SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. AE16/012

Senator McKim asked the following question at the hearing on 9 February 2016:

Senator McKIM: All right. I want to move on and ask whether the commission is aware of the Tasmanian anti-protest laws under which former senator Bob Brown was arrested a few weeks ago. It did generate some media coverage. The law is the Workplaces (Protection from Protesters) Act 2014. Effectively, it criminalises some forms of protest in Tasmania and provides for the courts to impose terms of up to five years imprisonment for some protest actions. Does the commission have a view about those laws and their consistency or otherwise with Australia's international human rights obligations?
Prof. Triggs: We have not received any complaints in relation to that matter and therefore we have not looked specifically at those laws. But there are many other examples where we do consider the balance between the rights to freedom of speech, freedom of assembly, political demonstration and political activity and the needs of a workforce or other national priorities—or, in that case, a state priority.
I would be very happy to refer you to the work that we have already done in this area. As I said, it arises in many contexts. But if it would help you, we are very happy to look at that piece of legislation to see, in our view—and that is all it would be—whether the balance is probably achieved. Or, to put it in more legalese: whether the measure in the legislation is a necessary and proportionate response to achieve a legitimate outcome—
Senator McKIM: Yes.
Prof. Triggs: That is the mantra, if you like, in law—both in international law and in Australian law, as articulated by the High Court. How we fall on that question is, of course, our view that it will only be resolved for the purposes of Australian law by the Federal Court or the High Court.
Senator McKIM: Thank you, Professor. I do appreciate those caveats.
Prof. Triggs: But we would be very happy to get back to you if that would help you.
Senator McKIM: Would you be happy just to take that as a question on notice, or should I write to you—
Prof. Triggs: Very pleased to take it—very happy to do that.

The answer to the honourable senator's question is as follows:

Commissioner Wilson reported on concerns that had been raised with the Tasmanian anti-protest laws (and similar laws in Queensland and Victoria) in the *Rights and Responsibilities* Consultation Report 2015 at pages 13-14: http://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/rights-responsibilities-consultation-report

The section from this Report that deals with the consistency of the anti-protest laws with Australia's international human rights obligations is extracted below:

> Anti-protest laws
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> At meetings in South Australia, Tasmania, Queensland and Victoria, concerns were raised about anti-protest laws. As noted in the Human Rights Law Centre's submission, 'many of these anti-protest laws … impact on freedom of speech' and the rights to freedom of peaceful assembly and association. In particular, these laws restrict the capacity for people to debate and disagree on public policy matters, as well as limit the ability for people to express these views as a group.

Examples of anti-protest laws that were identified during the consultation were:

- Workplaces (Protection from Protesters) Bill 2014 (Tasmania) – anti-protest laws criminalising legitimate forms of peaceful protest.

- Reproductive Health (Access to Terminations) Act 2013 (Tasmania) – access laws preventing persons from protesting within 150 metres of an abortion clinic.

- Amendments in 2014 to the Summary Offences Act 1966 (Victoria) – anti-protest laws expanding broad police powers to move people on from public space.

- G20 legislation enacted in Queensland giving police broad powers to control protesters during the G20 summit in Brisbane in November 2014.

Mark Parnell MLC (South Australia) also highlighted the detrimental impact of Strategic Litigation Against Public Participation (SLAPP) practices on free speech in South Australia. SLAPP occurs where civil litigation is initiated in relation to a political issue in order to suppress community debate or stifle political activity. These practices effectively use litigation to stop people from exercising their right to protest.

Exercising the right to freedom of peaceful assembly should only be curtailed when necessary, with any restrictions proportionate to the legitimate aims of assembly. In this respect, freedom should be 'considered the rule and its restriction the exception.'

Anti-protest laws diminish our right to freely express our views with others. Restrictions on this require serious justification, and must be limited to only what is necessary.

Hindering the expression of views – even where others may strongly disagree with those beliefs – undermines the strength of Australia's liberal democracy. Indeed, concern was voiced in several public meetings that adhering to 'political correctness' meant that people had lost the right to dissent from prevailing social and cultural opinions.