

Department of Justice
Strategic Legislation and Policy
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Workplaces (Protection from Protesters) Amendment Bill 2019

This Bill should be abandoned as:

- It compounds the confused nature of the original Act. This bill fails to make the Act clear and easily applicable and so is unfair to both the public and the police who are expected to implement it.
- The bill criminalises any interference with any business or, in the reverse, cuts down the long-held right of citizens to peacefully object to business malpractice. The amendments effectively widen the original intent to trammel the rights of environmental protesters to cut the rights of all Tasmanians to object to business malpractice.
- Leaving police to decide what the term ‘threatening’ (to interfere with a business) means is a failure of the need for laws to be clear and explicit.
- The High Court accepted that there are other Tasmanian laws to deal with criminal or destructive behaviour including those that may take place in public forests.

I have identified the proposed offences created by the Bill and set them out below. I have then set out offences from other legislation that duplicates the relevant offence, and/or achieve the same purpose so as to make the offences in the Bill pointless.

An act on business premises that impedes the carrying out of a business activity: 6(1)

This could be covered by public annoyance (*Police Offences Act* (‘POA’), s 13), which provides a person shall not, in a public place, disturb the peace, engage in disorderly conduct, annoy any person, or commit any nuisance. The POA definition of ‘public place’ is broad and many workplaces would fall within its scope. It includes, for example, “any...shop...while open for the transaction of business”.

However, in circumstances where a workplace is not considered to be a public place, the offence of unlawful entry would apply (POA, s 14B). This offence provides a person must not enter, or remain on, any land, building, structure, premise or vehicle without the consent of the owner, occupier or

person in charge. Where a person is acting (or may act) in a way that impedes business activity, it is inevitable that either no consent to entry was provided or that consent has been revoked, and therefore by unlawfully remaining this offence would apply.

The Local Government Act 1993 also deals with nuisance (Division 6) and does not confine it to public places. It allows council to issue a notice or, if necessary, take necessary action to abate a nuisance.

There are also provisions that would cover instances where the behaviour is more serious. If a person enters 'by actual force or by such a show of force as to deter opposition', the offence of forcible entry (*Criminal Code Act* ('Code'), s 79) would apply. If the behaviour (of 3 or more persons) involves an intent to assist each other in resisting any person opposing the execution of the purpose for which they are assembled, and the behaviour gives people reasonable grounds to apprehend a breach of the peace, they may be charged with taking part in an unlawful assembly (Code, ss 73,74).

An act in or on a business vehicle that impedes business activity in, on, or carried out by means of, the business vehicle: 6(3)

As this offence is directed at behaviour in or on vehicles the following offences achieve the same purpose -

- Section 14B of the POA (unlawful entry)

As explained above, unlawful entry extends to vehicles. Therefore, assuming there is no consent, merely entering a business vehicle would constitute an offence.

- Section 37I of the POA (tampering with vehicles)

'A person must not unlawfully tamper or interfere with a motor vehicle or trailer'. The act does not explain what 'interfere' means for the purposes of that section, however any act in or on a vehicle that intends to impede a business activity would involve interfering with the vehicle in some way.

- Section 42(1)(a) of the POA (taking or using animal, vehicle, or vessel without owner's consent) 'A person shall not take or use any vehicle (other than a motor vehicle within the meaning of the Vehicle and Traffic Act 1999) that is the lawful property of any other person without the consent of the owner or person in lawful possession thereof.' Whilst this appears to exclude general motor vehicles it covers other vehicles likely to be on a work site (i.e. vehicles 'designed for off-road work in construction') that the above offence may not.

Obstructing use or enjoyment of public thoroughfare to impede business activity: 6(6)

As a public thoroughfare is defined in the Bill to include ‘a public place’ the following provisions that apply to public areas will achieve the same purpose –

- Section 13(1) of the POA (public annoyance) provides ‘a person shall not, in a public place –
 - a) behave in a violent, riotous, offensive, or indecent manner;
 - b) disturb the public peace;
 - c) engage in disorderly conduct;
 - d) jostle, insult, or annoy any person;
 - e) commit any nuisance.’

- Section 15B of the POA (dispersal of persons)
 - a) ‘A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person -
 - b) has or is likely to commit an offence; or
 - c) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or
 - d) ...
 - e) has committed or is likely to commit a breach of the peace.’

Whilst 15(b) is about obstructing pedestrians or vehicles, the Bill defines *impede* to mean ‘prevent, hinder or obstruct’ and therefore this would arguably achieve the same purpose.

These offences do not require an ‘intention to impede business activity’ like 6(6) of the Bill, but they are aimed at preventing individuals from causing annoyance and obstructions in public generally, which would in turn prevent individuals from impeding business activities by way of obstructing a public place.

As an ‘intention to impede business activity’ is not an ingredient of this offence, it is easier to prove.

Impeding a police officer who is acting under s 12 (removing obstructions), or a person acting in accordance with a direction issued by a police officer for the purposes of that section: 9

The Bill defines *impede* to mean ‘prevent, hinder or obstruct’. As such, similar offences include –

- Section 15B POA (see above).

- Section 34B of the POA (resistance to, and obstruction of, public officer)
 - 1) A person shall not - (a) Assault, resist, or wilfully obstruct –
 - (i) A police officer in the execution of his duty;
 - (ii) A person lawfully assisting a police officer in the execution of his duty;

- Section 114 of the Code (resisting public officers)
 - 1) Any person who assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any other person lawfully assisting him therein, is guilty of a crime.

- Section 118 of the Code (disobedience to lawful authority)
 - 1) Any person who, without lawful excuse, disobeys any order, warrant or command duly made, issued, or given by any court, officer, or person acting in any public capacity and duly authorised in that behalf, is guilty of a crime.

- Sections 22(5) and (6) of the *Forest Management Act (FMA)* create offences for failure to comply with a request from an authorised officer and for undertaking an activity against the directions of a police officer. As such, a request/direction to not impede an office from removing an obstruction would achieve what section 9 of the Bill sets out to do.

Remove or damage objects indicating demarcated business premises: 9A

- Section 37 of the POA (offences relating to property) provides -
 - 1) A person shall not unlawfully destroy or injure any property
 - 2) ..
 - 3) A person shall not unlawfully remove, displace, deface, obliterate, or conceal any -
 - a) boundary mark;
 - b) beacon;
 - c) survey mark
 - d) mark used in setting out any work;
 - e) milestone or kilometre post;
 - f) sign post; or
 - g) notice –
set up or posted by or on behalf of a public authority.

Section 3 of the POA defines *public authority* to include – ‘the Crown, the Transport Commission, the Hydro-Electric Corporation, the Tasmanian Development Authority, local authorities, the

Tasmanian Ports Corporation Pty. Ltd. (ACN 114 161 938) and any other person with statutory powers to carry out or maintain works for the use or benefit of the public in this State or any part thereof’.

However, if any of the above “objects” were not set up by a public authority they would classify as private property, the removal or damage of which would could invoke s. 37(1) of the POA (unlawfully destroy or injure any property), or one of the offences below. And if on private property, entry would be an offence against s. 14B POA.

- Section 273 of the Code (‘unlawfully injuring property’). This applies to any person who unlawfully destroys or injures any property.

- For marine farming specifically, s 93 of the *Marine Farming Planning Act 1995* (‘Marine Act’) provides that a person, without lawful authority, must not remove, destroy, damage or interfere with –
 - a) a beacon, buoy or mark which is used to indicate the boundary of a lease area; or
 - b) a light provided in respect of that beacon, buoy or mark; or
 - c) a beacon, signal or light that is attached to a raft or structure used in connection with a marine farm.

Other

The following offences are industry specific but have a broad scope that cover any act that would impede business activity.

- Section 31(3) of the FMA provides that –

‘A person must not, without lawful excuse, undertake an activity or engage in conduct on a forest road or other land in permanent timber production zone land contrary to the directions of the Forest Manager expressed on a sign authorised by the Forest Manager.

- Accordingly, a [forestry] business could use signage to prohibit the behaviour that interferes with business activities (achieving the purpose of the Bill).

- Section 92(1) of the Marine Act provides that, amongst other things, a person must not ‘hinder or obstruct the operation of marine farming’.

- *The Mineral Resources Development Act 1995* provides (for each type of mineral licence available) that ‘a person must not hinder or obstruct a licensee from carrying out an activity under the licence’ (ss 23(3), 58(3), 67N(3) and 84(2)).

Accordingly, the Bill is unnecessary, and the duplication of offences renders the Bill unconstitutional as the Bill is not reasonable and appropriately adapted to its purpose.

Yours faithfully,

A handwritten signature in blue ink that reads "Roland Browne".

Roland Browne
President