



# Quaker Peace & Legislation Committee

## WATCHING BRIEF 25-2: ANTI-PROTEST LAWS IN AUSTRALIA

*As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government, we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.*

### **March 2025**

Watching Brief 22-4, titled Anti-Protest Laws in Australia, was published in July 2022. The purpose of this material is to update Watching Brief 22-4 so as to reflect changes in Australian law since the publication of that Watching Brief.

### **Background**

The right to peaceful assembly and association is set out in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 and the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966.

The ICCPR provides, among other things, the right to freedom of expression, peaceful assembly and the freedom of association. Australia is a signatory to the ICCPR. However, a treaty does not form part of Australia's domestic law unless it has been specifically incorporated into Australia's law through legislation.

By definition, the right to peaceful assembly cannot be exercised using violence. However, pushing and shoving, direct action, civil disobedience or temporary disruption to roads, cars, pedestrians or daily activities does not, on its own, amount to violence.

In recent years, the Australian States and Territories have enacted a number of concerning anti-protest laws seeking to control the actions of protesters (see for example: <https://www.hrlc.org.au/news/2024/03/25/protest-police-permit>).

The Human Rights Law Centre has prepared a Declaration of Our Right to Protest. ([declaration-right-to-protest-pdf-af6a7d.pdf](#)) The declaration sets out the principles of the right to protest, and contains information about practical steps to safeguard the right. The Australian Democracy

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Network encourages individuals to support the Declaration by signing a petition at <https://australiandemocracy.org.au/protest-rights-declaration>.

The following material is intended to complement and, where applicable, update the contents of Watching Brief 22-4 in relation to State and Territory laws concerning the right to protest.

## **Commonwealth Government**

Australia does not have a Commonwealth Human Rights Act that provides for the right to peaceful protest. The Commonwealth Government is bound by the implied freedom of political communication in the Australian Constitution. In 2023, the Attorney-General referred an inquiry to the Parliamentary Joint Committee on Human Rights into, among other things, whether the Commonwealth should enact a Human Rights Act. The committee recommended in favour of the proposal. The proposed legislation is expected to include the right to freedom of expression and freedom of association.

The Commonwealth Government has the power to regulate protest activity under a relevant head of power in the Australian Constitution or in circumstances where a protest is staged on Commonwealth property.

Subdivision J of the *Criminal Code Act 1995*, for example, contains provisions which make it an offence to use a carriage service to incite trespass on agricultural land, or to incite property damage or theft on agricultural land. The maximum penalty for inciting trespass is a term of imprisonment up to 12 months. The maximum penalty for inciting property damage or theft is imprisonment for a period up to 5 years.

## **Australian Capital Territory**

The *Human Rights Act 2004*, provides for: Freedom of Movement (s 13), Peaceful Assembly and Freedom of Association (s 15) and Freedom of Expression (s 16).

There is no requirement to obtain formal approval to conduct a protest or demonstration within the National Capital. However, the erection of structures associated with a protest or demonstration do require approval. Land in the National Triangle and diplomatic areas is managed by the National Capital Authority (NCA). The NCA has the power to approve or disallow the conduct of protests, demonstrations or public assemblies within the parliamentary precincts. Most land outside these areas is managed by the ACT Government's Department of Territory and Municipal Services.

Protesters must obey any lawful direction given by the Australian Federal Police (AFP), the Australian Protective Service or Parliamentary Security.

There have been no relevant changes to the *Human Rights Act 2004* since the publication of Watching Brief 22-4.

## **New South Wales**

New South Wales does not have a Human Rights Act. In NSW the right to protest derives from the implied freedom of political communication in Australia's constitution.

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The Freedom of Political Communication under Australia's constitution is not a personal right held by individuals. Instead, it is a limit on the laws that can be passed by State and Federal Governments.

To be constitutionally valid, a law that restricts political communication and which will limit the implied freedom must be justified and proportionate.

As mentioned in Watching Brief 22-4, on 1 April 2022, the NSW Parliament enacted the *Roads and Crimes Legislation Amendment Act 2002*. This Act inserted s 214A into the *Crimes Act 1900*. The new section criminalises damage or disruption to a major facility. The definition of the term major facility includes major roads, train stations, ports and public and private infrastructure. The maximum penalty upon conviction for an offence is 2 years imprisonment or a fine of up to \$22,000 or both.

In December 2023, the NSW Supreme Court declared parts of s 214A of the *Crimes Act* to be invalid, so far as the provision criminalises conduct that causes the closure of part of a major facility.

In November 2024, the NSW Government tabled the Crimes Amendment (Obstructing a Railway) Bill 2024. This Bill seeks to attach a steep fine to the existing offence of obstruction of a railway, contrary to s 213 of the *Crimes Act 1900*. The crime currently carries a maximum penalty of 2 years imprisonment. Under the proposed amendment, in addition to the term of imprisonment, the offence would have a maximum fine of \$22,000.

## **Victoria**

As mentioned in Watching Brief 22-4, the right to peaceful assembly and freedom of association is set out in s 16 of *Charter of Human Rights and Responsibilities Act 2006*.

Following the publication of Watching Brief 22-4, in August 2022, the Victorian Government enacted the *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022*. These laws doubled the penalty for peaceful protest, with maximum penalties of 12 months imprisonment and fines up to \$23,000. This legislation was repealed in 2024 after the Victorian Government decided to end native logging.

The law as set out in Watching Brief 22-4 is current at this time. However, in December 2024, the Victorian Government announced plans to introduce new laws restricting the actions of protesters. The proposed changes would introduce prohibited zones for protest, prohibit protesters using face coverings such as balaclavas and masks, ban certain flags deemed to belong to terrorist organisations, and prohibit the use of glue, locks, chains and rope, so as to prevent protesters attaching themselves to public spaces. Further information is available at: <https://australiandemocracy.org.au/vic-protest-laws-0125> and <https://www.abc.net.au/news/2024-12-17/victorian-protest-laws-reforms-explained/104736396>

## **South Australia**

South Australia does not have a Human Rights Act. The *Public Assemblies Act 1972* allows people to apply for authorisation for a protest. An objection to a proposed public assembly may be made by or on behalf of the Commissioner of Police. Where an objection has been made to a

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proposed public assembly, any person proposing to participate in the assembly may apply to a judge for a determination on the validity of the application.

As mentioned in Watching Brief 22-4, section 58 of the *Summary Offences Act 1958* contains provisions for regulating the conduct of public assemblies.

Following the publication of Watching Brief 22-4, on 18 May 2023, the South Australian Parliament passed the *Summary Offences (Obstruction of Public Places) Amendment 2023*. This legislation amended s 58 of the *Summary Offences Act* to provide an offence of intentionally engaging in conduct that obstructs the free passage of a public place. The maximum penalty was formerly a fine of \$750. Under the 2023 amendments the fine was increased to a maximum of \$50,000. This is 60 times increase in the maximum penalty. The 2023 amendments also provided for a period of up to 3 months imprisonment on conviction of an offence under the section.

The 2023 amendments to s 58 of the *Summary Offences Act 1958* also made the offence of obstructing a public place easier to establish. Under the former provisions, to establish the offence of blocking a public place the conduct had to be wilful. Under the new laws, the conduct must be intentional.

## **Queensland**

As mentioned in Watching Brief 22-4, under s 22 of the *Human Rights Act 2019*, every person has a right of peaceful assembly, and every person has a right to freedom of association with others, including the right to form and join trade unions.

Queensland also enshrines the right to peaceful protest in statute, the *Peaceful Assembly Act 1992*. Under s 5 of this Act, a person has the right to assemble with others in a public place.

There have been no relevant changes to Queensland law since the publication of Watching Brief 22-4.

## **Tasmania**

Tasmania does not have a Human Rights Act. In Tasmania, the right to protest is protected to a limited extent by the implied freedom of political communication in the State and Commonwealth constitutions.

As mentioned in Watching Brief 22-4, in September 2022, the *Police Offences Amendment Act (Workplace Protection) Act 2022* amended s 14B of the *Police Offences Act 1935*. The 2022 amendments provided that a person who obstructs access to a workplace as part of a protest faces a maximum penalty of 12 months imprisonment and a fine of up to \$9,750. An organisation found to support a protest may be fined up to \$48,750. This legislation was repealed in September 2023.

## **Northern Territory**

The Northern Territory does not have a Human Rights Act, and there is no statutory right to peaceful assembly. In the Northern Territory, the right to protest is, to some extent, protected by the implied freedom of political communication in the Australian constitution.

In most areas of the Northern Territory, there is a legal requirement to obtain a permit from the local council before holding a protest or demonstration in a public place. Some council by-laws may also apply to private land such as where there is a public right of access across the private land. Some councils require a permit for distributing leaflets or using public address systems.

As mentioned in Watching Brief 22-4, under s 74 of the *Summary Offences Act 1923*, the Northern Territory Police have the power to prevent the obstruction of streets and thoroughfares on any occasion, such as a protest, when streets are liable to be obstructed.

Protesters must comply with any lawful direction given pursuant to s 74 of the *Summary Offences Act*. The penalty upon conviction for non-compliance is a fine of \$200.

As mentioned in Watching Brief 22-4, Division 4 of the *Criminal Code Act 1983* sets out provisions relating to the conduct of public assemblies. Section 63 provides that an unlawful assembly occurs in circumstances where three or more persons assemble in a manner that causes people to fear that the persons assembled will tumultuously disturb the peace. It is an offence to engage in an unlawful assembly.

Under s 65, persons taking part in an unlawful assembly are liable on conviction to a maximum penalty of 12 months imprisonment.

When an unlawful assembly has begun to act in a manner that disturbs the peace, this is defined in the Act as a riot. Under s 66, persons convicted of taking part in a riot are liable to a maximum penalty of three years imprisonment.

The Speaker's permission is required for demonstrations and/or rallies at Parliament House. An application form is available online from the website for the Legislative Assembly of the Northern Territory.

There have been no relevant changes to Northern Territory law since the publication of Watching Brief 22-4.