

1 March 2019

Department of Justice  
Strategic Legislation and Policy  
GPO Box 825  
Hobart TAS 7001  
Email: haveyoursay@justice.tas.gov.au

**Re: *Workplaces (Protection from Protesters) Amendment Bill 2019 (Tasmania)***

1. Greenpeace Australia Pacific ('Greenpeace') is a leading independent campaigning organisation that is committed to using peaceful direct action and creative communication to expose global injustices. Greenpeace welcomes the opportunity to make a submission on the *Workplaces (Protection from Protesters) Amendment Bill 2019 (Tas)* ('the Bill') which proposes to amend the *Workplaces (Protection from Protesters) Act 2014 (Tas)* ('the Act').

**An undemocratic infringement on freedom of speech**

2. We begin by noting the beneficial role that peaceful protest has played in the shaping of modern Tasmania. Peaceful protest activities that would be prevented under the proposed legislation have played a significant role in securing changes that are extremely widely supported by the Tasmanian, Australian, and global communities, with regards to: (i) protection of the environment; LGBTIQ issues; and indigenous issues.
3. The legislation's current and proposed objectives lack legitimacy. The former targets protestors, while the latter seeks to protect 'commercial activities' from protest activities. Both purposes are wholly inconsistent with the Australian Constitution and our system of representative and responsible government.
4. Free speech in the form of peaceful protest is an essential bedrock of a functioning democracy. This long-held principle was recognised when Australia became a signatory to the International Covenant on Civil and Political Rights ('ICPR'). Article 19 of the ICPR recognises freedom of speech and Article 21 recognises the right to peaceful assembly.
5. The High Court of Australia has recognised that freedom of political communication is implied in the constitution and that this freedom goes beyond speech and includes non-verbal communication. In its unanimous judgment in *Lange*, the High Court stated that '[f]reedom of communication on matters of government and politics is an indispensable incident of the system of representative and responsible government which the [Australian] Constitution creates and requires.'<sup>1</sup> The freedom to protest is essential to representative and responsible government in Australia, insofar as it is a form of speech that allows individuals to challenge decisions made by governments or parliaments, and to seek to build support for these views in ways they believe likely to influence policy and decision-making.

---

<sup>1</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR, 559 approved in *Brown & Anor v. The State of*

6. In exploring the validity of laws which infringe upon this freedom, the High Court established a two part test encompassing the following questions: first, does the law effectively burden freedom of communication about government or political matters either in its terms, operation or effect? Secondly: does the law effectively burden that freedom - is the law reasonably appropriate and adapted to serve a legitimate end, the fulfilment of which is compatible with the Australian Constitution?
7. Turning to the first limb of the test - it is clear that the answer is in the affirmative. The legislation specifically targets protestors (as evidenced by its title), regardless of whether the definition is removed in the proposed bill. The terms used throughout the legislation continue to reflect this target.
8. The second limb of the test looks to whether the laws are 'reasonably appropriate' to serve a legitimate end. The objective of the Act is to ensure 'protestors do not damage...or impede business premises and activities'. The proposed amendment changes this purpose to the protection of 'commercial activities'. Neither of the aforementioned objectives are legitimate goals of legislation under the Australian constitution.
9. The legislation is clearly not for the purpose of preventing damage or disruption, but for the purpose of stopping protestors. This is evidenced by the fact that there is already existing legislation encompassing public order offences such as trespass and damage to property which cover these activities.
10. This legislation provides a government shield to protect mining, logging and other businesses from political communication. The legislation was established – not to protect the interference of business activities as its preamble suggests, but for the very specific purpose of protecting mining and other companies from protestors.
11. Furthermore, even if the Act was in the furtherance of a legitimate objective (which it is not), the proportionality of criminalising acts made by individuals which fall under freedom of political communication is grossly disproportionate to the damage likely to be done to the affected business.
12. It is necessary to 'strike a balance between competing rights – the right, jealously guarded, of the citizen to exercise freedom of speech and assembly integral to a democratic system of government and way of life, and the right of other citizens not to have their own activities impeded or obstructed or curtailed by the exercise of those rights'.<sup>2</sup> This Bill places disproportionate restrictions on the freedom of Australian citizens to exercise their right to free speech and association through peaceful protest. It goes far beyond protecting the legitimate rights of other citizens and seeks to silence civil society from providing peaceful educational dissent on important issues.
13. We agree with the view of the majority of the High Court in *Brown & Anor v. The State of Tasmania* [2017] HCA 43 that the burden imposed on the freedom of political communication

---

<sup>2</sup> *Commissioner of Police v Rintoul* [2003] NSWSC 662, 5.

by many of the provisions of the Act are not reasonably appropriate, adapted, or proportionate to the pursuit of the Act's objective.

14. Paradoxically, the Second Reading speech of the Act notes the significance of freedom of political communication, stating 'it is important to stress this last point. This Bill is not seeking to undermine or remove people's rights to voice their dissent, or undertake protest action'. If this is the case, then why is the legislation titled 'protection from protestors'? In what way could that wording be construed any differently than having the power to limit the activities of individuals who object to various issues regardless of whether their objections are expressed peacefully?
15. The Act and the Bill are disproportionate in their severity and must be amended. In *Lange* the High Court noted that if there are 'less drastic' measures by which the objectives of a law can be achieved then such other methods should take preference.

### **The geographical scope of the restrictions is far too broad**

16. In the Act, 'Business premises' is widely defined to include '(b) premises that are forestry land; and (c) premises used for agriculture, horticulture, viticulture, aquaculture, commercial food production or commercial food packaging, or as an abattoir, or for any associated purposes.'
17. As it stands the definition is too broad and a narrow application is required. We support the removal of the definition of 'access areas' from the 2014 Legislation and support the notion that these areas are not covered by the legislation. To criminalise individuals 'around and outside' the premises is to create legislation which has a clear purpose to discourage protest entirely.
18. The detailed definition of 'Business premises' covers a broad scope which includes public areas such as national parks and waterways. Such public areas must be removed from the legislation.
19. Furthermore, Section 5A of the Bill proposes a new system for the identification of business premises which reverses the onus of proof when determining whether conduct is occurring on 'business premises'. This reverse onus of proof is unacceptable – it places an unreasonable burden on protesters and seeks to punish protesters for protesting in areas when the reasonable person in the position of the protester would not know that the area was a 'business premise'.

### **No provision for peaceful protest**

20. The 2014 second reading speech which accompanied the Act's passage through parliament comments that it is not until the protestor 'unduly interfere[s], interrupt[s], obstruct[s] etc business activity,' that the conduct is captured by the legislation. This inclusion of the adverb 'unduly' provides a necessary benchmark upon which measurement of the severity of the action or 'impediment' can begin.

21. The legislation as it stands, and the proposed bill, contain no such 'adverb' or standard against which measurement can be made. As such the bill fails to delineate between violent and peaceful protests.
22. The High Court's unanimous decision in *Brown and Another v State of Tasmania* highlights the necessity for this yardstick. The High Court found that the legislation would prevent lawful protest and deter further protests, which they noted was a disproportionate result.
23. The legislation as it currently stands fails to incorporate what the parliament themselves have noted - that any interruptions or invasions to business activity must be 'undue'. The very nature of democracy and free speech is disruptive. Without the inclusion of a yard stick such as 'unduly' or 'significantly disruptive', the legislation may capture almost any communications made by protestors, as a business activity will always be 'disrupted' to some degree by anything outside its walls. The Bill may restrict the mere display of signage in a national park or in a boat near a fish farming area.

### **Conclusion**

24. It is fundamentally undemocratic to deny the Australian public the right to protest. Further clarification and a narrower application is required to align this legislation with the principles of democracy and responsible government enshrined in the Australian Constitution.

Yours sincerely

Jamie Hanson  
Head of Campaigns  
Greenpeace Australia Pacific