



# Protest in Peril

Our Shrinking Democracy

Human  
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# Contents

## Acknowledgement of Country

The Human Rights Law Centre acknowledges the lands on which we work and live, including the lands of the Wurundjeri, Bunurong, Gadigal, Ngunnawal, Darug and Wadawurrung people. We pay our respect to the Elders of these lands, waters, and skies, both past and present.

Aboriginal and Torres Strait Islander peoples have resisted the injustice of colonisation ever since the first ships entered Bidjigal, Wangal and Gadigal waters, including through protest. We recognise that this continent always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded.

Since colonisation, Aboriginal and Torres Strait Islander communities have fearlessly used protest as a way to fight for their right to self-determination, their land and water rights, an end to police violence and against the ongoing structural racism that locks them out of justice. We acknowledge the role of the colonial legal system in establishing, entrenching, and continuing the oppression and injustice experienced by Aboriginal and Torres Strait Islander people and that we have a responsibility to work in solidarity with Aboriginal and Torres Strait Islander communities to undo this.

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## With thanks

To everyone who assisted in the production of this report, including:

- Tarneen Onus-Williams
- Melbourne Activist Legal Support
- Dom Jacobs
- Helen Kvelde
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## Please Note

If an Act or a Bill expresses a pecuniary penalty in penalty units this has been converted to \$AUD using the appropriate penalty unit value and is correct as of 1 April 2024.

This report aims to provide general information only. It is not intended to be legal advice and should not be relied upon as such. This report does not suggest any illegal or improper conduct on the part of any of the individuals or organisations named.

This report was authored by David Mejia-Canales, Senior Lawyer, Human Rights Law Centre, 2 June 2024.

Cover image: School Strike 4 Climate Sydney, Greenpeace.

<b>Foreword</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Context: The Right to Protest</b>	<b>6</b>
<b>Context: Limiting the Right to Protest</b>	<b>8</b>
<b>The erosion of the right to protest in Australia</b>	<b>13</b>
– The Federal Government	14
– Australian Capital Territory	17
– New South Wales	18
– Northern Territory	23
– Queensland	24
– South Australia	26
– lutruwita/Tasmania	28
– Victoria	33
– Western Australia	37
<b>Protecting our right to protest</b>	<b>40</b>
<b>Endnotes</b>	<b>42</b>



## Foreword

Protest works to create a better future for all of us. But the right to protest is under attack. We were both arrested when we took part in a series of actions with Blockade Australia at Port Botany in March 2022.

We are Knitting Nannas, our motto is “saving land air and water for the kiddies.” Our yellow nanna t-shirt states that ‘well behaved women seldom make history,’ and this has certainly been proven over the years in Australia and globally. Women didn’t get the vote by asking nicely, they had to take bold action to demand their rights.

Non-violent protest and voting are the only ways we believe we can express our democratic rights effectively. Unfortunately, our representatives and our systems are compromised by party politics, dishonest media, and corporate lobbyists, which leaves us with the right to protest as our only effective demonstration of dissent.

By the right to protest we mean acts of civil disobedience. We’ve already tried all of the ‘acceptable’ avenues, we’ve marched, written letters and submissions, signed petitions, met with politicians, sat outside offices knitting in protest and the situation has only changed for the worse.

Various governments have chosen to enact anti-democratic laws which are designed to scare us off, but they are not as scary as climate breakdown. But still we are forced to choose: Do we follow our conscience and take action for life on earth thereby risking disproportionate bail conditions, heavy financial penalties, and even prison, or not act and watch life on our beautiful planet become extinct?

We choose action.

We won’t be silenced.

We have a right to peaceful protest.

The right to freedom of expression has always been important but now it is a question of life and death. There are many amongst us who are unable to protest so we feel a responsibility as older women, mothers, grandmothers, and wildlife carers to do everything we can to protect all life.

- We choose action.
- We won’t be silenced.
- We have a right to peaceful protest.



**Helen Kvelde and Dom Jacobs**  
Sydney Knitting Nannas  
[knitting-nannas.com](http://knitting-nannas.com)

*Helen and Dom were the successful plaintiffs in *Kvelde v State of New South Wales*, the constitutional challenge to NSW’s anti-protest laws.*

Credit: The Environmental Defenders Office.  
Photo: Cassandra Hannagan.

## Our hard-won freedoms of peaceful assembly and association are fundamental to our democracy.

Peaceful assembly encompasses various activities like meetings, sit-ins, parades, vigils, strikes, rallies, and of course protests, both in physical spaces and online. Similarly, our freedom of association gives us the liberty to interact with each other freely and organise collectively to express, promote, and defend our common interests, including by forming and joining trade unions. These rights are essential for exercising our other rights, which are also protected by international human rights law, including our rights to freedom of expression and participation in public affairs. In this report, references to the “right to protest” refer to peaceful actions of both individual and collective expressions of opposing or reactive views and values. This includes actions that are spontaneous and coordinated, conducted online or offline. Protests may speak to any audience, including public authorities, private entities, or the general public. A peaceful protest may involve behaviour or expression that could annoy or offend; and it may also temporarily obstruct other activities. In short, the right to protest represents the individual or collective exercise of our universally recognised human rights, including our freedom of expression, peaceful assembly, association, participation in public affairs, freedom of thought, conscience, religion, cultural participation, and rights to life, privacy, liberty, security, and non-discrimination.

Peaceful protest is crucial for realising all of our other human rights.<sup>1</sup> Australia has a long and proud history of protest movements which have won significant change, including preserving Tasmania’s Franklin River, the advancement of worker’s rights and trade unionism, the apology to the Stolen Generations, voting rights for women and Aboriginal and Torres Strait Islander people, and the advancement of LGBTIQ+ rights. Some of us owe our human rights more to protest than to the goodwill of politicians.

The right to protest is particularly important for Aboriginal and Torres Strait Islander people and their ongoing calls for justice. Since colonisation, Aboriginal and Torres Strait Islander communities have fearlessly used protest as a way to fight for their right to self-determination, their land, air and water rights, an end to police violence and against the ongoing structural racism that continue to lock them out of justice.

Australia is a signatory to all of the major international human rights treaties which bind all Australian governments and their agencies to respect, ensure, and protect our human rights, including our right to peaceful protest. Governments must also ensure that any restriction on our right to protest is in accordance with human rights law and is limited to what is strictly necessary and proportionate in pursuit of a legitimate objective.

Despite these clear human rights obligations, over the last twenty years, most governments around Australia have proposed and enacted laws to limit protest rights that are incompatible with our international human rights obligations. Common elements of these laws are vague and ill-defined offences, excessive police powers, disproportionately harsh penalties, and the prioritisation of corporate interests, like forestry and mining, over the rights of people to access public land to voice dissent.

Independent human rights experts have been troubled by the erosion of our right to protest in Australia. In 2014 and 2016, numerous United Nations Special Rapporteurs urged the state governments of Tasmania and Western Australia not to adopt anti-protest legislation which would “unduly restrict the right to freedom of peaceful assembly and the right to freedom of opinion and expression by criminalising legitimate and lawful protest.”<sup>2</sup> In 2018, a report by the United Nations Special Rapporteur on the Situation of Human Rights Defenders described alarm at “the trend of introducing constraints by state and territory governments on the exercise of this fundamental freedom.”<sup>3</sup>

In 2019, a number of United Nations Special Rapporteurs expressed serious concern that Queensland’s law to criminalise common devices used in protests via the *Summary Offences and Other Legislation Amendment Act 2019* “could have a deterrent effect on the legitimate exercise of the right to peaceful assembly and the right to freedom of expression.”<sup>4</sup> In December 2019, the CIVICUS Monitor, a global alliance strengthening citizen and civil society action, downgraded Australia’s civic space from “open” to “narrowed”, due in part to Australia’s proliferation of anti-protest laws.<sup>5</sup>

Recent developments in anti-protest laws in New South Wales, South Australia, Victoria and Tasmania have also garnered significant attention and scrutiny.

The Parliament of New South Wales enacted the *Roads and Crimes Legislation Amendment Act 2022*, which criminalised disruption on major roads with penalties of up to two years’ imprisonment or a maximum fine of \$22,000, or both.<sup>6</sup> South Australia’s *Summary Offences (Obstruction of Public Places) Amendment Act 2023* criminalised obstructing public spaces, for as little as ten minutes, with fines of up to \$50,000 or imprisonment for up to three months. The Victorian Parliament passed the *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022*, doubling penalties for peaceful direct action in forests. The Tasmanian Parliament passed the *Police Offences Amendment (Workplace Protection) Act 2022* to introduce penalties of up to 12 months’ imprisonment or a fine of up to \$9,750 for obstructing a workplace via a picket.



The steady erosion of our right to peacefully gather on public spaces should concern all of us. Our ability to peacefully protest is fundamental to safeguarding democracy and for holding those in power accountable. When this right is eroded or limited in a way that’s not compatible with international human rights law and principles, it not only limits the ways that we can voice our grievances, but it also undermines the democratic checks and balances which are essential for a healthy society.

This report provides a snapshot of how governments across Australia are failing to uphold our right to peaceful protest in accordance with international human rights law. The methodology involved thorough desktop research, including the analysis of Parliamentary Hansard, reports, legal databases, and newspaper articles, to identify legislative interventions that could substantially affect the right to freedom of assembly, between 2003 and 2023, even if they did not ultimately pass into law.

The inclusion of laws that were introduced but not enacted is important as each measure to restrict our ability to gather peacefully shapes public opinion, often negatively. Parliamentary debates on anti-protest measures tend to frame protests as inconveniences that must be abolished, or perpetuate negative perceptions about protesters and their causes, while ignoring the huge social benefits that protest movements have won over time.

It’s also essential to clarify that this report doesn’t cover other measures that affect our right to protest, like regulations, local council laws, or police policies and practices. While these certainly impact our right to protest, this report aims to provide a snapshot rather than a comprehensive analysis of the erosion of our right to protest. It does this by examining proposed or enacted laws that impeded our ability to gather peacefully.

### Trends uncovered

A number of observable trends have emerged over the last 20 years. The state of greatest concern is NSW, which has enacted the highest number of anti-protest laws in the last 20 years. Conversely, the Australian Capital Territory stands out for its commendable efforts in protecting the fundamental right to protest.

The most consistently targeted activists by anti-protest laws were from the environmental, climate and animal rights movements. But thanks to often vague and poor drafting of offences like “obstructing a road”, “preventing a business undertaking”, or “causing annoyance” to participants of a meeting, their application extends to all movements. For instance, in Western Australia, a law was proposed that made it an element of an offence to possess “a thing” to prevent the conduct of a business. These laws often introduced excessive penalties, including prison time and fines of up to \$50,000, for common forms of protest.

A number of laws were introduced specifically for major events, like the visit to Australia by the Pope or the Naarm/Melbourne Commonwealth Games. These laws imposed blanket bans on protests and banned items like banners or placards. Most of these laws lapsed immediately after the end of the major event, except for the laws governing the Commonwealth Games in Naarm/Melbourne. The repressive measures in those laws were in operation months after the conclusion of the games.

Throughout this report, case studies and profiles are presented to illuminate recent developments in anti-protest legislation across each jurisdiction, providing insights into their impact on protest movements.

Above: Global Climate Strike in Sydney 2019 - Greenpeace supplied

In Australia, the legal foundation for the right to protest is drawn from various sources including international law, domestic law and the common law.

### The right to protest at international law

The right to peaceful assembly and association is proclaimed in the *Universal Declaration of Human Rights*.<sup>7</sup> This right is a bedrock which enables our participation in public life and economic and social policy debates.

Australia confirmed the importance of the right to protest when it became a signatory to the *International Covenant on Civil and Political Rights (ICCPR)* in 1972.<sup>8</sup> The ICCPR, among other things, provides for the rights to freedom of expression, peaceful assembly and the freedom of association. As a signatory, all Australian governments and their agencies have obligations to respect, ensure, and protect all of the rights contained in the ICCPR to all people within Australia's jurisdiction, including citizens, non-citizens, people seeking asylum or refuge and stateless persons.<sup>9</sup>

The right to peaceful assembly protects assemblies wherever they take place, be it outdoors, indoors, online, in public or private spaces, or any combination of these.<sup>10</sup> An assembly can also take many forms, including demonstrations, protests, pickets, parades, meetings, processions, rallies, sit-ins, vigils, or flash mobs.<sup>11</sup> Even assemblies that are temporarily disruptive enjoy protection under the ICCPR, as long as they remain peaceful.<sup>12</sup>

The right to peaceful assembly, by definition, cannot be exercised using violence.<sup>13</sup> Violence at international law is deemed to entail the use of physical force against others that is likely to result in injury or death, or cause serious damage to property.<sup>14</sup> Mere pushing and shoving, direct action, civil disobedience, or the temporary disruption to roads, cars, pedestrians or of daily activities, does not on its own amount to violence.<sup>15</sup> Isolated acts of violence may not necessarily render an entire assembly as violent.<sup>16</sup> Importantly, violence that renders an assembly non-peaceful must originate from participants of the assembly.<sup>17</sup> This ensures that peaceful assemblies are protected from the violent actions of the authorities, *agents provocateurs* or counterdemonstrators.<sup>18</sup>

### The right to protest at common law

Common law has recognised the right to assembly as far back as 1215, and in Australia courts regard it a core part of a democratic system of government.<sup>19</sup> However common law freedoms only apply insofar as they are not overridden by parliamentary laws.<sup>20</sup> The High Court has deliberated on the conditional nature of these freedoms in *Lange v Australian Broadcasting Corporation*:<sup>21</sup>

*“Under a legal system based on the common law, ‘everybody is free to do anything, subject only to the provisions of the law’, so that one proceeds ‘upon an assumption of freedom of speech’ and turns to the law ‘to discover the established exceptions to it.’”<sup>22</sup>*

### The right to protest under the Australian Constitution

The right to protest receives limited protection in Australia's Constitution. The High Court has interpreted the Constitution to imply a freedom of political communication, even though communication, even though this is not explicitly stated in its text. The High Court reasoned that the free exchange of political communication is fundamental to our system of representative and accountable government, which the Constitution does explicitly establish, and it must therefore be protected from undue interference. The implied freedom applies at State, Territory and Commonwealth level.

In its 2017 decision in *Brown v Tasmania* [2017] HCA 43 (**Brown**), the High Court considered the freedom's application to laws restricting protest rights. In *Brown*, the Court stated that:<sup>23</sup>

*“The implied freedom protects the free expression of political opinion, including peaceful protest, which is indispensable to the exercise of political sovereignty by the people of the Commonwealth. It operates as a limit on the exercise of legislative power to impede that freedom of expression.”*

Unlike freedom of speech, assembly and association under international law, the freedom of political communication under the Australian Constitution is not a personal right held by individuals. Rather, it is a limit on the laws that can be passed by state and federal governments. Laws that prevent or deter political communication will limit the implied freedom and must be justified and proportionate to achieve a legitimate objective to be constitutionally valid.

### The right to protest in statute

In some Australian jurisdictions protest is expressly protected in legislation. Section 5 of Queensland's *Peaceful Assembly Act 1992* provides that “a person has the right to assemble peacefully with others in a public place”. Similarly, section 22 of Queensland's *Human Rights Act 2019*, section 16 of Victoria's *Charter of Human Rights and Responsibilities*, and section 15 of the Australian Capital Territory's *Human Rights Act 2004* all guarantee the right to protest as a human right.

### Protection of the right to protest in domestic law

The rights under the *Victorian Charter of Human Rights and Responsibilities Act 2006*, the ACT's *Human Rights Act 2004*, and Queensland's *Human Rights Act 2019* can be restricted by law only by such reasonable limits as can be demonstrably justified in a democratic society.

In Queensland, the *Peaceful Assembly Act 1992* provides that the right to assemble peacefully is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of public safety, or public order, or the protection of the rights and freedoms of other persons.

Similarly, our constitutionally protected freedom of political communication protects us from laws that are not “reasonably appropriate and adapted” to achieving a legitimate objective.



### ● Protest profile

In my community, young people have led movements in this country for around 100 years. It was young people from Redfern and Fitzroy leading protests in Sydney and Naarm, and fast forward to today and young Aboriginal people are again at the forefront of most campaigns, for example Seed mob's “Land Rights not mining rights”, Warriors of the Aboriginal Resistance “Abolish Australia Day” and Stolenwealth Games and Queer young blackfullas like Edie Sheppard and Tarsha Jago heading up “Blakfullas for Marriage Equality”.

Young Aboriginal people have been creating change in our community, but I continue to see the media or other institutions demonise them. Young Aboriginal people are incarcerated at record rates, yet continue to resist colonisation and fight for our mob. Australia seems to espouse the idea that young people are change makers and creates opportunities for them, but these typically exclude Aboriginal young people from that category.

#### Tarneen Onus-Williams

Gunditjmara, Bindal, Yorta Yorta, Erub and Mer Islands writer and community organiser

[indigenoux.com.au/the-revolution-has-always-been-in-the-hands-of-the-young](https://indigenoux.com.au/the-revolution-has-always-been-in-the-hands-of-the-young)

The rights to freedom of expression, peaceful assembly and freedom of association are not absolute, meaning that they can be limited.

Article 21 of the ICCPR provides that:

*“The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”*

### Limitations must be in conformity with the law.

Article 21 requires all restrictions on the right to protest be imposed through law or an administrative decision based on law.<sup>24</sup> Legal certainty is a key aspect of the rule of law. All laws affecting the right to peaceful assembly must be clear and easily understood by everyone, including protesters, police, and the general public.<sup>25</sup> Vagueness and ambiguity make it more likely that a law will be applied inconsistently, misapplied, or misunderstood in practice.

In the protest context, the risk of an unclear law is that protests may be prevented or ended when they should not be.<sup>26</sup> Laws that are not clear may be applied more broadly than intended by parliament, or in a manner that is unreasonable. The uncertainty may also deter people from engaging in protest, for fear of falling foul of a law that's difficult to interpret.

In recent times disproportionate, vague and unclear anti-protest laws have been enacted or proposed around the country. Some of these laws criminalise conduct that “causes annoyance”<sup>27</sup> or conduct that “hinders the working of equipment”.<sup>28</sup> In Western Australia, under a proposed law which was withdrawn after public backlash, it would have been an element for an offence to possess a “thing” for the purpose of “preventing lawful activity”.<sup>29</sup>

### Limitations must be necessary in a democratic society.

Article 21 requires that any restriction on the right to protest must be necessary and proportionate in a society based on democracy, the rule of law, political pluralism and respect for human rights.<sup>30</sup> Indeed, the Human Rights Committee commented that the right to protest and other related rights constitute the “very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism”.<sup>31</sup> A limitation on the right to protest must therefore be an appropriate response to a pressing social need, be the least intrusive measure to achieve a legitimate objective and moreover they must be proportionate to that objective (not merely “reasonable” or expedient).<sup>32</sup> It follows that any restrictions on the right to protest ought to meet this high threshold to show that the restriction is both necessary and proportionate in all the circumstances.

To determine the proportionality of a restriction on the right to protest, a value assessment must be made weighing the nature and detrimental impact of the limitation on the right against any benefits. If the detriment outweighs the benefit, at international law, the restriction is disproportionate and not permitted.<sup>33</sup>

South Australia's *Summary Offences (Obstruction of Public Places) Amendment Act 2023* increased the maximum penalty for “obstructing a public place”, which could include temporarily obstructing a doorway, from \$750 to \$50,000, and introduced a term of imprisonment of up to three months. On principle, peaceful forms of expression should not be made subject to the threat of imprisonment.<sup>34</sup> These laws, which criminalise people for benign public conduct, are not proportionate, nor the least intrusive measure to achieve a legitimate objective.



### Limitations on national security grounds.

The interests of national security could be a ground for a restriction on the right to protest provided the restriction is necessary to preserve the state's capacity to protect the *existence* of the nation, its territorial *integrity* or its political *independence* against a credible threat or a credible use of force.<sup>35</sup> Limitations on national security grounds can only be invoked in rare circumstances, for example, it will not be sufficient to invoke national security grounds to suppress or withhold from the public information of legitimate public interest which does not harm the security of a nation. Nor will it be sufficient to prosecute journalists, activists, human rights defenders or others for disseminating such information.<sup>36</sup> In relation to peaceful assemblies, limitations on national security grounds will therefore only reach the relevant threshold in exceptional circumstances.<sup>37</sup>

### Limitations on public safety grounds.

Public safety can only be invoked as a ground for restricting the right to protest if it can be established that a protest creates a real and significant risk to the safety, life, and security of people, or a real and significant risk to serious damage to property.<sup>38</sup>

Recently we have seen restrictions that limit protest rights using overstated public safety justifications. In Queensland, the government defended anti-protest laws on grounds of protecting first responders, but provided no evidence to substantiate their claims.<sup>39</sup> In New South Wales, the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016* introduced a new offence of “aggravated unlawful entry on inclosed lands”, where a person, while on inclosed lands, interferes with any “business or undertaking” on those lands.<sup>40</sup> The Act was introduced with the intention of deterring protest activities on land used for mining and coal seam gas production.

The definition of “inclosed lands” in the Act is overly broad and includes any public land inclosed, in whole or in part, by a fence, wall, building or natural feature like a river or cliff.<sup>41</sup> The Act expanded an existing offence of “interfering with a mine” which carries a maximum penalty of seven years’ imprisonment and expanded associated police discretion regarding search and move-on powers. The Act’s disproportionate penalties, its vague definitions and subjective thresholds like “interfering with a business”, created a legislative scheme that has had a significant chilling effect on climate and environmental activism and protest in New South Wales.

Photo credit: David Mejia-Canales

### Limitations on public order grounds.

Public order does not refer to law and order or the prohibition of public disorder. At law, public order is the sum of all of the rules that ensure the proper functioning of society or the fundamental principles on which society is founded.<sup>42</sup> Under international law, governments cannot rely on a vague definition of public order to justify overly broad restrictions on the right to protest, as happened during the G20 summit in Meanjin/Brisbane.<sup>43</sup>

In the lead up to the G20 summit, authorities expressed concern about the potential for violence at protests, this was informed by experiences during G20 summits in London and Toronto. In response, the Queensland Parliament passed laws to regulate and restrict protest in and around the G20 summit. The *G20 Safety and Security Act 2013* suspended the state law which recognises the right to protest,<sup>44</sup> prohibited a wide range of items like signs and placards, created vague new offences like “interfering with the G20”, and expanded discretionary police powers of search (including strip searches), seizure and arrest.<sup>45</sup>

### Limitations for the protection of public health.

The use of this ground to restrict protest at international law is considered to be exceptional and can only be properly used on the outbreak of an infectious disease where gatherings are dangerous.<sup>46</sup> In rare cases this ground can also be relied upon where the sanitary situation during a protest presents a substantial health risk.<sup>47</sup>

To be lawful and consistent with human rights law, any restrictions on protest rights that invoke public health grounds must be limited to what is strictly necessary to protect public health and remain in force only for as long as is absolutely necessary. The protection of public health must not be used as a gateway to impose lasting restrictions on protest rights.

In Victoria, during the COVID pandemic, a blanket ban on all forms of public protest was implemented, including COVID-safe protests. For example, a protest to advocate for the rights of people seeking refuge that was conducted in private cars was heavily policed with many people prosecuted, including some who were not even in attendance.<sup>48</sup>

COVID-19 posed a more serious threat to public health before there was wide-scale vaccination of the community, so some temporary and proportionate restrictions on gatherings and people’s movement were necessary. However, democracy does not stop during a health crisis. Protests like the Black Lives Matter protests in Naarm/Melbourne in 2020 demonstrated that COVID-safe protests could take place with modifications.



### Limitations for the protection of morals.

This ground, if used at all, should not be used to protect understandings of morality from a single social, philosophical or religious tradition.<sup>49</sup> Any restriction imposed for the protection of morals must be understood in the light of pluralism, non-discrimination and the universality of human rights.<sup>50</sup> Limitations on the right to protest “should only exceptionally be imposed” in the name of protecting morals.<sup>51</sup>

### Limitations to protect the rights and freedoms of others.

International law specifies that freedom of expression and association can be limited when necessary to respect the rights of others, including their rights to privacy, dignity and equality. For example, some Australian states and territories have introduced safe access zones for people accessing reproductive health services. These laws limit protest rights outside abortion clinics to protect and promote people’s access to health in privacy and dignity.

Limitations on the right to protest should not restrict specific ideas, messages, or discriminate based on the viewpoints taken by protesters except in very narrow circumstances. In some instances, a law limiting a particular message or idea is required, if the limitation is lawful, necessary, proportionate, and justifiable in a democratic society. Under international law, the right to protest can be limited if it is being used as propaganda for war or if it is used for the advocacy of national, racial or religious hatred that incites people to discrimination, hostility, or violence.<sup>52</sup>

Above: Brisbane School Strike 4 Climate, 2019.

Protest in Peril: Our Shrinking Democracy



## ● Protest profile

### Melbourne Activist Legal Support

Independent legal observers have been active for decades all around the world. The first known organised approach in Australia was led by Aboriginal activists monitoring police harassment in Redfern, New South Wales, in the late 1960s. Legal observers are recognised as Human Rights Defenders by the Office of the United Nations High Commissioner for Human Rights.

Born out of the Occupy Melbourne social movement, Melbourne Activist Legal Support (MALS) was formed in 2011 and is now one of several legal observer projects around Australia. As a community of human rights advocates, MALS aims to strengthen social movements by supporting them to safely and confidently exercise their rights. Stronger social movements create a more robust and sustainable democracy, a more accountable and representative political system, and a more equitable and just society for everyone.

MALS fields teams of trained legal observers at protests to monitor Victoria Police operations, gather evidence of human rights breaches and document police restrictions on civil and political rights such as protest suppression and violent or discriminatory policing. MALS also provides on-site information to activists about their rights and supports them in engaging with available legal support if they have experienced harm or if their rights have been restricted due to police misconduct. This includes assistance to make formal complaints against police and support to pursue legal action and class actions.

MALS notes a decreasing tolerance for protest action in general, driven primarily by police and media discourses that incite anger against protesters and frame protests as unacceptably disruptive. These dangerous narratives ignore the fact that protests are disruptive by nature and that disruption is a lawful and necessary element of protests to drive social and political change.

MALS is concerned by the militarisation of the police and the use of strategic incapacitation to repress protests, including the normalisation of oleoresin capsicum spray and projectile weapons against protesters, disproportionate and intimidating police presence, and surveillance of protesters at their homes and at protests.

MALS also holds significant concerns about unreasonably strict bail conditions and harsh sentences, including prison terms, that are frequently being imposed on activists.

If left unchallenged, MALS fears that these attempts to erode the right to protest will have a devastating effect on the protest environment, will significantly weaken our democracy, and will strip citizens of their power.

mals.au  
[twitter.com/ActivistLegal](https://twitter.com/ActivistLegal)  
[instagram.com/melbactivistlegal](https://instagram.com/melbactivistlegal)  
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## The erosion of the right to protest in Australia



The limitation of our right to protest in Australia, contrary to our international human rights obligations, is a concerning trend that warrants our immediate attention.

This trend not only undermines our liberties and freedoms but also strikes at the core of democracy itself. Peaceful protest is not a peripheral aspect of democracy; rather, it embodies its very essence by providing a vital avenue for all of us to voice dissent and advocate for change.

As restrictions on protests tighten, the very foundation of our democracy is compromised.

Above: Extinction Rebellion Protesters at South Australian Parliament, May 2023, Matt Hrkac





Most protests happen in the jurisdiction of the states and territories, however there are instances where the Federal Government intervenes to regulate protest activity. This occurs where the federal government has legislative authority under a head of power, or instances where protests occur on Commonwealth property.



Whilst the Commonwealth government is bound by the limited freedom of political communication in the Australian Constitution, it does not have a Human Rights Act that implements the much broader obligations that Australia has to protesters. However, last year the Attorney-General referred an inquiry to the Parliamentary Joint Committee on Human Rights into, among other things, whether the Commonwealth should enact a federal Human Rights Act. On 30 May, the Committee recommended that parliament pass a federal Human Rights Act, which would include the freedom of expression and freedom of association.

Above: Protest pre- Iraq war, Canberra, early 2003, Robert Davy.

Recent developments:

**Criminal Code Amendment (Agricultural Protection) Act 2019.**

*The Criminal Code Amendment (Agricultural Protection) Act 2019* amended the *Criminal Code Act 1995* (Cth) to introduce two new offences relating to using communication services to encourage property crimes or trespassing on agricultural land.<sup>53</sup> These laws were introduced as a response to the actions of animal rights group, Aussie Farms, whose stated objective is to end "commercialised animal abuse and exploitation in Australian animal agriculture facilities".<sup>54</sup>

In January 2019, Aussie Farms released an online map showing locations of farms, slaughterhouses and similar places around Australia. The map allowed anyone to contribute information, photos, and videos. The map included details like business names and addresses.<sup>55</sup> Some linked the existence of this map with an increase in animal rights activism in farms and abattoirs, including trespassing or property crimes.<sup>56</sup> In response, the Morrison Government pledged to make it illegal to use the internet to share personal information that could encourage trespassing on farms, punishable by up to 12 months in jail.<sup>57</sup>

**Australian Charities and Not-for-Profits Commission Governance Standard 3.**

While not legislation and outside the terms of this research, special mention should be made of the Morrison Government's attempt to deregister charities for promoting, or even having a presence at, protests. The effort was blocked in the Senate by one vote, after over a hundred charities campaigned against the punitive, anti-democratic law.

Commonwealth legislative interventions that were enacted.

Act	Provisions	Applicable Penalties	Comments
<i>Building and Construction Industry (Improving Productivity) Act 2013.</i>	This law made it illegal to plan or take part in 'unlawful pickets' in the construction industry. Under section 47(2), an 'unlawful picket' was described as any action aimed at stopping or limiting someone from entering or leaving a building or related site, if it's done to push for better employment conditions for workers in the construction industry.	Maximum fine for corporations: \$313,000. Maximum fine for individuals: \$62,600.	Pickets are a genuine and legitimate form of protest; this law was not reasonably adapted to achieving a legitimate objective as it effectively banned all pickets in the building industry. Article 21 of the ICCPR protects pickets as long as they remain peaceful.  Article 8 of the International Covenant on Economic Social and Cultural Rights (ICESCR) also guarantees the right of everyone to freely form and belong to trade unions and provides that trade unions must be allowed to function freely without limitations other than those in line with the ICESCR. Imposing blanket bans on all pickets is not compatible with either the ICCPR or the ICESCR.
<i>Criminal Code Amendment (Agricultural Protection) Act 2019.</i>	This law made it illegal to use phone or internet services to encourage people to trespass or commit crimes on farms or agricultural land.	Using a carriage service to incite trespass on agricultural land: 12 months' imprisonment.  Using a carriage service for inciting property damage or theft on agricultural land: five years' imprisonment.	When authorities limit the right to protest, they need to prove that the restrictions are legal, necessary, and proportional to at least one valid reason listed in Article 21 of the ICCPR.  When the Morrison Liberal/ National Government presented this law in Parliament, they justified it by saying it was to safeguard 'public safety' and 'property rights'. <sup>58</sup> However, in potential contravention of Article 21 of the ICCPR, it was irrelevant to the offence if any detriment to businesses or safety actually occurred. <sup>59</sup>

Commonwealth legislative interventions that did not pass.

Bill	Relevant Provisions	Applicable Penalties	Comments
<i>Protection of Australian Flags (Desecration of the Flag) Bill 2003.</i>	This Bill aimed to make it illegal to desecrate the Australian National Flag and other Australian flags.	Maximum fine of \$31,300.	Desecrating the Australian National Flag or other Australian flags could be a legitimate expression of political communication and if passed, this law could have been found unconstitutional. <sup>60</sup> This remains untested as this Bill was introduced as a Private Member's Bill.
<i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015.</i>	This Bill aimed to change the <i>Migration Act 1958</i> (Cth) to establish rules for when authorised officers in immigration detention centres can use force to, among other things, ensure the order of immigration detention facilities, including to quell protests.	N/A	This Bill lapsed when the Commonwealth Parliament was prorogued on 17 April 2016.  If passed, this Bill would have allowed officials to use force they reasonably believed was necessary to maintain control in an immigration detention centre. This Bill was not properly adapted to protect protests in detention centres from its operation. It could have been used to prevent or end legitimate peaceful protests by detained people.  International human rights law requires that Australia must protect everyone's right to protest within its jurisdiction, not just for citizens.
<i>Criminal Code Amendment (Inciting Illegal Disruptive Activities) Bill 2023.</i>	This Bill aimed to change the <i>Criminal Code Act 1995</i> (Cth) to introduce three new offences: using communication services, like phones or the internet, to encourage trespass, property damage or theft, or the obstruction of roads.	Using a carriage service to incite trespass: 12 months' imprisonment.  Using a carriage service to incite property damage or theft: five months' imprisonment.  Using a carriage service for inciting unlawful obstruction of roads: 12 months' imprisonment.	This Private Members Bill was introduced by Liberal Party Senator Alex Antic. Senator Antic said he wanted to impose severe penalties for "disruptive" protests in public space. <sup>61</sup>  Protests are a legitimate use of public and other spaces, even if they cause disruptions to traffic or pedestrians. If the disruptions become too difficult for authorities to manage, restrictions on protests can be imposed on a case by case basis. Authorities must demonstrate that any restrictions are compatible with human rights law. <sup>62</sup> This requirement was not met when this Bill was introduced into the Parliament.



As the political and administrative heart of the country, the Australian Capital Territory (ACT) is the stage for national and local protests.



The Aboriginal Tent Embassy, in front of Old Parliament House, is an enduring symbol of the ongoing fight for First Nations land rights and justice across the continent. The Aboriginal Tent Embassy is the longest, continuous protest for Indigenous land rights in the world.<sup>63</sup>

In 2004, the ACT was the first jurisdiction in the country to introduce a Human Rights Act. The Act guarantees the right to peaceful assembly and association as a human right.<sup>64</sup> On 26 October 2023, in another Australian first, the Legislative Assembly of the ACT introduced the *Human Rights (Healthy Environment) Amendment Bill 2023* (ACT) to amend the *Human Rights Act 2004* (ACT) so that environmental and climate factors are properly considered in public decision-making and in developing, implementing and interpreting ACT legislation.<sup>65</sup> The legislation is expected to commence in 2024.<sup>66</sup>

We identified no legislative interventions in the ACT for this report.

Above: Aboriginal Tent Embassy, 2022, Kgbo



In New South Wales, the right to protest has been an important catalyst for significant social and political change.



The first Aboriginal Day of Mourning in Gadigal/Sydney in 1938, the Freedom Rides in 1965, and the enduring legacy of the first Mardi Gras in 1978 - a protest against police violence by LGBTIQ+ communities - stand as testaments to the power of protest and collective action. The ongoing fight to safeguard the environment and combat climate change continues to underscore the importance of protest in effecting change in New South Wales.

New South Wales does not have a Human Rights Act. In New South Wales, the right to protest is protected by the limited freedom of political communication under the Australian Constitution.

Above: School Strike for Climate Sydney, Greenpeace

### Recent developments:

#### ***The Roads and Crimes Legislation Amendment Act 2022.***

On 1 April 2022, the Parliament of New South Wales passed the *Roads and Crimes Legislation Amendment Act 2022 (the Roads and Crime Act)*.

The *Roads and Crimes Act*, among other things, inserted section 214A into the *Crimes Act 1900 (NSW) (the Crimes Act)* to criminalise damage or disruption to a major facility. Where previous legislation covered disruption on major bridges or tunnels, the expanded offences in the *Roads and Crimes Act* cover major roads, train stations, ports and public and private infrastructure while also providing for significant penalties for breaches. These new measures were introduced to target climate defenders. However, the laws were so broad and vague that in effect they threaten anyone protesting in public space with up to two years in jail and/or up to a \$22,000 fine if they do so without a permit.

The *Roads and Crimes Act* was passed by Parliament and came into operation in under 30 hours,<sup>67</sup> without thorough parliamentary scrutiny or oversight. The law passed despite calls from a coalition of almost 40 civil society organisations to scrap them as they seriously undermine the ability of everyone in NSW to exercise their right to protest.<sup>68</sup>

On 13 December 2023, in the case of *Kvelde v State of New South Wales* [2023] NSWSC 1560 (**Kvelde**), the Supreme Court of New South Wales declared parts of section 124A of the *Crimes Act* to be invalid because it impermissibly burdened the implied freedom of political communication.

In its decision, the Court reaffirmed the proposition that environmental protests constitute political communication.<sup>69</sup> The Court concluded that there was a real prospect that section 214A could impact on various methods of political communication and that the burden is potentially substantial and direct.<sup>70</sup> The State of New South Wales contended that section 214A did not burden the implied freedom because the conduct it sought to prohibit was already unlawful.<sup>71</sup>

The Court found that the State of New South Wales did not prove that the conduct prohibited by subsection 214A(1)(c), so far as the partial closure of a facility is concerned, and subsection (1)(d), which concerns people being redirected away from a major facility due to it being obstructed or damaged, was already unlawful.<sup>72</sup> The Court declared that subsection 214A(1)(c), so far as the provision criminalises conduct that causes the closure of part of a major facility, and subsection 214A(1)(d) impermissibly burdened the implied freedom of political communication contrary to the Constitution and were therefore invalid.<sup>73</sup>

This law may be subject to further consideration in the near future. Following the *Kvelde* decision, the Sydney Morning Herald reported that the Minns Government was: “carefully considering the judgment and seeking advice on appeal options or options for legislative reform to ensure that protest activity is appropriately regulated and balances the rights and freedoms of the people of NSW”.<sup>74</sup> The law will also be reviewed by both Transport for New South Wales and the Department of Communities and Justice in mid-2024 to determine whether it is meeting its stated policy objectives.



**Protest Profile**

“The mighty trade union movement has always been proud to protest. Through protest we have won and improved our rights at work. The eight hour day, the right to vote, equal pay, marriage equality, Medicare, progress comes from protest. It’s a way our voices are heard and we act collectively. Peaceful protest has always been the centre of progress in our state. We have much to be thankful for for the protest movements of the past and the present.”



**Angus McFarland**  
Secretary  
Australian Services Union NSW and ACT

**Legislative interventions in New South Wales that were enacted.**

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Law Enforcement (Powers and Responsibilities) Act 2002.</i>	This law sets out many of the powers and responsibilities of police in relation to dispersing assembled groups and issuing move on orders. It also sets out offences for non-compliance with a police direction.	Refusing or failing to comply with a police direction to disperse: maximum fine of \$5,500. Refusing or failing to comply with a police direction to move on: maximum fine of \$220.	This law gives police significant powers to disperse groups (in order to prevent or control a public disorder) or to issue move on directions to an assembled group.  Police may not issue move on orders to industrial disputes, “apparently genuine demonstrations”, protests or processions, or organised assemblies. Police are, however, able to issue move on orders where the assembly is not authorised or not held substantially in accordance with an authorisation, if it is obstructing traffic.  The issue with this law, is that a lawful, peaceful protest can be made unlawful where there is any level of traffic obstruction, subject to broad discretion by police. To ensure that police act appropriately when relying on this law, they should receive proper training on its operation as well as comprehensive human rights training more broadly.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>World Youth Day Act 2006 (as amended by the World Youth Day Amendment Act 2007).</i>	This law was introduced ahead of the Pope’s visit for World Youth Day in Gadigal/Sydney. This law made it a crime to enter roads that were closed for the event. It also regulated the sale, distribution or display of articles in declared areas.	Offences relating to road closures: maximum fine of \$5,000. Offences relating to distribution of articles: maximum fine of \$5,000. Failure to comply with a direction without reasonable excuse: maximum fine of \$5,500.	It is common for parliaments to pass laws to facilitate major events. Often these laws impose restricted access zones, increase police powers, ban protests in some areas, or ban displaying signs or other articles.  This law gave broad search powers to police while also imposing fines for broad and vague offences, like causing ‘annoyance or inconvenience’ to participants (section 7).
<i>Major Events Act 2009.</i>	This law made it illegal to enter roads that are closed to vehicles or pedestrians during major events, even during a legitimate peaceful protest.	Offences related to road closures: maximum fine of \$3,300.	This law appears disproportionate in its blanket ban. Any laws introduced for, or around, major events must still be compatible with human rights law and carefully balance security concerns with the rights of protesters and their ability to use public space.
<i>Forestry Act 2012.</i>	This law established rules for dedicating, managing, and using State forests and Crown-timber land. It also made it illegal to obstruct or hinder forestry authorised officers.	Refusing of failing to answer questions of an authorised officer: maximum fine of \$2,200. Obstructing, delaying or hindering an authorised officer: maximum fine of \$2,200.	This law prioritises forestry operations over the right of people to access public land. This law does not exempt peaceful protests in State forests or protect anyone conducting citizen science or surveying logging areas for threatened species.
<i>Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016.</i>	This law introduced an aggravated offence of trespassing on inclosed land on which any business or undertaking is conducted if, while doing so, someone interferes with a business or undertaking.  This law gave police the ability to search people or their vehicles as well as seize items without a warrant if a police officer suspects that a person may be seeking to interfere with a business or undertaking.	Aggravated unlawful entry: maximum fine of \$5,500.	This law prioritises corporate interests over the rights of people to enter and access public land, including for legitimate peaceful protest.  The law does not define “interfere with”, but the standard appears lower than that required at international law. It is also overly broad in its application to inclosed lands, which include prescribed premises as well as any land surrounded in whole or in part by a fence, wall, river, or cliff.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Right to Farm Act 2019.</i>	This law amended the <i>Inclosed Lands Protection Act 1901</i> (NSW) to increase penalties for offences on agricultural lands and for trespass on farms.	For offences on agricultural land: maximum fine of \$13,200 or imprisonment for 12 months, or both.  If, when committing an offence, someone is accompanied by two or more people and they cause a serious risk to the safety of people on the land: maximum fine of \$22,000 or imprisonment for up to three years, or both.	This law was enacted to criminalise conduct on farms and was passed shortly after the <i>Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016</i> .  For similar reasons to the previous law, this law is not properly adapted to achieve its objective of protecting agricultural land.
<i>Roads and Crimes Legislation Amendment Act 2022.</i>	This law created offences for behaviour that causes damage or disruption to major roads or major public facilities without a lawful excuse.  It also created a new offence of causing disruption to any prescribed tunnel, road or bridge, or to railway stations, ports or infrastructure facilities without a lawful excuse.	Maximum fine of \$22,000 or imprisonment for up to two years, or both.	This law was passed by the then Perrottet Liberal/National Coalition Government, with support from the then Labor Opposition. The Labor Opposition negotiated amendments to the law to exclude industrial disputes or industrial actions from the laws. In doing so, the Labor Opposition improperly protected one type of protest over others.  At international law, there is a requirement that restrictions on protest be ‘content neutral’ and not protect one type of message over others, except in exceptional circumstances. <sup>75</sup>  This law in effect criminalises all protest activity on roads and other facilities in New South Wales that happen without prior approval from police. Having to apply for permission from the authorities to peacefully protest undercuts the idea that protest is a fundamental human right. <sup>76</sup>  The Supreme Court of New South Wales found that parts of this law were invalid.



In the Northern Territory, protest has been a driving force behind significant social advancements. In 1966, Gurindji stockmen, domestic workers, and their families took a courageous stand against dispossession, exploitation and wage-theft by walking off from Wave Hill Station.



This historic strike, which lasted seven years, ultimately resulted in the return of a part of Gurindji lands back to the Gurindji people.<sup>77</sup> Moreover, it paved the way for groundbreaking legislation, the *Aboriginal Land Rights (Northern Territory) Act 1976* which was the first law to recognise the traditional connection of Aboriginal people to Country.<sup>78</sup>

The Northern Territory does not have a Human Rights Act. In the Northern Territory the right to protest is protected in a limited way by the Australian Constitution.

**Legislative interventions in the Northern Territory that were enacted.**

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Justice Legislation Amendment (Group Criminal Activities) Act 2006.</i>	This law made it an offence to loiter in a public place after being given notice by a police officer to leave after certain conditions are met. Under this law, ‘loiter’ is taken to mean to idle or linger about.	Maximum fine of \$17,600, or imprisonment for up to six months.	This law defines ‘loitering’ very broadly and gives the police broad discretion to move people on when engaging in peaceful protests.

Above: Central Australian Frack Free Alliance protesting in Mparntwe/Alice Springs.

**Recent developments:**

***Justice Legislation Amendment (Group Criminal Activities) Act 2006 (NT).***

The *Justice Legislation Amendment (Group Criminal Activities) Act 2006* inserted section 47B into the *Summary Offences Act 1923* (NT) to make it an offence to loiter in a public place after being given written notice by a police officer to leave. While this law is not an anti-protest law in a strict sense, it confers such broad discretion on police that it could be used against protesters who may be gathering as part of a peaceful protest.

When such significant powers are exercised (or not exercised) by police on a discretionary basis, concerns can arise in relation to the appropriateness of conduct by the police.<sup>79</sup> Similarly, when police use their discretion inappropriately or inconsistently, it can escalate tension and increase risks of conflict with protesters.<sup>80</sup>



Important protest movements in Queensland include the historic fight to secure voting rights for all Aboriginal and Torres Strait Islander Queenslanders, the last state in the Commonwealth to grant this right in 1965.



Queensland has witnessed some of its largest demonstrations<sup>81</sup> regarding the war in Vietnam, apartheid in South Africa during the 1981 Springbok Rugby team tour, and the vehement opposition to then Premier Joh Bjelke-Petersen's blanket ban on all street marches.<sup>82</sup>

Queensland has a Human Rights Act which guarantees the right to peaceful assembly and association as a human right. Queensland also enshrines the right to peaceful protest in statute, the *Peaceful Assembly Act 1992*. The common law rights to political communication and the freedoms of peaceful assembly and association also operate in Queensland concurrently with the *Human Rights Act* and the *Peaceful Assembly Act*.

Recent developments:

**Summary Offences and Other Legislation Amendment Act 2019 (Qld).**

*The Dangerous Devices Act 2019 (the Act)* was introduced to the Queensland Parliament following a series of high-profile protest actions by climate defenders.<sup>83</sup> The Act's Explanatory Memorandum also noted that animal welfare advocates and people protesting against coal mining were also its targets.<sup>84</sup> The Act criminalises the use of several devices which are a common feature of peaceful protests, such as monopoles, sleeping dragons and tripods, even when the devices are used in a way that causes minimal disruption. Under the Act, protesters who use these devices in a way that prevents a person from entering a shop, or who disrupt mining equipment for as little as ten minutes, could face prison terms of up to one year.<sup>85</sup> The Act also enables police to bypass the usual court process by issuing on-the-spot fines.<sup>86</sup> The Act's provisions are broad and vague, with key terms such as "unreasonably interfere" and "reasonable excuse" not clearly defined.<sup>87</sup>

In seeking to justify the legislation, the Queensland Government labelled Extinction Rebellion protesters as "extremists" who used "sinister tactics".<sup>88</sup> The then Premier, Annastacia Palaszczuk, also told Parliament that lock-on devices in Queensland were being "laced with traps" such as glass fragments and butane gas containers,<sup>89</sup> but refused to provide any evidence in support of her claims.<sup>90</sup>

Legislative interventions in Queensland that were enacted.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>G20 (Safety and Security) Act 2013.</i>	This law gave police officers (including those from interstate) and other authorised officers additional powers to deal with 'civil disobedience', traffic control, and pedestrian movement within a designated special security zone in central Meanjin/Brisbane. It also imposed limitations on the timing and location of protests, including a total ban on protests in certain areas.  This law also gave police and authorised officers expanded search powers within the security zone, including authorising searches, including frisk searches. It also created new offences like 'interfering with any part of the G20 meeting' (section 74). This law stopped being in effect the day after the end of the G20 summit.	Possessing prohibited items: maximum fine of \$15,480.  Failing to provide personal information or details to authorised officers: maximum fine of \$1,548.  Interfering with the G20 meeting: maximum fine of \$7,740.	It is common for parliaments to pass laws to facilitate major events. Often these laws impose restricted access zones, increase police powers, ban protests in some areas, or ban displaying signs or other articles.  Any laws introduced for or around major events must still be compatible with human rights law and carefully balance security concerns with the rights of protesters and their ability to use public space.  Blanket restrictions on all protests, like those implemented during the G20 are presumptively disproportionate and incompatible with Article 21 of the ICCPR. <sup>91</sup>
<i>Summary Offences and Other Legislation Amendment Act 2019.</i>	This law changed the <i>Peace and Good Behaviour Act of 1982</i> (Qld). It allowed commissioned police officers and courts to issue public safety orders. These orders can stop individuals or groups from going to certain places or events if their presence is a serious threat to public safety or security.	Failure to comply with an order: maximum fine of \$46,440 or up to three years' imprisonment.	The Queensland Law Society argued that the powers to create safety orders should be limited to courts and not to police officers and that the laws did not properly protect the right to protest or to undertake industrial action. <sup>92</sup>
<i>Agriculture and Other Legislation Amendment Bill 2019.</i>	The law included amendments to the <i>Summary Offences Act 2005</i> (Qld), to change the definition of 'unlawful assembly' to specifically include assemblies on various types of agricultural land.	A group causing fear or posing risks to the health and safety of people or animals: maximum fine of \$1,548 or up to two years' imprisonment.  Remaining on a farm or agricultural land or food production facility: maximum fine of \$3,096 or up to 12 months' imprisonment.	This law was introduced in response to animal welfare protests on or around farms and animal processing facilities.  This law is overly broad because it criminalises peaceful protests. For instance, it would capture farm workers protesting for better working conditions on or near their workplaces.

Above: Black Lives Matter protest in Brisbane, June 2020, Andrew Mercer



In South Australia, protest has played a pivotal role in the state’s history. In 1894, South Australia was the first Australian colony, and the fourth place in the world, where women won the right to vote – including Aboriginal women. However, upon federation, voting rights for Aboriginal South Australians were again restricted.



The South Australian campaign for votes for women began in 1888 when the Women’s Suffrage League was formed at a public assembly in Gawler Place, Tarntanya/Adelaide.<sup>93</sup> Women first voted in the South Australian colonial election of 1896, but it was 24 years before the first woman stood for Parliament, and a further 41 years before a woman was elected.<sup>94</sup> Aboriginal and Torres Strait Islander women were not able to vote in South Australia until 1962.<sup>95</sup>

Additionally, the sustained efforts and advocacy of the Pitjantjatjara and Yankunytjatjara peoples, including large protests at Pakapakanthi/Victoria Park in Tarntanya/Adelaide, led to the passage of the *Pitjantjatjara Land Rights Act in 1981* (SA). That Act was a significant milestone granting inalienable freehold title to Pitjantjatjara and Yankunytjatjara peoples of over 100,000 square kilometres of their homelands.

South Australia does not have a Human Rights Act. However, in December 2023, the Parliament of South Australia’s Social Development Committee began an inquiry into the potential for a Human Rights Act for South Australia. At the time of writing, the inquiry was still ongoing.

In South Australia, the right to protest is only protected in a limited way, through state and Commonwealth constitutional protections for political communication.

Recent developments:

**Summary Offences (Obstruction of Public Places) Amendment Act 2023 (SA).**

On 18 May 2023, the South Australian Parliament passed the *Summary Offences (Obstruction of Public Places) Amendment 2023 (the Obstruction of Public Places Act)* in response to protests during a major oil and gas conference in Tarntanya/Adelaide.<sup>96</sup>

The *Obstruction of Public Places Act* amended section 58 of the *Summary Offences Act 1953* (SA) to dramatically increase the maximum penalty for directly and indirectly obstructing a public place from a maximum fine of \$750 to a maximum of \$50,000, or a term of imprisonment of up to three months. This amounted to a 60-fold increase to the maximum penalty. Protesters caught by the new laws could also be liable for paying the costs of law enforcement and other emergency service personnel called to the scene.<sup>97</sup> *The Obstruction of Public Places Act* also made the offence of obstructing a public place easier to establish. Previously, to establish the offence of blocking a public place, the conduct had to be wilful;<sup>98</sup> under the new laws the blocking of a public place would have to be ‘intentional’ or ‘reckless’.<sup>99</sup>

Only one amendment to the laws was made in the Upper House: the amendment removed the element of ‘recklessness’ to establish the offence, which would have disproportionately criminalised a wide range of legitimate public conduct. These laws continue to be excessive; their constitutional validity is yet to be tested.

Above: Protest on steps of South Australian Parliament, September 2019, Michael Coghlan

Legislative interventions in South Australia that were enacted.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Summary Offences (Declared Public Precincts) Amendment Act 2017.</i>	This law gave police officers the authority to compel people or groups within a declared public precinct to leave if the officer determines they pose a threat to public order or safety. Additionally, it empowered police to use force to remove people who refuse to comply with a directive to leave.  This law also made it a crime for a person or group to not leave a declared public precinct or to re-enter or try to re-enter a declared public precinct.	Maximum fine of \$1,250.	Under section 66L, this law cannot be used in a way that would diminish the freedom of people to protest or to be involved in advocacy, dissent or industrial action. However, in practice the direction to leave a declared public precinct is up to the discretion of an individual police officer on the ground.  To ensure that police act appropriately when relying on this law they should receive proper training on its operation as well as comprehensive human rights training more broadly.
<i>Summary Offences (Obstruction of Public Places) Amendment Act 2023.</i>	This law dramatically increases the maximum penalty for directly or indirectly obstructing a public place. This law also makes a person who obstructs a public place criminally liable for obstructions that emergency services cause when responding to the original obstruction.  It also allows for police and other emergency services to recover the costs of dealing with an obstruction of a public place - on top of any other penalty that a court may impose.	Maximum fine of \$50,000 or imprisonment for three months.	The Malinauskas Labor Government introduced this law in response to environmental protests during a major oil and gas conference, days after SA’s Minister for Energy and Mining, Tom Koutsantonis, told that conference that the state government was ‘at their disposal.’ <sup>100</sup>  This law was introduced and passed in the Lower House with only 22 minutes of debate. <sup>101</sup> The law increased the maximum penalty for obstructing a public place from \$750 to \$50,000 without any public consultation, parliamentary oversight, or even proper consideration on its impact on South Australians’ right to protest or their other human rights.  This law and how it was made was condemned by activists, environmental defenders, lawyers and legal associations, human rights defenders, unions and other civil society organisations as being incredibly broad, overly punitive, poorly made and not proportionately adapted to achieve a legitimate objective.



The campaign to save the Franklin and Gordon rivers was a monumental environmental victory, marked by mass civil disobedience and national grassroots activism.



This campaign not only saved the Franklin and Gordon Rivers from being dammed but also transformed environmental activism in Australia.<sup>102</sup> By making the dam a key federal election issue, protesters pressured the Hawke Government in Canberra to intervene in a matter within Tasmania's jurisdiction.

After sustained public pressure, the Franklin area was nominated for, and declared to be, a World Heritage Area in December 1982. This alone did not ensure its protection. In response to public pressure, the Hawke Government passed legislation, contrary to Tasmania's wishes, to protect the Franklin as required by the UNESCO *Convention for the Protection of the World Cultural and Natural Heritage*, which halted the construction of the dam.<sup>103</sup> A subsequent High Court ruling upheld the Constitutional validity of the legislation passed by the Commonwealth government.<sup>104</sup>

The Save The Franklin campaign continues to exemplify the profound impact that protest can have on legislative change and environmental conservation in Australia.

lutruwita/Tasmania does not have a Human Rights Act. In lutruwita/Tasmania, the right to protest is protected in a limited way by the state and Commonwealth Constitution.

Above: Franklin River Dam blockade, Image courtesy of the National Archives of Australia. NAA: A6135, K16/2/83/4

## Recent developments:

### ***Brown v Tasmania* [2017] HCA 43 (*Brown*).**

Dr Bob Brown and Ms Jessica Hoyt were arrested and charged under the *Workplaces (Protection from Protesters) Act 2014* (**Protection from Protesters Act**). Brown and Hoyt were arrested after entering Lapoinya Forest in lutruwita/Tasmania to raise public and political awareness about the logging of the forest. The Protection from Protesters Act made it an offence to not leave a forestry area when directed to do so by police and both were charged under this provision. Brown and Hoyt commenced proceedings in the High Court to challenge the constitutional validity of the *Protection from Protesters Act*, arguing it impermissibly restricted the implied freedom of political communication.

Although the State of Tasmania dropped the charges after proceedings had commenced, the High Court ruled that the plaintiffs had a real interest in the validity of the laws to understand whether or not the public were required to observe them. The High Court, in a 6-1 majority, held that the measures adopted by the *Protection from Protesters Act* to deter protesters imposed a significant and disproportionate burden on the freedom of political communication and were therefore unconstitutional.<sup>105</sup>

In March 2021, the *Workplaces (Protection from Protesters) Amendment Bill 2019* (Tas) – a law which purported to respond to the High Court's ruling in *Brown*, but which also could have criminalised people for conduct like handing out fliers on a footpath – was voted down by the Tasmanian Legislative Council after being criticised as broad and unnecessary.<sup>106</sup>

The introduction and passing of the *Police Offences Amendment (Workplace Protection) Act 2022* is the Tasmanian Government's most recent attempt to legislate unnecessary and disproportionate restrictions on people's right to peaceful advocacy following the High Court Decision in *Brown*.<sup>107</sup>

### ***Police Offences Amendment (Workplace Protection) Act 2022.***

The Rockliff Liberal Government passed the *Police Offences Amendment (Workplace Protection) Act 2022*, which amended the *Police Offences Act 1935* (Tas), in 2022. These laws continue to undermine lutruwita/Tasmania's democratic values and Tasmanians' fundamental right to protest. Under this law, a person who obstructs access to a workplace as part of a protest could face up to 12 months in prison or a fine of up to \$9,750.<sup>108</sup> Similarly, if an organisation supports members of the community to stage a protest, the organisation could be fined up to \$48,750.<sup>109</sup>





● Protest profile

**Oliver Cassidy**

In 2022 *Franklin* was released. It struck a chord. Exceeding our expectations, it remained in cinemas for more than 22 weeks and was the second highest grossing documentary in Australia for that year. *Franklin* tells of a beautiful river and the David vs Goliath campaign to save it. A campaign in which thousands of Australians, including my father, partook. The *Franklin* campaign was victorious. And from its place in history it continues to ignite hope and inspiration.

Making *Franklin* took ten years, over which we could not help but notice the shift in the framing of protest, and the erosion of human rights. While the *Franklin* campaign, along with many others in our rich history, is held up with pride, today's peaceful protesters are reframed as criminals, the laws around them morphing to uphold that assertion in any way they can.

But within protest lies hope. Peaceful protest strengthens our democracy - better decisions arise when exposed to scrutiny - and is the very symbol of that strength. When any one of us, even when all we have are our bodies, can take a stand on things that matter and through that, influence our collective trajectory, that is democracy.

Our free Civics & Citizenship learning resource for secondary students explores the role of peaceful protest in a functioning democracy. It is an important addition to a suite of free *Franklin* learning resources that ensure the lessons of the *Franklin* are not lost.

Protests were essential in the *Franklin* campaign. They demonstrated to the then Prime Ministerial candidate, Bob Hawke, that Australians cared deeply about this issue and therefore so should he. The Australian people were listened to. And Australian people learnt about the issue because of protests.

I was months old when the High Court made its historic ruling. As far as I ever knew the saving of the *Franklin* was never in doubt.

However, in talking with so many people, it became clear that there was never certainty. The people who participated in the *Franklin* were as uncertain then as we are today about any of the social or environmental justice issues we are facing, including climate change. We know where things are trending, but we don't know what will happen. That means there is still an opportunity to make good from here. And, I suspect, protest will always play a key role in that making good.



**Oliver Cassidy**  
*Franklin* Principal Cast & Co-Producer  
 franklinrivermovie.com  
 franklinrivermovie.com/education

Above: Oliver Cassidy rafting down the Franklin River solo. Supplied.

Legislative interventions in lutruwita/Tasmania that were enacted.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Workplaces (Protection from Protestors) Act 2014.</i>	<p>This law substantially restricted the right to protest in Tasmania by introducing provisions that prohibited protesters from taking actions that would prevent, hinder or obstruct business activities.</p> <p>The law also gave police the power to make people leave and stay away from business areas if directed by a police officer.</p> <p>The law also increased the powers of police officers to demand proof of identity, to give directions to protesters to move on and to arrest protesters without a warrant.</p>	<p>Obstructing the use of enjoyment of a public thoroughfare and impeding the carrying out of a business activity: maximum fine of \$5,000.</p> <p>Threatening to impede a business activity: maximum fine of \$5,000.</p> <p>Impeding a police officer: maximum fine of \$100,000 for a corporation and maximum fine of \$10,000 for an individual.</p> <p>Removing or damaging a sign indicating a demarcated business premises: maximum fine of \$2,000.</p>	<p>This law was enacted by the then Hodgman Liberal Government to fulfil an election promise to introduce tough new laws to punish environment and climate defenders protesting forestry or mining activities.</p> <p>Key provisions from this Act were struck down by the High Court decision in <i>Brown</i>.</p>
<i>Police Offences Amendment (Workplace Protection) Act 2022.</i>	<p>This law repealed the <i>Workplaces (Protection from Protestors) Act 2014</i> and made amendments to the <i>Police Offences Act 1935</i> to clarify the operation of provisions relating to unlawful entry onto land.</p> <p>This law also clarified that a person who attaches themselves to land, buildings, structures, or premises can be considered to be trespassing while they are attached.</p>	<p>While committing an offence, impeding or preventing a person from carrying out lawful work: maximum fine of \$48,750 for a corporation; maximum fine of \$9,750 or imprisonment for up to 12 months for an individual.</p> <p>While committing an offence, causing or taking action that creates a serious risk to people: maximum fine of \$9,750 or imprisonment for up to 18 months for a first offence.</p> <p>Maximum fine of \$14,625 or imprisonment for up to 24 months for any subsequent offences.</p>	<p>This law was enacted after the High Court decision in <i>Brown</i>. It was introduced and passed, albeit with substantial amendments, in response to protests at forestry and mining sites.</p> <p>This law, as originally introduced, sought to increase penalties for public annoyance and increase the level of interference required with a business undertaking to incur a penalty. These provisions were not passed by the Parliament.</p> <p>However, the Parliament did amend the law to create exceptions for industrial protests or disputes that do not create a risk to safety.</p>

Legislative interventions that did not pass.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Workplace Safety (Additional Measures) Act 2008.</i>	The Bill intended to make it an offence to approach a workplace ‘with the intention of causing a fear, risk or hazard’.  The Bill also made it an offence to obstruct someone entering or leaving a workplace as well as endangering the safety of, or interfering with, equipment.	Disrupting a workplace by creating health or safety fears, risks or hazards: maximum fine of \$97,500 for a corporation and maximum fine of \$48,750 for individuals.  Obstructing a person entering or leaving a workplace: maximum fine of \$19,500.  Endangering the safety of, or interfering with, equipment: maximum fine of \$48,750 or imprisonment of up to two years, or both.	This Bill was introduced by the then Liberal Opposition in response to anti-forestry protests in the state.  If enacted, this law would have provided for severe penalties for vague and broad offences like preventing someone from leaving or entering a workplace or something as subjective as “causing fear”.
<i>Workplace Health and Safety Amendment (Right To Work Without Hindrance) Bill 2011.</i>	The Bill was an amended version of the <i>Workplace Safety (Additional Measures) Bill 2008</i> . This Bill was amended to protect workplace demonstrations, but would limit protesters from blocking entry and exit to workplaces.	Disrupting a workplace by creating health or safety fears, risks or hazards: maximum fine of \$97,500 for a corporation and \$48,750 for individuals.  Obstructing a person entering or leaving a workplace: maximum fine of \$19,500.	This Bill was introduced by the then Liberal Opposition in response to anti-forestry protests in the state.  This Bill, even after amendments, is too broad and vague and contains substantial penalties for legitimate and peaceful protest tactics.
<i>Workplaces (Protection from Protesters) Amendment Bill 2019.</i>	This Bill proposed to amend the <i>Workplaces (Protection from Protestors) Act 2014</i> in response to the High Court’s decision in <i>Brown</i> . It removed the original Act’s focus on protesters as well as the concept of business access areas. The Bill also simplified the powers of arrest in the original Act and introduced new offences for impeding business activity.	Obstructing the use of enjoyment of a public thoroughfare and impeding the carrying out of a business activity: maximum fine of \$5,000.  Issuing a threat to impede carrying out of a business activity: maximum fine of \$5,000.	This Bill was voted down by the Tasmanian Upper House.



One of the most iconic victories attributed to protest in Victoria dates back to the 19th century, with the historic achievement of the eight-hour workday.



On 21 April 1856, stonemasons constructing the University of Melbourne downed tools and marched to the Victorian Parliament after their employers refused to accept their demands for reduced working hours.<sup>110</sup> By 1858, the eight-hour day had become firmly established within the building industry, and by 1860, it had spread widely across Victoria, marking a significant milestone in labour rights, however it was not until January 1948 that the Commonwealth Arbitration Court approved a 40-hour, five-day working week for all Australians.<sup>111</sup>

Victoria has a Human Rights Charter which guarantees the right to peaceful assembly and association as a human right.<sup>112</sup> The common law and constitutional protections also operate in Victoria.

Above: Flinders Street Station, Invasion Day Rally in Naarm, January 2024, Tash Khan.

Recent developments:

***Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022***

In August 2022, the then Andrews Labor Government passed the *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022*. These laws doubled the penalties for peaceful direct action, like conducting citizen science or surveying areas designated for logging, known as coupes, or Timber Harvesting Safety Zones.<sup>113</sup>

The changes meant that protesters who may be peacefully attempting to prevent or disrupt native forest logging in Victoria could face up to 12 months’ jail or over \$23,000 in fines.<sup>114</sup> The changes also threatened tourists, bushwalkers, firewood collectors, farmers and stock-workers conducting legitimate activities in areas scheduled for logging. Then Minister for Regional Development and Agriculture, Mary-Anne Thomas, took aim at “dangerous” protesters, stating “we want to make sure workers go home to their families each day”.<sup>115</sup> She provided no evidence to support the claim that peaceful protesting posed any actual safety risk to forestry workers.<sup>116</sup>

It has been argued that these laws were not intended to improve safety at logging sites but rather designed to prevent public scrutiny and oversight of the activities of VicForests - a Victorian government owned forestry business.<sup>117</sup> In 2021, VicForests recorded a loss of \$4.7 million, despite the Victorian Government allocating the agency \$18m and the agency making \$84m from selling forestry products. VicForests attributed this loss to an unprecedented number of court challenges from environment defenders and activists.<sup>118</sup>

In 2019, the Andrews Labor Government announced that native logging would end in Victoria by 2030.<sup>119</sup> However, in November 2023, after a long campaign from forest, climate, and environment defenders, the Victorian Government announced that native forest logging would end in 2024. The Victorian Government referenced the numerous legal actions, including advocacy from community groups, as a factor behind closing the industry.<sup>120</sup>

Legislative interventions in Victoria that were enacted.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Commonwealth Games Arrangements (Miscellaneous Amendments) Act 2005.</i>	<p>This law amended the <i>Commonwealth Games Arrangements Act 2001</i> (Vic) to provide for management and regulation of Commonwealth Games areas during the 2006 Commonwealth Games in Naarm/Melbourne.</p> <p>This law gave the power to police officers and other authorised people to give warnings and directions not to enter restricted areas.</p> <p>The law also created powers to remove offenders from restricted areas, prohibited certain signs, and banners in a Games Management Area while also creating a wide range of offences like damaging or defacing Games-related items, blocking stairs, exits or entries, climbing fences or barriers or using broadcasting devices.</p>	<p>Erecting structures or displaying signs: maximum fine of \$3,846.20.</p> <p>Failure to comply with a direction to leave: maximum fine of \$3,846.20.</p> <p>Refusing to give name or address to police or authorised officers: maximum fine of \$961.55.</p> <p>Climbing on fences or barricades: maximum fine of \$3,846.20.</p> <p>Using a loudhailer: maximum fine of \$3,846.20.</p>	<p>It is common for parliaments to pass laws to facilitate major events. Often these laws impose restricted access zones, increase police powers, ban protests in some areas, or ban displaying signs or other articles.</p> <p>These laws expired on 31 December 2006, despite the Commonwealth Games closing on 26 March 2006, meaning that its provisions were in operation beyond the time they needed to be without proper justification.</p>
<i>Sustainable Forests (Timber) and Wildlife Amendment Act 2014.</i>	<p>This law was introduced by the then Napthine Liberal/National Coalition Government and focused on the enforcement of game and forestry regulations as a way to restrict protest activities in forestry areas and wildlife habitats.</p>	<p>Failure to comply with a direction to stop or move a vehicle: maximum fine of \$3,846.20.</p> <p>Failure to comply with a direction to leave a timber harvesting safety zone: maximum fine of \$3,846.20.</p> <p>Interfering or obstructing a timber harvesting safety zone: maximum fine of \$3,846.20.</p> <p>Failure to comply with a direction to leave an exclusion area: maximum fine of \$11,538.60.</p>	<p>This law targeted protests against logging in Victoria's forests and the recreational shooting of ducks.</p> <p>This law was repealed by the Andrews Labor Government after its election in December 2014.</p>

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Summary Offences and Sentencing Amendment Act 2014.</i>	<p>This law amended the <i>Summary Offences Act 1966</i> to give police and protective services officers new powers to move people on from a public place if they believe that a person has: committed an offence in the previous 12 hours, or if their conduct is causing a reasonable apprehension of violence, or is likely to obstruct other people or cars, or tried to buy or supply drugs, or is preventing someone from entering or leaving a premise or a part of premises.</p> <p>This law gave police the power to apply for an exclusion order which would completely ban someone from a public area for 12 months.</p>	<p>Failure to give name and address: maximum fine of \$961.55.</p> <p>Contravening an exclusion order: Imprisonment for two years.</p>	<p>This law was introduced by the then Napthine Liberal/National Coalition Government to give police and protective services officers the ability to end pickets and other blockades, particularly those impacting the (subsequently abandoned) East-West Link major highway project.</p> <p>This law was controversial and heavily criticised by the Law Institute of Victoria, the Australian Human Rights Commission and civil society groups as disproportionately impacting the right to protest and interfering with people's rights of movement in public space.<sup>121</sup></p> <p>This law was repealed by the Andrews Labor Government after its election in December 2014.</p>
<i>Crimes Legislation Amendment (Public Order) Act 2017.</i>	<p>This law amended the <i>Summary Offences Act 1996</i> (Vic) to require local councils to consult with Victoria police before they issue a permit to protest.</p> <p>The law also amended the <i>Control of Weapons Act 1990</i> (Vic) to give police officers the power to direct someone to leave an area.</p>	<p>Failure to comply with direction to leave an area: maximum fine of \$961.55.</p> <p>Obstructing or hindering a search: maximum fine of \$961.55.</p>	<p>Having to apply for permission to protest undercuts the idea that protest is a fundamental human right.<sup>122</sup></p> <p>Under international human rights law, it is acceptable to have systems where protest organisers inform authorities of protests ahead of time, as long as these systems are designed to assist authorities to manage and facilitate protests and not to control or approve them.<sup>123</sup></p>
<i>Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022.</i>	<p>This law increased penalties for offences already in the <i>Sustainable Forests (Timber) Act 2004</i> (Vic).</p>	<p>Hindering or obstructing an authorised officer: maximum fine of \$3,846.20</p> <p>Threatening or abusing an authorised officer: maximum fine of \$23,077.20 or imprisonment for 12 months.</p> <p>Hindering or obstructing with timber harvesting: maximum fine of \$23,077.20 or imprisonment for 12 months.</p> <p>Contravening a banning notice: maximum fine of \$11,538.60.</p> <p>Contravening an exclusion order: maximum fine of \$11,538.60.</p>	<p>The International Network of Civil Liberties Organisations used this law as an example of repressive anti-protest laws which impose disproportionate prison sentences and financial penalties on protesters contrary to Australia's international human rights obligations.<sup>124</sup></p>

Legislative interventions that did not pass.

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Summary Offences Amendment (Move-on Laws) Bill 2019.</i>	This Bill amended the <i>Summary Offences Act 1966</i> (Vic) to give police and protective services officers new powers to move people on from a public place if they believe that a person has: committed an offence in the previous 12 hours, or if their conduct is causing a reasonable apprehension of violence, or is likely to obstruct other people or cars, or tried to buy or supply drugs, or is preventing someone from entering or leaving premises or a part of premises.	Failure to comply with direction to leave an area: maximum fine of \$961.55.	This Bill was introduced by the then Liberal Opposition and was broadly similar to the <i>Summary Offences and Sentencing Amendment Act 2014</i> .  The Bill was not supported and lapsed on 1 November 2022.



Protest has played a pivotal role in shaping the social and political landscape of Western Australia, spearheading significant social change throughout its history.



On 27 September 1983, 16-year-old Aboriginal boy, John Pat, died in Roebourne police station from massive head injuries caused by a brutal beating by police officers. His killing ignited nationwide outrage, leading to widespread demonstrations.<sup>125</sup> This collective pressure resulted in the establishment of a Royal Commission into Aboriginal Deaths in Custody in 1987, which issued 339 recommendations for change. Over three decades after the Commission issued its findings, many remain unimplemented. Communities around the country continue to protest and advocate for the full implementation of the Commission’s findings.

Western Australia does not have a Human Rights Act. In Western Australia, the right to protest is based on common law and constitutional protections for political communication.

Above: Whales Not Woodside Paddle Out in Fremantle, Greenpeace

Recent developments:

**SLAPP suits, Woodside and Disrupt Burrup Hub.**

SLAPP suits, known as ‘Strategic Litigation Against Public Participation,’ are legal actions aimed at intimidating individuals involved in public interest initiatives. These suits are often intended to divert plaintiffs’ resources from public-interest actions, ultimately discouraging others from pursuing similar causes.<sup>126</sup>

Corporations have used SLAPPs in Australia to silence environmental activists, such as the Tasmanian logging company Gunns,<sup>127</sup> which filed a \$6.3 million lawsuit against environment defenders who opposed its logging operations and in 2023 Western Australian oil and gas corporation, Woodside, launched legal proceedings against climate defenders campaigning against fossil fuel expansion in the Pilbara.<sup>128</sup>

On 1 June 2023, climate defenders from the Disrupt Burrup Hub group organised a protest that released foul-smelling gas and flares near Woodside headquarters causing the building’s 2,000 employees to be evacuated.<sup>129</sup> Woodside notified three members of Disrupt Burrup Hub, via their legal representatives, that they were considering initiating legal action against them, claiming that they have ‘suffered loss and damage’ due to their protest, including lost productivity and the costs of cleaning the building.<sup>130</sup>

Woodside demanded Disrupt Burrup Hub members provide any and all documents, emails, text and instant messages from more than a dozen social media or communications platforms to help Woodside identify others involved in the protest action. Woodside further advised that if the Disrupt Burrup Hub members did not comply with the request that Woodside would advance litigation in the Supreme Court of Western Australia against them.<sup>131</sup>

This prospect of court action by Woodside follows revelations that their CEO, Meg O’Neill, used restraining orders to silence climate defenders from Disrupt Burrup Hub. The orders prevented them from “making any reference” to O’Neill via email, message apps or social media.<sup>132</sup> The orders sought were unprecedented, particularly as there were no accusations that the protesters have at any stage used or threatened violence against anyone at Woodside.<sup>133</sup>



● Protest profile

**SLAPP Suits**

The simple fact of the commencement of a SLAPP suit has an untold chilling effect on the defendant and the broader community. They are long, costly and daunting. They threaten the defendant with millions in damages and legal costs. But the plaintiff knows it will rarely (if ever) recover that money, even if they won the case. How many ordinary protesters or activists have millions? And by the time the action is commenced, the targeted activists have generally switched tactics. So, what must be the point of a SLAPP suit? At the very least it is to send a message to activists: take us on and you could face personal ruin. That poses a very significant threat to the future of climate activism.

Kiera Peacock  
Partner, Marque Lawyers



**Legislative interventions in Western Australia that did not pass.**

Act	Relevant Provisions	Applicable Penalties	Comments
<i>Criminal Code Amendment (Prevention of lawful activity) Bill 2015</i>	The Bill proposed to create new offences, including preventing a lawful activity and possessing “a thing” for the purpose of preventing a lawful activity.	Physically preventing a lawful activity: maximum fine of \$24,000 or imprisonment for 12 months if aggravated circumstances are present, and maximum fine of \$12,000 in any other case.  Preparing to physically prevent lawful activity or trespass: maximum fine of \$12,000 fine or 12 months’ imprisonment.	This law was introduced by the then Barnett Liberal Government to prevent climate and environment related protests.  The broad language in this Bill, like “possessing a thing” covers a wide range of conduct not just those of people engaged in peaceful protests. This Bill, which fortunately didn’t pass, was likely incompatible with international human rights law.

Above: Civil Society Organizations Protest on Day of Woodside AGM in Perth, Greenpeace

Despite our right to protest being guaranteed by international human rights laws, most governments across Australia are not fulfilling their obligations to respect, ensure, and protect our right to protest and facilitate its enjoyment to all people.

Our right to protest does not exist in a vacuum. Protests by their very nature activate various fundamental human rights, including the right to privacy or the freedoms of speech and movement. To properly protect our right to protest, other human rights must also be protected. This is particularly so as protests are a mechanism through which people and communities recognise and actualise a broader spectrum of economic, social, cultural, and environmental rights.

The various anti-protest laws currently in effect around the country should be amended to make them compatible with human rights law or be repealed if they cannot be amended. However, whilst essential, amending or repealing laws alone would not prevent the possibility of similar or worse laws being introduced in the future. To protect our rights, long-lasting solutions must be prioritised.

The absence of human rights acts in the Commonwealth, Western Australia, South Australia, New South Wales, Tasmania or the Northern Territory results in the inconsistent protection of our right to protest and other fundamental human rights guaranteed by international law.

Human rights acts compel governments and their agencies, including the police, to consider human rights implications when formulating new laws and policies, or when delivering services. Human rights acts would require courts and tribunals to, wherever possible, consider and interpret laws in a way that is compatible with human rights. Human rights acts would also strengthen the law-making process as they would require parliaments to consider the human rights impacts of new legislation.



The table below provides a comparison between the human rights considerations that were given during the law-making process to laws introduced in Victoria, which does have human rights charter, and South Australia which does not. While regrettably both of these laws passed, the process they went through was very different. In Victoria, human rights consideration and public scrutiny were embedded in the legislative process as the legislation moved through Parliament. After it passed, human rights considerations continue to be applied on how the law is enforced by police and also considered by the courts.

Introducing human rights acts in jurisdictions where they are absent can prevent the further erosion of our rights. By embedding human rights principles into legislation and policy-making processes, we can erect barriers against governmental overreach and ensure the protection of fundamental rights for all people now and into the future.

**Comparison of human rights scrutiny of anti-protest laws between Victoria and South Australia.**

	Victoria	South Australia
<i>Legislation</i>	Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022 to amend the Sustainable Forests (Timber) Act 2004.	<i>Summary Offences (Obstruction of Public Places) Amendment Bill 2023</i> to amend the <i>Summary Offences Act 1953</i> .
<i>Consideration of human rights before introducing new legislation.</i>	Upon the introduction of a Bill to the Victorian Parliament, a human rights statement of compatibility must be tabled outlining whether the Bill is consistent with the <i>Victorian Charter of Human Rights and Responsibilities</i> and if not, the statement must explain the reasons why.  The Statement of Compatibility noted that the legislation was compatible with the Charter of Human Rights, despite the Bill introducing new mechanisms that could potentially limit protected rights under the Charter, specifically Freedom of Movement (section 12) and Property (section 20). The Statement claimed that the ‘narrow’ application of each mechanism would result in any limitation of a protected right being ‘reasonable and justified’.	This requirement does not exist in South Australia.
<i>Consideration of human rights during the legislative process.</i>	The Victorian Parliament’s Scrutiny of Acts and Regulations Committee examines all Bills introduced to the Parliament and reports back to Parliament on a Bill’s compatibility with the <i>Victorian Charter of Human Rights and Responsibilities</i> .  The Committee did not consider this law further as it was the Committee view that the law was compatible with the Charter of Human Rights.	This requirement does not exist in South Australia.
<i>Consideration of human rights when interpreting laws that have been enacted.</i>	Victorian courts and tribunals must interpret all Victorian laws in a way that upholds the human rights in the <i>Victorian Charter of Human Rights and Responsibilities</i> .  The Supreme Court of Victoria has the power to declare that a law or provision is inconsistent with the human rights outlined in the <i>Victorian Charter of Human Rights and Responsibilities</i> . However, the Court does not have the power to strike the law down.	This requirement does not exist in South Australia.

- 1 Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, 129th sess, UN Doc CCPR/C/GC/37 (17 September 2020) 1-3.
- 2 Clement Nyaletsossi Voule, David Boyd, David Kaye, Michael Forst, *UN Special Rapporteurs Joint Communication*, UN Doc JOL AUS 8/2019 (3 December 2019) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24922>>.
- 3 Michael Forst, “Report of the special Rapporteur on the situation of human rights defenders on his mission to Australia.” Human Rights Council, A/HRC/37/51Add.3, 28 February 2018, 43.
- 4 Clement Nyaletsossi Voule, David Boyd, David Kaye and Michael Forst, (nii).
- 5 CIVICUS Monitor, ‘Arrest of Climate Protesters, increasing anti-protest laws and continued prosecution of whistle blowers in Australia’ (Webpage, 29 September 2022) <<https://monitor.civicus.org/explore/arrest-climate-protesters-increasing-anti-protest-laws-and-continued-prosecution-whistleblowers-australia/>>.
- 6 In December 2022, the then United Nations Special Rapporteur on the freedom of peaceful assembly and of association, Clément Voulé, expressed alarm at the denial of bail and imprisonment of climate protesters in New South Wales, noting that “Peaceful protesters should never be criminalised or imprisoned”. @cvoule (Twitter, 2 December 2022) <<https://twitter.com/cvoule/status/1598642671266021377?lang=en>> accessed 24 May 2024.
- 7 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948).
- 8 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- 9 Human Rights Committee (n i) 4-8.
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid 15.
- 14 Ibid.
- 15 Ibid.
- 16 Inter-American Court of Human Rights, *Women Victims of Sexual Torture in Atenco v. Mexico*, judgment of 28 November 2018, series C, No. 371, para. 175; and European Court of Human Rights, *Frumkin v. Russia*, para. 99.
- 17 Human Rights Committee (n i) 17.
- 18 Ibid 18.
- 19 *South Australia v Totani* [2010] HCA at 30-39; *Evans v New South Wales* (2008) 168 FCR 576.
- 20 Tom Gotsis, Rowena Johns, *Protest Law in New South Wales* (Research Paper: 2024-03, February 2024) 5.
- 21 Ibid.
- 22 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 564.
- 23 *Brown v Tasmania* [2017] HCA 43 at 88.
- 24 Human Rights Committee (n i) 39.
- 25 Ibid.
- 26 *Brown v Tasmania* [2017] HCA 43 at 73, 77-79, 84-86.
- 27 *World Youth Day Regulation 2008* (NSW), s 7(1)(b), held to be beyond the regulation making power in *Evans v New South Wales* (2008) 168 FCR 576.
- 28 *Crimes Act 1900* (NSW), s 201(1)(c), (d).
- 29 *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015* (WA) s 68AB.
- 30 Human Rights Committee (n i) 40.
- 31 Ibid 1.
- 32 Ibid 40.
- 33 Ibid.
- 34 *Vural v Turkey* [2014] ECHR 1283 [66].
- 35 *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* (E/CN.4/1985/4, annex) 29.
- 36 Human Rights Committee, *General Comment No. 34 (2011) on the Freedoms of opinion and expression (Article 19)*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) 30.
- 37 Human Rights Committee (n i) 42
- 38 Ibid 43.
- 39 Human Rights Law Centre, Submission to the Legal Affairs and Community Safety Committee, 8 October 2019.
- 40 *Inclosed Lands Protection Act 1901* (NSW) s 4B.
- 41 *Inclosed Lands Protection Act 1901* (NSW) s 3.
- 42 Human Rights Committee (n i) 44.
- 43 Ibid.
- 44 *Peaceful Assembly Act 1992* (Qld).
- 45 *G20 Safety and Security Act 2013* (Qld). For a summary of the laws see Tamara Walsh, “‘Public Order’ policing and the value of independent legal observers” *Current Issues in Criminal Justice*, vol 28, Number 1, July 2016, 34-35.
- 46 Human Rights Committee (n i) 44; see European Court of Human Rights, *Cisse v. France* (application No. 51346/99), judgment of 9 April 2002.
- 47 Ibid
- 48 Human Rights Law Centre, *Statement: Melbourne CBD Shutdown*, (Website, 16 September 2021) <<https://www.hrlc.org.au/news/2021/9/16/statement-melbourne-cbd-shutdown>>.
- 49 Human Rights Committee, General comment No. 22 (1993) on the right to freedom of thought, conscience and religion, 8 in Human Rights Committee, (n i) 46.
- 50 Human Rights Committee (n i) 47.
- 51 Ibid 46.
- 52 Ibid 30.
- 53 Explanatory Memorandum, *Criminal Code Amendment (Agricultural Protection) Bill 2019*, p. 2
- 54 Owen Griffiths, Monica Biddington, *Criminal Code Amendment (Agricultural Protection) Bill 2019*, (Parliamentary Library Bills Direst No 25, 2019-20, 9 September 2019, Website) <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1920a/20bd025#\\_ftn1](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1920a/20bd025#_ftn1)>.
- 55 Ibid.
- 56 Ibid.
- 57 Ibid.
- 58 Explanatory Memorandum, *Criminal Code Amendment (Agricultural Protection) Act 2019* (Cth) 10.
- 59 Human Rights Committee (n i) 43, 44.
- 60 Catherine Bond, ‘Constitutional and community aspects of flag burning in Australia’, *AUSPUBLAW*, (Online, 3 March 2017) <<https://www.auspublaw.org/blog/2017/03/flag-burning-in-australia>>.
- 61 Explanatory Memorandum, *Criminal Code Amendment (Inciting Illegal Disruptive Activities) Bill 2023*, 7-10.
- 62 Human Rights Committee (n i) 47.
- 63 Bronwyn Carlson, ‘A short history of the Aboriginal tent embassy—an indelible reminder of unceded sovereignty’, *Museum of Australian Democracy at Old Parliament House* (Webpage, 24 January 2022) <<https://www.moadoph.gov.au/explore/stories/history/a-short-history-of-the-aboriginal-tent-embassy-an-indelible-reminder-of>>.
- 64 s 15 *Human Rights Act 2004* (ACT).
- 65 ACT Government’s Justice and Community Safety Directorate, ‘Right to a Healthy Environment’, (Webpage) <[https://www.justice.act.gov.au/safer-communities/right-to-a-healthy-environment#:~:text=The%20Human%20Rights%20\(Healthy%20Environment,the%20ACT%27s%20human%20rights%20framework](https://www.justice.act.gov.au/safer-communities/right-to-a-healthy-environment#:~:text=The%20Human%20Rights%20(Healthy%20Environment,the%20ACT%27s%20human%20rights%20framework)>.
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