

JOINT STATEMENT: Australians' right to protest

Endorsed by: NATSILS, Human Rights Law Centre, RACS, Amnesty, Grata Fund, NSW Council of Civil Liberties, Community Legal Centres NSW

Today seven legal and human rights groups condemned the approach of many Australian governments to recent Black Lives Matter and refugee rights protests, stating it is inconsistent with our democratic rights and freedoms.

The legal right to protest is fundamental to our democracy. Protests hold governments to account and make our country better. While the powerful few are able to write cheques or call their friends in high places, protests are how the invisible or ignored can become seen and heard by government. Only after tireless, sustained protest did Aboriginal and Torres Strait Islander people win the right to vote, did LGBT+ people achieve marriage equality, and did unions secure the eight hour work day.

Right now, the right to protest is vital for minority groups and supporters who continue to rally against state violence and injustice. Historically, overturning injustice of this kind requires incredible public momentum and visibility, which can only be sustained through protest. Since colonisation, Aboriginal and Torres Strait Islander Peoples have fearlessly fought for an end to police violence, discriminatory laws and the structural racism that locks them out of justice. The pressure is building on governments here in Australia to finally act on what First Nations people have been calling on for decades: an end to Black deaths in custody and an end to police violence.

As State and Federal governments continue to lift restrictions across the country - reopening restaurants, gyms and cinemas - they also have a democratic responsibility to facilitate safe and peaceful protests in accordance with their obligations under international law.

The Public Health Association of Australia has stated that peaceful protest is safe at this time provided practical steps are taken, like the use of masks. Governments could easily meet their international law obligation to facilitate peaceful protest by distributing personal protective equipment and by, for instance, closing off additional roads and public spaces to allow more opportunity for protesters to socially distance.

The groups call on State, Territory and Federal governments to refrain from knee-jerk responses. NSW Police Minister David Elliott announced plans to introduce legislation to ban protests of more than ten people, setting an incredibly alarming and undemocratic precedent.

Instead of committing to systemic change to keep Aboriginal and Torres Strait Islander people out of prisons and end Black deaths in custody, Prime Minister Scott Morrison called for Black Lives Matter protesters to be arrested and charged for exercising their democratic right. He did this just days before announcing football stadiums with crowds of 10,000 would be reopening next month.

Nerita Waight, Co-Chair of National Aboriginal and Torres Strait Islander Legal Services:

“We cannot be silent while police violence is unchecked and continues to kill our people. Upholding freedom of expression and assembly at times like this is critical and we encourage governments to

ensure that people attending the peaceful protests are doing so in the safest way possible. We strongly encourage governments to use methods that do not result in the further criminalisation of, or violence to, Aboriginal and Torres Strait Islander people - including fines.”

Alice Drury, Senior Lawyer at the Human Rights Law Centre:

“It is unacceptable that some Australian governments are talking about arresting protesters because of COVID-19 restrictions, while in the next breath celebrating the opening of football stadiums.

“Police and governments should be reaffirming their commitment to the right to protest, and observing their obligation at international law to facilitate peaceful protest safely.”

Nicholas Cowdery AO QC, President NSWCCCL:

“The public’s right to protest is a vitally important civil liberty that serves very valuable purposes in the advancement of our democracy. Rights must be exercised responsibly, so as not to cause avoidable harm. In the present context of the pandemic, it falls to protesters and those regulating them to ensure that public health measures in place are observed while the right to protest is exercised.

“The regulators also need to ensure that appropriate discretion is exercised in the enforcement of rules.”

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