

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

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(Please use this reference in your reply)

23 April 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 58/14, 52/9, 50/17 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government the *Crimes Amendment (Places of Worship) Act 2025* ("the Act"), which passed the New South Wales (NSW) Parliament on 21 February 2025 and received royal assent on 2 March 2025. The Act amends two existing laws: (1) creating new offences for intentionally impeding access to places of worship and intimidating, harassing or threatening people as they access or leave a place of worship, and (2) granting police officers powers to issue "move on" orders in the context of public assemblies near places of worship.

According to the Attorney-General of NSW, the Act is in response to "disgraceful acts targeting synagogues in New South Wales and other Australian jurisdictions", including an arson attack on a synagogue in Melbourne in December 2024, along with the vandalising of two synagogues in Sydney suburbs. The Act was adopted in response to antisemitic vandalism and attacks that have involved synagogues, and suggestions of potential terrorist threats, in the wider context of the public concern about the conflict in the State of Palestine. However, the new laws will affect all demonstrations and protests outside all places of worship.

We note that following its introduction to Parliament, the proposed law was not referred to a Parliamentary committee inquiry for scrutiny, public consultation and comment, as is the standard practice in Australian legislatures for bills that may potentially impact on human rights or fundamental freedoms.

We are concerned that the Act introduces measures that could significantly limit the exercise of fundamental freedoms in breach of Australia's international human rights obligations, in particular the rights to freedom of assembly (article 20 of the Universal Declaration of Human Rights (UDHR) and article 21 of the International Covenant on Civil and Political rights (ICCPR), which Australia ratified in August 1980), freedom of association (article 20 of the UDHR and article 22 of the ICCPR) and freedom of expression (article 19 of the UDHR and article 19 of the ICCPR). We recommend review and reconsideration of certain aspects of this legislation to ensure its compliance with Australia's international human rights obligations.

We emphasize that Australia is responsible for the conduct of all of its State organs, including of its internal territorial units such as the NSW Parliament: see article 4(1) of the International Law Commission Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001.

### *New offences*

The Act amends the *Crimes Act 1990* (“Crimes Act”) to create a new criminal offence in section 214B for a person to:

- without reasonable excuse, intentionally block, impede or hinder a person accessing or leaving a place of worship; or
- harass, intimidate or threaten a person accessing or leaving a place of worship.

The offences do not apply to conduct that is part of industrial action, occurs outside Parliament House or parliamentarians’ offices, or is in accordance with the consent of the Commissioner of Police or the person apparently in charge of the place of worship.

In relation to the first offence, the NSW Government has indicated that “reasonable excuse” for such conduct, though undefined in the Act, could include undertaking maintenance or construction work or street closures necessary for street markets or sporting events. However, the right to peacefully assemble, protest or demonstrate does not appear to be envisaged as a reasonable excuse with the same level of protection as utilitarian or recreational pursuits.

The offences carry a maximum penalty of 200 penalty units (a fine of \$22,000) or imprisonment for 2 years, or both.

We are concerned that the first offence is not consistent with the inter-related rights to freedom of assembly, freedom of association and freedom of expression (including the freedom to seek, receive and impart information and ideas of all kinds, including through peaceful protests). Under articles 21, 22 and 19 of the ICCPR, the three rights may only be restricted by law where necessary and proportionate in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Restrictions must be “narrowly drawn” (CCPR/C/GC/37, para. 8) and be “the least intrusive instrument among those which might achieve their protective function” ([CCPR/C/GC/34, para. 34](#)).

The NSW Attorney-General indicated in his second reading speech before Parliament that the Act would enable the protection of the right of people to “practise their religion freely and without fear of intimidation or harassment”. It thus aims to permit restrictions on freedoms of assembly, association and expression in order to protect the exercise of freedom of religion, which is protected under article 18 of the UDHR and article 18 of the ICCPR. States have an obligation to protect the right to expression of religious beliefs without interference, including the right to worship,

practice, teach and observe religious beliefs, and must take proactive steps to protect people of faith from hate crime and discrimination.

We are concerned, however, that the first offence restricts the right to peaceful assembly in a manner that is not proportionate to protecting the right to worship free from interference. We emphasize that under international law, “assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated” (CCPR/C/GC/37, para. 47). Assemblies may only be restricted if disruptions “impose a disproportionate burden” (ibid), for instance by considering “the cumulative impact of sustained gatherings” (para. 54). We highlight further that an assembly remains “peaceful” and protected where it involves “intended or unintended” disruption, including of vehicle or pedestrian movement or other activities (CCPR/C/GC/37, paras. 7 and 15). “Mere pushing and shoving” are also regarded as non-violent and protected (para. 15).

In contrast, the Act disproportionately criminalizes any impediment to any person accessing or leaving a place of worship, however brief or fleeting, and without reference to the duration of the protest or the extent of the impediment and the burden it imposes on the rights of others, including as regards the number of worshippers affected. It makes it a crime merely to cause inconvenience to someone seeking to enter a religious place, without weighing the interests by reference to the particular facts and circumstances, or giving any weight to the right to freely assemble or to express ideas. It is not even limited to acts impeding worshippers, but applies to any person seeking to enter a place of worship for any purpose, including for example tradespersons or public authorities, and to that extent is not strictly necessary to protect the freedom of others to exercise religion, while it seems to disproportionately interfere with the rights to freedom of expression and peaceful assembly.

We recall that article 21 of the ICCPR protects peaceful assemblies wherever they take place (CCPR/C/GC/37, para. 6). Peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets (para. 55), and assemblies must be allowed to be held within sight and sound of their target (paras. 22 and 53). There is no justification for treating the vicinity of all places of worship as a special category automatically entitled to higher protection than any other public places. In this respect, we note that in proposing the law, the NSW Government did not identify any incidents whereby worshippers were impeded from entering places of worship, including by any protesters, such that there appears to be no empirical evidence that could possibly support such far-reaching and over-broad restrictions. The occurrence of antisemitic incidents in society at large, including some targeting synagogues, does not justify restricting the unrelated phenomenon of legitimate protests in a democratic society. Further, the Act applies to all places of worship, not limited to any demonstrable threats against Jewish sites.

We emphasize that under international law, States are required not to sanction protesters without legitimate cause (CCPR/C/GC/37, para. 23). Further, any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it, and restrictions must not be aimed at discouraging participation in assemblies or causing a chilling effect (para. 36). Moreover, if the detriment if the restriction outweighs the benefit, the restriction is

disproportionate and thus not permissible (para. 40).

The principle of proportionality requires that any restrictions must be the least restrictive means necessary to achieve a legitimate aim. There is no strong evidence that existing laws are insufficient to address concerns around safety or the freedom of movement of worshippers near places of worship. Existing legal frameworks of general application, including ordinary criminal offences, public order laws and anti-harassment provisions, already address threats, violence, or obstruction. The introduction of new, vaguely worded, over-broad offences appears unnecessary and risks criminalizing and chilling legitimate and peaceful activism. It also appears intended to signal that freedom of worship is categorically more important than freedoms of assembly and expression, given the absence of any meaningful balancing or proportionality assessment and the lack of any empirical grounds justifying the restrictions.

We further highlight that laws restricting freedom of assembly must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement (CCPR/C/GC/37, para. 39), and that sanctions must not be based on ambiguous or overbroadly defined offences (para. 67). The Act's criminalisation of conduct which "impedes" or "hinders" access to places of worship is ill-defined, subjective and overly broad. We note that "places of worship" is also broadly defined to include "a building or structure ordinarily used for worship," which is not sufficiently precise since it could capture protest activity at or near locations such as schools and hospitals containing places of worship on their premises. The lack of clear legal thresholds, and overly broad terms, could potentially lead to arbitrary enforcement by police. This is especially concerning given that the proposed new offences carry serious penalties, including the possible deprivation of a person's liberty.

We further emphasize that harsh penalties of up to two years' imprisonment may be disproportionate to the act of merely hindering or impeding access to a religious place, particularly where this occurs in the exercise of freedom of assembly and expression.

The Act's exceptions to the offences, for protest activity outside Parliament House or an office of a member of Parliament or that is part of industrial action or an industrial dispute, are not sufficient to ensure that the offences are otherwise necessary and proportionate in pursuit of the legitimate aim of protecting freedom to worship. We recognise the importance of safeguarding the right to gather for industrial action, consistent with article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights, which Australia ratified on 10 December 1975, and that assembly and expression must be protected in relation to the right of political participation vis-a-vis influencing political representatives (ICCPR, article 25). However, we stress that human rights do not exist in a hierarchy; they are indivisible, interdependent and interconnected. We are concerned that the Act selectively upholds freedom of assembly and association in some contexts, while denying it in others.

### *Concerns regarding police 'move on' powers*

The Act also amends the *Law Enforcement (Powers and Responsibilities) Act 2002* ("LEPRA") to expand police powers to direct a person to "move on", i.e. to leave an area, where the person is participating in a demonstration, protest, procession or assembly occurring in or near a place of worship.

Under pre-existing powers (section 197 of LEPRA), a police officer may direct a person in a public place to "move on" where they believe, on reasonable grounds, that the person's behaviour or presence is obstructing another person or traffic; constitutes harassment or intimidation of another person; or is causing or is likely to cause fear to another person, provided it would cause fear to a person of reasonable firmness. Failure to comply with such a direction is an offence punishable by a fine of up to \$220.

Section 200 of LEPRA bars move on powers in relation to industrial disputes and, in relation to other protests or organised assemblies, they can only be issued where necessary to address a serious risk to safety, or where the assembly is either unauthorised or not being held substantially in accordance with the authorisation and the direction is limited to resolving obstructions of traffic.

The Act amends section 200 to additionally allow move on directions in relation to a demonstration, protest, procession or assembly which is not an authorised public assembly under the Summary Offences Act 1988, or is not being held substantially in accordance with the authorisation, where the assembly is occurring in or near a place of worship. Industrial protests remain excluded. Also excluded are assemblies that occur outside Parliament House or an office of a member of Parliament, or in accordance with the consent of the Commissioner of Police or the person apparently in charge of the place of worship.

We are concerned that these powers could allow police to unjustifiably disperse demonstrators "near" a place of worship for mere obstruction of people or traffic when such conduct may be protected in the circumstances by the right to freedom of assembly and dispersal would be unnecessary and/or disproportionate. Under international law, States are obliged not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification (CCPR/C/GC/37, para. 23). Assemblies may only be dispersed "in exceptional cases", such as where they are no longer peaceful or there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests (para. 85). Peaceful but highly disruptive protests may only be dispersed if the disruption is "serious and sustained" (ibid). Further, isolated acts of violence by some participants should not be attributed to others or the assembly (para. 17).

Further, the principle of proportionality requires that any restrictions must be the least restrictive means necessary to achieve a legitimate aim. Existing legislation already grants police the authority to issue move-on orders there is a sufficiently high threshold to justify restricting free assembly, namely where there is a serious risk to public safety, while ordinary powers of arrest are available where individuals commit criminal violence or threats.

As mentioned earlier, restrictions on freedom of assembly and freedom of expression must be sufficiently precise and not confer excessive discretion. The Act allows move on directions to be issued to people “near” a place of worship. The expression “near” is not defined and invites subjective and potentially overbroad interpretation and application by police in practice. In addition, the term could result in disproportionate restrictions because many major protest sites in NSW cities are “near” places of worship, including Town Hall Square in Sydney, which is owned by St Andrew’s Cathedral next door. The Act could accordingly severely limit freedoms of assembly and expression in places where protests are habitually held. Additionally, this measure could significantly curtail protest activity in many regional towns, whose small geographical size means places of worship are often centrally located on main streets or close to public buildings and parks.

The move on powers do not apply to assemblies authorized under the existing *Summary Offences Act 1988*, which is a system for notifying authorities of an assembly. However, we are concerned that the Act could permit unjustifiable interference in unauthorized assemblies. Under international law, a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences (general comment No. 37, para. 71). Further, spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected (para. 14). Notification systems should facilitate assemblies, not function as authorization systems (para 73).

We also do not consider that exempting protests outside Parliament House or an office of a member of Parliament or that are part of industrial action to be sufficient to ensure the necessity and proportionality of the move on powers, given the indivisibility of human rights, the general applicability of freedom of assembly in all public places, and the absence of an empirically evidenced special danger from protests near places of worship.

Finally, excluding the expanded move on power where the person apparently in charge of the place of worship consents to the assembly renders the operation of the law arbitrary. The Act does not specify any criteria for giving or refusing such consent, such as an objective concern about public safety, but vests an unfettered discretion in a local religious authority to determine whether the move on powers will apply in that location or not. Such religious leaders may have a self-interest in ensuring that there is no inconvenience or disruption whatsoever to the place of worship, including by maximising the availability of police powers, irrespective of whether the restriction on freedoms of assembly and expression is necessary and proportionate in order to protect the right of others in the circumstances.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above.

2. Please provide information on why the Act was not referred to a New South Wales (NSW) Parliamentary committee inquiry for scrutiny and public consultation.
3. Please provide any empirical evidence of whether any assemblies outside places of worship in NSW have involved any conduct of the kind targeted by the Act.
4. Please provide information on how the Act is consistent with Australia's international obligations under the ICCPR, including the rights to freedom of assembly and association under articles 21 and 22 and to freedom of opinion and expression under article 19. Please assess how the Act satisfies the international law requirements of legality, proportionality, necessity and legitimate aim.
5. Please explain whether the amendments introduced by the Act will be immediately reviewed in line with the abovementioned observations and repealed.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Irene Khan

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Gina Romero

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