

TASMANIA

WORKPLACES (PROTECTION FROM PROTESTERS) AMENDMENT BILL 2019

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WORKPLACES (PROTECTION FROM PROTESTERS) AMENDMENT BILL 2019

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
28 November 2019

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Guy Barnett)*

A BILL FOR

An Act to amend the *Workplaces (Protection from Protesters) Act 2014*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workplaces (Protection from Protesters) Amendment Act 2019*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Workplaces (Protection from Protesters) Act 2014** is referred to as the Principal Act.

4. Long title amended

The long title of the Principal Act is amended by omitting “**protesters do not damage business premises or business-related objects, or prevent, impede or obstruct the carrying out of business activities on business premises**” and substituting “**lawful business activities carried out on business premises, or by means of business vehicles, are not impeded**”.

5. Section 1 amended (Short title)

Section 1 of the Principal Act is amended by omitting “*Protection from Protesters*” and substituting “*Protection of Lawful Business Activities*”.

6. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *area of land* and substituting the following definition:

area of land includes –

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- (a) any waters, including seawater, on the area of land; and
 - (b) any seabed; and
 - (c) any area of Crown land;
- (b) by omitting the definition of *business access area*;
- (c) by omitting the definition of *business-related object* and substituting the following definition:
- business vehicle*** means –
- (a) a vehicle, vessel or aircraft; or
 - (b) a train, tram or other vehicle that is designed or intended for movement on rails –
- that is used for the purposes of a business activity;
- (d) by inserting the following definition after the definition of *business worker*:
- Crown land*** has the same meaning as in the *Crown Lands Act 1976*;
- (e) by inserting “, a business vehicle” after “to business premises” in the definition of *damage*;

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- (f) by inserting “, the business vehicle” after “the business premises” in the definition of *damage*;
- (g) by omitting the definitions of *development* and *engaging in a protest activity*;
- (h) by omitting “or access construction” from the definition of *forest operations* and substituting “or construction or maintenance of access to forest products or forest operations”;
- (i) by omitting “or, but for protest activities on the land, would be being carried out” from paragraph (b) of the definition of *forestry land*;
- (j) by inserting the following definition after the definition of *government entity*:

impede means to prevent, hinder or obstruct;
- (k) by omitting “, or object on a place,” from paragraph (d) of the definition of *premises*;
- (l) by inserting “peel,” after “cut,” in the definition of *process*;
- (m) by inserting the following definition after the definition of *process*:

public thoroughfare means –

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- (a) a street, road, lane, thoroughfare, footpath or bridge, that is open to the public or to which the public have access, whether on payment of a fee or otherwise; and
 - (b) a public place; and
 - (c) a waterway, or area of water (including the sea), that is open to the public or to which the public have access, whether on payment of a fee or otherwise;
- (n) by omitting the definition of *protester*;
- (o) by omitting the definition of *works* and substituting the following definitions:

user of a business vehicle means –

- (a) a person who owns a business vehicle; and
- (b) a person who is entitled to possession of a business vehicle; and
- (c) a person who is using a business vehicle for the purposes of a business activity and is using the vehicle with the consent

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of the owner of the business vehicle or of a person who is entitled to possession of the business vehicle;

vehicle means –

- (a) a vehicle that is built to be propelled by a motor that forms part of the vehicle; and
- (b) a trailer or other object attached to such a vehicle;

vessel means any ship, boat or other description of vessel used in navigation.

7. Section 4 repealed

Section 4 of the Principal Act is repealed.

8. Section 5 amended (Meaning of business premises)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting paragraph (h) from the definition of *business premises* in subsection (1);
- (b) by omitting paragraph (d) from subsection (2) and substituting the following paragraph:

- (d) a kindergarten, or a school or institution that provides primary, secondary or tertiary education;

9. Part 2: Heading amended

Part 2 of the Principal Act is amended by omitting “**PROTESTERS**” from the heading to that Part and substituting “**HINDRANCE, &C.**”.

10. Sections 6, 7 and 8 substituted

Sections 6, 7 and 8 of the Principal Act are repealed and the following sections are substituted:

6. Carrying out of business activity not to be impeded

- (1) A person must not –
 - (a) knowingly or recklessly trespass on business premises if –
 - (i) the trespass impedes the carrying out of a business activity on the premises; and
 - (ii) the person trespasses with the intention that the trespass impede the carrying out of a business activity on the premises; or

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- (b) while knowingly or recklessly trespassing on business premises, carry out, on the business premises, an act, if –
 - (i) the act impedes the carrying out of a business activity on the premises; and
 - (ii) the person does the act with the intention that the act impede the carrying out of a business activity on the premises.
- (2) A person must not –
 - (a) knowingly or recklessly trespass on or in a business vehicle if –
 - (i) the trespass impedes the carrying out of a business activity in, on, or carried out by means of, the business vehicle; and
 - (ii) the person trespasses with the intention that the trespass impede the carrying out of a business activity in, on, or carried out by means of, the business vehicle; or
 - (b) while knowingly or recklessly trespassing on or in a business

vehicle, carry out, in or on the business vehicle, an act, if –

- (i) the act impedes the carrying out of a business activity in, on, or carried out by means of, the business vehicle; and
 - (ii) the person carries out the act with the intention of impeding the carrying out of a business activity in, on, or carried out by means of, the business vehicle.
- (3) A person commits an offence if he or she contravenes subsection (1) or (2).
- (4) An offence against subsection (3) is an indictable offence and a court that convicts a person of the offence may –
- (a) if the offence is committed by a body corporate, impose a fine not exceeding 600 penalty units; or
 - (b) if the offence is committed by an individual, may –
 - (i) if subparagraph (ii) does not apply in relation to the offence, impose in respect of the offence a fine not exceeding 60 penalty units or a term of

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imprisonment not
exceeding 18 months, or
both; or

- (ii) if the offence is an offence (a ***further offence***) that is committed by the person after the person was convicted by a court for another offence against subsection (3), impose in respect of the further offence, a fine not exceeding 60 penalty units or imprisonment for a term not exceeding 4 years, or both.
- (5) Despite subsection (4), an offence against subsection (3) may, at the election of the prosecutor, be heard and determined by a court of petty sessions.
- (6) If an offence against subsection (3) is dealt with by a court of petty sessions under subsection (5), the court may impose –
- (a) if the offence is committed by a body corporate, a fine not exceeding 150 penalty units; or
 - (b) if the offence is committed by an individual, a fine not exceeding 30 penalty units or a term of

imprisonment not exceeding 12 months, or both.

- (7) A person must not cause the use or enjoyment of a public thoroughfare to be obstructed, if the person intends, by so doing, to impede the carrying out of a business activity.

Penalty: Fine not exceeding 30 penalty units.

- (8) A person is not to be taken to commit a trespass, or carry out an act, referred to in subsection (1) or (2), or to cause the use or enjoyment of a public thoroughfare to be obstructed in contravention of subsection (7), if the trespass, the act, or causing the use or enjoyment of a public thoroughfare to be obstructed –
- (a) consists of protected industrial action within the meaning of the *Fair Work Act 2009* of the Commonwealth; or
 - (b) would be, but for this Act, lawful, and is engaged in by the person as part of, or in connection with, an activity, organised by or for a trade union, that relates to remuneration, terms or conditions, hours of work, working conditions, or safety, in respect of employment; or

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(c) is authorised under a permit issued under section 49AB of the *Police Offences Act 1935*.

(9) It is a defence to a charge of an offence against subsection (3) or (7) if the defendant proves that he or she had a lawful excuse for committing the offence.

(10) For the purposes of this section, a reference to an act includes a failure to do an act.

7. Persons must not issue threat to impede carrying out of business activity

A person must not threaten to commit an offence against section 6 in relation to business premises or a business vehicle if the person intends, by the threat, to impede the carrying out of a business activity on the business premises or in, on, or carried out by means of, the business vehicle.

Penalty: Fine not exceeding 30 penalty units.

11. Section 9 repealed

Section 9 of the Principal Act is repealed.

12. Sections 10 and 11 repealed

Sections 10 and 11 of the Principal Act are repealed.

13. Section 12 amended (Police officer may remove obstructions)

Section 12 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “seize and” after “may”;
- (b) by inserting in subsection (1) “seize and” after “remove, or”;
- (c) by inserting in subsection (1) “, or used,” after “the area of land”;
- (d) by inserting the following subsection after subsection (1):

(1A) On an application made by a prosecutor or by any person who claims to be the owner of an object seized under this section, a court may order that the object –

- (a) be forfeited to the Crown;
or
- (b) be destroyed; or
- (c) be returned to the owner;
or

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- (d) be otherwise disposed of in the manner that the court thinks fit.

14. Section 13 amended (Arrest without warrant and removal of persons)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsection:
 - (1) A police officer may arrest without warrant a person who the police officer reasonably believes is committing, or has committed, an offence against a provision of this Act.
- (b) by omitting from subsection (3) “or a business access area in relation to business premises,” and substituting “or a business vehicle,”;
- (c) by omitting from subsection (3) “or a contravention of section 6(1), (2) or (3), on or in relation to –” and substituting “on or in relation to the business premises or business vehicle.”;
- (d) by omitting paragraphs (a) and (b) from subsection (3);
- (e) by omitting subsection (4).

15. Section 15 repealed

Section 15 of the Principal Act is repealed.

16. Sections 16 and 17 repealed

Sections 16 and 17 of the Principal Act are repealed.

17. Section 18 amended (Compensation for loss)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting subsections (1), (2), (3) and (4);
- (b) by omitting from subsection (5) “section 6” and substituting “section 6 or 7”;
- (c) by omitting paragraphs (a) and (b) from subsection (5) and substituting the following paragraphs:
 - (a) using, or threatening to use, an object to impede the carrying out of a business activity on business premises or to impede the movement of a business vehicle; or
 - (b) using, or threatening to use an object, or doing, or threatening to do, an act, to impede the carrying out of a business activity or to

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obstruct the use or enjoyment of a
public thoroughfare –

- (d) by inserting the following paragraph after paragraph (b) in subsection (6):
 - (ba) storing the object; and
- (e) by omitting from subsection (7)(b) “premises” and substituting “business premises, or a business vehicle”;
- (f) by omitting from subsection (8) “or a business access area in relation to business premises” and substituting “or a business vehicle”;
- (g) by inserting in subsection (8) “or to the user of the business vehicle” after “the business premises”;
- (h) by inserting in subsection (8) “, or the user of the business vehicle,” after “the business operator”;
- (i) by omitting from subsection (9)(a) “in relation to –” and substituting “in relation to the same business premises or same business vehicle; and”;
- (j) by omitting subparagraphs (i) and (ii) from subsection (9)(a);
- (k) by omitting from subsection (9)(b) “damage to premises or to a business-related object or to the same”;

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- (1) by inserting in subsection (9)(b) “or of the user of a business vehicle” after “premises”.

18. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.