



PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 24 August 2022

REVISED EDITION

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Wednesday 24 August 2022

The President, **Mr Farrell**, took the Chair at 11.00 a.m., acknowledged the Traditional People and read Prayers.

RECOGNITION OF VISITORS

Mr PRESIDENT - Honourable members, St Mary's Legal Studies students join us today to see how legislation is made. You have already visited the other place and are now in the Legislative Council. This will be a little odd as we are about to break for a briefing on legislation. This session will end and we will gather information on the bill and come back to debate it. It is an important and interesting bill to do with anti-protest legislation. If you are going to be around to hear the debate, it will be a fairly different procedure than normal practice. We are at the third reading stage and may attempt to recommit some clauses.

We wish you all the best in your studies and that you enjoy your time here today.

Members - Hear, hear.

TABLED PAPERS

Government Administration Committee A - Report on the Roy Fagan Centre - Government Response

[11.03 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I table the Government's response to the Legislative Council Government Administration Committee A's short inquiry process report on the Roy Fagan Centre.

SUSPENSION OF SITTING

[11.04 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.

This is for the purpose of a briefing on the Police Offences Amendment (Workplace Protection) Bill 2022, for the purposes of a procedural briefing by the Clerks.

Motion agreed to.

Sitting suspended from 11.08 a.m. to 11.39 a.m.

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

Order of the Day Discharged - Recommittal of Committee of the Whole Council

[11.39 a.m.]

Ms FORREST (Murchison) - Mr President, I move -

That the Order of the Day be discharged and the bill be recommitted to a Committee of the Whole Council for the purpose of reconsidering clause 4 as amended and clause 5.

Mr President, I was very grateful for the winter break. Had we sought to proceed with the bill at an earlier time, as sometimes happens in this place, I would have found myself in a position where I could not possibly have supported the bill in its current form, which is how it still stands before us today. I also acknowledge that this is a proper process and the reason we have a proper process is to enable matters to be fully considered, once the bill has been through the Committee stage, particularly where it has been amended already, to be sure that the bill actually gives effect to the stated policy and that it is in the best interest of the people of Tasmania generally.

I ask for members' support to recommit clauses 4 and 5. As members would be well aware, other members and I have circulated a number of amendments - me to clause 4 and other members to clause 5 - that we will go a long way to putting in place the stated policy position of the Government with regard to this matter. I have heard it even said in this place many times that this is 'anti-protest laws'. It is not. Well according to its title, it is not. It is workplace protection. It is 'police offences' and 'workplace protection'.

The current bill, as it stands, does not give effect to that title, so the amendments I am seeking to put in and I know other members are also seeking to do, is to alter the bill as it stands to give effect to that actual policy position. While some concerns, no doubt, will remain, for many members regardless of the passage of these amendments, or not, or even the outcome of this clause, I urge members to give the opportunity for these amendments to be debated and considered.

I know there has been a bit of a movement out in the community for members to be encouraged to vote against the recommittal, the so-called, 'kill the bill'. I have made my views very public and I think it has been capitalised on a little bit by some members of the community who think, 'well, if you are not going to support it in its current form just kill it now'. That is not my job in this place. My job in this place is to do the best I can with the legislation we have. My request to members is to enable the bill to be recommitted, those two clauses and to consider the amendments. Whether you agree with them or not is irrelevant. To enable them to be debated and considered is part of the proper process in this place, not dissimilar to when a member seeks to report progress during a Committee stage for the purposes of having a further amendment drawn so it can be considered, debated and voted on. That is my request to members in regard to that.

I also wish to say that it was disappointing at the end of the last Committee stage when the Leader, rightly, did not seek to push on with suspending Standing Orders, to seek to undertake the consideration of the amendments that have been agreed to, and the third reading.

It was very unfortunate that members of her Government were in the media, saying that the bill had passed and this was it and it was all done and dusted. That shows a complete disregard, or ignorance perhaps - or both - of the proper processes in this place.

I urge the Leader to go back to her members - the now current Minister for Resources is one of them saying that the bill had passed - to educate them about the processes in this place. This is a legitimate process and it is inappropriate for the other House to comment on procedures they are not aware of, when this bill still has a way to go, whether it is recommitted or not. There is still a way to go. It had not passed this House until after the third reading.

I urge members to please consider this request to recommit it and at least have the opportunity to debate the amendments, regardless of their view on them.

[11.44 a.m.]

Ms RATTRAY (McIntyre) - Mr President, I take this opportunity to support the member's request for a recommitment. I believe that it is our duty to gather as much information as we possibly can. There is no denying that over the past five or six weeks we have been inundated with requests for us to further consider the ramifications of this proposed legislation and we are only part way through, absolutely. I want the opportunity to listen to whatever debate is brought forward and because we have this process in place that it is only right. We do not use it very often - I believe about three times in the last 30 years or something like that - but it is there in our Standing Orders. I fully support the opportunity to have those two clauses recommitted and for members to progress their amendments and their views on what this might look like when it comes out the other side.

I congratulate those members who have done a lot of work over the break to present some amendments that we have before us. Thank you all, and I look forward to being part of the process for this next stage. It is something quite unique, but it is there for the Council to consider.

[11.45 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I do not have any issues with members seeking to recommit clauses once the Committee stage has been effectively concluded and there are new issues or matters to be considered that have not already been widely canvassed in the debate.

That is a perfectly reasonable path to take, but we do need to be wary for the future. As a general rule, recommitment at this stage happens very rarely, certainly not as a matter of course and that is the way it should be. Our procedures allow members to voice their opinions, to ask questions, to receive briefings and other advice on matters, and to move amendments if they see fit, all in the Committee stage. Then, after all of us have deliberated, we vote and proceed through the remaining stages, including the third reading.

If new information comes to light on the issues that the bill raises, then of course we should be able to reconsider; but we must be careful not to needlessly revisit issues that have already been debated at length.

I will always support a reasonable request for further debate to ensure that the Council and its members have as complete a picture as possible for the matters before us. However, debate cannot, and should not, be allowed to go on forever. If further debate will result in

clarification or amendments that make the intentions of the Government and the will of the House clearer, then it is a good and proper thing to do.

Bearing that in mind, Mr President, I respect the will of the House in this matter.

Mr PRESIDENT - The question is; that the Order of the Day be discharged and the bill be recommitted to a Committee of the Whole Council for the purposes of reconsidering clause 4 as amended and clause 5.

Motion agreed to.

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

In Committee

[11.48 a.m.]

Madam DEPUTY CHAIR - Honourable members, before we commence this process, I reiterate that we intend to take this slowly. This is quite a complex procedural process. I do not suggest that I have everything 100 per cent correct, but I have wonderful assistance either side of me, and I will be taking advice as necessary. We will make sure that we get through this in the proper manner.

I also remind members that this is not an opportunity to revisit any other clauses. It is for clause 4 as amended and clause 5 only - the two clauses recommitted - and we will not be entering into a second reading discussion. Ask your question, receive the answer, and there will be three opportunities on each amendment.

Mrs HISCUTT - Madam Deputy Chair, before we begin, I will make some opening remarks in relation to this bill and address some of the misplaced community concerns. We need to separate the inaccuracies quoted in the media and elsewhere.

Ms Webb - Through you, Madam Deputy Chair, is this not revisiting second reading elements?

Mrs HISCUTT - Is a statement not part of the recommitment?

Ms Webb - Do we all have that opportunity to make a statement?

Madam DEPUTY CHAIR - Apologies, Leader; if there is something that you want to point out, without reading an entire statement?

Mrs HISCUTT - I want to make it absolutely clear that this bill does not target people experiencing homelessness. It does not.

Ms Webb - It sounds like a second reading to me, Madam Deputy Chair.

Mrs HISCUTT - All these things are out there in the media and they need clarification.

Ms Webb - We will all have an opportunity.

Mrs HISCUTT - There are people scared out there.

Madam DEPUTY CHAIR - The Leader will have an opportunity to answer any questions relating to those issues as we go through the Committee stage. I will make sure of that.

Clause 4 - as further amended

[11.51 a.m.]

Ms FORREST - Madam Deputy Chair, I move -

That the first amendment previously made to clause 4 be disagreed to.

The reason I am asking members to disagree with that first amendment by the Government is that I am replacing it with exactly the same words, and then adding to it, in terms of the application of that new proposed clause 4(b)(ea).

I am happy to explain the purpose of that clause now, or when we get to that if members agree; but what it is doing is narrowing the scope of the new clause (ea) that has been inserted and amended by the Government in the bill that is before us now. I am not changing their wording in the overall offence:

unreasonably and substantially obstruct the passage of vehicles or pedestrians on a street.

I go on to clarify that it is only in relation to workers accessing the workplace. I am not sure if you want me to prosecute that case now, or just encourage members to vote against the Government's first amendment because it gets reinserted in mine. The only challenge is, if you do not agree with the additional qualification to this, you will need to vote against it if you want it to remain exactly as it is in the bill now.

Madam DEPUTY CHAIR - I suggest that the member prosecutes her argument here so that we have a complete understanding. Also, in saying that I am not allowing full second reading speeches. I am allowing some leeway for members to present their opinions.

Mrs Hiscutt - Through you, Madam Deputy Chair, for clarification while the member is on her feet - at the moment, all you are doing is removing the Government's first amendment from our amendment.

Ms FORREST - Yes, and I probably will not need to speak in great length to my amendment should that be successful.

Mrs Hiscutt - Have you read it in yet?

Ms FORREST - I have read it.

Madam DEPUTY CHAIR - The first amendment to clause 4, the question is, is to be disagreed.

Ms FORREST - I am asking to disagree with the first amendment to clause 4 made by the Government because I am seeking to reinsert exactly those same words but then add additional words. The reason I want you to disagree with the Government's amendment, as was agreed in the previous Committee stage, was to note that the bill, essentially, is titled Workplace Protection, and in my view should relate to workplaces and thus capture workplace invasion - actions to prevent workers safely attending their workplace. It should not capture workers in their workplace who may be legitimately raising safety issues and that sort of thing. It should not capture anyone else in the community who may be protesting or gathering or rallying on a matter of significance to them, if they do not obstruct a workplace, or obstruct someone getting into the workplace.

The amendment I seek to insert which would mean the current clause 4(b)(ea) that the Government have put in there, which says:

- (ea) unreasonably and substantially obstruct the passage of vehicles or pedestrians on a street

This is only an offence if:

- (i) the obstruction impedes, or prevents, the entry, onto a place at which a business or undertaking is carried on, of another person who was intending to carry out lawful work at the place; and

That is the first test: you have to actually create an obstruction and prevent workers going to work. They may be already there, and you are preventing them doing their work and the other test, it is not an offence until both of these occur. The person intended that the obstruction impede or prevent the entry onto a place where a person who was intending to carry out lawful work at the place.

Madam Deputy Chair, this is the matter that has been raised with me repeatedly by members of my community who are subject to protest action that does not actually constitute a trespass, but it does prevent them going to work. In cases, I know you yourself raised this in a previous debate, some of the workers who cannot attend their workplace will not even get paid and actually lose pay if they cannot attend work.

In the Government's rhetoric on this bill, it has been focused on these issues. It has been about supporting workers to access their workplace. It has been about ensuring workers can safely do that. It does not mean that they should not have to drive through people protesting or waving placards or raising their concerns with them. That is absolutely a fundamental right to people to be able to protest in that way. It is where they actually stop them from going to work that there is an issue.

This amendment is seeking to capture that and narrow it completely to that. If anyone else is protesting and they are not knowingly, deliberately and intentionally obstructing workers into their workplace, it is not an offence under this public annoyance offence. There may be other offences they are committing in relation to other road rules, and other matters we have already discussed at previous times, which I will not go over again. This is to deal with situations where a trespass is not occurring, but the worker is being prevented from doing

lawful work and the person or people who did that intended not to allow them to get to work. There has to be the intent as well.

Some people might say how do you prove intent? Well, intent appears in other legislation. It is a test the court will determine when all the evidence is presented to the court. In fact, the word 'intent' is used in the bill we deal with after this one. In the family violence laws we are dealing with, there is intent in there too. It is not a foreign concept. It is something we rightly have - parliament to make laws as well as we can, police to prosecute those laws, and the courts to determine the outcome of those laws.

It would be up to the court to determine intent with the evidence provided to the court. Generally, these things are pretty clear and there is always going to be an argument. All our laws, regardless of when we deal with them can be tested in the courts, and tested in the High Court at times too, as we have seen in the past.

I urge members to consider the request to disagree with the Government's amendment to include the words the Government has used about a new public annoyance offence, but to limit it specifically and entirely to a workplace obstruction - preventing workers getting to work when the intent is to do that. If it is an inadvertent attempt, like people are rallying on a cause unrelated to the workplace, that they have been blocked and people inadvertently block it, if there was no intention to do it, it is not an offence. I do not believe that should be an offence.

I have two more speaks on this, but I hope that has made it very clear and I will not need to re-prosecute much of that, if this is agreed to.

Recognition of Visitors

[11.59 a.m.]

Madam DEPUTY CHAIR - Before I call the next speaker I re-welcome the members of St Mary's Legal Studies. This is the part of the process where, quite unusually, the Chamber, the House has agreed to recommit two clauses to a bill that has already been approved. This is the first part of that stage and the member for Murchison is prosecuting why a previous amendment is to be disagreed to.

We hope that you enjoy your time here today.

Members - Hear, hear.

Mrs HISCUTT - To put it on the record, Madam Deputy Chair, I can see the logic behind this. We will work through the process, and therefore the Government will not oppose this.

Ms WEBB - To be very clear, it is important that we are talking about the substantial part of the proposed amendment that comes next, because what people need to be aware of - as they are deciding whether to vote for or against removing the previous amendment - is that if we vote to remove the previous amendment made by the Government to insert that higher bar of substantial and unreasonable, and then the member for Murchison's substantial amendment proposal does not pass, we go back to what was originally in the bill, which is a very low bar. What happens if that occurs? I need clarity on that.

If we have removed a previous amendment, and then we do not pass the member for Murchison's amendment, my understanding is that we have lost that wording altogether. I will stay on my feet to make some other remarks, but could that be clarified, either while I am on my feet or in response?

Madam DEPUTY CHAIR - That is correct, but the second, third, fourth, and fifth amendment still remain.

Ms WEBB - Yes; but we would lose that wording of 'unreasonably and substantially'.

Ms Forrest - We would lose the proposed new paragraph 4(b)(ea).

Mrs Hiscutt - Through you, Madam Deputy Chair, while the member is on her feet, if that is the case, the Government could recommit that clause, to revisit that. Is that how we could do it?

Madam DEPUTY CHAIR - I have been advised that there would be time needed to reconsider that, Leader. Members need to be addressing their mind to the proposal put forward by the member for Murchison and now those questions that have been posed by the member for Nelson. I make that clear to all members.

Ms WEBB - My interpretation of that would be, if members -

Madam DEPUTY CHAIR - I am taking some more advice in regard to this. I appreciate the member for Nelson, but we have to be careful not to be asking the question that was asked a few weeks ago when this amendment was put in. However, the Chair is prepared to allow some leeway in regard to this; but of the question -

Ms WEBB - Thank you, Madam Deputy Chair, I am not revisiting something from last time, I am clarifying what the impact would be of supporting this proposed amendment to remove the amendment from last time. For example, I supported that amendment from the Government last time because I wanted that extra language to be in there. I am clarifying that if I were to support this amendment from the member for Murchison to remove that language - that amendment from last time - but then the member's subsequent amendment does not get up, which reinserts it as part of her amendment, then I have lost that language which I wanted to have in there, which is why I supported the Government's amendment last time.

I am being very clear of what trajectories there could be from supporting the removal of the amendment that was agreed to last time.

Madam DEPUTY CHAIR - I understand what the member is asking. Should that occur, then someone would have to propose another amendment to reinsert what was taken out. Please continue.

Ms WEBB - Thank you. I will continue on some of the points, focusing on the substantial amendment from the member for Murchison as she was prosecuting the case for that as part of our consideration for this first amendment.

To be very clear, what we are talking about here is not just protest action, for a start. This bill is not about protest overtly. It is not in the title of the bill. It is not in what is described to

us in many instances but it does capture activity that is not just protest activity. It could be a variety of other sorts of activity too. It is a public space-related constraint that is put in there, circumstance - thank you, member for Hobart. That is my first one.

It also curtails the right for all protest activities and other activities that may be captured under this 'unreasonably and substantially obstruct the passage of vehicles'. It is not just the protests that we might have highlighted to us. It is all kinds of protests, some of which many of us may regard as being quite valuable. It is a difficult one because we will all have circumstances under which we agree with a protest action happening, or maybe we do not agree. This captures all of them. So be aware that what you are voting for is also going to capture those protest actions which we may well agree with, that align with our thoughts and values.

I believe, although it does narrow it to some extent to be about impeding or preventing the entry onto a workplace of someone intending to carry out lawful work, it narrows the focus, but it is still unacceptable to be placing that above that broad opportunity to engage in protest. This is an important and fundamental right and there are many historical instances of protest that would be captured by this, still, that we would look back and regard as having been beneficial and delivered positive process in our community. What that says to me is this constraint that the member for Murchison's amendment proposes would have constrained and in the future will constrain things that would potentially otherwise have delivered benefit to us through legitimate protest action, an expression of a fundamental right.

I also note, the member for Murchison says, 'people may still be able to drive through people holding banners or what not', but this says, 'impedes or prevents'. Impedes could mean delay, hinder. Those are the sorts of words that come into the definition of impede. So, it does beg the question if we delay someone on their way to work and prevent them from accessing their workplace, is a delay of 20 minutes okay? Is a delay impeding them for an hour okay? Is impeding them for half a day okay? I do not know what the measure is for 'impede' in this either. In 'hindered or impeded', by how much? Are we blocking them a bit, are we blocking them entirely? I find it problematic.

Essentially, this fundamentally does not fix the utter flaw of clause 4, in terms of being a fundamental curtailment of a very basic right. It presents still more issues that are yet to be clarified or that present complexity to us. I do not agree with the amendment that is there in its substantial form and because I value the words that were put in by the previous agreed amendment I cannot support the amendment to remove those. That is my essential position on it.

Mr VALENTINE - I understand exactly where the member for Nelson is coming from with regard to this. I am curious that we actually do not have this listed as the first amendment to take it out and then the second amendment being to insert something new. During briefings we were talking about - in fact the member for Mersey was talking about a circumstance where he wanted to deal with things separately and that is what we are doing here.

We are actually dealing with two amendments on the one occasion and I do not know that that is entirely right. It should have been the first amendment to remove and then the second amendment to put in the new. Nevertheless, that is just an opinion.

My concern with this is what it does - to seek to protect workers' rights to get to work, but at the same time, the effect of this is in fact to deny others. I have always had issues with this bill. I am fundamentally opposed to the way it causes discrimination. I know some will say, 'No, it is not discrimination'. I used the example at the time about somebody who might work for the Public Trustee, and I just pull them out, it could be any organisation. They want to complain about how their employer is dealing with them, for some reason, industrially, and they end up, because they are stopping someone from getting to work, whether they are charged or not. However, somebody who is a victim of the Public Trustee is treated differently.

Ms Forrest - Well, not in this circumstance, not at all.

Mr VALENTINE - Well, I am not sure that it does not, if this gets passed. The obstruction impedes or prevents the entry onto a place et cetera. I have concerns with the ultimate bill and no doubt, I will be able to make that concern noted when the third reading occurs. I want to make that statement about how it might have an effect outside of what may be intended to make sure that people are not unreasonably affected when accessing their workplace and what, in fact, the member for Nelson points out, the obstruction impedes or prevents the entry.

It is a bit amorphous to my mind and the police have to be able to make this work. They have to understand exactly what is 'impede' and what is 'prevents entry'. They have to uphold the law. I do not think it is entirely clear in this. So, I do have problems with it. I will listen to the debate, as I always do.

Madam DEPUTY CHAIR - For clarification for the Committee, the Committee needs to consider that before proceeding to consider any alternative, for example, the member for Murchison's amendment alluded to, she cannot put that until this is resolved. So that is why we are dealing with this first. I hope that helps the member for Hobart and others, in regard to process here.

Mr VALENTINE - If I might, the point I am making is it is two votes that we are talking about here, which means that it is two amendments. I know you have to take the first one out to enable the second one to be put in, but I would have thought that they were two amendments.

Madam DEPUTY CHAIR - The question is that the first amendment to clause 4 be disagreed to.

The Council divided -

AYES 8

Ms Armitage
Ms Forrest
Mr Harriss
Mrs Hiscutt
Ms Howlett
Ms Lovell (Teller)
Ms Palmer
Mr Willie

NOES 3

Mr Gaffney
Mr Valentine (Teller)
Ms Webb

Motion agreed to.

[12.18 p.m.]

Ms FORREST - Thank you Madam Deputy Chair. I wish to move an amendment to clause 4, page 4, paragraph (b), proposed new paragraph (ea):

Leave out the proposed new paragraph.

Insert instead the following new paragraph:

- (ea) unreasonably and substantially obstruct the passage of vehicles or pedestrians on a street, if -
 - (i) the obstruction impedes, or prevents, the entry, onto a place at which a business or undertaking is carried on, of another person who was intending to carry out lawful work at the place; and
 - (ii) the person intended that the obstruction impede, or prevent, the entry, onto the place, of a person who was intending to carry out lawful work at the place; or

In speaking to this amendment, I have given a fairly broad description on how it is intended to work, but I will reiterate this while we are on this amendment. This amendment is intended to narrow the scope of this new public annoyance provision. I will say at the outset, I have been concerned about this amendment all up and remain concerned to a degree. It has been very difficult to try to give effect to the Government policy as well as what I hear in my electorate, where workers are prevented from attending their work, not through trespass, but through creating a barrier, obstruction or some other mechanism that prevents them attending work and potentially getting paid. Obviously, that has a flow-on effect for a business, when a worker cannot get to work. It effectively prevents the business from operating as well, not necessarily in its entirety but certainly in that aspect of the business.

I have held a view for a long time that everyone has a right to attend work safely, undertaking lawful work, to be able to access their place of work safely and to leave safely and be safe at work. This does not go near that 'safe at work' other than if someone was obstructing the work at the workplace during that period of work, which is a different matter in this bill. It is more of a trespass, because this relates to an area that is not a trespass. It is an obstruction to the workplace in a public space where you are not actually trespassing, which is a road, or something like that.

I note the member for Hobart's comments in his initial contribution on the motion to disagree with the Government's first amendment, that was inserted at an earlier time. He was perhaps not quite focused on the right area of the amendments that I am proposing, because this would not matter whether it was a disenfranchised worker who felt aggrieved by their rate of pay or their work conditions, or whatever, who was stopping another worker getting into the workplace, or whether it was a so-called victim of that business and they prevented a worker going into their workplace. It would be the same.

If you are preventing someone going to work, carrying out lawful work, then that is the offence this creates. It is not an offence for anyone obstructing a street where they are not preventing people going to work and intending to do it. It is not an offence if you inadvertently

obstruct access to the café in a street during a protest action that may spill out into an area where businesses are actually obstructed. Generally, those actions only last for a short period of time. They are only an hour or two and businesses may be disrupted for a period, but it is not like every day turning up to work and being obstructed from entry to your workplace.

It was the member for Nelson who raised the question about what is 'impede', or 'prevent' and how long for and all that sort of thing. You actually need to read this as a whole clause. It is not just that section. The headline, as the member for Nelson said she agreed with in the Government's insertion, they had to 'unreasonably and substantially obstruct' the passage of vehicles or pedestrians on the street. That is the first test. There are definitions for that and understandings of what that means. It does not mean having to go through a narrow - if a vehicle can move, even though there may be people protesting or rallying around that area, that is not a substantial or unreasonable obstruction. You need to read it in context. That is the first test.

The second test is the action taken actually stopped people getting to their workplace and that the action that that person took intended to stop them from getting to their workplace and that is the third important test. If there is no intention there to stop someone going to work then it is not an offence at all for anybody. As I said, I still have some concerns about the application of this but this does address the very real concerns of workers I hear, in my area, and I represent these workers. I have a lot of people who regularly protest in my electorate and I will join them at times too, but in doing so I do not intend to stop people going to work in that action. We all have a right to attend our work safely. We do it every day. I might have people in our gallery perched in front of my office next week, but unless it physically prevents me from going in, it would not be an offence. I am really happy to talk to people who may want to talk to me at the door and prevent me from going in until we had a discussion about something, that is all part of our jobs. However, for workers who regularly, consistently and constantly are prevented from going to work, particularly where those people are not paid, it is not an appropriate form of action.

I know that the member for Launceston might wish to speak to this, but I had some discussion with her a week or two ago where she raised the matter of some actions such as farmers wanting to blockade a factory.

Ms Armitage - Simplot.

Ms FORREST - Yes, Simplot, or we have seen in the past the farmers rally up to Canberra and things like that. Those rallies can still occur, but if they did block the entrance to a business, they may fall foul and this is the concern that there is still that potential breadth of it. This is me trying to do the best I can to give effect to a provision that really narrows it down to what I believe is the Government's intent, and requests I hear from a number of workers in the state, particularly in my electorate with regard to being prevented from attending work.

It is something that is not a common experience for many people in Tasmania, they never have to think about it. However, it is a frequent occurrence to some people I represent and you could say it is a matter of police resourcing. You cannot have your police force hanging around the west coast to deal with this. It is a completely inappropriate use of resources. We need to make it clear what we have and what we think is acceptable, where you actually, potentially threaten someone's livelihood is one aspect; if you threatened their health and wellbeing, a later matter.

This is a mechanism to try to narrow it to just apply and only be an offence when someone intentionally and actively blocks the entry of a worker to a workplace, where they are not trespassing. Trespassing triggers another offence.

Mrs HISCUTT - Relaying back to the amendment of 'obstruction, impedes or prevents the entry', I make note some people have already protested against this bill on the streets, saying that without law protest, yet, their protest was a perfect example that even in large groups of people undertaking unlawful action to express their opinion, only a tiny minority of people, if any, are charged or fined. Usually, because they do not use the 'move on' direction.

As we said previously, permits are readily obtainable, which promotes safety. I will clarify that obstruction, which is in the bill, already means substantial obstruction. It takes the offence of obstructing a street which already exists in several pieces of legislation and inserts it into the Police Offences Act into the same section under which some types of street obstructions are already chargeable as public nuisances.

As drafted, it will not be targeting people who are experiencing homelessness, as it does not fall into this area. It does not mean the person holding a placard on a footpath will be arrested without warning or thrown into jail because the police will give a move on direction first. It does not mean that large protest cannot take place, as I explained a moment ago. It also does not introduce any new police powers. Like other offences in the act, it does not take away the ability of police to issue warnings or directions to move on. It does not take away from police the ability to issue a summons instead of arrest, where appropriate. It does not take away their decision to determine when it is appropriate to charge someone and when it is not appropriate to charge someone. It does not take away any rights that somebody has today.

These amendments will not change any of that, that is already in the bill. However, the Government will not oppose this amendment that has been put into the clause. While the preference of Government is to protect workers and workplaces by ensuring everyone can access these places, including customers, we recognise the members are concerned about clause 4. The member for Murchison's amendment will at least have the effect of ensuring workers can enter their workplace, which is better than the status quo. We are satisfied the clause, as amended, will protect workers and businesses in many current problem areas, such as Helilog Road and other blockades of access roads.

Of course, existing more general road obstruction offences continue to apply. Having said all of that, Madam Deputy Chair, the Government was quite convinced the bill we had before us, as drafted, was sufficient, but we will not oppose these amendments.

[12.25 p.m.]

Ms ARMITAGE - Madam Deputy Chair, I will support this amendment. It is a good amendment and does narrow the focus down. As mentioned by the member for Murchison, I have some concerns that some of the protest action that has been taken in the past could be swept up in this bill. This would still be caught by this bill and the one I was looking at that was mentioned was the farmers when they blockaded Simplot to try to get their passionate point across, that it was to do with their livelihoods.

There are many different issues. Looking at another truck driver protest last year, where the truck drivers were stopped from unloading and could not get into Bell Bay. Some of them were paid, some of them did not get paid. I accept there are going to be issues regardless, but

let us accept the amendment by the member for Murchison. It is an improvement on what we have, it brings into account intent, that it was the intention to do that and it is a good amendment and I will be supporting it.

Ms LOVELL - I wanted to respond to a couple of other points made by the Leader in her contribution. I will be careful, because a lot of this territory is what we have already visited in the last Committee stage with clause 4 generally. I accept what the Leader was saying in that with all of the things, it does not mean that warnings cannot be issued, it does not mean people cannot be asked to move on, it does not mean that people cannot appeal through the courts, a whole list of things. It does not mean any of those things.

However, it does mean there is a new public annoyance offence that people can be charged with that will capture a whole range of protest action. You can argue around permits and discretion of police and all of those things as long as we like, but the bottom line is there is still a new public annoyance offence that will provide another way for people to be charged when they are participating in those types of protest action where an obstruction is caused.

Now, I would argue that people should be allowed to cause an obstruction. Often that is the point of protest: if you are not causing an obstruction, you are not being heard. That is why people protest and that is why often people protest in the way that we do. As other members have noted, that is how we have achieved a whole range of really positive social change that has made us the society we are now. I wanted to put that point on record. I still have enormous problems with clause 4, which is the biggest issue with this bill. This is the most broad-reaching clause and the clause that will have the biggest impact on a whole range of protest action in public spaces.

I will be opposing clause 4 and I still encourage other members to do the same. However, on this amendment, while it does not address the problems I have with clause 4, it does go some way to restricting that and from what the Government has said, the Government will be supporting the amendments. The amendment is likely to end up in the bill. However, this amendment does not fix the enormous problems with clause 4.

Ms WEBB - Madam Deputy Chair, I spoke on this to some extent when we discussed the last amendment and I will make another couple of other points. I agree with the member for Rumney that clause 4 is absolutely problematic and an utter curtailment of a very fundamental right to protest. As the member for Rumney mentioned, often impeding, obstructing, preventing is the point of me being heard in a protest and it is a genuine way we actually see all kinds of positive outcomes and have seen. Yes, sometimes it is inconvenient and if you do not agree, it is pretty awkward, but there will be times we do agree and this is what we are going to put a stop to.

A couple of extra points in addition to my contribution on the last amendment.

We have a concept of balancing rights and although the amendment does narrow the very problematic clause 4 that we have in the bill - so that could be seen as positive - it is still fundamentally based on the wrong principle, a poor principle. It still is fundamentally wrong, to say that we put a person's right to attend work above the right to protest. Although there are still other options available, it utterly puts it above the right to protest in a way that it obstructs or impedes work, which we know is a core part of many elements of protest.

We are taking the balance we currently have, where we put those two rights against each other. We already have some public space offences in place to help address that balance. We have that utilised right now. Through this amendment and through this clause, we are fundamentally changing the way we balance these rights and we are categorically putting the right to attend work above the right to protest in all circumstances. Not just on Helilog Road, not just in the times that we do not agree with the protest that is occurring, but in every circumstance. What this means is, somebody entering work trumps you having your say in a protest that might be impinging on them getting to work - always.

That is problematic. That is the wrong principle. What that also says to me is, if we choose to make that really substantial change to the way we currently try to balance those rights, it is a categorical change on a particular circumstance and it invites us to ask, what will be the next time we pick out another specific right to do something and put it above the right to protest?

We are carving out through this the idea that getting into your workplace trumps somebody's right to have their say through protest that might impede you doing that. What we will do then, potentially, is ask ourselves what else would another government - this Government or another government - have a go at trying to put over that next time? What else could we do to start chipping further away at this fundamental right to protest that we currently recognise as an essential part of a democratic society?

To me, it is a tricky one because, yes, clause 4 is entirely problematic and wrong. This narrows it slightly which would appear to be a better outcome, but it is still fundamentally wrong in principle in terms of the way that it categorically changes the balance of rights. That is problematic to me.

I do not agree with one of the assertions made by the Leader of the Government. One of those, in that list of things that this does not do - and again, the things that it does not do are not a problem. It is the things that it does do that are a problem. One of the things that was mentioned that it does not do is it does not take away anyone's rights that they have now and that is not true. Right now, we do have a right to protest in a way that might block someone entering work, to effectively give voice to our protest action. That is a right we have now. Some of that is dealt with in current public nuisance offences. Sometimes people get arrested in those circumstances anyway under the options we have available, but this does change that. It absolutely does take something away. It is misleading to suggest that it does not take something away.

Ms Lovell - What would be the point of it if it did not?

Ms WEBB - Exactly right. It is intending to take something away and that is your right to engage in a protest action which impedes somebody getting to work to make the point you are trying to make to achieve the end and the outcome you might be trying to achieve through protest.

Mrs Hiscutt - It is called a workplace protection bill.

Ms WEBB - I do not know the relevance that has to the point I am making. I am making a point that this takes something away from a right that currently exists for people in our community, which is something you claimed it does not. It was untrue what you claimed.

It is a difficult one for me. I can see that there may be support for this amendment and that it might, if it passes, narrow this clause. On principle, I cannot vote for this amendment because it is the wrong principle. It is a problematic principle and I remain in opposition to clause 4. While I voted for the Government's amendment to it last time to change the wording, I ultimately voted against clause 4. I have not changed my opinion about clause 4 overall, so I am very upfront about that and always have been. That probably covers my view on it.

Mrs HISCUTT - To respond to the suggestion the bill is a totally new restriction, it is simply not correct. My advice is that the unreasonable obstruction of streets, including roads, can already, in some instances, be appropriately charged under this section -

Ms Webb - Exactly what I said.

Mrs HISCUTT - However, it has not been clear whether the obstruction of roads in certain circumstances can, or should be charged under the current provision of section 13(1). For example, the conduct may not meet the technical legal requirements of a nuisance. This issue often arises in respect of remote roads. In those cases, a person might be charged under the equivalent Road Rules 2019 offence which has a five penalty unit maximum. However, the penalty is set in the context of routine road regulatory enforcement and is an inadequate maximum penalty to reflect the potential serious impacts of deliberate, large-scale obstructions of roads. The amendment provides for consistency in the law so that a person unreasonably obstructing a street, regardless of where in the state that occurs, or how many people are impacted, will be governed by the same laws, that is, including in the Police Offences Act 1935 and Road Rules 2019.

The amendment contains the same, or similar wording to the Road Rules 2019 and clearer elements compared to provisions in the Roads and Jetties Act 1935 and the Crown Lands Act 1976. For example, Road Rules 2019, regulation 125(1) and regulation 236(2) say -

A driver must not unreasonably obstruct the path of another driver or a pedestrian. ... A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian.

So, some members are arguing against an offence that already exists in other law. I put that on the record.

Mr VALENTINE - I take the point that the member for Murchison was making in regard to the analogy that I put. I can appreciate that, but let me put another circumstance and that is where you have a farmer - and I may have spoken about this during my previous offering in the second reading speech. We have a farmer who is protesting about a company that is fracking on their land and they wish to obstruct access for the mining company to go onto the farmer's land. Pity help the police as to how they are going to work out what to do with that circumstance. It is fundamentally an issue for me.

The bill is a fundamental issue and I voted against it at the second reading, as people would know, but to my mind that is a real issue. All this does is basically strengthen the fact that the farmer may indeed, if it is on a public road, be stopping the mining company getting onto the farmer's land, and they are definitely going to get caught with this. I do not support it for that reason alone. I do not support clause 4 anyway, but there you go.

[12.44 p.m.]

Ms FORREST - I appreciate the comments made by people and I have also made it clear that there are concerns that remain and I do not discount those at all. I acknowledge that there are other mechanisms. The Leader would almost argue against the amendment on the basis there are other things. It does, in some respects, beg the question except for some of the complexity in applying it.

What this amendment has sought to do is to try to achieve a balance. It is not to try to trump the right to protest. I think a lot of the emails - I know the Leader was alluding to it, or sought to allude to it but did not really get there right at the outset of this debate today - are in relation to some of the inaccurate representations of the intent of this bill. We have all seen where they say it is going to actually stop all protest action and stop all peaceful protest action. That is so fundamentally wrong.

I know that the way it was drafted, without this amendment particularly, there was a very real concern about aspects of how it would apply and that is why clause 4 was really problematic and to a degree, remains problematic, even if this amendment is to be supported. It is important that when we talk about trumping the right to protest or the right to protest is trumped by the right to work, one instance of preventing someone attending work is not the same as repeated day after day after day prevention of attending work and -

Mrs Hiscutt - Especially when you are not getting paid for not being there.

Ms FORREST - Especially when you are not getting paid but even if you are getting paid, there are flow-on effects associated with that and impacts on people generally. Unless you have been exposed to that in some way or another, you probably do not have a great understanding of it. I do not believe anyone has a right, over time, to seriously negatively impact on that person's mental health and wellbeing. That is what you will see with repeated episodes of obstruction to a workplace. People's self-worth and value revolves around their capacity to work at times and we know the impacts of long-term unemployment on people. I do not think this is a perfect solution by any stretch. I have not suggested that it is but it does narrow it down to try to provide some balance with the right to attend work safely.

A couple of occasions where people might be barred from attending work, you could argue that they should not be pretty fussed about that. However, this is a repeated action that prevents someone and intends to prevent someone attending their work. It is a matter for the police to prosecute. It is obviously a matter for the court to decide what a penalty might be for such action. That is what this is seeking to do, to actually put in place a mechanism where if it is becoming an issue and a major problem, that a penalty could be applied.

The courts are generally reluctant to impose high penalties straight up, particularly if it was just, for example, one instance of a person being prevented access to their workplace. We tend to see them being relatively conservative. I know the police in their actions, even in areas on the west coast that have been referred to, are pretty conciliatory in their approach. They work with the people who are protesting. They work with the workers. They are there to try to defuse situations and trying to have a rational, meaningful and helpful conversation.

I absolutely respect people's right to hold the view, and I share their view, about concern for the protection of our environment. Once trashed, it is trashed and we have seen some decisions taken in years gone by that have led to terrible trashing of our environment. We

know the whole issue around protection of our environment and even climate change - which is often a key focus of protest in this state, and around the country and around the world - is a very real, genuine and legitimate concern and we should respond to those people's concerns.

Sometimes protest action, which does obstruct and causes an inconvenience or - well, distress, it might, but the protesters often feel quite distressed by what they see happening and I understand that. I absolutely get it. I was very distressed when I heard Roe v Wade overturned in the US. The fact that I even thought anything like that could happen here was so distressing. We all get distressed about things that matter to us. I get distressed about seeing our environment trashed. I get distressed about a whole range of things and I will stand up for things that I believe in and I will probably be more silent on things I do not, perhaps, most of the time. I do believe that this is not about trumping a right to protest. It is about saying that protests must and should and always will be part of our democratic right. However, where people are taking an action that puts another person at risk and prevents them from attending work, with the inherent risk that creates - particularly over time - that perhaps we do need to act.

That is what I am seeking to do. It is not perfect, but I urge members to support the amendment, acknowledging that it will not address all the concerns.

Mr GAFFNEY - Madam Deputy Chair, I congratulate the member for Murchison for bringing this forward.

I will go back to the basic philosophy here, that I consider clause 4 is fundamentally flawed. The member said it would not be a one-off situation if a business is impeded by somebody who is standing on the road or put a vehicle on the road, it would be the business owner who would ring the police and say, 'As this bill has been passed, this person is impeding and obstructing my workers from getting to work'. I do not care if it is the first, second, third or fifth time, or the twenty-fifth time. This first time, they have stopped them and, under this legislation, that person could be charged. It is not about the police being conciliatory. It is about what the legislation says, and that is a flaw - but it is not a flaw with the amendment; it is a flaw with clause 4.

Madam DEPUTY CHAIR - Which we will have an opportunity to discuss when we put the clause as amended for debate. This is in regard to the amendment.

Mr GAFFNEY - Yes, that is fine. We are also changing a protest into a guard of honour. We are saying, 'move away from the road, let the truck through' and there is a whole crowd standing on the side. We are not letting the people protest, as was raised by the member for Nelson. We are saying, 'if you have to go to work that is fine. Do not protest'.

Going back to what the member for Hobart, and the member for Murchison, herself, said about the road blockades. People will be up in arms, and on the streets, but with this bill, if you are impeding somebody going to work, you can be charged.

Ms Forrest - Only if you intended to impede them. Only if you intended.

Mr GAFFNEY - That is exactly right. If you are intending to impede that person going to work, you can be charged. That is why I believe it is important that we are very careful in this bill, and I urge people to not vote to pass the bill at the end.

Ms WEBB - Madam Deputy Chair, I will add a few comments there, off the back of the member for Murchison's extra comments.

I agree with the member for Mersey. It is problematic for the member for Murchison to present this as something other than it is, or soften it, and pretend that it is more targeted than it is.

This is not about multiple times. This is not about people who do something repeatedly. This is a law that applies in any instance. In any first instance, or any twenty-fifth instance.

We cannot pretend that this is more palatable in what it is trying to do by saying that it requires multiple times. It does not.

Ms Forrest - I did not say that. That is not what I said.

Ms WEBB - That is what I heard you say; I am clarifying. Others might have heard it similarly to me, and interpreted it similarly to me from what you said. I am clarifying that that is not the case.

It also is not about putting people at risk, specifically, in terms of the letter of the amendment. This is about impeding access.

It does not just capture people who are preventing a person from working and somehow putting them at risk. It captures a person who is preventing someone from accessing work, maybe through an entirely peaceful protest action.

Again, it concerns me that we might be presenting the impact of this somehow to be very narrowly targeted to one very narrow group of people protesting in very particular circumstances. Yet, if we pass it, it applies to everyone. It applies community-wide and to every protest that might, in some sense, impede people's access to work - which we know is a legitimate and effective form of protest, and one which, in some historical instances, we have valued.

I refer back to the member for Murchison's first contribution on this amendment. If we were to go back and look at it, I believe she made some comments that were, again, trying to put a different interpretation on 'unreasonably and substantially obstruct', and described circumstances about what that would or would not apply to. It is problematic if we are offering what might be a quasi-legal interpretation of our own here that is misleading as to the way this may be able to be interpreted and applied by police and by the courts, particularly if the impression we are giving is one of softening or narrowing what is able to be done under the proposal.

We keep coming back to this and discussing environmental protest. That is very telling, because, obviously, there are issues that people would like to solve - although they have not been presented to us clearly, quantified by evidence or demonstrated by data so we can discuss what could be a solution. We have never had that opportunity, and we keep coming back to examples that relate to environmental protest. However, what we are doing applies well beyond those circumstances. It potentially applies not just to all protest by any community members on any issue, if it fits with the impeding of work; it also applies to other non-protest

actions or things that are going on. 'Protest' is nowhere in this, and clause 4 itself is broad and then this amendment - as much as it narrows it to some degree - is still broad.

We keep being drawn back to environmental protest. The member for Murchison drew us back there too, and said she has sympathy with environmental protesters, that 'once trashed, always trashed'. If there is an urgent environmental protest, in an area where 'once trashed always trashed', if that protest does not impede potential work that is going on there, if that is the context, then it is not going to be successful in protecting the thing that we value or will ultimately be something that is very important to our state. Yes, it is inconvenient; yes, it does have an impact on workers. However, if we put this in here, clause 4 and even with this amendment, we immediately impact that potentially quite valid protest action which is about stopping work to protect something.

While the risk is there that we are doing that, we may ultimately lose out on something we would value down the track as having been protected. I suggest it is not going to stop everybody in those circumstances. If the member for Murchison is suggesting that this is somehow going to fix it for the distressed constituents that she is interacting with who are workers at these sites, she is fooling herself; because I also believe we will continue to see those actions taken, on that extremity. Yet, at the same time, it will have an impact that is felt across the entire community, across the entire breadth of protest actions that might be about impeding access to work and other actions outside protest actions that might also have that effect that may get captured by this. I stand by my position on this. Clause 4 is fundamentally wrong in curtailing fundamental rights.

Madam DEPUTY CHAIR - This is a question around the amendment.

Ms WEBB - This amendment to it, while narrowing that slightly, is still fundamentally wrong in principle. I believe it will not change the reality that the member for Murchison and others are observing and wanting to ameliorate, but will have a damaging effect more broadly.

Madam Deputy CHAIR - The question is that the amendment to clause 4 as proposed by the member for Murchison be agreed to.

Committee divided -

AYES 8

Ms Armitage
Ms Forrest
Mr Harriss
Mrs Hiscutt
Ms Howlett (Teller)
Ms Lovell
Ms Palmer
Mr Willie

NOES 3

Mr Gaffney (Teller)
Mr Valentine
Ms Webb

Amendment agreed to.

Sitting suspended from 1.04 p.m. to 2.30 p.m.

QUESTIONS

Hotel Quarantine Fees

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

[2.30 p.m.]

Mr President, my question is to the Leader. How much is the Tasmanian Government owed in unpaid hotel quarantine fees?

ANSWER

I thank the member for her question and it is quite a lengthy answer for a simple question so I will run through that. A total of \$2.425 million is outstanding in regard to the hotel quarantine fees raised. Of this, \$1.334 million related to invoices raised in the 2021-22 financial year and \$1.091 million related to invoices raised in the 2020-21 financial year, with outstanding invoices dating back to October 2020.

The money outstanding for hotel quarantine is made up various amounts including: payment arrangements (money still being paid off through a payment plan); pending exemptions (exemptions being processed for issues such as financial hardship); and potential bad debts.

In terms of what processes are in place to recoup outstanding fees, people could seek an exemption if they are unable to pay the fee due to either financial hardship, compassionate circumstances, medical treatment, or other exceptional circumstances. Regarding debt recovery, after the initial invoice is sent, the debtor receives a reminder letter 30 days from the invoice date and then a final notice 14 days from the reminder if they have not paid the account in full or made contact to organise a payment arrangement. If there is no payment or arrangement from 60 days, the invoice may be lodged with a debt collection agency.

Rotary Youth Driver Awareness (RYDA) Program

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

[2.32 p.m.]

My question is to the Leader. In regard to the Tasmanian Government-funded Rotary Youth Driver Awareness (RYDA) program, what is the process for which schools are given the opportunity to participate in this program? I know there is quite a lengthy list of schools and I have seen the list. I am interested in the mechanics of it.

ANSWER

I thank the member for her question. The RYDA program is offered to all Year 10 secondary school students in Tasmania. Expressions of interest are made through the RYDA website and directed to Rotary Tasmania. Rotary will then work with schools to allocate session times and a location closest to the school campus.

Tasmania Police - Homeless Tasmanians Policies

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

[2.33 p.m.]

I ask the Leader of the Government, regarding the state's policy towards homeless Tasmanians who are sleeping rough:

- (1) What is Tasmania Police's current policy and practice towards Tasmanians sleeping rough, specifically those determining any 'move on' actions?
- (2) Do any 'move on' policies and practices require Tasmania Police to consider safety of the rough sleeper? For example, perceived safety sheltering in well-lit areas versus dark locations.
- (3) How many 'move on' actions have been directed by Tasmania Police this calendar year, in regard to homeless rough sleepers?
- (4) Are demographic statistics recorded of homeless and/or rough sleeping individuals requested to move on, including gender, ethnicity and age? If so, please can you provide the details for the period of time?

ANSWER

I thank the member for her question. It is important to highlight that it is not an offence to be homeless or to be a rough sleeper.

Tasmania Police, under the Police Offences Act 1935, section 15B (dispersal of persons), can direct a person to leave a place, but under specific grounds, namely:

- (1) A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person:
 - (a) has committed, or is likely to commit an offence, or
 - (b) is obstructing, or is likely to obstruct the movement of pedestrians or vehicles, or
 - (c) is endangering, or likely to endanger the safety of any other person, or
 - (d) has committed, or is likely to commit a breach of the peace, and

A person must comply with a direction.

- (2) Directions to leave a public place are based on the criteria provided in the previous answer and Tasmania Police always consider the safety of an individual when deciding on directions that they may make.

Ms Webb - Excuse me, to pick up on that for clarification. Question (2) was, do the policies and practices require that safety is considered? That was not quite clear to me with that answer provided.

Mrs HISCUTT - I had not quite finished.

Ms Webb - Sorry, I thought you had moved onto three.

Mrs HISCUTT - Tasmania Police always considers the safety of an individual when deciding on direction that they may make.

Ms Webb - Yes, so my question was - do the policies and practices require that?

Mrs HISCUTT - That is what the police do. That is what they do.

Ms Webb - Sure, I am asking about the documented policies and practices.

Mrs HISCUTT - Well that is the practices. That is what the police do.

Ms Webb - I will have to restate the question and I hope that it would get answered specifically next time, thank you.

Mrs HISCUTT - Okay.

- (3) Information for 'move on' directions are recorded in an officer's notebook. Statistics of this type are not recorded in the police systems.
- (4) Statistics of this type are not recorded. 'Move on' directions are based on the criteria provided in question (1) and not on whether a person is homeless or sleeping rough.

Tasmania Health Service - Nursing and Midwife Vacancies

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

[2.37 p.m.]

How many vacant nursing and midwifery positions are there across the Tasmania Health Service? Please break these down by region.

ANSWER

I thank the member for her question. Unfortunately, it is not possible for the Department of Health to draw vacancy figures from the current human resources system. Once implemented the new human resources system, the HRIS, will address this and other major inefficiencies and operational risks associated with current business systems and processes underpinning human resource's functions within the department. The Tasmanian Health Service represents the largest workforce in the Tasmanian public service. Vacancies always exist with a workforce in excess of 12 000 FTEs. Nursing and midwifery alone represent over 4600 FTEs.

The department has implemented a number of strategies to both fill the short-term vacancies and longer term recruitment processes. The department actively works to fill vacancies and does not seek to operate hospitals by leaving vacancies unfilled. The department acknowledges the most effective way to fill vacancies is with permanent FTEs. Where vacancies exist agency and locum services can be utilised. If vacant shifts are unable to be filled the department looks to temporarily close beds to ensure maintenances of a safe operating environment for staff and patients.

Quarterly Vehicle Registration

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

[2.39 p.m.]

Noting the recent introduction of the option for quarterly vehicle registration payments, can the Government advise:

- (1) Since the option of quarterly vehicle registration became available in July 2021, what proportion of Tasmanian vehicle registration renewals have taken up the option to make quarterly payments, as opposed to six-monthly or 12-monthly; and
- (2) What consideration has been given to providing a monthly payment option for vehicle registration to further support Tasmanians, particularly low-income Tasmanians with bill smoothing?

ANSWER

I thank the member for her question.

- (1) Since the operation of quarterly vehicle registration became available in July 2021, a total of 1 081 401 registration transactions for light vehicles have been processed. Of these renewal transactions, 24 per cent were for three months; 23 per cent were for six months; and 53 per cent were for 12 months. Since implementation, 98 584 clients have chosen the three-month option, with 63 per cent of these individuals choosing the three-month option more than once.
- (2) The department conducted an investigation of the potential for more frequent periodic vehicle registration payments, including an interjurisdictional review and scenario modelling. The options investigated were monthly and fortnightly registration payments over a broad range of payment channels. The investigation revealed that there would be a very low uptake rate for monthly or fortnightly payment options in Tasmania, with underlying concerns that negate the benefits, including the risk that shorter registration payment periods significantly increase the risk of vehicles becoming unregistered, and therefore not covered by compulsory third party insurance in the event of a motor vehicle incident, which would be a very unfortunate outcome.

The Government is very pleased with consistent feedback from the community that appreciate the new quarterly payment option.

Feral Cats in Tasmania

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

[2.41 p.m.]

Mr President, in regard to feral cats in Tasmania, does the Government have:

- (1) An estimate of the number of feral cats in the state?
- (2) An estimate of the cost to primary producers caused by feral cats?
- (3) Records of instances of identified toxoplasmosis either within the agricultural sector and/or wildlife?

Also, in regard to the issuing of cat permits:

- (4) How many multiple cat permits have been applied for since the most recent amendments to the Cat Management Act 2009 came into effect in March 2022 and how many have been granted?
- (5) Of the multiple cat permits granted, what compliance monitoring has subsequently been undertaken or is planned to be undertaken?
- (6) How many breaches to the general conditions of multiple cat permits have been recorded since their introduction? What penalties have been applied?

ANSWER

Through you, Mr President. That was addressed to the Leader but I will defer to the Minister for Primary Industries and Water.

Ms PALMER (Rosevears - Minister for Primary Industries and Water) - Mr President, I thank the member for the question.

- (1) The department does not have an estimate of the total number of feral cats in Tasmania. The number of feral cats in Tasmania and their population density fluctuates spatially and seasonally across the landscape in response to factors such as prey resource availability and climatic conditions. The size of cats and the density of vegetation cover in Tasmania makes it impossible to accurately estimate the number of feral cats in the state. It is unlikely that any meaningful extrapolated figures could be derived across the entire state. Only in confined geographic locations, such as islands, is an estimate possible but again, this is difficult to determine and depends on the size of the island, topography and vegetation cover for visual sighting or trapping et cetera.
- (2) The department does not have an estimate for the total cost of feral cats to primary production in Tasmania. Nationally, the cost to livestock production by toxoplasmosis and sarcocystosis is estimated at \$11.7 million, ranging between \$7.67 million and \$18.3 million. An unpublished 2015 Department of Primary

Industries, Parks, Water and Environment assessment of the costs imposed by toxoplasmosis in Tasmania estimated annual economic losses of approximately \$1.7 million.

A 2020 study undertaken by Legge et al published in *Wildlife Research* by CSIRO Publishing estimated losses to Tasmanian primary producers from carcass condemnation and meat trimming in 2018 as a result of sarcocystosis to be approximately \$151 000.

It should be noted that the Tasmanian Government, through the Cat Management Amendment Act 2020, introduced reforms to enable humane trapping and seizing of stray and feral cats on private land and to enable primary producers to humanely destroy a cat on primary production land and production premises.

- (3) Toxoplasmosis is widespread throughout Australia and it is a significant cause of mortality in captive marsupials. There is no targeted surveillance program for toxoplasmosis, as it is not a nationally notifiable animal disease. Infection has been reported in free-living, herbivorous, omnivorous, and carnivorous marsupials. Introduced animals affected include; sheep, goats, and to a lesser degree, cattle, pigs and deer species.
- (4) In regard to the issuing of cat permits, there are two types of multiple cat permits, namely individual and organisational. Each application requires assessment. In individual multiple cat permit applications, as at 12 August 2022, the Department of Natural Resources and Environment Tasmania have received 55 applications from individuals for an individual multiple cat permit. There have been no individual multiple cat permits granted to date as applications are still being assessed.
- (5) Organisational multiple cat permit applications as at 12 August 2022, NRE Tasmania has received 10 applications from organisations for an organisational multiple cat permit. There have been no organisational multiple cat permits granted to date as applications are still being assessed.
- (6) Assessment of organisations for suitability to hold an organisational multiple cat permit requires, in addition to the general conditions of a multiple cat permit, an assessment of the animal welfare and husbandry capacity of the organisation. All applications will require a site visit as part of their assessment. No multiple cat permits have been granted as applications are being assessed. Once permits are granted, random compliance checks will be conducted on permit holders to ensure compliance with the conditions of the permit.

Dairy Tasmania - Migration Nomination Process

Ms RATTRAY question to MINISTER for PRIMARY INDUSTRIES, Ms PALMER

[2.47 p.m.]

Minister, have you had any discussions with Dairy Tasmania in regard to the difficult situation with the migration nomination process, where a lot of dairy farm workers need that

nomination process? Has Dairy Tasmania picked up the phone to you, as the Primary Industries minister, to talk about the challenges being faced at this moment?

Now, I know skills is not your area, but I am interested in whether Dairy Tasmania have used you as a direct connection to primary industries on the challenge.

ANSWER

I am not aware that Dairy Tasmania has reached out to me or my office, but I am more than happy to reach out to Dairy Tasmania to see if I can learn more about that from them.

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

In Committee

Resumed from page 20.

Clause 4 - as further amended

[2.48 p.m.]

Ms LOVELL - Madam Deputy Chair, as I indicated earlier when speaking to the amendments that had been put today, I will be opposing this clause.

Madam DEPUTY CHAIR - Sorry, member, we need to actually finish because we did not actually call the clause before we broke for lunch. Actually, we need to vote on that.

Ms LOVELL - Okay, so we vote, next one.

Madam DEPUTY CHAIR - Then I call that. The question is that clause 4 as further amended stand part of the bill?

Ms LOVELL - As members are well aware, I still have very significant issues with this bill. I will try not to revisit arguments I have made in previous contributions, but I understand there is some leniency.

Madam DEPUTY CHAIR - I have allowed some leniency.

Ms LOVELL - It has been quite a large volume of new information presented to members over the winter break. On that, I do want to acknowledge the lobbying by various groups over the break. In particular, I acknowledge the union movement.

There were a number of groups who I know lobby members. I have met with groups that I had not met, but it is important to acknowledge that because it demonstrates how important this is to those groups. It is worth acknowledging that those groups did not give up at the end of the second reading and really wanted to get every last opportunity they had for members to listen to their concerns.

We are here today having recommitted two clauses undertaking a process that has only been used in this place three times in 25 years. This is the third time in 25 years that we are undertaking this process. It is quite extraordinary and demonstrates there is still significant concern at a minimum, significant discomfort with this bill, or with parts of this bill. I want members to put their mind to that and to not forget that, because this is a really extraordinary process we are undertaking.

If the Government's intent of the bill as they state it is about dealing with workplaces, protecting workers in their workplaces and enabling people to be able to work safely, then this clause does not really do that. We have mentioned this before. We have all skirted around it, and we all know this is about one particular limited set of circumstances that the Government is trying to address. I understand there are legitimate issues around a particular set of circumstances, but the problem is when you try to legislate to deal with a really specific set of circumstances, it is almost impossible to do that without capturing other people and impacting on other groups and their rights.

That is what this clause does. For me, this clause is the most significant problem with this bill. I would like members to not forget we can still deal with the trespass issue, we can still deal with those issues where people are being put at risk of harm in their workplace, where workplaces have been made unsafe in various ways. We can still deal with that, without including this provision which, while it may deal with that particular set of circumstances that needs to be dealt with, also will capture a whole range of other action not intended to capture.

I also want to go back to some comments made by the Leader in the debates of the amendments, and the Leader made the point, more than once, that this does not change anyone's current rights. If this provision will not change the rights we have currently, my question then is, what is the point of it? Why do we need it? If it is not introducing any new restrictions that do not currently exist in existing law, why do we need this clause? Why do we not just use the provisions there already to deal with this issue?

By introducing this new provision, this new clause and a new offence, it will impact on other groups of people, other groups who the Government has said it is not their intention to impact upon. Either the Government is not being truthful about that, or they are presenting a bill which does not really do what their intention is.

I have always been opposed to this clause. I am still opposed to this clause. I understand and I supported the member for Murchison's amendments because I understand that the member for Murchison was attempting to further narrow the provisions to deal with the Government's stated intent. However, the problem with trying to legislate to deal with a specific circumstance with such broad provisions means you cannot possibly minimise the impact on everyone that we should be trying to minimise it on. There is no question that this clause will absolutely have an impact on protest in public spaces. I am not getting into an argument about permits, protected action, or 'if you are not in the way, it is not a problem,' because that is not the point. The point is, in Australia, in Tasmania, we have the right to protest in public spaces, and we should be protecting that right - because without that right, we start to infringe on people's right to protest, we infringe on the ability of people in the community to exercise their say in our democracy, and I cannot support that. I will be voting against this clause. I urge other members to put their mind to that.

We can still deal with some provisions of this bill, we can still deal with those trespass offences without this further broad-ranging impact on other groups who we know this is so important to because of that volume of lobbying we have seen. We had a protest out there today on the lawns. Members of community, our constituents, right across the state are taking every opportunity they can, right to the last minute, to have their say because this is so important.

I will be voting against this clause, and I urge other members to do the same.

Mrs HISCUTT - Madam Deputy Chair, the member for Rumney did ask a direct question. I will not be repetitious because I have already answered why this amendment is necessary. To suggest the bill is a totally new lot of restrictions is not correct.

Ms Lovell - Sorry, I did not hear what you said.

Mrs HISCUTT - I am not going to repeat what I have already said before, for fear of repetition, but I have said why we think this bill is necessary.

Ms WEBB - Madam Deputy Chair, for the sense of completeness, I agree with the member for Rumney and I restate that this clause is absolutely a curtailment of our fundamental right to protest in this state. If this clause passes, it says we are prepared to have some Tasmanians and Tasmanian communities become collateral damage to try to address a very specific instance that is causing disquiet and is problematic for some. We are prepared to say, in the instance of dealing with Helilog Road, we are prepared for other Tasmanians to be friendly fire, in terms of their right to protest. I believe that is quite appalling. If we have a problem that needs to be dealt with, we should be dealing with it in an evidence-based and constructive way that is effectively targeted, does not involve friendly fire, and does not involve collateral damage to a fundamental right to protest in this state.

Ms FORREST - Madam Deputy Chair, I have a few comments on this question before the Chair. I absolutely and strongly support the right to protest, and always will. I will probably continue to participate at times for matters I feel strongly about - and they are varied and serious to me. I assume that in doing so at different times I may be disruptive, I may be frustrating to other people, I may obstruct the actions of others, but I can pretty confidently tell you I will not be harming others in doing it, certainly not deliberately or with any intent to. It is very important, because I believe there has been a lot of misrepresentation in this debate about what we are doing here.

That brings me to the crux of the matter here. There has been a lot of lobbying, as the member for Rumney referred to, over the winter break. Some of it has been inaccurate in the impact. A lot of the representation, in fact I would say 99.99 per cent of it, has not been from my electorate.

Mrs Hiscutt - Through you Madam Deputy Chair, I did not receive one from my electorate.

Ms FORREST - Not everyone identifies where they are from, but in this case a lot of people have. Whilst I have talked to people in my electorate, and there are varying views in my electorate, we are here to make legislation for the whole state, and that is the important matter here. We are making legislation for the state, we should keep our eyes up and our eyes

broad, and our mind open, to the impact. There are always going to be other impacts from legislation that we deal with and we have to weight that up, as to whether the potential impact on other people is significant, can be harmful, and we need to measure that.

I recently heard a podcast that I shared with a couple of members from the ABC's *Background Briefing* about protests in Sydney recently. I know I am taking a bit of time here, but I need to explain why this is an issue.

Madam DEPUTY CHAIR - A little bit of leeway as well.

Ms FORREST - The legislation in New South Wales recently changed, and that legislation was changed to basically prevent people walking on certain streets around Sydney, including the Sydney Harbour Bridge, and the major streets around that area - which was quite a large area. It means you could not walk on them unless you were crossing at a traffic light. I do not think there are any traffic lights on Sydney Harbour Bridge, although I have not been there for a while. There are also many streets that come off Sydney Harbour Bridge where there are very few traffic lights, if any, and they are main arterial routes into the city, and when a protest occurs on the bridge or on one of these streets it is pretty disruptive. Recently, there was a protest where a young woman stopped her car on the bridge and locked herself onto the steering wheel, and the story played out.

I listened to what happened to the people involved in this protest - not just that young woman, who clearly committed an offence - but other people who turned up for this protest, which was about action on climate change. Unless you have been asleep at the wheel, the last federal election clearly shows this is a major issue. Other people who were protesting, who were in the streets but not on the streets, were also arrested. Such was the width of that power.

The New South Wales legislation does not have an intent provision in it so it is different from ours, but it raised my alarm. I went back to the amendments I had drafted and looked at them and thought, could this lead to a similar situation? I do not think it could because the intent is there, which is lacking in the New South Wales legislation. It has caused me to continue to reflect very deeply on this. I said to the minister when I contacted him straight after the last debate, and I said to him at a meeting I had with him this morning, that clause 4 still remains problematic for me and a real concern. I made that very clear to him and he would have to acknowledge that I said it several times. In fact, his staff member at the table would acknowledge that I said that a number of times. I said to him that even if it is amended, it would potentially be a problem.

We are trying to find a balance here. As the member for Rumney alluded to, there are other provisions in clause 5 related to trespass. In obstructing a road, the Leader made it quite clear there are other provisions that deal with this matter. Whether they are adequate or not, to deal with the specific circumstances we are seeing in some parts of our state, is a question here. Where I have got to is that I do remain concerned about the impact of trespass and the aggravated trespass offence. I absolutely do, and I will be proceeding with those amendments as well. I encourage members to support those and I thank members for the support of the one I have just put.

My view is that we should deal with the trespass issues because the trespass actually has much more risk of putting people directly in harm's way. Obstructing a road is inconvenient and frustrating. When I looked at the New South Wales experience, if there was even an intent

provision in that legislation - and if you watch the ABC, I think it was on *7.30 Report*, they actually did the same sort of story with some visual footage. In the podcast, you hear this young woman speaking and the man coming up to the car and abusing her, but her action prevented lots of people getting to work that day. Whether they intended to or not - well, she probably did - but their intent was to raise awareness of the very urgent matter of climate change and the need for action.

My concern remained that this clause, even as amended, is broad. It could be misused. It could prevent actions, that, yes, are disruptive and yes, may obstruct a business - the member for Launceston referred to the Simplot incident, with farmers being very upset about the price for potatoes, a really important matter for farmers. How do I deal with this? Where do I go? My job is to deal with legislation for the state and to make sure that other people are not inadvertently caught up in it.

It has not been an easy decision but where I have landed is, we do not need clause 4 at the moment. We need the provisions and the amendments in clause 5 to strengthen those areas, where people are actually at risk. If we continue to find that the current laws related to obstruction of roads and those sort of things are not working, we come back and the minister comes back. I am happy to talk to him any day of the week about this, because the people I represent are the people who want to protest and be disruptive - including myself - and the people who are being obstructed to get to their workplace and potentially harmed along the way.

I am not saying that standing on the road, taunting, blocking people without actually trespassing is not harmful to people. It can be, but I feel fairly confident there are other laws that can be applied here. So, in looking at a statewide approach here, of looking at the potential impact on other people who should not be caught up in this, that can potentially be dealt with through other provisions and the use of 'move along' powers and that sort of thing, I will be voting against clause 4 even though I recognise that the Government supported the amendment. I do thank them for that, because if it is really needed we can come back and fix this.

The key here is the actual physical and mental harm that can happen to people with the aggravated trespass position. It has not been an easy decision for me. I do not really appreciate sometimes the personal comments on this point about my comments here in the past. This is something that is felt very deeply in my electorate. Many people who have not even been there do not understand what it is actually like. I ask you to consider for a minute, being held up at your office every time, feeling threatened every time you turn up. I do not think we would like that much either and that is essentially what is happening in some areas.

I am happy to have further discussions with the minister at a later date if in fact the laws we have relating to obstruction of roads are not enough. At the moment, the evidence I have looked at, the situation in New South Wales and other discussions I have had make me very nervous about it. Sometimes we do bring in discriminatory legislation and treat some people differently. We did that in 2013 in this place, in nation-leading legislation. We put exclusion zones around abortion clinics. We treated people differently. We say people who are opposed to abortion cannot protest there. They have to be 150 metres away. That was discriminatory and we supported that because it was the right thing to do.

These arguments about discrimination need to be taken in the context of what we are trying to achieve. I will come more to that later on when we are dealing with another amendment in clause 5.

This has been a really difficult decision for me and I have agonised over it for a whole six, seven, eight, whatever weeks it is and I have worked really hard to do what I can to address it. As I said to the minister this morning, I am not confident, even with these changes, it actually is not going to be broader in its impact than it should be.

Mrs HISCUTT - I am going to seek some advice on that. So, to be clear, you are going to vote against your amendments, clause 4?

Ms Forrest - No, against clause 4.

Madam DEPUTY CHAIR - The amendments have been passed. We are voting on the clause as further amended. The Leader is seeking advice.

Mrs HISCUTT - I cannot make it any clearer. Unreasonable street obstruction and trespass are already offences today, yet we do not see police swooping in to bundle up or fine the knitting grannies or the homeless or the recent large group of protesters as has been feared.

Similarly, many aspects of trespass occur today with fine or charge and this will continue to be the case.

Madam DEPUTY CHAIR - I will remind the Leader, and I know that this is the second time today, but this is not about the policy. This is about the clause as further amended.

Mrs HISCUTT - I needed to correct that last statement after a word has been added. Similarly, most aspects of trespass occur today without fine or charge and this will continue to be the case.

As I have previously said, obstruction to the law already has a high threshold. The Government put forward an amendment so that the only increased maximum financial penalty under section 13 relates to both unreasonable and substantial street obstruction, as further amended.

That will arguably be a higher threshold than all current street obstruction offences, so the amendment covers narrower, more serious conduct, and clarifies the law. Lawfully permitted obstructions under work health and safety or any other legislation are explicitly protected as just some of the examples of what might be considered reasonable obstructions. As amended, the bill does also importantly address problems such as blockages of roads. Members have referred to blockages of remote roads leading to forestry and mining sites, such as the concerning videos that we saw during our briefings a while ago.

That is one of the scenarios the bill seeks to address and we are confident that the bill, as amended, still captures that and other conduct of concern. Members, the Government supported the amendments to clause 4. Now we are talking about the amended clause.

Madam DEPUTY CHAIR - That is exactly where we need to put our focus.

Mrs HISCUTT - The Government is supporting this amendment and I urge all members to please support clause 4.

Ms ARMITAGE - I have heard the argument of the Leader and it was articulated extremely well by the member for Murchison. As I have said in the past, when I had a meeting with the staff and also with the minister, Mr Barnett, one of my big problems was clause 4. I understand the Leader saying the video we saw, yes, I agree with that, that we have an issue that we are looking to deal with. However, I still believe that clause 4 unintentionally captures so many other things apart from that one area it is trying to capture. To me, that is the real issue.

I understand what we are trying to do, that we are trying to fix one problem, and it is almost like that old adage: hard cases don't make good laws, and we do have a hard case in that area. It is a really hard case, but the problem I have with clause 4 is that it is capturing so many other areas and so many unintended areas as we have all said. I am not going into a second reading speech, but it is the right for peaceful protest in a public street.

I will be voting against clause 4 because it is the issue I have the most problem with in the bill. Like the member for Murchison, I have agonised and cannot tell you how many meetings I have had, not just with union people - I have had a lot of those - but with genuine people who want to talk about their peaceful protest and what they want to do. I have protested before. I have had rallies to do with health and to do with lack of funding for hospitals. I have protested outside the public buildings in St John Street every lunch hour with another group. It was many years ago and probably a different colour government but it does not really matter, it was still the same issue. I believe you should have the right to peaceful protest on a public street if you are not impeding and you are not causing harm.

This is the part of the bill I find the most troublesome, that it is capturing unintentionally other areas. I thought it was articulated extremely well by the member for Murchison. I have agonised as well over the winter break. I do not think I have had a great deal of sleep and I am sure my husband, who decided he could not bear to come down this week to Hobart, will be very pleased when this bill is finished because he is a great sounding board.

I will be voting against the clause.

Mrs HISCUTT - This part of the bill is the way we had originally drafted the bill, and is what we wanted. We thought we had the balance right. I hear the member for Launceston talking about what may or may not happen but the scenarios, they will not happen. It is here on *Hansard*. Judges, when they make their rulings, read the *Hansard* and I have asked judges about that and they will know the intent of it.

Madam DEPUTY CHAIR - The member has to take the Floor if she wants to make a point of order.

Mrs HISCUTT - When the judges read all this and they will know the intent of the bill - I have stipulated before what the bill is not going to do - that will be read and taken into consideration. This is part of a bill and we have agreed to these amendments. We would really like to see this clause 4 as amended be approved and I urge members to please do so.

Ms ARMITAGE - Madam Deputy Chair, in answer to the Leader, a comment I made, that the magistrates or whoever it is in court will look at *Hansard*. My understanding is the act is the act and I understand and agree totally. I do not believe that a police officer or a court would capture these people but what I am hearing from people who have come to see me that are afraid and there is a genuine fear, whether -

Mrs Hiscutt - It is fear that is being introduced and it is not -

Ms ARMITAGE - Excuse me. I was not allowed to speak.

Madam DEPUTY CHAIR - The member has the Floor.

Ms ARMITAGE - Thank you. The fear, whether it is genuine or whether it is not genuine, for whatever reason, while I don't believe it would happen under the act, it could and that is the fear that has been brought to me. It is the unintentional possibilities that could happen. I agree with the Leader that I am sure it would not happen but that fear is still out there and, in the act, it says it could, whether it would - whether they read *Hansard*, I doubt that people would go through and read *Hansard* when they are making judgments. I am not there to judge what is happening in a court of law but my concern is that it is in the act and it could happen.

Mrs HISCUTT - To clarify, I have spoken to judges in the past and they tell me that they do pour through the *Hansard*.

Mr VALENTINE - It is always the case, whenever you try to tighten legislation or narrow it down to make sure that certain circumstances are covered, there is always a danger unintended consequences will occur.

With respect to this, I come back to log truck drivers wanting to protest the price of logs they are getting at the mill and they blockade. Those who want to get through cannot because there is a load of trucks in front of them stopping them from getting to work. I look at farmers in Latrobe protesting changes to the streets. They may blockade Latrobe, stop people getting to work. That means they would be captured by this. The one I shared with you with respect to the amendment we have just dealt with, the farmer who wants to protest fracking on his or her own property could be captured by this, because they are stopping a fracker from getting to work. It is their property but they are on a public road and they are stopping that person entering to do work. They could be captured by this.

Whenever there is an attempt to narrow things down or to change legislation to target a particular group in its fullest intent, you are going to have problems with it. I will not be voting for clause 4.

Madam DEPUTY CHAIR - I remind members, the question before the Chair is that clause 4 as further amended stand part of the bill. Not the policy, the clause as further amended. My further advice, if there are specific issues about operation of the clause as amended or matters to clarify, by all means raise them, but the Committee is not about progressing policy issues. Final time.

Mrs HISCUTT - I hope that members reflecting on clause 4 remember the effect of the amendment is about certainty and a higher maximum penalty from three to 10 units. The obstruction of streets already is an offence.

Ms FORREST - Madam Deputy Chair, I want to clarify a couple of things the Leader said in this in relation to the current obstruction laws. You made a comment along the lines that police had not been able to arrest knitting nannas and people like that. They did arrest a couple of knitting nannas when they were down here one time, because they ended up in court. I reckon they were arrested if they ended up in court.

Ms Webb - They were blocking us from coming into this building, actually.

Ms FORREST - I was stopped coming in. I was quite distressed because I was trying to come in to speak about young Ms Gilindon who was about to lead the climate strike in Wynyard. That was what I was trying to get in the door to do. I said, 'you better let me through, that is what I am going to talk about.'

Ms Webb - Perhaps they did not obey a police order to move on.

Ms FORREST - The Leader went on to say, as I recall her comments, they have not been out arresting people who are basically protesting in ways that are not harmful. That is good and great the police take that approach and I commend them for that and I hope they continue. That says to me the obstruction laws that are there are not being used to their full effect. If they are not being used to the full effect, why are the police not using them when they get down to a remote location where a road has been blocked by somebody - not locked on, not committing a trespass under the definitions in our trespass laws in the next clause of the act, but they are just obstructing the road? Why are they not arresting those people and dealing with that? If they are not being used, then let us use them and if they prove to be inadequate, let us come back. In the meantime, let us use the laws we have to deal with those situations.

The trespass laws are different, I am not going to get the diversion, because we are not talking about trespass, we are talking about public annoyance in this amended clause. That is what it is about. The concerning videos we watched related to trespass, that was the locking on, they were not about road obstruction.

Mrs Hiscutt - It was obstructing the vehicle from moving.

Ms FORREST - That is trespass when they are locked on, okay? If, for whatever reason, the police are not applying the current road obstruction to these situations where the breadth of the offence could be much broader than just this narrow group that I have tried to narrow it down to, it is something that needs to be progressed before we look at a potentially more - yes, slightly higher bar - but a higher penalty too. It is quite broad in its reach and there is a general concern in our community. I go back to the point, there has been a lot of misrepresentation about what this is seeking to do - but what we do not want is for people to feel they cannot use their voice, they cannot be out there, they cannot take action. People like farmers with their potato prices do not have many places to go.

Ms Armitage - That was about their livelihood.

Ms FORREST - Blockading Simplot for half a day or a day - however long they were there - is not going to end the world, but it can give them a real voice. The Leader's comments do not assure me that we need clause 4. That is all I am saying.

Mrs HISCUTT - I will seek some advice.

After much discussion with my advisers, the original amendment was what we liked, the amended amendment is tolerable and we ask members to please put it in there because it is crucial to the rest of the bill.

Madam DEPUTY CHAIR - The question is that Clause 4 as further amended stand part of the bill.

The Council divided -

AYES 5

Mr Harriss
Mrs Hiscutt
Ms Howlett (Teller)
Ms Palmer
Ms Rattray

NOES 6

Ms Armitage
Ms Forrest
Mr Gaffney (Teller)
Ms Lovell
Mr Valentine
Ms Webb

PAIRS: Mr Duigan, Mr Willie

Clause 4, as amended, negatived.

Clause 5 recommitted

[3.34 p.m.]

Ms FORREST - Madam Deputy Chair, I wish to move an amendment to clause 5.

First amendment

Page 6, paragraph (d), proposed new subsection (2AA):

Leave out "is satisfied that the person, by or while committing the offence -" and paragraphs (a) and (b).

Insert instead the following:

is satisfied that -

- (a) the person, by or while committing the offence, substantially impeded, or prevented, another person from carrying out lawful work; and

- (b) the person, by or while committing the offence, intended to substantially impede, or prevent, a person from carrying out lawful work -

Madam Deputy Chair, speaking to that amendment, a lot of the arguments in relation to the previous amendment are very similar. They are intended to ensure workers can access their workplace to undertake lawful work safely. The more serious aggravated trespass would only apply in cases where access to a workplace, or a machine, or a vehicle or whatever constitutes the workplace for that person, was obstructed and it was the intention of the person who committed that offence to prevent them from working.

The trespass offence remains unchanged. There is currently an offence of trespass and for this provision (2AA) to apply, the person already has to be trespassing. They are already subject to the trespass laws if they do not move on, and can be charged and fined, and potentially given a jail term. The trespass offence remains the same with or without this amendment, quite frankly. For anyone who enters private land or private facilities and refuses to leave when asked to, or public land where you can trespass, the aggravated offence, the higher penalty, if this amendment is agreed to, only applies to cases where workers are denied access to their workplace. Further on, we will get to whether the action directly or indirectly causes a serious risk of harm to the person. That will come later but I will speak to both at the same time because they do go together here, even though they are separate amendments.

I spoke about this in my comments on clause 4 as amended standing part of the bill, that this is a much more serious offence and I have been entirely consistent in my approach to this since the first workplace offenders bill, or whatever protesters law it was we brought in here that was a separate standalone piece. We have trespass laws that deal with these sorts of offences. If they need strengthening, strengthen them. This is what this is doing, it is strengthening an aggravated trespass. The trespass provision remains, but it is a more serious and risky situation where someone is actively preventing a person doing their lawful work through the act of trespass.

We know that trespass can include being on or in a vehicle, locking onto a vehicle, locking onto a machine. Even getting onto a machine, like a drill rig in operation on a mine site, and jumping onto the machine while it is operating and pressing the emergency stop or other things you can do. An incredibly dangerous thing to do. Dangerous to the people, dangerous to the equipment and potentially to the environment because you could create an oil spill or something like that as well. There are all sorts of things that can happen in these sorts of circumstances.

In my view, and as I have articulated previously, the aggravated offence really should only occur where someone is actually doing something in that trespass activity that stops someone working. If they are trespassing and they are in a formal protest, but they are not stopping people going about their lawful work by locking onto machinery or the aggravated trespass, then they should not be subject to a higher penalty. This is the other aspect of what we talked about previously, so I do not want to rehash all of that again because we have already gone through it.

I was grateful for the support for the amendment in clause 4 because it did actually go some way to addressing the issue, but not the issue more broadly when there are other mechanisms for it. This is specifically related to the trespass which is a more direct

engagement. It is a more threatening activity generally. It is much more up close and personal and when it is targeted particularly at people who are trying to work, and you are potentially putting yourself in harm's way by undertaking this trespass, that is when a higher penalty should apply, not when you are not impacting on people going to work. This is what this is about, I understand.

This is the principle behind the bill in the stated government policy and I urge members to support it.

Mrs HISCUTT - The amendment has a similar focus to the original bill but with a focus on the worker rather than the business. It further requires that the person be intentionally impeding or preventing a worker from carrying out their lawful work. For example, if a person was locked onto a piece of machinery, that would be a trespass. Under the amendment, the higher penalty would apply if a court convicts the person of trespass and is satisfied the person by, or while committing the trespass, substantially impeded or prevented a person from carrying out work, providing the prosecution could prove that that was intentional.

Similarly, our advice is that this also captures examples such as having to cease work because the person has created a safety concern by or while trespassing. So, if someone trespasses by climbing up a tree in an area where works are to be carried out, the fact may be that their conduct substantially impeded or prevented another person from carrying out lawful work and they intended to do so.

We accept this is an alternative approach to workplace protection, which we have always said is about workers and businesses and undertakings. Therefore, we are not opposing the amendment as it continues to strike the balance, only applying the aggravated penalty in appropriate circumstances where a trespass has occurred. I reiterate that the Government was satisfied that the bill was okay as it was, and we were happy with it. However, we will not oppose this amendment.

Mr VALENTINE - I again come back with two examples that I used before, only this time the log truck driver has gone through the gate and he is now on the premises of another business. If he was to continue through and drop his load and go out, that would be okay, but he has decided to stop there because he wants to make a real issue of the fact that he is not getting the price for his logs and he is not delivering them. He is going to stand there and stop other logs coming in.

It would seem to me he or she would be trespassing. It is the same with the farmer. The farmer might be inside their property and they might be on the leased area that the miner has access to. Now, under the law, is that person trespassing because they are on the leased area without the permission of the miner but it is their own land? They are grey areas and this is not going to solve what it may be intended to solve. I cannot support this.

Ms FORREST - I actually want to say that the Leader is right. This is about workers. In my mind, it has always been about workers and the intent and desire to bring forward legislation to greatly further assist workers in their workplace, to go to their workplace safely - which is the next amendment - but to do it without unnecessary obstruction, and that is an appropriate step.

The rest of the amendments to this clause relate to workers. This bill is called 'workplace protection' and this is about protecting workers in their workplace. Some of the matters that the member for Hobart raised are not really appropriate as examples, but I am not going to go into that.

I urge members to support this because if we are trying to enable workers to go to work, when trespass occurs, people still have the opportunity to leave. If they are trespassing and they are asked to move on and they do, they have not committed an offence. They have to actually first have committed the offence of trespass before any of this kicks in. We have heard, we have seen, and I am very much aware of some of the very real challenges that occur in more remote locations with workers in their workplaces. These are the matters we are trying to address and, I do not believe without taking a really wide berth around this. The public annoyance one on roads is different. This is focused on workers and workplaces and trespassing in or on workplaces. It is not about the public road. It is about being on a vehicle, in a vehicle, in a building, like a sawmill or other sort of mill or on a crane, on a whatever, that is what it is. It is where trespass has already occurred and the intention of that person was to prevent the person working that you attract the high penalty, if that is the case, and only then.

Mr VALENTINE - With the greatest respect, the circumstances I outlined - it is trespass. I was not talking about public roads, I was talking about private land. I was talking about the fact they are impeding others from getting to work because they have their trucks planted firmly on the other side of the gate and no one else can get through to carry out their work, which is to deliver logs and do whatever else it is they are there to do or they want to do. That is trespass. I disagree with you on that score and when it comes to the farmer who is protesting about fracking, it may well be that farmer is on their own land but within the lease area for the fracking and is stopping the company that needs to do the fracking from getting to their work and from doing their work.

Ms Forrest - Can you trespass on your own land?

Mr VALENTINE - This is the point. It is a lease area, maybe it is trespass. Maybe it is not but that is the point, it is grey and that is why I cannot support it.

Mrs HISCUTT - For clarity, I am advised a property owner on their own land does not commit trespass, even on a leased part of their land.

Mr Valentine - It is still stopping someone from getting to work.

Mrs Hiscutt - He is not trespassing.

Ms WEBB - Madam Deputy Chair, I rise to put my thinking on this on the record, so my vote is explained and accountable in the public domain, which is important for our constituents.

This is a tricky one for me. The clause in the bill as it stands is entirely unacceptable, in terms of the wording on, 'obstructed a business or undertaking, or took an action that caused a business or undertaking to be obstructed.' That is the bit that we are replacing here.

I do not agree with the wording as unamended there. Then in contemplating whether to support the amendment put forward, I have to ask, is it fixing issues that are wrong with the

clause as it stands now? How does it stack up, in terms of what are the appropriate principles to apply here?

It is difficult because it is a narrower option, so absolutely in that sense, it narrows and deals with some of the breadth of the clause as it stands. However, I still have concerns about it in terms of principle. It is still saying this aggravated element can be brought to bear on an action of trespass that involves impeding or preventing someone from doing their work. We are identifying that particular action as being worthier of an aggravated sanction in that way, an acknowledgement of an aggravated penalty. That is problematic. It will still broadly capture at that aggravated level, with the higher penalty that is potentially attached to it, actions that do not warrant that. That could be seen as being appropriate exercises of the right to protest.

Even though it is an improvement on what is there, I am uncomfortable that it contravenes important principles. I am still leaning towards voting against this amendment but I am very interested to hear other members' thoughts on it because each time I have listened to members' considerations of this, it has added to my thinking. I hope others will clarify their positions.

Ms LOVELL - Madam Deputy Chair, I do support this amendment. Again, I hear different opinions around the Chamber and with some reluctance that stems from the fact there is a great deal of discomfort with the clause at all, let alone with amendments. I share that. I am still entirely uncomfortable with this clause. There are further amendments to come that might go some way to addressing some of that discomfort, but perhaps not all of it.

In terms of this amendment, it does make things clearer, but particularly the new paragraph (b), that adding an element of intention is the key for me. That is the big difference for me between this amendment and the clause as it stands, that it adds an element of intention as a requirement for this higher penalty to apply, and is a sensible step.

In light of that, I will be supporting this amendment.

Mr GAFFNEY - Similar to the member next to me, I congratulate the member for Murchison. This does make it clearer for me. Whilst I still have reservations about it, I still think this is a clear and more explicit way, especially about the intent, as mentioned by the member. I will be supporting this amendment.

Ms FORREST - I reiterate this amendment to the clause is only triggered when a trespass has already occurred. It is not like it is creating a new offence; it is an aggravated trespass. The person has already trespassed, they are already where they effectively should not be - according to our law - and they have not moved on. That remains unchanged for anyone who commits a trespass offence.

The Government brought in a fairly broad provision about obstructing a business or undertaking, broad because protest actions can inadvertently obstruct business or undertakings. They can do it deliberately at times, too, and that is what this is intended to capture. Rather than just have this broad business about the workers actually going to work, if you are obstructing those workers, then the notion that you are obstructing the ongoing operations of the business is there.

The difference here is the person who takes that action to not only trespass and not move on when asked to, but they intentionally and actually cause an obstruction to a worker or

workers trying to access their workplace. That is the test here, and the way the member for Mersey articulated it is clearer. It is not some broad, sweeping thing which is a bit nebulous. It is actually much clearer about what the test is and there has to be intent. It is up to the court or the police prosecutor or whoever to demonstrate intent if that charge is going to hold up. If they did intend and they have done it in a way that is an aggravated trespass according to the provisions here, then a higher penalty can apply. Even if intent is not proved, they can still be subject to the lower trespass penalty anyway, because they have already done that. They get charged with trespass and then they may get charged with aggravated trespass and then fined or managed through the court depending on the nature of their activity. If they are not intentionally blocking workers getting about their work or anything like that, then it is not an aggravated trespass, it is a regular trespass, which it already is now; no change.

Madam DEPUTY CHAIR The question is that the amendment be agreed to.

The Committee divided -

AYES 10

Ms Armitage
Ms Forrest (Teller)
Mr Gaffney
Mr Harriss
Mrs Hiscutt
Ms Howlett
Ms Lovell
Ms Palmer
Ms Rattray
Mr Willie

NOES 2

Mr Valentine
Ms Webb (Teller)

Amendment agreed to.

Clause 5 - as further amended

Mr GAFFNEY - Madam Deputy Chair, I move an amendment to clause 5, page 6, paragraph (d), proposed new subsection (2AA):

Leave out "50 penalty units or imprisonment for a term not exceeding 12 months".

Insert instead "30 penalty units or imprisonment for a term not exceeding 8 months".

I recently sent around to all members a rationale of why we are going down this path and I provided a few comments to assist with the debate regarding the amendments. My apologies with the math. When the bill was first mentioned or read into the House the penalty units were at 173. It has now changed to be 181, so that is why there is a change. For those people listening to this, it means that instead of changing every piece of legislation, when a penalty unit changes, it is an easier way for that to work instead of going back to the act.

I also put on the table that in other acts that I may mention, the legislation, the New South Wales penalty unit is 110; the Queensland unit is \$143 -

Sitting suspended from 4.00 p.m. to 4.30 p.m.

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

In Committee

Resumed from above.

Clause 5

[4.30 p.m.]

Mr GAFFNEY - Madam Deputy Chair, I was discussing how different penalty units in different states are of different value, and how ours had recently changed from \$173 a penalty unit, up to \$181. I will be referring to one of the Commonwealth bills later on, and that unit cost is \$222.

Whilst we are debating each amendment individually, many of the comments I make with this amendment may also support and provide relevance for the debate in the second and third amendments, so I will not be repeating that then unless there is a question from members.

I have forwarded most of the rationale to members, but there is a little bit more, because I am presenting a case about why I consider this amendment should pass.

As I have stated previously, I do not believe this legislation is needed. Police already have a suite of offences like trespass, property damage, and breach of peace at their disposal, as well as overly broad powers to move protesters on if they reasonably suspect they are breaching the peace, preventing a lawful activity, or about to commit an offence.

This clause is primarily about obstruction of business, or taking an action to obstruct. I believe that currently in the bill, a maximum penalty of 50 penalty units, approximately \$9050, or imprisonment for a term not exceeding 12 months, is disproportionate for this offence, and that is what I ask members to reflect upon.

This penalty is similar to the current penalties for other aggravated offences, which includes the circumstance where a person trespasses while in possession of a firearm. I consider that peacefully obstructing a business activity is objectively less serious than committing trespass with a firearm.

There are other offences within this principal act. Section 35 relates to assault. The penalty is 20 penalty units, or \$3620, or imprisonment for a term not exceeding 12 months. Under section 19, the penalty for placing a poison substance in a public place is five penalty units, or \$905, or imprisonment for a term not exceeding six months. Under section 16, the penalty for a street entertainer whose conduct may be a danger to the public safety who is directed to stop and refuses to comply is a fine not exceeding two penalty units, which is \$362.

The penalty as drafted is far too high, therefore I suggested the amendment. The amendment that I have put forward is similar to the New South Wales offence of aggravated trespass, which can include '...interferes with, or attempts or intends to interfere with, the conduct of the business or undertaking...' and has a maximum penalty of 50 penalty units. Their penalty unit is \$110, so that is a total of \$5500, or up to eight months imprisonment.

Therefore, the amendment I am suggesting of 30 penalty units, that is \$5430, or a term not exceeding eight months, would bring the penalty more in line with the comparable offence in New South Wales. I am stating the case here, that whilst I agree there should be some fine and penalty, I consider it is far too high and I hope that I have some support from colleagues to bring the fine or the offence back into a more realistic, and, I believe, a more comparable cost and term.

Mrs HISCUTT - Madam Deputy President, bearing in mind that these are maximum penalties at the discretion of the judge, the Government considers they are appropriate. I have to say from the outset that it is extremely difficult, and often misleading, to compare penalties as the member has done, such as trespass that obstructs business, and trespass involving a firearm.

For example, under existing law, the maximum penalties are already the same for trespass with a firearm, as trespass involving a vehicle. They are both designed to reflect that these are more serious forms of trespass. Like these existing penalties, the bill follows the same pattern of doubling the penalties. Adding only five penalty units is meaningless.

While trespassing in possession of a firearm is a serious matter, a person would only ever be charged with that offence if there was no suggestion that they made any threats with the firearm or pointed it at anyone. If they did make threats with the firearm, they would be facing a significantly more serious charge for doing so - most probably, aggravated assault under the Criminal Code. The references to trespass with a firearm is more commonly in scenarios such as going hunting or shooting with a firearm, and straying onto someone else's property, which is considered more serious than normal trespass. Similarly, the degree of harm and loss that a business might suffer as a result of the trespass is a serious matter.

In relation to the proposed new penalty of 30 penalty units or imprisonment for a maximum not exceeding eight months, it has been suggested this is more in line with the comparable offences in New South Wales, and in particular, section 4B of the Inclosed Lands Protection Act. However, I suggest that it is not quite correct. That provision, 4B contains numerous penalty provisions for unlawful entry onto inclosed lands, which start at the point which the member for Mersey has referred to. The penalty starts at 50 penalty units, which is \$5500, but they go all the way up to 200 penalty units and three years imprisonment if certain circumstances are made out. For example, higher penalties in New South Wales apply to obstructing businesses on certain land.

The Government is satisfied that the penalties are a reasonable balance when comparing similar schemes in other jurisdictions. I take the opportunity to remind members that the minister distributed an extended fact sheet to members in June. There are some tables in that document that show that when compared to other jurisdictions, these increased penalties are not disproportionate.

As set out in the fact sheets and briefings, these are also maximum penalties. In line with sentencing practices, these guide the highest possible penalty, for the worst kind of offending, by the worst kind of criminal offender. They are maximum. It is at the discretion of the judge to deem how far up the scale he will go. We need a maximum for the most serious penalties, like chaining yourself to the machinery and activities like that.

I believe the Government has the right balance with these penalties. The judge will make the rule at the end of the day. I ask members not to support the member for Mersey's amendment.

Ms WEBB - Madam Deputy Chair, I will support this amendment. I thank the member for Mersey for bringing it, and for the rationale and the information provided. While it is a maximum, of course a judge could impose a penalty up to whatever this is set at. Maximum indicates a certain attitude and a certain view of how this should be treated, and I consider the way it is currently in the bill is excessive and unnecessary, and not aligned with what we would think the severity of similar actions would be. I absolutely support the amendment and will be voting for it.

Mrs HISCUTT - Under the member for Mersey's amendment, a trespasser faces a much lower penalty for actions that stop lawful work, compared to a trespasser who simply drives their car onto private land. As the bill is drafted, our position is the penalties for all these types of aggravated trespasses should be the same; up to the 50 penalty units. Members, please bear in mind, and we have said it in this place before many times, it is a maximum and it is up to the courts and the judge to make that decision depending on the facts as presented to the judge.

Mr GAFFNEY - I am not going to delay the point, but I understand that it is a maximum. Your maximum is too high for the offence and that is what I am seeking to change and I am saying it is comparable to the New South Wales one. Whilst there may be other instances where that is more difficult and there is a higher penalty or fine, in this situation we have gone for something that is not proportionate to the crime or to the offence.

Mrs HISCUTT - I have the New South Wales legislation in front of me and I will read it. The maximum penalties there:

- (a) For an offence that occurs on agricultural land -
 - (i) 120 penalty units or imprisonment for 12 months, or both,
or

That is in the New South Wales legislation. Bearing that in mind our Government has struck the right balance with penalties - obviously New South Wales is higher - so ours is the right balance. We are comfortable with where we are and it will be up to the judge to administer the punishment as he or she sees fit.

Madam DEPUTY PRESIDENT - The question is that the amendment be agreed to.

The Council divided -

AYES 5

Mr Gaffney (Teller)
Mr Harriss
Ms Lovell
Mr Valentine
Ms Webb

NOES 6

Ms Armitage
Ms Forrest (Teller)
Mrs Hiscutt
Ms Howlett
Ms Palmer
Ms Rattray

PAIRS: Mr Duigan, Mr Willie

Amendment negatived.

Madam DEPUTY CHAIR - Honourable members, the question is that the clause as amended stand part of the bill. The member for Murchison, there is a bit of a process here and we are working through that.

[4.47 p.m.]

Ms FORREST - Madam Deputy Chair, I move my second amendment to clause 5 on page 7, paragraph (d), after proposed new subsection (2AA) -

Insert the following proposed new subsection:

(2ABA) Subsection (2AA) does not apply in relation to an offence committed by a natural person if the court that convicts the person of the offence is satisfied that -

- (a) the offence was committed in the course of the person being engaged in an industrial dispute or an industrial campaign; and
- (b) the person did not, by or while committing the offence -
 - (i) cause, directly or indirectly, a serious risk to the safety of the person or another person; or
 - (ii) take an action that caused, directly or indirectly, a serious risk to the safety of the person or another person.

I understand the member for Nelson also has an amendment to propose and I will speak to this otherwise I will lose the call.

As I was saying, somewhat ad nauseam now, this bill is about workers and workplace protection and we have inserted a provision that means the aggravated trespass only applies when workers are prevented from going about their work and obstructing a business only applies if the workers are prevented from accessing that. That is the test and the person who commits the offence intends to do it.

As this is related to workers, it is vital that workers themselves are not subject to higher penalties when taking actions related to industrial matters where a workplace may be obstructed. These workers would still be subject to the trespass laws as existing because they actually have to be convicted of a trespass offence before these would even kick in.

They are still subject if they are undertaking industrial action or an industrial dispute and they are trespassing in doing that, and they can still be fined and charged with trespass. Fined and potentially imprisoned for that action if they do not move on. It does not remove that. That stays as it is.

This means that the workers undertaking some industrial action relating to their workplace - that is what industrial action is - would not attract the higher penalty unless they actually put someone at risk. After much toing and froing and while we have version 7 of the amendments, it was to try to nail down this wording to make it the same as the Government have proposed as the more aggravated offence in (2AB) where the action taken by people actually puts someone's health and safety at serious risk.

It is important to recognise that workers in their own workplace will take action and run campaigns on many matters related to safety in the workplace, which is not just about electrical safety, or trip hazards, or whatever else it might be. Safety in the workplace relates to safe staffing levels.

I am not going to repeatedly go over this, because I did a fair bit of this in the previous debate that we have had. Generally speaking, industrial action does not involve actually blocking access to businesses. For example, when nurses protest or take industrial action, they will often do it outside a hospital on the road, or on the footpath, but they do not actually stop people going in and out of the hospital. Nurses actually have an obligation to their patients.

What this is intended to do is, where there is industrial action being taken - the OPC's advice to me was not to try to define specifically 'industrial action' because it becomes a quagmire of definitions. That was the explanation I received, because I went and looked at definitions in our own state legislation, which would apply to State Service employees. I looked at the Commonwealth legislation under which the people are employed under Fair Work and they are almost contradictory. If you tried to actually define it in a strict sense you would end up with this massive, long, convoluted definition which is problematic.

'Industrial dispute' or 'industrial campaign' have the meanings that are understood by everybody. It is action taken in relation to a workplace. It is not limited to pay disputes. It could be safety in their workplace. It is not about perhaps environmental management or action on climate change. It is about the actions that a worker takes about their own workplace, or about their workplace conditions. Workers may go to another workplace or another work site to support their colleagues.

The example I use is in my electorate and many other electorates who have quite small schools. We all accept that cleaners are very important with COVID-19, for example. Often, a cleaner in a tiny, little school may be the only cleaner, or maybe there are a couple of them employed by that school to clean and they are not being treated in a way that they believe is appropriate. They may not have access to PPE, particularly in terms of what we need during the COVID-19 pandemic, at the height of it particularly, but even continuing, and so they wanted to protest. Here they are, one or two of them, standing outside a school having

absolutely zero impact because people hardly know they are there. The cleaners from around the other schools, or even the teachers who recognise that they have an unfair situation here, might come and protest with them.

That is why it is worded in this way, or I have worded it in this way, to ensure that workers taking some industrial action related to their workplace, effectively, or their workplace conditions, or their campaigns that they run to raise awareness about certain issues that are of concern, are not captured by the harsher penalty, unless they actually put someone at risk. They will still be subject to 30 penalty units and six months in prison, or maybe it is eight, that is currently in the principal act. That does not change. They will not be exempted if they cause a serious risk to the safety of another person or to themselves and they will be then subject to a higher penalty, which is a subject for another debate later on.

I urge members to support this amendment because it is a part of the package of amendments that I have put forward to this place related to workplace protection and ensuring that workers can get to work and work safely. There are many other workplace safety issues that are not covered by this and they are completely separate to this approach. However, when a worker wants to take action that may prevent access to their workplace, such as if there is a serious safety issue there, they are not caught up with the harsher penalties, unless their action puts someone else at risk.

Mrs HISCUTT - I emphasise that we have already spoken at length as to why we do not believe that protection for industrial action is necessary. Our concerns are on *Hansard*, so I will not go through that again.

The foundation of our concern is that people undertaking industrial action can avoid any penalty for trespass by ensuring that they are not on land without consent or leave land when consent is withdrawn. Industrial action can then happen with no trespass at all. Some industrial actions may be undertaken with a reasonable or lawful excuse, which is explicitly not a trespass under section 14B of the act. This includes the important duties and protections in relation to protected work health and safety.

Further, as we have discussed previously, there is Commonwealth and state industrial and safety legislation that provides lawful reasons for certain persons to enter workplaces. Commonwealth legislation also provides immunity from prosecution in relation to protected industrial action, unless the conduct causes injury, damage or theft. We are also concerned that industrial action can also have aggravated features, such as causing risks to others.

Finally, our concerns also related to the breadth of the previously debated amendment, which excluded the aggravated trespass penalty from both industrial action and any actions at all committed by workers trespassing on their workplace, even if they were unrelated to industrial action. In that context, the present amendment is restricted to industrial matters only, which is an improvement.

Further, the amendment clarifies the protection from higher penalties for industrial action does not apply if it creates a serious risk. This is consistent with the bill in respect to subsection (2AB) and is a further improvement to the previous proposal. The Government will monitor the situation closely to ensure that these amendments do not impede the operations of the framework.

In light of what I have said, and in the interests of progressing the bill, we will not be opposing this amendment.

[4.58 p.m.]

Ms WEBB - At this point in time, I ask if we are ready to pause on this because I need to move an amendment here. I will read in the amendment to the amendment. I will read it in and then explain. It is not about the content of this amendment, so much as the wording.

I move the amendment to amendments to clause 5 moved by Ms Forrest -

First amendment

Page 3 of proposed amendments, proposed second amendment,
proposed new subsection (2ABA), paragraph (b).

Leave out the paragraph.

Insert instead the following paragraphs:

- (b) the person did not, by or while committing the offence, engage in conduct that caused serious danger of death, or injury, to another person; and
- (c) if the person did engage in the conduct referred to in paragraph (b), the person -
 - (i) did not intend the conduct to cause serious danger of death, or injury, to another person; and
 - (ii) was not reckless as to whether the conduct was likely to cause serious danger of death, or injury, to another person.

To explain, I have a primary amendment which relates to (2AB) and changing wording in that one, which if it is supported, would then need to change the wording in this amendment put by the member for Murchison to make sure that there is alignment there.

Although we are talking about it in the context of amending the member for Murchison's amendment, what we are really talking about, what I will make the case for and we should engage in, is whether the amendment that I am proposing to clause 5 (2AB) is supported. I will speak to that because that is the substance of it. I hope everyone is following along with that.

I circulated this with some explanatory notes, so I am hoping everybody has had a chance to familiarise themselves with it, and I will briefly speak to the same notes that I already provided on this.

If we turn our attention to the primary amendment I would like to make here, which is clause 5 (2AB), which is currently worded:

- (2AB) Despite subsections (2), (2A) and (2AA), if the court that convicts a natural person of an offence under this section is satisfied that the person, by or while committing the offence -
- (a) caused, directly or indirectly, a serious risk to the safety of the person or another person; or
 - (b) took an action that caused, directly or indirectly, a serious risk to the safety of the person or another person -

That is the wording I am hoping that we might adjust through my amendment and then align with the member for Murchison's amendments.

The reason I am seeking to amend that clause is because, as it currently reads, the wording 'caused, directly or indirectly, a serious risk' can be regarded as fairly vague. It could be applied in many instances to capture many iterations of trespass offences and then have those subject to the higher penalty. It is problematic that a person could attract the aggravated penalty without intending to - no intention is required the way it is worded now - or being aware of, or even through negligence, causing the risk to another person. That is not required at all in the current wording. It says 'caused, directly or indirectly, a serious risk'. I believe that vague wording and the fairly low bar to reach in order to attract this aggravated penalty is too broad and is problematic.

What I am suggesting does not change the substance of that, or the policy behind it. It adjusts language to make the bar a little higher and more specific in terms of how it is expressed.

The proposed amendment would change that wording in (2AB) and then potentially the member for Murchison's amendments, to instead read:

Clause 5

Page 7, paragraph (d), proposed new subsection (2AB).

Leave out "that the person, by or while committing the offence - " and paragraphs (a) and (b).

Insert instead the following:

that -

- (a) the person, by or while committing the offence, engaged in conduct that caused serious danger of death, or injury, to another person; and
- (b) the person -
 - (iii) intended the conduct to cause serious danger of death, or injury, to another person; or

- (iv) was reckless as to whether the conduct was likely to cause serious danger of death, or injury, to another person -

The intent of making that language change is in recognition that, in my understanding of the intention of the Government with clause 5(2AB) as it stands, it is supposed to be in response to instances where harm or risk of harm is present, and elevating that to an aggravated offence in the context of trespass, where the physical safety or the mental health of workers may be being impacted, or where there is the risk.

It is clarifying that it needs to be a serious danger. Instead of using 'risk', which is fairly vague, 'serious danger' is a more specific test to apply. The term 'danger' in the notes I provided is already used in other aspects of the Police Offences Act. I will not read them all in here, but there are a number of other instances where that would be a comparable language in the primary act.

I believe restricting it to 'danger' rather than 'risk', more appropriately balances the legislation between the rights of the workers and the protesters, or the two sides of that equation. To change to 'danger' is more targeted towards serious actions which would cause danger of injury.

We already have an understanding in our legislation in Tasmania, that 'injury' includes not just physical, but also mental injury. Therefore, when we talk about a serious danger of death or injury, we are talking about physical or mental injury.

What is also brought in here - and we have done this already in another context of the bill with the amendment that was previously passed - is that it introduces the element of intention, and here, either intention or recklessness; as in you did not care whether you were going to cause it and you acted recklessly in a way that may well have caused that serious danger of risk of death or injury.

I hope that is enough of an explanation alongside the notes that I provided, and again it is awkward because we are having to address it in relation to the member for Murchison's amendment. If you can think of it as not being part of the content of that amendment from the member for Murchison, it is really back here on (2AB), that is the primary part of the clause I wish to amend and will attempt to amend. It would require aligned language in the member for Murchison's amendment, if it were to be passed. I am asking you for your view and your vote on the primary amendment that I am intending to bring. I am happy to clarify if you ask further questions on it.

Mrs HISCUTT - Madam Deputy Chair, this is quite an interesting amendment. The Government does not support the amendments as moved by the member for Nelson. The amendments would mean that a person would not be subject to the increased penalty if they were engaged in industrial action, and they did anything and everything falling short of causing serious danger of death or injury to another person. It would not cover causing a serious risk to the safety of the trespasser themselves. Trespassers at risk may also cause serious distress or mental harm to other people, to the workers that are present, or maybe the ones operating the machinery. Protesters putting themselves in perilous positions is one of the significant problems that this bill seeks to deter. This is a significant omission from this amendment.

Further to that, this amendment would not cover a person who, while trespassing and engaged in industrial action, harasses or intimidates other people. As long as they do not cause serious danger of death or injury, they will escape the aggravated penalty under this amendment.

Paragraph (b)(ii) gives even further leeway. Even if you do cause serious danger of death, as long as you were not reckless about it, you will not face the aggravated penalty. Just because that particular person did not turn their mind to the risk they might be causing, should not mean that they are not responsible for it. That clearly does not strike the right balance between the rights of workers to feel safe in their workplace and the right to protest. Members, I urgently implore you not to vote for this amendment.

Ms FORREST - Madam Deputy Chair, I understand what the Leader was saying. It is a slightly different debate but I understand the need to bring it on now. In terms of undertaking industrial action, if it was anywhere near where someone's life was in danger, or they became suicidal as a result - like a serious risk to your mental or physical health - that would be a bridge too far.

Ms Webb - It does not just require that. It is death or injury.

Ms FORREST - I do not think that someone should need to meet the bar of feeling in danger of your life.

Ms Webb - That is not what the bar is.

Ms FORREST - Seriously in danger of death or serious injury, that should be the measure for where aggravated offence would apply. I accept that if someone did die as a result of this action, or was very seriously injured no doubt other charges would be laid - manslaughter, serious assault or grievous bodily harm. This is taking it a step too high. If you are involved in that industrial action and you are actually causing risk of harm to people, then you should not be acting like that. Industrial action should be peaceful. It should be making a point. It may be obstructing a business, or a building or something like that because of the nature of the cause that is being acted on, but I cannot support the amendment to this, to the amendment I have proposed.

Ms LOVELL - Madam Deputy Chair, I do support this amendment because to me, it essentially means the same thing as the previous wording; it is clearer and more direct. The original wording being 'caused, directly or indirectly, a serious risk to the safety of the person or another person', and this now saying that that is engaging in conduct that causes serious danger of death or injury. We are not talking about someone's life being at risk. We are talking about a risk of injury, danger of injury to another person. Adding that element of intent is also important because the wording as it is quite vague, particularly where you talk about indirectly causing a serious risk.

If you then add the fact there is no intent behind that, that is quite broad and open to interpretation. I will be supporting the amendment because it makes it clearer in terms of what the expectation is.

Mrs HISCUTT - I am getting strong advice that the message I delivered prior is true and correct and it really is a risk going down this path.

Ms WEBB - To clarify a couple of matters there. It is probably helpful to read the language here as, 'did not intend the conduct to cause serious danger of injury'. The reason that death has to be included in there is because death is not included in injury. If we just had that the conduct was to cause the serious danger of injury which is very similar to serious risks to safety, I have been advised by OPC that would not capture risking someone's life. In order to as well as have this capture when there is a serious danger of injury, we also have to put in there 'serious danger of death, or injury' so that an instance where there was a serious danger and risk to the life of someone that did not cause injury has to be captured too, and why it is 'death, or injury'.

It would apply in cases where there is a serious danger of injury, which is already similar to what is already there, but a little more specific, because it does not have the vagueness of 'directly or indirectly'. I hope that helps clarify that there is not a need that this only applies when there is a risk to someone's life.

This is to capture those other incidents of serious danger of injury and it does have, as the member for Rumney reiterated, that alongside causing that risk, that serious danger, it needs to either be intentional or reckless. The Leader said somebody could do something, they did not care whether it caused a risk- that is not true, recklessness is captured by that.

This covers that you have to intend it or you were reckless to it. I am not sure if that is helping to clarify those matters for some members. To be really clear, it is very similar in terms of what it will capture versus what is there currently in the bill in (2AB), except that it removes the vagueness of directly or indirectly and it requires intention or recklessness.

I have one more call so if there are further clarifications needed, please ask me questions.

Mrs HISCUTT - Why is serious risk used? The phrase 'serious risk' is used in other legislation such as the Commonwealth Criminal Code where it is not defined. The Tasmanian Criminal Code contains the crime of making false threats of danger, which also uses the undefined phrase 'serious risk'. Serious danger is a less common term and is undefined.

Members, the advice I delivered earlier has come from the department and seriously, they are a group of lawyers who have looked and studied this. I urge members to be very cautious with something like this and to please vote against this amendment.

Mr VALENTINE - I can see the intent of this amendment and the original amendment. I hear what the Leader is saying. Why are we constructing this when really, where is the evidence that in fact people have been injured in workplaces and there is a need to legislate for this sort of thing?

Ms Forrest - This is about industrial action. It is not about workplaces.

Mr VALENTINE - We are talking about serious offences, serious risk and all those sorts of things. I do not know if there is huge evidence there.

Nevertheless, I am of a mind to support the drilling down on this, the way of the member for Nelson is doing. I hear what the intent of the amendment is with this. I do hear the plea of the Leader, but with no disrespect to any lawyer in the room, 50 per cent of lawyers are wrong in any one time.

Ms FORREST - It is really important we get back to what this amendment is about. The principal amendment is about providing for those engaging in industrial action, not to be subject to the higher penalty if they do it in a way that does not put anyone at risk.

Personally, if you are going to engage in industrial action, you should not be putting people at risk. People undertake industrial action and I would be happy to hear from the members for Elwick or Rumney who are more versed in various forms of industrial action or industrial campaigns. The ones I have been involved in - and I have been involved in some, some time ago - were peaceful in nature and about doing chanting and ranting, waving placards and things like that, but not actually putting people at risk.

I do not think we should facilitate, by any means, actions that will put the health and safety of someone at risk. I hear the comments around 'caused, directly or indirectly, a serious risk to the safety of the person'. That is quite adequate, because industrial action should not be about 'directly or indirectly'. It should be about raising a workplace issue, raising a concern about staffing levels, about rates of pay, about access to PPE, whatever it is that is related to a workplace.

There may be a different argument to put in terms of the aggravated trespass on its own and I hope that the member is able to make a case again in relation to this. However, I do not think we should be saying that unless someone actually puts someone's life at risk, or serious risk of injury, mental or physical and they did it recklessly during industrial action, we should actually have a lower bar than that. We should actually say that industrial actions should be predominantly peaceful and not even get anywhere near this sort of level of aggravation to be an offence.

If we are allowing industrial action to occur that is riskier than that, we have opened up a whole new level of industrial action I would not be happy to see happening in this state. It is unfortunate the way these amendments have to flow, but I am happy to reconsider this overall intention on the matter of aggravated trespass on its own. However, in relation to people or workers undertaking industrial campaign, action, whatever, they should be always endeavouring to do that in a peaceful way.

That is why I will not be supporting the amendment. I am happy to listen again to the member for Nelson's comments in relation to the aggravated trespass.

Mrs HISCUTT - For clarity, Madam Deputy Chair, both Tasmania and New South Wales used the same term, serious risk, including the New South Wales trespass laws the member for Mersey was referring to earlier. This is keeping acts interpretation that is consistent both within Tasmania and by reference to other jurisdictions. My adviser has pulled up the New South Wales legislation on the Inclosed Lands Protection Act 1901, part 4B, talking about aggravated, unlawful entry on inclosed lands and it goes through a lot of stuff. However, part (1)(b) talks about serious risk. So, back to my original statement, even though the Government was happy with the draft bill as it was, we have come to terms with the fact that we will not oppose this amendment that the member for Murchison has put forward. We think that the member for Nelson's amendment is way too far for any comfort that we would like.

Ms LOVELL - I want to clear up a few things. The member for Nelson can correct me if I am wrong and I do not mean to speak on her behalf, but in considering this amendment to the amendment moved by the member for Murchison, there has been this link being made now

between industrial action and what type of industrial action we are saying is okay and what type we are saying is not.

That is not how I am considering this. The reason I am considering this now, and I know it can be confusing because of the order and the way that these amendments are flowing, but it is similar to a debate we had earlier today where people were asked to consider whether they would disagree with the Government's earlier amendment to enable a debate to happen on the member for Murchison's earlier amendment.

This is not about saying when it comes to industrial action it is okay to put someone at risk, or when it comes to industrial action we only want it to be about serious danger, or death, or injury to a person. This is about consistency of language through the bill. That was the point that the member for Nelson asked us to put our minds to, that while we are debating this now inside another amendment, or as an amendment to an amendment, really what we are putting our mind to is whether we think this is the right language to use in the substantive bill, paragraph (2AB) I believe it is, which would be the next amendment the member for Nelson would move.

I am more comfortable with this, in terms of the language through the bill. In supporting this amendment, that would be the preferred language in (2AB) in that other aggravated trespass offence, to do with causing risk. Supporting this in terms of the industrial action amendment is all about consistency of language and the member for Nelson can speak to that further if she likes.

I do not know if ironic is the right word, but it is bizarre that the Leader is now suddenly calling on the New South Wales legislation, using the same language as a reason why we should oppose this, when the Government was not willing to entertain the same argument in relation to an earlier amendment moved in this debate. I put that on record and leave it to the side.

I will have further to say on other comments by the Leader when we come back to the amendment, but in terms of this, that is what it is about for me. It is not about saying what industrial action should be allowed, or not allowed to do, or what we consider acceptable in terms of industrial action. It is to do with consistency of language and how we think it best captures the Government's intent and our intent around causing risk to a person in aggravated trespass.

Mr GAFFNEY - I thank the member for Rumney, because the Leader has mentioned the inclosed lands, the New South Wales legislation and I was concerned with that, because when I went back and I had a look at where we went wrong in the last one, I was talking about the obstruction of a business. I was saying that the penalty that we had there was similar to the aggravated section in the New South Wales Inclosed Lands Protection Act. Then I was thrown this, yes, it is 200 penalty units and three years, but then you read the bill, the New South Wales act and it talks about being two or three people knowingly, aggravating, making an assault on the person, or inflicting some injuries.

It will teach me next time not to send my rationale around, because we are then looked at - when the member mentioned 200 penalty units, everyone else went, 'Oh, well, maybe that is reasonable' but it was for a totally different aspect. With this one, I am concerned that again, the member for Rumney some time ago mentioned the using of New South Wales in her presentation and it was not accepted.

I am very concerned that we are being given some information that does not truly reflect the debate that we are having, hoping to confuse the issue about the severity of the penalties. I will be accepting the amendment from the member because it fine-tunes it and I am less than comfortable with some of the answers I am getting from the Leader.

Mrs HISCUTT - For clarity, we were talking about the serious offence part as being consistent and all that sort of speak. When I was reading about the penalty units, I also read out the one that said 120 penalty units or imprisonment for 12 months, so I have covered both of them.

Mr Gaffney - But that is agricultural land, which is not comparable to the bill that we are discussing. It is just in agricultural land, so it is not comparable. It is not comparing apples and oranges.

Mrs HISCUTT - I did say it was on specified land and that is what agricultural land means.

Ms WEBB - Madam Deputy Chair, I have my final speak on this and I thank the member for Rumney for clarifying the thoughts there. That is in alignment with my intent and understanding, that essentially this is about harmonising language. We are really talking about (2AB) and whether there is support for that because then in order to align the language, we would make this amendment to the amendment that the member for Murchison is bringing.

We do have a number of instances in the Police Offences Act, as I put in the notes, where the term 'danger' is used and so that concept of a serious danger of death or injury to another person does align already with things that are in the act. That is not to say that the idea of risk might not be in other places in the act but in this instance, this brings it down in a more specific and clear way that is less ambiguous and less vague. Directly and indirectly 'serious risk' is quite vague.

This is about causing a serious danger of death or a serious danger of injury. If we spell it out in that way, it makes it really clear it is both those things, not requiring a danger to life but including a danger to life, as well as serious danger of injury requiring there to be intention or recklessness as to that conduct.

Thank you to members for engaging with it and thank you to the member for Rumney for clarifying some of those things too. I hope that members will consider that this is a fine-tuning and an adjustment that makes this a clearer clause in the bill; more clarity around the bar that needs to be reached.

Mrs HISCUTT - One last time, I reiterate that paragraph (b)(ii) says that even if you do cause serious danger of death, as long as you were not reckless about it, you will not face the aggravated penalty. This is the strong advice that I am getting. Just because that particular person did not turn their mind to the risk that they might be causing, should not mean that they are not responsible for it. That clearly does not strike the right balance between the right of workers to feel safe in their workplace and the right to protest.

I am getting strong advice that that is the case and I wanted to reiterate it one more time. Please do not vote for this amendment.

Ms FORREST - Picking up on the Leader's comments, I wanted the member for Nelson to describe - this is my last call - your last call, is it?

Ms Webb - I have used mine up. I had my last call a moment ago.

Ms FORREST - Maybe you can respond while I am on my feet perhaps.

Madam DEPUTY CHAIR - That is not how we work.

Ms FORREST - The question is, this applies to industrial action too, as well as an aggravated offence. My concern is you put it in here, it will apply to this, as well as to the aggravated offence.

I will try to read it in context, my amendment as well. I am going to read it in full, to try to make it make sense.

Subsection (2AA) does not apply in relation to an offence committed by a natural person if the court that convicts the person of the offence

So, they have already been convicted. Okay.

is satisfied that -

They have already committed the offence and now the court has to be satisfied that -

- (a) the offence was committed in the course of the person being engaged in an industrial dispute or an industrial campaign; and
- (b) the person did not, by or while committing the offence engage in conduct that caused serious danger of death, or injury, to the other person; and

If the person did engage in a conduct referred to in paragraph (b), that is what they call serious harm or risk of death or injury to the other person, if they did not intend to cause that serious death or injury, and they were not reckless about it.

I share the Leader's concern around this, in that we should not be putting in this provision. Let us get away from the industrial action for a minute. They have already been convicted of trespass. Then the court is deciding whether they intended committing that offence. They actually have hurt somebody, quite seriously. They intended to hurt someone really seriously. I do not think there are many people, I hardly know anyone who engages in protest action, not people I know, who intend to hurt anybody anyway - and they were reckless about it.

To say that for someone who actually has hurt somebody, surely that is where we should draw the line.

Ms Webb - That would apply. While you are on your feet, if I may? If they have hurt someone, a different offence will apply. At that point in time that they have hurt someone, it is not going to be trespass or aggravated trespass we are talking about. It is going to be assault.

Ms FORREST - Why do we need this?

Ms Webb - We need this because this is about if you cause a serious danger of death. We are talking when people are causing a danger.

Ms FORREST - It is only an aggravated offence.

Madam DEPUTY CHAIR - Order. This is not the process that we follow.

There are three opportunities to speak. I have lost mine at various times.

Ms FORREST - The concern is that if a person has caused serious harm to somebody. It is not really an issue unless they intended to do it and they were reckless about it.

I have already said in my previous contribution on this amendment, that would trigger other offences like manslaughter or grievous bodily harm, or whatever. This is creating a situation where someone already convicted of trespass is subject to some sort of penalty now, but to get a higher penalty, they have to actually intentionally and recklessly hurt somebody. To me, that is not okay.

Madam DEPUTY CHAIR The question is that the amendment to the main proposed amendment be agreed to.

The Committee divided -

AYES 4

Mr Gaffney
Ms Lovell (Teller)
Mr Valentine
Ms Webb

NOES 7

Ms Armitage
Ms Forrest
Mr Harriss
Mrs Hiscutt (Teller)
Ms Howlett
Ms Palmer

PAIRS: Mr Duigan, Mr Willie

Amendment to proposed amendment negatived.

[5.38 p.m.]

Ms FORREST - Essentially, we have covered the substantive debate. I appreciate the Government's lack of opposition to it and urge members to include this in there for the reasons we have outlined and ensure industrial action is able to be conducted without that higher penalty unless there is action being taken that puts people at risk. There is a bar there and there are people who are protesting - particularly, in the industrial sense - who I know do not seek to hurt others. If they do, then that is the matter for the court to decide as to what level of penalty they should suffer as a result.

Ms LOVELL - Madam Deputy Chair, I am flabbergasted - I cannot think of another word to describe it - that the Government is supporting this amendment. Do not get me wrong. I am pleased, but I am shocked and I have to say it is probably pretty lucky the member for Nelson got the call before me because it has given me a few minutes to gather my thoughts and take a few deep breaths.

I ask the Leader to again clarify, because I did not hear one of the reasons she has given, why the Government is prepared to support this amendment when they were not prepared to consider an amendment in a previous debate. I want to correct the record on one thing. This might be a little out of order and I hope that the Deputy Chair will allow leeway here.

I heard very clearly from the Leader that one of the reasons they will support this amendment and not the one put by me earlier was because it made it clear that this amendment did not apply to industrial action that put people at risk. That the exemption in there to say that this exemption for the higher penalty does not apply if in the course of trespassing and taking industrial action, somebody was put at risk.

My amendment did exactly the same thing. I would like the Leader to correct that on the record because it could not have been clearer that my amendment, the exemption to the higher penalty for trespass when obstructing a business or undertaking if you are undertaking industrial action or industrial dispute or an industrial campaign - from memory were the three reasons - did not apply to action that put somebody at risk. I am really shocked that the Government is supporting this because they were so adamantly against supporting my amendment.

What a waste of time and energy for all of those people who had to spend eight weeks lobbying people to get this back on. I want to understand from the Leader why the Government suddenly sees fit to support this amendment.

Madam DEPUTY CHAIR - Leeway granted.

Mrs HISCUTT - I will not repeat what I said earlier for fear of being accused of repetition. The member for Rumney can read that in *Hansard* later but I will add that Labor's amendments did not refer to serious risk. The member for Murchison puts beyond doubt that serious risk in industrial action is not included.

Ms WEBB - I rise again to put on the record my intention in terms of voting on this amendment. I agree with the member for Rumney, that it is strikingly similar to the member for Rumney's amendment that was considered last time. We were considering this clause and, in the interests of consistency, because I am voting on a principle here, so that does not change, I voted against the amendment proposed last time to carve out industrial action campaigns, disputes to protect that from the aggravated penalty. I voted against it then and I will be voting against it now for the very same reasons.

It is discriminatory. It is interesting that the Government made that case very clearly last time in relation to the amendment put by Labor, interesting that that does not seem to bother them whatsoever this time, that it is discriminatory even though the discriminatory elements have not changed. There might be some nitpicking about whether the risk to safety elements have changed between the previous and this one but certainly, the elements that are

discriminatory in that it is protecting one form of action over all other sorts of protest action remains exactly the same.

The Government is clearly in a position of appearing to be quite hypocritical here, but that is the way trading goes, I suppose. My position has not changed. My principles are the same. I am voting on the principle. This is discriminatory and I will not be supporting it.

Ms LOVELL - Again, I put on record that I am disappointed that the Leader did not answer the direct question that I asked, for fear of being accused of repetition. I would only say that the Deputy Chair has been very lenient in allowing this debate to take place in a way that means people can be fully informed. I will be going back to have a look at the *Hansard*, unless the Leader answers the question now and if there needs to be a further correction of the record I will get up at my earliest opportunity and ask for that.

I can tell you now that my amendment clearly said, subsection (2AA) and (2AC) do not apply to a person and it went on. I will not labour the point, but it was very clear, not only from my amendment, but from my contribution. If the Leader would like to check *Hansard*, or for all those people who apparently read *Hansard* to make decisions about things, that was very clear.

Again, I am disappointed that we have had to get to this point before the Government would consider an amendment along these lines, and I ask the Leader one more time to explain the reason for supporting the amendment, because I did not hear it in the first response and I am asking for clarification. If the Leader does not wish to give that then I will go to *Hansard* and have a look at it, and I will be supporting the amendment.

Madam DEPUTY CHAIR - I indicate that I am not entertaining this discussion any longer, so if the Leader would like to respond.

Mrs HISCUTT - The difference is that the member for Murchison's amendment specifically includes 'serious risk' and explains it and that is the difference.

Mr HARRISS - Like the member for Nelson, I also did not support this last time, or the same sort of amendment. I agree with the member for Rumney, she is right in saying about the Government, whether they are changing their mind, or viewing it differently. I cannot see where the difference is, so I can understand why she is frustrated, or cannot get that answer. When she gets that answer from the Government she can email me that response and I will take note of it. My position in the original was to not support this, for the same reasons as the member for Nelson, whether you call it privileged people, or what not, so I will not be supporting it.

Mrs HISCUTT - Madam Deputy Chair, give me a little bit of leeway for repetition, I have a couple of paragraphs that might aid the member for Rumney, it is very short. So, our concerns -

Madam DEPUTY CHAIR - I can absolutely assure the Leader that that will be the end of this discussion.

Mrs HISCUTT - Our concerns also related to the breadth of the previously debated amendment, which included the aggravated trespass penalty from both industrial action and

any actions at all committed by workers trespassing on their workplace, even if they were unrelated to industrial action. In that context, the present amendment is restricted to industrial matters only, which is an improvement.

Mr VALENTINE - I want to make it clear as well. I did vote against Labor's amendments the last time they came up for reasons of discrimination and I have not changed my mind on that. I may well have tried to create a more pointed circumstance on the previous amendment to the amendment, but I would not have voted for the amendment at the end of the day. I cannot support it because of its discrimination. It is a principle issue and it is the way I think.

Ms FORREST - I want to address the matter of the discriminatory impact of this. Workers in Tasmania encompass a very large number of Tasmanians. It is not like they are a tiny group. It is workers employed by the state, workers employed in the private sector. It is all workers, so it is broad and encompassing. Normally, discrimination is to treat someone differently based on an attribute and I understand that, but workers are very large in number, it is not an attribute as such, it is what they are doing.

I did make mention of this previously in the contribution that sometimes we do make laws that prevent certain actions in certain places. We have prevented protest outside abortion clinics - not that we have any in Tasmania at the moment - but we did bring in that legislation, saying it is not ok for people who have a fundamental opposition to termination of pregnancy to protest outside a clinic.

They had to be 150 metres away and it was deemed appropriate. However, the number of women seeking a termination of pregnancy is not large, but it is not insignificant either and we sought to protect them. Not only the staff and women, but we sought to protect their families, we sought to protect the workers who worked in those clinics. We know from those members who were around at the time in 2013, when Jo Wainer talked to us about one of their security guards outside the clinic being murdered.

There are reasons why sometimes we put in place mechanisms that treat a sector differently. In this case we were saying to the people who have a fundamental opposition to abortion you cannot protest here, you can protest over there or do it in this way, but you cannot do it there.

This is saying that workers who are taking action in relation to industrial matters, matters that relate to their workplace, should not suffer a higher penalty while they are doing that, even if it does obstruct a business unless they put someone at risk, and that is the bar. It is not discriminatory in the sense that we understand discrimination, it is the same sort of provision we put into our termination of pregnancy bill.

Ms WEBB - I will clarify with a couple of comments to respond to that suggestion from the member for Murchison. I do not agree that this is an analogy to make to that earlier bill. It does not help us to try to stretch that analogy; it is a different circumstance altogether. The reason I say this is discriminatory is because what it is saying is, we are going to protect from that protest action, if that is industrially related in a workplace where there is trespass occurring, we are going to protect that action from the aggravated offence, but not other forms of protest action that might be occurring on a private area or a place that attracts trespass.

That is the discrimination. Yes, workers do make up a large portion of Tasmania and that is not the discrimination, it is the action that is the discrimination carving out that particular form of protest action. What you could have is a Tasmanian, who is a worker, who does not attract the aggravated penalty if they trespass while they are engaging in industrial dispute. They are protected from the aggravated penalty for their trespass that they are picked up for there. But if they protest on an issue they care passionately about in their private capacity and are engaged in trespass and get picked up for trespass, they can attract the aggravated penalty there for the same behaviour, but in different circumstances. One, because they have an industrial hat on while they are engaging in a protest and one, when they are a private citizen.

Yes. Workers are many Tasmanians and they exist in their working and private capacity and this is discriminating against similar actions that they take under those two different scenarios. That is the element that is discriminatory here, that we are giving protection to one kind of protest action that we are deeming to be somehow better, more appropriate and more allowable to protect it from an aggravated penalty, but we are leaving all other forms to the wolves on that aggravated penalty.

I hope that is a better explanation of why it is discriminatory and the basis on which it is discriminatory and not comparable to the example the member for Murchison was using.

Mr VALENTINE - For clarity, I used this analogy in the first instance today when we started this bill, but the discrimination side of it comes - and I use an example of the Public Trustee, and I apologise to them - but if it was a worker at the Public Trustee who had a problem with the way they are being dealt with, it could be considered an industrial dispute. However, if somebody is a victim of decisions by the Public Trustee and they were to protest in a similar manner, they would be subject to an aggravated charge. That is why it is discriminatory. I reiterate that. I may have used that analogy in the wrong instance in the first amendment the member for Murchison put today and I acknowledged that at the time, but this is the circumstance where there is discrimination.

Madam DEPUTY CHAIR - The question is that the amendment proposed by the member for Murchison be agreed to.

The Committee divided -

AYES 7

Ms Armitage
Ms Forrest
Mrs Hiscutt
Ms Howlett (Teller)
Ms Lovell
Ms Palmer
Mr Willie

NOES 5

Mr Gaffney
Mr Harriss
Ms Rattray
Mr Valentine (Teller)
Ms Webb

Amendment agreed to.

[6.00 p.m.]

Ms WEBB - Madam Deputy Chair, we have arrived at the core amendment that I was intending to bring to this bill, which we have somewhat discussed already, I appreciate, in the context of the awkward situation earlier where we had to consider it in relation to another amendment.

Now we are at clause 5. I will read it in.

Clause 5 - as further amended

I move the following amendment to clause 5, page 7, paragraph (d), proposed new subsection (2AB):

Leave out "that the person, by or while committing the offence - " and paragraphs (a) and (b).

Insert instead the following:

that -

- (a) the person, by or while committing the offence, engaged in conduct that caused serious danger of death, or injury, to another person; and
- (b) the person -
 - (i) intended the conduct to cause serious danger of death, or injury, to another person; or
 - (ii) was reckless as to whether the conduct was likely to cause serious danger of death, or injury, to another person -

I outlined my rationale for that earlier and we have had some discussions around that already. We are now considering it in its pure form here on this part of the clause. I am quite happy to answer further questions or give further clarifications that may be necessary. I do not know that I need to re-prosecute the core case for it, other than to say this is to clarify the bar that needs to be reached to bring in that element of intention or recklessness, to capture the behaviour there. I will try to hold on to my speaks, at least my third speak on it if necessary and appreciate if other members, if they do have things they would like clarified, would make it before I make my third speak.

Mr Valentine - Point of order, Madam Deputy Chair. The last part of that amendment was not read. The person is liable to a penalty not exceeding 50 penalty units.

Ms WEBB - That's not an amendment that I am making.

Mr Valentine - It is in your receipt.

Madam DEPUTY CHAIR - Clause 5, the amendment, Ms Webb.

Ms WEBB - You might have a version from the last time we considered the bill.

Mr Valentine - I might. Apologies, if I have.

Ms WEBB - It was recirculated this time around.

Madam DEPUTY CHAIR - This one is 9.25 a.m. on 24 August, number 3. Is that helpful?

Mr Valentine - That is the problem. Sorry about that.

Mrs HISCUTT - Madam Deputy Chair, the Government does not support the amendments moved here in this amendment clause. It is for the same reasons as the last time. I do not believe I need to read them in again. I was fairly clear on how the Government felt about the last one. These are the same reasons.

Madam DEPUTY CHAIR - The question is that the amendment be agreed to.

The Committee divided -

AYES 4

Mr Gaffney
Ms Lovell
Mr Valentine
Ms Webb

NOES 7

Ms Armitage
Ms Forrest
Mr Harriss
Mrs Hiscutt
Ms Howlett
Ms Palmer
Ms Rattray

PAIRS: Mr Duigan, Mr Willie

Amendment negatived.

[6.09 p.m.]

Mr GAFFNEY - Thank you, Madam Deputy Chair. I move -

Clause 5 -

Second Amendment

Page 7, paragraph (d), proposed new subsection (2AB).

Leave out "the person is -" and paragraphs (c) and (d).

Insert instead "the person is liable to a penalty not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months."

To some extent, there are two parts to this amendment. It is difficult to prosecute a case for the first part when there was no movement with the previous amendment, but I am going to try anyway.

I only have three speaks on this for (c) and (d).

Madam DEPUTY CHAIR - You might encompass them all, to cover the field.

Mr GAFFNEY - It would be helpful when people were speaking to it, they speak to the field not just to one or other, as well.

Whilst it is acknowledged that the offence which has potential to cause harm is more serious than the previous situation, regarding obstruction, I still believe the current proposed maximum penalty of 75 units - approximately \$13 575 - or imprisonment for a term of 19 or 18 months is disproportionate when compared to penalties to other offences under Tasmanian law.

For instance, a person would receive a similar penalty for obstructing a crime scene. In the current principal act, section 63C already allows a failure to follow direction from a police office in relation to a serious incident is a fine not exceeding 40 penalty units, \$7240.

In incidents to do with the workplace protection, I am not certain how this offence has been used. However, in a meeting with the Attorney-General and the minister responsible for workplace safety and staff, the question was asked, how many incidents that have occurred since 2014, when the Government was first elected, have been reported where protests on worksites have caused injuries to workers or protest? The answer was there have been no injuries reported or workers compensation claims in relation to injuries to workers or protesters on forest protest sites or any protest sites. Thus, the principal argument put forward for this bill is to protect protesters and workers from injury. However, there is no evidence that any injury has occurred as a result of such a protest. Nor am I aware of any report or assessment, independent or otherwise, that suggests this bill would reduce the hypothetical risk of injury. I hope members support decreasing the penalty from 75 and imprisonment down to 50.

Paragraph (d) is slightly different. The intent of this part of the amendment is to remove the provision for greater penalties to apply in the case of a prior conviction. Under the current bill, 125 penalty units or \$22 625 or imprisonment not exceeding 30 months if they have a prior conviction. The community members who feel as though they have no alternative but to protest an unjust cause or situation or industrial action and there is an injury, they may be impassioned to do that a number of times. For instances, people are impassioned about human rights, social justice, climate change, fracking, nuclear power, destruction of habitat and indeed, as witnessed recently in finfish farming, will protest more than once and there may be an indirect safety issue with their protest. Yet, this penalty is drafted to carry a greater penalty than drugging another person, which is only 100 penalty units and/or two years imprisonment; or setting fire to a property which is 100 penalty units and/or two years imprisonment. It carries a greater financial penalty than assaulting a police officer, which is 100 penalty units or three years imprisonment.

The penalty being imposed by the Government is excessive. It should also be appreciated that when sentencing in courts, judges take into consideration prior offences and all application circumstances when determining the penalty to be applied. As such, it is unnecessary to include

a provision for higher penalties in the case of prior convictions. It is my understanding judges already have that information anyway. I would hope that members support the amendment which changes (c) and removes paragraph (d).

Mrs HISCUTT - I stress the current law today has a maximum penalty for most kinds of aggravated trespass at 50 penalty units and 12 months imprisonment, the same as the member for Mersey's amendment. For example, if a trespasser drives onto private land today, that is an aggravated penalty, with that maximum of 50 penalty units and 12 months imprisonment. This is also the same as previously discussed when a hunter trespasses on a farm with a firearm or other trespassers with a firearm. However, those penalties are currently the same whether or not serious risk is caused. A serious risk relates to the possibility of injury and death. The law should recognise that creation of serious risk to others is objectively different from simply driving onto land or carrying a firearm onto land. An even higher penalty for repeat offenders is also merited and provided for in the bill as drafted.

Honourable members, I urge you not to support this amendment. Bearing in mind, that we are talking about serious risk here. It is not just driving a car onto a private land and whilst on my feet and the judge makes the call, this is a maximum.

Ms FORREST - Madam Deputy Chair, in some respects it is a shame this amendment is drafted this way and not two separate parts. Amend part (c) and leave out (d) for example. We can actually separate out the arguments here, which makes it a little bit hard to actually address. You have to either support it or reject it, which makes it a bit awkward. I am making that point.

I hear the Leader's comments on some of their current penalty provisions. What the member for Mersey is proposing is for an aggravated trespass, where someone actually causes a risk to the safety of the other person. The aggravated penalty for that would be the same as a person in respect to entering or remaining in a dwelling house, okay. That is the same penalty. We are talking about home invasion. Home invasion is pretty frightening, pretty threatening. I have some sympathy for the member for Mersey on this. Having it lined up with that same sort of penalty for putting someone at risk. If you go into a private home, a home invasion, then that would be the penalty you would attract. If you put someone at risk out on the street, or in a business, or wherever and you do not have to actually have to harm them, you are just putting them at risk of harm, then what the member for Mersey is suggesting is 50 penalty units and 12 months. It is the same as the home invasion, effectively, so I do not think that is an unreasonable request.

The repeat offences which is in the bill clause (d) is if a person has been previously convicted of an offence to which the subsection applies - liable to a penalty not exceeding 125 penalty units, or prison not exceeding a term of three months. That is what the Government is proposing for repeat offenders. It does seem an awfully steep penalty for repeat offenders.

Mr Gaffney - 30 months, not three.

Ms FORREST - Did I say three? Sorry, 30. This has raised concern for many people. This is the aggravated trespass and I seek some clarification from the Leader with regard to this. Is the aggravated trespass where it is repeat offenders of aggravated trespass when it applies, or is it repeat offenders of the trespass provisions in this bill? If people are continually putting the health and safety of others at risk then maybe you do need to step up in the penalty

here. This far, I would argue not. Maybe that should be the 75 and 18 months for repeat offenders. That is why it is a bit awkward to actually accept the amendment or reject it outright. I need the Leader to indicate to me how (d) is intended to apply. If it applies to - it does say subsections (2) to (2AA), so it applies to all of them, not just the one where the person committing the trespass actually imposes a serious risk to their safety.

If that is the case we might need to alter the amendment. I know that will slow things down. Things are possible. It is not a massive change. It is amending (c), as you have suggested, member, and then amending (d) to perhaps put the penalty that is in (c) currently. I hope I have made it clear and you understand what I am saying here. You are right, member for Mersey, it is tricky that they are both in together because they cover separate matters and it is not unreasonable to expect the aggravated penalty to be as commensurate with a home invasion penalty.

Mrs HISCUTT - A repeat offender penalty only applies to previous convictions involving serious risk and as I have said the serious risk relates to the possibility of injury and death and it should be a severe penalty. Having said that, it is up to the judge. This is a maximum. It is up to the judge to take into account all the factors relative to the case and to make the call. It is up to judge, but this is the maximum.

Ms WEBB - I am interested to see these things split out as it would be interesting to deal with them separately as they are separate matters. I agree with the proposed amendment in relation to the penalty units brought to bear here in part (c). It is reasonable to align it appropriately.

In terms of (d), if the person has previously been convicted of an offence to which this subsection applies, liable to a penalty not exceeding 125 penalty units or imprisonment not exceeding 30 months, is really significant. I would be interested to know, to clarify for us here on the record, in any other instances of aggravated offences that relate to trespass, is there a similar part that relates to multiple convictions and escalating penalties and what are those? Then we can see how that aligns with this proposal in (d), and how it aligns with the amendment intention to get rid of that. Is in fact getting rid of (d) more aligned with what is already there about aggravated offences relating to trespass?

Madam DEPUTY CHAIR - For members' information, if the member was of a mind to attempt to split the amendment, then he would need to seek leave to withdraw, and then the Leader would have to report progress. For your information in regard to process while you are sitting there contemplating. It is a matter for the member whose amendment it is.

Mrs HISCUTT - I will make a comment before the member for Mersey makes his decision. Currently, there are no repeat trespass penalties in Tasmania, but there are repeat penalty provisions for other offences in Tasmania. I ask members to bear in mind that we are talking about a serious risk which relates to the possibility of injury or death. Bear that in mind when you are making this decision. Also, the judge has the final say on that. This is the maximum and the penalty should be set to reflect that it is a serious risk that relates to the possibility of injury and death.

Mr GAFFNEY - I seek leave to withdraw the amendment and look forward to redrafting (c) and (d).

Madam DEPUTY CHAIR - We will need to have some indication from the Leader whether she is prepared to.

The question is, is leave granted?

Leave granted.

Amendment withdrawn.

[6.25 p.m.]

Mrs HISCUTT - Madam Deputy Chair, I move -

That we do report progress, and seek leave to sit again.

Progress reported; Committee to sit again at a later hour.

SUSPENSION OF SITTING

Mrs HISCUTT - Mr President, just gauging the feel of the Council. Will we have a short break or will we have an hour's dinner break? How do members feel? Mr President, I move -

That the sitting be suspended until the ringing of the Division bells.

This is for the purpose of a dinner break, which will be about an hour.

Motion agreed to.

Sitting suspended from 6.26 p.m. to 7.53 p.m.

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

In Committee

Resumed from above.

Clause 5 - amendment

[7.54 p.m.]

Mr GAFFNEY - Madam Deputy Chair, I would appreciate if all members have version four of the amendments dated 7.30 p.m. 24 August in front of them.

Mr Valentine - Or 7:43 p.m.?

Mr GAFFNEY - Okay, they sent it to me first but it is the same one. I will read in the second amendment because we have dealt with the first one on the page and that one was lost.

Madam Deputy President, I move a second amendment to clause 5 -

Page 7, paragraph (d) proposed new subsection (2AB), paragraph (c).

Leave out "75".

Insert instead "50".

I will talk to second, third and fourth amendments so that you have an overall picture of what is happening; and then we will debate, and I will then read in the third and fourth ones after that.

You can see from the first amendment that it was 50 penalty units or imprisonment for 12 months. I said before the break I thought that was too difficult or too punitive but there is a distinct difference between a first obstruction impeding than there is for serious or indirect harm. The second amendment is keeping the penalty the same - the 50 - but increasing the imprisonment time to 18 months. As the Leader said, the judge usually has the discretion. Usually on the first offence the judge would possibly go 20 or 25; it would not probably be the full extent. By keeping it at 50 it does show that the judge could take it all the way to the 50 penalty units but also increase on the seriousness of the event the imprisonment term from 12 months to 18 months. That is the staggered impact of a more serious occurrence.

Amendments 3 and 4 are similar in the fact that it has gone from 125 penalty units down to 75, and from 13 months to 24 months but we separated those so that people have a chance to debate or discuss both those.

Picking up on the member for Murchison regarding the home invasion, there are some analogies between this and that one.

I am moving the second amendment as stated and hopefully members will support that.

Ms FORREST - Madam Deputy Chair, in terms of consistency, which is what we are trying to achieve, the offence for home invasion is 50 penalty units, which you have achieved here. In the bill, in (c) it is 18 months, and the home invasion is 12 months.

Mr Gaffney - While you are on your feet. The bill has 50 and 12 months for impeding and obstructing and we thought the next one, which had a serious risk, needs to be a little bit more.

Ms FORREST - I wanted to clarify it because it is not entirely consistent.

Mr Gaffney - It was to do with the seriousness.

Ms FORREST - I wanted to clarify it because the financial penalties are the same as a home invasion.

Madam DEPUTY CHAIR - I am allowing some latitude because I know that the member only has three speaks here. I am allowing a little bit of latitude, but this is not normal practice.

Ms FORREST - On that, Madam Deputy Chair, I thank the member for doing this and spreading it out it makes it much easier to consider each matter on its merits. I am in a position to support this as it does bring it in line with that consistent approach with a penalty similar to home invasion. I will support the amendment.

Mrs HISCUTT - Madam Deputy Chair, firstly, I thank the department advisers who worked with the member for Mersey on this. However, we do still like the bill as it was first drafted. We prefer the amendments that were there, and the penalties. The penalties that were in the original bill reflect the gravity of the serious risk to safety. Having said all and done that, we do not support the lowering of penalties. What is in the draft bill is a maximum, and the judge decides depending on the gravity of the situation and the defence put forward.

We feel there is no need to change the penalties because they are a maximum and the judge has the final call and the penalties have to reflect the gravity of the seriousness of the situation to safety.

Madam DEPUTY CHAIR - The question is that the amendment be agreed to.

The Committee divided -

AYES 8

Ms Armitage
Ms Forrest
Mr Gaffney
Mr Harriss
Ms Lovell
Ms Rattray
Mr Valentine
Ms Webb (Teller)

NOES 3

Mrs Hiscutt
Ms Howlett (Teller)
Ms Palmer

PAIRS: Mr Duigan, Mr Willie

Amendment agreed to.

[8.04 p.m.]

Mr GAFFNEY - Madam Deputy Chair, I move -

Third amendment

Page 7, paragraph (d), proposed new subsection (2AC), paragraph (d).

Leave out "125"

Insert instead "75"

That is still a sum of \$13 575 which is still significant and when we looked at this before, a number of people in here felt that penalty was quite severe in relation to other offences I outlined, so I will not go into that.

Noting then the fourth amendment will actually run into that same paragraph (d). So, be aware that I will move the third amendment. Hopefully people will support that, and then I will stand up and move the fourth amendment.

Mrs HISCUTT - Thank you, Madam Deputy Chair. I will reiterate what I had said before with the other amendment. I will not labour on the facts. It will be the same for all these amendments. I will not be calling a division on it, because I can read the room, but I would like it known, that had I had plenty of time I would have.

Amendment agreed to.

[8.05 p.m.]

Mr GAFFNEY - Madam Deputy Chair, I move -

Fourth amendment

Page 7, paragraph (d), proposed new subsection (2AB), paragraph (d).

Leave out "30 months".

Insert instead "24 months".

I apologise; on the top of my list was to thank the minister's adviser and OPC for their work during that dinner break. Thank you.

Amendment agreed to.

[8.06 p.m.]

Ms FORREST - Madam Deputy President, I wish to move what is my third amendment in my list of amendments. I move -

Third amendment

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

Leave out "is satisfied that the person, by or while committing the offence -" and paragraphs (a) and (b).

Insert instead the following:

is satisfied that -

- (a) the person, by or while committing the offence, substantially impeded, or prevented, another person from carrying out lawful work; and
- (b) the person, by or while committing the offence, intended to substantially impede, or prevent, a person from carrying out lawful work -

I have previously stated the reasons for this amendment. The reasons are the same for including them here. It is about workplace protection. It is about ensuring workers are not unnecessarily impeded from getting to their workplace. It narrows it down, rather than a broader 'obstructing a business', which may inadvertently capture a range of other people.

I do not wish to labour the point. The comments made earlier in the debate are the same for this amendment, and I urge members to support it as they did the previous one.

Mrs HISCUTT - Madam Deputy President, for much of the same reasons as I have already outlined in respect to the first amendment, we still do have some concerns that it is already challenging to prosecute body corporates under the law, and the requirement to provide an intention adds to this challenge.

However, in the interest of progressing the bill, we will not be opposing the amendment.

Amendment agreed to.

[8.08 p.m.]

Mr GAFFNEY - Madam Deputy President, I move -

Fifth amendment

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

Leave out "600 penalty units".

Insert instead "250 penalty units".

250 penalty units is still \$45 250, so it still a significant sum. I considered that the proposed penalty of 600 penalty units was excessive and disproportionate.

A natural person would face maximum penalty of 50 penalty units, approximately \$9050, or imprisonment of a term not exceeding 12 months, whereas a body corporate would face a maximum penalty of 600 penalty units, approximately \$109 800.

The Leader's second reading speech highlights the concerns that the actions are unacceptable, and our laws and penalties must clearly deter this behaviour and support people going about their lawful business.

The Government has also articulated that this bill is for the safety and protection of workers and protesters. I find it interesting that the very bodies that assist protesters in very real situations about safety rules and guidelines, are indeed the very organisation that the Government seeks to financially impact.

Many of the corporations receive finance to do their work via fundraising, donations and philanthropic means. I do not think the 600 penalty units has a lot to do with personal and individual safety. It is purely for the Government to play a heavy-handed role to try to financially cripple recognised corporations and foundations.

Similar anti-protest laws recently legislated in New South Wales and Victoria contain no provisions for greater penalties to apply to body corporates. In the extended fact sheet, the minister has not provided an explanation for the significant penalties proposed in relation to instances of trespass committed by body corporates. The proposed penalties under this subsection are far greater than for any other offence under the Police Offences Act 1935. It increases the penalty from simple trespass by 24 times. No other penalty units in the Police Offences Act 1935 are set so high. In fact, at 600 penalty units it is four times higher than the current highest penalty unit within the act.

This penalty is also significantly higher than similar offences in other jurisdictions. I did initially have the penalty at 75, but on reflection and discussion with people, that was possibly too low. Therefore, it has a similar reflection with the Queensland corporate laws.

The other thing that is interesting is the Crimes Act 1914. The Commonwealth provides that a court may impose, if the contrary intention does not appear and the court thinks fit, a pecuniary penalty not exceeding five times the maximum penalty that could be imposed on the individual. The Crime Act 1914 includes an offensive trespass on Commonwealth land of 10 penalty units.

I think 250 penalty units reflects the arrangements previously in the bill and will also mean that whilst corporations will find that difficult to find that money - because \$45 000 is significant - it is much more within the ballpark than \$109 000. I hope members support the amendment.

Mrs HISCUTT - I reiterate there are several reasons why the penalty for companies are higher than that of a natural person. For example, it accounts for the fact that a body corporate cannot be imprisoned. It accounts for the fact that often, body corporates will have a higher capacity to pay than a natural person. It also acknowledges that some body corporates will consider financial penalties a cost of doing business. The maximum penalty needs to be high enough that is still capable of acting as a deterrent.

As has been emphasised in respect of the natural person's penalties, this is the maximum. It is certainly not to say it is a penalty that will be applied in every case. It sets the limit and it is for the magistrate to determine where, within that range, that particular offending and that particular offender falls. We therefore oppose the amendment because it is a different category than a natural person.

Mr VALENTINE - Something the Leader said about a body corporate not being able to be imprisoned is of interest. I suppose the amendment is about the 250 penalty units versus the 600 penalty units, I realise that. I would like some clarification, because is it intrinsic in this (2AC) that it is simply not just changing the penalty units and that the imprisonment still applies?

Mrs HISCUTT - It is making it clear that a company cannot go to prison.

Mr VALENTINE - I expect that.

Mrs HISCUTT - The only thing you can do is fine, therefore, the higher the penalty - bearing in mind it is up to a judge - the bigger the deterrent.

Mr VALENTINE - Thank you for placing that on *Hansard*. It makes it clear that it is not the case. I support the member's change to 250 penalty units.

Ms FORREST - I have to acknowledge you cannot jail a body corporate - although sometimes we might like to - but you cannot, it is a thing, not a person.

Mr Valentine - I realise that.

Ms FORREST - You cannot put a thing in jail.

Mr Valentine - It does not make it 100 per cent clear.

Ms FORREST - It does if you read the rest of the police offences bill. Anyway, I am not going to argue about that, I make the point that it is appropriate that there is a higher penalty for a body corporate. However, the Leader's comment that body corporates have more capacity to pay is not necessarily true.

Sometimes in these matters I think about the Women's Legal Service, for example, or some other volunteer organisations - or predominantly volunteer - that are incorporated bodies, that undertake some protest action, for example, and a bigger crowd than expected turns out and they fall foul of this legislation. They do not have hundreds of thousands of dollars in their bank; some organisations do, yes, that is true. Some organisations will use these sorts of things to raise money. We know that, but we need to be thinking about the broader impact of this.

I accept that the court, or judge, will make the determination but the parliament sets the parameters, and that is what we are doing here; we are setting the parameters of what generally will be a community expectation. We could argue higher, lower, up, down, whatever, but when we are talking about some of these small, hardworking organisations that provide services to people and seek to engage in some of the areas that I would suggest warrant a response at times - and I can imagine with the *Roe v Wade* decision in the US, if anything like that happened here, I can guarantee the Women's Legal Service and many other small services would be out there with hundreds of thousands of people behind them and possibly blocking all sorts of things. They do not have \$100 000 in their bank, so that is why I am talking about finding that balance between trying to address a very real challenge but not capturing other people in it who really should not be.

I do not doubt that there are some organisations who make protest their business, in fact, in many respects, they may be well cashed-up, but this applies to everybody. That is why I support the member for Mersey's amendment here. If it proves to be terrible and does not work as a disincentive, then I do not know that actually raising it much higher will actually make much difference. We have higher penalties for serious crimes. With rape and murder it is 21 years imprisonment for the person, obviously, but corporations do not rape either and they do not murder. It is people who are responsible for those crimes. We set the standard and in setting that standard - or the parameters, if you like - we need to consider all the people who may be caught up by that, and some of them inadvertently.

Amendment agreed to.

[8.19 p.m.]

Ms FORREST - Madam Deputy Chair, this is now my fourth amendment. I move -

Fourth amendment

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

Insert the following proposed new subsection:

- (2AD) Subsection (2AC) does not apply in relation to an offence committed by a person that is a body corporate if the court that convicts the body corporate of the offence is satisfied that -
 - (a) the offence was committed in the course of the person being engaged in an industrial dispute or an industrial campaign; and
 - (b) the person did not, by or while committing the offence -
 - (i) cause, directly or indirectly, a serious risk to the safety of the person or another person; or
 - (ii) take an action that caused, directly or indirectly, a serious risk to the safety of the person or another person.

This basically removes that higher penalty for a body corporate where the action taken relates to industrial action. In my view, we should treat the body corporate the same as we treat the person in this circumstance. I know talking to a number of unions and others who represent people who undertake industrial action - it is not always unions, there can be others as well - but these are not often many highly cashed-up organisations. It provides that same protection. The aggravated offence in (2AB) applies when people do pose a risk to the safety of another person. I will not prosecute that whole argument again but that is the explanation for this amendment.

Mrs HISCUTT - Again, the Government's position with respect to the fourth amendment is the same as to the second amendment. We feel that it is unnecessary. We feel that the way it was drafted is okay. We will not oppose it in the interests of progressing the bill.

Ms WEBB - I am going to put on the record similarly to the amendment that we dealt with similar to this in relation to individuals and now this one relates to body corporate - I am going to make the point that it remains discriminatory. I am going to provide an example that would have been a good one to provide back then if I had thought of it in time but I will provide it in the context of this, a little more complex with the body corporate element, but you will get the gist.

What this carve-out means, this discriminatory carve-out for unions or others involved in industrial action but it is typically in terms of the body corporate who is instigating or encouraging people to be involved in an industrial dispute that would be captured by this, it is like the unions but carving them out. We could have a situation where you had a business and that business, at the same time, has an industrial dispute issue with its workers and they decide

to go onsite and block the entrance so that workers cannot come, which is what is required here, to be protesting about their industrial internal issue on that workplace. They would be subject to trespass, which is the first thing that they have to be for this. They would be blocking and impeding people going to work but because of this amendment they would be carved out and not at risk of the higher penalty, the aggravated offence.

At the very same time, on the very same day, the exact same location in that business you could have protesters who have an issue with the corporate entity, the business they are going about who want to protest about that business. They could come and they could occupy the site and block the entrance right alongside those workers who are involved in the industrial dispute doing exactly the same thing, standing beside them, impeding people coming into work, trespassing; they are both trespassing, they are both protesting something, one is industrial and one is about business itself. While the union instigated and encouraged, the body corporate that encouraged trespass which could be captured by this on the one hand is not subject to a higher penalty potentially, the aggravated offence, if the other protesters have also been encouraged by a body corporate and facilitated to be there and overtly it is a body corporate and they are trespassing as well, they will be subject to the higher penalty, potentially the aggravated offence.

This is how it is discriminatory. You can have the exact same thing happening on the same site at the same time and two groups are being treated entirely differently and held to a different standard. We are carving one out to protect them at a higher level than we are carving out the others. If I had thought of it in time as clearly as that I would have made it in relation to individuals on the earlier clause as to why that one that we have passed is absolutely discriminatory.

It is shamefully discriminatory. It means we, as a parliament, have said we allow and endorse one form of protest above another because for whatever reason we like them more. We are doing it again here and it is likely to get through because the last one did and there looks like there will be support in the room for this one. Now, we will be doing the same thing in relation to body corporates. Some organisations will be liable to this, this aggravated trespass and the penalty attached to it, and others will not. For no good reason, other than apparently, we like some of them better than we like the others. It is a shameful discrimination.

Madam DEPUTY CHAIR - Before the member resumes her seat, I am interested if you are intending to move your amendment to this amendment?

Ms WEBB - I am taking it, we did not pass my core primary amendment. We did not pass my other aligned adjustment to language in the previous amendment we talked about with the member for Murchison. I am imagining it is not fruitful now to move it on this one

Madam DEPUTY CHAIR - I needed to clarify that.

Ms WEBB - Thank you for clarifying, but no. Everyone who is voting for this, and planning to vote for it, should have a good hard look at themselves and know exactly what you are passing. Discrimination.

Mr VALENTINE - I can only rise to agree with the member for Nelson. And this is the trouble when you try to -

Ms Webb - Pick winners.

Mr VALENTINE - You try to pick winners. You try to make allowances for certain sectors, if you like, and in this case, it is workers.

You end up with discrimination. We do not want discriminatory legislation like this. We do not want people being treated differently.

My example, earlier, was about individuals and, as I say, I picked on the Public Trustee, but it is the same sort of thing in this regard, really. It is one type of corporate body versus another type of corporate body. One is maybe a union, and the other is associated with some other aspect that, I do not know, could be any number of things. However, they are being treated differently, and it is discriminatory. I will not support it.

The Committee divided -

AYES 7

Ms Armitage
Ms Forrest
Mrs Hiscutt
Ms Howlett
Ms Lovell
Ms Palmer
Mr Willie (Teller)

NOES 5

Mr Gaffney
Mr Harriss (Teller)
Ms Rattray
Mr Valentine
Ms Webb

Amendment agreed to.

Madam DEPUTY CHAIR - Honourable members, the question is, that Clause 5 as amended be agreed to.

The Committee divided -

AYES 7

Ms Armitage
Ms Forrest
Mr Harriss
Mrs Hiscutt
Ms Howlett (Teller)
Ms Palmer
Ms Rattray

NOES 4

Mr Gaffney
Ms Lovell
Mr Valentine (Teller)
Ms Webb

PAIRS: Mr Duigan, Mr Willie

Clause 5 as amended agreed to.

[8.38 p.m.]

Madam DEPUTY CHAIR - Honourable members, given that the debate that we have had was in regard to the recommitting of clauses 4 and 5, the question is now that I report a bill with further amendment.

Mr President, I have the honour to report a bill with further amendment.

Bill reported with amendments.

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

That the bill as further amended in Committee be taken into consideration tomorrow.

Motion agreed to.

ADJOURNMENT

[8.38 p.m.]

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

That at its rising the Council does adjourn until 11 a.m. on Thursday 25 August 2022.

Motion agreed to.

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, members, you would be aware that there are no briefings in the morning. I will see you all at 11 a.m. Mr President, I move -

That the Council do now adjourn.

The Council adjourned at 8.38 p.m.