



## Quaker Peace & Legislation Committee

### **WATCHING BRIEF 22-4: 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.*

**July 2022**

*The expansion of counterterrorism and national security legislation has been a feature of Australia's government apparatus since the 2001 attack on the USA. These laws have had an intimidating effect on those wishing to seek information about government policies. More recently, there has been a trend for governments globally and in Australia (federal, state and territory) to implement stronger sanctions against the right of protest. This Brief looks at current examples and ways to respond creatively.*

#### **Protest in its various Forms**

Protests are a public expression of objection to a political action, individually or in cooperation with others. Forms of nonviolent protest include – rallies, marches, vigils, pockets, boycotts, drama, strikes, lock-ons, silent witness, petitions, and lawsuits. Destructive forms include vandalism, rioting, looting, self-immolation, hunger strikes, and bombings. Direct action can take the form of civil resistance, occupations, public shaming. Tax resistance, and conscientious objection. There are many examples of all these approaches throughout history.

Responses by authorities have varied from low-key policing to heavy-handed confrontation. Laws and regulations have usually been proportional to the kind of protest, with warnings, fines and brief detention. It is common for protesters to be expected to advise police of their intended time and place for action.

#### **Recent Australian Trends**

In Australia there have been more protests on the streets about the climate crisis, racial inequality, violence against women and the current pandemic. Many people have sought direct action to highlight significant concerns. There has been a more assertive approach by protesters because of (a) the sense that governments have ignored major issues for too long and need reminding by a forceful manner of protest; (b) the

militarisation of police and border control forces with tactics that include stronger physical pushback and more 'aggressive' weapons; (c) 'state capture' which means that governments are seen to be doing the bidding of corporate interests and suppressing protest against those interests; and (d) giving priority to the position of the government over the opinions of citizens with different views.

## International Context

The UN General Assembly adopted the [International Covenant on Civil and Political Rights](#) (ICCPR) on 16 December 1966.

ICCPR Article 19 states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - ( a ) For respect of the rights or reputations of others;
  - ( b ) For the protection of national security or of public order, or of public health or morals.

The Covenant emphasises that freedom of expression and opinion are the foundation stone for a free and democratic society and a necessary condition for the promotion and protection of human rights. This includes:

- freedom of opinion
- freedom of expression
- freedom of expression and the media
- the right to access to information
- the importance of freedom of expression in a democratic society.

Australia has ratified the Covenant and associated treaties but has not incorporated them into domestic law.

## Federal Government

The *Public Order (Protection of Persons and Property) Act 1971* is the basic legislation used, and it has been amended several times up until 2016. It relates to public order "in certain territories and in respect of Commonwealth premises, the premises of certain Federal Courts and Tribunals, and the premises and personnel of diplomatic and special missions, consular posts, designated overseas missions and international bodies". Its focus is on preventing violence, bodily harm, property damage, obstruction, trespass, and giving authority to issue orders accordingly.

Under the terrorism laws, conduct that constitutes advocacy, protest, dissent and industrial action is exempt provided "the activity is not intended to cause death or

endanger the life of a person, or create a serious risk to health or safety to the public”.

For more details relating to terrorism, see this link

[https://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Completed\\_Inquiries/pjicis/securityleg/report/chapter5](https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/pjicis/securityleg/report/chapter5)

In 2019, the Federal Government targeted agricultural protests and said it would outlaw secondary boycott campaigns on businesses to refrain from links with companies involved in environmental and human rights damage. To date, no specific legislation has been passed.

## **State and Territory Governments**

**ACT.** The *Human Rights Act 2004* specifies that everyone has the right to freedom of expression subject only to reasonable limits set by Territory laws. Protests are allowed depending on location. Some (e.g. at Parliament House) require permits from the National Capital Authority, others from the ACT government.

**NSW.** The *Roads and Crimes Legislation Amendment Act* passed in 2022 threatens protesters with up to 2 years’ gaol and \$22,000 fines.

**Vic.** The *Charter of Human Rights and Responsibilities 2006* provides for freedom of expression, subject to lawful restrictions to respect the rights of others, public health or national security. Protest is subject to police power to intervene in the event of obstruction, trespass, unlawful assembly, offensive behaviour, assault, or riot.

**Qld.** The *Human Rights Act 2019* primarily protects civil and political rights drawn from the International Covenant on Civil and Political Rights. It also protects two rights drawn from the International Covenant on Economic, Social and Cultural Rights (rights to education and health services) and one right drawn from the Universal Declaration of Human Rights (property rights). The Act also explicitly protects the cultural rights of Aboriginal and Torres Strait Islander peoples. Local police must be notified in advance. Public safety and public order are reasons for stopping a protest.

In 2019, the Queensland Government enacted the *Summary Offences and Other Legislation Amendment* to criminalise peaceful protest with penalties up to 2 years, and greater police powers to search and interrogate, despite little evidence of a need for such strong sanctions. It was seen as aimed at the Extinction Rebellion group which had used locking devices in some actions. UN observers said the laws were disproportionate to the situation.

**SA.** The *Summary Offences Act 1953* provides the basis for regulating protests.

**NT.** Protests are handled under two laws – the *Summary Offences Act 1913* and the *Criminal Code Act 1983*. In 2021, there was a major change in legislation around young offenders. The bail laws remove the presumption of bail for first-time offenders, increase use of electronic monitoring devices, allow breath testing on a minor without an adult present, and introduce mandatory detention for any breaches of bail conditions. There have been strong objections from the Children’s Commissioner and Aboriginal groups, because there is a close overlap between youth crime and protests in terms of the police response.

**Tas.** Laws were passed in 2016 but overruled by the High Court as unconstitutional. A revised version called the *Police Offences Amendment (Workplace Protection) Act* was passed by both Houses of Parliament in June 2022, with substantial limits on protests, placing the penalties on the same scale as for trespass with a firearm.

**WA.** In 2016 Parliament passed *the Criminal Code Amendment (Protection of Lawful Activity Act 2015)* which imposed severe penalties (2 years gaol and/or \$24,000 fine) for interfering with someone else's 'lawful activity' – reversing the onus of proof and dealing with intent to disrupt.

## Commentary

Emeritus Professor Rosalind Croucher, President of the Australia Human Rights Commission, said on 22 April 2022 (speaking to the Samuel Griffith Society) that the pandemic has drawn attention to the restrictions on freedom. Although the public have generally complied and governments have explained the public health needs, the experience has raised the wider question of how human rights are protected in Australia. She highlighted the following points:

- Australia has embraced the international human rights instruments since the Universal Declaration of Human Rights but has done little to embed the rights in domestic law, as a result of which they are unenforceable.
- Three jurisdictions (ACT, Vic, Qld) have human rights legislation, but several attempts to pass a national Human Rights Act have failed in Parliament.
- The Human Rights Commission handles complaints mainly by offering mediation and other alternatives to court proceedings and has dealt effectively with over 30,000 people in the last twenty years.
- The time is overdue for a national legislative framework to embed the international principles more fully into our society.

Amnesty Australia affirms the importance of people standing up for human rights and says that governments and powerful groups with deep pockets are threatening the right to protest. Amnesty urges citizens to press for repeal of the new laws and advocate for laws that protect peaceful protest. They also support the creation of a national Human Rights Act.

The Tasmanian legislation has been described by *The Mercury* as “an attack on democracy and must be stopped”. The Council of Social Service says the law could criminalise protests by groups like the homeless. The Human Rights Law Centre says there are no safeguards and oversight against misuse of the law. The Australia Institute says that the legislation preferences business interests over the right to protest, and that the penalties are four times more than previously.

The NSW Council of Civil Liberties says that the NSW Government's laws have been aimed at intimidating anti-coal seam gas protests, joining a growing trend in Australia to expand police powers over protesters. The Law Council has warned that police powers to move on, detain or arrest protesters are not offset with judicial oversight and will have a chilling effect on protesters. Forty civil society organisations in NSW expressed alarm at a June pre-emptive police raid on a group of protesters camped in the bush prior to a rally, on the dubious grounds that the group was conspiring to obstruct a road.

Aboriginal groups have for years complained that protest laws are enforced against them in a more severe way than for other Australians. This was amplified by significant opposition to police action against those supporting the Black Lives Matter rallies in 2020 and 2021. For example, 50% of move-on notices go to Aboriginal people in WA who comprise 3.8% of the population; the number of Aboriginal people charged by police in NSW increased by 67% between 2010 and 2020, as against 8% for non-Aboriginal people.

## **Quakers and Protest**

Since their beginnings Quakers have had a strong commitment to being peace builders, believing that their peace testimony draws its inspiration from the 'inner light' within each person. Jo Vallentine, an experienced Australian Quaker who has been very active in nonviolent action for peace, including civil disobedience, speaks of the following elements of the Quaker approach:

- Prayerful preparation for a spiritual experience.
- Respect for those authorities one is confronting.
- Being open to the goodness in all involved.
- Focus on the 'law' or decision that is being challenged, and using creative methods (e.g. singing, dancing, meditating).

In Australia, Quakers have been involved in protests as part of their commitment to peace, justice and environmental care. This has led to working with a wide range of groups such as the Australian Religious Response to Climate Change, Extinction Rebellion, Alternatives to Violence Project, Peace Teams, the Independent and Peaceful Australia Network, the Australia-Palestine Advocacy Network, Refugee Support Groups, Act for Peace, the United Nations Association and the Women's International League for Peace and Freedom. QPLC itself has had a role of briefing Quakers about current concerns and identifying areas for possible action. It has conducted workshops on lobbying and has held 'dialogue' gatherings to enable people from different perspectives to listen and share in a positive and 'neutral' environment.

## **The Challenges Now**

We are in a political environment where there is likely to be more confrontation between citizens and authorities about many concerns. It is particularly important to listen to young voices at this time, given the vital impact of today's decisions on the future of the planet and the global community. Some options that may appeal include:

- Making submissions to government and parliamentary committees or enquiries, making clear the reasons for our objection to the protest laws.
- Initiating conversations about protesting with other organisations.
- Direct nonviolent action (e.g. at arms trade fairs).
- Meeting with MPs and Senators.
- Attending rallies and other public witness.
- Devising drama and comedy and using artistic presentations.
- Organising on-line events such as webinars.
- Meeting with police and other authorities to discuss protest action in advance.
- Publishing articles and stories in media outlets, including social media.

**How do Quakers respond? We encourage Friends to have discussions about protesting in these challenging times in your Meetings and Committees.**

QPLC welcomes your comments and suggestions.

Canberra July 2022

### References

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Amnesty [www.amnesty.org.au/campaigns/right-to-protest](http://www.amnesty.org.au/campaigns/right-to-protest)

Wikipedia <https://en.wikipedia.org/wiki/protest>

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Human Rights Law Centre [www.hrlc.org.au](http://www.hrlc.org.au)

Australian Human Rights Commission [www.humanrights.org.au](http://www.humanrights.org.au)

International Covenant on Civil and Political Rights [www.ohchr.org](http://www.ohchr.org)

Creative Spirits [www.creativespirits.infor](http://www.creativespirits.infor)

The Australia Institute <https://australiainstitute.org.au>