

Police Offences Amendment (Workplace Protection) Bill 2022

Submission to Tasmanian Department of Justice

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input on the proposed amendments to the *Police Offences Act 1935* (Tas) ('the Act') through the Police Offences Amendment (Workplace Protection) Bill 2022 ('the Bill').

The jurisprudential basis of the Bill

2. From the outset, it would be remiss not to observe that the amendments to section 14 of the Act adopt the logical structure suggested by the ALA in our September 2021 response to the Workplaces (Protection from Protestors Bill) 2021.
3. Rather than introducing confusing changes to an Act struck down by the High Court, it made sense that any proposed amendments could be better considered by the Parliament if applied to existing trespass law. Further, it is appropriate that the specific concerns that lie behind the Act are considered by a sentencing court as aggravating circumstances.
4. The ALA supplied a draft Bill with our last submission – not to endorse its passage, or to say that such a Bill was a desirable amendment, but to demonstrate how simply and succinctly such an amending Bill could be drafted.
5. Whilst the ALA welcomes the approach taken in the drawing of the Bill, in that it represents a jurisprudentially composed effort at amending the Act, the ALA holds significant concern about the uncertainty attendant to the offence under the proposed changes to section 13 of the Act.

The offence provisions

Broad qualifier of 'unreasonable' (section 13)

6. Section 13(1) currently comprises an offence provision encompassing 6 limbs (paragraphs (a)-(f)), each of which reflects concepts that have long-standing common law meaning (for instance, disturbing the public peace, and committing a nuisance), or that are to be interpreted according to their natural and ordinary meaning (for example, jostling a person).

7. The Bill proposes the insertion of paragraph (ea) which would add a seventh limb of “unreasonably obstruct the use of any street”.
8. The ALA is aware anecdotally that other limbs of section 13(1) are currently charged by Tasmania Police when members of the public obstruct the use of streets, particularly (1)(c) (“engage in disorderly conduct”). It therefore appears to the ALA that the paragraph (ea) would in the first instance cover conduct already captured by the other limbs of section 13(1).
9. The inclusion of paragraph (ea) would, however, introduce the open concept of “unreasonableness” in the obstruction. Whether conduct is “unreasonable” is typically interpreted by courts to involve a value-judgment requiring consideration of all of the relevant circumstances of the case.
10. It is undesirable for a person not to know whether or not their intended conduct amounts to an offence until after they are charged and a court has reached a decision about the “reasonableness” of such conduct.
11. The ALA therefore considers that the additional limb in paragraph (ea) offers certainty only to the extent that it duplicates the range of conduct covered by the existing limbs of section 13(1). Beyond the compass of those limbs, however, it only offers uncertainty.
12. The ALA notes that the Bill proposes significant penalties for conduct that may be unclear as to whether it is captured by paragraph (ea), and considers that this is an additional reason for adhering to the traditional understanding of the criminal law: that its parameters ought to be clear to those who are subject to it.

Unspecified degree of ‘obstruction’ (section 14B)

13. Proposed amendments to section 14B presents adjustments to the definition of trespass, and creates a modified sentencing regime when the court is satisfied, implicitly beyond reasonable doubt, of the additional matters in subsections (2)(2AA)-(2AC).
14. The ALA accepts that the modified sentencing range, with its increased statutory maximum penalties, would be interpreted by sentencing courts as indicating the intention of

Parliament that more severe penalties are warranted when the aggravating circumstances presented by subsections (2) (2AA)-(2AC) are proved.

15. The ALA notes, however, that in the case of subsection (2)(2AA), the modified sentencing range is engaged by any obstruction to a business or undertaking, however remote, to any the least degree.
16. The ALA considers that the objects of the amendment are unlikely to be served without the confinement of the operation of subsection (2)(2AA) to cases where there is a clear, proximate nexus between the act of trespass and the obstruction.
17. Otherwise, the ALA considers that it is consistent with existing legal principle that sentencing courts would regard the conduct referred to in subsections (2)(2AA) and(2AB) as aggravating, and necessitating a higher penalty within the existing sentencing range permitted by the Act.

Conclusion

18. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Police Offences Amendment (Workplace Protection) Bill 2022. As indicated above, the ALA has a number of concerns around proposed amendments to sections 13 and 14. The ALA is available to provide further assistance to the Tasmanian Government's Department of Justice on the issues raised in this submission.



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On behalf of the Tasmanian branch of the Australian Lawyers Alliance