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Thursday, 23 September 2021

Ginna Webster  
Secretary  
Department of Justice  
GPO Box 825  
Hobart Tas 7000

Dear Ginna

### **Police Association of Tasmania Feedback - Workplace Protesters Amendment Bill 2021**

The Police Association of Tasmania has reviewed the draft Bill and takes no issue with the objectives the Government is seeking to achieve. The Association strongly supports the philosophy that members of the Tasmanian community should be able to participate in lawful employment or business undertakings and not be interrupted or obstructed in that endeavour by persons undertaking unlawful actions. The Association supports legislation that clearly and unambiguously articulates what activities constitute lawful employment or business undertakings in any setting, and conversely the unlawful actions that may impinge on those activities. Importantly, legislation that provides our members clarity regarding what we believe to be the necessary powers to prevent these unlawful actions and remove those persons interfering with lawful employment, is a priority of this organisation.

We support the principles underpinning the draft Bill, but have concerns that the resultant legislation based on the proposed amendments will be quite complex, and we believe unnecessarily so.

To provide some context, where legislation provides for police powers, or creates offences, each individual police officer must be well versed in the legislation before they can properly apply it. At law, each police officer exercises original authority, and the application of the law by them cannot be at the direction of another.

As a result, it is highly desirable that legislative authorities be as clear and unambiguous as possible, especially given the consequences for individuals affected by police action, and also that individual police officers are accountable should they act beyond the law. This is not the current case with the existing Act, with the High Court noting the legislation is confusing, vague and poorly written.

Given police officers are required to operate under, and know, a diverse range of legislation, and the proposed legislation is likely to be used infrequently, the need for certainty and clarity

is even greater. Especially, as police may be called to protest activity in remote areas of the State with little notice, and initially with little support.

To this end, we believe the definitions in the Bill need to be streamlined. These currently run to 14 pages and are further complicated by the fact that numerous definitions depend on other definitions for their interpretation. This is particularly applicable regarding the business undertakings to be protected. While we understand the desire to limit the application of the Act, achieving this through the defining of 'business premises', as opposed to a clearer definition of 'protected business undertakings', results in significant complexity in applying the aggravated trespass offence to business vehicles.

We further note that exclusions to the definitions can be extended by regulations and believe this is unnecessary. A consequence of any resulting regulations will be that police cannot have a clear understanding of their authority by referring to the Act alone. There will be need to refer to additional legislation in interpreting their application of the law, which in turn increases opportunities for mistakes, especially where an individual may be unaware of the regulations. Ultimately, the operation of this Act needs to be self-contained, to ensure its successful application on the ground.

Similarly, we are of the view that the arrest limitations set out in the Bill add unnecessary complexity. Although the proposed limitations are entirely reasonable, they are not consistent with police arrest powers in other Tasmanian legislation, and are more extensive for the aggravated trespass offence than they are for the simple offence of trespass, under the *Police Offences Act 1935*. This is an area of the law that should more properly be addressed in the *Police Powers Act*, which the Government has committed to deliver in this term of government, rather than in this narrow legislation that will rarely be applied by individual officers.

With respect to the aggravated trespass offence, it is noted that there is currently no alternative conviction provision. As a result, should police charge someone with the offence, but not be able to prove the intended obstruction of business activity, the trespasser will escape liability entirely, despite being guilty of trespass. Therefore, we believe this is an issue that should be addressed.

The Association appreciates that the Bill may have been constructed to negate a potential High Court challenge, however, in the process, we believe that the Bill has become unnecessarily complex. This will in turn, potentially at the operational level, lead to our members being unnecessarily exposed to inappropriately applying the legislation and consequently undermining its probative value and effectiveness. Our interest is that while achieving the legislation's desired effect, that it is practical, workable and not an unnecessary burden on our already over-extended members.

Kind regards



Colin Riley  
**President**  
**Police Association of Tasmania**