



PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 24 March 2021

REVISED EDITION

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Wednesday 24 March 2021

The President, **Mr Farrell**, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

**JUSTICE MISCELLANEOUS (COMMISSIONS OF
INQUIRY) BILL 2021 (No. 6)**

Second Reading

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move:

That the bill be now read the second time.

Commissions of inquiry, known in some jurisdictions as royal commissions, are established on an as-needs basis to undertake a forensic examination into a matter of public interest. They provide an important social function by providing the community with the opportunity to contribute to the subject matter of the inquiry which, in turn, assists to inform recommendations and government decisions.

Commissions of inquiry are established to advise the Tasmanian Government on matters relevant to policy development and government processes. They are a powerful tool and what separates them from other inquiries and investigations is their ability to use powers normally only reserved for the courts to examine matters of great importance and public interest.

Commissions of inquiry are usually conducted in public, through open hearings. However, as we have learned through the conduct of the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse, not all members of the community wish or are able to share their experiences in a public forum by the very nature of the subject matter.

It is critical that commissions of inquiry are empowered to respect individuals' needs and ensure that all members of the community are supported to participate in the commission's work and share their unique experiences and perspectives.

On 23 November 2020, the Premier announced the intention of the Tasmanian Government to establish a commission of inquiry to examine the responses of the Tasmanian Government to allegations of child sexual abuse in institutional settings. The commission will commence its important work shortly and will be led by the Honourable Marcia Neave AO, assisted by former Family Court Justice the Honourable Robert Benjamin AM, and Professor Leah Bromfield, one of Australia's leading child protection researchers with expertise in child protection systems.

The commission of inquiry will build on the investigation to determine the adequacy and appropriateness of the responses by the Department of Education to allegations of child sexual abuse in Tasmanian government schools commenced by Professor Timothy McCormack and

Professor Stephen Smallbone last year. I wish to take this opportunity to thank them for their work to date on this investigation and for sharing their significant expertise.

The commission of inquiry will also continue the investigation into the responses of the Tasmanian Health Service and the Department of Health to allegations of child sexual abuse, particularly in the matter of James Geoffrey Griffin and the Launceston General Hospital; and the responses of the Department of Communities Tasmania to allegations of child sexual abuse at Ashley Youth Detention Centre.

I would also like to thank Maree Norton and the team at the Department of Communities for the work they have done in their respective investigations to date as well.

The allegations of abuse arising from these institutions have shocked us all. We need to understand how these incidents have occurred and what we need to do to ensure that they do not occur again. There is no greater task of a government than the protection of Tasmania's children and the prevention of child sexual abuse.

The Tasmanian Government is committed to ensuring that children are safe from those who would perpetrate sexual violence and so they can be confident they will be provided every opportunity to achieve justice in whatever form they seek.

Mr President, the Justice Miscellaneous (Commissions of Inquiry) Bill 2021 makes a number of important amendments to the Commissions of Inquiry Act 1995, the Children, Young Persons and Their Families Act 1997, the Youth Justice Act 1997 and the Public Interest Disclosures Act 2002 to ensure that commissions of inquiry are appropriately empowered to undertake their important work.

The bill amends the Commissions of Inquiry Act 1995 to clarify the Governor's power to amend or vary the matters which the commission is directed to examine, including the power to appoint additional commissioners to an established commission of inquiry.

Under the bill, a commission of inquiry will be empowered to conduct its inquiry in any manner that it considers appropriate, subject to the requirements of procedural fairness, including the use of private sessions.

The bill includes a number of amendments that support vulnerable witnesses to give evidence, including to:

- permit a witness to give evidence anonymously, including the use of pseudonyms and any other measure that will assist to prevent the direct or indirect identification of the witness; and

- provide for the use of special measures for the giving of evidence including, but not limited to, those available under the Evidence (Children and Special Witnesses) Act 2001, such as the use of witness intermediaries.

The Tasmanian Government's Witness Intermediary Scheme Pilot commenced on 1 March 2021 and is already being used in the north-west, north and south of the state, in police stations and in Magistrates and Supreme courts. The use of witness intermediaries is essential to ensuring witnesses can effectively participate in otherwise daunting criminal proceedings.

These types of improvements to access to justice is one of our Government's key priorities and we will continue to undertake evidence-based reforms that will support people to engage in the Tasmanian criminal justice system.

I believe it is critical that the commission of inquiry into the Tasmanian Government's responses to child sexual abuse in institutional settings is able to utilise witness intermediaries, where appropriate, and any other special measures available in Tasmanian courts, and we are prepared to make these services available to it.

The bill also implements the work of the Tasmania Law Reform Institute and the Australian Law Reform Commission to enable the appropriate management of circumstances where a witness to the commission or other person may be the subject of a finding constituting 'misconduct' or another finding of the commission which is contrary to the person's interest, and clarifying the circumstances and procedures for a commission seeking to use listening or surveillance devices.

The bill will also provide the commission with the power to inspect documents where legal privilege is claimed, such as legal professional privilege or public interest immunity, and enables the commission of inquiry itself to determine whether the claim is properly made.

A very important amendment in the bill ensures a commission of inquiry is able to discharge its ethical duty to share information for the purpose of ensuring the safety and protection of children, that is child safe reporting to appropriate law enforcement and other regulatory authorities.

Public interest disclosure schemes operate across Australia and provide a framework for public officials to raise concerns about the conduct by government agencies or other public officials. In Tasmania, public interest disclosures are received and investigated by the Ombudsman.

Public interest disclosure schemes promote integrity and accountability in the public sector by encouraging and facilitating the disclosure of information by public officials about suspected wrongdoing in the public sector. In some circumstances, the Ombudsman may refer matters to other bodies, such as the Integrity Commission for investigation.

The bill amends the Public Interest Disclosures Act 2002 to enable the Ombudsman to refer a matter for investigation by a commission of inquiry.

The Children, Young Persons and Their Families Act 1997 and the Youth Justice Act 1997 have confidentiality provisions that ensure the privacy of young people who are subject to child welfare and youth justice orders.

It is anticipated that the commission of inquiry will examine and hear from many people who have been the subject of these orders at one time in their lives, including being placed by the state in out-of-home care arrangements or while detained at Ashley Youth Detention Centre.

We already know from the work of the Commonwealth royal commission that Tasmanian children and young people have suffered abuse in these settings.

To ensure that the commission of inquiry can properly undertake its inquiry and that people who have been affected by abuse in child welfare and youth justice contexts can access their records to enable them to share that information with the commission and participate in private sessions, the bill amends the Children, Young Persons and Their Families Act 1997 and the Youth Justice Act 1997 to provide exemptions to the confidentiality provisions to permit the disclosure and use of information.

These exemptions to the confidentiality provisions enable the use of otherwise protected information to and by the person to whom the information relates, and ensures that:

a person seeking to bring an action may obtain relevant information to enable them to bring that action, civil or criminal, and can participate in out-of-court settlement discussions;

a person responding to an action, civil or criminal, can participate in out-of-court settlement discussions;

a person may use the information for any purpose associated with a commission of inquiry established under the Commissions of Inquiry Act 1995; and

a person may use the information for the purposes of any employment investigation or process to ensure the protection and safety of children.

It is important to note that the amendments ensure that the rules of procedural fairness are to be observed regarding a disclosure made for the purposes of seeking to bring, or responding to, a criminal or civil action or undertaking employment screening, review and disciplinary processes, and provides equivalent rights of access to information so that there is no power imbalance between the state and the party seeking to bring an action.

The amendment in so far as it relates to civil proceedings will enable the state and a party seeking to bring an action against the state to engage in early out-of-court settlement discussions and reduce the risk of re-traumatisation from the usual adversarial nature of civil litigation.

It was a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse that states work to ensure settlement of civil claims in relation to institutional child sexual abuse, and are facilitated at the earliest possible stage. These changes implement this recommendation.

This reform ensures that the state can act as a model litigant and manage civil litigation in a timely and trauma-informed manner.

I wish to take a moment to acknowledge and thank those victims and survivors who have shown enormous courage and already so bravely and selflessly shared their experiences so that we may identify where we need to improve and act to ensure Tasmania's children and vulnerable people are safe.

In closing, I want to highlight that these issues, and media coverage of these issues, can be extremely upsetting and traumatic for some people. I stress that if any aspect of these

matters raises concerns for anyone, please reach out for help. The Department of Justice has a list of support services available on its website, but please call services such as Lifeline or Beyond Blue if you need to talk to someone.

Mr President, I commend the bill to the House.

SUSPENSION OF SITTING

[11.17 a.m.]

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

That the sitting be suspended until the ringing of the division bells for the purpose of a briefing on this bill.

Sitting suspended from 11.17 a.m. to 11.50 a.m.

JUSTICE MISCELLANEOUS (COMMISSIONS OF INQUIRY) BILL 2021 (No. 6)

Second Reading

Resumed from above.

[11.51 a.m.]

Ms LOVELL (Rumney) - Mr President, I will not be speaking at length so someone else might want to get ready. Of course, I will be supporting the bill today. I do not think any of us need reminding of the deeply distressing circumstances that have led to the requirement for this bill today. I do want to take this opportunity to commend the bravery and strength of those victim survivors who have come forward with their stories and prompted this important moment in Tasmania.

I also want to recognise all victim survivors of child sexual abuse, as well as all other forms of abuse, those who have not shared their story, those who are unable to, those who do not want to and those who never will. Nobody should feel they are not as brave or as strong as anyone else if they cannot or do not want to speak up. You owe us nothing.

Processes like this commission of inquiry are critical public institutions to allow people to share their experiences, but more importantly to ensure we do all we can to make sure the types of things that will be revealed through this process can never happen again. The establishment of this commission was the right thing to do. I firmly believe no other course of action would have been appropriate in light of the allegations that have been coming forward.

I am pleased that Marcia Neave has been appointed to head the commission. Ms Neave is highly respected and is well placed to conduct this inquiry, having headed up the Royal Commission into Family Violence in Victoria. She is now to be joined by the Honourable Robert Benjamin and Leah Bromfield, respectively a former Family Court judge and an expert

in child protection. It is extremely reassuring to have people of such a high calibre conducting this critical piece of work.

I do have one question I will raise during the Committee process. My concerns have been addressed in the briefing. I want to thank the Leader and the department officials who gave us the briefing this morning. I know a great deal of work has been undertaken in quite a short period of time to have this bill to the point where it is and to be able to establish this commission now, as soon as this bill is passed. There was also a debate in the lower House which addressed some concerns. I have read through those answers and am satisfied the concerns have been addressed.

I will ask a question about the private sessions through the Committee stage, but just to really put onto the record so that everyone can be assured. I know there is a great deal of attention on this process. This is a really critical and important moment in Tasmania's history. It is important that not only do we get it right, but also people understand the process and are clear that the information they are getting is accurate and that everybody understands what the process will be and what it will mean for them or for people they may know. No doubt there will be other questions through the Committee process, but I am pleased to support the bill, Mr President.

[11.54 a.m.]

Mr VALENTINE (Hobart) - Mr President, I, too, will be supporting this bill. I wanted to make sure, by going to the briefings, that the information being revealed through the processes can be protected as best it can be. In a past life, in IT, I remember designing the first adoption information system. There are some very complex situations when it comes to adoption information and how life-changing it can be should information get out to certain stakeholders, if I can say that. While that sort of information may not end up being the subject of such a commission, it is important to make sure information that is private should remain so after a commission is protected. I am satisfied that it is. I thank the Leader for the opportunity to have the briefing to clarify some of that. I support the bill.

[11.55 a.m.]

Mr DEAN (Windermere) - Mr President, I support the bill. It is needed. These matters have to be comprehensively investigated as quickly as possible. There is a lot of public angst and many people are concerned about the allegations being made and the things coming out of this. A commission of inquiry is necessary.

The second reading speech says on page 2:

There is no greater task of a government than the protection of Tasmania's children and the prevention of child sexual abuse.

I agree with that. It is a pity the Government did not demonstrate that yesterday in the bill I moved. I raised police involvement in the briefing we had. I referred to surveillance devices. The commission may not necessarily be Tasmania Police - it could be the federal police or other police. When we pass these bills, we need to be conscious of the workload it places on other organisations. I expect that in putting this bill together, the police would have been involved, or they would have sought feedback from the police and how they think it should continue.

I asked what would happen to the offence section. The commission would refer any alleged breach or offence to the police. That could either be Tasmania Police or the federal police or another police service. This deals with child sexual abuse and refers to allegations coming out of schools and Health, particularly to the Griffin case. It could go further to any other allegations that would come. I understand there is another allegation involving some other person. It would be able to investigate all of those matters.

When referring to Ashley, the second reading speech reads, 'allegations of child sexual abuse at Ashley Youth Detention Centre'. I suspect that would cover any child in some form of controlled custody making an allegation of sexual abuse, not necessarily for it to have been committed at Ashley. These kids are transported around in vehicles. These kids are moved to other places, such as courts. I suspect it would also cover those situations.

Mrs Hiscutt - Yes, that is correct.

Mr DEAN - The other matter I raised in the briefing was self-incrimination. The Leader might want to cover that further. I understand the Evidence Act applies here and that a person is protected as a person giving evidence to the commission where they self-incriminate. They are given some protection.

Having made those few comments, I support the bill. We need to get these things underway. The quicker it can be done thoroughly, the better it will be for all of us.

[12.00 p.m.]

Ms FORREST (Murchison) - Mr President, my contribution on this bill will be brief.

When we hear about the abhorrent things that continue to go on in our state - some historic, some more recent - particularly in institutions that we would like to think are safe places for our children such as our schools and our hospitals, places like that, all of us are forced to stop and take account of what we are hearing.

The sad thing is this has been going on and on. We have had a royal commission into aspects of these sort of terrible events. We are now seeing through events in Canberra and even around other parliaments and other workplaces examples of a complete lack of understanding of what respect looks like, of what appropriate behaviour looks like, of what equality looks like.

We have a hell of a long way to go. Some time ago I felt we were actually making some progress but in the last two or three years, and particularly in the last two or three weeks, I have realised how far we are from living in what I thought was a civil society.

Where children are abused, where women are raped, where all manner of abuse occurs much lower down the scale that leads ultimately to where we see people turning a blind eye, not standing up, not calling it out, not holding people to account, and this is where we get. This is exactly where we get.

I hope that each of us, when next we see anything that is not right, whether it is a slur, whether it is an inappropriate comment, anything at all disrespectful, particularly to women and or children, stands up and does not walk past. That is not easy in a lot of circumstances, but I challenge us all to do that because this commission of inquiry is absolutely essential.

I commend the Government for bringing it on. They had no choice in my view. The more that came out, the more they had no choice.

We all have to do our part in this. We have to educate our children. If anyone has sons or grandsons, you have a big job ahead of you to make sure they are raised to understand what respect looks like - to understand what consent is and to empower our girls.

I watched a really good YouTube speech clip the other day from the school captain of the Brisbane Boys' College. If you have not watched it, I encourage you to do so. I posted it on Facebook. You may find it easier to access there.

He stood up in front of a private boys' school as school captain, and he said he was making the hardest speech of his life. He revealed the abuse of his mother at eight years of age, the sexual abuse of his mother, and he talked about the culture in their school. We do not have to go too far to read about culture in private boys' schools, do we? How disgraceful that has been.

I hope we have more young men like him who are willing to stand up and call it out. Not just in a forum like that but every time they see it because until we do the commission of inquiry on its own will not change much.

We are putting an ambulance at the bottom of the cliff here. We need fences at the top that actually stop people going down the path with the outcomes we have seen here.

This bill amends a number of acts to provide an appropriate framework I would say for this commission of inquiry to be conducted.

I made a point in the briefing that the bill provides the commission with the power to inspect documents where legal privilege is claimed, such as legal professional privilege or public interest immunity. It was for the commission of inquiry itself to determine whether the claim is properly made. I would have thought that would be in the original bill. I know it is an old bill and has not been used very often. I hope this will help it stand the test of time should there be further commissions of inquiry in the future.

The other amendments provide an appropriate mechanism to protect people who may be called to give evidence - adults who were children, or even children still, who will be drawn into this inquiry. I hope the outcome of the inquiry is that we see real change. I hope that even the conducting of the inquiry will see the start of a greater focus on how we prevent this happening, that we never need to do it again. It is just a travesty. The member for Windermere raised the matter of the investment required to resource police and to undertake additional work in this area - it is incumbent on the Government to resource this fully. There is no price I could put on any child's life who has been harmed or damaged by an institution of this state. I do not care how much it costs for them to get justice for these people. Surely, they deserve no less.

I listened to some of the Premier's comments at the time of the announcement. I think he made it fairly clear - the Leader may like to confirm this - that there will be no issue with resourcing of this commission and the work necessary to see it complete its work.

Mrs Hiscutt - That is correct.

Ms FORREST - The last thing we need is a commission that is somehow stymied from doing its work effectively because of a resourcing issue. I acknowledge the Premier has made that commitment. It is going to be a really tough time for a lot of people. It is going to raise a lot of matters for those who have been abused in other circumstances. We need to be very alert to that in our communities. We need to keep our ears open and our eyes up if we see people who are hurting, and if people come to us, we know how to help them.

Most of all we need to call out bad behaviour when it happens. Be brave, be strong because our children and grandchildren depend on this.

Mr President, I note that tonight a number of our members are coming to hear Bri Lee speak; she wrote *Eggshell Skull*, and she is an amazing woman who has had experience herself. She will be speaking to the members who can attend tonight. It will be a very valuable and timely experience. I contacted her - I am not sure how many weeks or months ago we organised this; it was when the borders were still shut - in the hope we would get her here.

She is here. I know she spoke to the Women's Legal Service people, which I helped to facilitate. Over 50 people were there last night, including a couple of judges. Bri told me this morning that it was a really fantastic session. Let us listen to people like Bri Lee, who has her own personal experience within the law herself. If you have not read her book *Eggshell Skull*, please read it, it is highly informative. She is putting out a new book in June about the inequity in our education system.

There are people like Bri, there are people like Jess Hill, who speaks about the impact of coercive control and family violence and also the effects on children. Let us inform ourselves. The commission of inquiry will do its work. I commend the Government for setting it up. I am pleased this will happen, but there is so much more outside this that needs to be done. We all, as leaders in our communities, have a very clear responsibility.

[12.09 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I do not think there is anything I have to answer at the moment. There is a question coming up during the Committee stage, which will be addressed. That is it, Mr President.

Bill read the second time.

JUSTICE MISCELLANEOUS (COMMISSIONS OF INQUIRY) BILL 2021 (No. 6)

In Committee

Clauses 1 to 15 agreed to.

Clause 16 -

Part 3, Division 1A inserted

Ms LOVELL - I refer to clause 16 of the bill, which inserts a new division - Division 1A, specifically proposed new section 19C(2)(d)(i) and (ii), which appear on page 23 of the bill paper before us.

I believe from the briefing - and thank you for the explanation during the briefing - that nothing in this proposed new section will have any impact on a victim survivor's ability to tell their story publicly if they choose or even if they have chosen to participate in a private session and if in telling that story, they identified the alleged perpetrator.

Can the Leader please confirm that nothing in this bill, and particularly in this proposed new section, will impose any penalties on that person for doing so?

Mrs HISCUTT - Without me reading out the answer, the way that the member has explained it is correct.

Clause 16 agreed to.

Clauses 17 to 19 agreed to.

Clause 20 -
Section 24B inserted

Mr DEAN - I raised this clause during the briefing but I raise it now to ask a different question, one that relates to proposed new section 24B(1) where it says:

A Commission may apply for a warrant under Part 4 of the Listening Devices Act 1991 ...

As I understand it, it has to be a specific person. I take it this would be the commissioner of that inquiry? That person would have to make the application and not another person involved in the investigative side of the inquiry?

Mrs HISCUTT - Yes, the commissioner does make that application in the form of a quorum so the commissioner would -

Mr Dean - The commissioner must personally do that?

Mrs HISCUTT - Yes. The commission stands in the place.

Mr DEAN - This is not a responsibility of the commission. I would have thought there might have been a position here where the commissioner could have delegated that, but there is nothing under the act to say that the commissioner can delegate any of their responsibilities. I take it that is the case?

Mrs HISCUTT - No, they cannot delegate, they have to act as a quorum, they have to do it. They cannot delegate that.

Mr Dean - The commissioner?

Mrs HISCUTT - Yes.

Clause 20 agreed to.

Clauses 21 to 33 agreed to and bill taken through the remainder of the Committee stage.

**WORKPLACES (PROTECTION FROM PROTESTERS)
AMENDMENT BILL 2019 (No. 54)**

Second Reading

[12.20 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move:

That the bill be now read the second time.

Mr President, the Workplaces (Protection from Protesters) Amendment Bill 2019 amends the Workplaces (Protection from Protesters) Act 2014.

The Government has now been elected twice with policies designed to further protect the rights of workers and to deal with unlawful interference with workplaces.

This bill fulfils the Government's commitment to amend the act to protect the rights of workers.

Certain provisions of the act were challenged in the High Court of Australia in the case of *Brown & Anor v The State of Tasmania*. The outcome of *Brown* was that certain provisions of the act in respect of those operations 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.

Importantly, a majority of the judges of the High Court of Australia considered that the purpose of the act was valid.

The Government has given careful consideration to the High Court's decision and to how the act can be amended to ensure continuing protection for business activity.

The bill gives effect to a fundamental principle: that our laws should protect people who are undertaking lawful business activities. This means people should be able to earn a living without trespassers interfering with their work, threats being made in an effort to shut down their businesses, or the roads they use being obstructed in order to stop their business operations.

Across the country we have seen people attempt to physically shut down shops by blocking entrances, mass trespasses on farms, and roads and railways being blocked. These types of behaviour are unacceptable and our laws must clearly support people who are going about their lawful business.

The bill therefore amends the act to criminalise the intentional impediment of business activity in certain circumstances.

This bill has been carefully drafted to ensure that it does not impermissibly burden the implied freedom of political communication. The Government recognises that freedom of communication is a fundamental right.

However, it is important to recognise that there are limits to all rights. The implied freedom of political communication does not permit people to trespass on the land of others only because the person entering the land wishes to make a political point or a statement. As a former Chief Justice of the High Court of Australia recently wrote:

The importance attached at common law and international law to freedom of speech does not convert it into a right which can be exercised inconsistently with the rights and freedoms of others. It does not carry with it a right to go on to private land in order to express a particular view. It does not carry with it a right to go on to land where access requires permission, for example by a public authority controlling the land for particular purposes. There are, and always have been, limits.

This bill includes several express provisions to ensure it does not conflict with other rights. Proposed section 6 sets out several circumstances in which a person is not to be taken to be committing an offence. These circumstances include protected industrial action, other trade union-based activity, and authority granted under a permit issued by a police officer under section 49AB of the Police Offences Act 1935. In addition, proposed section 6 provides a broad defence to a charge where a person has a lawful excuse for committing the offence.

The bill also removes the focus of the act from protesters. Its provisions apply to all people. As the act will apply to people generally, the bill removes a number of provisions that overlap with existing laws. For example, destroying property is an offence under both the Police Offences Act 1935 and the Criminal Code Act 1924. The specific offence in the act for damage to business premises and business-related objects is therefore removed by the bill, and existing charges under other legislation will be relied on where business premises are damaged. This will mean that trespassers who destroy property on business premises, and those who incite them, are subject to a maximum penalty of 21 years imprisonment, as is currently the case today. The offence in the act for refusing to provide a name and address to a police officer is also removed by the bill. Police will instead rely on existing offences in other legislation.

Current powers of arrest under the act are complicated. The bill amends the act to simplify arrest powers.

The bill also removes police powers of direction from the act.

It is important to note that the act as amended by the bill will not cover all business activities or business premises. In order to avoid the possibility of unintended consequences, the Government has largely retained the existing definition of business premises. However, business vehicles have been removed from the definition of business premises and separate definitions and offence provisions are now provided by the bill in relation to business vehicles.

Key changes to offence provisions are contained in proposed sections 6 and 7.

Proposed section 6 contains new offences for trespassers on business premises and on, or in, business vehicles. Trespass is a well-entrenched concept in our legal system and appears in a number of acts, including the Criminal Code Act 1924. The bill creates offences for trespassers who intentionally impede business activity on business premises or on, or in, a business vehicle. While there are already offences for trespass in Tasmanian law, trespass aggravated by the intentional impediment of business activity has the potential to cause significant economic loss for workers and businesses. For that reason, the bill makes these offences subject to a maximum penalty of 60 penalty units or 18 months imprisonment for a first offence, or both, and 60 penalty units or four years imprisonment for a further offence, or both.

There are higher financial penalties for offences committed by body corporates. Overall, this will provide the country's highest maximum penalty for the offence of trespassing while intentionally impeding business activities on business premises. At the election of the prosecutor, these trespass offences can be heard and determined in a Court of Petty Sessions, with lower maximum penalties. The possibility of facing a high maximum penalty, along with the possibility of a conviction for an indictable offence, is likely to have a deterrent effect on some who would otherwise be tempted to risk being charged and convicted of a summary offence with lower maximum penalties.

Proposed section 6 also contains a new summary offence for obstructing a public thoroughfare with the intention of impeding the carrying out of a business activity. This provision is based on existing laws in Tasmania that deal with obstruction of roads and public places, but public thoroughfare is given an extended definition in the bill to cover streets, roads, waterways and other public places and includes the element of intention.

Proposed section 7 contains a new offence for threats to commit an offence under section 6 if the person intends by the threat to impede the carrying out of a business activity. While existing laws cover false threats of danger and using a carriage service to menace, harass or offend, proposed section 7 aims to ensure coverage of a broader range of threatening conduct against businesses, and includes the element of intention.

Other Australian jurisdictions are also acting to deal with problems of trespass and interference with business activity.

The Commonwealth Parliament passed laws in 2019 to address the incitement of trespass and other property offences on agricultural land. The provisions of the bill currently before the House will complement the Commonwealth's recently introduced laws, but Tasmania's bill goes further in certain aspects than the Commonwealth laws. While the Commonwealth's laws focus on the use of a carriage service, such as a mobile phone, to incite, the provisions of Tasmania's bill mean that Tasmania's laws will apply in a broader range of circumstances, and to a broader range of businesses, than the recently passed Commonwealth offences.

Also in 2019, the Queensland Government created a new offence aimed at stopping dangerous devices being used to shut down public thoroughfares and infrastructure.

The New South Wales Government has also introduced legislation to address problems of trespass on agricultural properties.

Finally, the Government undertook extensive consultation on an earlier draft version of the bill and I thank all those who made submissions on the earlier draft bill.

More than 50 targeted stakeholders were sent a copy of the bill and invited to make a submission, and more than 400 submissions were received in response to the bill. Consideration was given to all the issues raised during consultation and a number of important amendments were made to the bill in response to matters raised during consultation.

Mr President, I commend the bill to the House.

SUSPENSION OF SITTING

[12.30 p.m.]

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

That the sitting be suspended until the ringing of the division bells for this briefing.

Sitting suspended from 12.30 p.m. to 2.30 p.m.

QUESTIONS

Drive Journeys - Cost and Success Measures

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

[2.32 p.m.]

With driving experiences as one of the priorities identified in the Tasmanian Visitor Engagement Strategy and the subsequent Tasmanian Drive Journeys State Growth initiative, I have four questions:

- (1) What process was undertaken to identify the initiative to name the areas?
- (2) How were the sign sites arrived at? Given, for example, that the 'Northern Forage' sign is often placed on road verges where there is no opportunity to forage for food or often not even to source supplies.
- (3) What was the total cost of this campaign?
- (4) How does the department intend to measure the success of this initiative?

ANSWER

Mr President, I thank the member for McIntyre for her question. It was an interesting question and this is quite a lengthy answer but I will read it out because I think members may be interested -

Ms Rattray - Two or three pages?

Mrs HISCUTT - Two and a bit.

Ms Rattray - I am happy for you to table it. As much as anything I am interested in it and it will be shared with members once I get it.

Mrs HISCUTT - Mr President, I seek leave to table and incorporate the answer. It is an interesting read so I urge members to look at it.

Leave granted; document incorporated as follows -

(1) In relation to the process undertaken to identify and name the Journey areas:

- The Drive Journeys project is being delivered through a partnership between the Department of State Growth and Tourism Tasmania, in collaboration with the Regional Tourism Organisations.
- There are five Drive Journeys in total that will be used as signature products to promote Tasmania as a leading global self-drive touring destination.
- The Discover Tasmania website is the primary source of information for anyone planning a road trip in Tasmania. Detailed information about the types of experiences on offer, as well as a planning tool, is hosted on DiscoverTasmania.com.au.
- The road signs installed as part of the project are not a marketing or planning tool, or a source of information about particular experiences or products. Instead, they are designed to reassure visitors, once they are here, that they are within a particular Journey's footprint.
- The name 'Great Eastern Drive' has been in place since the Great Eastern Drive was first developed back in 2015 and this has not changed. The same applies to the 'Western Wilds' which was initially launched back in 2018.
- The confirmed footprints and names of the other Journeys - Northern Forage, Heartlands and Southern Edge - came out of a statewide consultation with the tourism industry that included 14 face-to-face community forums, an online survey, and eight meetings with key industry stakeholders across the state.
- Working groups were then formed for each of the new Journeys. These included representatives from local government, the Regional Tourism Organisations, state Government - including the Department of State Growth and Tourism Tasmania - and industry representatives, including tourism operators.

- A creative agency, The20, was engaged through a competitive RFQ process, to develop naming and visual identity concepts for each of the three new Journeys, based on the insights gained from the consultation process.
- The working groups were then presented with a range of options to consider. Working group members had the opportunity to liaise with their stakeholders to determine which names were the preferred options, before reconvening as groups to make the final selections.

(2) In relation to the Journey road sign locations:

- The Journeys are aimed primarily at interstate and overseas visitors who are being encouraged to visit regional Tasmania and share the benefits of the visitor economy statewide.
- There are two types of signs: reassurance signs, which simply include the Journey logo; and a very small number of larger pictorial signs that include a beautiful regional photograph, the Journey logo, and the Discover Tasmania hashtag.
- The approach taken to signage is deliberately simplistic, in line with State Roads' requirements as the road authority. The signs are positioned along our roads essentially to reassure our visitors that they are on the right track.
- We anticipate many visitors undertaking self-drive touring holidays in Tasmania will have encountered the Drive Journeys as part of their pre-visit planning. Therefore, it is useful for them to see reassuring road signs when they experiencing their Tasmanian holiday.

(3) In relation to the total cost of this campaign:

- A budget allocation of \$1.4 million for the Tasmanian Drive Journeys Project was confirmed by the then Minister for Tourism, Hospitality and Events in September 2017.
- Of this \$1.4 million, \$800 000 was provided to the Department of State Growth as the project lead, and \$600 000 was provided to Tourism Tasmania for associated visual identity development and marketing activities.

(4) In relation to measuring the success of this project:

- The Drive Journeys are part of a range of strategic measures aimed at sharing the benefits of the visitor economy to Tasmania's regions.

- They are designed to showcase the depth, breadth and diversity of Tasmania's regional experiences, and inspire and support visitors to plan and experience a regional self-drive touring holiday.
- The Tasmanian Visitor Survey (TVS) measures regional visitation and nights, as well as total visitor spend.
- It is important to note that originally the Drive Journeys were to be launched to an interstate market to showcase the world-class self-drive touring opportunities available in Tasmania.
- As we all know, the measures taken to keep Tasmanians safe during COVID-19 have had a huge impact on our tourism and hospitality sector.
- To complement the many initiatives introduced by my government, the delivery timeline for the Journeys project was brought forward significantly, so that the project could contribute to recovery efforts as soon as possible.
- Instead of waiting for our interstate visitors to return, we launched it to the Tasmanian market in November last year, providing a new way for Tasmanians to explore our beautiful state.

Mornington Roundabout

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

The Mornington Roundabout is loathed by locals and is fast outgrowing its capacity.

- (1) What work has been done to progress a fix to this confusing and chaotic roundabout?
- (2) Has a design solution been identified? If so, what is it?
- (3) What are the cost estimates to fix this intersection?

ANSWER

Mr President, I thank the member for Pembroke for her question.

(1) to (3)

The Sorell to Hobart Corridor Plan released in November 2020 identified that the Mornington Roundabout should be upgraded to address community concerns and improve capacity and control.

The roundabout and the surrounding road and network including the interchange with the Tasman Highway have been identified by the Government for future upgrades to meet projected demand growth. The Government has asked the Department of State Growth to develop potential upgrade solutions over the course of 2021 and to share the outcomes with the community in 2022. It is on the radar.

TasWater - Membership and Composition of Board

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

[2.35 p.m.]

Regarding the Board of TasWater, please advise:

- (1) I understand the Board of TasWater currently comprises seven members, including the chair. Could the Leader please advise where each of these board members are based?
- (2) Does the current composition of the TasWater Board comply with the current TasWater Board Selection Committee Charter, which stipulates that one representative comes from the north-west region, one from the north and two from the southern region? If not why not?

ANSWER

Mr President, I thank the member for Launceston for her question.

- (1) The advice I have is that four board members are based in Tasmania and three are based interstate.
- (2) The advice is that TasWater Board Selection Committee Charter does not stipulate where board members are based. It stipulates the makeup of the board selection committee, and regarding the committee composition it states:

The ORG (owners' representative group) will appoint members to the Board Selection Committee in accordance with TasWater's Constitution, namely:

- one representative from the north western region
- one representative from the northern region
- two representatives from the southern region
- the Board Chair
- the Crown's owner's representative and
- the chief owner's representative, if that person is not one of the regional representatives or the Crown owner's representative referred to above.

The Board Selection Committee is compliant with the requirements. The Board Selection Committee is responsible for appointing directors to the TasWater Board. The TasWater Board is skills-based and comprises seven independent non-executive directors. Three of those directors are female.

Driver Assessments - Cost to Older Tasmanians

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

[2.37 p.m.]

- (1) Is the Minister for State Growth responsible for driver assessment aware of the process and the excessive cost of \$450, which does not include the additional cost of \$65 for the services of a driving instructor, that provider organisations are charging senior Tasmanian residents required to undertake a driver assessment?
- (2) For many older Tasmanians wishing to drive mostly in their local area and retain some independence, these costs are unaffordable. Is this excessive cost designed to deter older residents from undertaking driving in their local area?

ANSWER

Mr President, I thank the member for McIntyre for her question.

- (1) Many senior Tasmanians who are required to undertake a driver assessment can do so with a departmental driving assessor free of charge. Some older drivers are required to undertake a specialist occupational therapy driving assessment upon referral from their medical practitioner. OTDAs may be conducted for drivers of all ages when it is necessary to assess the impact of injury or illness on driving skills, including judgment, decision-making and vehicle handling.

OTDAs are conducted by private occupational therapists specifically trained in driver assessment. Their assessment includes both an off-road and on-road assessment. The average the assessment takes between two to three hours to complete.

The on-road component of the assessment will generally be carried out in a driving instructor's vehicle with dual controls, with both the vehicle instructor and occupational therapist in the vehicle.

Approximately 200 persons per annum are referred to an OTDA. Fees for the assessment can vary and are not covered by the Tasmanian Government.

A person referred for a driving assessment who meets the criteria for assistance of the Community Rehabilitation Unit in the Department of Health in Hobart may be eligible for a subsidised OTDA.

- (2) Not all older drivers referred for a driving assessment are required to undertake a specialised OTDA. Many older drivers are able to undertake a driving assessment free of charge with a departmental driving assessor.

Approximately 350 of these assessments occur per annum and these have enabled many older drivers to continue to drive with or without area restrictions. Driving is a complex task and any change or loss of function due to injury or illness may affect the ability of the person to drive. In some situations a person's driving may have become unsafe. OTDAs help people to identify and understand when their driving abilities have changed and to work with them to help them to be as independent and safe as possible.

Tasmania Prison Service - Allegations - Search of Juvenile

Mr DEAN question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.40 p.m.]

Similarly to questions referred to by other members yesterday and today, this question was asked some time back in January.

It relates to allegations made by Tasmanian Aboriginal Centre spokesperson Nala Mansell as reported in *The Mercury* on 8 January 2021. The allegations were that a teenage Aboriginal girl in the lock-up on a minor offence was told to take her clothes off in front of a group of police. When she refused, she was restrained and her clothes were cut off.

This matter has been raised with me for follow-up. Will the Leader please advise:

- (1) What was the nature of the offence giving rise to the arrest?
- (2) Was the subject person told to remove her clothes? If so, what were the reasons for that?
- (3) How many police were present, or others, and what was the gender of the people present?
- (4) Was the girl restrained physically within the lock-up? If so, what were the circumstances of that?
- (5) Were any of her clothes cut off? If so, what garments?
- (6) If applicable, why was any clothing cut off?

ANSWER

Mr President, I thank the member for Windermere for his question. We are just trying to look for the date that the question was sent, but we may not be able to find that now. I will launch into the answers

- (1) For privacy reasons it would not be appropriate to comment on this individual case.
- (2) Again, there is no comment on the individual case. As to the process, on completion of a Tasmania Police juvenile search risk assessment, an individual can be instructed to remove clothes to undertake a search in accordance with Director's Standing Orders (DSOs) 1.02, Use of force; 1.10, Searching; and 1.35, Watch-House detainees.

The degree of search undertaken is proportionate to the assessed risk. A full personal search is authorised only if there is a reasonable suspicion that a person is either in possession of an item of contraband or there are reasonable grounds to believe they are at risk of harming themselves or others, and the risk cannot be adequately mitigated by non-intrusive searching tools or a body/pat-down search.

Factors include stated intent to commit suicide or self-harm, known possession of weapons or drugs, or combative or non-combative behaviour. Tasmania Prison Service staff understand that entering the watch house can be a traumatic event, particularly for the first time as a juvenile. They make every effort to conduct personal searches in a professional and humane manner in order to minimise any potential distress.

Personal searches are necessary for the safety and security of the prison. Personal searches are conducted in areas that are secure and discreet, and all correctional officers must successfully complete the relevant training. Personal searches are conducted using the half:half method, so at no point is a person required to be completely unclothed.

- (3) For privacy reasons, it is not appropriate to comment on this individual case, but the relevant DSO states that personal searches must be conducted by correctional officers of the same gender as the person being searched, other than by exception, such as where use of force is required and limited staff are available.
- (4) For privacy reasons again, it would not be appropriate to comment on this individual case, but the procedure for conducting searches when an individual is physical restrained is guided by DSO 1.10, Searching, which says:
 - o Inform the prisoner that if they continue to refuse to be searched or remain non-compliant they will be subject to a personal search using force.
 - o If the prisoner continues to refuse or remains non-compliant, place the prisoner in controlled manner on their stomach.
 - o Restrain the prisoner's limbs in a controlled and careful manner.
 - o A blanket is to be placed over the body of the prisoner to preserve their dignity (wherever possible), as their clothes are being removed.
- (5) For privacy reasons, it is not appropriate to comment on this individual case.

(6) It is not applicable.

Mr Dean - Maybe I should be asking the question whether the allegation is true or not, I suppose.

Mrs HISCUTT - We received the question on 19 March.

SUSPENSION OF SITTING

[2.45 p.m.]

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

That the sitting be suspended until the ringing of the division bells to further continue the briefing.

Sitting suspended from 2.45 p.m. to 3.48 p.m.

WORKPLACES (PROTECTION FROM PROTESTERS) AMENDMENT BILL 2019 (No. 54)

Second Reading

Resumed from above.

Statement by President

[3.48 p.m.]

Mr PRESIDENT - Honourable members, it may seem as if today is the day presiding officers choose to make statements. Before I call, I ask for the indulgence of the Council to make a brief statement in regard to this bill.

It is disappointing, but not surprising, that this bill has been brought forward now. It is obvious to all that this bill is being brought to this Council at this time for purely political reasons. It sat for almost a year-and-a-half. It was stated in the other place at the time of debate that it was urgent - so urgent, in fact, that debate on it continued until the early hours of the next day before debate was guillotined. So, in fact, it was not even thoroughly debated. It was to be ready for the next summer of protests, so why did the Government hold it not just for that summer, but also for the following summer? It must not have been all that urgent after all.

But, hang on, all of a sudden it is urgent again. It was plainly obvious to everyone, including the timber industry, that it was being held for political reasons. It appears the minister prefers the fight, not the fix. Apart from the contrived media and social media content, further evidence is from the minister's contribution in the other place. I quote the minister, Mr Guy Barnett, who, on 2 March, in the other place, said:

We know the position of ... the Liberal candidate for Windermere. He stands up for the little guys -

As distinct from the big guy?

... the workers, and their right to work. We know the position of ... the Liberal candidate for Derwent.

I can only assume they have read and understand this legislation. He goes on to say:

Sadly, this is all coming to Mr Farrell, the Labor Party member for Derwent.

Sadly, what does he mean by that? He goes on:

Will there be a backflip in advance of that decision in only a few weeks time?

A clear bullying undertone. Had he knowledge of how the Legislative Council operates, he would know that in my role as President of the Legislative Council, I would not have the opportunity to defend myself on the Floor if it was voted down at the second reading stage.

Laws often interfere with people's rights and freedoms. Laws are considered necessary for many reasons - public order, public health, protection of vulnerable people, security. We accept that laws are required to regulate behaviour. Laws should be reasonable, proportionate, balanced - that is, balanced with others' rights - we accept that as part of a healthy democracy. Rights ought not to be sacrificed lightly. Societal interests are weighed purely against those of individuals and are justified. Laws cannot target particular groups. Proportionality means law has legitimate objectives suitable to meet its objectives and necessary to meet its objectives. On balance, the public interest outweighs harms to individuals' rights.

For Mr Barnett's information, the role of this House is one of review. It examines the merits of legislation and consults with the electorate and the community at large. This is very important in a jurisdiction that has no bill of rights or dedicated committee to consider rights. Is this law compatible with these principles? Is it reasonable, proportionate, legitimate? Does it do more harm than good? As the Leader stated, we have current laws on our statutory books. These ought to be used. It is up to the courts then to sentence accordingly based on the circumstances of the case.

Do we need more laws that might detrimentally affect people's rights to speak out and protest? If this law goes too far, what is the chilling effect? That is, people will be too scared to speak out. If law is targeted to a group, is it fair? The original bill in 2014 was found not constitutional by the High Court. This bill is an attempt to repair bad laws that were struck down in part. It would be far more sensible to repeal and start again with proper consultation with community, including industry, affected groups, law practitioners and police, unions and other interest groups.

Mr Barnett needs to work with industry to get a proper result to keep workplaces safe. Running around parroting 'wood is good', is not a policy. It is vital that Mr Barnett listens to the industry to ensure workplace safety is enforced. The last thing these industries want is to remove democratic rights in a broad and sweeping fashion, but they want trespass and workplace laws to be strong enough to ensure their workers are safe and their plant is protected.

In his reply to an offer to work in a bipartisan way, he stated:

The reasons ... gives to oppose this legislation are either misplaced, misleading or wrong. The Labor Party has a clear choice. Stand with the Bob Brown Foundation and the Greens and oppose this important legislation or vote for the right of business to operate ...

Once again, he plays the wedge and clearly indicates he is not prepared to work with any others to find a solution. I have no doubt the Liberal Party factotums have the media release ready to go out. Actually, based on past history it has probably already gone out. For the record, I fully support the timber industry and other primary producers in this state, and I want to see these dangerous and irresponsible workplace invasions stopped.

This minister is treating the Legislative Council with contempt by playing a political stunt to try to win seats in the Legislative Council and possibly trigger an election.

[3.55 p.m.]

Dr SEIDEL (Huon) - Mr President, thank you for your contribution. I thought it was entirely appropriate for you to address the House. I agree with you. This debate is not about debating the rights to protest or the rights to protect businesses from disruption, it is just a political stunt and the sorry highlight of a mediocre Liberal campaign for the seats of Derwent and Windermere. As you mentioned, it is not even unannounced.

I was in the other place on 2 March, when Mr Barnett raised the legislation as a priority campaign issue. I will quote Mr Barnett from *Hansard*:

Be assured it is a priority that is coming up in the Legislative Council. I have announced it as a priority. This will be a key question in the Legislative Council election, so watch this space for the Labor candidate member, for the absent member for Derwent and his position.

It goes on:

Labor has opposed it. They opposed it in this House. The test will be in a couple of weeks time. What will Labor do when this legislation comes to the Legislative Council as a priority bill?

I am not surprised the Liberal Party has run out of issues to campaign on, but it is just disrespectful of this House. The proposed legislation has, of course, implications for our health professionals as well. It has implications for our doctors, our nurses, our paramedics and our carers. Our healthcare workers cannot be expected to work any harder. If this Government wants to pick any issue to campaign on, my advice would be to offer a genuine commitment to fix the perpetual Tasmanian health crisis. But the Government does not want to talk about the perpetual health crisis because it is directly responsible for it in the first place.

Instead, this Government wants to prevent nurses from protesting for better working conditions, aged care workers for better staffing levels in nursing homes and paramedics for getting paid a travel allowance. I get it, because when I campaigned for the seat of Huon, I

was standing with the union. I was standing with the Health and Community Services Union (HACSU) and our aged care workers to protest for better working conditions in our aged care facilities. Because it matters. This legislation would have prevented me from doing that. Listen to the voices of the union movement, listen to our healthcare workers, because if you do not, do not be surprised if you are ending up with a royal commission. That is exactly what happened with the royal commission into aged care.

This morning we also heard from Dr Clare Smith representing the doctors' industrial union, the Australian Medical Association (AMA). Dr Smith stated:

This bill puts the rights of businesses above the rights of people without balancing provisions. The offence is extremely broad. It covers merely intending to impede a business, with no proximity in time or place required. As there is no longer any reference to forestry or mining, it covers any businesses and no evidence of actual harm is required. You are used to thinking about this bill as applying to forestry and mining operations, but this is no longer the case.

If you see harm being done to our patients, we are likely at some point to be part of action to try to limit that harm in a way that could see us captured by this legislation because of the breadth of its reach. Actually, this law itself could be seen as intending to impede my business as a health provider since I regularly give advice that would not be in some business interest.

She concludes:

Doctors are used to reading signs and we have been reading the signs. We need to speak out. We should be protected, not criminalised for doing so.

Honourable members, when the Government targets doctors, ignores their calls but portrays them as the new radicals of society instead, the Government should really deeply reflect on how disengaged it is from our society and our communities. People can see through political stunts. For that reason I will not be supporting this bill.

[4.00 p.m.]

Ms LOVELL (Rumney) - Mr President, I am sure it will come as no surprise to anyone when I say from the outset I will not be supporting this bill.

If we are to accept that the intent of this bill is what the Government has said it is - an attempt to protect the safety of workers and the rights of people to conduct their business - in my view this is not the way to do it.

I believe in the right to protest. Having worked with union members for 10 years in my career prior to being elected, I know only too well sometimes protest or industrial action is the only option available to people.

When there is a significant imbalance of power, as there often is in a workplace, sometimes the only option - the last resort - to effect change is through protest so personally I could not possibly support any legislation that puts this at risk.

A great deal of legitimate union activity would be captured by these laws; to quote Unions Tasmania secretary Jessica Munday, 'Who knows whether that is deliberate design or lucky consequence?'.

We know this Government is no friend of unions. It has demonstrated that time and time again. I will take this opportunity to remind Government members that when they talk about unions, they are in fact talking about the hardworking Tasmanians who are members of their unions, as is their right to be.

Nurses, teachers, security officers, cleaners, doctors, correctional officers, hospitality workers, early years educators, farm workers, construction workers and shipbuilders. This Government is no friend of workers, that is very clear.

The minister wrote in today's *Mercury*, '... enough with the party politics, let's work together.'.

Well, it would help if the minister was more open about the fact that he has ignored invitations from Labor to do just that - to work together on fixing the problem. That is if we are to believe what he says is what he is attempting to do with this bill.

Labor's shadow minister for Resources, Primary Industries and Water and Infrastructure wrote to the minister on 19 March 2021 - last week - offering to do just that. Dr Broad wrote:

Dear Minister Barnett,

I write to you to discuss correspondence we have both received from the Tasmanian Forest Products Association TFPA.

It is clear from this letter that the TFPA are seeking leadership from the Tasmanian Labor and Liberal Parties to take a bipartisan approach to tackling workplace invasions by the Bob Brown Foundation and others targeting our resource industries.

It is with this request from the timber industry that I offer to work with you to draft legislation to tackle these jobs destroying workplace invasions and dangerous stunts.

I am extremely concerned that the actions of the Bob Brown Foundation are inherently dangerous and put the safety of protesters and workers at risk.

In the spirit of the TFPA's request for bipartisanship I propose that we work together to expedite the drafting of legislation that achieves the following.

Mirrors part 7A of the Victorian Sustainable Forest Timber Act 2004, to enforce timber harvesting safety zones on public and private land that include significant fines for unauthorised entry and create an offence of aggravated trespass for protestors who enter resource processing primary production or export facilities for the purpose of disrupting or obstructing a lawful activity.

I look forward to your response and beginning a bipartisan approach to protecting our vital resource-based industries.

Your sincerely
Shane Broad MP
Labor member for Braddon

The minister's response was:

Dear Shane

I refer to your letter of 21 March 2021.

You say you oppose radical protestors invading workplaces and denying the right of Tasmanians to work however, you go on to say you oppose our Government's Workplace Protection Legislation soon to be debated in the Legislative Council. This is very disappointing.

The reasons you give to oppose this legislation are either misplaced, misleading or wrong. The Labor party has a clear choice. Stand with the Bob Brown Foundation and the Greens and oppose this important legislation or vote for the right of business to operate and Tasmanian workers to work without interference, impeding or harassment.

Our legislation has the support of Tasmania's productive industries representing farmers, foresters', miners', fishers and the business community not to mention Tasmanian workers.

Furthermore, similar legislation has been passed in the Federal Parliament with bipartisan support, as well as in most mainland states with bipartisan support.

For all the reasons I have outlined publicly over a long period of time I urge you and the Labor Party to reconsider your position and support our legislation.

Yours sincerely,
Honourable Guy Barnett MP

No interest in working together, none at all.

A small minority of people go to extreme lengths and take unsafe actions: standing on loose log piles, chaining themselves to machinery in remote locations, and entering workplaces in a manner that is unsafe for themselves and for workers. I will be clear: I am not just referring to the forestry industry here - it is all workplaces. We have heard some stories about that today; so let us fix that problem. There are ways to do that. I stand here ready to work with the Government on fixing that problem, but this is not it.

The minister also said in his Talking Point in *The Mercury* today that Labor governments across Australia have supported and passed similar legislation, with the New South Wales, Queensland, South Australian and Western Australian governments moving to tighten laws.

Let us look at what has actually happened in other states.

Let us look at what is happening in Western Australia. In Western Australia the Government has focused on biosecurity laws to crack down on vigilantes, but recognises that there needs to be a balance against tightening trespass laws with increased inspection regimes and increased resources to protect animals from cruelty and neglect. It has not introduced an all-encompassing draconian bill like this.

In Victoria a committee was established to look at biosecurity incursions on farms and, again, trespass laws.

What is happening in Queensland? In Queensland they have identified there are biosecurity threats from the incursions occurring on farms, and they are now imposing a fast penalty for the crime of trespass. Trespass again.

South Australia has introduced aggravated farm trespass laws.

The governments in other jurisdictions have looked at how they can improve trespass laws so they provide the protections those farmers need and do not inadvertently capture other innocent people who might be protesting about other things, as this bill does.

It is wrong for the minister to claim that other states are doing anything like this, because they are not.

We have heard from a number of employer and industry bodies who are in support of this bill. Of course they are; I would expect nothing less. Many of them shared distressing stories with us this morning, and I want to thank them for speaking with us so openly and so frankly. They want to be able to get on and do their work safely. I support them in that.

I recognise that in some cases unsafe actions are taking place that unfairly impede on their workers' ability to conduct their business. My colleagues in the other place have been having extensive conversations with industry representatives, and we will always support their right to conduct their business.

I will always support the rights of workers to a safe workplace. I do not support protest that puts people at risk, physically or emotionally. As I have said, we are ready and willing to work with the minister and industry to address the real problem here, but this bill is not it.

It is a real shame that these employers and industry representatives have been abandoned by this Government for the last several years. No action has been taken to find a way to address this problem in a way that can be supported by the parliament and in a way that I could support. There are ways, we know that. We have seen that happening in other states.

These employers and industry representatives, who obviously care deeply about this issue, have been utterly abandoned by this Government. This bill itself has been sitting before the parliament for 14 months. Fourteen months of nothing. What a terrible waste of time.

At best, this bill is a clumsy attempt to fix a legitimate problem. At worst it is a deeply divisive and dangerous political game. This bill was rushed through the House of Assembly in the last sitting week of 2019. Indeed, the debate was cut short because the bill was so urgent.

My one question to the Leader on this bill is: if it was so urgent that it had to be rushed through in the final sitting week into the early hours of the morning with a shortened debate, why have we not debated this bill in this place before now, almost exactly 14 months later? I do not want to hear blame being put on the pandemic, so please do not mention COVID-19 in your answer because we all know that is simply not true. No wonder people are cynical about politics. Mr President, I will not be supporting this bill.

[4.10 p.m.]

Ms FORREST (Murchison) - Mr President, it is no surprise we see this bill presented for the obvious reason that the 2014 bill was fundamentally flawed, as a number of us pointed out at the time. I was not aware that the 2019 debate was guillotined. It was in 2014 too. It is like a case of *déjà vu*. I accept and understand the challenge many businesses and workplaces are experiencing when protesters invade their workplaces and prevent them going about their work. This is unacceptable. We need to respond to this more effectively.

Some of this relates more to police resourcing, it seems, from discussions I have had. A lot of these activities occur in quite remote areas, certainly in my electorate they are quite remote. It is difficult for police to respond in a timely manner. It is not a criticism of police, it is acknowledgment of a reality. Business is disrupted for much longer, even though the protesters might move along once the police arrive. But three hours of work, time and opportunity have been lost.

The other point raised with me, including by those in industry, who in many cases have felt very let down by the politicisation of this issue, is that this is a purely political attempt to create division and seek to politicise the upcoming Legislative Council elections. Surely we can do better than that? To claim that because we had an existing framework and the bill that was tossed out by the High Court, while valid in purpose - to protect workers in their workplace and businesses - that framework was rejected in its approach by the High Court.

To suggest that this bill needs to be modified, and the Government is presenting that as the only way, I believe is disingenuous. As a number of us stated in 2014, the strengthening of existing legislation and/or more direct application of existing laws would provide the same framework and be less likely to fail a High Court challenge, depending on the approach taken.

If the intent is to create an additional offence of aggravated trespass, it seems clear this could equally be achieved without the breadth and associated risks of limiting freedom of communication that many, especially in the legal profession, believe this bill risks. So, is this a politically driven move that is putting industry in the unenviable position that we could see them let down again? This is a very real fear that industry has. I have spoken to industry people, and many of them are in my electorate, who feel they are being used like political pawns.

I note recent posts on social media and via email from Liberal Party members that are entirely political and inflammatory in their nature. This is childish if you are serious about the validity of the bill and does not help anybody. I will not name names. I know who they are; it

is completely unacceptable. As you said, Mr President, they probably have the memes ready to go out now. The memes are already out there. The last one I saw was a week or so ago. If you are serious about the strength of your legislation, do not trivialise it with stupid political antics. That is what some Liberal Party members are doing.

Also helping me make my decisions about this legislation are the hundreds if not thousands of emails generated through websites like dogooder.co. These are equally unhelpful and add nothing to a thoughtful, considered debate about important legislative reform. I do not believe anyone here suggests that workplace invasion is appropriate where it disrupts business, threatens workers and is on the basis of a philosophical opposition to the industry. I believe it is fundamentally wrong and a real and current problem for many businesses right now in my electorate.

Despite some of the recent media promotion by the Government, it is interesting to note that in my discussions about this bill with key stakeholders - in the forestry industry in particular, but also in others - they share the view that this spiel is a political game where other options more likely to be effective have been overlooked.

There are other laws that could and should be tested more fully to deal with the problem, and, if necessary, we could amend those laws.

I know the member for Rumney spoke a little about approaches taken in other jurisdictions in regard to the trespass laws.

Mrs Hiscutt - I am just dwelling on the fact you said hundreds of Do Gooder proforma emails.

Ms Lovell - It is an online advocacy platform.

Mrs Hiscutt - I know what it is. I have not received any of them.

Ms FORREST - Lucky you. They clog up your inbox and you run the risk of deleting important emails.

Mr PRESIDENT - We can forward them to you.

Ms FORREST - What I will do, Mr President, as soon as I finish my speech is do an automatic forward of all of them to you.

Mrs Hiscutt - No, that is okay. It is interesting to note the three Liberals here were excluded from that.

Ms FORREST - Lucky you.

Mr Valentine - It is probably only to independents or something.

Ms FORREST - To anyone out there listening who may participate in that sort of activity, it is not helpful at all. I do not mind getting an email with a well-considered opinion on this bill on either side of the argument. In fact, I welcome it, but that sort of nonsense - I

call it nonsense because it is completely unhelpful, and I do not read any of them, if anyone is interested - I delete. I have set up a rule and they go straight to the bin.

If that is what you are going to do, that is not helpful. The risk in setting up a rule to delete them all is that you end up deleting something you actually wanted to see.

It is a big call, but I tend to delete them individually, which takes time I could be spending on other things.

In order to have thoughtful, considered debate about this important reform, we need to have considered thoughtful input into it - not just mindless pressing a button of an already prepared email.

I do not believe anyone here suggests that workplace invasions are appropriate.

There are laws that could and should be more fully tested to deal with this problem. If necessary, we can amend those laws, including increasing penalties, particularly, if that is deemed necessary to act as a deterrent. We know monetary penalties and even prison terms do not appear to be a particularly good deterrent for some of these activists who do not really seem to care what is the penalty. If they are really determined to do it, they will just be there. If they know that when they get there, they have already disrupted the business for a number of hours, their work is done. They do not need to be arrested.

Even with these laws passed, it will not help my people at Venture Minerals because there is a camp of Bob Brown Foundation people in that vicinity. They are between Venture Minerals operations, a forestry operation and the MMG expansion of a tailings dam. They are in spitting distance of each other.

It is very convenient and you can move from one to the other. Police are definitely on the back foot here. If this bill were to pass, it would be of little benefit to the impact on the workplaces I represent in those areas.

What the members for Huon and Rumney have said was interesting, because I read with interest the terms of the willingness or non-willingness of the minister to work cooperatively with the Opposition.

I will just read from an article in *The Examiner* on Saturday:

Tasmania Small Business Council director Elizabeth Skirving said as the policy was a mandated issue it needed to be supported in the vote next week.

'It's an issue that we would really like to get sorted now, it has been mandated. It has gone to the people of Tasmania and it is something that needs to be pushed through so that we're in-line with other jurisdictions in Australia,' ...

I am uncertain what Ms Skirving means when she says it is mandated. Our job here is to assess every bill on its merits. The whole mandate argument is a tired and poor reason to say any particular bill should or should not be supported. Our job is much more than that.

Mr Valentine - It is a mandate to put it on the agenda to have it debated.

Ms FORREST - That is right. They have often said that.

Those are the words put into her mouth, I almost believe, because that is the language that comes out of the minister's mouth and others promoting this bill on a mandate argument.

Yes, they went to an election talking about this, as they did many other things. The article went on with regard to the opposition to the bill by the Opposition and comments made by the member for Braddon, Dr Broad:

... said the party was open to working with the government, but changes needed to be made to secure support.

I am willing to work with Minister Barnett on alternative models that would provide certainty to the forest sector and other industries'

Mr Barnett confirmed that the government is willing to hold more discussions with advocacy and protest groups in place of them protesting at workplaces.

'We're very open to working with everyone in the community -

I thought Opposition were members of the community, but I could be wrong on that:

... we support what's best for Tasmania and my door is open and we look forward to those discussions ...

If that is a clear representation of his comments, he has committed to working with anyone, including the protesters, advocacy groups and obviously, I suggest here, the Labor Party because it is part of our community, or its members are.

I was very pleased to read this because I have been hearing it from many in industry. This is what they would want rather than this legislation. They want a proactive, considered approach, a collaborative approach that actually addresses their problem. I hear that from the member for Rumney, particularly when she read the letter to Dr Broad -

Ms Lovell - That's right.

Ms FORREST - That seems not to have been followed through. What was the date of that letter?

Ms Lovell - It actually was not dated, but the letter to the minister was sent on 19 March, so after 18 March.

Ms FORREST - It was probably said before the media comment, I expect; that was Saturday. Anyway, close in time.

In considering this bill, it seems that there are some inconsistencies and flaws in the previous bill that remain in this bill. I share the frustration of the industries impacted by the serious negative impacts of protester activity which disrupts their businesses and risks or causes a genuine worker health and safety risk. That is not appropriate anytime, anywhere.

I see the industry caught in the middle of this, purely for political pointscore, and that is disappointing to say the least. What the Government should do is have an adult conversation that fully considers all the options to address this, including police resourcing. The minister has stated he is willing to do this, so I urge him to get out there and get on with it. Include the Labor Party, include the Greens, include the protesters and include whoever it is you need to engage.

I revisited my 2014 speech on this bill that the Government now seeks to amend. As I indicated in my comments, many comments I raised and matters I addressed remain relevant now. As I said in 2014 - and I repeat again now - I made it very clear a number of times in this place, certainly prior to the previous elections and since, that I support the overall intent of the legislation and the need to address issues related to workplace disruption, especially when driven from an ideological position.

The current Government, including when in opposition, was very strong in condemning protesters, as was, I think I can safely say, everyone in this place. To disrupt workplaces in the way that has happened in the past - and we are seeing more and more of it again at the moment in recent times - is wrong. Of course, regardless of the workplace, there will be times when you should disrupt people seeking to attend or be in their workplace and that is when the work they are doing puts them in personal danger or can cause harm to others.

I understand this is not what we are talking about here, but as I raised a particular scenario in the briefing, it seems to me that they could be caught up in that if a worker, not part of an industrial action, deliberately tried to prevent entry to a site and impede the business activity. This could be because of concerns around the practices inside, whether it be a health or a safety practice from a danger point of view, physical danger, or whether it be vilification of women or that sort of thing. To me this is that broad.

This bill is about where people are trying to stop people going about their lawful work when they have every legal right to do so and the people seeking to prevent them are opposed, often from a philosophical point of view, to the work being done. I do not have an issue with that principle, it is how it is put into effect that is an issue.

The fundamental principle underpinning the 2014 legislation, and again in this bill, is that no one should have the right to prevent another person from undertaking their lawful work. The unions and the legal fraternity agree with this principle. How you give effect to that principle is the issue here, as it was in 2014. Playing politics with this issue rather than an approach that strengthens current laws that have yet to be tested in many cases has not been tried as much as it should have been. Ensuring adequate resourcing of workplace standards and police seem to be another issue that is repeatedly raised with me by industry representatives.

One of the concerns I had in 2014 and which remains today is: has the case been made for this particular approach to legislation? Our job is to ensure that legislation that comes into this place to give effect to government policy actually does that and does not have unintended consequences, or is a duplication of something from legislation already in place, thus creating confusion, particularly for police, who have to apply these laws. In 2014, and again now, I have listened to many opinions and I suggest there are other avenues that would achieve the intended policy position. However, according to some, these options and laws are not working.

The questions are: Why are they not working? What is the issue? Why are people not being prosecuted under provisions that we have? Or are they? Why or why are they not having sentences imposed which the general community deems to be appropriate for the circumstances? I have not been able to get any information about recent sentencing of protesters to understand what is happening, so I went back.

In 2014 we were provided with a case by the unions, where arrests were made and charges were laid. This is a case in 2001. It is a long time ago, but to say our laws are not working, I would question that. I referred to this in 2014, but I want to mention it again now. It was *Smith v Visser* (2001) TASSC40 10 April 2001.

To briefly refer to that case, the defendant held up forestry work by occupying land where work was being undertaken for one week. The magistrate imposed a fine of \$7000, not an insignificant sum for an individual, in line with the penalties being proposed in 2014, and here, depending on whether it was deemed a summary or indictable offence, of course, in this bill. The defendant appealed against the penalty to the Supreme Court and the judge imposed a fine of \$5000, so it was reduced. But it was still \$5000 and it was still a fine in line with this bill and the 2014 bill, as was being proposed for a summary offence. As this was 20 years ago, I assume the penalties under trespassing legislation and the Police Offences Act might have increased on these offences, but I have not been able to get the current information.

In this case 20 years ago, I suggest the court was doing its job. You could argue that the reduction of the penalty was the court doing its job too. Maybe the first decision was a heavy-handed approach. However, there are others we hear about - I do not have evidence of this - that receive a slap on the wrist, then are sent home back to the mainland where they come from. I agree this is not right, particularly when they have caused a significant disruption and/or damage in the workplace. I know Venture Minerals and others are particularly concerned about the Easter break, a nice little holiday to Tassie, borders are open, let us go down and do a bit of protesting. Even if this legislation is passed, it would not help them this Easter. It is next week.

That case suggests that our current laws can work. As I said in 2014, rather than politicise it, we need to make it work, rather than trying to duplicate or bring in separate legislation where other significant concerns have been raised about it. The concern raised in the 2014 bill - it is somewhat changed in this bill - relates to the power of the prosecutor to effectively determine the likely offence.

I know the member for Windermere raised this in the briefing. It is with regard to a decision whether an offence would be heard and determined as an indictable or summary offence and either go to the Court of Petty Sessions or the Supreme Court.

The only change I could really discern in this current bill is the wording changes from 'with the consent of the prosecutor' to 'at the election of the prosecutor'. That is in clause 10 of this bill, and in section 17 of the act, so I do not understand how this wording would alter the outcome, if indeed it does.

To me the bill states that the default position is that offences under this legislation are indictable offences and will be dealt with in the Supreme Court before a judge and, if the offender pleads not guilty, before a judge and jury.

The Supreme Court has a full range of sentencing options available and now has significant times to trial and delays, partly COVID-19-related, but they have always had a bit of a backlog. This is why we have expanded the Magistrates Court last year.

Mr Valentine - Also a fairly expensive exercise.

Ms FORREST - Oh yes, expensive as well. As I was about to say, it is much more expensive for a person to defend in the Supreme Court.

In the proposed amendments, there is an amendment to clause 17, which says that an offence may on the election of the prosecutor be heard and determined by a court of summary jurisdiction.

This means it can be dealt with summarily before a magistrate where there is no jury. Magistrates deal with offences which are of a less serious nature generally and there are significant differences in penalties to be imposed in the event of finding of guilt, depending on whether the matter is dealt with by the Supreme Court or by a magistrate.

Importantly, there are no guidelines in the bill as to when it should be dealt with by a magistrate, a judge and/or jury. It simply says 'the election of the prosecutor'. The prosecutor - that is the DPP - will be able to make the decision as to how to proceed.

I am concerned as I was in 2014 that this will create a risk of interference and the prosecutor could easily determine which way to go of their own volition, potentially without any guidelines.

Basically, the prosecutor is really determining a likely fine going to be imposed or a likely term of imprisonment an offender would be sentenced to. The court could still impose those, of course, but depending on which path they take, the difference is significant.

I think there should be some guidelines for this rather than just the prosecutor's decision. Maybe the Leader can comment further on that in her reply.

Either way, it seems to me this bill has all the hallmarks of being politically driven, particularly its timing. I believe it was brought on at a time to play wedge politics rather than work with industry players. That is what they are telling me to ensure our current laws are effective and working.

The case has not been made for this approach and I fear the industries impacted by workplace invasions will be caught in the middle of a political game prior to the upcoming elections, and that is very disappointing.

I heard absolutely nothing in our briefings to convince to me that this is the most appropriate framework. I absolutely support the right of people to go about their work unimpeded and do their lawful work. I urge the Government to fully explore the current legislative framework, consider increasing maximum penalties if indicated and utilise other laws available to respond to some of the well-organised groups like the Bob Brown Foundation, which raises funds, often through dishonesty and deceit. We have state government legislation related to charitable organisations which I think should be considered and perhaps used. If you

hit an organisation like that in the hip pocket, you will have a much bigger impact because they are just raising money to pay the fines at the moment.

If this bill were to pass, we can almost guarantee the day after it is enacted, one of the Bob Brown Foundation members or a similar organisation will lock onto some forestry or mining equipment, break into a workplace and obstruct access to a worksite to encourage their arrest, so we are back to the High Court, leaving the industry almost worse off than they are, as if there is any chance of a High Court victory for them. If there is a High Court victory after all of that, another win for the Bob Brown Foundation or whoever it is that takes it further is a kick in the guts for industry.

Mr President, I urge the minister to do what he said he would in *The Examiner* and hold more discussions with advocacy and protest groups, all interested parties and also with industry representatives to ensure we have an effective mechanism to enable workers to go about their lawful work and businesses to get on with their business.

The minister said he is open to working with everyone in the community. He supports what is best for Tasmania and his door is open and he looks forward to those discussions. Through that process I am sure a more workable solution could be found.

I will not be supporting the legislation because I think there is a better way. It is just a real shame it has been brought on this way.

[4.35 p.m.]

Mr VALENTINE (Hobart) - Mr President, as the member for Murchison pointed out, the last time a bill like this was before us, which is now the act, was October 2014. Back then I thought, what are we trying to do here? After all the effort we went to with the Tasmanian Forest Agreement to try to get to a point where we could all live harmoniously together just to have it overturned and then for something like this to come back to us.

I know some will say we are still going to get protests no matter what is in place. I think that having the community largely come together across the traditional barriers that exist between the industry and the protesting community, if I can put it that way - if we could get to that middle ground - was a real achievement. I do not know how many hours we spent on it, but it was a heck of a long time.

We are where we are. I, too, went back to my original speech just to do a little comparison with some of the statements I made then as to whether they applied today. I want to repeat a couple of things. It probably does apply to this. There is a balance of competing rights in this bill: the right to access a workplace to undertake work versus the right to free speech. I said then:

Many see this bill as an attack on our individual freedoms in this nation and that it is not in line with our obligations under the United Nations commitments. In my reading of it, resolution 25/38, the Promotion and Protection of Human Rights, in the context of peaceful protests talks about recognising and protecting people's rights to express dissatisfaction through protest. What is more, it is co-sponsored by Australia.

I went on to say:

Article 19 of the International Covenant on Civil and Political Rights talks about people being able to hold opinions without interference and that they do have freedom of expression. However, article 19 stipulates that this is limited to responsible expression and that it cannot be at the expense of public order in which case we have the Police Offences Act that deals with that and a number of other acts.

I also said:

To my mind, the extra thing this bill does is increase the penalties for certain types of misdemeanours -

Still true:

... in certain business sectors, which in its own way is discriminatory to those who are convicted as opposed to someone convicted after committing an offence on a business premises not listed in this bill.

That has been changed. We know this now would be more broadly applied if the amendments were passed. I said:

There are UN experts who say the bill would stop the right to express opinion and who consider it a shocking bill.

They were pretty tough words at the time:

The Australian Constitution has an implied guarantee on freedom of political communication under sections 7 and 24. Any limitations upon this could potentially be challenged in the High Court, and that has been mentioned. That is something to be aware of - just because there is the potential does not mean a law should not be enacted. It is about judging the risk.

Well, we have seen what happened. It was challenged and it was found wanting. After what we have been through back then in 2014, it came true.

I want to turn to some of the briefings we had. I thank the Leader for organising the briefings. She is always very good at organising briefings and allowing people of all persuasions to be able to give us their information and I really do appreciate that. Today we heard two sides of the story. Dr Clare Smith has already been mentioned by the member for Huon, but her observations put the rights of business above individuals. The inference there is that there was no balance. Women did not get the vote by chitchatting over a cup of tea, saying sometimes you have to take stronger action to get an outcome.

Ms Forrest - And they were thrown in prison.

Mr VALENTINE - They were thrown in prison. She says doctors need to speak out and need to be protected while doing so. If this bill is passed and used, where will you be able to place all the doctors and nurses and others who protest? This bill is even more draconian

than the protest laws in Hong Kong. I see what is going on in Myanmar, I see what is going on in Hong Kong, I see what is going on in Russia, I see what is going on in other parts of the world and I think, 'How can they let that happen?' . We can get to the same place here bit by bit if we are not careful.

We have to be careful that we balance legislation to make sure that people have a right to go to work and feel safe. People also have a right to put their opinion through protest. That was Dr Clare Smith.

We heard from Fabiano Cangelosi and Alisha Ali from the Australian Lawyers Alliance, which takes a conservative approach to the enlargement of civil law. People will be in a state of uncertainty as to whether they will be breaking the law. This has a chilling effect. It may result in a person committing an offence, but not having an opportunity to be warned before committing others, which is not a situation we want to see people in.

Civil Liberties Australia provided us with a paper, and they provided this much earlier with similar statements in it. I will read from the one provided today. They have a number of headings, including 'Current law of trespass is adequate'. Current laws can deal with these things. In my second reading speech in 2014, I said:

Arguably, there is already a balance between these rights because of existing laws and laws of private trespass and public nuisance under the Police Offences Act 1935 and also current property damage laws. The Work Health and Safety Act also offers protection, as do the Competition and Consumer Act, the Road Rules, the Traffic Act, and the Roads and Jetties Act, to name a few.

Some of them were read to us during the briefings:

- Competition and Consumer Act 2010 - section 45D deals with secondary boycotts; section 45DC deals with involvement and liability of employee organisations;
- Police Offences Act 1935 - section 49AB deals with public street permits; section 15B deals with the dispersal of persons; section 13 deals with public annoyance; section 14B deals with unlawful entry on land, about trespass; section 20K deals with hindering removal or modifications of fortifications; and section 35 deals with common assault and aggravated assault.
- Road Rules Act 2009 - section 236 deals with pedestrians causing a traffic hazard or obstruction.
- Traffic Act 1925 and section 49 of the Roads and Jetties Act 1935 and section 47 of the Crown Lands Act 1976 all deal with the removal of obstructions on roads.

I read that out on purpose because I wanted to make sure it was known that current law can deal with these things. Some of those that I have read out were put together because of what is in the current act. Some of them would not be needed under these present amendments. I argue that some of the present amendments might make it a little better. However, I want to

talk about that in relation to what Civil Liberties Australia told us this morning - that the current law of trespass is adequate.

They also talked about undemocratic and illiberal in the way that proposed new sections 6 and 7 in the bill shield business from public criticism. Proposed new section 6, Carrying out of business activity not to be impeded, is unjust in setting harsh criminal and financial penalties for those who peacefully assemble on public land to protest. Under that heading, they say that the bill will create a harsher potential penalty of up to four years for a peaceful protest on public land compared to two years for an armed invader in a private home. This is a disproportionate penalty regime which sets harsh criminal penalties for peaceful protests on public land.

They also pointed out that it was dangerous in the silencing effect it will have on Tasmanians who decide against participating in public meetings and rallies for fear of breaking the new law. That is about fettering, if you like, which I was talking about earlier.

We also heard from Brendan Gogarty, and everybody has received his papers. He mentioned fettering journalists doing their work of investigative journalism. I do not know whether he used the word 'fettering', but that is the essence of what he was saying. The first point should be the balance of the law. The thoroughfare offence will provide a chilling effect.

We then heard from Julian Harrington from the Tasmanian Seafood Industry Council. He stated, 'We respect the right to personal views and people's rights to protest.'. He was very clear on that. Protesters should not impede the right of businesses. Salmon workers are forced to cover up their employers' brand when they go out and about for fear of being targeted in some way, shape, or form.

We heard from Peter Skillern from the Tasmanian Farmers and Graziers Association, and Ray Mostogl from the Tasmanian Minerals, Manufacturing and Energy Council.

It was a very impassioned presentation to us. Peter has clearly been affected by some of the protesters, no question. It came through in his presentation. And Ray Mostogl made the observation that no-one is actually caring about the workers. It is always about the business, about the protesters, not the workers involved. He was very clear about that, about the cruel and damaging invasion of workplaces, that protesters cause workers to be stressed, bullying and intimidation causes psychological stress.

Who is representing the silent victims in this? If the Parliament of Tasmania does not protect workers from bullying and intimidation, who will? We got that message quite clearly. 'Penalties might be in the book, but they are not working' - Robert Mallett from the Tasmanian Small Business Council. Nick Steel, from Tasmanian Forest Products Association, also made a representation to us in a briefing.

There are two sides to this debate. It is not just about the protesters. It is also about those who have been affected by protests. Clearly, the law put in place has to be a just law; it has to be a law that works; and it has to be a law that is not challengeable in the High Court, to be quite honest.

As a result of that, I turned to the Law Society's paper which they distributed during the briefings. These are just a couple of statements from the Law Society. Maybe I should read it in and leave others to deal with some of the other information we have received. I will read

this in for *Hansard*; I think it is important. It is headed, 'Law Society of Tasmania, Workplaces (Protection from Protesters) Amendment Bill 2019, a brief for the Legislative Council':

While the bill would remove express references to protesters from the existing legislation, the bill remains overly complex, difficult to interpret and will be difficult for the courts to apply and the community to understand. The crimes and offences that would be created by the bill remain too broad and would likely capture benign protesting behaviour. This will likely lead to police and prosecutors exercising discretion to determine when the laws will be enforced. These difficulties would arise from the terms 'obstruct' and 'impede' in the key offence provisions, which are defined in such a way that may capture benign conduct which may not have been intended to be caught.

The rule of law dictates that it is for the parliament to create the laws and the executive arm of government to enforce them. However, the enacting of unclear and vague criminal laws will tend to create a situation where the police and prosecutors effectively determine what acts are and are not treated as unlawful and lead to prosecution. This is a highly unsatisfactory situation.

I am sure the member for Windermere will add some comments from the Police Association:

The bill also would empower prosecutors to determine whether the maximum penalty available to courts for particular offences would be four years or one year by electing whether to proceed in a lower court. Given that the High Court has already declared that aspects of the existing act are constitutionally invalid, it is surprising that the Government has sought to amend the act rather than draft fresh legislation. The bill would replace existing unconstitutional provisions with new provisions, the constitutional validity of which is uncertain.

There is a real risk that the new provisions will not fit within the existing legislative scheme and unintended consequences and statutory interpretation difficulties. The bill would remove important requirements for police to issue warnings and directions prior to arrest. This means there is a real risk that people might be subject to arrest and prosecution when a warning or direction would have been effective. This is a particular concern, given that the way subsection 6(1) and (2) are drafted means there is a real risk that a person may be found to have committed multiple offences in quick succession without being warned that they are doing so.

I have lost the second page of that letter, but that will suffice, I think. It gives a pretty good indication of the Law Society's concerns with the legislation. During that presentation they also pointed to the Law Council of Australia policy agenda, international law, rule of law. They had some key principles there. He read out the first three:

- The law must be both readily known and available and certain and clear.

I do not think anyone would say that this is in that category:

- The law should be applied to all people equally, and should not discriminate between people on arbitrary or irrational grounds.
- All people are entitled to the presumption of innocence and to a fair and public trial.

Those three dot points were the main ones the Law Society brought out. I missed the gentleman's name; I apologise for that.

During the briefings, we heard that this bill is about protecting business by impeding lawful activity and aggravated trespass. It is not the intention to put people in jail.

It is my understanding that when we are setting legislation with the objective to narrow it to a certain activity, it is not a good way to craft legislation, because we are liable to produce unintended consequences when we do that.

We know that is true, because you only have to look at the path to where we are today with the amendments before us as to the fact that is exactly what was trying to be achieved with what is now the act, but then it goes to the High Court and gets dumped on.

It is important when we are putting legislation together that we make sure it can be applied across the board, not narrowed to get a certain outcome in a certain sector of the community. Even though it has been broadened, there will be some unintended consequences - I can see it a mile off - if this comes into being.

A couple of examples: in the briefings, I put forward the example of truckie blockading. Truckies are upset they are not getting paid enough per tonne to drag logs from out in the bush to a veneer or chipping facility or wherever it is they may be going, and so they decide to get together and blockade the entrance to that facility to make their point.

It has happened before. It happened up in Triabunna, as I recall. A whole heap of truckies banded together and did that, or they went and protested somewhere else and impeded business. I am pretty sure that was the case.

I am told that is the case on public land, but then I thought about a farmer, and I put that forward. A farmer owns a farm and somebody has a licence to do some fracking or some mining of some sort. They had a permit and have a right to traverse that farmer's land.

There is something going wrong with the operation and it is absolutely devastating to the farmer. Would the farmer be caught with this? I was told no, if it is on private land, they have a right. It is only public land and I can appreciate that.

I know of farms that have surveyed roads right through the middle of them. They are public roads but they are treated like they are private. They have locked gates over them. They are probably not allowed to have locked gates over them, but do.

If a farmer in a circumstance like that decided to protest all of a sudden, you might find he is actually in breach if he is trying to stop equipment getting onto his land and stopping that operation.

Unintended consequences could occur in trying to narrow down, trying to do so much to stop these protests that it actually catches some genuine problems and issues impacting on them. Whether it be the protesting women, as someone was talking about during briefings - whatever the case maybe, we have to be careful when setting laws.

I have said enough. I cannot support the bill because I think it is not good law. We have heard from the lawyers on this - the Law Society, Australian Lawyers Alliance - and have heard from plenty of people in the community.

As I close, I will read one I received at 3.46 p.m. - from 1231 people. It does not always do people favours to do this, but I have to read one of them in because if the 1231 people are telling me the same thing, it needs to have some airing:

We call on the Legislative Council to protect one of the most fundamental freedoms of our democracy, the right to peaceful protest. The Workplaces (Protection from Protesters) Amendment Bill 2019 if passed will see those engaged in peaceful protest activity subject to laws and penalties that are disproportionate to the intended purpose of the legislation.

The amendments will result in onerous and unwarranted criminal offences and powers that punish persons involving their democratic rights to freedom of expression, association and assembly. The bill will have a chilling effect on citizens who want to peacefully protest. It contains legislative restrictions on freedom of expression, association and peaceful assembly, which breach a number of national and international human rights provisions.

The higher penalties proposed were highlighted by the minister during his second reading speech. For that reason the bill makes these offences subject to a maximum penalty of 18 months imprisonment for a first offence and four years imprisonment for a further offence. This will provide the country's highest maximum penalty for the offence of trespassing while intentionally impeding business activity on business premises.

The bill should be dismissed due to the potential for unreasonable, unnecessary and disproportionate outcomes. Police already have numerous powers to remove and charge people defending forests from destruction. Activists already face jail terms for non-violent action. Protests have traditionally protected Tasmania's outstanding wild places, including the Franklin River, the Styx Valley of the Giants, Recherche Bay and wildlife-rich native forests elsewhere around the state. Special places and tourism icons that contribute to the economy with thousands of jobs and the wellbeing of Tasmanians are only there because citizens took part in peaceful protest when they were threatened.

The right to protest is fundamental to a robust and healthy democracy and should be enshrined by our political leaders rather than curtailed. Whether it be land rights for Aboriginal people, the environment, equality or workers' rights, peaceful protest has been an integral part in shaping our nation's healthy democracy. These are an essential part of Australia's democratic fabric and we respectfully call upon you to vote them down.

That was from more than 1200 people. I will listen to debate and see what others have to say, as I always do. At this point I cannot see myself supporting this.

[5.02 p.m.]

Ms HOWLETT (Prosser) - Mr President, the Government makes no apology for delaying the workplace protection legislation. We have been dealing with the greatest health and economic crisis since World War II. The Government's number one priority was to keep Tasmanians safe.

This bill is in no way aimed at unions. The bill contains provisions to make clear that people whose acts are part of lawful or protected industrial action are not in contravention of key offences.

We also know every single job counts. The Government is strongly committed to the right for people to peacefully protest, but not at the expense of the right of workers to earn a living or the right of a business to operate safely and free from interference and disruption.

The Government makes no apology for ensuring Tasmanians can go to work and run their businesses in a safe manner, free from threats and disruption. That is why we have introduced our workplace protection bill. The Government is seeking to ensure that all Tasmanians can support their families by going to work and running local businesses in a safe manner free from threats and disruption.

Our workplace protection bill, which complements legislation already passed in the federal parliament, where it received bipartisan support, will deliver Tasmanian businesses, workers and their families protection against intentional trespass designed to deliberately impede business activity.

These laws are needed following a significant escalation in threatening, radical protests from extremist groups. Unfortunately, almost every day Tasmanians are being threatened and harassed for simply doing their job and going to work.

I would like to read out a few emails I have received, including the following email from Mr Brett McKay from McKay Timber.

General manager of McKay Timber Brett McKay said:

McKay Timber general manager Brett McKay said the protest cost the company \$25,000 to \$30,000.

'All people must have the right to attend their workplace without fear of such harassment,' he said.

'I commend our employees on the way they handled the situation.'

Mr McKay said all timber products milled at the site are 100 per cent Chain of Custody Certified, meaning the wood originates from certified forests.

Tasmanian Forest Productions Association Chief Executive Nick Steel condemned the protest:

'All of their wood is sourced from forests approved for harvesting by both the Greens and Wilderness Society in 2013,' he said in a statement.

I move to Peter Skillern from the Tasmanian Farmers and Graziers Association. He is on record saying the bill is about protecting farming families and providing security for those farmers and their families:

... we can no longer tolerate nor should the community accept the type of invasions of private property and intimidation that we have seen on mainland states and in Tasmania.

The TFGA supports the rights of individuals to engage in lawful protests to express their particular political or philosophical views, however this does not override the right of family farms and their employees to undertake their lawful business. ...

The TFGA will be engaging all parties to ensure the successful passage of this important bill.

I then go to Britton Timbers Managing Director Shaun Britton, who recently condemned the actions of extremist radicals from the Bob Brown Foundation:

... were going from business to business across Tasmania, terrorising employees, issuing death threats to managers, endangering lives and crippling economic activity at a time following COVID when it could be least afforded.

Other people have been texting me and sending me emails while they have been listening to this protest. It has been brought to my attention that small businesses around Tasmania have had dozers walked off cliffs. I do not know - there are not that many people who can drive a D-9 dozer in this state but clearly there are some people.

Walking D-9 dozers off a cliff. Smashing windows in excavators and contaminating fuel tanks. The cost of this to small business is just unsustainable. Workers on machines are often abused and targeted when all they are trying to do is do their job.

Last week the Bob Brown Foundation invaded the worksite of a mining company on the west coast, directly threatening the rights of Tasmanians working at Venture Minerals Riley Creek operation.

The Bob Brown Foundation has openly stated that its intention is to maintain these invasions. Workers are to be threatened and put at risk every single day.

These protests are designed to create maximum distress and disruption, while attracting, of course, media attention which in turn drives donations from inner city benefactors in Sydney and Melbourne. Often these protesters are undertaken by professional protesters flown into Tasmania from the mainland.

These are a small minority of extremists. They do not care about the facts of our sustainable industries. They do not care about our farmers and their families. They do not care about Tasmanians. They only care about their own agenda and they certainly do not care about jobs here in this state.

Each member, regardless of their political alliance, has a responsibility to Tasmanian businesses, workers and their families, to ensure that Tasmanians can go to work and return home from work safely. This responsibility should not be taken lightly because the consequences of doing nothing and allowing extremist radicals to endanger and threaten and impede Tasmanian workers would be great. That is at a time when every job more than ever counts. There is no party politics here, it is all about working together to protect Tasmanian jobs. Jobs, jobs, jobs for this state. Thank you.

[5.11 p.m.]

Ms ARMITAGE (Launceston) - Mr President, the controversy around this bill seems to relate to people's ability to lawfully, peacefully and freely protest, and balancing that with the right of people to go about their work without unreasonable interference arising from protest activity or types of intrusion or trespass. It comes down to freedom to versus freedom from. It is important not to forget that certain provisions of the Workplaces (Protection From Protesters) Act 2014 were challenged in the High Court of Australia in the *Brown & Anor v The State of Tasmania* case. It was held by a majority of the Bench that certain provisions of the act were invalid because they impermissibly burdened the implied freedom of political communication governed by the Constitution. To quote the case note from *Brown & Anor v The State of Tasmania* -

However, by majority, the Court held that the burden imposed by the impugned provisions on the implied freedom of political communication was impermissible because those provisions were not reasonably appropriate and adapted, or proportionate, to the pursuit of that purpose in a manner compatible with the maintenance of the system of representative and responsible government that the Constitution requires.

In other words, the protest act was too heavy-handed in regulating protest activity. The purpose of the bill before us then is to strike a more even balance. One of the issues I have seen repeatedly come up as a matter of concern is the addition of new offences to the act relating to trespassing on business premises and in or on business vehicles, obstructing public thoroughfares and threatening to commit an offence to impede the carrying out of business activities.

Many people are concerned that benign forms of protest, such as handing out pamphlets near a business or other similar activities will be caught by this act as an offence. While I do not see this being very likely on my reading of the bill, I am mindful that legal experts do see it as a possibility. I would therefore like the Government's assurance that this bill, should it pass into law, will be monitored very closely for any adverse effects as it is implemented and applied. It goes without saying that it would be an extraordinarily poor outcome for our state's democratic processes and systems of accountability, responsibility and transparency if lawful, peaceful and benign forms of protest end up being criminalised by this legislation.

We can also be sure of further High Court challenges should the act still be considered too forceful, wasting taxpayers' money and the valuable time of our High Court.

Further feedback I have received relates to a concern that the protest bill duplicates a number of offences which are already contained in other acts. I believe that it might help the Government to expand more on how the definition of trespass in this bill and trespass described by the Police Offences Act or the Criminal Code are different, and to put that on *Hansard*, even though we have had it in briefings. As I read it, offences in the Police Offences Act relating to trespass refer to a person not being able to enter land without lawful excuse. The clause in the bill we are considering, however, prohibits a person from trespassing on land if it impedes business activity. I wonder if the current Police Act could not be simply amended to incorporate this. I have had communication today with the police union, but I will leave it. I believe Mr Dean will read that in.

Mr Dean - No. You know the reading.

Ms ARMITAGE - I am happy for you to read it in. Just let me know if you are or not.

Mr Dean interjecting.

Ms ARMITAGE - That is all right. I will leave it till later.

According to the minister's second reading speech, the idea behind creating this additional process for civic trespass provision is that trespass, aggravated by the intentional impediment of business activity, has the potential to cause significant economic loss for workers and businesses, as opposed to the type of trespass contained in the Police Offences Act or the Criminal Code, for example. Again, I encourage the Government to make a commitment to ongoing monitoring of this legislation as it is implemented, should it pass, to ensure no adverse effects arise.

I am given a bit more confidence in this bill by the High Court's passing comments in the *Brown v Tasmania* case that the protesters act pursued the legitimate purpose of protecting businesses and their operations by ensuring the protesters do not prevent, hinder or obstruct the carrying out of business activities on business premises. Whilst I understand these comments do not bind the High Court in future decision-making, this bill expressly includes the words 'prevent, hinder or obstruct' to define impediment to a business activity, which means that judicial guidance has been considered as the bill has been drafted.

As such, I am pleased this has specifically been considered in drafting the bill. I am yet to be convinced, however, that there is sufficient certainty around the definition of 'prevent, hinder or obstruct.' The submission made by Dr Brendan Gogarty advises that clause 6 of the bill, which prescribes impeding business activities not further defined or circumscribed by the bill, leaves the definition to be gleaned from common law.

According to Dr Gogarty's submission, each term 'prevent', 'hinder' and 'obstruct' being defined by common law extends 'impeding' to include -

- (1) any act which makes any aspect of a business more difficult to carry out;
- (2) so long as the effect of the impeding is depreciable; and,

- (3) regardless of whether the interference is complete, serious or even physical in character.

To my mind, this renders the definition of 'prevent, hinder or obstruct' to potentially be extraordinarily broad. I am unsure if the bill intends for this to be so broad and capture this much conduct. If so, clarification in the bill of these terms may be necessary to ensure its proper intended function.

I am sceptical of any laws that can potentially impede the fundamental implied right of political communication and protest and believe that any legislation which seeks to do this ought to have significantly important reasons to do so. I understand the context from which this bill has arisen is quite unique and it is likely with the Tasmanian forestry in mind. It is in the interest of every Tasmanian to have a sustainable and prosperous forestry industry. We must remember while it is also in their interests to have a robust system of civil liberties, that where work that is being undertaken is lawful, those workers have rights too.

Like all rights there must be a balance between freedoms - freedoms to and freedoms from. In this case, the right to protest must not unreasonably impinge on another's right to work without interference. Undue, unreasonable and dangerous interference with work that is being lawfully carried out is not in the interests of anyone. I appreciate this is a highly emotive topic which inspires passionate debate from all sides but we, as lawmakers, need to keep a cool head and ensure that legislation we consider is proportionate, necessary and clear.

I can understand that where loss to business and harm to workers are exacerbating factors, more specific provisions with greater penalties may be warranted. I know that as it has been drafted the bill has considered the High Court comments on the matter and I believe has tried to strike a fair balance but whether this will carry through to its practical functions if passed remains to be seen.

I want to be clear that in considering whether I support this bill, it is on the proviso that it is monitored carefully for adverse effects as it is implemented and does not unduly impinge on our civil liberties, nor leave our businesses vulnerable to undue, unreasonable or unsafe interference.

I look forward to hearing other members' contributions on that. As for some of the briefings we actually had - and some of it was read in by the member for Hobart and I appreciate the Leader organising the briefings from the Government and from both sides of the debate, but one of the questions we have is: how do we deter a protest that is unreasonable?

As we heard this morning, laws must be clear, predictable and accessible, readily known, available, certain and clear, and applied to all people equally and not discriminatory.

As we heard earlier from other members, Ray Mostogl mentioned the forgotten victims. He said that we need to be a voice for the people who respect the laws that are passed and make sure the silent majority are not taken for granted, that these workers are powerless. Tasmanian workers need security. They must be free from bullying and intimidation and they often work in remote places.

Something we heard as well is that so often by the time the police actually get there and remove workers, it is certainly a long time that they have actually been in the workplace - protesters I should say, have been there for some time.

We also heard this sits with people for a long time and the psychological problems they have do not just happen while the protesters are there, but can be ongoing for such a long time.

Nick Steel mentioned strong protection for workers. We need stronger laws passed, that we cannot put the rights of workers at risk. The TFGA said they clearly support the right of people to protest, engaged in protest for good sound reasons, but never to invade a workplace. Tasmanian workers, including farmers and farming families, have the right to have a safe working environment that is free of harassment, bullying and intimidation.

We must think about the impact on workers, both short and long term. As mentioned, I contacted Colin Riley of the Police Association, as I believe did the member for Windermere. He has asked that his whole response be read in:

Hello Rosemary,

The Police Association has not been engaged in detail by the Government with regards this bill so my comments here in this email are from reading the bill without an appreciation of the background purpose or understanding of why the sections have been constructed.

Our comments with regard to this bill are:

- (1) Police officers are in the frontline position of policing unlawful actions at protests. It is noted that unlawful actions at protests can endanger the health and safety of members of the public and potentially our members.
- (2) The original act was poorly constructed and overly complicated. The current bill is about fixing these issues with the associated amendments proposed.
- (3) Police currently have powers to intervene for unlawful actions at protests.
- (4) This act is an additional piece of legislation that police will need to understand, making policing more complicated. Individual police officers have original authority i.e. their own discretion at incidents. As there will be potentially options for trespass under different acts, this can create uncertainty as to which offence to select by police officers at that time.
- (5) Creating an 'aggravated trespass' under the Police Offences Act is once again overcomplicating a piece of legislation that police have to operate under. The issue of any aggravation should be a consideration in penalty only and not in the offence. A court can

now take into account any aggravating circumstances when it decides on a penalty.

- (6) The act itself is about increasing penalties for offenders impeding business. As it relates to the imposition of sanctions we do not have a view on this bill.

As he mentions, he hopes this assists and he was happy to have this read into parliament provided the whole email was read in. That was Colin Riley, president of the Police Association of Tasmania.

I too have received many emails, many form emails - at my last count I had 1198 form emails and that included the email read out by the member for Hobart, but I divided them, and I had another 85 emails where people actually put their own comments. I have responded to the emails where people put in their own comments. I have not responded to the form email.

One of the issues I have with the form email - and this is where the Government or the Leader in summing up can make a comment - is my understanding is that peaceful protest really is not captured by this bill.

I have had people saying to me that the recent Women 4 Justice march would have been captured under this. My understanding is it certainly would not. The police will look at many of these issues and really will only be prosecuting when people are actually going onto worksites, going into businesses, and causing utter grief for those workers.

Mrs Hiscutt - I can confirm, now, that is the intent the way you described it.

Ms ARMITAGE - Yes.

I supported the bill in 2014. When I looked over my comments then, to me it comes down to the rights of workers - where they spend their money, look after their families - and they have a right to go to work. I would hate to think any of my family members who went to work were intimidated or harassed to stop working. I appreciate that they still get paid, but someone suffers. If their business suffers or the business they are working for suffers, ultimately they suffer. If people have to be put off and they lose their jobs and they suffer, their family suffers and ultimately the community suffers because they cannot afford to pay their bills, afford to shop and do other things.

The other part in the bill gives me some comfort - and I have spoken to a couple of the people who had written to me who gave me phone numbers - is the offences and the jail terms actually say 'up to' or 'not exceeding'. I would be very surprised if any magistrate or judge gave someone going on to a workplace, unless they caused serious injury or malicious intent - caused something terrible to happen at that business - any of these major penalties. It comes down to the discretion of the judiciary to actually make those decisions.

I understand the intent is to try to prevent this happening, but, as we heard in briefings today -

Ms Rattray - Deter.

Ms ARMITAGE - Deter, prevent. I hope it does not deter normal people from going out and being afraid to peacefully protest as people are able to do. I hope people do not think they are going to be caught up in this.

Mr Dean - When you refer to penalties, you probably should have mentioned 'unless they have 20 prior convictions as well for the same offence.'

Ms ARMITAGE - Well, perhaps you can mention that when you stand up, member, because I am not sure I have seen that in there and I am not going to make a comment on something I am not certain about.

I certainly will support the bill into Committee. I believe it deserves to get into Committee to at least discuss the clauses as we go through. I would appreciate if the Leader could make some comment on some of the issues I raised. I thank her for the briefings, they were very informative and helpful.

[5.28 p.m.]

Ms RATTRAY (McIntyre) - Madam Deputy President, we know the history that the 2014 legislation underwent a High Court challenge and failed to pass the test, and here we are back here today. I note some people believe there is a political angle for this. I do not necessarily disagree with that view. I am very disappointed, though, if that is the case, that good people in really significant industries in our state are the ones who are the football if that is the case. They are the ones who are being ping-ponged around here and possibly taken for a bit of ride. I think it is really disappointing if that is the case.

I do not know if that is the case. I am only listening to what the talk is around the place and I am sure that some people in our communities believe this is being used as what is known as a 'wedge'. If that is the case, it is very disappointing.

Like other members, I looked at the bill and was aware that it focuses away from protesting and focuses on the creation of a new level of offences for trespass to legitimate workplace businesses and activities.

We heard some really heartfelt stories this morning through the briefing process from people, I believe, who have been caught up or know of people who have been caught up in those protests. I particularly thank those people for being brave enough to come forward and tell it how they see it, and I thank the Leader for organising those briefings.

We also heard from the legal fraternity which always have a very considered view about legislation. Sometimes this place takes on board all their concerns, sometimes we take on some of them and sometimes we do not necessarily agree. That is the way this place works. It has done for the time I have been here, and I trust that it will in the future.

We always welcome people to come into this place. I know the Leader does her best to facilitate anybody or any organisation that feels that they want to come to brief the Council. That is one of the things I have found so important in the way we go about our business. As much as we possibly can, we facilitate everyone, and I want to say a huge thank you to those people who go out of their way.

I know we are doing a bit more skyping and a bit more webexing these days so we do not necessarily need people to travel to Hobart. I think that is a good thing because that again keeps that communication open but for those people who do travel, we thank you.

I also have had the form emails. I have not counted them. Thanks to those members who have; counting them certainly was not high on my priority list. My assistant, Melissa, deals with the form ones -

Ms Armitage - The computer counted them.

Ms RATTRAY - It is all a bit technical for me and most people know that around here when it comes to technology, I still do a lot of handwriting.

I received a number of those genuine emails, not that I am saying that the form email is not genuine but it just does not resonate with most of us. The member for Murchison made that very clear in her contribution.

Other members probably feel the same about it because they just come thick and fast. You do not have time to answer them. It takes away from things that you need to be doing and it does not necessarily have any impact on our decisions.

For those genuine ones who take the time to make personal contact, I respond to the ones in my electorate. I always try to do that and I will continue to try to do that. I thought I would take the opportunity today to read one I received just so that those people who make that genuine contact know that it certainly does not go unnoticed.

This one was back in August of 2020. There was some talk about this piece of legislation being urgent in 2019-20 and so my particular constituent, and I am not going to name them, wrote this:

I am writing to you regarding workplace (protection of lawful business activities) bill 2019 and strongly urge you to vote against it. I am deeply concerned that this bill represents an intrusion on Tasmanians' fundamental freedoms, which will restrict freedom of assembly and expression and the right to protest. The right to peaceful protest is a core human right and is fundamental to democracy. Exercising this right without fear or unnecessary interference is central to living in an open and fair society, one in which people can enjoy their human rights. It saddens me greatly to find those protections are under threat in Tasmania. I call on you to vote against the bill which -

It goes on to outline four points:

1. It contains several offences which are not clearly defined. I am concerned that this legislation could impact people wishing to protest against the behaviour of businesses such as banks, a poorly-run nursing home or farmers seeking to protect their livelihood against powerful manufacturers or miners.

I think that goes to the example that you raised, member for Hobart.

2. It is disproportionate and offences in it are overly broad. It even seeks to make it an offence to threaten to protest against a business without the need to demonstrate that any actual detriment has occurred.
3. It is unnecessary and for the most part simply duplicates existing offences for trespass, property damage and so on.
4. It imposes higher penalties on protesters than others committing the same offences in violation of the fundamental human rights principle that protesters should be punished to a greater degree than others for the same offence.

I believe that it is critical that this legislation should not be supported, and strongly urge you to ensure that it does not become law. It is signed.

I thanked this person for their email and their views regarding the proposed workplace bill. I said:

I note your opposition to the bill and appreciate you sharing your position. I also note that you have raised the matter of the proposed legislation containing several offences which are not clearly defined. I would be interested in understanding specific detail around what those offences are, as I believe it is important that as a member of the Legislative Council in the house of review to fully explore the detail of any legislation and how it impacts, either negatively or positively on the community. Again your contact is much appreciated and as with all legislation representation from my electorate together with my own research will be carefully considered.

I did not receive a response as to what those concerns were or the offences that were not clearly defined, but I appreciated the opportunity to have that. It was useful to make sure that people understand that we read their emails and their correspondence, and respond to those who belong to our electorate.

Is this bill going to achieve what it sets out to achieve? Is it going to deter the vicious process that we see? That is the question. That is the question I have asked myself. Other members believe that nothing will deter those career protesters who often take the opportunity, I believe, to come to Tasmania and have a break from wherever they usually reside. They are paid to come over, their air fares are paid, I expect their living expenses are not terribly high if they are camped on the west coast, as the member for Murchison said they can be, within spitting distance of a particular activity, whether it be mining or forestry or whatever that might be. It is interesting to think about people who do that and particularly, if they are non-Tasmanians, whether they really understand the impact or even care what the impact is on genuine Tasmanian people who are legitimately going about their work.

I have been thinking about what I might share with members. I might share a story about a lot of people in our state who legitimately go about their work. Log truck drivers - a lot I know personally and others I know of them by name - most have a nickname and I would not know their actual Christian name, but they certainly are known to me.

I see them regularly on the road when I am coming home late from events, because mostly where I come from is a couple of hours at least away. During the week they are going to work at 11.30 the day before, to be at the likes of Artec or wherever their resource goes to, by 4 a.m. because they want to be first there or soon after. Then they can get back out and load up and possibly get two loads in on that day, because they are often hundreds of kilometres away from where they take their resource.

Have a think about that - going to work at 11.30 at night, so you probably got up at 10.30, probably went to bed at half past 4: how much family life is that? Possibly not a lot, but that is what you do to make a living in that particular industry. I know that for certain. I know that they go to work the day before. Imagine when you get to the likes of Artec at 4 o'clock in the morning after you have left home at 11.30 p.m the day before and you find a protester chained to a barrel impeding you. Unable to get in and unload your plantation-based load. More often than not, it is a plantation-based load of timber.

We spent weeks and weeks on working through the Tasmanian Forest Agreement. I asked the member for Hobart if he might be able to find how many weeks we did spend on that.

Mr Valentine - It was 20 December 2012.

Ms RATTRAY - And we spent the whole of January.

Mr Valentine - To 15 March 2013.

Ms RATTRAY - Weeks and weeks to come to a compromised and negotiated position about what sort of resource was available for the timber industry into the future. I know that some members here will remember it well. I am starting to feel that it was all to no avail.

We spent all that time working on that so the industry and the markets would have some certainty, and certainly the good people who work in it and stick their necks out and buy whatever machinery - some of those pieces of machinery cost \$500 000 or more. That is big bikkies. That is a lot of money.

I am very disappointed now we see an increase in protest, an increase in disruption to legitimate workplace. It is no wonder there is a high level of frustration in our communities around this. It is no wonder we are receiving phone calls from Scott Arnold, who owns Artec, and from log truck drivers who only get paid by the load. If they are sitting there from 4 o'clock until midday - this is no disrespect to our police, they have to assemble themselves, work out what to do, do the negotiating and try to work through this in a civilised manner.

It is no wonder everyone is super frustrated about this. I am frustrated and I did not get up at that hour of the morning, or night and to try to unload the load I loaded up the day before, then get there and find somebody is chained to it. This is from a media release on Saturday, 13 February; it talks about more than 50 loaded log trucks parked outside, waiting to get inside and unload. Protesters were escorted from the mill by police hours later. Hours.

The protester, Gabby Knox, said they wanted to stop the trucks from being able to unload:

Obviously we have no hate for the truckies whatsoever. We understand they are just doing a job. Unfortunately that job is in direct contradiction of what we believe in. We have tried writing to politicians -

Well, Gabby, I have had a look in my inbox. You have never written to me. You have never had a conversation with me about the impact of what you and your fellow protesters do to the health and wellbeing of workers by your bullying, your harassment and your impeding of them in their workplace. So please, I urge you to come and have a conversation with me. I am happy to meet you up the bush if that is what it takes. I am happy to meet you on a logging site. You might like to meet some of those truckies whom you have no hate for and see how they live and how they look after their families.

It goes on to say:

Organisers said they were protesting against the woodchipping of Tasmania's old growth and native forests and about 20 protesters were involved.

As I have said, a huge majority - and I will not say all of them because I do not know the whole 50, whether they all had plantation wood on them, but I have been told that most of them had plantation timber, plantation resource. Again, anything from those native forests would have been identified through the TFA process that we negotiated with the environmentalists, with the protesters, with all those people with whom we sat around for weeks and weeks and weeks, and listened to.

Mr Valentine - It was like pulling teeth.

Ms RATTRAY - It was difficult; it was hard and it was long. We were away from our families for the whole of January. Most of us only take a break in January.

Mr Dean - One member was sunning himself up in Queensland.

Ms RATTRAY - I think that is fair to say - most members may only take a break in January. I know I do. I do not take a break during the middle of the year. There is too much to do. I did not get a break that year, but I was happy to do that, because I felt that the industry deserved some security, some surety and some certainty.

I will just finish this media release:

Police said they made two arrests and that charges were expected later today.

It would be interesting to watch the progress of that through the court process:

The majority of protesters complied with the police directions to move on', police said in a statement. 'Police remained on the scene and will investigate the incident, including the allegations of property damage'.

The protesters said that their tyres were slashed and the RACT had to remove several vehicles from the site. That may have been the case. There was possibly some high-level frustration at 4 a.m. and 5 a.m. and 6 a.m. and 7 a.m. and 8 a.m. - maybe it was getting daylight then - from those people who were waiting to legitimately go to work.

Log truck driver Stewart Lindsay said he would have finished work hours earlier and he had lost income. He said, 'I get paid per load.' We heard today that no matter if something is happening in a workplace people still get paid even though they cannot go to work. This log truck driver could not get paid because he could not unload his load. He says, 'So all the hours I've been sitting here since probably 7 o'clock, I don't get paid, so I'm sitting here for nothing.'

The last part of this media release is from the chief executive of the Tasmanian Forest Products Association, Nick Steel, who is known to most of us. He called the protest unfair -

As we have repeatedly stated, we support free speech but it is unfair and unjust to invade workplaces causing loss of income and stress to your fellow Tasmanians trying to make a lawful living simply in order to make your point.

The point was, 'Unfortunately that job is in direct contradiction of what we believe in'. That is why Gabby and her fellow protesters attached themselves to barrels and blocked the entrance of that mill.

Interestingly, the last line of the media release from Nick Steel says -

We urge the Government and Labor Party to sit down together and find a way to pass through the parliament stronger protections for hardworking Tasmanians seeking to make a lawful living in our renewable forestry industry.

I have been talking about the forest industry because I know that quite well, but I also know the farming industry quite well. I know of people who have been subjected to protester action that has almost ruined them. I do not necessarily mean financially, I mean emotionally. They do not undertake the area of agriculture that they did in the past, they are not able to do that. They have been so wounded by what they have been through, undertaking legitimate work activities on their farm.

To say that there is no harassment and there is no bullying and there is no effect on mental health and emotional stability and that everyone has a right to protest - and I fundamentally believe that -

Mrs Hiscutt - That sort of emotion was displayed today from one of our presenters.

Ms RATTRAY - Absolutely. Even one presenter who obviously had not faced that intensity and had not had that experience himself, talked about workers that they knew had been through that. Some people never get over that. A lot has been said around the country about bullying, harassment and all those things in workplaces. These people are in their workplaces -

Ms Forrest - So are the staff in Parliament House in Canberra.

Ms RATTRAY - Yes, exactly. They were in their workplaces also. It is not right. That has been called out for what it is, and this is not right. How do we deter these people? How

do we get to the Gabby Knoxs and get them to understand what they do is harmful as well as illegal?

We have talked about the fact that there are laws in place. I want to move on to that if I can, because I, like most members, have been thinking: how are we going to be able to progress this? I want to be able to progress this. I am not interested in the political games. I am interested in an outcome for these good people, for all Tasmanians. I look at whether we could do something with the Police Offences Act and whether we need to amend that. I know the member for Launceston read out the response from the Police Association -

Mr Dean - Police Association of Tasmania.

Ms RATTRAY - of Tasmania, thank you, member for Windermere. But interestingly point 5 - I know it has been read in its entirety now - of the email we received today said:

Creating an 'aggravated trespass' under the Police Offences Act is once again overcomplicating a piece of legislation that police have to operate under. The issue of any aggravation should be a consideration in penalty only and not in the offence. A court now can take into account any aggravating circumstances when it decides on a penalty.

I have been thinking through this. I asked our government advisers in the briefing for some comment on this and whether it would over-complicate the legislation we already have in place. It was difficult to get a clear-cut answer. Do we try to amend the bill we have? Do we put it into Committee? Do we take it to a committee? I did not sleep much last night, wondering whether I should try to move for a committee inquiry.

However, look at all the work we did through the TFA to get an agreed outcome. We had willing participants then. My belief was we had willing participants all round, or we would not have achieved what we did. It obviously does not mean much to some now, but the work done in this place means a lot to the industry. Do we try to do that again? It appears the Government has no appetite to move in line with that. The Leader may give me some different direction about that when she sums up.

Perhaps that was an opportunity, but again this Government would need to be invested in that. We could do a power of work as a committee and the Government might say, 'No, that is against our policy. No, that is a step too far. We went to the election with this particular policy and this is the legislation we have put in place. That is the Government's right and this House decides'. Or they could say, 'Perhaps there is some compromise here, some negotiated areas.'. My understanding, from what I have gleaned from the bill, is the Government has removed the concerns around industrial relations, so it does not affect people who legitimately need to protest. For all those examples that have been given - women's rights, unsafe workplaces; those well-intentioned protests we all want people to be able to do - it has removed those concerns. I would appreciate a confirmation about that from the Leader in her second reading summing up.

The parliament needs to sell this approach to the community and clearly explain why the existing laws are not working. The member for Murchison has talked about asking for information about offences and what has happened in the past. We need a better understanding

of why they are not working. Why are people not getting the message? Do they just have a blatant disregard for the laws of Tasmania? If that is the case, it will not matter what we do.

Unfortunately, the very good people in all those industries, whether it be the aquaculture, agriculture, forestry or mining industries, are probably going to have a long, hard look at how they try to make a living. It is the saddest day we will see in this state when people who love their job, who go to work at 11.30 p.m. to be sitting at an Artec gate at 4 a.m. to unload their plantation timber and someone is impeding their access because they do not like what they do.

I have not said 'What a nonsense' for a while but I will today. What a nonsense, but what a sad day as well. What a sad day for us, if that is the case. I talked about the Whole-of-Council Committee, as we did for the TFA, working on a negotiated position to get the Opposition's support, your support, Mr President. I do not know if that is the answer.

If somebody from the Government, the minister, would walk through the door into the Chamber and give me a nod and say, 'Yes, we would do that', I would be happy to adjourn this debate and move to establish a committee. However, without that, I see no reason this House would try to rewrite Government policy if there were no will to proceed with it.

The TFA had willing participants. If there are any willing participants from another place - and the Leader might be able to find that out - I would be more than comfortable to do that. I am not the last person to have the opportunity to speak.

I checked on the High Court challenge situation. We would be the laughing-stock of the country if we went through another High Court challenge. I believe there is no watertight guarantee for that. The Bob Brown Foundation is well resourced. The member for Murchison made the point about those donations and the donation laws in this state, and that needs the attention of somebody within the Government to see what might happen there.

I will just read from this article in *The Examiner* on Monday, 2 December 2019. The headline is 'Protest law will hold up in court':

A previous anti-protest bill passed by the Tasmanian Government was struck down by the High Court in 2017, and on Thursday Mr Barnett would not answer whether or not the Solicitor-General had told him the new law would survive a court challenge. But on Sunday he said unequivocally the Solicitor-General, Michael O'Farrell SC, had advised him the laws were constitutional. 'The government is confident in the constitutionality of the bill,' he said.

The Labor Party has some differing views on that. I am taking it at face value. The minister has made that statement. I have not had anything to the contrary. How do we know the Bob Brown Foundation might not challenge this one? I trust the Government has done its homework and would not be going down this path if it felt that there were any chance it would end up back in the High Court.

How do we send a strong message to the community? Do we do it with this piece of legislation? Do we let Tasmanians know that we care about them, that we want them to go to work and be safe and be able to go about their lawful business? Do we have enough safeguards to protect the rights of any individual or organisation that wants to protest peacefully and not impede but make their point? Is this a strong enough message? Does this do all those things?

I can only do what I believe is right. We need to make sure that if this bill passes into the Committee stage we look very carefully at those clauses and make sure that all the matters I talked about in my second reading contribution are addressed, and that there is no doubt in anyone's mind that they can do those things, whether they want to be the working person, whether they want to be the protesting person, or whether they want to be both - we have working protesters. If they feel strongly enough about a cause, they will take the opportunity to protest in a peaceful way, not impeding, not destructing.

I am prepared to follow on from my previous support of this legislation in 2014. I am prepared to put it into the Committee stage. I urge other members: if they are not satisfied with some of the components of the clauses and feel they are not clear enough, let us work through that process. I am sure it does not have to be done today; I am sure it does not have to be done tomorrow.

If we need to take some extra time to make sure all those clauses are watertight and do what the Government has said it wants them to do - protect legal protesting, but also protect the rights of workers right across the state to go about their lawful business, then so be it. If we have to go back to the drawing board and start all over again, it is going to take a lot longer.

I would like to see something in place so that the people of Tasmania know this parliament is serious about supporting Tasmanians, what they want to do and what they need to do to care for their families and their communities.

The member for Prosser said, 'Every job counts in small communities'. The ANZ Bank in Scottsdale shut last Friday. Four positions gone. They shut the door. Had I thought a protest would have helped, I would have been on the footpath. Instead I took a photo of the shut bank and I posted it and said:

So, this is what one of the big fours think about rural communities? Not much.

It took my business away. They might not worry about it, but I felt I needed to do that to make a point. I took my business from the ANZ Bank.

Mr PRESIDENT - I did the same when they closed the New Norfolk branch after being a lifelong customer.

Ms RATTRAY - Thank you, Mr President. Every job counts. It will be a sad day when workers in Tasmania do not feel they are supported to go about their lawful business because this parliament was not bold or strong enough to support the legislation the Government has assured us is robust and constitutionally compliant, and they walk away from their jobs. They walk away and say: 'We are not going to farm anymore. We are not going to get any more resource out. We are not going to mine anymore'

Those big west coast mines will pack up and go elsewhere. A sad day. I do not want to see that sad day. I have children and grandchildren who live in this state. They work in this state, they live in our communities, and I want them close by. We have all seen what fly-in fly-out does to communities. Flat out to get a football team these days, because people have to work. Most people want to work. It gives you purpose. You have direction. I really feel for

those people who cannot get a job because of their loss of independence and confidence. It is about jobs. It is about people. It is about communities. It is about our state.

For members who do not feel they can support it, let us take it to Committee and work on it. We have worked on bills in this place. Sometimes more amendments go out this door than we care to think of, but we work hard on them. Given the information we received today from very good people on all sides of this debate, I have the absolute faith we could, if we needed to, come up with watertight amendments to make this work for the people of Tasmania.

Let us give it a chance. Show those people that we do care and that we are there to support them and are not down here wasting our time. We are working hard and we are working hard for them. I want to support the bill into Committee and I urge other members to do the same.

Mr President, I am delighted to move to adjourn the debate because goodness knows what I will think of by tomorrow morning.

I move:

That the debate stand adjourned.

Debate adjourned.

FOOD AMENDMENT BILL 2020 (No. 41)

LAND (MISCELLANEOUS AMENDMENTS) BILL 2020 (No. 42)

First Reading

Bills received from the House of Assembly and read the first time.

BRICKMAKERS POINT LANDSLIP BILL 2020 (No. 15)

The House of Assembly advised that it agreed to the Council amendments.

ADJOURNMENT

[6.17 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 11 a.m. on Thursday 25 March 2021.

Honourable members, I remind you of our briefing tomorrow morning at 9.30 a.m. This is a self-request, as some members have said, we try to accommodate people who asked. This is the director of Reloop Pacific, who would like to talk to us at 9.30 a.m. tomorrow.

Motion agreed to.

The Council adjourned at 6.18 p.m.