

## **SECOND READING SPEECH**

# **WORKPLACES (PROTECTION FROM PROTESTORS) BILL 2014**

### **INTRODUCTION**

Madam Speaker, I move that the Bill be read a second time.

Madam Speaker, the Government has brought this Bill before this House today to rebalance the scales.

The right to protest and freedom of speech are important to our way of life. There is no question about that.

This Bill does not seek to remove that right but ensure that it is exercised responsibly and lawfully so that others rights are not negatively impacted.

The rights of businesses to create economic opportunities and to develop the economy of this State, along with the rights of workers to go about their work without disruption, are equally important rights contributing to the wellbeing and prosperity of Tasmania.

Hard working Tasmanians must be able to go to work free from deliberate interference by protest action that obstructs and disrupts those businesses, preventing the creation of wealth and employment through legal means.

The Government's policy objectives with this legislation are clear. We are seeking to:

- Deter protests that seek to intentionally shut down and harm Tasmanian businesses' capacity to build productive commercial enterprises through new offences and robust penalties;
- Ensure Tasmanians can go to work and run their businesses in a safe manner free from interference and disruption; and
- Protect and support the continued right to free speech and the right to protest.

Madam Speaker, it is important to stress this last point.

This Bill is not seeking to undermine or remove people's right to voice their dissent or undertake protest action; indeed the Bill specifically provides that

certain acts are not taken to be protest activity for the purposes of the legislation.

This Bill regulates protest activity to ensure that where protesting starts to unduly interfere, interrupt, obstruct or hinder the ability of business to develop and operate productive, job creating ventures and for workers to go to work and do their jobs safely and productively then that protest action is going too far.

Madam Speaker, the Government supports improving business confidence and this legislation is part of that vital process.

It will allow business to get on with building the economy and creating jobs for Tasmanians without being obstructed or prevented from doing so by protest action that deliberately brings the operations of the targeted business to a halt, causing lost production and income, as well as deterring others from productively investing in Tasmania.

## **PROVISIONS OF THE BILL**

### **Intent and Scope**

This Bill operates such that a person engaged in protest activity must not hinder, obstruct or prevent business activity.

These laws will apply to those businesses that operate on a commercial basis with the intent to generate wealth and employment opportunities in Tasmania. This includes government owned businesses, as well as private for profit businesses.

Tasmania needs to encourage these businesses because they create the jobs that employ Tasmanians and they develop the economy for the benefit of all.

The coverage of this Bill does not extend to certain premises such as government or electorate offices and premises, charities, hospitals, schools and tertiary institutions. There are exceptions where works are taking place at these premises.

Whilst these are important institutions the central objective of the Government is to ensure, wealth creating businesses can develop and grow free from

disruptive protest action that prevents them from operating on normal commercial basis.

The context of this legislation is about addressing unlawful acts against economic businesses central to the Government's policy focus of developing our competitive industries such forestry, mining, and the value added components of these and other important commercial businesses across the agricultural, building, construction and manufacturing sectors.

Madam Speaker, it is these businesses that the Bill seeks to protect.

Specifically, the Bill provides that a protestor is a person engaging in protest activity on a road, footpath, public place, business premises or business access area.

Importantly the Bill describes when a person is taken not to be engaging in protest activity.

Hence a person engaging in protected industrial action within the Commonwealth's *Fair Work Act 2009*, or lawful industrial action undertaken by a State service officer or employee, is not taken to be engaging in protest activity for the purposes of this Bill.

In regulating protest activity in respect of business premises the Bill defines what businesses premises are.

The Bill makes specific reference to ensure that business premises include areas where mining, mining operations or the exploration for minerals occurs.

A business premise also includes premises that are forestry land. Forestry land is defined as land where forestry operations take place and includes private commercial forests.

This means that legal economic activity on the permanent timber production zone land, as well as on private forestry land, actively being managed for forestry products are protected under the Bill.

## **Offences**

Madam Speaker, the Bill before this House is intended to provide specific laws to address the concerns of Tasmanian businesses and their workers.

To deter deliberate and intentional interference and disruption of business by protestors the Bill creates a series of offences to address protest action that hinders, obstructs or prevents the carrying out of

business activity on a business premises, or on a business access area.

A business access area is an area of land outside of the business premises reasonably necessary to enable access to an entrance, or exit from, a business premises.

As vessels and aircraft are business premises for the purpose of this Act, a business access area also includes an area reasonably necessary to enable a vessel or aircraft to access a mooring or airport.

Madam Speaker, it will be an offence for a person engaging in protest activity to deliberately enter a business premises with the intent of preventing the carrying out of business activity on a business premises.

It will also be an offence for a protestor to perform an act that intentionally prevents, or obstructs the carrying out of business activity on the premises.

In addition, protestors undertaking an act with the intention of preventing, hindering or obstructing entry to, or exit from, a business premises or a business

access area may also be guilty of an offence under this Act.

So for example, a protestor who prevents, hinders or obstructs entry to, or exit from, a business premises by a tradesperson who requires access to undertake work would commit an offence under this Bill.

To compliment this, it is an offence for a protestor to do an act on a road, footpath, public place or another area of land, which would obstruct hinder or prevent the movement of a vehicle, vessel or aircraft by a business occupier.

This will address actions taken by protestors to stop the transport of goods once those goods are travelling outside of the business premises or business access area.

There are safeguards built into these offences whereby if a person has a lawful excuse to commit these offences that lawful excuse is a defence to those offences.

For example, a person may be exercising legal authority to prevent a person entering a business premises on the grounds those business premises are

unsafe and may present a risk to the health of the person seeking to enter those premises. If that authority is exercised lawfully in accordance with the relevant legislation, then the act of preventing the person from entering the premises would be a defence under this Bill.

The Bill also provides that a person does not commit an offence under the legislation if they form part of a march that proceeds and passes by a business premises once a day at a reasonable pace. Such activities are not taken to be protest activity for the purposes of this legislation.

Madam Speaker, the Bill also provides that a protestor must not perform an act that causes damage to the business premises, nor damage any business related object.

The creation of these offences delivers on the Government's commitment to address those protestors who deliberately damage equipment to prevent a business from carrying on its operations.

The intent here is to protect not only the business premises but the use of anything related to the operation of that business, including equipment and

other aspects of a business's operations such as the products it produces, or the resources it may use as inputs into producing its products.

In addition to it being an offence to actually damage business premises or a business related object there will also be an offence for a person to threaten an act that would damage the business premises, or business related object.

Similarly, threatening to do act that could injure workers is not legitimate protest activity and is an offence under this Bill.

Madam Speaker, the Bill provides that it will be an offence for a person, including a body corporate to incite any other person to commit an offence against clauses 6 and 7 of this Bill.

This delivers on another of the Government's commitment to introduce new offences that relate to the incitement of persons to commit the invasion or hindrance of a workplace and to intentionally damage businesses premises or equipment.

## **Powers of Police**

Madam Speaker, this Bill provides powers to police officers to enable them to operate efficiently and effectively in enforcing these laws. It also sets out clearly the scope of police powers.

Police officers will have the power to direct persons to leave a business premises.

To deal with large groups of protestors police will also have the power to direct that group as a whole to leave that business premises, business access area, or area of land.

In addition, police officers will have powers to remove obstructions that may have been placed to prevent, obstruct or hinder a business from carrying out its business on business premises.

For example, a blockade or obstruction placed on a road to a business premise that prevents a delivery driver or employee of the business from entering or exiting that business premises can be removed by a police officer to ensure access to and from that business.

Police officers will also be able to arrest, without warrant, persons an officer reasonably believes is committing, has committed, or is about to commit offences on business premises, in a business access area, or another area of land.

A police officer will also have the power to remove persons from a business premises or a related business access area or an area of land.

The Bill also provides that a police officer can use reasonable force to perform their functions and exercise powers provided for in this Bill.

The police may carry out, or require the carrying out of, any activities that might be necessary to make good any damage to an area of land caused by a person contravening the provisions of Part 2 of this Bill.

### ***Penalty System***

Madam Speaker, I want to touch on the penalty system that the Bill establishes.

The police will have the power to issue infringement notices for offences relating to invading or hindering a business, or the failure of person to leave a business

premises or business access area at the direction of a police officer.

The system and function of the infringement notices is to give effect to the Government's policy commitment to introduce "on the spot" fines for the offence of invading or impeding access to a workplace.

The levels of penalties set out in the Bill are consistent with the Government's stated intent.

Individuals would face an infringement notice penalty of \$2000 for an offence against clauses 6(6) or 8(1).

If a person elects not to pay the infringement notice and have the matter heard by the court, which they are entitled to do, and they are convicted by the court of the offence under clause 6(6) they will face a fine of not less than \$5000.

These are minimum penalties, sending a strong message to protestors that they face the prospect of significant fines if they contravene these laws and are convicted by a court under this legislation.

The Bill also creates the capacity of a court to issue fines up to \$250,000 for bodies corporate and up to \$50,000 or possible imprisonment for a term not

exceeding five years for individuals, as penalties for the offences of causing, or threatening to cause, damage to a business premises, or a business related object.

There is no infringement notice option for these offences as they are extremely serious. It is the Government's position that persons and bodies corporate engaging in, or inciting, such activity should face penalties imposed by a court.

Strong penalties may also apply if a person obstructs a police officer from removing an obstacle, barricade or other obstruction that may be erected to prevent, hinder or obstruct the operation of a business or access to and from that business.

Finally, a court may, for offences relating to inciting a person to commit an offence against clause 6, impose a penalty of a fine up to \$10,000 for individuals and up to \$100,000 for bodies corporate.

For inciting a person to damage or threaten damage, bodies corporate face possible fines of up to \$250,000 with individuals possibly being fined up to \$50,000.

The introduction of these substantial penalties gives effect to the Government's policy commitment to introduce serious penalties to deter and address such action.

### **Court Proceedings**

Madam Speaker, the Bill provides that the offences under this Bill are indictable offences. This means they will be heard in the Supreme Court and the general provisions of the Criminal Code Act 1924 will apply.

To ensure the automatic recording of a criminal conviction the Bill clearly provides that a court, if they find a person guilty of an offence under Part 2, must convict the person of the offence.

The Bill also establishes that the courts must impose mandatory penalties of not less than 3-months imprisonment up to a term of no more than 2-years imprisonment where individuals are convicted of a further offence under clause 6(6) of the Bill.

### ***Compensation provisions***

Madam Speaker, I would like to turn to the compensation provisions of this Bill.

The offences in this Bill are concerned with dealing with the impact on business of protest action where protest action shuts down or delays the operation of a business.

The Government is committed to ensuring that business may be compensated for the direct loss suffered by the business as a result of the action taken by the protester or protestors.

The Bill, therefore, provides that a court may order a person convicted of an offence against clauses 6 or 7 to pay the costs of repairing damage to business premises, or to restore or repair a business related objects damaged in the offence.

A court may also order persons convicted of offences against clause 6 to pay to the Crown removal and repair costs, including costs for disposing of objects or carrying out of works to make good damage caused by an object, where the police have had to remove those objects or repair damage to an area of land.

Moreover a court may also order a person convicted under clause 6 or 7 to pay to the Crown the out of pocket costs that the government incurred in having to

hire or obtain and operate equipment to arrest or remove a person under this Act.

There are additional provisions for a court to also order a person convicted under clause 6 or 7 to pay a business operator an amount equal to the financial loss suffered by that operator as the natural, direct and reasonable consequence of the offence.

This will provide a more direct means for the criminal court to determine and award compensation.

It would not of course prevent the business owner from seeking to address broader economic loss, covering matters such as future lost earnings consequential on the action of the protestors through civil court action.

In addition, the Bill provides that where 2 or more persons are convicted of an offence under clause 6 or 7 in relation to the same business premises or related business access area, a court may apportion the requirement to pay for those financial losses amongst those involved in the criminal conduct in proportion that the court thinks just in all the circumstances.

## **Conclusion**

Madam Speaker, this Government is committed to driving the recovery of the Tasmanian economy by encouraging businesses. This Bill will assist in rebuilding industry confidence and allow businesses and employees to do their work creating wealth and employment opportunities for Tasmanians.

This Bill is consistent with the policy commitment that the Government presented to the Tasmanian people at the last State election.

The Bill does not remove a person's ability to protest, nor does it place someone who may unintentionally disrupt a business's activities at risk of breaching these laws. However, it does require that protesting occur in a responsible and safe manner.

This Bill, therefore, regulates protest activity to ensure that businesses and employees can go about their legitimate commercial activities free from acts of obstruction, prevention or hindrance.

Madam Speaker, this Bill is about sending a strong message to disruptive and irresponsible extremist protest groups that protest action of that kind is not acceptable to the broader Tasmanian community.

I commend the Bill to the House.