

COMMUNITY LEGAL CENTRES TASMANIA

23 September 2021

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Secretary

via email: haveyoursay@justice.tas.gov.au

To Ginna,

Re: *Workplaces (Protection from Protesters) Amendment Bill 2021*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Workplaces (Protection from Protesters) Amendment Bill 2021* ('the Bill').¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We are strongly opposed to the *Workplaces (Protection from Protesters) Act 2014* ('the Act'). In our opinion, the Act is unnecessary with existing legislation already providing sufficient scope to punish illegal protest. For example, under the *Police Offences Act 1935* (Tas), it is an offence to unlawfully enter land with the penalty for non-residential land being a fine of up to \$4,325 or a prison term not exceeding 6 months.² Additionally, the *Police Offences Act 1935* (Tas) makes it an offence to destroy or injure property with the penalties being a fine not exceeding \$1,730 or a prison term not exceeding 12 months.³

¹ CLC Tas would like to acknowledge University of Tasmania constitutional law lecturer Brendan Gogarty who assisted in the preparation of this response.

² Section 14B of the *Police Offences Act 1935* (Tas). Also see sections 79, 244 of the *Criminal Code Act 1924* (Tas).

³ Section 37 of the *Police Offences Act 1935* (Tas).

The Act also infringes on Australia's human rights obligations with three United Nations human rights experts having urged the Tasmanian Government in 2014 to refrain from passing the Bill into law. The three UN experts noted:⁴

If passed, the law would almost certainly run afoul of Australia's human rights obligations, which Tasmania is also obliged to uphold. State governments in Australia need to ensure the legislation they adopt is in line with the country's international obligations under international human rights law.

More than two years after the Bill was passed into law the United Nations Special Rapporteur on the situation of human rights defenders undertook an official mission to Australia, during which he "conveyed to the Tasmanian government his concern about the law, its implementation and deleterious impact on the freedom to peaceful assembly and human rights advocacy".⁵

Following his official mission to Australia the Special Rapporteur presented his report in an End of Mission Statement in which he observed as follows:

Freedom of peaceful assembly is an essential part of democratic societies. Demonstrations and protests help raise awareness about human rights and encourage dialogue on social concerns and environmental, labour or economic issues. Australia can be proud of its history of successful protest movements triggering many political, social and environmental advances. This has included some important labour-related achievements, universal voting rights, reconciliation progress towards the recognition of the indigenous peoples' historic injustices, and environmental movement in defence of the Franklin River from a dam.

Despite this, it is alarming to observe the increasing trend by State governments to constrain the exercise of this fundamental freedom through what essentially is anti-protest legislation. Jointly with other fellow UN experts, I have conveyed repeated concerns to the Australian Government that such laws would contravene Australia's international obligations under international human rights law, including the rights to freedom of expression as well as peaceful assembly. The proposed laws would criminalize a wide range of legitimate conduct by determining them as "disrupting" business operations, physically preventing a lawful activity or possessing an object for the purpose of preventing a lawful activity. Peaceful civil disobedience and any non-violent direct action could be characterized as disruption and "physically preventing a lawful activity", and thus become criminalized. The sanctions carry hefty fines or penalties of imprisonment of up to two years.

⁴ Office of the United Nations High Commissioner for Human Rights (2014), 'UN experts urge Tasmania to drop its anti-protest bill' 9th September 2014. As found at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E> (Accessed 23 September 2021).

⁵ Office of the United Nations High Commissioner for Human Rights (2017), *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia*. As found at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_51_Add_3_EN.docx (Accessed 23 September 2021).

While the bill is still under consideration of the Legislative Assembly of Western Australia, the Tasmanian Government has regrettably enacted it through the Workplaces (Protection from Protesters) Act in 2014. Since the adoption, the Act has unjustifiably targeted environmental protestors in Tasmania, the birthplace of the first green party in the world. I have met a number of environmental defenders in Hobart who were charged under this law, and could discern a sense of bewilderment and indignation among civil society of the law's arbitrariness and unfairness. I am concerned about the implementation of the law, and its impact on the exercise of the freedom to peaceful assembly by environmental and indigenous activists, trying to raise awareness of key environmental and land rights issues.

From my discussions with the Tasmanian Government, it has become clear that the Government had prioritized business and government resource interests over the democratic rights of individuals to peacefully protest. I reminded the Government that human rights defenders have a legitimate right to promote and protect all human rights, including the right to a healthy environment, regardless of whether their peaceful activities are seen by some as frustrating development projects. I therefore recommend that the laws criminalizing peaceful protests are urgently reviewed and rescinded.

Finally, we are also concerned that whilst some in our community may be able to understand the Act and make an informed decision in relation to protest activity, most will not, particularly as the Bill, if passed, is likely to lead to duplication with already existing legislation. As we have already noted, trespass and damage to property provisions in the Bill are already contained in the *Police Offences Act 1935* (Tas).⁶

In our opinion, if the Government's intention is to provide greater protections to business, the *Workplaces (Protection from Protesters) Act 2014* should be repealed and the maximum penalties available under the *Police Offences Act 1935* (Tas) for trespass and destroying or injuring property be reviewed.

Nevertheless, if the Government intends to make the Bill we recommend adoption of the following amendments.

- *Police Direction*

We strongly believe that police officers should be required to direct, warn and move-on persons from business premises or business access areas before arresting them. As it currently stands, sections 8 and 11 of the Act allow police officers to direct persons away from business premises or business access areas. Similar directions are common in other Tasmanian Acts including the *Police Offences Act 1935* (Tas).⁷

⁶ Sections 14B and 37 of the *Police Offences Act 1935* (Tas). Also see sections 79, 244 of the *Criminal Code Act 1924* (Tas).

⁷ See, for example sections 10, 15B, 63A of the *Police Offences Act 1935* (Tas).

Whilst sections 8 and 11 of the Act were struck down by the High Court in *Brown v Tasmania*⁸ their invalidity was not a consequence of the subject matter but rather the lack of clarity about when and where it could legitimately be used. Taking into account the majority view that police directions were both a form of procedural fairness and recognition of the need for proportionality,⁹ we therefore recommend that amended sections 8 and 11 of the existing Act be retained.

- **Thoroughfare Obstruction**

As it stands, clause 8 of the Bill provides that any obstruction of a public thoroughfare, including a 'public place' that may impede the carrying out of a business activity is an offence. In other words, a protest on the footpath outside a business or close to a business would be an offence. For example, protestors standing in Salamanca Square handing out leaflets and/or holding a banner raising awareness of the harmful effects of salmon farming would be obstructing a public thoroughfare in an attempt to impede business activities, either through consumer spending or increased community concern. Similarly, persons holding a banner on the opposite side of the street to Sustainable Timber Tasmania to protest against old-growth logging would be impeding business activities with some members of the public choosing not to enter the STT premises because of the protest. The effect of clause 8 is likely to have a chilling effect, with some members of our community choosing not to protest for fear of being charged under the Act.

The insufficient circumscribing of the scope of clause 8 can be contrasted with clause 7 which clearly identifies that a person commits an offence if the person trespasses on business premises or performs an act while trespassing on business premises. We therefore strongly recommend that clause 8 and its offence of obstructing a public thoroughfare is removed.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl

Policy Officer

Community Legal Centres Tasmania

⁸ *Brown v Tasmania* [2017] HCA 43 at para. [113]-[116] per Kiefel CJ, Bell and Keane JJ.

⁹ For example, the majority observed that because it was unclear when and where an illegal act might arise, a police officer might 'erroneously' direct a person to move away from a place where they had a legal right to be. Further, because a warning could be given to a 'group of persons', even by loudspeaker, there was a chance that some of the group did hear the direction but were in fact not breaching the law at the time, but were still required to move on. See *Brown v Tasmania* [2017] HCA 43 at para. [80]-[83] per Kiefel CJ, Bell and Keane JJ.