Tasmanian Council of Social Service Inc.

Submission Workplaces (Protection from Protesters) Amendment Bill 2019

March 2019

TasCOSS

INTEGRITY
COMPASSION
INFLUENCE

tascoss.org.au

About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low-income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

Kym Goodes
CEO
Ph. 03 6169 9500
Email: Kym@tascoss.org.au

Introduction

TasCOSS appreciates the opportunity to make a submission to the Department of Justice regarding proposed amendments to the Workplaces (Protection from Protestors) Act 2014 contained in the Workplaces (Protection from Protesters) Amendment Bill 2019.

TasCOSS advocates on behalf of low-income Tasmanians who often live in vulnerable and disadvantaged circumstances. Our vision is for one Tasmania, free of poverty and inequality, where everyone has the same opportunity. We advocate for public policy that values and respects the diversity of Tasmanians and makes a real difference to the lives of people who are experiencing vulnerability. We work to ensure that the human rights of all Tasmanians are integrated into government consultation processes, policy approaches and budget allocations.

Our submissions and advocacy are strongly informed by the expertise of our members and the lived experiences of the Tasmanians we represent. For this submission, we consulted:

- Community Legal Centres Tasmania
- Tenants Union Tasmania
- The Environmental Defender's Office Tasmania
- Hobart Community Legal Service
- Women's Health Tasmania
- Social Action and Research Centre, Anglicare
- Neighbourhood Houses Tasmania

Background

In 2014 the Tasmanian Government enacted the Workplaces (Protection from Protestors) Act 2014. The Act introduced specific restrictions upon people from taking part in protest activities in or around business premises. Prior to its enactment, the legislation attracted significant criticism including from the United Nations. TasCOSS notes that this criticism from the UN was in response to a letter authored by Community Legal Centres Tasmania and co-signed by a diverse range of Tasmanian community groups. Community Legal Centres Tasmania are a TasCOSS member.

Despite strong criticism regarding the Act's non-compliance with international human rights law the legislation was passed in 2014.

In 2016, two Tasmanians, Bob Brown and Jessica Hoyt were arrested under the laws. They later initiated proceedings in the High Court of Australia challenging the laws. The basis of their challenge was that that Act infringed their implied freedom of political communication under the Australian Constitution. In October 2017, the High Court of Australia ruled that key provisions of the Act were invalid (Brown v Tasmania [2017] HCA 43) 'Brown'.

Issues of concern

We have two areas of concern with this Bill. First, the Government has not presented evidence that the amendments are necessary. The second and more fundamental concern is that the Bill impinges on fundamental human rights, and its application could therefore have a detrimental effect on the ability of citizens to raise and have addressed fundamental issues of justice.

The amendments are unnecessary

In Tasmania the Police Offences Act 1935 contains the offences of trespass and property damage. Both of these summary offences have traditionally been used to protect businesses from criminal activities. Further protections for specific industries such as forestry are contained in the Forest Management Act 2013 (Tas) which empowers forestry officials to exclude persons whose presence or activities are likely to interfere with forest operations. Similar protections exist to protect marine business operations and the mining industry.

When releasing the draft amendment Bill, the Minister for Building and Construction, Sarah Courtney stated in a media release on the 28th of January 2019 the following:

> The financial cost to legitimate Tasmanian businesses and their employees over many years due to having their business activities disrupted is very substantial, and we make no apologies for standing up for Tasmanians' rights to go about their lawful business and earn a living.

TasCOSS notes that no specific examples or statistics were provided regarding incidents of people behaving in unlawful ways against business in recent years. Nor did the government state in dollar figures the "financial cost" to business due to alleged interference from protesters. The onus should be on the government to demonstrate the need for any law that impedes the freedom of its citizens. This has not occurred in this instance.

The Bill impinges fundamental human rights

Although Australia does not have a formal bill or charter protecting human rights, the Constitution does contain some limited rights protections. The High Court decision in the Brown case was a strong statement that peaceful protests are an important form of free political expression, and that the original legislation puts that free expression at risk. In addition, the UN High Commissioner for Human Rights expressed concern about the law's impact on the freedom to peacefully assemble and, as a result, human rights advocacy: "The government appeared to prioritize business interests over the democratic rights to peacefully protest or the social dialogue about environmental protection."[1]

[1]Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_51_Add_3_EN.docx Accessed 2 March 2019

Freedom of assembly for the purpose of political expression is particularly important to people and groups in the community who struggle to have their voices heard in the political and legal realms. In addition, many of the traditional mechanisms of having one's voice heard, such as submissions on draft legislation or writing to members of parliament, depend on issues already being on the legislative agenda. Where they are not, peaceful public protests enable citizens to raise issues of concern so that they might become matters to consider for legislators and policymakers.

There are Tasmanian examples of protests being viewed as disruptive but, ultimately, the protests were seen as worthy and even as having made a significant contribution to the future of the State. For example, the human rights protests at Salamanca Market by gay and lesbian protestors resulted in arrests over disruption of public amenity and the business of other stallholders. These protests paved the way for significant gay and lesbian law reform in Tasmania. Recently the Tasmanian Government apologised to those it arrested and a key player in those protests, Rodney Croome, is now seen as a champion of human rights and equality in the State.

A second example are the protests to save the Franklin River from being dammed. Protestors deliberately obstructed access to the site by Hydro workers, as part of a strategy of civil disobedience. The river runs through what is now a World Heritage area that is the cornerstone of Tasmania's booming tourist industry.

A final example occurred in 2000 and involved a coalition of organisations, including TasCOSS, protesting outside the Executive Building. They argued that electricity concessions should be extended beyond pensioners to include health care card holders, who were on lower incomes than pensioners. As a result of that action the Government agreed to grant the extension to concessions.

In these examples, preventing or disrupting access to workplaces was a strategy of civil protest that produced outcomes most Tasmanians would now believe are just and beneficial. TasCOSS believes that the proposed legislation could have the effect of suppressing activity by pro-social citizens that brings issues of social (and environmental) justice to the attention of the media and the public. Our State would be a weaker democracy as a result.

Recommendations

- TasCOSS does not support the proposed amendments to the Act.
- TasCOSS instead recommends that the Act be rescinded.