

## DRAFT SECOND READING SPEECH

HON GUY BARNETT MP

### *Workplaces (Protection from Protesters) Amendment Bill 2019*

*\*check Hansard for delivery\**

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

Madam Speaker, the Workplaces (Protection from Protesters) Amendment Bill 2019 amends the *Workplaces (Protection from Protesters) Act 2014*.

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

This Bill fulfils the Government's commitment to amend the Act to protect the rights of workers.

Certain provisions of the Act were challenged in the High Court of Australia in the case of *Brown and Another v State of Tasmania*. The outcome of *Brown* was that certain provisions of the Act in respect of their operation on forestry land or business access areas in relation to forestry land are invalid because they impermissibly burden the implied freedom of political communication contrary to the Commonwealth *Constitution*.

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

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

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

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

The Bill therefore amends the Act to criminalise the intentional impediment of business activity in certain circumstances.

This Bill has been carefully drafted to ensure that it does not impermissibly burden the implied freedom of political communication.

The Government recognises that freedom of communication is a fundamental right.

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

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

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

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

a name and address to a police officer is also removed by the Bill. Police will instead rely on existing offences in other legislation.

Current powers of arrest under the Act are complicated. The Bill amends the Act to simplify arrest powers.

The Bill also removes police powers of direction from the Act.

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

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

Proposed section 6 contains new offences for trespassers on business premises and on, or in, business vehicles. Trespass is a well-entrenched concept in our legal system and appears in a number of Acts, including the *Criminal Code Act 1924*. The Bill creates offences for trespassers who intentionally impede business activity on business premises or on, or in, a business vehicle. While there are already offences for trespass in Tasmanian law, trespass aggravated by the intentional impediment of business activity has the potential to cause significant economic loss for workers and businesses. For that reason, the Bill makes these offences subject to a maximum penalty of 18 months' imprisonment for a first offence and four years' imprisonment for a further offence. This will provide the country's highest maximum penalty for the offence of trespassing while intentionally impeding business activity on business premises. At the election of the prosecutor, these trespass offences can be heard and determined in a Court of Petty Sessions, with lower maximum penalties. The possibility of facing a high maximum penalty, along with the possibility of a conviction for an indictable offence, is likely to have a deterrent effect on some who would otherwise be tempted to risk being charged and convicted of a summary offence with lower maximum penalties.

Proposed section 6 also contains a new summary offence for obstructing a public thoroughfare with the intention of impeding the carrying out of a business activity. This provision is based on existing laws in Tasmania that deal with obstruction of roads and public places, but public

thoroughfare is given an extended definition in the Bill to cover streets, roads, waterways and other public places.

Proposed section 7 contains a new offence for threats made with the intention to impede the carrying out of a business activity. While existing laws cover false threats of danger and using a carriage service to menace, harass or offend, proposed section 7 aims to ensure coverage of a broader range of threatening conduct against businesses.

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

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

The Queensland Government has announced that it will create a new offence aimed at stopping dangerous devices being used to shut down public thoroughfares and infrastructure.

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

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

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

Madam Speaker, I commend the Bill to the House.