

TASMANIA
LAW REFORM
INSTITUTE

29 September 2021

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Dear Ms Craven,

Workplaces (Protection from Protestors) Amendment Bill 2021

Thank you for the opportunity to comment on the draft bill.

The Tasmania Law Reform Institute (“TLRI” / “Institute”) acknowledges the Government’s continued work to clarify, simplify and amend the Principal Act, and previous versions of this bill. The TLRI notes that the High Court has confirmed that “the protection of businesses and their operations” is a legitimate purpose of a law, so long as the operation of that law is proportionate to burden on freedom of political communication.¹

The Institute recognises the significant work that has been undertaken to redraft the bill in response to: the High Court’s declaration of the invalidity of the operative provisions of the Principal Act; and to many concerns that motivated the Parliament’s rejection of this Bill’s predecessor. The Institute refers to its submissions on previous versions of this bill and reiterates the need for appropriate balance between: the legitimate ends of the bill on the one hand; and protecting human rights – including freedom of political communication, speech and association – on the other.

The Institute remains concerned about the bill for the following reasons:

- The process of redrafting and refining reveals the essential core of this bill, which is an exercise in modifying and recalibrating existing summary offences relating to interference with business property. In practice the bill creates two principal offences which appear to be aggravated versions of criminal trespass to land and public nuisance. Given this is the case, the subject of any reform should be directed to the consolidated omnibus of simple offences that the bill functionally aggravates.
 - Law reform should be directed to simplifying the law, removing defects, uncertainties and conflicts. Consolidation leads to those outcomes, de-consolidation undermines them.²
 - The Institute urges the Government to reconsider the long term implications of situating standalone offences outside of the appropriate, existing, consolidating framework.

¹ Brown v Tasmania (2017) 261 CLR 328, per Kiefel CJ, Bell and Keane JJ at 363, 369

² Tasmania Law Reform Commission, *Report on Powers of Arrest, Search and Bail*, 1977; Tasmania Law Reform Institute, *Consolidation of Arrest Laws in Tasmania*,

- There is no compelling evidence to disturb the common law ascendancy of a person's private home over other types of property. Nor, in the Institute's view is there justification to utilise a standalone, targeted law to pursue a policy of protecting specific classes of business property with punitive offences that are equal or greater than that applying to people's private homes and property.

Consequently whilst the Institute commends the Government's continued efforts to refine and strengthen its approach to protecting workplaces it is not supportive of this bill as being appropriately balanced in its form or approach.

The Institute reiterates that workplaces are appropriately protected by existing police powers, summary offences and criminal laws. If the Parliament is of the view that interference with business premises is equivalent to interference with people's homes then the most appropriate and discrete way to achieve a recalibration is within the existing consolidated summary codes. However, the Institute notes that the evidence of trauma and impact on victims of such offences does not support such an approach.

Whilst the Institute's broader position is that the bill is unjustified and unnecessary we have provided general and specific clause comments in the attached document.

If you would like further information or explanation of our response, please contact Dr Gogarty (03) 6226 7562

Yours sincerely,



Brendan Gogarty

For the **Tasmania Law Reform Institute**