

18 August 2014

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Dear Special Rapporteur,

**Re: Urgent appeal to UN Special Rapporteurs on the proposed introduction of  
the *Workplaces (Protection from Protesters) Bill 2014* in Tasmania, Australia**

This urgent appeal is respectfully submitted to the United Nations Special Rapporteur on the introduction of the *Workplaces (Protection from Protesters) Bill 2014*, that if passed, will see mandatory sentencing for protesting introduced into the Tasmanian legislature and is likely to have a chilling effect on persons who want to express an opinion, to associate with others or engage in peaceful assembly.<sup>1</sup> In the view of the signatories to this letter, the Bill violates a number of core human rights principles, including:

- Article 7 of the *International Covenant on Civil and Political Rights*, which prohibits the imposition of cruel, inhuman or degrading punishment; and
- Article 9 of the *International Covenant on Civil and Political Rights*, which prohibits the imposition of arbitrary detention; and
- Article 14 of the *International Covenant on Civil and Political Rights*, which guarantees a fair hearing; and
- Article 19 of the *International Covenant on Civil and Political Rights*, which guarantees the right to freedom of expression; and
- Article 21 of the *International Covenant on Civil and Political Rights*, which guarantees the right to peaceful assembly; and

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<sup>1</sup> This communication was prepared by Benedict Bartl, a lawyer and Policy Officer with Community Legal Centres Tasmania along with Matthew Sakaris and Matias Thomsen two final-year law students at the University of Tasmania. The authors were assisted by Andrew Topfer a recent law graduate.

- Article 22 of the *International Covenant on Civil and Political Rights*, which guarantees the right to freedom of association.

For information about the signatories to this urgent appeal, please see Appendix A. A copy of the *Workplaces (Protection from Protesters) Bill 2014* is attached.

We respectfully request that you send a communication to the Tasmanian government in relation to the allegations set forth herein. If the allegations are confirmed we request that you send an urgent appeal to the Australian government requesting that the laws either not be enacted due to the potential for unreasonable, unnecessary and disproportionate outcomes or amended to ensure compliance with international human rights law.

#### **The *Workplaces (Protection from Protesters) Bill 2014***

The *Workplaces (Protection from Protesters) Bill 2014* ('the Bill') was tabled in the Tasmanian House of Assembly on 24 June 2014 and read a second time on 26 June 2014.<sup>2</sup>

The Bill makes it an offence for a 'protester' to engage in 'protest activity'. A person is a 'protester' under the Bill, if they are engaging in 'protest activity'. 'Protest activity' is defined in the Bill as:

an activity on business premises ... that is in furtherance of or for the purpose of promoting awareness of or support for an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue.

The Bill makes it an offence for a protester to:

- Invade or hinder a business (including by entering a business premises, doing an act on a business premises or preventing access to a business premises);
- Cause or threaten damage to a business premises or business-related object (this would include machinery used by the business).

It is also an offence under the Bill for a person (as distinct from a 'protester') to incite someone to commit one of the abovementioned offences.

The Bill makes it a criminal offence to "prevent, hinder or obstruct the carrying out of a business activity". However, despite the stated intention of the Bill being to prevent impacts on commercial operations, the broad wording means there is no requirement to establish that the 'hindering' actually caused any damage to the business.

The Bill aims to regulate protest activity conducted on a 'business premises' or 'business access area'. A business access area includes any land outside the business

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<sup>2</sup> Paul Harriss MHA, Minister for Resources, Second Reading Speech, *Workplaces (Protection from Protesters) Bill 2014*, Hansard, 26 June 2014.

premises and is defined to include:

- land on which mining, mining operations or exploration is being carried out;
- forestry land (which is broadly defined);
- land or a building in which agriculture, aquaculture or an abattoir operation is being carried out;
- a vehicle or vessel used for the purpose of the business activity (e.g. a bulldozer);
- other ancillary premises (manufacturing, administration, management or residential premises associated with the business).

A business activity means a lawful activity carried out for the purpose of profit and has been intentionally broadly worded.

### **Penalties**

The Bill prescribes significant fines and mandatory prison sentences for protesters under the Bill. The Bill permits a police officer to issue on-the-spot fines of up to \$2,000 for refusing to provide identification.<sup>3</sup> Protesters who refuse to 'move on' after being directed to by a police officer will be fined at least \$5000 even where no offence has been committed but the police officer reasonably believes that the protester is 'about to' commit an offence.<sup>4</sup>

Of most concern is that the Bill imposes mandatory sentencing with protesters convicted of a second offence being sentenced to a mandatory minimum term of imprisonment of not less than three months and not more than two years.

Worryingly, existing legislation already provides protection to businesses from potentially invasive protest activity. Current legislation provides such protection while leaving the judiciary with the discretion to impose a sentence appropriate to all the circumstances of the offence. For example, under the *Police Offences Act 1935* (Tas), it is an offence to unlawfully enter land with the penalty for non-residential land being a fine of up to \$650 or a prison term not exceeding 6 months. Additionally, the *Police Offences Act 1935* (Tas) makes it an offence to destroy or injure property with the penalties being a fine not exceeding \$1,300 or a prison term not exceeding 12 months.

The Bill has passed Tasmania's House of Assembly (the lower house of Parliament) and is likely to be debated in the Legislative Council (the upper house) in the Sitting Week beginning **19<sup>th</sup> August 2014**. If the Bill garners sufficient support, it could pass immediately into law.

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<sup>3</sup> If a person elects to have the charge heard by a court and is found guilty the court penalty is a minimum of \$5000 and a conviction must be recorded.

<sup>4</sup> The fine must be not less than \$5000 and no more than \$10,000.

## **Imminent Violation of Human Rights**

### **- Mandatory Sentencing**

In his second reading speech the Minister made clear “this Bill is about sending a strong message to disruptive and irresponsible extremist protest groups that protest action of that kind is not acceptable to the broader Tasmanian community”.<sup>5</sup> However, in the view of the signatories, the proposed introduction of mandatory sentencing provisions amounts to a breach of international human rights principles, in particular the guarantee of a fair hearing and the prohibition of arbitrary detention and cruel, inhuman or degrading punishment.<sup>6</sup> All of these rights are breached by the mandating of a sentence of imprisonment that is not proportionate to the circumstances of the offence and the offender.

We strongly believe that mandatory sentences contravene the principle of proportionality and may lead to harsh, unjust and disproportionate sentences with judicial officers unable to take account the particular circumstances of a case in determining the appropriate sentence.

Human rights authority has consistently upheld the view that sentencing must be proportionate. That is, that the sentence imposed must reflect the personal circumstances of the offender and the particular circumstances of the offence. Expressed in another way, a sentence that fails to take into account the particular circumstances of the offender and the offence may in some cases be ‘grossly disproportionate’, amounting to cruel, inhuman or degrading punishment and thereby a breach of article 7 of the *International Covenant on Civil and Political Rights*. The European Court of Human Rights, the United States Supreme Court, the German Federal Constitutional Court, the Supreme Court of Canada, the South African Constitutional Court and the New Zealand Supreme Court have all adopted similar tests in their determination of statutory or constitutional equivalents to article 7 of the ICCPR.<sup>7</sup>

For example in the Canadian case of *R v Smith*,<sup>8</sup> the Supreme Court of Canada held that a mandatory minimum sentence of seven years imprisonment for the importation of illicit drugs would amount to cruel, inhuman or degrading punishment where the mandatory minimum sentence was disproportionate to the

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<sup>5</sup> Paul Harriss MHA, Minister for Resources, Second Reading Speech, *Workplaces (Protection from Protesters) Bill 2014*.

<sup>6</sup> Articles 7, 9 and 14 of the *International Covenant on Civil and Political Rights*, 16 December 1966 [1980] ATS 23 (entered into force generally on 23 March 1976). See also, Human Rights and Equal Opportunity Commission, *Mandatory Detention Laws in Australia: An Overview of Current Laws and Proposed Reform*, Australian Human Rights Commission. As found at [http://www.hreoc.gov.au/human\\_rights/children/mandatory\\_briefing.html](http://www.hreoc.gov.au/human_rights/children/mandatory_briefing.html) (Retrieved 9 July 2014).

<sup>7</sup> In the European Court of Human Rights see *Vinter & Ors v United Kingdom* [2012] ECHR 61. In the United States see *Harmelin v Michigan* 501 US 957 (1991). In Germany see BVerfG 2 BvR 2299/09, 16 January 2010. In Canada see *R v Smith (Edward Dewey)* [1987] 1 SCR 1045. In South Africa see *Dodo v The State* 2001 (3) SA 382. In New Zealand see *Taunoa v Attorney-General* [2008] 1 NZLR 429.

<sup>8</sup> [1987] 1 SCR 1045.

gravity of the offence.<sup>9</sup> A failure to appropriately take into account extenuating circumstances, including age, the mental state or the motives of the offender meant that it was “inevitable that, in some cases, a verdict of guilty will lead to the imposition of a term of imprisonment which will be grossly disproportionate”.<sup>10</sup> Similarly, it is our belief that the proposed mandatory sentencing provisions for protesting will in some cases be grossly disproportionate to the crime committed.

An assessment of proportionality is also informed by the prohibition of arbitrary detention enshrined in article 9 of the *International Covenant on Civil and Political Rights*. The United Nations Human Rights Committee (UNHRC) has consistently held that ‘arbitrariness’ is not to be equated with ‘against the law’ but rather must be interpreted more broadly to include elements such as inappropriateness, injustice and lack of predictability.<sup>11</sup> In the case of *A v Australia*<sup>12</sup> for example, the UNHRC clearly indicated that detention is arbitrary if disproportionate in the circumstances of the case. Therefore, a term of imprisonment must not be totally disproportionate to the severity of the crime committed. In other words, the punishment must fit the crime.<sup>13</sup> Case law from other courts applying similar statutory or constitutional tests has reached similar findings.<sup>14</sup> In the view of the signatories to this letter the mandating of a minimum three month custodial sentence will on occasion amount to arbitrary detention in circumstances where the judicial officer is unable to consider the circumstances particular to the individual case.<sup>15</sup>

Finally, we are concerned that the right to a fair hearing including the requirement that sentences should be reviewable by a higher court as enshrined in article 14 of the *International Covenant on Civil and Political Rights* is at risk with the judiciary required to impose the mandated minimum term of imprisonment even where it may be considered unjust to do so in view of the particular circumstances of the offence or offender. Human rights authority has consistently held that there must be

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<sup>9</sup> *R v Smith* [1987] 1 SCR 1045 per Dickson CJ and Lamer J (Wilson, Le Dain and La Forest JJ in agreement). This decision has been reaffirmed in a unanimous judgment of the Supreme Court in *R v Ferguson* [2008] 1 SCR 96.

<sup>10</sup> *R v Smith* [1987] 1 SCR 1045 at 1078 per Dickson CJ and Lamer J.

<sup>11</sup> *Van Alphen v The Netherlands*, Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990) at [5.8]; *Womah Mukong v Cameroon*, Communication No. 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994) at [9.8].

<sup>12</sup> *A v Australia*, Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

<sup>13</sup> *Fernando v Sri Lanka*, Communication No. 1189/2003, UN Doc CCPR/C/83/D/1189/2003 (2005) at [9.2] and *Dissanayake v Sri Lanka*, Communication No. 1373/2005, UN Doc CCPR/C/93/D/1373/2005 (2008) at [8.3].

<sup>14</sup> For example, for cases adopting a similar test under article 5(1) of the *European Convention on Human Rights* see *R v Governor of HMP Brockhill; Ex parte Evans (No 2)* [2001] 2 AC 19 at 38 per Lord Hope of Craighead; *Engel v Netherlands* [1976] 1 EHRR 647 at [58]; *Tsirlis and Kouloumpas v Greece* [1997] 25 EHRR 198 at [56]. Whilst in Canada, section 1 of the *Canadian Charter of Rights and Freedoms* has been similarly applied in *R v Oakes* [1986] 1 SCR 103; *R v Edwards Brooks and Art Ltd* [1986] 2 SCR 713 at 768-769 per Dickson CJ; *R v Clayton* [2007] SCC 32.

<sup>15</sup> *Shams v Australia*, Communication No. 1288/2004 UN Doc CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 & 1288/2004 (2007); *A v Australia*, Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997); *Danyal Shafiq v Australia*, Communication No. 1324/2004, CCPR/C/88/D/1324/2004 (2006).

a proportionate correlation between the sentence and the circumstances of the offence and offender. The inability of the judiciary to determine a minimum sentence based on the individual circumstances of the offence and the offender may undermine public confidence in the independence of the judiciary and is contrary to the right of a fair hearing. As the former Special Rapporteur on the Independence of Judges and Lawyers has observed:<sup>16</sup>

...the requirement of a fair trial under international standards, is negated when the trial judge imposes the prescribed minimum sentence, since there is nothing in the sentencing process for an appellate court to review. Hence, legislation prescribing mandatory minimum sentences may be perceived as restricting the requirements of the fair trial principle and may not be supported under international standards.

In summary, a consideration of relevant international jurisprudence reinforces the fundamental importance of proportionality in sentencing. The judiciary must be provided with the discretion to take into account the individual circumstances of the particular offence and the offender in determining an appropriate sentence. In the view of the signatories, the inherent inability of the judiciary to consider the circumstances of the offender and the offence carried out will lead to disproportionate sentences and leads us to conclude that the *Workplaces (Protection from Protesters) Bill 2014* violates the rights guaranteed by articles 7, 9 and 14 of the *International Covenant on Civil and Political Rights*. Indeed, as the United Nations Human Rights Committee has previously observed about mandatory sentencing provisions in other Australian States and Territories:<sup>17</sup>

Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory... leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and... raises serious issues of compliance with various articles of the Covenant.

***- Freedom of expression and of association and the right to peaceful assembly***

It is also the view of the signatories that the legislative restrictions on the right to freedom of expression and of association and the right to peaceful assembly also amount to breaches of the relevant human rights provisions. Case law has consistently held that restrictions on articles 19, 21 and 22 of the *International Covenant on Civil and Political Rights* and similar provisions in other international human rights instruments may only be limited so far as is strictly reasonable, necessary and proportionate. Such an interpretation is reiterated in the Human Rights Committee's General Comment No 31 which provides:<sup>18</sup>

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<sup>16</sup> Dato' Param Cumaraswamy, *Mandatory Sentencing: The Individual and Social Costs* (2001) 7(2) *Australian Journal of Human Rights* at 14.

<sup>17</sup> United Nations Human Rights Committee, Concluding Observations on the third and fourth periodic reports of Australia: Australia, UN Doc: HRC/A/55/40, 28 July 2000 at [522].

<sup>18</sup> Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc: CCPR/C/21/Rev.1/Add.13 (2004) at [6].

Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

For example, in the case of *Hashman & Harrup v The United Kingdom*<sup>19</sup> in which protesters had sought to disrupt a fox hunt, the European Court of Human Rights reaffirmed that any restrictions upon the right to freedom of expression must be “formulated with sufficient precision to enable the citizen to regulate his [or her] conduct”.<sup>20</sup> The Court went on to note that “[t]he level of precision ... depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed”.<sup>21</sup>

It is our belief that the *Workplace (Protection from Protesters) Bill 2014* lacks sufficient precision and is therefore likely to amount to a breach of international human rights principles. Among a large number of extremely vague formulations expressed in the Bill we draw particular attention to clauses 6 and 10 of the Bill. Clause 6(2) of the Bill provides that protesters ‘must not do an act on business premises, if... the act prevents, hinders or obstructs the carrying out of a business activity...’. No clarification is provided in either the Bill itself or in explanatory materials of acts that may amount to ‘hindering’ the carrying out of a business activity.<sup>22</sup> Additionally, clause 10 of the Bill provides, ‘a person must not incite a person to commit an offence’ against the Bill. Again, no definition of ‘incite’ is provided and the explanatory materials provided with the Bill fail to provide any clarification.<sup>23</sup> Perhaps most alarmingly, clause 10 applies to any person, not just protesters, meaning that journalists reporting on protest activity, family members explaining the actions of their children to their neighbors or union officials advocating on behalf of their membership may be inadvertently found to have incited others to protest activity. The failure to circumscribe the circumstances in which the police and prosecutorial authorities could act means that most if not all persons are unlikely “...to foresee, to a degree which is reasonable in the circumstances, the consequences which a given action may entail”.<sup>24</sup> As a result the Bill is likely to have a chilling effect on persons who want to express an opinion, to associate with others or engage in peaceful assembly.

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<sup>19</sup> *Hashman & Harrup v The United Kingdom* [2000] 30 EHRR 241.

<sup>20</sup> *Hashman & Harrup v The United Kingdom* [2000] 30 EHRR 241 at [31].

<sup>21</sup> *Hashman & Harrup v The United Kingdom* [2000] 30 EHRR 241 at [31].

<sup>22</sup> See, for example, the *Workplace (Protection from Protesters) Bill 2014* clause notes, the *Workplace (Protection from Protesters) Bill 2014* Factsheet and the Legislative Assembly *Hansard* from 26<sup>th</sup> June 2014.

<sup>23</sup> See, for example, the *Workplace (Protection from Protesters) Bill 2014* clause notes, the *Workplace (Protection from Protesters) Bill 2014* Factsheet and the Legislative Assembly *Hansard* from 26<sup>th</sup> June 2014.

<sup>24</sup> *The Sunday Times v United Kingdom* (No 1)(1979) ECHR 1 at [49].

Additionally, international courts have held that restrictions on the rights noted above must be necessary. The Government's aim in introducing the *Workplace (Protection from Protesters) Bill 2014* is the protection of the rights and freedoms of others, with the Bill clearly stating that it seeks "to regulate inappropriate protest activity that impedes the ability of businesses to lawfully generate wealth and create jobs". However, in the view of the signatories, the restrictions it places on these rights are not 'necessary' to achieve that aim, because the rights of businesses and business owners are already protected by various legislative instruments, including the offences of trespass to property,<sup>25</sup> damage to property,<sup>26</sup> and common nuisance.<sup>27</sup>

We also strongly believe that the *Workplace (Protection from Protesters) Bill 2014* is not proportionate to the limitations sought to be imposed as required in international law.<sup>28</sup> For example, in *Öllinger v Austria*<sup>29</sup> a counter demonstration against neo-Nazis was not permitted by Austrian authorities on the grounds that it would incite violence between the opposition groups and threaten public safety. However, the measures taken were ultimately held by to be disproportionate, as the Court determined that protests could have been organised for each of the opposing factions, with appropriate police precautions.

Worryingly, the Bill covers many forms of action that may be taken by unions on or near business premises, including stop-work meetings and other forms of industrial action. We are very concerned that union officials organising what might be a protected action, a very short defined time of work stoppage, is simply not protected at all. In the case of *Demir* the European Court of Human Rights summarised the essential elements of the right of association as including, among other things, "the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members".<sup>30</sup> One of the most effective means of drawing attention to the concerns of workers is protest action, often at or near the place of business. As a result, it is conceivable that, if enacted, the *Workplace (Protection from Protesters) Bill 2014* could be used to fine and imprison union members for participating in protest activity, include strike action at their place of work, as well as those union officials who are held to have incited the protest.

Further, there is strong evidence in international human rights law that the limitations upon the right to protests are not invoked without a significant threat to safety and the rights and freedoms of others. In the case of *Stankov and United Macedonian Organisation Ilinden v Bulgaria*<sup>31</sup> for example the Bulgarian government had prevented an organization from demonstrating for greater autonomy of the

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<sup>25</sup> Section 14B of the *Police Offences Act 1935* (Tas).

<sup>26</sup> Section 31(1) of the *Police Offences Act 1935* (Tas).

<sup>27</sup> Section 140 of the *Criminal Code Act 1924* (Tas).

<sup>28</sup> *Otto-Preminger-Institut v Austria* [1994] ECHR 26.

<sup>29</sup> *Öllinger v Austria* [2006] ECHR 665.

<sup>30</sup> *Demir and Baykara v Turkey* (2008) ECHR 1345 at [145].

<sup>31</sup> *Stankov and United Macedonian Organisation Ilinden v Bulgaria* [2001] ECHR 567.



minority Macedonian population in Bulgaria. The court ruled that peaceful protest, even where persons are seeking changes to territorial boundaries, would not automatically amount to a threat to national security warranting prohibitions on the freedom of expression and assembly.<sup>32</sup> In Tasmania, it is widely acknowledged that the vast majority of protest activity in Tasmania is peaceful protest and it is strongly asserted that there is no significant threat warranting this legislation.

In summary, the cases highlighted above clearly demonstrate that the limitation on the right to protest in international law is only enlivened in cases of strict necessity, in which the curtailment on civil and political rights is both legitimate and subject to international human rights principles. It is the view of the signatories to this letter that the restrictions proposed by introduction of the *Workplaces (Protection from Protesters) Bill 2014* are not reasonable, necessary or proportionate.

### **Request for Urgent Action**

The enactment of the *Workplaces (Protection from Protesters) Bill 2014* is likely to have a chilling effect on persons who want to express an opinion, to associate with others or engage in peaceful assembly. It will also see the imposition of harsh, unjust and in some cases disproportionate sentences with the judiciary unable to take into account the particular circumstances of a case in determining the appropriate sentence. In light of this situation, the signatories to this letter formally request that in your capacity as United Nations Special Rapporteurs and in accordance with the terms of your mandate, take all appropriate measures to investigate this urgent communication.

In particular, we request that you take urgent action with a view to ensuring that the Tasmania Government desist from enacting the *Workplaces (Protection from Protesters) Bill 2014* in its current form in potential violation of articles 7, 9, 14, 19, 21 and 22 of the *International Covenant on Civil and Political Rights*.

In order to remedy the violations of core human rights principles, including the inherent inability of mandatory sentencing to recognize proportionality in sentencing and the likelihood of the laws having a chilling effect on persons who want to express an opinion, to associate with others or engage in peaceful assembly we request that the Special Rapporteur recommend that the laws either not be enacted due to the potential for unreasonable, unnecessary and disproportionate outcomes or amended to ensure compliance with international human rights law.

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<sup>32</sup> *Stankov and United Macedonian Organisation Ilinden v Bulgaria* [2001] ECHR 567 at [110].

**Signed by**



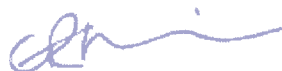
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Paul Harriss MP  
Minister for Resources  
Parliament House  
Hobart

## Appendix A

### Signatories to this appeal

**Against Animal Cruelty Tasmania** represents all nonhuman animals who are exploited by humans. AACT is focused on advocacy and education directed towards abolishing all forms of suffering, use and abuse of nonhuman animals.

The **Australian Lawyers Alliance** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

**Australian Lawyers for Human Rights** is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 3,000 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

The **Bob Brown Foundation** is an environmental campaigning foundation, supporting front-line environmentalists wherever they face the imminent destruction of 'Australia's wild and scenic heritage'. The Bob Brown Foundation campaigns to protect scenic land environments, wildlife and marine ecosystems in Tasmania, around Australia, in Antarctica and across our region.

**Civil Liberties Australia** is a national organisation with members in each State and Territory. CLA aims to protect traditional rights of the individual such as freedom of speech, freedom of association and freedom of religion.

**Community Legal Centres Tasmania** is the peak body representing the interests of eight community legal centres (CLCs) located throughout Tasmania. CLC Tas advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

**The Community and Public Sector Union (State Public Services Federation Tasmania) Inc** represents workers in the Tasmanian public sector, government business enterprises and at the University of Tasmania. In addition to protecting the industrial interests of members we also play a proactive role in protecting their professional interests and in lobbying for the provision of quality public services. The CPSU (SPSFT) Inc. represents a significant number of lawyers across the Tasmanian public sector including legal aid commission, crown law, in the Office of the Director of Public Prosecutions and also workers in the courts and prison system.

**Environment Tasmania** is the state's conservation council, dedicated to the protection, conservation and rehabilitation of Tasmania's natural environment. We are a non-profit, non-government organisation representing over 20 conservation groups.

**Markets For Change** is a market focused environmental Non-Government Organisation. Its mission is to drive responsible business and industry practices through an informed public which has the power to change markets and public policy.

**The National Tertiary Education Union** represents staff working in the higher education sector across the nation. It strives to maintain and improve working conditions in Australian universities, and advocates for members' rights on individual or group bases.

**Sea Shepherd Australia** is a non-profit conservation organisation whose mission is to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species. Sea Shepherd Australia uses innovative direct-action tactics to investigate, document and take action when necessary to expose and confront illegal activities on the high seas. By safeguarding the biodiversity of our delicately balanced oceanic ecosystems, Sea Shepherd Australia works to ensure their survival for future generations.

**The Tasmanian Aboriginal Centre** is a statewide program that has operated since 1973 from three regional offices throughout Tasmania. It is a community controlled organisation funded by the Federal Government that provides free legal representation to Aborigines and provides community legal education, advocacy and law reform services for the protection and enhancement of Aboriginal rights.

**The Wilderness Society** is an Australian environmental Non-Government Organisation whose purpose is protecting, promoting and restoring wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth. The Society was established in Tasmania in 1976 and has since worked for the protection of natural and cultural heritage in Tasmania and across Australia.

## TASMANIA

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# 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 –

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***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



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- (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

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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

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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

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- (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;

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- (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*;

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**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

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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

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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 –



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- (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, a business access area in relation to

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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

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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

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(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

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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; 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

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- (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; 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;

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

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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

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

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- (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 \$250 000; or

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- (b) an individual, a fine not exceeding \$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 \$250 000; or
  - (b) an individual, a fine not exceeding \$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 –

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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

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(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

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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 –



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- (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 \$100 000; or
  - (b) an individual, a fine not less than \$5 000 and not exceeding \$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.

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**10. Incitement to commit offence against Act**

- (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.

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**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 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 \$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).

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Part 3 – Police Powers

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**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, 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, 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.

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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

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- (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.
- (6) A police officer may only arrest a person under subsection (1), (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*;

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- (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.



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- (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; or
  - (b) in the case of an individual – \$2 000.

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**PART 4 – COURT PROCEEDINGS**

**17. Certain offences to be indictable**

An offence against a provision of this Act is an indictable offence.

**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

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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

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- (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 –

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- (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 –

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- (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

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- (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.

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Part 5 – Miscellaneous

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**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.



