the Wagerup Occupations

Chapter 4 set out the key detail of the Wagerup occupations in WA in 1979 that were planned and coordinated by the group Campaign to Save Native Forests (CSNF). As discussed earlier, the failed prosecutions of the Wagerup 12 and the Wagerup 23 were

brought under the then obstruction provisions set out in s67(4) of *Police Act 1892* (WA). These obstruction provisions (since repealed) were introduced in WA in 1978 to create new offences and penalties for direct action protest. Their introduction was triggered by off-shore anti-whaling protest by Greenpeace directed at the Cheynes Beach Whaling Company, a business that at the time operated lawfully and under a Commonwealth government licence (Western Australia Legislative Council, 1978, pp. 967-968; 1979a, p. 5916). Through the introduction in 1978 of the obstruction provisions, the WA police hoped the maximum monetary penalty of $1,500[29] would do two things: 'frighten off the protesters'; or intimidate them into inaction through being 'punished so heavily' (Bonyhady, 1993, p. 43). The Wagerup 23 involved in the May 1979 occupation were charged under s67(4) of the *Police Act 1892* (WA) for 'obstructing somebody from doing something pursuant to an authorisation issued under a law of the State' (French, 2010, p. 5). As discussed previously, the prosecutions failed on key points of law relating to how the development agreement between the WA government and Alcoa (the company targeted at the Wagerup occupations) was made. While the development agreement had intended to be considered a law of the State, due to technical deficiencies that were believed to have been rectified after the failure of the prosecution of the 12 protesters from the earlier occupation in February 1979, it still did not meet the threshold test. In this sense, the failed prosecution of the Wagerup 23, following on the earlier failed prosecutions, highlighted continued differences and deficiencies in practice in the mechanisms for making major resources development agreements laws of the State and therefore (among other things) enabling the use of the obstruction provisions. It was a sobering judicial outcome for the conservative WA government led by Sir Charles Court whose pro-development agenda was very well established in the eyes of developers, his political opponents and the electorate (Jamieson, 2011; The Liberal Party of Australia - West Australia Division, 2013). As Mr Bartholomeaus and one of the Wagerup 23 has explained of the failed prosecutions (personal communication, July 16, 2013), 'at the time we were headed for both a state and federal election' and 'it was a political imbroglio.'

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[29] Approximately $7,400 in 2015 dollars.

6.4.1 *The Government Agreements Act 1979* **(WA)**

In 2010 and reflecting on his role in defending the Wagerup 23 as a young lawyer, Robert French (2010, p. 5) now Chief Justice of the High Court, said the case 'generated some interesting law' and 'a new statute'. In direct policy response to the failed prosecutions of the Wagerup 23, the Court government introduced the *Government Agreements Act 1979* (WA) (the GAA) (Western Australia Legislative Assembly, 1979a, pp. 5847-5848; 1979b, pp. 5705-5706; Western Australia Legislative Council, 1979a, pp. 5906, 5911). It became operative on 21 December 1979 (Government of Western Australia, n.d.-b). Through introducing the GAA, the policy goals of the Court government were twofold (1) to close what was considered to be a legislative and policy lacuna in respect of the mechanisms used to ratify development agreements to make them laws of the State (ss1-3), and (2) to introduce sufficiently harsh monetary penalties to dissuade protesters from attempting to disrupt specific resources development projects (s4) (Western Australia Legislative Assembly, 1979b, pp. 5705-5706; Western Australia Legislative Council, 1979a, p. 5915).

Policy Intent and Application in Practice, GAA ss1-3

The GAA remains in force today, is administered by WA's Department of State Development and, save for minor and technical amendments made in 1990 and 2004, remains unaltered (Department of State Development, 2014, p. 115; Government of Western Australia, n.d.-b). The GAA is to be read in conjunction with Government Agreements (also known as State Agreements) which are 'contracts between the Government of Western Australia and proponents of major resources projects which are ratified by an Act of the State Parliament' (Government of Western Australia, 2013). There are 63 Government Agreements currently in force that cover major infrastructure and resources development projects in WA (Department of State Development, 2014, pp. 115-117). With dozens of proponents, these projects involve mining, energy production, forest products, gas production, and oil refining (see Department of State Development, 2014, pp. 115-117).

One of the 63 Government Agreements currently in place is the *North West Gas Development (Woodside) Agreement Act 1979* (WA) (Department of State Development,

2014, p. 115). It was debated in WA's parliament contemporaneously with the GAA, also became operative on 21 December 1979, and smoothed the way for the construction of the North West Shelf Project (Government of Western Australia, n.d.-a). As noted above, the first policy goal of the GAA was to provide a mechanism to make specific major resources development agreements laws of the State. In this respect the passage of ss1-3 of the GAA through the WA Parliament to retrospectively and prospectively provide a mechanism for development agreements to be ratified as laws of the State was largely uncontroversial (Western Australia Legislative Assembly, 1979a, 1979b; Western Australia Legislative Council, 1979a, 1979b). Although not the sole mechanism, ss1-3 of the GAA have been relied on since to ratify development agreements, making them laws of WA (Government of Western Australia, 2013; Hillman, 2006). In the broader political context, the use of Government Agreements signal strong political buy-in to the respective infrastructure and development projects (Hillman, 2006). In the broader policy context, the intent and effect of ratifying development agreements as laws of the State has, since their inception in the 1950s (Government of Western Australia, 2013), been to enable projects 'to proceed outside most State laws' (Hillman, 2006, p. 293). Since their inception, the aim of Government Agreements has been to provide regulatory certainty to proponents and facilitate infrastructure and resources development (Hillman, 2006). Hillman (2006, pp. 293-294) points out WA 'is exceptional in scale and specificity of (their) use'. In respect of ss1-3 of the GAA, its intent has been realised (Hillman, 2006).

Policy Intent and Application in Practice, GAA s4

With its genesis in the failed prosecutions of the Wagerup 23, the GAA introduced at s4, penalties of $5,000 or 12 months' imprisonment for: being on subject land without lawful authority after being warned to leave; and for unlawfully preventing, obstructing or hindering activity relevant or incidental to, implementing a Government Agreement. Discussed later in this Chapter is that the monetary penalty of $5,000 was expressed in dollar terms rather than as penalty units. When introduced in WA in 1979, specific offences and penalties for protest activity beyond that already provided for by the *Police Act 1892* (WA) were highly controversial and the Parliamentary debate and the subsequent vote split along party lines (Western Australia Legislative Assembly, 1979a, 1979b; Western Australia Legislative Council, 1979a, 1979b). In respect of the GAA's penalties and offences

provisions, the Parliamentary debate primarily focused on whether the offences clause was necessary and whether the monetary penalty of $5,000 was appropriate (Western Australia Legislative Assembly, 1979a, pp. 5840-5841, 5845-5846; Western Australia Legislative Council, 1979a, pp. 5906-5919). In its political context, the $5,000 monetary penalty was viewed by the Labor opposition as extreme in comparison to the monetary penalty of $1,500 already available under s67 of the *Police Act 1892* (WA)) (Western Australia Legislative Assembly, 1979a, pp. 5840-5841, 5845-5846; Western Australia Legislative Council, 1979a, pp. 5906-5919).

Practical barriers to applying s4 of the GAA were foreshadowed in the at times intense and fiery Parliamentary debate during the Bill's passage (Western Australia Legislative Assembly, 1979a, pp. 5840-5841, 5845-5846). At the time not only was the complexity of applying s4 of the proposed GAA highlighted, but so too was the corollary complexity for police and prosecutors that with the passage of the GAA, penalties for acts of protest would be found in the GAA as well as the *Police Act 1892* (WA) (Western Australia Legislative Assembly, 1979a, pp. 5842, 5844, 5847, 5850, 5853; Western Australia Legislative Council, 1979a, pp. 5907, 5914-5915). A focus of the Parliamentary debate included that this would create a legislative anomaly where different offences and penalties could apply to protest activity targeting projects subject to Government Agreements; namely s67(4) of the *Police Act 1892* (WA) and s4 of the GAA (Western Australia Legislative Assembly, 1979a, pp. 5842, 5844, 5847, 5850, 5853; Western Australia Legislative Council, 1979a, pp. 5907, 5914-5915). Mr Davies (and part of the then Labor opposition) predicted during the Parliamentary debate that 'lawyers will have a heyday with this legislation' (Western Australia Legislative Assembly, 1979a, p. 5846).

This study has found that the intent of introducing harsher monetary penalties for protest activity targeting major resources and development projects subject to Government Agreements has never been realised. The three specific reasons that have been identified and are now discussed in turn are: the complexity of the GAA; a less-complex legislative alternative was introduced in early 1980 by the re-elected Court government in the form of criminal trespass provisions in the *Police Act 1892* (WA); and due to inflation, the effective reduction over time of the significance of the quantum of the monetary penalties.

The complexity of applying s4 (Offences and Penalties) of the GAA is multi-faceted and rests with the definitions and interplay between the definitions of "subject land" and "Government Agreements" so central to the GAA (appendix 1). The GAA makes it an offence at s4(1) to remain on subject land after being warned to leave it. At s4(2) the GAA also makes it an office to prevent, obstruct or hinder any activity which is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing a Government Agreement, or attempting to do so. The GAA defines subject land broadly as land that is set aside, or is being used, for the purposes of or incidental to implementing a Government Agreement. Further, activity incidental to implementing a Government Agreement was intended to mean anything that 'could affect the agreement' (Western Australia Legislative Assembly, 1979a, p. 5848). For the pro-development Court government, this was intended to be interpreted expansively (Western Australia Legislative Assembly, 1979a, p. 5848). The desired political and policy goal was to ensure the offences and penalties provisions of the GAA could capture protest targeting business supply chains and enabling infrastructures however remote from, and however tangential to, the main focus of the project subject to Government Agreements in WA (Western Australia Legislative Assembly, 1979a, p. 5848). A spokesperson for the WA Police indicates that these factors pose 'practical barriers' to police and prosecutors (spokesperson 2, personal communication, July 24, 2013).

When in early 1980 a re-elected Court government amended the *Police Act 1892* (WA) through the introduction of s82B, it created general laws of trespass with related penalties of $500 or six months' imprisonment. Thus, at law, only months after the passage of the highly controversial GAA, a possible and less complex alternate to prosecuting protest was introduced. A spokesperson for the WA Police (spokesperson 2, personal communication, July 24, 2013) indicates that the s82B provisions were used in preference to both s67 of the *Police Act 1892* (WA) and the GAA, until s82B and s67 of the *Police Act 1892* (WA) were repealed by the *Criminal Law (Simple Offences) Act 2004* (WA) and replaced with a new s50 of the *Police Act 1892* (WA) (in the form of move on powers) and updated trespass provisions at s70. The move on powers currently rest within the *Criminal Investigation Act 2006* (WA) and the trespass provisions within the *Criminal Code* (WA). A spokesperson for the WA police (spokesperson 2, personal communication, July 25, 2013) indicates that these powers are used in preference to the GAA because of the 'practical

barriers' inherent in the GAA. Since its introduction in 1979, the GAA remains substantively

unaltered. However, the practical barriers that prevented its use so soon after its

enactment have deepened and broadened over time. Discussed in turn are that the impact

of the "harsh" monetary penalties diminished over time due to inflation, while the reach of

the GAA expanded with each new Government Agreement ratified.

The penalty provisions of the GAA are expressed in dollar terms rather than penalty

units and have never been updated ($5,000 or 12 months' imprisonment). However, the

trespass penalty provisions initially introduced in 1980 (now reflected in the *Criminal Code*

(WA)) while also expressed in dollar terms rather than penalty units have been updated

(currently $12,000 or 12 months' imprisonment). Adjusting the $5,000 penalty in the GAA

for inflation using the Australian Bureau of Statistics Consumer Price Index (CPI) Inflation

Calculator equates to approximately $22,700 in 2015 dollar terms. The practical impact is

that the "tougher" monetary penalties introduced specifically for disrupting infrastructure

and resource development projects subject to Government Agreements have been

effectively diminished over time as a result of inflation, while the practical barriers inherent

in the GAA remain. Had the monetary penalties in the GAA been updated even to the

extent of keeping up with CPI, the monetary penalties available would have eclipsed the

current $12,000 penalty for trespass currently available in the *Criminal Code* (WA). As noted

earlier in respect of the WHC case, reflecting monetary penalties in the form of penalty units

rather than in dollar terms in *Corporations Act 2001* (Cth), meant that Mr Moylan faced a

potential monetary penalty that had kept pace with inflation.

Over time, as the impact of inflation diminished the "harshness" of the $5,000

monetary penalty provided for in the GAA, the reach of the GAA expanded. This is because

since the enactment of the GAA, additional resources development agreements have

become laws of the State, and by their very nature, the scope of projects facilitated by such

agreements, expands over time (Department of State Development, 2014, pp. 115-117).

This adds to the complexity of identifying subject land, which is a threshold factor for the

application of s4 of the GAA. The North West Shelf Project and its energy installations

considered Vital National Installations under the earlier VI Program and critical

infrastructure in contemporary policy is instructive. The analysis that follows highlights a

juxtaposition between the expanding significance and reach over time of a major critical

infrastructure project, and the diminishing significance over time of monetary penalties that were, at least on the books, applicable to disruptive protest directed at it by way of s4 of the GAA. This analysis reinforces the complexity in practice of s4 of the GAA in respect of just one of the current 63 Government Agreements in play, all covering major resources development projects.

The North West Shelf Project

After construction commenced in 1980s, the North West Shelf Project grew to include: additional off-shore drilling and production platforms; off-shore (sub-sea) and on-shore pipelines; gas treatment plant; liquefied natural gas carriers; and a workers' village and supply base (Allen, 1986; Jamieson, 2011, Ch 20; Woodside, n.d.-a, n.d.-b). Central to the planning for, and the operations of, the North West Project have been the construction of public and private roads and enhancements to port infrastructure (Schedule 1, section 7), the upgrading of airports (Schedule 1, section 16(1) of *North West Gas Development (Woodside) Agreement Act 1979* (WA)), access to a power supply including for the workers' accommodation (Schedule 1, sections 17(2) & 17(4)) and supporting water and electricity supplies (Jamieson, 2011, p. 318). Also central to the North West Shelf Project is the provision of opportunities for local workers and local suppliers (Schedule 1, section 12).

In respect of the North West Shelf project, the potential reach of the GAA was intended to go so far as to include the premises used by sub-contractors to manufacture component parts (including those of potentially very minor significance) for the overall project and far removed from the locus of the project. This was explained by Mr Mensaros, the then Minister for Industrial Development, during the Parliamentary debate on the GAA in the following terms:

> In the case of the North-West Shelf project a subcontractor could be manufacturing components at Jervoise Bay which is far removed from Dampier, but an obstruction on his premises at Jervoise Bay could affect the agreement (Western Australia Legislative Assembly, 1979a, p. 5848).

The intended breadth of the concept of subject land in the GAA should be seen in light of its overall intent; protecting resources development projects from disruptions by protest and thus protecting the economic interests of WA (Western Australia Legislative

Assembly, 1979a, p. 5853). The expansion of the North West Shelf Project over time increased the reach of s4 of the GAA. First, component parts for the North West Shelf Project came to be manufactured thousands of kilometres away in the eastern Australian States of New South Wales, South Australia and Victoria (Jamieson, 2011, p. 322). This brought with it the potential for the extraterritorial application of the GAA. Secondly, as the project expanded, subject land and activity incidental to implementing a Government Agreement (in this case the *North West Gas Development (Woodside) Agreement Act 1979* (WA)), also expanded. In her biography of Sir Charles, Jamieson (2011, Ch 20) artfully charts the expansion of the North West Shelf Project, giving her readers a sense of its enormity and significance. Considered in the context of the intent of the reach of s4 of the GAA, an infrastructure project of this scale that developed over time, illustrates the complexity for police in identifying the shifting goalposts of what could be considered subject land and activity incidental to implementing a Government Agreement (s4 of the GAA) as projects expand.

The desired political and policy effect of s4 of the GAA was to ensure the new offences and monetary penalties applied to protest targeting business supply chains and enabling infrastructures however remote from and tangential to the implementation of Government Agreements in WA (Western Australia Legislative Assembly, 1979a, pp. 5848-5849). However, this intent (including its arguable extraterritorial application) has never been realised, there has been no "heyday for the lawyers" as predicted during the Bill's passage though the Parliament and a different legislative anomaly has arisen. In respect of the latter, the anomaly now rests not with the now obsolete obstruction provisions in *Police Act 1892* (WA) which were removed in 2004, but with the general laws of criminal trespass that are now in the *Criminal Code* (WA). The contemporary policy landscape has evolved over time to one where trespass is now criminalised and where special offences and penalties still apply to the disruption of businesses operating under Government Agreements. Despite a specific law on the books that when introduced was aimed squarely at deterring protest, in practice there is no incentive for police or prosecutors to pursue a charging regime using the GAA and every incentive not to do so.

6.4.2 Summary

The few academic analyses of the Wagerup occupations include a focus on their legacy as "Australian firsts". In the social movement and environmental scholarship they are identified as both 'unprecedented in Australia' (Bonyhady, 1993, p. 43) and 'the first occupation of an industrial site using tactics of non-violent civil disobedience' in Australia (Chapman, 2011, p. 181). Both claims are true to the extent the Wagerup occupations were direct action protests solely motivated by environmental concerns. However, although beyond the scope of the present study, what should not be overlooked in the historical context is the far earlier resistance by Indigenous people to their forced removals from traditional lands to pave the way for resources development (Hutton & Connors, 1999, pp. 6-7; National Museum of Australia, 2007/08).

This aspect of the analysis has assessed the GAA, the legislative legacy of the Wagerup occupations in WA in 1979. Departing from and extending the existing scholarship, this part of the Chapter has analysed the impact of s4 of the GAA in the context of the policing of protest. The present study has found that the intent of s4 of the GAA, to introduce new offences and penalties (including harsh monetary penalties) for acts of protest directed towards major infrastructure and development projects, has never been realised. The key reasons identified are the complexity of the GAA (foreshadowed in the Parliament debate at time) and that a less complex legislative alternative (in the form of general laws of criminal trespass) was enacted shortly after the introduction of the highly controversial GAA. As the present study has shown, the complexity of the GAA arises because of the definitions and interplay between subject land and Government Agreements and that activity incidental to implementing a Government Agreement was to be interpreted broadly.

Through one of the case studies, the present study has also extended the scholarship relating to the legacy of the Wagerup occupations by identifying a further complexity of the GAA; namely that Government Agreements are not static, and the very nature of major infrastructure and development projects mean they expand over time. To the extent of any expansion (and possibly contraction as aspects of major projects conclude), the scope of the GAA in terms of "subject land" and "activity incidental to implementing a Government

Agreement", shifts. As the Parliamentary debate foreshadowed during the passage of the *North West Gas Development (Woodside) Agreement Act 1979* (WA) and in cognisance of the GAA debated the same day, this could be as minor as a new sub-contracting arrangement. The case study also highlights that in respect of s4 of the GAA, while the North West Shelf Project developed to become a vital part of the nation's infrastructure, any concept of criticality of infrastructure is not a feature of the GAA. Rather, the GAA signalled the pro-development agenda of the Court government at a time when a national policy focus on protecting critical infrastructure was only just emerging.

The analysis has also identified that since its inception, the GAA remains in force and is substantively unaltered. As a result of inflation, the impact of the "harsh" monetary penalty of $5,000 introduced specifically to deter protest has diminished over time. As the present study has found, by way of comparison, the monetary penalty for trespass currently available in the *Criminal Code* (WA) is $12,000. Although the GAA remains a law on the books, there is little incentive for the WA police and prosecutors to pursue a regime of charging and prosecution under the GAA for disruptive protest and every disincentive in practice not to do so. For today's policymakers in both Australia and the UK, the question of offences and penalties for acts of protest that disrupt critical infrastructure is both live and contentious (Australian Government, n.d.; Joint Committee on Human Rights, 2009, Ev 136). The analysis of the legislative intent and actual impact of the GAA as it has played out over the past 40 years offers sharp lessons for them.

6.5   Chapter Conclusion

In answering RQ 1, Chapters 5 and 6 have set out an analysis of policy and policing discourse and critical infrastructure policy frameworks. The overarching purpose was to contribute to understanding how radical environmental protest has been framed and if, how, to what extent and why it can be considered within critical infrastructure policy frameworks. This in turn establishes a foundation for the examination of policing response that follows in Chapters 7 and 8. The purpose of this Chapter has been to answer RQ 1(b). The literature review and cases have highlighted that the target of radical environmental protest can be key parts of the civil infrastructure including assets that in contemporary policy parlance are termed critical infrastructure.

Contemporary Australian and UK critical infrastructure policy frameworks share marked similarities that provide a solid foundation for more detailed comparisons. These include similar concepts of critical infrastructure, the sector groups from which critical infrastructure is drawn and concepts of relative criticality. There is also a shared policy goal of critical infrastructure resilience. This Chapter has highlighted that the scholarship on both resilience and critical infrastructure resilience is still evolving. In this context, there remain differences in how critical infrastructure resilience is described and understood. This should be considered against the backdrop that resilience itself is inherently difficult to define and means different things to different people. Notwithstanding, Australia and the UK also share a similar understanding of what is broadly meant by critical infrastructure resilience. In the case of Australia this is expressed in terms of 'the continued operation of critical infrastructure in the face of all hazards' (Commonwealth of Australia, 2015b, p. 2) and in the UK this is expressed in terms of 'a fast and effective response to and recovery from disruptive events' (Cabinet Office, 2011, p. 16). However, these resilience narratives are moderated by the embedded risk and threat narratives that underpin the respective policy frameworks. Here sharp differences are evident. In Australia, risk and threat is considered expansively and expressed in terms of resilience in the face of *all* hazards. While for the UK, contemporary critical infrastructure policy is bounded by a focus on resilience in the face of *natural* hazards. This stark difference means that whereas actual or potential disruptions to essential services from radical environmental protest can be considered within Australia's critical infrastructure policy framework, this is not the case in the UK. The distinct antecedents of the policy frameworks explain this sharp difference.

The final part of the Chapter considered responses to the Wagerup occupations that saw the introduction of new offences and penalties for acts of protest in WA through the enactment of the GAA. This part of the Chapter set out the twofold intent of the GAA: to close a legislative lacuna (ss1-3); and to introduce new offences and penalties for acts of protest (s4). In respect of the latter, this intent has never been realised. The reasons for this have been identified as the GAA's complexity and that a less complex legislative alternative (criminal trespass) became available soon after. This analysis has also highlighted that the complexity of the GAA foreshadowed when debated in WA's Parliament, expanded over time. This is because the number of Government Agreements expanded over time and as the example of the North West Shelf Project highlights, the

projects subject to Government Agreements (by their very nature intended to facilitate development), also expand over time. What the North West Shelf Project highlights is a stark policy juxtaposition; as the North West Shelf Project expanded and its energy installations became more critical, the impact of the monetary penalties for acts of protest directed towards any aspect of it (however remote) by way of s4 of the GAA, diminished due to inflation. This analysis offers policy lessons for both Australia and the UK. For the energy sector the adequacy of available offences and penalties and their practical application for illegal and disruptive environmentally-motivated protest is internationally 'a serious and pressing issue' (Energy Industry Participant 1, personal communication, February 12, 2014). This point is underscored in the Chapters that follow.

7. POLICING RESPONSES TO RADICAL ENVIRONMENTAL PROTEST –PART 1

7.1 Introduction and Chapter Outline

The case studies identify a varied repertoire of radical environmental protest involving markedly different forms of criminality that has elicited distinctly different policing responses. The next two Chapters analyse the policing responses to each of the protests to answer RQ 2; can the policing of radical environmental protest be explained and understood using Jean-Paul Brodeur's Integrated Model of Policing? The analytical approach employed is a deductive analysis, which as discussed earlier aims to test theory against evidence (Kraska & Neuman, 2011, p. 65; Neuman, 2011, pp. 69-70). In the next two Chapters, Brodeur's Integrated Model of Policing (the Model) and its theoretical underpinnings set out in *The Policing Web* (Brodeur, 2010), are systematically tested against how protest was policed in each of the five case studies. The overarching goal of the deductive analysis is to verify or challenge each aspect of the Model.

This Chapter is set out in five parts. After this introduction, the second part of this Chapter (7.2) reintroduces the Model and recaps the first of its three core components considered in this Chapter; policing types. As it is a necessary precursor to the analysis that follows, the third part of this Chapter (7.3) assesses in detail the Association of Chief Police Officers (ACPO). The significance is that at the time of both of the UK case studies, the National Public Order Intelligence Unit (NPOIU) that housed Mark Kennedy (involved in the policing of both protests in the undercover persona of Mark Stone) was under the operational control of ACPO. Part 7.3 of this Chapter sets out a key finding of the present study influential in the further analysis that follows; that since its incorporation as a private company limited by guarantee on 1 April 1997 until it was wound up on 31 March 2015, ACPO can be considered a hybrid policing body. The fourth part of this Chapter (7.4) begins to test the Model with empirical evidence from the case studies. This part of the Chapter sets out a detailed and systematic analysis of the nature and form of each type of policing discernible in each of the case studies. The focus is on discerning high and low policing, public and private policing and hybrid policing with a view to mapping it to the Model.

The fifth and final part of this Chapter (7.5) discusses the overall findings from the analysis of the first component of the Model. This part of the Chapter identifies an

underlying paradox of the Model. First, the value of the Model in describing different forms of domestic policing, policing bodies, bodies with policing functions and their interactions and blurred boundaries is reinforced. As the analysis in this Chapter shows, this arises from the contemporaneous consideration of high and low policing as well as public and private policing. However, the identification of distinctly different forms of hybrid policing fundamentally challenges the way hybrid policing has been reflected within the Model. This conflicts with how hybrid policing has been more broadly reflected in the theorising underpinning the Model. As the analysis in this Chapter shows, hybridity in policing is ubiquitous and it exists in a multiplicity of forms. The findings from this Chapter are applied in Chapter 8 to assess the Model's remaining two components (orientation to justice and social interventionism).
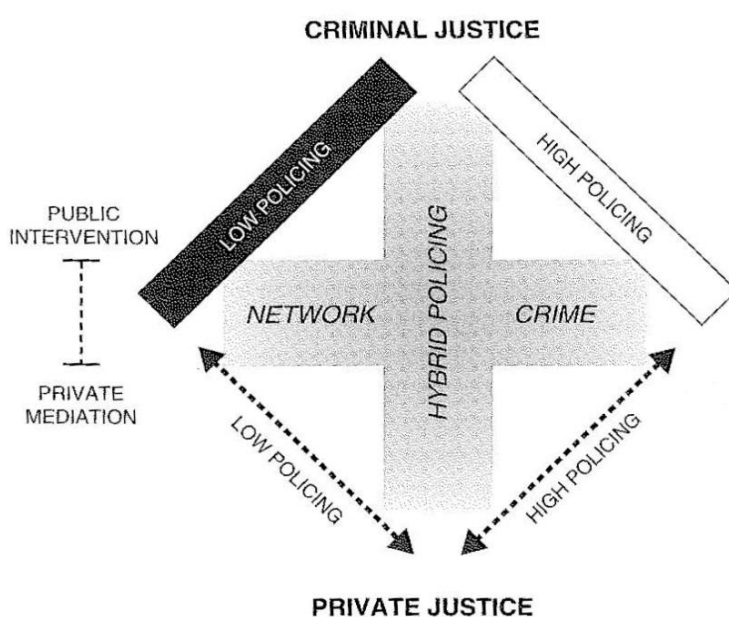
7.2   Brodeur's Integrated Model of Policing

In *The Policing Web*, Brodeur (2010, p. 305) points out the Model diagrammatically reflects (and was developed from) a synthesis of the policing literature and his decades of empirical research (refer Figure 11 below). As discussed previously, the Model is complex and has three distinct components: policing types; orientation to justice; and social interventionism. The focus of this Chapter is the first component. In framing the analysis that follows, the Model has been considered in the context of its complex and at times inter-related theoretical bases (articulated in *The Policing Web*) and the broader policing literature on which it draws and is now situated. This approach was employed to enable an in-depth rather than superficial analysis of the Model.

The two binary dichotomies that underpin the Model are the distinctions between high and low policing, and public and private policing. Both are explicitly reflected in the Model. Reflected in Figure 12 below is that hybrid policing is embedded within the Model across dual axes. Hybrid policing is explicitly reflected in the Model along Axis 1 ('hybrid policing') and implicitly reflected along Axis 2 (the descriptor 'network crime') (Brodeur, 2010, pp. 306-307). The central placement of hybrid policing within the Model reflects it acts as a reminder that 'there are interfaces between high and low policing and between public and private policing' (Brodeur, 2010, p. 307). However, this should be viewed in light of the more expansive concept of hybrid policing reflected in *The Policing Web;* in which

hybridity can be considered in terms of arrangements such as joint ventures, and the intertwinement and interpenetration of different forms of policing and policing bodies (Brodeur, 2010, pp. 22, 29, 69, 74, 288, 309). The scant explanation of the descriptor 'network crime' and its placement within the Model, identifies it is intended to reinforce that in policing crimes such as organised crime, gang-related crime and terrorism), there are areas of overlap (Brodeur, 2010, p. 307). Hybridity in policing should not be considered a new phenomenon and comes with a long history (Brodeur, 2010, p. 192).

**Figure 11: Brodeur's Integrated Model of Policing**

Figure 8.1 An Integrated Model of Policing

Source: Brodeur, 2010, p. 306

As flagged earlier, in *The Policing Web* (and while he alludes otherwise), Brodeur neither defines police nor policing. However, a key theme underpinning *The Policing Web* is an expansive concept of both. With police and policing undefined yet broadly considered, Figure 12 below shows that implicit within the Model are distinctly different ways of considering policing: public policing (quadrants 1 and 2); public low policing (quadrant 1); public high policing (quadrant 2); private policing (quadrants 3 and 4); private low policing (quadrant 3); private high policing (quadrant 4); and hybrid policing (the dual axes).

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Figure 12: Policing Dichotomies and Types Embedded in Brodeur's Integrated Model of Policing
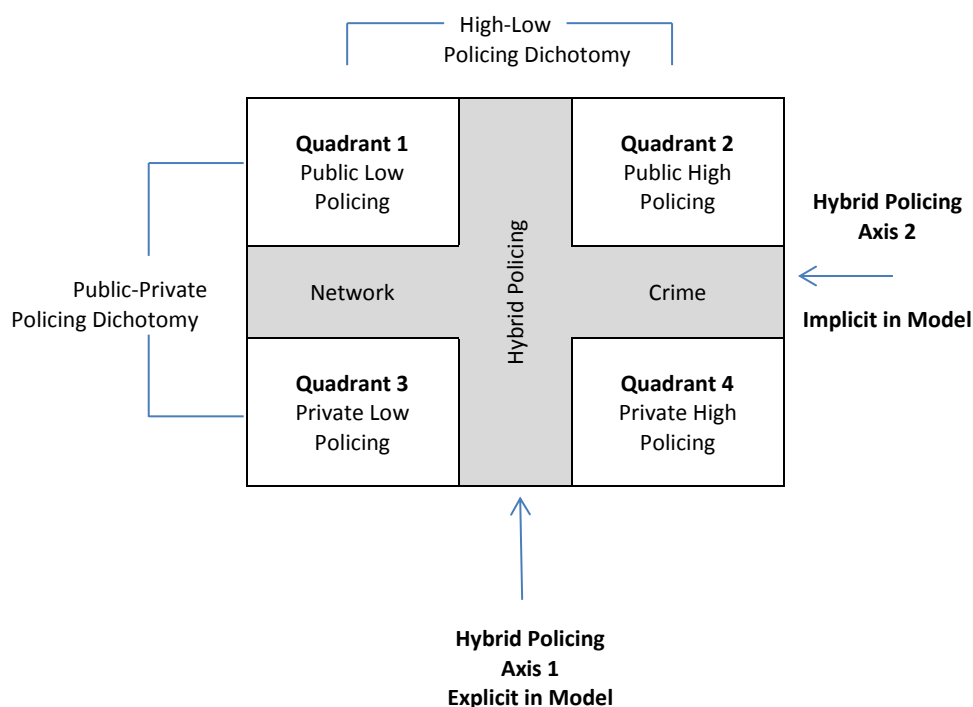
The hallmarks of the different policing types applied in the analysis that follows are drawn from the literature and summarised in 7.4.1 below. As a simple starting point (and noting the boundaries are blurred and the scholarship is still evolving), whereas high policing can be considered political policing and surveillance, low policing can be considered criminal policing and law enforcement. As a simple starting point (also noting the boundaries are blurred and the scholarship is also still evolving), public policing is carried out by public entities and private policing by private entities. Further, both high and low policing can be undertaken in the public sphere, the private sphere or both. As the Model and its theoretical bases reflect, these key divides are analytical rather than neat and their complex interactions open up the space for hybrid policing. Discussed next is that a notable example of hybridity identified in the present study that combines elements of the Model's underlying dichotomies, is the role of ACPO in policing.

7.3   The Association of Chief Police Officers (ACPO)

Discussed in Chapter 4 is that ACPO had operational control of, and ran covert policing units after it was incorporated as a private company limited by guarantee on 1 April 1997. These were the Special Demonstration Squad (SDS) in the period 2006 to 2008 until it

was disbanded, and the NPOIU in the period 2006 to January 2011 until it was transferred to MPS under a lead force arrangement (and renamed and refocused). At the time of the Ratcliffe-on-Soar protest (in April 2009) and the Drax train occupation (in June 2008) when the NPOIU was under the operational control of ACPO, former UCO Mark Kennedy was deployed deep undercover as part of the NPOIU and was involved (in different ways) in both protests. This part of the Chapter sets out the reasons why the present study has identified that since 1997 when it was incorporated as a private company limited by guarantee until it was wound up in 2015, ACPO can be considered a hybrid policing body. The analysis shows that key markers of ACPO's hybridity varied during the period 1997 to 2015.

Her Majesty's Inspectorate of the Constabulary (HMIC) has identified that in 2006 the covert policing units SDS and the NPOIU were operationally 'moved to ACPO' from the MPS (HMIC, 2012, p. 30) who then ran the units (HMIC, 2012, p. 31). At the time of both of the UK case study protests, and until it was wound up on 31 March 2015 and replaced with the National Police Chief's Council (NPCC), ACPO was a private company limited by guarantee and had been since 1 April 1997 (National Police Chiefs' Council, 2015b; The Association of Chief Police Officers of England, Wales & Northern Ireland, 1997, 2006). At the time of the Ratcliffe-on-Soar protest and the Drax train occupation, in terms of sectoral placement ACPO was in the private sphere. However, relying on sectoral placement while useful as a starting point, is manifestly insufficient to accurately describe the forms of policing evident in these cases. Rather, consistent with the scholarship, consideration should also be given to the broader markers of "publicness" that are also evident. Three distinct markers identified and analysed in the present study indicate that since 1 April 1997 when it became a private company limited by guarantee, until it was wound up on 31 March 2015, ACPO was neither wholly private nor wholly public and was a hybrid policing body.[30] Since ACPO's incorporation and discussed in turn, these are (1) that ACPO employees had access to civil service pension schemes otherwise closed to employees of private entities (during 1997-2015), (2) that ACPO had operational control of the SDS and the NPOIU with no corresponding statutory authority to undertake policing directly (during 2006-2011), and

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[30] Due to incomplete information, ACPO's role in the maintenance of the national extremism database as a potential fourth marker of hybridity has not been able to be assessed as part of the present study (see Metropolitan Police, 2013; NetPol, 2014).

(3) that ACPO was declared a public authority for the purpose of applying the *Freedom of Information Act 2000* (the FOI Act) (in 2011).

7.3.1 Access to Civil Service Pension Schemes (1997–2015)

After ACPO's incorporation as a private company limited by guarantee, it produced financial statements and furnished them to Companies House (The Association of Chief Police Officers of England, Wales & Northern Ireland, 1998 – 2012; The Association of Chief Police Officers of the United Kingdom, 2013, 2014). An analysis of these financial statements obtained from Companies House identify that in the years 1997 to 2002, ACPO's civilian staff were members of the MPS civil staff pension scheme (The Association of Chief Police Officers of England, Wales & Northern Ireland, 1998, p. 4; 1999, p. 4; 2000, p. 4; 2001, p. 4; 2002, p. 5). During these years, this was the Metropolitan Civil Staff Superannuation Scheme (MCSSS) (www.parliament.uk, 2001, para 298). During 1997 to 2001, the MCSSS was a closed pension scheme, existing solely for the MPS's civil staff (www.parliament.uk, 2001, para 297). It was therefore closed to the private sector.

The situation whereby ACPO's civilian staff were members of the otherwise closed MPS civil staff pension scheme emerged because they had earlier been seconded to ACPO from the MPS. By virtue of their employment relationship with the MPS, the seconded staff were members of the MCSSS at the time they later become direct employees of ACPO (www.parliament.uk, 2001, para 297). However after ACPO's incorporation as a private company limited by guarantee in 1997, ACPO's civil staff continued to be members of the MCSSS. In giving effect to this, pension scheme contributions were made by the MPS on behalf of ACPO that in turn reimbursed the MPS for the financial contributions made (The Association of Chief Police Officers of England, Wales & Northern Ireland, 1998, p. 4; 1999, p. 4; 2000, p. 4; 2001, p. 4; 2002, p. 5). In 2001 as the path was being laid for the MCSSS to be wound up and rolled up into a different and existing scheme (the Principal Civil Service Pension Scheme (PCSPS)), this situation was recognised as irregular and unsatisfactory (www.parliament.uk, 2001, para 298). To provide a "statutory fix", s127 of the *Criminal Justice and Police Act 2001* (an omnibus Act) amended s1 of the *Superannuation Act 1972* to prospectively and retrospectively legitimise ACPO employees' membership of civil servant pension schemes (www.parliament.uk, 2001, para 299).

In the years 2003 to 2014 and after the MCSSS had been rolled up into the PCSPS, ACPO's financial statements identify that employees of ACPO were then members of the PCSPS (The Association of Chief Police Officers of England, Wales & Northern Ireland, 2003, p. 6; 2004, p. 6; 2005, p. 6; 2006, p. 6; 2007, p. 6; 2008, p. 7; 2009, p. 9; 2010, p. 8; 2011, p. 8; 2012, p. 8; The Association of Chief Police Officers of the United Kingdom, 2013, p. 9; 2014, p. 11). Until October 2013 (noting ACPO's special exemption), the PCSPS was also closed to private sector employees. Notwithstanding the "statutory fix", pension scheme contributions although also reimbursed, continued to be made by the MPS on behalf of ACPO (The Association of Chief Police Officers of England, Wales & Northern Ireland, 2003, p. 6; 2004, p. 6; 2005, p. 6; 2006, p. 6; 2007, p. 6; 2008, p. 7; 2009, p. 9; 2010, p. 8; 2011, p. 8; 2012, p. 8; The Association of Chief Police Officers of the United Kingdom, 2013, p. 9; 2014, p. 11).

In October 2013, amendments were effected to the PCSPS 'to allow independent employers to participate' in it (Civil Service Pensions, 2014a). Of note is that these changes enabled private sector employers to join the PCSPS (therefore expanding membership eligibility to their employees) where, as a result of outsourcing, private sector employees carry out work 'formerly done within Government' (Civil Service Pensions, 2014b). Even then eligibility to participate in the PCSPS is restricted to employees who were existing members at the time their employment was transferred from Government to the private sector as part of the outsourcing arrangements (Civil Service Pensions, 2014b). The list of employers admitted to the PCSPS under s1(4A) of the *Superannuation Act 1972* is strictly limited (Civil Service Pensions, 2014b).

What can be concluded is that since its incorporation as a private company limited by guarantee in 1997, ACPO's civilian staff were members of pension schemes that were until October 2013 (and only then in strictly limited circumstances), otherwise closed to other employees of private entities. This was legitimised only by retrospective changes in 2001 to s1 of the *Superannuation Act 1972* which provided the ongoing "statutory fix" to facilitate the special arrangements for ACPO.

7.3.2 Operational Control of Covert Policing Units (2006-2011)

The most powerful of the three markers of "publicness" assessed in the present study that identify ACPO is neither wholly public nor wholly private and can be considered a hybrid policing body, is that after its incorporation as a private company limited by guarantee ACPO had operational control of, and ran, the covert policing units the SDS and the NPOIU (Creedon, 2013, pp.1-2; HMIC, 2012, pp. 30-31). This collectively covered the period 2006 to January 2011. In 2012 HMIC reported that by 2010 serious concerns had been identified that ACPO (noting it was a private company limited by guarantee), had moved beyond its remit of 'providing a strategic view on policing matters' and had operational control of covert policing units (HMIC, 2012, p. 31). As discussed earlier, throughout its existence (1948 to 2015) ACPO was not a police force and it had no statutory authority to undertake policing functions directly (Association of Chief Police Officers, 2011b; 2012, p. 3; Reiner, 1991, pp. 362-367). According to HMIC (2012, p. 30), in 2006 the covert policing units the SDS and the NPOIU, were operationally 'moved to ACPO'. The impact of this move meant that according to HMIC (2012, p. 31), both the SDS and the NPOIU were then 'run by ACPO'. With no statutory authority to undertake policing functions directly, ACPO had operational control of, and ran the covert policing units the SDS in the period 2006 until it was disbanded in 2008, and the NPOIU from 2006 until January 2011 when it was transferred to the MPS under a lead force arrangement, and renamed and refocused (HMIC, 2012, p. 31).

It has not been possible in the present study to identify either the decision-maker or the authority (legislative or otherwise) the decision-maker relied on to move the SDS and the NPOIU to ACPO, enabling it to run the two covert units. The instruments used to effect such a machinery-of-government change while usually in the public domain, have not been able to be uncovered in the present study. The response from the Home Office to my request under the FOI Act for access to any document that related to the decision to move the SDS and the NPOIU under the operational control of ACPO, was that a search 'found no information' and a continued search would exceed the allowable cost limit of an FOI application (Home Office, personal communication, January 28, 2015). How this critical decision came to be made, who made it and the authority and mechanism on which they relied, while beyond the scope of this thesis, warrants further official scrutiny and research.

While it may never be fully revealed, the terms of reference for the inquiry into covert policing in the UK currently being undertaken by Lord Justice Pitchford arguably allow for its consideration (May, 2015).

In respect of the SDS and the NPOIU, when under its operational control, ACPO relied on undercover officers deriving their authority "to police" from the police forces in which officers had been seconded from or in the geographical areas in which they were deployed (Association of Chief Police Officers, 2012; HMIC, 2012). As the SDS had been disbanded in 2008, for the NPOIU, ACPO's reliance on the statutory authority of individual police forces escalated with the introduction of the *Regulation of Investigatory Powers Act 2000* (RIPA). As noted earlier, the RIPA provides the legislative framework for covert surveillance and investigation in the UK (Independent Police Complaints Commission, 2012, p. 5). After the introduction of the RIPA what occurred in practice (evidenced in the two UK cases), is that covert deployments and techniques were authorised by the respective authorising officers from the police forces in whose geographical area the NPOIU officers operated (HMIC, 2012, pp. 24-25). In this sense, ACPO was wholly dependent on authorising officers in individual police forces, to authorise the deployments of covert officers under its operational control. Of particular note is that HMIC has stated that 'no single authorising officer appears to have been fully aware either of the complete picture in relation to Mark Kennedy or the NPOIU's activities overall' (HMIC, 2012, p. 23). That full intelligence picture rested only with the NPOIU, and therefore organisationally within ACPO. Identifying the potential legal and policy implications from these arrangements is also beyond the scope of a deductive analysis and this thesis. It too warrants further scrutiny and research.

7.3.3 The *Freedom of Information Act 2000* and ACPO

The final marker of ACPO's "publicness" assessed in the present study is the application of the FOI Act to ACPO. In a 30 March 2010 news release, the Ministry of Justice announced that by November 2011 ACPO would become subject to the FOI Act, which gives a general right of access to information held by public authorities (Ministry of Justice, 2010). To give effect to this, the then Secretary of State exercised authority under s5 of the FOI Act to declare specific entities to be public authorities. In doing so, and for the purposes of the Act, (by order) declared ACPO, the Universities and Colleges Admissions Service and the

Financial Ombudsman Service to be public authorities (Information Commissioner's Office, 2015, pp. 4-5; Ministry of Justice, 2011, para 2.1). This decision by the then Secretary of State was on the basis that ACPO exercised functions 'of a public nature' (Ministry of Justice, 2011, paras 7.5-7.8). It was the first order made under s5 of the FOI Act, and ACPO became retrospectively and prospectively subject to the FOI Act on 1 November 2011 (Association of Chief Police Officers, 2011c; Information Commissioner's Office, 2015, p. 4).

The FOI Act does not define functions "of a public nature" and a range of factors can be considered that include (but are not limited to) 'if the body is funded in order to meet publicly desirable objectives' (Ministry of Justice, personal communication, August 18, 2011). The documents released in response to my FOI request about the decision to declare ACPO a public entity for the purposes of the FOI Act, identify the then Secretary of State considered a range of material in making this decision. This was a brief summary of ACPO's purpose and functions, advice that ACPO was a company limited by guarantee, advice that policing is a function of a public nature, advice that as ACPO's remit expressly included coordinating strategic policy responses in times of national need ACPO could direct the actions of public bodies, and advice that ACPO was willing to be drawn under the FOI Act (Ministry of Justice, personal communication, August 18, 2011).[31] The then Secretary of State also considered advice that based on these factors, 'all of ACPO's functions make a fundamental contribution, and are inextricably linked, to the policing of the state' (Ministry of Justice, personal communication, August 18, 2011).

While the order made to apply the FOI Act to ACPO reflects the decision rested on ACPO's purpose and functions as set out in its initial 1997 *Memorandum and Articles of Association* (Ministry of Justice, 2011, paras 7.5-7.8) (which remained substantively unchanged during ACPO's existence), this document was not expressly before the then Secretary of State when the decision was made (Ministry of Justice, personal communication, August 18, 2011). Nor was the fact that ACPO formerly had operational control of the covert policing units the SDS and the NPOIU (Ministry of Justice, personal communication, August 18, 2011). Had it been, it is arguably more likely this would have strengthened, rather than weakened, the basis for the decision to declare ACPO a public

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[31] The documents while released in 2014 are, as expected, dated 2011.

authority for the purpose of the FOI Act. However, had the fact that ACPO had formerly run covert policing units been before the then Secretary of State when the decision was being made to apply the FOI Act, it could also have raised the very questions about their respective roles, functions and tradecraft that are subject to the still ongoing official inquiries and legal proceedings. The question of whether the then Secretary of State was potentially misled (through omission) in making the decision to apply the FOI Act to ACPO is beyond the scope of this thesis, yet also warrants further scrutiny.

7.3.4 Summary - the Association of Chief Police Officers (ACPO)

As the policing scholarship expanded from the 1990s from an earlier and narrower focus on public police, theoretical concepts of policing expanded. As Stenning and Shearing (2012, p. 269) argue, the contemporary orthodoxy is that policing is not the exclusive mandate of the state. Rather, the concept of plural policing recognises policing occurs beyond the constabulary and moreover, beyond the state (Loader, 2000). Further, policing can be understood as being undertaken by 'the public police, other public policing bodies, "hybrid" policing bodies, and by private security and voluntary organisations' (Button, 2002, p. 1). As noted earlier, hybrid policing bodies do not neatly fit into the public-private dichotomy (Jones & Newburn, 1998, p. 200) and policing crosses the public-private divide (Johnston, 1992, Ch 6).

As the analysis above sets out, despite its sectoral placement in the private sphere between 1997 and when it was wound up in 2015, ACPO can be considered neither a wholly private entity nor a wholly public entity. At the time of the cases relevant to the present study, ACPO while a private company limited by guarantee and in the private sphere, exhibited distinct markers of "publicness". First, employees of ACPO had access to employment entitlements in the form of access to civil service pension schemes that were otherwise closed to the private sector; a situation that was retrospectively and prospectively legitimised by a special "statutory fix" in 2001. Secondly, with no statutory authority to undertake policing functions directly, ACPO had operational control of, and ran two covert policing units. Finally, while occurring after the cases in the present study (yet applying both retrospectively and prospectively), a third marker of "publicness" is that in 2011 for the purposes of the FOI Act, ACPO was declared a public entity. Relevant to the present study is that this was on the stated basis that ACPO had, since its incorporation in

1997, performed functions that were of a public nature. For the reasons set out above, and critical to the analysis that follows in 7.4 and Chapter 8, this study finds that during 1997 to 2015, ACPO can be considered neither wholly public nor wholly private and can be considered a hybrid policing body.

7.4   Mapping High and Low, Public and Private and Hybrid Policing to the Model

7.4.1   Approach to the Analysis

This part of the Chapter sets out the first of the three components of the deductive analysis of the Model, which continues and concludes in Chapter 8. Its focus is the first core component of the Model; policing types. Guided by the tentative definition of a policing agent proposed in *The Policing Web* (Brodeur, 2010, p. 130),[32] the questions of "what is policing?" and "who polices?" are considered expansively. As Brodeur (2010, Ch 1) argues, the policing assemblage is diverse and the meaning of police and policing has evolved. In the analysis, I systematically assess each case study in turn to determine if, how, to what extent and why, the policing identified in each protest can be mapped to the elements of the Model in terms of high and low policing, public and private policing, or hybrid policing. The focus is on identifying from available information who policed, and what they did to police. Then the focus is on mapping the nature and form of the policing identified (to the extent possible), to the first component of the Model. As discussed earlier, to enable an in-depth rather than superficial analysis, the Model and its theoretical bases are considered in the context of the broader policing literature in which it is now situated.

Approach to Identifying High and Low Policing

The literature review in Chapter 2 highlights the complexity of neatly distinguishing between high and low policing and between public and private policing. Further, policing does not necessarily neatly fit within these key analytical divides. Noted previously is that in simple terms, high policing can be considered covert political surveillance and the policing of the general order of the state which stands in contrast to the focus of low policing on the

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[32] As discussed in Chapter 2, Brodeur (2010, p. 130) proposed a tentative definition of policing agents in the follow in terms, 'policing agents are part of several connected organizations authorized to use in more or less controlled ways diverse means, generally prohibited by statute or regulation to the rest of the population, in order to enforce various types of rules and customs that promote a defined order in society, considered in its whole or in some its parts'.

specific order of the state (Anderson et al., 1995, p. 167; Brodeur, 2007; 2010, p. 183; Brodeur & Leman-Langlois, 2006, p. 171; Marenin, 1996, pp. 8-9; O'Reilly & Ellison, 2005, p. 649). In respect of high policing, the focus of the analysis that follows is on identifying the features of high policing as theorised by Brodeur (Brodeur, 1983; 2010, Ch 7). It underpins his theorising and how high policing is reflected in the Model. As discussed earlier, in the context of an expanding scholarship on high policing (drawing it more closely into concepts of national security and macro crimes), in *The Policing Web* Brodeur (2010, Ch 7) more fully articulates and describes what he came to view as the specific features of high policing. Discussed previously is that Brodeur (2010, Ch 7) identifies nine features of high policing: it is absorbent - soaking up intelligence and information as its currency; its prime focus is not to uphold or enforce the law; the protection of the state rather than the protection of the community from law breakers is its focus; the state can be the intended victim (through politically motivated offences); it makes extensive use of undercover agents and paid informants (including criminals); it is shrouded in secrecy; deceit is part of its tradecraft ; there is a conflation of legislative, judicial and executive power; and extra legality is not shunned. Notably for Brodeur (2010, Ch 7), not all of these features need be present to consider the nature and form of policing to be high policing. As Lévy (2012, para 14) notes, the distinction between high and low policing can be considered akin to 'two contrasting ways of operating', and as Ransley and Mazerolle (2009, p. 376) note, there are 'tensions and changing boundaries between high and low policing'. These factors guide the analysis that follows.

The hallmarks of low policing articulated by Brodeur in *The Policing Web* are more closely aligned to the ways low policing is theorised in the broader policing literature. As discussed earlier, the features of low policing include that: it can be equated to criminal policing (Brodeur, 1983, p. 512); its focus is the maintenance of order, the suppression of crime and the prosecution of criminals (O'Reilly & Ellison, 2005, p. 641); its focus is on traditional forms of delinquency (Brodeur, 2010, p. 252); it can be considered law enforcement (Brodeur & Leman-Langlois, 2006, p. 171); and as noted above, it can be considered the policing of the specific order of the state (Anderson et al., 1995, p. 167). In distinguishing between high and low policing, O'Reilly and Ellison (2005, p. 645) caution taking a narrow focus on 'operational methods as opposed to their underlying rationale'. These factors guide the analysis that follows.

Approach to Identifying Public and Private Policing

Brodeur (2010, pp. 22-27) points out that public police departments 'are the main component of the public police apparatus'. As a starting point for the analysis that follows, public police departments are considered to fall within the public sphere. Any additional factors that may moderate this preliminary placement within the Model are then identified and considered. Johnston (1992, p. 205) observes that 'public and private domains relate to each other in complex, dynamic, contradictory, and sometimes ambiguous ways'. These complex relationships underpin the way public and private policing have theorised by Brodeur and reflected in the Model. Jones and Newburn (1998, Ch 2 & Ch 7), with a focus beyond private security (a key focus of *The Policing Web*), offer one way of unpacking these complex relationships to better understand the distinctions between public and private policing. This is in terms of four interconnected dimensions: sectoral (whether the policing body is the public or private market sphere); spatial (where policing is carried out); legal (the powers available and the extent of their use); and functional (what police do). These different dimensions and their interactions also guide the analysis that follows.

Approach to Identifying Hybrid Policing

Hybrid policing is integral to the policing scholarship, Brodeur's theorising and to the Model. As noted earlier, in *The Policing Web*, Brodeur (2010, Ch 7 - 8) sought to address the lacunae in his earlier theorising identified by O'Reilly and Ellison (2005); namely that that high policing extends well beyond public policing, and the boundaries between public-private and high-low policing are blurred. As discussed earlier, hybrid policing bodies do not neatly fit into the high-low policing or public-private policing dichotomies (Brodeur, 2010, Ch 7-8; Jones & Newburn, 1998, p. 200). As the literature review highlights, hybridity in policing can be understood as occurring in the spaces between public-private policing and high-low policing (Button, 2002, p. 10; Johnston, 1992, p. 114-115; Ransley & Mazerolle, 2009, p. 372). Of particular relevance to the analysis that follows, hybrid policing bodies can operate in the public sphere, the private sphere, or both (Johnston, 1992, p. 115). These factors guide the analysis that follows.

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7.4.2   Policing of the Second Occupation at Wagerup, Australia May 1979

Chapters 4 and 6 include the key detail surrounding two site occupations by the group Campaign to Save Native Forests (CSNF) to protest resources development in WA in 1979. In summary, at the time of the Wagerup occupations, WA did not have general laws of criminal trespass and protesters at both occupations were arrested and charged with the then "obstruction provisions" in the *Police Act 1892* (WA). The policing of the second Wagerup occupation (May 1979) was multi-faceted involving the WA Police (including Special Branch) and ASIO. As noted previously, Australia's current national police force the AFP, did not become operational until October 1979. In the analysis that follows, the policing by the WA Police (in attending the scene and ultimately making arrests), will be identified and mapped to the Model as public low policing (Quadrant 1 in Figure 12) and the policing roles of both ASIO and the WA Special Branch (part of the WA Police) in the broader context of the policing of the CSNF, will be identified and mapped to the Model as public high policing (Quadrant 2 in Figure 12).

- **Policing of the May 1979 Wagerup Occupation by the WA Police (Excluding Special Branch)**

The overt policing of the Wagerup occupation in May 1979 was undertaken by the WA Police. Mr Bartholomaeus, one of the Wagerup 23 and present at the time, does not recall a private security presence in the policing of the occupations. The second occupation at Wagerup ended when the Wagerup 23, who had formed a human blockade aimed at preventing Alcoa commencing work on site, were arrested and charged by the WA Police with the then obstruction provisions in the *Police Act 1892* (WA). In exercising their statutory authority under the *Police Act 1892* (WA), the WA Police having become aware of the impending protest (which had been openly planned and advertised in *The West Australian*) gathered in nearby Yarloop. They observed the protesters over the weekend and when they believed the obstruction provisions had been triggered, entered the site and arrested the Wagerup 23. In respect of the obstruction provisions, the prosecution of the Wagerup 23 ultimately failed on a point of law. This focus of the WA Police on law enforcement and the prosecution of criminals (despite the prosecutions ultimately failing – discussed further in Chapter 8) exhibit the hallmarks of low policing.

The WA Police is a public police department. In this case there are no markers of "privateness" or other factors evident that would act to moderate this classification. Therefore, this aspect of the policing of the Wagerup occupation in May 1979 by the WA Police in attending the scene of the protest and arresting the Wagerup 23 can be identified as, and mapped to the Model, as public low policing (Quadrant 1 in Figure 12).

- **Policing of the Wagerup Occupations and the Campaign to Save Native Forests by the Australian Security Intelligence Organisation**

In response to my request for access to any potential ASIO holdings on Mr Bartholomaeus, who as noted earlier was one of the Wagerup 23, a spokesperson for the CSNF and later central to the highly politically controversial Jarrah Class Action, the National Archives of Australia (NAA) (personal communication, September 17, 2014) indicated 'ASIO could not identify any records in the open access period relating to (him)'. This does not preclude that holdings may exist outside of the open access period. In response to this request, ASIO did release (via the NAA) its minimally redacted holdings on the CSNF (NAA, barcode 13130381). No folios were wholly exempt from release and the reasons given for the minimal redactions included it could identify 'a confidential ASIO source or agent' or information about the 'management of an ASIO source' (NAA, barcode 13130381, pp. 4-5). The ASIO holdings released show that the CSNF did draw interest from both ASIO and WA's Special Branch. The ASIO holdings cover the period August 1978 (the date of the earliest folio released) to September 1980 (the date of the latest folio released) and therefore both occupations by the CSNF at Wagerup.

Of the 21 pages of ASIO holdings released in respect of the CSNF: six pages were press cuttings; one was the cover page of the Communist Party of Australia's newsletter; and one page was the agenda for the State Conference of the Communist Party of Australia. Of the press cuttings, one was the advertisement referred to earlier that was published in *The West Australian* on 25 May 1979, announcing that the second Wagerup occupation would commence on 26 May 1979 (folio 18). Of the 13 remaining pages, all are intelligence reports (nine reports in total). Of the nine intelligence reports, two are ASIO intelligence reports (folios 4 & 11) and seven are WA Police Special Branch intelligence reports (folios 1, 2, 3, 9, 10, 14, 15, 16, 17, 19, 20). What should be borne in mind is that until 1 June 1980 (the date of the proclamation of the *Australian Security Intelligence Act 1979* (Cth)), ASIO's

enabling legislation remained as it was at the time of the Bunbury bombing, the *Australian Security Intelligence Organization Act 1956* (Cth). As noted above, this required that ASIO's functions in obtaining, correlating and evaluating intelligence be 'relevant to security' which was defined in s2 as meaning 'the protection of the Commonwealth and the Territories of the Commonwealth from acts of espionage, sabotage or subversion'. What should also be borne in mind is that at the time, ASIO was a "customer" of intelligence supplied by Special Branches (Horner, 2014, p. 171; Special Attention - A History of Special Branch, 2014). As the ASIO records in this case confirm, the WA Special Branch supplied it with intelligence reports.

Of the ASIO intelligence reports, the first (folio 4) dated 8 August 1978 notes a surveillance report provided to ASIO by the WA Special Branch dated 1 August 1978 (folios 1-3). The appended WA Special Branch intelligence report reflects the surveillance of a demonstration outside Parliament House in Perth on 1 August 1978 by the CSNF that was attended by approximately 100 people and had been duly authorised by the WA's Commissioner of Police. It establishes the CSNF or individuals associated with it were of interest to the WA Special Branch before the occupations at Wagerup. However, of this report, the ASIO notations (folio 4), indicate it had little interest in the CSNF *per se*, but it did have interest in some already "indexed" individuals present at the protest. In context, prior to the Wagerup occupations, the Communist Party of Australia and Prout (associated with the Ananda Marga) were very much of interest to both ASIO and the WA Police. The second ASIO intelligence report (folio 11) relates to surveillance of people linked by ASIO to Prout at a social theatre night where mention was made of 'the Forest people', which ASIO identified as a reference to the CSNF. These two records suggest that in respect of the policing by ASIO of the Wagerup occupation and its broader context of the CSNF, ASIO's interest was tangential to what was at the time an existing interest in the Communist Party of Australia (Horner, 2014; McKnight, 1994) and the Ananda Marga (Hocking, 1993, pp. 132-137). In context, this was at a time when ASIO considered that 'members of Ananda Marga (had) been responsible for terrorist actions' (NAA barcode 3340041, Series A1838, Folio 72, p.2). It was also after the Hilton Hotel bombing became a catalyst 'for the government to implement a sweeping build-up of the police-intelligence apparatus' that included a focus on the Ananda Marga (Head, 2008, p. 254).

In this case, the way ASIO operated included: as a customer of intelligence reports (provided by the WA Police Special Branch); with a tradecraft of secrecy through the use of sources or agents (one reason given for the partial redaction of the files); and with no discernible focus on the identification of possible criminality for the purposes of possible prosecution. While not exhibiting all the hallmarks of high policing identified by Brodeur, the overall focus on surveillance of political groups, infiltration with informers, and political policing in this case is characteristic of high policing.

Brodeur (2010, pp. 22-27) points out domestic security agencies are considered public policing bodies. In the case of ASIO, it is a 'non-corporate Commonwealth entity' (Australian Government, 2014, p. 1) whose enabling legislation was in 1979 (and still is) administered by the federal Attorney-General (Commonwealth of Australia, 1975, p. 4; 2013b, p. 5). In terms of sectoral placement, ASIO is in the public sphere and can be considered a public entity. In respect of the policing by ASIO in this case, there are no markers of "privateness" or other factors evident that would act to moderate this. Therefore, the policing by ASIO of the Wagerup occupation considered in its broader context of the policing of the CSNF can be identified as, and mapped to the Model as, public high policing (Quadrant 2 in Figure 12).

- **Policing of the Wagerup Occupations and the Campaign to Save Native Forests by the WA Police Special Branch**

Of the WA Police Special Branch intelligence reports in the ASIO records of the CSNF, five (folios 9-10, 15-16, 17, 19, 20) record detail of the surveillance of Prout and one (folio 14) lists the names of people of security interest that appeared in a newsletter of the Communist Party of Australia. One of the intelligence reports relating to Prout (folio 17), identifies that at a Prout meeting on 17 May 1979, mention was made of the preparations for the second Wagerup occupation. Of note is that the three ASIO holdings released that post-date 1 June 1980 (the date the *Australian Security Intelligence Act 1979* (Cth) was proclaimed), were all were supplied to ASIO by the WA Police Special Branch. Whether there was a re-calibration in this case of how matters relevant to security were considered under the then new *Australian Security Intelligence Act 1979* (Cth), has been unable to be determined in the present study. What can be discerned from the ASIO holdings in respect of the policing by the WA Police Special Branch of the Wagerup occupation and its broader

context of the CSNF, is that its interest was also tangential to an underling interest in Prout (associated with the Ananda Marga). My request directed to the State Records Office of WA for any Special Branch files that may exist in respect of the Wagerup occupation returned that no specific files were identified (State Records Office of WA, personal communication, March 5, 2015). What is evident from the WA Special Branch intelligence reports that do form part of the ASIO holdings, is that: their focus was the collection of detailed information about those surveilled; intelligence collected by them was supplied to ASIO; and there was no discernible focus on the identification of possible criminality for the purposes of possible prosecution. While not exhibiting all the hallmarks of high policing identified by Brodeur, as noted above the overall focus on political policing and surveillance is characteristic of high policing.

Established earlier is that the WA Police is a public entity. It is a public police department. In this case there are no markers of "privateness" or other factors evident that would act to moderate this. Therefore, the mapping of the "light touch" policing by the WA Police Special Branch of the Wagerup occupation when considered in its broader context of the policing of the CSNF, can be identified as, and mapped to the Model as, public high policing (Quadrant 2 in Figure 12).

7.4.3   Policing of the Bunbury Bombing, Australia July 1976

Chapters 4 and 5 set out the key detail surrounding the bombing of port infrastructure in Bunbury, WA on 19 July 1976 by Mr Chester and Mr Haabjoern aimed at halting wood chipping. In summary, after stealing a cache of 363kgs of gelignite and associated detonating equipment, the men planted three bombs at the port, only one of which exploded. Arrested soon after, and with no terrorist offences on the books to consider, the Bunbury bombers were arrested, charged and prosecuted using the criminal law. They were both given full-time custodial sentences and the non-parole periods were increased after Crown appeals.

The response to my access application to the NAA for ASIO files in the open access period relating to Mr Haabjoern and Mr Chester, indicate that while ASIO did take an interest in both men, they were assessed as not being of security concern. The NAA

(personal communication, October 23, 2013) has advised that although 'traces' relating to the men were located on ASIO databases, they only identified 'testing files'. Testing files are 'files on persons under investigation to determine their security significance who prove not to be of security interest' (NAA, personal communication, November 1, 2013). For both men, the testing files were destroyed on 13 March 2000 in accordance with archives procedures set out in Records Disposal Authority 1366 Entry 3.3 (NAA, personal communication, October 23, 2013).

The policing of the Bunbury bombing was dual-faceted and involved the WA Police and ASIO. In the analysis that follows, the policing by the WA Police (excluding Special Branch) will be identified and mapped to the Model as public low policing (Quadrant 1 in Figure 12) and the policing by ASIO will be identified and mapped to the Model (to the extent it can be assessed) as public policing (Quadrants 1 and 2 in Figure 12). For the reasons that will be identified, any potential role of the WA Police Special Branch has been unable to be assessed as part of the present study. In terms of the organisation of police resources in Australia, the Bunbury bombing also occurred before the formation of the AFP.

- **Policing of the Bunbury Bombing by the WA Police (Excluding Special Branch)**

For the then Premier of WA, the Bunbury bombing was a gross act of terrorism and for the WA police at the time, it was a very serious crime. Exercising their statutory authority to police derived from the *Police Act 1892* (WA), the WA Police were first responders to the Bunbury bombing. The immediate response by the WA Police involved officers attending the scene and defusing the two bombs that did not explode. The WA Police then instigated an investigation and located and arrested Mr Chester and Mr Haabjoern. Then with the assistance of the men, the WA Police searched for and found the remnant gelignite from the earlier theft. This focus of the WA Police on law enforcement including "catching and locking up criminals" (in this case the Bunbury bombers) reflects the hallmarks of low policing.

The WA Police is a public police department. In this case there are no markers of "privateness" or other factors evident that would act to moderate this. The policing by the WA Police in attending the scene, defusing the two bombs that did not explode, initiating an investigation, locating and arresting the Bunbury bombers and searching for and recovering

the remnant gelignite can be identified as, and mapped to the Model as, public low policing (Quadrant 1 in Figure 12).

- **Policing of the Bunbury Bombing by the Australian Security Intelligence Organisation**

In respect of the policing of the Bunbury bombing, ASIO took a transitory interest in Mr Chester and Mr Haabjoern who they assessed as not being of security concern. With the destruction of ASIO's testing files in 2000 in accordance with archives procedures, the present study has not been able to identify precisely when ASIO's interest in the Bunbury bombers either began or ended. What is identifiable from a recently de-classified ASIO threat assessment is that at least by 28 February 1978, ASIO had determined one of the men (unnamed in the threat assessment) was a member of Ananda Marga (NAA, barcode 3340041, Folio 72, Attachment C, p.20). In this threat assessment, while reference to the Bunbury bombing is brief, the broader context was the threat from Ananda Marga and in respect of the Bunbury bombers, the sub-text was that both men were in custody. The threat assessment reads in part:

> In July 1976 two persons, one of whom was an Ananda Marga member, were arrested and convicted for attempts to blow up a woodchip gantry in Bunbury, Western Australia (NAA, barcode 3340041, Folio 72, Attachment C).

If ASIO's interest began only after the bombing, what must be borne in mind is that the Bunbury bombers had been arrested soon after the bombing and were in custody. When he was questioned by members of the WA Police immediately after the bombing, the nightwatchman Mr Morritt (personal communication, 24 February, 2015) was shown what he describes as 'heaps of photos of people at forest protest rallies, save our forest and all that sort of thing'. When Mr Morritt (personal communication, February 24, 2015) was shown the photographs at the time by the WA Police, he was able to point out Mr Haabjoern in one of the photographs. This is because Mr Haabjoern was wearing the same jumper he had worn at the time of the bombing. He explains:

> Yeah, so anyway the police must have known something was going on because they had heaps of photos of people at forest protest rallies, save our forest and all that sort of thing. And Haabjoern was in one of the photos with the same jumper (T. Morritt, personal communication, 24 February, 2015).

On the information available in respect of the policing by ASIO, the specific files created by ASIO for both men, which related to their respective security assessments, progressed no further than the now destroyed testing files. At the time ASIO's enabling legislation was the *Australian Security Intelligence Organization Act 1956* (Cth), section 5 requiring that ASIO's functions in obtaining, correlating and evaluating intelligence be 'relevant to security'. This was defined in s2 as meaning 'the protection of the Commonwealth and the Territories of the Commonwealth from acts of espionage, sabotage or subversion'. The Bunbury bombing was considered a serious act of politically motivated sabotage and a very serious crime. Coupled with ASIO's later assessment that one of the men was a member of Ananda Marga, this arguably legitimately drew the protest within ASIO's statutory remit at the time.

The precise nature of the policing by ASIO of the Bunbury bombing is unable to be identified in the present study. This includes the source of the material relied on by ASIO to make the determination that one of the men was a member of Ananda Marga. The information available suggests ASIO acted within their legislative remit at the time in collecting and analysing information about what was considered a serious act of politically motivated sabotage. The absence of any further specific files beyond the testing files suggests that information was collected only to the extent required for ASIO to assess if the Bunbury bombers were of security concern (they were deemed not to be). As noted above, Brodeur (2010, Ch 7) explains, not all the features of high policing need to be evident to categorise the nature and form of policing as high policing. Had the testing files not been destroyed in 2000, it may have been possible to discern if any of the features of high policing articulated by Brodeur (1983; 2010, Ch 7) or within the broader literature were evident in the policing by ASIO of the Bunbury bombing. As noted above, ASIO arguably acted within it legislative remit by taking an interest in the Bunbury bombers. That the testing files remained just that, shows that at some point ASIO took no further specific interest in the Bunbury bombers. However, this may feasibly have been on the sole basis the men were in custody. The origin of the photographs shown to Mr Morritt has not been able to be identified in the present study. There is no way of knowing from the surviving ASIO records: whether the ASIO files were created before or after the Bunbury bombing; what information ASIO relied on to make its security assessments of the Bunbury bombers; how that information was received or collected; the nature, form and extent of its receipt

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and collection; the extent of intelligence gathered; and the possible foci of any surveillance and intelligence reports. These are relevant considerations in distinguishing between high and low policing.

Established earlier is that ASIO is a public entity. In respect of the policing by ASIO in this case there are no markers of "privateness" or other factors evident that would act to moderate this. As noted, any potential markers of high or low policing are not able to be further assessed as part of the present study. With incomplete information, on fine balance the policing role by ASIO in undertaking security assessments of the Bunbury can only be identified as, and mapped to the Model as far as public policing (Quadrants 1 and 2 in Figure 12).

- **Policing of the Bunbury Bombing by the WA Police Special Branch**

At the time of the Bunbury bombings, the WA Police (along with other state and territory police forces) operated a Special Branch and shared information on organisations and individuals with ASIO (Horner, 2014; Special Attention - A History of Special Branch, 2014). The practice of Special Branches sharing intelligence reports with ASIO occurred from ASIO's inception in 1949 and was formalised in 1951 (Horner, 2014, p. 171; Special Attention - A History of Special Branch, 2014). In Australia at the time of the Bunbury bombing, Special Branches were "forces within forces" and the WA Special Branch formed part of the WA Police (NAA, barcode 13130381, folio 4). Noted previously is that the operational relationships between ASIO and Special Branches were built on ASIO being a customer of information and intelligence supplied to it by the Special Branches (Special Attention - A History of Special Branch, 2014). Whether the WA Special Branch supplied information to ASIO about the Bunbury bombers (and if so its extent, its nature and form and methods of collection) has not been able to be determined in the present study. Coupled with the destruction of the testing files, my request directed to the State Records Office of WA for any Special Branch files that may exist in respect of the Bunbury bombing returned that no specific files were identified (State Records Office of WA, personal communication, March 5, 2015). Therefore, in respect of the Bunbury bombing any further potential policing role by the WA Police beyond that already identified as public low policing

(with its attendant focus on criminal policing and catching and locking up criminals), is not able to be assessed as part of the present study and thus mapped to the Model.

7.4.4 Policing of the Whitehaven Coal Hoax, Australia January 2013

Chapter 4 sets out the key detail surrounding the false media release circulated on 7 January 2013 by anti-coal protester Mr Moylan. In summary, the false media release purportedly from the ANZ Bank, falsely announced the ANZ Bank had withdrawn its $1.2 billion loan facility to the mining company Whitehaven Coal (WHC). When a range of investors off-loaded WHC shares (acting as if this were a genuine announcement), the market capitalisation of WHC was temporarily reduced by approximately $300 million. The matter was investigated by the Australian Securities and Investments Commission (ASIC), Australia's corporate, markets and financial services regulator. Mr Moylan was prosecuted and found guilty of breaching s1041E of the *Corporations Act 2001* (Cth), was sentenced to imprisonment for 20 months and was immediately released on recognisance.

The policing of the WHC hoax was dual-faceted and involved ASIC and to a much lesser extent, the Australian Securities Exchange (ASX). As noted previously, constabulary powers are in no way required for a body to have a policing function (Johnston, 1992, p. 115; Stenning et al., 1990). In this case the constabulary including the AFP had no discernible role to play in the policing of the WHC hoax. As Stenning et al. (1990) have highlighted that with no constabulary powers, financial markets and their regulators can and do undertake policing functions. Comino (2015, p. 1) points out that ASIC, as Australia's corporate regulator, is also Australia's 'corporate cop'. In the analysis that follows, the policing by ASIC will be identified and mapped to the Model as public low policing (Quadrant 1 in Figure 12) and the policing by the ASX will be identified as and mapped to the Model as private low policing (Quadrant 3 in Figure 12).

- **Policing of the Whitehaven Coal Hoax by the Australian Securities Investment Commission**

ASIC's authority to police and enforce the *Corporations Act 2001* (Cth) is derived from its enabling legislation, the *Australian Securities and Investments Commission Act 2001* (Cth) (the ASIC Act). In the case of the WHC hoax, ASIC's policing role included initiating and

undertaking an investigation (which was publicly announced on the day of the hoax and commenced almost immediately) and initiating and supporting the prosecution of Mr Moylan for contravening section 1041E of the *Corporations Act 2001* (Cth) (ASIC, 2013). The focus of ASIC in enforcing the *Corporations Act 2001* (Cth) by using its statutory authority to investigate and then initiating and supporting the prosecution of Mr Moylan, was focused on law enforcement. In this context, ASIC Commissioner Cathie Armour said 'ASIC will not hesitate to enforce the law to ensure investors are protected and the integrity of the market is maintained' (ASIC, 2014). That the law enforcement action commenced almost immediately is consistent with the assessment by Stenning et al. (1990, p. 89), that financial markets can 'get out of control very quickly, with devastating results'. ASIC bringing charges under s.1041E (and its predecessor, s.999) of the *Corporations Act 2001* (Cth) is far from unusual and can in fact be considered a "business as usual" approach. This focus by ASIC on law enforcement and pursuing the prosecution of Mr Moylan reflect the hallmarks of low policing.

ASIC is 'an independent government body' (Australian Securities & Investments Commission, 2014) whose enabling legislation (the ASIC Act) is administered by the federal Treasurer (Commonwealth of Australia, 2013b, p. 38). As an organisation, ASIC is a 'non-corporate Commonwealth entity' (Australian Government, 2014, p. 2). ASIC officials can be engaged under either the ASIC Act, or as a further marker that ASIC is both a Commonwealth and public entity, the *Public Service Act 1999* (Cth) (Australian Government, 2014, p. 2). For these reasons, and while it has a hybrid regulatory mandate in respect of the civil and criminal penalty regimes it enforces (Comino, 2015, p. 235), in terms of sectoral placement, ASIC is in the public sphere and can be considered a public entity. In respect of ASIC, in this case there are no markers of high policing or markers of "privateness" evident. The policing by ASIC of the WHC hoax can therefore be identified as, and mapped to the Model as, public low policing (Quadrant 1 in Figure 12).

- **Policing of the Whitehaven Coal Hoax by the Australian Securities Exchange**

The role of the ASX in policing the WHC hoax is far more subtle and discernible only for a brief period on the day of the hoax itself. The ASX 'is one of the world's leading financial market exchanges' (ASX, 2014a). As noted previously, at 12:41 am on 7 January 2013, the ASX announced it had placed the securities of WHC in a pre-open phase, which

enabled orders for trading to be submitted but prevented their execution. In doing so the ASX used its own motion powers. The formal trading halt that had been requested by WHC and subsequently imposed by the ASX at 12:56 pm was lifted by the ASX at 1:30 pm enabling WHC securities to resume trading. Relevant to this analysis, the role and authority of the ASX is derived by its constitution (ASX Limited, 2012). Consistent with its constitution, the ASX has issued listing rules in respect of trading halts (ASX, 2014c, pp. 1701-1702). While the ASX has the ability to place securities in a pre-open phase using its own motion powers, a trading halt can only be initiated 'at the request of an entity' (ASX, 2014c, pp. 1701-1702) in this case, WHC. Under its listing rules, having regard to a number of factors, the ASX may, but is not required to, issue trading halts when they are requested (ASX, 2014c, p. 1701).

As previously noted, constabulary powers are in no way required for a body to have a policing function (Johnston, 1992, p. 115; Stenning et al., 1990) and financial markets can exercise policing functions (Stenning et al., 1990, p. 95). Also noted previously is that in respect of distinguishing between high and low policing, O'Reilly and Ellison (2005, p. 645) caution against taking a narrow focus on 'operational methods as opposed to their underlying rationale'. The underlying rationale of the ASX in exercising its authority by placing the securities of WHC in a pre-open phase and issuing a trading halt was to protect both the interests of WHC, investors in WHC and investors in the Australian financial markets more broadly. While the ASX has no constabulary powers, the effect of the action by the ASX was to suppress the manipulation of the stock market, an offence at s1041E of the *Corporations Act 2001* (Cth). With a focus on the suppression of crime, the policing role by the ASX in firstly placing the securities of WHC in a pre-open phase and then in a trading halt reflect the hallmarks of low policing.

The ASX is 'a company limited by shares' (ASX Limited, 2012, p. 1) and is itself listed on the ASX (ASX, 2014b). The ASX is a publicly listed company which puts the ASX solely in the private market sector. In terms of sectoral placement, the sole potential marker of "publicness" evident is that the ASX is a publicly listed company. However, this has the effect of rendering it a private entity. In terms of sectoral placement, the ASX is in the private sphere and is considered a private entity. In respect of the ASX, in this case there are no markers of high policing evident and the one potential marker of "publicness"

identified has been discounted. The policing by the ASX in placing the securities of WHC in a pre-open phase and then in a trading halt (which was later lifted) can therefore be identified as, and mapped to the Model as, private low policing (Quadrant 3 in Figure 12).

7.4.5   Policing of the Ratcliffe-On-Soar Protest, Nottinghamshire England April 2009

Chapter 5 sets out the key detail surrounding the attempt in 2009 by climate change activists to shut down the power station at Ratcliffe-on-Soar in Nottinghamshire. The attempt was thwarted by the use of pre-emptive arrests supported by intelligence provided by Mark Kennedy, at the time an undercover officer with the NPOIU. Of the 115 people arrested (114 that night and one later), 26 were ultimately charged under s68(1) of the *Criminal Justice and Public Order Act 1994* (CJPOA) with the offence of aggravated trespass. Discussed further in Chapter 8, is that as a result of the non-disclosure by the Crown of key evidence that ought to have been provided to those charged, as well as the role of Kennedy in the planned protest, all prosecutions ultimately failed. Central to the assessment that follows is that at the time of this protest, the NPOIU was under the operational control of ACPO. For the reasons set out in 7.3 above, at the time ACPO can be considered a hybrid policing body.

The policing of the Ratcliffe-on-Soar protest was multi-faceted and involved: Kennedy in his role with the NPOIU (who collected the intelligence supplied to the Nottinghamshire Police, participated in the planning of the protest and acted as an agent provocateur); the Nottinghamshire Police (and other Home Office forces) who made the arrests; and ACC Ackerley of the Nottinghamshire Police who in this case authorised the undercover deployment of Kennedy pursuant to the RIPA. The present study has not discerned a private security response to this protest nor potential interaction between the Nottinghamshire Police and the operator of the power station, E.ON. In the analysis that follows: the policing by Kennedy as part of the NPOIU will be identified as hybrid high policing that can only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12); the policing by the Nottinghamshire Police will be identified as and mapped to the Model as public low policing (Quadrant 1 in Figure 12); and the policing by ACC Ackerley of the Nottinghamshire Police in authorising the undercover deployment of

Kennedy will be identified as hybrid high policing yet can also only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12).

- **Policing of the Ratcliffe-on-Soar Protest by Kennedy and the NPOIU**

Chapter 4 has set out that by 2009 when the core group of five activists were planning to enter and shut down the power station and drew Kennedy into the group, he had been living deep undercover in the persona of committed green anarchist Mark Stone for close to seven years. By that time, Kennedy had become a "go to man" for people planning large-scale overt protests as well as clandestine protests. In the persona of Mark Stone, Kennedy had access to cash, equipment and transportation making him a valuable commodity in the activist community in which he was deployed. In respect of this case, Kennedy's role is evident in the pre-protest planning phase and during the protest. Kennedy's role in the pre-protest phase was twofold. First, it included collecting intelligence and passing detailed intelligence reports to his handler. Secondly, Kennedy participated in planning the protest and in this capacity (among other things), drove four of the core group of five activists to the site of the planned protest to facilitate a scoping visit. Kennedy's role during the different phases of the protest itself is critical to understanding how the protest and its aftermath played out. As noted earlier, Kennedy was authorised under the RIPA to participate in the protest (including in criminal activity) and make audio-recordings while undercover. Hours before the protest was due to commence, Kennedy warned police stationed near the power station that the protest would be called off if they remained on site. In his undercover persona, and in the guise of reporting back to fellow activists after undertaking a final reconnaissance, Kennedy advised those gathered at Iona School that the police had left. This effectively gave the protest the "all clear". Consistent with the authorisations under the RIPA, Kennedy made secret audio-recordings of his description of the status of the planned protest and briefings to the assembled protesters that took place. He remained undercover during the raid on Iona School, his subsequent arrest and during the initial charging process.

In this case taken in its broader context of Kennedy's long term deployment with the NPOIU, the features of high policing evident include: the role of the NPOIU was to collect intelligence (which was its "main game") and not to uphold the law; the modus operandi of

the NPOIU was the use of long-term undercover deployments; the tradecraft involved surveillance, secrecy and deceit; and Kennedy acted as an agent provocateur. While not exhibiting all the hallmarks of high policing identified by Brodeur, this is characteristic of high policing.

For the reasons set out in 7.3 above, at the time of the Ratcliffe-on-Soar protest ACPO was a hybrid policing body. In this case, the nature and form of policing by Kennedy in its broader context of his role with the NPOIU at the time under the operational control of and run by ACPO, can be identified as hybrid high policing yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12).

- **Policing of the Ratcliffe-on-Soar Protest by the Nottinghamshire Police, the Pre-emptive Arrests**

Central to the policing of this case were the pre-emptive arrests made by the Nottinghamshire Police and other Home Office police forces as part of Operation Aeroscope.[33] Kennedy was the sole source of the intelligence that fed into Operation Aeroscope (Rose, 2011, p. 34), which 'cost £300,000 and resulted in the largest number of pre-emptive arrests of political activists in the UK' (Lewis & Parakash, 2011). As part of Operation Aeroscope, approximately 200 police (predominantly the Nottinghamshire Police force) exercised their authority "to police" and arrested the 114 activists at the Iona School to thwart the attempt to shut down the power station. As noted earlier, one activist was arrested soon after.

Of the 115 activists arrested on suspicion of being involved in a 'conspiracy to commit aggravated trespass and criminal damage at the power station', 26 were ultimately charged (Association of Chief Police Officers of England, Wales & Northern Ireland, 2009, p. 2). Noted earlier is that on the basis of the failure by the Crown to comply with pre-trial disclosure obligations, the trial of the six Deniers collapsed as it was about to begin and the

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[33] In respect of the pre-emptive arrests, as part of Operation Aeroscope 200 police from the Nottinghamshire Police and other forces were deployed. This analysis has focused on the role of the Nottinghamshire Police. This is because detail of the precise forces also involved in the pre-emptive arrests has not been able to be identified as part of the present study. If other police forces had been identifiable, they would also be identifiable as public entities. This form of policing would be categorised as public low policing. In the case of the present study, the effect would be to identify further forces involved in public low policing rather than any discernible difference in policing types.

convictions of the 20 Justifiers were later quashed. Despite the ultimate failure of the prosecutions, the focus of Home Office police forces led by the Nottinghamshire Police on law enforcement, criminal policing, the suppression of crime and the prosecution of criminals, reflect the hallmarks of low policing.

The Nottinghamshire Police is a public police department. In respect of the Nottinghamshire Police's role in making the pre-emptive arrests, in this aspect of the case while a customer of intelligence, there are no markers of high policing or markers of "privateness" evident. Therefore, the pre-emptive arrests made by the Nottinghamshire Police can be identified as, and mapped to the Model as, public low policing (Quadrant 1 in Figure 12).

- **Policing of the Ratcliffe-on-Soar Protest by the Nottinghamshire Police, the Authorisation under the *Regulation of Investigatory Powers Act 2000* (RIPA)**

On 5 November 2008 as part of Operation Pegasus run by the NPOIU, Assistant Chief Constable (ACC) Ackerley of the Nottinghamshire Police authorised a request from 'a (Detective Inspector) … from NPOIU … to consider an application for the use, conduct and participation in criminal activity of (an undercover officer)' (Independent Police Complaints Commission, 2012, p. 5). The authorisation was subsequently made by ACC Ackerley pursuant to the RIPA (Rose, 2011, p. 19) which as noted earlier, provides the legislative framework for covert surveillance and investigation in the UK. On 7 April 2009 shortly before the planned protest, the authorisation was re-affirmed and extended by ACC Ackerley to enable audio-recordings to be made (Rose, 2011, p. 19). Of note is that ACC Ackerley was 'the authorising officer throughout in relation to Kennedy's use, conduct and participation in Nottinghamshire' (Rose, 2011, p. 19). According to ACC Ackerley, he viewed that his role 'was to review and test the application and intelligence and to ensure there was a base upon which to act' (Independent Police Complaints Commission, 2012, p. 25).

As noted above, Kennedy's deployment considered in its broader context exhibits the hallmarks of high policing. However, in this case (discussed in more detail in Chapter 8) there is a very subtle shift in Kennedy's modus operandi from intelligence gathering (considered the purview of high policing) to evidence gathering (considered the purview of low policing). At the time, the NPOIU that housed Kennedy was under the operational

control of and run by ACPO which for the reasons set out above was at the time a hybrid policing body. Therefore, the effect was that ACC Ackerley in relying on his authority "to police" authorised high policing by a hybrid policing body. As noted above, the Nottinghamshire Police that housed ACC Ackerley is a public police department.

As previously discussed, the way hybrid policing has been theorised, recognises the inherent complexities and limitations of neatly distinguishing policing into the two binary dichotomies of public and private policing, and high and low policing. The blurring of boundaries is a hallmark of hybrid policing. The reliance of a hybrid policing body (ACPO) to deploy an undercover officer from the NPOIU at the time under its operational control, on the ACC Ackerley's authority to police, reflects an interdependent relationship and a enmeshing of the public-private as well as high-low policing dichotomies. For these reasons, the policing by ACC Ackerley of the Nottinghamshire Police in authorising Kennedy's covert deployment in this case can be identified as hybrid high policing, yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axis in Figure 12).

7.4.6   Policing of the Drax Train Occupation, Yorkshire England June 2008

Chapter 4 sets out the key detail surrounding the halting and occupation by activists of a freight train laden with coal on its way to the Drax Power Station in June 2008. In summary, 29 environmental activists stopped and boarded the train and while they had plans to occupy the train for several days, were arrested within hours. On the day of the protest, the 29 activists were arrested at the site of the protest by the British Transport Police (BTP), charged and ultimately convicted under s36 (obstructing engines or carriages on railways) of the *Malicious Damage Act 1861*. On the basis of the failure by the Crown to comply with pre-trial disclosure obligations (discussed further in Chapter 8), all convictions were ultimately quashed.

On the day of the protest amid concern the site of the protest could shift to the Drax Power Station, Drax sought and was granted a High Court injunction pursuant to the *Protection From Harassment Act 1997*. This occurred in the context that under the *Protection From Harassment Act 1997*, the High Court can grant injunctions to restrain people from 'pursuing any conduct which amounts to harassment' (Ashfield et al., 2000, pp.

1082-1084; Home Office, 2012). *The Protection From Harassment Act 1997* was intended to 'tackle stalking' yet its offences 'were drafted to tackle any form of persistent conduct which causes another person alarm or distress' (Home Office, 2012). The intended legal effect of gaining a High Court injunction was that any one entering the power station without Drax's permission, or causing or encouraging others to do so, committed the offence of "contempt of court"' (Joint Committee on Human Rights, 2009, Ev 135). Ashfield et al. (2000, p. 1084) point out, that by virtue of s3(6) of the *Protection From Harassment Act 1997*, this is a criminal offence. The effect is that as the injunction is a civil remedy, the civil law converts a breach to a criminal offence.

The policing of the Drax train occupation was multi-faceted. It involved: Kennedy in his role with the NPOIU (who collected the intelligence supplied to the West Yorkshire Police, participated in the planning of the protest and acted as an agent provocateur); Drax due to its role in seeking and being granted a High Court injunction; the BTP who made the arrests; and the Chief Constable and Acting Chief Constable of the West Yorkshire Police who in this case authorised the undercover deployment of Kennedy pursuant to the RIPA. In the analysis that follow: the policing by Kennedy as part of the NPOIU will be identified as hybrid high policing yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12); the policing by Drax will be identified as hybrid low policing that can also only be mapped to the Model as far as hybrid policing; the policing by the BTP will be identified as hybrid low policing yet can also only be mapped to the Model as far as hybrid policing; and the policing by the Chief Constable and Acting Chief Constable of the West Yorkshire Police will be identified as hybrid high policing that can also only be mapped to the Model as far as hybrid policing.

- **Policing of the Drax Train Occupation by Kennedy and the NPOIU**

By 2008 when Kennedy was involved in both the planning and execution of the Drax train occupation, he had been living deep undercover as Mark Stone for approximately six years. Further to the broader context of his deployment with the NPOIU discussed earlier, in respect of this particular case Kennedy kept detailed records of what happened (before, during and after the train occupation) that were sent via his handler to the West Yorkshire Police (*R v Bard (Theo) and Others*, 2014). Consistent with his undercover persona, in this

case Kennedy was the sole driver of the vehicle that took protesters to the site on the day of the protest (*R v Bard (Theo) and Others*, 2014, para 14). Kennedy remained undercover during the subsequent arrests and prosecutions of the Drax 29 (*R v Bard (Theo) and Others*, 2014). The Drax 29 were all convicted without the role of Kennedy being disclosed and before his outing as an UCO. In this Drax train case, the Appeal Court ruled that Kennedy's role should have been disclosed to the activists as it would have enabled their lawyers to argue at the original trial that either 'there had been an abuse of process' or in the alternate 'whether Mr Kennedy had acted as agent provocateur' (*R v Bard (Theo) and Others*, 2014, para 15). The policing by Kennedy in this case considered in the broader context of his deployment with the NPOIU, exhibits the hallmarks of high policing.

For the reasons set out in 7.3 above, at the time of the Drax train occupation ACPO was a hybrid policing body. At the time, the NPOIU was under the operational control of and was run by ACPO. Therefore, in this case the policing by Kennedy can be identified as hybrid high policing, yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12).

- **Policing of the Drax Train Occupation by Drax Power Limited (Drax)**

The role of Drax in policing the train occupation is far more subtle and is evident only for a brief period on the day of the protest itself. On the day of the protest amid concern the site of the protest could shift to the power station, Drax sought and was granted a High Court injunction pursuant to the *Protection From Harassment Act 1997.* The overall aims of Drax in seeking a High Court injunction are discernible through its explanation to the Joint Committee on Human Rights about the overall strategy of using civil injunctions in the context of radical environmental protest (see Joint Committee on Human Rights, 2009, Ev 134-137). The aims of Drax in seeking an injunction can be considered multi-focused: to create an offence of contempt of court for anyone entering the site without Drax's permission or causing or encouraging others to do so; to deter protesters entering the site; and to deter otherwise law-abiding protesters from breaking the law. In the UK, as trespass *per se* is a civil tort and not a criminal offence, the strategy of using High Court injunctions for the reasons discussed below is considered helpful for police responding to mass trespass (Joint Committee on Human Rights, 2009, Ev 135).

While Drax had no constabulary powers, in using the lever of seeking and being granted an injunction, it expanded the statutory powers available to the constabulary to respond to, and remove protesters from its power station if there was an incursion. Drax has explained of its earlier use of an injunction that it 'hoped … (it) would reinforce the police's position and given them more authority to direct the protestors off the land' (Joint Committee on Human Rights, 2009, Ev 135). In this context, the effect of the injunction was twofold: it created an offence that would otherwise not have existed (an offence of contempt of court for breaching the injunction by trespassing); and by doing so, it conferred the constabulary with authority that would not otherwise have existed to respond to trespass (enabling police to arrest protesters for contempt of court). In any event, in this case the protest did not move to the power station. The intent of seeking an injunction was to expand the statutory powers of the constabulary to respond to any incursion on site. In this sense, the focus was on criminal policing, the maintenance of order and the prosecution of criminals. The strategy of the injunction relies on it being openly sought and its granting widely promulgated. This reflects the hallmarks of low policing.

Drax is a public limited company listed on the London Stock Exchange (London Stock Exchange, 2014). For the reasons articulated in respect of the ASX, in terms of sectoral placement, Drax is in the private sphere and is considered a private entity. As discussed earlier, the value of the public-private policing dichotomy arises not because the boundaries are sharp (they are not) but that through the public-private frame, policing can be better understood (Jones & Newburn, 1998, p. 200). This interplay between Drax and the constabulary highlights the blurring of boundaries between public and private policing. In this case, Drax used a lever available to it to create an offence that would otherwise not have existed. The effect was that it expanded the statutory powers of the constabulary to police protest on private property. As noted previously, hybrid policing crosses the public-private divide. In this case the actions of Drax in creating an offence bringing with it expanded powers for the constabulary to police private property (albeit in this case not used), also blurs the public-private divide. For these reasons, the policing by Drax in seeking and being granted an injunction reflects the hallmarks of hybrid policing. The policing by Drax can be identified as hybrid low policing, yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axis in Figure 12).

- **Policing of the Drax Train Occupation by the British Transport Police; the arrests**

The Drax train occupation was shut down (lasting hours rather than the planned days) when the 29 protesters were arrested by the BTP. The Drax 29 were all convicted and sentenced with sentences ranging between conditional discharges, payment of compensation and community service. On the basis of the Crown's failure to comply with pre-trial disclosure obligations (discussed in Chapter 8), the convictions of all 29 were quashed after they had been invited by the DPP to appeal their convictions. The failure to comply with pre-trial disclosure obligations rested either individually or collectively with the Crown Prosecution Service (CPS), the West Yorkshire Police or counsel involved at the time (*R v Bard (Theo) and Others*, 2014, para 24). Despite the ultimate failure of the prosecutions, this focus of the BTP on law enforcement, criminal policing, the suppression of crime and the prosecution of criminals reflect the hallmarks of low policing.

The BTP is a specialised policing body (Button, 2002, p. 12; Crawford, 2008, p. 153) and is a non-Home Office police force with constabulary powers (Button, 2002, p. 66; Jones & Newburn, 1998, pp. 124-128) that polices Britain's privatised railways (British Transport Police, n.d., p. 127; Jones & Newburn, 1998). Unlike Home Office police forces, the BTP is not funded by a central government grant and has, since 2003, been funded by the rail industry (HMIC, 2014a, p. 3). Jones and Newburn (1998, pp. 125-128) note there are grey areas in the jurisdiction of the BTP whose powers are spatially constrained (1998, p. 222). However, for the purposes of the present study, the constabulary powers of the BTP include the statutory powers to 'arrest and detain suspects using full police powers in the case of a crime committed on the railways' (Jones & Newburn, 1998, p. 125), as they did in this case.

Whether the BTP is an independent public police force that nonetheless can be distinguished from the Home Office police forces (Crawford, 2008, p. 156; Jones & Newburn, 1998, pp. 127, 206), or is a hybrid policing body (Button, 2002, pp. 8-10; Reiner, 2010, p. 5), is contested territory. Central to the scholarship that has classified the BTP as either a public policing body or hybrid policing body are the questions of how hybrid policing has been defined and conceptualised and how markers of "publicness" and "privateness" have been manifested by the BTP over time. In support of their argument that the BTP is a public police force, Jones and Newburn (1998, pp. 125-128) point to their

similarity with Home Office police forces, namely: that officers of the BTP formed part of ACPO; the BTP hold constabulary powers (derived from statute and common law); that BTP recruitment, training and promotion arrangements mirror those in Home Office police forces; rail operators are compelled to use the services of BTP (although not to the exclusion of supplementary private security); and the government views the BTP as a public force. However, having forcefully made this argument (including discounting the BTP as a private policing body) Jones and Newburn (1998, pp. 218-220) also explain policing occurs in hybrid spaces and that the BTP operates in hybrid spaces. After considering these arguments, Button (2002, pp. 8-10) concludes that BTP should not be considered a public policing body and ought to be considered a hybrid policing body. This is on the basis of distinct markers of "privateness", namely while the BTP are public officers, they are funded by the rail industry to police private space. The policing by the BTP in making the arrests can be identified as hybrid low policing, yet can only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12).

- **Policing of the Drax Train Occupation by the West Yorkshire Police, the Authorisations by the West Yorkshire Police under the RIPA**

From as far back as 29 January 2007 and relevant to this case, Kennedy was authorised under the RIPA to operate undercover by the 'Chief Constable of the West Yorkshire Police and the Acting Chief Constable of the Yorkshire Police' (*R v Bard (Theo) and Others*, 2014, p. 3). As noted above, the RIPA provides the legislative framework for covert surveillance and investigation in the UK. As also noted above, Kennedy's deployment in this case exhibits the hallmarks of high policing. At the time of the Drax train occupation, the NPOIU that housed Kennedy was under the operational control of and run by ACPO which for the reasons set out in 7.3, can be considered a hybrid policing body.

In this sense and in the same way ACC Ackerley of the Nottinghamshire Police later went on to do in the Ratcliffe-on-Soar case discussed above, both the Chief Constable and the Acting Chief Constable relying on their authority to police, authorised high policing by a hybrid policing body. This mirrors the interdependent relationship and a crossing of the public-private and high-low policing dichotomies also evident in the Ratcliffe-on-Soar case. For the same reasons the policing by the Chief Constable and the Acting Chief Constable of the West Yorkshire Police in authorising Kennedy's deployment under the RIPA can be

identified as hybrid high policing, yet can also only be mapped to the Model as far as hybrid policing (the hybrid policing axes in Figure 12).

7.4.7   Summary

Having identified ACPO as a hybrid policing body, this step of the deductive analysis of the Model then focused on isolating and describing the nature and form of each type of policing discernible in each of the case studies. The focus was to identify if, how, to what extent and why each different policing type could be categorised and then mapped to the Model in terms of: high and low policing; public and private policing; and hybrid policing. By taking the broadest view possible of the questions of "what is policing?" and "who policed?" this step systematically identified (to the extent possible): who policed (people and / or organisations); what they did; and the characteristics of the bodies that policed or housed those that policed. In doing so, the analysis gave contemporaneous consideration to the two binary dichotomies underpinning the Model; high and low policing, and public and private policing. Table 4 below summarises the analysis.

Table 5: Policing Types Identified in Case Studies

Policing Types		Whitehaven Coal Hoax	Bunbury Bombing	Wagerup Occupation	Ratcliffe-on-Soar	Drax Train Occupation
Public Policing	Public Only (not further discernible)	--	ASIO	--	--	--
	Public Low	ASIC	WA Police	WA Police	Nottinghamshire Police	--
	Public High	--	--	ASIO WA Police Special Branch	--	--
Private Policing	Private Only (not able to be further discerned)	--	--	--	--	--
	Private Low	ASX	--	--	--	--
	Private High	--	--	--	--	--
Hybrid Policing	Hybrid Only (not able to be further discerned)	--	--	--	--	--
	Hybrid Low	--	--	--	--	Drax British Transport Police
	Hybrid High	--	--	--	NPOIU Nottinghamshire Police through ACC Ackerley	NPOIU West Yorkshire Police through the Chief Constable and the Acting Chief Constable

Key: -- reflects no evidence of this form of policing discernible.

7.5   Chapter Conclusion

In analysing policing responses to radical environmental protest targeting key parts of the civil infrastructure in Australia and the UK, this Chapter has set out the first part of the deductive analysis of Brodeur's Integrated Model of Policing that continues and concludes in Chapter 8. Chapter 8 shows this systematic and detailed analysis was a necessary precursor to the analysis of the two further components of the Model (the concepts of orientation to justice and social interventionism). This is because in different ways, both rely on the distinction between public and private policing which must be established first.

This Chapter has set out further findings of the present study. The first is that in the period 1997 when it became incorporated as a private company limited by guarantee until it was wound up on 31 March 2015, ACPO can be considered a hybrid policing body. With ACPO abolished on 31 March 2015 and replaced on 1 April 2015 by the NPCC, this finding makes a fresh and timely contribution to ACPO's historiography. By triangulating the existing scholarship with information from official documents, official reports into covert policing in the UK and ACPO's company records accessed via Companies House, the present study has identified that when ACPO was a private company limited by guarantee, it exhibited at least three distinct markers of "publicness" over time that were able to be assessed in detail. These are: that ACPO staff had access to civil service pension schemes that were otherwise closed to employees of private entities; that ACPO had operational control of the covert policing units the SDS and the NPOIU and, with no corresponding statutory authority "to police" directly, relied on deriving that authority from officers in different constabularies; and that for the purposes of applying the FOI Act to ACPO in 2011, the then Secretary of State declared ACPO a public authority. The analysis of ACPO highlights that a range of factors such as the underlying administrative and organisational arrangements of policing bodies (beyond funding sources) that are well removed from concepts of "the who", "the what" and "the how" of policing can be relevant considerations in identifying policing hybridity.

Considered in isolation, a prima facie innocuous yet underlying marker of "publicness" is evident from 1997 until 2015, when ACPO employees had access to

otherwise closed civil service pension schemes. Recognised by 2001 as irregular and unsatisfactory, this situation was legitimised retrospectively and prospectively through a "legislative fix" in an omnibus statute. The nature and form of ACPO's hybridity shifted and intensified during 2006 and January 2011 in very distinct ways. First, with no legislative authority to undertake policing directly, ACPO assumed operational control of covert policing units. Further, after the introduction of the RIPA in 2000 in respect of covert deployments by officers in the NPOIU (the SDS having been disbanded in 2008), ACPO was wholly reliant on authorising officers in Home Office forces to exercise their statutory options, responsibilities and obligations under the RIPA. However, these authorising officers were never given the full intelligence picture. The nature and intensity of ACPO's hybridity shifted again when it lost control of the NPOIU in January 2011. A further shift in how hybridity has been manifested in ACPO then occurred in November 2011 when, for the purposes of the FOI Act, ACPO was declared a public authority.

This study finds that ACPO's hybridity is evident during a defined period (1997 to 2015) and during that time, it varied in both form and intensity. Identifying and assessing variations in the intensity and manifestations of hybridity within a single policing body over time is a fresh contribution to the scholarship. The present study reinforces hybridity is neither a simple nor static concept. Rather, there is a multiplicity of ways hybridity can be manifested.

ACPO having operational control of the covert policing units the SDS and the NPOIU could potentially be considered somewhat of an "outlier" and an unusual set of events that may never be replicated. Consistent with this argument, the policing hybridity identified could be considered a potential aberration and a transient situation, lasting only between 1997 and 2015. However, that ACPO became a company limited by guarantee in 1997 was no secret. Yet the decision was still taken in 2006 to move the SDS and the NPOIU under its operational control. As identified in this study, it then took four years for the "flag to go up" raising serious governance issues about the arrangement, identifying that ACPO had moved well beyond its remit of 'providing a strategic view on policing matters' (HMIC, 2012, p. 31). Even then it took a further year before the NPOIU was removed from ACPO's control (the SDS having been disbanded in 2008). This decision was triggered not by the serious concerns raised by the HMIC in 2010, but by the outing of Mark Kennedy and the crisis of

policing that followed and is yet to abate. The overall impact is that by January 2011 when the NPOIU was removed from ACPO's control, it was ACPO, a private company limited by guarantee, and not any of the Home Office police forces that for five years had been the body with full sighting of the intelligence collected by the SDS and the NPOIU. This included targets, how intelligence was being gathered and if and how it was being sanitised and fed to Home Office forces for the purposes of law enforcement. Additional enmeshed forms of hybridity have also been identified in this study. First, the BTP is a key component of the overall policing assemblage in the UK. Secondly, the use of High Court injunctions by companies to create new offences giving the constabulary wider powers has been strategically devised and employed. Overall, this analysis identifies the ubiquitous nature of hybrid policing.

The analysis in this Chapter has also identified diversity in the policing of radical environmental protest across time, in different domestic jurisdictions, with different organisational structures and where the authority "to police" was derived from different authorities (statute and common law). Table 4 summarises how these distinctly different types of policing can be identified, described and, where possible, mapped to the Model. As discussed, in *The Policing Web* Brodeur (2010) defines neither police nor policing and expansive concepts of both underpin his theorising that is reflected diagrammatically in the Model. In this vein, beyond constabulary forces and intelligence agencies, the Model facilitated consideration of policing by bodies in both the private sphere (Drax and the ASX) and the public sphere (ASIC), whose principal functions are not policing, yet who exhibited varied roles in "policing" the protests. It reinforces the scholarship reflected in the Model, that policing occurs well beyond the constabulary and that constabulary powers are in no way necessary for a body to exercise a policing function.

The Model also facilitated a useful way of identifying different policing bodies and different types of policing, their boundaries, interactions and interdependencies. Applying the case study data to the Model forced contemporaneous analyses of how policing as an activity, interacted with the bodies that policed. The analysis strongly reinforced that the key divides of high-low and public-private policing, while useful starting points, are in and of

themselves, a wholly inadequate way of considering policing. This is because hybridity is central to theorising policing.

The analysis has found complex interdependent relationships well beyond interfaces between high and low policing and between public and private policing and well beyond a "blurring of boundaries". The interdependent relationships identified in the present study between (1) ACPO and Home Office police forces, and (2) private companies, the High Court and constabularies in creating offences pursuant to the *Protection From Harassment Act 1997* (with the purpose of enforcing them), further illustrate the complexity of understanding hybrid policing. Triangulating the interplay between aspects of ACPO's organisational and administrative arrangements, the nature and form of policing by Kennedy and the authorisations under the RIPA by the Nottinghamshire Police and the West Yorkshire Police for Kennedy to operate undercover, has enabled a nuanced form of hybrid policing (hybrid high policing) to be discerned and described. Similarly, examining the intent and impact of Drax seeking and being granted an injunction to make trespass an offence of contempt of court expanding the constabulary's statutory repertoire to respond to protest has enabled a nuanced form of hybrid policing (hybrid low policing) to be discerned and described. However, the distinctly different forms of hybrid policing identified could only be mapped to the Model as simply hybrid policing.

This analysis suggests a paradox in the way hybrid policing has been theorised expansively by Brodeur in *The Policing Web* yet reflected more narrowly in the Model. As noted previously, by situating hybrid policing within the Model as he has, Brodeur (2010, p. 307) argues it acts as a reminder that 'there are interfaces between high and low policing and between public and private policing'. However, this is done in the context of a more expansive consideration of hybrid policing in Model's theoretical bases. This theme is considered and further developed in Chapter 8.

8.   POLICING RESPONES TO RADICAL ENVIRONMENTAL PROTEST – PART 2

8.1   Introduction and Chapter Outline

The purpose of this Chapter is to finalise answering RQ 2; can the policing of radical environmental protest be explained and understood using Jean-Paul Brodeur's Integrated Model of Policing? Its focus is twofold: to finalise the deductive analysis of the Model; and draw overall conclusions about the value of the Model in explaining and understanding the policing of radical environmental protest targeting key parts of the civil infrastructure in Australia and the UK identified in the case studies.

This Chapter is set out in five parts. After this introduction, the second part of this Chapter (8.2) briefly contextualises the focus of the Chapter and explains why the examples of hybrid policing identified in the case studies and the policing by ASIO of the Bunbury bombing are excised from the remainder of the deductive analysis of the Model. The third part of this Chapter (8.3) continues the deductive analysis and sets out further key findings of the present study. Its focus is the second component of the Model; orientation to justice and the related dual concepts of criminal justice and private justice. The analysis empirically validates this aspect of the Model to the extent of how the orientation to criminal justice for public low policing and public high policing have been reflected in the Model. However, the analysis will also challenge (although predicated on one case) how the orientation to private justice for private low policing has been reflected in the Model.

The fourth part of this Chapter (8.4) continues and finalises the deductive analysis of the Model and also sets out further key findings of the present study. Its focus is the third and final component of the Model; social interventionism and the related dual concepts of public intervention and private mediation. The analysis validates this aspect of the Model only to the extent of how public intervention for public low policing has been reflected in the Model. However, the analysis will challenge (again predicated on one case) how private mediation for private low policing has been reflected in this aspect of the Model.

The final part of this Chapter (8.5) discusses the overall conclusions of the value of the Model in explaining and understanding the policing of radical environmental protest targeting key parts of the civil infrastructure in Australia and the UK. This analysis identifies

that the Model offered a robust theoretical lens overall with which to describe and explain the diversity of policing actors, their roles in policing protest and their interactions. In particular, it enabled "the who", "the what" and "the how" of policing to be identified and explained. However, with two of the three components of the Model limited in their application to public and private policing to the exclusion of hybrid policing, there are limitations overall in the value of the Model in explaining and understanding aspects of the policing response to protest. To be of more value, the Model needs to reflect hybrid policing more substantively.

8.2   Context and the Exclusion of Hybrid Policing from Residual Deductive Analysis

As discussed earlier, while it has three components, the Model was proposed in two distinct phases (Brodeur, 2010, pp. 8-9). Understanding the Model's development assists its interpretation. The first iteration of the Model reflected solely public policing (high and low) and its different links to the criminal justice system (Brodeur, 2010, p. 252). Then, the Model was expanded to incorporate private policing (high and low) and its links to private justice (Brodeur, 2010, p. 306). The Model was completed by including hybrid policing and introducing the concepts of (1) orientation to justice, and (2) social interventionism. When fully developed, the Model (1) reflects public and private policing, high and low policing and hybrid policing, (2) orients public and private policing to different forms of justice (criminal justice and private justice respectively), and (3) orients the concept of social interventionism to public low policing and private low policing (public intervention and private mediation respectively) (refer again Figure 11). Further guiding the analysis in this Chapter is that the concept of orientation to justice incorporates consideration of both the public-private policing dichotomy and the high-low policing dichotomy. However, the concept of social interventionism incorporates only consideration of the public-private policing dichotomy and only then as it relates to low policing.

In concluding the deductive analysis of the Model, the two remaining components of the Model assessed in this Chapter, are focused solely on public and private policing. This is to the exclusion of hybrid policing. This is despite hybrid policing being an element of the Model and an accepted orthodoxy that in *The Policing Web* Brodeur more fully integrates into this theorising. The analysis in Chapter 7 has isolated and described distinctly different

forms of hybrid policing (hybrid low policing and hybrid high policing). As discussed earlier, these reflect complex and at times interdependent relationships. However, consistent with the deductive approach of applying evidence to theory, the analysis set out in 8.3 and 8.4 therefore excludes an analysis of how hybrid policing may potentially relate to the two residual components of the Model examined in this Chapter. By excluding hybrid policing, this excludes further consideration of: policing by the NPOIU; policing of the Drax train occupation (including by Drax and the BTP); and the policing of the Ratcliffe-on-Soar protest by ACC Ackerley in authorising Kennedy's deployment under the RIPA. The limitation of the study that arises and the corresponding opportunity for future research is reflected on in Chapter 9.

To guide the reader through analysis that follows, instances of public and private policing (high and low) in the case studies have been extracted from Table 4 and are summarised in Table 5 below.

Table 6: Summary of Public and Private Policing Identified in Case Studies

Policing Types		Whitehaven Coal Hoax	Bunbury Bombing	Wagerup Occupation	Ratcliffe-on-Soar	Drax Train Occupation
Public Policing	Public Only (not further discernible)	--	ASIO	--	--	--
	Public Low	ASIC	WA Police	WA Police	Nottinghamshire Police	
	Public High	--	--	ASIO WA Police Special Branch	--	--
Private Policing	Private Low	ASX	--	--	--	--

Key: -- reflects no evidence of this form of policing discernible.

As noted previously, the role of ASIO in policing the Bunbury bombing while discernible was not able to be fully identified and fulsomely described. Based on incomplete information, the policing role by ASIO in this case is unable to be further assessed against the Model and is therefore excluded from further analysis. Of note is that while it is an inherent part of the policing assemblage that is reflected in the Model, no instances of private high policing were identified in the case studies. For this reason, the orientation of

private high policing to private justice has not been able to be tested as part of this analysis. These research gaps are reflected on in Chapter 9.

8.3   Orientation to Justice

As noted earlier the Model is oriented to the nature and strength of different relationships to two distinctly different concepts of justice. These are criminal justice (the criminal justice system) in the case of public police, and a broad concept of private justice in the case of private police. For Brodeur (2010, Ch 7-8), different relationships to these different concepts of justice are the crux of what distinguishes public and private policing.

In respect of public policing and its orientation to criminal justice, Brodeur (2010, p. 306) identifies public low policing as having a strong, direct and institutional relationship with the criminal justice system (represented in the Model by the solid shaded bar) and public high policing as having a much weaker relationship (represented in the Model by the solid unshaded bar). In respect of private policing and its orientation to private justice, Brodeur (2010, p. 306) identifies the existence of a weak relationship. For both private low policing and private high policing this is depicted as uniformly weak (represented in the Model by the symmetrical dotted lines). Within the Model, the orientation to justice (the criminal justice system in the case of public policing and private justice in the case of private policing) is reflected as stronger overall for public policing. Of particular relevance for the analysis that follows is that Brodeur (2010, p. 306) argues corporate decisions can drive discretion in private policing responses that can see a shift in focus from private justice to the criminal justice system either through private low or private high policing channels. This is reflected in the arrows on the symmetrical dotted lines. This represents that such discretion could drive either private low policing or private high policing responses.

The analysis that follows draws on the case studies and the analysis set out in in the previous Chapter to assess if, how, to what extent and why the case studies demonstrate the two different perspectives on orientation to justice (criminal justice and private justice) described by Brodeur and reflected in the Model. For the reasons set out above, the deductive analysis that follows considers only those instances of public and private policing evident in the case studies. As Table 5 above summarises, after excluding the policing by

ASIO of the Bunbury bombing (due to incomplete information), these are public low policing, public high policing and private low policing. In the analysis of the concept of orientation to justice, each policing type is considered in turn.

This part of the Chapter both validates and challenges this aspect of the Model. The analysis shows the strongest validation of this aspect of the Model is evident in the way the relationship between public low policing and criminal justice has been reflected in the Model, highlighting there are differences in policy and practice that can act to qualify this finding (8.3.1). Noting the limitation of the present study in respect of private high policing, the analysis validates the way the relationship between public high policing and criminal justice has been reflected in the Model (8.3.2) and challenges how the orientation to private justice for private low policing has been reflected in the Model (8.3.3).

8.3.1   Orientation to Criminal Justice: Public Low Policing

Table 5 above summarises that in the five case studies, public low policing is evident in: the role of Australian Securities and Investment Commission (ASIC) in the case of the Whitehaven Coal (WHC) hoax; the Western Australia (WA) Police (excluding Special Branch) in respect of the Bunbury bombing and the second Wagerup occupation; and the Nottinghamshire Police in respect of the Ratcliffe-on-Soar protest. As discussed earlier, policing by these bodies varied but included: responding to and investigating crime; identifying alleged perpetrators; making the arrests; and supporting the prosecutions (directly or by referral to prosecutors) that followed. For these bodies and their respective roles in the policing these protests, this was the "main game". The bodies involved in policing these protests utilised a variety of legislative and procedural tools and levers available to them to police the different forms of protest. In all four cases of public low policing, the intent and effect was that alleged offenders faced the courts in the relevant jurisdictions for their alleged and varied criminal offences. While the legislative or common law authority of these different bodies "to police" the protests varied, in all cases the policing by these bodies demonstrated a direct link to the criminal justice system. Having exercised their discretion to police, for these bodies there were well worn, direct and institutionalised paths (albeit them different paths) from protest to the criminal justice system. With the exception of the six Deniers from the Ratcliffe-on-Soar case who had been

arrested and charged but whose looming trial collapsed, in all other instances (including the 20 Justifiers from the Ratcliffe-on-Soar case), protesters did face court in the relevant jurisdictions. With the exception of the six Deniers, in all these cases, protesters were found guilty of the various offences and a range of sentences were imposed by the respective courts.

Prima facie the above factors collectively act to validate what Brodeur (2010, Ch 7) has described as public low policing's strong, direct and institutional link to the criminal justice system and reflected it in the Model. However, the convictions of the Wagerup 23 and the 20 Deniers were all quashed. Now considered in turn, the analysis that follows identifies that the quashing of convictions alone does not moderate public low policing's otherwise strong, direct and institutional link to the criminal justice system that is evident in these cases and that is reflected in the Model. However, the analysis also identifies that when differences in policy and practice are considered, validation of this component of the Model is qualified.

The Wagerup 23

Protesters at the second occupation at Wagerup (the Wagerup 23) were arrested and charged under s67(4) of the *Police Act 1892* (WA) for 'obstructing somebody from doing something pursuant to an authorisation issued under a law of the State' (French, 2010, p. 5). Aware of and expecting the planned protest, the WA Police had gathered nearby while protesters occupied the site, and waited for the obstruction provisions to be triggered by protesters before moving in to make arrests. After peacefully occupying the land, that trigger was, in the words of Mr Bartholomaeus and one of the Wagerup 23 (personal communication, October 18, 2011), 'when we went in front of the bulldozer'.

The need for such a trigger for the WA Police to invoke the obstruction provisions harked back to the very public failure of the earlier prosecutions of 12 protesters arising from the first occupation at Wagerup in February 1979. In context, these earlier prosecutions failed on the basis that the verbal resources development agreement between the WA government and mining company Alcoa that existed did not meet the threshold test to trigger the valid use by the WA Police of the obstruction provisions in s67(4) of the *Police*

Act 1892. The verbal agreement (unsurprisingly in retrospect) was not considered by the court to be a law of the State. After this and prior to the second occupation at Wagerup, the WA government and Alcoa entered into a written resources development agreement (Chapman, 2008, p. 138). In the context of ongoing protest directed towards Alcoa and a forest movement in transition to more radical ideation and action overall, it was thought this would make the written resources development agreement a law of the State and smooth the way for the future use of the obstruction provisions.

The Wagerup 23 were arrested, charged under the obstruction provisions, found guilty in the WA Magistrates Court, fined and appealed to the WA Supreme Court. The convictions of the Wagerup 23 were ultimately quashed on the basis that the written resources development agreement between the WA government and Alcoa (though it was the intent) had not been made a law of the State. This triggered the Court government's introduction of the *Government Agreements Act 1979* (WA) (the GAA) that introduced new offences and harsher monetary penalties for acts of protest disrupting major resources projects and their business supply chains. The introduction of the GAA acts to reinforce the policy intent of the government of the day; that the WA Police were to have available to them the necessary legislative tools to arrest, charge and prosecute protesters who disrupted major resources projects. The policy intent was a strong, direct and institutional link to the criminal justice system.

While the prosecutions of the Wagerup 23 ultimately failed, there is nothing to suggest the WA Police were not genuinely of the view that the obstruction provisions in the *Police Act 1892* (WA) had been triggered, legitimising the arrests and the prosecutions that followed. There is also nothing in this case to suggest anything other than a strong, direct and institutional link from the WA Police to the criminal justice system. That the legislative tool kit was expanded to create new offences and harsher monetary penalties for acts of protest, reinforces the political and policy intent of the government of the day; that protesters faced the criminal justice system and the "full force of the law".

For the reasons set out above, the policing by the WA Police of the second Wagerup occupation (despite the failed prosecutions) when considered in its broader political and

policy context, acts to validate the way the Brodeur has theorised the orientation of public low policing to the criminal justice system and reflected it in the Model.

The Justifiers and the Deniers

In assessing the relationship of the Nottinghamshire Police to the criminal justice system in the Ratcliffe-on-Soar case, this section of the Chapter is laid out in three parts. This layered analysis enables the complex policing and policy contexts in which the policing of this protest occurred to be understood and assessed.

- **Preliminary Finding**

In the Ratcliffe-on-Soar case, 26 of the 115 people arrested were charged with conspiracy to commit aggravated trespass under s68(1) of *Criminal Justice and Public Order Act 1994* (CJPOA). The clear intent of Operation Aeroscope with its tactic of pre-emptive arrests by the constabulary (led by the Nottinghamshire Police) was twofold; to shut down the protest and to make arrests and lay charges that would "stick" (Independent Police Complaints Commission, 2012; Rose, 2011). Operation Aeroscope led by the Nottinghamshire Police had the intended effect of drawing the alleged offenders charged into the criminal justice system. In the case of the Ratcliffe-on-Soar protest, the 20 Justifiers were prosecuted, found guilty and sentenced before the trial of the six Deniers began. However, in this case as a direct result of the failure of the Crown to comply with pre-trial disclosure obligations (relating to Kennedy, the nature of the intelligence he collected and his role in the protest) the trial of the six Deniers very publicly collapsed before it began, just as the media scrutiny of Kennedy and the NPOIU began to intensify. The Director of Public Prosecutions invited the Justifiers to appeal on the grounds the convictions were considered unsafe with the result that the convictions of the 20 Justifiers were subsequently quashed.

In a similar vein to the case of the Wagerup 23 and the use of the obstruction provisions, there is nothing to suggest the Nottinghamshire Police were not genuinely of the view that the aggravated trespass provisions of the CJPOA 1994 had been adequately triggered, legitimising the 115 arrests and 26 subsequent prosecutions. Operation Aeroscope led by the Nottinghamshire Police had been meticulously planned and included the 'conscious decision' to shift from a public order policing operation 'to investigate those

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attending the muster point for conspiracy' (Independent Police Complaints Commission, 2012, p. 6).

The Crown Prosecution Service (CPS) with its dual roles in (1) determining charges in serious and complex cases (Crown Prosecution Service, n.d.-b), and (2) prosecuting people charged with criminal offences (Crown Prosecution Service, n.d.-a), had been involved in Operation Aeroscope's planning (Independent Police Complaints Commission, 2012, p. 7). This included the tactical shift to the use of pre-emptive arrests for conspiracy to commit aggravated trespass. In context, liaison between the Nottinghamshire Police and the CPS continued throughout the planning of Operation Aeroscope, the arrests, charging decisions, trials and in the aftermath of Kennedy's outing (Independent Police Complaints Commission, 2012; Rose, 2011). At the time of Operation Aeroscope, the relationship between Nottinghamshire Police and the CPS has been described as 'close and beneficial' (Rose, 2011, p. 4). In this case, the CPS was a tiller intended to effectively and safely guide the policing of the protest to, and through, the criminal justice system. The picture that emerges in this case is one characterised by a strategic intent that the protest be shut down and further, having settled the tactic of pre-emptive arrests for conspiracy to commit aggravated trespass, those involved in the conspiracy would then face "the full force of the law".

For the reasons set out above, the policing by the Nottinghamshire Police is prima facie consistent with the strong, direct and intuitional relationship of low policing to the criminal justice system described by Brodeur and reflected within the Model. It is reinforced by the strong, direct and institutional link with the CPS in this case. However, an analysis of the reasons for the failure to comply with pre-trial disclosure obligations in this case is instructive and as the analysis that follows will identify, acts to moderate this preliminary finding.

- **Moderating Factors**

In respect of the Crown meeting its pre-trial disclosure obligations in this case, there were fractures in appropriately managing (1) knowledge of Kennedy, (2) Kennedy's role in the protest, and (3) the resultant intelligence product including Kennedy's notebooks,

witness statement and transcripts of audio-recordings he had made that would in particular exonerate the six Deniers (Independent Police Complaints Commission, 2012; Rose, 2011). All three were at the crux of the failed prosecutions.

Pinpointing the precise "who", "how" and "why" of the Crown's pre-trial disclosure failures in this case have been and remain elusive (Independent Police Complaints Commission, 2012; Rose, 2011). In June 2015, the CPS was ordered to pay £43,000 for the legal costs incurred by the Drax 29 (Lewis & Evans, 2015, para 2). However, the report that was influential in this decision has not been released publicly (Lewis & Evans, 2015, para 2). In their investigation specifically into the Crown's pre-trial disclosure failures, the IPCC (Independent Police Complaints Commission, 2012, p. 25) found there had been 'a collective failing by a number of parties' in different agencies. Although far from being solely responsible, part of the responsibility for ensuring the Crown's pre-trial disclosure obligations were met (and thus partially fulfilling requirements of the criminal justice system) rested with the Nottinghamshire Police (Independent Police Complaints Commission, 2012; Rose, 2011).

In respect of public low policing by the Nottinghamshire Police (the focus of this component of the analysis), whatever its contribution to the failure to meet the Crown's pre-trial disclosure obligations should be viewed in light of the prevailing policy context at the time. At the time, there was no lack of policy guidance available to the Nottinghamshire Police and the CPS in respect of managing covert sources, the resultant intelligence product and its use in prosecutions (Independent Police Complaints Commission, 2012; Rose, 2011). The policy intent was that intelligence product (including from covert sources) could be used in prosecutions and that any resultant convictions were safe (Independent Police Complaints Commission, 2012; Rose, 2011). The so-called "sterile corridor" between covert sources and evidence was never intended to exclude the possibility of prosecutions (Rose, 2011, pp. 35-36). Rather once sanitised, policy frameworks both enabled and facilitated undercover officers and their intelligence product entering the evidence chain (Harfield, 2012; Independent Police Complaints Commission, 2012; National Centre for Policing Excellence, 2005; Rose, 2011).

In respect of policing practice, this policy intent was reinforced following this case through the signing of a Memorandum of Understanding (MOU) by the DPP, police and other investigative agencies. As discussed earlier, the overarching purpose of the MOU sparked by the failed prosecutions in this case, was to better manage the interface between covert sources and intelligence product with the criminal justice system. In the face of escalating revelations about Kennedy, the SDS and the NPOIU and the "crisis of policing" being experienced, its core focus was the safety of future convictions that relied on covert sources or intelligence product (The Crown Prosecution Service, 2012b). What can be concluded is that the stated intent in policy (although not achieved in this case in practice) is reflective of an institutional relationship to the criminal justice system. However, the strength of that relationship and its nature and form can, on the one hand be reinforced in policy frameworks, yet on the other hand be fractured or undermined in practice (intentionally or otherwise). As noted previously, the MOU is protectively marked at the classification level of restricted and is not in the public domain. Documents that are protectively marked can be accessed on the basis of the "need to know" (Cabinet Office, 2014, p. 5). However if the MOU is not available for scrutiny, even in a partially redacted form, the "need to know" could be inherently difficult to argue and prove. When this key governance document is not available for scrutiny, this arguably undermines confidence that the policy intent of ensuring proper disclosure will be achieved.

In his review of the Crown's pre-trial disclosure failures in this case, Rose (2011) found 'the failures were individual, not systemic and not due to any want of printed guidance'. This aspect of the Rose report in particular has been labelled by critics as 'a whitewash' (Nottingham Indymedia, 2011). After the publication of this report, the revelations about Kennedy and the NPOIU continued to emerge, at the time bringing with them a heightened probability the issue could indeed be considered a very serious systemic issue. To date at least an additional 25 convictions have been overturned (Evans, 2015b). On 26 June 2014, the UK Home Secretary Teresa May announced Mr Mark Ellison QC would undertake a review to examine 'the possible impact upon the safety of convictions in England and Wales where relevant undercover police activity was not properly revealed to the prosecutor and considered at the time of trial' (May, 2014). The enormity and complexity of this tasking is laid out in the resultant report (Ellison & Morgan, 2015). The report includes that an additional 83 convictions are currently under review by the CPS and

the Criminal Cases Review Commission (Ellison & Morgan, 2015, p. 12). The attendant

outcome of this could well be the quashing of additional convictions. Detail of these cases

(should they be made public) could offer a further rich seam of data including (but not

limited to) cases that could further test this aspect of the Model in respect of public low

policing. This is particularly so if the CPS, the Criminal Cases Review Commission or the

courts consider what if anything the constabulary knew about covert sources and

intelligence product and how it entered (or did not enter) the evidence chain.

- **Finding**

In this case, the distinction between policy intent and policing practice is sharp.

While the policy intent was that the constabulary have a strong, direct and institutional

relationship with the criminal justice system, in practice there were multiple fracture points

that weakened this relationship. As noted above these related to how the knowledge of

Kennedy, his role in the protest and the intelligence product he created were managed. In

this case, responsibility for the Crown's disclosure failures is yet to be publicly pinpointed.

While the policy intent validates a strong, direct and institutional relationship with the

criminal justice system and acts to validate this component of the Model, this validation is

qualified. What this suggests is that variations in the relationships between low policing

bodies and the criminal justice evident in the present study are not overtly reflected in the

Model. While this does proffer some challenge to this aspect of the Model, for the reasons

set out above, it not an insurmountable challenge. This finding is underscored by the intent

of this aspect of the Model; to be reflective of different relationships with the criminal

justice system for different forms of public policing.

8.3.2 Orientation to Criminal Justice: Public High Policing

Table 5 above summarises that in the five case studies, public high policing is evident

only in the policing by ASIO and the WA Police Special Branch of the group Campaign to

Save Native Forests (CSNF) which organised and participated in the Wagerup occupations.

From the ASIO records released as part of the present study, what can be ascertained is that

the policing responses by both ASIO and the WA Police Special Branch in this case, were

focused on intelligence gathering. Noted previously is that for both ASIO and the WA Police

Special Branch, policing the CSNF was more tangential to their existing interest in the Communist Party of Australia and Prout (associated with the Ananda Marga).

In this case both occupations at Wagerup were planned openly, the CSNF sought publicity for the occupations and protesters expected to be arrested and prosecuted. The records that are available about the policing of the CSNF by ASIO and the WA Police Special Branch include a press cutting from *The West Australian* newspaper on 25 May 1979 that promoted the second occupation at Wagerup that began on 26 May 1979 (NAA barcode 13130381, folio 18). However, while ASIO and the WA Police Special Branch were clearly aware of the planned protest, there is nothing in the available records to suggest either had any involvement (either covertly or overtly) with drawing protesters within the jurisdiction of the criminal justice system. As discussed earlier, this was the result of the public low policing response. In this case, and in respect of ASIO and the WA Police Special Branch, on the information available, no link to the criminal justice system is discernible. Whereas the Model identifies public high policing has a relationship to the criminal justice system (although not as strong, direct or as institutionalised as that of public low policing yet stronger than for private policing), in this case no link is evident. Prima facie this challenges how Brodeur has reflected the relationship of public high policing to the criminal justice system.

However, as was the case with the Justifiers and the Deniers, the context of the policing response is a relevant consideration. In this case, the tangential policing of the CSNF by ASIO and the WA Police Special Branch should also be viewed in its broader political and policing context. In this broader context, ASIO was a consumer of Special Branch intelligence and its interest in Ananda Marga (including Prout) pre-dated the planning and execution of the Wagerup occupations. Members of Ananda Marga had been under intense surveillance by ASIO and Special Branches in Australia since at least 1975 (Head, 2008, p. 243). At the time, this related to politically -motivated violence targeting the Indian government internationally including its officials in Australia (Head, 2008; Hocking, 1993, pp. 132-137). In this broader political and policing context, ASIO and Special Branch (not exclusive to the WA Police Special Branch) surveillance of Ananda Marga escalated in the months leading up to the Commonwealth Heads of Government Regional Meeting (CHOGRM) held in Sydney in February 1978 (Head, 2008, p. 243). After the bombing outside

the Hilton Hotel that occurred as leaders gathered, ASIO's interest in Ananda Marga further intensified and in this respect ASIO and Special Branches cast a wide net (Head, 2008). In the aftermath of the bombing, the focus of ASIO and Special Branches included a focus on gathering potential evidence for use in criminal prosecution (Head, 2008).[34] The prosecution of those responsible for the Hilton Hotel bombing was the clear political expectation (Head, 2008). From the files available, the more tangential policing by ASIO and the WA Police Special Branch of the CSNF occurred simultaneously with, and can be considered a product of, their heightened focus on the Ananda Marga and their underlying interest on the Communist Party of Australia.

Considered in this broader context, this case has also highlighted the product of high policing can traverse the gap from intelligence to evidence for use in criminal prosecutions. This broader context identifies a relationship between public high policing and the criminal justice system that while evident is not as strong, direct nor institutional as that evident in low policing. This case illustrates Brodeur's (2010, pp. 251-252) contention that high policing while formally part of the criminal justice system, can also be 'relatively independent of it on a practical level'. While this case does proffer some challenge to this aspect of the Model, for the reasons set out above, it is not an insurmountable challenge. This finding is also underscored by the intent of this aspect of the Model; to be reflective of different relationships with the criminal justice system for different forms of public policing.

8.3.3   Orientation to Private Justice: Private Low Policing

Table 5 above summarises that in the five case studies private low policing is only evident in the policing by the Australian Securities Exchange (ASX) of the WHC hoax. In this case, the focus of the policing response by the ASX is very subtle and only occurred during a brief period on the day of the hoax itself. The aim of the policing response was to protect the interests of WHC, investors in WHC and investors in the Australian financial markets more broadly. As discussed, this was achieved through the ASX firstly using its own motion powers to place the securities of WHC in a pre-open phase preventing the execution of ordered trades, and then issuing a trading halt at the request of WHC that was lifted later that afternoon. That securities exchanges and corporate regulators have a role in policing

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[34] For an account of controversial prosecutions that followed see Head 2008.

financial markets is an accepted orthodoxy (Bucy, 2002; Comino, 2015; Stenning et al., 1990). In this case rather than use a statutory authority to police, the ASX (a private company) used levers available to it to police the protest by disrupting its further impact. In this case, the regulatory framework of the ASX both foreshadows and institutionalises the action taken in policing the WHC hoax. In this case the ASX used the discretion available to it (in both placing WHC securities in a pre-open phase and issuing the trading halt) to police the protest. It did so to prevent further public harm (to the market and investors) and further private harm (to WHC).

In respect of private policing, the Model's relationship to private justice (that can incorporate private prosecutions, private adjudications and civil law remedies such as injunctions) reflects that corporate decisions can drive discretion in private policing responses that may still shift to the criminal justice system. While the ASX did use its discretion in policing the protest, the decisions by the ASX did not trigger private prosecutions or private adjudication. The role of the ASX in the policing the protest is this case ceased when the trading halt was lifted. The shift to the criminal justice system in this case was triggered independently by ASIC in its role as the regulator of the financial market when an alleged crime was detected.

The Model identifies private low policing has a link to a broad concept of private justice, although not as strong, direct or as institutionalised as that of public policing to the criminal justice system. Considered in a broad context, in exercising its obligations under the *Corporations Act 2001* (Cth) the ASX monitors and enforces compliance with its listing rules (ASX, 2012). Where the ASX identifies minor breaches of its listing rules that do not require it by statute to refer the matter to ASIC, it can require listed companies to take a range of corrective actions (ASX, 2012, p. 2). While this facilitates a link to private justice for breaches of listing rules, the WHC hoax was not a breach of listing rules but a breach of the s1041E of the *Corporations Act 2001* (Cth). In respect of the action by the ASX in policing a breach of s1041E of the *Corporations Act 2001* (Cth), no link to private justice is either available to it or evidenced. The role of the ASX in policing the WHC hoax poses a challenge to the way the Brodeur has theorised the orientation of private low policing private justice and reflected it in the Model. An underlying factor is that the policing by the ASX of the

WHC hoax was not aimed at protecting its private interests in terms of its "bottom line" but about serving the public interest by preserving the integrity of the financial market.

8.3.4 Summary

This part of the Chapter has applied the analysis set out in Chapter 7 to assess the second component of the Model; the dual concept of orientation to justice (criminal justice in the case of public policing and private justice in the case of private policing). Restricted to a focus on public and private policing (high and low), the deductive analysis has both empirically validated and at times challenged aspects of this component of the Model.

In the case of public low policing, the analysis has identified a strong, direct and institutionalised relationship of public low policing to the criminal justice system. What the analysis illustrates is that while the relationship of public policing to the criminal justice system can on the one hand be considered strong, direct and institutionalised as "business as usual" (a focus on "catching and locking up criminals"), it can also be highly complex and at times fraught. Considering the broader context in which policing occurred has been relevant to this aspect of the analysis. The analysis of the relationship between public low policing and the criminal justice system has also identified the strength of the relationship can be varied and despite clear policy intent, an otherwise strong relationship can be weakened or fractured in practice. Despite policy guidance, the so-called "sterile corridor" between intelligence and prosecution can be difficult to navigate in practice. In respect of the steering by public low police of covert sources and their intelligence product into the criminal justice system, in practice operational secrecy or the "need to know" can influence what if anything is introduced into the evidence chain. As the Crown's failure to comply with pre-trial disclosure obligations in the UK cases show, those with the "need to act", may not be adequately identified and subsequently briefed into the "need to know". Despite this, consistent with the Model, overall it is the strongest and most direct relationship to criminal justice system assessed in this analysis. The analysis has however also highlighted an area of further research that could further test this aspect of the Model; the differences in policy intent and policing practice.

In respect of public high policing, the Model suggests while there is a relationship with the criminal justice system, it is much weaker than with that shared with public low policing. This has been borne out in the analysis. While the analysis has validated this aspect of the Model, it has also reinforced that high policing occurs in a broader political and policy context; where different drivers and pathways to the criminal justice system exist that may not always be readily discernible. Analysing this aspect of the Model poses unique challenges to researchers. As noted earlier, bodies engaged in high policing have been reluctant to open their doors to academic enquiry (Brodeur & Dupont, 2006; Lowe, 2010). In the present study, the passage of time has enabled access in the historical Australian cases to formerly classified or sensitive material (via both documents and interviews). In the UK, Operation Herne examining historical aspects of covert policing in the UK is yet to conclude and the inquiry by Lord Justice Pitchford focused on covert policing is yet to begin taking evidence. The respective reports will likely offer a further seam of both historical and contemporary data for further research in this area.

The Model suggests private low policing has a relationship with private justice, although much weaker overall than for public policing's varied relationships with the criminal justice system. What this analysis has shown overall however (although based on a single case), is no relationship between private low policing and private justice. As highlighted earlier, critical to understanding this aspect of the Model is that discretion can drive policing responses by bodies with private low policing functions that can shift responses to the criminal justice system. The analysis reinforces the discretion available to private policing bodies. However, private policing also did not shift to the criminal justice system; this shift was triggered independently by ASIC exercising its role in what Comino (2015, p. 1) describes as Australia's 'corporate cop'.

In testing the second component of the Model (orientation to justice) the overarching finding that emerges is that it does what it is intended to do; reflect different relationships with the criminal justice system for different forms of public policing; and provide a theoretical framework to generate further distinctions between public and private policing. The analysis also reinforces the different relationships with public policing and the criminal justice system reflected in the Model. In this regard, understanding and considering the broader policing, policy and political contexts has been critical. However,

the analysis of the second component of the Model has also posed two distinct challenges to it; (1) influenced by differences in policy intent and policing practice, variations in the strength of the relationships between public low policing and the criminal justice system are not overtly accommodated, and (2) no relationship between private policing and private justice was identified. Both warrant further research.

8.4   Social Interventionism

As previously discussed, the concept of social interventionism is underpinned by its focus on potentially disruptive action by public police (through public intervention) or private police (through private mediation). In respect of the public police, Brodeur (2010, p. 307) argues that they can, and do, openly practice various forms of social interventionism through exercising their statutory or symbolic powers "to police". In respect of private police, Brodeur (2010, p. 307) argues private entities (while at times holding considerable statutory authority to police) are less focused on using it, preferring to adopt a 'wait and see attitude'. For Brodeur (2010, p. 307), the usefulness of the concept of social interventionism is to seek to further contrast public and private policing. Within the Model, public intervention is oriented towards the criminal justice system while private mediation is oriented towards private justice. The placement of this component of the Model adjacent to low policing (both public and private), reflects is does not apply to high policing (neither public nor private). It is the least theoretically developed component of the Model and in *The Policing Web*, Brodeur (2010, p. 307) offers only a scant explanation of its contribution. Its meaning can be further gleaned in Brodeur's (2010) treatise as referring to differences in policing visibility, power and force.

The analysis that follows draws on the case studies and the analysis set out in in the previous Chapter to assess if, how, to what extent and why, public low policing and private low policing in the case studies demonstrate the two different perspectives on social interventionism (public intervention and private mediation) described by Brodeur and reflected in the Model. As this component of the Model excludes a focus on hybrid policing and high policing, the focus of the analysis that follows is on public low policing (8.4.1) and private low policing (8.4.2). This third and final phase of the deductive analysis validates the way the social interventionism has been reflected in the Model in terms of public

intervention for public low policing (8.4.2), and challenges how social interventionism has been reflected in the Model in terms of private mediation for private low policing, albeit predicated on one case (8.4.3).

8.4.1   Public Low Policing

Table 5 summarises that public low policing is evident in the WHC hoax, the Bunbury bombing, the occupation at Wagerup and the Ratcliffe-on-Soar protest. In respect of public low policing, the analysis that follows centres on the two aspects of public intervention incorporated in the Model; the open use of statutory or symbolic powers to police, and the orientation to the criminal justice system discussed earlier. In this context, symbolic powers refer to 'the ability to secure compliance without engaging in overt behaviour that forces obedience' (Brodeur, 2010, p. 296).

In respect of public low policing, the WHC hoax, the Bunbury bombing, the Wagerup occupation and the Ratcliffe-on-Soar protest all evidence the open use of statutory powers to police. For public low policing, this is a key element in the way Brodeur (2010, p. 307) has described social interventionism. In these cases, different public entities with different authorities to police, openly used their markedly different statutory powers to respond to the protests. In all cases it was the cornerstone of the low policing responses. In respect of these examples of public low policing, and albeit at different stages of the protest, protesters knew they were "being policed", knew which public body was doing "the policing" and knew where the statutory authority to police was derived from. In all cases, the statutory powers to police were openly used. As shown earlier in these cases in respect of public low policing (8.2.1), the policing of the protests were directly, strongly and institutionally oriented to the criminal justice system. For these reasons, in respect of public low policing, these cases empirically act to validate the way Brodeur has theorised social interventionism (as public intervention) and reflected it in the Model.

8.4.2   Private Low Policing

Table 5 identifies the policing by the ASX of the WHC hoax as the sole instance of private policing evident in the case studies. In respect of private low policing, the analysis that follows centres on the two aspects of public intervention incorporated in the Model; "a

wait and see attitude" in using statutory or symbolic powers to police, and the orientation to private justice discussed earlier.

In policing the WHC hoax, the ASX did not adopt a wait and see attitude and neither attempted to nor engaged in private mediation (even when considered in its broadest sense) with the perpetrator of the hoax. Rather, the ASX quickly and openly used the powers available to it to halt trading in WHC securities. While not statutory powers, these powers designed to preserve the integrity of the financial market are far more than symbolic powers. They are focused on maintaining the integrity of the financial market, a core responsibility of the ASX. The decisions by the ASX to place WHC securities in a pre-open phase and subsequently issue the trading halt requested by WHC, were centred on preventing people disposing of WHC shares on the basis of false information and preserving the integrity of the financial market. In respect of the financial market, it had the immediate and desired effect of shutting down any further impact of the hoax. In this sense, the action by the ASX successfully disrupted the protest. In this case, no element of private mediation is discernible and there is nothing to suggest ASX had any contact with Mr Moylan. Further, the ASX did not pursue a path towards private justice (however broadly conceived) as the Model would suggest. Rather, as discussed previously, it was ASIC that pursued a criminal prosecution and drew Mr Moylan into the criminal justice system and away from systems of private justice. For these reasons, the actions by the ASX in policing the WHC hoax challenges the way Brodeur has described private mediation and reflected it in the Model.

8.4.3   Summary

This part of the Chapter has applied the findings from Chapter 7 to assess the third and final component of the Model; the dual concept of social interventionism (public intervention in the case of public low policing and private mediation in the case of private low policing). As noted above the concept of social interventionism is the least theoretically developed component of the Model. Restricted to a focus on public low policing and private low policing, the deductive analysis has both empirically validated and challenged this component of the Model. In respect of public low policing, the open use of statutory powers to police and an orientation to the criminal justice system were both evident. However in respect of private low policing, there was no evidence of either private

mediation or any orientation to private justice. For private low policing, the conduit to "justice" switched and was reoriented by a body with public low policing functions to the criminal justice system.

In testing this third and final component of the Model (social interventionism) the overarching finding that again emerges is that it does what it is intended to do; provide a theoretical framework to generate further distinctions in public and private policing. This also traverses time, jurisdictions and organisations with distinctly different policing roles. However, the analysis has also posed a distinct challenge to the Model in that no private mediation and no link to private justice were identified. As this finding is based on just one case, this warrants further research.

8.5   Discussion and Chapter Conclusion

In answering RQ 2, using data from the five case studies, Chapters 7 and 8 have set out a deductive analysis of the three distinct components of Brodeur's Integrated Model of Policing. The overarching purpose was to explain policing response to radical environmental protest through assessing each aspect of the Model. Depicted in Figure 11, the Model and the theoretical bases on which it is built was developed by Brodeur from a synthesis of his decades of empirical research into policing and from policing literature. In respect of the former, this included from his reflections on his role in Commissions of Inquiry into political policing in Canada (see Brodeur, 1983; 2010, Ch 7). In respect of the latter, this included consideration of Egon Bittner's seminal works *The Function of the Police in Modern Society* as well as *Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police* considered by Brodeur (2010, p. 104), to be 'the closest thing we have to an explicit theory of the police'. Against this theoretical backdrop, Brodeur's contribution in *The Policing Web* is considered by Stenning (2012, para 5) to be 'the first serious attempt by a mainstream policing scholar to develop an integrated 'theory of policing'. *The Policing Web* reflects a descriptive theory of policing diagrammatically represented in the Model. Its theoretical bases were built on considering 'as many of the components of the policing web as possible' (Brodeur, 2010, p. 5). It was for these reasons it was selected as the theoretical framework for analysing the policing of radical environmental protest in the present study.

The Model has provided a fresh theoretical lens through which to analyse, describe and understand the policing of radical environmental protest. As the deductive analysis has shown, the Model provided a robust theoretical framework with which to examine in detail the policing of protest across time, in different jurisdictions and where policing was undertaken by actors well beyond the constabulary. Consistent with the deductive approach, data from the case studies were systematically isolated, described and then applied to the Model. The focus was to either validate or challenge different aspects of the Model based on empirical evidence. The analytical approach employed was to test each of the three components of the Model in turn.

The first component of the Model (policing types) was analysed in Chapter 7 and laid the foundation for the analysis of the additional two components of the Model (orientation to justice and social interventionism) set out in this Chapter. Policing types were analysed in three steps: identifying and describing the range of policing actors and their respective roles in each protest; classifying each policing type identified; and finally to the extent possible, mapping each policing type identified to the Model. The Model enabled the internal diversity within organisations with policing functions to be isolated and examined. The analysis identified instances of: public policing; public low policing; public high policing; private low policing; hybrid low policing and hybrid high policing.

The analysis of the first component of the Model both validated and proffered the first challenge to it; how hybrid policing is reflected. In acting to partially validate this aspect of the Model, the analysis reinforced key themes from the policing literature. First, as the diversity of bodies with policing functions identified in the present study reinforce, the public-private and high-low policing dichotomies while a useful starting point, are a wholly inadequate way of considering the questions of "what is policing?", and "who polices?". Secondly, the analysis reinforced that constabulary powers are not needed to police and policing is undertaken by a complex web of actors. Finally, the analysis has reinforced that hybrid policing is central to the way policing has been theorised. A key finding of the present study set out in Chapter 7 is that distinctly different forms of hybrid policing (hybrid low policing and hybrid high policing) were isolated, able to be described, and yet could only be mapped to the Model as far as hybrid policing. While this proffers a challenge to the Model, the extent of the challenge is qualified. This is because of an

underlying paradox of the Model also identified in the present study in the way hybrid policing is, on the one hand theorised expansively by Brodeur (2010), and yet on the other hand is reflected narrowly in the Model. Nevertheless, distinctly different forms of hybrid policing (hybrid high policing and hybrid low policing) have been identified that are not well accommodated within the Model.

As the analysis in this Chapter has set out, the remaining two components of the Model, concepts of orientation to justice and social interventionism are solely focused on public and private policing to the exclusion of hybrid policing. In the case of the former, this includes high and low policing yet in the case of the latter is limited to low policing. Employing a deductive approach (applying evidence to theory) meant hybrid policing was excluded from further analysis. Within the theoretical constraints of a deductive analysis and the practical constraints of a doctoral thesis, this means how different forms of hybrid policing potentially relate to these components of the Model remain unexplored. This necessarily limits the way the policing of the Ratcliffe-on-Soar protest and the Drax train occupation can be assessed. The effect is that the way that distinctly different forms of hybrid policing may relate to the criminal justice system or private justice and how statutory or symbolic powers may have been used in policing the protests remains unexplored.

What should be borne in mind in critiquing the final two components of the Model is that they are specifically intended to generate distinctions and differences between public and private policing. This limited focus on the public-private policing dichotomy reflects a further paradox between the Model and the theorising that underpins where policing is considered expansively. As noted earlier, although Brodeur's (2010, p. 130) definition of a policing agent is never fully resolved in his treatise, in its tentative form it reflects "the police" very broadly. Further, a focus of the treatise was to encompass 'as many of the components of the policing web as possible' (Brodeur, 2010, p. 3) and as this analysis has shown, high and low policing and hybrid policing are central to the Model. Notwithstanding, the analysis of orientation to justice and social interventionism has highlighted they do, as the Model intends, deepen the distinctions between public and private policing. This is because they collectively show sharp distinctions between public and private policing: in the origin of the powers to police (via statutory or regulatory

frameworks); in the triggers for how and when powers to police are applied; in different policing objectives; and in different pathways to the criminal justice system.

In respect of the concept of the orientation to justice, the analysis did validate the way the relationship between public low policing and the criminal justice system has been reflected in the Model. As the Model reflects, it was the strongest of these potential relationships. The analysis did however also identify (1) that these relationships are not uniformly strong, and (2) there were differences in how the relationships were manifested. The analysis further identified that sharp distinctions in policy intent and practice can fracture or undermine what is intended to be otherwise strong relationships between public low policing and the criminal justice system. The Model does not overtly accommodate these fine variations and distinctions. Given the overall strength of the relationships identified, this is not however an insurmountable challenge to the Model. The analysis also validated the way the relationship between public high policing and the criminal justice system has been reflected in the Model. What was influential in making this finding is that consideration needed to be given to the broader context in which the policing responses occurred. However, while the Model identifies a relationship between private low policing and private justice (although weaker than for public policing), no link at all was found. The strength of this challenge should be considered in the context that it is based on the sole instance of private low policing identified in the case studies.

In respect of the concept of social interventionism, the analysis went on to validate the way public intervention for public low policing has been reflected in the Model. In all cases, public low policing evidenced the open use of statutory powers to police by intervening in the protests. However, in analysing this final component of the Model, a further challenge to it was also identified; no link with private low policing and private mediation was found. This finding was also built on just a single case.

In making a fresh contribution to the policing literature, the deductive analysis is the first known attempt to comprehensively empirically test Brodeur's Integrated Model of Policing. Overall the case studies have identified a diversity of policing bodies involved in the policing of radical environmental protest over time and across jurisdictions. The UK case studies in particular provided the evidence base with which to use the Model to isolate and

describe distinctly different forms of hybrid policing. However, a limitation of the present study is that the case studies have not evidenced a key part of the policing assemblage reflected in both the policing literature and the Model; private high policing. While not the sole factor, this was in part due to the ACPO's organisational arrangements and therefore the way hybrid policing was able to be isolated and categorised. Further while public high policing was evident, due to incomplete information, it was unable to be fully applied to the Model. These two distinct policing types are accepted theoretical orthodoxy and relevant in practice to the policing of radical environmental protest. A further less obvious limitation in the present study is that while it is reflected in the Model, the analysis has not tested any potential conduit of private high policing to the criminal justice system via public high policing. While these do not offer serious challenges to making robust findings from the deductive analysis, they do pinpoint where further targeted research would also be valuable.

Brodeur (2010, pp. 14-15) recognises there are necessarily limitations in his treatise. As Stenning (2012, para 5) points out, Brodeur himself recognised that a limitation in his theorising was that it was not able as yet to integrate 'security technology and the security manufacturing sector'. Brodeur (2010, Ch 8) notes, this may change the way public and private policing is theorised. While this may yet prove to be true, what this deductive analysis shows, is that there are distinct challenges to the Model. In summary, these are: how hybrid policing has been incorporated; the relationship of private low policing to private justice; and the relationship of private low policing to private mediation. The most significant challenge to the Model is that distinctly different forms of hybrid policing are not overtly or sufficiently accommodated in the Model. This is particularly significant as hybrid policing is one of the core policing types that anchors the Model.

Bronitt and Donkin (2012) have recently re-considered the concept of hybridity as it relates to terrorism legislation in post-9/11 Australia, in their case arguing that regulatory hybridity is neither extraordinary nor exceptional. Its relevance to this analysis is that it rejects a notion of hybridity that is merely appended to binary typologies. In their case, these are binaries of law (criminal versus civil, and judicial versus administrative). Although their focus is regulatory hybridity, they call for "hybrids" to 'be judged from a more substantive perspective' (Bronitt & Donkin, 2012, p. 237). In their analysis, "hybridity" is not

seen as something deviant, something that merely spans existing binary typologies, or as a "catch-all" for regulation that does not fit neatly into a binary. Rather, Bronitt and Donkin (2012) reimagine "hybridity" as a core and enduring feature of regulation in its own right.

The policing literature evidences that the parallels with Bronitt and Donkin's (2012) assessment of legal frameworks and hybrid policing are striking: hybridity is an accepted part of the policing assemblage – it is neither extraordinary nor exceptional; since hybrid policing was first described in the literature, its categorisation has been challenging; and while the literature has moved beyond hybrid policing being a "catch all", for policing that does not neatly fit the dominant binaries, it is still cloistered by them (Brodeur, 2010, p. 306; Button, 2002, pp. 8-19). The present study has evidenced that hybrid policing can and ought to be judged from a more substantive perspective. As the present study has shown, hybridity can be evidenced in the interplay between "the who", "the what", "the how" and "the where" of policing. The present study has shown that hybridity can be a transient feature of the policing assemblage (for example when ACPO had operational control of the NPOIU) or an enmeshed feature of the policing assemblage (for example the BTP). Further, the present study has identified that hybrid policing can occur when otherwise disparate policing bodies are dependent on the exercise of others' respective authorities "to police" (for example the seeking of High Court injunctions to create the offence of contempt of court and extending the tool kit of the constabulary to police protest).

9. DISCUSSION AND THESIS CONCLUSION

The overall aim of this historical-comparative study has been to contribute to understanding responses in policy and practice to radical environmental protest over time and across different jurisdictions. With an empirical focus on radical environmental protest, critical infrastructure policy frameworks and policing practice in Australia and the UK, the purpose of the work has been twofold: to describe and interpret contemporary discourse and critical infrastructure policy as it relates to radical environmental protest; and to assess, explain and understand policing responses to radical environmental protest. In doing so, the study has canvassed a broad literature base and a diverse range of environmentally-motivated protests that elicited distinctly different policy and policing responses. Each incrementally added to the way responses to radical environmental protest can be explained and understood.

9.1 Summary of Findings

This study began by examining contemporary policy and policing discourse to identify how and why radical environmental protest in Australia and the UK is framed the way it is. What the study revealed is that the terms used to describe a broad range of advocacy, pressure, dissent and protest groups (IMG and Domestic Extremism) also apply to radical environmental protest. The study identified a revised genealogy of the divisive and pejorative term eco-terrorism before setting out for the first time the genealogy of the term IMG in Australia and a mapping out a revised genealogy of the term Domestic Extremism in the UK. With terminology central to the scholarship relating to radical environmental protest, this is a fresh contribution. Understanding the emergence and contemporary meanings of these key terms provided a way of understanding how different concepts of threat posed by radical protest (including radical environmental protest) have been considered over time.

What this study has found is that when coined the terms IMG and Domestic Extremism filled a nomenclature gap for policing bodies enabling them to describe and discuss the threat to domestic security from protest. However, both terms became catch-all terms and this goal soon became a casualty. Despite it being part of the lexicon reflected in the scholarship and in practice (most notably in the US) the term eco-terrorism has not

gained a foothold in policy or policing discourse in either Australia or the UK. Rather, the seemingly more benign term IMGs and the more pejorative term Domestic Extremists both refer to a broad range of pressure and advocacy groups, social movements and their radical fringes. For policymakers and police, framing definitions of these terms to separate lawful advocacy, protest and dissent from protest involving serious criminality that is potentially violent and prejudicial to domestic security remains a work in progress. As environmental advocacy protest groups are not homogeneous and employ a broad spectrum of strategies and tactics across a spectrum of legality from lawful through to serious criminality, this reflects a discourse disconnect. In both Australia and the UK, the discourse disconnect is relevant in policy and practice for three key reasons: policymakers, police and industry may well be talking about different things when they talk about IMGs and Domestic Extremists; it blurs the lines between lawful advocacy, protest and dissent and very serious criminality; and it offers little guidance to policymakers and policing bodies about the serious criminality that can be associated with the radical fringe of social movements. As HMIC (2013, p. 12) pointed out, overlapping definitions act to complicate rather than clarify.

In both Australia and the UK, the meanings of both terms evolved and expanded as critical infrastructure policy broadened after 9/11 to more directly encompass disruption of essential services from sources beyond terrorism. This study has identified that in Australia and the UK, contemporary critical infrastructure policy is underpinned by similar definitions of critical infrastructure and a similar policy goal of critical infrastructure resilience. However, sharp policy differences mean that in Australia threat from radical environmental protest can rest within critical infrastructure policy frameworks with its focus on resilience in the face of all hazards, while in the UK with its focus on threat from terrorism and natural hazards, this is not the case. While the different policy antecedents explain the reasons for this, it is at odds with the way protest has been policed in the UK. This study has identified that among other perceived threats, threat to critical infrastructure from radical environmental protest has been a consideration in the organisation of policing resources.

The exposure in late 2010 of apparently committed green anarchist Mark Stone as UCO Mark Kennedy and the official inquires and reviews that followed demonstrate that in practice, the threat to business operations (including critical infrastructure) from radical protest has been a factor for the organisation of policing resources since at least 1983 when

the SDS then housed within the Special Branch of the MPS first infiltrated radical animal rights groups. The official inquires and reviews into covert policing in the UK that remain ongoing have shone an unrelenting spotlight on the policing of protest. Information now in the public domain includes historical and contemporary details of the targets and tradecraft of the SDS and the NPOIU. While high policing in Australia has only been able to be identified in the present study from at times incomplete archival records, a rich seam of data about high policing in the UK dating back decades has been able to be assessed in this study.

A key part of this study has been assessing policing responses to radical environmental protest through the theoretical lens of the Jean-Paul Brodeur's theory of policing articulated in *The Policing Web* and reflected in the Integrated Model of Policing. As Stenning (2012, para 5) points out, it is 'the first serious attempt by a mainstream policing scholar to develop an integrated 'theory of policing'. Underpinned by broad considerations of "who polices" and what it means "to police", the Model and its theoretical underpinnings provided a robust way of systematically assessing distinctly different policing responses to protest over time and across jurisdictions. Undertaken in three steps reflective of the distinct components of the Model, the assessment of policing response to protest using a deductive approach both validated and challenged different aspects of the Model. Assessing the interplay between the two policing dichotomies underpinning the Model (high-low policing and public-private policing) identified distinctly different forms of hybrid policing (hybrid high policing and hybrid low policing).

A finding of this study is that between 2006 and 2015, ACPO can be considered a hybrid policing body. Further, the nature and form of ACPO's hybridity was manifested differently, changing in intensity over time. These preliminary findings strongly influenced the study. While this may represent a highly nuanced form of hybrid policing that varied in intensity and was transitory, the analysis also identified hybrid low policing can also be an enmeshed part of the policing assemblage. In the cases examined in this study, the policing roles of Drax and the BTP while both classified as hybrid low policing, are also distinctly different. In the case of the former, hybridity was derived from the interdependency between Drax, the High Court and the constabulary. In the case of the latter, it was derived from the circumstances where the BTP as public officers are funded by the rail industry to

police private space. The identification of distinctly different forms of hybrid policing could not be accommodated with the Model beyond the more generic concept of hybrid policing. This finding suggests a paradox in the way hybrid policing has been theorised expansively by Brodeur in *The Policing Web* yet reflected more narrowly in the Model. However, two components of the Model (orientation to justice and social interventionism) apply only to public and private policing. The overall effect is that hybrid policing is not reflected substantively in the Model.

The two other challenges to the Model identified in the study should be considered cautionary as they relate to the single instance of private policing identified; the ASX's role in the WHC case. Whereas the Model suggests private low policing has a link to private justice, in this study no link at all was identified. Although the ASX does use civil settlements to enforce corporate breaches, this case exhibited no evidence of a link between the ASX and private mediation. Rather than the wait and see attitude the Model suggests, the ASX was aggressive in its response to the WHC hoax. This reflects the significance of the financial market.

9.2   Limitations of the Study

This study has not been without its challenges. With a dual focus on critical infrastructure policy and the policing of radical environmental protest, the challenges in researching protest that are well documented by others and were canvassed in Chapter 3 were all encountered. So too were the additional challenges of recruiting participants to the study given the passage of time in respect of the historical cases and difficulty recruiting participants to the study in respect of the contemporary cases. Further, research that seeks to examine the policing of protest directed towards key parts of the civil infrastructure deemed by nation states as critical and essential to national security and economic prosperity is inherently complex. While the sector groups that now comprise critical infrastructure in Australia and the UK are a matter of public record, lists of what has been identified over time as critical infrastructure within the framework of national security policy are tightly held. This necessitated (1) examining responses to protest that targeted sector groups identified as critical, or where the specific infrastructure targeted had been publicly identified as critical, and (2) where the passage of time enabled, seeking out and

gaining access to formerly classified information. In respect of the latter, some documents had been destroyed consistent with archives procedures and some were provided partially redacted. In other instances, while mitigated by a range of data collection techniques, potentially relevant material (such as the classified versions of ASIO annual reports and the MOU) was inaccessible.

In this overall context, despite the breadth of policing identified in the cases there are unique limitations of the study. First, no instances of private high policing were evident. This is despite it being accepted theoretical orthodoxy and relevant in practice to the policing of radical activism (Brodeur, 2010; Lubbers, 2012; O'Reilly & Ellison, 2005). The effect is that in respect of the Model, the relationship between private high policing, the criminal justice system and any linkages with private justice remain unexplored. This limitation is largely due to the cases that were selected that sought to balance access and data with a breadth of policing. Of note is that when the two UK cases were selected it was evident that (1) Mark Kennedy had been engaged in high policing and (2) that ACPO was a private company limited by guarantee during the period in which the protests occurred. However, a key finding of the present study is that ACPO was (between 1997 and 2015) a hybrid policing body. It had been anticipated when the cases were selected that evidence of private high policing would be found in the interactions between Mark Kennedy and ACPO. However, the alternate finding of a highly nuanced and previously unidentified form of hybrid high policing was ultimately made.   This finding flowed through and strongly impacted the deductive analysis.

The second unique limitation of the study is that hybrid policing has not been examined in respect of two components of the Model; orientation to justice and social interventionism. Within the theoretical constraints of a deductive analysis and the practical constraints of a doctoral thesis, this means how different forms of hybrid policing potentially relate to these components of the Model also remain unexplored. This necessarily limits the way the policing of the Ratcliffe-on-Soar protest and the Drax train occupation have been assessed. The effect is that the way different forms of hybrid policing may relate to the criminal justice system or private justice and how statutory of symbolic powers may have been used in policing the protests also remain unexplored.

9.3   Suggested Future Research

This study incorporates the first known comprehensive deductive analysis of Brodeur's Integrated Model of Policing and the research gaps identified above provide a way of mapping out future research. Noting the inherent challenges in doing so, future research could include testing the Model in respect of instances of private high policing. Further research could also include an inductive analysis of responses to radical environmental protest. Further research into different forms of hybrid policing is also required that considers it from a more substantive perspective; not as merely reflecting the space or interface between high and low policing, and public and private policing. As this study has shown, distinctly different forms of hybrid policing are able to be isolated and described. In 2014 the Council of Canadian Academies (2014) in the context of the future of policing in Canada and in cognisance of *The Policing Web,* proffered the far broader concept of a safety and security web. This was in light of the 'changing context in which police now operate' (Council of Canadian Academies, 2014, p. x). The concept of a safety and security web views police as one part of an increasing number and range of bodies involved in policing an ever shifting range of threats and crime. It may offer a theoretical lens through which to consider hybridity more substantively. During the course of this study, data that flowed into the public domain on policing protest in the UK were able to be tapped. With policy, policing and activist perspectives, this study provides a useful platform for future research. Official inquiries into covert policing in the UK remain ongoing. At the time of writing, Operation Herne now led by Chief Constable Mick Creedon that began in 2011 and is examining historical aspects of covert policing in the UK is yet to be finalised. Its key focus is the 'alleged misconduct and criminality engaged in by members of the SDS' (Derbyshire Constabulary, n.d.). When Operation Herne is finalised, the full reports will also offer a further rich seam of data about the policing of protest. So too will the final reports of the inquiry being undertaken by Lord Justice Pitchford. As former President of ACPO Sir Hugh Orde (2011, p. 1) has said in respect of undercover policing, 'something (has) gone wrong'. The full extent to which "something went wrong" is yet to be quantified.

Appendix 1: Extract of the *Government Agreements Act 1979* (WA)

4 .   Offences

(1) A person shall not without lawful authority remain on any subject land after being warned to leave it by —
   (a) the owner or occupier, or a person authorised by or on behalf of the owner or occupier, of that subject land; or
   (b) a member of the Police Force.

   Penalty: $5 000 or 12 months' imprisonment.

(2) A person shall not without lawful authority prevent, obstruct, or hinder any activity which is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement, or attempt to do so.

   Penalty: $5 000 or 12 months' imprisonment.

(3) For the purposes of any proceedings for an offence under this Act an averment in the prosecution notice —

   (a) that an agreement is scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister; or
   (b) that an agreement is scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act,

   shall, in the absence of proof to the contrary, be deemed to be proved.

2. Interpretation

***Government agreement means* —**

(a) an agreement scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister, and any other agreement scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act,

and includes —

(b) any variation of that agreement —
   (i)   which is or has been entered into pursuant to that agreement; or
   (ii)   the signing or implementation, or both, of which has been ratified, approved, or authorised by Parliament;

   and

(c) any document or instrument, including any grant, lease, licence, permit, approval, authorisation, right, concession, or exemption, or any other thing made, executed, issued, or obtained for the purposes of that agreement or its implementation;

***subject land* means —**

   (a) land that is set aside, or is being used, for the purposes of or incidental to implementing a Government agreement; or
   (b) land where activity is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement.

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