Submission to the United Nations Human Rights Council

Universal Periodic Review (4th cycle)

Australia

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Melbourne Activist Legal Support (MALS) was formed in 2011 and is now one of several legal observer projects around Australia. As a community of human rights advocates, MALS aims to strengthen social movements by supporting them to safely and confidently exercise their rights. Stronger social movements create a more robust and sustainable democracy, a more accountable and representative political system, and a more equitable and just society for everyone. MALS fields teams of trained legal observers at protests to monitor Victoria Police operations, gather evidence of human rights breaches and document police restrictions on civil and political rights such as protest suppression and violent or discriminatory policing. MALS also provides on-site information to activists about their rights and supports them in engaging with available legal support if they have experienced harm or if their rights have been restricted due to police misconduct. This includes assistance to make formal complaints against police and support to pursue legal action and class actions.

1. EXECUTIVE SUMMARY

1.1. In this submission, MALS examines the Australian Government's compliance with its international human rights obligations to uphold the right to freedom of assembly in relation to protest legislation, policing of protests, and monitoring of protests by independent legal observers (LOs). We provide evidence-based analyses of these issues to assess the Government's implementation of recommendations received during the 3rd Universal Periodic Review (UPR) cycle, and provide further recommendations.

1.2. During the 3rd UPR cycle, the Australian Government received four recommendations regarding the right to freedom of assembly, of which it accepted three and noted one but would not consider it further. Not only has the Government failed to implement any of these recommendations (see Section 6: Annex), but governments in all Australian jurisdictions have taken actions that blatantly undermine the recommendations.

1.3. MALS is gravely concerned about sustained attacks on the right to freedom of assembly since the 3rd UPR cycle. This includes the introduction of a raft of repressive anti-protest legislation across Australia, documented cases of serious injuries caused by police using dangerous weapons against protesters, and obstruction of independent LOs who monitor and report on police conduct and human rights abuses at protests. If left unchallenged, MALS fears these attempts to erode the right to freedom of assembly will have a devastating effect on the protest environment, significantly weaken our democracy, and strip citizens of their power.

1.4. As a state party to the International Covenant on Civil and Political Rights (ICCPR), Australia is obligated to guarantee the right to freedom of assembly under Article 21 of the ICCPR. As the only liberal democracy in the world not to have a legislated national Human Rights Act (HRA)[1], the right to freedom of assembly in Australia is primarily regulated by a patchwork of state and territory-based legislation. Only Victoria, Queensland, and the Australian Capital Territory have enacted HRAs. The absence of a national HRA means the right to freedom of assembly and other civil and political rights are not adequately or uniformly protected.

1.5. This submission focuses on three main areas of concern:

- anti-protest laws and police powers,
- use of dangerous police weapons at protests, and
- legal observer rights and protections.

[1] Parliament of Australia, Chapter 9 - Committee views and recommendations, Para. 9.8, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report/Chapter_9_-_Committee_views_and_recommendations

2. ANTI-PROTEST LAWS AND POLICE POWERS

2.1. The right to freedom of assembly is being actively undermined and repressed across Australia through the introduction of draconian legislation that restricts and criminalises protesting, expands police powers to crack down on protest activity, and increases penalties for protesting. These measures have particularly targeted climate action protesters, leading a December 2024 research report to identify Australia as the number one country in the world for arresting climate protesters[2].

2.2. In the 3rd UPR cycle, Australia received three recommendations regarding safeguards for the right to freedom of assembly: 'ensure that Australia's international human rights obligations are enshrined in domestic law', 'continue to protect civil and political rights for all persons in Australia as well as freedom of expression and freedom of religion', and 'put an end to the violation of freedom of peaceful assembly and the excessive use of force by law enforcement officials', all of which were accepted by the Australian Government.

2.3. Since the 3rd UPR cycle, jurisdictions across Australia have introduced or amended numerous laws that have the effect of restricting the right to freedom of assembly and criminalising protesters.

2.3.1. New South Wales

- *Roads and Crimes Legislation Amendment Act 2022 (the Roads and Crime Act)* – intended to restrict climate protests; criminalises damage or disruption to a major facility; expands legislative coverage to include major roads, train stations, ports, and public and private infrastructure; penalties include a $22,000 maximum fine and/or two years imprisonment.
- *Law Enforcement (Powers and Responsibilities) Act 2022, Sections 45A, 45B, 45C* – introduced to target protesters; gives police expanded powers to search people and/or their vehicles and seize property without a warrant if police suspect they wish to interfere with a business or undertaking.
- *Law Enforcement (Powers and Responsibilities) Act 2022, Section 200* – intended to restrict climate protests; gives police expanded powers to issue directions at protests to manage safety risks, or if the protest is obstructing traffic and is not an authorised protest under the Summary Offences Act.

[2] University of Bristol, *Criminalisation And Repression Of Climate And Environmental Protests*, https://bpb-eu-w2.wpmucdn.com/blogs.bristol.ac.uk/dist/f/1182/files/2024/12/Criminalisation-and-Repression-of-Climate-and-Environmental-Protests.pdf

- *Crimes Amendment (Places of Worship) Bill 2025* – introduced to restrict protests by the Free Palestine movement; introduces new offences that criminalise blocking access to places of worship; amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to give police the power to issue move-on directions to anyone participating in a protest in or near a place of worship.
- *Crimes Legislation Amendment (Racial and Religious Hatred) Bill* – introduced to restrict protests by the Free Palestine movement; makes it a criminal offence to intentionally incite hatred towards a person or group based on their race by engaging in a public act that could cause a reasonable person to fear harassment, intimidation, violence, or concerns for their safety; penalties include a $11,000 maximum fine and/or two years imprisonment.

2.3.2. Queensland

- *Police Powers and Responsibilities Act 2000, Sections 30, 32 and 53AA* – introduced to target protesters; gives police powers to search people and vehicles without a warrant if they suspect they are carrying an attachment device, and the power to seize and dispose of the device.
- *Summary Offences Act 2005, Section 10A* – intended to restrict climate and animal rights protests; prohibits assemblies of three or more people if their conduct would cause someone to reasonably fear that unlawful violence will occur or is likely to disrupt the operation of a business carried out on agricultural land; penalty of up to two years imprisonment.

2.3.3. South Australia

- *Summary Offences (Obstruction of Public Places) Amendment Act 2023* – introduced to restrict protests by climate activists; criminalises the obstruction of public spaces for as little as ten minutes; holds a person who obstructs a public place criminally liable for obstructions caused by emergency services when they are responding to the original obstruction; allows police and other emergency services to recover resulting costs; penalties of up to $50,000 fine or three months imprisonment.

2.3.4. Tasmania

- *Police Offences Amendment (Workplace Protection) Act 2022* – intended to restrict protests at business locations; criminalises protesters who obstruct workplaces; adds aggravated offences for trespass that impedes or prevents

someone carrying out their work; allows for organisations that support such protests to be fined; penalties of up to two years imprisonment or up to $13,000 fine for individuals and up to $50,500 for organisations.

2.3.5. Victoria

- *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022* – introduced to restrict climate protests; establishes protest-free zones; penalties of up to 12 months imprisonment or up to $24,077 fine.
- *Sustainable Forests Timber Act 2004, Section 88A* – introduced to target climate activists; gives police the power to search people and seize their property if police believe they have committed or are about to commit an offence.
- *Sustainable Forests Timber Act 2004, Section 94CA* – introduced to target climate activists; gives police the power to ban people from a timber harvesting zone for up to 28 days if they believe they have committed or are about to commit an offence within the zone; penalty of up to $11,820 fine.
- *Anti-Vilification and Social Cohesion Bill 2024 – proposed in 2025*: intended to restrict the pro-Palestine protest movement; bans face coverings and masks at protests except for religious or health reasons, bans protests near places of worship, and prohibits the possession and use of items that could be used as an attachment device; gives police wide-ranging discretionary powers to search anyone at a protest, and confiscate and destroy their property.

2.4. The introduction of these laws has seen activists fined and imprisoned for exercising their right to protest, including a climate activist who blocked a single lane of traffic on the Sydney Harbour Bridge being sentenced to 15 months in prison with a non-parole period of 8 months in December 2022[3]; 72 climate activists arrested and fined $385 for blocking a road in Melbourne in December 2023[4]; a climate activist sentenced to 3 months imprisonment in July 2024 after attaching themselves to machinery at a coal terminal in Newcastle[5]; and NSW police arresting 170 people,

[3] Visontay E, 2 December 2022, The Guardian, *Climate activist who blocked traffic on Sydney Harbour Bridge jailed for at least eight months*, https://www.theguardian.com/environment/2022/dec/02/climate-activist-who-blocked-traffic-on-sydney-harbour-bridge-jailed-for-at-least-eight-months

[4] Mike Lorrigan, 9 December 2023, ABC News, *Police arrest 72 climate activists in Melbourne CBD for blocking traffic outside Flinders Street Station*, https://www.abc.net.au/news/2023-12-09/police-arrest-72-people-climate-protest-extinction-rebellion/103210166

[5] Jordan Beazley, 8 July 2024, The Guardian, *Blockade Australia climate activist sentenced to three months in jail over Port of Newcastle protest*, https://www.theguardian.com/australia-news/article/2024/jul/08/blockade-australia-climate-activist-sentenced-to-three-months-in-jail-over-port-of-newcastle-protest-ntwnfb

including 14 minors, for participating in a mass protest where hundreds of people in kayaks blockaded the world's biggest coal port in Newcastle.[6]

3. USE OF DANGEROUS POLICE WEAPONS AT PROTESTS

3.1. The militarisation of police across Australia has seen the increasing normalisation of the use of so-called 'non-lethal' weapons to control protest crowds through the use of force. This includes kinetic impact projectile weapons (KIPs) such as flash grenades/flashbangs, baton rounds/rubber bullets, beanbag rounds, and chemical irritants (CIs) such as oleoresin capsicum (OC) spray and tear gas. Use of these weapons deters individuals from exercising their right to protest by creating an environment of fear concerning the perceived safety risks of participating in protests.

3.2. KIPs are inaccurate and known to cause serious injuries, including internal bleeding, bone fractures, organ and tissue damage, and traumatic brain injuries; when used by police to control crowds, KIPs have resulted in significant disability and death.[7] CIs are indiscriminate and can induce respiratory distress, nausea, vomiting, and cause temporary blindness and chemical burns.[8] CIs are so dangerous that their production and use are banned internationally under the Chemical Weapons Convention[9] to which Australia is a party.

3.3. In the 3rd UPR cycle, the Australian Government received one recommendation urging it to 'put an end to the violation of freedom of peaceful assembly and the excessive use of force by law enforcement officials', which the Government accepted.

3.4. The number of occasions where police have used dangerous weapons against protesters has been steadily rising since Australia's last UPR.[10] A research report by Grata Fund and

[6] Australian Associated Press, 24 November 2024, The Guardian, *Police arrest 170 at NSW Rising Tide protest as activists temporarily block coal ships*, https://www.theguardian.com/australia-news/2024/nov/24/police-arrest-170-at-nsw-rising-tide-protest-as-activists-temporarily-block-coal-ships
[7] International Network of Civil Liberties Organizations and Physicians for Human Rights, 2024, *Crowd-Control Weapons – Kinetic Impact Projectiles Fact Sheet*, https://lethalindisguise.org/wp-content/uploads/2023/06/LID2-Factsheets-KIPs.pdf
[8] International Network of Civil Liberties Organizations and Physicians for Human Rights, 2024, *Crowd-Control Weapons – Chemical Irritants Fact Sheet*, https://lethalindisguise.org/wp-content/uploads/2023/06/LID2-Factsheets-Chemical-Irritants.pdf
[9] Organisation for the Prohibition of Chemical Weapons, *Chemical Weapons Convention*, https://www.opcw.org/chemical-weapons-convention
[10] Grata Fund and Australian Democracy Network, December 2024, p31-32, *In Defence of Dissent: Mapping the repression of protest rights in Australia and identifying strategies communities can use to protect them*,

the Australian Democracy Network found there were at least 26 recorded incidents of dangerous police use of weapons at protests across Australia between 2021 and 2024[11]. Human rights organisations, lawyers, and experts have repeatedly raised concerns about the use of dangerous weapons at protests and have called for such weapons to be banned.[12]

3.5. Victoria Police are increasingly using dangerous weapons against protesters, with evidence collected by MALS LOs showing police use of KIPs and CIs against protesters on several separate occasions since Australia's last UPR cycle. For instance, the Victoria Police Chief Commissioner confirmed in 2021 that police used baton rounds and beanbag rounds against anti-lockdown protesters, with MALS further detailing the deployment of rubber bullet launchers, semi-automatic pepperball rifles, stinger grenades, and flashbangs.[13] A comprehensive report by MALS on the police response to the Disrupt Land Forces protests in September 2024 described how police routinely and indiscriminately misused these weapons as a crowd control measure, causing serious injuries to protesters, journalists, and members of the public.[14]

4. LEGAL OBSERVER RIGHTS AND PROTECTIONS

4.1. LOs are recognised by the United Nations (UN) Human Rights Committee as Human Rights Defenders (HRDs) who are crucial to the protection of the right to protest.[15] As HRDs, LOs monitor, document, and publicly report on police conduct at protest actions to ensure accountability for human rights violations. Article 12 of the UN Declaration on HRDs requires states to take all necessary measures to ensure the protection of HRDs.[16] However, LOs in Australia face interference and obstruction from police, including arrests, harassment, intimidation, and surveillance. Such attacks are condemned by the UN

https://assets.nationbuilder.com/gratafund/pages/1199/attachments/original/1741244305/In_Defence_of_Dissent_ADN_GrataFund_2024.pdf?1741244305

[11] Grata Fund and Australian Democracy Network, December 2024, Appendix A, *In Defence of Dissent: Mapping the repression of protest rights in Australia and identifying strategies communities can use to protect them*, https://assets.nationbuilder.com/gratafund/pages/1199/attachments/original/1741244305/In_Defence_of_Dissent_ADN_GrataFund_2024.pdf?1741244305

[12] Australian Democracy Network, 12 September 2024, *Joint Letter to Victorian Premier and Attorney General calling for ban on dangerous police weapons at protests*, https://australiandemocracy.org.au/police_dangerous_weapons_protest

[13] Melbourne Activist Legal Support, 22 August 2021, *Statement of Concern: Police use of projectile weapons*, https://mals.au/2021/08/22/statement-of-concern-police-use-of-projectile-weapons/; Melbourne Activist Legal Support, 17 October 2021, *Policing of the anti-lockdown protests*, https://mals.au/2021/10/17/policing-antilockdown/

[14] Melbourne Activist Legal Support, 27 January 2025, *The Policing of the DLF Protests*, https://mals.au/files/2025-01_MALS-ThePolicingOfTheDLFProtests.pdf

[15] United Nations Human Rights Committee, Para. 30, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, https://digitallibrary.un.org/record/3884725?ln=en&v=pdf

[16] United Nations General Assembly, 8 March 1999, A/RES/53/144, https://docs.un.org/en/A/RES/53/144

General Assembly as human rights violations that contravene international human rights norms.[17] Robust legal safeguards and independent oversight are essential to ensure the rights of LOs are upheld and their role as HRDs is recognised and respected.

4.2. The Australian Government received two recommendations regarding the protection of HRDs in the 3rd UPR cycle: the Government was urged to 'continue to protect civil and political rights for all persons in Australia as well as freedom of expression and freedom of religion', which it accepted, and to 'repeal laws criminalising public interest reporting and provide civil society members, human rights defenders and journalists with a safe and secure environment to carry out their work', which it noted but said it would not consider further.

4.3. On 4 August 2021, the NSW Council for Civil Liberties (NSWCCL) published a public letter in response to several incidents of police obstruction of LOs. The letter called on the NSW Police Commissioner to ensure that police are briefed on and understand the role of LOs, and do not obstruct or harass LOs.[18]

4.4. In June 2022, an LO was arrested while monitoring a Blockade Australia rally in Sydney, NSW, despite being clearly identifiable in a bright pink hi-vis vest with *Legal Observer* on the back and clearly stating multiple times to police that they were monitoring the protest as an independent observer and not participating as a protester.[19] The LO faced fines of up to $22,000 and up to two years imprisonment after being charged under newly introduced anti-protest laws.

4.5. On 26 November 2023, five LOs were arrested at a Rising Tide protest in Newcastle, NSW and charged with unreasonable interference by use of a vessel under s14 of the Marine Safety Act, which carries a maximum penalty of $5,500.[20] LOs notified police several times about their presence and role as independent observers. The NSWCCL called on police to withdraw their charges and expressed concerns about police attempts to avoid independent oversight.[21]

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[17] United Nations General Assembly, 19 December 2011, Resolution A/RES/66/164, https://docs.un.org/en/A/RES/66/164
[18] NSW Council for Civil Liberties, 4 August 2021, *Police must not obstruct Legal Observers*, https://www.nswccl.org.au/legal_observers
[19] Melbourne Activist Legal Support, 22 August 2022, *Asserting the rights of legal observers*, https://mals.au/2022/08/22/asserting-the-rights-of-legal-observers/
[20] Legal Observers NSW, 27 November 2023, *Legal Observers NSW statement on the arrest of 5 legal observers at the Rising Tide protest in Newcastle on 26 November 2023*, https://legalobserversnsw.org/2023/11/27/legal-observers-nsw-statement-on-the-arrest-of-5-legal-observers-at-the-rising-tide-protest-in-newcastle-on-26-november-2023/
[21] NSW Council for Civil Liberties, 5 December 2023, *City Hub: Police under fire after charging legal observers at climate change protest*, https://www.nswccl.org.au/city_hub_police_charging_legal_observers_climate_protest

4.6. In September 2024 during the week-long Disrupt Land Forces protests opposing a weapons convention in Melbourne, Victoria, LOs documented several incidents of obstruction and excessive force including being sprayed with OC spray on several separate occasions, a Public Order Response Team (PORT) officer aiming a KIP rifle directly at LOs, being forcibly pushed away as they filmed arrests, repeatedly being pushed by police and restricted from observing police actions. LOs reported trouble breathing and stinging eyes after police used chemical weapons against the crowd, and ringing in their ears after police indiscriminately deployed flashbang grenades, with one LO requiring medical treatment three days after the event.[22]

4.7. In November 2024, an LO was threatened with arrest for filming an interaction with a police officer at a traffic stop during Rising Tide protests in Newcastle, NSW.[23] The threat of arresting an LO came after the NSWCCL published a media release ahead of the protest, calling on police to respect the rights of LOs and stating that 'The Council remains concerned that the function of LOs is unfortunately neither uniformly well understood, nor respected by NSW Police… NSW Police currently do not consider LOs as having special status and performing special functions as recognised under International Law.'[24]

4.8. On 9 May 2025, MALS published a Statement of Concern describing police obstruction of LOs, including a police officer pointing an OC spray canister directly at the face of an LO at close range in a threatening manner.[25]

4.9. A comprehensive report by Grata Fund and Australian Democracy Network found that police obstructed independent LOs on at least 12 separate occasions between January 2021 and July 2024.[26] These incidents include police physically assaulting LOs, stopping LOs from handing out legal rights information, disallowing LOs to access areas to observe policing, being directed to stop filming police, receiving inconsistent information and contradicting directions from different officers, being met with hostility when approaching police, and police questioning their independence.

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[22] Melbourne Activist Legal Support, 27 January 2025, *The Policing of the DLF Protests*, https://mals.au/files/2025-01_MALS-ThePolicingOfTheDLFProtests.pdf
[23] NSW Council for Civil Liberties, 25 November 2024, *Policing of Rising Tide 2024 – Key Observations*, https://legalobserversnsw.org/2024/11/25/policing-of-rising-tide-2024-key-observations/
[24] NSW Council for Civil Liberties, 11 November 2024, *MEDIA RELEASE: Concern Over Protection for Legal Observers*, https://www.nswccl.org.au/legal_observers_mr
[25] Melbourne Activist Legal Support, 27 May 2025, *Policing of the 'Abolish the Police – Our Safety in Our Hands' rally in the CBD on 9 May 2025*, https://mals.au/2025/05/27/policing-of-abolish-the-police-rally-9-may-2025/
[26] Grata Fund and Australian Democracy Network, December 2024, *In Defence of Dissent: Mapping the repression of protest rights in Australia and identifying strategies communities can use to protect them*, https://assets.nationbuilder.com/gratafund/pages/1199/attachments/original/1741244305/In_Defence_of_Dissent_ADN_GrataFund_2024.pdf?1741244305

5. RECOMMENDATIONS

5.1. Anti-protest laws and police powers

- Ensure the right to protest is protected in all jurisdictions consistent with international human rights law, and repeal all anti-protest laws.
- Withdraw all charges against protesters and ensure they are not further targeted by law enforcement agencies.
- Curb the current practice of overcharging protesters by implementing processes to ensure adequate oversight and scrutiny of prosecutorial practices regarding offending alleged to have occurred during protests, including an assessment of the reasonableness of criminal charges when balanced with the protected right to political demonstration.

5.2. Dangerous police weapons

- Immediately legislate bans on the use of dangerous police weapons at protests, particularly KIPs and CIs.
- Ensure all police officers who use dangerous weapons against protesters are held accountable for their misconduct, including breaches of law regarding use of force, non-compliance with police policy, and breaches of relevant state human rights charter obligations.

5.3. Legal observer rights and protections

- Ensure legal recognition of and protections for legal observers so they can exercise their right to monitor the policing of protests free from obstruction or harassment by police.

5.4. Civil and political rights

- Establish an independent police ombudsman in all jurisdictions to ensure full accountability for police misconduct.
- Introduce legislation to enact a national Human Rights Act that is consistent with international human rights law as recommended by the Parliamentary Joint Committee on Human Rights in 2024.[27]
- Incorporate recommendations from this UPR in plans to ensure a comprehensive and consistent human rights framework in all jurisdictions across Australia.

[27] Parliament of Australia, Chapter 9 - Committee views and recommendations, Para. 9.42, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report/Chapter_9_-_Committee_views_and_recommendations

6. ANNEX – ASSESSMENT OF IMPLEMENTATION OF RELEVANT RECOMMENDATIONS UNDER AUSTRALIA'S 3RD UPR CYCLE

Recommendations (Source: A/HRC/47/8)	**Government response (Source: A/HRC/47/8/Add.1)**	**Assessment of implementation**
146.48 Ensure that Australia's international human rights obligations are enshrined in domestic law (Canada)	**Accepted** (Domestic Frameworks)	**Status**: Not implemented yet **See**: Section 2
146.174 Continue to protect civil and political rights for all persons in Australia as well as freedom of expression and freedom of religion (Bosnia and Herzegovina)	**Accepted** (Civil and political rights)	**Status**: Not implemented yet **See**: Sections 2 & 4
146.178 Repeal laws criminalizing public interest reporting and provide civil society members, human rights defenders and journalists with a safe and secure environment to carry out their work (Bangladesh)	**Noted but will not consider further** (Civil and political rights)	**Status**: Not implemented yet **See**: Section 4
146.181 Put an end to the violation of freedom of peaceful assembly and the excessive use of force by law enforcement officials (Bolivarian Republic of Venezuela)	**Accepted** (Civil and political rights)	**Status**: Not implemented yet **See**: Sections 2 & 3