

5 June 2024

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### Re: Statutory Review into part 4AF of the Crimes Act 1900

The CFMEU welcomes the opportunity to provide submissions in response to the official review of the Part 4AF of the Crimes Act 1900 on whether the policy objectives remain valid and whether those terms remain appropriate for securing these objectives.

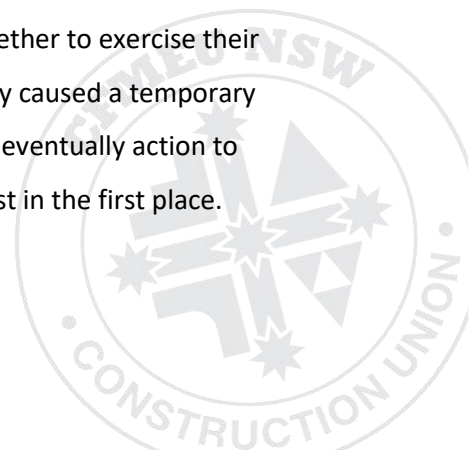
The CFMEU supports the submissions as made by Unions NSW.

In April 2022 The Roads and Crimes Legislation Amendment Act 2022 (NSW) was introduced and came into operation within a mere 40 hours. It beggars belief that the rights of individuals within this such short time period were eroded before our very own eyes.

From the outset we make it abundantly clear that these laws should be *repealed in full*. These laws are an affront to every single individuals rights in NSW to participate in a protest. It is telling that these laws were rammed through parliament without any community consultation or proper deliberation before parliament.

The CFMEU has a long-standing history of being involved in not only industrial campaigns, but protests involving social causes. Our predecessor union the Builders Labourers Federation (The BLF) through Jack Munday championed the worlds first 'Green Ban'. Standing side by side with community members to fight and ultimately succeeding to preserve some of NSWs most cherished places including Kellys bush, the Rocks and Centennial park, just to name a few.

None of this would have been possible without a group of people coming together to exercise their right to protest. At the time it may have not been hugely popular and certainly caused a temporary disruption to the lives of ordinary people. However, it brought attention and eventually action to resolve the issue at hand, which is the fundamental reason why people protest in the first place.



The broad based nature 4AF that has been inserted in the Crimes Act has meant all peaceful protest will be deemed criminal. The restriction placed in the provisions simply has a simple blanket application to all peaceful protests that are undertaken at major facilities.

All governments are required under Article 21 of the International Covenant on Civil and Political Rights (ICCPR) to guarantee and respect the right to peaceful protest and to create an enabling environment within their jurisdictions for the exercise and enjoyment of the right.

We refer to the recent decision in the Supreme Court of NSW in *Kvelde v State of New South Wales* [2023] NSWSC 1560 (Kvelde) that found sections of PART 4 AF to be invalid due to it infringing on the Constitution's implied freedom of political communication.

We are deeply concerned with the heavy handed punishment that these laws have been introduced. for, in particular that an offence under these laws contains a maximum of 2 years imprisonment or a \$22,000 or both.

Part 4AF of the Crimes Act imposes a higher bar for protests to be authorised than what is ordinarily required under the Summary offences Act. As it requires the consent of TfNSW, NSW Police Force or other public authorities. Whereas, the Summary Offences Act(SOA) only requires that the NSW Police do not oppose the protest and that the protest be held 'substantially in accordance' with the Form 1 Notice of intention.

The so called protections under the SOA are also compounded by the requirement to provide seven days notice to police of the intention of holding a public assembly. Notably Justice Walton observed in *Kvelde v State of NSW* Justice Walton that :

*An applicant must provide 7 days' notice. In the event of less than 7 days' notice being provided, or the Commissioner indicated that he has no opposition, then the applicant must apply to a Court for authorisation. Thus, the provision does not accommodate spontaneous protests or protests undertaken with urgency.*



Protests are a reaction to an issue, that can often require an urgent spontaneous action. The Green Bans would not have been successful as they were without the reactionary nature with which they were undertaken. Imposing such burdensome obligations is an affront to a democratic society.

The CFMEU does not believe that the supposed carve outs of industrial activity and workplace activity is sufficient to protect industrial campaigns and those that participate in them. There are gaps in this legislation that present real risk to individuals being deemed criminals for simply showing solidarity and participating in an industrial dispute and or industrial campaign.

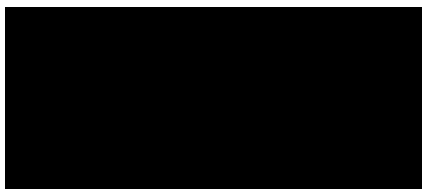
This is a democratic society built on the idea of protest, these current laws represent a step back from our proud history and have no place in a modern society where people are more politically engaged on a larger range of objectives. There is sufficient existing law to deal with actions that may go beyond protest.

We don't need any further protections and these laws merely reflect the conservative political ideology of the former Liberal Government, sadly and disappointingly supported by a Labor Government contrary to expected Labor principles that should support the very important right to protest.

The Government through its police, government agencies and property owners have considerable and myriad of laws available to them prior to these recent changes. They were wholly unnecessary and should be repealed.

It beggars belief that this is even an issue for a Labor Government.

Yours sincerely,



Darren Greenfield

State Secretary



