



# Environmental Defenders Office

## Protest and Police Powers in South Australia

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### The Right to Protest in South Australia

There is no express right to protest or to hold a peaceful assembly in South Australia ('SA'). The right to protest comes from the implied freedom of political communication found in the Australian Constitution. This means that the government cannot make laws that prohibit or significantly impede a person's right to protest.

### Planning a Protest in South Australia

The *Public Assemblies Act 1972 (SA)* provides for a process to obtain a permit for the holding of a public assembly in a public place. If a permit is obtained and the public assembly is conducted in conformity with the permit, participants in the public assembly will not be subject to any civil or criminal liability for obstructing a public place.

To obtain a permit, an organiser or participant in a public assembly must serve a notice on the Commissioner of Police or the clerk of the council for the area in which the assembly is to be held. The notice must be served at least 4 days before the public assembly is to take place and must include the following information:

- a) the date of the assembly,
- b) the time at which the assembly will convene and the time at which it will disband,
- c) the place in which the assembly will be held, and the boundaries of the area to be occupied by the assembly, or if it is to move in procession, the route that it will follow, the extent to which it will occupy the public places through which it will pass, the places (if any) at which it will halt and the time for which it will remain stationary in each such place,
- d) the name and address of the person by whom the notice is given,

- e) the name of the person or body of persons by whom the assembly is being, or is to be, organised,
- f) the purpose of the assembly, and
- g) an estimate of the number of persons who will participate in the assembly.

When providing your notice to the Commissioner, it will be helpful to include as much detail as possible. Consider organising the following to support your notice:

- Assign police liaisons who are responsible for communicating with the police on the day,
- Create a covid-19 safety plan including face masks and hand sanitizer to be distributed, covid marshals and QR check in codes, if necessary,
- Ensure there is first aid equipment available, and people trained in first aid assigned a role,
- Ensure safety risks are considered and if necessary, risk-mitigation plans put in place,
- Any further permits and approvals obtained, for e.g., from councils.

The Commissioner of Police or the council may object to any proposal for the public assembly on the ground it would unduly prejudice the public interest. They must identify the grounds and must serve the objection upon the person who gave notice of the public assembly and publicly publish the objection at least two days before the proposed date of the public assembly.

Upon receiving an objection, the person who gave notice of the public assembly may apply to a Judge for a determination on whether the public assembly can be held. If the Judge is not satisfied there is a proper ground for any objection made, they may quash the objection and approve the proposal. They may also approve any further proposals submitted before them when hearing the application.

### **An approved or not approved public assembly – what is the difference?**

Protestors in an approved public assembly are afforded legal protections that protestors in a public assembly that is not approved are not. This means that the police cannot charge protestors with offences relating to obstruction.<sup>1</sup>

The protection that is provided to protestors in an approved public assembly is limited. It is only provided where the public assembly is conducted in conformity with the proposals set out in the notice.<sup>2</sup> For example, you cannot be charged with obstructing traffic during a protest when the police were informed of the route of the procession and that route was taken. However, you could be charged with obstructing traffic if you decide to take a different route that the police did not agree to.

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<sup>1</sup> *Public Assemblies Act 1972 (SA)* s 6.

<sup>2</sup> *Public Assemblies Act 1972 (SA)* s 6.

A public assembly that is not approved is not illegal. There is no prohibition on members of the public gathering together in a public place to express their political views. However, it means that the protestors will not be afforded the legal protections that are afforded in an approved assembly.

### **Obstruction of free passage of a public place**

Protestors in South Australia can be charged with obstruction of a public place, which carries significant fines, a risk of costs payable to emergency services, and even imprisonment.

Protestors can be charged not only with directly obstructing free passage of a public place, but also indirectly. The legislation provides an example of this, stating that a charge can be made against a protestor where emergency services or another relevant entity had reasonable necessity to obstruct passage to 'safely deal with the person's conduct'. This means that protestors can be charged with conduct that has indirectly obstructed the passage of traffic by requiring police to obstruct free passage of a public place to handle a protest.

Furthermore, protestors can be made to pay for the 'reasonable costs' incurred by emergency services for dealing with their obstruction. This is separate to any fine or imprisonment.<sup>3</sup>

## **Police Powers**

The law provides police with certain powers above that of the general population to ensure that they can responsibly enforce the law. These powers can only be exercised in specific circumstances. Having a basic awareness of these powers can help you to stay safe and avoid negative consequences during police interactions. The following powers are some that are likely to be exercised by the police during a protest or demonstration.

In SA, police powers are mainly regulated by the *Summary Offences Act 1953 (SA)*. The following powers are worth noting.

### **Requirement for identity to be disclosed<sup>4</sup>**

A police officer can require you to disclose your full name, date of birth and address (including business address) if the police officer reasonably suspects that you have committed, are committing or are about to commit an offence, or you may be able to assist in the investigation of a suspected offence.

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<sup>3</sup> *Summary Offences Act 1953 (SA)* s 58.

<sup>4</sup> *Summary Offences Act 1953 (SA)* s 74A.

If you fail to comply or provide false personal details, you may be committing an offence with a maximum penalty of 3 months imprisonment or a fine of \$1,250.

### **Directions to move on – loitering<sup>5</sup>**

Where a person or group of persons are loitering in a public place and a police officer believes on reasonable grounds:

- that an offence has been, or is about to be, committed by that person or group or by another in the area; or
- that a breach of the peace has occurred, is occurring, or is about to occur, in the area of that person or group; or
- that the presence of that person or group or others in the area is causing or may cause an obstruction to the movement of pedestrians or vehicles; or
- that the safety of a person in the vicinity is in danger.

The police officer may request that person or those persons to cease loitering and disperse.

If a person does not leave the place and the area in the vicinity of the place they were loitering they may be guilty of an offence with a maximum penalty of imprisonment for 3 months or a fine of \$1,250.

### **Search and seizure powers without a warrant**

A police officer may search a person (including their clothing) if the officer reasonably suspects that the person has:

- stolen goods,
- an unlawful object (for example, illegal drugs), or
- evidence of the commission of an indictable offence.<sup>6</sup>

If a police officer finds something on a person that is relevant to an offence, the police officer may seize that thing.

## **What to Do in the Event of an Arrest and your Right to Silence**

### **Power of Arrest**

A police officer may arrest someone that they reasonably suspect has committed or is about to commit an offence.<sup>7</sup>

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<sup>5</sup> *Summary Offences Act 1953 (SA)* s 18.

<sup>6</sup> *Summary Offences Act 1953 (SA)* s 68.

<sup>7</sup> *Summary Offences Act 1953 (SA)* s 75.

## **Right to Silence**

If you are involved in a protest it is possible that you may have a direct interaction with police.

It is important to remember when interacting with police that you have a right to not incriminate yourself, also known as the right to remain silent or the right to silence. This means that you don't have to answer all the questions that the police ask you. This silence cannot be held against you if you are charged with an offence and your matter goes to court.<sup>8</sup> The right to silence is subject to limited qualifications. In SA, an important qualification is if a police officer reasonably suspects that you have committed, are committing or are about to commit an offence or may be able to assist in the investigation of an offence they can request your name, date of birth, and current address.<sup>9</sup> It is important to seek legal advice about your specific circumstances should this arise.

Anything that you do say or do while interacting with police can ultimately form a part of the evidence used against you if you are charged with an offence.

## **Police caution**

When you are under arrest and the police want to question you, they are required to caution you that you do not have to do or say anything and that anything that you do or say can be used in evidence against you.<sup>10</sup>

## **Right to communicate with friend, relative, guardian or independent person and Australian legal practitioner**

As an arrested person, you have the right to communicate with a friend or relative to inform them of your whereabouts.<sup>11</sup> If you wish to do so, you can also ask that person to attend the police station so that they can be present for any interview or investigative procedure.<sup>12</sup> You also have the right to communicate with a lawyer of your choice. If you wish, your lawyer can attend the police station in person and be present for any investigative procedure. Your lawyer may give advice to you throughout any investigative procedure.<sup>13</sup>

The police must defer any investigative procedure for up to two hours to allow you to make communication with the person and/or lawyer of your choice and for them to attend the police station.

## **Additional rights as a person with complex communication needs**

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<sup>8</sup> *Summary Offences Act 1953 (SA) s 79A(1)(b)(iii).*

<sup>9</sup> *Summary Offences Act 1953 (SA) s 74A.*

<sup>10</sup> *Summary Offences Act 1953 (SA) s 79A(3)(a).*

<sup>11</sup> *Summary Offences Act 1953 (SA) s 79A(1)(a).*

<sup>12</sup> *Summary Offences Act 1953 (SA) s 79A(1)(b)(i).*

<sup>13</sup> *Summary Offences Act 1953 (SA) s 79A(1)(b)(i).*

The law says you have complex communication needs if you have significant difficulty in communicating effectively with the interviewer, whether the communication difficulty is temporary or permanent and whether caused by disability, illness or injury.<sup>14</sup> If you have complex communication needs the police must make arrangements for a prescribed communication assistant to be present or a prescribed communication device to be used, if appropriate. A communication assistant is someone that provides assistance to someone while being interviewed and includes speech pathologists, occupational therapists, psychologists and social workers, amongst others. A communication device includes text, symbol or picture boards, speak-and-spell communication devices, voice output communication devices, amongst others.

### **Power to take identifying particulars**

If you are suspected of committing a criminal offence that is punishable by imprisonment (i.e., the maximum penalty is one of imprisonment), upon a senior police officer order, the police have the power to take your fingerprints, palm prints and DNA for the purposes of identification. You do have the right to oppose this and can make your case as to why it should not occur to the senior police officer. However, ultimately the senior police officer makes the decision.<sup>15</sup>

### **Bail**

If police arrest you, they will take you back to the police station to charge you. Once the charge paperwork has been completed at the police station, the police decide whether to release you. The police can release you without bail and tell you to attend court on a certain day to face your charges, they can release you on bail subject to certain conditions or they can refuse to release you.<sup>16</sup>

### **Police bail**

If police decide to release you on bail, this is known as police bail.<sup>17</sup> The police can impose conditions on you such as a requirement that you be of good behaviour, that you comply with a curfew or a place restriction, amongst other conditions. It is always a requirement of bail that you attend court on your next court date.<sup>18</sup> If you receive police bail you have to sign a form acknowledging your bail conditions before you are released. This form is called a bail agreement.<sup>19</sup>

### **Release application before the court**

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<sup>14</sup> *Summary Offences Regulation 2016 (SA)* r 18(2).

<sup>15</sup> *Criminal Law (Forensic Procedures) Act 2007 (SA)* ss 14 - 19.

<sup>16</sup> *Bail Act 1985 (SA)* s 5(1)(e).

<sup>17</sup> *Bail Act 1985 (SA)* s 13.

<sup>18</sup> *Bail Act 1985 (SA)* s 6.

<sup>19</sup> *Bail Act 1985 (SA)* s 6.

If police refuse to release you or you refuse to sign your bail acknowledgment, you are taken before the court to apply for bail. If the police refuse to release you they must record their reasons on a form called a "Form 2".<sup>20</sup> The police must take you before the court as soon as possible after they decide to not release you on bail, however depending on what time you were arrested this may not be until the next day.<sup>21</sup> You will be given the opportunity to speak to a solicitor, either of your own choosing, or a Legal Aid solicitor, to represent you on your release application. You can also self-represent.

If you make a release application, the court can decide to dispense with bail and release you, release you unconditionally (without any conditions), impose bail conditions and release you, or refuse you bail. If you are refused bail by the court you will be taken to a correctional centre and be held in custody until your matter is finalised or another release application is made, this is known as 'remand'.

### **Determining whether to grant bail**

When determining whether or not to grant you bail the court has to consider, amongst other things, the gravity of the offence which you are charged with, whether it is likely you will fail to attend court, interfere with witnesses or evidence, commit another offence or breach an intervention order, any need you may have for physical protection or medical care and any prior bail record you have. If the court believes that you are a low risk, or that certain conditions can be imposed to mitigate your risk then they will release you on bail subject to conditions or unconditionally.<sup>22</sup> If they believe that there are no conditions to mitigate those risks then you will be held on remand.<sup>23</sup>

### **Bail conditions**

Bail conditions are designed to be restrictive, however, they should not be more onerous than necessary. If you believe your bail restrictions are more onerous than necessary you can apply to the court to vary your conditions.<sup>24</sup> Therefore, it is important to remember even if you do not agree with the police bail conditions, you can ask the court to change them in the days after your release. Not agreeing with the police bail conditions should not be a reason to refuse to sign your bail acknowledgment.

## **Non-binary, intersex, and transgender people in custody**

### **Police searches and custody**

There is no clear legal basis to say that a non-binary, intersex, or transgender person must be searched by a member of the police of the sex of their choosing or of the sex that they

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<sup>20</sup> *Bail Regulations 2015* (SA) sch 1 Form 2.

<sup>21</sup> *Bail Act 1985* (SA) s 13(3).

<sup>22</sup> *Bail Act 1985* (SA) s 10(1).

<sup>23</sup> *Bail Act 1985* (SA) s 10(1).

<sup>24</sup> *Bail Act 1985* (SA) ss 11, 14.

identify with. Internal police policy may indicate that transgender, non-binary and intersex people be searched by their preferred gender.

There is also no publicly available police policy concerning how transgender, non-binary and intersex people should be treated in police custody.

### Correctives searches and custody

When you are taken to a correctional centre either on remand or to serve a custodial sentence, you are in correctives custody. There are no publicly available policies with respect to how transgender, non-binary and intersex inmates are searched or placed in SA correctives custody. SA’s Department of Corrective Services says ‘Transgender prisoners will have an individualized management plan developed to take into consideration their individual needs’.<sup>25</sup>

### Common Offences

The following are some examples of offences that a person might be charged with during a protest or demonstration:

Offence	Description	Maximum penalty
<b>Offences at public meetings<sup>26</sup></b>	<p>A person who, in, or at or near a place where a public meeting is being held:</p> <ul style="list-style-type: none"> <li>a) behaves in a disorderly, indecent, offensive, threatening or insulting manner; or</li> <li>b) uses threatening, abusive or insulting words; or</li> <li>c) in any way, except by lawful authority or on some other lawful ground, obstructs or interferes with a person seeking to attend the meeting, any of the proceedings at the meeting, or a person presiding at the meeting in the organisation or conduct of the meeting,</li> </ul> <p>may be guilty of an offence.</p>	<ul style="list-style-type: none"> <li>• \$1,250 fine or imprisonment for 3 months.</li> </ul>

<sup>25</sup> Government of South Australia, Department for Correctional Services, *Prisoner health and wellbeing* (Web page, 2021) < <https://www.corrections.sa.gov.au/prison/prison-life/prisoner-health-and-well-being>>.

<sup>26</sup> *Summary Offences Act 1953* (SA) s 18A.



	The person presiding at a public meeting may request the police remove any person they believe is acting in the abovementioned way.	
<b>Violent disorder</b> <sup>27</sup>	If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) would cause a person of reasonable firmness to fear for their safety, they may be guilty of an offence.	<ul style="list-style-type: none"> <li>• \$10,000 fine or 2 years imprisonment.</li> </ul>
<b>Riot</b> <sup>28</sup>	If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) would cause a person of reasonable firmness to fear for their safety, they may be guilty of an offence.	<ul style="list-style-type: none"> <li>• 7 years imprisonment.</li> </ul>
<b>Affray</b> <sup>29</sup>	A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness to fear for their safety may be guilty of an offence.	<ul style="list-style-type: none"> <li>• 3 years imprisonment.</li> </ul>
<b>Being on premises for an unlawful purpose</b> <sup>30</sup>	<p><u>Generally</u></p> <p>A person who has entered or is present on a premise for an unlawful purpose or without lawful excuse may be guilty of an offence.</p> <p>Where a police officer believes on reasonable grounds that a person has entered, or is present on, premises for the purpose of committing an offence, the officer may order the person to leave the premises. Failure to comply may be a criminal offence.</p> <p><u>Primary Production Premises</u></p>	<ul style="list-style-type: none"> <li>• \$2,500 fine or 6 months imprisonment.</li> <li>• If the unlawful purpose is the commission of an offence that has a maximum penalty of 2 years imprisonment or more, the maximum penalty for this offence is increased to imprisonment for 2 years.</li> </ul>

<sup>27</sup> Summary Offences Act 1953 (SA) s 6A.

<sup>28</sup> Criminal Law Consolidation Act 1935 (SA) s 83B.

<sup>29</sup> Criminal Law Consolidation Act 1935 (SA) s 83C.

<sup>30</sup> Summary Offences Act 1953 (SA) s 17.

	<p>A person who has entered or is present on a primary production premises for an unlawful purpose or without lawful excuse may be guilty of an offence.</p> <p>A primary production premises is a premises used for the purpose of:</p> <ol style="list-style-type: none"> <li>a) agricultural, pastoral, horticultural, viticultural, forestry or apicultural activities;</li> <li>b) poultry farming, dairy farming or any business that consists of the cultivation of soils, the gathering of crops or the rearing or processing of livestock;</li> <li>c) commercial fishing, aquaculture or the propagation or harvesting of fish or other aquatic organisms for the purposes of aquaculture.</li> </ol> <p>Aggravated circumstances include:</p> <ol style="list-style-type: none"> <li>a) interferes with, or attempts or intends to interfere with, primary production activities; or</li> <li>b) is accompanied by 2 or more persons; or</li> <li>c) does anything that gives rise to a serious risk to the safety of the person or any other person on the premises; or</li> <li>d) does anything that— <ol style="list-style-type: none"> <li>i. involves, or gives rise to a risk of the introduction, spread or increase of a disease or pest or the contamination of any substance or thing; or</li> <li>ii. gives rise to any other risk, or kind of risk, related to primary production activities prescribed by the regulations; or</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• Primary production premises: \$5,000 fine or 6 months imprisonment.</li> <li>• Primary production premises (aggravated): \$10,000 fine or 12 months imprisonment.</li> </ul>
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	<p>iii. intentionally causes, or is recklessly indifferent as to whether they cause, damage to an operation or activity connected to the primary production activities at the premises.</p> <p>If you commit an offence under aggravated circumstances, you may be ordered to pay compensation for injury, loss or damage resulting from the offence.</p>	
<p><b>Trespass<sup>31</sup></b></p>	<p>If you enter a place without consent you could be committing the offence of trespass. Your access to an area can be revoked by either express or implied refusal or withdrawal of access, for example by a locked door or the owner, manager or occupier asking you to leave. If you remain after you have been asked to leave, you will be committing a trespass.</p> <p>If you trespass on any premises you may be guilty of an offence.</p> <p>If you trespass on a primary production premises (defined above) you may be guilty of an offence.</p> <p>A person who uses offensive language or behaves in an offensive manner while trespassing commits an additional offence.</p> <p>An owner, manager or occupier of land or a police officer can request a trespasser disclose their name and address. Failure to comply with this or providing a false name or address may be an offence.</p>	<ul style="list-style-type: none"> <li>• 6 months imprisonment or \$2,500 fine.</li> <li>• Primary production premises: 6 months imprisonment or \$5,000 fine.</li> <li>• Using offensive language: \$1,250 fine.</li> <li>• Failing to provide name: \$1,250 fine.</li> </ul>

<sup>31</sup> Summary Offences Act 1953 (SA) s 17A.

<p><b>Hindering police<sup>32</sup></b></p>	<p>A person who hinders or resists a police officer in the execution of their duty, may be guilty of an offence.</p> <p>Upon conviction for this offence, the Court may order the police officer be compensated for damage caused to their property or the property of the State or bodily injury.</p> <p>To resist is to oppose some course of action that the police officer is trying to execute. In most circumstances the police will charge you with resist when you are resisting an arrest. This can involve pulling away from the police or even going limp or not pulling your arms out from under you when the police are trying to effect an arrest.</p> <p>To hinder is to make the police officer's job more difficult and includes disturb.</p>	<ul style="list-style-type: none"> <li>• 6 months imprisonment or \$2,500 fine.</li> </ul>
<p><b>Disorderly or offensive conduct or language<sup>33</sup></b></p>	<p>A person may be guilty of an offence if they:</p> <p>behave in a disorderly or offensive manner,  fight with another person,  use offensive language, or  disturbs the peace.</p>	<ul style="list-style-type: none"> <li>• \$1,250 fine or 3 months imprisonment.</li> </ul>
<p><b>Obstruction<sup>34</sup></b></p>	<p>A person who intentionally obstructs the free passage of a public place may be guilty of an offence.</p> <p>A public place is defined as including:</p> <p>a) a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place;  and</p>	<ul style="list-style-type: none"> <li>• \$50,000 fine or 3 months imprisonment.</li> </ul>

<sup>32</sup> Summary Offences Act 1953 (SA) s 66U.

<sup>33</sup> Summary Offences Act 1953 (SA) s 7.

<sup>34</sup> Summary Offences Act 1953 (SA) s 58.

	<p>b) a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and</p> <p>c) a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property.<sup>35</sup></p>	
<p><b>Interference with railways<sup>36</sup></b></p>	<p>A person who unlawfully, and with knowledge that they are acting unlawfully:</p> <ul style="list-style-type: none"> <li>a) interferes with any part of a railway, tramway or track designed for the passage of a vehicle; or</li> <li>b) interferes with any signal or machinery used in connection with it; or</li> <li>c) places any obstruction on the track or obstructs or causes the obstruction of a vehicle; or</li> <li>d) does anything else that is likely to result in damage to a vehicle using the track,</li> </ul> <p>may be guilty of an offence.</p>	<ul style="list-style-type: none"> <li>• 2 years imprisonment or \$10,000 fine.</li> </ul>

<sup>35</sup> Summary Offences Act 1953 (SA) s 4.

<sup>36</sup> Summary Offences Act 1953 (SA) s 43.

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