

FACT SHEET

Police Offences Amendment (Workplace Protection) Bill 2022

The *Police Offences Amendment (Workplace Protection) Bill 2022* repeals the *Workplaces (Protection from Protesters) Act 2014* (the 2014 Act), and makes amendments to the *Police Offences Act 1935*.

The object of the amendments are to provide:

- appropriate aggravated penalties where a court is satisfied that a trespass obstructed a business or undertaking, and clarify the elements of the trespass offence;
- appropriate aggravated penalties where a court is satisfied that a trespass caused a serious risk to the safety of the trespasser or another person; and
- appropriate penalties for the existing offence of public annoyance, and clarification that this offence includes unreasonable obstruction of the passage of vehicles or pedestrians on a street.

The Bill is necessary to address a High Court decision that certain provisions of the 2014 Act in respect of their operation on forestry land or business access areas in relation to forestry land are invalid because they impermissibly burden the implied freedom of political communication contrary to the Commonwealth Constitution.

The Bill takes into account feedback received during consultation on previously proposed amendments to the 2014 Act. The alternative approach of repealing the 2014 Act and amending the *Police Offences Act* is consistent with current offences and safeguards. For example, the offence of trespass only applies to a person who trespasses without a reasonable or lawful excuse.

The amendments make changes to two existing offences to ensure they adequately cover the conduct intended, and increase the maximum penalties for those offences. The increased penalties for trespass only apply where the court is satisfied that the trespass obstructed a business or undertaking, or caused a serious risk.

The amendments are designed so the legal framework is more readily understood, appropriately enforced, and provides the appropriate balance for the rights of persons to freedom of movement, assembly and lawful expression of opinion.

Section 13, *Police Offences Act* - Public Annoyance

The Bill amends s 13 of the *Police Offences Act*, which creates the offence of 'public annoyance'. Section 13(1) lists a number of actions that constitute a public annoyance, including conduct such as 'commit a nuisance', 'disturb the public peace' and 'disorderly conduct'. While this can already apply to unreasonable obstruction of streets, this is clarified by an amendment to that effect.

The obstruction to the passage of vehicles or pedestrians on a street must be unreasonable, similarly to the current offence in the *Road Rules 2019*. Offences of obstructing streets do not prevent permitted activities on streets, such as activities for which there is a permit under s 49AB of the *Police Offences Act* for demonstrations, fundraising drives, processions, and cycle events.

The amendment also increases the maximum penalty for the offence in s 13(1) from 3 penalty units (currently \$519) to up to 10 penalty units (currently \$1,730). No change has been made to the currently allowable maximum period of imprisonment.

Section 14B, Police Offences Act - Unlawful entry on land (commonly known as trespass)

The Bill clarifies the offence commonly referred to as 'trespass', contained in s 14B(1) of the *Police Offences Act*. The current wording of the provision provides the following is an offence:

"A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel."

To clarify that trespass is intended to cover conduct such as a person who climbs on to, or attaches themselves to, the specified things, the Bill omits s 14B(1) and replaces it with the following subsections (with italicised words emphasising the amendments):

- (1) A person, without reasonable or lawful excuse (proof of which lies on the person), must not *enter into or onto, move into or onto, or remain in or on*, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.
- (2) *For the purposes of this section and the application of this Act to this section, a person who attaches himself or herself to, or permits himself or herself to be attached to, any land, building, structure, premises, aircraft, vehicle or vessel, is taken, while remaining so attached, to be remaining in or on that land, building, structure, premises, aircraft, vehicle or vessel.*

Consequential amendments to reflect this change are made to other subsections in s 14B.

The Bill also clarifies when, for the purposes of s 14B of the *Police Offences 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 offence of trespass. This is done by reference to 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 if a person is on land to which a mineral tenement relates, and a police officer forms a reasonable belief that the person is committing the offence under the *Mineral Resources Development Act*, the person is taken to be on that land without the consent of the person in charge, unless they have consent to be on that land from the holder of the mineral tenement.

Penalties

The penalty for non-aggravated trespass remains the same at a maximum of 25 penalty units and 6 months imprisonment, and 50 penalty units or 12 months imprisonment for trespass in a dwelling.

There is an existing aggravated penalty provision for trespass which applies if the court is satisfied of the specified aggravating circumstances at sentencing. That is, the court can currently impose double the maximum penalty for trespass if satisfied the trespasser was in possession of a firearm while trespassing, or made use of an aircraft, vehicle or vessel during the offence. For example, trespass in a dwelling would have a maximum penalty of up to 100 penalty units or 24 months imprisonment.

The Bill provides for further aggravated maximum penalties in the following situations if the court is satisfied of the specified matters:

- The first aggravated situation is where a person is convicted of trespass, and by or while committing the offence, they either obstructed a business or undertaking, or took an action that caused a business or undertaking to be obstructed. In such a case, the

person is liable to a maximum penalty of up to 50 penalty units (currently \$8,650) or imprisonment for a term up to 12 months.

- The second aggravated situation where a person is convicted of trespass, and by or while committing the offence, they caused, directly or indirectly, a serious risk to the safety of themselves or another person (or took an action which caused such a risk). In such a case, the person is liable to a maximum penalty of up to 75 penalty units (currently \$12,975) or up to 18 months imprisonment. The amendment also provides a person is liable to a maximum penalty of up to 125 penalty units (\$21,625) or up to 30 months imprisonment if they have previously been convicted of an offence the paragraph applies to (i.e. a trespass where there is a serious risk to the safety of the person or other people). Both these penalties apply to trespasses relating to serious risk, and do not also require the trespass to have obstructed a business or undertaking.
- The third aggravated situation is where it is a body corporate that commits a trespass, and in doing so, the body corporate obstructs a business or undertaking, or takes an action that obstructs a business or undertaking. The body corporate would be liable to a maximum penalty of up to 600 penalty units (\$103,800).