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To: Mr Michel Forst, Special Rapporteur on the situation of human rights defenders
Mr David Kaye, Special Rapporteur on the right to freedom of expression
Mr Maina Kiai, Special Rapporteur on the rights to freedom of assembly and of association

By email: urgent-action@ohchr.org

Copy: Hon Liza Harvey MLA, Police Minister of Western Australia

8 February 2016

Dear Special Rapporteurs

Request for intervention on proposed anti-protest laws in Western Australia

We write in relation to proposed new laws in Western Australia that, if passed, would severely infringe the rights to peaceful assembly and freedom of expression, and give excessively broad powers to police aimed at defenders of land and environment rights.

In 2015, the Western Australian Government introduced the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015 (**the Bill**) for the stated purpose of stopping environmental protesters locking themselves onto equipment, trees and other objects in order to delay or frustrate fossil fuel development sites (see parliamentary speech [here](#)). However, the terms of the Bill are much broader than that purpose suggests and, if passed, would criminalise peaceful assembly and civil disobedience, as well as the possession of everyday items.

The Western Australian parliament is due to debate the bill in the week beginning 15 February 2016, making time of the essence.

Given the impact of your strong [joint statement in 2014](#) on similar anti-protest laws in Tasmania, which led to the amendment of some of that Bill's most problematic provisions, we believe that an

intervention by your mandates on the human rights impact of the Bill during the next fortnight could be very influential.

About the proposed law

Put broadly, the Bill would create two new criminal offences:

1. physically preventing a lawful activity; and
2. preparation for physically preventing a lawful activity or trespass, including possessing a 'thing' for the purpose of preventing lawful activity .

Both offences carry serious penalties of up to one year in prison and a fine of up to \$12,000. If the offence is committed in circumstances of aggravation, the penalty for preventing a lawful activity could be as high as two years imprisonment and a fine of \$24,000. The bill can be found [here](#).

The Bill is an unnecessary and unreasonable limitation on the rights to freedom of assembly and expression

We are concerned that, contrary to articles 19 and 21 of the International Covenant on Civil and Political Rights, the Bill unnecessarily and unreasonably limits the rights to freedom of expression and of assembly and gives excessively broad powers to police with the intention that they will target environmental defenders.

The Bill is unnecessary. The Western Australian police already have broad powers to manage protests where necessary to protect public safety, public order and other interests recognised as legitimate under the International Covenant on Civil and Political Rights. These include powers to arrest, detain and charge people for a suite of offences like trespass, obstruction, nuisance, breach of the peace and property damage. The Bill would grant police disproportionate and unnecessary powers to restrict protest; powers aimed at preventing protests by environmental defenders in particular.

In addition to being unnecessary, the Bill is unreasonably and excessively broad. It criminalises a wide range of conduct, including peaceful civil disobedience and any non-violent direct action that can be characterised as 'physically preventing a lawful activity'. The offences are drafted in such broad terms that the possession of everyday equipment such as bike locks or of any 'thing' could be an offence if it is possessed for the purpose of committing the offence. Even a brief, trivial interruption to a lawful activity could trigger the offence. Under international law, by contrast, the notion of a protected 'peaceful' assembly is broad. A demonstration may be peaceful even though the protestors' conduct might 'annoy, give offence, hinder, impede or obstruct the activities of third parties'.¹ International law will almost invariably protect peaceful civil disobedience.² International law also recognises that engaging in protest, including non-verbal protest, may entail and be protected as an exercise of the fundamental right to freedom of expression.³

¹ See OSCE Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly*, 2010, 1.3.

² Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 3rd ed, 2013) [19.05].

³ UN Human Rights Committee, *Kivenmaa v Finland*, CCPR/C/50/D/412/1990, [9.3].

The Bill also contains an effective reversal of the onus of proof, whereby the accused must disprove that they intended to prevent a lawful activity if there are reasonable circumstances suggesting that they did.

Instead of facilitating peaceful assembly and free expression, the Bill discourages legitimate protest activity and prioritises business interests over democratic rights.⁴

A broad sector of civil society oppose the Bill, including church leaders, conservation groups, the legal profession, farmers, community advocates and unions.

Request for action

Unfortunately, Australia's domestic laws (including Western Australian law) do not adequately protect the rights to freedom of assembly, association or expression in line with international standards. The ICCPR is not incorporated or unenforceable under Australian domestic law. Accordingly, there are few legal limits on the ability of the Western Australian parliament to pass these anti-protest laws.

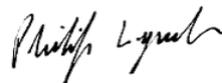
The Human Rights Law Centre and the International Service for Human Rights respectfully request that you take action with a view to ensuring that the Western Australian parliament refrains from passing the bill in its current form on the basis that the Bill unnecessarily and unreasonably infringes on the rights to freedom of assembly and of expression. We believe that a communication to government, together with a media statement by your mandates, could provide an important and influential contribution to the debate on these laws at a local level.

We would be pleased to provide you with any further information that might be of use.

Yours sincerely



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⁴ Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Addendum – Observations on Communications Transmitted to Governments and Replies Received*, 29th sess, UN Doc A/HRC/29/25/Add.3, 10 June 2015, 41-2 [211]-[212].