

1 June 2024

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*By email: policy@dcj.nsw.gov.au;
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Dear Director, Law Enforcement and Crime Team Policy (DCJ) and Transport for NSW,

Review of *Roads Act 1993*, Part 9, Division 7 and *Crimes Act 1900*, Part 4AF

We write this submission in our capacity as academics at the Faculty of Law, University of Technology Sydney. We welcome the opportunity to submit to the review with regard to:

1. Whether the policy objectives remain valid; and
2. Whether the terms remain appropriate for securing these objectives.

Should you have any questions in relation to our enclosed submission, please contact the corresponding author, Dr Elyse Methven, by email to Elyse.Methven@uts.edu.au.

Yours sincerely,

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Encls.

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Submission

1. Introduction

There is a common law right to freedom of assembly,¹ in the absence of an explicit constitutional right. In addition, the right to peaceful assembly is protected by the implied freedom of political communication in the Constitution, since protests are a form of political communication.² In Australia, the right to free political communication in the form of protest has been linked to ensuring the efficacy of electoral accountability for the exercise of legislative and executive power.³

Recently, the NSW Supreme Court has recognised that legislation that restricts free assembly can encroach on this implied freedom and be thereby declared invalid.⁴ That decision is discussed further in Part 3 of this submission.

The right to peaceful assembly is enshrined in a number of international human rights instruments, including Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The right to peaceful assembly is closely associated with the rights to freedom of expression and freedom of association, which are both also enshrined in international human rights instruments. An assembly in itself is usually understood to be a form of expression. With respect to the right to freedom of expression, Article 19(1) of the ICCPR states:

¹ Notably, common law freedoms operate ‘only to the extent that laws do not encroach on them’. Tom Gotsis, *Protest Law in NSW*, 5.

² *Brown v Tasmania* [2017] HCA 43 at [182] (*‘Brown’*).

³ *Kvelde v State of New South Wales* [2023] NSWSC 1560 (*‘Kvelde’*), [415]; *Brown*.

⁴ See *Kvelde*, [415].

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In regard to the right to freedom of association, Article 22 of the ICCPR states:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

In the United States, the constitutional right to free expression has been called a 'powerful medicine' in a diverse society:

It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that the use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would

comport with the premise of individual dignity and choice upon which our political system rests. ...

To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits and, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength.⁵

Australia differs from the US in that the US Constitution explicitly recognises ‘the right of the people peaceably to assemble, and to petition the Government for a redress of grievances’ (First Amendment). The inclusion of a comma after assemble has been interpreted to signify that the intention of the Founders was to protect two separate rights — the right to assemble and the right to petition — though modern Supreme Courts have subsumed both rights within the expansive ‘freedom of expression’ right.⁶

2. The Importance of the Right to Protest

Many rights that we take for granted in Australia today, including the rights of women and First Nations people to vote and to equal wages, marriage equality, abortion rights and fair working conditions, emanate from decades of collective action and protests. Protests are essential not just for the functioning of a democratic society but for the interests of marginalised groups to be expressed and progressed. Justice Murphy held in the High Court decision of *Neal v The Queen*, which involved a protest against the repressive conditions of an Aboriginal reserve:

Many of the great religious and political figures of history have been agitators, and human progress owes much to the efforts of these and the many who are unknown. As Wilde aptly pointed out in *The Soul of Man under Socialism*, ‘Agitators are a set of interfering, meddling people, who come down to some perfectly contented class of the community and sow the seeds of discontent amongst them. That is the reason why

⁵ *Cohen v. California*, 403 U.S. 15 (1971), 24-25.

⁶ John Inazu, ‘The Forgotten Freedom of Assembly,’ (2010) 84(565) *Tulane Law Review* 604.

agitators are so absolutely necessary. Without them, in our incomplete state, there would be no advance towards civilisation.’⁷

People turn to protest because efforts to communicate with politicians are frustrated and exhausted. Protests convey the importance of particular causes and the collective support for particular causes, as well as draw attention to and educate the community on these issues. They are an essential vehicle to express solidarity with oppressed peoples and communicate dissent to government policies.

In recent years, NSW has had a vibrant movement of non-violent, effective protests. For instance, in 2020, tens of thousands of people gathered and marched from Town Hall to Belmore Park in Sydney as part of the Black Lives Matter movement. This collective action led to a NSW Parliamentary Inquiry into First Nations Deaths in Custody and a number of reforms, including the removal of hanging points in NSW correctional centres and additional resourcing and Aboriginal casework for inquests into First Nations deaths in custody.⁸

More recently, weekly protests and peaceful encampments have been organised across the world, including in NSW, to express solidarity with the Palestinian community and seek to put pressure on governments and institutions (such as universities) to comply with their obligations under international law. Their demands call for the withdrawal of Australia’s contribution to the risk of genocide in Palestine, through the government and institutions cutting funding, ties and support for the Israeli military.⁹ The encampments specifically have urged Australian university managers and academics to fulfil their international obligation to not conduct research that supports the risk of genocide of Palestinian civilians.¹⁰ Such encampments have been successful in raising awareness of university relations with weapons manufacturers who have contributed weapons to the Israel Defence Forces. The encampments at Sydney and

⁷ (1982) 149 CLR 305 at 316-17.

⁸ ‘NSW Government response: Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody’ <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2602/Government%20response%20-%20First%20Nations.pdf>>.

⁹ Raffi Berg, ‘Top UN court orders Israel to stop Rafah offensive’ (BBC News, online, May 2024) <<https://www.bbc.com/news/articles/crggvmyz03vo>>; Sara Dehm, ‘Australian universities and the “plausible” genocide in Gaza: What are the legal and ethical risks and responsibilities?’ (ABC News, online, 22 March 2024), <<https://www.abc.net.au/religion/australian-universities-icj-plausible-genocide-gaza/103620064>> (‘Australian universities and the “plausible” genocide in Gaza’).

¹⁰ Dehm, ‘Australian universities and the “plausible” genocide in Gaza’.

Melbourne universities have contributed to university managements making commitments to disclosure and review such relationships.¹¹

3. *The Roads and Crimes Legislation Amendment Act 2022 and the Decision in Kvelde v State of New South Wales*

NSW has recently seen an expansion of anti-protest laws in the form of police powers and criminal offences. The amendments made by the *Roads and Crimes Legislation Amendment Act 2022* to the *Crimes Act 1900* (NSW) and the *Roads Act 1993* (NSW), which are the subject of the present submission, exemplify this expansion. The amendments, commencing on 1 April 2022, less than 30 hours after the Bill was introduced in Parliament, were in direct response to climate change protests. Specifically, they were designed to target protest activities which disrupt the use of infrastructure facilities such as railways, ports and transport facilities — with s 214A(1) of the *Crimes Act* prescribing maximum penalties of two years imprisonment and/or \$22,000 in fines in circumstances where protest activities cause damage to the facility; seriously disrupt or obstruct people attempting to use the facility; cause the facility to be closed or partially closed; or cause people trying to use the facility to be redirected. In the Second Reading Speech to the *Roads and Crimes Legislation Amendment Bill 2022*, then NSW Attorney General, Mark Speakman, recognised that an array of offences already existed to capture the protest activities complained about. He nonetheless argued that the protests warranted more serious penalties.¹²

In *Kvelde v State of New South Wales* ('*Kvelde*'), two members of the Knitting Nannas, who conduct protests to raise awareness about environmental harms, sought a declaration that the laws were unconstitutional because they burdened their right to political communication.¹³ The NSW Supreme Court found subs 214A(1)(c), so far as the provision concerns the closure of part of a major facility and subs 214A(1)(d) impermissibly infringe the implied freedom of

¹¹ 'Pro-Palestinian protesters announce end to University of Melbourne encampment after claiming 'major win'' (ABC News, online, 22 May 2024) <<https://abc.net.au/news/2024-05-22/pro-palestinian-melbourne-university-encampment/103881534>>; Daniella White, 'Student campers reject Sydney University's pledge to review defence ties' (Sydney Morning Herald, online, 28 May 2024) <<https://www.smh.com.au/national/nsw/sydney-university-s-pledge-to-review-defence-ties-rejected-by-student-campers-20240528-p5jhfq.html>>

¹² New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022 (Mark Speakman, Attorney General).

¹³ [2023] NSWSC 1560.

political communication. Specifically, the Court found that the new section of the *Crimes Act* did:

effectively burden the implied freedom in its terms, operation and effect... the law is, therefore, constitutionally invalid unless justified...¹⁴

While the Court found that the purpose of ‘increas[ing] deterrents to conduct ... causing damage or serious disruption or obstruction to or closure of major facilities, and hence, causing harm to the community generally’¹⁵ was a legitimate one, the Court nonetheless held that:

... the impugned law has failed at the stage of analysis in considering structural proportionality concerning necessity. That is, there is an obvious and compelling alternative to the impugned law which is equally practicable and available and would result in a significantly lesser burden. The impugned law is also inadequate in its balance.

Both of those conclusions concern the operation of subs 214A (1)(c) (so far as the provision concerns the partial closure of a major facility) and subs 214A(1)(d) (so far as those provisions relate to the conduct of entering, remaining on or near to any part of a major facility).

As such, s 214A imposes an unjustified burden on the implied freedom to communicate on governmental and political matters which is an indispensable incident of the constitutionally prescribed system of government.¹⁶

Importantly, the Court found the burden to be unjustified where the protest activity causes people to be redirected or a facility to be partially closed — an outcome which the Knitting Nannas have claimed as a partial victory.

¹⁴ Ibid [557].

¹⁵ Ibid [558].

¹⁶ Ibid [562]-[564].

Since the decision in *Kvelde*, it was reported in March 2024 that 19 protestors at Port Botany were arrested and charged with obstructing roads or paths, failing to comply with a move on direction, and remaining ‘near or on [a] major facility causing serious disruption’.¹⁷ The protestors had been protesting a cargo ship owned by the Israeli company ZIM. It has been alleged that ZIM has provided support for Israel’s war effort, although the company has stated that its cargo to and from Australia does not contain ‘arms shipments of any kind’.¹⁸ Police had demanded that the protestors move on or be arrested, according to reports.¹⁹ Prior to this, 23 people were arrested in November 2023 at Port Botany for protesting the unloading of an Israeli-owned shipping company vessel.²⁰ It has been reported that they were charged with failing to comply with a move-on direction, and damage or disruption to a major facility.²¹ Their cases are still before the NSW courts.

4. Business Interests Elevated over Community Concerns

While anti-protest laws are often introduced with the stated purposes of promoting safety and protecting the public, a primary reason for broadening protest laws in Australian states and territories has been to protect business interests (primarily those of mining, deforestation or gas industries).²² In the expanding criminalisation of non-violent protest action, governments have elevated these business interests over civil and political rights.²³ Examples of legislation introduced to stop protests interfering with business interests include the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016* (NSW) passed

¹⁷ Madeleine Achenza, ‘19 charged over pro-Palestine protest at Sydney port’ (News.com.au, online, 25 March 2024) (‘19 charged over pro-Palestine protest’) <<https://www.news.com.au/national/nsw-act/crime/19-charged-over-propalestine-protest-at-sydney-port/news-story/413961024d2363dba841aa22ca085f46>>

¹⁸ Zacharias Szumer, ‘In Australia, Palestine Solidarity Activists Are Blockading ZIM Ships Owned by Israel’ (Jacobin, online, 13 December 2023) <<https://jacobin.com/2023/12/australia-palestine-solidarity-zim-isreal-war-gaza-blockade>>

¹⁹ Achenza, ‘19 charged over pro-Palestine protest’.

²⁰ ‘NSW Police charge 23 pro-Palestinian activists over protest against Israeli shipping line ZIM at Sydney’s Port Botany’ (ABC News, online, 22 November 2023) <<https://www.abc.net.au/news/2023-11-22/nsw-port-botany-protest-arrests-zim-sydney-port-botany/103134228>>

²¹ Ibid.

²² Aidan Ricketts, ‘Anti-protest laws: Lock up your nannas’ (2017) 42(2) *Alternative Law Journal* 107 (‘Anti-protest laws’).

²³ Ibid.

in April 2016,²⁴ as well as the provisions of the *Roads Act 1993* and *Crimes Act 1900* currently under review. Academic and environmental activist Aidan Ricketts has identified a ‘language of extremism or even fascism’²⁵ that politicians have used to discredit and ostracise mainstream, non-violent protest actions.

5. Protests Necessarily Interrupt Routines and Activities

In *Commissioner of Police v Langosch*,²⁶ the NSW Supreme Court declined to grant an order sought by the NSW Commissioner of Police ‘prohibiting’²⁷ the holding of a public assembly arranged by the Al-Nakba Planning Committee to commemorate the displacement of Palestinians.²⁸ The Police Commissioner argued that the protest would be a threat to the safety of protestors and pedestrians and significantly interfere with commuters leaving the city at the end of the working day.

In the reasons for her decision, Justice Adamson recognised that the primary purpose of the protest was to commemorate Nakba Day, which that year fell on a weekday. Her Honour said it was ‘inevitable’ that:

the public assembly proposed by the defendant will inconvenience commuters and other members of the public endeavouring to use streets and footpaths along the route. There will be aggravation and a risk of danger caused by the added pedestrian traffic on the footpath and the likely spillage of pedestrians onto the road. ... It will present a significant challenge to the plaintiff's police officers to keep the peace and ensure that the public assembly does not cause a breach of the peace or that the consequences of any such breaches is minimised. It will probably be a thankless task.²⁹

²⁴ See discussion in Vicki Sentas and Michael Grewcock, ‘Criminal Law as Police Power: Serious Crime, Unsafe Protest and Risks to Public Safety’ (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 75, 81.

²⁵ Ricketts, ‘Anti-Protest laws’, 111.

²⁶ [2012] NSWSC 499 (*Langosch*).

²⁷ The idea that an order granted under the section prohibits a protest is misleading. Justice Adamson remarked that the word ‘prohibit’ in s 25 of the Act is inapposite since a s 25 order does not prohibit the holding of a public assembly at all. All it does is deprive the participants in the public assembly of the additional protection that is afforded by s 24: *Ibid*, [19].

²⁸ Al-Nakba commemorates the displacement of Palestinians that followed the Israeli Declaration of Independence in 1948 and takes place on 15 May: *Ibid*.

²⁹ *Ibid*, [31].

Her Honour, nonetheless, refused the Police Commissioner's application to prohibit the protest. Despite the inconveniences and challenges of the public assembly, her Honour noted that 'public facilities are to be shared. It is of the nature of a protest that others will be affected and that their routines will be, at least ephemerally, interrupted.'³⁰ By refusing to make the order sought by the Commissioner, her Honour sanctioned 'a significant disruption to the routines of many commuters on a single evening and delaying their arrivals home by minutes if not hours,'³¹ but did so recognising that such inconvenience and disruption was necessary for the protesters to exercise their rights to freedom of expression and assembly. This decision underscores the importance of allowing protestors to use public space to exercise their human rights of freedom of expression and assembly, even when disruption may be caused to other members of the public.

6. The Unpopularity of Views Should Not Dilute the Right to Free Assembly

Protests often challenge majority-held views and beliefs espoused by people occupying positions of power. As Dr Jeffrey Gordon has explained:

The right of public assembly is not reserved for popular or benign causes. A central purpose of free assembly is to enable the public ventilation of unpopular ideas that generate impatience and antipathy from the community. Freedom of assembly embraces the expression of minority views precisely because they provoke dissension and agitate for change.³²

7. Discriminatory Impacts of Enforcing Protest Laws

The impact of policing protests has been identified as having a heavier burden on marginalised groups. Overall in Australia, policing disproportionately targets racialised groups. This is evident in relation to racist language and violence against First Nations, Muslim³³ and

³⁰ Ibid, [33].

³¹ Ibid, [34].

³² Jeffrey Gordon, 'Protest Before and During a Pandemic' (2022) 50(4) *Federal Law Review* 421 <<https://doi-org.ezproxy.lib.uts.edu.au/10.1177/0067205X221126557>>.

³³ AMAN, 'Policy brief – Australian Muslims' Experiences of Policing and Surveillance' (6 October 2021) <<https://www.aman.net.au/policy-brief-australian-muslims-experiences-of-policing-and-surveillance/>>.

Sudanese groups, as found in reported evidence in New South Wales,³⁴ Victoria,³⁵ the Northern Territory³⁶ and Queensland.³⁷ First Nations people are the most imprisoned people in the world, which is at least in part attributed to discriminatory policing.³⁸ Racism in Australian police forces was found to have contributed to mass incarceration in the Royal Commission into Aboriginal Deaths in Custody in 1991. It noted, ‘far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent.’³⁹ This was more recently identified by the Australian Law Reform Commission in its 2017 Inquiry into Indigenous Incarceration Rates.⁴⁰ Many of the recommendations of these and other inquiries have been ignored or only partially implemented by governments, demonstrating the continuing need for political protest to hold governments to account for work that remains unfinished. It also demonstrates why widespread racism in police forces continues to be reported in major commissions and inquiries.

Discriminatory law enforcement in relation to protesters means that people of colour are more likely to receive harsher charges. For illustration, in New York, 46 protesters at Columbia University were charged with criminal trespass (a misdemeanour with a maximum prison sentence of 90 days). For similar acts of encampment, 28 protesters at City College were charged with burglary in the third degree (a felony with a maximum prison sentence of seven

³⁴ Christopher Knaus, NSW police use force against Indigenous Australians at drastically disproportionate levels, data shows (Guardian Australia, online, 30 July 2023); ; Public Interest Advocacy Centre, ‘Unreasonable, unjust, oppressive and improperly discriminatory: watchdog blasts police on STMP’ (Media Release, 30 October 2023) <<https://piac.asn.au/2023/10/30/unreasonable-unjust-oppressive-and-improperly-discriminatory-watchdog-blasts-police-on-stmp/#>>.

³⁵ Natalie Whiting and Monique Hore, ‘Victoria Police presentation on youth crime criticised for “racist” focus on “African gangs”’ (ABC News, online, 27 May 2024) <<https://abc.net.au/news/2024-05-27/victoria-police-youth-crime-presentation-labelled-racist/103877374>>; Police Accountability Project, ‘What is Racial Profiling?’ <<https://policeaccountability.org.au/issues-and-cases/racial-profiling/>>

³⁶ Melissa Mackay and Samantha Dick, ‘More racist awards shared within NT Police revealed during Kumanjaji Walker inquest’ (ABC News, online, 27 May 2024) <<https://www.abc.net.au/news/2024-05-27/kumanjaji-walker-inquest-resumes-racist-awards-nt-police/103883562>>.

³⁷ ‘A Call for Change: Commission of Inquiry into Queensland Police Service responses to domestic and family violence’ (Report, 2022) <<https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf>>.

³⁸ Thalia Anthony, ‘FactCheck: are first Australians the most imprisoned people on Earth?’ (The Conversation, online, 6 June 2017) <<https://theconversation.com/factcheck-are-first-australians-the-most-imprisoned-people-on-earth-78528>>.

³⁹ Elliott Johnston, ‘Royal Commission into Aboriginal Deaths in Custody’ (Report, Vol 2), 13.2.3, <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol2/90.html>>.

⁴⁰ Australian Law Reform Commission, ‘Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples’ (Final Report, No 133, December 2017) <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>, 364, 454. See Recommendation 14-1 on addressing the problem of police racism.

years). This discrepancy was attributed to racialised mistreatment due to the racial profile of students at City College.⁴¹

Discriminatory practices have also been identified in relation to police treatment of female protesters.⁴² We have heard from lawyers for protesters in Sydney, NSW, that police have acted violently towards women at pro-Palestinian protests, including the use of handcuffs and manhandling where the woman is compliant, following orders and not resisting. In the United States, Professor Aya Gruber has noted that police have mistreated female professors who have sought to intervene to assist protesters. These female professors have been abused, humiliated and brutalised by police, including the former chair of Dartmouth’s Jewish studies department, Annelise Orleck. Caroline Frohlin, an economics professor at Emory University, had her head smashed on the concrete, which was recorded on video.⁴³ Video recordings also show police stripping and handcuffing a young Asian woman at the UCLA encampment. Professor Gruber concludes that females are especially vulnerable to policing because their involvement in protests is regarded as a betrayal of the feminine ideal and therefore especially offensive to hetero-masculine norms.⁴⁴

8. Concluding Observations on NSW Anti-protest Laws Under Review

In our opinion, the current criminal laws and police powers in NSW that target protests, including those presently under review, represent a bridge too far. The penalties prescribed for disruptive protest behaviour are disproportionate, undermine international human rights and have the effect of stifling important — even if at times unpopular — voices.

We are concerned about rhetoric from politicians and commentators that elevates business interests over the right of peaceful protest, and provides licence for heavy-handed police tactics to be used against protestors (especially those from marginalised groups). For instance, in a recent statement, NSW Premier Christopher Minns promoted the right of ‘commerce’ over the rights of protestors, stating ‘We cannot have a situation where our ports are blocked for

⁴¹ Nicolas Niarchos, CUNY and Columbia: A Tale of Two Campuses (The Nation, online, 16 May 2024) <<https://www.thenation.com/article/activism/ccny-columbia-disparities-protests-charges/>>.

⁴² Aya Gruber, ‘The misogyny of the anti-protest’ (Al Jazeera, online, 17 May 2024) <<https://www.aljazeera.com/opinions/2024/5/17/the-misogyny-of-the-anti-protest>>.

⁴³ Ibid.

⁴⁴ Ibid.

commerce because one group or another has a political disagreement with another country'.⁴⁵ There have also been reports that the NSW Police Commissioner has considered, on numerous occasions, the authorisation of the use of expansive police powers to stop and search people and vehicles without a warrant against protestors demonstrating solidarity with Palestinian people, powers that were introduced in response to the Cronulla riots with overtly discriminatory impacts on Muslim and Middle Eastern people.⁴⁶ While such expanded police powers remain there is a risk that any discriminatory deployment of such laws towards minority causes and groups would threaten rather than advance social cohesion.

The strong anti-protest stance of successive NSW governments, on both sides of the political spectrum, is also reflected in the sentencing penalties of individuals who are charged with offences related to protest and civil disobedience. For instance, in 2022, climate change activist Deanna 'Violet' Coco was sentenced to 15 months imprisonment for her participation in a protest which stopped one lane of traffic on the Sydney Harbour Bridge for 28 minutes.⁴⁷

Commenting on the case, the then NSW Attorney General, Mark Speakman (now NSW Opposition Leader) said the right of individuals to participate in lawful protest must be weighed against 'the right of ordinary members of the public to move about safely and freely in their day-to-day lives'.⁴⁸

The initial sentence received by Deanna Coco — which in our opinion is grossly disproportionate — suggests that the right to peaceful assembly, explicitly enshrined in the ICCPR, is inappropriately viewed as a deferential consideration to commercial and public order interests. Whilst Deanna Coco's 15-month imprisonment was overturned by Williams J in the District Court of NSW on the basis she had been initially imprisoned on false information

⁴⁵ 'NSW Premier Chris Minns speaks after pro-Palestine protest at Port Botany' (7 News, Press Conference, 22 November 2023) <<https://www.youtube.com/watch?v=W6ILa8LGb9Q>>.

⁴⁶ Chris Cunneen, 'Law, Policing and Public Order: The Aftermath of Cronulla', in Noble, G. (ed) *Lines in the Sand. The Cronulla Riots, Multiculturalism and National Belonging* (Institute of Criminology Press, Sydney, 2009) 220-231.

⁴⁷ 'Climate activist Deanna 'Violet' Coco's 15-month jail sentence quashed on appeal' (The Guardian, online, 15 March 2023) <<https://www.theguardian.com/australia-news/2023/mar/15/climate-activist-deanna-violet-cocos-15-month-jail-sentence-overturned-on-appeal>> ('Climate activist Deanna 'Violet' Coco's 15-month jail sentence quashed on appeal').

⁴⁸ NSW Council for Civil Liberties, 'WSWS: Climate change protester jailed for 15 months in Australia' (9 December 2022), <https://www.nswccl.org.au/wsWS_climate_change_protester_jailed_for_15_months_in_australia>.

provided by NSW Police, the initial 15-month sentence still raises concerns as it appears not in line with the seriousness of the offending.⁴⁹ In comparison, a sentence of 15 months imprisonment is often prescribed in response to repeated instances of property offending or aggravated assaults.

The strong anti-protest stance of the NSW Government in our opinion does not reflect community sentiments as the penalties prescribed to individuals convicted of civil disobedience offences are grossly disproportionate when compared to the penalties received by individuals who are convicted of violent or repeat offences. Peaceful protests, including where they disrupt commuters or trade, play a crucial role in a civil society. The disruptive effect of protests is what highlights issues and projects demands that are otherwise overlooked in Parliament, by institutions or employers. Peaceful protests are a valid form of political communication that have provided significant human progress over the course of democratic society. The anti-protest laws under review dampen the capacity for peaceful protest and assembly by intimidating protesters with their punitive effect. They provide a disproportionate punishment to the inconvenience caused and balance the interest towards law enforcement over public participation. These laws are a slippery slope towards an authoritarian regime that quashes dissent.

9. Recommendations

- I. That the legislation under review be repealed due to its disproportionately punitive impact on protesters and that any outstanding charges under these laws arising from peaceful protest be revoked.**

- II. That NSW Parliament conduct a broad review of NSW Anti-Protest laws that engages the NSW Council for Civil Liberties, the NSW Legal Observers Network and academic experts, with a view to documenting their impact on protesters, especially those from minority groups and women.**

⁴⁹ 'Climate activist Deanna 'Violet' Coco's 15-month jail sentence quashed on appeal'.