

Public Consultation *Police Offences Act 1935*  
Department of Police and Emergency Management  
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8 December 2011

Dear Department of Police and Emergency Management

My submission is about the proposed section in Part IX, Procedure and Supplemental Provisions, of the *Tasmanian Police Offences Act 1935*, which would allow for applications for court orders in relation to costs. I oppose this proposal being included in the department's advice to the Minister for Police and Emergency Management.

The proposed amendment would allow government agencies to apply for a court order in relation to costs incurred in responding to offences such as trespass and nuisance. It is claimed that:

"Tasmania Police is regularly required to hire equipment and contractors to facilitate the removal of protestors trespassing who place themselves in positions, which are dangerous to their health and that of others and which require the use of special resources, such as cranes or tree climbers, to effect their removal."<sup>1</sup>

No other Australian state or territory has a comparable provision to that which is proposed in this consultation document. If accepted this provision would be peculiar to the Tasmanian jurisdiction. It would also place a differential burden on Tasmanian citizens in contrast with citizens of other states.

The comparison provided in the consultation document with the existing section 44A of the Act is irrelevant. Section 44A(1) states:

"A person shall not, falsely and with knowledge of the falsity of his statement, represent to any police officer or any person employed in the Department that any act has been done, or that any circumstances have occurred, which act or circumstances as so represented are such as reasonably call for investigation by the police."

That section relates to offences of false reporting, in which a citizen deliberately misuses public resources. The recovery of costs in the case of knowingly providing false information is not

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<sup>1</sup> Police consultation document, p.77

comparable to the situations envisaged in the proposed new section of citizens exercising their democratic rights to protest.

Protestors against forest destruction are singled out from other protestors by the creation of exclusion zones in public forests which create the offences of trespass and nuisance for people simply wanting to exercise a right to protest. There can be substantial police costs involved in monitoring rallies through city streets or assemblies of protestors at static locations, are they also going to try to recover the costs associated with those peaceful protests?

A precedent indicates that a law of this nature will, in due course, also be used against a broader group of people than just forest protestors and will have implications for unions, workers and other peaceful protestors alike.

Australia has obligations under the International Covenant on Civil and Political Rights to peaceful protest. Article 21 of the ICCPR states:

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."<sup>2</sup>

Australia agreed to be bound by the ICCPR on 13 August 1980. The proposed new section of the Tasmanian Police Offences Act is contrary to the international obligation to not place restrictions, by the imposition of unreasonable costs, on the right to peaceful assembly. The proposed amendment does not meet the threshold test of any of the exemptions provided in Article 21 of the ICCPR. The right to protest is a fundamental right in a functioning democracy and is protected by Australia's international obligations.

I strongly disagree with the proposed amendment to allow applications for the recovery of costs.

Yours sincerely,



Senator Bob Brown

cc: Paul O'Halloran MP, Tasmanian Greens Shadow Minister for Police & Emergency Services

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<sup>2</sup> <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>