

WORKPLACES (PROTECTION FROM PROTESTORS) 2014

CLAUSE NOTES

PART 1 – PRELIMINARY

Clause 1 - Short title

This clause provides the short title to be used when citing the Act for any legal purpose.

Clause 2- Commencement

The Act will commence on the day or days on which it is proclaimed.

Clause 3 - Interpretation

This clause defines certain words and terms for the purposes of the Act and, in particular, defines key terms and words such as “business access area”, “business activity”, “business occupier”, “business operator”, “business related object”, “business worker”, “forestry land”, “owner”, “premises”, “protester” and “works”.

Clause 4 – Meaning of protestor and engaging in protest activity

Subclause (1) establishes the meaning of a protestor for the purposes of the Act.

Subclause (2) specifies what constitutes a protest activity for the purposes of the Act.

Subclause (3) specifies when a person is engaging in a protest activity, and provides that a person who is bystander to a protest activity is not engaging in a protest activity.

Subclause (4) provides that all acts, whether lawful or not, done in a protest activity are subject to the relevant offence provisions of this Act.

Subclause (5) provides that subclauses (3) and (4) do not limit the generality of subclause (1).

Subclause (6) provides that a person engaging in a protest activity where the business occupier is prepared to consent to the protest activity on their premises is not engaging in a protest activity for the purposes of this Act.

Subclause (7) provides that a business operator or a business worker with the consent of the business operator can conduct a protest activity on business premises or a business access area and not contravene this Act.

Subclause (8) provides that a person undertaking protected industrial action under the *Fair Work Act 2009* or a State Service employee or officer participating in lawful industrial action is not taken to be engaging in a protest activity.

Subclause (9) provides that regulations can set out that a class of activities are not protest activities and a person taking part in those activities would not be engaging in protest activity. A person is not to be taken to be engaging in a protest activity if the activity is within a class of activities prescribed by regulations not to be protest activities.

Clause 5 - Meaning of business premises

Subclause (1) defines “business premises” for the purposes of this Act. There is ability to prescribe in regulations places that are business premises where the premises are related to carrying out of a business activity.

Subclause (2) specifies what constitutes use or intended use of premises for the purposes of subclause (1)(h).

Subclause (3) provides that a public road, public footpath or public place is not taken to be business premises for the purposes of this Act, except under the specified circumstances.

Subclause (4) specifies the premises which are not to be taken as business premises for the purpose of this Act.

PART 2 – PROTECTION OF BUSINESS PROTESTORS

Clause 6 – Protestors not to invade or hinder business, &c.

Subclause (1) prohibits a protestor from entering business premises or a part of business premises if entering or remaining on those premises would prevent, hinder or obstruct carrying out of a business activity by the business occupier of those premises, and the protestor knows, or ought reasonably be expected to know, that their action would likely prevent, hinder or obstruct carrying out of that business activity.

Subclause (2) prohibits a protestor from doing an act on business premises, or on a business access area, if the act would prevent, hinder or obstruct carrying out of a business activity on the premises by the business occupier of those premises, and the protestor knows, or ought reasonably be expected to know, that their action would likely prevent, hinder or obstruct carrying out of that business activity.

Subclause (3) prohibits a protestor from doing an act that would prevent, hinder or obstruct a business occupier's access to an entrance to, or exit from, the business premises or business access area related to those business premises, if the protestor knows, or ought reasonably be expected to know, their act would likely prevent, hinder or obstruct that access.

Subclause (4) prohibits a person from doing an act for the purposes specified on a road, footpath, public place or another area of land that prevents, hinders and obstructs the movement of a vehicle, vessel or aircraft by a business occupier in relation to business premises, and the protestor knows, or ought reasonably be expected to know, their act would likely prevent, hinder or obstruct that movement.

Subclause (5) prohibits a protestor from remaining on business premises, in contravention of a police officer's direction under clause 12 to leave. This subclause also prohibits a protestor from entering business premises within 4 days after being directed by a police officer under clause 12 to leave the premises or a business access area of the business premises.

Subclause (6) creates an offence if a person does not comply with subclause (1), (2), (3), (4) or (5).

Subclause (7) provides that if a person is part of a procession, march or event that passes business premises or a business access area at a reasonable speed once on any day, that person does not commit an offence against section 6(6).

Subclause (8) provides a defence of lawful excuse to an offence against clause 6(6).

Subclause (9) specifies the non-limiting circumstances under which an act prevents, hinders, or obstructs the carrying out of a business activity on business premises or a business access area and includes acts that prevent, hinder or obstruct the use by a business occupier in relation to the business premises of a business related object on the business premises, or causes a risk to the safety of a business occupier in relation to the business premises.

Clause 7 – Protestors not to cause damage or threaten damage or risk to safety

Subclause (1) creates an offence if a protestor does an act causing damage to business premises and the protestor knows, or ought reasonably be expected to know, their act would likely cause that damage.

Subclause (2) creates an offence if a protestor does an act that causes damage to a business related object that is on business premises, or on a business access area being taken to or from the business premises, and the protestor knows, or ought reasonably be expected to know, their act would likely cause that damage.

Subclause (3) creates an offence if a person issues a threat of damage in relation to business premises in the furtherance of, or for the purposes of promoting awareness of, or support for, an opinion or belief in respect of a political, environmental, social, cultural or economic issue.

This subclause refers to a threat issued by a person, as the definition of a ‘protestor’ is limited to activities on roads, footpaths, public places, business premises or business access areas and a threat may not necessarily be issued from one of these areas.

A threat to damage in relation to business premises is not limited to those places where protest activity as defined in clause 4(2) can take place.

Subclause (4) specifies what constitutes a threat of damage in relation to business premises.

Subclause (5) establishes a defence of lawful excuse to an offence against subclause (1) or (2).

Subclause (6) specifies the circumstances under which an act causes damage to business premises or a business-related object.

Clause 8 – Protestors must, at direction of police officer, leave and stay away from business access area

Subclause (1) creates an offence if (1) a person remains on, a business access area or an area of land, if directed by a police officer under clause 12 to leave or (2) enters a business access area in relation to business premises within 4 days after having been directed by a police officer under clause 12 to leave; or (3) remains on an area of land or enters the area within 4 days, after having been directed by a police officer under clause 12 to leave the area of land.

Subclause (2) establishes a defence of lawful excuse to an offence against subclause (1).

Clause 9 - Prevention of removal of obstruction

Subclause (1) creates an offence to prevent, hinder or obstruct a police officer from taking action to remove objects in accordance with the provisions of clause 13.

Subclause (2) provides it is a defence to an offence under subclause (1) if the person provides that they had a lawful excuse.

Clause 10 - Incitement to commit an offence

Subclause (1) creates an offence if a body corporate or an individual incites a person to commit an offence against clause 6.

Subclause (2) creates an offence if a body corporate or an individual incites a person to commit an offence against clause 7.

Subclause (3) establishes a defence of lawful excuse to an offence against subclause (1) or (2).

Subclause (4) establishes an additional defence to an offence against subclause (1) and (2) if the inciting person can prove that the person they incited to commit the offence also has a defence against that offence under this Act.

PART 3 – POWERS OF POLICE

Clause 11 - Police officer may demand proof of identity, &c.

Subclause (1) empowers a police officer to require a person to provide the specified information relating to the person's identity where they reasonably believe that the person has committed, is committing, or is about to commit an offence against the provisions of this Act.

Subclause (2) creates an offence if the person fails or refuses to comply with a requirement under subclause (1) or provides false information in response to a requirement under subclause (1), and specifies the penalty for the offence.

Subclause (3) empowers a police officer to search a person if the police officer reasonably believes the person has failed to provide evidence of identity that the person has in his or her possession.

Clause 12 – Police officer may direct person to leave business premises or business access area

Subclause (1) provides that a police officer can direct that a person leave without delay a business premises where the police officer reasonably believes that the person has committed, is committing or is about to commit an offence on or in relation to the business premises or business access area.

Subclause (2) provides that a police officer can direct that a person leave without delay a business access area where the police officer reasonably believes that the person has committed, is committing or is about to commit an offence on or in relation to the business premises or business access area

Subclause (3) provides that a police officer can direct that a person leave without delay an area of land where the police officer reasonably believes that the person has committed, is committing or is about to commit an act in contravention of clause 6(4) on the area of land.

Subclause (4) provides that a police officer can issue a direction to leave to a group of persons.

Subclause (5) provides that a direction under subclause (4) is taken to be given to each and every member of the group who ought to reasonably be expected to hear it.

Clause 13 - Police officer may remove obstructions

Subclause (1) provides a police officer may remove, or have removed, from an area of land any object that the officer reasonably believes is hindering, obstructing or preventing business activity.

Subclause (2) provides a police officer may carry out, or have carried out, activity on an area of land the officer reasonably believes are necessary to make good any damage caused to an area of land by a person, in contravention of Part 2 of this Act.

Clause 14 – Arrest without warrant and removal of persons

This clause empowers a police officer to arrest a person without warrant, detain an arrested person and to remove a person from a specified location, under the specified circumstances and for the specified purposes.

Clause 15 – Use of force

This clause provides that a police officer may use reasonable force in relation to a person, object or premises when exercising powers or performing functions under this Act.

Clause 16 – Infringement Notice

Subclause (1) authorises a police officer to issue and serve an infringement notice on a person where the police officer reasonably believes that a person has committed or is committing an offence under clauses 6(6) or 8(1).

Subclause (2) provides that the infringement notice must be in accordance with clause 14 of the *Monetary Penalties Enforcement Act 2005* and cannot relate to more than one offence.

Subclause (3) specifies the respective penalties payable by a body corporate or an individual under an infringement notice for an offence against clauses 6(6) or 8(1).

PART 4 – COURT PROCEEDINGS

Clause 17 - Certain offences to be indictable

This clause provides that offences against provisions of this Act are indictable offences.

Clause 18– Conviction must be recorded

This clause provides that if a person is found guilty of an offence under Part 2 a court must convict that person of the offence.

Clause 19 – Mandatory penalties for invading or hindering business

Subclause (1) provides for penalties of not less than \$50,000 and no more than \$100,000 to be imposed by a court on a body corporate convicted of an offence against clause 6(6).

Subclause (2) provides that where a court convicts an individual of an offence against clause 6(6) for a first offence the penalty is to be not less than \$5000 and no more than \$10,000; and if a further offence is committed by an individual after the person is convicted of an offence against clause 6(6) the court must impose a term of imprisonment of not less than 3 months and not more than 2 years on that person.

Clause 20 – Compensation for loss

Subclause (1) provides that where a person has caused damage to a business premises, a court may order the person to pay, to the business operator of the business premises, the amount determined by the court to be the costs of repairing the damage.

Subclause (2) provides a court may order a convicted person to pay to a business operator of the business premises the relevant amount in relation to a business related object where an offence under clause 6 or 7 has caused damage to a business related object in relation to the business premises.

Subclause (3) provides how the court may determine what the relevant amount is in relation to a business related object.

Subclause (4) defines references in this section to causing damage to a business related object and the relevant amount in relation to a business related object.

Subclause (5) provides that a person convicted of an offence under clause 6 may be ordered by a court to pay to the Crown the removal and repair costs in relation to the object or act.

Subclause (6) provides where the removal and repair costs in relation to the object or act are reasonably incurred for the purposes of subclause (5).

Subclause (7) provides where a court may order the payment of costs to the Crown reasonably incurred in hiring or obtaining and operating equipment in order to effect the arrest or removal of persons.

Subclause (8) provides that a court may order a person convicted of an offence under clause 6 or 7 to pay a business operator an amount determined by the court to be equal to the amount of the financial loss suffered by the business operator as the natural, direct and reasonable consequence of the offence.

Subclause (9) provides where a court convicts 2 or more persons of offences under clauses 6 or 7 in relation to the same business premises or business access area and the offences each contribute to part, or all of the same damage to premises or business related object, or to the same incidence of financial loss of the business operator, the court may apportion between the convicted persons so much of the cost, or amount of the financial loss, in proportions that the court thinks just in all the circumstances.

PART 5 – MISCELLANEOUS

Clause 21 – Regulations

Subclause (1) provides the Governor with the power to make regulations for the purposes of this Act.

Subclause (2) provides for general regulation making powers.

Clause 22 – Administration of Act

This clause assigns the administration of the Act to the Treasurer and nominates the Department of Justice as the responsible agency until such time as provision is made by an order under the *Administrative Arrangements Act 1990*.