



## 44. Protests, rallies and marches

There are many examples of peaceful protest being used as a means of achieving social and environmental change. This fact sheet is designed for people who are organising or involved in peaceful protests, rallies or marches. It has been compiled to inform people about the law and legal procedures which may be relevant to protests and activism. The overriding principle which should guide peaceful protests is non-violence.

This Fact Sheet does not address legal issues relating to other types of public gatherings, such as sporting events, industrial pickets, concerts or other recreational activities. See also **Fact Sheet 42: Defamation and safe speech**.

### What are protests, rallies and marches?

A protest meeting is an assembly of three or more persons held for the purpose of:

- communicating a view or opinion to the public;
- ascertaining the view of the public; or
- demonstrating on any matter.

A protest includes a march, rally or procession through a street.

### Is there a right to protest?

In Western Australia, people have a lawful right to “peaceful assembly”. This right can be exercised in the form of a protest meeting, rally or march.

This right derives from at least three sources:

1. the common law right of peaceful assembly, which was received into Western Australian law at colonisation; and
2. the *International Covenant on Civil and Political Rights*, which recognises the right of peaceful assembly.
3. Australian citizens also have an implied right to protest on political matters under the Commonwealth Constitution.

### Is the right to protest unrestricted?

Whilst there is a general right to protest, it has to be exercised in consideration of the rights of other people. The following considerations may lead to restrictions being placed on the right to protest:

- avoidance of obstructions on roads;
- protection of national security;
- maintaining public order and safety; and
- avoidance of nuisance to others.

### Principles of peaceful protest

There are some basic rules that should be followed when conducting a peaceful protest:

- never become abusive;
- do not threaten a person with violence;

#### **Important disclaimer:**

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

- do not assault, hit, or hurt anyone;
- do not interfere with or damage equipment, possessions or property; and
- if arrested, go quietly and cooperatively with the police.

Adhering to these rules will reduce the risk of infringing others' rights, and will promote the protest message.



## Where can protests be conducted?

Protests can generally be undertaken on any Crown land, roads and any private land to which the public usually have unrestricted access. However, protests are not allowed on land which is controlled by a locked gate or has some other type of restriction on access. Entering such land or property is likely to amount to trespass and may result in legal action being taken by the occupier of the land.

A police officer or any person in charge of a particular place can order a protest to stop. It is an offence for a person not to leave when asked to do so. It is also an offence to leave the area but then re-enter immediately. The maximum penalty for these offences is a fine of \$500 and/or six months jail. The occupier of the land may also be able to take trespass proceedings against a person refusing to leave.

Higher penalties apply if you are on land controlled by the Department of Conservation and Land Management (CALM), such as a national park or State forest. If a CALM officer or police officer tells you to leave CALM land and you fail to do so, the maximum fine is \$1,000. Higher penalties also apply if you are told to leave land which is the subject of a State Agreement Act, such as some forests or mine sites. The maximum fine for failing to leave land the subject of a State Agreement is \$5,000 and/or 12 months jail.

## Protests on water

Special rules apply to protests in navigable waters (for example, a flotilla of small craft protesting against a live sheep shipment). It is an offence for a person to navigate a vessel in a way which endangers the safety of another vessel or obstructs another vessel. An on-the-spot fine of \$100 applies. If the matter is dealt with by a court, the maximum fine is \$500. More significant penalties apply for failing to prevent collisions between craft – maximum fine \$10,000 and two years jail. Police also have powers to detain a vessel suspected of being used in or proposed to be used in the commission of an offence.

Waters may be closed to navigation generally, or closed to navigation by vessels of a particular type or class on public safety grounds. It is an offence for a person in charge of a vessel to knowingly navigate that vessel in contravention of a closed waters notice.

If the protest is against a naval vessel from Australia or another country, special rules may apply. This is especially so in relation to any “anti-terrorism” laws. It is recommended legal advice be sought before undertaking a protest that may involve naval vessels or naval waters.

## Commonwealth land

It is an offence to enter any Commonwealth land when there is a notice stating that trespassing is prohibited. The maximum penalty for trespassing on Commonwealth land is \$1,100.

Special rules apply to other types of Commonwealth land, such as diplomatic areas, defence installations and airports. You should seek legal advice if you intend to protest at such places.



## Do I need a permit to hold a protest?

You must have written authority to conduct a protest, march or rally:

- on a street or land adjacent to any street; or
- on land managed by the Department of Conservation and Land Management (“CALM land”), where the number of protesters is likely to exceed 100 persons.

## Protests on or near a street

A “street” means any road or highway open to or used by the public, whether on private or public land. It includes everything within the road reservation, such as the surface of the road, the footpath, median strip and traffic islands.

A peaceful protest that involves either a procession on a street or an assembly on public or private land adjacent to a street requires the written approval of the police. A person who organises or participates in a meeting or procession on or near a street without approval commits an offence and is liable to an on the spot fine of \$50. If the matter proceeds to a court, the maximum fine is \$800 for a first offence, and \$1,600 for subsequent offences.

### Protests on CALM land

You will need permission to hold a gathering on CALM land where the number of people attending or likely to attend exceeds 100. CALM land includes State forests, timber reserves, national parks and nature reserves.<sup>27</sup> Failing to obtain approval is an offence, and the organiser is liable to a \$200 on-the-spot fine. If the matter proceeds to court, the maximum penalty is \$2,000.

Some areas of CALM land may also be closed for public access, including temporary control areas and prohibited areas. Entry onto these lands without approval attracts a maximum penalty of \$2,000.

For further information on protesting on CALM land, see the [Forest Activism Handbook](#).



## How do I obtain a permit to protest?

### Protests on or near a street

Most peaceful protests will involve the use of a street or be located near a street. An application for a permit to hold a street protest should be made to the police at least four days prior to the protest. An application form is available from the police.

The police must grant approval for a procession unless they are satisfied that the procession or parade will —

- (a) give rise to an obstruction that is too great or too prolonged;
- (b) cause damage to a street; or
- (c) create a public nuisance.

The police may place conditions on any approval relating to public safety and other limitations that are necessary.

If the police refuse or fail to grant a permit, or grant it on conditions that the applicant finds unreasonable, the applicant may appeal to a magistrate. The hearing of a claim before the magistrate must be held as soon as practicable.

### Protests on CALM land

For protests on CALM land involving more than 100 persons, written approval is required from the Executive Director of CALM. There is no form prescribed for making an application, but it should contain details such as:

- where the event will be held;
- the purpose of the protest;
- the likely number of people attending; and
- the expected program and duration.

In addition to obtaining the approval of the Executive Director, if the protest is held near or on a road (even if it is on CALM land) a permit should also be obtained from the police as described in the previous section.



## What activities are authorised at a protest, march or rally?

If a permit is granted for a protest, march or rally in or near a street, participants observing the conditions imposed on that protest are exempt from any offence against laws regulating the obstruction of a street.



## What powers do the Police have at a protest?

Police have the following powers at a protest:

- *Order to disperse* – if a protest becomes unruly or threatens to breach the peace, the police may order the assembly to disperse. If the protest becomes unruly, it may be declared to be an “unlawful assembly”, taking part in which

may be a criminal offence with a maximum jail term of 12 months. If an unlawful assembly actually threatens the peace, it is called a “riot” and participants face a maximum penalty of three years jail.

- *Asking name and address* – a police officer can ask a person for their name, address or date of birth if the officer has reasonable grounds to suspect the person has committed, or is about to commit, an offence. It is an offence to refuse to give these details or to provide false details. The maximum penalty is 12 months jail.
- *Request for driver’s licence* – a police officer can require a person driving a vehicle to produce a driver’s licence. Failure to produce the licence either when requested or within a reasonable time afterwards is an offence. The maximum penalty is \$200.
- *Power to arrest* – a lawful arrest requires the arresting officer to do three things:
  - Use words that indicate you are under arrest;
  - Either touch you and have you go with them, or tell you to stay in a particular place; and
  - Give a reason for the arrest (not necessarily the actual charge).

The police do not need to have a warrant to arrest you, and in fact most arrests are made without a warrant. While there is no requirement for a police liaison person or ‘buddy’ to be in attendance when you are arrested, the local police station may have a policy suggesting or requiring that a police liaison person or a ‘buddy’ be present during removal, arrest or detention of peaceful protestors.

The police are allowed to use reasonable force if it is necessary to make an arrest. However, if you are injured or think that the arresting officer has used unreasonable force, verbally report it to the officer-in-charge immediately. Make a written and signed report as soon as possible. Request medical assistance and have any injuries photographed as soon as possible, and inform your lawyer.

- *Power to search* – the police have a right to search the clothes and body of a person arrested to preserve any evidence of an offence, or to ensure the safety of the arrested person and others. The police are allowed to use force if it is necessary to undertake a search.

A person must comply with any reasonable instructions from the police. It is an offence to disturb, hinder, or resist any member of the police force in the execution of their duties, or to aid or incite another person to do so. This includes doing anything that makes it more difficult for police to discharge their duties, such as standing between an officer and a person to be arrested, lying in an officer’s path, or obstructing even in fairly passive ways. The maximum penalty for this offence is \$500 or six months jail. A similar penalty applies for obstructing a CALM officer. In addition, refusal or failure to obey a lawful direction of a CALM officer could result in a maximum penalty of \$10,000 or 12 months in prison.

### What you can do at a protest

- walk or march along any street, road or other public place approved in the permit;
- chant, sing and make other noise as part of the protest;
- carry flags, signs and other safe material;
- gather at any place approved in the permit for the purpose of hearing a public address or demonstration.

### What you can’t do at a protest

- obstruct any ambulance, fire brigade vehicle, or police vehicle;
- hinder another person’s lawful activities;
- engage in disorderly conduct, such as loud shouting and the use of obscenities;
- destroy or cause damage to another person’s land or property;
- engage in acts of graffiti;
- erect any permanent structure on the land;
- make defamatory comments about any individual or organisation;
- create a nuisance, behave in a disorderly or offensive manner, use abusive or insulting language, or be seriously affected by alcohol or drugs on CALM land.



## Terrorism: implications for protests

Many governments are increasing the level of security in response to the threat of terrorism. This may include restrictions on protests in security sensitive areas. As the law relating to terrorism is rapidly changing, it is recommended that you always seek advice from the police or a lawyer before protesting at any location which may involve special security (for example, protests near or at government buildings, Parliament, airports or defence installations).

### Contacts and further information

Police Service of Western Australia - to be put through to your local station	Tel: 131 444
Police - State Traffic Coordination, Perth	Tel: (08) 9222 1832
Department of Conservation and Land Management, Crawley	Tel: (08) 9442 0300
Department of Planning and Infrastructure - Marine Division, Fremantle	Tel: (08) 9216 8999
Australian Federal Police, West Perth	Tel: (08) 9320 3444

For copies of legislation considered in this fact sheet visit:

State Law Publisher (WA legislation)	Tel: (08) 9321 7688
Australian Legal Information Institute (Commonwealth legislation)	

## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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