

## ***WORKPLACES (PROTECTION FROM PROTESTORS) 2014***

### **NOTES for GOVERNMENT AMENDMENTS**

#### **PART 1 – PRELIMINARY**

##### **Amendments to Clause 4 – Meaning of protestor and engaging in protest activity**

These amendments will ensure the Bill does not impede any protest such as marches and other demonstration activity that occur on public roads and footpaths.

These amendments ensure the Bill only covers protest activity related to a business premises (as defined in the amended Clause 5) or a business access area.

Note: 'business access area' is defined in Clause 3 to include roads and footpaths outside a business which enable access to the business. These access areas are still within the scope of the Bill.

##### **Amendments to Clause 5 - Meaning of business premises**

These amendments will ensure the Bill only covers those industries that have been identified as vulnerable to protest action namely; mining, forestry, agriculture, construction and manufacturing activities.

These amendments remove the following areas from the Bill –

- premises used as a shop, market, warehouse or professional offices or for the sale of food or drink; and
- premises that are used as, or intended to be used as, business premises, within the meaning of subclause (2) which would include premises ordinarily used as business premises, premises intended for use as business premise and premises including roads where works associated with the business are carried out; and
- a part, of residential premises, that is used by a resident of the premises for the purposes of a business activity and at which customers or clients periodically attend for the purposes of receiving goods or services from the resident.
- The definition continues to exclude hospitals, schools, prisons, government offices, charitable organisations and the like.

There is a minor amendment to Clause 5(1)(f) to ensure the protection of head offices of mining, forestry and farming businesses that remain in scope of the meaning of business activity.

Similarly there is a minor amendment to Clause 5(1)(k) to protect ancillary premises that may be associated with the business premises that are within the scope of the

Bill. This could cover buildings such as storage sheds, garages or other premises used as part of the carrying out certain business activity.

## **PART 2 – PROTECTION OF BUSINESS PROTESTORS**

### **Amendments Clause 6 – Protestors not to invade or hinder business**

These amendments will introduce an additional safeguard to ensure people are given a fair opportunity to stop acting in a manner that is preventing, hindering or obstructing a business.

These amendments provide that a police officer would need to deliver a direction to the person protesting that if they did not desist from their activity they may be subject to a possible action and sanctions under this Bill.

These amendments provide a ‘check and balance’ so that people will be warned first before they are issued with an infringement notice or arrested and charges applied under these laws.

Once a direction is given to a protestor, the protestor is effectively on notice that if they do not leave or stop what they are doing they may be liable to be charged or given an infringement notice in respect of a serious offence.

It should be noted that amendments to Clause 12 provide that business operators such as farmers cannot be required to leave their land (business). They may still be issued with the direction for the purposes of becoming subject to an offence provision, but they are not required to leave.

The amendments also clarify that the offence provisions do not apply to roads, footpaths or public places, only business access areas.

### **Amendments Clause 10 - Incitement to commit an offence**

These amendments remove the incitement clause from this Bill as existing laws already exist in the both section 3-6 of the Criminal Code and section 73 of the Justices Act.

Both these provisions are intended, more or less, to reproduce the common law of parties.

At common law, “whosoever shall aid, abet, counsel or procure the commission of any...offence...shall be liable to be indicted and punished as a principal offender.”

There is therefore no requirement at law for a specific incitement provision and these will be removed and the Code and Justices Act will apply.

The Government will move to remove this clause in the Committee Stage of the Bill.

### **PART 3 – POWERS OF POLICE**

#### **Amendments Clause 11 - Police officer may demand proof of identity**

These amendments clarify there is a requirement to state name and address if contravening clauses 6(1), (2), (3) or (4) of the Bill. These changes are consequential to other amendments.

#### **Amendments Clause 12 – Police officer may direct person to leave business premises or business access area**

These amendments allow police to provide directions to leave businesses or business access area where there are contraventions of Clauses 6(1), (2), (3) or (4) of the Bill.

As noted above if a direction is not complied with and the behaviour continues, then an offence is committed. This is the threshold trigger for offences under the Act which is included to limit the broad application of the offence provisions.

This works to protect ‘mum and dad’ type protestors.

This amendment also takes into account TFGA concerns to ensure that it is clear that farmers (business operators) cannot be directed to leave their land.

This amendment specifically inserts new subsections (3A), (3B) to allow for the police to issue directions to business operators (to activate the offence provisions), but not require them to leave. This allows for the issuing of the direction to be the trigger for the offence but permits the business operator or worker to remain on the business land.

#### **Amendments Clause 16 – Infringement Notice**

As it is now proposed that an infringement notice will generally only be issued for first-time offenders, these amendments reduce the infringement notices for failure to comply with a direction from a police officer under clause 6 (6) in line with similar offenses.

The infringement notice for an individual has been amended from \$2000 to two penalty units (note a penalty unit is \$140).

The infringement notice for a corporation has been amended from \$10 000 to ten penalty units (note a penalty unit is \$140).

These penalties are consistent with penalties prescribed by other police offences such as Public Annoyance and Dispersal of Persons.

## **PART 4 – COURT PROCEEDINGS**

### **Amendments Clause 17 - Certain offences to be indictable**

These amendments to Clause 17 are significant as they provide for the DPP to determine in which court a matter will be heard.

More serious matters will be treated as indictable offences within the Supreme Court and less serious matters as summary offences in the Magistrates Court.

The decision as to in which court to commence proceedings rests with the prosecutor who exercising the prosecutorial discretion would take into account a number of factors including the nature of the offence, severity of damage, seriousness, deterrent effect and the like.

DPP prosecutorial discretion applies in deciding what conduct to prosecute and what provision or law may be applicable to the conduct of the offence and, if a prosecution is commenced, how it is conducted.

The DPP already exercises these discretions in relation to other matters such as assault or arson offences.

Importantly amendments also provide for penalties for both indictable (Supreme Court) and summary (Magistrates Court) matters.

The summary matters have new lesser penalties which reflect similar offences i.e.:

- Summary fines for individual under 6(6) have been reduced from \$5000 to \$1000.
- Summary fines for corporations under 6(6) have been reduced from \$50 000 to \$5 000.

The mandatory imprisonment terms have also been removed for all summary offences.

Consistent with the original intent of the Bill the penalties for indictable offences will remain unchanged in order to deter extreme protest activities that hinder and damage Tasmanian businesses.

