



# Environmental Defenders Office

## Lawful Speech, Protests and Petitions

*Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).*

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

*This factsheet was last updated in August 2018*

### Overview

This factsheet outlines the regulatory framework governing:

- defamation and freedom of speech;
- protests; and
- petitions.

### Defamation and freedom of speech

Freedom of speech on environmental issues is fundamental to ensure the transparency and accountability of governments and businesses concerning environmental decisions. However, this freedom is limited by the tort of defamation, which is governed by the common law and the national uniform defamation laws.

#### What is defamation?

Defamation occurs where a person publishes matter which may damage another person's reputation. An action in defamation will arise where:

- a publication is made;
- of a defamatory matter;
- about the plaintiff.

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A publication or communication will be 'of a defamatory matter' if it causes ordinary reasonable members of society to:

- think less of, or discredit, the person;
- shun or avoid the person; or
- subject the person to hatred, ridicule or contempt.

### **Who can be defamed?**

The following persons cannot sue for defamation:

- a deceased person;
- a corporation, unless it is a not-for-profit organisation or a private body with fewer than 10 employees; or
- a government or public authority, like the Environmental Protection Authority (EPA).

The plaintiff must be identifiable from the statement or publication. A person is identifiable if an ordinary reasonable person would be able to identify the plaintiff or conclude that all the members of a group to which the plaintiff belongs are the object of the statement. The plaintiff need not be expressly named.

### **Who is liable?**

Each person who participates in the publication of the defamatory statement incurs liability. This might include the broadcaster, the author, the producer of a program or editor of a newspaper, and any other person who contributed to the publication.

#### **Examples:**

- A person who hands out a defamatory leaflet may be liable in addition to the person who wrote it.
- The committee members of a community group who authorise the issuing of a defamatory media release may be liable in addition to the person who wrote the media release. If the community group is an incorporated body, that body may also be liable.

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## Defences to defamation

The following statutory and common law defences may be available to the defendant in a defamation action.

### **Justification**

The defence of justification is available if the defamatory statement or publication can be proven to be substantially true. This defence may be difficult to establish where the truth of a statement is ambiguous or unascertainable.

### **Honest opinion**

The defence of honest opinion is available if the defendant demonstrates:

- the material published is an expression of opinion rather than a statement of fact;
- the opinion relates to a matter of public interest; and
- the opinion is based on proper material, that is, material that is substantially true.

### **Qualified privilege**

The defence of qualified privilege applies where information is given to a person who has an interest in having that information and the maker of the statement acts reasonably in giving that information. The maker of the statement must not be motivated by malice. The qualified privilege defence will apply, for example, to the reporting of a suspected crime to the police or an environmental offence to the Department of Environment.

This defence is applicable if the defendant demonstrates that:

- the recipient has an interest or apparent interest in having information on a subject;
- the matter is published to the recipient in the course of giving him or her information on that subject; and
- the conduct of the defendant in publishing the matter is reasonable in the circumstances.

The factors a court can take into account when deciding whether a person acted reasonably include:

- whether the matter published is of public interest;
- whether the matter published relates to the performance of the public functions or activities of the person;
- the nature of the business environment in which the person operates;

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- any other steps taken by the person to verify the information in the matter published;
- the seriousness of any defamatory imputation carried by the matter published;
- the extent to which the matter published distinguishes between suspicions, allegations and proven facts; and
- the integrity of the sources of information in the matter published.

### **Absolute privilege**

A matter contained in a privileged public document can be published without risk of being defamatory. This defence protects matter published in the course the proceedings of a Parliamentary Body or an Australian Court or Tribunal.

### **Triviality**

The defence of triviality may be available if the defendant proves that the publication of defamatory material is unlikely to harm the plaintiff.

### **Apologies**

A person may request an apology from the publisher of material the person considers defamatory. The request is known as a 'concerns notice'. The notice should identify the imputations considered defamatory, and may request that an apology in a specified form be published in a certain place, such as a local newspaper.

If the defendant chooses to apologise, they can make an 'offer of amends', including an apology and an offer of damages if appropriate. Otherwise, the plaintiff may proceed with legal action. If the offer of amends is accepted and the terms are carried out, the plaintiff releases the defendant from any cause of action relating to that defamatory statement. If the plaintiff rejects an offer of amends, it is a defence to an action of defamation to show that the offer was reasonable in all the circumstances.

## **Court Proceedings**

Defamation cases are heard in the Supreme Court of Western Australia. If a defamation action is successful, the Court can order that the person or persons who made the statement in question to pay damages to compensate for injury to reputation and any financial loss caused by the defamatory statement (such as loss of business). In addition, the court will usually order that the unsuccessful party pay the successful party's legal costs.

The Environmental Defender's Office may be able to assist persons being sued after speaking out on an environmental issue – visit our [website](#).

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## General guidelines

The risk of making defamatory comments when speaking out regarding environmental issues may be reduced by:

- refraining from identifying a person where a statement could harm their reputation;
- refraining from making sweeping statements and generalisations;
- referring to the issue rather than the possible motives of the people involved;
- ensuring communications are substantially truthful
- distinguishing between suspicions, allegations and proven facts in the statement;
- providing opinions only if they are held honestly; and
- checking with a lawyer prior to publication

## Protests, rallies and marches

Peaceful protest is frequently used as a means of achieving social and environmental change. This section of the factsheet is designed for people who are organising or involved in peaceful protests, rallies or marches. It is intended to inform people about the law and legal procedures relevant to protests and activism.

### What is a protest?

Protests, rallies and marches are referred to as 'public meetings', 'processions' or 'assemblies' in legislation. A public meeting is defined as an assembly of three or more persons where members of the public in general are invited, induced or permitted to attend, held for the purpose of:

- communicating a view or opinion to the public; or
- ascertaining the view of the public or a section of the public.

A procession is defined as three or more persons moving along a common route as a single body.

### Right to protest

People have the right to peaceful assembly. This right derives from the Australian Constitution, common law and international law, including the International Covenant on Civil and Political Rights.

Australian citizens also have an implied right to political expression under the Commonwealth Constitution.

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While people have the right to protest, it must be exercised in consideration of the rights of the public. The following concerns may lead to restrictions being placed on the right to protest:

- avoiding obstructions on roads;
- protecting national security;
- maintaining public order and safety; and
- avoiding nuisance to others.

### **Principles of peaceful protests**

There are some basic rules that should be kept in mind when conducting a peaceful protest:

- never become abusive;
- do not threaten or commit violence;
- do not interfere with or damage equipment, possessions or property; and
- if arrested, leave quietly and cooperate with the police.

### **Where can protests be conducted?**

Protests can generally be undertaken on any Crown land, roads and private land to which the public has unrestricted access. However, protests are not allowed on private land (without the owner's consent) or protected land in some circumstances. Entering such land or property may result in civil or criminal liability.

### **Protests on water**

It is an offence for a person to navigate a vessel in a way which endangers the safety of or obstructs another vessel. It is an offence to fail to prevent collisions between crafts.

Waters may be closed to navigation generally, or closed to navigation by vessels of a particular class on public safety grounds. A person in charge of a vessel commits an offence if they knowingly navigate the vessel in contravention of a closed waters notice.

### **Protests on Commonwealth land**

It is an offence to enter any Commonwealth land when there is a notice stating that trespassing is prohibited.

There are special rules applying to other types of Commonwealth land, such as diplomatic areas, defence installations and airports. Legal advice should be sought if you intend to protest at such places.

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## **Protest permits**

You can obtain a permit for a public meeting or procession from the Commissioner of Police. This is an optional process to protect against charges of obstruction. You can request the permit by lodging an application with a local police station.

If a large protest or procession is planned to take place on a public road, you can seek an order for road closure may by lodging an application with the Local Authority (ie the City/Shire/Town containing the road).

## **Protests on land under the *Conservation and Land Management Act 1984 (WA)* and State agreement land**

Permission is needed to hold a gathering on land under the [Conservation and Land Management Act 1984 \(WA\)](#) (**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. It is an offence to remain on CALM Land if directed to leave by a CALM officer. It is also an offence to remain on land subject to a State Agreement (such as some forests or mine sites) if directed to leave by a police officer.

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 is an offence.

## **What is the process for obtaining a protest permit?**

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

The police must grant approval for a procession unless they are satisfied that it will:

- give rise to an obstruction that is too great or too prolonged in the circumstances;
- cause damage to public or private property;
- create a public nuisance; or
- place the safety of any person in jeopardy.

The police may grant the approval subject to conditions 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 the State Administrative Tribunal.

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Protests involving more than 100 persons on CALM Land require written approval from the Executive Director of CALM. There is no form prescribed for the application, but it should contain details such as the event's location, the likely number of people attending and expected program and duration.

## Unlawful protests and riots

There are two main protest offences under the [Criminal Code Act 1913 \(WA\)](#):

- taking part in an **unlawful assembly**; and
- taking part in a **riot**.

### Unlawful assembly

If members of a protest conduct themselves in such a way as to cause reasonable people to fear a breach of peace, the protest will become an 'unlawful assembly'. Any person who takes part in an unlawful assembly is guilty of an offence.

If members of an unlawful assembly are ordered to disperse by a justice or police officer, they must do so within the stated time limit to avoid criminal liability.

### Riots

If an unlawful assembly becomes so tumultuous that it disturbs the peace, it will be considered a riot. Any person who takes part in a riot is guilty of a crime.

Members of the protest are acting tumultuously if they move in an agitated manner or are excited and emotionally aroused, and generally (although not necessarily) if they create noise. An assembly may be acting tumultuously even if no physical violence, personal injury or damage to property has occurred.

## Police powers

Police have the following powers at a protest:

- Ordering persons to move on – a police officer can ask a person in a public place or on public transport to leave if the officer reasonably suspects that the person is committing or intending to commit an offence.
- 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.

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- 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.
- Obstruction of a police officer – a person must comply with police orders. It is an offence to disturb, hinder, or resist any police officer in the performance of their duties, or to aid or incite another person to do so. This includes doing anything that makes it more difficult for a police officer to discharge his or her duties, such as standing between the officer and a person to be arrested, lying in the officer's path, or otherwise obstructing the officer, even in a passive way.
- Power to arrest – For an arrest to be made properly, the police officer or person arresting you should:
  - 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).
- 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.
- Power to set up roadblocks – the police have a right to set up a roadblock on the road for the purpose of stopping a vehicle.

## DO's and DON'Ts of a protest

### What you CAN do

- 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 material;
- gather at any place approved in the permit for the purpose of hearing a public address or demonstration.

### What you CANNOT do

- 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;
- erect any permanent structure on the land;

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**What you CAN do**

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**What you CANNOT do**

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- make defamatory comments about any individual or organisation;
  - create nuisance, behave in a disorderly or offensive manner, use abusive or insulting language, or be seriously affected by alcohol or drugs on CALM Land.
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## Petitions

Petitions are documents used by citizens to directly lobby representative bodies such as Parliaments and local governments on matters of public concern, such as environmental issues.

This section provides an overview of the rules and guidelines that apply to the preparation and presentation of petitions.

### Who receives petitions?

Petitions may be presented to either the House of the Western Australian Parliament (Legislative Assembly and Legislative Council), the House of the Commonwealth Parliament (House of Representatives and Senate) or your local government. You should present your submission to whichever body has power to consider and act upon the matter that concerns you.

### What rules do I need to comply with?

The first general rule is that the petition must be targeted appropriately. The three tiers of government (Commonwealth, State and local government) each have different responsibilities. Petitions should be directed to the body that has the power to act upon the petition.

A petition *should* have the following characteristics:

- be polite;
- be legible, being either clearly written, typed or printed;
- be correctly addressed;
- state the reasons for the petition and request some action or remedy;
- contain the request for a remedy at the top of each page of the submission;
- be in English or be accompanied by a certified translation;

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- contain at least one signature;
- contain the names and addresses of the petitioners and their signatures; and be an original document.

The requirement that a petition document be original means that if you want to present the same petition to two different bodies you must prepare two petitions, rather than simply photocopying the petition.

A petition *should not* have the following characteristics:

- struck out or erased passages in the reasons for the petition or the request for action;
- signatures copied or pasted onto the petition;
- other documents attached to the petition;
- irrelevant statements; or
- defamatory statements.

## Petitions to local government

There are no rules in the [Local Government Act 1995 \(WA\)](#) with regard to petitions. The guidelines here are taken from the Western Australian Local Government Association model local laws. We recommend that you check with your local government about whether it has particular requirements.

Petitions to local governments must:

- be made by electors of the district;
- show the date each elector signed the petition; and
- state the person to whom, and the address to which, the Council's response to the petition can be sent.

There are forms prescribed by the [Local Government Act 1995 \(WA\)](#) and the [Local Government \(Constitution\) Regulations 1996 \(WA\)](#) for petitions that:

- propose to change the method of filling the office of Mayor or President;
- propose to create a new district or alter the boundaries of the local government; or
- request a poll on a particular amalgamation of Local Governments.

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The forms for these petitions can be found in Schedule 1 of the *Local Government (Constitution) Regulations*. These petitions must be signed by 250 people or 10% of the electors of the district, whichever is fewer.

### Petitions to Western Australian Parliament

Petitions to either House of the Western Australian Parliament must not ask for a grant of money.

Petitions to the Legislative Assembly must not be lodged by a Member who has signed the petition.

Petitions to the Legislative Council must contain the principal petitioner's signature and the total number of signatures collected on the first sheet of the petition.

Petitions to the Legislative Council must not attempt to bypass the courts or a tribunal. This means that petitioners cannot approach the Legislative Council to pre-empt or avoid the decision of a court or tribunal.

The Legislative Council will not accept petitions that reflect upon a vote of the Council in the same calendar year.

### Petitions to Commonwealth Parliament

The Senate will generally not accept petitions that refer to a debate being held in the same session of Parliament.

Petitions to either House of the Commonwealth Parliament must not be lodged by a Member who has signed the petition.

Petitions to the House of Representatives may show an address of a particular Member of Parliament as the person who will be presenting the petition, but they must not otherwise suggest the support or sponsorship of that or any other Member of Parliament.

### How should a petition be signed?

Signatories must sign for themselves except in cases of sickness and incapacity. Those who cannot sign their own name may make their mark. The signature and address of a witness should accompany this mark. Petitions of corporations may be made under their common seal.

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The Commonwealth House of Representatives accepts petitions lodged electronically through its online portal (**e-petition**) and the Commonwealth Senate accepts petitions distributed and signed electronically on the internet. E-petitions will be published online after being assessed by the Petitions Committee, after which they will be open for signatures from the public.

In the Senate, a hard copy of the 'electronic signatures' is presented along with a letter from the presenting Senator certifying that Standing Orders were followed. In particular, each petitioner must have seen and understood the wording of the petition before they 'signed'. An electronic signature consists of a person's name and email address. They do not have to provide their street address.

### Presenting a petition via a member of government

Your responsibility is to give the petition to a member of the appropriate House of Parliament or Local Government Council. That member is then responsible for bringing the petition to the attention of the body of which he or she is a member. You can give the petition to any member of the relevant body; it does not have to be your local representative or the member responsible for the subject matter of the petition. There is no direct obligation on any member to present a petition given to them. However, most regard it as their duty to do so, regardless of their personal opinion on the subject matter of the petition.

### Process after presentation of a petition

#### Local government

There are no specific directions as to dealings with petitions. Petitions presented at Council meetings should be noted in the minutes for that meeting and used by the Council to assess public opinion on the subject matter of the petition. Petitions received as part of the public submission period, typically for a planning decision, will be dealt with by Council staff in their report on submissions.

#### Western Australian Parliament

In the Legislative Assembly the petition is read out and noted in Hansard. There is no requirement for the Legislative Assembly to take action with respect to the petition. In the Legislative Council the petition is immediately included in the Notice Paper for the next sitting and is referred to the Environment and Public Affairs Committee for consideration and report (usually upon the advice of the appropriate Minister). The principal petitioner will be advised of the outcome of the report.

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## **Commonwealth Parliament**

In the House of Representatives, petitions are announced in Parliament by a clerk and recorded in Hansard. A copy of every petition is given to the Minister responsible for the administration of the matter that is the subject of the petition. The Minister may lodge a response that is announced in Parliament. Petitions may also be referred to a committee by motion.

In the Senate, a summary of the petition is circulated to Senators and the full text is printed in Hansard. Petitions are also brought to the attention of the appropriate Parliamentary committee, which may act upon them.

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