COMMUNITY
LEGAL CENTRES
TASMANIA

15 April 2022

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

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

To the Department of Justice,
Re: *Police Offences Amendment (Workplace Protection) Bill 2022*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Police Offences Amendment (Workplace Protection) Bill 2022* ('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.

Over the years, we have consistently voiced our opposition to the *Workplaces (Protection from Protesters) Act 2014*.[2] In our opinion, the Act is unnecessary with existing legislation already providing sufficient scope to punish illegal protest. For example, pursuant to 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.[3] 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.[4]

We are pleased that the Government intends to repeal the *Workplaces (Protection from Protesters) Act 2014* and instead seeks to adopt an alternative approach.

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[1] CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.
[2] Comment on the *Workplaces (Protection from Protesters) Bill 2021* (September 2021); Comment on the *Workplaces (Protection from Protesters) Amendment Bill 2019* (March 2019).
[3] Section 14B of the *Police Offences Act 1935* (Tas). Also see sections 79, 244 of the *Criminal Code Act 1924* (Tas).
[4] Section 37 of the *Police Offences Act 1935* (Tas).

Public annoyance

The Bill amends the summary offence of 'public annoyance' in section 13 of the *Police Offences Act 1935* (Tas) ('the Act') by making it an offence to "unreasonably obstruct the use of any street". The expansive phrasing of the provision means the offence will apply in circumstances where persons are obstructing any street, regardless of whether the protest activity obstructs access to a particular business.

It is likely that the proposed offence is a breach of the United Nations Human Rights Council Resolution 38/11 entitled *The promotion and protection of human rights in the context of peaceful protests*, which calls upon States including Australia "to facilitate peaceful protests by providing protestors, to the extent possible, with access to public space within sight and sound of their intended target audience..."[5]

In our opinion, the proposed amendment is likely to have a chilling effect on the right to peacefully protest, particularly spontaneous protests that occur without a police permit, with some members of the community unlikely to protest for fear of being charged.

The use of the word 'obstruct' may see otherwise peaceful protesters targeted. Amongst the definitions of 'obstruct', the *Macquarie Dictionary*[6] provides the following definitions:

> ***obstruct*** *1. to block or close up, or make difficult of passage, with obstacles, as a way, road, channel, or the like. 2. To interrupt, make difficult, or oppose the passage, progress, course, etc.*

It is likely that a protestor handing out leaflets outside a bottle shop or supermarket calling for a boycott of Russian vodka/caviar will be captured by the proposed amendment. Or, a person or group of people protesting outside a business that has been underpaying employees or has unsafe work conditions. Both of these examples are likely to meet the dictionary definition of "interrupt, make difficult or oppose the passage, progress, course etc". We also agree with TasCOSS that the broad wording of the proposed offence may lead to unintended consequences including the risk that the homeless are charged for begging or sleeping rough.

It is also of concern that the maximum penalty for public annoyance offences will be raised from $519.00 to $1730.00. Expressed in another way, the fine able to be imposed for public annoyance offences may rise threefold. However, increasing the sentence available for public annoyance offences is unwarranted with the most recent data finding that there was a 196 per cent decline in 'public order' cases brought before the courts in Tasmania between 2008-09 and 2020-21.[7] And as a

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[5] *The promotion and protection of human rights in the context of peaceful protests,* GA Res 16, 38th session, Agenda Item 3, UN Doc A/HRC/38/L.16 (6 July 2018).

[6] *The Macquarie Dictionary* (Macquarie University, Third Edition: 2001) at 1323.

[7] The total number has dropped from 2297 cases to 775 cases: Australian Bureau of Statistics, *Recorded Crime – Offenders 2020-21*, Table 30. As found at https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders (accessed 14 April 2022).

percentage of all offending, public order offences declined from 17 per cent of all offences in 2008-09 to 8 per cent in 2020-21.[8]

Finally, we note that with the research demonstrates that people experiencing poverty and homelessness are more likely to be charged with public annoyance offences,[9] significantly increasing the maximum fine is likely to have a disproportionate impact on disadvantaged members of our community.[10]

In our opinion, there is no justification for significantly increasing the fines able to be imposed for public annoyance offences including the proposed offence of "unreasonably obstruct the use of any street" given that public order offences are occurring less often and the amount of the fine will have a disproportionate impact on the disadvantaged.

- ***aggravated trespass***

The Bill also introduces an aggravated trespass offence where the person "obstructed a business" or "took an action that caused a business to be obstructed". Under the proposed offence the maximum fine able to be imposed is $8,650 or imprisonment for a term not exceeding 12 months. And, in circumstances where the court is satisfied that the person caused a serious risk to the safety of the person or another person or took an action that caused a serious risk to the safety of the person the person may receive a fine of up $12,975 or imprisonment for a term not exceeding 18 months. Finally, a previous conviction for the same offence means that the court has the power to impose a maximum fine of $21,625 or imprisonment for a term not exceeding 30 months. The Bill also proposes to introduce a maximum fine of $103,800 for body corporates who obstruct or took action that caused a business or undertaking to be obstructed.

In the *Guide for Framing Offences*,[11] the Australian Capital Territory Government has developed a resource for the drafting of offences. The Guide makes clear that "aggravated offences should be used very sparingly and carefully considered".[12] As well, the High Court noted in *Brown v Tasmania* that a compelling justification is required by legislatures where a heavy burden on the implied freedom of political communication is proposed.[13]

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[8] Australian Bureau of Statistics, *Recorded Crime – Offenders 2020-21*, Table 30.
[9] Tamara Walsh, 'Poverty, Police and the Offence of Public Nuisance' (2008) 20(2) *Bond Law Review* 1 at 9.
[10] For example, a study carried out in 2004 in the Brisbane Magistrates Court established that whilst more than half (56 percent) of those convicted of public nuisance offences were financially disadvantaged, the fine imposed was higher than that imposed on offenders convicted of the same offence but not assessed as financially disadvantaged. Tamara Walsh, 'Won't Pay or Can't Pay? Exploring Fines as a Sentencing Alternative for Public Nuisance Types' (2005) 17 *Current Issues in Criminal Justice* 217.
[11] ACT Department of Justice and Community Safety, *Guide for framing offences* (Version 2: April 2010). As found at https://www.justice.act.gov.au/sites/default/files/2019-08/report_GuideforFramingOffences_LPB_2010.pdf (accessed 9 April 2022).
[12] ACT Department of Justice and Community Safety, *Guide for framing offences* (Version 2: April 2010) at 34. As found at https://www.justice.act.gov.au/sites/default/files/2019-08/report_GuideforFramingOffences_LPB_2010.pdf (accessed 9 April 2022).
[13] *Brown v Tasmania* [2017] HCA 43 at para. [119]-[122].

It is not known how many protests have obstructed a business or taken an action that caused a business to be obstructed. But all unlawful entry with intent offences are captured in data collected by the *Australian Bureau of Statistics* which found that over the last year there was a 20 per cent decrease in the number of victims of unlawful entry with intent recorded in Tasmania.[14] The data also noted that most unlawful entry with intent offences involve stolen property (79 per cent of cases) and most offences occur in residential premises (60 per cent of cases).[15] As well, there has been a 133 per cent decline in unlawful entry with intent cases brought before the courts in Tasmania between 2008-09 and 2020-21.[16] And as a percentage of all offending, unlawful entry with intent cases brought before the courts in Tasmania has declined from 6.5 per cent of all offences to 3.9 per cent of all cases.[17]

Finally, we note that the relative seriousness of the offences does not warrant such harsh penalties being imposed. By way of example, the inclusion of the proposed aggravated trespass offence for obstructing a business will have the same penalty as the offence of entering into or remaining on land whilst in possession of a firearm.[18]

With the data demonstrating that most trespass occurs in residential premises with property stolen, and that there has been a marked decline in both the number of victims reporting trespass and the number of cases brought before the courts, we do not believe that a compelling justification has been made to warrant the inclusion of an aggravated trespass offence for obstructing a business.

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

[14] Australian Bureau of Statistics, *Recorded Crime – Victims*. As found at https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020 (accessed 10 April 2022).
[15] Australian Bureau of Statistics, *Recorded Crime – Victims*.
[16] The total number has dropped from 872 to 373 cases: Australian Bureau of Statistics, *Recorded Crime – Offenders 2020-21*, Table 30.
[17] Australian Bureau of Statistics, *Recorded Crime – Offenders 2020-21*, Table 30.
[18] Section 14B(2A) of the *Police Offences Act 1935* (Tas).