# PARLIAMENT OF TASMANIA

# LEGISLATIVE COUNCIL

**REPORT OF DEBATES**

**Thursday 23 June 2022**

**REVISED EDITION**

# Contents

## Thursday 23 June 2022

The President, **Mr Farrell**, took the Chair at 10 a.m., acknowledged the Traditional People and read Prayers.

## MOTION

### Joint Sessional Gender and Equality Committee

[10.02 a.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the amendment proposed by the House of Assembly to the resolution be agreed to, and that Mr Duigan, Ms Forrest, Mr Harriss and Mr Willie be appointed to serve on the joint sessional committee on the part of the Council.

**Amendment agreed to.**

**Mrs HISCUTT** - Mr President, I move that a message be transmitted to the House of Assembly acquainting that House accordingly.

**Motion agreed to.**

## POLICE OFFENCES AMENDMENT (WORKPLACE PROTECTION) BILL 2022 (No. 15)

### Second Reading

**Continued from 22 June 2022 (page 41).**

[10.03 a.m.]

**Mr GAFFNEY** (Mersey) - Mr President, I take this opportunity to thank those individuals and groups who have contacted me and other members of parliament since the debate started yesterday. Again, we received information last night and I know that there have been some emails this morning, but I have not had a chance to read those because we have had a committee inquiry meeting.

However, I am going to read into *Hansard* four smaller documents that have arrived on my desk, because they need to be on the record. There are many people interested in this issue.

The first one was received from Jessica Munday. For those people listening, Jessica is the Secretary of Unions Tasmania and I am assuming she has written to each of the members:

Dear Mike,

Firstly, thank you for taking the time to listen to Unions Tasmania's briefing yesterday on our concerns surrounding the Police Offences Amendment (Workplace Protection) Bill 2022.

We hold real and grave concerns that this legislation would significantly curtail the sorts of union activity that delivers tangible and positive benefits to workers and to their communities:

- Nurses protecting ward closures
- Campaigning for nurse to patient ratios
- Forestry workers protesting in support of jobs in their industry
- Teachers protesting the closure of a local school in a regional community
- Child safety officers protesting for more staffing to protect vulnerable children
- Women protesting for equal pay and paid domestic violence leave

This is just a short list, but, unless clause 4 is struck from the bill, all this will be captured.

These laws will embolden those who oppose unions ideologically to use unfair laws to prevent workers standing together, often exercising collective action as a last resort, to improve their lives or the lives of others in their community. Tasmania's unions are often small branches whose members' money should be spent working to improve their pay and conditions, not fighting legal challenges to unfair protest laws.

We have never supported protest activity that endangers the health and safety of workers. Health and safety is a core business for unions, but these laws have never been about worker safety. Unions in Tasmania have not been consulted by the Government on these laws, none of our unions have.

We put a position to you of opposition to these laws. It remains our position for all the reasons stated above. We are aware, however, that there are amendments being proposed by the ALP and by Meg Webb. We would urge you to support these amendments to at least blunt the worst elements of legislation, noting that Labor's amendment covers not just union members, but anyone taking part in industrial campaigns, disputes or action at work and that Meg's amendments do important things like reduce excessive penalties.

Unions Tasmania's 50,000 members across the state, in the public and private sector, are relying on you and the other members of the Legislative Council to ensure that this Bill does not stop them from taking part in legitimate and safe protest in our State.

I received an email, as many of us would have, from an individual who is a teacher and he writes:

Dear Michael,

I am writing to you to ask that you please vote to reject the anti-protest legislation before you this week. Disguised and spun as workplace safety legislation, the proposed laws are simply an attack on democracy and the rights of those who have the courage to stand in the way of injustice, corruption and environmental destruction.

I have heard so many lies from the minerals council, MMG and parliamentarians over the last few days, accusing peaceful protesters of intimidation, violence and threatening behavior and causing the workplace to be unsafe for its workers. I know they're lying because unlike the 1000s of other Tasmanians who listen to their rubbish, I've been there, my wife has been there and my children have been there. The only threats, acts of violence, dangerous behaviour and intimidation are carried out by contractors, employees and security staff, but that's another story.

That's the sacrifice and the risk that peaceful, non-violent protesters have the courage to endure.

This legislation before you is designed to silence critics and hide from view the appalling practices of mining and forestry in Tasmania, plain and simple. Dressing it up as anything else is a complete distraction.

I will not read the person's name into *Hansard* because I have not been able to get confirmation I am able to do so, but he is a teacher in one of our schools.

The next piece of correspondence I will read in is from the General Secretary of the Community and Public Sector Union, Thirza White, on the anti-protest bill, received last night:

Dear Mike,

I write to you as the Secretary of the CPSU, Tasmania's public sector union which has been in operation for 125 years, and has members in every corner of Tasmania and in the communities you represent. Our members are in Service Tasmania, Parks and Wildlife Service, your local school, hospital and across the State Service. CPSU members are not radical protesters, they are committed community members who believe in democracy and the power of the collective.

The CPSU takes careful and considered industrial and collective action. It is always a last resort, voted on by members and we always give the employer ample time and opportunity to resolve the issue. Most of the time we give them months if not years to resolve the issue. But the sad reality is that it is often only industrial and collective action that forces the government of the day to stop and consider our members' issues, issues that are more often than not about the delivery of services to the Tasmanian community, under-staffing, safety, service cuts, and issues of integrity.

In the past three years, Child Safety members have taken action to protest the unacceptable risk to vulnerable kids from chronic underfunding. Biosecurity workers have taken action to protest the use of contracts that guarantee them only one hour a week in income, but don't pay a casual loading. Public sector workers have held stop work action in their own workplaces as part of industrial action to scrap the wages cap that has suppressed the wages of all Tasmanians for the best part of a decade.

The examples above would all fall foul of this legislation. They included sit-ins of offices, workers walking off the job and protesting in airports, leafletting of the community at major events and actions that have blocked sidewalks.

To be really frank, much of our industrial action is 'public annoyance', in part, as the real decision-makers in our workplaces are not the employer but the Ministers who fund and exert control over the employer.

This means our action is often focused on making noise, and generally causing enough of an embarrassment to the government of the day, so that they step in and negotiate an outcome.

Without amendments, the proposed changes will make illegal almost all industrial and collective action the CPSU has undertaken.

CPSU also holds concerns as to the bigger picture here. Across the globe we have seen rights of workers eroded, not by banning what they do, but by making it only legal when certain processes have been followed, permits sought. When that process is not followed we see employers and governments then use this as a way to strike out legitimate action or seek prosecutions.

We have no faith that the Rockliff Government will not use this legislation to do just that, to silence and stop legitimate action by public sector workers and other community groups.

Just last month, the Head of the State Service was found by the Equal Opportunity Tasmania tribunal to have discriminated against union members on the basis of political and industrial affiliation, for attempting to hinder workers' rights to take strike action.

We are also seeing a growing trend of involvement of the Solicitor-General in issues related to industrial actions, turning up to the Tasmanian Industrial Commission and being represented by Silks to intimidate workers standing up for their rights and taking cases that extend small wins to seasonal firefighters all the way to the Supreme Court. Arguing for workers to be denied basic and long-standing rights on the basis of a legal technicality.

For many small Tasmanian unions, we will not have the resources to fight long protracted legal cases, effectively bullying our members out of their rights.

> The unintended consequences of this Bill, without amendments, are far reaching. We oppose the changes to the Police Offences Act, but on behalf of our members, encourage you to accept the amendments being proposed by Independent Meg Webb and the Labor Party, particularly in opposition to clause 4.
>
> This is a position supported by our Council, who are all current employees of the public sector and also includes members from WorkSafe and Sustainable Timber Tasmania who are impacted by the actions of protesters that these changes are claimed to address.
>
> As an independent you rightly hold that the greatest responsibility of the Legislative Council is as a House of review. We encourage you to do just that. Review this legislation, and focus not on whether this is a resolution to an existing problem, but what impact this will have on thousands of Tasmanians who work collectively towards a better Tasmania.
>
> It is really difficult to put into an email the concerns we hold for what this will mean for the right of all Tasmanians to collectively work together for change.
>
> Thirza White
> General Secretary

I spoke with Thirza last night, at some length.

Finally, we received quite a lengthy email from Mr Alishah but I am only going to read you the last part. It was published on the *Tasmanian Times* website. His last point was very pertinent:

> The only practical impact, if successful, the Bill will have is to increase the reach and effectiveness of the Foundation's considerable communications and fundraising capacity. It will not curtail environmental protest activity in Tasmania.
>
> What may change is that the Foundation's banner will appear outside the protest zone and not inside it. Individuals will take responsibility for their own actions and legal professionals that assist them by advocacy in the courts will continue to refer to the individual client. Increased fines will be paid at the same fortnightly rate as now, court lists will be populated by cases and should more activists take to the idea of breaching court-imposed restrictions to use a term of imprisonment as a symbol of the absence of social license for current resource management regimes, overburdened and understaffed prisons will bear the cost of becoming a tool of protest as there is simply no rehabilitation for an ideologically and philosophically justifiable position. The environment movement will once again be united by a homogeneous stance of opposition.
>
> I challenge the proponents of the Bill to demonstrate otherwise. I humbly request that in the absence of such demonstration, the Bill be abandoned.

Mr President, whilst I spoke last night, I thought it was important to have those four documents on *Hansard* for the people of Tasmania to fully appreciate and understand the implications of this bill, as seen by two union groups, a primary school teacher, and also a member of the public concerned with the way that this is being handled.

With that in mind, I will not be supporting the bill.

[10.15 a.m.]

**Ms RATTRAY** (McIntyre) - Mr President, through the Estimates process last week we did not have to keep on wiping spaces because they had some magic spray that did it for the whole day. COVID-19 certainly presents its challenges and so does this bill.

I made a few notes as I was listening to the contributions yesterday, and I will start with this: the right to protest in Tasmania. That is a given. We always need to support that; but we also need to support the right of a worker to legitimately go about their work, at their workplaces, without being harassed, impeded and put at risk. I do not only mean physical risk - I mean mental risk as well. It seems to me there is as much mental health safety at risk here for what people are experiencing as there is potential physical safety risk.

The question is, how do we do this as legislators and achieve the outcome to support a right to protest, but also support a right for a worker to attend their workplace and be safe and go home feeling as safe as they did when they went to work that day?

I also received a couple of those particular emails and contacts that the member for Mersey read out. There is always a risk that the later you choose to get up, somebody else takes your material.

I re-read my contributions, as you do when you have been around this place a while. I got out my contribution from 29 October 2014 and I could pretty much table that. In October 2014, I supported the principle of the right to protest but also the right for a worker to attend their workplace and to be safe. That is already in *Hansard*.

Then we come to March 2021. I said pretty much the same thing as I said back in 2014. My principle for support for this intended bill is exactly the same; but I did talk a long time on that one and I will not do that again today.

The reason it has returned is because there was a High Court challenge to the 2014 legislation. I believe the member for Rumney and also the member for Mersey spoke about the Brown v Tasmania court case and so I am not going to rehash that. We have a judicial system in place in this country and people can choose to use it.

Obviously, the Bob Brown Foundation is very well resourced. You only have to look at their annual reports. When you look at the 2014 annual report and the amount of funds that the foundation generates to support the people - I believe they have 100 members - to support the foundation and their work, then you have a look at their 2021 annual report. I have not looked at it more recently but I know it is quite a significant increase in the financials of 2021. It shows a comprehensive income for the year, $3.47 million, which included $3.01 million fundraising donations and in kind.

Back in 2014, they had an income of $255 000 which included donations of $185 000. Employee costs were a mere $46 000 back then. Their employee costs in 2021 have increased to $1.2 million. They are a well-resourced organisation and that certainly was proven in their ability to challenge the 2014 legislation. Hence, we are back here today. It is interesting that now it looks like the organisation needs around $1.6 million per annum just to cover their costs. As I said, I believe they have just under 100 members.

That is some general information around the Bob Brown Foundation which is one of the active organisations. We had a presentation yesterday from their campaign manager, Ms Weber, who came with the chair Roland Browne. I am acknowledging the amount of representation that we have had from various sides of this debate. I sincerely thank those people who have taken their time, and some travel down the highway. We know it is not just a 10- or 15-minute drive for some people to come and make their views felt. Representing in person to the Council is always worthwhile, when they have a particular view.

I thank the Leader for arranging those presentations. I believe, by interjection yesterday to the member for Murchison, the Leader indicated that there was equal time given to both sides of the debate. That shows the fairness of the Leader and how she manages her office. I thank her for that.

It was interesting, Mr President, Ms Weber - or it might have been Mr Browne - asked members to step back and step away from seeing this legislation as a solution to protest. He went on to talk about the High Court challenge and some of the facts that they have a nonviolence ethic. I am sure that he indicated that they are the only protest organisation that has a nonviolence ethic. It is hard to see that a nonviolence ethic ends up turning into some of the examples that have been provided to members around the protest activity of protest groups. We can only hope that they revisit that nonviolence ethic. As I have said, it is not just about the physical harm to workers. In my view, it is around that mental harm as well.

The member for Mersey did not read this particular piece of information. This was in this morning's *Examiner*, a Letter to the Editor, and it is appropriate to slot it in here. It is a letter from Steve Whiteley, Sustainable Timber Tasmania, Chief Executive:

> Every Australian employee has the right to be and feel safe at work.
>
> Collette Harmsen (*The Examiner* May 30)' said, 'peaceful protests have not injured workers in the workplace' and 'de-escalation techniques are used to maintain a non-violent approach to protesting, and protesters are trained in non-violent direct action'. Despite action being non-violent, protests are premeditated, calculated and designed to cause discomfort, distress, and trauma to people in their workplace.
>
> Psychological and emotional trauma is not always physically evident but the impact can be ever-present and damaging.
>
> Now, more than ever, the mental health of workers and their safety is a priority for all organisations. Intimidatory and bullying behaviour is never acceptable.

We would never allow it here. Why should we allow it in other workplaces? That is my comment, not one from the article. I will go on with the article:

> Protest actions should not inflict psychological and emotional trauma on workers. Sustainable Timber Tasmania upholds the right for all workers to go home safe and well every day.
>
> Signed, Steve Whiteley, Chief Executive Sustainable Timber Tasmania.

That sums it up quite well, in my view. Psychological harm is not necessarily something that you see. It might even take a period of time over their working journey for it to finally come to a head. There might be one incident that might seem small at the time, but that might be what we often refer to as the straw that broke the camel's back. I feel that we have an obligation to at least do what we can.

Is legislation ever perfect? No, and that was one of the comments I made in my previous contributions. I said we will not always get it perfect in this place. Obviously, in 2014 we got it far from perfect and there was a High Court challenge. However, at the very least, I consider that it is our duty to do what we can. With the information that we have at hand, and the processes that we have in this place, we always do what we can to make the legislation the best it can be to the best of our knowledge. That has been my commitment from the time I arrived here, 18-and-a-bit years ago. I will continue to uphold those values as I continue to represent my people.

I say that with the greatest sincerity. That is true, and that means all people, those who wish to peacefully protest, but not impede anyone else from doing their job, not impede, harass, and intimidate. I believe that is where the rot sets in.

We have had the email from Jessica Munday, Unions Tas, read out this morning. I thank the member again for that - 50 000 members, significant representation for workers in our state.

**Mrs Hiscutt** - For clarity, I have not seen that email.

**Ms RATTRAY** - I can forward it to you.

**Mrs Hiscutt** - I do not think any of my colleagues have seen it. Just to let you know that.

**Ms RATTRAY** - Well, can I offer some advice to anybody who makes contact with Legislative Councillors? For members who belong to parties of either colour in this place, and another colour and an Independent in the other place, I say it is respectful to send emails to all members. That is my advice to anyone making contact with us. We are all Legislative Councillors, we all represent constituents in our electorate, as you do, Mr President, and do it well, I might add.

We were told yesterday 6500 workplace claims, and it certainly highlighted for that organisation - Unions Tasmania - that a range of them are related to mental health issues. It was very enlightening. The email indicated that they protested to make significant gains in workplaces, such as the hospital. I know the member for Murchison said that she had protested in her former work life about conditions. So we have to acknowledge that.

I was part of a protest, or a gathering - I do not know if you would call it a protest - at Ringarooma a few years ago. I quite often take us back in this place to when a former minister for education in the Labor-Greens accord government, Nick McKim, thought he might shut down the Ringarooma Primary School. Bad call. I was at the front of the line when it came to making a representation to the minister. Thankfully that community power changed the mind of the minister, the department, whoever had decided - there was a hit list to be honest, not that anyone could ever get hold of it. It was pretty clear who was on it, smaller schools where they thought they might be able to save a dollar or two. We know that trying to save a dollar or two is not going to wash when it is a community that really depends on a school community.

Just the same as if there was an attempt to shut down some of my small hospitals, we would march in the street. There would be war, and I would be at the front line. I might have slightly sidetracked.

I thank again Ray Mostogl and Steve - forgive me for not remembering.

**Ms Palmer** - Steve Scott.

**Ms RATTRAY** - Thank you, member for Rosevears. We see a lot of people through our briefing process, but Steve and MMG were good enough to provide some information overnight. I do not want to read the entire lot, because it was pretty much the briefing we received yesterday. In fairness to MMG it would be useful - I know the member for Murchison who knows her area so well gave a very good indication of some of the challenges for MMG in undertaking their exploratory operations. I will read what was provided overnight because it supports the mining industry and it enforces why I believe that it is appropriate to support this legislation.

We have some very good amendments that may well further clarify some of the operations. I know the member for Rumney has some, the member for Nelson has some, and the Government itself has decided it needs more clarification around some of the aspects. I certainly will address my mind to those through the Committee stage. Back to MMG and I quote from the document:

> The Bob Brown Foundation has made a number of false claims during today's briefing that require a response. MMG Rosebery is currently investigating the feasibility of building a new Tailings Storage Facility at South Marionoak to extend the life of the mine beyond 2028.

We heard quite a bit about that yesterday.

> It has been suggested that South Marionoak is a pristine rainforest. In reality, the site contains a mix of vegetation that has been previously disturbed by logging ....

A lot of our forests certainly have been previously logged.

> … a power corridor and a large fire break. We have looked at alternative sites but these present greater environmental and social challenges. To date, works have been limited to upgrading existing roads into the site and conducting geotechnical and environmental surveys.

How can you put up a proposal if you have not been allowed unimpeded to actually conduct the geotechnical and environmental surveys that are so necessary for a project like this? That is the question.

> The allegation MMG has at any time carried out illegal works is completely false. We are in constant contact with DAWE and the EPA …

We know what the EPA is.

> … to ensure we are meeting our regulatory obligations. All activities on site have been explicitly approved by the Department of Agriculture, Water and Environment. The Federal Court recently dismissed an application from the Bob Brown Foundation to stop early works in recognition of the efforts MMG has taken to minimise the impact of our activities on the surrounding environment.

Does that sound to you like they are a company that is not focused on the environment? Obviously, the Federal Court thought it was a company with ethics.

> The Bob Brown Foundation has repeatedly claimed that paste fill is a viable alternative to a TSF.

That is the tailings.

> They either do not understand the technical requirements of paste fill or are deliberately misrepresenting the issue for their own advantage.

It goes on to talk about a Queensland mine MMG owns and why that would not work and it is quite a lengthy document. I do not intend to read it all but I highlighted a couple more through that document. I know it was sent around by the Leader's office and I expect to everyone. It goes on to say:

> Routine biological testing shows improvement in the health of the Stitt River and significant improvement in seepage collection and management systems across the site since the recommissioning of 2/5TSF. We are transparent with our regulators who have independently monitored all release events and they have been within recommended requirements. This project …

This is the nub of it alongside them being a responsible company. It says:

> This project is crucial to the future of MMG Rosebery's 500 employees and contractors and it should be judged on evidence, facts and process.

That is a compelling number, 500. We know how important mining is to our state and you only have to look at the amount of royalties received from mining when we did our scrutiny through the Estimates process. I do not recall what that figure was but it is significant.

I will also touch on a couple of quotes that have been provided from employees who are working down at South Marionoak:

> Working at South Marionoak is an extremely stressful environment where the only goal of protesters is to provoke you and get you to react for their media.
>
> This work environment does not only have an effect whilst on site but continually plays on your mind outside of work, not knowing what the next day will bring and what interactions you may encounter from people standing in your face calling you a murderer or following you around filming every move you make.

It goes on:

> Our workers and contractors are just doing their jobs. They are abiding by the law and yet there are no protections for them, either from the direct impact of protester activities or the psychological impact of abuse and regular near-miss incidents.
>
> The dangerous activities are being conducted on a public road around heavy machinery. It is only a matter of time before someone is seriously injured.

It goes on to give a couple of examples of incidents that were close to being something of a very serious nature. Again, that psychological impact is certainly weighing heavily on those workers.

I will provide that for *Hansard*, as I have quoted from it.

I thank MMG, not only for their presentation yesterday, but for following up with that information. I certainly do not write or type as quickly as the member for Launceston, she manages to get a lot of information down and I only ever have a few dot points. She is a touch typist, that is for sure.

This morning we also received some information from Colin Riley, President of the Police Association. I am not going to read it all, but to highlight one aspect of it:

> The Police Association of Tasmania … has reviewed the tabled draft Bill and takes no issue with the objectives the Government is seeking to achieve.

Then it goes on to say:

> Our initial feedback provided on 23 September 2021 supported the principles underpinning the initial draft Bill, but raised concerns that the resultant legislation based on the proposed amendments was quite complex, and we believe unnecessarily so, for our members to execute the associated powers.
>
> We are very pleased to see that the new draft that we provided feedback on …

That is the one we have here today.

> … significantly reduced our concerns around the previous draft's complexities.

They provided a detailed response in May and we also received a copy of a letter from May. We have the whole series.

> Since the feedback, there have been further recent changes to the bill and the association feedback is as follows.
>
> - The proposed offence, the Bill seeks to add to section 13.1(ea) of the Police Offences Act, we have no issues with the wording change from the consult version to the tabled Bill.
>
> - The new proposal to add the words 'without lawful or reasonable excuse (proof of which lies on the person)', is unnecessary.
>
>  If the person had a lawful excuse, i.e., was permitted to do so by law, they would not be committing the offence in any event, making this unnecessary. Providing any examples in legislation of what a reasonable excuse is unnecessary.

There is quite a bit of other information there. They have no comment on the 10 penalty unit maximum. It says:

> The table draft of the Bill is more practical, workable and not an unnecessary burden on our already over-extended members - less the proposed subsection (7), and less the inclusion of 'without lawful or reasonable excuse (proof of which lies on the person)'.
>
> Holistically, this draft Bill is workable, and the Police Association of Tasmania is supportive of this tabled bill in its current form to make for a simpler and more pragmatic approach that currently exists for our members.

Obviously that is a change, we are amending the Police Offences Act here. That was exactly the approach that was suggested by the Australian Lawyers Alliance back in March 2021 - not to have a standalone bill but to amend the Police Offences Act 1935. I note that yesterday in the briefings the department said that the Government and the department had taken on board the suggestion from the Australian Lawyers Alliance about amending the Police Offences Act 1935 to deal with protests. At the time, it was called the Police Offences Amendment (Protection from Business Interruption). Obviously, we have a different name, Workplaces (Protection from Protesters) Amendment Bill. It is useful to note in the debate that there was a constructive suggestion in March 2021 that the Government has taken on board: do not have a standalone bill, but amend the Police Offences Act 1935.

I briefly touched on the member for Rumney's amendments and I will listen with great interest through the Committee stage; but there are some very compelling arguments in that proposed amendment, particularly about supporting those 50 000 employees who are members of Unions Tasmania. Yesterday, the member for Rumney clearly articulated the lengths that the union has to go to to establish a protest.

We also had some examples provided by the member for Murchison about how community dissatisfaction can sometimes swell something that was never foreseen. I believe we have to be careful about what we are putting in place. In my mind, it is all about that

balance. I am certainly considering what the member has put forward, as well as the suite of amendments from the member for Nelson.

I have spent a lot of time talking about the minerals industry, where normally I would spend most of my time talking about the forest industry, because that is what I know best. I was very pleased to see the representation from the forest industry, the timber industry, which I still have a strong support for. I have rehashed a number of times on *Hansard* the amount of work that is being done to arrive at a compromise position. They are going about their work legally - legally harvesting. By interjection yesterday, I said that there is a forest practices plan with every piece of harvesting that happens in our state. Even if you harvest a few trees by a stream side, because they are falling into the waterways, you have to have a forest practices plan. You cannot take anything down without a forest practices plan. That is why we have the Forest Practices Authority - and they do check. Now they have some teeth since we had some amendments put through in this place to hold people to account if they do the wrong thing.

I thank Nick Steel, who is a great advocate for the Tasmanian Forest Products Association and the industry in general. We also heard from Andrew Walker, from Neville Smith Forest Products; he wore a number of hats as well. I do not think he could change them all.

When I spoke about the Australian Lawyers Alliance, we also had Greg Barns present and he always challenges us. His views on a number of aspects were interesting, and the department had responses to some of those views. However, as I said, the Australian Lawyers Alliance suggested back in March 2021 to amend the Police Offences Act and not have a standalone piece of legislation.

In my view, everyone who presented gave us the same message; whether you are for or against, everyone supported people's right to peacefully protest. That was certainly the message I received. We do not know what sort of protest may be coming in the future. My community who live around Ashley may well decide that the proposed facility might not meet their community expectations. They might well need to protest, and I would never want to impede their opportunity to do that.

We also need to protect those people who are working in very remote places, where having police support to go about your job is not always available. Some of the information that was received is around the resources that the police are able to deliver to the community. It is about how timely attending those things can be sometimes be, not necessarily that they do not come. If this legislation - whether or not it is amended - can present a deterrent to some who might believe they have a right to impede, to harass, and to intimidate, then I want to do what I can to support those people who work in our state, and most of them are Tasmanians.

I will say some more about the maximum, the quantum of penalties, through the Committee stage, rather than having that as part of my second reading contribution.

I will come back to where I started. I believe the right to protest in Tasmania needs to be upheld, but also the right for a worker to legitimately go about their work at their workplace without being harassed, impeded or intimidated or put at risk. We have to do what we can to present legislation that shows the court and shows the Tasmanian community, and those who might come to Tasmania to undertake protests - because we know that often, the people who are protesting, particularly in some of those more remote areas, are not necessarily Tasmanians - we need to send that strong message. We are not the only state to put in place

this type of legislation about the workplace. I remind those people who say to us, 'no you cannot pass this, this is so undemocratic', what about the health and wellbeing of those people trying to make a living, support their families, and go about their job in legitimate work? Legitimate work, particularly in the forest industry. A compromise position. I know not everyone got what they wanted. It was a compromise position and certainly, we heard from MMG, one of those companies that continues to face protest activity, that they are meeting all their requirements. They are decent corporate citizens in this state and employ 500 people, including contractors. We have an obligation to them as well. However, we also have to be very mindful of the rights of people who have, through protest in this state and in this country over many years, achieved some very good outcomes.

I support the principle of what the Government is trying to achieve here. I look forward to the opportunity to further explore the amendments proposed by, not only two members, but also the Government, in attempting to make it clear. We always need clarity when it comes to legislation, particularly when it is an emotive area. People get very passionate about their causes, and I do not disagree that everyone is entitled to do that, but there has to be a balance here and I am looking for that balance.

I support the bill into the Committee stage.

[10.56 a.m.]

**Mr HARRISS** (Huon) - Mr President, I thank the Leader for organising the briefings relating to this bill. I found them most informative. It strikes me that this is a very important part of how the Legislative Council operates in order for members to be well informed of all sides of any issue being considered.

As members may know, I have spent my working life on construction sites. Some small, some quite large and I have been a site manager. I think back to when I arrived at the job sites, ready to start a day, sometimes in the dark. If for one minute I thought I had to go around and check machinery, trucks, areas of the job site in case someone wanting to draw attention or to prevent workers going about their day may have locked themselves onto things, I could not begin to imagine the stress and worry that may cause everyone who has turned up ready for their day at work.

That is not to suggest we ever compromised safety. We all wanted to safely come home to our families after going to work for the day.

All Tasmanians have a fundamental right to go to work and earn a living without being intimidated, threatened or having to deal with people who are trying to prevent work. The member for Murchison shared the intimidation she felt when she was visiting a mining site on the west coast and having protesters film her every movement without permission.

Amongst all this, people also have a right to protest. I acknowledge some good outcomes have resulted from sensible peaceful protest. Do people have a right to lawfully protest? Unequivocally, as the High Court has affirmed. The Commonwealth Constitution ensures an implied freedom of political communication.

I am unable to see where the workplace protection bill prevents this. Yes, I can see where it introduces high penalties for actions, in clause 4, from $519 to $1730. Is that unreasonable? I think not. This is a maximum penalty which will be ultimately decided through the courts.

Then clause 5 prescribes aggravated penalties and the addition of obstruction to business and also causing serious risk to the safety of a person. Again, the provisions in no way prevent lawful, peaceful and safe protest. Do people wishing to activate their implied freedom of political communication have a right to trespass on a workplace and disrupt lawful business activities? I am satisfied that they do not. I remember media coverage around a protest at Sustainable Timber Tasmania's office in Hobart a few months ago. Steve Whiteley, who the member for McIntyre mentioned before, is STT chief executive officer. He said the Bob Brown Foundation attempted to bully and intimidate STT staff in their workplace. He went on to say that bullying and intimidation is never okay. I agree with Mr Whiteley. The member for Rumney may have also referenced this in her contribution.

On the one hand, it is commendable the Government is working on amendments to this bill because it demonstrates a willingness to listen and adapt to concerns that have been raised since the passage of the bill through the Assembly. It is hopefully strengthening the bill. On the other hand, does it suggest that the bill is not as carefully drafted as the Leader indicated in her second reading?

In closing, I will quote from an open letter published in the *Mercury*, on 30 April 2022, from Steve Scott, who is the general manager at Rosebery. He refers to peaceful protests:

> At Rosebery, we love the nature that surrounds us. We have been co-existing with this unique environment for almost a century. When we recognised the need to expand our footprint, we searched for the lowest impact. That was found in 2008 at South Marionoak and we took a mining lease over the land.

Again, the member for McIntyre covered that and he goes on to say -

**Ms Rattray** - As I said, that is what happens when you get up after me.

**Mr HARRISS** - True. He goes on to say:

> The access to conduct environmental assessments has been blockaded, as has the right of the general public to use the same road. The safety of workers and emergency services has been put at risk by dangerous protest tactics, and our people have been subjected to threats, abuse and intimidation.
>
> We respect people's rights to peacefully protest, but there is nothing peaceful about this.

I support the principle of the bill and it should proceed to the Committee stage, so we can consider in more detail the amendments that some members are proposing.

[11.03 a.m.]

**Mr VALENTINE** (Hobart) - Mr President, I have to agree with the member for Mersey, when he said there was a bit of déjà vu with respect to this bill. There is a bit of confusion as to whether this is the third or fourth time we have dealt with this -

**Ms Rattray** - I would say the third.

**Mr VALENTINE** - Yes, I thought it was the third, someone else said it was the fourth. There was 2014, there was 2021 and then today but then someone else said there was another time. Maybe that went through the lower House and it was prorogued. I am sure it is the third for me.

As always, we have received a lot of community feedback. Nowhere near as much as with the same-sex marriage debate - 2440 emails on that score. It is probably in the sixties or something of that order. Clearly, there is a lot of concern with respect to this bill and not just from those who are coming from an environment perspective. We received submissions, representations to us, from a number of quarters. I will go to TasCOSS and read the concerns aspect of their submission to this Police Offences Amendment (Workplace Protection) Bill 2022. Their concerns are:

> Our principal concerns are as follows:
>
> - the broad wording of the proposed amendments could create unintended consequences which go beyond the stated intention of the Bill;
>
> - the Bill is disproportionate; and
>
> - the Bill may have a chilling effect on legitimate and lawful protest activity which could have a significant impact on the entire Tasmanian community.

I turn to their concerns with regard to the bill being disproportionate:

> Although the Bill does address some of the issues raised in our earlier submissions, TasCOSS believes the Bill continues to be a disproportionate response.
>
> As well as introducing a new offence under the 'public nuisance' provisions of the Police Offences Act, the Bill also introduces three new aggravating factors for trespass under section 14B: when a person is convicted of trespass and they have 'obstructed a business or undertaking' or have taken an action which 'caused a business or undertaking to be obstructed'; when a person is convicted of trespass and they caused either directly or indirectly 'a serious risk' to the safety of themselves or another person; and when a 'body corporate' commits a trespass which has obstructed a business or undertaking.
>
> A conviction for the above aggravated offences can result in more severe penalties. A person convicted of trespass who has obstructed a business or undertaking is liable to a penalty not exceeding 50 penalty units or a maximum of 12 months imprisonment. A person convicted of trespass who caused a 'serious risk' to themselves or another person may face a penalty of up to 75 units or a maximum of 18 months imprisonment. If the person has been previously convicted of a similar offence/offences, this can increase to 125 penalty units or up to 30 months imprisonment. A body corporate convicted of trespass in situations where they have obstructed a 'business' or 'undertaking' can face penalties of up to 900 penalty units.

> The maximum penalties for the proposed offence of aggravated trespass are disproportionate when considered alongside penalties for other offences in Tasmania. For example, the maximum penalty for assault under the Police Offences Act is 20 penalty units or 12 months imprisonment. The maximum penalty for aggravated assault, defined as an assault committed against a person who is known to be pregnant, is 50 penalty units or imprisonment for 2 years. This is less than the maximum penalty proposed for a person convicted of aggravated trespass who has prior convictions for similar offending. There is no explanation for the extraordinary penalties proposed in the case of a 'body corporate'.
>
> We note concerns have already been raised by other stakeholders over the appropriateness of similar clauses in previous Bills. In particular, the Human Rights Law Centre noted, in relation to a similar provision in the Workplaces (Protection from Protesters) Amendment Bill 2021, that 'it is unclear from the legislation how a body corporate might commit the offences and this lack of clarity compounds the disproportionality and excessiveness of the penalty'.
>
> Also concerning is the provision which makes it an aggravating factor to cause a serious risk, either directly or indirectly, to oneself or another person whilst committing trespass. It is very possible this offence would capture instances where somebody is completely unaware of the potential risk they presented to another person and did not intend for any harm to occur. It would also include situations where no harm was caused, only a 'serious risk' of harm, a term which is not defined in the legislation, with no examples provided. Considering the significant penalties which can be incurred for this offence, we agree with the Human Rights Law Centre's earlier submission, in relation to a similar provision in the Workplaces (Protection from Protesters) Amendment Bill 2021, which stated: 'Characterisation of circumstances of aggravation is manifestly disproportionate and excessively penalises peaceful conduct that has potentially caused no physical harm.'
>
> The fact that this aggravating provision is reliant on the response of a third party to the offender's conduct exacerbates the breadth and uncertainty of the proposed regime. In other words, the same conduct, could or could not rise to an aggravated offence solely based on how a third party responded to conduct.
>
> TasCOSS believes the offences outlined in the Bill, as well as the statutory penalties imposed, are a disproportionate response which go far beyond the stated objectives of the Bill.

They have concerns that the bill may curtail legitimate and lawful protest activity. It says 'protect activity' here, but I think they mean 'protest'.

> As noted above the Bill seeks to introduce particularly harsh penalties for offences which are poorly defined, and could potentially be applied to encompass a wide range of activities and circumstances. Many stakeholders, including TasCOSS, have already raised concerns about the potential 'chilling' effect of this type of legislation which could easily result in

> confusion and concern about whether the legitimate protest activities are lawful.
>
> Tasmania has a proud history of political and environmental activism. There are several examples of activism, including protests, playing a significant role in achieving social and legal reform, not only in Tasmania but throughout Australia. Protests and demonstrations are particular significant for those members of our community who may be excluded from traditional law reform mechanisms and can provide opportunities for inclusive community debate and political expression. Although the Bill is not aimed at restricting lawful protest activities, TasCOSS is extremely concerned about the potential for the Bill to discourage citizens from engaging in peaceful, legitimate protest for fear or confusion about the lawfulness of this conduct.

In the recommendations at the bottom:

> TasCOSS does not support the Bill or the proposed amendments to the Act. As per our 2021 submission in relation to the Workplaces (Protection of Business and Workers) Bill 2021, we recommend the Tasmanian Government engages in further community consultation to adequately identify the needs of businesses and workers and to present these findings to the community before proceeding with any further attempts to legislate in relation to these issues.
>
> We make this recommendation in light of the importance of the freedom of political expression and the significant detrimental effect any limitation of this right may have on our community. Otherwise, given the concerns expressed above, it remains entirely possible that this Bill, if enacted, would again be found unconstitutional by the High Court.

I read that because it sums up a lot of the concerns that people have.

I will read the conclusion from the Australia Institute submission on this bill:

> Since 2014, the Tasmanian Government has waged a sustained attack on peaceful protestors. The Workplace Bill 2022 is the Tasmanian Government's fourth attempt at creating legislation which restricts citizens' right to protest in favour of protecting business activities.

There it is, fourth attempt. I am not quite sure where the fourth one is, but anyway. They go on:

> The Workplace Bill 2022 sets disproportionate penalties for protestors who commit public annoyance or aggravated trespass. These penalties place protest amongst the worst offences in the Police Offences Act 1935, alongside loitering near children, drugging another person, setting fire to a property and assaulting a police officer. It also creates penalties up to four times higher than any currently in the legislation.

It contains nebulous wording that will make it difficult for the public to comply with the legislation, and too much power for police officers to choose how to enforce it.

Furthermore, the additional powers and penalties contained in the Workplaces Bill 2022 are unnecessary, as there are a broad range of offences already available, and regularly used, in order to protect business activity from protestors.

Despite recognition of citizens' right to protest in international and domestic law the Tasmanian Government continues to contravene citizens' rights in creating legislation which seeks to give police broad powers to arrest protestors and harshly punish them where this occurs. Questions remain as to whether this Bill will breach the implied freedom of political communication, given its history and continued broad application. Australia Institute Tasmania recommends that the Tasmanian Government abandons the Workplaces Bill 2022, instead respecting citizens' rights to peaceful protest.

Another submission, from the Environmental Defenders Office. They have an executive summary:

Having previously provided detailed comments on the draft Workplaces (Protection from Protesters) Amendment Bill 2021, EDO strongly supports the proposal to repeal the flawed and unconstitutional *Workplaces (Protection from Protesters) Act 2014* (Tas). However, EDO considers that the proposals to both widen the ambit of public nuisance and trespass offences and create aggravated penalties for the obstruction of businesses though amendments to the *Police Offences Act 1935* (Tas) (the Act) introduced by the Bill are unwarranted. If passed, this Bill has the potential to significantly infringe on the right to protest in this state and therefore on our democracy.

The Bill follows a concerning trend in other Australian states such as Queensland and most recently in New South Wales, to "clamp down" on peaceful protest. These laws come at a time when Australia is facing the unprecedented challenges of climate change and mass extinctions of our precious and endemic flora and fauna. The right to freedom of peaceful assembly and of association is enshrined in article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the International Covenant on Civil and Political Rights, and has been recognised by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association as being 'one of the most important tools people have for advocating for more effective and equitable climate action and environmental protection.'

While the EDO does not condone illegal activity, it does advocate for fair, just, and proportionate laws. EDO endorses the submission made by Community Legal Centres (Tasmania) in response to the draft Bill, and for all the reasons outlined in that submission, EDO considers that the Bill is not

fair, just or proportionate in all the circumstances. EDO also provides the following short additional submission in response to the Bill.

In summary, EDO's submission raises concerns about:

(1) The ambiguity in the drafting of the proposed new aggravated penalties for trespass which obstructs a business or undertaking or causes the business or undertaking to be obstructed;

(2) The ambiguity in the drafting of the aggravated penalties for trespass causing a risk to the safety of the person or another person; and

(3) The unnecessary duplication of offences relating to mineral tenements.

The EDO's recommendation is:

The draft Police Offence Amendment (Workplace Protection) Bill 2022 not proceed.

They give an explanation of the ambiguity in the aggravated penalties for trespass obstructing a business or undertaking:

The Bill proposes aggravated penalties where a person or body corporate "obstructs" a "business or undertaking" while trespassing, or where a person takes an action that causes a business or undertaking to be obstructed. No definitions of the words "obstructs", "business" or "undertaking" have been provided under the Bill, and no definitions exist in the Act or the *Acts Interpretation Act 1931* (Tas). The ordinary definitions of these words are necessarily broad, and the words "business" or "undertaking" are not tied to particular locations, premises, or lawful activities.

This gives rise to significant uncertainty around when the aggravated penalties provided for under the Bill might be imposed by the courts. Furthermore, the aggravated penalty for trespass resulting in the obstruction of a business or undertaking might be applied even in circumstances where a particular business or undertaking is not the target of the trespass or protest activity.

For example, a peaceful protest in the entrance to or lobby of a building accommodating a Minister or Department but that also accommodates other businesses, might result in the protesters being exposed to significantly higher penalties even though those businesses were not the target of the protest.

Their second explanation of the ambiguity in the aggravated penalties for trespass causing a risk to safety of the person or another person:

The Bill provides for an aggravated penalty to be imposed where a person, while committing a trespass offence, "caused, directly or indirectly, a serious risk to the safety of the person or another person" or "took an action that

caused, directly or indirectly, a serious risk to the safety of the person or another person".

The use of the word "indirectly" in the case of this aggravated penalty, opens a pandora's box of possible circumstances where a trespasser may be exposed to a much greater penalty, and provides enormous scope for protesters to be held responsible at law for the safety of persons with whom they have had no direct contact, or that their protests do not directly affect. The use of the phrase "risk to the safety" is also equivocal. There need not be any person in danger, just the risk that they may face danger for the increased penalty to apply.

This use of the term "risk" in combination with the term "indirectly" draws a long and uncertain bow; one which could see a protester at risk of a much greater penalty in a broad range of circumstances. No justification for this aggravated penalty has been provided in the factsheet accompanying the Bill, and it is therefore not clear what types of conduct or "risks" the amendments are intended to cover.

For these reasons, EDO considers this proposed aggravated penalty for trespass to be unjustified and unwarranted.

These are interesting cases and perspectives. The third and last that I have here, is 'unnecessary duplication in penalties relating to mineral tenements':

The accompanying factsheet of the Bill states that the bill:

… clarifies when, for the purposes of section 14B of the [Act], the holder of a 'mineral tenement' (being a mining lease or relevant mining licence) is taken to be a person in charge of land for the existing office of trespass. This is done by reference to a person who is on land subject to a mineral tenement, and contravening existing offences under the *Mineral Resources Development Act 1995* which relate to obstruction of mining operations under leases, and authorised activities under relevant mining licences. This clarifies that a person who is committing those existing offences on land subject to a mineral tenement is a trespasser on that land, unless they have consent to be on that land.

The Environmental Defenders Office makes comment on that:

There are already existing offences where a person hinders or obstructs mining or exploration activities under the *Mineral Resources Development Act 1995* (Tas), for which there are significant penalties. Indeed, the Bill proposes to only apply to the trespass on mineral tenements where a person has also contravened contravenes sections 23(3), 58(3), 67N(3) or 84(2) of the *Mineral Resources Development Act 1995* (Tas). The proposed "clarification" in the Bill, therefore, represents a duplication of those existing offences and is unwarranted and unjustified.

**Ms Forrest** - Through you, Mr President. Is that not there to ensure that the requirement to commit a trespass has to have occurred before the next step can occur and therefore it needs to make it clear that is the process for a trespass in the first instance? If the person does not leave at that point, then it is trespass.

**Mr VALENTINE** - That might be an argument.

**Mrs Hiscutt** - Through you, Mr President. That is correct, the way it was described.

**Ms Forrest** - It is okay to read stuff, but you also have to put some context around it.

**Mr VALENTINE** - That is okay. I am giving you their context. I am only quoting what they have written in their submission.

**Ms Forrest** - We have said that we always need to look at the situation behind the comment.

**Mr VALENTINE** - I will not argue against that. They are obviously their interpretations.

**Ms Webb** - I do not think we have fact-checked everybody as we went.

**Mr VALENTINE** - No I do not think we have, nevertheless I thought their explanations in relation to at least the other two things were quite good and on the last one there might be some conjecture.

**Mrs Hiscutt** - There is some misunderstanding.

**Mr VALENTINE** - There may well be, but that points up the issue the law has to be clear: it cannot and should not be convoluted. The more you try to narrow things down to capture a certain set of activities, the more convoluted the law becomes, the less clear it becomes and the greater opportunity there is for unintended consequences and one of the key things that is a problem with this bill. The fact that we, in dealing with that small thing we were talking about, there is a conjecture even here, shows the law is not going to be clear. It concerns me it is not going to be clear.

Another concern I have raised before is, where you have a farmer who is carrying out a legitimate farming business and somebody gets a mining licence to do fracking on their land and the farmer is concerned about the unknown damage that may inflict on his, her, or their land. They protest on their own land. When the miners come along to undertake the activity of drilling and trying to do tests or whatever, where does this bill leave that farmer? Are they able to lawfully protest on their own land?

**Ms Forrest** - They cannot be charged with trespass.

**Mr VALENTINE** - If you read the bill, it is not necessarily the case, with the lease area. It might be considered they are trespassing on the lease area. It concerns me.

The other is where we have the occasion of the log trucks convoy around Triabunna where they were protesting around the price they were getting for logs. Correct me if I am

wrong, but there was a significant protest either at Triabunna or somewhere else on the mainland. They were protesting about the price they were getting for their logs. They were blocking the road, stopping people from getting through. How are they going to be affected? We can always try to look at things through a single lens, but you do need to cast your mind around the broader impact of a bill like this and what it might mean to all in our society.

We have heard other letters that have been read in by members. Jessica Munday's letter was read in by the member for Mersey.

**Ms Rattray** - In its entirety.

**Mr VALENTINE** - Yes. I have information handed out to Community & Public Sector Union members by Tom Lynch, the Assistant Secretary:

> People in healthy democracies should feel free to protest without threat of criminal prosecution. The Rockliff government's *Police Offences Amendment (Workplace Protection) Bill 2022* is bad legislation. Rather than being developed to address real problems, its purpose is to create a political wedge.
>
> In addition to broadening trespass laws, the Bill amends the *Police Offences Act* to expand the offence of 'public annoyance'. Actions that constitute public annoyance include conduct such as 'commit a nuisance', 'disturb the public peace' and 'disorderly conduct'. The Bill broadens the circumstances where a person could be charged with public annoyance by including 'unreasonably obstruct the passage of vehicles or pedestrians on a street'.
>
> The government will tell you that the Bill won't prevent activities on streets, activities such as demonstrations, fundraising drives, processions or cycle events, as long as they have been issued with a permit. So now we need permission to protest, permission granted by the same government many of the protests are against.
>
> When public sector workers took strike action in 2019 and marched to a rally on Parliament lawns, did they unreasonably obstruct the passage of pedestrians on their way there?
>
> When they walked around the city at lunch time beating drums to highlight how much Tasmanians needed a pay rise, did they create a public annoyance?
>
> When thousands of Tasmanians turned up to protest for women's rights and spilled out across the street, were they unreasonably obstructing the passage of vehicles?
>
> Are we really going to crack down on the knitting nanas for protesting in the Elizabeth Street mall in support of refugee children? Should they be charged?

> There are some that say those who oppose the Bill should be lobbying the Legislative Council to make amendments, but it is bad legislation, and bad legislation should not be amended. It should be opposed.
>
> Tom Lynch, Assistant Secretary, CPSU Tasmania
> Federal President, Community and Public Sector Union, SPFST

**Ms Rattray** - Did that come to all of us?

**Mr VALENTINE** - No, I got it. Something that was sent to everyone and I did further investigation and found that as an attachment. They sent it to me especially.

**Ms Rattray** - Well done on your homework.

**Mr VALENTINE** - Yes, but I take your point. It is important in this Chamber that we have the same information. Nevertheless, it is not always possible. For instance, when people write to you, you can see whether they have written to everyone. Sometimes they do not. It is their right, I suppose.

I have one here from Bronwyn Holly:

> Dear Mr Valentine,
>
> I wish to draw to your attention the concern many Tasmanians hold about the implementation of a Police Offences Amendment (Workplace Protection) Bill 2022.
>
> The government says: 'The new Bill would repeal the *Workplace (Protection from Protesters) Act 2014*, and clarify the offences of public annoyance and trespass under the *Police Offences Act 1935*, including appropriate penalties and aggravated penalties. The Bill responds to matters raised by the High Court of Australia in the case of *Brown and Another v State of Tasmania*, and provides protection for lawful business activities.'
>
> The Workplace Protection Bill 2022 is the Tasmanian Government's fourth attempt -

I do not know where are they getting this fourth from.

**Ms Rattray** - Because the member for Mersey has tracked down the fourth attempt.

**Mr VALENTINE** - Has he? Okay. Maybe you would like to share it with us. Could you tell the Chamber?

> The Workplace Protection Bill 2022 is the Tasmanian Government's fourth attempt in creating legislation which restricts citizens' rights to protest in favour of protecting business activities.
>
> There are already a broad range of offences already available and regularly used to protect business activity from protestors.

> The Bill establishes businesses' abilities to carry out work over the right of people to protest, by giving broad powers to police to arrest peaceful protestors and imposing harsh penalties. These penalties place protest amongst the worst offences in the *Police Offences Act 1935*, alongside loitering near children, drugging another person, setting fire to a property and assaulting a police officer. It creates penalties up to four times higher than any currently in the legislation.
>
> The Workplaces Bill 2022 has the potential to silence protest and restrict citizens' democratic right to protest on key issues in our society. Section 13, public annoyance, and 14, detailing unlawful entry to land are so loosely worded they are open to any interpretation the law chooses to impose.
>
> Australian citizens' right to protest is embedded in international and domestic law. The Australian Government is a signatory to the UN International Covenant on Civil and Political Rights, ICCPR, which secures the rights of freedom of expression, association and assembly.
>
> I hope you will do the best you can to kill the Bill.

I will not read any more because the point has been made. It really is a bill that through all of the information that we have been provided with - and I thank the Leader for providing the briefings as always - it is a bill that is not watertight in any way, in terms of the way it can be read and interpreted. For that reason alone it needs to be withdrawn.

I will close with one set of things. The first is, what is the bill supposed to be fixing in terms of workplace protection? There is a concern because when there was a question asked in Estimates - it might have been Cassy O'Connor who asked the question, the question from *Hansard* says:

> Since 2014, how many incidents have been reported to WorkSafe where protests on work sites have caused injury to workers or protesters?

Ms Archer says:

> Can we answer that or on notice? Ms Pearce is going to answer that.
>
> Ms Pearce - There have been no injuries reported or workers compensation claims in relation to injuries to workers or protesters on forest protest sites or any protest sites.

The question is, what is it fixing?

A couple of observations about protest. Protests have changed the world, the course of history, if you like. There was Gandhi's Salt March. It was a British taxation protest march in April 1930. Under British rule, Indians were prohibited from collecting or selling salt and the staple mineral was heavily taxed. In 1930 Gandhi rallied supporters and set off on a 241-mile, 23-day march across western India to collect salt from the sea in defiance of the British government. It was illegal to do that. More than 60 000 people, including Gandhi himself, were incarcerated for participating. That is a lot of people put in jail. It ultimately turned the

tide of world sympathy towards India, rather than British interests. Was a permit sought before heading off? I doubt it very much.

The Boston Tea Party: over the course of three hours, more than 100 American colonists, frustrated and angry at Britain for imposing taxation without representation, secretly boarded three ships arriving at Griffin's Wharf in Boston, Massachusetts and dumped 342 chests, 45 tonnes of tea imported by the British East India Company, into the harbour. The unorthodox protest was a key precursor to the American Revolution.

South Africa's national day of protest, 26 June 1950: Nelson Mandela's ANC Party organised this anti-apartheid work stoppage in retaliation for a new bill, effectively allowing the government to investigate any political party or organisation. Hundreds of thousands of South Africans participated in the Stay at Home, a tactic that was used several times in the next decade. 26 June was celebrated as National Freedom Day in South Africa until 1994.

The Orange Revolution: in late 2004, hundreds of thousands of people flooded Kyiv's main square to protest the results of the Ukrainian presidential election. Demonstrations continued for 12 days through sleet and snow until a revote was called, reversing the results and putting the opposition candidate - whose party colour was orange - in office instead.

As with those small examples of civil disobedience, while we certainly do not want to see people injured, we do not want to see people out of their minds with stress and worry, and that happens. I know that happens, but it is that balance. It is the balance that the Government talks about needing to find. Balance is always in the eye of the beholder. When we look at these sorts of bills, we need to think about the chilling effect, how it will constrain society, how it has the capacity to be ultimately detrimental to society.

I cannot support the bill the way it is. I will listen to the amendments. As I said before, I have some issues with 'carving out' in legislation because it leads to unintended consequences. I find it difficult to participate in that by supporting carve-outs. I will listen to everyone else as I always do. Thank you for your attention.

[11.42 a.m.]

**Ms WEBB** (Nelson) - Mr President, I rise to speak on the Police Offences Amendment (Workplace Protection) Bill. As we have all noted, this bill is the next iteration of the Government's attempts - as I would characterise them - to quash certain kinds of environmental protest actions in this state. In doing so, yet again, this bill risks jeopardising the fundamental rights of Tasmanian citizens.

This is an ideologically driven and deliberately divisive culture war. Rather than seeking to de-escalate the divisions, it seems the Government is hell-bent on amplifying them. The intensely disappointing thing about this whole exercise is that the very real people involved at the front line of the kinds of situations at the centre of this legislative effort will be entirely let down in what they dearly want to see occur. One thing is for certain: this bill is not in the best interests of our state legislatively, economically, environmentally, democratically or socially.

Another thing is certain: this bill will not do what it says on the packet. This is called the workplace protection bill. That is a title that is an outright lie. There is nothing in this bill that will ensure any greater level of protection for those in workplaces. This bill offers nothing protective, nothing preventive, nothing prophylactic. Not even anything pre-emptive when it

comes to the kinds of activities that the Government has apparently put it forward to address. Quite the contrary, in fact.

If anything, this bill will cause an increase in the very things the Government claims it wants to stop. That is not good. It is not good for workers, for businesses, for police, for protesters or for the general public. A decent, effective government would invest in efforts to reduce the kinds of policy disputes and ideological conflict that lead to protest actions. It would not actively engage in aggravating and amplifying those disputes and conflicts through misleading legislation. It would certainly not do so in a way that also impinges significantly on the fundamental democratic rights of its citizens. A decent and effective government would not do that.

So many of the rights and opportunities that we benefit from and take for granted today were hard won through peaceful, nonviolent protest. Reforms on many fronts that we hold dear and have led to many positive advances for our society, our laws and our culture. As has been pointed out, in many of the submissions and correspondence we have received on this bill, committed protest activity has delivered Tasmania many outcomes of value to our state. For example, the decriminalisation of homosexuality; the protection of iconic wilderness areas, now tourism drawcards; and our best practice anti-discrimination laws, to mention a few. More broadly than just our state, we know the committed protest activity of ordinary citizens delivered women the vote; established a whole suite of gender equality protections now in place; brought about important public reckonings, like the Royal Commission into Aboriginal Deaths in Custody; achieved essential industrial rights and protections, and much more.

To be clear, these outcomes we value were not won solely through protest action that was authorised, sanctioned, tamed or sanitised, to borrow the term the member for Rumney applied to this. Every one of these achievements and improvements came about through protest action that included measures that would be captured and highly penalised by this bill, every single one. This categorical, historical pattern of societal progress and protections won through protest included actions that were radical, confronting, inconvenient, obstructive and persistent. That pattern is there for us all to see. There is a clear message in this, that given the many benefits now achieved through a robust right to protest, legislating to threaten this right risks depriving us of future benefits and ultimately paying a higher price than any hoped for, but unlikely to be achieved by this bill in the immediate quelling of conflict.

In speaking on this bill, the Government claims that it recognises that the freedom of communication, including protest, is a fundamental right. Then we run into trouble when we start to contemplate how to balance that right against the rights of businesses to operate. The Government also claims it recognises that businesses may need to accommodate some level of disruption, due to the legitimate expression of these rights. They also say:

> … freedom of political communication does not mean unreasonable obstruction of lawful business viability.

Further:

> … the bill recognises there are limits to all rights, particularly when businesses suffer substantial disruption.

Interestingly, on that last point on my reading of the bill there is a great deal of vagueness in regards to what level of disruption to a business should or would be tolerated, as there is no explicit requirement that the obstruction of a business, dealt with in clause 5 of this bill, needs to be either unreasonable or substantial. There is no degree of tolerance or accommodation detailed in terms of the obstruction to business activity. No doubt we will discuss that in the Committee stage, if the bill gets through to that point. What is clear is that the Government is misleading us in its second reading speech, presenting in more modern rhetoric in the way they speak about what needs to be tolerated, rather than what is actually in the detail of this bill and what it would allow or constrain.

Other members have spoken about this challenge of balance. Were we each to assess what the right balance should look like, it is likely we would all land somewhere a little different, which tells us that there is no categorically right answer here. It is something we will all continue to struggle with in an ongoing way. An important thing to remember is that our existing laws already strike a balance between protecting these various and sometimes conflicting rights and interests. Current laws, which have been developed over time and are sitting there in our context now already provide a response to unlawful actions taken by protesters. Current laws already provide a response to damaged property, assaults and trespass and nuisance.

We have heard clearly from union stakeholders that their message from workers in the relevant industries captured under the intent of this bill is that current laws are not being applied to the extent they would like to see in response to current situations. If this is the case, surely the first response is to more adequately apply current laws to give better effect, to give balance than we have already defined and agreed to, rather than skip past that to impose new, contested and more onerous laws.

The Government talks about 'the lawful expression of opinion'. That was from an extended fact sheet we received. However, the point it makes very clearly is that protest is not simply an expression of opinion, it is an expression of political will, it is a call for action, it is a demand for attention to an issue, it is an attempt to prompt change and it can be a last-ditch attempt to protect and preserve before irrevocable harm is done. While we may be able to expect expressions of opinion to be always lawful, it entirely misconstrues the nature of protest to believe or expect it must be so. In fact, by reference to history, we can assume that to provide the greatest benefit there will be times when protest must not be lawful. Protest, especially urgent protest, can and must have a significantly felt impact or it will not serve the purpose it seeks, to promote urgent action for change, for protection.

On environmental protest in particular, it is interesting in the context of these discussions and deliberations on this bill that many people have a particular view about people who engage in protest action, who are involved in these activities, what they are like and how they behave.

Interestingly too, we have just experienced a federal election that was won in significant part on the overwhelming community view that greater urgent action is required on climate change. Not only did the overwhelming community sentiment change the government federally, we saw blue ribbon conservative seats fall to Independent candidates who were calling for climate change action, gender equality and greater government integrity. All typical issues that have previously required protest action to progress and are now mainstream expectations and vote winners in conservative suburbs of Australia, no less.

We also have children striking for climate change action en masse, taking action for their own future. We have environmental blockades being undertaken by a wide range of citizens in this state - as we have all heard through correspondence we have received - including people with professional backgrounds, grandparents, small business owners and people from all parts of our state. The insight that is provided by these participants in their correspondence describing their activity to us is quite telling. I will share a couple of those and read them into the record. Some I will put names to because I have permission to do so. Others I will not. Firstly, here is an email we all received from a citizen of our state:

> I write to each of you today asking you to please understand the importance of the public citizen's right to protest. Women's rights, including our right to vote, First Nations rights and their ongoing struggle for equality sovereignty and constitutional recognition, the black lives matter movement, LGBTIQA+ equality including the marriage plebiscite, all of these important and imperative social movements were powered by the people and their fundamental and democratic right to protest. Our country would be a far more oppressive place to call a home had these pivotal moments in our social history not occurred.
>
> Issues facing the environment are the same. Had people across the country not fought for the protection of precious wild places, we would be far deeper into the climate crisis than we already are.
>
> I have volunteered with the Bob Brown Foundation twice in the last two months, protecting the Tarkine from being pillaged by the company MMG. Takayna, the Tarkine, is not only one of the last remaining cool temperate rainforests with connection to Gondwana remaining, it is also a huge carbon sink. The trees there are worth more in the ground than with 50 metres of toxic sludge sitting atop it.
>
> Every protest I've joined with the BBF, both here and in Brisbane, have been peaceful, safe and nonviolent to both protesters and workplace employees. More often than not the protesters are the ones who suffer verbal and sometimes physical abuse by company workers. But that is also the risk protesters accept when speaking up about injustice.
>
> The accusations made against the BBF of intimidation and performing unsafe actions are completely untrue. I have been on the ground multiple times and have only experienced pleasantries between protesters and company workers. I have always felt safe, both with the foundation and in all the interactions with those 'against' us.
>
> Socially practising this democratic right is also hugely empowering. And when it comes to relieving eco-anxiety about the state of the world, which is a growing mental health epidemic, it is wonderfully alleviating. It takes you out of your head and pushes you towards something meaningful and you meet the most amazing individuals who come together for a safer future for all.
>
> We have seen the public respond to the federal election with a call for more action on climate change. This means stopping native forest logging. MMG

have another more environmentally responsible option and the money to do that, that leaves Tarkine at peace. That is why we are protecting this forest and will remain here until it is officially so.

Please protect the public's fundamental right to protest. Our future on this planet depends on it.

That is from a female citizen of our state.

Now I will read one that I can put a name to. Again, it is one that we would have all received. This is an email that came through this week from Carol Barnett:

Dear MLC of the Tasmanian state government

My name is Carol Barnett, I am a 60-year-old retired registered operating theatre and recovery nurse of 40 years. I cared for Tasmanians for the last 10 years of my profession, working to ensure a clinically safe environment, ensuring my patients were safe from harm.

My family is eight generations Tasmanian from proud convict stock. My brother-in-law is minister Guy Barnett. I am married to his brother. Unfortunately, some government ministers, himself included, would like you to see peaceful protesters like myself face highly punitive fines and jail sentences for doing what I feel compelled to do in order to protect Tasmania's unique world heritage value, biodiverse forests and the species that depend on them for survival.

I'm writing to inform you of my experience peacefully protesting in the Tasmanian native forests over the past three years. I chose to exercise my concerns for the endangered species and the environment they depend on by peacefully protesting in the very native forests that are being clear-felled and burnt.

It was a choice I didn't take easily. But as taking part in letter writing, signing petitions and voting for Tasmania's precious native forests was falling on deaf ears, I felt compelled to do more.

I first went to the Sumac forest camp, hosted by the Bob Brown Foundation, an old growth forested area which is still standing as a result of hundreds of peacefully protesting people like me, raising awareness of the logging taking place there. I took part in protests in Eastern Tiers with the Bob Brown Foundation in an area that is vital swift parrot breeding habit. It was in the process of being logged while swift parrots were selecting their breeding sites.

I was also present protesting in the Wentworth Hills for similar reasons, habitat destruction of the endangered species that depend on these native old growth forests.

Recently I was arrested at the Pieman River site of takayna Tarkine, where a mining company is illegally working to clear Gondwanan native forest, home to numerous endangered species, including the largest barn owl in the world, the masked owls, numbers down to levels that imminently risk the species' survival.

The charges for my arrest were dropped in total at my court appearance. The road I was on was illegally closed. No repercussions for this illegal road closure, to my knowledge, have eventuated.

Addressing issues, some parties are asserting that peaceful protesters in relation to the Bob Brown Foundation are in some way using unsafe and abusive actions. This is far from my experience. I have never witnessed peaceful protesters in these settings provoking violence, with violence to workers, contractors or police. Indeed, I will not take part in a setting that perpetrated or condoned such actions.

My nurse training has been an advantage, informing my scrutiny of safety and welfare in these settings. All voluntary participants undergo nonviolence training before taking part in any BBF in situ protest, training that has been acknowledged by police officers to myself.

To quote one officer who said he, 'wished more of the general public he dealt with would receive this training'.

Individual and group safety is taken seriously through skill development and safety training, personal responsibility is essential and encouraged. Physical and emotional support is demonstrated routinely at BBF protests and associated activities. I have only seen and been part of orderly, well-organised, cohesive, consensus-based practice in implementing protests under this duty of care model.

It is with dismay that you and your colleagues could see myself, a concerned grandmother, passing legislation that could jail me for attempting to promote the health and safety of our natural environment. There is a better way forward for all of us and this new legislation you are being invited to pass, in my opinion, is not it.

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## Recognition of Visitors

[12.01 p.m.]

**Madam DEPUTY PRESIDENT** - While the member is moving on to her next email, I welcome to the Chamber year 7 students from Hobart City High School, the Ogilvie campus. There will be two groups coming through. They are in the member for Elwick's area but he is not in the Chamber at the moment, so he is missing out on welcoming you but he may reappear during your time here.

We are in the middle of debating legislation that amends our Police Offences Bill, which is in relation to trespass and workers in areas where trespass can occur, and about protesting, which I know some of you young people are probably quite interested in.

We welcome you into the Chamber and when we get past this bit, we will move into another process that looks at each part of the bill that we are dealing with. Welcome to the Chamber and I hope you enjoy your time here.

**Members** - Hear, hear.

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**Ms WEBB** - The next one I will share, I am not going to put a name to, it is another female citizen of our state. Actually, sorry, it is another citizen of our state:

> Dear Member of the Legislative Council,
>
> My name is - I am a 29-year-old disabled enrolled nurse first-year student of Psychological Science at the University of Tasmania. Growing up in rural north-west lutruwita, Tasmania, so close to the other-worldly beauty of the native ancient old-growth forests has instilled in me an innate and unquestionable love in the value of these unprotected forests. In light of this, I have participated in numerous peaceful demonstrations and protests to try to raise awareness about the unnecessary destruction of these ecologically essential and one-of-a-kind forests.
>
> I have attended numerous nonviolent direct action (NVDA) training sessions and have a sound understanding of what is involved in various contexts and forms of protest. In all the protests I have participated in, most unfolded by the book, with most interactions taking place between the coordinated liaisons. The accusations of protesters being reckless, unsafe or violent is completely unfounded. I have really enjoyed all of the protests I have been involved in. All were nonviolent, planned and managed very effectively.
>
> When I first started demonstrating in takayna Tarkine forests with the Bob Brown Foundation, I was extremely surprised and intrigued by the amount of courses, planning and training which went into each and every nonviolent protest, down to radio and communication checks, high visibility gear being provided and the solidarity and understanding of our united purpose. As a mantra that a coordinator told me at my first protest, 'Remember, we don't run, we walk with purpose'. And we continue to walk with purpose to protect the environment and the community that represents it.
>
> We ask you to please vote with purpose and keep in mind you are protecting with your vote.

The last one I will read here at this juncture I can put a name to and that is from a Tasmanian called Philip Tapper. Philip writes this to us in his email:

> I am in my 70th year, a retired health safety and environmental manager. I am familiar with the state and federal requirements for businesses to provide environmental approvals and management plans for particular projects they

undertake. That the state and federal governments have given environmental approvals to MMG's tailing dam works to date, current and proposed, astounds me. I have been to the Tarkine, seen the destruction of old growth forest for logging, road track building, and now for this proposed tailings dam. Yes, with other avenues achieving no respite, I have reluctantly protested against the destruction of this amazing forest by the foreign owned mining company MMG.

I have locked onto machinery and I have been arrested. All this has been done with the utmost care and attention to detail. Some examples: security guards were present on the access road and good mornings were exchanged - nothing more; protective mats were used to ensure no lock on equipment touched and damaged the machinery in any way; only a stationary, locked and inoperative - no-operator present - machine was the subject of my lock-on. My position on the machine was evaluated by myself and buddies. A chair was provided as were hot coffee and biscuits for the duration.

The police were courteous towards me as I was towards them. At no time did I approach, converse with or intimidate anyone; workers, security or police. Nor did I damage any contractor or police equipment. And as an OH&S professional with approximately 40 years, I believe the safety argument in relation to this proposed legislation is substantially a trumped up issue. There is more risk to these workers every day from their bush work environment and the machinery operations they undertake, than from peaceful protesters.

The real risk is to the ancient forest ecosystems, the flora and fauna, some of which the state and federal governments themselves acknowledge as being threatened with extinction. I was of the strong view that the MMG activity was illegal and my actions were purely aimed at stopping that activity on that particular day.

To stifle free speech further by the proposed amendments to current law is an over-reach. I am aware of escalations under current legislation by police as they lay more and more charges, and by the judiciary as they progressively increase fines and other penalties, nowhere near to the currently allowed maximum.

I respectfully request you oppose these legislative changes.

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## Recognition of Visitors

[12.07 p.m.]

**Madam DEPUTY PRESIDENT -** Honourable members, I welcome to the Chamber the second group of year 7 students from the Hobart City High School Ogilvie Campus. Welcome to the Chamber and to the parliament. We are in the middle of debating legislation that amends what is called our Police Offences Act, which is where one of the offences of trespass sits, and debating how that might or might not be changed to deal with some protest actions that occur. That is predominantly what it is about. Every member of the Chamber gets a chance to speak

and then we decide if we are going to take it into another stage where we look at each part of the bill.

Your member is still not in the Chamber - the member for Elwick. He is obviously watching from somewhere else. Welcome to the Chamber, we hope you enjoy your time here.

**Members: -** Hear, hear.

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**Mr Valentine** - Some of them live in my electorate.

**Madam DEPUTY PRESIDENT** - The member for Hobart, down there too.

**Ms WEBB** - Some of them might live in mine, too.

Madam Deputy President, those are examples of quite a flood of emails we received this week and in recent times about this bill, and are carefully, and thoughtfully, put-together stories to share with us about people's personal experience protesting.

I believe they assist to help in more fully understanding what the picture might be looking like where these particular sorts of activities are occurring in the front line of environmental protests. It is easy to have either outdated perceptions about what that might look like, or to make ready stereotypes about the sort of people who protest in those circumstances and about the way they might behave.

It is also easy to take anecdotal stories - which may or may not be current - and to assume that those are reflective of what is going on today. That would not be a full picture or a full understanding of the reality. We need to be fair in our understanding of that and the way that we are regarding it.

Moving on, the member for Hobart posed this question near the end of his contribution. What problem is this bill seeking to solve? That is a particularly interesting question and it is an essential one that we ask. Given that the High Court found that the Workplaces (Protection from Protesters) Act 2014 was unconstitutional, the Government knows that it cannot be explicit in targeting protest activity outright in this bill. However, it is patently clear that it is protest activity that is squarely being targeted. I want the Government to confirm if that is the case. If it wishes to claim otherwise, I will put on record examples of activities or behaviours that are not protest-related which have been identified as needing to be addressed by this bill. Let us get them on the record here, in detail and with data on their frequency of occurrence and impact.

In the Government's second reading speech, care is taken to barely mention the 'p' word - and certainly not when describing the apparent problem this bill purports to address. Instead of the 'p' word, on the first page of the Government's second reading speech, we have descriptions of 'unlawful interference'; the 'actions of individuals and small groups'; 'attempts to disrupt business activity'; 'these actions'; 'this behaviour'; 'these types of activities'; and 'unlawful activity'. All very coy and non-specific; but it is not acceptable to be coy about this.

Anytime the Government is proposing to expand offences and increase penalties by which the rights of its citizens may be curbed, it is incumbent on that Government to make a crystal-clear case. Three things are needed to make a crystal-clear case. The case must include

an evidence-based demonstration of the problem that it seeks to address. There must be a demonstration that the proposed legislation provides an appropriate and effective solution or response to that problem. It must also be demonstrated that there will not be any detrimental or unintended consequences.

On that first point, that an evidence-based demonstration of the problem be presented, I note that the Government says this:

> For some time now, businesses in Tasmania have been adversely impacted by the actions of individuals and small groups and it remains an issue today.

Let us get this nice and clear. I will call on the Government now to quantify the issue, to justify those comments and assertions being made. How many instances have there been of businesses being impacted? How many instances have there been of worker injury or safety reports being made in relation to any of these instances? What actions have been taken in response to these documented incidences? In what way were the actions taken under existing laws insufficient in their response to those instances? What data is there on trend over time of these instances - any changes or trends from 2014 through to now, for example? Are we looking at the same issue now that we were looking at in 2014, or a different one?

We heard during a briefing from the Tasmanian Forest Products Association that during 2021, there were 20 instances of protest in forests that required a police presence. I think I am recalling that piece of information correctly, but I am happy to stand corrected. I am interested to know if this is an accurate number. What actions were taken in response to those instances? What charges were laid and penalties ultimately applied? In what specific ways were any actions taken under existing laws insufficient in their response on these instances? What data do we have on trends about these particular sorts of instances?

Picking up on the lack of evidence presented to us, the submission from Community Legal Centres on the draft version of this bill tells us - and I quote from page 4 of their submission:

> 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. 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). 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. 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.

From that data, and in the absence of any data provided by the Government to support its assertions about these activities, I am prompted to ask, why is there no evidence-based demonstration of this problem? It adds to the impression that this is an ideological exercise.

A further assertion from the Government in attempting to describe a problem here, is that, and I quote from the Government:

> Importantly, there are also psychological impacts for people going about their daily work who are confronted with these unlawful disruptions.

Again, I call on the Government. We have anecdotal stories of that, and I acknowledge those stories, but what do we have to present to us about the totality of that picture? How many instances of this type of impact have been reported, or captured in some way, in recent years, so we can understand the totality of that picture? What response was made to any reported instances? In what way were responses made under existing laws shown to be insufficient? I am not asking these questions because I have any lack of empathy for people who may have been involved in those sorts of activities and felt that impact. I am not disputing that some people have felt that negative psychological impact. I am interested that we construct a careful and evidence-based picture of the problem we are seeking to solve here, so we can assess whether this bill is the right response to it.

In a further assertion from the Government in attempting to pin down the problem this bill is responding to, the Government says this:

> Of course, we also seek to protect those persons who foolishly place themselves, and often others, at risk in their attempts to disrupt business activity.

Again, I call on the Government to quantify that issue, to justify the comment being made.

How many instances of people putting themselves at risk have been reported and documented? What actions were taken in response to those instances under current arrangements? In what way were the actions taken in response, under existing laws, insufficient? In what way is this bill more protective than the existing laws of those people the Government is describing as foolish?

The Government has not provided a clear description of the problem to be addressed here, nor presented any evidence to support the extent or detail of the problem. In my view, that first criteria is a fail for the Government.

Given this, I mention here the difficulty for us in assessing the nub of this issue without the Government providing us with an evidence-based picture of it. Plainly, the central activities we are talking about are particular kinds of protest, especially in remote places, on worksites, and in particular, businesses.

We have all heard vastly different stories in terms of these protest actions; assertions made from both sides of those encounters. We have assertions put forward by the Government and others, about the actions of people engaging in protest. We have assertions from the Bob Brown Foundation categorically stating that it engages in nonviolent direct action. It is difficult for us to make those assessments, and it is even more unfortunate that the Government has not provided us with an evidence-based way to understand this problem, so that we can help navigate through those competing assertions.

It is hard for us even to assess what is being claimed in those assertions, if we are not fully understanding the terms, or the approaches that are being described. Some of those emails I read out begin to describe the approaches that are being taken by protesters. I asked for information from the Bob Brown Foundation about their approach to protest, to better understand what that was. I have no prior contact with them, so I have no idea about their approach.

I did receive some information from the Bob Brown Foundation which I will make reference to here to help put on the record a better understanding, in some sense, about the claims being made, about the approach and attitude of protesters in some of these situations, at the centre of this bill. I have a document here. It is a policy document on nonviolent, direct action. It says:

> This policy describes Bob Brown Foundation's commitment to undertake all protests, events and public activities, following long-established principles of nonviolent direct action. This policy applies to all BBF employees, volunteers and contractors.
>
> Policy
>
> Bob Brown Foundation supports the right of all people to take part in peaceful protests and direct action to protect the national environment and affect positive change in society. All protests, public activities and events organised and conducted by the Bob Brown Foundation will always follow principles of nonviolent direct action. This policy includes violence towards people, animals and property. The Bob Brown Foundation will never support, or carry out violence, or damage to property or act that deny liberty, or freedom to leave an area. The Bob Brown Foundation will not carry out actions, or protests which knowingly cause fear, distress or humiliation to any individual who may be the subject of, or involved with the protest.
>
> While protests or actions can evoke negative responses from individuals for a variety of reasons, our actions will never set out to provoke this response. Strategy, planning and conduct of all actions will seek to minimise this impact as far as possible. We believe that adhering to nonviolent methods is the only way to achieve our campaign goals. A strict policy of nonviolence is a tangible demonstration of our integrity and respect for others and is essential to maintaining the trust and respect of our supporters and the community. Participants in nonviolent direct action must be at least 16 years old.

That is the description there from this policy document of the approach taken and it is worth clarifying that on the record. In briefings from the foundation we had yesterday, we heard Jenny Weber take personal responsibility for the veracity of that approach and its application in the protest situations. I put that on the record not because I necessarily believe that some of the assertions being made about different sorts of behaviour are untrue, but we need to understand this is a complex picture and where you have an organisation clearly being targeted by this bill, in its actions, we have to give it the courtesy of understanding what their documented approach is, so we are not just making assumptions about how they operate and what people do under their name.

On the second page of this document is the nonviolent direct-action operating procedure and it describes a little bit more about that approach:

> All staff and volunteers are trained in nonviolent direct action and operate as peaceful environmental defenders. Before attending an action, each participant must complete the Bob Brown Foundation nonviolent direct-action training. Every action includes trained police and site contractor liaison officers. The role of the liaison officer is to communicate the safety protocols of the action and what is planned and taking place at the action at any point in time. The liaison officers will always seek out for subjects of the protest to clearly explain who we are and what we are protesting on that day. One liaison officer is responsible for talking to the people on the site involved, reassuring them that no damage will be made to machines, infrastructure or people. The police liaison officer will be the single point of contact between the protesters and the police, explaining to the police the purpose and process of the action and ensuring clear, concise communication between police and protesters. The following protocols for actions are communicated to all participants who must agree to abide by them.

This is the list of the protocols they agree to abide by:

> The safety of everyone involved in the action protesters and the subject of the protest is a priority. Remain calm. No running. No shouting. No physical contact. No intimidating attitudes. No aggression, physical or verbal. No humiliation. Everything is filmed for everyone's safety. Hi-vis vests, site-appropriate clothing and closed shoes are compulsory. All climbers and those on the ground, near climbers, must wear helmets at all times. No one can climb, rig, or access a tree-sit until they have successfully completed a trained climbing program. If you are faced with a threatening situation do not respond with physical or verbal violence. Call the police as soon as possible.

I share that so we can have a clear understanding of the approach the foundation asserts it takes in its protest actions. That is really important and when we hear assertions made, we can then assume that is the case across the board in all cases. However, what we are going to capture here with this bill is all those actions taking place out there, even those being undertaken under those parameters described in that document. It is important for us to realise that actions will be captured beyond the ones we might be assuming are taking place.

I note the Bob Brown Foundation also sent through to us a response to the paper we had been provided by MMG. It is really difficult and I made the point yesterday, by interjection, that we are not here to prosecute the merits one way or another of any particular situation or protest activity going on in the state at the moment. It is awkward that particular details about particular protests and the merits of that protest have come into this debate to some extent. That is not what this bill is about. We should not be forming our opinion on this bill based on the degree to which we might agree or otherwise with any particular protest action occurring or activity being undertaken that is prompting a protest action, either side of that. I found it difficult that sort of information has been brought into the debate and we are being provided with competing information about it. That is awkward and I have a particular difficulty if I feel

one group of stakeholders is provided with greater opportunity to provide insight and access then others. I felt uncomfortable during briefing sessions when some sessions were held in camera, the content of which, largely, was not required to be in camera, which meant that other stakeholders who readily could normally sit in were not able to sit in.

**Mrs Hiscutt** - It is my role when these things are requested. Anybody could have requested that and I would respect that.

**Ms WEBB** - Sure. It is unfortunate because those briefings are not on the record. We do not have a different way to hold them to account. We did have a party sitting in on these briefings remotely via video that we actually were not made aware of at the beginning of the day. It was those parties that then provided further critique and briefing on the briefings of others. This is an issue we will have to discuss more as a Chamber in terms of how we deal with this.

I know all members have received further information from the Bob Brown Foundation which was a response to the response from MMG to their briefing. I could seek to table that now. I do not believe it is relevant to this bill because, as I said, the merits of particular activities by organisations and particular protest actions occurring in relation to those activities is not the essence of this bill. All members have those documents available and if there are members of the public who would like to see those documents I am certainly prepared to share them.

I talked about three things that need to be done in relation to making a case for this bill. The first was identifying the problem to be solved which I do not believe has been effectively done. The second question, or criteria, is for a demonstration that the proposed legislation provides an appropriate or effective solution or response to the problem. The Government tells us this:

> … our law and penalties must clearly deter this behaviour and support people who are going about their lawful business

and further, it says:

> We want to deter people from this aggravated, unlawful conduct that has such significant economic impact on businesses and workers in these sectors.

We have heard in some briefings from the legal fraternity that evidence does not support the idea that increasing penalties provides a higher level of deterrence. In relation to this, given a key intent of the Government is to deter people from certain activities, what evidence does the Government have that the laws and penalties presented in this bill provide a greater or more effective deterrence in relation to the specific behaviour being targeted? What has the sentencing pattern been in recent years, for example, in relation to current offences that are being used to address this behaviour? For the kinds of protest actions targeted by this bill that are currently occurring, what sentences are being handed down? Are courts consistently applying the available maximum sentences to indicate that these current behaviours are already being regarded as the most extreme iteration of current offences and sentence at the highest penalties currently available? Surely, if the current maximum sentences available are not being applied to current cases, we are not seeing then an indication from the courts that these maximums should be raised, for example, to allow for greater penalty either as greater

punishment or deterrent. I do not know what this picture is. If the Government has the information, I am interested to hear it.

A great deal rests on the potential of this bill to act as deterrence in relation to very particular actions that are targeted by it. Every single industry group and business that we heard from in submissions and in briefings had this as their central measure of support for this bill: that it would stop or at least substantially reduce instances of problematic protest, as they see it, as a result of being a greater deterrence.

This is incredibly problematic. I hate to think that the Government has given these industry groups and businesses the impression that is the end that will be achieved by this bill. The Government certainly has not presented any evidence that is going to be the case and certainly cannot make any guarantees that will be the outcome of this bill. In fact, we have heard from numerous parties that it could very well have the opposite effect and that is quite tragic, that the Government may have given businesses and industries to believe that this will be an effective deterrent and will change patterns of behaviour at that very intense end of protest activity. There is nothing to tell us that will be the case.

Interestingly, one of the things that came up in briefings was the suggestion that we cannot have it both ways. We cannot make an argument potentially that this will not be an effective deterrent, while also making the argument that it would have a chilling effect. I will talk more about the chilling effect later; others have mentioned it. I actually do not think that that is true. Those two things are not mutually exclusive at all. This bill can be precisely that because the actions that would be impacted in both those very different ways are entirely different actions.

What we are looking for, in terms of deterrence from this bill, is deterrence of those most urgent and extreme frontline protest actions that we have all heard described. There is nothing to tell us that bill will deter those actions. What we are talking about, in terms of a potential and likely chilling effect, is on the vast array of other sorts of protest activity that sit nowhere near that urgent and extreme end of things.

Based on all the expert advice we have had, this bill is likely to have a chilling effect on that category of protest activity while at the very same time having absolutely little deterrent effect on the extreme end of protest activity. That is what we are hearing from experts as well. That is highly concerning because that is basically the polar opposite of what we would understand the intent of this bill to be.

Beyond deterrence, the Government states this bill is a commitment to workplace protection. The Australian Democracy Network says this bill does nothing to ensure workplace safety while doing everything to criminalise peaceful protest, and I agree with that. There is nothing in this bill, as I mentioned earlier, and its name is a lie, 'Workplace Protection Bill'. There is nothing in this that actually offers greater protections as such in the workplace.

We have heard from others, including the member for Rumney in her contribution, that there are myriad workplace safety issues that are crying out to be addressed by this Government that were a priority for it. With the efficacy of this bill as a deterrent to those targeted actions seriously questionable, the Government's claim that this bill is a commitment to workplace protections is spurious. In fact, it is odious, when there are genuine ways the Government

could seek to de-escalate workplace protest actions but they are failing to pursue those things because they do not suit their ideological agenda.

The more we are talking about solving the problem, I have heard time and again in briefings, and in contributions here, members asking, 'If we don't do this, what should we do then?' in regard to protesters disrupting businesses, especially in remote locations. I find that understandable as a response. It is understandable that those whose livelihoods are affected by this kind of protest action would feel frustrated and would want it to stop. It is highly understandable that some here who represent communities that are the most common locations for those protests would want to be able to do something to assist members of their community being affected in that way.

Quite simply and categorically, this bill will not make it stop. We know that the state cannot outlaw specific types of protest. The High Court would not have a bar of that. So, I believe the only answer is to look at what is driving protest activity and for the Government to take leadership to work constructively to de-escalate it. We have seen that leadership in the past result in improvement. This is an option that the Government has before it right now, but it is choosing not to pursue.

I believe that rather than squash protest out through increased charges and penalties - or at least attempt to do so - which we know will not work, the Government should be engaging more constructively with the issues that are driving the urgency of these protesters.

In her contribution, the member for Murchison raised structural matters that could also be addressed and suggested that if the environmental legislation protecting places is not adequate, then we should try to fix that. I can assure the member for Murchison, the NGOs and others are engaged in trying to do exactly that, at both a state and federal level.

We all know, very clearly, that law reform is not a quick business. Advocates for law reform count their campaign periods in years and decades, not months. Advocates for environmental law reform are up against some of the most financially powerful, politically connected industries in this country. It is a protracted David and Goliath fight to work for positive change on environment law reform.

So, in the meantime, while the law reform is being worked on at a structural level, these groups and advocates also protest at the front line to protect and preserve. It is not one or the other. It is generally both happening concurrently. At the same time, there is probably a third tranche of more general community engagement and protest that happens through less intense forms of protest activity like petitions, marches or rallies in capital cities or engaging with education through discussion and community engagement.

All those things happen concurrently, but we cannot just snap our fingers and fix structural issues to hope that those urgent frontline actions will stop and go away when the people undertaking them passionately and firmly believe that they are preserving and protecting something that would otherwise be gone. As we would all understand, once some of these areas are gone, that is it, there is no getting them back. Once a species is pushed to extinction, that is it, no getting them back.

In terms of the many people we have been hearing from this week who have participated in these frontline forest preservation actions, I am sure there is nothing more that most of them

would wish for than to stand down because successful law reform has occurred at a state and federal level and greater protections are in place at a structural level.

I understand members here wanting to take action, especially on behalf of their communities, which are the site interactions between protesters, businesses and workers. But it would be wrong to legislate from a sense of frustration and a sense that we need to feel like we are doing something.

Passing this bill is a fruitless action to take in delivering an actual outcome for change to those particular protest situations. It risks other negative impacts on our broader community, whose rights we are also here to represent.

Which brings us to that third consideration in assessing this bill. In that third criteria, it must be demonstrated there will not be any detrimental, unintended consequences beyond what we could expect to be acceptable. The Human Rights Law Centre has made an argument that this bill is likely to chill the democratic right to protest, which is a vital part of democratic accountability.

We saw in the open letter from that broad range of civil society groups, this statement:

> The Tasmanian Government's claim that it will not put in place anything that will limit lawful protesting is simply not true, when these anti-democratic, anti-protest laws do just that.

Again, from the same open letter.

> The state Government's proposed anti-protest laws are undemocratic and unnecessary. These laws, if passed, will silence communities from having their voices heard.

Also, from TasCOSS in their submission on the draft of this bill:

> The Bill may have a chilling effect on legitimate and lawful protest activity which could have a significant impact on the entire Tasmanian community … which could easily result in confusion and concern about whether legitimate protest activities are lawful.

The Community Legal Centres, in their submission, on the draft version of this bill, said:

> 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.

Let us remember it can be any or every member of our community who may find themselves in a situation that prompts them to engage in protest. The member for McIntyre made this point very clearly in her contribution. This is normal and common. It is an important way that we hold Government and decision-makers to account through protest. Government decision-making, sadly, is not always reflective of community views, nor does it always

include appropriate consultation with community to enable community voices to be heard and considered.

We have regularly seen Government decisions made and rushed through this place. We have even seen legislation passed which allows Government decision-making processes that would otherwise have appropriate community consultation built into them to be fast-tracked and community consultation to be dispensed with. In these circumstances it is not uncommon that we see communities turn to protest actions to have their voices heard and to try to curb fast-tracked processes, to try to change decisions that have been made.

The one that sprung to my mind was the Westbury community in recent years, and the member for McIntyre pointed out a potential opportunity when changes to the Ashley Youth Detention Centre site come.

**Ms Rattray** - Once we get an understanding as a community of what is proposed for the area, and I would like to think the Government is still considering some other model other than a straight-out replica of the Risdon Prison.

**Ms WEBB** - Indeed, either way, depending on how Government goes about making its decision, it is going to largely frame up how that community may respond. If it is something where the community feels they have not been heard, or have not had an opportunity to have their say, they may well turn to protest activity.

It is not just those protesters at whom the Government has primarily targeted this bill, who will be captured by it. This bill restricts democratic expression through protest of all Tasmanians. The changes in this bill and the heightened penalties will act to chill the availability of protest action for regular Tasmanians and local communities. In situations where it does not chill that action, it will expose those regular Tasmanians and local communities to heavy-handed charges and penalties.

For many Tasmanians leading regular lives in our local communities, the right to protest may not be one they have need to call on. However, if this bill is passed in the immediate future, they also may not notice the detriment it might bring to their right to protest. It is likely many will not notice until, potentially, one day they wake up and find they need to make themselves heard in relation to a government decision, like we have seen happen to communities in the past. Westbury, case in point.

I ask the Government what consideration has been given and what quantifiable assessment has been made of their expectation of the risk of this bill to chilling protest across the community in Tasmania?

Further to that, the point made by TasCOSS in its submission on the draft is this:

> Protests and demonstrations are particularly significant for those members of our community who may be excluded from traditional law reform mechanisms and can provide opportunities for inclusive community debate and political expression.

They say further:

> TasCOSS is extremely concerned about the potential for the Bill to discourage citizens from engaging in peaceful, legitimate protest for fear or confusion about the lawfulness of this conduct.

I will read a piece of correspondence because of TasCOSS mentioning that marginalised people are sometimes most in need of being able to protest as they do not have access to law reform mechanisms and access to government decision-making. I will not put a name to, but it is from a member of the Tasmanian Aboriginal community and this is what they wrote to us:

> I'm writing to urge you to vote against the anti-protest bill tomorrow. As a member of the Tasmanian Aboriginal community, I know that protesting is the only mechanism we have to represent ourselves. It is the only mechanism through which we have achieved a Royal Commission into Aboriginal Deaths in Custody, land return across lutruwita, saving the resting places of our ancestors, the changing laws to help our people.
>
> People who are born with automatic privilege, I am talking about not having to fight racism, sexism, health and education restrains, inter-generational trauma, et cetera, you may not fully understand the loss we continue to bear and the severe impact it has on our collective and individual social, mental, and physical wellbeing.
>
> We have to fight to gain the tiniest amounts of what we have lost since invasion. We do not have any representation in government, we do not have a voice, we do not have the opportunity to really have our say. You can only do this through protest. Would you really remove the last way for us to be heard as a community? I worked for years in government and I know how inauthentic and meaningless consultation really is.
>
> I am an engagement and communication specialist. I have been ignored and beaten down, so that the community's voice, not just the Aboriginal community, is drowned out by economics. Well, economics can improve without ignoring people, through fair and transparent engagement can work to the benefit of all, to find the right solutions that are equitable and do not destroy the oldest continuing culture on earth.
>
> I understand you may want to prevent loss of earnings for people in business, but we have lost our land, our heritage, our culture, our language, our people. When will it end? You and those businesses will not lose much at all through protest. You can only gain in the end by collaborative and constructive partnerships that will offer you social licence and more sustainable ways of working and succeeding.
>
> Please, please vote this down.

It is important to highlight the different sorts of impact this bill might have on different sections of our community. I was pleased to receive that communication from a member of the Tasmanian Aboriginal community to remind me of that.

We have heard very clearly from the union movement it does not support this bill, because it risks capturing a range of activities and actions its members regularly engage in as part of advocating for change and protecting their rights. Unions regard this bill as detrimental to workers' rights overall. Others have read into the record here the communications we have received from various unions articulating this quite clearly.

Social services in our community regard this bill as a risk to already marginalised groups. Civil society organisations regard this bill as an unacceptable limitation on the rights of all citizens. The likelihood of detrimental impacts from this bill, beyond its central intent to curb the specific types of protests, is well articulated and cannot be dismissed. On that basis the third criterion is also a fail for the Government.

The Government has said and I quote from the second reading speech:

> Several other jurisdictions have taken the necessary step of introducing legislation to curb these types of activities.

From that, I take it to mean that the Government seeks to imply that this legislation is simply aligning us with other states and the Commonwealth in some manner. It is, however, doing nothing of the sort. The various legislation from other jurisdictions is all particular to circumstances in those jurisdictions. Many are highly controversial and significantly opposed in the community, as this bill is, and some are likely to face challenges in the High Court, and are yet untested at that level. The laws in other jurisdictions referred to by the Government do not sanction this Tasmanian bill and it is misleading of the Government to suggest that they do. Overall, it is simply misleading to try to paint this bill as being a straightforward way of bringing us into alignment with some national approach on this issue.

I will move on to speak about some specific issues with this bill. We are given to understand by the Government that the bill does not present us with new offences or police powers. It is a simpler framework. It clarifies the law of trespass and public order offences making them more readily understood and enforced. It applies equally to all persons and businesses. It gives the court the ability to give higher sentences, if appropriate, for more serious conduct. That is the overview we are provided with about this bill. I acknowledge that the Australian Lawyers Alliance says, yes, this approach is more appropriate than the previous attempt; but that group still has significant concerns on the detail of this bill. Some of those I will make reference to as I pick up a few points throughout the bill.

The bill seeks to make changes to section 13 of the Police Offences Act 1935 around the matters of public annoyance. I note the Government has indicated its intention to put forward amendments to this clause, so my comments will relate to the bill as it is presented to us, with reference to the proposed amendments that we understand the Government is bringing.

The bill inserts a new element into section 13(1) of 'unreasonably obstruct the passage of vehicles or pedestrians on a street'. The Government has confirmed that this conduct can already be charged under section 13, and it can also be charged under the Road Rules 2019. In general, my understanding is that it is not good practice to introduce new offences already captured under existing laws and, in fact, the legislature should be actively seeking to ensure new laws are not duplicating existing offences.

It is interesting the term 'unreasonable obstruction' has been incorporated from both the road rules and other offences. The Government tells us that obstruction would be understood to apply to 'substantial or serious' obstruction and the Government has flagged further amendments to this part of the bill to make this explicit. I understand that under the amendment they wish to bring, it would read, 'unreasonable and substantial obstruction for the passage of vehicles or pedestrians on a street,' or did I get that round the wrong way? Those two elements would be there. The Government has done this in recognition of the fact that there were considerable issues raised in relation to this clause. They have acknowledged the validity of those issues by bringing this amendment to their own bill and they are attempting to fix it on the fly. I find this very concerning. This is an admission from the Government that they got it wrong. Unfortunately, I believe that the amendment they are proposing to make does not fully deal with all the concerns that were raised relating to this clause.

**Mrs Hiscutt** - Mr President, is this not a discussion for the Committee stage?

**Ms WEBB** - I am touching lightly on matters through the bill and in fact my notes at various points as I go through say, 'to be discussed in detail at the Committee stage,' so -

**Mr PRESIDENT** - Yes, if you can keep it as broad as possible and then save the detail for the Committee stage.

**Ms WEBB** - Indeed. I note that others have had the leeway to make mention of some specific aspects of parts of the bill, so I will try to do that in the most appropriate way possible. Looking at the bill before us, I note comments from the Australian Lawyers Alliance in its submission on the draft bill. They said:

> Whilst the Australian Lawyers Alliance welcomes the approach taken in the drawing of the bill, in that it represents a jurisprudentially composed effort at amending the act, the ALA holds significant concerns about the uncertainty attendant to the offences under the proposed section 13 of the act.

Further, they said:

> It therefore appears to the ALA that the paragraph (b)(ea) would, in the first instance, cover conduct already captured.

They raised questions about the vagueness of terminology used and they are, as the Leader has rightly pointed out, all of the matters that no doubt we will go into in greater detail during the Committee stage of the bill, if the bill arrives there.

The point that the ALA is making, in broad terms, is that a lack of clarity is detrimental to people when they are trying to interpret and understand what a law is about and how it might apply to them. In their submission, they go on to say:

> It is undesirable for a person not to know whether or not their intended conduct amounts to an offence until after they are charged and a court has reached a decision about the reasonableness of such conduct; and further, the ALA, therefore, considers the additional limb of the paragraph offers certainty to the extent that it duplicates a range of conduct covered by existing

> limbs of section 13(1). Beyond the compass of those limbs, however, it offers only uncertainty.

I am pointing out these aspects around the broad criticisms made of aspects of this bill because it goes to providing an explanation as to whether or not, and in what ways I can support or not support the bill, which is relevant to my second reading contribution.

Mr President, it is an important consideration. Citizens need to be able to understand what constitutes unlawful activity. When deciding whether to engage in an activity, how will citizens be able to assess whether it will constitute an unreasonable and substantial obstruction? What criteria will they apply? Where will they find that documented? It is going to be a situation that citizens grapple with, which is what will contribute to, as we are led to believe, that chilling effect, which is a major concern raised.

Another major concern raised by some expert stakeholders during consultation on this draft bill was the potential unintended impact on others. We had numerous groups, such as TasCOSS and Community Legal Centres, concerned about the way this particular aspect - which is in clause 4 of our bill - may well flow on to impact people who utilise public space and are known to be impacted more significantly by laws associated with public space than you or I might be impacted. This is what the Community Legal Centres said in their submission on the draft bill:

> We note that the research demonstrates that people experiencing poverty and homelessness are more likely to be charged with public annoyance offences. Significantly increasing the maximum fine is likely to have a disproportionate impact on disadvantaged members of our community.

My assertion is that, yes, no doubt the Government would say that will depend on the circumstances but when it comes to public space, it has to be much clearer than that. We have to make sure that it is not going to disproportionately affect already marginalised Tasmanians. To further criminalise the use of public space as a response to potential uncertainty in terms of when a person may be charged with existing offences is a disproportionate response to this issue. I consider that public space provision goes beyond the stated objective of this act.

I am also interested because, from what I can gather in the briefings and from understanding what we are trying to address with this particular provision in clause 4 - and perhaps the Government can confirm this for me - I have the impression that this provision is essentially being created to allow a more -

**Sitting suspended from 1 p.m. to 2.30 p.m.**

## RECOGNITION OF VISITORS

**Mr PRESIDENT** - Before I call on questions I welcome today to the President's reserve, John Ratcliffe and Liz Jaliyah who are joining us here today. John is well known in the Glenorchy and Moonah area, a long-term resident, and a very active community member. He has been awarded an OAM, a Paul Harris Fellow and a Melvin Jones award. Welcome, John. It is good to see you in the Chamber and thank you for the work you do in the community.

**Members** - Hear, hear.

## QUESTIONS

### Salmon Industry Moratorium

**Mr WILLIE question to MINISTER for PRIMARY INDUSTRIES and WATER, Ms PALMER**

[2.30 p.m.]

Noting that an issues paper on the 10-year plan for the salmon industry is forthcoming, what actions led to the decision to impose a 12-month moratorium on salmon farming? What issues were evident in the salmon industry for the moratorium to be required?

**ANSWER**

Mr President, I thank the member for his question. That was a matter for the previous minister and the previous Cabinet, of which I was not a part. If you are happy I will take that on notice and get some information for you.

### Rock Lobster Fishery - Proposed Changes

**Mr WILLIE question to MINISTER for PRIMARY INDUSTRIES and WATER, Ms PALMER**

[2.33 p.m.]

My question concerns the Tasmanian rock lobster fishery proposed rules and policy changes. Noting that the department appears to have regularly declined the decision to expand the 60-pot area, what has changed now to have this proposal included within the suite of rule changes for the rock lobster fishery?

**ANSWER**

I thank for member for the question.

The rock lobster rules have to be remade and the proposed changes have been subject to a 60-day statutory public consultation process. That ended recently on 30 May. That decision-making process and eventual policy position on proposed rule changes by recognised fishing bodies, such as the Tasmanian Rock Lobster Fishermen's Association, is a matter for the fishing body and not for this Government.

We understand that there are going to be some differing views in the submissions that are made through that process, and we understand that the 60-pot rule is going to affect different businesses compared to other businesses that may be smaller businesses. We are looking at all of those submissions and we are taking all of that information in and then we will make our decision from there.

## Meander Dam Capacity

**Ms RATTRAY question to MINISTER for PRIMARY INDUSTRIES and WATER, Ms PALMER**

[2.35 p.m.]

With regard to Tasmanian Irrigation, what discussions have taken place with stakeholders and the community to arrive at the decision to expand the take-out of water from the Meander Dam, given the dam capacity has not been increased?

**ANSWER**

I thank the member for the question. The Greater Meander Irrigation Scheme augmentation was developed due to interest from the irrigation community to increase supply to the greater Meander district.

The Irrigator Representative Committee, known as the IRC, was also consulted and engaged with by the local communities and Tasmanian Irrigation (TI) on the process to develop the scheme and the delivery of the additional water for irrigation.

The current capacity of the Meander Dam is 43 000 megalitres. Prior to 2020, Tasmanian Irrigation held water licences to the capacity of 25 500 megalitres. Tasmanian Irrigation can now reliably deliver an additional 11 000 megalitres at a high surety, and this has been facilitated by a Hydro water supply agreement and an updated hydraulic assessment of the dam yield.

An amendment to the Hydro Tasmania deed was finalised in November 2020, allowing TI access to a further 12 000 megalitres from the Meander Dam and 12 000 megalitres from the bed of the Meander River, within the boundaries of the Greater Meander Irrigation District (GMID). After a reliability assessment was undertaken, it was determined that 11 000 megalitres per annum could be reliably offered to irrigators.

The current water licence now allows TI to deliver up 37 500 megalitres from the Meander Dam, subject to various daily maximum flow rates and to deliver up to 12 000 megalitres from the Meander River, subject to a maximum daily flow rate. The water licence imposes various conditions on TI for the management of environmental flows from the Meander Dam. These are stipulated as minimum daily flows for each month of the year.

## ADF Veterans - Mental Health Issues

**Ms ARMITAGE question to DEPUTY LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Ms PALMER**

[2.37 p.m.]

For living and deceased Australian Defence Force (ADF) members who served at least one day in the ADF between 2001 and 2018, the age-adjusted rate of suicide was 22 per cent higher for ex-serving male veterans and 127 per cent higher for ex-serving female veterans when compared to the general population.

To this end and regarding the Rethink 2020, a state plan for mental health in Tasmania 2020-2025:

(1) Why have veterans been excluded entirely as a priority group from this plan, given their far higher likelihood of impaired mental health and suicide risk?

(2) During the development of the Rethink 2020 plan, were veterans identified as a priority group during the consultation phase? If so, why were they excluded from the final plan?

(3) Would the Government consider either revising the Rethink 2020 plan to include veterans as a priority group or developing a plan specifically to address veteran mental health and wellbeing?

**ANSWER**

I thank the member for Launceston for her question.

In response, the mental health and wellbeing of all Tasmanians, especially our Australian Defence Force personnel, veterans and their families, is important to this Government and we thank the member for raising her concerns.

The death of any Australian by suicide is a devastating tragedy that is deeply felt across families and friends, workplaces and communities. It can lead to an overwhelming sense of grief and loss.

The Government is working to ensure that all Tasmanians in suicidal crisis have access to timely and accessible support. The priority areas under Rethink 2020, Tasmania's state plan for mental health, were agreed through an extensive consultation process. Changes to these areas, such as including new priority population groups under Reform Direction 7, will not happen until we draft the next version of the overarching Rethink plan, which is anticipated will be in 2025, the year that the current plan expires.

In terms of annual updates, Rethink 2020 is supported by annual implementation plans. We are currently working with key partners, the Mental Health Council of Tasmania and Primary Health Tasmania, to update and develop new actions for the next Rethink 2020 implementation plan, which is expected to be completed later this year.

The implementation plan will also incorporate additional actions from the National Mental Health and Suicide Prevention Agreement and Tasmania's bilateral schedule to this agreement.

The Australian Government is primarily responsible for funding, policy and management of services for veterans. This approach is outlined in clause 37 of the National Mental Health and Suicide Prevention Agreement that all states and territories and the Australian Government agreed to and signed in March this year.

Under the national agreement, the Commonwealth agrees to be primarily responsible for, among other matters, funding and provision of mental health and suicide prevention services to veterans, defence force personnel, and people in immigration detention. Clause 37 also notes

that at times acute care might be required to be undertaken in state-based services, and this is certainly the case in Tasmania.

At a national level, the Australian Defence Force has a Mental Health and Wellbeing Strategy 2018-2023, as well as a Suicide Prevention Program in place. The Department of Veterans' Affairs has developed a Veteran Mental Health and Wellbeing Strategy and National Action Plan 2020-2023.

I also note the National Suicide Prevention Adviser's final advice to the former prime minister recommends that all jurisdictions identify national actions for priority population groups to be included in a national suicide prevention strategy. While the Australian Government assumes this responsibility, there are various programs and services across most Australian jurisdictions that have been established to provide additional support for transition and reintegration for veterans and that complements those funded by the Australian Government.

In relation to suicide prevention, I also advise the member that developing a new Tasmanian Suicide Prevention Strategy is an action under Rethink 2020. Consultation on the new strategy commenced on Friday 17 June 2022, with the release of the community online survey. This survey seeks feedback from the Tasmanian community on the direction for suicide prevention in the state.

The feedback from organisations associated with and supporting veterans and their families is important. The following organisations have been emailed the survey: Defence Families of Australia, Tasmanian Government Veterans Reference Group, Legacy Tasmania, Mates4Mates, Open Arms - Veterans & Families Counselling, RSL Tasmania, Partners of Veterans Association of Australia (Tasmanian branch) and Vietnam Veterans Association of Australia (Tasmanian branch).

The Department of Health, in partnership with the Office of the Chief Psychiatrist will also be hosting community consultations around the state in July. More details about the progress of the development of this strategy, including opportunities to be involved, will be posted on the Department of Health website.

We also acknowledge the current Royal Commission into Defence and Veteran Suicide. Hearings have been held in Sydney, Brisbane, Canberra and Townsville, with a hearing currently scheduled for 1 August 2022 in Hobart.

The interim report from the commission was expected to be finalised by 11 August this year. Once released, the department will ensure that the interim findings are considered in the development of Tasmania's new Suicide Prevention Strategy. The department will also consider the National Suicide Prevention Adviser's final advice as a source of advice in the development of the new Tasmanian Suicide Prevention Strategy.

Discussions about suicide can be distressing and for anyone who is listening in person, or on-line, if you need to please contact Lifeline on 13 11 14.

Mr President, I seek leave to table a document which is the Bilateral Agreement for Mental Health and Suicide Prevention.

**Leave granted.**

**See Appendix 1 on page 102.**

## Landfill Levy

**Ms LOVELL question to the LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT**

[2.45 p.m.]

(1) How much is the Tasmanian Government expecting to raise from the landfill levy across the Budget and forward Estimates?

(2) Have any appointments been made to the Waste and Resource Recovery Board? If so, who has been appointed and what is their experience?

(3) When will the statewide waste strategy be completed?

**ANSWER**

I thank the member for her question.

(1) Based on the Tasmanian Waste Levy Impact Study 2020 the landfill levy revenue, based on the levy starting rate of $20 per tonne, is estimated to be around $8.3 million in the first year 2022-23 and just under $8 million in the second year in 2023-24. The study indicated the levy rate increasing to $40 per tonne would see revenue of around $14 million in year three, 2024-25, and approximately $12.5 million in year four, 2025-26.

It should be noted these estimates are based on the best data available at the time and actual landfill tonnages will vary from year to year. The introduction of the levy will see a dramatic improvement in our collection of data on landfilling and resource recovery, so the accuracy of these figures will improve over time.

(2) On 17 June 2022, the Minister for Environment and Climate Change, Roger Jaensch MP, announced the members and chairperson appointed to the inaugural Waste and Resource Recovery Board via a media release. They are: Pam Allan, who was appointed as chairperson; Glenn Doyle, who is the nominee of the Local Government Association of Tasmania; Allison Clark; Matthew Greskie; Tony Ferrier and Helen Millicer.

The members were appointed based on their high level of suitability for the role in accordance with the criteria specified in section 11(4) of the Waste and Resource Recovery Act 2022. These criteria include skills, experience and knowledge in matters such as waste management; remote area waste management; resource recovery; industry development; regional development; finance; public sector administration; risk management and corporate governance.

(3) Under section 19(1)(a) of the Waste and Resource Recovery Act 2022, the board is to prepare a draft waste strategy and provide it to the minister within six months after the day on which section 19 commences. It commenced on 29 March 2022. Therefore, the waste strategy will be provided to the minister by 29 September this year.

The strategy is in effect once the minister has approved the draft waste strategy as provided for under section 19(4)(a).

## Prosecutions under the Building Act 2016

**Ms LOVELL question to the LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT**

[2.48 p.m.]

How many prosecutions have there been under the Building Act each year since it was introduced?

**ANSWER**

I thank the member for her question.

The Building Act 2016 regulates the approval of and standards for building, plumbing and demolition work. Councils have responsibility for many aspects of compliance and enforcement under the Building Act 2016. This includes issuing and enforcing building notices, building orders and emergency orders. Councils may initiate prosecutions through the Director of Public Prosecutions. The data relating to enforcement actions and prosecutions initiated by councils is not available.

As at 22 June 2022, there have been three prosecutions initiated by Consumer, Building and Occupational Services under the Building Act 2016. One matter was withdrawn in 2017, based on advice from the Director of Public Prosecutions, and two matters were initiated in 2021. Under the previous Building Act 2000, one prosecution commenced in 2016, and two matters commenced in 2017. These prosecutions were all successful.

## SUPPLEMENTARY ANSWER

## Tobacco Control Laws

[2.50 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, as a follow-up answer to the member for Launceston, further to the response provided in question 2(1) yesterday about the other two members of the Tasmanian Tobacco Control Coalition. To be clear, the Tasmanian Tobacco Control Coalition is an advisory group. It advises the Government and comprises 25 members, consisting of public servants, university academics, as well as individuals representing non-government health and community sector

organisations. The coalition reviews its membership annually, or as required - and I will seek some further information.

As a follow-up, we will not name these 25 people, because it gives open slather to the tobacco companies to target them.

## POLICE OFFENCES AMENDMENT (WORKPLACE PROTECTION) BILL 2022 (No. 15)

### Second Reading

**Resumed from above (page 47).**

[2.52 p.m.]

**Ms WEBB** (Nelson) - In a broad way I was reflecting on one element of the bill in terms of how I regard my support of it. I have concerns relating to the change that is proposed in clause 4 to section 13 of the principal act. I feel concerned that what we appear to be doing, in including new elements there, is looking for one possible opportunity to enable arrest of protesters on a handful of remote roads which are the site of protest actions. Really, there is not much else that is intended to be captured by that change. It concerns me that we would put a change in place for what would seem such a narrow apparent purpose, when it can have a much broader impact beyond that. It goes along with my concerns about the broad impact that might come from the bill, regardless of what certain intentions might be behind it.

I will talk briefly on further elements of the bill because, as has been pointed out, we will be going into them in detail in the Committee stage. The elements that are proposed in clause 5, which relate to section 14B of the Police Offences Act, add elements to provide for aggravated trespass to be linked to various sorts of activities, as many others have discussed in their contributions. I am concerned about these aspects as well. In a similar way, I feel there is a lack of clarity around these proposed additions. I feel there is an issue around imprecise language and intention in them.

The Community Legal Centres, in their submission on the draft bill, quoted further from the ACT Guide for Framing Offences. This is the quote they included in their submission:

> Aggravated offences should be used very sparingly and carefully considered.

The Community Legal Centres also noted that in the High Court case Brown v Tasmania, it was made clear that a compelling justification is required by legislators where a heavy burden on the implied freedom of political communication is proposed. Aggravated offences that might impose into that space are going to have to be carefully considered in this context.

We heard from many groups who contacted us that the sorts of maximum penalties that are being aligned with these proposed new aggravated elements to the offence of trespass are disproportionate, and they are concerned about the impacts these may have. We have the first of these inclusions being focused on obstruction when trespass is committed, and there are significant penalties available for obstructing a business or undertaking - in fact, double the standard penalty for trespass, the same as aggravated penalty for trespassing in a home or with a firearm.

There are broad questions around these inclusions. Are each of them necessary? Would they actually provide outcomes that the Government is seeking? We have an open question there, as we do with the whole bill. It is questionable whether it would deliver the intentions the Government is seeking, which is a deterrence to particular kinds of behaviour.

We need to ask ourselves, are these necessary? We also need to ask ourselves, are they framed clearly enough? When we get to the Committee stage, if we do get to the Committee stage, we will be able to interrogate that in more detail. I note that many submissions on the draft bill raised questions about the clarity of the way these are framed.

With the second of those new inclusions where you are committing a trespass, and then the second one, where you are causing directly or indirectly a serious risk to the safety of yourself or another person, similar concerns are raised around the lack of clarity of the terms 'directly' or 'indirectly', and what would constitute a 'serious risk' to the safety of yourself or others.

The penalty units there are very significant. Many questions have been raised by stakeholders on this inclusion, and no doubt we will get to the bottom of some of those during the Committee stage. I am particularly interested to explore the parameters - or to what extent the protesters could be held responsible for people they have no direct contact with, and did not directly affect with their actions. No doubt that degree of connection will be one question we will need to tease out.

The third new inclusion around aggravating circumstances for trespass is, as some others have commented on, in relation to the body corporate committing a trespass, and in doing so obstructing a business or undertaking. This is an interesting one. It is a very large penalty. In fact, I believe it is 24 times higher than a simple trespass penalty, and higher than any other penalty in the Police Offences Act, but I stand to be corrected on that.

It is quite extraordinary, and groups like TasCOSS express concern about it being unclear how a body corporate might commit the offences, and the lack of clarity compounding what would seem a disproportionality and excessiveness of the penalty. That would be interesting to understand more about. We have had some information during briefings on how this might operate; I do not want to speak for the Government in trying to explain it. No doubt they will be able to do that themselves when asked to do so in the Committee stage.

Again, there is a lot of opportunity here for lack of clarity, and some confusion as to how it would be applied. I have serious reservations about each of these elements that introduce these opportunities for aggravated trespass to be charged.

Mr President, I said before in this place, and I reiterate now, that it is important to remember that we cannot conveniently divide people into two camps, with workers on one side, and protesters on the other. It is politically convenient to divide people into us and them, to pitch people against each other, but the right to protest extends to all citizens - and many if not most citizens will engage with that right at some point in their lives, or someone close to them will.

We had some other contributions from unions, and I note one came in during the lunchbreak speaking about workers. I am going to read in the communication that we received

recently from the Health and Community Services Union so that becomes part of the record here in the view of that union representing many valuable workers in this state. It reads:

> Honourable members of the Legislative Council,
>
> It is with great concern and urgency that I write to you today to request that the Police Offences Amendment (Workplace Protection) Bill 2022 be abandoned.
>
> As secretary of the Health and Community Services Union, HACSU, it is my primary duty to defend our 9000 members from dangerous work conditions, unsustainable workloads, inadequate remuneration and insecure employment. The Legislative Council is considering this bill at a time when the Tasmanian health care and community systems are reeling from over a decade of inadequate resourcing and policy shortcomings, the cumulative effects of which became abundantly apparent due at the onset of the COVID-19 health emergency.
>
> Whilst our entire society suffers from the consequences of government failures, it is our members who actively suffer the immediate frontline stresses of service provision to vulnerable Tasmanians. These members are increasingly frustrated by the intransigence of government when meaningful reform is required and demanded and wish to expand their capacity to organise and exercise their right to protest on and around worksites, many of which are not covered by the so-called protected industrial action provisions.
>
> Furthermore, as rightly identified by members of the Legislative Council, successive Tasmanian governments have failed to address community concerns about environmental and heritage protection and management, inequitable market constructs and inequitable social practices. Instead of demonstrating collaborative leadership, governments have employed politically divisive legislative measures and proposals that further polarise the Tasmanian community. This practice must come to an end.
>
> This bill is another such divisive measure. No degree of amendment changes that fact. Therefore it must be voted down. Governments must focus legislative efforts on collaboratively addressing community concerns and frustrations which lead to protests, rather than increasing penalties for acts already covered by existing provisions in the Police Offences Act and the Criminal Code. We at HACSU are very willing to be part of collaborative approaches and I intend to write to the Premier and heads of agencies to discuss this is in greater detail.
>
> Yours sincerely
> Tim Jacobson, State Secretary
> 23 June 2022

I agree with many of the sentiments in that correspondence from HACSU. As expressed in that correspondence, I feel that no degree of amendment to this bill makes it appropriate legislation to be supported in this Chamber. I know I have flagged with members potential

amendments for this bill. I have considered those amendments on the basis of requests from outside advocates and civil society groups that have been interacting with us about their concerns on the bill. I reserve my right to bring those amendments, if and when we get to the Committee stage, but even if all were going to get through, I do not necessarily believe that they would make this a redeemable bill. It may well be that I choose not to bring those amendments after all when we get to that point. I am trying to be up-front and on the record at this point in time about my overall broad feeling about this bill.

Protest, as we have heard, does not happen in a vacuum. It is a product of its social and political environment. Any escalation of protest action can be linked to what is occurring in the social and political environment around it. We need to look for effective ways to address any intensification of protest by bringing people together, not driving them further apart.

Put simply, the Government has not effectively identified and established that there is a problem here that needs to be solved beyond remedies available. The Government has not demonstrated that this bill as a proposed solution will address the ambiguous apparent problem. Independent experts have reliably warned us that this bill will have broader consequences and a chilling effect on citizens in our state.

I agree with the assessment of the Australia Institute in its submission on this draft bill. The bill continues to preference the ability of businesses to carry out work over the right of people to protest by giving broad powers to police to arrest peaceful protesters and imposing harsh penalties. I also agree with the Human Rights Law Centre that this bill is not necessary or proportionate, nor does it contain robust safeguards and oversight needed to protect against misuse.

Finally, I concur with the recommendation of TasCOSS in its submission. It is a thoughtful recommendation and it was this:

> That the Tasmanian Government engage in further consultation to adequately identify the needs of businesses and workers and to present these findings to the community before proceeding with any further attempts to legislate in relation to these issues.
>
> We make this recommendation in light of the importance of the freedom of political expression and the significant detrimental effect any limitation of this right may have on our community.

On that note, I conclude my remarks and state that as this bill is before us, as a responsible legislator, I cannot support the bill.

[3.06 p.m.]

**Mr DUIGAN** (Windermere) - Mr President, I am very happy to speak to this one as it is something I feel strongly about. I have had firsthand experience of this and this legislation is something that I feel is firmly supported by the majority of the people I represent.

As mentioned by the Leader, greater workplace protection is a platform the Government has taken to three successive elections. This bill has had a long gestation period and it aims to better balance the interests of those who wish to voice their opinions by unlawful protest action and those whose lawful rights to work and earn are impacted by those actions.

I will put it on the record like everyone else we have heard from on this issue, I have no problem with people protesting. Bring it on.

As rightly noted, over the past 50 years Tasmania has seen plenty of protests. As mentioned yesterday in our briefing by Bob Brown Foundation chair, Roland Browne, regarding the High Court in Brown vs Tasmania, protests have been a way of promoting legislative change, and I agree. That, however, is not a one-way conversation.

This bill is a legislative response to protest activity that is now routinely extreme, protest action that targets the livelihoods of Tasmanians going about their lawful business, and protest action that compromises the health and safety of not only workers but the protesters themselves. This legislation is about striving to address the balance.

Yesterday, also in our briefings, Unions Tasmania showed us that iconic photo of Zelda D'Aprano chained to the doors of the Commonwealth Conciliation and Arbitration Commission, striving for equal pay for women back in the 1960s. In 1969 that was a powerful image: an activist chained to the doors of that austere public institution.

**Ms Forrest** - I would have joined if I was old enough.

**Mr DUIGAN** - Indeed you would have, I have no doubt.

As I say, in 1969 that was a powerful image. However, today an activist chaining themselves to something is so commonplace as to be banal. It has morphed from a powerful image into a lazy tool of economic injury. It is about adding cost to business. It is about stretching time lines, making it even harder to make ends meet, making Tasmania a more difficult place to do business and a less attractive place to invest.

Here in this place we might like to think that we know a little bit about protests. It is not unusual for protests to happen here on the lawns of parliament, sometimes closer to the doors. It is entirely appropriate. After all, this is the place where we decide what is lawful and what is not.

The difference is that, come what may, with protests that are happening here at parliament, when we turn up for work we get paid. I ask members to consider their reactions if for every day there was a protest at parliament, the worksite was closed and we were sent home, and we were not paid. How long would we be prepared to accept that situation? How long until our attitudes to that activity were hardened? It is a hypothetical for us, but that situation is a reality for people in Tasmania going about their legal work. Yesterday, while there was protest happening out the front I was ushered into the Legislative Council special doorway by Mr Mills and I thank him for that. Sadly, the secret doorway is not an option for people going down Helilog Road at the moment. They do not have the special doorway.

**Ms Forrest** - You could have also gone around the back.

**Mr DUIGAN** - Indeed and I would have done. I am happy to go through the protest.

**Ms Forrest** - Don't tell them where it is.

**Mr DUIGAN** - The secret door?

**Ms Forrest** - It used to be our entry once upon a time.

**Mr DUIGAN** - Indeed. Yesterday we heard from Lawyers Alliance, Greg Barns, who made the point that higher penalties may not be a deterrent and there is evidence to support that assertion. I am comfortable that it is an appropriate response because nowadays much protest action is designed to maximise the financial penalty inflicted.

Workplace health and safety standards have changed drastically since the 1970s and 1980s when environmental protesting took its roots here in Tasmania and really got going. Back in the day, there would be an ad hoc, case-by-case response to protest activity, probably a lot more push and shove and that sort of thing. Nowadays, however, as businesses happily place a much greater emphasis on safety, unlawful protest activity comes at a much greater cost to business. Sites are shut. Workers are stood down. Protocols are engaged. Security fencing is built. Security guards are employed. As the cost rises for those being protested or who are subject to the protest, it is not unreasonable that the costs should rise for those people making the choice to engage in that unlawful protest.

It is about trying to address the balance. I point to the minister Mr Barnett's correspondence to all members on 16 June where he expands on that point:

> By using the existing framework of the Police Offences Act, the focus is on penalties that are capable of serving as a proper maximum penalty and deterrent. The bill does not increase police powers and it does not limit lawful protest and free speech. Put another way, the bill does not criminalise any currently lawful conduct. People wanting to make a point, political or otherwise, have always had a choice whether to do it lawfully or unlawfully. Our policy will not change that choice.

We heard yesterday again in the briefings from MMG, and as has been covered extensively by the member for Murchison and the member for McIntyre, that MMG for the past 18 months, almost two years, has been looking to do some preliminary work on a new tailings dam. At every stage that has been met with extreme protest activity. Hundreds of thousands of dollars in financial damages inflicted on a company going about its lawful business, working within the frameworks set out in this parliament. If those hundreds of thousands of dollars were from an act of arson or an act of theft, would we care more about that because the cost is just as real, probably less insurable? It is not just large mining companies that are affected. It is family businesses, sole traders, it is mums and dads.

The member for Mersey and the member for Nelson read for the record the vast number of emails we have all received.

**Ms Webb** - Certainly not all of them.

**Mr DUIGAN** - No, not all of them.

**Ms Webb** - Small examples.

**Mr DUIGAN** - Certainly an example. The member for Mersey even gave us a Robin Hood narrative. You were cast.

**Ms Rattray** - What about me?

**Mr DUIGAN** - I do not know that you were, maybe, Maid Marian, perhaps, Friar Tuck - the Government, certainly as the evil Sheriff of Nottingham in that context.

**Ms Forrest** - Well, you look a bit like him.

**Mr DUIGAN** - Well, maybe, perhaps I will have to wear that.

It is important, if we are going to characterise certain sections and members of the community, and it has been well described by the Bob Brown Foundation, that their people are well trained. They are well trained, well organised, well resourced and they are very effective at mounting campaigns. It is what they do. I make the point these are not the people in our society who struggle to have their voice heard. These people have made an art of amplification. These are the loudest voices in our community and they number in the hundreds.

This legislation seeks to provide some protections to the silent majority. The many thousands of people who will go to work each day, in lawful, productive enterprise, and those people deserve the relatively modest protections offered in this bill.

I will also read for the record a submission from the Tasmanian Chamber of Commerce and Industry to us yesterday who were not included in our briefings. This is from Michael Bailey, Chief Executive Officer of TCCI:

> The Tasmanian Chamber of Commerce and Industry (TCCI) is a strong supporter of the Government's Police Offences Amendment (Workplace Protection Bill) 2022.
>
> We fully support the rights of individuals to protest in public places, but not in Tasmania's workplaces.
>
> We have had too many occasions in Tasmania where individuals have used protest as a form of economic terrorism. They have attempted to stop law-abiding Tasmanians from going about their legal employment.
>
> Examples in Tasmania include individuals and organisations locking themselves to timber furniture in furniture stores, locking themselves to machines at sawmills, invading animal processing factories and invading offices of businesses they do not agree with. Each of these examples have cost the businesses financially and severely impacted the mental health of workers. Current trespass legislation does not provide the deterrent needed to stop these actions once and for all.
>
> The TCCI implores the Legislative Council to pass this critical piece of Legislation.
>
> Michael Bailey, Chief Executive of the Tasmanian Chamber of Commerce and Industry (TCCI)

Mr President, I commend the bill to the House.

[3.18 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank all members for their contributions. There have been some interesting ones. Some I am not sure are absolutely 100 per cent correct, so I will run through for some clarity on the bill and to tidy up some of those misconceptions.

I also thank those people, community groups and businesses who made submissions on the bill. All submissions received were thoroughly considered and some led to changes to the consultation draft, including clarification of section 13 and other matters. We also appreciate the considered input that has been made at briefings to members.

Members have noted the critical importance of worker safety. I will first make some brief comments on additional measures outside of this bill. There are only two paragraphs, two statements.

The Government continues to invest in strategies to lift the capabilities of WorkSafe to engage with and educate industry and workers, as well as monitor and enforce compliance with the Work Health and Safety Act 2012, such as additional inspectors, that were in the Budget. National discussion on the model framework also continues to lead initiatives, such as ensuring psychological injury is recognised as a significant risk in Australian workplaces. For example, a decision was made to amend the model Work Health and Safety Regulations to deal with psychological injury.

In relation to calls for 'industrial manslaughter', the national work health and safety ministers also unanimously agreed to introduce gross negligence or equivalent as a fault element in the Category 1 offence in the model Work Health and Safety Act.

Tasmanian workplace deaths may currently result in a person being charged with the crime of manslaughter as this crime is already provided for in Tasmania's Criminal Code Act 1924.

I will move on to some more specific issues of the bill.

Despite the Government's clear position there continues to be misunderstandings about the bill. Importantly, the bill does not make currently lawful protests unlawful. The bill does clarify some aspects of existing offences. I cannot make it any clearer: unreasonable street obstruction and trespass are already offences today. Yet we do not see the police swooping in to bundle up the knitting grannies, or the homeless, as has been feared in some of the submissions, or even some of the activities that do involve trespass.

In reality, police statements and media show that police respect the right to protest and only step in when reasonably required. Indeed, we have seen reports of police encouraging protesters to move off roads onto footpaths where their point can still be made without substantially obstructing vehicles and pedestrians. When action is needed police seek to inform people of what is necessary to continue their activities. If necessary, as a first step, police may direct people to disperse. If people do not disperse on police direction there can be arrests made today for street obstruction or trespass.

What this bill does is to clarify the law and it ensures appropriate maximum penalties for the worst examples of street obstruction and also trespass that causes obstruction or serious

risk. As discussed in the briefings, it is clear that penalties can be relevant to deterrence. All sentencing is about community protection, offender rehabilitation and deterrence. Particularly for the organised actions that often occur to block streets, or commit trespass, the maximum penalties can be expected to deter the worst type of offending and encourage lawful activity. I say it again, the bill simply does not make currently lawful protests unlawful.

As I said in the second reading speech, obstruction in the law already has a high threshold but, as discussed, the Government is prepared to make this explicit in the legislation through an amendment at Committee stage. I emphasise that this is not an oversight by the Government in the tabled bill, given we do not believe the feared, unintended consequences apply. However, we are prepared to provide reassurance through the amendment.

If the Government's amendments pass the only increased maximum financial penalties under section 13 will relate to both unreasonable and substantial street obstruction. That will arguably be a higher threshold than all current street obstruction offences so the amendment covers narrower, more serious conduct and clarifies the law. Lawfully permitted obstructions, under work health and safety or any other legislation, are explicitly protected as some of the examples of what might be considered reasonable obstructions.

The maximum penalty will increase from approximately $500 to $1700. This is consistent with the range of penalties for similar offences in other jurisdictions, neither the highest nor the lowest. Maximum penalties, as discussed in briefings, are for the worst type of offending by the worst offender. Courts continue to have full discretion to give the appropriate penalty, including no penalty at all.

The amendment does not unreasonably impact public activities. There is already a commonly used permit process in the Police Offences Act to conduct activities that obstruct streets such as demonstrations, races and processions. This promotes engagement and planning with police to enable traffic obstruction to be managed safely in the public interest. It does not 'sanitise' protesting. As the Bob Brown Foundation campaign member said, already there is usually engagement with police around protesting.

As an example of advice from DPFEM's southern officers, no permits have been refused unless the time frame is unreasonable, such as a protest the following day to shut down a road. Even with short notice, police try to facilitate all applications.

Members have referred to blockades on remote streets leading to forestry and mining sites and roads, such as the concerning videos that we saw yesterday. That is one of the scenarios this amendment seeks to address. However, serious road obstruction and risk from trespassing can strike closer to home.

I will briefly address some of the issues raised regarding section 14B amendments.

The importance of union and industrial action has been raised in relation to the bill, particularly in relation to trespass. In response, any trespass a union member or other person does with lawful or reasonable excuse as part of industrial action today can still be done under this bill. This includes the important duties and protections in relation to protecting work, health and safety. The Government's position is that it would be illogical to say industrial action might get a penalty today, but not an aggravated penalty under this bill. I note the Human

Rights Law Centre also noted possible constitutional concerns with excluding industrial action from the aggravated penalties.

I make note of the Government's response to the Police Association of Tasmania's submission. I know a couple of letters came in recently.

Proposed section 14B(7) has been amended and a new subsection (8) added in part due to the submissions from the Police Association of Tasmania and the Department of Police, Fire and Emergency Management. The provision in the bill before the Council is simpler and easier to understand than the version in the consultation draft. It clarifies when a police officer may take a mining tenement holder to be the 'person in charge' of the land, so that person may withdraw consent, such that the person on the land must leave or be subject to the law of trespass.

I can clarify that an owner of land that is subject to a mining lease cannot be found to trespass on their own land. Of course, they might be subject to other existing regulatory offences if they obstruct authorised mining activity. In practice, however, mining lease holders give ample notice of entry to private land and work closely with private landowners in accordance with codes of conduct, and under the oversight of the Mining Tribunal.

Consideration was given to inserting powers of arrest into the existing offences in the Mineral Resource Development Act 1995, as the Police Association suggested. However, the act is about obstructing mining activities generally while the Police Offences Act offence is about clarifying the law of trespass. Further, the mining act has higher maximum financial penalties compared to the standard penalty for trespass or the proposed penalty for trespass that obstructs businesses or causes serious risk. It is therefore more appropriate to deal with trespass on mining land in this bill, where the trespass is so closely related to the mining operations that the tenement holder can reasonably be considered in charge of that part of the land.

Departmental officers spoke with the Police Association as recently as this morning. This confirmed that while the Police Association prefers not to include the mining provisions for simplicity, and feels section 13 as tabled is sufficient, they support the bill even with those proposals.

Some members have been concerned about the proportionality of the trespass penalties, that they are not excessive. For example, the maximum penalty of the trespassing and obstructing a business is the same as the current penalty for using a vehicle to trespass. The penalties are neither the lowest or the highest penalties for comparable offences in Australia. Yes, the penalty for a body corporate is high. As body corporates cannot be subject to imprisonment, it is typical for financial penalties to be five to 10 times higher than the individual penalty, which this bill reflects.

General principles of corporate criminal liability have arisen from the common law and are now well established.

The general principle at common law is that a corporation is 'personally' liable for the mental state and conduct of a 'directing mind', such as the board of directors, acting on the corporation's behalf.

For example, a company's board of directors acting as a directing mind of the company might resolve that the company should trespass on land or obstruct a street. The company might direct its employees to cause that to happen.

In closing, the bill deserves support. It is targeted to appropriate maximum penalties for the worse type of offending by the worst offenders, which impact workers, workplaces and the public without impinging on rights such as any lawful protests that are currently occurring today.

**Mr PRESIDENT -** The question is that the bill be now read for the second time.

**The Council divided -**

| **AYES 11** | **NOES 3** |
|---|---|
| Ms Armitage | Mr Gaffney |
| Mr Duigan (Teller) | Mr Valentine (Teller) |
| Ms Forrest | Ms Webb |
| Mr Harriss | |
| Mrs Hiscutt | |
| Ms Howlett | |
| Ms Lovell | |
| Ms Palmer | |
| Ms Rattray | |
| Ms Siejka | |
| Mr Willie | |

**Bill read the second time.**

## POLICE OFFENCES AMENDMENT (WORKPLACE PROTECTION) BILL 2022 (No. 15)

### In Committee

[3.39 p.m.]

**Clauses 1, 2 and 3 agreed to.**

**Clause 4 -**
Section 13 amended (Public annoyance)

**Mrs HISCUTT -** Madam Chair, I move the following amendments to this clause:

**First amendment**

Page 4, paragraph (b), proposed new paragraph (ea), after "unreasonably" *insert* "and substantially".

**Second amendment**

Same page, after paragraph (b).
*Insert* the following paragraph:

(ba) by inserting the following subsection after subsection (1):

(1A) Without limiting the generality of subsection (1)(ea), the circumstances where an obstruction, of the passage of vehicles or pedestrians on a street, may be reasonable includes, but is not limited to, an obstruction that -

(a) is authorised by, or is lawfully permitted under, a permit issued under section 49AB; or

(b) is authorised by, or is lawfully permitted under, another Act of the State or the Commonwealth including, but not limited to, the *Fair Work Act 2009* of the Commonwealth, and the *Work Health and Safety Act 2012.*

**Third amendment**

Same page, paragraph (c).

*Leave out* that paragraph.

*Insert instead* the following paragraph:

(c) by omitting from subsection (3AA)(a) "subsection (1) or (3)" and substituting "subsection (1), other than subsection (1)(ea), or subsection (3)";

**Fourth amendment**

Same page, paragraph (d).

*Leave out* that paragraph.

*Insert instead* the following paragraph:

(d) by inserting the following paragraph after paragraph (a) in subsection (3AA):

(ab) a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, in the case of an offence under subsection (1)(ea); or

**Fifth amendment**

Same page, paragraph (e).
*Leave out* that paragraph.

In speaking to that, the Government has listened and is responding to feedback from members across this Council and other stakeholders in making these amendments to clause 4.

The first amendment is to expressly provide that the obstruction needs to be unreasonable and substantial.

While the legal meaning of 'obstruct' does require the obstruction be substantial, the term has been expressly included to remove any doubt members may have about its meaning. This is intended to ease concerns that the provision may inadvertently capture those sleeping rough on the streets, or protesters merely holding placards on a footpath.

The second amendment is to provide two examples of what may amount to a reasonable obstruction, without limiting what might amount to a reasonable obstruction. The two examples provided relate to obstructions authorised under a permit - the obstruction authorised by any other legislation, whether state or Commonwealth.

This does not limit other things being considered reasonable, but directly addresses the importance of protecting lawful activity, and things such as reasonable, industrial or other public action that goes towards protecting people from injury.

The third amendment to clause 4 is to restrict the increased penalty to the obstruction of streets. So, the penalty for things such as committing a nuisance or disorderly conduct will not be impacted under this amendment. Again, this is to reduce the scope of the bill and avoid unduly impacting disadvantaged members of the community.

Madam Chair, when he came to brief us, the minister heard those concerns of members, and this is the action he has taken, to clarify what can and cannot happen with this bill.

[3.44 p.m.]
**Ms LOVELL** - Madam Chair, I want to clarify a couple of points. First of all, I support these amendments because I believe they do somewhat improve this clause, and if the clause is to be supported in the bill, in my view this version would be better than what is currently in there.

In particular, I want to comment on the change to the penalty, and that the higher penalty would only apply to this new public annoyance offence. I raised this issue with the minister as well, and I am pleased to see he did move on that.

I have a question about this second amendment, (ba), and the new subsection (1A).
To be absolutely certain, and to have it on the record, this paragraph states that:

> … where an obstruction, of the passage of vehicles or pedestrians on a street, may be reasonable includes, but is not limited to …

I want to explicitly hear from the Leader that this does not mean that other types of protest activity would be excluded from being considered 'reasonable' - including, potentially, protests without a permit and protests that are not protected industrial action.

**Mrs HISCUTT** - I can confirm what the member is saying is correct.

[3.45 p.m.]

**Ms RATTRAY** - Madam Chair, I appreciate that the minister has listened to the concerns that have been raised and it certainly does provide some comfort. In the briefing yesterday from Greg Barns we heard the term 'substantial' was highlighted. I know you have just read out something, Leader, but is there any more that could be added to make clear that it does meet legal standards? That was the challenge that was put to members yesterday around that word, 'substantial'. I put in my comments, is there another word? Obviously you - or the Government and the OPC - have considered what other word would be appropriate. That is my first question.

My second question is about public annoyance. Obviously, that is what it refers to. I also asked in the briefing yesterday about adding the word 'intimidate'. I was given a response on using the actual word 'intimidate', and I want that response put on the public record, because it does not mention in any of the list of public annoyances that a person shall not, in a public place: 'behave in a violent, riotous, offensive or indecent manner, disturb the public peace', et cetera.

It has no reference to 'intimidate', so I want the response that was given to be on the public record.

**Mrs HISCUTT** - With regard to your first question, the word 'substantial' was advised as appropriate by the OPC. It is used in various acts, including the Criminal Code Act 1924. It was discussed in Brown v Tasmania -

**Ms Rattray** - Brown and Others.

**Mrs HISCUTT** - Brown and Others; it has been shortened here. It was discussed in Brown v Tasmania at paragraph 71 that, consistent with the principle of legality and section 3 of the Acts Interpretation Act 1931, the term 'obstruct' should be construed so as to apply only to the conduct or presence of a person that 'substantially' or 'seriously' hinders or obstructs business activities. Based on that the OPC, when drafting this, has decided that the word 'substantial' is sufficient.

With regard to your second question, 'intimidation' could take up or mean those other things we just spoke about. Here already there is prohibited language and behaviour. Section 12(1) of the substantial act that we are in, the Police Offences Act 1935, says:

> **12. Prohibited language and behaviour**
>
> (1) A person shall not, in any public place, or within the hearing of any person in that place -
>
> (a) curse or swear;

(b) sing any profane or obscene song;

(c) use any profane, indecent, obscene, offensive, or blasphemous language; or

(d) use any threatening, abusive, or insulting words or behaviour calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

Intimidation can also be considered by the court when setting penalties for obstruction of the street. It is covered.

**Ms Rattray** - That was the answer I was looking for and those others were an addition, thank you.

[3.50 p.m.]

**Ms FORREST** - Madam Deputy Chair, I rise to speak in support of this motion. I know this is in direct response to many of the concerns raised by those who expressed legitimate concerns about groups being caught up in a higher penalty regime who are vulnerable members of our community, who often have limited access to support and frequently do not have a voice. These people are often not actually engaging in protest activity or even activity that might be considered offensive or doing any of those other things the Leader read out from the Police Offences Act.

In speaking to this, it is important to respond to a couple of the comments made earlier that relate to this matter. I have heard members talking about the need for clarity in the legislation. This actually does make it clear we are not trying to pick up anybody but the worst offenders doing the worst acts, where they are in a position where they are actively preventing people going about their lawful business. That is what we are seeking to do. It was too broad previously. I did talk to the minister and I am sure others did too, about can we not put all this into the trespass provisions in the bill? That was problematic for lots of reasons. It is an appropriate mechanism to have it carved out and basically have the scope of this provision reduced to those particular offences and the behaviours that would warrant a higher penalty. I am somewhat concerned it still sits within the public annoyance area. I believe, because the higher penalties only relate to the more serious breaches and the other matters, they are already there in the legislation in other forms and other legislation in terms of obstruction. This is a reasonable approach and does provide clarity and some balance.

I note, and this refers to the comments related to this - I received some correspondence from TasCOSS following my contribution yesterday that goes to this point. They said:

> As you said yesterday in your speech, it is important to get the balance right to ensure the rights of workers are protected in a way that does not compromise the safety and wellbeing of others in the community. We believe the offence, even with the amendment as proposed -

This is the one we are talking about now:

> fails to achieve that balance.

That is the view of TasCOSS. They believe it still fails to achieve that balance. Speaking about me again:

> You have previously spoken in parliament about the need for genuine consultation and engagement with industry groups to recognise the particular issues they are facing.

I believe the Government has actually consulted. The submissions that have been read repeatedly by members in this Chamber are from many of these groups. I know they have also engaged with - if you want to talk about industry - the industries being directly and negatively impacted by some of these behaviours, where one would argue it is not peaceful in that it is actually creating a great deal of anxiety and stress for people who are actually trying to go about their lawful business. Being concerned they may start up an engine on a vehicle, or something - as the member for Huon alluded to - and finding there is something not right or in the dark. At this time of year it is dark when you get to work and dark when you go home, and there is genuine fear they may not see something.

I am not quite sure that is a fair comment. It is not like there has been no consultation. There has been consultation for eight years and, up until this point, the Government has done a poor job in understanding what is being asked. Now they have listened and this amendment we are dealing with is evidence of listening. Despite the fact they thought it was okay, I know the Leader thinks it would be fine without it, but that is not the case and I know that is probably the view of others.

I wanted to make those points because it is important to recognise while some seem to feel there is not any evidence of a need, I invite any members here to come with me to my electorate: come, visit and look. There is an open invitation from any of the mines or others there who are having challenges with this very real matter. Come and see what the challenges are and what happens when they cannot go to work, and what that really means. That is an open invitation. I cannot do an electorate tour this year coming up, but I can take you there before Christmas, if you would like. You can see the protesters there and, as I said, the time when I was in South Marionoak they were doing absolutely what you would expect and hope protesters do. They were standing back, they had placards, they were talking civilly, but they were filming, which they say they do as part of their approach, but it would be nice to be asked if there is a need.

**Madam DEPUTY CHAIR** - The member has a question?

**Ms FORREST** - I do not have a question as such of the Government, but I want to express my support for an amendment that is before the Chair and explain why I am supporting it, particularly where there has been criticism of my actions, criticism of my comments. I want to make it clear there is an issue to be addressed. I feel as confident as you can with any legislation we pass here that it is going to meet the mark. We do end up back here on numerous occasions amending legislation because things are overlooked. We are dealing with an amendment, not questions about how a clause operates and I am trying to make that point as to why I am supporting. My decision to support this is clearly on the record and hopefully, it will not be challenged or questioned in a way that does not misrepresent what I was saying.

[3.57 p.m.]

**Mr GAFFNEY** - I do take heart we can do some second reading speeches when we are making these amendments because that is what I heard, so in light of that leniency I want to ask a question at the end.

Clause 4 has created the most angst within our community and I have recently received something from the Human Rights Law Centre. They say:

> It appears this clause has been created to address concerns about the blocking of remote access roads in a small number of workplaces in regional Tasmania, and we would agree that this is an issue that has been raised by the honourable member.
>
> It is inappropriate, however, to address such an isolated issue with a broadly applicable public space offence. The unintended consequence of this offence will then significantly impact Tasmanians who wish to peacefully protest against a spectrum of issues.
>
> The significance of public space offences negatively impact marginalised groups. We do not believe that the Government amendments ameliorate those risks.

They are clearly saying that they do not believe the amendments here. My question to the Leader, as pointed out to me by Scott McLean the Tasmanian District Secretary, he says here, recently in Victoria:

> Our union as you would be aware, timber workers have borne the brunt of behaviour for three decades …

Obviously, the member for McIntyre would agree with that.

> … which we do not simply consider a legitimate protest activity. Our union supported laws passed in the Victorian Parliament's Legislative Assembly this week increasing its deterrence of workplace invasions in timber harvesting safety zones.

They actually supported that piece of legislation, but they are not supporting this legislation, especially this clause.

> We note that the intention of the Tasmanian bill has a wider applicability then the Victorian Bill, regarding both prohibited behaviour and the location of it. It is more akin to provisions in the NSW parliament Roads and Fines Legislation Amendment Act. We believe that this amendment, unamended, the Tasmanian rule will have the consequence of curtailing legitimate protest activity, for this reason. We do not understand the reason why the Liberal Government of Tasmania refuses to support similar amendments than those that were proposed and ultimately supported by the Liberal government in NSW.

My question is, why has the Government not taken on board two lots of amendments? Two acts have been supported by unions and the unions would be supportive of their industry, whether it be timber or mineral industry, and then coming out here they are not supporting this one. Whilst we can say it is good that the Government has listened and changed or made some amendments to the legislation that we found out yesterday, before we were doing our second reading speeches, I am concerned that once again, this demonstrates amendments on the run.

It demonstrates that they are putting this through, not because they think it is the best legislation, but because they think that is what is going to be accepted by the people in this place. I say that they should come back again, review that, and consult with the unions that have not been consulted about the impact of this bill.

I will not be accepting the amendment.

My question is, was there any consideration given to other legislation proposed in both Victoria and New South Wales addressing these specific things? It is because they believe this clause will whitewash all of the protests. The government of the day can use this at any time. They are saying at the moment it is only for those isolated cases, but it can be used at any time that they take offence to any protest activity anywhere in the state, regarding any policy that they do not like.

That is why I have some pause for this one.

[4.01 p.m.]

**Mrs HISCUTT** - Other jurisdictional approaches were considered and many jurisdictions have higher penalties for road offences. As I said in my response, huge impacts on businesses and the community do not only apply in forestry, mining or other remote settings.

I will read part of a police statement to illustrate how the law, strengthened by this bill, would respond to unreasonable obstruction of roads and risky trespasses while not impinging on the right to protest. This is a police media statement. It says:

> Two people have been arrested and charged following a protest by Animal Liberation Tasmania on the Tasman Bridge about 8 a.m. this morning.
>
> …
>
> The two people allegedly climbed onto the gantry on top of the Tasman Bridge and hooked themselves onto the bridge.
>
> …
>
> Acting Inspector Philippa Burk said that the two people voluntarily removed themselves from the bridge following police negotiations.

This is a quote from Acting Inspector Burk, and she said:

> Tasmania Police appreciates that people have the democratic right to protest but actions such as what occurred this morning will not be tolerated.

> Peak hour traffic was thrown into chaos, the safety of the two protesters on the gantry of the bridge was a risk and the actions of the protesters could have resulted in a traffic crash on the bridge.

The media release then goes on to say:

> There were approximately 20-30 protesters on the walkway of the bridge from the same group waving placards. They were allowed to remain on the bridge.

That is the end of the statement. This perfectly demonstrates that higher penalty discretion for courts is a necessary response to address such massive disruption to the community, workers and business.

In an example such as this, it is also clear that police have a continuing respect for the democratic right to protest. In this case only two people obstructing the road had to go and ultimately were convicted of a nuisance under section 13, while 20 to 30 people were free to conduct their protest on the walkway.

**Amendments agreed to.**

**Question - That clause 4, as amended, be agreed to -**

[4.04 p.m.]

**Ms LOVELL** - As I flagged in my second reading speech and have been quite open about, I do not support this clause and I will be voting against it. I was happy to support the amendments because I believe that the amendments do improve the clause, but they do not improve it enough for me to be able to support the clause.

I am still concerned that this clause will restrict protest activity that is not explicitly mentioned in the clause. While I appreciate that the intent of the Government is to try to address an issue that is occurring on one particular road, I am not convinced that they have been able to draft legislation that does that in a way that does not also capture other forms of protest in other streets and other roads. That is why I cannot support it. It goes too far.

I also note that whilst the Government's consultation has, from what I heard, improved on this bill, there has not been consultation with unions. I have been advised that no Government member has ever contacted Unions Tasmania as the peak body about this bill. Unions Tasmania did put in a submission to the draft. They were not contacted regarding that submission. The matters they raised in that submission were not addressed in the bill, so I challenge the idea that there has been broad consultation.

I agree that there has been consultation with lots of industry groups, and I appreciate this is a significant issue for industry, but it is also an issue for unions in particular, and many other community groups. It will become a more significant issue for those groups should this clause be supported into the bill. I oppose the clause and I urge other members to vote against it as well.

**Mrs HISCUTT** - As you can see, I have already read it all out, I will not repeat it all again, but this amendment definitely improves the bill as per the concerns of members in the

Council during our briefing stage. The minister has taken note of the concerns and I do believe that it covers what everybody is afraid of. I think it will. We would add that Unions Tasmania is on the department's standard consultation email list, so they might not have been face to face, but they got the email, like all the others did, asking for submissions from them, so they were not not included.

**Ms Lovell** - But no follow-on the submission that they put in?

**Mrs HISCUTT** - Unions Tasmania was concerned about section 13, and the tabled draft did have an amendment to that. I urge members to support these amendments. The minister saw the concern and he has made moves to address the concerns of the Council.

[4.07 p.m.]

**Ms WEBB** - I rise similarly to the member for Rumney to say that I was pleased to see the amendment go through from the Government on this because it somewhat improved what we have been presented with in the bill. However, I am still not satisfied that this is an appropriate clause to be supporting overall. I am rising to explain that I will not be supporting this clause.

The concern that I have is in addition to the concerns already expressed, about other forms of protest action that might be captured here. I am also substantially concerned about the issues raised about the broader impact, not on protest action, but on the community and particularly marginalised members of the community when we bring in another public space offence like this. It is another way that we seek to manage people in the public space.

Research from jurisdictions around Australia tells us very clearly that marginalised groups are substantially affected whenever we expand the sort of offences that we deal with within the public space. It just happens.

So, regardless of how this might operate in the very limited circumstances the Government wants to target it at, and regardless of how that might then concerningly operate on other sorts of protest activities, there is a third level there that is of concern. That is how it operates more broadly as a public space management offence. To me, that has not been well mitigated as a risk. The evidence says fairly clearly that it is going to have an impact. If this bill passes, it will remain to be seen exactly what that is in the state. I hope that it is well documented and that we, if necessary, can do something about it down the track, if this bill were to pass.

**Mrs HISCUTT** - There is a very high threshold for these offences, but the obstruction of a street is already an offence, and there is relevant case law on this point. Obstruction requires the lessening of a substantial degree of the commodiousness of the use of the highway for legitimate purposes by using it for purposes other than a highway. That clarifies it a bit more. The amendments were made by the minister in reaction to a concern from this Council. I urge members to please support the amendments and things will be a lot better because it will be clear who can and cannot, and who this is targeting and who it is not.

[4.10 p.m.]

**Ms LOVELL** - A couple of last notes on this. I appreciate that these amendments were made by the minister in response to concerns raised by the Council and I thank the minister for doing that. However, it does not mean that those amendments address all the concerns that we

have and it does not mean that we necessarily will agree with the clause as amended. That is the position that I find myself in.

I also note that the Leader has explained that Unions Tasmania are on a standard email list for consultation, inviting submissions to draft bills. Inviting someone to put in a submission and then ignoring that submission is not consultation. I will make that point.

We have also heard from a number of organisations, including Unions Tasmania and separate to Unions Tasmania, which is the peak body for most of the unions in the state. We have also heard from the CPSU, the CFMEU and HACSU that they do not support this legislation and they do not support this clause in particular.

I firmly believe that while there is a legitimate issue that needs to be addressed, that issue, for the most part - putting aside the issue with the road leading into these worksites, and I know that this is specifically Helilog Road - I have not been convinced that the issue on Helilog Road can be dealt with in a way that does not capture other roads and activities outside that area. Putting that aside, because I am not convinced that can be done, the legitimate issue of workplace invasion and action that puts people at risk - which is the issue that we want to address and we want to fix - can be dealt with by the other parts of the bill should this clause be struck out. That is the position I am in. I urge members to consider that and consider voting against this clause so that we can get a bill through that will deal with those other issues.

**Mrs HISCUTT** - I put on the record that the submission was considered by the department. It does not mean that they have to act on everything that everybody wants, otherwise we would not get anywhere, but yes, the department has confirmed that they have definitely looked at and considered the submission.

[4.12 p.m.]

**Ms FORREST** - I rise to say that I support the amended clause, which is the question before the Chair at the minute. I note that the member for Rumney has a subsequent amendment coming to a later clause which seeks to deal with particular concerns related to industrial activity particularly, so I am not going to speak too much about that now. I make that point, because it is relevant to the comment in my support for this.

I see this clause, with the amendment, which is intended to increase the penalty for substantially and unreasonably obstructing a road - and yes, it could be any road, but it has to be 'substantially and unreasonably'. There are a number of provisions there that clarify what we are talking about here that will directly assist the workers who do not need to protest in a workplace. They need to get to work. I see that without this clause as well - and if we get to the next clause and we support that amendment, subject to the debate on that we are saying we will make sure that these workers are assisted and not heavily penalised for taking action that protects their workplace, or raises workplace safety concerns, but we are not going to take an action here that protects workers who are trying to go to work, many of whom are union members themselves.

If we do not accept this then - and I believe it will do the job it is intended to do in the worst offences, in the worst conditions - you are not actually supporting these workers who are workers, who are trying to get to work, trying to get paid, or businesses that are doing lawful work, whether it be in the forest, in the mine, on a piece of agricultural land, whatever it is.

There are ways of protesting. We know there are many forms used. I do not think we should be treating one group of workers less favourably here by saying we do not support this carving out to enable workers whose only access to a worksite is down a road, in favour of other workers - not in favour of but then we go on and say, 'Let us protect these workers and the actions they wish to take'. We need to be consistent in this, recognising that there are different workers involved here, and that this legislation is intended to address the very real challenges that are faced.

To vote against this clause now it has been amended will ignore that group of workers who this is intended to support. Those workers who are being psychologically harmed, some physically harmed, who deserve a measure of protection, like the other workers who want to protest against unsafe workplace practices or unsafe staffing levels or whatever. I will talk more about that later on when we get to that, but if you knock out this clause, then we are actually leaving those people out in the cold.

**Madam ACTING CHAIR** - The question is that the clause as amended stand part of the bill.

**The Committee divided -**

| **AYES 8** | **NOES 6** |
|---|---|
| Ms Armitage | Mr Gaffney |
| Mr Duigan | Ms Lovell |
| Ms Forrest | Ms Siejka |
| Mr Harriss | Mr Valentine (Teller) |
| Mrs Hiscutt | Ms Webb |
| Ms Howlett (Teller) | Mr Willie |
| Ms Palmer | |
| Ms Rattray | |

**Clause 4 as amended agreed to.**

**Clause 5 -**
Section 14B amended (Unlawful entry on land, &c.)

[4.22 p.m.]
**Ms LOVELL** - Madam Chair, I move the following amendment in my name -

**Clause 5**

Page 8, paragraph (d), after proposed new subsection (2AC).

*Insert* the following proposed new subsection:

(2AD) Subsections (2AA) and (2AC) do not apply to a person who is convicted by a court of an offence under this section if the offence was committed -

(a) in the course of the person being engaged in -

(i) industrial action; or

(ii) an industrial dispute; or

(iii) an industrial campaign; or

(b) at a workplace at which the person works at the request of an employer of the person; or

(c) at a workplace owned, occupied, operated, or used, for the purposes of a business or undertaking, by an employer of the person.

I spoke to this in my second reading speech. This is really about providing some assurance and protection particularly for workers, but also other persons who are involved in a workplace dispute in a workplace.

We have heard from the Government and many other stakeholders. The Government claims it supports workers' right to protest in their workplace.

We heard earlier today about the recent decision by the Anti-Discrimination Tribunal where it was found the state Government had discriminated against union members by trying to stop them attending stop-work meetings which were being held during the last public sector wage negotiations. Workers were advised they would not be able to use annual leave or flex time to attend the stop-work meetings. Some workers received text messages from managers while they were at the stop-work meetings advising them their absence was not authorised and they were instructed to return to work.

The Anti-Discrimination Tribunal, Tasmanian Civil and Administrative Tribunal, found a couple of weeks ago that the Government had discriminated against its workers on the basis of industrial activity and has ordered the state and the head of the State Service to apologise to workers for that discriminatory conduct.

I mention that example not because that was an example of the trespass offence, which is what this clause is in relation to, but because that illustrates when the Government says it supports workers' right to protest, it has actually demonstrated very recently that is not the case. I do not think we can take their word for it when they say they support workers' right to protest.

I also wanted to make the point this was something Unions Tasmania called for in their submission. I do not know if people have seen the Unions Tasmania submission, but it is not particularly lengthy; it is one page. Unions across Tasmania have been opposed to these laws for eight years. It is well known they have had strong opposition to these laws. They were invited to put in a submission. They put in a submission that said, in particular, they would be looking for some kind of protection for workers and for union activity. They also said in that submission they were open to further discussion about that, they heard nothing and their concerns were not addressed through the bill.

It is also interesting in the previous iterations of this bill, there has been a carve-out for protected industrial action. We have had conversations with the minister about this and have

told him those carve-outs were not sufficient because they only talked about protected industrial action. Even that was better than having nothing at all.

Going to the amendment specifically, I will talk through parts of that amendment so it is clear what we are seeking to insert into the bill.

New subsection (2AD), paragraph (a):

> (a) in the course of the person being engaged in -
>
> (i) industrial action; or
>
> (ii) an industrial dispute; or
>
> (iii) an industrial campaign; or
>
> (b) at a workplace at which the person works at the request of an employer of the person; or

Paragraph (a) now is clear that what we are saying there is, if people are there, and remembering there is a trespass clause, there has to have been a trespass offence committed. We are not arguing the penalty should be reduced, the penalty that currently applies to trespass should not apply or that people should not be charged for trespass as they are now under the current legislation. All we are saying is, if that trespass offence was committed in the course of industrial action, or an industrial dispute or an industrial campaign, that the higher maximum penalty would not be able to be applied, just the regular trespass offence that applies in the current legislation.

Paragraph (b) talks about a workplace, 'at a workplace at which the person works at the request of an employer of the person'. I will note at this stage that the use of the word 'or' between each of these paragraphs is deliberate. That is to ensure people do not have to satisfy each of those paragraphs but just one, but they have to either have been engaged in industrial action, industrial dispute or industrial campaign, or they must be at a workplace in which the person works at the request of the employer of the person. That can either be in their own workplace, and it is worded that way also to capture instances where people might be requested to be working at a location that is not their place of work. An example of that might be a delivery driver who might be attending a place to make a delivery that is not their place of work, but is there at the request of their employer, performing their duties.

The third paragraph, paragraph (c):

> (c) at a workplace owned, occupied, operated, or used, for the purposes of a business or undertaking, by an employer of the person.

is again to capture where there might be an industrial dispute at, for example, a head office of an employer. It would also capture an instance where there might be a retail chain of stores and someone ordinarily works in one store and, on this occasion, they are in another store that is not their normal place of work. It is still a workplace owned, occupied, operated, or used for the purpose of a business or undertaking, by their employer.

The other point that I want to make clear is this exemption is not about applying an exemption to a particular group or a class of people, union members or workers, but for a type of activity. That is captured in the very first part of this amendment. Subsections (2AA) and (2AC) do not apply to a person who is convicted by the court of an offence under this section if the offence was committed in the course of the person being engaged in these three types of industrial activities. That would then also cover union officials, members of the community who might be there to support those workers, other union members who might be there to support their comrades in their protests, family members who might be there cooking a barbeque, any of those normal types of activity we would see in a workplace protest.

This is an important amendment because it is often low-paid workers who have no other option but to take industrial action to be heard. I do not want to and cannot pass legislation that might infringe on that ability for people to take action in their workplace. I have spoken at length in my second reading contribution about why it is important this covers all industrial activity and not just protected industrial action, which is the usual term we use when we talk about industrial action because that is the only term that is really available in any form of legislation. I spoke yesterday at length about the lengthy process and the number of hoops people need to go through to take protected industrial action and that is not sufficient, and why we want to protect all types of industrial action.

This amendment is also based on an amendment that was inserted into the New South Wales legislation, which was their most recent, and most similar to this legislation, about other obstruction to roads and bridges. This amendment was moved by the Labor Opposition in the New South Wales parliament, and was supported by the Liberal Government in New South Wales, in recognition of the importance of people feeling comfortable and assured that they can continue to take industrial action in the way they currently do.

I am a little confused as to why, when this Government says they support workers being able to take action, they also would not support this amendment.

**Ms Rattray** - They might.

**Ms LOVELL** - You never know. Never say never.

I know some concerns have been raised about the constitutionality of this amendment. I have sought advice on that matter, and received some advice from George Williams AO, from the University of New South Wales, who is generally regarded as an expert in constitutional matters and is a well regarded lawyer in this field.

Mr Williams has seen our amendment and has made the following comments in relation to its constitutionality. To be clear, he is not commenting on the constitutionality of the bill, just our particular amendment. His advice is that:

> The amendment would reduce the impact of the legislation by exempting industrial conduct, and so lessen the overall restriction on political communication.
>
> This would discriminate between types of communication, but this is likely a smaller problem than the impact of the legislation in limiting political communication in the first place.

> Any increased risk due to the amendment would likely only be marginal, so long as the exemption of industrial conduct can be justified as reasonable and appropriate.

I also refer to an email that was forwarded to us all while this debate has been underway, and which the member for Mersey has referred to already. People may not have had a chance to see this, because we have all been in the Chamber absorbed in this debate. This was sent at 3.40 p.m. by Jessica Munday, the Secretary of Unions Tasmania. I will read her email first:

> Dear Legislative Council,
>
> Please see below correspondence from the Tasmanian Secretary of the CFMEU Manufacturing Division, formerly known as the Forestry Division of the CFMEU, regarding the Police Offences Amendment (Workplace Protection) Bill 2022.
>
> This should be taken as correspondence from this union as the secretary is away from their office and asked for my assistance in sharing this with you.
>
> Regards
> Jessica Munday

The email from Scott McLean reads to the Legislative Council members as addressed:

> I am the Tasmanian Secretary of the Manufacturing Division of the CFMEU, formerly known as the Forestry Division of the CFMEU, and prior to that the Australian Timber Workers' Union.

Members, this is the union that represents the workers who are most directly impacted by this, being forestry workers.

**Ms Rattray** - Those who have been around a while know Scott.

**Ms LOVELL** - You will know Scott well.

> I write to you regarding the Police Offences Amendment (Workplace Protection) Bill 2022, the Tasmanian bill, which is currently before the Legislative Council.
>
> It was my intention to address the Legislative Council briefing yesterday, however, I was unable to alter my diary, given the short notice of the briefing.

As an aside, I do know Scott went to considerable lengths to try to be there yesterday.

> As a union official of many decades, I have organised and joined many legitimate protests myself. The goal of legitimate protest is to hold powerful institutions to account and to seek justice.
>
> The right for citizens to undertake legitimate protest is paramount in a democratic society.

However, reckless behaviour targeting the health, safety and economic security of workers, their families and communities impacts some of the most economically vulnerable people in society, and governments should act to stop it.

As you would be aware, timber workers have borne the brunt of behaviour for three decades, which we simply do not consider legitimate protest activity.

Our union supported laws passed in Victorian parliament's Legislative Assembly this week, increasing the deterrent of workplace invasions in timber harvesting safety zones.

We note that the intention of the Tasmanian bill has a wider applicability than the Victorian bill, regarding both prohibited behaviour and the location of it, and is more akin to the provisions in the New South Wales parliament's Roads and Crimes Legislation Amendment Act.

We believe that, unamended, the Tasmanian bill will have the consequences of curtailing legitimate protest activity.

For this reason, we do not understand why the Liberal Government of Tasmania refuses to support similar amendments to those that were proposed and ultimately supported by the Liberal Government of New South Wales. Nobody has articulated to us a potent argument about why these similar amendments, protecting legitimate protest activity, should not apply to the Tasmanian legislation.

We are appalled that community support for the plight of timber workers is being used to promote a bill which contains provisions that curtail legitimate protest activity.

Therefore, our union does not support the passage of the Tasmanian bill without the Labor amendments being agreed to by the parliament, and urges opposition to the bill in the absence of those amendments being supported.

Scott McLean
Tasmanian District Secretary
CFMEU Manufacturing Division

As many of us have spoken about, there is a legitimate issue here affecting particularly forestry workers and also mining workers, and that is an issue that many of us want to address.

However, it is important to note that the union representing these workers, that would be dealing with the impacts of these protests every day, does not support this bill without some protection for their own workers and their own members to be able to undertake legitimate protest activity and, in fact, they would prefer this bill not to pass should there not be protection in there for that type of activity.

I know there is some concern about making distinctions between different types of activity and different people. I understand that. I do not disagree with that, to be honest. I do not disagree with the impact that this bill will have. I do not like the impacts of this bill, particularly with clause 4 remaining. I am very much not in favour of the impact that this bill will have on other activity and other community groups. In terms of this clause being applicable to trespass offences, I do not think it is an unreasonable line to draw to say that workers should be able to participate in legitimate union activity in their own workplace - or legitimate industrial activity, not necessarily union activity in their own workplace - without fear of having these higher maximum penalties applied.

I urge members to support this amendment. Again, I do not believe it will harm the intent of the bill and the ability to address the issues that the Government has expressed as its intention, but it will provide that extra protection and extra reassurance to workers in those industries.

[4.38 p.m.]

**Mrs HISCUTT** - I urge members not to support this amendment. The Government does not consider it desirable or appropriate to distinguish between different categories of people, or decide that certain causes are more worthy than others. We want all citizens to be treated equally under the law and, for that reason, we will not be supporting a specific exemption for unions.

It is important to note that the amendment put forward by the Opposition is only an exemption from the aggravated penalty for a trespass that obstructs a business. As happens today, the person participating in industrial action could still be prosecuted for trespass; however, they will only face the standard trespass penalty, regardless of whether they obstructed a business. This is a difficult position to justify - even more so by the fact that the offence of trespass has the safeguard that a person with reasonable or lawful excuse may still enter land, buildings and vehicles. Anything a union or union member is reasonably or lawfully excused of doing today can still be done under this bill.

The amendment also excuses the higher penalty for any worker at their workplace, even if not for industrial action. If you read the amendment, it seems pretty clear that an unhappy worker who breaks into his or her place of work and obstructs the business would be excused from the higher penalty.

Members would be aware that there are comprehensive systems and legislation in place in relation to union activity and workplace health and safety at both the state and federal levels. Some of this legislation does provide a lawful excuse for what would otherwise be trespass. For example, union officials are permitted to enter workplaces in certain circumstances under both the Fair Work Act at the Commonwealth level and the Industrial Relations Act at the state level and the Work Health and Safety Act 2012. In addition to, 'reasonable,' or 'lawful' excuses, the activity of protected industrial action also has immunity from prosecution under the provisions of the Fair Work Act 2009.

Given all of that, what exactly is the purpose of this amendment, because they can do that under those acts? Further to this lack of clarity, members have heard from a Mr Pender, from the Human Rights Law Centre. It was mentioned in his letter that potentially there are constitutional issues that arise with inserting a provision that seeks to treat one group of people differently from others, or discriminate between different political viewpoints. For these

reasons, the Government does not support the amendment as lawful and reasonable excuse is sufficient and does not favour one cause over another.

If members were to take a little bit of time to actually read it and the 'or, or, or,' if you go to (b) anybody can break into a business and do as they like, as I have explained. There is nothing there about industrial action. It just says:

> at a workplace at which the person works at the request of an employer of the person.

It is not clear. I urge members not to vote for this amendment because it will carve out a certain group and I do not really understand why you would want it to be there when you read it. I urge members not to vote for the amendment.

[4.41 p.m.]

**Ms RATTRAY** - I am addressing my mind very much to the amendment put forward by the member for Rumney. I have already shared my concerns about having a particular group of people and I know that the number is 50 000, we have been told, who actually are members of unions. I am interested in understanding if 'worker' is inserted before 'at a workplace' then that narrows it down to the workers of that workplace, not anyone else.

You talked about the people who may well be supporting industrial action, but they do not need to be on the site. They can be cooking the barbecue or doing whatever else. That is my question to the member proposing the amendment. If 'worker' was inserted before, 'at a workplace' on (b) and (c) would there be any issue with that? Then it makes it very clear who is entitled to enter that workplace, a 'worker,' who works there, not just all and sundry, because I want to protect those workers as well. I want to support their right to protest. We have already heard a number of times today how important over years and years those protests have been.

I am in your camp there, member, but I am concerned that, as the Leader said, this may well open up too much of an area. That is my question to the member and I apologise that it is just - as you work through these you look for alternatives, or suggestions on how you can make it more confined if you like but still achieve the same outcome. I am interested in hearing the views of the member proposing the amendment.

**Madam CHAIR** - Before the member for Rumney responds, I urge other members to get up if you have other questions. She only has two more calls, so if there are other members who wish to pose questions, or speak to it.

[4.44 p.m.]

**Ms FORREST** - Madam Deputy Chair, I am broadly in support of this amendment. I am not quite sure that the Leader has identified the issue correctly. I am listening to both aspects here.

You talked about a cohort of people, or a class of people being carved out of this, but as the member for Rumney says, and the way I read it - and I note the Deputy Chair's comments when she was speaking, about this being an 'activity', not about people. People undertake activities. It is about ensuring that those people who currently do will continue to take protest action in their workplaces on matters generally of safety, workplace safety, or the safety of those they care for - in the case of nurses and other health professionals - or it may be pay and

conditions, that mean that they are really not being paid commensurate to their responsibilities and in line perhaps with other jurisdictions.

I want the member for Rumney to talk more about the legislation that passed in New South Wales and the basis for that. You touched on that it is a Liberal government there, and they were convinced of its value being there. It is not generally a party that represents workers the same way that the Labor party traditionally has, so I am interested to know more about that.

I know there have been many times in my former life as a health professional where - and this is more so in the private setting than in the public sector - I have turned up for work and they are so short-staffed that it is impossible to provide safe care to the women in the ward at the time, particularly when you have women actively labouring. You simply cannot leave a woman in the second stage of labour on their own while you attend to another one in second stage, who is pushing, birthing the baby, or you might have one who has just given birth. You think she is okay, and you dash to the other one, and she has a postpartum haemorrhage while you are out of the room because you have not had time to fully ensure that her safety and welfare occurs. Or her baby may develop breathing problems, which happens sometimes a little bit after the birth, not immediately.

I have been in those situations where we are expected to work in unsafe conditions. Unsafe for us, because if a mother or baby dies on our watch, imagine the trauma of that for everyone involved. Also, it is not safe for the people who are in the care of these people. This activity has been going on for a long time, and it will continue to go on.

The point the member for Rumney is making here is that where that does prevent access to a workplace, it is unlikely to be in the circumstance that I have just referred to. It is likely to occur - and I have talked to people, I have employees from a mine site who will remain nameless, where they were genuinely and legitimately concerned about electrical safety underground. When you have a live risk like that you want your workers to feel that they can actually stop work and block work activity to ensure their colleagues are not electrocuted, for example. Should they receive a higher penalty, which they are at risk of doing under this for undertaking such an activity?

For me, this is not about unions. It is about workers. Most mines are unionised workforces, I accept that, not all of them. Some of them use contractors who are not unionised. It is appropriate to ensure that those people taking legitimate industrial activities - the activities are what matter here, not the people, not who they are, not whether they are a member of a union or not. Even in a unionised workforce there are still people who are not union members within that workplace.

In my mind it is not about unions. It is about ensuring that people who take legitimate industrial action on matters of importance in the workplace, particularly relating to worker safety or client safety, if you like, that they are not going to be caught up with this. They can still be charged with trespass if they commit a trespass offence, in doing that, but they will not get the higher penalty for the nature of the work they are undertaking.

That is how I understand it. To me that is an appropriate protection. I will listen to others, but I have a mind to support this for those reasons.

[4.50 p.m.]

**Ms WEBB** - I rise to speak on this so it is on the record, in terms of the way I will vote on it.

I am not inclined to support this amendment and understand the arguments made for it. I believe the member for Murchison has clarified the fact this only provides protection from attracting that aggravated penalty and the potential higher maximum penalties that go with that. That is what the amendment is aimed to do.

In the circumstances of (2AA) which is the obstructing a business or undertaking, and (2AC) which is the body corporate obstructing a business or undertaking, presumably in that instance we would be talking about a body corporate entity such as a union. It is protecting that aggravated penalty applying there in that case. I believe I understand what the intent of the amendment is to do.

While I agree we want to see people protected taking those sorts of actions, I cannot contemplate we do that in a way that then excludes the rest of our citizens from the same protection. I do not agree with this clause or with the intent of it, to expose any of us to this. By putting selective protections in place like this we have less inclination to fix this on behalf of everybody, at a later date, which I hope we would have the opportunity to do.

It is not an expression of my view at all. I have no view that people described by the member for Rumney and the member for Murchison who are taking those sorts of actions deserve better protection than they are afforded under this bill, and do not deserve to be exposed to those aggravated penalities. I cannot vote for something that provides them with that protection but leaves the rest of our citizens, and probably our most vulnerable citizens, exposed to that, the opportunity for that aggravated offence and penalty.

It is a difficult one, but at the moment I am inclined towards not supporting it. I will keep listening, but it is a hard one.

[4.53 p.m.]

**Ms ARMITAGE** - I believe it was well articulated by the member for Murchison and I am inclined to support it. I hear the member for Nelson, but it is actually workers in their workplace and I do not think it is necessarily excluding other people.

Anyone who is genuine in their workplace should have the right to actually make sure their workplace is safe. If they feel they need to perform some action, as it has been said, they can still come under a trespass law but will not attract the aggravated, the higher penalities.

The amendments are appropriate in this case for workers in their workplace. The description by the member for Murchison was very well articulated, particularly workers in a mine, or anywhere else they feel they actually need that protection. This is what it is all about. As far as I am concerned, they should not be caught up in the new bill we have before us.

This is about people, for whatever reason, feeling they need to feel safe and that is genuinely the reason, or they feel that something is wrong in the place they are actually working. It is not the general public, as it has been said. I understand where the member for Nelson is coming from, saying we are excluding a group of people, but I do not believe we are. We are covering anyone in their workplace or employers.

**Ms Webb** - To be clear, the point I am making is about privileging a group of people with better protection than others.

**Ms ARMITAGE** - It comes down to opinion. I do not agree with that comment. I am inclined to support the amendment before us. The members who have spoken, the member for McIntyre and the member for Murchison, have articulated that very well, along with the member for Rumney.

[4.54 p.m.]

**Mr VALENTINE** - It is a tough one and we are in the role of making good legislation in this Chamber. I voted against the bill, as people will have seen. This is a bit like trying to make a silk purse out of a sow's ear. It is a very difficult circumstance. I can understand how members want to see the workforce protected but, by the same token, it is a discriminatory action by putting it in there. The Leader even made that comment, that it is discriminatory, if I am not mistaken.

If it goes in, it is probably going to make it even more likely to be struck down in the High Court. I cannot support it. There will be those who will say you were a public servant for so long and all this sort of thing, but a principle is a principle. Discrimination is discrimination. The bill is a bad bill and the bill should not go through. I will not be supporting it.

[4.56 p.m.]

**Ms RATTRAY** - I am obviously interested in what the member for Rumney has to say in regard to the questions I posed. She is limited on her responses and is going to probably do them all in one go. I am very interested in having a very clear picture of how this amendment will actually be able to support what it is meant to do in protecting rights to protest at a workplace.

My understanding is people who are volunteers are also included under the Work Health and Safety Act as being workers and the workplace they might choose to go and disrupt might be considered their workplace. It may well be the Bob Brown Foundation volunteers, and we know they have a lot of them. They may well be able to articulate they are workers under that area. I am not sure this will actually fit the purpose of what you are intending and I absolutely acknowledge you are supporting your union people and there are 50 000 of them in our state. However, I also acknowledge what the member for Hobart said, that this may well be constitutionally unconstitutional. I am really struggling with this one, like others around the Chamber. I wanted to add that to my original question, understanding you do not have a lot of calls to get up and respond as the mover of the amendment.

[4.58 p.m.]

**Ms LOVELL** - Madam Chair, thank you to members for their questions and comments. I will work through them.

Starting with comments made by the Leader, the Leader pointed out that this exemption would only apply to the aggravated penalty where a trespass offence was committed and in the course of that trespass somebody obstructed a business or undertaking. Thank you for explaining that. Yes, that is correct. That is exactly the intent of it. Maybe I did not explain that as clearly in moving the amendment but, yes, that is correct.

The Leader thought that was a difficult position to justify. I do not think it is a difficult position to justify or I would not be moving the amendment. It is a really reasonable position to justify. We are not arguing that current trespass penalties should not apply where a trespass offence is committed in the course of industrial activity or in a person's workplace. We are arguing that the aggravated penalty should not apply under these particular circumstances.

The Leader also spoke about the Work Health and Safety Act and the Fair Work Act and different types of action that are already protected or allowed under such legislation. Again, I do not disagree, but they are limited to matters to do with workplace health and safety and protected action, as we spoke about yesterday. I have already been through the lengthy process that people need to go through to get protected action, ballots, notifying your employer, time frames, all of those things.

I did think it was a bit rich to quote Mr Pender's advice on this amendment, considering his very strong opposition to this bill in its entirety. If the Leader is encouraging people to listen to Mr Pender's opinion, that might be a little risky when you consider his opinion on the bill.

**Mrs Hiscutt** - By way of interjection, it shows that we do look at all submissions.

**Ms LOVELL** - When it suits you.

**Mr Valentine** - How they use them is another thing.

**Ms LOVELL** - That is right. The comment by the Leader that paragraph (b), 'at a workplace at which a person works at the request of an employer of the person' - meaning the person's workplace - means that people could just break in and do whatever they like is ludicrous. People cannot just break in and do whatever they like under current law. They will not be able to break in and do whatever they like under this amendment. The only difference is that where a trespass offence is committed - not break and enter; we are not talking about break and enter. We are talking about criminal damage. We are talking about trespass. Where a trespass offence is committed in connection with these sets of circumstances, and a business or undertaking is obstructed, then an aggravated penalty would not be able to be applied. Not the current penalty. We are not talking about people being able to break in and do what they like. I want to make that very clear. That is not the intention of this amendment, and that is not what this amendment would do.

Moving to a couple of points the member for McIntyre made, yes, this amendment would provide protection for 50 000 union members across the state, but not only union members. This has been specifically drafted to cover workers. They do not have to be a member of a union. Essentially, about 250 000 workers across the state would be provided with some protection under this amendment.

The member for McIntyre asked whether people needed to be a worker or not. Paragraph (a) provides for people who are not necessarily a worker in that workplace - but there is a very clear link there that it has to be in connection with industrial action or an industrial dispute or an industrial campaign.

The intent behind that is to provide that protection to union officials, family members and other community supporters. That would cover someone who might want to be a

volunteer - they might be in the RSPCA having a dispute over an industrial matter, something to do with their pay and conditions, and volunteers of that organisation want to support it. That would cover those people.

Again, if they trespass and obstruct a business - or if they trespass at all - they can still be charged with trespass and have the trespass penalty applied, just not this aggravated penalty if they also obstruct the business.

I reckon that answers your question, but I am sure you will tell me if it does not.

**Ms Rattray** - So, you do not feel it needs to be more clearly -

**Ms LOVELL** - I know the member for McIntyre raised a question about whether it should be only covering workers. It is intended to be broader than just workers where there is a very clear link to industrial action or an industrial dispute, because the nature of those types of activities usually involves other people supporting.

Paragraphs (b) and (c) clearly say it is at a workplace at which the person works - so that is a worker - and (c), at a workplace owned, occupied, operated or used by an employer of the person - so again that is a worker, an employee of that employer.

The member for Murchison asked a question about the New South Wales legislation and why the government supported it. I understand there were ongoing negotiations between the opposition and the government of the day. The arguments put by the opposition - being the Labor Party - should apply here, too. I do not think anyone would be surprised to hear the Labor Party advocating for workers and trying to ensure that workers can continue with industrial activity as they currently can. That is all we are asking for with this amendment. That was accepted by the Liberal government just out of pragmatism, I believe. They were taking a pragmatic rather than an ideological approach, understanding that this was an important matter for workers and a large cross-section of the community, and wanting to be able to provide that protection.

I also want to echo a point made by the member for Murchison that this is not about unions, necessarily. I will say, I am a unionist. I am a member of a union. I believe in unions and I back unions every day. I do not shy away from that. I am not going to pretend that I am not a unionist, or I do not believe in unions, but this amendment is not just about unions. This is about workers. This is about the 250 000 workers across Tasmania who need to be able to continue with their activities as they currently do.

I understand the objections, and I appreciate the comments from the member for Nelson and the member for Hobart. I understand your opposition, but I am disappointed that in opposing it, we will not be able to extend protection to anyone, essentially.

**Mr Valentine** - If the bill did not go through?

**Ms LOVELL** - True, but that is a big risk to be taking.

**Mr Valentine** - That is a big risk.

**Ms LOVELL** - The member for McIntyre had a second question asking for a clear picture of how this will support protecting workers' rights to protest.

**Ms Rattray** - To be constitutionally able to stand a High Court challenge down the track if that is where we end up with Brown and Others?

**Ms LOVELL** - Yes, I read the advice I had from George Williams about its constitutionality before. I can repeat that if you like. I am not a constitutional expert. He is. I trust his advice on that, that it will not make it any worse. That is not to say that this bill -

**Ms Rattray** - He did put a proviso in there.

**Ms LOVELL** - I agree, and that is what I was about to say. That is not to say that this bill would withstand a constitutional challenge, but his advice was that our amendment - this amendment - would not make it any less likely to withstand a constitutional challenge. He did not comment on whether or not the bill would withstand a constitutional challenge - different people have varying views on that - but he did say he did not believe this amendment would make it any worse.

**Ms Rattray** - It would have been good if you had asked him.

**Ms LOVELL** - I believe I have answered the member for McIntyre's question about volunteers and the definition of a workplace.

To give a clear picture of how this will support protecting rights to protest, the key thing for me and hopefully for other members is that this amendment bill will introduce an aggravated penalty for the type of activity that unions and workers undertake regularly. Let us be honest, obstructing a business or undertaking - a lot of the time that is the point of strike action and protest action, and it is not very effective if you are not obstructing the business in some way. Nobody is going to shy away from that. It is usually a last resort. Workers are not running out on strike at every whim. This is the kind of action that takes place usually after protracted negotiations, or where it is a particularly serious matter. Where it is something that happens at short notice, it is usually something very serious that needs to be acted on straightaway.

My amendment would protect workers' right to protest by allowing the current situation to continue as it is. That is all we are asking for. We are not asking for any additional protection. We are not asking for any reduction in penalty that currently applies. We are asking for the status quo to remain for workers on the type of action they can take in their workplace.

I will resume my seat at this point. I still have another call if other members have further questions, but I urge members to support the amendment.

[5.09 p.m.]

**Mrs HISCUTT** - Madam Chair, I have a couple of points to make, but the logical and obvious question is, why is the member okay with some union activity being charged for trespass and receiving the current penalty, but not the higher penalty? Why does the member not wish to excuse unions from trespass generally?

That said, I have already explained that union activity, if it is a lawful or reasonable excuse, is already excused.

As I have explained earlier, the issue with the amendment - if members have the amendment in their hand, have a look at it - is that only (a) is linked to industrial action. Paragraphs (b) and (c) excuse broad classes of workers from the aggravated penalty, even if the conduct of those workers has no connection to industrial activity. For example, it would excuse malicious aggravated trespass by workers on their workplace. So, for example, it simply says in subsection (2AD)(b):

> at a workplace at which the person works at the request of an employer of the person;

For (c), the same thing. It does not say it has to be for industrial action. It just says if that person is there and does something, the damage is done, the only time they will get charged with trespass is after the boss asks them to leave and then they refuse to leave.

I do not see how you cannot see that.

In response to the member for Murchison, we do support workers taking safety action, which may need to be spontaneous but that is already captured by 'reasonable excuse'. So, entering land to address a safety risk can be excused from trespass.

When you look at the amendments carefully, (b) and (c) do not talk about industrial action, they just talk about a person being there. It is not right. They could be doing anything there. I urge you, do not put this in, it is not right.

[5.12 p.m.]

**Ms WEBB** - I rise to correct the Leader. It might help the member for Rumney out a little, even though I am voting against the amendment, as a show of solidarity and solidarity is important, it is the reason I am voting against the amendment.

To correct the Leader, yes, with (b) and (c) in this amendment, basically (b) means when someone is at their place of work, and (c) is when they are at a place of work that is owned and occupied by the person who employs them, when they are at work.

All this does is to say that, if they are trespassing, they are not going to attract the aggravated version of that that relates to obstructing the business or undertaking. They will still attract trespass and the regular penalties and things for trespass.

**Mrs Hiscutt** - Only when they do not leave when they are asked to after the damage is done.

**Ms WEBB** - However, that is the situation now. We have a current situation where if I am at work and I start engaging in an activity that is deemed to be trespass, I am going to be charged with trespass. Under the law as it stands, without the amendment, if my trespass involved obstructing a business or undertaking, I could attract an aggravated penalty for that.

This amendment seeks to say no, when you are at work you cannot attract the aggravated penalty, just the regular one you get now. I am trying to be as clear as possible about that. The

member for Rumney is nodding. So to correct the Leader and make sure members are not confused about this amendment I am voting against, that is what the amendment is trying to do.

**Mrs Hiscutt** - Then why does only (a) link to industrial action when (b) and (c) do not?

[5.14 p.m.]

**Ms FORREST** - It is a shame that some things are being confused and they really should not be. If a person who works in a workplace goes in and trashes the joint, they are going to be done for all sorts of things, not just trespass.

**Mrs Hiscutt** - We are trying to link it with industrial action.

**Ms FORREST** - No. Let me continue. We need to identify and name up, if you like, industrial action. Industrial action by its very intent is to disrupt. It is about workplace safety. It is about workplace conditions. It is about not having enough staff to safely care for the patient you are looking after. It is about not having air purifiers in your classrooms and you are worried about COVID-19, whatever it is, it is about a safety issue or a matter that affects a worker in a workplace. It is industrial action. Generally, the only way when things get to the last resort. As the member for Rumney alluded to, industrial action is not the first action that is taken. There are many other attempts to deal with these workplace issues and workplace problems, inequities or safety matters. There are all forms of negotiation but sometimes, these do not elicit the responses and reactions from the employer that you need to actually address the issues.

We talked about some of the workplace health and safety matters earlier that the Government has not focused attention on, and we need them to do that. They are the sort of things that unions, or workers - not just unions, but workers - take industrial action on to actually make people take notice. You have to be a little bit disruptive, and I welcome that. I welcome disruption. I welcome protest out on the front lawns of the parliament whenever they are out there. I want to know why they are there. What is their problem? What are they trying to bring our attention to? The member for Windermere talked about that. That is their right. This is the place they should come to.

A worker should go to their employer and try to address it that way. But there are times when they need to take more disruptive action that actually might disrupt aspects of the business. All of us here know that when nurses take industrial action they do not all walk off and leave all their patients to themselves, do they? Never. They do it in a way that the patient care can continue while they and maybe some others, their family, friends and supporters, go along with them, because they are the recipients of that care.

If you have ever been to a rally or a protest that health professionals have organised you will see that it is not just nurses and doctors and other health workers who turn up. It is others who have been recipients of the care and want nurses, or whoever, treated well in the workplace. It is disruptive. It is designed to be a nuisance and annoying. If they do it in their workplace because that is the place to have the biggest effect, we should not be saying to them that you are going to get this maximum penalty here because, if they are trespassing and they are asked to leave and they do not, then they will be charged with trespass. They will still be charged.

If they then go and trash the place, they will be charged with that as well. If they physically harm someone, they will be charged with assault as well. This does not prevent any of that. The Leader was wrong when she said a worker can go into the workplace and trash the joint and do whatever they like. That is not right. Well, they can, but they will get everything thrown at them, except the maximum penalty for trespass. They will get everything else. It is not a free-for-all. That is a ridiculous notion.

We know by the very nature of industrial action, it is an action taken by workers in relation to their workplace. That is why it is talked about being at their workplace. It is about ensuring that those issues relate to the workplace. I am not quite sure what the real issue is here. I understand the member for Nelson's concern, I know there is a different class of people, but it is a particular activity we are protecting here. I accept that.

**Ms Webb** - I did not say a different class of people, but the point that I have been making the whole time is it privileges certain people in certain -

**Ms FORREST** - I accept the point you make. I am accepting that. I am not disputing that, but I am disputing some of the things that the Leader has said here as to how this would apply. It does not create a free-for-all for workers. Workers will still be subject to every aspect of the law, except the two sections in the bill as presented. You will note, it is only (2AA) and (2AC). It is where they are obstructing a business or a corporate matter, not where they directly or indirectly cause a serious risk to the safety of a person. If they do that, they will still get the maximum penalty for that or the court will decide what they get, but they will be subject to the maximum penalty for that. We are not saying they can go in and beat up or cause harm to someone in this amendment. We are saying if they obstruct a business or undertaking, they are not going to get the maximum penalty for that, because that is what industrial action is. That is what workers seeking to address matters in their workplace do when everything else has failed. To suggest that a person can go into their workplace and do anything they like and not be held to account is an absolute nonsense.

The Leader is right, it does talk about industrial activity in the first three areas there but it ties in so that all workplaces - approximately 250 000 workers, the member for Rumney said, so we are talking about a lot of Tasmanians here. We would all be protected. It is not a union thing, it is a worker thing. It is people in their workplaces. I hope I have made that a bit clearer.

As far as the constitutionality of it, I did listen to what the member for Rumney said, the advice she received from George Williams, who is recognised as a constitutional law expert but that is a matter for the courts anyway. Any piece of legislation that we pass through this place could end up in a court, in the High Court being challenged and we have seen that previously.

We do our best in this place to make things right, even when we do not support things and they still get through and then subsequently they are found to perhaps not be valid or aspects of them are not valid. Sadly, that is what happens but we do try to do our best. I do not think this makes it any more or less unconstitutional. I am not a constitutional lawyer, but I can see what the member for Rumney is trying to do.

Other jurisdictions have brought in similar provisions, because by its very nature industrial activity and workers seeking to protect their rights in a workplace will almost

inevitably obstruct a business. Let us charge them with trespass, the way it is now. Let us not change that. Let us keep that as it is.

Do not expose that activity and the person who conducts it to a higher penalty but if they do go the next step and threaten or harm or risk the safety of another person, then yes. If they are doing that, it is not appropriate. It is not appropriate in the workplace, it is not appropriate down on Helilog Road, it is not appropriate in other places to actually threaten the safety of another person. I hope that is clear. It has all got a bit muddled up, and suddenly we are going to say workers or unionists can do whatever they like. No. We are not changing anything, except those aspects.

[5.23 p.m.]

**Mr GAFFNEY** - I am pleased I have had a chance and I said to the member I will get up and put this case because she has only one call.

When I first saw this, I did approach the member to say should (a)(iii), instead of saying 'or', should it be 'and', so that it actually links to (b) and (c). My issue would be this, and I am giving you a scenario and I am happy for a situation to arise. A young person is sent to a chook farm to fix a gate. He is not there for industrial action, he is not there for industrial dispute, he is not there as a part of industrial campaign, he is not trying to improve his conditions or anything. He gets there and he does not like chooks being kept in captivity. What does he do? He undoes all the pens and all the stuff, creates a nuisance so the chooks escape. According to this, he would be protected because - applied to persons convicted by a court - under this section it is at a workplace at which the person works at the request of an employer. He has been asked to go there to do a job, that person is there, he has taken it into his own hands to release the fowls, becomes a nuisance. According to this, he will only be fined under the first one, because he has been asked to go there by the employer, not the aggravated one.

That is just a scenario, but if you can clear that up for me?

**Mr HARRISS** - A couple of points to clarify. The first one is, I am definitely confused. I am a little bit stuck on this and the debate has been going for a fair while.

The member for Nelson raises a fair point about privileges for certain people or areas, which I was reasonably comfortable with. Then the member for Murchison, when she mentioned about workplace action in a hospital, my first initial thought was, you should not have to obstruct or disrupt a business if you want to have a protest. Make a point and go down to Parliament Lawns. Your point about hospitals is very relevant because you do not just leave, do you? You do not leave 400 patients at the Royal Hobart Hospital and go. I thought it was worth getting up.

[5.26 p.m.]

**Mrs HISCUTT** - To the member for Huon's point, we did clarify we certainly agree with occupational health and safety, so yes, we were agreeing with that one. I will have one last go at this.

We are firmly of the belief, and the simple scenario of the chooks was good. I have another simple scenario to explain our view as to why the amendments (b) and (c) may have unintended consequences.

Let me clarify my early remarks. Clearly, if there is other offending like damage to property, that is not excused by this amendment. I totally agree. I also totally agree with the member for Mersey's example. If that employee asked the owner to let the chooks out, and the chook farmer says no, leave my property, why is the employee protected because he realises he wants to let the chooks out? This is my simpler scenario.

A worker has a disagreement with colleagues at work over a personal matter and is upset by their conduct. The worker refuses to work but also refuses to leave or let others take over the worker's duties. For example, perhaps, this worker is not letting critical machinery be used, so business activity shuts down and the police have to be called to remove the worker. Under the bill, such a worker may, in theory, be subject to the higher maximum penalty. However, under the amendments in (2AD)(b), the worker would not be subject to the higher penalty. That is more of a workplace, industrial place scenario.

It is the same thing. I rest my case. I cannot see how this amendment is going to do what the member for Rumney is saying it will.

[5.28 p.m.]

**Mr DUIGAN** - I understand you only have one call and the member for McIntyre put the question earlier and it is an interesting question.

A protest group potentially sends a cohort of people, some might be paid, some might be volunteers to a protest site, which they might term as a place of work. How does this interact with that scenario?

**Madam CHAIR** - Does anyone have any other questions of the member? She is on her last call. Member for McIntyre, last call for you.

**Ms RATTRAY** - The member for Windermere is exactly right. I have already supported the previous amendment and I keep on coming back to the question whether this, in some way, might negate what the principle of the bill set out to do when you are protecting a workplace.

That is where I am feeling - and I have heard what the member for Murchison said and I always appreciate her views. She has been a member for a long time and has a huge depth of understanding about a lot of issues. I am concerned that we are going to undermine what has already been put in place and then potentially we have another constitutional challenge and we are back here again. I might not be around to fix the next one, so you never know. So, that is my last call on that, Madam Chair, I understand that.

[5.30 p.m.]

**Ms LOVELL** - Thank you to members for their continued questions and comments and I will work through them again. The Leader started by asking why am I okay with some activity attracting a penalty but not all, or some activity being excused from a penalty. That is not what this is about. This amendment is about preventing a higher penalty being applied, providing protection from a higher penalty being applied for activity that currently takes place. I am not arguing for that penalty to be reduced. That does mean that I am okay with that.

That is not what is being debated here. We are not debating the current penalty for trespass. We are debating the aggravated penalty for trespass. If we were here having a debate about the current trespass penalty we would all be having a very different conversation. That

is not what we are debating. We are debating the penalty for aggravated trespass and I am putting the case that there should be protection for workers in the application of that, under some circumstances.

The Leader also spoke about 'a malicious aggravated trespass by a worker' - I believe that was the phrase - that is not connected to industrial action. In the example the Leader gave, she said that it would only be when the person was asked to leave and then the damage was done. Correct me if I am wrong, but even with the aggravated trespass penalty the person still has to be asked to leave. So, that does not change. They cannot be charged with an aggravated trespass until they are asked to leave, and then they have trespassed. That situation is no different for workers. It would be no different with this amendment. The situation is still the same. The person is on the property, they are asked to leave, they refuse to leave, it then becomes trespass. Whether or not it is then an aggravated trespass because they are obstructing a business is the next step in that process, but they still have to be asked to leave, and if they do not, for this aggravated trespass penalty to apply then that is a whole other conversation that we will need to have.

We need to be really clear about that. The idea that they are going to be on the site and it is only when they are asked to leave that this comes into play, that is the case regardless of whether we are talking about the clause, as it stands in the bill, or the clause with my amendment. When we are talking about my amendment we are talking about trespass. Trespass is trespass.

The member for Nelson, thank you, yes, your explanation was correct. I agree entirely. The member for Mersey spoke about the scenario with escaped chooks. I am loath to get into scenarios because we start getting very confused but it is important to note that when we talk about a scenario like that - actually I will not talk about the scenario. I will remind people that we are talking about a trespass offence where the person in the course of committing that offence has obstructed a business or undertaking. We are not talking about criminal damage. We are not talking about theft. We are not talking about whatever letting chooks out would be. We are talking about obstructing a business or undertaking.

**Mr Gaffney** - My point is that they are allowed to be there because they have been employed by somebody else because it is covered, and then if they are asked to leave and they do not, are they still - do you see what I mean? They have been asked to be there, but it is not industrial action they are there for.

**Ms LOVELL** - Yes, that is right. So, the point you are making is that - if I can find it - yes, paragraph (b) and (c) by virtue of that or, using the word, 'or,' between the three paragraphs covers a worker at a workplace. It does not have to be in connection with an industrial dispute and this is the point that the Leader was making as well, and the Leader gave an example of a worker being upset over a personal matter and refusing to leave. Again, without getting into - I understand scenarios might make it easier for people to understand -

**Mr Valentine** - Make a piggery, it will suit the bill.

**Ms Webb** - I thought that was an interesting one. It is a good one to address.

**Madam CHAIR** - Order.

**Ms LOVELL** - In the Leader's example a worker in their workplace for whatever reason refuses to leave and the police need to be called to get them to leave and they are then charged with trespass. Yes, under this amendment they would not be subject to the aggravated trespass but I believe that is a reasonable position. What this comes down to is a difference perhaps in ideology, a difference in opinion, a difference in policy.

The circumstances of a worker in their own workplace refusing to leave and it not being connected to industrial activity is pretty rare. Let us not get carried away with that scenario. I hope there is a bit more compassion shown than calling the police on that person but that is a separate issue.

**Ms Rattray** - While the member for Rumney is on her feet, if you took out 'or' after the (a)(iii), and then had that, then it would definitely relate to industrial action. If you took that out, then I could probably support it because it relates directly to industrial action. I know you are thinking on your feet.

**Ms LOVELL** - Yes, I will come back to that, member for McIntyre.

The member for Huon is confused. Welcome to the Legislative Council. I accept your comment that you do not necessarily need to disrupt business to protest and there have been some good examples of effective protest where that has happened. My counter argument to that is, sometimes you do, particularly in industries where people might be marginalised or not have a lot of power in other ways. Sometimes the only effective way to protest is by withdrawing your labour, and that is the only way you can be heard and make your point. My personal opinion is that is okay and that should be allowed.

The member for Windermere raised the point about volunteers coming to a protest site. This is probably related a little to the member for McIntyre's question about potential amendments. That is why the only part of this amendment that would apply to somebody who is not a worker in that workplace is paragraph (a), and that is where it very clearly has to be linked to an industrial action, an industrial dispute, or an industrial campaign.

**Mr Duigan -** But there will be times when there will be a worker there and then they are able to be supported by volunteers?

**Ms LOVELL** - Yes, supported by volunteers only to do with an industrial campaign. It could not be a protest about another matter that is not linked to an industrial matter; it has to be linked to that industrial campaign or industrial action. So it would be limited, otherwise they would be subject to the higher penalty if they are trespassing and obstructing the business and it is not related to that industrial campaign, or they are not participating in that campaign or that activity. Does that make sense?

**Mr Duigan -** I wonder how good a lawyer you would have to be to argue that.

**Ms LOVELL** - We may find out one day. Coming to the member for McIntyre and whether this amendment would negate the principle of the bill, I do not believe that it would. It is specifically related only to workers and only workplace disputes, remembering that the exemption would only apply to paragraph (2AA) and (2AC). It is only where there is a trespass offence committed and a business or undertaking has been obstructed. It is pretty limited to the circumstances under which this could apply anyway.

**Ms Rattray** - And my suggestion?

**Ms LOVELL** - In relation to your suggestion for an amendment, I am open to amendments if people want to put amendments. I am comfortable with this amendment as it stands but if people feel that they would like to move an amendment I am very open to that.

In relation to the amendment that you suggested, I suggest rather than changing that 'or' to an 'and', that it might be better to strike out (b) and (c) because by changing that 'or' to an 'and', you would then exclude anybody who was not a worker in that workplace. That would exclude union officials, family members, union members from another worksite, those types of supporters who people might be there to support. If people follow these types of protests, that is what happens. People protest, they strike, they walk out and they have people come and support them, peacefully. They are not doing anything wrong. Well, no, I will not say they are not doing anything wrong, in terms of the law, because they might be trespassing and they can be charged with that and they are charged with that. People do get charged for this. I believe that should not attract a higher penalty, because I believe this is an important type of activity that should be allowed to continue as it does.

With that, I believe I have answered all of the questions. I do urge members to support the amendment. I urge members to read the amendment and listen to the arguments that have been put and not be distracted by some of the other comments and things that have come up. However, I know members are capable of making their own judgments about those things and all I say is that I urge members to support the amendment.

**Madam CHAIR** - The question is that the amendment be agreed to.

**The Committee divided -**

| **AYES 6** | **NOES 8** |
|---|---|
| Ms Armitage | Mr Duigan |
| Ms Forrest | Mr Harriss (Teller) |
| Mr Gaffney | Mrs Hiscutt |
| Ms Lovell | Ms Howlett |
| Ms Siejka (Teller) | Ms Palmer |
| Mr Willie | Ms Rattray |
| | Mr Valentine |
| | Ms Webb |

**Amendment negatived.**

**Ms WEBB** - We are back to asking questions on the regular clause?

**Madam CHAIR** - Yes. The clause as it is, clause 5.

**Ms WEBB** - To put a few questions in relation to clause 5. The part that I am interested in hearing more from the Government about relates to part (d), which covers the (2AA) insertion, the aggravated provisions there about trespass which is committed while obstructing a business or undertaking, or taking an action which caused a business or undertaking to be

obstructed. I need to know what degree that obstruction is going to need to be done and to understand the distinction between business or undertaking; and how remote, in terms of:

> (b) took an action that caused a business or undertaking to be obstructed

How remote you might have to be from the business to be causing an obstruction to a degree which would trigger that? It is essentially a greater level of detail about what comes into play there. Because there is a lot covered in this clause, and I want to ask some questions about other parts of the clause while I am on my feet for the first time. I am mindful staff will be trying to hear questions and respond to questions at the same time, so I will go slowly.

In the same area but (2AB), which is where we are looking at inserting in this bill another aggravating sort of circumstance to the trespass where:

> … if the court that convicts a natural person of an offence under this section is satisfied that the person, by or while committing the offence -
>
> (a) caused, directly or indirectly, a serious risk to the safety of the person or another person: or
>
> (b) took an action that caused, directly or indirectly, a serious risk to the safety of the person or another person

Similarly to the questions I posed on the other part, (2AA), in relation to (2AB) what, 'caused, directly or indirectly,' means, particularly the, 'indirectly,' and how remote that might need to be in terms of either proximity, time or any of those sorts of things that indirect seems to imply. What does 'serious risk to the safety of the person or another person,' intend to be meant there? That is probably enough to start with.

More information about (2AC), talking about the aggravated arrangements coming into play when a body corporate is involved in the trespass. The situation there where we have had that explanation and the Leader in the summing up of her second reading speech spoke about that directing mind, say the directors of the body corporate planning or directing people to act on its behalf in terms of committing the offence but again, took an action that caused a business or undertaking to be obstructed. How is that different to a more direct obstruction that might be captured in (a) and some of the parameters there? If I might have more information on those elements to begin with.

**Mrs HISCUTT** - I will make a start. What is an obstruction, was related to the first question. There is a relevant case in law on this point. Essentially, case law suggests that it must be an appreciable obstruction; a trivial act or even an act which could not reasonably be regarded as an obstruction would not fall within the definition and that comes from Darlaston v Parker and Others [2010] FCA 771 paragraph 52.

It was discussed in Brown & Others v Tasmania at paragraph 71, that:

> Consistently with the principle of legality and section 3 of the Acts Interpretation Act 1931 (Tas), the term 'obstruct' should be construed so as to

apply only to the conduct or presence of a person which substantially or seriously hinders or obstructs business activity.

So, why have we differentiated between obstructing a business, and taking an action that caused the business to be obstructed? The wording is intended to capture a number of circumstances in which such behaviour may occur.

Firstly, where there is not the trespass per se, entering, remaining on property, that causes the obstruction of the business or a safety risk, but rather the doing of an action while entering or remaining on the land that causes the obstruction. For example, if a person trespasses on a forestry site during business hours and puts a padlock on doors to the workroom, the person can take an action that obstructed a business while committing a trespass. If, however, the person committed the trespass and attached the padlock outside of business hours, the obstruction to this business is likely to occur after the person has ceased to commit the offence, thus they have taken an action that obstructed a business by committing the trespass.

There might be situations where it is the trespass itself that causes the obstruction for the business. For example, if a person entered a forestry site and stood in front of a piece of machinery, it is the act of being on the land which is obstructing the business.

What is indirect serious risk? An example would be if, while trespassing, a person interfered or tampered with machinery, such as inserting a foreign substance into a fuel tank. This may not cause a risk until the machinery is turned on or used in a certain way. Hence, it may be considered to indirectly cause a serious risk to the safety of the worker using the machinery.

How is a serious risk assessed? Why is it not defined in the legislation? The phrase 'serious risk' is used in other legislation such as the Commonwealth Criminal Code, where it is not defined. The Tasmanian Criminal Code contains the crime of making false threats of dangers which also uses the undefined phrase 'serious risk'. It is a question of fact, in the circumstances of the case. It is also the test in the Work Health and Safety Act of Tasmania.

**Ms WEBB** - A few more clarifications I want to pin down.

In either of those instances, (2AA) or (2AB), where we are talking about individuals, in any of the circumstances described there, does the person need to be aware that they, for example in (2AA), are obstructing a business, or taking an action that caused a business or undertaken to be obstructed, or in (2AB), do they need to be aware that they have caused, directly or indirectly, serious risk to the safety of a person, or took an action, et cetera?

Does that sense of awareness of those things need to be there for the person doing it? To what extent do they need to intend to do that?

Those are separate questions. One is about awareness; one is whether intention is required.

The other clarification I want is in relation to (2AC). I probably should be aware of this myself. This is dealing with an aggravation element. It says:

> Despite subsections (2) and (2A), if the court that convicts a person that is a body corporate of an offence under this section is satisfied that the person …

To me, that must mean that a body corporate can be convicted of trespass under current arrangements. Can you confirm that under current arrangements, with the current penalties that are available for the common offence of trespass without this aggravation, a body corporate can be convicted under those circumstances - and if so, has that actually occurred in this state? I imagine if we are adding on that if a body corporate has been convicted, then this aggravating trespass can apply, it must be that they can be, but I was not aware of that.

**Madam CHAIR** - Before you sit down, are you intending to move any of your amendments?

**Ms WEBB** - I asked the things that I was going to ask.

[5.57 p.m.]

**Mrs HISCUTT** - Trespassers need to take responsibility for their actions. As obstructing a business is a high threshold, a person would, or should, be aware if their actions are obstructing the business. In practice, persons are directed to leave sites when they are obstructing businesses or causing risks. However, as Mr Barns referred to in briefings, the obstruction or risk needs to be voluntary and intentional, and an honest and reasonable mistake or belief may be relevant.

**Ms Webb** - Are more answers coming to the body corporate question I asked?

**Mrs HISCUTT** - Section 35(1) of the Acts Interpretation Act 1931 provides that every provision of an act relating to offences punishable upon indictment or upon summary conviction shall be construed to apply to body corporates, as well as to individual persons. Therefore, a body corporate is capable of being indicted with offences under the Police Offences Act 1935, including the trespass offence.

Many acts provide for higher penalties for body corporates, but the Police Offences Act has not, to date, specified different penalties for body corporates.

**Mr VALENTINE** - I asked this question in briefings. Can you explain how a body corporate is to be the trespasser, if there is no officer of the body corporate present at the protest?

There may well be people who identify with the principles and practices of the body corporate. They might be members of the body corporate, but they are not the body corporate and they might be volunteers, they may not be employees of the body corporate. Exactly how are those people who are at a protest convicted as the body corporate? Is that possible? Or does it have to be that there has to be an officer of the body corporate clearly there, for the body corporate to be charged?

**Mrs HISCUTT** - I went through some of those answers in my summing-up, but to try not to repeat myself I will add some other stuff. I will seek advice.

Criminal prosecutions against body corporates in Australia are extremely rare. As a legal entity, a body corporate has no physical existence and therefore no capacity for physical action.

However, general principles of corporate criminal liability have arisen from the common law and are now well established. The general principle at common law is that a corporation - and I did go through this in my summing-up - is 'personally' liable for the mental state and conduct of a directing mind, the board of directors, managing director, or other persons to whom the function of the board has been fully delegated acting on the corporation's behalf.

For example, a company's board of directors acting as the directing mind of the company might resolve that the company should cause a trespass on land to occur. For example, the company might direct its employees to cause that to happen, or it could hire others to do so. That is, an officer need not be present. Any body corporate that simply supports activities without committing those activities itself is not captured. Employees of body corporates are not subject to the higher penalties.

**Mr Valentine** - It is the volunteers that I am interested in.

**Madam CHAIR** - Member for Hobart, you have another call, you are right.

**Mr Valentine** - I did not want another call, because I had already asked it if it is possible.

**Mrs HISCUTT** - We will seek some advice. Volunteers are certainly not captured by that, Madam Chair.

**Madam CHAIR** - The question is that the clause as read stand part of the bill.

**The Council divided -**

| **AYES 8** | **NOES 6** |
|---|---|
| Ms Armitage | Mr Gaffney |
| Mr Duigan | Ms Lovell (Teller) |
| Ms Forrest | Ms Siejka |
| Mr Harriss | Mr Valentine |
| Mrs Hiscutt | Ms Webb |
| Ms Howlett | Mr Willie |
| Ms Palmer | |
| Ms Rattray (Teller) | |

**Clause 5 agreed to.**

**Clause 6 agreed to.**

**Clauses 7 and 8 agreed to.**

**Schedule 1 agreed to.**

**Title agreed to.**

**Bill reported with amendments.**

**Third reading made an order of the day for tomorrow.**

## QUESTIONS ON NOTICE

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council)(by leave) - Mr President, I seek leave to table and incorporate the following answers to questions numbers 1, 2 and 3 appearing on the Notice Paper in the name of the member for Murchison.

**Ms Forrest** - I am sure they will be emailed to me.

**Mrs HISCUTT** - I am sure that will happen.

**Leave granted.**

### 1. TASMANIAN RISK MANAGEMENT FUND

**See Appendix 2 on page 106.**

### 2. FISCAL STRATEGIC ACTION No. 1

**See Appendix 2 on page 108.**

### 3. IMPUTED RENTS FOR OWNER OCCUPIED HOUSING

**See Appendix 2 on page 111.**

## ADJOURNMENT

[6.10 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That the Council at its rising adjourns until 9.30 a.m. on Friday 12 August 2022.

**Motion agreed to.**

**The Council adjourned at 6.10 p.m.**

**Appendix 1**

tabled J. Palmer
Jo Palmer.
23 June 2022

# Bilateral Agreement for Mental Health and Suicide Prevention

## Fact Sheet | May 2022

The Tasmanian and Australian Governments have signed a new bilateral agreement for Mental Health and Suicide Prevention. The agreement is a schedule to the National Mental Health and Suicide Prevention Agreement which was endorsed by National Cabinet on 11 March 2022.

This agreement will see an investment, by the Australian Government, of over $46 million into Tasmania to deliver several initiatives that together will contribute to better health outcomes for people living in our State. Importantly, this work aligns with the significant mental health reform programs in Tasmania and the $108 million investment announced by the Tasmanian Government in the 2021/22 State Budget.

### Initiatives for collaboration

The agreement provides for a range of co-funded mental health and suicide prevention initiatives, including:

- **Establishing and operating three Head to Health Adult Mental Health satellite clinics in Tasmania, with two likely to be located in Burnie and Devonport and one in the outer Hobart area.**
    - This includes ongoing funding for operation of the existing Head to Health Centre in Launceston.
    - These services are in addition to the two new Integration Hubs under development at the Peacock Centre in North Hobart and at St John's Park in New Town, as part of the Tasmanian Mental Health Reform Program.
    - The Integration Hubs will be co-branded as Head to Health Hubs, will form part of the Head to Health network, and care will be delivered through multidisciplinary teams including lived experience workers.
- **Integrating three Head to Health Kids Hubs within three new Child and Family Learning Centres (CFLCs).**
    - This process will be undertaken flexibly to consider both Tasmania's existing CFLC service model and alignment with the Head to Health Kids Service Model principles. The new CFLCs will be co-branded as Kids Head to Health Service Hubs.

Department of **Health**

Tasmanian Government

- These services will provide a multi-disciplinary team approach to the care of children and align with Tasmania's response to the review of the Child and Adolescent Mental Health Service (CAMHS).

- **Establishing and operating a new headspace site in Tasmania, and working in partnership to improve access to multidisciplinary youth mental health services in Tasmania, ensuring integration with existing services**.
    - These services will increase access to youth mental health services in alignment with Tasmania's youth mental health reform program which was developed in response to the CAMHS review.

- **Supporting perinatal mental health screening services, including identifying and addressing gaps in screening,** building on existing infrastructure to enhance digital capture and reporting of screening data from public antenatal and postnatal care settings, and working towards providing nationally consistent data to the Australian Institute of Health and Welfare.

- **Establishing and operating three eating disorders day programs** which will be integrated within the stepped system of care for eating disorder services in Tasmania and ensuring Tasmania's residential eating disorder centre is completed through the Community Health and Hospitals Program Agreement.

- **Delivering psychosocial aftercare follow-up services to support individuals discharged from an emergency department** after a suicide attempt or suicidal crisis, in the community, for up to three months.

- **Adopting and supporting the use of the Initial Assessment and Referral (IAR) model and digital decision support tool** to support consistent intake, referral and integration across all mental health care and clinical services in Tasmania, as well as general practice.
    - This work will include reviewing Tasmanian Health Pathways against the IAR levels of care and establishing new referral pathways as appropriate.

- **Implementing a single, statewide intake and assessment phone service** that integrates with Tasmania's existing state-based systems.
    - This Central Intake and Referral Service (CIRS) will be staffed by therapeutic professionals who will offer compassionate and consistent triage using the Initial Assessment and Referral tool, supporting referrals to the most appropriate local services.
    - The CIRS will make it easier to navigate across the service system to access the right care in the right place at the right time.

These initiatives align with the Tasmanian Government's significant mental health reform program which includes reforms to improve and expand mental health services, prioritise prevention and early intervention and empowering Tasmanians to improve their own mental health and wellbeing, and reforming CAMHS.

The initiatives included in the bilateral agreement also align with key national mental health reports and inquiries including recommendations from the Productivity Commission's Inquiry into Mental Health and the final advice of the National Suicide Prevention Adviser.

## Next steps

The Tasmanian and Australian Governments will work together to develop a joint implementation plan and to progress current and future mental health and suicide prevention initiatives.

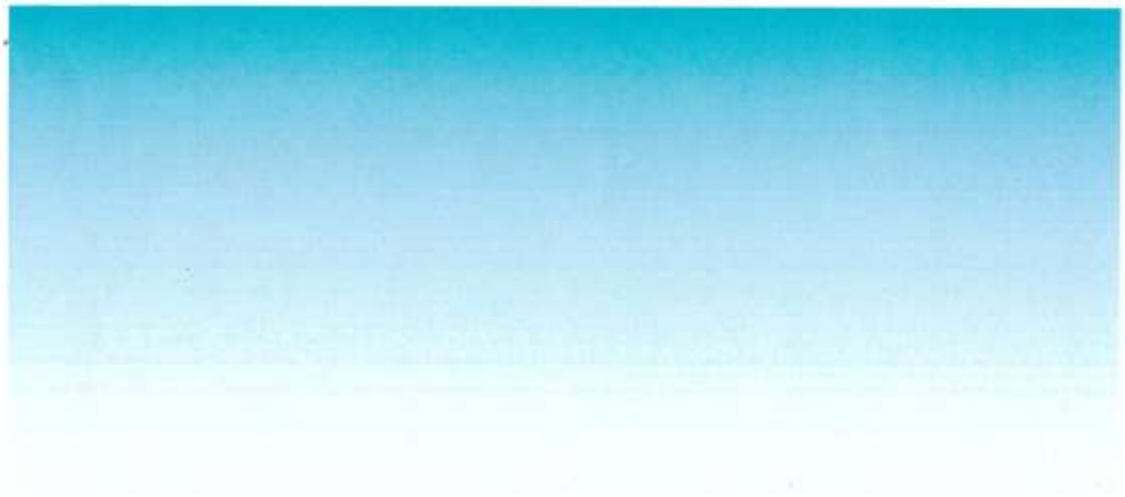
The agreement will also strengthen partnerships with service delivery through increased data sharing, evaluation of services, closer integration of referral pathways and ongoing work in regional planning and commissioning of services.

As a result, the agreement will assist in achieving our long-term goals to improve timely access to care and improved mental health outcomes for our community.

For further information, please visit the Department of Health, Tasmania website at www.health.tas.gov.au.

If you or someone you know is experiencing distress, seek advice and support from:

| | |
|---|---|
| A Tasmanian Lifeline | 1800 98 44 34 |
| Beyond Blue | 1300 22 4636 |
| Kids Helpline | 1800 55 1800 |
| Suicide Call Back Service | 1300 659 467 |
| Lifeline | 13 11 14 |
| MensLine Australia | 1300 78 99 78 |



Tasmanian Government

Department of Health
GPO Box 125
Hobart TAS 7001

1300 135 513

www.health.tas.gov.au

# Appendix 2

## Question 1

Tabled and incorporated into Hansard
L. Hiscutt
23 June 2022

RESPONSE TO QUESTION ON NOTICE

LEGISLATIVE COUNCIL

QUESTION NUMBER: Question 1

ASKED BY: Ruth Forrest MLC

ANSWERED BY: Leader of the Government

QUESTION:

With regard to the Tasmanian Risk Management Fund:

(1) The 2021-22 Budget Papers noted in Table 7.11 in that year a line titled 'Payables'. In the 2022-23 Budget Paper No. 1 in Table 7.12 the line is titled 'Payables and Employee entitlements':

a. What is the reason for the change; and

b. what do the provisions relate to?

(2) On page 148 of the 2022-23 Budget Paper No. 1 it states that overall costs to agencies are increasing to meet increasing costs:

a. Is this increase spread evenly across departments; and

b. if not, do departments, eg. health, pay a higher rate?

(3) With regard to the Balance Sheet on page 149 of the 2022-23 Budget Paper No. 1, will the Treasurer consider the inclusion of a Profit & Loss or cash flow statement to enable the reader to see the expected receipts in and payments out of the fund

ANSWER:

(1)

a. The descriptor changed from 'Payables' in the 2021-22 Budget to 'Payables and Employee entitlements' in the 2022-22 Budget to better reflect the nature of the liabilities within the line item. The figures remain comparable between 2021-22 and 2022-23.

b. The Payables and Employee Entitlements line item includes unpaid leave entitlements for staff responsible for the administration of the Tasmanian Risk Management Fund; as well as claim costs, fund administration agent fees, actuarial fees and other administrative costs incurred but not yet paid in the financial year.

(2)

a. The increase in contributions is not spread evenly across agencies.

b. The quantum of an agency's contribution is determined by an independent actuary and reflects specific consideration of each agency's coverage requirements, risk exposure, claims experience and nominated excess amounts.

(3) The expected revenue and expense figures for the Tasmanian Risk Management Fund are included within Finance-General in the 2022-23 Budget.

Actual revenue and expense figures related to the activity of the TRMF are included within the Fund's Annual Reports, available publicly online.

APPROVED/NOT APPROVED

Hon Michael Ferguson
Deputy Premier
Treasurer

Date: 23 June 2022

## Question 2

tabled and incorporated into Hansard
L. Hiscutt
23 June 2022

RESPONSE TO QUESTION ON NOTICE

LEGISLATIVE COUNCIL

QUESTION NUMBER: Question 2

ASKED BY: Ruth Forrest MLC

ANSWERED BY: Leader of the Government

QUESTION:

1. With regard to current Fiscal Strategic Action No. 1 as described in the 2022-23 Budget Papers:

   a. (i) Does revenue include capital grants; and

   (ii) if so, why are they included when assessing a goal for an appropriate level of operating expenses?

   b. Does the Treasurer accept that receiving grants for the Bridgewater Bridge does not indicate the State's financial position is more sustainable from an operations viewpoint?

2. With regard to current Fiscal Strategic Action No. 4 as described in the 2022-23 Budget Papers, this action requires government businesses to deliver services to Tasmanians at the lowest sustainable cost while also providing an appropriate financial return to the government:

   a. How do the two projects Marinus and Battery of the Nation satisfy the specific expectations of Strategic Action No. 4;

   b. How will these two projects lower electricity prices in Tasmania when the State is currently 100% self-sufficient;

   c. (i) Will Marinus drive down local prices more than the extra burden of Marinus costs; and

   (ii) if so, how?

   d. What are the expected returns to government from these two projects as required by Strategic Action No. 4?

ANSWER:

1.

   a. (i) and (ii)

Consistent with calculation methodology since the introduction Fiscal Strategic Action 1, revenue growth is calculated based on total Revenue from transactions as per the General Government Income Statement. In accordance with Accounting Standards, this incorporates all grants from the Australian Government, including capital grants. Capital grants from the Australian Government represents a small component of overall Grants, ranging from approximately one per cent to four per cent of total Revenue over the Budget and Forward Estimates period, depending on the year.

b. Over the long term, the receipts for the Bridgewater Bridge represent a small proportion of overall revenue growth.

2.

a. It is important to note that neither Project Marinus nor projects within the Battery of the Nation strategy have reached a Financial Investment Decision. At the appropriate time the Government will make an investment decision that is in the best interest of Tasmanians.

b. While there is some uncertainty on wholesale electricity price reductions, analysis conducted for TasNetworks by global consulting firm FTI in 2021 demonstrates that wholesale electricity prices in Tasmania are likely to be lower with Marinus Link in service.

Within Tasmania, the 1500 MW of Marinus Link is likely to be accompanied by at least 2500 MW of wind development in the state. The introduction of this additional low-cost supply into the Tasmanian market will help exert downward pressure on wholesale energy prices.

More broadly, Marinus Link (and Battery of the Nation) has the ability to put downward pressure on wholesale energy prices right across the NEM by introducing an additional 1500 MW of dispatchable capacity into the NEM, accessing the existing spare and refurbished dispatchable capacity in the Tasmanian hydro-electric system for the first stage of the link, and enabling the development of long-duration pumped hydro facilities with the second stage of the link. This lower cost dispatchable energy assists in minimising market volatility thereby suppressing energy price rises from more expensive solutions (like gas, diesel and shorter duration pumped hydro on mainland Australia) that are otherwise required in the NEM.

c. As noted previously, the analysis conducted for TasNetworks by global consulting firm FTI Consulting demonstrates that wholesale electricity prices in Tasmania are likely to be lower with Marinus Link in service than they would otherwise be.

In regard to the costs for Tasmanians,

written into the MoU and funding agreement for Marinus Link and Battery of the Nation, is a commitment from both the Tasmanian and Australian Governments to work together to submit a cost allocation rule change to the Australian Energy Market Commission (AEMC) for Marinus Link. This agreement was signed on the 3rd of April 2022.

This is an important step to ensure interconnector pricing and cost allocation to those jurisdictions that would benefit from Marinus and access Tasmania's low-cost renewable generation, and I expect the rule change application to be lodged shortly.

d. As a regulated service, the returns from the Marinus Link project are expected to provide the owner a commercial return on investment. The Australian Energy Regulator (AER) determines regulated revenues.

More interconnection will unlock Tasmania's full renewable energy potential, providing clean, reliable and affordable energy to support a resilient future energy market. This will allow Hydro Tasmania greater access to market for its existing latent capacity and future investments in hydro upgrades and pumped hydro.

APPROVED/NOT APPROVED

Hon Michael Ferguson
**Deputy Premier**
**Treasurer**

Date: 23 June 2022

## Question 3

tabled and incorporated into Hansard
L. Hiscutt
23 June 2022

RESPONSE TO QUESTION ON NOTICE

LEGISLATIVE COUNCIL

QUESTION NUMBER: Question 3

ASKED BY: Ruth Forrest MLC

ANSWERED BY: Leader of the Government

QUESTION:

With regard to imputed rents for owner occupied housing:

(1)

a. How are imputed rents included in the national income accounts; and

b. can the Government confirm that imputed rents for owner occupied housing are included in national income accounts at a rate as high as 8%?

(2)

a. To what extent have imputed rents affected the growth in national income over the last three years; and

b. as it appears to have had a big impact, how has it affected Tasmania as relative latecomers to the boom?

ANSWER:

(1) and (2) For the benefit of Members, imputed rents are a calculation by the Australian Bureau of Statistics to try to estimate the rent that owner-occupiers would pay on the housing that they own. This concept treats owner-occupiers as if they were renting from themselves. Imputed rents are included in ABS National Accounts data. While imputed rents and actual rents are separated out at a national level, they are not split this way on a state basis. Income from the ownership of dwellings accounts for around eight per cent of household income. However, this calculation includes both imputed and actual rents. This is a highly complex area and further enquiries on the detailed treatment of this matter would best be directed to the ABS, which has responsibility for the preparation and treatment of these data.

APPROVED/NOT APPROVED

Hon Michael Ferguson
**Deputy Premier**
**Treasurer**

Date: 23 June 2022