

DRAFT SECOND READING SPEECH

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Police Offences Amendment (Workplace Protection) Bill 2022

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

Mr Speaker, the *Police Offences Amendment (Workplace Protection) Bill 2022* repeals the *Workplace (Protection from Protesters) Act 2014* ('the 2014 Act'), and amends the *Police Offences Act 1935*.

The Government has been elected three times with policies designed to further protect the rights of workers, and to deter unlawful interference with workplaces.

For some time now, businesses in Tasmania have been adversely impacted by the actions of individuals and small groups, and it remains an issue today. We want to deter people from this aggravated unlawful conduct that has such significant economic impact on businesses and workers in these sectors. Importantly, there are also the psychological impacts for people going about their daily work, who are confronted with these unlawful disruptions. Of course, we also seek to protect those persons who foolishly place themselves, and often others, at risk in their attempts to disrupt business activity.

The Tasmanian Government condemns these actions. They are unacceptable and our law and penalties must clearly deter this behaviour, and support people who are going about their lawful business.

This problem is not unique to Tasmania. Several other jurisdictions have taken the necessary step of introducing legislation to curb these types of activities. In New South Wales a spate of unlawful activity shut down major roads, costing the community millions of dollars in direct economic loss and lost productivity. In response, this year the New South Wales Government passed the *Roads and Crimes Legislation Amendment Bill 2022* to deal with illegal activity blocking major roads or facilities, in addition to existing road obstruction offences. Like other jurisdictions, New South Wales has also introduced higher penalties for trespass that obstructs business and undertakings.

In 2019 the Queensland Government passed the *Summary Offences and Other Legislation Amendment Act 2019* to address the use of dangerous lock-on devices, recognising that those devices were designed solely to maximise the disruption caused to workers and members of the public.

Similarly, the *Criminal Code Amendment (Agricultural Protection) Act 2019* passed by the Commonwealth Parliament created two new offences relating to trespass and property offences on agricultural land. This legislation was in direct response to the actions of those people inciting serious trespasses on a number of farms throughout Australia. Such conduct could cause the contamination of, or interfere with, food production and poses a significant biosecurity hazard.

Such legislation recognises that the freedom of political communication does not mean unreasonable obstruction of lawful business viability.

Like those jurisdictions, Tasmania needed to take action to further protect the rights of people going about their lawful business. We took action with the *Workplace (Protection from Protesters) Act 2014*, but of course accept that the High Court of Australia in *Brown and Another v State of Tasmania* found certain provisions of that Act relating to forestry land are invalid. This was because they were found to impermissibly burden the implied freedom of political communication contrary to the Commonwealth *Constitution*. However importantly, a majority of the judges of the High Court considered the purpose of the Act was valid.

This Bill gives effect to the fundamental purpose recognised as valid by the High Court, fulfilling the Government's commitment to workplace protection. It protects people who are undertaking lawful business activities. People should be able to earn a living without trespassers obstructing businesses and undertakings, or unreasonable obstruction of roads. The Police Association of Tasmania has expressed strong support for this objective.

In utilising existing offences and new penalties to clarify the law for this proper purpose, the Government recognises that freedom of communication including protest is a fundamental right. It has been called the touchstone of all human rights and it allows ideas to be tested and inform political debate. The Government recognises that businesses may need to accommodate some levels of disruption due to the legitimate expressions of these rights.

However, the Bill recognises there are limits to all rights, particularly when businesses suffer substantial disruption. For example, the implied freedom of political communication doesn't 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 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 when access requires permission, for example by a public authority controlling the land for particular purposes.... There are, and always have been, limits.

The Government has given careful consideration to the High Court's decision, as well as feedback received during consultation on previously proposed amendments to the 2014 Act, and the feedback received during consultation on this Bill. The Bill has been carefully drafted to ensure it strikes the right balance between protecting these various, and sometimes conflicting, rights and interests.

This Bill delivers a simpler framework that deserves broad support. It creates no new offences or police powers, but clarifies the law of trespass and public order offences, making them more readily understood and enforced. It applies to all persons and businesses equally. And it gives Courts the ability to give higher sentences if appropriate for the more serious conduct.

I turn to the detail of the Bill. The Bill amends the offence of 'public annoyance' in section 13 of the *Police Offences Act*, which currently prohibits violent and riotous behaviour, disturbances of the public peace, disorderly conduct, nuisance and so on. The Bill inserts a new element of 'unreasonable obstruction of the passage of vehicles or pedestrians on a street'. This clarifies the existing fact that this conduct can already be charged under section 13. Of course, it can also continue to be charged under law such as the *Road Rules 2019* where appropriate. In recognition of feedback during submissions, the Bill has been amended to clarify what obstruction refers to. Similarly to other offences, it is now stated clearly as unreasonable obstruction of the passage of vehicles or pedestrians.

The element of 'unreasonable obstruction' has been incorporated from both road and other offences. For example, a person stopped in traffic or broken down on a street, is not unreasonably obstructing a road. As noted by the High Court in the *Brown* case, the notion of 'obstruction' is also limited by principles of legality and section 3 the *Acts Interpretation Act 1931*. That is, obstruction would apply to "substantial" or "serious" obstruction.

Importantly, members of the community will continue to be able to apply for a permit to conduct various activities on public streets, as they have always done. This change has no effect on the conduct of demonstrations or events which have been granted a 'public street permit' by a senior police officer under section 49AB of the *Police Offences Act*.

This Bill also addresses the issue that the current maximum penalty under the *Police Offences Act* for section 13(1) offences is too low for appropriate deterrence and recognition of this serious conduct. We want to give courts discretion for higher penalties for more serious offending conduct under section 13(1), which includes unreasonable obstruction of streets but also the other existing elements such as violent and riotous behaviour, disturbances of the peace, disorderly conduct, and nuisance.

The amendment will increase the maximum financial penalty for public annoyance under section 13(1) from 3 penalty units to 10 penalty units, however it will not impact on the maximum period of imprisonment allowable. The new maximum financial penalty equates to \$1,730. This change brings Tasmania into line with similar offences in other jurisdictions. It remains a maximum for the court's discretion, for the most serious conduct, so that lower level conduct is not unduly affected. In many cases, police will disperse persons found offending in minor ways against section 13, rather than charge them under the offence.

Moving on to section 14B of the *Police Offences Act*, the Bill makes amendment to the offence of trespass. It reinserts the current 14B(1) with minor amendment to clarify the current references to entering or remaining on property, including a new 'move into or onto'. It also includes a new section 14B(1A) to clarify that acts such as locking on to machinery, or standing on machinery, amount to trespass. This is a common sense amendment given the significant disruption and danger that can be caused by this conduct.

The Bill provides for increased penalties for the offence of trespass. Importantly, the increased penalties only apply where the court is satisfied, at the time of sentencing, that the trespass either obstructed a business or undertaking, or caused a serious risk to the safety of the trespasser or others. The increased penalties only apply in these specific situations because these are the situations that have a real impact on business and livelihoods, or create serious risks. The *Police Offences Act* already provides for increased penalties for certain forms of trespass that are considered more serious or dangerous, and the Bill is consistent with this approach.

I will now breakdown the three types of what can be thought of as 'aggravated trespass'.

The first situation where an increased penalty will apply is where the person, by or while committing the trespass, **obstructed a business or undertaking**, or took an action that caused a business or undertaking to be obstructed. The person will be liable to a maximum penalty of 50 penalty units (currently \$8,650) or imprisonment for a term of 12 months. This is double the standard penalty for trespass, and the same as the current aggravated penalty for trespassing in a home or with a firearm. The terms "business" or "undertaking" is used across a range of Tasmanian legislation, and has its normal meaning. For example, it protects both profitable and not-for-profit businesses and undertakings.

Again, for the same reasons I explained for the section 13 amendment, obstruction would apply to "substantial" or "serious" obstruction.

The second situation is where the person, by or while committing the trespass, caused directly or indirectly, **a serious risk to the safety** of themselves or another person (or took an action that caused such a risk). This covers both risks directly created at the time of the offence, but also indirect risks that are still closely linked to the person's conduct. For example, a person that tampers with machinery overnight, that may malfunction and harm someone the next day.

The person will be liable to a maximum penalty of 75 penalty units (currently \$12,975) or 18 months imprisonment. That penalty is three times the standard trespass penalty. If a person has previously been convicted of this form of trespass, they are liable to a maximum penalty of 125 penalty units (currently \$21,625) or 30 months imprisonment. That is a significant penalty. It is five times the standard trespass penalty, and for good reason. It applies only if a person has previously been convicted of trespass which caused a serious risk to the safety of themselves or another person.

Thirdly, if a body corporate commits a trespass and in doing so, they obstruct a business or undertaking, or take an action that obstructs a business or undertaking, the body corporate is liable to a maximum penalty of 600 penalty units (currently \$103,800). Again, this is a significant penalty, as it should be. Body corporate penalties are generally significantly higher than those faced by individuals. Of course, this is partly because prison does not apply to a body corporate. There is a risk that without a significant penalty, body corporates will simply consider any fine imposed as a cost of business.

It's important to remember that, in respect of all of the increased penalties introduced by this Bill, they are maximum penalties. The Magistrate retains sentencing discretion to fix a sentence that is appropriate in the circumstances of the case. Further, the penalty levels for trespass for individuals are substantially lower than related penalties in the 2014 Act.

The offence of trespass requires a person to be on property without the consent of the owner, occupier or person in charge. The final substantive aspect of the Bill clarifies when the holder of a mineral resources lease or licence, known as a mineral tenement, is taken to be in charge of an area of land. In many cases, it is already clear when the holder of a lease or licence is in charge of the land, or an occupier of the land, for the purposes of trespass. However, noting the nature of mineral tenements is that the holder only has possession of the land to the extent necessary for carrying out lawful operations under the lease or licence, and that there are a wide variety of factual situations that may arise, this provision is intended to address any circumstances where it isn't clear whether the holder is an occupier or person in charge of the land. This is an important issue because we know that sites of mining leases or licences are often targeted by persons looking to disrupt lawful mining activities.

This provision was clarified after consultation to address an issue noted by the Police Association. That is, the Bill was never intended to deem persons on mining land to be trespassers, or deem a person to commit a trespass if they also commit a mining offence. The clause now simply provides that where a police officer reasonably believes a person on such land is obstructing operations to the extent they are committing serious offences under the *Mineral Resources Development Act 1995*, the lease or licence holder is taken to be the person in charge of the land for the purposes of trespass.

Where a person has entered land and committed such offences, therefore, the tenement holder can give or withdraw consent to persons remaining in that area. Under the continuing law of trespass under the Act, if the persons do not then leave that land they are also committing a trespass.

The specified offences under the *Mineral Resources Development Act* all involve hindering or obstructing lessees and licensees from carrying out lawful activities under the respective lease or licence. This approach has the practical effect of clarifying a person can be trespassing in mining areas if they are on an area of the land in which they are actually hindering or obstructing lawful activities under the lease or licence from occurring. It does not apply to the entirety of the land subject to the lease or licence.

This approach to mining areas draws on the existing model in section 55 of the *Police Offences Act*, which provides a police officer can arrest someone if they reasonably believe a specified offence is being committed. Existing safeguards for trespass continue, such as a person must first be given an opportunity to leave before being arrested. Further, another continuing safeguard is that a police officer cannot arrest a person for trespass if they believe the person has a reasonable or lawful excuse for being on the property. Finally, of course, a person may not be arrested at all if it is more appropriate to proceed by way of summons.

Indeed Mr Speaker, it is not the case that every offender today, or under this Bill, will be charged or arrested. As is the case today, where people are unreasonably obstructing a street or trespassing, most often it is only those few whose behaviour is serious, or who refuse to disperse, who will be charged.

And for those who are charged with trespass, this Bill only allows Courts to consider a higher penalty if the court considers the trespass meets the aggravating criteria. If not, that person is subject to the same trespass penalty as they are today.

Mr Speaker, public and targeted consultation was undertaken on this Bill. I note in particular the Australian Lawyers Alliance acknowledged the Bill in part reflected their previous proposal for a simpler approach. Both the Australian Lawyers Alliance and some other submissions gave constructive feedback. The Police Association of Tasmania noted that this Bill is far simpler than previous legislation, and far more practical, workable, and not an unnecessary burden on police officers. We have addressed any necessary changes in the final version of the Bill, consistent with the Government's objectives.

By utilising the existing framework of the *Police Offences Act*, the Bill enacts changes that can be readily understood by members of the community, businesses and police. Most importantly, the Bill, while respecting the right to freedom of communication, appropriately protects people undertaking lawful business activity. The Bill ensures activity that involves trespass or road obstruction is adequately addressed by our laws, and that if people decide to commit these offences, the penalty is capable of serving as a deterrent. It is clear that the current laws are not doing enough.

I commend the Bill to the House.