



Environmental
Defenders Office

**Submission on the draft Police Offences
Amendment (Workplace Protection) Bill 2022 (Tas)**

14 April 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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Executive summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft Police Offences Amendment (Workplace Protection) Bill 2022 (**the Bill**).

Having previously provided detailed comments on the draft Workplaces (Protection from Protesters) Amendment Bill 2021,¹ EDO strongly supports the proposal to repeal the flawed and unconstitutional *Workplaces (Protection from Protesters) Act 2014* (Tas). However, EDO considers that the proposals to both widen the ambit of public nuisance and trespass offences and create aggravated penalties for the obstruction of businesses through amendments to the *Police Offences Act 1935* (Tas) (**the Act**) introduced by the Bill are unwarranted. If passed, this Bill has the potential to significantly infringe on the right to protest in this state and therefore on our democracy.

The Bill follows a concerning trend in other Australian states such as Queensland and most recently, in New South Wales,² to “clamp down” on peaceful protest. These laws come at a time when Australia is facing the unprecedented challenges of climate change and mass extinctions of our precious and endemic flora and fauna. The right to freedom of peaceful assembly and of association is enshrined in article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the International Covenant on Civil and Political Rights,³ and has been recognised by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association as being “one of the most important tools people have for advocating for more effective and equitable climate action and environmental protection.”⁴

While EDO does not condone illegal activity, it does advocate for fair, just, and proportionate laws. EDO endorses the submission made by Community Legal Centres (Tasmania) in response to the draft Bill, and for all the reasons outlined in that submission, EDO considers that the Bill is not fair, just or proportionate in all the circumstances. EDO also provides the following short additional submission in response to the Bill.

In summary, EDO’s submission raises concerns about:

1. The ambiguity in the drafting of the proposed new aggravated penalties for trespass which obstructs a business or undertaking or causes the business or undertaking to be obstructed;
2. The ambiguity in the drafting of the aggravated penalties for trespass causing a risk to the safety of the person or another person; and
3. The unnecessary duplication of offences relating to mineral tenements.

¹ A copy of that submission can be accessed on EDO’s website here:

<https://www.edo.org.au/publication/submission-on-the-workplaces-protection-from-protesters-amendment-bill-2021-tas/>

² See for example, <https://www.hrlc.org.au/news/2022/4/1/draconian-new-anti-protest-law-will-hurt-democracy-in-nsw>

³ This was ratified by Australia on 13 August 1980.

⁴ Clement Nyaletsossi Voule, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/76/222 (23 July 2021), 16-17

In light of these concerns and those outlined in the Community Legal Centres (Tasmania) submission, EDO considers that the Bill is unnecessary and disproportionate and has the potential to stifle the freedom of peaceful assembly and association in Tasmania.

Recommendation: The draft Police Offences Amendment (Workplace Protection) Bill 2022 not proceed.

1. Ambiguity in the aggravated penalties for trespass obstructing a business or undertaking

The Bill proposes aggravated penalties where a person or body corporate “obstructs” a “business or undertaking” while trespassing, or where a person takes an action that causes a business or undertaking to be obstructed. No definitions of the words “obstructs”, “business” or “undertaking” have been provided under the Bill, and no definitions exist in the Act or the *Acts Interpretation Act 1931* (Tas). The ordinary definitions of these words are necessarily broad, and the words “business” or “undertaking” are not tied to particular locations, premises or lawful activities.

This gives rise to significant uncertainty around when the aggravated penalties provided for under the Bill might be imposed by the courts. Furthermore, the aggravated penalty for trespass resulting in the obstruction of a business or undertaking might be applied even in circumstances where a particular business or undertaking is not the target of the trespass or protest activity.

For example, a peaceful protest in the entrance to or lobby of a building accommodating a Minister or Department but that also accommodates other businesses, might result in the protesters being exposed to significantly higher penalties even though those businesses were not the target of the protest.

2. Ambiguity in the aggravated penalties for trespass causing a risk to the safety of the person or another person

The Bill provides for an aggravated penalty to be imposed where a person, while committing a trespass offence, “caused, directly or indirectly, a serious risk to the safety of the person or another person” or “took an action that caused, directly or indirectly, a serious risk to the safety of the person or another person”.

The use of the word “indirectly” in the case of this aggravated penalty opens a Pandora’s box of possible circumstances where a trespasser may be exposed to a much greater penalty, and provides enormous scope for protesters to be held responsible at law for the safety of persons with whom they have had no direct contact, or that their protests do not directly affect. The use of the phrase “risk to the safety” is also equivocal. There need not be any person in danger, just the risk that they may face danger for the increased penalty to apply.

This use of the term “risk” in combination with the term “indirectly” draws a long and uncertain bow; one which could see a protester at risk of a much greater penalty in a broad range of circumstances. No justification for this aggravated penalty has been provided in the factsheet

accompanying the Bill, and it is therefore not clear what types of conduct or “risks” the amendments are intended to cover.

For these reasons, EDO considers this proposed aggravated penalty for trespass to be unjustified and unwarranted.

3. Unnecessary duplication in penalties relating to mineral tenements

The accompanying factsheet to the Bill states that the Bill:

...clarifies when, for the purposes of s 14B of the [Act], the holder of a ‘mineral tenement’ (being a mining lease or relevant mining licence) is taken to be a person in charge of land for the existing offence of trespass. This is done by reference to a person who is on land subject to a mineral tenement, and contravening existing offences under the *Mineral Resources Development Act 1995* which relate to obstruction of mining operations under leases, and authorised activities under relevant mining licences. This clarifies that a person who is committing those existing offences on land subject to a mineral tenement is a trespasser on that land, unless they have consent to be on that land.

There are already existing offences where a person hinders or obstructs mining or explorations activities under the *Mineral Resources Development Act 1995* (Tas), for which there are significant penalties. Indeed, the Bill proposes to only apply to the trespass on mineral tenements where a person has also contravened sections 23(3), 58(3), 67N(3) or 84(2) of the *Mineral Resource Development Act 1995* (Tas). The proposed “clarification” in the Bill, therefore, represents a duplication of those existing offences and is unwarranted and unjustified.