



Commonwealth of Australia

Joint Submission to the UN Universal Periodic Review

37th Session of the UPR Working Group

Submitted 9 July 2020

**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
General Consultative Status with ECOSOC**

**CIVICUS: World Alliance for Citizen
Participation**

Tor Hodenfield
tor.hodenfield@civicus.org
Susan Wilding, Email:
susan.wilding@civicus.org

Tel: +41 22 733 3435
Web: www.civicus.org

1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries.
- 1.2 In this document, the authors examine the Government of Australia's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Australia's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in November 2015. To this end, we assess Australia's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of recommendations.
- 1.3 During the 2nd UPR cycle, the Government of Australia received six recommendations relating to the space for civil society (civic space). Of these recommendations, five were accepted and one was noted. However, an evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Australia has partially implemented two recommendations and not implemented four others relating civil society space.
- 1.4 We are deeply concerned that in the wake of Australia's recent bushfires, climate and environmental movements and defenders are increasing being criminalised as a tactic to silence them, including Indigenous peoples, scientists, student strikers and environmental organisations.
- 1.5 We are further alarmed by unwarranted restrictions on media freedoms due, in large part, to an increase in police raids on independent media outlets.
- 1.6 Moreover, we express concern over recent attempts to silence whistleblowers who reveal government wrongdoing under the Intelligence Services Act.
- 1.7 As a result of these issues, in December 2019, the CIVICUS Monitor, which rates and tracks respect for fundamental freedoms in 196 countries, downgraded Australia's civic space rating from open to narrowed.¹

¹ CIVICUS Monitor: Australia, <https://monitor.civicus.org/country/australia>; 'People Power Under Attack', CIVICUS, December 2019, <https://civicus.contentfiles.net/media/assets/file/GlobalReport2019.pdf>.

2. Freedom of association

- 2.1** During Australia's examination under the 2nd UPR cycle, the government did not receive any recommendations on the right to the freedom of association and creating an enabling environment for CSOs. CIVICUS is however concerned that the Australian government is using a variety of measures to discourage CSOs from engaging in advocacy and critique of government policies, including threats to strip environmental groups of charity status and its associated benefits on the grounds of being 'too political'.²
- 2.2** For example, in one worrying case, the National Family Violence Prevention and Legal Services Forum, the only peak body representing 13 frontline family violence prevention organisations, did not have its federal government funding renewed in November 2019, meaning that there will no longer be any advocacy representing Indigenous domestic violence victims at the national level.³ The defunding of the National Family Violence Prevention and Legal Services Forum followed a pattern that the UN Special Rapporteur on the situation of human rights defenders had expressed concern about.⁴
- 2.3** Concerns have been also raised by civil society groups about a bill on foreign donations that could suppress the voices of CSOs from speaking up and contributing to public debate. The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 is currently before the Australian Senate.⁵
- 2.4** In January 2020, legal experts said that the Queensland state government's bill to limit political donations and election spending will have the unintended consequence of silencing charities and community groups unless it is amended. The Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 is currently before the Economics and Governance Committee

² 'Liberals push to strip environmental groups of charitable tax status', The Guardian, 30 June 2014, <https://www.theguardian.com/environment/2014/jun/30/liberal-party-environmental-groups-charitable-status>.

³ 'Morrison Government defunds Indigenous domestic violence body', ABC News, 6 December 2019, <https://www.abc.net.au/radio/programs/am/morrison-government-defunds-indigenous-domestic-violence-body/11772656>.

⁴ 'Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia', UN Human Rights Council, A/HRC/36/46/Add.2, 8 August 2017, para.44, <https://undocs.org/A/HRC/36/46/Add.2>.

⁵ 'Proposed laws could criminalise whistle-blowers and silence civil society', CIVICUS Monitor, 18 February 2018, <https://monitor.civicus.org/updates/2018/02/14/proposed-laws-could-criminalise-whistle-blowers-and-silence-civil-society>; 'Changes to security laws likely to have chilling effect, UN warns', CIVICUS Monitor, 4 May 2018, <https://monitor.civicus.org/updates/2018/05/04/changes-security-laws-likely-have-chilling-effect-un-warns>.

for review.⁶

- 2.5** In December 2018, Unions NSW filed a legal challenge against the New South Wales state government's Electoral Funding Act, which restricts registered third-party campaigners to a spending cap of AUD 500,000 (approx. US\$360,000) in the six months before an election. Unions NSW stated that the "fear of being prosecuted" would prevent unions, community groups and environmentalists from communicating and working together during elections. Under the new legislation, multi-million-dollar union anti-privatisation campaigns would be outlawed during election periods.⁷

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Australia's previous UPR examination, the government received three recommendations on the protection of HRDs, civil society representatives and journalists. Among other recommendations, the government committed to "Allow human rights organisations full access to detention centres." Of the recommendations received, three were accepted and one was noted. However, as examined in this section, the government has failed to operationalise these recommendations effectively. Of the four recommendations on protection and the promotion of the work of HRDs, the government has partially implemented two and not implemented two others.
- 3.2** On 22 July 2019, TV reporter Hugo Clément from French public broadcaster France 2 and three of his crew were arrested while filming protesters in Queensland. They were filming protesters blocking access to Indian conglomerate Adani Enterprise's Abbot Point coal terminal for an environmental documentary about oceans, including the Great Barrier Reef.⁸
- 3.3** On 5 June 2019, a warrant was served at the Sydney offices of the Australia Broadcasting Corporation (ABC), naming three of its journalists. The warrant was reportedly issued in order to help the authorities to identify the sources for a report broadcast on the ABC current affairs programme 'The 7.30 Report' in July 2017 about the so-called Afghan Files, detailing possible unlawful killings by members of

⁶ 'Smear campaign against green activists, anti-protest laws and media restrictions in Australia', CIVICUS Monitor, 4 February 2020, <https://monitor.civicus.org/updates/2020/02/04/smear-campaign-against-green-activists-anti-protest-laws-and-media-restrictions-australia>.

⁷ 'Anti-encryption law rammed through Australian parliament could impact global privacy', CIVICUS Monitor, 28 January 2019, <https://monitor.civicus.org/updates/2019/01/28/anti-encryption-law-rammed-through-australian-parliament-could-impact-global-privacy>.

⁸ 'Freedoms at risk in Australia with media raids, silencing of whistleblowers and arrest of protesters', CIVICUS Monitor, 29 August 2019, <https://monitor.civicus.org/updates/2019/08/29/freedoms-risk-australia-media-raids-silencing-whistleblowers-and-arrest-protesters>.

the Australian special forces in Afghanistan.⁹

- 3.4** On 4 June 2019, the home of Annika Smethurst, the national politics editor of the Sunday Telegraph, was raided by the Australian Federal Police (AFP) for more than seven hours as part of an investigation into the publication of a leaked plan to expand government surveillance in 2018. In April 2020, Australia's High Court ruled that the warrant used by police to search the journalist's home was unlawful.¹⁰ In May 2020, the AFP said that journalist Smethurst would not be charged.¹¹

4. Freedom of expression, independence of the media and access to information

- 4.1** Under Australia's previous UPR examination, the government received two recommendations on the freedom of expression, independence of the media and access to information. The government committed to "take concrete measures in order to ensure that any interference with the right to privacy comply with the principles of legality, proportionality and necessity, regardless of the nationality or location of the individuals affected." Both recommendations were accepted, but as examined in this section, the government has not implemented either.
- 4.2** There is civil society concern about the impacts on the freedom of expression and media freedom of a barrage of recently passed or proposed laws. On 28 June 2018, the Australian Senate passed the National Security Legislation Amendment (Espionage and Foreign Interference) Bill and the Foreign Influence Transparency Scheme Bill. Serious concerns had been raised over the proposed changes to Australia's official security laws including broad definitions within the text that threatened to impose new duties on journalists, charities, protesters and possibly academics to register and disclose foreign contacts, along with potential liabilities for failure to do so. In February 2018, three UN special rapporteurs warned that changes to such laws in Australia could contravene its international human rights obligations and potentially have a chilling effect on investigative reporting.¹²
- 4.3** On 4 April 2019, the Australian parliament passed new legislation to crack down on violent videos on social media. Civil society groups criticised the lack of consultation around the bill. The UN special rapporteurs on counterterrorism and human rights and freedom of expression wrote to the government saying they had intended to provide comments on the proposed legislation, but the law was passed before they

⁹ Ibid.

¹⁰ 'Continued concerns about privacy and freedoms in Australia, following civic space rating downgrade', CIVICUS Monitor, 27 May 2020, <https://monitor.civicus.org/updates/2020/05/27/continued-concerns-about-privacy-and-freedoms-australia-following-civic-space-rating-downgrade>.

¹¹ Ibid.

¹² 'New security laws will have a chilling effect on freedom of expression, says civil society', CIVICUS Monitor, 13 August 2018, <https://monitor.civicus.org/updates/2018/08/13/new-security-laws-will-have-chilling-effect-freedom-expression-says-civil-society>.

had an opportunity to do so.¹³

- 4.4 On 7 December 2018, Australia's parliament passed the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 that will allow the country's intelligence and law enforcement agencies to demand access to end-to-end encrypted digital communications. In October 2018, The UN Special Rapporteur on the right to privacy, Joseph Cannataci, raised concerns about the bill, calling on the government to drop its "fatally flawed" proposed legislation, noting that it forces tech companies to help spy on citizens in various ways, including by granting access to phones and other devices.¹⁴
- 4.5 A further proposed new law, the Telecommunications Legislation Amendment (International Production Orders) Bill 2020, introduced in March 2020, could allow the Australian government to access data across borders. It would also enable foreign agencies to directly obtain access to data stored in Australia. The Australian Privacy Foundation has labelled the bill as "deeply flawed," stating that it "enshrines an inappropriate level of discretion and weakens parliamentary oversight."¹⁵
- 4.6 On 6 August 2019, it was reported that the former spy and whistleblower, Witness K, would plead guilty to breaching secrecy laws by revealing Australia's spying on Timor-Leste but that his lawyer, Bernard Collaery, would fight the charges in the Supreme court. The two men were charged under section 39 of the Intelligence Services Act with disclosing secret information about the bugging of Timor-Leste government buildings in 2004, an operation that gave Australia the upper hand in talks to carve up resources in the Timor Sea.¹⁶

5. Freedom of peaceful assembly

- 5.1 During Australia's examination under the 2nd UPR cycle, the government did not receive any recommendations on the right to the freedom of peaceful assembly. In policy and practice the government has taken a number of undue measures to subvert this right.
- 5.2 In November 2019, Prime Minister Scott Morrison slammed environmental groups that are targeting businesses, branding environmental protesters as "anarchists" and threatening "a radical crackdown" on the right to protest. Civil society groups criticised the proposal as undemocratic and an attempt to stifle civil society

¹³ 'New Australian law to crackdown on violent videos on social media may lead to censorship', CIVICUS Monitor, 17 April 2019, <https://monitor.civicus.org/updates/2019/04/17/new-law-crackdown-violent-videos-social-media-australia-may-lead-censorship>.

¹⁴ CIVICUS Monitor, 28 January 2019, op. cit.

¹⁵ CIVICUS Monitor, 27 May 2020, op. cit.

¹⁶ CIVICUS Monitor, 29 August 2019, op. cit.

advocacy for Australia to act on climate change.¹⁷

- 5.3** Protesters for climate and environmental action have faced arrest.¹⁸ On 6 August 2019, Queensland police arrested and charged 56 climate protesters in Brisbane.¹⁹ During a series of disruptive Extinction Rebellion actions in Brisbane in mid-2019, more than 70 people were arrested. In May 2019, ahead of federal elections, at least 13 people were arrested after environmental activists abseiled off the Sydney Harbour Bridge to demand action on climate change.
- 5.4** Protesters on other issues have also faced arrest. Four women were charged in Melbourne on 11 July 2018 with ‘wilful trespass’ after refusing to move from the Department of Home Affairs office during a protest against the detention of refugees on Christmas Island, Nauru and Manus Island in Papua New Guinea.²⁰
- 5.5** During the Commonwealth Games in Queensland in 2018, Indigenous protestors were reportedly subjected to arrest for being within exclusion zones, despite police roadblocks allegedly forcing them to return to some of these areas. One of the protesters arrested was Dylan Voller, the survivor of torture in Dondale Youth detention centre in the Northern Territory, whose photograph was widely shared in international media.²¹
- 5.6** New laws have been introduced or proposed at state level in the wake of recent protest actions. New protest regulations in the state of New South Wales, which came into effect on 1 July 2020 have been called “a fundamental attack on democracy” by a prominent activist. The new regulations under the Crown Management Act would give low-ranking officials broad powers to disperse or ban protests, meetings, rallies and gatherings on any state-owned land, which amounts to around half of all land in New South Wales.²²
- 5.7** In October 2019, new anti-protest laws were pushed through in Queensland. In a letter to the Australian government, four UN special rapporteurs on human rights outlined concerns about the new laws, which they say are at odds with international obligations.²³
- 5.8** In Tasmania, even stricter anti-protest laws may soon be enacted. Individuals found guilty of breaking the proposed law could face jail terms of 18 months for a first

¹⁷ CIVICUS Monitor, 4 February 2020, op. cit.

¹⁸ ‘Civil society action on climate crisis’, State of Civil Society Report, CIVICUS, 2020, <https://bit.ly/3efkkY9>.

¹⁹ CIVICUS Monitor, 29 August 2019, op. cit.

²⁰ CIVICUS Monitor, 13 August 2018, op. cit.

²¹ ‘Jack Latimore: Big questions remain over the police treatment of Aboriginal protest group at Games’, @Indigenousx, 19 April 2018, <https://indigenousx.com.au/jack-latimore-big-questions-remain-over-the-police-treatment-of-aboriginal-protest-group-at-games>.

²² CIVICUS Monitor, 13 August 2018, op. cit.

²³ CIVICUS Monitor, 4 February 2020, op. cit.

offence and four years for a second offence.²⁴

6. Recommendations to the Government of Australia

CIVICUS calls on the Government of Australia to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made.

16.1 Regarding the freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding in line with best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Amend the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 and the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 to guarantee that undue restrictions on the freedom of association are removed to bring their provisions into compliance with ICCPR articles 21 and 22.

16.2 Regarding the protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that journalists are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.

²⁴ Ibid.

- Publicly condemn at the highest levels instances of harassment and intimidation of civil society activists and CSOs.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists in accordance with Human Rights Council resolution 27.31.

16.3 Regarding the freedom of expression, independence of the media and access to information

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Review the National Security Legislation Amendment (Espionage and Foreign Interference) Bill, the Foreign Influence Transparency Scheme Bill, the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 and the Telecommunications Legislation Amendment (International Production Orders) Bill 2020 in line with best practices and international standards in the area of the freedom of expression.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.

6.4 Regarding the freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 annual report, which calls for procedures in which there is simple notification of assemblies being held, rather than explicit permission being needed to assemble.
- Review and amend all state-level laws, including the Crown Management Act, to guarantee fully the right to the freedom of peaceful assembly.

6.6 Regarding the state's engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.

- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.