RE: Workplaces (Protection from Protesters) Amendment Bill 2019

Thank you for this opportunity to make a submission on this Bill.

In summary, I make the following three points:

1. Please place an immediate hold on the consultation and recommence it once a plain-English explanation has been made available to the Tasmanian community. The explanation needs to outline exactly what actions the proposed new laws criminalise and why this is necessary.

2. The proposed new laws potentially criminalise an extraordinarily wide range of actions which are currently legal. I seriously question whether this is appropriate and/or justified given the absence of disruptive large scale protest activity in Tasmania over recent years, including since the first anti-protest laws have been invalidated.

3. If fortunate enough to be elected to the Legislative Council, I will move a motion in Parliament requiring the State Government to table the advice received on the amendments which, reportedly, indicates they are constitutional. My motion would cite precedent from the Australian Parliament where the Australian Government has tabled legal advice in response to constitutional issues.

My comments in detail are as follows:

1. Please place an immediate hold on the consultation and recommence it once a plain-English explanation has been made available to the Tasmanian community. The explanation needs to outline exactly what actions the proposed new laws criminalise and why this is necessary.

The document released for public consultation – the “Consultation Draft Workplaces (Protection from Protesters) Amendment Bill 2019” – is a document that very few people will be able to understand. As a lawyer familiar with the subject matter I have had difficulty piecing together the effect of the amendments. In part, this is because the amendments are contained in the Consultation Draft and the document being amended is itself a separate
document. Also however it is because the amendments are a response to the High Court judgement. The government know which amendments address which concerns raised by the High Court but, in the absence of explanation from government, the community are left to guess.

To make good on the promise of ‘fulsome’ consultation made by the Minister, the State Government needs to do more work to explain more clearly to the community exactly what the effect of the proposed amendments would be.

Without further work from the government the consultation is, sadly, meaningless and farcical. When government creates new offences it is under an obligation to clearly explain this to the community. The current consultation documents offer no clear explanation and instead are highly complex, technical and confusing.

Previously the Minister has declined to provide a summary of the legal advice received by government and, instead, encouraged the community to read the High Court judgement which necessitated these amendments. With respect, it is insulting and improper to expect the Tasmanian community to wade through the detailed and complex 180 page High Court judgement before they are able to participate in this community consultation. It is incumbent on the State Government to make it much easier for the community to have a say on these proposed new laws.

2. The proposed new laws potentially criminalise an extraordinarily wide range of actions which are currently legal. I seriously question whether this is appropriate and/or justified given the absence of disruptive large scale protest activity in Tasmania over recent years, including since the first anti-protest laws have been invalidated.

Proposed section 6(6) of the Bill states “A person must not cause the use or enjoyment of a public thoroughfare to be obstructed, if the person intends, by so doing, to impede the carrying out of a business activity’.

To contravene 6(6) is an offence attracting a fine of up to $5,000.

There are several aspects of this drafting which exponentially increase its potential scope beyond what might be regarded as reasonable.

Firstly, ‘public thoroughfare’ is defined very broadly to include ‘a public place’ and ‘a waterway’. This effectively expands the scope of this offence to any public land or water in Tasmania.

Secondly, ‘impede’ is defined to include ‘obstruct’ which has been held by Australian courts to include ‘non-physical interference’. This expands the scope of the offence to include those who encourage consumers to not buy a certain product. i.e. the business would be obstructed through reduced numbers of customers.
Thirdly, the public thoroughfare used by the community to undertake their action or awareness raising does not need to have any linkage or physical connect whatsoever with the business which is subject of their activity.

The above exponentially increases the potential scope of this new crime.

For example:

- people concerned about the latest skyscraper proposed by the Fragrance Group would possibly break this law if they stopped people in the street and asked them to sign a petition calling for the Hobart City Council to vote against the development application; or

- people opposed to the Lake Malbena helicopter tourism proposal would breach this law if waving placards in Salamanca Place and slowing cruise ship visitors from accessing market stalls

As a result of the above, people will be frightened into silence. They will not speak up and engage in debate or distribute information for fear of breaking this very widely drafted new offence.

As Tasmanian Director of Civil Liberties Australia I took calls from many different local groups in 2014 and 2015 when the first anti-protest laws were being debated and passed. The local groups were uncertain of whether they should or should not proceed with their proposed community event for fear of being charged with one of the new crimes. Sadly, I do know that due to the uncertainty some of these events did not proceed, despite them being peaceful, not violent, family friendly community events far removed from anything those laws were designed to stop. Put simply, the organisers were scared into silence and inaction. This is and was an unacceptable outcome for a democracy such as ours in Tasmania.

3. If fortunate enough to be elected to the Legislative Council, I will move a motion in Parliament requiring the State Government to table the advice received on the amendments which, reportedly, indicates they are constitutional. My motion would cite precedent from the Australian Parliament where the Australian Government has tabled legal advice in response to constitutional issues

I note the government is within its legal rights to claim the legal advice it has received is confidential and privileged, however I do also believe there is a very strong public interest argument as to why the government can and should elect to waive that privilege and release the legal advice.

The public interest supports release of the advice because of the large amounts of public money spent on drafting the first anti-protest laws, defending them in court and now drafting the second anti-protest laws. Further, the matters being addressed relate to the constitutionality of the laws
(a matter of significant public interest) and there is widespread general interest in the community.

For the Tasmanian Government to be responding to a High Court case which invalidated Tasmanian law is a significant and unusual event which heightens the public interest in full transparency.

I note that in 2010 the Australian Government released legal advice it had received in relation to office of the Speaker and again in 2011 the Australian Government released legal advice it had received in relation to the Constitutionality of its proposed amendments to the Migration Act. These indicate government can and do elect to release legal advice, especially in response to serious and unprecedented constitutional events.

Thank you again for this opportunity to provide comment.

Richard Griggs
Independent Candidate for Nelson

www.richardgriggs.com.au