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Monday, 2 May 2022

Ginna Webster
Secretary
Department of Justice
GPO Box 825
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Dear Ginna

POLICE ASSOCIATION OF TASMANIA FEEDBACK - POLICE OFFENCES AMENDMENT (WORKPLACE PROTECTION) BILL 2022

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.

Our initial feedback provided on 23 September 2021 supported the principles underpinning the initial draft Bill, but raised concerns that the resultant legislation based on those proposed amendments will be quite complex, and we believe unnecessarily so, for our members to execute the associated powers.

We are very pleased to see that the new draft that we have been asked to provide feedback on i.e., *Police Offences Amendment (Workplace Protection) Bill 2022*, significantly reduces our concerns about the previous draft's complexities.

The proposed Bill will repeal the *Workplaces (Protection from Protestors) Act 2014* and make amendments to the *Police Offences Act 1935*. These main amendments include:

- A new public annoyance offence (in s.13) of obstructing a street (in a public place) and increasing the maximum penalty for public annoyance offences from 3 penalty units to 10 penalty units (while maintaining the option of up to 3 months imprisonment). This provides our members with an arrestable offence where streets are blocked, which the existing offence in the *Road Rules* does not. Previously we have relied on committing a nuisance, but technically for the offence to be made out it needs to be a nuisance to the

public broadly, which blocking a forestry vehicle on a remote forestry road could be argued did not.

- Amending trespass to:
 - Clarifying that entering onto any land, building structure, premises, aircraft, vehicle or vessel amounts to trespass - where previously the offender had to enter into or remain on. In addition, a person attaching themselves to any land, building structure, premises, aircraft, vehicle or vessel will be taken to be on it and therefore a trespasser.
 - Additional increased penalties where a trespasser obstructs a business or the trespasser causes a risk to safety.
 - Adding a specific (and higher) penalty for a body corporate where a trespasser obstructs a business.

In a forest protest context, whether a protestor is trespassing will still be determined by the *Forest Management Act 2013*, so our members dealing with forest protests will still need to be aware of this (as native forests are usually on Crown Land and the public are entitled to access them, unless the forest manager has met certain criteria under the Act to prohibit access).

As much mining also occurs on crown land, which the public are often entitled to be on (because a mining lease is for the minerals under the land, not the land itself), we understand the draft has included a subsection to trespass that says:

For the purposes of this section, a person who, on land to which a mineral tenement within the meaning of the Mineral Resources Development Act 1995 relates, contravenes section 23(3), 58(3), 67N(3) or 84(2) of that Act, is taken to have been on the land, at the time of the contravention, without the consent of the person in charge of that land, unless the holder of the mineral tenement has consented to the person being on that land at that time.

This seems unnecessarily complex and this proposed provision in the *Police Offences Act 1935*, won't make enforcement for police easier, nor simpler.

People generally, including police, understand trespass to mean being on land without consent. In what is proposed, the offence is not committed by simply being on the land. Instead, the person is deemed a trespasser by virtue of doing another act (hindering or obstructing), which is in itself an offence. As such, we recommend a less complex approach would be to omit the proposed subsection (7) altogether and instead add a power of arrest for the three offence provisions to the *Mineral Resources Development Act 1995*.

Police officers will still have to know and understand the *Mineral Resources Development Act 1995* to apply the proposed subsection (7). As a consequence, it makes little sense not to simply deal with any offenders for the substantive offence.

The current draft Bill is far simpler, and at the operational level, will ensure our members are less likely to be unnecessarily exposed to inappropriately applying legislation. The Bill is far

more practical, workable and not an unnecessary burden on our already over-extended members, compared to the previous draft Bill.

Holistically, this draft Bill is a significant improvement on the previous Bill – less the proposed subsection (7) - and the Police Association of Tasmania is supportive of this legislative change into a simpler and more pragmatic approach.

Kind regards

A handwritten signature in black ink, appearing to read 'Colin Riley', with a stylized flourish at the end.

Colin Riley
President
Police Association of Tasmania