

## Workplaces (Protection From Protesters) Act 2014

### Introduction

The [Workplaces \(Protection from Protesters\) Act 2014](#) (the **Act**) took effect on 17 December 2014. The Liberal Government went to the election in March with a promise to introduce 'tough' new laws to impose mandatory sentences and large fines for protesters who prevent, hinder or obstruct forestry or mining activities. The initial Bill seeking to give effect to this commitment was amended by the Legislative Council, resulting in the removal of mandatory sentencing and increased maximum penalties. The Act has been criticised for its broad application, restricting a wide range of protest activities in respect of many industries and businesses.

This fact sheet examines the practical effects of the new restrictions on protesting.

### What is 'protesting'?

A person is a 'protester' under the Act if they are engaging in 'protest activity'. 'Protest activity' is defined in the Act as:

*an activity on [or in relation to] business premises or a business access area...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 issues.*

A person will engage in protest activity if they participate in a demonstration, parade, event or collective action, unless:

- they are merely a "bystander" at the event;
- they are the business operator;
- they have consent from the business operator to engage in the protest activity;
- the activity is protected industrial action or an activity prescribed not to be a "protest activity" (there are currently no prescribed activities).

The Act makes it an offence for a protester to:

- prevent, hinder or obstruct the carrying out of a business activity, including by entering a business premises, doing an act on a business premises or preventing access to a business premises. These actions will only be an offence if the protestor has been issued with a direction by police not to carry out a "protest activity" in the previous 3 months.

**Note:** A person will not be hindering or obstructing a business if they are taking part in a march or event that passes the business, provided the march moves "at a reasonable speed" and passes the business only once in a day.

- cause, or threaten to cause, damage to a business premises or business-related object (e.g. machinery) or safety risks at the business. While it is not clear, this offence appears to be restricted to physical damage, rather than purely financial damage (e.g. loss of trade).
- refuse to leave a business access area when directed to do so by police
- return to a business access area within 4 days of being directed to leave by the police
- prevent the police from removing an obstruction

The Bill originally included an offence of inciting a person to commit an offence, however this was removed by the Legislative Council and is not included in the Act.

Penalties for these offences are high, with the possibility of significant fines and imprisonment (see below).

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## Where will protest activities be restricted?

The protest activities which the Act aims to regulate are restricted to protesting that is conducted on a 'business premises' or 'business access area'. A business access area includes any land outside the business premises (e.g. footpath or road).

'Business premises' is defined to include:

- land on which mining, mining operations or exploration is being carried out;
- forestry land (which is broadly defined – see below);
- land on which agriculture, aquaculture, viticulture, commercial food production or packaging or an abattoir operation is being carried out;
- premises used for manufacturing, construction or building;
- shops, markets or warehouses;
- a vehicle or vessel used for the purpose of the business activity (e.g. a bulldozer);
- the offices of a Government Business Enterprise engaged in (or regulating) the above mentioned activities (e.g. Forestry Tasmania or Mineral Resources Tasmania);
- other premises used for ancillary business purposes, such as administration, management or distribution.

Schools, charities, hospitals, prisons, not-for-profit and volunteer organisations are excluded from the definition of business premises.

## Mining

Business premises includes land on which mining, mining operations or exploration for minerals (as defined under the *Mineral Resource Development Act 1995*) is occurring, even where the land is private property. This includes both traditional open cut mining and processing and exploration for and extraction of unconventional gases, such as shale gas.

Under the Act, police cannot issue landowners (such as farmers) with a direction to leave their own property where they are protesting or trying to prevent exploration and mining activities. However, a police officer may still issue a direction requiring the landowner to cease the protest activity – failing to comply with the direction will be an offence and could attract a fine of up to \$10,000.

These laws will have implications for "Lock the Gate" style protests in rural areas affected by mining activities.

## Forestry

The Act also prescribes substantial penalties for protesters undertaking 'protest activity' on forestry land.

Forestry land is defined broadly in the Act and includes:

- An area of land on which forest operations are being carried out;
- An area on which work is being undertaken in preparation for the submission of a plan for certification of a forest practices plan;
- Private commercial forests under the *Private Forests Act 1994*;
- Premises that are used to process forest products or to store equipment.

Under the Act, a person who damages a bulldozer which was to be used for the purposes of undertaking forestry work or prevents machinery from entering a forest coupe may face fines up to \$50,000 or up to 5 years in prison (in addition to any compensation to be paid for any damage caused).

## Police powers

### *Move on powers*

The Act gives police the power to direct a person to leave a business premises or business access area where the police officer reasonably believes that the person has committed, or is committing, an offence. As outlined above, “move on” directions cannot be given to landowners or business operators (such as farmers protesting against mineral exploration on their property).

The Act also allows the police to direct a person to move on if the officer reasonably believes that the person is “about to” commit an offence under the Act. This means that a police officer is only required to reasonably believe that a person is about to undertake an unlawful ‘protest activity’ before being able to direct a person to ‘move on’. These are strong powers, requiring the police to make a subjective judgment regarding a person’s motivation and their predicted actions.

Directions may be issued to groups or individuals. Where a direction is given to a group, any member of the group who could reasonably have been expected to hear the direction will be required to comply with it.

If the police officer has directed a person to ‘move on’, it is an offence under the Act for that person (or any person from a group that was directed to move on) to return to the area within 4 days of the police direction.

When issuing a direction, a police officer may also require the protestor (or group of protestors) not to commit an offence under the Act within 3 months of the date of the direction. If a protestor carries out any “protest activity” within 3 months of receiving this direction, the protestor will commit an offence punishable by significant penalties (see below).

These broad police powers to move people on will have significant ramifications for peaceful and traditionally lawful protests.

### *Powers with respect to identification*

The Act also imposes significant penalties for any person who refuses to provide proof of identity, or who provides false information. Under the existing *Police Offences Act 1935*, the fine for failing to provide a name and address when directed by police is \$280. The new Act would impose a fine of up to \$2,000.

Currently, police can search people if they believe they have stolen goods, drugs or an item intended to be used to commit an offence (such as a weapon). Police cannot search people for their identification.

The Act changes that, allowing police officers to search any ‘protestor’ if they believe the person has identification on them and has not handed the identification to police when requested. The Act therefore provides police with broader powers of inspection against ‘protestors’ than they currently have in respect of other serious offences.

### *Arrest without warrant*

Under the Act, a police officer may arrest or physically remove a person without a warrant where the person is on business premises or a business access area and the officer reasonably believes that the person is committing, or has committed within the previous 3 months, an offence under the Act. The police officer may use “reasonable force” when exercising these powers.

The power to arrest or remove a person without warrant can only be exercised where the officer believes it is necessary to ensure court attendance, preserve public order and safety or to prevent continuing or repeated breaches.

## Penalties

The Act provides for significant fines and prison sentences for offenders.

Where a person (or organisation) carries out protest activity in contravention of a police direction, fails to leave business premises when directed to do so, or returns to the business premises within 4 days, a police officer may issue an on-the-spot fine (infringement notice). Unless contested, these fines will be up to \$280 for individuals, and \$1,400 for organisations. If the protestor seeks to have the matter heard by a Court, they will risk attracting higher penalties if convicted.

While many of the activities regulated by the Act would traditionally be considered summary offences (that is, less serious charges heard by a single judge), the Act provides for all offences, other than refusing to provide identification, to be indictable (that is, more serious charges heard by a judge and jury). However, the prosecutor may consent to an offence being heard summarily.

Where hindering / obstructing offences are heard as an indictable offence, fines of up to \$100,000 may be imposed for an organisation, and up to \$10,000 for individuals (or up to 4 years in prison for a second offence). Where these offences are heard summarily, the court may impose fines up to \$5,000 and up to 12 months for a second offence.

Where offences relate to causing damage to business premises, indictable offences may attract fines up to \$50,000 or 5 years in prison for individuals. If heard summarily, such offences may be penalised by a fine of up to \$5,000 or up to 12 months in prison. In addition to these penalties, the Court may order the protestor to pay the costs of repairing any damage caused (including replacing damaged equipment).

By comparison, under other legislation a person convicted of assaulting another person may be fined up to \$3,600 or imprisoned for up to 12 months. A person who steals a car may be fined up to \$6,500 or imprisoned for up to 3 years.

## Do existing laws cover these issues?

### *Trespass*

Under the *Police Offences Act 1935*, it is an offence to unlawfully enter land (i.e trespass). For non-residential land, the penalty for trespass is a fine up to \$650 or a prison term not exceeding 6 months.

The *Police Offences Act 1935* provides power to the police to arrest trespassers without a warrant. However, the police can only take this action if the person has failed to comply with a request to leave the area. The police cannot arrest a trespasser without a warrant if they believe the person has a reasonable excuse for being on the land.

In contrast, the Act allows police to arrest persons without a warrant without giving a warning.

The Act adds the additional element of hindering a business activity to a trespass offence. The addition of that element sees the fine go from a maximum of \$650 (for trespass) to up to \$10,000 (for protest activity). If a person commits a second offence, they may then be gaoled for up to 4 years.

### *Property damage*

The *Police Offences Act 1935* makes it an offence to destroy or injure property. The penalty is a fine not exceeding \$1,300 or a prison term not exceeding 12 months.

Under the Act, the fine for causing damage to a business premises is up to \$50,000, 5 years gaol or both.