

Submission: Police Offences Amendment (Workplace Protection) Bill 2022

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Summary

Legislation that silences peaceful protesters by criminalising non-violent dissent has no place in a free and fair secular, pluralistic, society. Tasmanians deserve the right to express their political views without fear of harsh penalties.

An organising principle of democracy is the right to seek redress for one's grievances, going back as far as we have had the idea of representative government. The Australian Constitution implies freedom of political communication is a necessary aspect of creating a representative and responsible government. This Bill undermines these fundamental tenets of Tasmanian democracy by unreasonably restricting peaceful protest.

- This Bill is unnecessary because the Police Offences Act already sufficiently and comprehensively covers the protest acts this Bill seeks to punish;
- This Bill is problematic because it undermines Tasmanians' right to freedom of political communication as implied in the Australian Constitution;
- This Bill overreaches in its aim to protect Tasmanian workers in their workplaces by unfairly and unreasonably burdening the freedom of political expression;
- Earlier iterations of this Bill have attracted harsh criticism from UN Special Rapporteurs for disproportionately restricting peaceful assembly and expression¹;
- This Bill curtails peaceful protest more broadly and imposes harsher penalties for similar acts than any other state or territory in Australia therefore represents an unacceptable intrusion on the rights of Tasmanians to participate peacefully in their democracy; and

¹ UN News, 9 September 2014, *Tasmania anti-protest bill contravenes Australia's human rights obligations – UN experts*, <https://news.un.org/en/story/2014/09/477062-tasmania-anti-protest-bill-contravenes-australias-human-rights-obligations-un>, accessed 31 March 2022

- This Bill will have a chilling effect on Tasmanians who seek to affect political change through peaceful protest.

Doing the same thing over and over and expecting different results

This is now the fourth time in ten years the Tasmanian Government has attempted to pass unnecessary and problematic legislation to curb Tasmanians' right to peacefully protest.

The first government attempt to silence peaceful protest on behalf of business interests was the *Workplaces (Protection from Protestors) Act 2014 (Workplaces Act 2014)* which was struck down by the High Court of Australia on 18 October 2017 in *Brown v Tasmania*. The High Court found the legislation fell foul of the implied freedom of political communication in the Australian Constitution which was found in *Lange v Australian Broadcasting Corporation*.

The same year, in March 2014, Australia co-sponsored United Nations Human Rights Council resolution 25/38, "Recognizing that peaceful protests can make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes"². It was this contradiction that was noted by the UN experts in their press release when they stated, "the experts pressed the government and legislature of Tasmania to be consistent with Australia's international commitments and withdraw the bill."³

The second attempt was the *Workplaces (Protection from Protestors) Amendment Bill 2019* which failed to pass the upper house in 2021. This was declared "a win for democracy" by the Human Rights Law Centre⁴.

The third attempt by the Tasmanian Government to broadly restrict protest through harsh penalties was the *Workplaces (Protection from Protestors) Amendment Bill 2021*⁵ which the Environmental Defenders Office called, "unnecessary, inappropriate and an overreach by the Tasmanian Government"⁶.

² United Nations General Assembly, 11 April 2014, Resolution 25/38 adopted by the Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, <https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>, accessed 31 March 2021

³ Op cit, UN News, 9 September 2014

⁴ Bennett (26 March 2021), *Win for democracy: Dangerous Anti-Protest Law Defeated in Tasmania's Upper House*, <https://www.hrlc.org.au/news/2021/3/26/dangerous-anti-protest-law-defeated-in-tasmanias-upper-house>, accessed 31 March 2022

⁵ Tasmanian Government, *New Workplaces (Protection of Business and Workers) Amendment Bill open for public consultation*, https://www.premier.tas.gov.au/site_resources_2015/additional_releases/new_workplaces_protection_of_business_and_workers_amendment_bill_open_for_public_consultation, accessed 31 March 2022

⁶ Environmental Defenders Office, 23 September 2021, *EDO Submission on the Workplaces (Protection from Protestors) Amendment Bill 2021 (Tas)*, <https://www.edo.org.au/wp-content/uploads/2021/11/210923-Tasmania-Workplace-Protest-Bill-2021-EDO-Submission.pdf>, accessed 31 March 2022.

There is a long history of peaceful protest and civil disobedience in Tasmania which has led to protection of the environment. The Tasmanian economy, particularly businesses and industry groups like the tourism sector, have been the beneficiary of our clean, green brand which was hard fought for and hard-won by the very type of peaceful protest this Bill seeks to eliminate.

Australians know the importance of these rights and freedoms as evidenced by the outpouring of support for pro-democracy protesters in Hong Kong and anti-war protesters in Russia. Many social justice movements have been achieved using the type of protest tactics this Bill specifically seeks to infringe. These include the five-day workweek and the eight hour day, women's suffrage, civil rights, land rights and national independence to name but a few.

A problematic relationship with the Australian Constitution

In applying the decision in *Lange v Australian Broadcasting Corporation*⁷, the High Court had to consider three issues

1. Does the law effectively burden freedom of political communication?
2. Is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of government?
3. Is the law reasonably appropriate and adapted to advance that purpose in a manner compatible with the maintenance of the constitutionally prescribed system of government?

These same three questions should rightly be asked of the *Police Offences Amendment (Workplace Protection) Bill 2022*.

To the first question, the law proposed by this Bill effectively burdens freedom of political communication by seeking to sever protesters' ability to temporarily halt works in order to draw attention to injustice. There are circumstances in which non-violent civil disobedience and peaceful protest must seek a physical injunction to prevent the destruction of precious assets. For example, during the campaign for marriage equality, there was no need for protesters to halt physical works to make their argument, whereas when protesting against the demolition of a heritage building or a threatened forest, a protest that does not pause the destructive or harmful operations will be ineffective.

To the second question, whilst the purpose of this Bill is legitimate in its aim to keep workplaces safe, where it falls down is where it is incompatible with the maintenance of the constitutionally prescribed system of government. This Bill seeks to attain the same outcome as the previous Act struck down by the High Court. This Bill is therefore distinct from the *Workplaces (Protection*

⁷High Court of Australia, *Lange v Australian Broadcasting Corporation* ("Political Free Speech case") [1997] HCA 25; (1997) 189 CLR 520; (1997) 145 ALR 96; (1997) 71 ALJR 818 (8 July 1997) <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1997/25.html>, accessed 31 March 2022

from Protestors) Act 2014 (Workplaces Act 2014) on paper but too similar in its prescribed intentions.

Thirdly, this Bill is not reasonably appropriate and adapted to advance its purpose in a manner compatible with the maintenance of the constitutionally prescribed system of government. In fact, the Bill represents a fundamental overreach because there are already laws in place under the *Workplaces Act 2014* and the *Police Offences Act 1935* that sufficiently cover the issues which the Bill purports to address.

It is unreasonable to disrupt a fundamental democracy-strengthening right in order to keep money flowing through businesses and avoid temporary disruption to that business. It is certainly not the least invasive option available. For example, the government could provide or mandate protest insurance.

The Bill is also not well adapted to the aims: it penalizes all protest, regardless of how significant the impact on business. But most of all, the law recognizes that business interruptions happen, and civil rights are a very good reason for such interruptions.

This Bill overreaches by duplicating existing laws but with harsher penalties

Tasmania Police already have sufficient powers to arrest persons engaging in unlawful protest activities. The powers extend, under some circumstances, to a police officer detaining a person without a warrant and using such force, means and assistance as is reasonably necessary. Instead of further broadening these already sufficient powers, the Tasmanian Government should be passing a Charter of Rights and Freedoms that protects citizens' right to peacefully protest. Such a move would strengthen our democracy, whereas this Bill seeks to weaken it.

Section 13 of the *Police Offences Act 1935 (Tas)*⁸ already contains provisions relating to public annoyance:

(1) A person shall not, in a public place –

(a) behave in a violent, riotous, offensive, or indecent manner;

(b) disturb the public peace;

(c) engage in disorderly conduct;

(d) jostle, insult, or annoy any person;

(e) commit any nuisance; or

(f) throw, let off, or set fire to any firework.

⁸ Tasmanian Consolidated Acts, *Police Offences Act 1935 (Tas)*
http://www5.austlii.edu.au/au/legis/tas/consol_act/poa1935140/s13.html, accessed 31 March 2022

Section 14B of the *Police Offences Act 1935 (Tas)* already prohibits unlawful entry on land:

(1) A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.

The chilling effect

Increasing penalties and emboldening police to exercise additional unnecessary powers in quashing displays of dissent will further erode public trust in democracy. As evident from innumerable public protests throughout history, from Ghandi's Salt March for Indian independence to the Franklin Blockade, a government cannot arrest its way out of public discontent.

Further criminalising protest will not make workplaces safer. Creating additional prohibitions where trespass and public annoyance laws already exist will only further erode trust in democratic institutions. Where a movement cannot express itself freely, it will be driven underground. As John F. Kennedy said on the first anniversary of the Alliance for Progress, "Those who make peaceful revolution impossible will make violent revolution inevitable." It is a matter of critical importance that the public feels their political expression is legitimated and validated, not diminished, ignored or criminalised.

The government's continued attempts to silence protests in this state are ineffective for their purported aim of improving workplace safety and unnecessary as they duplicate existing laws. However, they must be examined within their current context in which they serve a clear political motive for the group pushing them to reignite and perpetuate the divisive forestry wars to energise their voter base. Even if these proposed laws are ultimately ineffective, deleterious to democracy and even if they are unsuccessful in passing the parliament or the courts once again, this Bill will have served its political purpose to strike fear in would-be protesters and to provide catharsis to anti-environmentalists and those who bay for a strong-armed government.

I urge those considering this Bill to think beyond the environmental circumstances which dominate the debate regarding these proposed anti-protest laws and to instead think about the risk to our democracy of setting a precedent whereby the right to protest is curbed.

A future government may make choices that are not in line with the majority community viewpoint. It is for those future governments and those future citizens for whom it is so important that we protect the citizen's right to protest.

Let us turn our attention to those Russian citizens presently protesting against Putin's war of aggression in Ukraine. Is it right that those protesters face arrest and imprisonment for slowing the war machine and attempting to prevent more death and destruction? Is a Russian citizen morally justified to lock on or chain themselves to a weapon of war on the property of a Pro-Putin military contractor to prevent its deployment to Ukraine? What about a Tasmanian

citizen blocking the take-off of a military bomber from Hobart Airport or a Navy Destroyer or nuclear submarine from the Port of Hobart?

As the Port of Darwin has been leased for 99 years to a foreign-state-owned-corporation, if a future Tasmanian Government decides to lease out Salamanca's CSIRO dock for 99 years to a foreign government, would a protester blockading the entrance to the HVS Nuyina be morally unjustified in expressing their view to protect their nation's sovereignty?

We are living in increasingly uncertain and turbulent times. The very essence of democracy is being undermined around the world by the slowly oozing encroach of authoritarianism. As climate change exacerbates insecurity and precipitates more frequent and severe natural disasters, there will be more public discontent with the way our governments and corporations handle the cascading crises. We must gird our democratic institutions and enshrine trust in the citizenry so that people finally take precedence over corporations and the government's heavy hand. I urge the Tasmanian Government to withdraw this harmful Bill.