

DEPARTMENT OF THE SENATE
PAPER No. 7791
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PRESENTED

19 JUN 1997

Mary Evans

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The Parliament of the Commonwealth of Australia

**Joint Standing Committee on
the National Capital and External Territories**

A right to protest

May 1997

**Australian Government Publishing Service
Canberra**



The Parliament of
the Commonwealth
of Australia

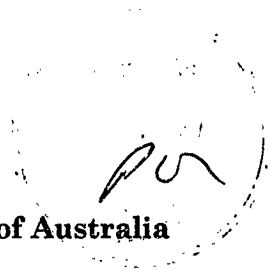
A RIGHT TO PROTEST



Joint Standing
Committee on the
National Capital and
External Territories

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Foreword

Australians generally recognise that the ability to protest is an essential part of our democratic traditions. As we are free to choose our elected representatives, we also must be free to make our views known to those representatives.

On matters of national significance, Canberra, as the nation's capital, has become an important focal point for protests about issues affecting people's lives. By protesting in Canberra, particularly at Parliament House, Australians symbolically are delivering their message directly to the people they have chosen to make decisions on their behalf.

This report presents the findings of an inquiry which the Joint Standing Committee on the National Capital and External Territories conducted into the right to protest on national land, particularly in the parliamentary zone.

The recommendations in this report are aimed at facilitating the conduct of peaceful protests on national land. The Committee's intention is that protests on national land should not be restricted unnecessarily.

In arriving at its conclusions, the Committee took account of the diversity of views presented during the inquiry. The Committee's recommendations reflect the need to uphold the people's right to protest, while at the same time ensuring that the interests of the broader community are taken into consideration.

In acknowledging that Australians have a right to protest on national land, the Committee also recognises that the exercise of that right carries with it important obligations. The Committee's recommendations aim to strike an appropriate balance between the right and the obligations.

SENATOR J J McGAURAN
CHAIR

May 1997

Acknowledgments

The Committee expresses its appreciation to all those people who contributed to the inquiry by making submissions and attending public hearings.

The Committee is grateful to its secretariat for the administrative, procedural and drafting support which was provided throughout the inquiry. During the 37th Parliament, the secretariat included Ms Meg Crooks (Secretary), Ms Catherine Cornish (senior research officer), Ms Jennifer Hughson (senior research officer), Ms Annette Fischer (administrative officer) and Ms Kate Wallace (administrative officer).

Special mention should be made of the efforts of the secretariat for the 38th Parliament, which was instrumental in drafting the report and completing the inquiry. The secretariat comprised Mr Andres Lomp (Secretary), Ms Bronwyn Allan (senior research officer), Ms Gabrielle Jess (research officer), Ms Sophia Konti (administrative officer) and Ms Denise Picker (administrative officer). Assistance also was provided by Ms Catherine Cornish.

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Committee membership

Joint Standing Committee on the National Capital and External Territories

37th Parliament

Chairman: Mr R L Chynoweth, MP

Deputy Chairman: Senator M E Reid

Members: Mr E H Cameron, MP (to 30 March 1995)
Mr H A Jenkins, MP
Mr J V Langmore, MP
Hon L B McLeay, MP
Mr J R Sharp, MP
Mr B M Smyth, MP (from 30 March 1995)
Senator R J Bell
Senator J Coates
Senator M A Colston
Senator N Crichton-Browne (to 9 May 1995;
reappointed 11 May 1995 to 23 October 1995)
Senator A B Ferguson (from 23 October 1995)
Senator I D Macdonald

Secretary: Ms M Crooks

Inquiry staff: Ms C Cornish
Ms A Fischer
Ms J Hughson
Ms K Wallace

Committee membership

Joint Standing Committee on the National Capital and External Territories

38th Parliament

- Chair:** Senator J J McGauran
- Deputy Chair:** Mr J V Langmore, MP (to 6 December 1996)
Senator K Lundy (Deputy Chair from 5 March 1997)
- Members:** Mr S J Dargavel, MP (from 13 February 1997)
Ms A L Ellis, MP
Mrs R Johnston, MP
Mr G B Nehl, MP
Mr P C Neville, MP
Dr A J Southcott, MP
Senator L Allison (from 1 July 1996)
Senator N J Stott Despoja (to 30 June 1996)
Senator the Hon B Collins (from 5 March 1997)
Senator M A Colston (to 6 May 1997)
Senator A B Ferguson
Senator M E Reid (to 19 August 1996)
- Secretary:** Mr A Lomp
- Inquiry staff:** Ms B Allan
Ms C Cornish
Ms G Jess
Ms S Konti
Ms D Picker

Terms of reference

On 9 December 1994, the then Deputy Prime Minister and Minister for Housing and Regional Development, the Hon Brian Howe, MP, referred to the Joint Standing Committee on the National Capital and External Territories the following inquiry:

The right to legitimately protest or demonstrate on national land and in the parliamentary zone in particular.

As the inquiry was not completed in the 37th Parliament, it was referred to the Committee of the 38th Parliament on 19 August 1996 by the Minister for Sport, Territories and Local Government, the Hon Warwick Smith, MP.

Abbreviations

ACT	Australian Capital Territory
AFP	Australian Federal Police
APS	Australian Protective Service
Committee	Joint Standing Committee on the National Capital and External Territories
ICCPR	International Covenant on Civil and Political Rights
Minister	Minister for Housing and Regional Development (37th Parliament)
	Minister for Sport, Territories and Local Government (38th Parliament)
NCA	National Capital Authority

Conclusions and recommendations

The right to protest

There is a strong community expectation that a right to protest should be acknowledged as a fundamental principle of Australian society. In the Committee's view, the combination of Australian democratic traditions, implied constitutional guarantees and international obligations provides a basis for accepting that such a right exists.

Once it is acknowledged that a right to protest is a basic tenet of Australian society, it follows that the Australian people must be able to exercise that right on national land. The Committee agrees with those who, in submissions to the inquiry, suggested that there is no more appropriate place to voice their opinions than in the nation's capital.

In accepting that Australians have a right to protest on national land, it also must be recognised that such a right carries with it certain obligations. Democracy recognises the rights of individuals but does not elevate the interests of the individual above all others. Instead, it seeks to balance those interests with the interests of the community as a whole.

A paramount obligation is to ensure that the right to protest on national land is exercised with due regard to public safety and public order. This necessitates appropriate legislative and administrative arrangements which facilitate protest activity but do not allow the rights of other users of national land to be infringed.

It is important to remember that national land serves many purposes. It is the site for a number of institutions which are fundamental to the operation of Australia's democratic processes. It also is the location for many of the important symbols of Australian nationhood. The representatives of overseas governments are housed on national land. In addition, hundreds of Australians regularly work in offices located on national land, with many having homes that border national land. While there is a legitimate expectation that protests can be held on national land, there is an equally legitimate expectation that people have the right to go about their daily business on that land without unnecessary hindrances. It is particularly important that the conduct of one democratic process, namely protesting, does not impede the proper functioning of other democratic processes, such as the operation of the Parliament or the High Court.

In the Committee's view, the special qualities of the national capital derive from its multiplicity of purposes. As it means different things to different people, it is an appropriate symbol of the diversity of Australian society. Just as modern Australian society is built on the principles of tolerance and respect for the rights of others, so too the national capital and activities which take place there must reflect those principles if the special qualities of Canberra are to be preserved.

The challenge is to ensure that the legislative and administrative arrangements governing the conduct of protests on national land achieve an appropriate balance between the right to undertake protest activity and the obligation to ensure that any such activity does not endanger public order, public safety or the rights of other users of national land. The proposals for meeting that challenge are considered in the chapters which follow.

(Chapter Three, paragraphs 3.56 to 3.62)

Existing law and practice

From the evidence provided to the Committee, it is clear that close cooperation between protesters and relevant authorities is crucial in ensuring that the interests of all parties involved in a public demonstration can be satisfied. Past difficulties tend to have arisen where there have been differing expectations of how protests should be conducted or where there has been a breakdown in goodwill between the protesters and relevant authorities.

According to Commonwealth agencies with responsibility for managing protest activities on national land, confusing laws and overlapping responsibilities have not contributed to the resolution of difficulties when they have arisen. On the basis of their past experiences, agencies such as the Australian Federal Police and the National Capital Authority consider that existing laws and administrative arrangements do not provide an adequate or appropriate framework for protests to be held on national land. The Committee is sympathetic to this position, as unclear law does not make for good law.

At the same time, various respondents to the inquiry highlighted inconsistencies in the management of past protests which, in their view, have more to do with a lack of will in enforcing existing laws than with inadequacies in those laws. On the basis of examples provided during the inquiry, the Committee considers that this proposition has some merit.

In the Committee's view, if future protests on national land are to be conducted so that all parties involved can be satisfied with the outcome, then all parties involved, including the protesters and relevant authorities, must have a clear understanding of their responsibilities and obligations. This can be achieved only if there is clarification of existing laws and administrative arrangements applying to protests on national land.

In considering options for the future, the Committee is mindful of the strong community sentiment that protests on national land should be allowed to occur free of unnecessary constraints. At the same time, the Committee is aware of the need to take into consideration the other significant purposes for which national land is used.

In determining whether there is a need for wholesale change in the management of protests on national land, or whether only particular modifications are required, the Committee assessed the contrasting proposals outlined during the inquiry. Those proposals are considered in the final chapter of this report.

(Chapter Four, paragraphs 4.79 to 4.84)

The future conduct of protests

As noted in Chapter Four, the proper conduct of protests on national land depends largely on the level of cooperation established between protesters and authorities responsible for managing national land and maintaining law and order on that land. In the Committee's view, the laws and administrative arrangements applying to protests on national land must be directed to encouraging such cooperation.

While some Commonwealth agencies advocated the introduction of a non-compulsory permit or notification system which would provide a more structured framework for managing protests on national land, the Committee was not convinced of the need for or appropriateness of such a system. The history of protests in the national capital shows that the majority of demonstrations proceed without incident. While difficulties have been experienced from time to time, it is unlikely that a permit system would have resulted in different outcomes to some of the more controversial protests which have occurred, particularly at Parliament House.

A permit is essentially an administrative mechanism to facilitate the planning of protests. It is not a safeguard against disorderly or violent conduct by those who are intent on causing trouble or by those who turn to violence in the heat of a protest. A permit cannot prevent a demonstration from getting out of hand, nor does it provide a remedy for dealing with disorderly conduct by demonstrators. Where protests do not proceed in a spirit of cooperation, a permit will not ensure public safety and public order. In such circumstances, it is the way in which relevant authorities exercise their powers which will determine the outcome of the protest. Those powers derive not from any permit system but rather from relevant law and order legislation.

The Committee detected strong community resistance to the proposition that people should apply for a permit in order to exercise a democratic right. Given the broad sentiment against a permit system, it is likely that many people would not seek a permit if they had a choice. If this were the case, the system would become redundant. Evidence in this regard was received from the previous

President of the Senate who noted that a permit system operating at the United States Congress has become irrelevant because most people do not bother to apply for a permit. The Committee also was swayed by advice from the Parliament's Security Controller, who indicated that in most cases authorities obtain prior notification of a protest at Parliament House without a permit or formal notification system. This was confirmed by the Australian Federal Police, which indicated that existing arrangements already are akin to a non-compulsory notification system.

The Committee is particularly concerned that a permit system would not provide greater clarity and certainty in relation to the conduct of protests, but instead could introduce an overly complex legislative and administrative process which may or may not be followed. Even among supporters of a permit system there were differences of view on whether such a system should involve immunity from prosecution and, if so, what impact this would have on the ability of law enforcement agencies to deal with disorderly protests. There also were differences of opinion on the types of demonstrations which should be covered by any permit system and the effect any such system may have on people's ability to protest spontaneously. These differences of view suggested to the Committee that a permit system may introduce new complexities without necessarily resolving existing difficulties.

The Committee's preference is to build on existing cooperative arrangements for dealing with protests rather than establish a new legislative system which ultimately may become redundant if people have the choice to circumvent it. In the Committee's view, a better system for managing protests can be achieved if:

- prior notification and planning of protests is encouraged rather than enshrined in legislation;
- more detailed information is available to protesters on how best to arrange and conduct a protest on national land;
- existing laws are clarified and consolidated rather than replaced by new laws which may be subject to successful challenge and which may introduce new complexities; and
- there is improved coordination between all relevant authorities which have a role in dealing with protests in order to build on existing processes which have facilitated the management of protests to date.

By emphasising that they are offering cooperation rather than permission, relevant authorities are more likely to strike a positive chord with protest organisers. This is important not only for the planning of a protest but also for ensuring its orderly conduct.

While the Committee is not in favour of a permit or formal notification system for protests on national land, it does support the introduction of a system for the management of protest structures erected on national land. Protest structures can be a safety risk if they are not constructed properly. As some structures enable protesters to remain at the protest site for extended periods of time, they can have public health implications. They also can exclude others from using the same site either for another protest or for a different activity. In addition, protest structures can affect the proper functioning of the institution at which they are located. In the Committee's view, all of these public interest considerations justify a general requirement that protest structures placed on national land should be authorised.

It is important to remember that there already are prohibitions on people erecting structures on national land without permission. There is, however, considerable uncertainty about the processes through which protest structures currently can be authorised. This uncertainty has led to inconsistencies in dealing with protests, particularly protest structures, and unnecessary administrative complexities. For this reason, the Committee agrees with the National Capital Authority that a permit system for protest structures is the best way of ensuring that there are clear and consistent procedures by which protesters can apply for and be granted permission to erect a structure on national land. The Committee considers that such a system should operate for all national land and not just the parliamentary zone or precincts.

In the Committee's view, a permit system for protest structures should be a mechanism for facilitating protests rather than restricting them. This premise should be the guiding principle under which the permit system operates.

In this regard, the Committee recognises that certain structures, such as stages and sound systems, provide a focal point for demonstrators and, therefore, are integral to the proper conduct of a protest. On this basis, the Committee would exclude such structures from the permit requirement as long as they are of a size which would have minimal impact on land features, such as grassed areas, and are erected and removed on the same day during daylight hours.

In summary, the Committee considers that cooperative arrangements for the planning and conduct of protests, when combined with a permit system for protest structures, provide the most appropriate legislative and administrative framework for dealing with protests on national land. The Committee's proposals build on existing arrangements and are intended to complement existing approaches to protest management, such as the Presiding Officers' guidelines for protests in the parliamentary precincts, which are an appropriate basis for dealing with protests at Parliament House. The Committee's recommendations also obviate the need to adopt more complex proposals, such as the introduction of a broader permit system or, alternatively, the extension of the parliamentary precincts to bring more national land under the Parliamentary Precincts Act and, therefore, under the purview of the Presiding Officers' protest guidelines.

Recommendations

The Committee recommends that:

1. a permit not be required in order to protest on national land, subject to recommendation 3 dealing with protest structures;
2. a broad legislative scheme for non-compulsory prior notification of protests, based on the Queensland *Peaceful Assembly Act 1992*, not be introduced, but instead a cooperative approach to protest management be encouraged by:
 - (a) identifying in a community liaison section of the Australian Federal Police a contact officer for coordination of protests on national land who would provide a contact and information point for protest organisers and who would be responsible for liaising with other relevant authorities when a protest is planned for national land; and
 - (b) producing and making available a public information booklet on protesting in the national capital which would encourage prior notification of protests to a protest coordination officer of the Australian Federal Police and which would provide relevant information and advice on the conduct of protests in the national capital, focusing on national land;
3. a permit system be introduced for the management of protest structures on national land so that a permit is required from the National Capital Authority for a structure placed on national land as part of or in association with a protest, but a permit not be required where the structure:
 - (a) is of a size which would have minimal impact on the land and is used to facilitate the protest, such as sound systems and small stages; and
 - (b) is erected and removed on the same day during daylight hours;
4. relevant legislative amendments be introduced to recognise protests as an appropriate use of national land and to enable the National Capital Authority to issue permits for the erection of protest structures;

5. the term 'structure' be defined broadly to ensure that the myriad fixtures, edifices, constructions, vehicles, machinery and fixed display materials which could be used in association with a protest, including tents used for camping, come within the terms of the permit system;
6. in determining an application for a permit to erect a protest structure on national land, including the duration of a permit, the National Capital Authority be required to give due consideration to:
 - (a) the public's right to peaceful assembly on national land;
 - (b) issues regarding equality of access to national land;
 - (c) public interest considerations which may require certain limitations to be placed on the erection of structures, including public order, public health and safety, national security, the rights of other persons, and the proper functioning of the Parliament and other national institutions, including their ceremonial functions; and
 - (d) any specific requirements relating to the parliamentary precincts as determined by the Parliament's Presiding Officers, including existing requirements set down in their guidelines for protests in the parliamentary precincts;
7. guidelines on the erection of protest structures on national land, covering issues such as location, duration and public health and safety considerations, be developed by the National Capital Authority and be included in the information booklet proposed at recommendation 2;
8. on the basis of advice from the National Capital Authority or the Presiding Officers in relation to the parliamentary precincts, the Australian Federal Police be empowered to remove any protest structure on national land for which a permit is required under the system proposed at recommendation 3 but for which a permit has not been issued;
9. the *Unlawful Assemblies Ordinance 1937* be repealed;
10. the Commonwealth Attorney-General's Department, in consultation with the Australian Capital Territory Attorney-General's Department, review the existing laws which can apply to protests on national land to ensure that they are written in plain English and define clearly the powers which are available to relevant authorities in dealing with protests; and

11. building on the memorandum of understanding established between the Australian Federal Police and the Australian Protective Service, clearly documented procedures for coordination of protests be developed between all relevant authorities involved with the management of protests on national land.

(Chapter Five, paragraphs 5.57 to 5.69)

Chapter One

The inquiry

Introduction

1.1 On 9 December 1994, the then Deputy Prime Minister and Minister for Housing and Regional Development, the Hon Brian Howe, MP, referred to the Joint Standing Committee on the National Capital and External Territories (the Committee) the following inquiry:

The right to legitimately protest or demonstrate on national land and in the parliamentary zone in particular.

1.2 The principal focus of the inquiry was to assess the appropriateness, adequacy and effectiveness of the laws and administrative arrangements applying to protests on national land. In broad terms, national land comprises designated areas of Canberra required to fulfil its special purpose as the capital of Australia and otherwise required for use by the Commonwealth Government. Such areas include Parliament House, the residences of the Governor-General and Prime Minister, the Australian War Memorial and embassies and high commissions.¹

1.3 In referring the inquiry to the Committee, the then Minister² indicated that it should go beyond an examination of the technical issues associated with demonstrations. He stated:

I believe that the right to protest or demonstrate is a legitimate activity in the Central National Area. That being said, I believe that it is necessary to examine in detail how freedom of expression may be allowed without compromising the special qualities of the National Capital.³

1.4 The inquiry was commenced by the Committee of the 37th Parliament but was not concluded prior to the dissolution of the House of Representatives for the March 1996 federal election. On 19 August 1996, the

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- 1 See paragraphs 1.20 to 1.27 for a more detailed description of terms such as national land, parliamentary zone and parliamentary precincts used during the inquiry and in the report.
 - 2 The term Minister has been used in this report to denote the Minister for Housing and Regional Development in the 37th Parliament and the Minister for Sport, Territories and Local Government in the 38th Parliament.
 - 3 Letter from the Hon Brian Howe, MP, Deputy Prime Minister and Minister for Housing and Regional Development to Mr R Chynoweth, MP, Chairman, Joint Standing Committee on the National Capital and External Territories, 9 December 1994.

Minister for Sport, Territories and Local Government, the Hon Warwick Smith, MP, requested that the Committee of the 38th Parliament complete the inquiry. The evidence received by both Committees has been used in preparing this report.

Background to the inquiry

1.5 As Canberra is the seat of the Federal Government and the home of the national Parliament, it is recognised as the place where decisions are made which affect the lives of all Australians. On this basis, Canberra also is the place where people come to express their views on those decisions and other matters of importance to their lives.

1.6 Over the years, Canberra has been the location for a variety of protests and demonstrations. Parliament House generally has been the focal point for such protests, although from time to time demonstrators have targeted other venues, such as the Prime Minister's residence and the embassies and high commissions of foreign countries.

1.7 The nature of these demonstrations has varied greatly. They have ranged from a lone protester carrying a placard to rallies involving thousands of people. The reasons behind the protests have been as diverse as the people who have taken part in them.

1.8 While the majority of demonstrations last for short periods of time and pass without incident, certain longer term protests have given rise to some debate and controversy within the community. Much of that debate has focused on the right of demonstrators to remain at the protest site for extended periods of time, to erect structures on that site and to inhibit access to Parliament House. Some of the more notable structures to be erected on national land have included the 'Aboriginal Tent Embassy' across from what is now Old Parliament House, the 'Trojan Horses' protest and the Wilderness Society's 'Forest Embassy' in front of the current Parliament building, and the 'East Timor Liberation Centre' near the Indonesian Embassy.⁴

1.9 Prior to the referral of the inquiry, particular concerns were raised about the legality of such structures and their impact on the aesthetic value of national sites. This led the then Minister to request that the Committee conduct a detailed inquiry into all the relevant issues. The Minister was interested particularly in whether the right to protest on national land needed to be formalised and how structures associated with demonstrations might be controlled or administered.⁵

4 Each of these protests was referred to by the Minister when referring the inquiry to the Committee. They are described in further detail in Chapter Two.

5 Minister's letter, 9 December 1994, op. cit.

Conduct of the inquiry

1.10 The inquiry was announced by the Minister in a media release dated 29 November 1994. This was followed by a media release from the Committee inviting submissions to the inquiry.

1.11 The terms of reference were advertised in capital city newspapers on 7 and 8 April 1995 and in the April 1995 editions of *The Land*, *The Australian Lawyer* and the *Alternative Law Journal*. In addition, notices on the inquiry were sent to regional newspapers and radio stations across Australia.

1.12 The Committee wrote to a wide range of individuals and organisations inviting submissions. These included federal parliamentarians, State and Territory Governments, Commonwealth Government departments and agencies, law faculties and law enforcement bodies, human rights advocates, student and trade union organisations, and various community groups. A background information booklet accompanied the Committee's invitations.

1.13 The Committee of the 37th Parliament received 135 submissions, comprising original and supplementary submissions. These are listed at Appendix One. The Committee also received 12 exhibits, which are listed at Appendix Two.

1.14 Evidence was taken at public hearings held in Canberra, Sydney, Brisbane and Melbourne between August and December 1995. A list of hearing dates is provided at Appendix Three and a list of witnesses who gave evidence at those hearings is provided at Appendix Four.

1.15 Following the re-referral of the inquiry on 19 August 1996, the Committee of the 38th Parliament wrote to those who had made submissions to the previous Committee and asked whether they wished to provide any additional views or comments. In response, the Committee received 35 submissions, which also are listed at Appendix One. The Committee received two exhibits, which are included in Appendix Two.

1.16 To update some of its evidence, the Committee conducted a public hearing in Canberra on 8 November 1996. A list of witnesses who attended that hearing is included in Appendix Four.

1.17 In preparing this report, the Committee has drawn on the evidence received throughout the inquiry. Copies of that evidence, comprising transcripts from the hearings and the volumes of submissions, are available from the Committee secretariat and for perusal at the National Library of Australia.

Developments during the inquiry

1.18 Various demonstrations held on national land during the inquiry raised a number of significant issues for the Committee to consider. Those protests included:

- a blockade of Parliament House by logging trucks from late January to early February 1995;
- demonstrations against visiting representatives of overseas governments; and
- protests at the current and old Parliament Houses on 19 and 20 August 1996, which led to violence, injury and damage to public property.

1.19 Each of these demonstrations raised questions about whether people have the right to protest in the manner they see fit or whether there are public interest issues which necessitate certain limitations to be in place. In the Committee's view, it was not its role to make judgments about any particular demonstration which has been held on national land. The Committee's task was to assess the broader issues arising from the conduct of such protests. Those include issues of legality, equity of access, public order and public safety. The Committee has drawn on the experience of past demonstrations and the issues which have arisen to assist in determining how protests on national land should be managed in the future.

Inquiry definitions

1.20 This inquiry focused on protests and demonstrations conducted on national land, particularly in the parliamentary zone. Various terms which were used during the inquiry and which feature in this report require some explanation.

National land

1.21 The concept of national land is established by the *Australian Capital Territory (Planning and Land Management) Act 1988*. Under that Act, land which is in the Australian Capital Territory (ACT) and which is used by or intended to be used by the Commonwealth can be declared to be national land.

Section 27 of the Act provides that:

(1) The Minister may, by notice published in the *Commonwealth Gazette* declare specified areas of land in the Territory to be National Land.

(2) The Minister shall not declare an area to be National Land unless the land is, or is intended to be, used by or on behalf of the Commonwealth.

1.22 National land is divided into two categories:

- land which is required for the special purposes of Canberra as the national capital; and
- land which otherwise is required for Commonwealth purposes.

1.23 Declared national land, illustrated in Map 1, includes:

- the parliamentary zone and precincts;
- the residences of the Prime Minister and Governor-General;
- embassies and high commissions;
- Commonwealth Government offices and defence facilities at various locations around Canberra;
- Canberra airport;
- the foreshores of Lake Burley Griffin;
- the Australian War Memorial and Anzac Parade;
- the Australian National Botanic Gardens; and
- the Royal Australian Mint.

1.24 The Commonwealth Government is responsible for managing national land. For those sections of national land required for the special purposes of the national capital, management responsibility is vested in the Minister for Sport, Territories and Local Government and is exercised on behalf of the Minister by the National Capital Authority.⁶ For national land required for Commonwealth purposes, management responsibility is vested in the Minister for Administrative Services and is exercised on behalf of the Minister by the Department of Administrative Services.

⁶ The National Capital Authority was known previously as the National Capital Planning Authority. The name change took effect from 1 July 1996.

Parliamentary zone

1.25 The parliamentary zone is a defined area of national land established under the *Parliament Act 1974*. In broad terms, it encompasses the area of land stretching from Capital Hill, on which Parliament House is situated, to Lake Burley Griffin. As illustrated in Map 2, the boundaries of the parliamentary zone are formed by the lake, the two avenues leading to Parliament House (Commonwealth and Kings) and the outer road circling Parliament House (State Circle).

Parliamentary precincts

1.26 Within the parliamentary zone are the parliamentary precincts, established by the *Parliamentary Precincts Act 1988*. In broad terms, the parliamentary precincts comprise Parliament House and the land immediately surrounding it. As illustrated in Map 2, the inner road encircling Parliament House (Capital Circle) provides the boundary for the precincts.

1.27 The Parliamentary Precincts Act places the precincts under the control and management of the Parliament's Presiding Officers.⁷ Under section 6 of that Act, the Presiding Officers can take any action they consider necessary for the control and management of the precincts. In accordance with this power, the Presiding Officers have issued guidelines for the conduct of public demonstrations in the parliamentary precincts. The guidelines are particularly relevant to this inquiry and are discussed in detail later in this report.

Report structure

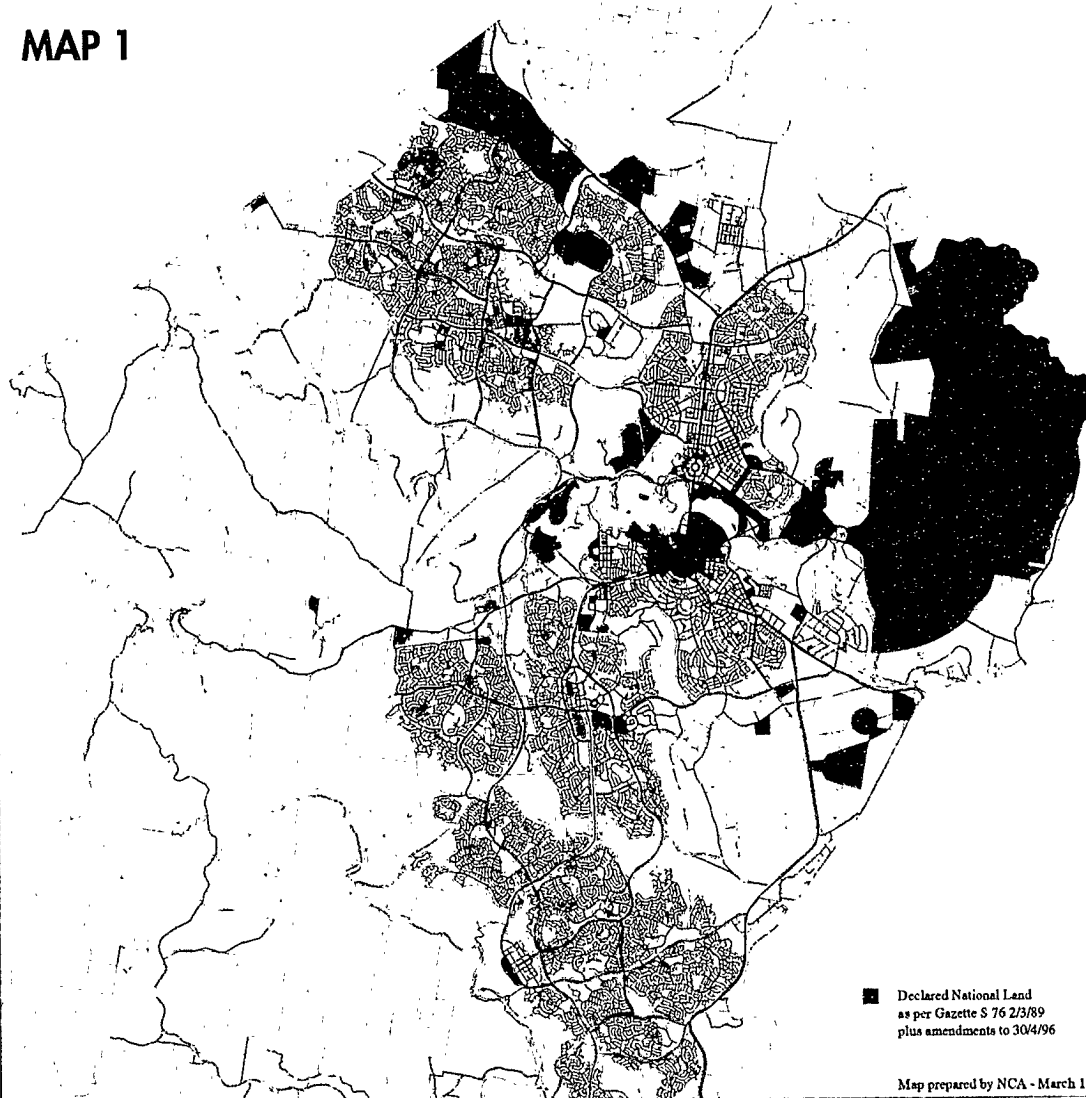
1.28 In this report, the Committee details the evidence it received during the inquiry and its conclusions and recommendations on that evidence. In particular, the Committee examines:

- the role of protests in a democratic society and their particular significance for the national capital (Chapter Two);
- the extent of any right to protest on national land (Chapter Three);
- the existing law and practice governing protests on national land, including community views on the existing arrangements (Chapter Four); and
- the options for future conduct of protests on national land (Chapter Five).

⁷ The Presiding Officers of the Parliament are the Speaker of the House of Representatives and the President of the Senate.

MAP 1

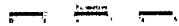
7



■ Declared National Land
as per Gazette S 76 2/3/89
plus amendments to 30/4/96

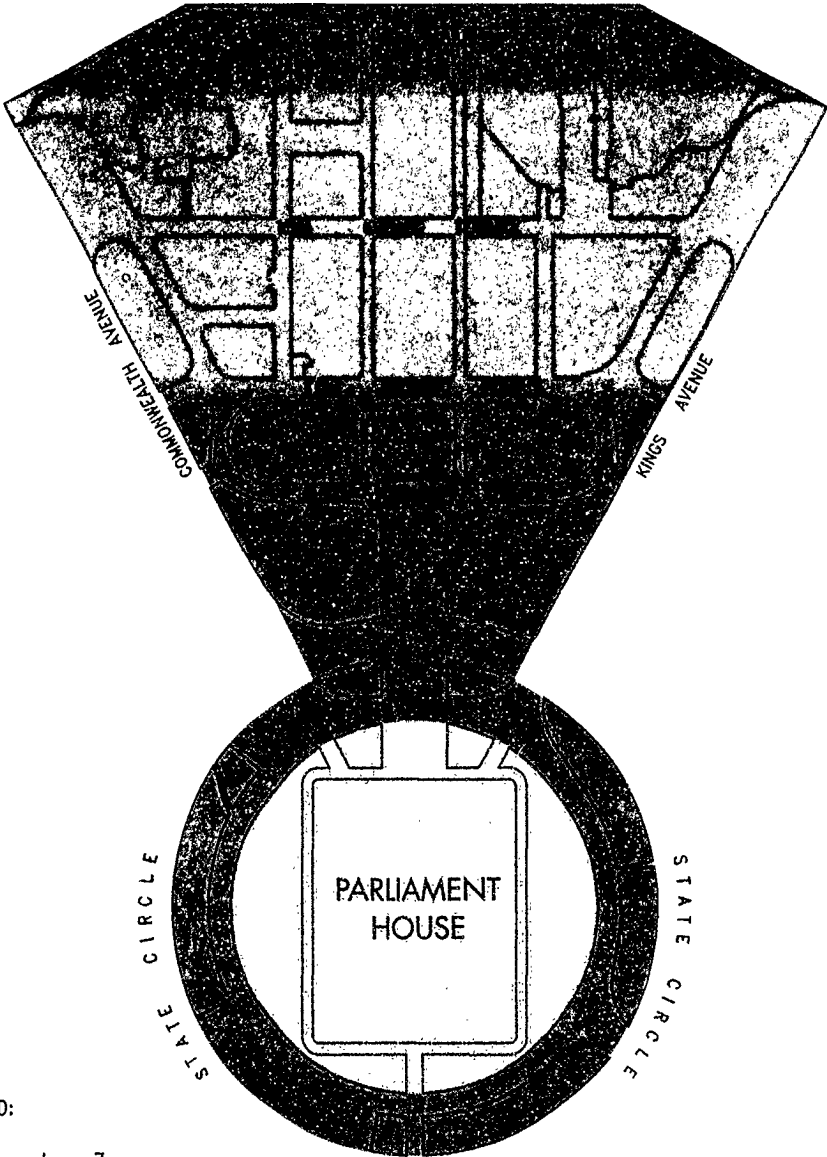
Map prepared by NCA - March 1997

DECLARED NATIONAL LAND - ACT



MAP 2

LAKE BURLEY GRIFFIN



LEGEND:



Parliamentary Zone



Parliamentary Precincts

PARLIAMENTARY ZONE

Chapter Two

Democracy in action

Introduction

2.1 Democracy is based on the principle that people have a direct say in the way in which they are governed. It has been described as government of the people, by the people, for the people.

2.2 In modern democratic society, people elect representatives to make decisions on their behalf. Those representatives are accountable to the people for the decisions they make. The proper functioning of representative democracy is reliant upon people's ability to freely choose their representatives and on the opportunities people have to make their views known to those representatives.

2.3 Regular elections are the principal means for ensuring accountability to the will of the people. Between elections, there is a variety of mechanisms which people can employ to make their opinions known. Protests or demonstrations are one such mechanism.

2.4 Throughout modern history, people have participated in protest activity in order to influence and change the decisions of their elected representatives. Whether it has been a picket line, a street march or a mass rally, public demonstrations have become a common means for the voice of the people to be heard.

2.5 In this chapter, the Committee considers the importance of protests in modern Australian society, examining in particular the reasons why the nation's capital has become a focal point for public demonstrations. The Committee also outlines recent experience with protests on national land as a prelude to its consideration of the arrangements and requirements which should apply to such protests in the future.

Representative democracy in Australia

2.6 In Australia, representative democracy is established by the Australian Constitution, which sets down the fundamental principles and rules by which the nation is governed. The Constitution provides for a bicameral Parliament to be chosen by the people and for the Executive Government to be formed from the membership of that Parliament. In this way, the Australian

people have a direct say in how and by whom they are governed. As noted by the then Chief Justice of the High Court:

The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives ... the representatives who are members of Parliament and Ministers of State ... exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act.¹

2.7 The proper functioning of representative democracy in Australia is dependent upon public participation in the processes of government. It is only by participating in the electoral process that people can choose representatives to the Parliament and influence who will form the government. In addition, it is only by making their views known to their elected representatives that people can have a say in the decisions which affect their lives. As indicated in recent High Court cases, which are discussed in further detail in Chapter Three, if people do not have the opportunity to communicate their views freely to their elected representatives, then representative government ceases to be truly representative.

2.8 Outside elections, Australians have available to them various means by which they can make their opinions known to their elected representatives and the government. These include:

- direct contact with parliamentarians;
- petitioning the Parliament;
- making submissions to parliamentary committees;
- joining political parties;
- forming or joining organisations which lobby government;
- raising issues in the media, through letters, advertisements, media releases, 'talkback' radio or current affairs programs;
- making representations to a government agency or an ombudsman; and
- attending public protests or demonstrations.

¹ *Australian Capital Television Pty Ltd and Ors v The Commonwealth of Australia* (1992) 177 CLR 106 at 137-138.

2.9 Through these various avenues, the Australian public is able to ensure that its elected representatives stay in touch with the views of the people they represent.

The role of protests and demonstrations

2.10 Protests and demonstrations are an integral part of Australia's political landscape. They are a public display of community sentiment. Protests provide an opportunity for people to express their views on the issues which affect their lives. As such, they are a manifestation of representative democracy—people participating in the processes of government by expressing their opinions to their elected representatives and the community at large. As stated in one submission to the inquiry, protest action supports democracy by 'enabling citizens to convey their views to government and the legislature about political matters'.²

2.11 There are a number of reasons why people decide or see a need to participate in public demonstrations. Many of those reasons arise because of the nature of modern political processes.

2.12 Some people organise public demonstrations to increase community awareness of an issue. By marching in the street or conducting a rally in a public place, they hope to attract the attention of the media and the community at large. By increasing awareness of their cause, they hope to gain support for that cause and improve their chances of having their grievances addressed.

2.13 For others, public demonstrations are necessary to show the depth of feeling in the community on a particular issue. They consider that a protest attended by a large number of people will be more effective in bringing about change than will separate actions by individuals.

2.14 Some people participate in public demonstrations because other forms of dissent have proven to be unsuccessful. As noted by one witness at the inquiry hearings:

The people demonstrating are reasonable, intelligent, law-abiding people and they are people for whom the first level of democracy, like writing letters and trying to phone people, has broken down or they do not see it as being effective. The demonstration is their only hope of being heard.³

2 Submissions, p. 185.

3 Transcripts, p. 380.

2.15 People often resort to demonstrations when they feel that their elected representatives are not taking sufficient account of their views. As stated to the Committee:

The ground for a protest is created when [Members of Parliament] have refused to hear, when other avenues have been denied. Rather than being 'a subjective belief of those involved', protest gains legitimacy in people's eyes because there is a necessity to convey a message to [Members of Parliament], to call for their accountability ...⁴

2.16 People also undertake protest activity if other ways of influencing public opinion is beyond their means. One respondent, for example, suggested:

The very rich and influential people can buy advertising space and pay lobbyists and they can even buy TV stations and newspapers. The normal person in the street who feels very strongly has only a demonstration as a way of being heard.⁵

A focal point for protests

2.17 Public demonstrations generally are held where they will gain maximum exposure or in locations proximate to the people who are the target of the protest's message. The choice of venue is often symbolic. For example, protests against government decisions are held regularly in front of parliament buildings across Australia, while protests against the actions of foreign governments often are conducted in front of embassies or consulates.

2.18 In its role as the national capital, Canberra has become a regular venue for public demonstrations on issues of national significance. As noted in Chapter One, Canberra generally is recognised as the place where decisions are made that affect the lives of all Australians. Increasingly, therefore, people have felt compelled to travel to Canberra to make their views known on decisions of national importance, particularly where they judge that those decisions impact adversely on their lives.

2.19 Just as State and Territory legislatures have become a focal point for protests about local affairs, so too the national Parliament has become a focal point for protests on national affairs. As stated at the inquiry hearings:

Demonstrations will inevitably take place in close proximity to Parliament House since this is where the decisions are taken which give rise to the dissent and since proximity is essential if the protests are to be direct and effective.⁶

4 Submissions, p. 170.

5 Transcripts, p. 380.

6 Transcripts, p. 368.

2.20 By protesting in the national capital in front of the national Parliament, people symbolically are delivering their message directly to their elected representatives. They also are trying to maximise the impact of their protest. They can present their message to the whole of the Parliament rather than just their local representatives. In addition, a protest in Canberra is more likely to attract national media coverage, and therefore a wider audience, than is a demonstration held in the city or town where the protesters live.

2.21 For similar reasons, people from time to time travel to Canberra to protest against the actions of foreign governments. In its role as the national capital, Canberra plays host to the embassies and high commissions of foreign governments. By protesting in front of those missions, people consider that they are delivering their message direct to the relevant authorities.

Protests on national land

2.22 Each year a variety of protests is held on national land. The nature and characteristics of such demonstrations vary considerably. They address a variety of issues, differ in size, are held at various locations, last for differing periods of time and employ a range of techniques for attracting attention.

2.23 From time to time protests on national land attract public attention as much for the way in which they are conducted as for the messages they carry. Certain protests have been the subject of recent debate either because of their distinguishing characteristics or because of incidents which have arisen during their conduct.

2.24 For those charged with the responsibility of managing national land and enforcing the laws which apply there, the variety of protests held on national land has presented a range of challenges. In particular, it has been necessary to balance the community's expectation that protests are a legitimate activity on national land with the obligation to uphold peace and order on that land.

2.25 Before considering the principal issues of this inquiry, it is important to understand the nature of the demonstrations which are held on national land. In order to determine an appropriate basis for managing future protests, the first step must be to recognise the variety of situations which can arise and which must be taken into account. By looking back to the types of demonstrations which have been held on national land, an effective response can be determined for the challenges which those protests have presented.

Nature of protests

2.26 Protests which have been held on national land can be divided into two broad categories:

- spontaneous demonstrations; and
- planned demonstrations involving varying degrees of organisation.

2.27 Spontaneous protests generally have occurred in response to an announcement or event which has evoked particular sentiments within the community. They have occurred where people have felt an immediate need to make their views known in a public forum. One of the more noted spontaneous demonstrations on national land took place on 11 November 1975 when people gathered in front of Parliament House in response to the dismissal of the Whitlam Government. A more recent example of a spontaneous protest occurred when demonstrators gathered outside the French Embassy in 1996 in response to the French Government's decision to test nuclear weapons in the South Pacific.

2.28 By their very nature, spontaneous demonstrations lack any detailed organisation. Their general aim is to capture the spirit of the moment. People tend to arrive at the relevant venue with little or no prior notice. Accordingly, such protests usually involve smaller numbers of people than more organised demonstrations and tend to last shorter periods of time.

2.29 By contrast, a majority of the demonstrations held on national land are planned events. Generally, if people are going to make the effort to travel to Canberra for a demonstration, or even if they belong to the local Canberra community, they will make plans about how their protest is to be conducted.

2.30 The degree of planning devoted to any protest depends largely on the resources and time available to the protest organisers and their general experience in conducting demonstrations. In some instances, months of planning can be directed towards the staging of a protest on national land.

2.31 As there currently is no requirement for people to seek permission to protest on national land, or even to notify relevant authorities of their intention to do so, much has depended on cooperation and goodwill established between protesters and relevant authorities, such as the police. Through a process of negotiation (described in further detail in Chapter Four), protesters and relevant authorities usually seek to achieve agreement on the way in which protests are to be conducted on national land.

2.32 Protests which have deviated from negotiated arrangements have given rise to some debate about whether a more defined administrative and legislative system is required for the conduct of protests on national land. Two protests which took place during the inquiry raised particular concerns about the management of public demonstrations. Those protests comprised:

- a blockade of Parliament House conducted by timber industry workers from the end of January to early February 1995 which impeded access to Parliament House in contravention of assurances that the protest would not cause obstruction; and
- a rally organised by trade unions and associated organisations on 19 August 1996 during which a large group of demonstrators broke away from the agreed protest area in front of Parliament House and attempted to break into the building, causing injury and damage.

2.33 Public debate in the wake of such demonstrations has tended to focus on whether existing arrangements for managing protests on national land are adequate to ensure that public order and public safety are protected.

Location of protests

2.34 The majority of protests on national land are held in front of Parliament House. As one of the most important symbols of Australian democracy, it generally is regarded as the most appropriate place for people to make their views about national issues known to their elected representatives.

2.35 From time to time, various other venues have been targeted in the national capital, where protesters have judged that their point is better made at alternative locations. Those other venues have included:

- embassies and high commissions, where the actions of a foreign government are the reason for the protest;
- the Australian War Memorial, where the protest has concerned war related issues;
- the Prime Minister's residence (The Lodge), where protesters have seen a need to direct their protest at the Prime Minister;
- Commonwealth Government offices, where the protest has related to public service issues; and
- Canberra airport, where the protest has targeted official visitors arriving in the national capital.

2.36 On occasions, protesters have marched from one venue to another. As one example, during the demonstration held on 19 August 1996 (referred to at paragraph 2.32) protesters marched to Parliament House from a variety of locations around Canberra, including Old Parliament House and the city centre.

2.37 As a result of concerns arising from particular demonstrations, certain limitations have been placed on the manner in which protests can be conducted at some of the above locations. At Parliament House, for example, the week-long blockade by logging trucks in 1995 (referred to in paragraph 2.32) resulted in the introduction of revised guidelines for the conduct of public demonstrations in the parliamentary precincts. Among other limitations, those revised guidelines restrict protests to a designated area in front of the Parliament building. In another instance, the Commonwealth Government introduced a regulation to remove an East Timorese protest from outside the Indonesian Embassy, on the basis that the protest offended the dignity of a foreign government's representatives in Australia.

2.38 The placement of such limitations on protest activity has generated some community debate, with people questioning whether it is appropriate to restrict the manner in which they can protest on national land. It also has given rise to some discussion of whether protests on national land should be treated differently from protests held on land which is under the jurisdiction of the ACT.

Duration of protests

2.39 Protests on national land generally last for short periods of time. As protest activity takes people away from their daily lives, they usually are not able or willing to devote more than a few hours to a public demonstration.

2.40 Since many protests are aimed at attracting attention or making an impact, demonstrations often disperse once the main program for the demonstration has concluded. Once the speeches have ended and any media has decided to leave, people usually consider that they have made their point and it is time to return to their normal activities.

2.41 Another factor limiting people's desire and ability to conduct longer term protests is the general lack of facilities at protest venues to accommodate longer stay. Without facilities such as toilets and shelter, and without access to water and food, protesters generally do not remain at the protest site for extended periods of time.

2.42 From time to time, however, protesters have prolonged their demonstrations on national land, with some protests lasting several days and others extending to several months. In those cases, the protesters either have planned a longer term protest to make a particular statement or have remained at the protest site because they have felt that their grievances have not been

addressed. Some of the more notable longer term protests in Canberra have included:

- the 'Aboriginal Tent Embassy', initially comprising a tent erected in front of Parliament House (now Old Parliament House) in 1972 to highlight the grievances of Australia's indigenous people, subsequently removed in 1975, re-established in the form of a demountable shed in 1992, and recently supplemented by another demountable shed previously used as the 'East Timor Liberation Centre';
- the Wilderness Society's 'Forest Embassy', which on three separate occasions between 1989 and 1994 comprised tents and stalls placed in front of Parliament House for a four day period in order to highlight environmental issues;
- the 'Trojan Horses' protest, which comprised three large steel figures designed to resemble the Trojan Horse and which was placed in front of Parliament House for a period of six months from November 1994 to April 1995 by farmers protesting against banks;
- the 'Lone Fathers' protest, comprising a tent placed adjacent to the 'Trojan Horses' protest by representatives of the Lone Fathers Association protesting on family law issues;
- the 'East Timor Liberation Centre', which was a demountable shed placed near the Indonesian Embassy in the suburb of Yarralumla to protest against Indonesia's annexation of East Timor and to highlight concerns about the treatment of East Timorese people since the annexation; and
- the 'South African Liberation Centre', which was a demountable shed located across from the South African Embassy in Yarralumla to protest against the policy of apartheid.

2.43 Such longer term protests have generated debate about the right of protesters to occupy national land for extended periods of time. That debate has focused on whether time limits should apply to any protest on national land and how issues of land management should be addressed. Longer term protests also have given rise to conflicting views about the erection of protest structures on national land.

Use of structures

2.44 The debate surrounding the use of protest structures on national land has been ongoing. The focus of that debate has been on whether long term protest structures should be permitted on national land.

2.45 From time to time, people have used structures to facilitate their protest on national land. Such structures have included stages or platforms from which speakers can address protesters, as well as tents and stalls from which protest information can be distributed.

2.46 In general, because most protests last for short periods of time, structures used in association with such protests are of a temporary nature and are removed by the protesters when they leave. However, as noted at paragraph 2.42, some protesters have erected structures in order to prolong their protest. Some of these structures have become semi-permanent.

2.47 Some people have criticised such longer term structures as being 'eye-sores' and 'blots' on the landscape. Others have suggested that they are a legitimate protest tool symbolising the protesters' grievances.

2.48 In some instances, the structures have been removed, either forcibly or after negotiation with protesters. In other cases, the structures have remained, even though their presence appears to be in contravention of existing laws. In one instance, facilities, such as electricity and toilets, were installed by relevant authorities, even though the protesters did not have a permit to erect the structure.

2.49 The debate on structures has focused attention on the adequacy of existing laws for dealing with those structures, as well as the role of relevant authorities in determining what should happen to those structures. Some of that debate has concerned consistency of treatment afforded to different protests.

Behaviour at protests

2.50 In general, protests on national land have tended to be peaceful events which have passed without incident. Most people come to a public demonstration to make a statement and not to initiate unlawful action.

2.51 From time to time, however, demonstrations on national land have resulted in acts of violence which have caused injury to people and damage to public property. Two recent examples occurred on 19 and 20 August 1996, when protesters sought to force entry to the current and old Parliament Houses.

2.52 Protests resulting in violence have attracted considerable public debate, focusing not only on the reasons why the particular demonstration got out of hand, but also on responsibility for the damage caused. At issue has been whether existing laws are adequate in controlling demonstrations and whether protesters should be liable for any damage they cause.

Inquiry focus

2.53 The many diverse protests which have been held on national land have generated a number of complex issues to be dealt with by this Committee. As can be evidenced from the Committee's overview of recent demonstrations in the national capital, there is a range of matters which need to be addressed to ensure that any future protests on national land are conducted with due regard to the interests of protesters and the community alike. After all, representative democracy has as much to do with the interests of the community as it has with the rights of individuals.

2.54 In the ensuing chapters of this report, the Committee examines in closer detail the adequacy and appropriateness of existing arrangements for the conduct of protests on national land. The Committee considers the evidence it received during the inquiry, which not only focused on concerns arising from past demonstrations, but also detailed proposals for the future. On the basis of that evidence, the Committee outlines its considered view on how the challenges raised in this chapter should be addressed.

Chapter Three

The right to protest

Introduction

3.1 As a commencement point for its inquiry, it was important for the Committee to determine whether protesting on national land can be considered a right and, if so, the implications which arise for the conduct of any such protests.

3.2 By definition, a right is an interest or expectation guaranteed by law.¹ The nature and scope of any right depends on the particular legal system which is in force. As noted in one explanation of rights:

In so far as they are recognised by the rules of a particular legal system, they are legal rights; in so far as they are not, they may be moral claims or mere wishes or aspirations or assertions; thus 'the right to a living wage' may be a legal right if there is relevant legislation defining and enforcing such an entitlement; otherwise it is a mere assertion or aspiration. In most political discourse, 'we have a right' really only means 'we want'. Precisely what rights any particular kind of person or particular individual has in law depend on the particular legal system in question at the time in question.²

3.3 Rights can be established under a constitution, by enactment of specific legislation or by reference to judicial decisions. They also can be claimed on the basis of principles or standards which have been accepted over time.

3.4 In this chapter, the Committee considers whether a right to protest can be ascertained in Australia, either from its Constitution, its laws or its traditions. In accordance with the focus of the inquiry, the Committee also assesses whether the characteristics of national land are relevant to any such right.

Constitutional rights

3.5 The Australian Constitution sets down the framework of laws and institutions which govern the operation of Australian society. Essentially, it outlines who can make the laws and what laws can be made.³

1 Garner, B A, *A Dictionary of Modern Legal Usage* (second edition), Oxford University Press, New York, 1995, p. 772.

2 Walker, D M, *The Oxford Companion to Law*, Clarendon Press, Oxford, 1980, p. 1070.

3 Howard, C, *Australia's Constitution* (revised), Penguin Books, Victoria, 1985, pp. 1-2.

3.6 As noted in Chapter Two, the Constitution provides for a system of representative government, whereby the sovereign power which resides in the people is exercised on their behalf by their representatives. Those representatives not only are chosen by the people but exercise their legislative and executive powers as representatives of the people.

3.7 When the Constitution was drafted, little regard was directed to the inclusion of rights to protect the individual from the exercise of governmental powers. As noted in one analysis of the Constitution:

The principal (and almost exclusive) focus ... was on defining the institutions of government (legislatures, ministers, executive councils, courts), articulating their powers and functions, and spelling out the relationships between those institutions. Unlike the United States Constitution, the Commonwealth Constitution and the State Constitution Acts do not prescribe a catalogue of fundamental freedoms or libertarian values to restrict the exercise of the governmental powers which the instruments confer on legislatures and executive governments.⁴

3.8 While a specific catalogue of rights, including a right to protest, is not included in the Australian Constitution, it has been argued that certain rights can be implied from the system of representative government established by the Constitution. This argument was considered in recent High Court cases, with the decisions in those cases reflecting the differing interpretations which can apply when determining whether a right can be ascertained under the terms of the Constitution.

3.9 In *Nationwide News Pty Ltd v Wills*⁵ and *Australian Capital Television Pty Ltd and Ors v The Commonwealth of Australia*,⁶ a majority of the High Court held that the principle of representative democracy derived from the Constitution implies that there is a constitutional freedom for Australian citizens to communicate on political matters. Laws which infringe that implied freedom can be struck down by the Court.

3.10 In the *Australian Capital Television* case, the High Court found that, in the exercise of their legislative and executive powers, the representatives of the people are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act. The Court held that freedom of communication in public affairs and political

4 Hanks, P, *Constitutional Law in Australia* (second edition), Butterworths, Sydney, 1996, p. 495.

5 *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1.

6 *Australian Capital Television Pty Ltd and Ors v The Commonwealth of Australia* (1992) 177 CLR 106.

discussion is indispensable to that accountability and responsibility. As stated by Mason CJ:

Only by exercising that freedom of communication can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticize government decisions and actions, seek to bring about change, call for action where none has been taken and in this way influence the elected representatives. ... Absent such a freedom of communication, representative government would fail to achieve its purpose, namely, government by the people through their elected representatives; government would cease to be responsive to the needs and wishes of the people and, in that sense, would cease to be truly representative.⁷

3.11 From a similar perspective, Brennan J stated in the *Nationwide News* case:

To sustain a representative democracy embodying the principles prescribed by the Constitution, freedom of public discussion of political and economic matters is essential: it would be a parody of democracy to confer on the people a power to choose their Parliament but to deny the freedom of public discussion from which the people derive their political judgments.⁸

3.12 This view subsequently was affirmed in *Theophanous v Herald and Weekly Times Ltd*⁹ and *Stephens v West Australian Newspapers Ltd*.¹⁰ In the *Theophanous* case, Mason CJ and Toohey and Gaudron JJ held:

The implied freedom of communication is not limited to communication between the electors and the elected. Because the system of representative government depends for its efficacy on the free flow of information and ideas and of debate, the freedom extends to all those who participate in political discussion. By protecting the free flow of information, ideas and debate, the Constitution better equips the elected to make decisions and the electors to make choices and thereby enhances the efficacy of representative government.¹¹

3.13 In determining that freedom of communication on political matters is implied in the Constitution, the High Court at the same time found that this freedom is not absolute. The Court held that while freedom of communication is important, it has to be balanced against more significant competing interests, such as national security, the administration of justice, or other laws necessary

7 *ibid.*, at 138-139.

8 *Nationwide News*, *op. cit.*, at 47.

9 *Theophanous v Herald and Weekly Times Ltd* (1994) 124 ALR 1.

10 *Stephens v West Australian Newspapers Ltd* (1994) 124 ALR 80.

11 *Theophanous*, *op. cit.*, at 12.

in an ordered and democratic society. On this issue, Brennan J stated in the *Nationwide News* case:

The balancing of the protection of other interests against the freedom to discuss governments and political matters is, under our Constitution, a matter for the Parliament to determine and for the Courts to supervise.¹²

3.14 Brennan J went on to state:

The role of the court in judicially reviewing a law that is said to curtail the freedom unduly and thereby to exceed legislative power is essentially supervisory. It declares whether a balance struck by the Parliament is within or without the range of legitimate legislative choice.¹³

3.15 The import of these High Court decisions is still being debated. Relevant to this inquiry, some people have argued for a broad interpretation of the decisions by suggesting that an implied freedom of communication on political matters could be extended to infer a constitutional guarantee for freedom of assembly and protest. Others have indicated that this implied freedom could operate to invalidate laws which unduly restrict protests on political matters.

3.16 Adding fuel to the debate has been the more recent decision in *McGinty and Ors v The State of Western Australia*.¹⁴ In that decision, the High Court appears to have challenged the proposition that representative democracy is an underlying doctrine of the Constitution from which particular freedoms or rights can be implied.¹⁵

3.17 In the *McGinty* case, a majority of the High Court held that no implication could be drawn from the Constitution which was not based on its actual terms or its structure. In this regard, McHugh J stated:

Underlying or overarching doctrines may explain or illuminate the meaning of the text or structure of the Constitution but such doctrines are not independent sources of the powers, authorities, immunities and obligations conferred by the Constitution.¹⁶

12 *Nationwide News*, op. cit., at 50.

13 *ibid.*, at 52.

14 *McGinty and Ors v The State of Western Australia* (1996) 134 ALR 289.

15 It is relevant to note that the membership of the High Court changed between the *Stephens* case and the *McGinty* case.

16 *McGinty*, op. cit., at 345.

3.18 In one analysis of the *McGinty* case, it was suggested that the decision appears to mark a change of direction in the High Court's development of implied rights. One commentator stated:

Whereas a majority of the court asserted in earlier cases that there was an underlying doctrine of representative government or representative democracy in the Commonwealth Constitution (a doctrine which could be invoked by individuals to support their claims of legal rights), a majority in the later cases rejected that view.¹⁷

3.19 In another analysis, it was argued:

... the Court has cut off one source from which a range of public rights might have been judicially developed and has tilted the political balance of power away from the Court and back towards Parliament.¹⁸

3.20 As the Committee was preparing this report, a further case was being heard by the High Court (*Levy v State of Victoria*), in which the Court was to reconsider the implied freedom argument used in the *Theophanous* and *Stephens* cases. In one analysis of the implications of the new case, it was suggested:

Even if the Court decides to overrule *Theophanous* and *Stephens*, its earlier decisions on the implied freedom are not under challenge. Some form of implied freedom of political discussion will continue to stand, even if its impact is narrowed by the Court or if the Court takes, as did Brennan J in *Australian Capital Television*, a robust attitude to the leeway to be granted to the Parliament.¹⁹

3.21 While recent judicial decisions have given rise to doubts about the nature and scope of any rights implied in the Constitution, various respondents to the inquiry argued that a right to protest underpins the principles of democracy and representative government which provide the foundation for the Constitution. The community's views in this regard are considered later in this chapter.

Statutory rights

3.22 Alongside any actual or implied constitutional guarantees, rights also can be enacted in legislation. In relation to protests, only one jurisdiction in Australia, Queensland, has legislated for a specific right to protest.

17 Hanks, P, op. cit., p. 555.

18 Ball D, 'The Lion that Squeaked: Representative Government and the High Court: *McGinty & Ors v The State of Western Australia*', *The Sydney Law Review*, Vol. 18, No. 3, September 1996, p. 372.

19 Williams, G, *The State of Play in the Constitutionally Implied Freedom of Political Discussion and Bans on Electoral Canvassing in Australia*, Department of the Parliamentary Library, Information and Research Services, Research Paper No. 10 1996-97, 11 February 1997, p. 7.

3.23 Within the Commonwealth's jurisdiction, there is no specific law which establishes a right to protest or defines how protests should be conducted. While there are a number of laws which establish offences applicable to protests, including trespass and unreasonable obstruction, those laws do not relate exclusively to protests.

3.24 Despite the lack of a statutory right to protest, it has been argued that Commonwealth laws implicitly recognise the right to peaceful assembly. As stated by the Australian Law Reform Commission:

... the right to protest in the Parliamentary zone, and in the ACT in general, is a 'negative' right. That is, there is an implicit recognition of the right of people to assemble peacefully in the streets without committing an offence by virtue of the fact that, in general, it is not an offence in itself to take part in an unauthorised public assembly. However, there is no positive recognition of this right and no provision to protect its exercise.²⁰

3.25 Like the Commonwealth, most Australian States and Territories also have not established a statutory right to protest. While a number of States have enacted legislation dealing with public assemblies, Queensland is the only Australian jurisdiction to have enacted legislation which provides for 'the recognition, exercise and any necessary and reasonable restrictions of the right of peaceful assembly'. The Queensland *Peaceful Assembly Act 1992*, which is described in further detail later in this report, establishes:

- a person's right to assemble peacefully with others in a public place;
- only those restrictions on that right which are necessary and reasonable in a democratic society in the interests of public safety, public order, or the protection of the rights and freedoms of other persons; and
- a notification system for public assemblies.

3.26 One issue which attracted debate during the Committee's inquiry was the need for the Commonwealth to follow the Queensland model and legislate for a specific right to protest. This issue is discussed in further detail later in the report.

²⁰ Submissions, p. 221.

International obligations

3.27 International law provides a further source from which individual rights can be ascertained. In broad terms, international law can be defined as the principles and rules of conduct which nation states consider they are bound to observe in their relations with each other. This includes certain rules relating to the rights and duties of individuals.²¹

3.28 One of the key instruments outlining the rights of individuals is the International Covenant on Civil and Political Rights (ICCPR). Relevant to this inquiry, the ICCPR establishes the right to freedom of expression (Article 19) and the right to freedom of peaceful assembly (Article 21). In particular, Article 21 states:

The right to peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary 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.

3.29 As a signatory to the ICCPR, Australia is obliged to respect and uphold the rights recognised in the Covenant. As stated by Mason CJ and Deane J in the High Court case of *Minister for Immigration and Ethnic Affairs v Teoh*:

... ratification of a convention is a positive statement by the Executive Government of this country to the world and to the Australian people that the Executive Government and its agencies will act in accordance with the Convention.²²

3.30 In the *Teoh* case, the High Court recognised that the provisions of an international treaty do not form part of Australian law unless they have been incorporated into that law by statute. At the same time, the Court held that the ratification of a treaty creates a legitimate expectation that the Executive Government and its agencies will act in accordance with the treaty provisions, even if those provisions have not been incorporated into law.

3.31 In response to the *Teoh* decision, the then Government introduced into the Parliament legislation to counteract the effect of the decision. The legislation sought to eliminate any legitimate expectation that administrative decisions will be made in conformity with treaties ratified by Australia. That legislation was not passed by the Parliament prior to the calling of the March 1996 federal election. On 25 February 1997, however, the Attorney-General and

21 Starke, J G, *Introduction to International Law* (11th edition), p. 3., cited in Reicher, H (ed), *Australian International Law: Cases and Materials*, The Law Book Company Limited, Sydney, 1995, p. 3.

22 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353 at 365.

Minister for Foreign Affairs announced that new legislation to overcome the effects of the decision would be enacted.²³

3.32 For the purposes of this inquiry, the *Teoh* decision has created some expectation that any decisions made or actions taken on the conduct of protests will be in accordance with the provisions of the ICCPR. This view, which was put in various submissions to the inquiry, is discussed in further detail in the section which follows.

Community expectations

3.33 In considering the nature and scope of any right to protest on national land, it was important for the Committee to take account of community views in this regard. After all, while some rights are derived from a statute, others arise as a result of agreed community standards of behaviour and conduct.

3.34 During the inquiry, a common view put to the Committee was that a right to protest is a basic premise of Australian society and the democratic traditions on which it is based. While it was acknowledged that existing legislation does not provide a statutory right to protest on national land, many respondents argued that a right of peaceful assembly is so fundamental to Australian society that its existence should be accepted regardless of whether that right has been enacted in legislation.

3.35 Many who made submissions to the inquiry argued that a right to protest is an essential element of a free and democratic society. As noted in one submission:

Free speech is an integral part of a free society. The right to protest is part of the right of free speech.²⁴

3.36 This view was supported in submissions received from various parliamentarians, who suggested that a right to protest forms part of the tradition and custom of Australian society. Reflecting the views of other parliamentarians, one Member of the House of Representatives commented:

... I have no hesitation in maintaining that it is the right of every Australian to demonstrate as and when they feel fit and, as owners of the Parliament and also the national land that surrounds it, I believe that it has been traditional that this should be done and that such demonstrations be approved in the future.²⁵

23 Joint press release by the Minister for Foreign Affairs and Trade, Hon A Downer, MP, and the Attorney-General and Minister for Justice, Hon D Williams, QC MP, 'The effect of treaties in administrative decision-making', 25 February 1997.

24 Submissions, p. 31.

25 Submissions, p. 9.

3.37 In another submission, it was argued that a right to protest has been inherited from common law principles on which the Australian Constitution is based. It was suggested that this 'inherited law', which has been built up over centuries and which guarantees the freedom and liberty of the individual, gives Australians the right to protest in a peaceful, law abiding manner.²⁶

3.38 Other respondents linked the right of protest to the implied constitutional guarantee of freedom of communication on political matters which was discerned by the High Court (as discussed at paragraphs 3.9 to 3.14). As noted in one submission:

... it is at least arguable that the implied constitutional protection of the right of freedom of communication found by the High Court in the [*Australian Capital Television*] case extends to freedom of assembly and the right of peaceful demonstration. The essence of the right upheld by the High Court is freedom to communicate on all matters of public affairs and political discussion, including the right to criticise government.²⁷

3.39 It also was argued that a right to protest stems from Australia's ratification of the ICCPR. Reflecting the views in other submissions, one respondent stated:

As a matter of international law, Australia is bound to respect and ensure the rights recognised under the Covenant.²⁸

3.40 While there was widespread agreement that a right of protest is inherent in Australian society, there was some debate about whether such a right needs to be recognised and defined specifically in legislation. That issue is considered in more detail later in this report.

The relevance of national land

3.41 In considering the right of protest, the focus of this inquiry required the Committee to assess whether there are any characteristics of national land which would be relevant to or impact on the exercise of any such right. When the inquiry originally was referred to the Committee, the then Deputy Prime Minister and Minister for Housing and Regional Development stated:

... I believe that it is necessary to examine in detail how freedom of expression may be allowed without compromising the special qualities of the National Capital.²⁹

26 Submissions, p. 177.

27 Submissions, p. 183.

28 Submissions, p. 185.

29 Minister's letter, 9 December 1994, op. cit.

3.42 In a number of submissions, it was argued that, as the right to protest is an accepted principle of Australian society, it is particularly appropriate to exercise that right on national land. Various respondents submitted that national land is owned by the Australian people and, therefore, should be freely available to the people for the purposes of protests and demonstrations. As stated in one submission:

... Commonwealth land is the property of the taxpayers, and as such should be available to any Australian citizen for the right to dissent, at no charge!³⁰

3.43 It was suggested that it is particularly important to ensure that a right to protest applies in the national capital because it is the seat of the Commonwealth Parliament and the Commonwealth Government. One respondent stated:

Freedom of political expression necessarily includes the right to peaceful protest. If the right of protest against decisions of the Commonwealth government or Parliament is to be meaningful, then protests and demonstrations must be permitted in the national capital, and, in particular, in the Parliamentary Zone, which is where the object of protest is located. Political decisions are taken in the Parliament and for protest to be direct and effective, it must be proximate to the site of decision-making. The right to freedom of expression should be maintained in relation to National Land and the Parliamentary Zone—if anything, it is more important in these locations than in others.³¹

3.44 In arguing that a right to protest is particularly important in the national capital, a number of respondents addressed the question of whether there are any special qualities of the national capital which should be taken into account when determining the extent of such a right. The diversity of views received by the Committee reflected the differing community perceptions of the role of the national capital. While for some it is simply the seat of the national government, for others it is the city in which they live and work. These differing outlooks influenced respondents' views regarding the way in which any right to protest should be exercised in the national capital.

3.45 In some submissions, it was suggested that any special qualities inherent in the national capital should not be used as a basis for limiting the right to protest on national land. As stated in one submission:

We should not be concerned with compromising the special qualities of the National Capital. We should be concerned with compromising our democratic freedom to protest to our elected government.³²

30 Submissions, p. 101.

31 Submissions, p. 246.

32 Submissions, p. 133.

3.46 This view also was reflected in comments by the Queensland Law Society, which stated:

If the nation's capital has any 'special qualities' which are in any way inconsistent or incompatible with the right of peaceful assembly, of freedom of expression and peaceful protest then those special qualities should be altered. The citizens of this country should always be entitled to peacefully air their grievances in the immediate vicinity of their national parliament to the extent that such demonstration or protest does not breach the criminal law.³³

3.47 In another submission it was suggested that the ability to express views freely is the special quality inherent in the Australian nation and its capital. It was argued that such freedom of expression should be welcomed and encouraged rather than curtailed.³⁴

3.48 In a similar vein, another respondent submitted that one of the special qualities of the national capital is that it is the seat of the national Parliament, which makes it the centre of national political activity. It was argued that if the Australian people exercise their freedom of expression and thereby participate in political debate, they are enhancing rather than diminishing the special qualities of the national capital.³⁵

3.49 It also was argued that while certain protest activities may be regarded as diminishing the aesthetic qualities of the national capital, such matters are subjective considerations which do not provide adequate justification for curtailing the fundamental right to freedom of expression. It was stated:

Aesthetic perceptions of one part, or even a majority, of the community cannot, in a democratic society, be sufficient reason to limit freedom of political speech in the form of peaceful protest.³⁶

3.50 Various respondents submitted that the only limitations which should apply to the right to protest on national land are those necessary to protect public safety, public health, public order and national security. Some indicated that these are the only restrictions allowable under the ICCPR. As stated in one submission:

It is no part of the legitimate business of any Australian government to redefine any fundamental human right, or to seek to 'control or administer' the peaceful assembly of Australian people. It is critically important that the needs of administrators not be confused with human rights. The national government is bound to recognise and respect our 'right of peaceful assembly' and we remind you that 'no restrictions may be placed on the exercise of this right' other than

33 Submissions, p. S1.

34 Submissions, p. 4.

35 Submissions, p. 247.

36 Submissions, p. 248.

those lawful and necessary for such essential purposes as: national security, public safety, public order, public health and the protection of the rights and freedoms of others (*International Covenant on Civil and Political Rights*, Article 21).³⁷

3.51 In other submissions, it was suggested that an individual's right to protest on national land needs to be balanced against a broader public interest. As stated by one respondent:

National Land belongs to the citizens of Australia and therefore should be accessible at all times to them. However, this does entail a responsibility that other citizens should not be inconvenienced or put at risk.³⁸

3.52 In another submission, it was argued that while the right to dissent is a central tenet of Australian democracy and should exist on national land, this right is not absolute. It was suggested that the rights of the individual are subject to the rights of the majority and that, accordingly, the restriction of individual liberties may be necessary for good governance.³⁹

3.53 In its submission, the Department of the Prime Minister and Cabinet emphasised the need to strike a balance between the public's right to protest and the need to ensure the proper functioning of the Parliament in the general interest of the public. According to the Department, the wider public interest requires the right to protest on national land to be balanced against the need to ensure that:

- there is unimpaired and safe access to Parliament House and its vicinity by parliamentarians, their constituents and other members of the public;
- the Parliament is able to conduct its business free of coercion and intimidation; and
- official ceremonies at Parliament House can proceed without unreasonable interference.⁴⁰

3.54 The importance of achieving a balance between the right to protest and the obligation to protect the wider public interest also was emphasised by the Parliament's Presiding Officers. The President of the Senate of the 37th Parliament stated:

Parliament House is a symbol of democracy and it must be treated differently from other buildings. It is appropriate that people should

37 Submissions, p. 302.

38 Submissions, p. 135.

39 Submissions, p. 212.

40 Submissions, p. 318.

have a right to demonstrate freely here but, obviously, this right must be offset against the right of this Parliament to operate efficiently and well and the people have a right to be here safely, not only the people who work in the place but also visitors to it.⁴¹

3.55 The Northern Territory Government submitted that, while it is the duty of any government to protect freedom of speech and expression, and while that freedom can be exercised in diverse forms, there is an overriding obligation to protect democracy and the democratic institutions and processes which are fundamental to democracy. In this regard, the Northern Territory Government stated:

... any form of protest which impedes the free operation of the Commonwealth Parliament (or indeed any Parliament) and the freedom of its Members to carry out their functions and their duties, amounts to a challenge to the nation's democratic processes and should be strongly resisted, if necessary by appropriate amendments to legislation.⁴²

Conclusions

3.56 There is a strong community expectation that a right to protest should be acknowledged as a fundamental principle of Australian society. In the Committee's view, the combination of Australian democratic traditions, implied constitutional guarantees and international obligations provides a basis for accepting that such a right exists.

3.57 Once it is acknowledged that a right to protest is a basic tenet of Australian society, it follows that the Australian people must be able to exercise that right on national land. The Committee agrees with those who, in submissions to the inquiry, suggested that there is no more appropriate place to voice their opinions than in the nation's capital.

3.58 In accepting that Australians have a right to protest on national land, it also must be recognised that such a right carries with it certain obligations. Democracy recognises the rights of individuals but does not elevate the interests of the individual above all others. Instead, it seeks to balance those interests with the interests of the community as a whole.

3.59 A paramount obligation is to ensure that the right to protest on national land is exercised with due regard to public safety and public order. This necessitates appropriate legislative and administrative arrangements which facilitate protest activity but do not allow the rights of other users of national land to be infringed.

41 Transcripts, p. 191.

42 Submissions, p. 288.

3.60 It is important to remember that national land serves many purposes. It is the site for a number of institutions which are fundamental to the operation of Australia's democratic processes. It also is the location for many of the important symbols of Australian nationhood. The representatives of overseas governments are housed on national land. In addition, hundreds of Australians regularly work in offices located on national land, with many having homes that border national land. While there is a legitimate expectation that protests can be held on national land, there is an equally legitimate expectation that people have the right to go about their daily business on that land without unnecessary hindrances. It is particularly important that the conduct of one democratic process, namely protesting, does not impede the proper functioning of other democratic processes, such as the operation of the Parliament or the High Court.

3.61 In the Committee's view, the special qualities of the national capital derive from its multiplicity of purposes. As it means different things to different people, it is an appropriate symbol of the diversity of Australian society. Just as modern Australian society is built on the principles of tolerance and respect for the rights of others, so too the national capital and activities which take place there must reflect those principles if the special qualities of Canberra are to be preserved.

3.62 The challenge is to ensure that the legislative and administrative arrangements governing the conduct of protests on national land achieve an appropriate balance between the right to undertake protest activity and the obligation to ensure that any such activity does not endanger public order, public safety or the rights of other users of national land. The proposals for meeting that challenge are considered in the chapters which follow.

Chapter Four

Existing law and practice

Introduction

4.1 A principal focus of the Committee's inquiry was to determine the legislative and administrative arrangements under which protests on national land should be conducted in the future. In order to come to any conclusions in this regard, it was first necessary to assess the appropriateness, adequacy and effectiveness of the existing law and practice relating to such protests.

4.2 As noted in Chapter One, national land comprises land in the ACT which is required for the purposes of the national capital or which otherwise is required for use by the Commonwealth. As a result, both Commonwealth and ACT laws can apply to such land.

4.3 During the inquiry, various criticisms were directed at the existing arrangements for dealing with protests on national land. Among the critics were those with responsibilities for the management of national land and for the maintenance of law and order on that land. The main criticisms were directed at the lack of a clearly defined legislative regime for dealing with protests on national land.

4.4 In this chapter, the Committee seeks to identify the existing legislative and administrative arrangements applying to protests on national land. In addition, the Committee considers the major criticisms of those arrangements as a basis for determining their appropriateness, adequacy and effectiveness.

The legislative framework

4.5 Currently there is no single law which establishes a right to protest on national land or which defines the requirements for conduct of such protests. Instead, there is an array of Commonwealth and ACT laws which establish offences that may occur at protests and which provide powers to be used in dealing with protests. Some laws apply generally on national land. Others are relevant only in relation to protests around Parliament House or in relation to protests at diplomatic missions.

Provisions applying to national land

4.6 In their submissions to the inquiry, the Commonwealth Attorney-General's Department and the National Capital Authority listed the main Commonwealth and ACT laws which can apply to protests on national land.¹ These include the:

- *Crimes Act 1900* (ACT);
- *Motor Traffic Act 1936* (ACT), as it applies generally and as applied by the *National Land (Parking) Ordinance 1994* (ACT);
- *Australian Capital Territory (Planning and Land Management) Act 1988*;
- *Trespass on Commonwealth Lands Ordinance 1932* (ACT), as applied by the *National Land Ordinance 1989* (ACT); and
- *Public Order (Protection of Persons and Property) Act 1971* (Cth).²

4.7 Many of these laws do not refer specifically to protests and do not relate exclusively to national land. They are, in the main, general provisions dealing with matters such as public order, trespass, traffic control and land management. Nevertheless, they establish a range of offences which law enforcement agencies can employ in dealing with protests. In broad terms, the laws provide that:

- it is an offence to behave in a riotous, indecent, offensive or insulting manner in, near, or within the view or hearing of a person in a public place;³
- a driver of a motor vehicle on a public street must not, negligently or willingly, obstruct or prevent the free passage of a vehicle or person on a public street;⁴
- it is an offence to camp, erect a structure or be in a structure, other than a structure belonging to the Commonwealth, without a permit;⁵

1 The specific laws relevant to protests at Parliament House are detailed at paragraphs 4.10 to 4.15.

2 Submissions, pp. 240-241 and pp. 345-352.

3 *Crimes Act 1900* (ACT), s. 546A.

4 *Motor Traffic Act 1936* (ACT), s. 134.

5 *Trespass on Commonwealth Lands Ordinance 1932* (ACT), s. 8A(2).

- no works shall be performed in a designated area of national land unless approved by the National Capital Authority;⁶ and
- it is an offence to trespass or cause an unreasonable obstruction in a Territory or on Commonwealth premises.⁷

4.8 The various laws described above provide a range of powers which relevant authorities have available to them in dealing with protests. These powers enable the relevant authorities to:

- prevent persons from trespassing on Commonwealth land and remove any person found trespassing;
- arrest any person who appears to have been guilty of a prescribed offence; and
- remove structures or vehicles placed on unleased land.

4.9 Evidence to the Committee indicated that law enforcement agencies exercise some discretion in determining the circumstances in which they use these powers (see also paragraph 4.29).

Provisions applying to Parliament

4.10 Alongside the laws which apply to all national land, there are certain laws which are relevant to protests taking place in the area immediately surrounding Parliament House. Once again, those laws generally are not specific to protests but can be invoked in dealing with protests.

4.11 The *Parliamentary Precincts Act 1988* provides that, subject to any order of either House of Parliament, the Presiding Officers of the Parliament may take any action they consider necessary for the control and management of the land on which the Parliament is located, known officially as the parliamentary precincts.⁸ As noted by the Presiding Officers, the Parliamentary Precincts Act gives them the power to 'determine the arrangements within the precincts for the holding of protests and demonstrations'.⁹

6 *Australian Capital Territory (Planning and Land Management) Act 1988*, s. 12. The relevance of this provision for protests is that the term 'works' has been interpreted to include erection of protest structures on designated areas of national land (see also paragraph 4.41).

7 *Public Order (Protection of Persons and Property) Act 1971* (Cth), ss. 9-12.

8 *Parliamentary Precincts Act 1988*, s. 6.

9 Submissions, p. 386.

4.12 Under the Parliamentary Precincts Act, the Presiding Officers and officers authorised by them have the power to move, remove and attempt to exclude any person, including any protester, from the parliamentary precincts. This does not include the power to arrest and detain the person.¹⁰

4.13 In accordance with their powers, the Presiding Officers have issued guidelines for the conduct of public demonstrations in the parliamentary precincts. Those guidelines, which are discussed in further detail later in this chapter, are an administrative document. A breach of the guidelines of itself does not constitute an offence. However, advice from the Director of Public Prosecutions suggests that an offence can arise under the Public Order (Protection of Persons and Property) Act if a protester refuses to leave the parliamentary precincts after the Presiding Officers or their authorised representatives give such a direction in accordance with the guidelines.¹¹

4.14 The laws of parliamentary privilege also can apply to protests. Under the *Parliamentary Privileges Act 1987*, the Parliament may treat as contempt any act that obstructs or impedes either House of Parliament in the performance of its functions, or any Member of the Parliament or parliamentary officer in the discharge of his or her duty. The Parliament could take action, including the imposition of a jail sentence, where it considered that a protest was impeding the operation of the Parliament. In practice, no such action has been taken to date.

4.15 The provisions of the *Unlawful Assemblies Ordinance 1937* (ACT) also are applicable to protests at Parliament House. That Ordinance provides that it is unlawful for more than 20 people to meet or assemble for an unlawful purpose within 90 metres of Parliament House. This includes assembling for the purpose of doing an unlawful act, making known a grievance, discussing public affairs or presenting a complaint or other address to both or either House, a Minister or Commonwealth officer. While this Ordinance remains in effect today, evidence to the Committee suggested that it has not been utilised since 1971.¹²

Provisions relating to diplomatic premises

4.16 As with Parliament, protests at diplomatic premises also come within the general laws applying to protests on national land. At the same time, the *Diplomatic Privileges and Immunities Act 1967* provides the Minister for Foreign Affairs with the power to order the removal of prescribed objects which are considered to impair the dignity of or endanger a diplomatic mission or its staff. That power can be invoked to remove objects associated with protest activity. One example of this occurred in January 1992 when the then Minister for

10 Submissions, p. 347.

11 Submissions, p. 388.

12 Submissions, p. 379.

Foreign Affairs ordered the removal of crosses placed as a protest outside the Indonesian Embassy in Canberra.

The administrative framework

4.17 As noted above, there are no specific laws which establish how protests should be conducted on national land. While certain procedures have been promulgated for the conduct of protests in the parliamentary precincts, the requirements for demonstrations outside the precincts have not been defined. Despite this apparent lack of formal arrangements, a significant number of demonstrations is held annually on national land without incident. As a basis for determining whether more formal or comprehensive administrative processes are required for dealing with protests on national land, the Committee sought to identify how existing arrangements operate.

Management of protests

4.18 Various individuals and organisations have a role in managing the conduct of protests on national land. They include:

- the National Capital Authority (NCA);
- the Australian Federal Police (AFP);
- the Parliament's Presiding Officers;
- the Parliament's Security Controller; and
- the Australian Protective Service (APS).

4.19 The NCA has an involvement in the management of demonstrations because it is responsible for the management and control of designated areas of national land required for the purposes of the national capital. As part of its functions, the NCA is responsible for approving any works which take place in such designated areas, including the parliamentary zone. In fulfilment of that function, the NCA can request the AFP to remove any structures for which approval has not been given. This can include structures erected in association with a protest.

4.20 The AFP's primary role in relation to protests is to provide crowd and traffic control. It also provides protection for Australian office holders, guests of government and diplomatic personnel. In undertaking these functions, the AFP liaises with all parties relevant to a protest, including the protesters and relevant administrative authorities. The AFP also can be called upon to enforce Commonwealth laws where demonstrators breach those laws.

4.21 In support of the AFP, the APS assists in maintaining the security of Parliament House and diplomatic premises during protests. The APS is responsible for the provision of security services at those locations. As part of that role, the APS assists in preventing unauthorised access or damage to those premises during protests. A memorandum of understanding has been developed between the AFP and the APS to define the relationship between the two organisations.¹³

4.22 The Presiding Officers also have a management role in relation to protests, although that role is limited to demonstrations occurring in the parliamentary precincts. As noted at paragraph 4.11, the Presiding Officers can require any action to be taken to ensure the control and management of the precincts. This can include action against protesters. In accordance with their role, the Presiding Officers have issued guidelines for the conduct of public demonstrations in the parliamentary precincts. The guidelines, which are discussed in further detail later in this chapter, outline the requirements which are to be followed when protesting in the parliamentary precincts.

4.23 Supporting the Presiding Officers is the Parliament's Security Controller, who is responsible for security arrangements at Parliament House. The Security Controller acts as a conduit between the Presiding Officers and the APS on parliamentary security matters, and between the Presiding Officers and the AFP on crowd and traffic control for protests in the parliamentary precincts.

4.24 Any of the individuals and organisations listed above can become involved in dealing with protests on national land, depending on the circumstances of the particular protest. The existing procedures for dealing with protests, outlined below, generally take account of the differing roles and responsibilities which these individuals and organisations assume in relation to a protest.

Notification of protests

4.25 Under existing laws and procedures, protesters are not required to obtain a permit to protest on national land or to notify relevant authorities about the staging of a protest. While there is nothing to prevent spontaneous protests on national land, protest organisers often contact relevant authorities, such as the AFP, either to ensure that their demonstration proceeds without incident or because they incorrectly believe that a permit may be required.

13 Transcripts, p. 540.

4.26 It was suggested to the Committee that existing arrangements essentially comprise an informal or ad hoc notification system.¹⁴ The AFP and APS advised that it is usual for law enforcement agencies to obtain prior knowledge of major demonstrations which occur on national land.¹⁵

Planning for protests

4.27 Where prior notice of protests is received, the AFP, in conjunction with other relevant authorities, consults with protest organisers on the arrangements for the demonstration. Through this consultative process, the AFP seeks to come to some agreement with protesters on the manner in which the protest is to be conducted.

4.28 The commencement point for any consultations is that the protest must be conducted in accordance with the law. As noted by the AFP:

The legitimacy of protests or demonstrations is determined by the application of the law ... Behaviour at any protest or demonstration which breaks the law is unlawful, regardless of any subjective belief of those involved that their actions are legitimate.¹⁶

4.29 Within the framework of the law, relevant authorities exercise a degree of discretion in dealing with protests. Certain activities which otherwise could be treated as an offence may be accepted if undertaken as part of a protest for which agreements have been reached. For example, while it usually may be an offence to park a vehicle in a particular area, police may decide not to take any action if that vehicle is being used in association with a protest on which prior consultations have taken place.

4.30 By seeking to establish the parameters of acceptable conduct for a protest, the overall objective of prior consultations is to balance the wishes of the demonstrators with the AFP's obligation to uphold the law and the interests of the general public. To this end, the AFP offers advice to protesters on the staging of the protest, including on matters such as movement to and from the demonstration, parking of vehicles and any other requirements applicable to the protest. As one example of the consultative process, the AFP noted that it negotiates with demonstrators who seek to march from central Canberra to Parliament House, to ensure that they leave open at least one lane of the road leading to Parliament House for use by the general public.¹⁷

14 Transcripts, p. 140.

15 Transcripts, p. 139 and p. 150.

16 Submissions, p. 258.

17 Transcripts, pp. 125-126.

4.31 According to the AFP, protesters generally abide by the conditions agreed to prior to the protest. The AFP stated:

Most people with whom we come into contact who want to conduct a demonstration accept and abide by the advice we give. They meet our requirements.¹⁸

4.32 In the AFP's opinion, difficulties tend to arise where protesters either do not accept the advice of the AFP or make alternative arrangements during a demonstration. The AFP commented:

This causes unnecessary difficulties for us and, on occasions, we get into a confrontational situation.¹⁹

Guidelines for protests in the parliamentary precincts

4.33 For demonstrations at Parliament House, guidelines issued by the Presiding Officers are used as the basis for the management of any protest. The guidelines set down the minimum standards which must be adhered to when protesting within the parliamentary precincts. They establish an authorised area for protests at the front of Parliament House and provide that:

- protests shall be permitted only in the authorised area;
- participants shall arrive and depart in an orderly manner without causing obstruction to traffic within the parliamentary precincts;
- participants shall not obstruct access to Parliament House by members of the general public and those persons entering or leaving the building in the normal course of their business;
- participants shall conduct themselves and assemble in such order as to avoid any breach of the peace;
- sound amplification may be permitted within the authorised area but shall be directed away from the Parliament building and shall not be permitted during ceremonial occasions or in any form which may disrupt the business of the Parliament;
- structures of any kind shall not be erected or placed within the parliamentary precincts without the permission of the appropriate authorities;

18 Transcripts, p. 125.

19 Transcripts, p. 126.

- vehicles including aircraft shall not be used as part of a protest except for a vehicle authorised for use as a stage by the Parliament House Security Controller, with stages not permitted to remain in place overnight;
- persons shall not camp in the parliamentary precincts;
- signs and banners shall not be erected within the precincts or attached to or hung from any built structure within the precincts, although hand held signs or banners may be permitted;
- persons shall not wilfully mark, by means of chalk, paint or other material, the land or built surfaces within the parliamentary precincts;
- food and beverages shall not be prepared or sold within the external precincts of the Parliament and participants in protests shall not consume alcohol within the authorised area for the duration of the event; and
- participants shall observe any lawful instructions given by parliamentary security, AFP or APS officers.²⁰

4.34 The guidelines state that parliamentary security, AFP or APS officers shall ensure that protests in the parliamentary precincts are not held outside the authorised protest area. They also include warnings that:

- where necessary, persons entering an area other than an authorised area shall be moved within or removed from the parliamentary precincts;
- non-compliance with directions from parliamentary security, AFP or APS officers may result in arrest; and
- any breach of the guidelines may be the subject of police investigation and subsequent action pursuant to relevant legislation.²¹

4.35 As noted earlier, failure to abide by the guidelines of itself does not constitute an offence. However, action can be taken against protesters who do not abide by the guidelines where a failure to do so constitutes an offence such as trespass or obstruction.

20 Submissions, pp. S115-S116.

21 Submissions, p. S116.

4.36 According to the Presiding Officers of the 37th Parliament, the guidelines seek to achieve a balance between the rights of protesters and the needs of the Parliament.²² Evidence from the APS indicated that the guidelines generally have been followed by protesters. The APS noted that out of a total of 99 reported demonstrations at Parliament House in the 12 months to August 1995, a significant proportion has been held in the designated protest area. A representative of the APS commented:

Compared to the number of reports, there have been very few instances where arrests have arisen. I think the outcomes have been win-win in terms of meeting the guidelines but it has also been a successful outcome for the demonstrators involved.²³

Protests involving official visitors

4.37 In addition to the specific arrangements which apply to protests at Parliament House, special procedures may be adopted where protests are expected against official overseas visitors. According to the AFP, particular considerations which need to be taken into account include the safety and dignity of the visitor.²⁴

4.38 During an official visit, procedures are implemented to ensure that the official motorcade is not impeded and to ensure that the safety and dignity of the visitor is protected when arriving at and departing the official venue and when undertaking official duties at the venue. Those procedures include formation of a perimeter around the visitor and removal of any blockade to the motorcade.²⁵

4.39 At Parliament House, demonstrators protesting against official visitors are confined to the designated protest area, in accordance with the guidelines for any protest in the parliamentary precincts. As Parliament House may be used as the venue for an official welcome, the AFP also is responsible for ensuring that the welcome proceeds in a secure and dignified manner. This may require the AFP to remove any unauthorised structures associated with any protest, not only because they may offend the dignity of the visitor, but also because they may provide the opportunity for covert activities which could threaten the safety of the visitor.²⁶ Removal has been effected where the AFP has been directed to do so.

22 Submissions, p. 387.

23 Transcripts, pp. 159-160.

24 Submissions, p. 260.

25 Submissions, p. 261.

26 Submissions, pp. 257-262.

Use of structures

4.40 Where protesters seek to erect structures as part of any protest on national land, they must obtain approval from the NCA. Existing laws provide that approval of a structure can be given where the structure:

- is being erected for the purposes of a festival, fair, circus or carnival; or
- comes within the category of works in a designated area (that is, those areas of national land required for the purposes of the national capital, such as the parliamentary zone).²⁷

4.41 The NCA defined 'works' and 'structures' as follows:

A work is any structure or excavation or any change to the appearance of any structure and includes landscape carried out within a designated area. It requires works approval. A structure is a little harder to define. The advice that we have had is that, if something is affixed to the ground or attached to something which is affixed to the ground, it becomes a structure. In that sense, a tent is a structure and would require works approval. However, a banner rested on the ground, hand-held or propped up against something would not be a structure.²⁸

4.42 The NCA told the Committee that it used to issue permits for protest structures until legal advice indicated that it should not issue permits for activities which were outside the criteria of festivals, fairs, circuses or carnivals. As a result, protest structures currently are approved only under the NCA's power to approve works in designated areas.²⁹

4.43 To obtain works approval for a protest structure, protesters are required to complete an application form under section 12 of the ACT (Planning and Land Management) Act. A processing fee of \$25 applies.³⁰ The processing time depends on the issues which need to be addressed. The NCA advised that where the structure is simply a tent or banners supporting the demonstration, the approval process usually takes 24 hours. Where the scale of the proposed structure is larger, the approval process can take much longer because of negotiations which may be required with the protesters. In one case, it took some months to approve a range of structures which were to be erected in association with a protest.³¹

27 Transcripts, p. 5.

28 Transcripts, p. 18.

29 Transcripts, pp. 5-6.

30 Transcripts, p. 18.

31 Transcripts, p. 10.

4.44 In dealing with an application for works approval, the NCA considers the proposed location of the structure and the impact which it is likely to have on the land. In particular, the NCA assesses whether the structure is likely to cause any damage to the land and its fixtures, such as irrigation systems.³² The NCA also consults with other relevant parties, such as the AFP, the Parliament House Security Controller and the ACT City Parks Office, which maintains the horticultural features of the land on behalf of the Commonwealth.³³

4.45 While some protesters seek prior approval of structures, many do not. The NCA stated:

In many cases the protest groups have gone there, it is a spontaneous action, and they have not approached the Authority prior to setting up any structures ... In other cases ... they did formally approach the Authority requesting approval well before the event and there was a series of negotiations with those applicants to work out some arrangements. Eventually ... there was a negotiated outcome and formal approvals were granted for the erection of structures.³⁴

4.46 Where structures are erected without prior approval, the NCA generally approaches the protesters and advises them of the requirement to obtain approval.³⁵ The NCA also can request the AFP to take action to remove any unapproved structures, but has been reluctant to do so because of uncertainties in the law (see paragraphs 4.62 and 4.74).

4.47 The NCA advised that there has been only a limited number of cases involving forced removal of structures.³⁶ Evidence to the Committee indicated that the NCA exercises a considerable degree of discretion when determining whether to request removal of unapproved structures.³⁷

Protests involving camping

4.48 Related to the use of protest structures on national land is the issue of camping as part of a protest activity. As noted earlier, the guidelines on protests in the parliamentary precincts prohibit camping in the precincts. For other national land, camping without a permit is an offence.

32 Transcripts, p. 19.

33 Transcripts, p. 23.

34 Transcripts, p. 9.

35 Transcripts, p. 9 and p. 32.

36 Transcripts, p. 12.

37 Transcripts, pp. 7-8 and p. 12.

4.49 The approval process for the erection of tents on national land (excluding the parliamentary precincts) is the same as for other protest structures. Currently tents erected for the purposes of a protest can be approved only under the NCA's authority to approve works in designated areas of national land. Legal advice indicates that the NCA does not have the authority to issue permits for camping in association with a protest.³⁷ The dilemma for the NCA is whether it should take action against protesters who camp in tents which are used in association with a protest and for which works approval has been granted. In the one example provided to the Committee (as described at paragraph 4.76), the NCA decided not to take any action because of the general compliance with conditions and spirit of cooperation demonstrated by the protesters.³⁸ This dilemma and other difficulties experienced in the management of protests are discussed further in the section which follows.

Submissions on existing arrangements

4.50 A range of views was put to the Committee on the appropriateness, adequacy and effectiveness of the existing legislative and administrative arrangements for protests on national land. In submissions and at public hearings, the Committee was told of various problems and concerns which have arisen in relation to the conduct of such protests.

Scope of existing laws

4.51 Commonwealth agencies, including those with an involvement in the management of protests, were critical of the existing legislative framework governing protests on national land. They argued that the variety of different laws which apply on national land makes it difficult to identify with any accuracy what provisions can be used or must be complied with in the conduct of a protest. The Attorney-General's Department, for example, stated:

Law enforcement agencies have encountered difficulties in identifying the powers available to them to regulate protests or demonstrations in the [parliamentary] zone. Similarly, the state of the law is such that it would almost certainly be beyond the competency of a lay person to accurately identify the provisions with which he or she would have to comply if conducting a protest or demonstration within the zone. In brief, the relevant law is not readily identifiable and accessible.³⁹

37 Transcripts, p. 11.

38 Transcripts, p. 14.

39 Submissions, pp. 353-354.

4.52 This view was supported by the Department of the Prime Minister and Cabinet, which commented:

The regime described above is one of overlapping responsibilities and legislative provisions. It does not provide a clear picture of the extent to which land in the [parliamentary zone] can be used legitimately for activities relating to expression of views and peaceful protest. Equally, it does not provide a clear picture of the necessary limitations on activities and the mechanisms for enforcement if necessary.⁴¹

4.53 Similar criticisms were made by the Australian Law Reform Commission, which noted that the existing laws form a complex and fragmented patchwork of provisions. It stated:

As well as deriving from different jurisdictions, they apply to overlapping geographical areas, including the Parliamentary precincts, the Parliamentary zone, National Land, unleased Commonwealth land and, finally, all public places. The law is unclear for citizens and those who administer it.⁴²

4.54 The Human Rights and Equal Opportunity Commission expressed concern that the existing legal framework leaves people's rights subject to uncertainty. The Commission indicated that because the current laws are confusing and inconsistent, people do not know whether they can exercise their rights with safety from prosecution.⁴³

4.55 In a similar vein, the Community Law Reform Committee of the ACT argued that the variety of Acts and Ordinances applying directly or indirectly to public assemblies do little to clarify acceptable and unacceptable behaviour. It commented that when police and various members of the public meet in the streets of the ACT, both are unclear of their exact rights and responsibilities.⁴⁴

4.56 A particular concern of the ACT Attorney-General's Department was the jurisdictional overlap which currently arises as a result of the various laws applying to protests on national land. It was noted that protests sometimes span both national and Territory land, for example, where a Territory road crosses national land. This can create uncertainty in establishing precisely which laws apply and in determining appropriate lines of responsibility between

41 Submissions, p. 317.

42 Submissions, p. 217.

43 Transcripts, p. 284.

44 The Community Law Reform Committee of the ACT, *Public Assemblies and Street Offences*, Issues Paper No. 10, March 1994, p. 15.

Commonwealth and ACT authorities. The ACT Attorney-General's Department stated:

We just do not seem to be able to find where the jurisdictions end. There is a lot of overlapping; it makes it very confusing.⁴⁴

4.57 In contrast to the above criticisms, some respondents were concerned more about increased regulation of protests than about deficiencies in the scope of existing laws. In some submissions, it was suggested that there already are sufficient laws for managing protests on national land. One respondent stated:

The existing laws seem adequate and sufficiently comprehensive to control the subject matter under review.⁴⁵

4.58 In a number of submissions, it was suggested that the focus should be on the enforcement of existing laws rather than amending or replacing those laws. Comments on existing administrative arrangements are discussed in further detail at paragraphs 4.68 to 4.78.

Operation of laws

4.59 Alongside the criticisms of the general legislative framework, concerns also were expressed about the operation of specific laws relevant to protests on national land. Those concerns focused on the clarity, applicability and appropriateness of those laws.

4.60 Some respondents suggested that existing laws which can be invoked to deal with protests on national land create uncertainty for protesters and administrators alike. It was suggested, for example, that the law regarding trespass is not understood easily. The Department of Administrative Services stated:

It is complicated and not easy to put into practice. A person's right to be on National Land can be as obscure as that of the Commonwealth when rendering a person a trespasser.⁴⁶

4.61 A complicating factor is the number of pieces of legislation which can apply to the act of trespass. According to the Department of Administrative Services, Commonwealth agencies must regularly seek advice from the Attorney-General's Department to determine 'the legitimacy of protest action and the powers that are available to the Commonwealth in each circumstance'.⁴⁷

44 Transcripts, p. 95.

45 Submissions, p. 113.

46 Submissions, p. 396.

47 Submissions, p. 396.

4.62 The NCA concurred that existing legislation creates uncertainty, particularly in relation to the approval of protest structures. As noted earlier, existing law does not enable permits to be issued for structures erected in association with a protest. Accordingly, the NCA is required to use alternative avenues of approval where protesters wish to use structures in association with their protest.

4.63 The NCA considers that the complexities of the legislation lead to an uncertain situation in approving protest structures. According to the NCA, because of this uncertainty in the law, it has been reluctant to initiate action against unauthorised protest structures (see also paragraph 4.74).⁴⁸

4.64 From a similar perspective, the Attorney-General's Department suggested that there is some doubt about the application of particular legislation within the parliamentary zone. The Committee was told that the Public Order (Protection of Persons and Property) Act may apply differently in the parliamentary precincts than it does in the rest of the parliamentary zone, which could cause practical difficulties in administering the law.⁴⁹

4.65 Various respondents to the inquiry also expressed concern about the appropriateness of existing laws. Particular criticisms were directed at the Unlawful Assemblies Ordinance, which essentially prohibits public assemblies within 90 metres of Parliament House. It was argued that the Ordinance is outdated and contrary to the democratic principle of freedom of expression. While evidence to the Committee indicated that the law is no longer used, it was suggested that the existence of such a law is inappropriate within a democratic society, regardless of the extent to which it is used.

4.66 The Attorney-General's Department indicated that a law expressed as broadly as the Unlawful Assemblies Ordinance may breach the implied constitutional freedom of communication on political matters discerned recently by the High Court.⁵⁰ This view was supported by the ACT Community Law Reform Committee, which also stated:

Such a prohibition—which appears to have its origins in a 180-year-old English law designed to control sedition—might be seen as unacceptable in this day and age, particularly when police have adequate powers to deal with other breaches of the law in the vicinity of Parliament House.⁵¹

48 Transcripts, p. 8.

49 Submissions, p. 354.

50 Submissions, p. 354.

51 Submissions, p. 138.

4.67 The Human Rights and Equal Opportunity Commission and the ACT Council for Civil Liberties submitted that the Ordinance is inconsistent with Australia's freedom of assembly obligations under the ICCPR.⁵² The Commission and the Australian Council of Trade Unions argued that it is inappropriate to have a domestic law which deems public assemblies to be unlawful, even if that law is used very rarely.⁵³

Management of protests

4.68 During the inquiry, various respondents suggested that any problems arising in relation to protests on national land have more to do with the management of protests than the existing laws which apply to them. It was argued that there already are sufficient laws to manage protests on national land and that, instead of enacting new laws, existing provisions should be enforced by relevant authorities. Reflecting this view, The Greens NSW stated:

There is already a vast array of laws enabling government authorities to control protests. There is no need for more. The area needing review is the enforcement of existing provisions.⁵⁴

4.69 Particular criticisms were directed at the differences in approach which relevant authorities have adopted in dealing with demonstrations held on national land. On the basis of their experiences, some respondents submitted that relevant authorities are being inconsistent in their treatment of protests.

4.70 The Wilderness Society, which organised the 'Forest Embassy' protest in front of Parliament House in 1994, suggested that double standards are applied to protests on national land. The Society contrasted the arrangements for its protest with those applying to the timber industry blockade of Parliament in early 1995. A representative of the Society stated:

... we went through this lengthy process to get this piece of paper that gave us the permission to be out here in front of this place for five days. I believe we abided by the law. We went to a lot of trouble to try to ensure that we did not disrupt this place in all sorts of ways, for example, by making sure that speakers were not facing towards Parliament House and all those sorts of things. Then at the end of January there was the loggers' protest, which was highly disruptive, not regulated and not policed ... It made me feel distressed that there were no regulations being imposed on that protest, yet we had to jump through a lot of hoops to stay.⁵⁵

52 Submissions, p. 290 and p. 334.

53 Submissions, p. 334 and p. 369.

54 Submissions, p. 174.

55 Transcripts, p. 508.

4.71 Other respondents expressed similar concerns. Mr Joseph Bryant, who was involved with the 'Trojan Horses' protest, and Mr Barry Williams, who was involved with an adjoining protest by the Lone Fathers Association, were critical of the decision to remove their protests from the parliamentary zone. They both suggested that the treatment they were afforded was inconsistent with the treatment afforded to other demonstrators.⁵⁶

4.72 In another submission, it was argued that the decision to allow certain protest structures to remain on national land can be construed as 'calculated acquiescence of standards that would not, and should not be tolerated for law abiding ACT citizens'.⁵⁷ It was stated:

The condoning of such double standards for the benefit or placating [of] minority groups who transgress the law must be in itself considered discriminatory.⁵⁸

4.73 During public hearings, the Committee questioned relevant authorities on the concerns which were raised in evidence regarding inconsistencies in approach. In particular, the Committee questioned the NCA on the reasons some demonstrations, such as the 'Trojan Horses' protest, have been removed, while others, such as the 'Aboriginal Tent Embassy', have been allowed to remain.

4.74 In response, the NCA indicated that, because of uncertainties in the law, it generally has been reluctant to initiate removal of protest structures, particularly as such protests involve considerations beyond land management. The NCA stated:

... it would be true to say we are reluctant to act unless there is clearly a significant problem. From our perspective we are beginning to impinge upon what essentially are issues of political expression, and going well beyond the land use type of activities.⁵⁹

4.75 In relation to specific examples referred to in evidence, the NCA indicated that the 'Trojan Horses' protest had been removed following a request from the Presiding Officers, who indicated that the protest was impeding the operations of Parliament. According to the NCA, the 'Aboriginal Tent Embassy' was 'not in the category of interfering with the operations of the Parliament'.⁶⁰ In

56 Submissions, pp. 119-120 and p. 191.

57 Submissions, p. 112.

58 Submissions, p. 112.

59 Transcripts, p. 8.

60 Transcripts, p. 14.

the case of the 'Trojan Horses' protest, the NCA considered that it had clear support to pursue a particular course of action. It commented:

We did not feel that it was our role to second-guess the Presiding Officers of Parliament ... we took the advice of the Presiding Officers ... The judgment we exercised was whether to proceed to take action in light of that advice.⁶¹

4.76 In relation to another protest, namely the Wilderness Society's 'Forest Embassy', the NCA indicated that, even though some protesters did not abide by the agreed conditions for their structures, removal was not requested because the general requirements for the protest were being met. The NCA stated:

We did not request the police to take action in that case because as far as we were concerned the balance of that protest was being conducted in the way we thought those sorts of things should be done. In other words, they were complying with the major things, they had gone to a lot of trouble and a lot of expense to meet requirements and there was a spirit of cooperation.⁶²

4.77 In its evidence to the Committee on this issue, representatives of the AFP suggested that the approach taken in relation to differing protests can be perceived as being discriminatory. Commenting on the rationale for moving against one demonstration and not another, one representative of the AFP stated:

It is a fairly contentious subject. Somewhere through the process, we were basically advised—although it was not written—not to touch or do anything against the demonstration group at the front of Old Parliament House. I questioned that issue because I thought it was a bit discriminatory inasmuch as we were moving one group. The bottom line of the answer was the fact that the 'Trojan Horses' were unsightly in the front of Parliament House. It was causing the concern that dignitaries coming to this country could not walk out the front of Parliament House without the eyesore; and that is the basis of it. I must agree that it did look like favouritism, but that was the exact circumstance that we were placed in.⁶³

4.78 On the broader operation of existing administrative arrangements applying to protests on national land, the AFP, while supporting a more defined system, indicated that a majority of protests held on national land have been managed successfully. The AFP commented:

With good management and liaison with protesters so far, we have in the main managed to control those demonstrations effectively.⁶⁴

61 Transcripts, p. 15.

62 Transcripts, p. 14.

63 Transcripts, p. 130.

64 Transcripts, p. 125.

Conclusions

4.79 From the evidence provided to the Committee, it is clear that close cooperation between protesters and relevant authorities is crucial in ensuring that the interests of all parties involved in a public demonstration can be satisfied. Past difficulties tend to have arisen where there have been differing expectations of how protests should be conducted or where there has been a breakdown in goodwill between the protesters and relevant authorities.

4.80 According to Commonwealth agencies with responsibility for managing protest activities on national land, confusing laws and overlapping responsibilities have not contributed to the resolution of difficulties when they have arisen. On the basis of their past experiences, agencies such as the Australian Federal Police and the National Capital Authority consider that existing laws and administrative arrangements do not provide an adequate or appropriate framework for protests to be held on national land. The Committee is sympathetic to this position, as unclear law does not make for good law.

4.81 At the same time, various respondents to the inquiry highlighted inconsistencies in the management of past protests which, in their view, have more to do with a lack of will in enforcing existing laws than with inadequacies in those laws. On the basis of examples provided during the inquiry, the Committee considers that this proposition has some merit.

4.82 In the Committee's view, if future protests on national land are to be conducted so that all parties involved can be satisfied with the outcome, then all parties involved, including the protesters and relevant authorities, must have a clear understanding of their responsibilities and obligations. This can be achieved only if there is clarification of existing laws and administrative arrangements applying to protests on national land.

4.83 In considering options for the future, the Committee is mindful of the strong community sentiment that protests on national land should be allowed to occur free of unnecessary constraints. At the same time, the Committee is aware of the need to take into consideration the other significant purposes for which national land is used.

4.84 In determining whether there is a need for wholesale change in the management of protests on national land, or whether only particular modifications are required, the Committee assessed the contrasting proposals outlined during the inquiry. Those proposals are considered in the final chapter of this report.

Chapter Five

The future conduct of protests

Introduction

5.1 In the previous chapter, the Committee outlined the challenges and difficulties which arise as a result of the existing law and practice governing protests on national land. In this chapter, the Committee will detail the options for meeting those challenges and resolving those difficulties.

5.2 The Committee's own challenge was to achieve a balance between the expectations and obligations which attach to protests on national land. On the one hand, there is an expectation that protest activity should not be restricted unduly, if at all, because it is a legitimate activity on national land. On the other hand, there is an obligation to ensure that protests are conducted in accordance with the law and mindful of other public interest considerations, such as public order, public safety and the rights of other users of national land.

5.3 In attempting to strike an appropriate balance, the Committee took account of the diversity of views and proposals presented to it. In coming to its conclusions, the Committee considered the constitutional, legal and administrative implications of those proposals, as well as the obligations arising from Australia's ratification of relevant international conventions.

Options for managing protests

5.4 During the inquiry, the Committee was presented with a range of views on how protests on national land should be conducted in the future. Some people submitted that the right to protest is fundamental within a democracy and should not be limited by legislative or administrative requirements other than those which are necessary to protect public order and safety. They warned against any additional restrictions or controls over protests on national land, arguing that any further limitations would impact adversely on the exercise of a democratic right. Others suggested options for a more defined legislative and administrative system to ensure that demonstrations can be facilitated and are managed properly. The various suggestions made to the Committee are detailed below.

Minimal regulation of protests

5.5 In various submissions, it was argued that any regulation of protests on national land should be kept to a minimum, with respondents generally focusing on the arrangements applying to protests at Parliament House. A number of people submitted that any additional controls on protests are unnecessary and would impinge on people's democratic right to express their views freely. As stated by one group:

We submit that to make any such changes to people's right to protest in Canberra and especially at Parliament House will ... compromise our democratic freedom to protest to our elected representatives.¹

5.6 It was suggested that while more formal processes for dealing with protests, such as permits, may be appealing, they may lead to an unnecessary curtailment of democratic rights. In this regard, one group of respondents commented:

We are concerned that if Government acts to remove or restrict the right of protest on National Land, it will set a precedent for further restriction of protest that might ultimately result [in] a dangerous festering discontent.²

5.7 Various respondents were concerned that the inquiry would lead to further limitations on protests in the vicinity of Parliament House. It was suggested that any additional restrictions would:

... increase the isolation of the Parliament, and [Members of Parliament], from people; weaken the processes of government by heightening their remoteness and making them less real in people's lives; serve to alienate people who already feel their needs/views are not being attended; add to frustration and anger by exclusion; raise the spectre of 'fortress Parliament' and, of even more unapproachable [Members of Parliament]; engender fear or hostility rather than respect.³

5.8 Other people were concerned that any increased regulation of protests would place certain groups in the community at a disadvantage. The Chairperson of the Aboriginal and Torres Strait Islander Commission stated:

Various minority groups would be heavily disadvantaged by the procedural requirements inherent in any permit system.⁴

1 Submissions, p. 133.

2 Submissions, p. 231.

3 Submissions, p. 173.

4 Submissions, p. S26.

5.9 As noted in Chapter Four, those arguing against any further regulation of protest activity suggested that there already are sufficient laws for dealing with protests on national land and that the emphasis should be on enforcing those laws rather than changing them. Reflecting this view, the Australian Anti-Bases Campaign Coalition stated:

We submit that the national capital is a proper place in which to express dissent; that the public's right to have access to National Land should be paramount; and that existing laws—if enforced correctly and equitably—are more than adequate to ensure the security of Parliament House and its occupants as well as the uninterrupted flow of both Parliamentary business and traffic.⁵

5.10 A few respondents argued that even existing requirements for protests on national land are overly restrictive and should be removed. It was suggested, for example, that the restrictions which apply to protests around Parliament House are inappropriate because they confine people to an area of the parliamentary precincts which politicians either do not frequent or can avoid. In this regard, The Greens NSW submitted:

Protests directed at elected representatives must not be prevented from being seen and acted on by those representatives. Anything else smacks of an elitist and 'ivory tower' situation which has no place in a democracy. Barriers between the people's representatives and the people themselves demonstrating peacefully are dangerous to the democratic process. The law and guidelines should be amended to remove prohibitions on protests within the parliamentary precinct.⁶

5.11 These sentiments were echoed by People for Nuclear Disarmament, which stated:

We believe that the Parliamentary Lawn is a place of special interest to those who would want to express an opinion regarding the deliberations or actions of the Federal Parliament, and that for that reason there should be no restrictions placed on its use.⁷

Authorising of protests

5.12 In contrast to those supporting a minimalist approach, the Attorney-General's Department, the AFP, the Department of the Prime Minister and Cabinet and the Australian Law Reform Commission all advocated a more defined system for dealing with protests on national land. They argued that a permit or notification system was required to clarify the rights and

5 Submissions, p. 158.

6 Submissions, p. 175.

7 Submissions, p. 147.

responsibilities of all parties involved in a protest and to overcome deficiencies in the existing legislative and administrative framework (as discussed in Chapter Four).

5.13 It was proposed that the Queensland *Peaceful Assembly Act 1992* could be used as a model for a permit or notification system applying to protests on national land. The Queensland Act provides a statutory right of peaceful assembly in a public place and establishes a system of non-compulsory prior notification of public assemblies. Under that system, advance notice of an assembly can be given to the police or relevant local authorities in writing, setting out the details of the proposed assembly. Where such advance notice is given and the protest is authorised, participants receive immunity from civil and criminal liability for obstruction of a public place, as long as the assembly is peaceful and complies substantially with agreed conditions. Protests are taken to be authorised where:

- the police or relevant local authority issues a notice of permission; or
- notice of the assembly was given not less than five days in advance and the Magistrates Court has not made an order refusing authorisation of the assembly; or
- notice of the assembly was given less than five days in advance and the Magistrates Court has made an order authorising the assembly.

5.14 The police or local authority may apply to the Magistrates Court for an order refusing authorisation of an assembly, but only if:

- it would be likely that the safety of persons would be in jeopardy, serious public disorder would occur, or the rights or freedoms of persons would be interfered with excessively; and
- consultation has been attempted with each interested person and a mediation process has taken place.

5.15 An assembly organiser also may apply to the Magistrates Court for an order authorising an assembly where that assembly is proposed to be held with less than five days' notice. Such an order can be sought only if a mediation process has taken place.

5.16 The Queensland system provides that conditions for the conduct of an assembly may be specified by the police commissioner or local authority after they have been agreed to by the protest organiser and after consultations have been held with a person or body with a significant interest in or responsibility for the place of assembly. Those conditions can relate to public safety, maintenance of public order, protection of the rights and freedoms of others, payment of

clean-up costs, recognition of the environmental or cultural sensitivity of the place of assembly, or resource management practice.

5.17 On the basis of this Queensland model, the Commonwealth Attorney-General's Department and the Department of the Prime Minister and Cabinet proposed the enactment of legislation which would recognise the right to protest on national land, but which at the same time would recognise competing public interests such as public safety, public order, the rights and freedoms of others and the protection of Parliament and other institutions on national land. The two departments suggested that this new legislation should establish a permit system applying only to protests in the parliamentary zone. In their view, the permit system should have the following features:

- the grant of a permit could provide immunity from prosecution under laws which otherwise could be breached during the course of a protest, such as the laws relating to obstruction or trespass, although immunity would not extend to violent, destructive or offensive behaviour;
- obtaining a permit would not be compulsory, with failure to do so simply leaving protesters liable to prosecution under existing laws;
- provision could be made for cooperation between Commonwealth and ACT authorities where a protest was expected to extend beyond the parliamentary zone onto other land in the ACT;
- protesters would need to lodge an application for a permit with the AFP a minimum number of days before a protest (for example, five days), with a discretion to consider applications which provide less notice;
- a permit could be deemed to have been granted if the AFP does not respond in a specified period;
- the AFP could be required to consult with other relevant authorities, including the NCA, the Presiding Officers and, where appropriate, relevant ACT authorities;
- for protests in the parliamentary precincts, the AFP could be required to act in accordance with the guidelines issued by the Presiding Officers and any orders of the Parliament;
- a permit could authorise the use of roadways, erection of temporary structures and other relevant activities which otherwise would not be permitted;

- a permit could be granted subject to conditions which are necessary to protect public order and safety, protect the rights and freedoms of persons not involved in the protest, protect the proper operations of institutions operating on national land, and protect against damage or denigration of national land; and
- a refusal to grant a permit and/or the imposition of conditions in relation to the grant of a permit could be subject to review by a court.⁸

5.18 In supporting such a model, the Australian Law Reform Commission emphasised that approval must be automatic where protesters provide notice of the protest in the correct format. It also suggested that the circumstances in which conditions can be imposed on a protest should be set out in regulations promulgated under the legislation. In the Commission's view, any conditions which are sought to be imposed should have a compelling rationale relating to competing public interests and should not be applied in a blanket fashion to all protests notified to the authorities.⁹

5.19 Outlining the benefits of a non-compulsory permit (or notification) system, the Attorney-General's Department indicated that it would:

- provide advance warning of protests to relevant authorities;
- allow police to plan for contingencies and allocate resources;
- allow negotiations between police and protesters over the conduct of a protest; and
- balance the right to protest with other public interest considerations, such as public safety and the proper functioning of Parliament.¹⁰

5.20 The Attorney-General's Department also submitted that such a system would not impinge on any implied constitutional guarantees of freedom of communication, as discerned by the High Court (and discussed in Chapter Three). It stated:

... a law which did not prohibit protesters or demonstrators from communicating information or ideas about political matters, but which imposed reasonable regulatory measures aimed at maintaining public order and protecting the rights of other citizens to go about their business, probably would not infringe the implied freedom. That

8 Submissions, pp. 358-359.

9 Submissions, pp. S21-S22.

10 Submissions, pp. 359-360.

is, it is within the competency of the Commonwealth Parliament to make a law of that kind.¹¹

5.21 The AFP concurred that a permit system would provide certain benefits, particularly in terms of operational planning for protests. While acknowledging that existing ad hoc arrangements for managing protests generally have worked to date, the AFP commented:

Our view is that, if we did have a permit system, it would enable us to better manage the demonstrations that occur either in the parliamentary zone or precincts or even outside at other locations within the ACT.¹²

5.22 The AFP, however, was concerned about certain elements of the proposed system advocated by the Attorney-General's Department. It suggested that a non-compulsory system based on the Queensland model would not vary greatly from the ad hoc notification arrangements currently in place and therefore would be of little value. The AFP stated:

There has to be something binding to try to have people at least sit down and negotiate a set standard—otherwise we are really going back to where we are now.¹³

5.23 The AFP also expressed concern about providing immunity from prosecution for protesters, commenting:

If that notification also carried an opportunity to avoid prosecution for trespass, obstruction, or whatever, then I think we would have some difficulties accepting that. It just opens up a bit of a Pandora's box. The demonstrators could then do a lot more things than they could at the moment. Once you allow them so much latitude they will extend it a little more.¹⁴

5.24 In contrast to those supporting a permit system, some respondents questioned the usefulness of such a system. The President of the Senate (37th Parliament), Senator the Hon Michael Beahan, stated:

I think permits all over the world have shown themselves to be intrusive, administratively messy and usually ineffective, and I do not see that they are any different here. In fact, it may be more complicated here ... because we have so many organisations involved.¹⁵

11 Submissions, p. 357.

12 Transcripts, p. 139.

13 Transcripts, p. 142.

14 Transcripts, p. 140.

15 Transcripts, p. 203.

5.25 On the basis of discussions he held during a visit to the United States Congress, Senator Beahan referred to the difficulties which have arisen with the permit system applying at the Capitol in Washington. He noted that while permits are required for demonstrations and for the erection of structures, this requirement is flouted as a matter of course. Senator Beahan commented:

When it comes to permits for demonstrations that manifestly does not work. Nobody applies for them, the rule is never applied by the police and so the police are placed in the position where they make a judgment based on the right of those people to demonstrate for a short time and then they go in and try to make some sort of a deal with them or move them away. So it is left up to the police to use their judgment about how that demonstration is handled. The permit system there simply does not work.¹⁶

5.26 Based on his experience in dealing with protests at Parliament House, the Parliament's Security Controller also opposed the introduction of a permit system for demonstrations in the parliamentary zone. He stated:

... it is my personal view that permits are not the answer to the problem here. Permits for people would be ... a bureaucratic nightmare, particularly if they do not have a penalty clause for non-compliance—it just becomes nonsense. I believe we have enough liaison and communication with people who come up here to protest to control it. To my knowledge there has never been a problem here with people demonstrating. The problem arises when people put structures up and bring heavy vehicles into the place. I really think that is the crux of the problem.¹⁷

5.27 The NCA concurred with this view, suggesting that protest activity which does not involve the use of structures should not require a permit or approval. It argued that when structures are not involved, law and order legislation would be the appropriate means for dealing with disorderly behaviour at protests.¹⁸

Permits for protest structures

5.28 While opposing the introduction of a general permit system for protests in the parliamentary zone, the NCA, together with the Parliament's Presiding Officers and Security Controller, suggested that there would be merit

16 Transcripts, p. 192.

17 Transcripts, p. 204.

18 Submissions, p. 242.

in establishing a clearer system for the approval of protest structures on national land. In this regard, the Senate President stated:

There might well be some merit in permits for structures, with somebody having to make a decision about how appropriate a structure is and how safe it is, and so on.¹⁹

5.29 Senator Beahan again referred to the experience of the United States Congress in dealing with protest structures. He suggested that, because a permit system operates in relation to structures, relevant authorities are in a better position to deal with protest structures than are the equivalent Australian authorities. Senator Beahan commented:

It gives the police the right to pull down those structures within 24 hours and they do. It gives them a power that we do not have and that we cannot apply here.²⁰

5.30 As noted in Chapter Four, the NCA was critical of the existing system for dealing with protest structures on national land. While protesters currently wishing to erect protest structures on national land must obtain approval from the NCA, existing laws do not enable the NCA to issue a permit for such structures. Instead, the NCA can approve such structures only as 'works' on designated land. This gives rise to some uncertainty, particularly where removal of a protest structure is required.

5.31 In its submission, the NCA proposed that existing legislation should be amended so that protesters wishing to erect a structure on national land would be required to apply for a permit under the Trespass Ordinance. A permit would not be required where the proposed structure was to be:

- located in a defined part of Federation Mall between the current and old Parliament Houses;
- limited to a specified type and size; and
- removed outside daylight hours.²¹

5.32 According to the NCA, the establishment of such a permit system would require:

- amendment of the Trespass Ordinance to allow for the issuing of permits for protests structures and to enable the parameters of structures requiring a permit to be defined;

19 Transcripts, p. 203.

20 Transcripts, p. 191.

21 Submissions, p. 242.

- amendment of the National Capital Plan to make it clear that protests and demonstrations are legitimate activities on unleased national land (excluding land reserved for diplomatic use); and
- amendment of the ACT (Planning and Land Management) Act to exempt protest structures from the requirement for works approval.²²

5.33 The NCA indicated that guidelines then could be developed outlining acceptable parameters for protest structures. Such guidelines could cover issues such as duration, location and camping. The NCA told the Committee that it did not have any specific views on the limits which should apply to protest structures, commenting:

What we have not done in this submission is to be specific about what limits you might embody in those sorts of changes. We talk about structures limited to a specific type or size to be determined, because we feel that the forum of this committee is a good opportunity to explore the range of things we want to accommodate rather than us adopting an arbitrary view of saying, 'We think this is some sort of limit that should be placed on it'.²³

5.34 When questioned by the Committee on what would be regarded as a reasonable time limit for a protest structure, one representative of the NCA commented:

While I do not think we have a fixed view about what sort of time, I think somewhere in the week to three-week period is a pretty reasonable time. Any protest that extends beyond that point probably loses its impact. Parliament might be sitting for a longer period, but certainly all Members of Parliament will have seen it in the space of a week or three weeks. The media have probably lost interest after the first few days, unless someone takes steps to remove them. I do not think a lot is gained by a longstanding protest. That is my view as a land manager.²⁴

5.35 The NCA also indicated that if a permit system for structures were introduced, the public would need to be informed about the requirements of the system. In this regard, a representative of the NCA commented:

One of the things I would hope we could do in the future if we have a new, clearer system is to produce a small booklet, guide or publication that can be pretty widely available to people so that if people are interested there is a chance they might be able to access that. As we do with many other things, we would try and promote the fact that

22 Submissions, pp. 242-243.

23 Transcripts, p. 29.

24 Transcripts, p. 21.

there are some controls, that there are some guidelines and that this [is] how you go about things. It is an education process.²⁵

5.36 The NCA conceded that a permit system would not prevent people simply arriving on national land and establishing a protest structure. If this were to occur, the NCA indicated that it would approach the relevant people, point out to them that they require a permit and then expedite an approval where that was appropriate.²⁶

Other proposals

5.37 Other suggestions received by the Committee focused on modifying existing arrangements in order to address particular difficulties or deficiencies of concern to inquiry respondents. Such proposals were put forward as options which the Committee could consider as part of any improvements to the existing processes for dealing with protests on national land.

Limits on protests

5.38 In some submissions, it was suggested that, in the wider public interest, it may be appropriate to introduce certain limits on protests held on national land. The proposals put to the Committee included:

- a maximum time limit for protests, with suggestions ranging from three days to two months;
- restricting protests to daylight hours; and
- prohibiting permanent or semi-permanent structures.

5.39 The use of protest structures on national land attracted particular attention, with various respondents arguing that they should not be tolerated. This view was reflected in a submission from two ACT residents, who stated:

If people feel strongly enough they can come back day after day to make their point, but allowing structures gives the message that there are sympathisers or weak people in the administration system.²⁷

5.40 Others, however, argued that protest structures are a legitimate means for people to express their views. While it was acknowledged that some people may consider protests structures to be unsightly, it was suggested that a

25 Transcripts, pp. 31-32.

26 Transcripts, p. 32.

27 Submissions, p. 8.

subjective view should not determine the way in which freedom of expression is exercised. As noted in a submission from the Pax Christi organisation:

Democracy is a bit messy and not conducive to tidy minds and straight lines but rather it is dynamic and creative.²⁸

5.41 Beyond the debate over protest structures, the suggestions for limiting protest activities, by imposing particular time limits on protests, attracted minimal discussion during the inquiry.

Legislative amendments

5.42 Other proposals put to the Committee involved legislative amendments to overcome perceived problems in existing laws which apply to protests on national land. These proposed amendments were not put forward as part of any comprehensive overhaul of existing laws, but rather to address specific concerns about individual laws which apply to protests on national land.

5.43 As noted in Chapter Four, various respondents were critical of the Unlawful Assemblies Ordinance, which essentially prohibits public assemblies within 90 metres of Parliament House. While advice indicated that the law had not been used since at least 1971, a number of people suggested that the Ordinance should be repealed as it is inappropriate for a democratic society and may even breach the implied freedom of communication discerned in the Australian Constitution by the High Court.

5.44 Another suggestion was to limit the scope of the Public Order (Protection of Persons and Property) Act so that it applies only to national land and not ACT land. As noted in Chapter Four, that Act establishes the offences of trespass and obstruction in a Territory or on Commonwealth premises. The ACT Community Law Reform Committee argued that while it may be appropriate for the Commonwealth Government to have the power to control protests within the parliamentary triangle and areas of joint interest to the Commonwealth and the ACT, it is another matter to say that this power should extend to other areas of the ACT. It commented:

Assemblies of a purely local flavour should be the concern of ACT authorities and not regulated by federal law.²⁹

Extension of the parliamentary precincts

5.45 A separate proposal put to the Committee was to extend the parliamentary precincts so that the Parliament's Presiding Officers have responsibility for the areas in front of both the current and old Parliament

28 Submissions, p. 234.

29 Submissions, p. 137.

Houses. In this way, the guidelines relating to protests in the parliamentary precincts would be applicable over an extended area.

5.46 The Presiding Officers (37th Parliament) indicated that they would not favour such a proposal, as it could increase the complexity of managing the area and may not necessarily resolve any difficulties which may arise in relation to protests which occur on the borders of the precincts. As stated by the Senate President:

... pushing it back simply pushes the problem back and you always get a problem on the margin ... There has been long debate on this, of course, at the Joint Committee on the New Parliament House about where the precinct should be. It was arrived at as being the minimum amount that could be easily defined and was seen as being appropriate for Presiding Officers to have rights over. You can revisit that argument, if you like. I am not sure that you would prove anything in doing it.³⁰

Guidelines for protests in the parliamentary precincts

5.47 In addition to the proposal for extension of the parliamentary precincts, there also were suggestions in relation to the guidelines which the Presiding Officers have issued for protests in the parliamentary precincts. Various matters dealt with in the guidelines, such as erection of protest structures, were raised in the broader context of the arrangements which should apply generally to national land (as discussed earlier). The additional suggestions related specifically to the operation of the guidelines.

5.48 As noted at paragraphs 5.10 and 5.11, a few respondents argued that the guidelines are overly restrictive because they confine protests to a designated area in front of Parliament House and, therefore, place an unacceptable barrier between the people and their elected representatives. It was argued that such restrictions should be removed.

5.49 One proposal was to move the designated protest area closer to the front entrance of Parliament House.³¹ A separate suggestion was to increase the size of the designated protest area, so that it extends down to Old Parliament House, and to change the traffic flow arrangements around the parliamentary precincts, so that people coming to Parliament House, be they politicians, public servants or visitors, are 'forced to travel past the front of the parliament and so become aware of any protest or demonstration'.³²

30 Transcripts, p. 205.

31 Submissions, p. 235.

32 Submissions, p. 123.

5.50 In response to criticisms of the restrictions which apply to protests at Parliament House, the Presiding Officers argued that they need to balance the public's right to protest at Parliament House with the obligation to ensure the proper functioning of the Parliament. The Speaker of the House of Representatives (37th Parliament) commented:

... we, under no circumstances, are opposed to the legitimate right of citizens of Australia to demonstrate at Parliament House to put forward their views on what they believe governments and members of parliament should or should not be doing on their behalf ... However, what we have done is to indicate to people that, if they do come to Parliament House, into the precincts of this place, there are certain obligations which are on them. In that respect, we have guidelines in place ... We are concerned to ensure that the efficiency and effectiveness of the Parliament is not impeded by actions of people that might come here.³³

5.51 The AFP argued that there is also a resource issue to be addressed when considering the issue of protests at Parliament House. It stated:

Rightly or wrongly, we have set a standard for the demonstration area at the front of Parliament House. We are trying to avoid the problems around the building. We just do not have the resources to be at every point of the building, so it is better to try to keep it so.³⁴

5.52 Other respondents indicated that the restrictions incorporated in the Presiding Officers' guidelines would not be contrary to the restrictions allowable under the ICCPR. Elizabeth Evatt, for example, commented:

The right of peaceful assembly is not violated by restrictions which are aimed at action which may prevent or obstruct the business of Parliament or threaten the security of Parliament House or of its occupants. Limiting protests and demonstrations to specific areas could be seen as a reasonable response to this need.³⁵

5.53 From a different perspective, it was suggested that the power to deal with protests at Parliament House could be supplemented by introducing penalties or sanctions for a breach of the Presiding Officers' guidelines. This proposal was rejected by the Presiding Officers, with the Speaker of the House of Representatives (37th Parliament) stating:

We are still fortunate in this country to have a democracy that allows people to have freedom of expression of opinion. Ninety-nine times out of 100 it does not lead to any difficulties at all. Therefore, to have penalties, sanctions or whatever imposed seems to be a little heavy handed at this stage.³⁶

33 Transcripts, pp. 190-191.

34 Transcripts, p. 142.

35 Submissions, p. 188.

36 Transcripts, p. 210.

Clarification of responsibilities

5.54 Another suggestion for improving existing arrangements was to establish clearer lines of responsibility between the authorities involved in dealing with protests. As noted in Chapter Four, various individuals and organisations can become involved in protests on national land, including the AFP, APS, NCA, Presiding Officers and the Parliament's Security Controller. While it was indicated to the Committee that existing liaison arrangements between the various authorities have not given rise to any difficulties, it was acknowledged that there may be some room for improvement.³⁷

5.55 In this regard, some steps were taken during the course of the inquiry to build on existing liaison arrangements. The AFP and APS issued a memorandum of understanding to strengthen the consultative processes between the two organisations.³⁸

5.56 Despite such measures, evidence to the Committee indicated that further improvements to existing liaison arrangements may be required. The Presiding Officers, for example, stated:

... there should be more detailed guidelines between the AFP and the Presiding Officers about their respective roles and responsibilities in relation to the conduct of demonstrations in the [parliamentary] precincts.³⁹

Conclusions

5.57 As noted in Chapter Four, the proper conduct of protests on national land depends largely on the level of cooperation established between protesters and authorities responsible for managing national land and maintaining law and order on that land. In the Committee's view, the laws and administrative arrangements applying to protests on national land must be directed to encouraging such cooperation.

5.58 While some Commonwealth agencies advocated the introduction of a non-compulsory permit or notification system which would provide a more structured framework for managing protests on national land, the Committee was not convinced of the need for or appropriateness of such a system. The history of protests in the national capital shows that the majority of demonstrations proceed without incident. While difficulties have been experienced from time to time, it is unlikely that a permit system would have resulted in different outcomes to some of the more controversial protests which have occurred, particularly at Parliament House.

37 Transcripts, p. 23.

38 Transcripts, p. 540.

39 Submissions, p. 389.

5.59 A permit is essentially an administrative mechanism to facilitate the planning of protests. It is not a safeguard against disorderly or violent conduct by those who are intent on causing trouble or by those who turn to violence in the heat of a protest. A permit cannot prevent a demonstration from getting out of hand, nor does it provide a remedy for dealing with disorderly conduct by demonstrators. Where protests do not proceed in a spirit of cooperation, a permit will not ensure public safety and public order. In such circumstances, it is the way in which relevant authorities exercise their powers which will determine the outcome of the protest. Those powers derive not from any permit system but rather from relevant law and order legislation.

5.60 The Committee detected strong community resistance to the proposition that people should apply for a permit in order to exercise a democratic right. Given the broad sentiment against a permit system, it is likely that many people would not seek a permit if they had a choice. If this were the case, the system would become redundant. Evidence in this regard was received from the previous President of the Senate who noted that a permit system operating at the United States Congress has become irrelevant because most people do not bother to apply for a permit. The Committee also was swayed by advice from the Parliament's Security Controller, who indicated that in most cases authorities obtain prior notification of a protest at Parliament House without a permit or formal notification system. This was confirmed by the Australian Federal Police, which indicated that existing arrangements already are akin to a non-compulsory notification system.

5.61 The Committee is particularly concerned that a permit system would not provide greater clarity and certainty in relation to the conduct of protests, but instead could introduce an overly complex legislative and administrative process which may or may not be followed. Even among supporters of a permit system there were differences of view on whether such a system should involve immunity from prosecution and, if so, what impact this would have on the ability of law enforcement agencies to deal with disorderly protests. There also were differences of opinion on the types of demonstrations which should be covered by any permit system and the effect any such system may have on people's ability to protest spontaneously. These differences of view suggested to the Committee that a permit system may introduce new complexities without necessarily resolving existing difficulties.

5.62 The Committee's preference is to build on existing cooperative arrangements for dealing with protests rather than establish a new legislative system which ultimately may become redundant if people have the choice to circumvent it. In the Committee's view, a better system for managing protests can be achieved if:

- prior notification and planning of protests is encouraged rather than enshrined in legislation;

- more detailed information is available to protesters on how best to arrange and conduct a protest on national land;
- existing laws are clarified and consolidated rather than replaced by new laws which may be subject to successful challenge and which may introduce new complexities; and
- there is improved coordination between all relevant authorities which have a role in dealing with protests in order to build on existing processes which have facilitated the management of protests to date.

5.63 By emphasising that they are offering cooperation rather than permission, relevant authorities are more likely to strike a positive chord with protest organisers. This is important not only for the planning of a protest but also for ensuring its orderly conduct.

5.64 While the Committee is not in favour of a permit or formal notification system for protests on national land, it does support the introduction of a system for the management of protest structures erected on national land. Protest structures can be a safety risk if they are not constructed properly. As some structures enable protesters to remain at the protest site for extended periods of time, they can have public health implications. They also can exclude others from using the same site either for another protest or for a different activity. In addition, protest structures can affect the proper functioning of the institution at which they are located. In the Committee's view, all of these public interest considerations justify a general requirement that protest structures placed on national land should be authorised.

5.65 It is important to remember that there already are prohibitions on people erecting structures on national land without permission. There is, however, considerable uncertainty about the processes through which protest structures currently can be authorised. This uncertainty has led to inconsistencies in dealing with protests, particularly protest structures, and unnecessary administrative complexities. For this reason, the Committee agrees with the National Capital Authority that a permit system for protest structures is the best way of ensuring that there are clear and consistent procedures by which protesters can apply for and be granted permission to erect a structure on national land. The Committee considers that such a system should operate for all national land and not just the parliamentary zone or precincts.

5.66 In the Committee's view, a permit system for protest structures should be a mechanism for facilitating protests rather than restricting them. This premise should be the guiding principle under which the permit system operates.

5.67 In this regard, the Committee recognises that certain structures, such as stages and sound systems, provide a focal point for demonstrators and, therefore, are integral to the proper conduct of a protest. On this basis, the Committee would exclude such structures from the permit requirement as long as they are of a size which would have minimal impact on land features, such as grassed areas, and are erected and removed on the same day during daylight hours.

5.68 In summary, the Committee considers that cooperative arrangements for the planning and conduct of protests, when combined with a permit system for protest structures, provide the most appropriate legislative and administrative framework for dealing with protests on national land. The Committee's proposals build on existing arrangements and are intended to complement existing approaches to protest management, such as the Presiding Officers' guidelines for protests in the parliamentary precincts, which are an appropriate basis for dealing with protests at Parliament House. The Committee's recommendations also obviate the need to adopt more complex proposals, such as the introduction of a broader permit system or, alternatively, the extension of the parliamentary precincts to bring more national land under the Parliamentary Precincts Act and, therefore, under the purview of the Presiding Officers' protest guidelines.

Recommendations

5.69 The Committee recommends that:

1. a permit not be required in order to protest on national land, subject to recommendation 3 dealing with protest structures;
2. a broad legislative scheme for non-compulsory prior notification of protests, based on the *Queensland Peaceful Assembly Act 1992*, not be introduced, but instead a cooperative approach to protest management be encouraged by:
 - (a) identifying in a community liaison section of the Australian Federal Police a contact officer for coordination of protests on national land who would provide a contact and information point for protest organisers and who would be responsible for liaising with other relevant authorities when a protest is planned for national land; and
 - (b) producing and making available a public information booklet on protesting in the national capital which would encourage prior notification of protests to a protest coordination officer of the Australian Federal Police and which would provide relevant information and advice on the conduct of protests in the national capital, focusing on national land;

3. a permit system be introduced for the management of protest structures on national land so that a permit is required from the National Capital Authority for a structure placed on national land as part of or in association with a protest, but a permit not be required where the structure:
 - (a) is of a size which would have minimal impact on the land and is used to facilitate the protest, such as sound systems and small stages; and
 - (b) is erected and removed on the same day during daylight hours;
4. relevant legislative amendments be introduced to recognise protests as an appropriate use of national land and to enable the National Capital Authority to issue permits for the erection of protest structures;
5. the term 'structure' be defined broadly to ensure that the myriad fixtures, edifices, constructions, vehicles, machinery and fixed display materials which could be used in association with a protest, including tents used for camping, come within the terms of the permit system;
6. in determining an application for a permit to erect a protest structure on national land, including the duration of a permit, the National Capital Authority be required to give due consideration to:
 - (a) the public's right to peaceful assembly on national land;
 - (b) issues regarding equality of access to national land;
 - (c) public interest considerations which may require certain limitations to be placed on the erection of structures, including public order, public health and safety, national security, the rights of other persons, and the proper functioning of the Parliament and other national institutions, including their ceremonial functions; and
 - (d) any specific requirements relating to the parliamentary precincts as determined by the Parliament's Presiding Officers, including existing requirements set down in their guidelines for protests in the parliamentary precincts;
7. guidelines on the erection of protest structures on national land, covering issues such as location, duration and public health and safety considerations, be developed by the National Capital Authority and be included in the information booklet proposed at recommendation 2;

8. on the basis of advice from the National Capital Authority or the Presiding Officers in relation to the parliamentary precincts, the Australian Federal Police be empowered to remove any protest structure on national land for which a permit is required under the system proposed at recommendation 3 but for which a permit has not been issued;
9. the *Unlawful Assemblies Ordinance 1937* be repealed;
10. the Commonwealth Attorney-General's Department, in consultation with the Australian Capital Territory Attorney-General's Department, review the existing laws which can apply to protests on national land to ensure that they are written in plain English and define clearly the powers which are available to relevant authorities in dealing with protests; and
11. building on the memorandum of understanding established between the Australian Federal Police and the Australian Protective Service, clearly documented procedures for coordination of protests be developed between all relevant authorities involved with the management of protests on national land.

SENATOR J J McGAURAN
CHAIR

May 1997

Addendum by Steve Dargavel, MP

The outcome of the Committee inquiry is to oppose proposals which would limit the people's ability to protest to the Parliament. The Committee has proposed the removal of legislation that prohibits protests to the Parliament.

The majority of the Committee felt that it was unnecessary to comment on any one particular protest.

A current protest on national land is the Aboriginal Tent Embassy, the continued presence of which should not be interfered with.

The report does not recommend the removal of the Aboriginal Tent Embassy.

The Committee proposes that some discretion be provided to the NCA over the question of fixed structures. If such discretion is provided then the NCA should not interpret the recommendations of this Committee as encouraging the removal of the Tent Embassy. Quite the contrary view should be taken as the Committee has actively considered and rejected proposals aimed at limiting the rights of protesters and has instead opted for minimalist intervention.

STEVE DARGAVEL, MP

May 1997

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73 and 73.01	Mr Alan Rose President Australian Law Reform Commission	16.5.95 18.1.96	216 536

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Submission No.	Individual/organisation	Date	Page in volume
74	Mr Amos Hunter	11.5.95	224
75	S Hogan	16.5.95	225
76	Mr Stephen Langford Secretary Australia-East Timor Association NSW	3.5.95	227
77	Mr Maurice Fountain Concerned Citizens	10.5.95	230
78	Mr Denis Doherty Pax Christi Sydney	12.5.95	232
78.01	Mr Denis Doherty National Coordinator Australian Anti-Bases Campaign Coalition	19.12.95	545
79	Ms Deborah Foskey Convenor ACT Greens	19.5.95	237
80 and 80.1	Mr Gary Prattley Acting Chief Executive National Capital Planning Authority	19.5.95 24.8.95	239 418
81 and 81.01	Ms Kristen Walker Lecturer in Constitutional Law and International Law University of Melbourne	18.5.95 16.1.96	244 540
82	Ms Kathy Freihaut	5.5.95	251
83	Sr Michele Madigan	9.5.95	253
84	Ms Joan Lucas Acting Assistant Secretary Government and Public Relations Division Australian Federal Police	19.5.95	255
84.01	A H Bird Acting Assistant Commissioner ACT Region Australian Federal Police	26.9.95	429

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Submission No.	Individual/organisation	Date	Page in volume
85	Mr John Henry Cranmer and Mr John James Larkin, OAM	16.5.95	263
85.01	Mr John Larkin, OAM	5.12.95	521
86	Mr P Hannan Assistant Secretary Resources Policy and Programs Department of Defence	18.5.95	266
87	Mr Rodney Johnstone	10.5.95	272
88	Mr J and Ms A Blackwell	23.04.95	274
89	Ms Lois O'Donoghue, CBE AM Chairperson Aboriginal and Torres Strait Islander Commission	18.5.95	278
90	Mr Peter Conran Secretary Department of the Chief Minister Northern Territory Government	23.5.95	280
91	Mr L G O'Sullivan President Council for Civil Liberties (ACT) Inc	23.5.95	289
92	Mr Peter Varghese First Assistant Secretary Public Affairs Division Department of Foreign Affairs and Trade	25.5.95	292
92.01	Mr Christopher Lamb Legal Adviser Department of Foreign Affairs and Trade	4.10.95	445
93	Mr Ray Platt Editor The Strategy Newspaper	27.5.95	296
94	Mr Liam Spencer	12.5.95	299

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Submission No.	Individual/organisation	Date	Page in volume
95	Ms Linda Parlane Campaigns Co-ordinator Environment Victoria Inc	23.5.95	300
96 and 96.01	Mr Tim Anderson Lecturer University of Technology	10.5.95 21.12.95	302 522
97	Mr Tim Cadman Native Forest Network Southern Hemisphere	28.4.95	304
98	Ms Anna Clendinning Acting Assistant Secretary Parliamentary and Government Branch Department of the Prime Minister and Cabinet	13.6.95	314
99	Mr Kevin O'Connor Acting Human Rights Commissioner Human Rights and Equal Opportunity Commission	8.6.95	330
100	C Kearney	10.5.95	336
101	Mrs Doreen Henderson	11.5.95	337
102 and 102.01	Mr Robert Orr Deputy General Counsel Attorney-General's Department	28.6.95 7.11.95	338 509
103	Mr Bernard Collaery Barrister and Solicitor	27.6.95	361
104	Mr Martin Ferguson President Australian Council of Trade Unions	5.7.95	364
105	Mr Gary Humphries, MLA ACT Attorney General	7.7.95	382
105.01	Mr Chris Hunt Secretary Attorney General's Department Australian Capital Territory	16.10.95	482

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Submission No.	Individual/organisation	Date	Page in volume
106	Mr John Templeton Secretary Department of the Parliamentary Reporting Staff	17.7.95	384
107	Hon S P Martin, MP Speaker of the House of Representatives and Senator the Hon M Beahan President of the Senate	25.7.95	386
107.01	Mr Phil Bergin Senior Adviser to the Speaker of the House of Representatives and Mr Fred Peppinck Senior Adviser to the President of the Senate	27.9.95	428
108	Ms Cathy Argall General Manager Australian Estate Management Department of Administrative Services	31.7.95	394
108.01	Mr Pat McQuin ACT Regional Manager Australian Estate Management Department of Administrative Services	10.8.95	407
109	Mr Allan Green	9.8.95	405
110	Mr Bob Wiese, MLA Minister for Police Western Australia	10.8.95	410
111	Hon Matt Foley, MLA Minister for Justice and Attorney-General Queensland	3.10.95	437
111.01 and 111.02	Mr Peter Byrnes Director (Public Law Group) Policy and Legislation Division Department of Justice and Attorney-General Queensland	16.10.95 5.1.96	487 524

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Submission No.	Individual/organisation	Date	Page in volume
112 and 112.01	Mr T P O'Gorman President Australian Council for Civil Liberties	6.10.95 3.1.96	438 528
113	Mr Jon Axtens	3.1.96	530
114	Inspector R Gorrie Queensland Police Service	17.1.96	533

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Submission No.	Individual/organisation	Date	Page in volume
1	Mr Scott S Carter Solicitor Queensland Law Society Inc	19.9.96	S1
2	Mr K John Uebergang	24.9.96	S4
3	Mr Bernard Collaery	25.9.96	S5
4	Commander Denis McDermott District Operations ACT Region Australian Federal Police	23.9.96	S6
5	Mr Michael Deegan Estate Manager Domestic Property Group Department of Administrative Services	2.10.96	S7
6	Linda Kaucher	4.10.96	S10
7	Susan Hogan	5.10.96	S11
8	Mr V P White	8.10.96	S14
9	Mrs G Cunningham	6.10.96	S15

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Submission No.	Individual/organisation	Date	Page in volume
10	Mr Irwin Ramsay President Rural Action Movement of Victoria Inc.	7.10.96	S16
11	Mr Alan Rose President Australian Law Reform Commission	4.10.96	S17
12	Mrs Doreen Henderson	1.10.96	S23
13	Dr Helen Wiles	7.10.96	S24
14	Ms Lois O'Donoghue, CBE AM Chairperson Aboriginal and Torres Strait Islander Commission	9.10.96	S26
15	Dr Hannah Middleton National Spokesperson Australian Anti-Bases Campaign Coalition	9.10.96	S28
16	Mr Stephen Langford Secretary Australia - East Timor Association (NSW)	4.10.96	S30
17	Deborah Foskey The ACT Greens	10.10.96	S44
18	Raymond and Eileen Wingfield	9.10.96	S45
19	Betty Benson	7.10.96	S46
20	Mr Amos Hunter	9.10.96	S50
21	James Allen	8.10.96	S52
22	Mr Joseph Bryant	11.10.96	S53
23	Mr Barry Williams National President Lone Fathers Association Australia Incorporated	10.10.96	S69

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Submission No.	Individual/organisation	Date	Page in volume
24	Ms Rhonda Russell Wycheproof Branch Rural Action Movement of Victoria, Inc.	11.10.96	S70
25	Mr Jack Moran Immediate past President Rural Action Movement of Victoria Inc.	11.10.96	S72
26	Sister Michele Madigan	10.10.96	S73
27	Mr Denis Doherty Secretary Pax Christi Sydney	9.10.96	S74
28	Mrs W J McDonald	11.10.96	S76
29	Ms Hellen Cooke and Ms Nancy Shelley	14.10.96	S78
30	Mr Robert Samsa Spokesperson Sydney Peace Squadron	8.10.96	S89
31	Sharon Sullivan Executive Director Australian Heritage Commission	15.10.96	S90
32	Mr Gary Humphries, MLA Attorney-General Australian Capital Territory	21.10.96	S109
33	Ms Jenny Ryde and Mr Murray Matson Members The Greens NSW	25.10.96	S111
34	Mr John Templeton Secretary Dept Parliamentary Reporting Staff	28.10.96	S113
35	Hon R J Halverson, OBE MP Speaker of the House of Representatives and Senator the Hon M Reid President of the Senate	12.11.96	S114

Appendix Two

Exhibits

37th Parliament

- 1 Correspondence dated 27 March 1995 from Mr Adrian Aylott to the Speaker of the House of Representatives, provided by the Office of the Speaker.
- 2 Various newspaper articles supplied by Mr Cameron Edwards in a letter to the Chair of the Committee dated 17 May 1995.
- 3 Correspondence dated 6 May 1995 from Mr Peter Williams, on behalf of NSW Farmers' Association to Jim Snow, MP.
- 4 Correspondence dated 5 July 1995 from Ms Fiona Hanlon, Department of the Premier and Cabinet, Victoria, to the Committee Secretary with information on the *Unlawful Assemblies and Processions Act 1958* (Vic) and a letter from the Presiding Officers of the Victorian Parliament which specifies the requirements to be observed by demonstrators at Parliament House, Victoria.
- 5 United Nations Code of Conduct for Law Enforcement Officials.
- 6 The Parliamentary Debates Official Report from the British Parliament, provided by the Presiding Officers of the Commonwealth Parliament.
- 7 Memorandum of Understanding between the National Capital Planning Authority and Australian Estate Management, July 1995.
- 8 Exposure Draft of the ACT Bill of Rights Bill 1994 and associated articles, provided by Mr Tony Whiting, ACT Attorney-General's Department.
- 9 Queensland Police Service Policy, provided by Dale Pointon, Queensland Police Service.

- 10 'Demonstrations at Parliament House—Requirements to be Met', guidelines to be observed for the conduct of demonstrations at Parliament House, Victoria, issued by the Presiding Officers of the Victorian Parliament, 11 March 1993.
- 11 ACT Magistrates Court, Transcript of Proceedings dated 1 November 1995—Dale Clayton Perry and Joseph Richard Bryant.
- 12 'A Matter of Urgency—Supplementary Log of Claims' served on Federal Parliament, 5 December 1994, by Mr Joseph Bryant.

38th Parliament

- 1 Bronitt, S and Williams, G, 'Political Freedom as an Outlaw: Republican Theory and Political Protest'.
- 2 Working Guidelines between the Australian Federal Police and Australian Protective Service.

Appendix Three

Public hearings

37th Parliament

Date	Location
8 August 1995	Canberra
9 August 1995	Canberra
21 August 1995	Canberra
13 October 1995	Brisbane
30 October 1995	Sydney
31 October 1995	Melbourne
8 December 1995	Canberra

38th Parliament

Date	Location
8 November 1996	Canberra

Appendix Four

Witnesses at public hearings

Witness/Organisation	Date(s) of appearance
Individuals	
Mr Tim Anderson	30.10.95
Mr Simon Bronitt	9.8.95
Mr Joseph Richard Bryant	8.12.95
Mr Bernard Joseph Edward Collaery	8.12.95
Ms Hellen Barbara Cooke	8.12.95
Mr Alan Henry Ellis	13.10.95
Ms Elizabeth Andreas Evatt, AO	8.12.95
Mr Maurice David Fountain	13.10.95
Mr John Donald Hendry	8.12.95
Ms Lucy Alesia Horodny, MLA	8.12.95
Mr Laurence Amos Hunter	8.12.95
Mr John James Larkin	31.10.95
Mr Ray Platt	31.10.95
Ms Nancy Jean Shelley	8.12.95
Mr Donald Edward Smith	8.12.95
Ms Margot Elisabeth Stevens	8.12.95
Ms Kristen Louise Walker	31.10.95

Aboriginal and Torres Strait Islander Commission

Mr Robert Goodrick 8.12.95
Assistant General Manager
Legal Branch

Mr Shane Hoffman 8.12.95
General Manager
Strategic Development and Support

Miss Lois O'Donoghue, CBE AM 8.12.95
Chairperson

ACT Attorney-General's Department

Mr Roderick Campbell 8.8.95
Convenor of Public Assemblies Subcommittee
Law Reform Unit

Mr Christopher Hunt 21.8.95
Departmental Secretary

Ms Veronica Laletin 8.8.95
Member of Public Assemblies Subcommittee
Law Reform Unit

Mr Peter Quinton 21.8.95
Director
Law Reform Unit

Mr Peter Sutherland 8.8.95
Member Law Reform Committee
Law Reform Unit

Mr Anthony John Whiting 21.8.95
Legal Officer
Law Reform Unit

ACT Greens

Ms Deborah Jane Foskey 8.12.95
Convenor

Mr Shane Rattenbury 8.12.95
Member

Animal Liberation Victoria

Mr James Kenneth Roberts 31.10.95
President

Attorney-General's Department

Mr Leo James Hardiman 8.8.95
Counsel
Office of General Counsel

Mr Robert Grant Orr 8.8.95
Deputy General Counsel

Mr William Douglas Rolfe 8.8.95
Director
Counter Terrorism and Security Law

Australia-East Timor Association

Mr Stephen John Langford 30.10.95
Secretary

Australian Anti-Bases Campaign Coalition

Dr Hannah Elina Middleton 30.10.95
National Spokesperson

Australian Council for Civil Liberties

Mr Terence Patrick O'Gorman 13.10.95
Vice President

Australian Council of Trade Unions

Mr Peter Moylan 31.10.95
Industrial Officer

Mr Bob (Robert) Richardson 31.10.95
Industrial Officer

Australian Estate Management

Mr Richard Mark Lansdowne 21.8.95
Assistant General Manager

Mr Patrick McQuin 21.8.95
ACT Regional Manager

Australian Federal Police

Commander Alan Henry Bird Commander Operations Division, ACT Region	9.8.95
Mr John Ireland Director Office of the Commissioner	8.11.96*
Denis Leslie McDermott Superintendent City District, ACT Region and subsequently Commander-District Operations	9.8.95 8.11.96*
Detective Superintendent Roger Martindale Officer in Charge Security Intelligence and Diplomatic Liaison Branch	9.8.95
Acting Commander Richard Henley Saunders Acting Officer in Charge Protection Division	9.8.95
Assistant Commissioner William James Stoll Assistant Commissioner ACT Region	8.11.96*

Australian Heritage Commission

Mr Brian Prince Acting Director Indigenous Heritage Section	8.12.95
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Australian Law Reform Commission

Mr Michael Ryland Commissioner	30.10.95
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Australian Protective Service

Acting Chief Superintendent Graham Barry Boyce Acting Regional Commander ACT Region	9.8.95
Mr Trevor Robertson Director	9.8.95

Commonwealth Parliament

Mr Robert William Alison 21.8.95
Usher of the Black Rod
Department of the Senate

Senator the Hon Michael Eamon Beahan 21.8.95
President of the Senate

Mr David Russell Elder 21.8.95
Serjeant-at-Arms
Department of the House of Representatives

Superintendent Donald Bainbridge Holmes 21.8.95
Security Controller
Department of the House of Representatives

Hon Stephen Paul Martin, MP 21.8.95
Speaker of the House of Representatives

Mr John William Templeton 21.8.95
Secretary
Department of the Parliamentary Reporting Staff

Construction Forestry Mining and Energy Union

Mr Michael Joseph O'Connor 31.10.95
Assistant National Secretary
Forestry Division

Council for Civil Liberties (ACT)

Mr Lawrence Gregory O'Sullivan 8.8.95
President

Department of Defence

Mr Stephen Brown 9.8.95
Assistant Secretary
Legal Services

Mr David Hollbrook 9.8.95
Assistant Secretary
Security

Mr Rodney Henry Tonkin 9.8.95
Deputy Secretary

Department of Foreign Affairs and Trade

Ms Susan Coles 8.8.95
Legal Officer
Administration—Domestic Law Section

Mr Jeremy Hearder 8.8.95
Chief of Protocol

Mr Christopher Lamb 8.8.95
Legal Adviser
Assistant Secretary
International Organisations and Legal Division

Mr Michael Williams 8.8.95
Executive Officer
Protocol Branch

Department of Justice and Attorney-General—Queensland

Mr Peter John Byrnes 13.10.95
Director
Public Law Policy and Legislation Division

Department of the Prime Minister and Cabinet

Mr William James Blick 8.8.95
First Assistant Secretary
Government Division

Mr Gregory Wood 8.8.95
Deputy Secretary

East Timor Relief Association Inc

Ms Ines Almeida 8.12.95
Public Officer
Assistant Executive Director

Human Rights and Equal Opportunity Commission

Mr Kieren John Fitzpatrick 30.10.95
Senior Adviser to the Commissioner

Mr Christopher Dominic Sidoti 30.10.95
Federal Human Rights Commissioner

Witnesses at public hearings

Lone Fathers Association

Mr Barry Colin Williams, BEM
National President 8.12.95

National Association of Forest Industries

Mr Robert Addison Bain
Executive Director 8.12.95

National Capital Authority

Mr John Edward Bolton
Acting Executive Director
Planning and Development Control 8.8.95
8.11.96*

Mr Anthony Francis Campbell
Statutory Planning Officer 8.8.95

Mr Rodney Edward Grose
Acting Chief Executive 8.11.96*

Mr Gary Noel Prattley
Acting Chief Executive 8.8.95

Ms Debra Smith
Acting Director
Corporate Relations 8.11.96*

Mr David Terrence Wright
Director
Statutory Planning 8.11.96*

Ngunnawal Aboriginal Education Corporation

Mrs Cheryl Williams
Secretary 8.12.95

Ngunnawal Land Council

Mrs Matilda Ann House
Chairperson 8.12.95

North Star District Council of NSW Farmers Association

Mr Christopher John Henley
Chairman 30.10.95

Pax Christi

Mr Denis Doherty 30.10.95
Secretary

Police Association of New South Wales

Mr Raymond Thomas Collins 30.10.95
Assistant Secretary
Industrial Division

Mr Phillip James Tunchon 30.10.95
President

Queensland Police Service

Inspector Ross William Gorrie 13.10.95
Inspector of Police

Rural Action Movement of Victoria Inc

Mr John Gerard Moran 31.10.95
President

The Greens (NSW)

Ms Jenny Ryde 30.10.95
Member

*Evidence to the Committee of the 38th Parliament.

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