

XR PROTESTER LAW KIT: PROTEST ACTIONS ON ROADS

Acknowledgements: parts of this kit draw on factsheets and related publications issued by the Environmental Defenders Office and the “Green Law” project at the Australian National University.

Limitations: This protester kit does not constitute formal legal advice. It provides only general information about the legal context for protest actions on roads and related places. Protesters planning civil disobedience may wish to obtain professional legal advice or do their own research before making a final decision about whether to accept the legal risks and consequences.

PART A: Overview of the Legal Issues

Rights to protest

The legal entitlement to engage in protest actions is predicated on having rights to assemble, organise and speak in public. Citizens’ rights in these respects are recognised by the International Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (UNICCPR) (1966) and several other international legal instruments. For instance, the right to engage in participatory democracy “without unreasonable restrictions” is explicitly acknowledged by the UNICCPR (article 25). However, international law itself generally has no direct application to Australian domestic law unless those rights (or duties) have been incorporated into Australian law through parliamentary legislation or court rulings.

In the Australian legal system, the common law recognises a long-standing entitlement to peaceful assembly. It is, however, not a comprehensive “right”, as it allows people to participate in gatherings so long as there are no overriding lawful restrictions. If the common law provided a full, “positive” right, it would oblige regulators to respect the right and provide remedies against those who violate it.

Also, Australia lacks a nationwide, affirmative right to free speech. Nonetheless, a right of implied freedom of communication about political and governmental matters is acknowledged by courts, as that freedom of communication is considered essential to the maintenance of the system of representative and responsible government provided by the Australian Constitution. This implied freedom of communication operates as a limit - but not complete bar - on legislation that impedes freedom of expression. Political communication includes non-verbal

communication, assembly and movement for the purpose of political protest.

Some individual states or territories in Australia have also legislated human rights charters that affirm explicit rights to assemble, speak and protest. These are detailed in the sections below in regard to each state or territory.

Restricting the right to protest

No human right is ever unlimited or unqualified. Rights are exercised in consideration of the rights of other individuals and wider societal interests, thereby requiring some trade-offs or limitations. In Australian law, the following considerations may result in restrictions placed by parliaments or courts on the right to protest, such as:

- Preventing obstructions to vehicles or pedestrians on streets;
- Protecting national security;
- Maintaining public order and safety;
- Safeguarding property rights; and
- Minimising nuisances to other people.

Nonetheless, courts may not uphold restrictions given competing legal and policy considerations. For instance, in 2017 the High Court ruled that some elements of Tasmania's anti-protest law (*Workplaces (Protection from Protestors) Act 2014*) are invalid because they went too far in compromising the right of political communication implied in the Constitution.

Protesting on roads

Protests in Australia can generally be undertaken on any Crown (public) land, including roads, as well as any private land to which the public usually has unrestricted access. However, one cannot protest where access to a place is obviously restricted (eg signs barring trespassers or locked gates).

Legislation commonly defines a “road” as any street or highway open to or used by the public, and includes everything within the road reservation, such as the footpath and median strip. Generally, any protest activity will be permissible only on footpaths or, with a permit from authorities, on the main road itself.

Under the law of each state or territory, if a group wishes to stage a protest on a street it needs to obtain a permit from the local police or other authority, which, if issued, will contain conditions (eg in regard to route, time, and behaviour). Where

disputes arise over a request for a permit or a challenge to a proposed rally, the courts may be petitioned to decide (eg as happened recently in NSW over the Black Lives Matter rally in Sydney).

If a permit from police or other relevant authority is granted for a protest, the participants observing the conditions in that permit should be exempt from any offence associated with obstructing a street so long as the protesters behave peacefully. Otherwise, protesters risk being prosecuted for:

- Blocking traffic.
- Disrupting public order and safety.
- Property damage - eg graffiti or other marks left on roads, bus stops, traffic lights or other road-related infrastructure.
- Not moving on - police have powers to move on protesters when the police believe that things have gone too far, and failure to observe a “move on” direction creates in itself an offence.
- Trespass – this would be applicable to private roads, such as on the land of a mining company, as well as some sensitive public lands (eg military bases).
- Violating public health regulations – eg Covid-19 physical distancing regulations,
- There may also be additional offences for blocking roads in particular ways, such as use of a lock-on device that attaches protesters to traffic lights or gates.

Many of these offences are essentially strict liability, meaning that the police only need to prove that the offending conduct occurred without needing to demonstrate the intention of the defendant. If proven, then in court the onus of proof shifts to the defendant to establish some lawful excuse.

The foregoing offences are mostly treated by authorities as “summary offences” (as against indictable offences) and thus tried by a judge alone (usually a magistrate). Penalties for the foregoing offences commonly range from \$500 - \$5000 or 6 to 12 months imprisonment, although the latter is very rare and usually only reserved for “serial protesters” or offences with aggravating circumstances (eg use of a lock-on device). It is not possible in his protester kit to forecast accurately the specific offence a protester may be charged with or the ultimate penalty incurred owing to variations in how police may choose to exercise their powers and the variety of factors that a magistrate may consider in sentencing a guilty defendant.

Rights if arrested or charged by the police

Beyond questions about the legality of road blockades, additional legal issues flow from being arrested and/or charged by police. In all jurisdictions in Australia, protesters have rights:

- To remain silent, apart from giving one's name, birth date and address if asked by police.
- To know the reason why one has been arrested.
- To telephone a friend, family relative or lawyer.
- And before a police officer starts questioning a suspect, the officer must caution that he or she does not have to say anything.

Police may search a person without his or her consent if they believe one has an object that is dangerous or connected with an offence (eg a lock-on device). Police can also require a protester to remove a face mask.

Note, special considerations about the above procedures apply to persons under 18 years of age, and persons unable to communicate fluently in English or have a physical disability.

Defences when charged with an offence

Prosecution of a protester for blocking a highway or other acts of civil disobedience undertaken in the name of taking action on the climate and environmental crisis may be challenged if the protester has a lawful excuse.

The "climate emergency" defence has been successfully used in England since 2006 in a few instances, although it has yet to be affirmed by any Australian court. The climate emergency defence is an extension of the common defence of "necessity" to a criminal offence, requiring that the defendant prove that his or her action was taken due to an immediate or urgent need to avoid a greater evil, and that there was no reasonable, alternate course of action available.

The climate emergency defence was first successfully used in court in England in 2008 when six Greenpeace activists defeated charges of causing £30,000 of criminal damage at a coal-fired power station. Although a number of governments and local councils in Australia and abroad have declared a climate emergency, judges will be inclined to believe that the offender had other options available to him or her other than engaging in civil disobedience. Three XR activists in Brisbane were unsuccessful in using the defence when prosecuted for blocking roads in August

2019. Successful invocations of the climate emergency defence have involved trial by jury rather than by a judge (the two Australian cases where the defence was rejected involved decisions by a magistrate). In Australia, only a magistrate will hear a criminal case when the matter involves only summary offences.

PART B: Legal Context in States and Territories

Australian Capital Territory

Generally, one does not to obtain official approval to hold a protest within the ACT, though in specific locations approval is necessary. The Territory's *Human Rights Act 2004* affirms several rights relevant for protests including freedoms of movement, expression and assembly (sections 13 – 16). The legislation, which applies to all ACT laws and authorities, also allows for such rights to be subject to reasonable limits as "can be demonstrably justified in a free and democratic society" (section 28). The ambit of such limits may be determined by the court when a protester's actions are challenged by police.

It is important to recognise that the criminal law applicable to unacceptable conduct in a protest will be different in the ACT depending on whether the land is under the authority of the ACT Government or the Commonwealth's National Capital Authority. Further, there are specific rules for land, including roads, in the parliamentary precinct on Capital Hill. For a protest on roads under the auspices of the ACT Government, approval can be sought by enquiring with Access Canberra; several approvals may be needed, such as if traffic conditions have to be altered to accommodate the protest. In the parliamentary precinct, peaceful protest is generally allowed in the "authorised assembly area", subject to application to the Department of Parliamentary Services (section 19, *Parliamentary Precincts Act 1988* (Cth)).

Blocking traffic in Canberra during an unauthorised protest may involve offences under the *Public Order (Protection of Persons and Property) Act 1971* (Cth); the *Crimes Act 1900* (ACT) or the *Criminal Code 2002* (ACT), including offences for: trespass; disorderly conduct, obstruction of pedestrians or vehicles, obstructing a public official and affixing placards to property (eg traffic lights and bus shelters).

Unlike other jurisdictions in Australia, in the ACT, police do not have the power to move-on protestors, though disobeying is an offence police if they ask a protester to leave an area where they reasonably believe there is a risk of violence including property damage. However, on Commonwealth land in the ACT the police have a

move-on power in regard to an assembly of 12 or more persons if they create a reasonable apprehension of damage to property or physical violence; failure to move-on within 15 minutes of a direction from police is an offence, and may incur imprisonment for up to 6 months.

Some protest-related offences in the ACT are tied to participating in an “assembly”, defined as a group of not less than three persons who gather for a common purpose, whether at a particular place or moving through, and includes the conduct associated with this assembly (section 4, *Public Order (Protection of Persons and Property) Act* 1971). For instance, specific offences arise if the assembly is accompanied by unlawful violence to persons or damage to property (section 8)

Another type of offence relates to obstructions. The *Public Order (Protection of Persons and Property) Act* defines an “unreasonable obstruction” as an act that constitutes, or contributes to, an obstruction of, or interference with, the exercise or enjoyment by other persons of their lawful rights or entitlements (including that relating to moving on public streets), having regard to the context (eg time, place and duration of the obstruction). Thus, blocking vehicles on public roads could constitute an unlawful unreasonable obstruction (see section 11(2)(a), *Public Order (Protection of Persons and Property) Act*).

The *Road Transport (Road Rules) Regulation* 2017 is also relevant to actions that obstruct road traffic. Specific road-related offences under this regulation include: lingering on a road longer than necessary to cross the road safely (regulation 230(1)); creating a traffic hazard by blocking the path of a driver (regulation 236(1)) and unreasonably obstructing the path of any driver or pedestrian (regulation 236(2)). The maximum penalty for each of these offences is currently \$3,200.

In regard to Commonwealth land in the ACT, specific offences may apply to protests that involve trespass and obstructions, with additional offences where the protest involves an assembly of more than 3 persons that creates a reasonable apprehension of damage to other persons or property. For instance, under the *Public Order (Protection of Persons and Property) Act* 1971 it is an offence to obstruct the passage of persons or vehicles to and from Commonwealth premises (section 12(2)(a)), and an offence if an assembly forms an unreasonable obstruction anywhere (section 9(1)).

A public health emergency has recently been declared by ACT authorities, under the *Public Health Act* 1997, as a response to the Covid-19 pandemic. With the ACT in State 3 controls at the moment, public gatherings are limited to a maximum of 100

persons, and no more than one person per 4 square metres in both indoor and outdoor spaces (see *Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020* (No 5)). Organisers of gatherings for specified persons must also complete a COVID-19 Safety Plan. The penalty for violation of a Covid-19 regulation on public gatherings is up to \$8,000 for an individual.

New South Wales

The NSW *Summary Offences Act 1988* makes it an offence to obstruct traffic without reasonable excuse (section 6). The offence could arise even for momentarily blocking traffic. In addition, the *Crimes Act 1900* (section 546C) makes it an offence to resist or hinder a police officer in their duty, which could occur if a protester is sitting on a road and resists a direction from police to move on (penalty of imprisonment of up to 12 months or a fine). Further, the *Law Enforcement (Powers and Responsibilities) Act 2002* empowers police to give directions to move on protesters if obstructing traffic or pedestrians (section 197(1)).

Protesters should notify the Commissioner of NSW Police of intention to hold a public assembly at least 7 days before the proposed assembly, at which point the Commissioner has the option to ask a court to prohibit the assembly (section 23, *Law Enforcement (Powers and Responsibilities) Act*). A public assembly is defined by the Act as including a gathering on a public road. This procedure does not mean that *any* conduct in a public place will be lawful, but it provides a legal framework for protests to occur including obstructing traffic. For instance, police may still direct a crowd to move on if there is public disorder, defined in the legislation as a "riot or other civil disturbance that gives rise to a serious risk of public safety" (sections 87A and 87D, *Law Enforcement (Powers and Responsibilities) Act*).

As in other jurisdictions in Australia, a variety of specialist legislation may also be relevant to regulating protests at specific times or places. For instance, section 30(3) of the *Major Events Act 2009* prohibits people to use (eg on foot) roads that have been closed for the purposes of conducting major events. Ignoring a direction of police to leave a closed road is an offence (section 30(4)). Also, section 632(2) of the *Local Government Act 1993* authorises local councils to ban a variety of activities in public places, such as Martin Place in the Sydney CBD. Further, regulation 52(1)(d) of the *Roads Regulation 2008* stipulates that a person must not, without a permit, participate in any public assembly on the ANZAC Bridge or Sydney Harbour Bridge.

With Covid-19 continuing to flare-up in hotspots, the NSW regulations on movement and gatherings of persons in public are rapidly changing and variable in different locations. Currently, as of early August 2020, no more than 20 persons are allowed to gather outside in a public place, except for specified activities such as weddings and sports where larger groups may be approved by authorities. The recent Black Lives Matter rally held in Sydney was banned by authorities, as upheld by the court, on the ground that such a gathering would be contrary to Covid-19 control measures. The NSW regulations governing Covid-19 are issued under the *Public Health Act 2010*, with violations by individuals incurring penalties of up to \$11,000 or imprisonment for 6 months. NSW police may also issue on-the-spot fines of \$1,000 for an offence.

Northern Territory

The NT lacks explicit human rights legislation allowing peaceful assemblies. Instead, NT law requires for a permit to be sought from the relevant local council where one wishes to hold a protest, such as a march, in a public place. If the event will be on a public road, the permit must be sought from the local council and the NT police commissioner (regulation 38, *Northern Territory Traffic Regulations 1999*, under the *Traffic Act 1987*). Each local council may have different requirements under its by-laws for arranging approval for a protest (eg some councils may require the NT police to assess the situation before authorising a public demonstration). In Alice Springs, for instance, it is an offence under section 33 of the *Alice Springs (Management of Public Places) By-laws 2009* to organise or lead a protest in a public place without a permit, subject to a fine.

Activities on private land including a private road require the landowner's approval, and the offence of trespass is committed without it.

On Aboriginal land, which covers at least half the Northern Territory, protest organisers must obtain in advance a permit in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and *Aboriginal Land Act 1978* (NT) before entering Aboriginal Land. Violation of this requirement incurs a fine of up to \$1,000.

In other contexts, the NT's *Summary Offences Act 1923* specifies a range of offences that protesters may be charged with, including "offensive conduct" that is defined as including "disorderly ... behaviour .. in a public place", "disturbing the public peace", and "unreasonably causing substantial annoyance to another person" (section 47).

The NT's Criminal Code 1983 also contains a relevant provision: an "unlawful assembly" is defined as where three or more individuals with common purpose assemble in a manner that causes people to fear on reasonable grounds that the perpetrators will "tumultuously disturb the peace" (section 63), with punishment of up to one year imprisonment (section 64).

Covid-19 regulations in the NT are currently at Stage 3. Public gatherings are subject to different requirements depending on the size of the crowd (see directions issued under the *Public and Environmental Health Act 2011*). An assembly of more than 500 persons requires submission of a COVID-19 Event Safety Plan for approval from the Chief Health Officer (CHO). Failure to comply can result in a fine of up to \$62,800 imposed on the organiser of the gathering. A public gathering of 100 to 500 persons requires completion of a COVID-19 safety checklist but does not require formal approval from the CHO. Events with fewer than 100 participants do not require completion of a checklist or safety plan, although physical distancing principles should still be observed.

Queensland

The Queensland *Human Rights Act 2019*, which came into effect on 1 January 2020, affirms 23 human rights and it obliges courts and other public authorities to interpret all Queensland laws, as far as possible, in a manner that is compatible with the human rights. Sections 21 and 22 of the Act affirm rights to freedom of expression and peaceful assembly respectively.

Such rights are not absolute. Under the *Peaceful Assembly Act 1992*, section 5(2) provides that the right to assemble is subject to such restrictions: "as are necessary and reasonable in a democratic society in the interests of: (a) public safety; or (b) public order; or (c) the protection of the rights and freedoms of other persons". Moreover, section 5(3)(b) provides that the reference in section 5(2)(c) to the rights of other persons specifically includes the rights of persons to carry on business. To balance such considerations, proponents of protest marches in Queensland must notify police at least 5 days before their event. Police can only oppose an assembly if they apply to the court for an order prohibiting the assembly. Otherwise section 10 of the Act deems the proposed protest event to be approved. In such circumstances, the police would not be able to charge participants with blocking a highway, for instance, if that is the notified route of the protest.

An unlawful assembly in Queensland can attract a variety of sanctions. The *Police Powers and Responsibilities Act 2000* gives police powers to issue move-on

directions (Part 5) and creates offences connected with breaching the peace (Part 6). A move-on direction is usually directed to protesters to leave a place for a stated distance and not return for at least 24 hours, and the police must provide reasons for the move-on direction (section 48(4)). However, a police officer must not give a move-on direction that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of public safety, public order or the protection of the rights and freedoms of others (section 48(2)).

The *Summary Offences Act 2005* creates a range of offences that could be applicable to blocking roads, including creating a public nuisance (section 6), and holding an unlawful assembly that inter alia affects the health and safety of other people (section 10A(2)). A protester must not also obstruct a police officer in the performance of his or her duties, such as failing to move on (section 790, *Police Powers and Responsibilities Act 2000*).

The Queensland government passed legislation in 2019 banning lock-on devices, which have been used in some road blockading protests. Under the law (in an amendment to the *Summary Offences Act*), any device can be considered a "dangerous attachment device" if it may harm a person when one tries to remove it, with a tough penalty of up to 2 years' imprisonment or a fine of up to \$6,672 (see sections 14A – 14C).

As in other jurisdictions in Australia, protests in public places including roads currently face some additional restrictions from Covid-19 regulations. As of July 2020, Queensland regulations restrict public assemblies to a maximum of 100 persons plus participants must practice physical distancing of at least 1.5 metres, but there are no restrictions on movement within the state (see *Movement and Gathering Direction (No.2)*, 3 July 2020, under the *Public Health Act 2005*). Violations may incur a penalty of up to \$13,345 or 6 months imprisonment.

South Australia

South Australia does not have a human rights charter and thus lacks an explicit right to protest. Instead, protest actions, if they are to be conducted lawfully, must meet the requirements of the *Public Assemblies Act 1972*. This legislation provides that an application for a public assembly can be made to the Commissioner of Police, Chief Secretary or local council in the area where the assembly is proposed. If approved, a protester can participate in the assembly without being charged with criminal or civil offences (section 6(1)) so long as he or she behaves in accordance with the conditions of the approval. If the application is formally opposed by anyone, a judge

can be asked to decide whether the assembly can go ahead. Protesters participating in an approved public assembly cannot be charged with any offences connected with obstructing traffic if that would be the intended effect of the assembly route.

If a protest blocking traffic is not authorised, police may arrest participants for a range of possible offences, and can require the protesters to provide their name, birth date, and residential address (and failure to cooperate itself would constitute a further offence punishable by up to 3 months goal (section 74A(3), *Summary Offences Act* 1953). Police also have move-on powers, exercisable where a breach of the peace has occurred, is occurring or is about to occur, or that the movement of pedestrians or traffic is or is about to be obstructed (section 18(1), *Summary Offences Act*). Failure to comply with a lawful move-on direction incurs a maximum penalty of \$1250.00 or 3 months imprisonment (section 18(2)) Potential summary offences associated with obstructing traffic include disturbing the public peace (section 7(2)), obstruction of a public place (section 58).

The *Summary Offences Act* also enables the Attorney-General to declare a defined area a "declared public precinct" for a specified time where the Attorney-General believes there is a reasonable likelihood of conduct in the area affecting public order and safety (section 66N(1)). Such a declaration gives police additional law enforcement powers in that area for the prescribed period (eg to issue an order barring an offending person to enter or remain in the area), but subject to the statutory override that the declaration is "not be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action" (section 66L).

South Australia's Covid-19 regulations currently restrict the size of public gatherings outdoors to 100 persons, coupled with physical distancing of no more than one person per 2 square metres (see *COVID-19 Disease Emergency (Miscellaneous Provisions) Act* 2020 and directions issued under the *Emergency Management Act* 2004). There are no restrictions on movement within South Australia, but interstate visitors are subject to restrictions and currently only NT, Tasmanian and Western Australian visitors are allowed to freely enter without a quarantine period.

Tasmania

Tasmania lacks any legislation specifically regulating peaceful assembly, unlike legislation in other Australian jurisdictions. It does however have anti-protest legislation, subject to amendments at this time after a successful High Court challenge to parts of the law (*Workplaces (Protection from Protestors) Act* 2014),

Highway blockades in Tasmania are illegal without a permit. It may be obtained by written application to the closest district police headquarters. Section 49AB of the *Police Offences Act 1935* creates an offence if a person stages on a public street a demonstration, march or rally without such a permit.

In addition, the *Police Offences Act* stipulates offences indirectly connected to blocking roads. The most likely such offence is under section 13: causing public annoyance – disorderly, riotous conduct, creating a nuisance, which presently incurs a penalty of between \$500 to \$4,200 or up to 6 months imprisonment. The police may also direct a person in a public place to leave and not return for 4 hours or longer if the police reasonably believe, inter alia, that the person is obstructing or is likely to obstruct the movement of pedestrians or vehicles (section 158(1)).

More serious offences with draconian penalties are possible under the *Criminal Code Act 1924*. The most relevant to civil disobedience that blocked a public road are:

- Section 73 - a riot, involving inter alia an unlawful assembly of more than 3 persons that would cause alarm to reasonable people and involve a breach of the peace.
- Section 140 – common nuisance, which endangers the lives, safety, health, property, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all.

Section 389 of the *Criminal Code Act* provides that the punishment for any stipulated crime is imprisonment for up to 21 years and/ or by fine, but subject to any mitigating considerations stipulated in the *Sentencing Act 1997*.

Tasmania's *Workplaces (Protection from Protestors) Act 2014* targets protesters who disrupt businesses, with offences extending not only to protests on business premises but also access areas to a business. In particular, the Act currently provides that "a person must not do an act that prevents, hinders, or obstructs access, by a business occupier in relation to the premises" (section 6(2)). The Act authorises police to direct a person to leave and stay away from business access areas where they reasonably suspect that the person is or is about to commit an offence against the Act (section 8). However, if a person is merely passing the entrance to business in a peaceful demonstration, no offence is committed (section 6(5)).

Tasmanian authorities have used Covid-19 regulations to prosecute anti-logging activists during the earlier, more stringent Stage-2 restrictions. Currently in Stage 3, the state's public health rules limit outdoor gatherings to 500 persons, with a maximum density of one person per 2 square metres and at least 1.5 metres separation between individuals (see further regulations issued under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*).

Victoria

Street marches or other protests that block traffic usually require a permit, which is obtained from the relevant local council. The requirements of councils can differ, but they must consult with local police if the protest will involve a road closure (section 6A, *Summary Offences Act 1966*). This legislation also prohibits blocking a road or footpath with a vehicle or goods without prior permission from the relevant local authority in the area (section 4(e)).

The *Summary Offences Act 1966* gives police "move-on" powers to direct a person to leave a public place including a road (section 6(1)) if the officer believes the person's conduct is inter alia breaching the peace or is a risk to public safety. However, the move-on power cannot be used against a person "demonstrating or protesting about a particular issue" or "speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue" (section 6(5)).

The Victorian human rights code, enacted under the *Charter of Human Rights and Responsibilities Act 2006*, provides basic rights of assembly and speech. Section 16 affords every person the right of peaceful assembly and section 15 upholds freedom of expression by any medium. However, these rights do not provide unlimited authority to protest in any place or by any means. The Charter provides that freedom of expression may be restricted "for the protection of national security, public order, public health or public morality" (section 15(3)(b)). In the Melbourne "Occupy movement" case of *Muldoon v Melbourne City Council* (2013), the Charter right of freedom of assembly was interpreted by the court to be "subject to such reasonable limits as can be demonstrably justified in a free and democratic society". The Victorian Supreme Court in *Magee v Delaney* (2012) ruled that the Charter rights do not shield protesters who damaged private property by defacing a commercial advertisement in a bus shelter.

Pursuant to a State of Emergency declaration in Victoria, Covid-19 regulations currently place significant restrictions on public gatherings and movements,

especially in Melbourne. A public gathering is restricted to 10 persons and everyone must wear face masks at all times when outdoors. More stringent rules on gatherings apply in Covid-19 hotspots. Stay-at-home restrictions in much of Victoria prohibit non-essential travel, which would exclude participating in a protest. Victoria Police can issue on-the-spot fines of up to \$1,652 for individuals who fail to comply with the emergency directions, and heavier fines of up to \$20,000 can be imposed on individuals if such cases are referred to the courts.

Western Australia

Western Australian law does not provide an explicit right to peaceful assembly or protest, and the state lacks a human rights charter as found in the ACT, Queensland and Victoria. Protests that involve unlawful conduct or impacts may incur a variety of sanctions, depending on the location and circumstances.

Protests conducted on private roads require the permission of the landowner, even if the road is one to which the public usually has unrestricted access. Without the landowner's consent, participants are liable to prosecution for trespass, punishable by imprisonment of up to 12 months and a fine of \$12 000 (section 70A(1), *Criminal Code Act Compilation Act 1913*).

In public areas, a variety of legal regimes apply. Permission is required from the Executive Director of the Department of Conservation and Land Management (CALM) to hold an assembly of more than 100 persons on land managed CALM (*Conservation and Land Management Act 1984*). This includes roads and adjacent areas in state forests and national parks. For protests in other public areas, involving three or more persons on general streets and adjacent footpaths, the participants must obtain a permit from the Commission of Police at least four days before the planned event (sections 3 and 4(1)(a), *Public Order in Streets Act 1984*). A permit will shield protesters from any possible offences relating to the approved conduct on the street. The legislation stipulates that the Commissioner must issue the permit unless he or she is satisfied there is a risk of serious public disorder or nuisance or the event would obstruct a street for too long.

Participants in an approved protest may still be liable for criminal offences if it is not conducted peacefully. This could happen if the protest sparks fear of a tumultuous disturbance of the peace, with protesters liable to a penalty of up to 12 months imprisonment and a fine of \$12,000 (section 62, *Criminal Code Act Compilation Act 1913*). Further, a failure to observe a police move-on direction from such as unlawful assembly may incur imprisonment for up to 3 years and a \$24,000 fine (section 64).

Among other possible offences connected with a public protest, obstructing a police officer, such as by resisting arrest, risks imprisonment of up to 18 months and a fine of \$18,000, and disorderly behaviour in a public place may incur a fine of up to \$6,000 (section 74A).

As in other jurisdictions in Australia, Covid-19 regulations that restrict gatherings and movements of persons may be relevant to a protest in Western Australia. These regulations and their application are in flux and one cannot rely on the advice in this protester kit for the current state of such regulations. The government has issued a State of Emergency Declaration under the *Emergency Management Act 2005*, which currently prohibits a gathering of more than 100 persons in an outdoor space, whether on public or private land. A variety of penalties including imprisonment and fines may be imposed on people who violate the Covid-19 regulations, with increased penalties where a person is aware that they have the virus.