

# Protesting in NSW: your rights and police powers

## 1 Is there a right to protest?

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Yes, within limits.

In Australia there is no Bill of Rights, national Human Rights Act, or specific part of the Australian Constitution that gives us the *express* right to protest.

However, the High Court has said that the Australian Constitution gives us an ***implied right to express our political opinions***. This means that, for the Constitution to function properly, it must protect our right to express opinions about the government and political issues. This implied right does not explicitly allow us to protest. However, it can make it difficult for the government to pass laws that would seriously limit our ability to share our political opinions, including by limiting protests.

The common law (meaning the law that has been developed by the courts over the years) also recognises the rights to freedom of peaceful assembly and freedom of expression. The **right to peaceful assembly** allows people to meet, organise and engage in peaceful protests. The **right to freedom of expression** allows people to express their opinions freely, and to share information and ideas.

There is no absolute right to peaceful assembly or freedom of expression in Australian national law. Although Australia has signed some international human rights treaties that protect these rights, they have not been properly translated into our own national laws.

The right to freedom of peaceful assembly and freedom of expression is protected in some parts of Australia (Queensland, Victoria and the Australian Capital Territory) by a Human Rights Charter. These rights can be limited by the government in some circumstances, but the limitations must be reasonable, necessary, justified and proportionate.

New South Wales doesn't have a human rights charter or any similar law that specifically protects these rights. We can still rely on the common law rights to freedom of peaceful assembly and freedom of expression – but without a charter or bill of rights, it is easier for our government to place restrictions on these rights.

For more information about the right to protest, see the links at the end of this fact sheet.

## 2 “Authorisation” and “prohibition” of protests in NSW

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### 2.1 Introduction

In New South Wales, the *Summary Offences Act* sets out a procedure for protests to be “authorised”.

A protest organiser may apply to the Commissioner of Police, or to the Supreme Court in some situations, for authorisation.

The Commissioner of Police may also apply to the Supreme Court for a “prohibition” order.

### 2.2 Can a protest be banned?

No, a protest cannot be banned.

The use of words like “prohibition” is confusing because it suggests that a protest can be banned. The actual meaning of a “prohibition” order is explained below.

### 2.3 What does it mean if a protest is “authorised”?

If a protest or public assembly is “authorised” and is held according to the terms of the authorisation guidelines set out, participants can’t be charged with any offence relating to:

- participating in an unlawful assembly, or
- obstruction of traffic (which may include pedestrians, vehicles or vessels).

This protection won’t apply if the protest ends up being substantially different from what is authorised (e.g. if the authorisation was for 500 people gathering at Town Hall, and instead 5000 people turn up and all march through the city).

### 2.4 What does it mean if a protest is “prohibited”?

Prohibition does not actually make it illegal to hold a public assembly or protest.

Rather, a prohibition order means that participants are not protected from being charged with obstruction or unlawful assembly.

It is important to note that the offence of “unlawful assembly” is only committed when there are 5 or more people and they are using violence or intimidation.

## 3 “Anti-protest” laws in NSW

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### 3.1 Introduction

In response to activism around issues like climate change, logging and animal rights the NSW government has introduced laws which make some kinds of protest activity more difficult.

### 3.2 Search powers

A police officer can stop and search you in a number of situations, such as if they suspect on reasonable grounds that you are carrying stolen goods, prohibited drugs or something about to be used in a serious crime (e.g. weapon) (*Law Enforcement (Powers and Responsibilities) Act*, sections 21, 36) (*LEPRA*).

These powers were expanded by the “anti-protest laws” that were introduced in 2016 (*Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act*, Schedule 3).

A police officer can stop, search and detain you (including your car and possessions) if they suspect on reasonable grounds that you have something intended to be used to “lock on” to something (e.g. bulldozers, fences, mining equipment) *and* that is likely to be used in a manner that will give rise to a serious risk to any person’s safety (*LEPRA*, sections 45A, 45B). If the police find anything that may be used to “lock on” to something as a result of a search, they may seize, detain and destroy it (*LEPRA*, section 45C).

For more information about police powers, see our fact sheet on *Police Powers and Your Rights*.

### 3.3 “Aggravated unlawful entry” offences

The offence of “aggravated unlawful entry on inclosed lands” involves unlawfully entering a premises in an attempt to interfere with or cause serious risk to a business (*Inclosed Lands Protection Act*, section 4B). This includes activities which could negatively impact the economy or

environment of the land and business (*Biosecurity Act*, section 13). A person can face a fine of up to \$5,500 if the offence occurs on land that is not agricultural land.

In 2020 the NSW Parliament introduced the “Right to Farm” laws to increase the maximum penalties when the offence of aggravated unlawful entry occurs on agricultural land. “Agricultural land” includes any inclosed lands where agricultural, livestock, forestry or aquacultural businesses are carried out – such as farms, slaughterhouses, saleyards, tanneries and timber mills (*Inclosed Lands Protection Act*, section 3).

The “Right to Farm” laws also extended the offence of aggravated unlawful entry to include damaging property on agricultural land, and intentionally or negligently releasing livestock.

The maximum penalties are 12 months imprisonment and/or a \$13,200 fine if the offence occurs on agricultural land. This is increased to a maximum of 3 years imprisonment and/or a \$22,000 fine if an offender was accompanied by 2 or more people, or seriously risked any person’s life.

### 3.4 Offences involving roads and major facilities

In 2022, the NSW Parliament passed new laws to prevent “illegal protesting” on major roads, bridges, tunnels, public transport and infrastructure facilities.

There was already an existing law which made it an offence to cause serious disruption by entering, remaining on or trespassing on certain major bridges and tunnels. It was expanded to include all “main roads” (*Roads Act*, section 144G).

There is also a new offence of causing damage or disruption to a “major facility”, such as a public transport facility, port, power station, etc (*Crimes Act*, section 214A).

These offences carry a maximum penalty of a \$22,000 fine and/or or two years’ imprisonment.

The offence of “causing damage or disruption to a major facility” has been especially controversial. According to section 214A of the *Crimes Act*:

- (1) A person must not enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility if that conduct--
  - (a) causes damage to the major facility, or
  - (b) seriously disrupts or obstructs persons attempting to use the major facility, or
  - (c) causes the major facility, or part of the major facility, to be closed, or
  - (d) causes persons attempting to use the major facility to be redirected.

However, in the 2023 case of *Kvelde v State of New South Wales*, the Supreme Court ruled that paragraphs (c) and (d) were invalid because they infringed on the implied constitutional right to freedom of political communication.

This decision recognises that the NSW Government must allow people to peacefully protest in public spaces, including near or at train stations, for example, Central, Town Hall and Martin Place, which have all historically been places synonymous with peaceful protest.

Section 214A also contains some protection for people who are employed at major facilities or who are involved in industrial action (e.g. a strike).

## 4 Police powers at protests

For general information about police powers, see our fact sheet on *Police Powers and Your Rights*.

Mostly, police can use the same powers at protests as they can in everyday situations.

However, there are some restrictions on the use of powers like move-on directions against protestors.

The police powers set out in this table may vary depending on whether a protest is “authorised” or “prohibited”.

Police power	If protest authorised ( <i>Summary Offences Act</i> section 23 or 26)	If protest “prohibited” ( <i>Summary Offences Act</i> section 25) or not authorised
“Move-on” direction ( <i>LEPRA</i> Part 14)	<p><b>Usually no</b> (if protest is apparently genuine), but:</p> <p><b>Yes</b>, if the officer believes on reasonable grounds that a direction is necessary to deal with a serious risk to a person’s safety; <i>or</i></p> <p><b>Yes</b>, police can issue a direction to a person obstructing traffic (including pedestrian traffic) but only if the protest is <i>not substantially compliant</i> with the authorisation.</p>	<p><b>Usually no</b> (if protest is apparently genuine), but:</p> <p><b>Yes</b>, if the officer believes on reasonable grounds that a direction is necessary to deal with a serious risk to a person’s safety; <i>or</i></p> <p><b>Yes</b>, police can issue a direction to a person obstructing traffic (including pedestrian traffic).</p>
Power to demand name and address	<b>Yes</b> (but only in limited circumstances – similar to non-protest situations)	<b>Yes</b> (but only in limited circumstances – similar to non-protest situations)
Search powers	<p><b>Yes</b> (with reasonable suspicion, consent or a warrant – similar to non-protest situations)</p> <p>Police can search a person and their vehicle if they have reasonable suspicion that the person possesses “lock-on” equipment (see 3.2 <i>Search Powers</i>).</p>	<p><b>Yes</b> (with reasonable suspicion, consent or a warrant – similar to non-protest situations)</p> <p>Police can search a person and their vehicle if they have reasonable suspicion that the person possesses “lock”-on equipment (see 3.2 <i>Search Powers</i>).</p>
Criminal Infringement Notice for offences under <i>Crimes Act</i> or <i>Summary Offences Act</i> (e.g. obstructing traffic, offensive language, offensive conduct, stealing, minor drug possession)	<b>No</b> (if protest is apparently genuine) but can still issue court attendance notices for these offences.	<b>No</b> (if protest is apparently genuine) but can still issue court attendance notices for these offences.
Penalty notice or court attendance notice for obstructing traffic (which can include pedestrians as well as vehicles and vessels)	<b>No</b>	<b>Yes</b>
Court attendance notice for unlawful assembly	<b>No</b>	<b>Yes</b> (but only if at least 5 people and violence or intimidation involved)

Penalty notice or court attendance notice for offences other than the ones mentioned above	<b>Yes</b>	<b>Yes</b>
Arrest for purpose of issuing court attendance notice	<b>Yes</b> (but arrest is a last resort)	<b>Yes</b> (but arrest is a last resort)
Arrest for the purpose of stopping a breach of peace (i.e. imminent threat of violence or property damage)	<b>Yes</b> (but arrest is a last resort)	<b>Yes</b> (but arrest is a last resort)
Physical removal from the scene (if trespassing on private property, doing unauthorised activities in areas covered by special legislation, or breach of peace)	<b>Yes</b> (but usually only after refusing to leave when directed)	<b>Yes</b> (but usually only after refusing to leave when directed)
Emergency public disorder powers (LEPRA Part 6A)	<b>Yes</b> (but powers must be authorised at senior level, and only if there is "large scale public disorder").	<b>Yes</b> (but powers must be authorised at senior level, and only if there is "large scale public disorder")

## 5 More information

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The Environmental Defenders Office have a fact sheet on *Protest and Police Powers in NSW (November 2023)* at <https://www.edo.org.au/publication/protest-and-police-powers-in-new-south-wales-2/>.

For a brief summary on the right to protest and access to legal help, see the NSW Council for Civil Liberties *Right to Protest* page at [https://www.nswccl.org.au/right\\_to\\_protest](https://www.nswccl.org.au/right_to_protest).

Legal Observers NSW have some resources about protest rights at <https://legalobserversnsw.org/resources/>.

For more detail about protesting and the law, see the NSW Parliamentary Research Service Research Paper on *Protest law in New South Wales (February 2024)* at <https://www.parliament.nsw.gov.au/researchpapers/Pages/Protest-law-in-NSW.aspx>.

For more general information about police powers and criminal law, see the fact sheets on our website at <https://www.theshopfront.org/legal-information-for-youth-workers>.

Legal Aid NSW also has police powers information at <https://www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources/police-powers> or, if you are under 18, see *Get Street Smart* at <https://www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources/get-street-smart-under-18s-know-your-legal-rights>.

### **The Shopfront Youth Legal Centre Updated February 2025**

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*The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills, in association with Mission Australia and The Salvation Army.*

*This document was last updated in February 2025 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.*

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