

Our ref:LOR/TL

23 September 2021

Ms Ginna Webster  
Secretary  
Department of Justice

By email: [HaveYourSay@justice.tas.gov.au](mailto:HaveYourSay@justice.tas.gov.au)

Dear Ms Webster

### **Workplace (Protection from Protesters) Amendment Bill 2021**

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Thank you for the opportunity to comment on the Bill.

#### **Purpose of Submissions**

These submissions should not be taken as endorsing or opposing the Bill. The Council of the Law Society will decide whether it supports the relevant legislation when the Bill is in its final form.

#### **Submissions**

The proposed amendments contained in the Bill may improve some aspects of the existing legislation. However, the Bill remains overly complex, difficult to interpret, and will be difficult for the Courts to apply and the community to understand.

The Bill would remove important requirements for police to issue warnings and directions prior to arrest. This means there is a real risk that people might be subject to arrest and prosecution, when a warning or direction would have been an effective remedy.

This is of particular concern given that the way subsections 7(1) and (2) are drafted means there is a real risk that a person may be found to have committed multiple offences in quick succession without being warned that they are doing so.

The compound elements of proposed section 8 of the Principal Act will be difficult to interpret and apply and are likely to create uncertainty as to what does and does not amount to a contravention of the Act. Such a result is contrary to the Rule of Law, which dictates that criminal laws should be clear so that civil society can ascertain readily whether they are behaving lawfully. This underpins the legal principle. Difficulties in ascertaining the scope of this provision will likely lead to police and prosecutors exercising discretion to determine when the laws will be enforced, which is quite unsatisfactory from a rule of law perspective.

The rule of law dictates that it is for the Parliament to create the laws and the Executive arm of Government to enforce them. However, the enacting of unclear and vague criminal laws will tend to create a situation where the Police and Prosecutors effectively determine what acts are and are not treated as unlawful and lead to prosecution. This is a highly unsatisfactory situation.

Proposed subsection 7(7), which defines “circumstances of aggravation” for the purposes of ss 7(5), is quite uncertain in scope. The term “serious risk” therein is undefined. Accordingly, determining when a person can be said to have ‘indirectly’ ‘caused’ a ‘serious risk’ to the safety of the person or another person in each case will be difficult to ascertain and is likely to absorb considerable judicial resources. Again, the vague scope of this provision is a concern from a rule of law perspective.

Finally, proposed ss 6(1) is entirely otiose. Such a provision has the potential to embarrass Parliament as it merely describes the legal effect of the Constitutional invalidity of a State legislative provision. In this respect, the passing of such a position may risk causing reputational harm to the members of Parliament who support it.

Please do not hesitate to contact me if there are any issues you wish to discuss.

Yours faithfully

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a horizontal line.

**Luke Rheinberger**  
**Executive Director**