

# AUSTRALIA - THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION TO ADVANCE CLIMATE JUSTICE

## SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

### REPORT TO THE 76<sup>TH</sup> SESSION OF THE GENERAL ASSEMBLY

Amnesty International submitted this document in response to the call for inputs issued by the Special Rapporteur on the rights to freedom of peaceful assembly and of association to inform his report to the 76<sup>th</sup> session of the General Assembly. This document responds to the questions by the Special Rapporteur in relation to Australia.

### QUESTIONS

- 1. What are examples of climate justice activism from your country or region? What has been their impact over the last 5 years? What is the role that the rights to freedom of peaceful assembly and of association plays in those movements and their impact? When successes were achieved, what tools and strategies were used to achieve them? For example, do climate defenders or affected communities in your country engage in civil disobedience, non-violent protest actions or digital activism?**

Examples of climate justice activism in Australia include youth-led movements such as Schools Strike 4 Climate, the Australian Youth Climate Coalition, and Seed, a movement of Aboriginal and Torres Strait Islander young people, all of whom engage in digital activism and non-violent protest. Other movements such as Stop Adani also engage in digital activism and non-violent protest actions against the failure of successive Australian governments to adequately address climate change, and the continued expansion of fossil fuel projects in Australia.

Some climate justice activists in Australia including Extinction Rebellion, the Galilee Blockade, and the Frontline Action on Coal, engage in civil disobedience.

Aboriginal and Torres Strait Islander peoples have a long and proud history of activism, particularly at the intersection of climate justice and cultural rights, protesting against operations by the fossil fuel industry traditional lands, the destruction of cultural heritage by the fossil fuel industry and others, and calling for government action to address climate change. This includes non-violent protests by the *Gamilaraay Next Generation* and the *Gamil Means No* movements against a Santos coal seam gas project in northwest New South Wales.

Over the last 5 years, the climate change movement in Australia, in the face of considerable opposition from the federal government, state governments, and the fossil fuel industry, has achieved impact in advancing climate justice.

These impacts include activists holding mining company Rio Tinto accountable for the destruction the Juukan Gorge, a sacred site for the Puutu Kunti Kurrama and Pinikura (Binigura) peoples. Protests, including by shareholder

activists, led to the resignation of Rio Tinto's chief executive Jean-Sebastien Jacques. The Stop Adani campaign has led to over 65 companies including banks, engineering firms, and insurance companies, to declare that they would not work on the Adani coal mine.

The right to freedom of peaceful assembly and of association is critical to the success of climate movements in Australia, and to their impact. The Australian government has been hesitant to take action to address climate change, and often hostile to climate change movements who protest their inaction. Thus, it is imperative that the rights to freedom of association and assembly are protected in Australia so climate activists are protected from the governments' hostility and can protest the government's inaction on climate change.

- 2. What are the particular challenges and threats to exercising assembly and association rights to advance climate justice in your country or region? For example, what sort of restrictions on peaceful protest does climate defenders face in your country or region? What was the rationale advanced when these restrictions were introduced? What are the most common restrictions on the right to freedom of association facing those engaged in climate justice activism, including operation and access to funding barriers?**

Particular challenges to exercising the rights of freedom of assembly and association, and advancing climate justice, include recent changes to laws that unnecessarily restrict peaceful protest tactics in Queensland, the use of disproportionate and unnecessary force by police against peaceful protesters, and the influence of fossil fuel industries on both the Queensland laws, and the Australian government's public statements concerning climate change activists.

The rationale advanced for these restrictions is often that these protests are disrupting 'ordinary Australians,' particularly when protests have blocked roads. Governments also contend that protest threatens the livelihoods of 'ordinary Australians', when activists such as the Frontline Action on Coal group interfere with the operations of mining companies.

- 3. What are the unique challenges and threats to peaceful assembly and association rights face climate defenders belonging to at-risk groups, in particular, children and youth, indigenous peoples and women and girls? What barriers, challenges and impacts, including those arising from the legal framework governing associations and assemblies, do these populations face in this context?**

There are unique challenges faced by at-risk groups in Australia, including children and youth and Indigenous peoples, when exercising their rights to peaceful assembly and association. Prime Minister Scott Morrison has condemned Schools Strike 4 Climate activists and the Australian Youth Climate Coalition for their peaceful protests.<sup>1</sup> The Prime Minister responded to a question about the Schools Strikes by saying "what we want is more learning in schools and less activism in schools." Indigenous protests are particularly over-policed, and protesters can face arrest and detention for minor infractions while taking part in peaceful protests.

- 4. Please provide any specific examples illustrating violation of the rights to freedom of peaceful assembly and of association against climate defenders in your country or region, for example: (1) laws that restrict peaceful assembly and association rights of those engaged in climate justice; (2) violent repression and criminalization of climate peaceful protests; (3) killings, harassment, and intimidation against climate defenders, affected communities and climate protest leaders; (4) restrictions to public participation by affected communities, including indigenous peoples and women, in climate decision making; (5) gender based violence, including online and sexual violence committed particularly against women climate defenders, (6) digital surveillance and other digital threats against climate defenders and (7) the role of companies, particularly the fossil fuel industry, in these contexts.**

In recent years several Australian jurisdictions have proposed laws that restrict the right to peaceful assembly and association of those engaged in climate activism, and could criminalise peaceful protest tactics. In October 2019,

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<sup>1</sup> The Guardian, "Scott Morrison tells students striking over climate change to be less activist", 26 November 2018, <https://www.theguardian.com/environment/2018/nov/26/scott-morrison-tells-students-striking-over-climate-change-to-be-less-activist>

the Queensland government passed the *Summary Offences and Other Legislation Amendment Act 2019*, which created an offence that outlawed using a dangerous attachment device to "unreasonably interfere with the ordinary operation of transport infrastructure" with a maximum penalty of up to two years' jail or a fine of up to \$6,672.50.<sup>2</sup> The *Act* also increased police search powers and could allow the police to search and arrest anyone engaged in civil disobedience. On the day the bill passed, Queensland police strip-searched a 17-year-old girl, among 20 other Extinction Rebellion protesters.<sup>3</sup>

Four UN Special Rapporteurs commented that the Act 'unduly restricts the right to freedom of peaceful assembly' and is 'inherently disproportionate'.<sup>4</sup>

Other jurisdictions in Australia have proposed laws that would criminalise peaceful protest tactics, including in Tasmania.<sup>5</sup> The laws, which were proposed in 2019, failed to pass Tasmania's Legislative Council, contained several vaguely defined offences. Lawyers and civil liberties groups argued the laws could lead to people being charged for "standing on a footpath and handing out pamphlets."<sup>6</sup> Many of the offences contained in the Bill were already covered by existing laws, such as trespass, and the Bill imposed harsher penalties for offences conducted at protests, such as trespassing while protesting, than contained in existing laws. Under the Bill protesters faced up to 21 years in prison for peaceful protest.<sup>7</sup>

The federal government amended the *Criminal Code Amendment (Agricultural Protection) Bill* in 2019 to create harsh penalties for those who incite others to trespass, following protests involving trespass. The federal government has also proposed expanded powers for the Australian Charities and Not-for-profits Commission (ACNC) that would allow them to deregister a charity where the ACNC "reasonably believes" its members are likely to commit a summary offence.<sup>8</sup> The government is expected to introduce the amendments to Governance Standards contained in the *Charities Act 2013* to Parliament by the end of 2021. The proposal lowers the standard of proof so that "it is not necessary for a registered entity to be charged or found guilty of a relevant summary offence for the ACNC Commissioner to take enforcement action," and would place significant administrative burdens on charities in Australia, who could risk deregistration for supporting civil disobedience, or even appearing to.<sup>9</sup>

A number of climate activists have been subject to strict bail conditions, including some climate activists who were remanded in custody for up to 27 hours for obstructing traffic on Broadway road in Sydney. In New South Wales, police have imposed strict bail conditions on Extinction Rebellion activists, preventing them from "going near, or contacting or trying to go near or contact (except through a legal representative) any members of the group Extinction Rebellion," and banning them from within 2.5 kilometres of the Sydney city centre. One arrested protester, Lily Campbell, said she was held for 27 hours, and refused food for 17 hours, as the police tried to convince her to sign the bail conditions.<sup>10</sup>

In Queensland, French journalist Hugo Clément was arrested and charged with trespassing in July 2019 while covering a protest against the Adani coal mine. His bail conditions included an unprecedented ban on reporting near Adani's Carmichael mine site. Other bail conditions that have impacted climate activists' rights to freedom of assembly and of association include a decision to remand three Extinction Rebellion activists in custody for more

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<sup>2</sup> Queensland, Summary Offences and Other Legislation Amendment Act, 2019, <https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2019-035>

<sup>3</sup> The Guardian, "Teenage girl among 20 Extinction Rebellion activists strip-searched by Brisbane police", 24 October 2019, <https://www.theguardian.com/australia-news/2019/oct/24/teenage-girl-among-20-extinction-rebellion-activists-strip-searched-by-brisbane-police>

<sup>4</sup> The Guardian, "Queensland anti-protest laws 'inherently disproportionate', UN human rights experts say", 13 December 2019, <https://www.theguardian.com/australia-news/2019/dec/13/queensland-anti-protest-laws-inherently-disproportionate-un-human-rights-experts-say>

<sup>5</sup> ABC, "Move to revive anti-protest laws in Tasmania a 'face-saving exercise', Bob Brown says", 29 January 2019, <https://www.abc.net.au/news/2019-01-28/tasmania-revives-anti-protest-laws/10755796>

<sup>6</sup> Human Rights Law Centre "Proposed anti-protest laws would trample the democratic rights of all Tasmanians", 23 March 2021, <https://www.hrlc.org.au/news/2021/3/23/proposed-anti-protest-laws-would-trample-the-democratic-rights-of-all-tasmanians>

<sup>7</sup> Amnesty International Australia, "Draconian anti-protest legislation would take Tasmanian back to the dark ages", 15 November 2019, <https://www.amnesty.org.au/draconian-anti-protest-legislation-would-take-tasmanian-back-to-the-dark-ages/>

<sup>8</sup> Amnesty International notes the Commission is not independent as the Commission's members are directly appointed by the federal government.

<sup>9</sup> The Guardian, "Charities slam government plan to deregister organisations that may commit crimes", 25 February 2021, <https://www.theguardian.com/society/2021/feb/25/charities-slam-government-plan-to-deregister-organisations-that-may-commit-crimes>

<sup>10</sup> The Guardian, "Absurd' bail conditions prevent Extinction Rebellion protesters 'going near' other members", 9 October 2019, <https://www.theguardian.com/environment/2019/oct/09/absurd-bail-conditions-prevent-extinction-rebellion-protesters-going-near-other-members>

than two weeks for an act of non-violent civil disobedience. One of the activists was a media spokesperson, who claimed to have not engaged in civil disobedience but rather to be liaising with the media.<sup>11</sup>

The policing of peaceful protests has at times been characterised by the use of unnecessary and disproportionate force, and those responses have repressed peaceful protests, particularly during the Covid-19 pandemic. In New South Wales police pepper sprayed peaceful protesters in June 2020, mounted police chased student protesters in September 2020, police forcefully pushed both protesters and bystanders to the ground at several protests at the University of Sydney in 2020, and arrested dozens of students and staff for breaches of public health orders. The police's disproportionate and unnecessary use of force caused injuries to multiple students and bystanders at the University of Sydney.

COVID-19 restrictions have criminalised peaceful protests during the Covid-19 pandemic, including the arrest and detention of dozens of peaceful protesters in New South Wales for breaches of *Public Health Orders*, and the issuing of \$1000 fines to dozens of peaceful protesters. Penalties applicable for breaches of public Health Orders include up to 6 months in prison.<sup>12</sup>

The New South Wales police's intimidating use of force was to enforce Covid-19 restrictions, and with the purported aim of protecting public health. However, in New South Wales, Covid-19 restrictions concerning public assemblies have been disproportionate to the threat posed by the pandemic, inconsistent with, and significantly harsher than, restrictions on other outdoor public gatherings such as community sport. As public assemblies continued to be limited to groups of 20, restrictions were gradually eased elsewhere, allowing thousands to attend the beach, the football, and to congregate in indoor shopping centres.<sup>13</sup>

New South Wales police have been frequently observed carrying Long Range Acoustic Devices (sound cannons) at protests in Sydney. In Queensland police have been accused of employing heavy-handed and aggressive tactics to deal with Extinction Rebellion activists engaged in civil disobedience who stopped traffic in Brisbane in 2019.<sup>14</sup>

The influence of companies in government's restrictions on the rights to freedom of assembly and of association, and particularly the fossil fuel industry, is a particular concern in Australia. Australia is the world's second-largest exporter of coal by volume, and the federal government has long resisted calls to commit to adequate emission reduction targets for 2030 and over the long-term.

Notably, the Queensland government sought the input of the Queensland Resources Council, a fossil-fuel industry body, on the *Summary Offences and Other Legislation Amendment Act 2019 Act*.<sup>15</sup>

Prime Minister Scott Morrison, while speaking to a mining lobby group in November 2019, told the group that the federal government would consider measures that would make it illegal for climate activists to advocate for boycotts of companies that do business with mining companies.<sup>16</sup> The Prime Minister's proposal was welcomed by the Minerals Council of Australia, the Australian Forest Products Association, and the Business Council of Australia.<sup>17</sup>

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<sup>11</sup> <https://www.theguardian.com/environment/2019/dec/04/extinction-rebellion-protesters-to-be-held-in-jail-for-at-least-two-weeks-after-being-denied-bail>

<sup>12</sup> New South Wales, Public Health Act, 2010, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2010-127>, Division 3, section 118.

<sup>13</sup> Amnesty International Australia, "Covid-19 crackdowns: The policing of protest in New South Wales during the Covid-19 pandemic", 5 May 2021, <https://www.amnesty.org.au/wp-content/uploads/2021/04/COVID19-CRACKDOWNS-POLICING-PROTEST-NSW-BRIEFING-12042021-FINAL.pdf>

<sup>14</sup> The Guardian, "Queensland police arrest 56 climate change protesters in Brisbane", 6 August 2019, <https://www.theguardian.com/environment/2019/aug/06/queensland-police-arrest-56-climate-change-protesters-in-brisbane>

<sup>15</sup> The Guardian, "Queensland government sought mining industry input on laws targeting protesters", 19 September 2019, <https://www.theguardian.com/australia-news/2019/sep/19/queensland-government-unveils-proposed-laws-against-protester-locking-devices>

<sup>16</sup> Reuters, "Australia's threat to outlaw mining protests highlights industry split", 4 November 2019, <https://www.reuters.com/article/us-column-russell-mining-climatechange-idUSKBN1XE003>

<sup>17</sup> Australian Financial Review, "Morrison vows to take action against environmental 'anarchists'", 1 November 2019, <https://www.afr.com/politics/federal/morrison-vows-to-take-action-against-environmental-anarchists-20191101-p536fk>

**5. What measures and actions would you recommend that States and businesses take to ensure the promotion and protection of freedom of peaceful assembly and of association in the context of climate action?**

To promote and protect the freedom of assembly and association in Australia, the federal government should pass a *Human Rights Act* with explicit protections for the rights to freedom of peaceful assembly and association, and accountability for abuses of those rights. State governments should also adopt similar legislation to promote and protect the freedom of peaceful assembly and association. Any restrictions on the right to freedom of expression and the right to peaceful protest should be in line with international human rights law and standards and fundamentally uphold those rights as its primary objective.

In accordance with the UN Declaration on human rights defenders, and the 2019 resolution on environmental human rights defenders, the Australian government should provide a safe and enabling environment for all human rights defenders and those participating in peaceful activism, refrain from using disparaging language, and recognise the important role that they play in upholding human rights.

Police should take action to ensure they comply with international human rights standards, including the *UN Code of Conduct for Law Enforcement Officials* and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. This includes resourcing independent investigations into all allegations of disproportionate and unnecessary force by police at protests. State and federal ministers must make clear the role of police is fundamentally to uphold the right to freedom of expression, including the right to peaceful assembly.

**6. What is the role of multilateral institutions, including bodies and processes within the United Nations Framework Convention on Climate Change, in supporting individual's peaceful assembly and association rights in the context of climate action? What type of measures should be adopted by multilateral institutions to promote and ensure affected communities and climate defenders can enjoy these freedoms without fear of reprisals and attacks?**

The role of multilateral institutions includes raising awareness of the repression of climate activists in Australia and of Australia's inaction on climate change to the international community, writing to governments and calling for them to end repressive laws and policies, calling for the reform of policing, and pressuring the Australian government to take concrete climate action and meet its international obligations on climate change.