

# Submission: *Police Offences Amendment (Workplace Protection) Bill 2022*

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*The Tasmanian Government's attempt to restrict citizens' right to protest with the Police Offences Amendment (Workplace Protection) Bill 2022 is unnecessary and problematic. The Bill continues to preference businesses' ability to carry out work over the right of people to protest by giving broad powers to police to arrest peaceful protestors and imposing harsh penalties. These penalties place protest amongst the worst offences in the Police Offences Act 1935, alongside loitering near children, drugging another person, setting fire to a property and assaulting a police officer. It creates penalties up to four times higher than any currently in the legislation. These broad powers, and the history of the Bill, raise questions as to whether it will continue to burden the implied freedom of political communication. The Australia Institute Tasmania recommends the Government abandon this Bill, and instead respect the democratic right of citizens to protest.*

Submission

Rachel Hay

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Ground Floor, 71 Murray St

Hobart, Tasmania 7000

Tel: (02) 61300530

Email: [mail@australiainstitute.org.au](mailto:mail@australiainstitute.org.au)

Website: [www.australiainstitute.org.au](http://www.australiainstitute.org.au)

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# Summary

Since 2014, the Tasmanian Government has waged an attack on the right of citizens to participate in their democracy through protest.

The *Workplaces (Protection from Protestors) Act 2014* made it an offence to hinder or obstruct the carrying out of a business activity on a business premises or business access area. It gave broad powers to police to ask a protestor to leave the area and imposed large fines for not doing so. These prohibitions were found by the High Court in *Brown v Tasmania* to pose too great a burden on the implied right to political communication.

In 2019, the Tasmanian Government resurrected the partially invalid legislation in the *Workplaces (Protection from Protestors) Bill 2019*, with a few alterations. However, this Bill was voted down by the Legislative Council in 2021. The Tasmanian Government released its third attempt of the legislation in late 2021. Like previous iterations, it was widely opposed by various groups for seeking to enact broad powers of arrest and harsh penalties for protest.

Now, in proposing the *Police Offences Amendment (Workplace Protection) Bill 2022* (Workplace Bill 2022), the Tasmanian Government continues with its anti-protest project.

The Workplace Bill 2022 extends the offence of public annoyance to include unreasonably obstructing the use of a street, with increased penalties. It also creates three types of aggravated trespass: trespass which obstructs a business activity; trespass which risks the safety of a person; and trespass which obstructs a business activity by a corporate body.

The Workplace Bill 2022 sets disproportionate penalties for the offences of public annoyance and aggravated trespass. It increases the penalties for public annoyance more than threefold. It doubles the current penalty for trespass where a person obstructs a business activity, putting the penalty for trespass at the same level as offences including loitering near children, possession of an implement with intent to commit a crime, and aggravated assault. It triples the penalty from the current amount for trespass where a person's trespass causes risk to the safety of a person. A person would receive similar penalty for obstructing a crime scene. From simple trespass, the penalty increases fivefold where the person has caused risk to the safety of another person while trespassing, and they have committed this offence previously. This carries a greater penalty than drugging another person, assaulting a police officer, and setting fire to a property.

Where a corporation obstructs a business, it increases the penalty from simple trespass by 24 times. No other penalty units in the *Police Offences Act 1935* are set so high. In fact, at 600 penalty units, it is four times higher than the current highest penalty unit in that *Act*.

The current highest offence is 150 penalty units, applied when a convicted offender habitually consorts with another convicted offender after being warned not to.

The Workplace Bill 2022 contains nebulous wording which will make it difficult for the public to comply with the legislation, and for police officers to enforce it. In the new type of public annoyance, the phrases “unreasonably” and “obstructing the use of any street” mean that police will have broad discretion to arrest protestors for conduct as innocuous as holding up a placard at the Salamanca Market. In creating a new aggravated type of trespass, the word “indirectly” means that protestors could be held responsible for a broad array of conduct which has caused a risk to another’s safety, no matter how remote.

The Workplace Bill 2022 is unnecessary, as several offences already exist and are commonly used in order to protect businesses’ ability to continue work in spite of protest action. The current offences of trespass, public annoyance, common nuisance, tampering with vehicles and the “move on” direction already cover the conduct which the Workplaces Bill 2022 seeks to make an offence.

The right to protest has been supported in Australia, through the recognition of the implied right to political communication in the *Australian Constitution* upheld by the High Court in *Brown v Tasmania*; by the federal government in signing and ratifying the United Nations *International Covenant on Civil and Political Rights*, which guarantees the rights of assembly, expression and association; and state and territory governments in Victoria, the Australian Capital Territory and Queensland who have enacted rights charters. Iutruwita/Tasmania has a long history of protest, through which citizens’ have influenced their democracy on issues such as the Franklin River, the Vietnam War, LGBTQI+ discrimination and climate change.

Yet the Tasmanian Government is continuing to seek to restrict the rights of citizens to protest through the Workplaces Bill 2022, subjecting them to broad powers of arrest and harsh penalties. The history of this Bill, as well as its continued broad application, leaves questions as to whether it will continue to breach the implied freedom of political communication. We recommend that the Bill be scrapped, and the Tasmanian Government instead respect Tasmanians’ democratic right to protest.

# Introduction

We welcome the opportunity to make a submission on the *Police Offences Amendment (Workplace Protection) Bill 2022* (Workplace Bill 2022).

Protest is a fundamental way in which citizens can participate in their democracy. Tasmanians have a proud history of this, having protested on issues such as Franklin River, the Vietnam War, LGBTQI+ discrimination and climate change. Across Australia and the world, citizens' right to protest is recognised and protected. Yet, since 2014, the Tasmanian Government has sought to legislate new offences which target protestors with harsh penalties and broad powers.

The Tasmanian Government's first attempt at this legislation – the *Workplaces (Protection from Protestors) Act 2014* (Workplaces Act 2014) – aimed to deter people from engaging in protest which impeded business activities.<sup>1</sup> The legislation stipulated that a protestor could not do an act in a business premises or business access area if it hindered or obstructed the carrying out of a business activity.<sup>2</sup> If they did so, a police officer could direct them to leave the area, requiring them to stay away for up to three months.<sup>3</sup> If they remained in the area, or returned, it was an offence punishable by a fine of up to \$10,000 for an individual and \$100,000 for a body corporate.<sup>4</sup>

In the High Court decision *Brown v Tasmania*, a majority found that the prohibitions in Workplaces Act 2014 were invalid, in relation to forestry land or business access areas of forestry land.<sup>5</sup> This was because the provisions of the Workplaces Act 2014 operated more widely than what their purpose of protecting business activities required, impermissibly burdening the implied freedom of political communication. This means that, while the legislation still exists, a number of its operative provisions cannot be used. The only operative provisions that remain valid are section 7, prohibiting protestors from causing or threatening damage or risk to safety, and section 9, which prohibits the removal of obstructions.

The Tasmanian Government resurrected the Workplaces Act 2014 with the *Workplaces (Protection from Protestors) Bill 2019* (Workplaces Bill 2019), which similarly aimed to restrict the ability of citizens to protest in order to protect the ability of businesses to continue work.<sup>6</sup> The Workplaces Bill 2019 prohibited the intention to impede the carrying

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<sup>1</sup> *Workplaces (Protection from Protestors) Act 2014*, long title

<sup>2</sup> *Ibid* ss 6(1), (2) and (3)

<sup>3</sup> *Ibid* ss 8(1), 11(1) and (2)

<sup>4</sup> *Ibid* ss 6(4) and 8(1)

<sup>5</sup> *Brown v Tasmania* (2017) 261 CLR 328, p 330

<sup>6</sup> *Workplaces (Protection from Protestors) Amendment Bill 2019*, long title

out of a business activity on business premises or public thoroughfare.<sup>7</sup> It also retained the offence of intending to carry out an act on a business vehicle which impeded business activity.<sup>8</sup> The penalties for these offences remained similarly harsh. Further, if a person threatened to impede a business activity, they could be fined up to \$5,000.<sup>9</sup>

The Workplaces Bill 2019 was widely criticised for bringing in unnecessary and harsh offences for protestors, and for not addressing the reasons given by the High Court for why the last iteration of the legislation was invalid.<sup>10</sup> The Tasmanian Aboriginal Centre, the Human Rights Law Centre, Civil Liberties Australia, Greenpeace, the Tasmanian Law Reform Institute, the Tasmanian Greens, and the Bob Brown Foundation were all in opposition to the Workplaces Amendment Bill 2019. Whilst the Workplaces Bill 2019 passed the Tasmanian House of Assembly in November of 2019, it was defeated in the Legislative Council in March of 2021.<sup>11</sup>

In 2021, the Tasmanian Government released the *Workplaces (Protection from Protesters) Amendment Bill 2021* (Workplaces Bill 2021) for community consultation. Like previous iterations, the Workplaces Bill 2021 placed restrictions on protest so broad that various commentators predicted it could breach the implied freedom of political communication. In particular, the definitions of business premises and business access area in relation to forestry land were retained, despite the High Court's disapproval of them in *Brown v Tasmania*.<sup>12</sup> It also gave expansive powers to police to arrest protestors in public thoroughfares.<sup>13</sup> Further, the offences created, and their associated penalties, continued to be unnecessary and harsh.<sup>14</sup>

The Workplaces Bill 2021 was opposed by organisations such as the Australia Institute Tasmania, the Human Rights Law Centre, Community Legal Centres Tasmania, TasCOSS, the Australian Lawyers Alliance, Environmental Defenders Office, the Bob Brown Foundation and the Tasmanian Greens.<sup>15</sup>

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<sup>7</sup> Ibid ss 11(6)(1), (2) and (6)

<sup>8</sup> Ibid s 11(6)(3)

<sup>9</sup> Ibid s 11(7)

<sup>10</sup> Haubrick (2021) *Anti-protest workplace bill defeated*, <https://www.greenleft.org.au/content/anti-protestworkplace-bill-defeated>; Department of Justice (2021) *Workplaces (Protection from Protesters) Amendment Bill 2019 - Have your say*, <https://www.justice.tas.gov.au/community-consultation/closed-communityconsultations2/workplaces-protection-from-protesters-amendment-bill2019>

<sup>11</sup> Killick (2021) *MLCs act on advice to vote down proposed anti-protest laws*, <https://www.themercury.com.au/news/politics/groups-band-together-in-bid-to-stop-antiprotest-laws-getting-tick/news-story/643f6f1adc13d9d5edd2bd7be4096e53>

<sup>12</sup> *Workplaces (Protection from Protesters) Amendment Bill 2021*, s 7(7)

<sup>13</sup> Ibid s 7(8)

<sup>14</sup> Ibid ss 7(7) and 7(8)

<sup>15</sup> Read our previous submission here: <https://australiainstitute.org.au/report/submission-workplaces-protection-from-protesters-amendment-bill-2021/>

The creation of the Workplace Bill 2022 is a tacit admission from the Tasmanian Government that the Workplaces Bill 2021 continued to go too far in punishing protestors. However, now on its fourth attempt, the Tasmanian Government continues with efforts to make the right to peaceful protest illegal. The legislation still seeks to restrict a broad range of protest activities through harsh penalties and expansive police powers.

At the same time, the Tasmanian Government continues to remove and punish protestors who obstruct business activities with offences in existing legislation.<sup>16</sup> These offences, such as trespass, public annoyance and nuisance, have a long history of being used to protect business activities from protest and make the Workplaces Bill 2022 unnecessary. These charges have only been dropped recently because a technical administrative issue relating to the Forest Practices Act 1985 means that all logging in lutruwita/Tasmania has been taking place illegally for more than three decades.<sup>17</sup> When Parliament resumes in May, the Tasmanian Government plan to enact legislation which will fix this issue, and retrospectively validate previous logging activity.

The Australia Institute Tasmania recommends the Tasmanian Government abandon the Workplaces Bill 2022, and instead protect the right of peaceful protestors to participate in their democracy through protest.

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<sup>16</sup> For example, see: Bob Brown Foundation (2022) Media Release: Protest halts logging - Sustainable Timbers Tasmania urged to get out of Wentworth Hills, [https://www.bobbrown.org.au/mr\\_15032022](https://www.bobbrown.org.au/mr_15032022)

<sup>17</sup> Murray (2022) *Tasmanian government accused of attempting to 'retrospectively' change law to 'legalise' logging*, <https://www.abc.net.au/news/2022-04-07/tasmania-forestry-law-retrospective-change/100972112#:~:text=Call%20for%20logging%20to%20be%20'Immediately%20halted'&text=%22This%20is%20the%20revelation%20that,state%20to%20be%20immediately%20halted.>

# Another attack on protest

The Australia Institute Tasmania commends the Tasmanian Government for repealing the partially unconstitutional *Workplaces Act 2014* in the Workplace Bill 2022. However, this is the only good thing that can be said about the Bill.

The Workplace Bill 2022 seeks to amend the *Police Offences Act 1935*: section 13 regarding public annoyance, and section 14B detailing unlawful entry onto land (commonly known as trespass).

The Workplace Bill 2022 substitutes the word “nuisance” as an example of public annoyance, for “unreasonably obstructing the use of any street”.<sup>18</sup> It also increases the penalties for public annoyance from 3 penalty units (\$519) to 10 penalty units (\$1,730).<sup>19</sup>

In relation to trespass, the existing legislation specifies that it is an offence to “enter into or remain on” property.<sup>20</sup> The Workplace Bill 2022 extends this, making it an offence to “enter into or onto, move onto, or remain in or on (including, but not limited to, by becoming attached to) property”.<sup>21</sup>

The current penalty for trespass is 25 units (\$4,325) or 6 months imprisonment.<sup>22</sup> The penalty increases to 50 units (\$8,650) or 12 months imprisonment for trespass in relation to a dwelling.<sup>23</sup> The Workplace Bill 2022 creates an additional aggravated penalty in three circumstances:

1. Where the person trespasses while obstructing a business activity or undertaking, or they took an action which causes a business or undertaking to be obstructed.<sup>24</sup> When this occurs, the person is liable for a penalty of 50 units (\$8,650) or imprisonment for up to 12 months.<sup>25</sup>
2. Where a person by or while committing trespass caused, indirectly or directly, (or took an action which causes) a serious risk to the safety of themselves or another person.<sup>26</sup> In this circumstance, the person is liable for a penalty of up to 75 units

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<sup>18</sup> *Police Offences Amendment (Workplace Protection) Bill 2022* s 4(b)(ea)

<sup>19</sup> *Ibid* s 4(c)(a)

<sup>20</sup> *Police Offences Act 1935* (Tas) s 14B(1)

<sup>21</sup> *Police Offences Amendment (Workplace Protection) Bill 2022* s 5(a)

<sup>22</sup> *Police Offences Act 1935* (Tas) s 14B(2)(a)

<sup>23</sup> *Ibid* s 14B(2)(b); Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>24</sup> *Police Offences Amendment (Workplace Protection) Bill 2022* ss (f)(2AA)(a) and (b)

<sup>25</sup> *Ibid*; Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>26</sup> *Ibid* ss (f)(2AB)(a) and (b)

(\$12,975) or 18 months imprisonment.<sup>27</sup> Where the person has committed the offence before, they are liable for a fine of up to 125 penalty units (\$21,625) or 30 months imprisonment.<sup>28</sup> This offence seeks to replace the remaining section 7 in the Workplaces Act 2014.

3. Where a body corporate commits trespass, and obstructs a business or undertaking while doing so, or takes an action which does so, they are liable for a penalty of up to 600 penalty units (\$103,800).<sup>29</sup>

The Workplace Bill 2022 also clarifies that, unless a person on a mineral tenement has the consent of the person in charge of that land, they are trespassing.<sup>30</sup>

## DISPROPORTIONATE PENALTIES

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The Workplace Bill 2022 sets disproportionate penalties for the offences of public annoyance and aggravated trespass.

First, it increases the penalties for public annoyance more than threefold.

Second, it doubles the current penalty units for trespass to 50 where a person obstructs a business activity. This sets the penalty at the same level as offences including loitering near children,<sup>31</sup> possessing an implement with intent to commit a crime,<sup>32</sup> and aggravated assault.<sup>33</sup>

Third, it triples the penalty units to 75 from the current amount for trespass where a person's trespass causes risk to safety. The only similar penalty in the *Police Offences Act 1935* is 80 penalty units, for obstructing a crime scene.<sup>34</sup>

Fourth, from simple trespass, the penalty units increase fivefold to 125 where the person is for repeat offender of causing a risk to safety while trespassing. The only offence in the *Police Offences Act 1935* which sets a higher penalty in terms of units is where a convicted offender habitually consorts with another convicted offender after being warned – at 150 penalty units.<sup>35</sup> Offences in the *Police Offences Act 1935* that carry a similar penalty of 100

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<sup>27</sup> Ibid s (f)(2AB)(c); Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>28</sup> Ibid s (f)(2AB)(d)

<sup>29</sup> Ibid ss (f)(2AC)(a) and (b)

<sup>30</sup> Ibid s 5(i)(7)

<sup>31</sup> *Police Offences Act 1935* (Tas) ss 7A(1) and (2)

<sup>32</sup> Ibid ss 7B(1) and (b)

<sup>33</sup> Ibid s 35

<sup>34</sup> Ibid ss 63A(1) and (2)

<sup>35</sup> Ibid s 20C(1)

penalty units include drugging another person,<sup>36</sup> assaulting a police officer,<sup>37</sup> and setting fire to a property.<sup>38</sup>

Fifth, where a corporation obstructs a business, it increases the penalty units from simple trespass by 24 times. No other penalty units in the *Police Offences Act 1935* are set so high. In fact, at 600 penalty units, it is four times higher than the current highest penalty unit in the *Police Offences Act 1935* issued for consorting.

The Workplaces Bill 2022 sends a clear message through its strict penalties for public annoyance and trespass that obstructing a business activity is amongst the worse offences. In doing so, it sets disproportionate penalties for protestors who obstruct business, clearly seeking to dissuade them from exercising their democratic right.

## NEBULOUS WORDING

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The Workplace Bill 2022 contains nebulous wording which will make it difficult for the public to comply with the legislation, and for police officers to enforce it.

The Workplace Bill 2022 substitutes the word nuisance as an example of public annoyance, for “unreasonably obstructing the use of any street”.<sup>39</sup> The *Police Offences Act 1935* considers that a street “extends to and includes any road, square, court, passage, alley, thoroughfare, or public way or footway, any place of public resort, and any avenue leading thereto”.<sup>40</sup>

This results in the offense covering a worryingly broad range of activities. It could extend to a person holding a placard at the Salamanca Market, handing out pamphlets outside a café, asking for a petition to be signed in a public park or filming on a public road.

Further, by stipulating that a person must not “unreasonably” obstruct a public street, it allows police officers broad discretion in what is a reasonable activity.<sup>41</sup>

Similarly, in relation to trespass, the scope of what it might mean to “indirectly” cause a serious risk to the safety of another person is potentially large.<sup>42</sup> It means that protestors could be responsible for people who they have no direct contact with, and do not directly affect.

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<sup>36</sup> Ibid s 21A

<sup>37</sup> Ibid ss 34B(1)(a) and (1A)

<sup>38</sup> Ibid s 37AA(1)

<sup>39</sup> *Police Offences Amendment (Workplace Protection) Bill 2022* s 4(b)(ea)

<sup>40</sup> Ibid s 3(1)

<sup>41</sup> Ibid

<sup>42</sup> Ibid ss (f)(2AB)(a) and (b)

The broad application of this legislation means that questions as to whether it will breach the implied freedom of political communication remain unanswered.

## EXISTING OFFENCES PROTECT BUSINESSES

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Like previous iterations, the Workplace Bill 2022 is unnecessary, as several offences already exist and are commonly used in order to protect businesses and their ability to continue work in spite of protest action.<sup>43</sup> The *Police Offences Act 1935* and *Criminal Code Act 1924* contain several offences that can be used separately, or together, to remove protestors who threaten business activities. These offences are regularly used for such a purpose.<sup>44</sup>

The offence of trespass already exists to criminalise entering onto or remaining on land without the consent of the owner without a reasonable or lawful excuse.<sup>45</sup> It already sets adequate penalties of 25 units (\$4,325) or 6 months imprisonment,<sup>46</sup> or 50 units (\$8,650) or 12 months imprisonment for trespass in relation to a dwelling.<sup>47</sup>

Further, the offence of public annoyance already adequately penalises behaviour which is riotous, offensive, disorderly, insulting, annoying, a nuisance or disturbs the peace.<sup>48</sup> The punishment attached of 3 penalty units (\$519) is adequate for this offence.<sup>49</sup>

The crime of creating a common nuisance is very similar to the new offence which the Workplace Bill 2022 seeks to bring in, of causing a serious risk to themselves or another person whilst trespassing.<sup>50</sup> Under common nuisance, a person who endangers the lives, safety or health of the public, or causes injury to a person is guilty of a crime.<sup>51</sup> This offence makes it unnecessary to include the new provision.

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<sup>43</sup> For examples of how the previous iterations have been unnecessary see: Environmental Defenders Office (2021) *Submission on the Workplaces (Protection from Protesters) Amendment Bill 2021 (Tas)*, <https://www.edo.org.au/publication/submission-on-the-workplaces-protection-from-protesters-amendment-bill-2021-tas/> p 7; TasCOSS (2021) *Workplaces (Protection from Protesters) Amendment Bill 2019*, <https://tascoss.org.au/new-submission-to-the-tascoss-vault-6/> p 4

<sup>44</sup> For example, see: Bob Brown Foundation (2022) *Media Release: Protest halts logging - Sustainable Timbers Tasmania urged to get out of Wentworth Hills*, [https://www.bobbrown.org.au/mr\\_15032022](https://www.bobbrown.org.au/mr_15032022)

<sup>45</sup> *Police Offences Act 1935* (Tas), s 14B(1)

<sup>46</sup> *Ibid* s 14B(2)(a)

<sup>47</sup> *Ibid* s 14B(2)(b); Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>48</sup> *Ibid* s 13(1)

<sup>49</sup> *Ibid*; Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>50</sup> *Criminal Code Act 1924* (Tas) s 141(1)

<sup>51</sup> *Ibid*.

The broad application of this legislation means that questions as to whether it will breach the implied freedom of political communication remain unanswered.

Another tool in polices' arsenal against protestors is the offence of tampering with vehicles. This stipulates that a person cannot interfere or tamper with a motor vehicle, or they will be liable for a \$3,460 fine.<sup>52</sup>

Further, a police officer can direct a protestor in a public place to move on if they believe on reasonable grounds that that person has, is or is likely to commit an offence, obstruct the flow of pedestrians or vehicles, endanger the safety of another person or commit a breach of the peace.<sup>53</sup> If a person does not comply with this direction, they can be fined up to \$346.36. This power is often used to remove protestors from an area.<sup>54</sup>

These offences allow protestors to be cleared from an area quickly and with appropriate penalty, allowing businesses to continue their work – meaning that there is no need for changes to the current offences and additional harsh penalties.

## CONTRAVENES CITIZENS' RIGHT TO PROTEST

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Despite not directly stating that protestors are the target of the Workplace Bill 2022 in name, aim or wording (like some previous iterations), this Bill still has the effect of restricting citizens' right to peaceful protest. This is despite the recognition of citizens' right to peaceful protest in Australian and international law.

The High Court has determined that the *Australian Constitution*, in creating a government that is representative of, and responsible to, the people, it implies that people's freedom to communicate about politics is necessary to ensure the proper functioning of that government (this is referred to as the implied freedom of political communication).<sup>55</sup> Therefore, the importance of peaceful protest where it allows the expression of political opinion about Australia's democracy is recognised and protected under Australia's highest form of law.

According to the High Court, where a piece of legislation impinges on people's freedom to communicate about political issues to a greater extent than is necessary in order to achieve the purpose of the legislation, it can be deemed invalid. This occurred with the first iteration

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<sup>52</sup> *Police Offences Act 1935* (Tas) s 37I; Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*,

[https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>53</sup> *Ibid* s 15B.

<sup>54</sup> Tasmanian Government Department of Justice (2021) *Value of Indexed Amounts in Legislation*, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>55</sup> *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Lange v Australian Broadcasting Corporation* (1992) 177 CLR 106

of this legislation – the Workplaces Act 2014 – where people were restricted from communicating about political issues in more places more than the purpose of the legislation – to protect business activities – required.<sup>56</sup> This was due to the nebulous nature of forestry land, which meant that people could not protest in or near any forest – even those where business activities were not currently occurring.<sup>57</sup> It was argued by various commentators that the second and third iterations of this legislation would continue to breach the implied freedom of political communication, given the retention of the wording around forestry land, and extension of the legislation to public thoroughfares.<sup>58</sup> Given the history of the legislation, and its continued attack on protestors in public places, the question of whether this latest version will avoid this hangs over the Workplace Bill 2022.

The Australian Government has shown its support for citizen’s rights to protest, by signing and ratifying the UN International Covenant on Civil and Political Rights (ICCPR), which secures the rights of freedom of expression, association and assembly (Articles 19 and 22, inter alia).<sup>59</sup> If Australian states and territories do not uphold these rights it can create significant international pressure on the Australian Government.

The Workplaces Act 2014 attracted harsh criticism from UN Special Rapporteurs for disproportionately restricting peaceful assembly and expression.<sup>60</sup> The Workplaces Bill 2022 flies in the face of Australia’s international commitments by heavily restricting protest in lutruwita/Tasmania, and harshly punishing those who do. It will likely attract the continued condemnation from the international community.

Across Australia, other jurisdictions such as Victoria, the Australian Capital Territory and Queensland have all recognised the importance of the right to expression, association and assembly, enacting legislation to protect them.<sup>61</sup> No other Australian jurisdiction has waged such a continued attack on protest as lutruwita/Tasmania.

History shows that protest has been an important way in which Tasmanians have voiced their opinions on political issues and influenced the democratic process. Protests by citizens against the flooding of Lake Pedder, the Vietnam War, the damming of the Franklin River,

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<sup>56</sup> *Brown v Tasmania* (2017) 261 CLR 328

<sup>57</sup> Ibid.

<sup>58</sup> See, for example, Department of Justice (2021) *Workplaces (Protection from Protesters) Amendment Bill 2019 - Have your say*, <https://www.justice.tas.gov.au/community-consultation/closed-communityconsultations2/workplaces-protection-from-protesters-amendment-bill2019>

<sup>59</sup> *International Covenant on Civil and Political Rights*. Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

<sup>60</sup> OHCHR (2014) *UN experts urge Tasmania to drop its anti-protest bill*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E>

<sup>61</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2004* (ACT); *Human Rights Act 2019* (Qld).

the Tamar Valley Pulp Mill, LGBTQI+ discrimination, the Iraq War and the School Strike for Climate are considered by many citizens as milestones in Tasmania's democratic history.

When citizens express their opinions about political issues through protest, this can result in a change in policy, allowing citizens a direct means through which to participate in democracy. For example, the High Court has commented on the 'substantial history of... protests against forest operations in Tasmania', 37 of which between 2006 and 2017 resulted in protection of that area by government.<sup>62</sup> The Workplaces Bill 2022 therefore has the potential to silence protest and restrict citizens' democratic right to protest on key issues in our society.

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<sup>62</sup> *Brown v Tasmania* (2017) 261 CLR 328, pp 402 and 346.

# Conclusion

Since 2014, the Tasmanian Government has waged a sustained attack on peaceful protestors. The Workplace Bill 2022 is the Tasmanian Government's fourth attempt at creating legislation which restricts citizens' right to protest in favour of protecting business activities.

The Workplace Bill 2022 sets disproportionate penalties for protestors who commit public annoyance or aggravated trespass. These penalties place protest amongst the worst offences in the *Police Offences Act 1935*, alongside loitering near children, drugging another person, setting fire to a property and assaulting a police officer. It also creates penalties up to four times higher than any currently in the legislation.

It contains nebulous wording that will make it difficult for the public to comply with the legislation, and too much power for police officers to choose how to enforce it.

Furthermore, the additional powers and penalties contained in the Workplaces Bill 2022 are unnecessary, as there are a broad range of offences already available, and regularly used, in order to protect business activity from protestors.

Despite recognition of citizens' right to protest in international and domestic law, the Tasmanian Government continues to contravene citizens rights' in creating legislation which seeks to give police broad powers to arrest protestors, and harshly punish them where this occurs. Questions remain as to whether this Bill will breach the implied freedom of political communication, given its history and continued broad application.

The Australia Institute Tasmania recommends that the Tasmanian Government abandon the Workplaces Bill 2022, instead respecting citizens' right to peaceful protest.