



Australia's Human Rights Score Card

Australia's 2015 UPR—NGO Coalition Fact Sheet 3

Democratic Rights and Freedoms

Introduction

The rights to free speech, freedom of association, freedom of assembly and voting rights are not properly protected in Australian law. In recent years laws, policies and practices are gradually eroding these basic freedoms in Australia.

Peaceful Protest

In the past two years, a number of states legislatures have introduced and/or passed anti-protest laws that unfairly restrict rights to peaceful assembly.¹

In October 2013, Queensland passed laws ahead of hosting the G20 meeting in November 2014 that give police unnecessarily broad powers and create new, vague and overly broad offences (eg: “disturb” the G20). These laws threaten to stifle legitimate peaceful protest and could criminalise peaceful protesters and passers-by.

In 2014, Tasmania made it a criminal offence to protest against, including to “hinder”, business activities or operations of mining, resource and forestry companies.² Three UN Special Rapporteurs warned that this law could silence legitimate and lawful protest, is disproportionate and targets environmental protesters.³ Similar laws have been introduced in Western Australia.⁴

Proposed Recommendation

Australia should repeal laws that unnecessarily and disproportionately infringe on freedom of assembly.

¹ *Workplaces (Protection from Protesters) Act 2014* (Tas); *G20 (Safety and Security) Law 2013* (Qld). Victoria introduced legislation (*Summary Offences and Sentencing Amendment Act 2014* (Vic) that was repealed earlier in 2015.

² Under the *Workplaces (Protection from Protesters) Act 2014*.

³ For example, Media release, “UN experts urge Tasmania to drop its anti-protest bill”, OHCHR, 9 September 2014, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E>.

⁴ The Western Australian parliament is currently debating the *Criminal Code Amendment (Prevention of lawful activity) Bill 2015*.

Freedom of Association

“Anti-bikie” laws and “anti-consorting” laws in Queensland and New South Wales unfairly limit freedom of association. For example, new ‘bikie’ laws in Queensland include mandatory minimum sentences of up to 25 years for offences undertaken as part of an association.⁵ On 14 November 2014, the High Court upheld some of the anti-bikie laws, whilst noting that they could be “unduly harsh”.⁶ This highlights the gap in protection of freedom of association in Australian law.

Laws in NSW are wide enough to place restrictions on any person (not just ‘bikies’) from consorting with persons convicted of an indictable offence.⁷ These laws strongly infringe on peoples’ right to interact for reasonable purposes, such as to socialise or assemble peacefully.⁸ Anti-consorting laws seriously risk criminalising otherwise legitimate interactions and dismantling social units and ought to be repealed.⁹

Proposed Recommendation

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

⁵ *Vicious Lawless Association Disestablishment Act 2013* (Qld). The Australian Human Rights Commission has expressed its concern that the laws violate the right to equality before the law, freedom of association, freedom of expression and the right to take part in public affairs. Australian Human Rights Commission *Freedom and Rights Concerns in QLD Bikie Laws*

<http://www.humanrights.gov.au/news/stories/freedoms-and-rights-concerns-ql-d-bikie-laws>.

⁶ *Kuczborski v Queensland* [2014] HCA 46, para 208.

⁷ *Crimes Act 1900* (NSW), s 93X.

⁸ Public Interest Advocacy Centre, *Targeting criminality: Submission in response to the NSW Ombudsman’s Issues Paper: Review of the use of the consorting provisions by the New South Wales Police Force*, 27 February 2014.

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Free speech

Federal and state governments have been progressively curtailing NGO advocacy by using a range of funding levers to restrict the advocacy of civil society. Since July 2014, federal government funding contracts have prohibited community legal centres from using federal funds to undertake law reform and advocacy work, severely restricting their ability to speak out on systemic issues affecting their vulnerable client group. The Australian Government also cut funds to prominent advocacy organisations such as the National Congress of Australia's First Peoples, the Refugee Council of Australia and the Environmental Defenders Offices. The Government is sending a message to NGOs that receive government funding – if you speak out, you risk losing your funding.

The tax deductible status of environmental NGOs is also under scrutiny through a parliamentary inquiry. Hostile statements made by several MPs about the advocacy work of environmental organisations, raise concerns that the inquiry could be a vehicle to stifle important voices in the environmental movement.¹⁰

Refugee issues have also led to increased political attacks on the President of the Australian Human Rights Commission (see Fact Sheet 1) and other threats to whistleblowers and restrictions on press freedom. For example, the Australian Government has referred a number of journalists to the Federal Police in a bid to uncover confidential sources of immigration detention stories.¹¹

Most recently, in June 2015, the government passed a new law that limits transparency and accountability at detention centres. The new law allows for sentences of two years jail to be imposed on doctors, teachers and social workers employed in detention centres who disclose confidential information, including abuse.¹²

Proposed Recommendation

Australia should ensure that the withholding or the threat of withholding government funding is not used to stifle free speech in the community sector.

¹⁰ See discussion in Human Rights Law Centre submission to the House of Representatives Standing Committee inquiry, May 2015, at: http://hrlc.org.au/wp-content/uploads/2015/05/HRLC_REO_Submission_21May2015.pdf.

¹¹ See Paul Farrell, "Journalists reporting on asylum seekers referred to Australian police," *The Guardian*, 22 January 2015, at: <http://www.theguardian.com/australia-news/2015/jan/22/journalists-reporting-on-asylum-seekers-referred-to-australian-police>.

¹² Australian Border Force Act 2015 (Cth), Part 6.

Australia should create an enabling tax environment for non-government organisations to ensure that they can continue their valuable work, including advocacy.

Australia should stop intimidation of whistleblowers and repeal laws that penalise the disclosure of human rights abuses in immigration detention.

Voting rights

The state of Queensland bans all persons serving a sentence of imprisonment from voting, denying prisoners their fundamental right to vote.¹³ All state and federal electoral laws also deny the vote to persons of "unsound mind", a term that is vague, stigmatising and overly broad.¹⁴ This exclusion from voting violates the right to vote of persons with disabilities, their right to equality and their right to freedom from discrimination on the basis of disability. The Australian Electoral Commission found that 28,000 people were removed from the electoral roll between 2008 and 2012 on this basis.¹⁵

In May 2014, Queensland passed voter ID laws requiring persons wishing to vote in a state election to produce identification. These laws were repealed on 7 May 2015 after a change of government. The laws restricted the right to vote and are particularly harmful towards already marginalised and disadvantaged groups.¹⁶ While Queensland is the only state to have introduced these laws, similar laws have been endorsed for introduction at the national level by the ruling Liberal party.¹⁷

Proposed Recommendation

Australia should ensure that all persons have the right to vote subject only to restrictions that are reasonable and proportionate, in accordance with international law.

¹³ *Electoral Act 1992* (Qld), s 106(3).

¹⁴ See *Commonwealth Electoral Act* s 93(8)(a); *Electoral Act 2004* (Tas) s31(1); *Electoral Act 1992* (QLD) s64; *Northern Territory (Self Government) Act 1978* (Cth) s14(1); *Electoral Act 1992* (ACT) s72(1); *Constitution Act 1975* (Vic) s48(2)(d); *Parliamentary Electorates and Elections Act 1912* (NSW) s25.

¹⁵ Joint Standing Committee on Electoral Matters Advisory Report on the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, August 2012, p 29.

¹⁶ Including, the elderly and young voters, people in remote rural regions, people with disabilities, Aboriginal and Torres Strait Islander people and the homeless, from: HRLC, Queensland passes first Australian voter ID laws as Liberal Party flags reforms at national level (22 May 2014), at: <http://hrlc.org.au/queensland-passes-first-australian-voter-id-laws-as-liberal-party-flags-reforms-at-national-level/>.

¹⁷ Joint Standing Committee on Electoral Matters, User friendly, not abuser friendly (May 2001), p vii, at: <file:///C:/Users/Anja/Downloads/http---www.aphref.aph.gov.au-house-committee-em-eleccroll-front.pdf>.