

# 'Incredibly worrying': legal fight looms around Australia over clampdown on protest

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On Monday, the activist group Extinction Rebellion will begin a week of global protests.

In Brisbane, home to the grassroots organisation's first Australian chapter, activists are preparing to stage protests around the city. At the group's headquarters in Woolloongabba, a busy training schedule is under way. It is hosting introductory sessions at local libraries planning two large-scale marches, with a litany of other "non-violent disruptive actions".

Since the group conducted its first action in Australia in April, there have been more than 170 arrests, with penalties ranging from a warning to a \$1,500 fine.

When new laws designed to target the tactics used by Extinction Rebellion pass parliament, those penalties will escalate. The use of a purpose-designed "dangerous attachment device to disrupt lawful activities", referring to the Extinction Rebellion tactic of locking on to railways and roads, will attract a \$6,500 fine or two years' imprisonment.

Peaceful protest, the Queensland government says, is only acceptable if it does not disrupt people going about their ordinary business.

But disruption is the point.

"We are using civil disobedience to cause economic disruption and a disruption to business as usual," Extinction Rebellion south-east Queensland member Emma Dorge says. "Without disruption, our voices are not being heard."

She is not deterred by harsher penalties.

"We are fighting against extinction," she says. "People are doing what's necessary in the face of complete inaction from governments on climate change."

Queensland has proposed two new amendments this year designed to clamp down on protests: increased trespass penalties aimed at animal welfare protests, currently going through a parliamentary committee, and the lock-on laws. It has also introduced biosecurity regulations with on-the-spot fines for entering an agricultural premises.

New South Wales has also introduced new \$1,000 on-the-spot penalties through biosecurity regulations and is considering draft laws with broad new trespass penalties.

When the Western Australian premier, Mark McGowan, was opposition leader in 2016, he ceremonially ripped up anti-protest laws proposed by his predecessor, but his government has also said it will increase penalties for trespass. The reforms are aimed at animal welfare protesters described by the attorney general as “mushy-headed vegans”.

Victoria is holding a parliamentary inquiry to determine if it ought to strengthen trespass laws, following uproar about a \$1 fine levied against an activist who stole a goat from a Gippsland cheese cafe. The Law Institute of Victoria has suggested the government instead introduce laws promoting greater transparency in the agriculture industry.

Tasmania, still bruised from a 2017 high court decision that struck down its anti-protest laws, is working on amended legislation to reintroduce the laws.

That high court ruling – that environmental protests are political and protected under the constitutional implied freedom of political communication – could potentially apply to Queensland and NSW laws as proposed.

“When we see the positioning that’s been coming out of the government we tend to look at it through two filters,” the Wilderness Society national director, Lyndon Schneiders, says. “One is: is what they are proposing actually legal? And secondly, what are they trying to achieve politically?”

The NSW Nature Conservation Council chief executive, Chris Gambian, says the NSW legislation is framed as a narrow provision supporting farmers but could actually work against their interests by penalising almost all protest actions.

Farmers have been heavily involved in environmental protests in Australia, particularly against coal seam gas. The Bentley Blockade, a seven-year protest in the Northern Rivers region which successfully halted gas exploration and is cited as inspiration by Dorge and other Extinction Rebellion members as an example of successful activism, was underpinned by farmers.

And when more than 300,000 people join climate strikes around Australia, can protesting still be considered a fringe activity?

“There is a culture war going on that is trying to pit those people that care about the environment against other people, and I think that’s incredibly worrying,” Gambian says.

Take these comments from Peter Dutton.

“People should take these names, and the photos of these people, and distribute them as far and wide as we can so that we shame these people,” said the home affairs minister in his regular spot on Sydney’s 2GB radio. “Let their families know what you think of their behaviour ... We should push back on it because these people are a scourge, they are doing the wrong thing. If you want to protest, do it peacefully.”

In this context, “peaceful” can be taken to mean “unobtrusive”.

Dutton also suggested protesters should face mandatory minimum sentences and murmured support for host Ray Hadley's suggestion that the welfare payments of protesters be restricted. In the world of talkback radio, the Venn diagram of ordinary working Australians and people who protest are two circles that never meet. Reality has more overlap.

Gambian is a spokesperson for a loose coalition of environment groups, Unions NSW and legal groups that have banded together to oppose the proposed NSW anti-protest laws, which would result in protesters facing fines of up to \$22,000.

A similar coalition of 80 organisations, from unions to religious groups, staved off the most recent anti-protest laws in WA and is waiting to see the draft of the new proposed laws.

"It was a matter that brought together a really broad cross-section of society," Perth-based public advocacy lawyer Kate Davis says. "I don't think any laws that are targeted at restricting the right to protest have a place in our democracy."

The proposed NSW laws, like new federal laws passed in August, are targeted at "farm invasion" protests from animal activists who have targeted abattoirs, factory farming operations and family-run farms in the past 18-months.

They make use of the Inclosed Lands Protection Act and are "breathtakingly broad," says Gambian, and would capture protests on environmental grounds, including anti-mining protests.

That act was amended in 2016 to introduce a \$5,500 penalty for aggravated unlawful entry to enclosed lands. It was up for review next month, but that review has now been superseded by the proposed [Right to Farm Bill](#).

The proposed amendments would increase the penalty for aggravated trespass to \$13,200 or 12 months' jail. If a person was accompanied by two or more other people, or taken to be interfering with the conduct of the business, they would face a \$22,000 fine or three years' jail.

"Enclosed land is any land that has a fence around it," Gambian says. "Including a temporary fence. Including a temporary fence erected while the protest is going on."

It includes public land, such as state parliament.

Emily Howie, legal director for the Human Rights Law Centre, says the proposed laws could run afoul of the same constitutional provisions that allowed the former Greens leader Bob Brown to win his high court challenge against the Tasmanian anti-protest laws.

If the laws were found to be denying Australians their constitutional freedom to talk about things that are politically important, Howie says, they could be found to be invalid.

Moves by governments to protect businesses from disruption are legitimate, Howie says, but they must be “reasonable and proportionate”.

“The last thing that we want is for laws that are meant to be protecting business to in fact be deterring people from engaging in peaceful and lawful protest and our concern about this bill in New South Wales is that is exactly what it does,” she says.