

Protection of Protest Rights Bill 2023

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Protection of Protest Rights Bill 2023

Act no. , 2023

A Bill for
An Act to repeal recently passed anti-protest laws and protect the right to protest in NSW; and for other purposes.

Second Reading Speech

Mr Alex Phoon (Oatley—Shadow Minister for Justice):

The inherent backbone of our democracy is a protected right to protest. History shows that protest and civil disobedience leads to revolutionary change, including: the suffragette movement which won a woman's right to vote, the labour movement which achieved the 8-hour workday, the civil rights movement which put an end to segregation between black and white people, and the school strike for climate movement which forced leaders to declare a climate emergency.

The right to protest is under attack in jurisdictions across Australia, with governments introducing draconian anti-protest laws, police using increased powers to threaten and intimidate protestors, and magistrates sentencing protestors as criminals. This Bill is about taking the power back. This Bill is about protecting a fundamental human right to protest. Most importantly, this Bill is about protecting democracy for future generations like ours.

I commend the Bill to the House.

Explanatory Notes

The legal basis of the right to protest in NSW is the common law right to peaceful assembly, which can be traced back to the Magna Carta. The right is further protected by the Australian Constitution under the implied freedom of political communication. The legislative context in which the common law right to assembly operates in NSW is Part 4 of the Summary Offences Act 1988. While not conferring any rights itself, Part 4 facilitates the exercise of the common law right to assembly by encouraging mutual cooperation between protesters and police. While the right to protest remains an important means of political expression, extensive limits are imposed on protests by the criminal law, including the Summary Offences Act 1988, Crimes Act 1900, Inclosed Lands Protection Act 1901, Forestry Act 2012, Mining Act 1992 and Law Enforcement (Powers and Responsibilities) Act 2002. The civil law and, more recently, applications for victims' compensation also play an important role in limiting the right to protest.

In recent times, NSW legislation regarding the rights and framework for protesting have been under both national and international scrutiny for its bleak and unconscionable stance. Comments such as *“dark days for our democracy”* and *“pushback in Australia against increasingly draconian protest laws”* testify to the negative responses concerning the amended Roads and Crimes Legislation Amendment Bill 2022 that push harsh fines reaching \$20,000 and jail terms up to 2 years. International organisations such as Human Rights Watch have criticised the NSW legislation change, claiming the violation of human rights of individuals to peacefully protest; commenting how there are *“disproportionate punishments”* with *“excessive Bail Conditions”*.

The rights of protestors are immensely important as they allow for the expression and thought of ideas that would be considered going against the status quo. Furthermore, rights of protestors allow the individuals to be free from persecution and discrimination for the movement that they stand by and support, allowing them to express their individuality in the modern democratic civil process. Protestors rights also fundamentally always for the voices of minorities and oppressed groups to be heard and respected in civil discourse.

As the new anti-protest laws continue to infringe individuals' universal right to protest, that has been stipulated in Article 20 (Freedom of Assembly and Association) of the UDHR, they have given rise to the abuse of police power. For example, ABC News reported that members of climate activist group Blockade Australia were raided with about 100 police officers, where 40 individuals were detained and eight were charged with offences. Such counts of police brutality are not uncommon in Australia, and it is imperative that an effective bill be implemented to limit excessive police powers surrounding peaceful protests in order to balance the rights of protesters and community welfare.

Across the world, the protesting has taken a plethora of forms, shaping the problematic spectrum of protests rights. In the Netherlands, protesting is a fundamental right, and the country has a long tradition of peaceful protest. For example, the Dutch Constitution guarantees the right to peaceful assembly and freedom of speech. The Dutch government requires protest organisers to notify local authorities at least 48 hours before the protest, but prior authorization is not required, and spontaneous protests are allowed. Conversely, North Korea has one of the most repressive protesting laws in the world. The country is a one-party state, and all protests are prohibited. Any attempt to protest is treated as a threat to the government's authority, and violators risk severe punishment, including imprisonment, torture, and execution.

This Bill aims to enshrine protest rights of individuals within NSW, allowing objections to be openly expressed in an effective manner. It will remove the requirement for individuals who intend to protest to apply and have their application accepted by the NSW Council of Civil Liberties, in order to carry out a protest in NSW. Furthermore, it will identify the conditions under which protests can legally occur in NSW, outlining methods by which protesters must minimise harm to other people and the environment.

The Youth Legislature of New South Wales enacts –

Part 1 Preliminary

Division 1 Preliminary

1 Name of Act

This Act is the *Protest Rights Act 2023*.

2 Commencement

The Act commences on the date of assent of this Act.

3 Relationship with other Acts and laws

This Act prevails to the extent of an inconsistency with another Act or law.

4 Objects

The objects of this Act are to—

- (1) define the varying natures of protest,
- (2) enshrine the right to protest,
- (3) decrease police powers during protests,
- (4) increase legal protections for protestors, and
- (5) streamline protest processes for union bodies.

Division 2 Interpretation

5 Definitions

In this Act—

peaceful/nonviolent protest means any act of protest that is defined in Part 3, Division 1, and according to Article 21 of the International Covenant on Civil and Political Rights

union means any body representing a group of employees that is registered with the Fair Work Commission

Note— The *Interpretation Act 1987* also contains definitions and other provisions that affect the interpretation of this Bill.

6 Definition of peaceful protest

- (1) For the purposes of this Act, a ***peaceful protest*** involves a group of people performing a public demonstration to communicate discord, grievances or demands.
- (2) Without limiting clause 6(1), it does not cause—
 - (a) physical harm to individuals, establishments or other private property, or
 - (b) physical aggression.

7 Definition of violent protest

(1) For the purposes of this Act, a *violent protest* is a public demonstration which causes or involves—

- (a) physical harm to an individual, regardless of whether they are involved in the protest or not; or
- (b) harm to establishments, such as businesses and residential buildings; or
- (c) the use of weapons; or
- (d) physical aggression; or
- (e) general acts of violence, including, but not limited to—
 - (a) vandalism,
 - (b) throwing objects,
 - (c) arson, or
 - (d) physical confrontation with law enforcement.

Part 2 Enshrining the right to protest

Division 1 The ability to protest

8 Meaning of person wishing to protest

For the purposes of this section a *person wishing to protest* means a person who is protesting in any and all forms, except if he is protesting under the authority of a registered union.

9 The right to protest individually

(1) If a person eligible to protest desires to protest out of free will—

- (a) the person is entitled to organise and all aspects of the protest; and
- (b) in no way other parties, including the NSW Government, are permitted to intervene or stop the person's actions unless in special circumstances.

10 The right to protest with others

(1) If a person wishing to protest desires to organise a protest with others—

- (a) the person and all parties involved are entitled to organise any and all aspects of the protest; and
- (b) in no way other parties, including the NSW Government, are permitted to intervene or stop the person's actions unless in special circumstances.

11 Special circumstances to stop a protest

(1) A police officer or Government can only intervene or stop a person's actions to protest if—

- (a) the person's actions are harmful towards the immediate welfare of others, or

- (b) in any other circumstances where the personal interests of others are breached to an unreasonable extent.

Division 2 The defence of genuine protest

12 Eligibility

(1) A person is eligible to put up a defence of genuine protest if—

- (a) the individual is charged, or offences proved to have been committed in the events of protest; and
- (b) the person had committed the offence without malicious intent to harm—
 - (a) the immediate personal welfare of others, or
 - (b) personal or private property as an attempt to sabotage, and
- (c) the person had committed the offence with the sole intention to promote whatever message of protest so long as it is non-discriminatory, non-hateful, and primarily geared towards the protection of personal interest.

13 Particle defence

Is the actus reus in itself still proved to immediately endanger the interests of others, in which the defence of genuine protest may act as a mitigating factor subject to the discretion of the courts.

14 Full defence

If the actus reus in itself did not immediately endanger the interests of others, the defence of genuine protest may completely exempt the person from partial or all charges subject to the discretion of the courts.

Division 3 Miscellaneous

15 Acts of which are allowable

Peaceful protests may involve civil disobedience, including but not limited to road blockage or sit-ins and other forms of non-violent disruption.

16 Limiting protest topics

Protest topics are limited under Article 20 of the *International Covenant of Civil and Political Rights*, whereby topics which are deemed of national, racial or religious hatred, which constitute incitement of discrimination, hostility or violence are prohibited.

Part 3 Police powers and protest

17 Police to negotiate

If a peaceful, nonviolent protest is to take place with police presence, then the police shall be encouraged to negotiate any matters with protestors in a way that will not result in the shutting down of a peaceful protest.

18 Protestors to feel entitled to exercise democratic rights

Police shall take every reasonable effort to ensure peaceful protestors feel entitled to exercise their democratic rights.

19 Non-lethal devices to be used

(1) In situations where there is an imminent threat to public safety, the police shall opt for non-lethal devices including, but not limited to—

- (a) rubber bullets; and
- (b) tear gas; and
- (c) water cannons.

20 Police impartiality

Police shall remain impartial and unbiased of protest messages, to allow protestors to continue peacefully protesting.

21 Protestor rights with police

(1) If an individual engages in an act of protest that is considered peaceful and nonviolent, then that shall have the right to—

- (a) exercise their right to silence; and
- (b) be informed by police about all of their democratic rights; and
- (c) refuse being searched, unless on the grounds of another offence.

Part 4 Legal protections for peaceful protestors

Division 1 Legal Immunity of Peaceful Protestors

22 Immunity of criminal record

If someone engages in an act of protest that is considered peaceful and nonviolent, they cannot solely, because of their act of protest, be eligible for a criminal record.

23 Misdemeanour of offence

If protestors are to be charged with any offence relating to their act of peaceful protest, that charge is to be considered a misdemeanour.

Division 2 Freedom from imprisonment

24 Prohibition of prison sentence

No one who engages in a peaceful protest can serve a prison sentence solely as a result of their protest actions.

25 Protestors cannot be threatened

Peaceful protestors can never be threatened with a prison sentence by a police officer, magistrate or judge.

Division 3 Bail Conditions

26 Bail conditions to be given by a court

Bail conditions for peaceful protestors, solely on the basis of their protest actions, can only be given by a court.

27 Rights of protestors undergoing court proceedings

(1) If peaceful protestors are in the process of undergoing court proceedings, they must automatically be granted bail. This can include, but not limited to—

- (a) any hearing; or
- (b) an appeal to be heard.

28 Conditions of bail for protestors

(1) If peaceful protestors are to receive bail conditions, the conditions may only be—

- (a) reporting to a police officer or station on a regular basis; or
- (b) attending a bail support service; or
- (c) not going back to the place where an offence was committed if it is a major facility or building.

Part 5 Unions and Protesting

29 Definition of certain unions

For the purposes of this section, *certain unions* shall mean registered unions deemed by the NSW Government to be related to ‘essential workers’.

30 Certain unions to not have to wait for sanctions

Certain unions shall not have to wait for the state government to sanction an appropriate time to protest in any capacity.

31 Certain unions to be able to strike

Certain unions are able to organise a protest or general strike without approval from a governing body that is not the union itself.

32 Certain unions to protest freely

(1) Certain unions are able to protest freely at the discretion of the union so long as they—

- (a) do not directly put individuals in harm and have appropriate policies in place to prevent such harm; and
- (b) provide the workforce with an appropriate stipend for the duration of the strike or protest.

33 Conditions relating to health care unions

(1) Health care unions must take the appropriate care to ensure that the public is notified that the medical facility shall be out of action or operate with a safe staffing practice for non-essential surgeries.

(2) Medical facilities shall refer to non-elective appointments including—

- (a) general practitioner appointments,
- (b) hospital elective appointments,
- (c) X-Ray appointments, and

- (d) Elective surgery that can be delayed but not endanger the individual's life or pose a serious risk to the health of the patient.

34 Conditions relating to education unions

- (1) Education unions must ensure that the students of the educational facility will be left with adequate resources to continue their education for the duration of the extended strike or protest.
- (2) Education unions must ensure that the number of non-union teachers remaining or abstaining from the protest is adequate for the continued function of a school day.

35 Definition of education facilities

For the purposes of this section, *Education facilities* shall mean independent schools, catholic or religious-based schools, and government schools.

36 Unions to provide a stipend

Unions must not organise a strike that they know in good faith cannot provide a stipend that will allow for the continued liability of the employees.

37 What unions can and cannot protest for

- (1) A union may not organise a protest that is based on a dislike of an employer.
- (2) A union may organise a protest for the purpose of remove an NSW Government Minister.

38 Unions to remain autonomy

- (1) Unions shall maintain autonomy in their ability to plan general strikes and protests so long as they are peaceful and justifiable.
- (2) If the Government deems the protest is unjustifiable it is to be argued at the appropriate tribunal to determine if court action is needed to stop the exploitation of the union's powers and autonomy.

Schedule 1

Minor amendments

1.1

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Division 7

Omit the division.

[2] Section 200

Omit section 200(3) and section 200(4).

1.2

Crimes Act 1900 No 40

[1] Section 201

Omit the section.

[2] Section 214A

Omit the section.

1.3

Roads Act 1993 No 33

[1] Section 144G

Omit the section.

1.4

Inclosed Lands Protection Act 1901 No 33

[1] Section 4B

Omit section 4B(1)(a) and section 4B(1)(b).

1.5

Crown Land Management Regulation

[1] Section 13

Omit items 4, 6, 7, 16, and 29.

