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To whom it may concern,

Thank you for the opportunity to make a submission to the *Workplaces (Protection from Protesters) Amendment Bill 2021*.

Before getting into the substance of the Bill it is critical to note its context.

Liberal Government Ministers and Members have consistently referred to protestors as 'terrorists' under Parliamentary privilege. Outside of privilege, in a media release on this Bill, Minister Barnett has instead opted for the word "extremists".

We cannot find any formal usage of the word 'extremism' that is not associated with terrorism. The terms of reference for the *Inquiry into Extremist Movements and Radicalism in Australia* make it clear it the term is related to, if not synonymous with, terrorism. The same is true for public statements from the Australian Federal Police.

Protestors are clearly not terrorists, they are not 'extreme', and despite multiple attempts to paint them as dangerous to workers, not a single shred of evidence has been presented that protestors now, or in the past, have caused any injury or even put individuals at risk of injury.

We believe an increase in violent and threatening behaviour towards protestors is correlated with the use of this dangerous and grotesquely inappropriate language.

This amendment Bill contributes towards a campaign of hate and vilification designed to virtue signal to members of our community who have a cultural antagonism towards peaceful protestors that the Government shares this contempt. This Bill, and other actions and statements from the Gutwein Government, contribute to an incitement of hatred and violence towards peaceful protestors, who, it must be remembered, come from across all societal demographics.

Put simply, this Bill is morally reprehensible, dangerous, and is solely designed to garner political support. The Liberals secured office in 2014 by tapping into deep and painful divisions in Tasmania, and are motivated to keep these wounds seeping to maintain political support.

Clause 4

This clause removes references to protestors from the long title, instead using the phrase “certain actions”. However, a practical interpretation of the Act, and the media releases and public statements from the Premier and Minister Barnett, make it clear the “certain actions” being referenced are peaceful protests.

What is also curious is the removal of the emphasis on “lawful” business activities that the 2019 amendments attempted to introduce. No rationale for the removal in this draft of a reference to ‘lawful’ business activities in the long title has been provided.

It is worth noting that, since the last failed legislative attempt to amend the Act in 2019, protests have occurred in relation to MMG Australia Pty Ltd continuing road works in Takayna rainforest despite being subject to an Environment Protection and Biodiversity Conservation (EPBC) Act assessment.

While this Bill, as drafted, can only capture a person who obstructs lawful activities, there are no defence provisions if they are also obstructing unlawful business activities.

For example, if a person is obstructing works, some of which are not lawful and some of which are lawful, they could still be captured by this Bill as drafted.

Clause 5

The 2019 amendment Bill attempted to replace “Protection from Protesters” with “Protection of Lawful Business Activities” in the short title. This iteration has instead chosen “Protection of Business and Workers”.

Again, the removal of “lawful” is curious.

This Bill also introduces the concept of protecting workers into its rhetoric.

It is again worth noting events since the last Bill was drafted. Specifically, WorkSafe turned their attentions towards protestors on the basis of worker safety. No evidence has ever been proffered of anyone being put in danger by protestors, and indeed WorkSafe eventually withdrew the notice after damning assessments in court.

Interestingly, only an aggravated offence under this bill requires that anyone be put at risk. It is therefore curious that this has been prioritised in the short title – particularly given it did not make the cut for reference in the long title or the objects of the Act. One has to assume that, as most people will only see the short title, it is for political messaging purposes. That is, to construct a false narrative that protestors represent a danger to workers.

Clause 6, new section 3

In attempting to address issues raised in *Brown v Tasmania*, this Bill removes references to protestors. Yet in a media release announcing this draft Bill, the words ‘protest’ or ‘protesters’ were used six times.

We’re in a situation where the Gutwein Government is trying to tell the Legislature – and the High Court – that the Bill is not in fact, about protestors, while trying to tell the public and industry that the Bill is all about cracking down on peaceful protestors.

The proposed Objects state –

“The object of this Act is to balance appropriately –

- (a) the right of persons to carry out business activities on business premises, or in, on or from business vehicles, without being intentionally obstructed by trespassers or persons obstructing the use or construction of public thoroughfares or critical infrastructure; and*
- (b) the rights of persons to freedom of movement, assembly and lawful expression of opinion.”*

The purpose of Objects provisions in an Act is to aid interpretation of provisions that could be interpreted in a number of ways (*Acts Interpretation Act 1931*, s. 8A). We can see no provisions in this Act that do not have a clear purpose and which would have its interpretation aided by the Objects provision.

Instead, the Objects have clearly been designed as an attempt to convince legislators that the unconstitutionality of the Principal Act is being remedied. In truth, the provision is meaningless.

The clear intention of the amendments is to make the wilful obstruction of certain business activities a specific offence. Any reasonable interpretation of this, taking into account exemptions contained in the Bill, is that its application would largely only be towards protestors. This interpretation is supported by the Government's own statements and media releases.

Clause 6, new sections 4 and 5

The original Act was very much focused on forest protestors.

The 2019 amendments broadened this issue out to cover a wide array of actions that may be detrimental to any business.

This amendment Bill appears to have landed on protection of a very specific list of industries from wilful obstruction (implicitly, from protestors). Specifically; mining, forestry, agriculture, aquaculture and meat processing, and retail.

This targeting of specific industries raises a serious question. Why are some industries deserving of these special protections, but others not?

Interestingly, industries which this government has made a big deal of supporting, and many of which have made sizable political donations to the Liberal Party, are disproportionately represented in this Bill.

Clause 6, new section 6

This proposed new section provides that, *"This Act does not apply to the extent, if any, that it would infringe any constitutional doctrine of implied freedom of political communication."*

The inclusion of this provision is a curiosity. The Australian Constitution already provides for this, so there is no legal weight added by this section.

Further to this, individuals who may be potentially subject to these provisions, and police officers required to enforce them, will likely lack the expertise required to know what this means in practical terms in relation to any given circumstances.

We can only conclude that this is another ham-fisted and lazy attempt to satisfy that this redrafting would address constitutional concerns.

Clause 7

The proposed new section 7 establishes that if a person intentionally obstructs a business activity in the course of trespassing, they commit an offence, and can be fined up to 50 penalty units or be subject to a term of imprisonment for a term not exceeding 12 months.

The *Police Offences Act 1935* already establishes an offence of *unlawful entry on land* (s. 14B). This offence similarly provides for a penalty of 50 penalty units or a term of imprisonment not exceeding 12 months, if the offence is in relation to a “dwelling-house”.

The penalty is 25 penalty units or a term of imprisonment not exceeding 6 months in other cases.

This is important context in relation to the proposed new offence. The clear intent of the *Police Offences Act 1935* is that trespass on a residential property should be treated as a more egregious offence than trespass on commercial premises.

This Bill is at odds with this principle – and in fact enables trespass on a business premises in relation to forestry, or aquaculture, to attract a higher penalty than trespass on the premises of a business in another sector, for example advanced manufacturing. In short, the amendments would give greater protection from trespass for select businesses favoured by the Liberals.

Section 14B(2A) of the *Police Offences Act 1935* allows for penalties for *unlawful entry on land* to be doubled if the person is in possession of a firearm.

In effect, this means if this Bill passed, a person who trespasses on an advanced manufacturing facility armed with a loaded firearm would potentially be subject to the same maximum penalty for this offence as a person who trespasses on a forestry coupe ‘armed’ with a placard.

This proposed new section also establishes aggravating provisions if the commission of the offence causes “*directly, or indirectly, a serious risk to the safety of the person or another person*”. As discussed earlier in this submission, this is the only element of the Bill that purports to relate to worker safety.

If this Bill is truly concerned with worker safety (despite not stating so in the Objects) it is curious that a limited range of businesses are covered. Mechanic workshops, waste and recycling facilities, and manufacturing are some of the more occupationally dangerous sectors in Australia, yet surprisingly absent from this Bill.

We would submit, if the objective of this government is to reduce risks to workers, that it needs to look at implementing reforms to our work health and safety laws based on the recommendations of the 2018 Safe Work Australia review.

To date, we are not aware of any injury or death caused directly or indirectly by peaceful protestors, but there have certainly been instances of injury or death caused by employers.

Conclusion

This is clearly another politically-driven attempt to garner electoral support, and to create a wedge issue for Labor, and potentially sitting Legislative Council members in upcoming elections.

This is a waste of taxpayer money, and a waste of the time of the Department, the Office of Parliamentary Counsel, and the Legislature more broadly.

We encourage the Gutwein Government to get on with the business of governing and drop this petty and destructive crusade.

If it is sincere about reducing protest activity, they should do it by properly regulating industries and protecting the environment, not bulldozing over freedom of speech.

Yours sincerely,



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