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CONFIDENTIAL

TASMANIA

WORKPLACES (PROTECTION FROM PROTESTERS) BILL 2014

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WORKPLACES (PROTECTION FROM PROTESTERS) BILL 2014

(Brought in by the Minister for Resources, the Honourable Andrew Paul Harriss)

A BILL FOR

An Act to ensure that protesters do not damage business premises or business-related objects, or prevent, impede or obstruct the carrying out of business activities on business premises, and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Workplaces (Protection from Protesters) Act 2014*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act –

area of land includes any waters on the area of land;

building includes a structure;

business access area, in relation to business premises –

(a) means so much of an area of land (including but not limited to any road, footpath or public place), that is outside the business premises, as is reasonably necessary to enable access to an entrance to, or to an exit from, the business premises; and

(b) in relation to business premises consisting of a vessel or aircraft, includes a mooring, airport, and landing strip, at which the vessel or aircraft is, or is to be, stationed and so much of an area of land as is reasonably necessary to enable access to the mooring or airport;

business activity means a lawful activity carried out –

(a) for the purposes of profit or in the course of, or in relation to, carrying out an activity undertaken for the purposes of profit; or

(b) by a government business enterprise; or

(c) as part of an activity carried out on business premises by a business occupier in relation to the premises or ancillary to, or connected to, such an activity; or

(d) for a prescribed purpose that is related to the carrying out of an activity to which paragraph (a), (b) or (c) relates –

but does not include an activity that is prescribed to not be a business activity for the purposes of this definition;

business occupier, in relation to business premises, means –

(a) a business operator in relation to the business premises; and

(b) a business worker in relation to the business premises;

business operator, in relation to business premises, means all of the following persons or entities in relation to the premises:

(a) an owner, lessee, or lawful occupier, of the premises, including a government entity that is an owner, lessee, or lawful occupier, of the premises;

(b) a government entity in which the premises are vested or that has

management or control of the premises;

(c) a person who carries out a business activity on the premises under a contract (other than a contract of service), arrangement, or agreement, with a person who is, in relation to the premises, a business operator;

(d) a person who, under a permit, licence, or another authority, issued or granted under an Act, is entitled to carry out a business activity on the premises;

(e) a person –

(i) who is a member of a prescribed class of persons who are concerned in the management of the carrying out of a business activity; and

(ii) who carries out a business activity on the premises;

business premises has the meaning it has in section 5;

business-related object, in relation to business premises, means an object that belongs to, is in the possession of, or is to be used

by, a business occupier in relation to the business premises;

business worker, in relation to business premises, means –

(a) a person who is, under a contract of service, employed by a business operator in relation to the premises; and

(b) a person who is a member, in relation to the premises, of a prescribed class of persons who carry out business activities in relation to the premises;

damage, in relation to business premises or an object, includes to destroy, or the destruction of, the business premises or the object;

development includes –

(a) the construction, exterior alteration or exterior decoration of a building; and

(b) the demolition or removal of a building or works; and

(c) the construction or carrying out of works; and

(d) the subdivision or consolidation of land, including buildings and airspace; and

(e) the placing or relocation of a building or works on land; and

(f) the construction or putting up for display of signs or hoardings; and

(g) any activities ancillary to, or preliminary to, the carrying out of development;

engaging in a protest activity has the meaning it has in section 4;

forest operations means work comprised of, or connected with –

(a) seeding and planting trees; or

(b) managing trees before they are harvested; or

(c) harvesting, extracting or quarrying forest products –

and includes any related land clearing, land preparation, burning-off or access construction;

forest products means any of the following:

(a) vegetable growth on or from forestry land;

(b) a product of growing trees, or a product of dead trees on or from forestry land;

(c) shrub, timber, or other vegetable growth, that is on or from forestry land;

(d) sand, gravel, clay, loam, or stone, that is on or from forestry land;

forestry land means –

(a) an area of land on which forest operations are being carried out; and

(b) an area of land on which work preparatory to the submission of a plan for certification as a certified forest practices plan under the *Forest Practices Act 1985* is being carried out or, but for protest activities on the land, would be being carried out; and

(c) an area of land that is a private commercial forest within the meaning of the *Private Forests Act 1994*; and

(d) premises that are used to process forest products or to store vehicles, or equipment, for use on forestry land, whether or not the premises are forestry land;

government business enterprise has the same meaning as in the *Government Business Enterprises Act 1995*;

government entity means the Crown and includes a statutory officer and a statutory authority;

object includes machinery and a vehicle, vessel, aircraft, or other mobile structure;

owner, in relation to business premises, means –

(a) if the premises are Crown land that is permanent timber production zone land within the meaning of the *Forest Management Act 2013* – the Forestry corporation within the meaning of that Act; and

(b) if the premises are land held in fee simple – the person in whom the estate of fee simple is vested or, if the land is general law land subject to mortgage, the person having the equity of redemption in that land; and

(c) if the premises are land held under a tenancy for life – the person who is the life tenant; and

(d) if the premises are land held under a lease for a term of not less than 99 years – the person who is the lessee of the land; and

(e) if the premises are land held under any other interest

prescribed to be an interest for the purposes of this definition – the person who is the holder of the land under that interest;

premises means any of the following:

(a) a building;

(b) an area of land;

(c) a building floating on any waters on an area of land;

(d) any other place, or object on a place, that is within a prescribed class of places;

private commercial forest has the same meaning as in the *Private Forests Act 1994*;

process, in relation to timber, means to pulp, chip, cut, or saw, timber;

protester has the meaning it has in section 4;

statutory authority means an incorporated or unincorporated body which is established, constituted or continued –

(a) by or under a Tasmanian or Commonwealth Act; or

(b) under the royal prerogative –

being a body which, or of which the governing authority, wholly or partly

comprises a person or persons appointed by –

(c) the Governor-General or the Governor; or

(d) a Minister of the Crown, including the Crown in right of the Commonwealth; or

(e) another statutory authority or a statutory officer;

statutory officer means a person, including a corporation sole, established or appointed under a Tasmanian or Commonwealth Act by –

(a) the Crown, including the Crown in right of the Commonwealth; or

(b) a Minister, including a Minister of the Commonwealth; or

(c) another prescribed person or a member of a class of prescribed persons –

to carry out any functions, or exercise any powers, under a Tasmanian or Commonwealth Act;

timber includes the trunks and branches of trees, whether standing or not, and all wood, whether or not the wood is cut up, sawn, hewn, split or otherwise fashioned;

works includes –

(a) development; and

(b) repair or maintenance, other than repairs or maintenance that are carried out by a person other than for profit; and

(c) actions, on a site of works, preliminary to the carrying out of works on the site of works, including, but not limited to including –

(i) works referred to in paragraph (a) or (b); and

(ii) mapping, surveying, testing, or designing; and

(iii) any works that are prescribed; and

(d) any prescribed works.

4. Meaning of protester and engaging in a protest activity

(1) For the purposes of this Act, a person is a protester if the person is engaging in a protest activity.

(2) For the purposes of this Act, a protest activity is an activity that –

(a) takes place on business premises~~,~~ or a business access area in relation to

business premises~~, a road, a footpath or a public place~~; and

(b) is –

(i) in furtherance of; or

(ii) for the purposes of promoting awareness of or support for –

an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue.

(3) For the purposes of this Act, a person is engaging in a protest activity if the person participates, other than as a bystander, in a demonstration, a parade, an event, or a collective activity, that is a protest activity.

(4) For the purposes of this Act, an act done by a person is to be taken to have been done by the person while the person is engaging in a protest activity, even if –

(a) the act is unlawful; or

(b) the act is not itself a protest activity –

if the act occurs in the course of the person otherwise engaging in a protest activity.

(5) Nothing in subsection (3) or (4) is to be taken to limit the generality of subsection (1).

(6) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity in relation to business premises, a part of business

premises, or a business access area in relation to business premises, if the person has the consent, whether express or implied, of a business occupier in relation to the business premises –

(a) to be on the premises, part or area*;* and

(b) to engage in the protest activity on the premises, part or area.

(7) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity in relation to business premises, or a business access area in relation to business premises, if the person is –

(a) a business operator in relation to the business premises; or

(b) a business worker in relation to the business premises who has the express or implied consent of a business operator in relation to the premises to engage in the protest activity.

(8) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity on business premises, or a business access area in relation to business premises, if the protest activity is –

(a) protected industrial action within the meaning of the *Fair Work Act 2009* of the Commonwealth; or

(b) part of lawful industrial action undertaken by a State Service officer or State Service employee.

(9) For the purposes of this Act, a person is not to be taken to be engaging in a protest activity if the activity is within a class of activities prescribed not to be protest activities for the purposes of this subsection.

5. Meaning of business premises

(1) In this Act –

business premises means –

(a) premises on which –

(i) mining; or

(ii) mining operations; or

(iii) exploration for minerals –

within the meaning of the *Mineral Resources Development Act 1995*, is or are being carried out or is or are authorised under an Act to be carried out; and

(b) premises that are forestry land; and

(c) premises used for agriculture, horticulture, viticulture, aquaculture, commercial food production or commercial food

packaging, or as an abattoir, or for any associated purposes; and

(d) premises used for manufacturing, building, or construction, for the purposes of a business activity; and

~~(e) premises used as a shop, market, warehouse or professional offices or for the sale of food or drink; and~~

(f) premises used for the purposes of the administration or management of the conduct of business activities in relation to premises referred to in another paragraph of this definition; and

(g) premises occupied by a government business enterprise; and

~~(h) premises that are used as, or intended to be used as, business premises, within the meaning of subsection (2); and~~

~~(i) 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; and~~

(j) a vehicle, vessel, aircraft, or other mobile structure, used for the purposes of a business activity; and

(k) premises used for purposes ancillary to the carrying out of a business activity on business premises to which paragraph (a), (b), (c), (d), (f) or (g) or (j) applies.~~; and~~

~~(l) any prescribed place, or any place that is within a prescribed class of places, that is occupied for purposes related to the carrying out of a business activity.~~

~~(2) Premises are used as, or intended to be used as, business premises for the purposes of paragraph (h) of the definition of *business premises* in subsection (1) if –~~

~~(a) the premises are ordinarily used as business premises; or~~

~~(b) the premises are designed or intended for use as business premises and are owned, leased, or occupied, for use as business premises; or~~

~~(c) the premises consist of premises (including but not limited to a road, public place or footpath or an intended road, public place or footpath) on which works are, or, but for persons engaging in a protest activity, would be, lawfully being carried out.~~

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~~(3) For the purposes of this Act, a public road, public footpath or a public place is not to be taken to be business premises unless –~~

~~(a) subsection (2)(c) applies in relation to the road, footpath or place; or~~

~~(b) it –~~

~~(i) is being used as a market or a place at or from which goods are sold or traded or as a site for an event for which a person is required to pay a fee to attend; and~~

~~(ii) is not established for the purposes of a protest activity.~~

(4) The following premises are not to be taken to be business premises for the purpose of this Act~~, except in relation to a part, of such premises, that consists of premises to which subsection (2)(c) applies~~:

(a) a hospital that is owned, leased or occupied by, or on behalf of, a government entity;

(b) a day-procedure centre, a private hospital, or a residential care service, each within the meaning of the *Health Service Establishments Act 2006*;

(c) a prison or detention centre;

(d) a primary school, high school or tertiary institution;

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(e) premises occupied by a charitable, volunteer or religious organisation~~, except in so far as the premises are used –~~

~~(i) as a shop; or~~

~~(ii) as a warehouse for the storage of goods for sale~~;

(f) any premises that are a member of a class of premises that is prescribed for the purposes of this paragraph.

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PART 2 – PROTECTION OF BUSINESS FROM PROTESTERS

6. Protesters not to invade or hinder businesses, &c.

(1) A protester must not enter business premises, or a part of business premises, if –

(a) entering the business premises or the part, or remaining on the premises or part after entry, prevents, hinders or obstructs the carrying out of a business activity on the premises by a business occupier in relation to the premises; and

(b) the protester knows, or ought reasonably to be expected to know, that his or her entry or remaining is likely to prevent, hinder or obstruct the carrying out of a business activity on the premises by a business occupier in relation to the premises.

(2) A protester must not do an act on business premises, or on a business access area in relation to business premises, if –

(a) the act prevents, hinders or obstructs the carrying out of a business activity on the premises by a business occupier in relation to the premises; and

(b) the protester knows, or ought reasonably to be expected to know, that the act is likely to prevent, hinder or obstruct the

carrying out of a business activity on the premises by a business occupier in relation to the premises.

(3) A protester must not do an act that prevents, hinders, or obstructs access, by a business occupier in relation to the premises, to an entrance to, or to an exit from –

(a) business premises; or

(b) a business access area in relation to business premises –

if the protester knows, or ought reasonably to be expected to know, that the act is likely to prevent, hinder or obstruct such access.

~~(4) A person must not do an act on a road, footpath, public place, or another area of land, if –~~

~~(a) the act is done –~~

~~(i) in furtherance of; or~~

~~(ii) for the purposes of promoting awareness of or support for –~~

~~an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue; and~~

~~(b) as a result of the act, the movement of a vehicle, vessel or aircraft used by a business occupier in relation to business premises is prevented, hindered or obstructed; and~~

~~(c) the person knows, or ought reasonably to be expected to know, that the act is likely to~~

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~~prevent, hinder or obstruct the movement of that particular vehicle, vessel or aircraft or other vehicles, vessels or aircraft, of a business occupier in relation to particular business premises.~~

~~(5) A protester must not –~~

~~(a) remain on business premises after having been directed by a police officer under section 12 to leave the premises; or~~

~~(b) enter business premises within 4 days after having been directed by a police officer under section 12 –~~

~~(i) to leave the premises; or~~

~~(ii) to leave a business access area in relation to the business premises.~~

(6) ~~A person commits an offence if he or she contravenes subsection (1), (2), (4), (3) or (5).~~ A person commits an offence if he or she contravenes a requirement, specified in accordance with section 12(3D) on a direction issued to the person under section 12(1), (2) or (3), that the person must not, in the period of 3 months after the date on which the direction is issued, contravene subsection (1), (2) or (3) of this section.

(7) A person does not commit an offence against subsection (6) by reason only of the person forming part of a procession, march, or event, that –

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(a) passes business premises; or

(b) passes along a business access area in relation to business premises –

at a reasonable speed, once on any day.

(8) It is a defence to an offence against subsection (6) if the defendant proves that he or she had a lawful excuse for committing the offence.

(9) Without limiting the generality of subsection (2), an act on business premises, or a business access area in relation to business premises, prevents, hinders or obstructs the carrying out of a business activity on the business premises by a business occupier in relation to the premises if the act –

(a) prevents, hinders or obstructs the use, by a business occupier in relation to the business premises, of a business-related object on the business premises; or

(b) causes a risk to the safety of a business occupier in relation to the business premises.

7. Protesters not to cause or threaten damage or risk to safety

(1) A protester must not do an act that causes damage to business premises if the protester knows, or ought reasonably to be expected to

know, that the act is likely to cause damage to the business premises.

Penalty: In the case of –

(a) a body corporate, a fine not ~~exceeding~~ less than $50,000 and not more than $250 000; or

(b) an individual, a fine not ~~exceeding~~ less than $5,000 and not more than $50 000 or imprisonment for a term not exceeding 5 years, or both.

(2) A protester must not do an act that causes damage to a business-related object that –

(a) is on business premises; or

(b) is on a business access area in relation to business premises and is being taken to or from the business premises –

if the protester knows, or ought reasonably to be expected to know, that the act is likely to cause damage to such a business-related object.

Penalty: In the case of –

(a) a body corporate, a fine not ~~exceeding~~ less than $50,000 and not more than ~~–~~$250 000; or

(b) an individual, a fine not ~~exceeding~~ less than $5,000 and not more than $50 000 or

imprisonment for a term not exceeding 5 years, or both.

(3) A person must not issue a threat of damage in relation to business premises –

(a) in furtherance of; or

(b) for the purposes of promoting awareness of or support for –

an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding $250 000; or

(b) an individual, a fine not exceeding $50 000 or imprisonment for a term not exceeding 5 years, or both.

(4) For the purposes of subsection (3), a threat of damage in relation to business premises is a threat to the effect that –

(a) damage to a business-related object that is on business premises has been, is being, or is to be, caused by a person; or

(b) damage to a business-related object that –

(i) is on a business access area in relation to business premises; and

(ii) is being taken to or from the business premises –

has been, is being, or is to be, caused by a person; or

(c) the use of a business-related object that is on business premises has been, is being, or is to be, prevented, hindered or obstructed by a person; or

(d) the use of a business-related object that –

(i) is on a business access area in relation to business premises; and

(ii) is being taken to or from the business premises –

has been, is being, or is to be, prevented, hindered or obstructed by a person; or

~~(e) an act, to which section 6(4) relates, in respect of a business-related object, has been, is being, or is to be, carried out; or~~

(f) a risk to –

(i) the safety on business premises; or

(ii) the safety on a business access area in relation to business premises –

of a business occupier in relation to the premises has been, is being, or is to be, caused by a person.

(5) It is a defence to an offence against subsection (1) or (2) if the defendant proves that he or she had a lawful excuse for committing the offence.

(6) Without limiting the generality of subsection (1) or (2), an act causes damage to business premises, or to a business-related object, if, as a consequence of the performance of the act, the use of any business-related object by a business occupier in relation to the premises causes, or would be likely to cause –

(a) damage to the business premises, the object or any other business-related object; or

(b) a risk to the safety of a business occupier in relation to the business premises.

8. Persons must, at direction of police officer, leave and stay away from business access areas

(1) A person must not –

(a) remain on a business access area in relation to business premises after having been directed by a police officer under section 12 to leave the business access area; or

(b) enter a business access area in relation to business premises within 4 days after having been directed by a police officer under section 12 to leave –

(i) the business premises; or

(ii) a business access area in relation to the business premises~~; or~~.

~~(c) remain on an area of land, or enter the area within 4 days, after having been directed by a police officer under section 12 to leave the area of land.~~

Penalty: In the case of –

(a) a body corporate, a fine not less than $10 000 and not more than $100 000; or

(b) an individual, a fine not less than $5 000 and not more than $10 000.

(2) It is a defence to an offence against subsection (1) if the defendant proves that he or she had a lawful excuse for committing the offence.

9. Persons must not prevent removal of obstructions

(1) A person must not prevent, hinder or obstruct a police officer from taking action under section 13.

Penalty: In the case of –

(a) a body corporate, a fine not less than $10 000 and not ~~exceeding~~ more than $100 000; or

(b) an individual, a fine not less than $5 000 and not ~~exceeding~~ more than $10 000.

(2) It is a defence to an offence against subsection (1) if the defendant proves that he or she had a lawful excuse for committing the offence.

10. Incitement to commit offence against Act

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(1) A person must not incite a person to commit an offence against section 6.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding $100 000; or

(b) an individual, a fine not exceeding $10 000.

(2) A person must not incite a person to commit an offence against section 7.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding $250 000; or

(b) an individual, a fine not exceeding $50 000.

(3) It is a defence to an offence against subsection (1) or (2) if the defendant proves that he or she had a lawful excuse for committing the offence.

(4) It is a defence to an offence against subsection (1) or (2) if the defendant proves that the person who the defendant incited to commit an offence (***the other offence***) against a provision of this Act had a defence to the other offence.

PART 3 – POLICE POWERS

11. Police officer may demand proof of identity, &c.

(1) A police officer who reasonably believes that a person has committed, is committing, or is about to commit, an offence against a provision of this Act or a contravention of section 6(1), (2) or (3), may require the person –

(a) to state the person's name and date of birth; and

(b) to state the address at which the person ordinarily resides; and

(c) to give to the officer any evidence of the person's identity that the person has in his or her possession.

(2) A person on whom a requirement is imposed under subsection (1) must not –

(a) fail, or refuse, to comply with the requirement; or

(b) in response to the requirement, state a false name or address or date of birth or give false evidence of identity.

Penalty: Fine not ~~exceeding~~ less than $500 and not more than $2 000.

(3) A police officer may search a person who the police officer reasonably believes has failed to comply with a requirement imposed on the person under subsection (1)(c).

12. Police officer may direct person to leave business premises or business access area

(1) A police officer may direct a person who is on business premises to leave the premises without delay, if the police officer reasonably believes that the person has committed, is committing, or is about to commit, an offence, against a provision of this Act, or a contravention of section 6(1), (2) or (3), on or in relation to –

(a) the business premises; or

(b) a business access area in relation to the business premises.

(2) A police officer may direct a person who is in a business access area in relation to business premises to leave the business access area without delay, if the police officer reasonably believes that the person has committed, is committing, or is about to commit, an offence, against a provision of this Act, or a contravention of section 6(1), (2) or (3), on or in relation to –

(a) the business premises; or

(b) a business access area in relation to the business premises.

~~(3) A police officer may direct a person who is on an area of land to leave the area without delay, if the police officer reasonably believes that the person has committed, is committing, or is about to commit, an act in contravention of section 6(4) on the area of land.~~

(3A) A police officer may not issue to a person who is a business operator in relation to business premises a direction under subsection (1) or (2) in relation to the business premises or a business access area in relation to the premises.

(3B) A police officer may direct a person who is a business operator in relation to business premises to cease to carry out an activity that, if the person were not such a business operator, may constitute an offence against a provision of this Act, or a contravention of section 6(1), (2) or (3), on or in relation to the business premises or the business access area in relation to the premises.

(3C) A natural person must not contravene, or fail to comply with, a direction issued under subsection (3B), including a requirement included in the direction under subsection (3D).

Penalty: Fine not less than $5,000 and not more than $10,000.

(3D) A direction issued under this section to a person may include a requirement that the person must not, in the period of 3 months after the date on which the direction is issued –

(a) commit an offence against a provision of this Act; or

~~(a)~~(b) except in the case of a direction issued under subsection (3B), contravene section 6(1), (2) or (3).

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(4) A direction may be issued under this section to a person or to a group of persons.

(5) If a direction is issued under this section to a group of persons, the direction is to be taken to have been issued to each person –

(a) who is a member of the group to whom the direction is issued; and

(b) who ought reasonably to be expected to have heard the direction.

13. Police officer may remove obstructions

(1) A police officer may remove, or cause to be removed, from an area of land, an object that the police officer believes on reasonable grounds to have been placed on the area of land in contravention of a provision of Part 2.

(2) A police officer may carry out, or cause to be carried out, an activity on an area of land, other than business premises, that the officer reasonably believes to be necessary to make good any damage caused to an area of land by a person in contravention of a provision of Part 2.

14. Arrest without warrant and removal of persons

(1) A police officer may arrest without warrant a person –

(a) who is on business premises; and

(b) who the police officer reasonably believes is committing, or has committed within the previous 7 days, an offence, against a provision of this Act, on or in relation to –

(i) the business premises; or

(ii) a business access area in relation to the business premises.

(2) A police officer may arrest without warrant a person –

(a) who is on a business access area in relation to business premises; and

(b) who the police officer reasonably believes is committing, or has committed within the previous 7 days, an offence, against a provision of this Act, on or in relation to –

(i) the business premises; or

(ii) a business access area in relation to the business premises.

~~(3) A police officer may arrest without warrant a person –~~

~~(a) who is on an area of land; and~~

~~(b) who the police officer reasonably believes is committing, or has committed, an offence against section 6(4) on or in relation to the area of land.~~

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(4) A police officer may remove from business premises, or a business access area in relation to business premises, a person who the police officer reasonably believes is committing, or has committed, an offence, against a provision of this Act, on or in relation to –

(a) the business premises; or

(b) a business access area in relation to the business premises.

~~(5) A police officer may remove from an area of land a person –~~

~~(a) who is on the area of land; and~~

~~(b) who the police officer reasonably believes is committing, or has committed, an offence against section 6(4) on or in relation to the area of land.~~

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(6) A police officer may only arrest a person under subsection (1~~)),)~~or (2)~~ or (3)~~, or remove a person under subsection (4)~~ or (5)~~, if the police officer reasonably believes that it is necessary to do so for any of the following purposes:

(a) to ensure the attendance of the arrested person before a court of competent jurisdiction;

(b) to enable the detention of the person in accordance with the *Criminal Law (Detention and Interrogation) Act 1995*;

(c) to preserve public order;

(d) to prevent the continuation or repetition of an offence against a provision of Part 2;

(e) for the safety or welfare of members of the public or of the arrested person –

and may detain a person so arrested only for so long as is necessary to fulfil the purpose, or purposes, for which the person was arrested.

15. Use of force

A police officer may use, in relation to premises, a person or an object, the reasonable force necessary to exercise his or her powers, or perform his or her functions, under this Act.

16. Infringement notices

(1) A police officer may issue and serve on a person an infringement notice if the police officer reasonably believes that the person is committing, or has committed, an offence against section 6(6) or section 8(1).

(2) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than one offence.

(3) The penalty payable under an infringement notice for an offence against section 6(6) or section 8(1) is –

(a) in the case of a body corporate – ~~$10 000~~10 penalty units; or

(b) in the case of an individual – ~~$2 000~~2 penalty units.

PART 4 – COURT PROCEEDINGS

17. Certain offences to be indictable

(1) An offence against a provision of this Act, other than section 11(2) is an indictable offence.

(2) Despite subsection (1), an offence against a provision of this Act may, with the consent of the prosecutor, be heard and determined by a court of summary jurisdiction.

(3) If an offence against a provision of this Act is dealt with by a court of summary jurisdiction under subsection (2), the court may impose –

(a) if the offence is an offence, committed by a body corporate, against –

(i) section 6(6) – a fine of not less than $2,500 and not more than $25,000; or

(ii) section 7(1) or (2) – a fine of not less than $2,500 and not more than $25,000; or

(iii) section 7(3) – a fine not exceeding $25,000; or

(iv) section 8 or 9 – a fine not less than $2,500 and not more than $10,000; or

(c) if the offence is an offence committed by an individual against –

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(i) section 6(6) and section 19(2)(a) applies in relation to the individual – a fine of not less than $1,000 and not more than $5,000; or

(ii) section 6(6) and section 19(2)(b) applies in relation to the individual – a fine of not less that $2,000 and not more than $5,000 or a term of imprisonment of not more than 12 months, or both; or

(iii) section 7(1) or (2) – a fine of not less than $1,000 and not more than $5,000 or imprisonment for a term not exceeding 12 months, or both; or

(iv) section 7(3) – a fine not exceeding $5,000 or a term of imprisonment not exceeding 12 months, or both; or

(v) section 8 or 9 – a fine not less than $1,000 and not more than $5,000; or

~~(i)~~(vi) section 12 – a fine not less than $1,000 and not more than $5,000.

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18. Conviction must be recorded

A court that finds a person guilty of an offence against a provision of Part 2 must convict the person of the offence.

19. Mandatory penalties for invading or hindering business

(1) A court that convicts a body corporate of an offence against section 6(6) must impose in respect of the offence a penalty of not less than $50 000 and not more than $100 000.

(2) A court that convicts an individual of an offence against section 6(6) must –

(a) if paragraph (b) does not apply to the offence, impose in respect of the offence a penalty of not less than $5 000 and not more than $10 000; or

(b) if the offence is an offence (a ***further offence***) that is committed by the person after the person was convicted by a court for another offence against section 6(6), impose in respect of the further offence a term of imprisonment of not less than 3 months and not more than 2 years.

20. Compensation for loss

(1) If a court convicts a person of an offence against section 6 or 7 that has caused damage to business premises, a court may order the person to pay, to a business operator in relation to the premises, the amount determined by the court to be the cost of repairing the damage.

(2) If –

(a) a court convicts a person of an offence against section 6 or 7 in relation to business premises or a business access area in relation to premises; and

(b) the offence has caused damage (including by virtue of section 7(6)) to a business-related object in relation to the business premises –

a court may order the convicted person to pay, to a business occupier in relation to the premises, the relevant amount in relation to the business-related object.

(3) The relevant amount in relation to a business-related object is the cost that is determined by the court to be reasonably required in order to –

(a) restore the object to the condition it was in before the damage was caused; or

(b) replace the object, if the object cannot be restored to the condition it was in before the damage was caused.

(4) A reference in this section –

(a) to causing damage to a business-related object includes a reference to doing an act in relation to the object such that the use of the object causes or, if the object were to be used, would cause –

(i) the object, another object or premises to be damaged; or

(ii) a risk to the safety of a person; and

(b) to the relevant amount in relation to a business-related object is, in a case to which paragraph (a) refers, a reference to the cost determined by the court to be reasonably required in order to –

(i) restore the object to the condition it was in before the act referred to in paragraph (a) occurred; or

(ii) replace the object, if the object cannot be restored to the condition it was in before that act occurred.

(5) If a court convicts a person of an offence against section 6 that consists, in whole or in part, of –

(a) using an object to prevent, hinder or obstruct the carrying out of a business activity on business premises; or

(b) using an object, or doing an act, to prevent, hinder or obstruct access to an entrance to, or an exit from, business premises or a business access area in relation to business premises~~; or~~ -

~~(c) engaging in an act referred to in section 6(4) –~~

and a police officer has, under section 13, removed the object, or caused the object to be removed, or repaired, or caused to be repaired,

any damage to an area of land caused by the act, a court may order the person to pay to the Crown the removal and repair costs in relation to the object or act.

(6) For the purposes of subsection (5), the removal and repair costs in relation to an object or act are the costs reasonably incurred in –

(a) removing the object or having the object removed; and

(b) disposing of the object or having the object disposed of; and

(c) carrying out, or causing to be carried out, works to make good any damage caused by the use of the object or by the act.

(7) If –

(a) a court convicts a person of an offence against section 6; and

(b) a police officer arrested the person while, or immediately after, the offence was being committed, or removed the person from premises under section 14; and

(c) equipment was required to be used in order to effect the arrest or the removal –

a court may order the person to pay to the Crown the costs reasonably incurred in hiring or obtaining the equipment, and operating the equipment, in order to effect the arrest or removal.

(8) If a court convicts a person of an offence against section 6 or 7 in relation to business premises or a business access area in relation to business premises, the court may order the person to pay to a business operator in relation to the business premises the amount determined by the court to be equal to the amount of the financial loss suffered by the business operator as the natural, direct and reasonable consequence of the offence.

(9) If –

(a) a court convicts 2 or more persons of an offence against section 6 or 7 in relation to –

(i) the same business premises; or

(ii) a business access area in relation to the same business premises; and

(b) the offences each contributed to part or all of the same damage to premises or to a business-related object or to the same incident of financial loss of the business operator in relation to business premises –

a court may, in a determination under this section as to the amount of any cost or financial loss, apportion between the convicted persons so much of the cost or amount of the financial loss, and in the proportions, as the court thinks just in all the circumstances.

PART 5 – MISCELLANEOUS

21. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

22. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Treasurer; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.