

TASMANIA

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**WORKPLACES (PROTECTION FROM  
PROTESTERS) AMENDMENT BILL 2019**

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consultation draft

**WORKPLACES (PROTECTION FROM  
PROTESTERS) AMENDMENT BILL 2019**

*(Brought in by the Minister for Building and Construction, the  
Honourable Sarah Courtney)*

**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.

**3. Principal Act**

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

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\*No. 25 of 2014

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**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 inserting the following definition after the definition of *area of land*:

***authorised operator of a business vehicle*** means –

- (a) the owner of the business vehicle; or
- (b) a person who is, expressly or impliedly, authorised by the owner of the business vehicle to

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operate the business  
vehicle;

- (b) by omitting the definition of *business access area*;
- (c) by inserting “but does not include a business vehicle” after “the business premises” in the definition of *business-related object*;
- (d) by inserting the following definition after the definition of *business-related object*:

***business vehicle*** means –

- (a) a vehicle, vessel or aircraft; or
- (b) another structure that is designed or intended for movement on wheels or rails –

that is used for the purposes of a business activity;

- (e) by inserting “, a business vehicle” after “to business premises” in the definition of *damage*;
- (f) by inserting “the business vehicle” after “the business premises,” in the definition of *damage*;
- (g) by inserting the following definition after the definition of *damage*:

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*demarcated business premises* – see section 5A(1);

- (h) by omitting the definitions of *development* and *engaging in a protest activity*;
- (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 inserting the following definition after the definition of *owner*:

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

- (l) by omitting “, or object on a place,” from paragraph (d) of the definition of *premises*;
- (m) by inserting the following definition after the definition of *process*:

*public thoroughfare* means –

- (a) a street, road, lane, thoroughfare, footpath or bridge, that is open to the

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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 “fashioned;” from the definition of *timber* and substituting “fashioned.”;

(p) by omitting the definition of *works*.

**7. Section 4 repealed**

Section 4 of the Principal Act is repealed.

**8. Section 5 amended (Meaning of business premises)**

Section 5(1) of the Principal Act is amended by omitting paragraph (h) from the definition of *business premises*.

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**9. Section 5A inserted**

After section 5 of the Principal Act, the following section is inserted in Part 1:

**5A. Demarcation of business premises**

- (1) For the purposes of this Act, an area of land is demarcated business premises if –
  - (a) all or part of the area of land consists of business premises; and
  - (b) the perimeter of the area of land is marked in the prescribed manner; and
  - (c) signs containing the prescribed words are situated, at prescribed distances from each other, on the perimeter of the area of land marked in accordance with paragraph (b).
- (2) For the purposes of this Act, an area of land that is demarcated business premises is to be presumed, in the absence of evidence to the contrary, to be business premises.

**10. 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.**”.

**11. 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 interfered with**

- (1) A person who is not authorised to be on business premises must not carry out, on the business premises, an act, if –
  - (a) the act impedes the carrying out of a business activity on the premises; and
  - (b) the person carries out the act with the intention of impeding the carrying out of a business activity on the premises.
- (2) For the purposes of subsection (1), a person is not authorised to be on business premises only if –
  - (a) the person is trespassing on the premises; or
  - (b) were the person to enter or remain on the premises, he or she would be contravening an Act or a requirement, direction, or notice, imposed or issued under an Act.

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- (3) A person who is not authorised to be in or on a business vehicle, or to carry out an act in or on a business vehicle, must not carry out, in or on the business vehicle, an act, if –
- (a) the act impedes the carrying out of a business activity in, on, or carried out by means of, the business vehicle; and
  - (b) 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.
- (4) For the purposes of subsection (3) –
- (a) a person is not authorised to be in or on a business vehicle only if –
    - (i) the person is committing trespass by being in or on the vehicle; or
    - (ii) were the person to enter or remain on the business vehicle, the person would be contravening an Act or a requirement, direction, or notice, imposed or issued under an Act; and
  - (b) a person carries out an act in or on a business vehicle only if the person enters, remains on, or does

an act in or on, the business vehicle after the person is not permitted to be in or on the business vehicle.

- (5) A person commits an offence if he or she contravenes subsection (1) or (3).
- (6) 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 \$5,000.

- (7) A person is not to be taken to be carrying out an act, or to cause the use or enjoyment of a public thoroughfare to be obstructed, in contravention of subsection (1), (3) or (6), if the act, or the act 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) is part of lawful industrial action undertaken by a State Service officer or State Service employee.
- (8) It is a defence to a charge of an offence against subsection (5) or (6) if the defendant proves that he or she had a

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lawful excuse for committing the offence.

- (9) 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 so doing, 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 \$5,000.

**12. Section 9 amended (Persons must not prevent removal of obstructions)**

Section 9 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A person must not –
- (a) impede a police officer who is taking, or attempting to take, action under section 12; or
  - (b) a person who is taking, or attempting to take, action under that section in accordance with a

direction issued by a police officer given for the purposes of that section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$10 000.

**13. Section 9A inserted**

After section 9 of the Principal Act, the following section is inserted in Part 2:

**9A. Persons must not remove, &c., objects indicating demarcated business premises**

A person must not, without lawful excuse, remove, damage, deface or obscure any sign or other object that is being used to indicate that an area of land is demarcated business premises.

Penalty: Fine not exceeding \$2 000.

**14. Section 10 amended (Police officer may demand proof of identity, &c.)**

Section 10 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “is committing, or is about to commit,” and substituting “or is committing,”;
- (b) by omitting from subsection (1) “or a contravention of section 6(1), (2) or (3),”;
- (c) by omitting subsection (3).

**15. Section 11 repealed**

Section 11 of the Principal Act is repealed.

**16. 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 vehicle.”;

- (d) by omitting paragraphs (a) and (b) from subsection (3);
- (e) by omitting subsection (4).

**17. Section 15 repealed**

Section 15 of the Principal Act is repealed.

**18. Section 16 substituted**

Section 16 of the Principal Act is repealed and the following section is substituted:

**16. Prosecution of offences**

- (1) An offence against section 6(5) is an indictable offence.
- (2) Despite subsection (1), an offence against section 6(5) may, at the election of the prosecutor, be heard and determined by a court of petty sessions.
- (3) If an offence against section 6(5) is dealt with by a court of petty sessions under subsection (2), the court may impose –
  - (a) if the offence is committed by a body corporate, a fine not exceeding \$25 000; or

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- (b) if the offence is committed by an individual, a fine not exceeding \$5 000 or a term of imprisonment not exceeding 12 months, or both.

**19. Section 17 amended (Penalties for invading or hindering business)**

Section 17 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 6(4)” and substituting “section 6(5)”;
- (b) by omitting from subsection (2) “section 6(4)” first occurring and substituting “section 6(5)”;
- (c) by inserting in subsection (2)(a) “or a term of imprisonment not exceeding 18 months, or both” after “000”;
- (d) by omitting from subsection (2)(b) “section 6(4)” and substituting “section 6(5)”.

**20. 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);

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- (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 obstruct the use or enjoyment of a public thoroughfare –
- (d) by omitting from subsection (8) “or a business access area in relation to business premises” and substituting “or a business vehicle”;
- (e) by inserting in subsection (8) “or to the owner of the vehicle” after “the business premises”;
- (f) by inserting in subsection (8) “, or owner of the vehicle,” after “the business operator”;
- (g) by omitting from subsection (9)(a) “in relation to ” and substituting “–in relation

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to the same business premises or same business vehicle; and”;

- (h) by omitting subparagraphs (i) and (ii) from subsection (9)(a);
- (i) by omitting from subsection (9)(b) “damage to premises or to a business-related object or to the same”;
- (j) by inserting in subsection (9)(b) “or the owner of a business vehicle” after “premises”.

**21. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.