

Democratic rights and freedoms

NGO Coalition Fact Sheet 16 (LOIPR 22)

Anti-protest laws (page 72)

A number of states have introduced anti-protest laws that infringe on the right to peaceful assembly, with severe penalties.

In the most extreme example, Tasmanian laws criminalise all protest activity which “prevents, hinders or obstructs” access to business premises. Even a brief peaceful protest on public land could attract penalties up to \$10,000 and 4 years imprisonment. The High Court will soon hand down its decision on whether these laws are unconstitutional.

These anti-protest laws clearly prioritise business and political interests, and often target environmental advocates. This is particularly the case for NSW laws, which make it an offence to “interfere” with a mine, with a penalty of up to 7 years in prison.

Also, under NSW law the penalty for unlawfully entering any public or private land surrounded by a fence is now \$5,500 (up from \$550).

Australia should repeal laws that criminalise peaceful protest contrary to international law.

Anti-association laws (page 74)

Increasingly, Australia is criminalising the act of people associating with each other. Consorting (or unlawful association) is an offence everywhere except the ACT.

In NSW, talking to two or more convicted criminals can lead to 3 years in prison and/or a fine of \$16,500.

The Ombudsman reported in 2016 that these laws are being disproportionately used against Aboriginal and Torres Strait Islander people, people experiencing homelessness, and young people.

Australia should amend relevant legislation to ensure that association does not form the basis of criminal conviction or punishment.

Industrial action (pages 72-73)

New federal laws introduced last year are targeting legitimate industrial action in the construction industry.

Not only is it unlawful for a group of people to assemble for the industrial purpose of preventing or restricting access to a building site (termed “unlawful picketing”). A person may face fines even if they didn’t actually prevent or restrict access, or even before they actually assemble. The mere act of organising an action is unlawful.

Other federal laws introduced only a few months ago prevent people from forming and joining trade unions, and interfere with trade unions functioning freely.

Australia should ensure that industrial relations laws and practices uphold the right to freedom of association, the right to strike and the right to form and join trade unions.

Border Force Act (page 73)

Under these secrecy laws, immigration workers and contractors risk two years in jail for recording or disclosing information about the events they witness.

The laws were recently amended to exempt medical professionals, but they still apply to civil society organisations, teachers, lawyers and social workers.

This imposes significant barriers to whistleblowing on human rights abuses in immigration detention.

Australia should repeal the secrecy provisions of the Australian Border Force Act 2015 (Cth).

Silencing civil society (page 73)

Governments across Australia have been putting financial pressure on civil society organisations to keep quiet on matters of public interest.

Increasingly, “gagging clauses” in government funding agreements are prohibiting federal funding from being used to undertake law reform, policy or advocacy work.

Environmental groups are being threatened with the removal of their tax status which allows donors to make tax deductible donations. It has been suggested that environmental groups should be required to spend over a quarter of their expenditure on work such as planting trees, in order to qualify for this tax status.

It has also been proposed that Australian civil society organisations be banned from receiving foreign donations.

Australia should not use financial pressure, including funding agreements, tax concessions or bans on foreign donations, to stifle the free speech of civil society.

Metadata and web blocking

(pages 74 - 75)

Australia has the most extreme metadata retention laws among its allies.

Telcos must retain every customer’s metadata for two years. This metadata can then be accessed by law enforcement and security agencies without a warrant or any independent authorisation. And there is no requirement that a person be told when their metadata is accessed.

Also, the Australian government has a regime that allows copyright holders to apply to a court for a website to be blocked. There is little transparency over the requests and the blocking process.

Australia should immediately repeal the metadata retention regime or alternatively amend legislation to put in place proper safeguards consistent with the rights to privacy and freedom of expression.

Voting rights (page 75)

Federal and state laws contain “unsound mind” exclusions which prevent people with a range of impairments from enrolling and voting in elections. In particular, people with intellectual and psychosocial disability and degenerative brain conditions.

Queensland currently prohibits all people who are serving a sentence of imprisonment from voting at Queensland elections.

Australia should remove the unsound mind exclusion from the Electoral Act, and all reforms should reflect the fundamental principles of non-discrimination, presumption of legal capacity and supported decision making.

Australia should ensure that prisoners in all states and territories are afforded the right to vote.