



1. Introduction
2. Facts
3. Workplaces (Protection from Protesters) Act 2014 (Tas)
4. The implied freedom of political communication
5. Implications of the decision for NSW law
6. Conclusion

## The High Court's decision in *Brown v Tasmania*

by Tom Gotsis

### 1. Introduction

On 18 October 2017, the High Court handed down its decision in [\*Brown v Tasmania\*](#). By a 6:1 majority,<sup>1</sup> the Court held that certain sections of the *Workplaces (Protection from Protesters) Act 2014 (Tas)*, in their operation in respect of forestry land, were invalid because they impermissibly burden the implied freedom of political communication in the Commonwealth [Constitution](#). This e-brief provides an overview of the reasons of the majority. It also considers the implications of the decision for protest laws in NSW.

### 2. Facts

The Lapoinya Forest is located in North West Tasmania. Forestry operations were authorised in a part of the forest that adjoins reserve land. In January 2016 Dr Bob Brown (the first plaintiff) entered the reserve land and, while being filmed, began speaking about environmental issues against a background of preparatory logging work.<sup>2</sup> He was approached by police officers and directed to leave. After refusing to do so, he was arrested and charged with an offence against [s 8\(1\)](#) of the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#).<sup>3</sup>

Ms Jessica Hoyt (the second plaintiff) was, in similar circumstances, arrested, issued with an infringement notice for an offence against [s 8\(1\)](#) of the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#), and charged with an offence against [s 6\(4\)](#) of that Act.<sup>4</sup>

The State of Tasmania did not pursue the charges against Dr Brown and Ms Hoyt. Ultimately, the infringement notice was withdrawn and the charges dismissed.<sup>5</sup> The decision not to pursue the charges was based on advice from the Tasmanian Director of Public Prosecutions that “it was difficult for police officers to determine whether a person was in a business access area or on business premises”.<sup>6</sup>

The plaintiffs challenged the validity of the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) in the High Court.

### 3. Workplaces (Protection from Protesters) Act 2014 (Tas)

#### 3.1 Background and object

The [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) commenced on 24 December 2014.<sup>7</sup> The object of the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) is not to deter protest activity based on the right to peaceful assembly.<sup>8</sup> Instead, in light of the “substantial history”<sup>9</sup> of protests against forest operations in Tasmania, the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) was enacted to fulfil the Tasmanian Government’s election promise<sup>10</sup> of ensuring protesters do not damage business premises or prevent, impede or obstruct the carrying out of business activities on business premises.<sup>11</sup>

As the [Second Reading Speech](#) to the Workplaces (Protection from Protesters) Bill 2014 states:

it is important to stress ... that this Bill is not seeking to undermine or remove people’s right to voice their dissent or undertake protest action ... This Bill regulates protest activity to ensure that where protesting starts to unduly interfere, interrupt, obstruct or hinder the ability of business to develop and operate productive, job creating ventures and for workers to go to work and do their jobs safely and productively then that protest action is going too far.<sup>12</sup>

#### 3.2 Key terms

Table 1 sets out the definitions of key terms in the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#):

Table 1: Definition of key terms		
Term	Definition	section
<b>Protester</b>	A person engaging in a “protest activity”.	4(1)
<b>Protest activity</b>	Activity on business premises or business access areas furthering or promoting awareness or support for an opinion or belief regarding a political, environmental, social, cultural or economic issue.	4(2)
<b>Engaging in a protest activity</b>	Participating, other than as a bystander, in a demonstration, parade event or collective activity that is a protest activity. Excludes acting with the consent of a business occupier or furthering lawful industrial action.	4(3) 4(5)-(7)
<b>Business activity</b>	A lawful activity carried out for the purposes of profit.	3
<b>Business occupier</b>	A business operator or business worker.	3
<b>Business premises</b>	Includes “premises that are forestry land” (which in turn includes “an area of land on which forest operations are being carried out”).	3, 5(1)(b)
<b>Business access area</b>	So much of an area of land (including but not limited to any road, footpath or public place), outside the business premises, as is reasonably necessary to enable access to an entrance to, or to an exit from, the business premises.	3
<b>Prevent, hinder or obstruct</b>	Includes to prevent, hinder or obstruct the use of a business-related object on the business premises; or cause a risk to the safety of a business occupier.	6(7)

### 3.3 Invalid sections

The [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) was not invalid in its entirety. The High Court's Order states that only section 6(1), (2), (3) and (4), section 8(1), section 11(1), (2), (6), (7) and (8), section 13, and Part 4 (sections 16–18) were invalid and only "in their operation in respect of forestry land or business access areas in relation to forestry land".<sup>13</sup> The key elements of the sections that were invalid in respect of forestry land are set out in Table 2.

<b>Table 2: Invalid sections (in respect of forestry land)</b>	
<b>Offences</b>	<b>section</b>
It is an offence for a person to contravene a direction issued under section 11 that the person must not, within 3 months of the issuing of the direction, contravene sections 6(1), 6(2) or 6(3).	6(4)
It is an offence for a person to remain on a business access area after having been directed by a police officer under section 11 to leave the business access area. It is also an offence for a person to enter a business access area within 4 days of having been directed by a police officer under section 11 to leave the business premises or access area. The maximum penalty for an offence against section 8(1) is a fine not exceeding \$100,000 (for a body corporate) or \$10,000 (for an individual).	8(1)
<b>Related provisions</b>	<b>section</b>
A protester must not enter or remain on business premises, or a part of business premises, if doing so prevents, hinders or obstructs the carrying out of a business activity on the premises; and the protester knows, or ought reasonably to be expected to know, that his or her actions would likely have that outcome.	6(1)
A protester must not do an act on business premises and business access areas that prevents, hinders or obstructs the carrying out of a business activity, or obstructs an entrance or exit from the business premises, if the protester knows or ought reasonably likely to know that would be the likely effect of the act.	6(2), 6(3)
A person does not commit an offence against section 6(4) by reason only of the person forming part of a procession, march or event that passes business premises, or passes along a business access area in relation to business premises at a reasonable speed, once on any day.	6(5)
<b>Police powers</b>	<b>section</b>
A police officer may direct a person on business premises or a business access area to leave the premises or area without delay if the police officer reasonably believes the person has committed, is committing or is about to commit an offence or contravention against the Act in relation to the business premises or business access area.	11(1),(2)
A direction issued under section 11 may include a requirement that a person must not, in the period of 3 months after the date on which the direction is issued, commit an offence against a provision of the	11(6)

Act or contravene sections 6(1)–(3).

A direction may be issued under section 11 to a person or to a group of persons. If a direction is issued to a group of persons, the direction is taken to have been issued to each person who is a member of the group and who can reasonably be expected to have heard the direction. 11(7),(8)

A police officer may arrest without warrant a person who is on business premises or a business access area and who the police officer reasonably believes is committing, or has committed within the previous 3 months, an offence against a provision of the Act on or in relation to the business premises or business access area. 13(1), (2)

A police officer may remove from business premises or a business access area a person who the police officer reasonably believes is committing or has committed an offence against a provision of the Act or a contravention of section 6(1)–(3). 13(3)

A police officer may only arrest a person under section 13(1) or 13(2), or remove a person under section 13(3), if the police officer reasonably believes it is necessary in order to: 13(4)

- ensure the attendance of the person before court;
- enable the detention of the person in accordance with the *Criminal Law (Detention and Interrogation) Act 1995 (Tas)*;
- preserve public order;
- prevent the continuation or repetition of an offence against sections 6–9; or
- preserve the safety or welfare of members of the public or of the person.

Court proceedings	Section
Sets out the maximum penalties that apply when an indictable offence against the <a href="#">Workplaces (Protection from Protesters) Act 2014 (Tas)</a> is, with the consent of the prosecutor, tried in a court of summary jurisdiction.	16
Maximum penalty for an offence against section 6(4): for body corporates, a fine not exceeding \$100,000; for individuals, a fine not exceeding \$10,000 or, for further offences, a fine not exceeding \$10,000 and/or 4 years imprisonment.	17
The court may order a person who has been convicted of causing damage to business premises to pay the cost of repairing the damage or the financial loss suffered by the business operator as a consequence of that damage.	18

#### 4. The implied freedom of political communication

The implied freedom of political communication “protects the free expression of political opinion, including peaceful protest, which is indispensable to the exercise of political sovereignty by the people of the Commonwealth”.<sup>14</sup> It does so not by conferring any individual rights but by limiting the exercise of legislative power in order that the free expression of political opinion is not impeded.<sup>15</sup> Public debate about environmental issues

## The High Court's decision in *Brown v Tasmania*

generally constitutes political opinion.<sup>16</sup> In particular, Tasmania's forests are an important matter of politics and government in Australia.<sup>17</sup>

The test adopted in *McCloy v NSW*<sup>18</sup> was restated in *Brown v Tasmania*.<sup>19</sup> Whether or not a law impermissibly burdens the implied freedom of political communication was determined by reference to the following questions:

1. Does the law effectively burden the implied freedom of political communication?
2. If "yes" to question 1, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?
3. If "yes" to question 2, is the law reasonably appropriate and adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?<sup>20</sup>

A law is invalid if question 1 is answered "yes" and either question 2 or question 3 is answered "no".<sup>21</sup>

### 4.1 Did the law effectively burden the implied freedom of political communication? Yes.

The law effectively burdened the implied freedom of political communication.<sup>22</sup> The freedom was burdened because the law excluded persons from areas of a forest and deterred protesters from voicing their protests with respect to forest operations.<sup>23</sup> The law achieved this effect by conferring a broad discretion on police to bring otherwise lawful protest activity to an end.<sup>24</sup> That discretion was, to a significant extent, "unconfined by practically examinable and enforceable criteria."<sup>25</sup>

### 4.2 Was the purpose of the law legitimate? Yes.

The purpose of the [\*Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)\*](#) was legitimate; in the sense of being compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.<sup>26</sup> Before reaching that conclusion, Chief Justice Kiefel, Justice Bell and Justice Keane distinguished between the purpose of the [\*Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)\*](#) and the effect of the measures it employed to achieve that purpose, stating:<sup>27</sup>

It is not to be inferred that the purpose of the Act is to deter protesters more generally, even if that is the effect of some of the measures it employs in seeking to achieve its purpose of prevention of damage to and disruption of forest operations.

Their Honours then determined that the purpose of protecting businesses and their operations from damage and disruption from protesters was "compatible with the maintenance of the constitutionally prescribed system of representative and responsibly government."<sup>28</sup>

Justice Gageler said that "there could be no question that such a purpose is compatible with the maintenance of the constitutionally prescribed system of government".<sup>29</sup> To similar effect, Justice Nettle said:<sup>30</sup>

Persons lawfully carrying on their businesses are entitled to be left alone to get on with their businesses and a legislative purpose of securing them that entitlement is, for that reason, a legitimate governmental purpose.

### 4.3 Was the law reasonably appropriate and adapted? No.

The [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) was not reasonably appropriate and adapted to advance its legitimate object in a manner that was compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.<sup>31</sup>

Chief Justice Kiefel, Justice Bell and Justice Keane stated that the measures adopted by the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#):

... extend to protesters undertaking protest activities of a kind and in a place which would not affect forest operations ... Their effects will extend beyond individual protesters to entire groups ... Protesters ... will be deterred from being present in the vicinity of forest operations for fear that they may be subject to a direction to leave ... even though the direction may be based upon an erroneous view of where they are situated. ... Protesters will be deterred from returning to areas around forest operations for days and even months. During this time the operations about which they seek to protest will continue but their voices will not be heard.<sup>32</sup>

Those measures go “far beyond those reasonably necessary for its purpose”.<sup>33</sup> The Act is “likely to deter protest of all kinds and that is too high a cost to the freedom given [its] limited purpose”.<sup>34</sup>

Justice Gageler found the burden imposed on the freedom to engage in political communication by means of on-site political protests to be greater than that which was necessary to protect forestry operations from serious interference.<sup>35</sup> In particular, the criminal consequences that flow automatically under section 8(1) from an exercise of discretion under section 11(1) or (2) travel so far beyond protecting forestry operations that they “could not even be described as using a blunt instrument to achieve that purpose”.<sup>36</sup> The criminal consequences which flow under section 6(4) from the adding of a requirement under section 11(6) are “nothing short of capricious in their temporal duration of three months and nothing short of punitive in their geographical coverage and intensity”.<sup>37</sup> Justice Gageler did not find those consequences ameliorated by section 6(5); which, with “Pythonesque absurdity”,<sup>38</sup> permits protesters to march past business premises or along a business access area once a day, provided they do so at reasonable speed.

Justice Nettle described the provisions of the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) as “grossly disproportionate to the achievement of the stated purpose of the legislation”.<sup>39</sup> A particular concern identified by his Honour was that the breadth of the terms of the Act provided “little by way of a clear standard to guide the exercise of the relevant powers”<sup>40</sup> and, as a result, frustrated the capacity for judicial review of that exercise.<sup>41</sup> This, in turn, placed the freedom to protest lawfully on forestry land or related areas “at the mercy of police officers’ attempts”<sup>42</sup> to apply the Act.

### 5. Implications of the decision for NSW law

In NSW Part 4 of the [Summary Offences Act 1988](#) seeks to facilitate peaceful protests by encouraging co-operation between protest organisers and police.<sup>43</sup> At the same time, a broad range of offences in other Acts prohibit protests which are either violent or which seek to obstruct business activities.<sup>44</sup> For instance, with respect to forestry land, section 83(1)(c) of the [Forestry Act 2012](#) prohibits a person from obstructing, delaying or hindering authorised officers (including employees of the Forestry Corporation or police officers).<sup>45</sup> Similar offences are provided in respect of mining sites: for instance, interfering with a mine, contrary to section 201 of the *Crimes Act 1900*; and obstructing and hindering offences under sections 257, 378A and 378B of the *Mining Act 1992*.<sup>46</sup>

Of more general application is the [Inclosed Lands Protection Act 1901](#), which defines “inclosed lands” to mean:

any land, either public or private, inclosed or surrounded by any fence, wall or other erection, or partly by a fence, wall or other erection and partly by a canal or by some natural feature such as a river or cliff by which its boundaries may be known or recognised, including the whole or part of any building or structure and any land occupied or used in connection with the whole or part of any building or structure.<sup>47</sup>

Section 4(1) of the [Inclosed Lands Protection Act 1901](#) prohibits entering inclosed lands without consent and remaining on inclosed lands after being requested to leave.<sup>48</sup> Section 4B of the [Inclosed Lands Protection Act 1901](#) prohibits a person from committing an offence under section 4 in relation to inclosed lands on which any business or undertaking is conducted and, while on those inclosed lands:

- interfering with the conduct of the business or undertaking (or attempting or intending to do so); or
- doing anything that gives rise to a serious risk to the safety of the person or any other person on those lands.<sup>49</sup>

Section 4B was inserted into the [Inclosed Lands Protection Act 1901](#) by the [Inclosed Lands, Crimes and Law Enforcement Legislation Amendment \(Interference\) Act 2016](#); which also introduced the following measures designed to protect business operations from protesters:

- section 201 of the [Crimes Act 1900](#) was amended to include within the definition of “mine” a place “at which gas or other petroleum is extracted from the ground”.<sup>50</sup>
- Part 4 Division 7 was inserted into the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) to provide police with additional search and seizure powers in relation to:

anything that is intended to be used to lock-on or secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of a business or undertaking and that is likely to be used in a manner that will give rise to a serious risk to the safety of any person.<sup>51</sup>

- section 200 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) was amended to authorise police officers to issue general

directions to individuals or groups of persons<sup>52</sup> in public places who are involved in any “apparently genuine demonstration or protest”, “procession” or “organised assembly”, provided a police officer believes on reasonable grounds that the direction is “necessary to deal with a serious risk to the safety of the person to whom the direction is given or to any other person”.<sup>53</sup>

On 17 March 2016, Labor MLCs lodged a [protest](#) against the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill 2016 with the Clerk of the Parliaments.<sup>54</sup> One expressly stated reason for the protest was that the Bill “offends against the implied freedom of political communication in the Australian Constitution”. In debates on the Bill, Adam Searle MLC referred to the NSW Bar Association’s concern that:

... there must be a real doubt about the constitutional validity of proposed section 200 [of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)] in its application to individuals or groups that are exercising their implied constitutional freedom of communication about government and political matters. ... The new section 200 ... would involve an unjustifiably broad conferral of discretionary power on police officers to prevent or disrupt peaceful assembly, processions and demonstrations.<sup>55</sup>

The only aspect of NSW protest law that was commented upon in *Brown v Tasmania* was the [Inclosed Lands Protection Act 1901](#). Justice Nettle said that, while the [Inclosed Lands Protection Act 1901 \(NSW\)](#) applies to persons who prevent, hinder or obstruct an activity, it does not focus on protest activity as such, or seek to go as far as the [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) in the attempt to prevent protests relating to business activity.<sup>56</sup> Further, the land to which the [Inclosed Lands Protection Act 1901 \(NSW\)](#) applies is more restricted.<sup>57</sup>

The NSW Environmental Defenders Office has said it was “looking much more closely” at challenging NSW’s protest law in light of the decision in *Brown v Tasmania*.<sup>58</sup> The NSW Attorney General, Mark Speakman SC MP, has “requested the Department of Justice to obtain advice from the Solicitor-General on the impact of the judgment, if any, on NSW laws”.<sup>59</sup>

## 6. Conclusion

*Brown v Tasmania* demonstrates that, while the implied freedom of political communication protects the right to protest, this right is not absolute. Protecting businesses and their operations from damage and disruption by protesters is a legitimate legislative object. A law whose object is to prohibit damaging and disruptive protest activity will not be invalid, provided it is reasonably appropriate and adapted to advance that legitimate object. The [Workplaces \(Protection from Protesters\) Act 2014 \(Tas\)](#) was not reasonably appropriate and adapted to advance that object because its practical effect was to deter protest of all kinds. Whether any part of NSW’s protest laws will be challenged on these grounds remains to be seen.



## The High Court's decision in *Brown v Tasmania*

- <sup>1</sup> [2017] HCA 43. Chief Justice Kiefel, Justice Bell and Justice Keane in a joint judgment: at [154]. Justice Gageler in a separate judgment agreeing: at [235]. Justice Nettle in a separate judgment agreeing: at [298]. Justice Gordon in a separate judgement agreeing only in respect of s 8(1)(b): at [439], [483]. Justice Edelman in a separate judgment dissenting: at [568].
- <sup>2</sup> [2017] HCA 43 at [15].
- <sup>3</sup> [2017] HCA 43 at [55] per Kiefel CJ, Bell J and Keane J.
- <sup>4</sup> [2017] HCA 43 at [55] per Kiefel CJ, Bell J and Keane J.
- <sup>5</sup> [2017] HCA 43 at [499].
- <sup>6</sup> [2017] HCA 43 at [76], per Kiefel CJ, Bell J and Keane J
- <sup>7</sup> Section 2 and [Gazette S.R. 2014, No. 149](#).
- <sup>8</sup> See: Gotsis T, *Protests and the law in NSW*, NSW Parliamentary Research Service, 2015, p 5-7.
- <sup>9</sup> [2017] HCA 43 at [244] per Nettle J.
- <sup>10</sup> [2017] HCA 43 at [276] per Nettle J.
- <sup>11</sup> [Long Title](#) to the *Workplaces (Protection from Protesters) Act 2014 (Tas)*.
- <sup>12</sup> [Second Reading Speech](#), Workplaces (Protection from Protesters) Bill 2014, p 2-3. See also [2017] HCA 43 at [101], per Kiefel CJ, Bell J and Keane J.
- <sup>13</sup> This point was emphasised by Kiefel CJ, Bell J and Keane J: [2017] HCA 43 at [6].
- <sup>14</sup> [2017] HCA 43 at [88], per Kiefel CJ, Bell J and Keane J.
- <sup>15</sup> [2017] HCA 43 at [88] and [90], per Kiefel CJ, Bell J and Keane J.
- <sup>16</sup> [2017] HCA 43 at [34] per Kiefel CJ, Bell J and Keane J.
- <sup>17</sup> [2017] HCA 43 at [239] per Nettle J.
- <sup>18</sup> *McCloy v NSW* (2015) 257 CLR 178 at [2].
- <sup>19</sup> [2017] HCA 43 at [104], per Kiefel CJ, Bell J and Keane J; at [156] per Gageler J; at [277] per Nettle J.
- <sup>20</sup> [2017] HCA 43 at [104], per Kiefel CJ, Bell J and Keane J; at [156] per Gageler J; at [277] per Nettle J. Justice Gageler reformulated the first question in the following terms: “Does the law effectively burden freedom of political communication?”
- <sup>21</sup> [2017] HCA 43 at [156], per Gageler J.
- <sup>22</sup> [2017] HCA 43 at [95], per Kiefel CJ, Bell J and Keane J; at [199], per Gageler J; at [270] per Nettle J. See also Gordon J at [396].
- <sup>23</sup> [2017] HCA 43 at [95] and [118], per Kiefel CJ, Bell J and Keane J.
- <sup>24</sup> [2017] HCA 43 at [196], per Gageler J; at [269] per Nettle J.
- <sup>25</sup> [2017] HCA 43 at [269], per Nettle J.
- <sup>26</sup> [2017] HCA 43 at [102], per Kiefel CJ, Bell J and Keane J; at [213] per Gageler; and at [275] per Nettle J. See also Gordon J at [413].
- <sup>27</sup> [2017] HCA 43 at [99], per Kiefel CJ, Bell J and Keane J.
- <sup>28</sup> [2017] HCA 43 at [102], per Kiefel CJ, Bell J and Keane J.
- <sup>29</sup> [2017] HCA 43 at [213] per Gageler J.
- <sup>30</sup> [2017] HCA 43 at [275] per Nettle J.
- <sup>31</sup> [2017] HCA 43 at [152] per Kiefel CJ, Bell J and Keane J; at [232]–[233] per Gageler J; at [295] per Nettle J. See also Justice Gordon at [440]–[442].
- <sup>32</sup> [2017] HCA 43 at [84]–[86], per Kiefel CJ, Bell J and Keane J.
- <sup>33</sup> [2017] HCA 43 at [146], per Kiefel CJ, Bell J and Keane J.
- <sup>34</sup> [2017] HCA 43 at [145], per Kiefel CJ, Bell J and Keane J.
- <sup>35</sup> [2017] HCA 43 at [232], per Gageler J.
- <sup>36</sup> [2017] HCA 43 at [228], per Gageler J.
- <sup>37</sup> [2017] HCA 43 at [230], per Gageler J.
- <sup>38</sup> [2017] HCA 43 at [231], per Gageler J.
- <sup>39</sup> [2017] HCA 43 at [295], per Nettle J.
- <sup>40</sup> [2017] HCA 43 at [294], per Nettle J.
- <sup>41</sup> [2017] HCA 43 at [294], per Nettle J.
- <sup>42</sup> [2017] HCA 43 at [294], per Nettle J.
- <sup>43</sup> Gotsis T, *Protests and the law in NSW*, NSW Parliamentary Research Service, 2015, Chapter 4.
- <sup>44</sup> Gotsis T, *Protests and the law in NSW*, NSW Parliamentary Research Service, 2015, Chapter 5.

- <sup>45</sup> Authorised officers are defined in sections 70 and 71 of the *Forestry Act 2012*. The maximum penalty for an offence against section 83(1) of the *Forestry Act 2012* is 20 penalty units or \$2,200 (as provided by section 17 of the *Crimes (Sentencing Procedure) Act 1999*, one penalty unit is equal to \$110).
- <sup>46</sup> The maximum penalty for an offence against section 201 of the *Crimes Act 1900* is 7 years imprisonment. The maximum penalty for an offence against sections 257 of the *Mining Act 1992* is 100 penalty units (\$11,000). Section 378A of the *Mining Act 1992* carries a maximum penalty of 10,000 penalty units (\$1,100,000) and 2,000 penalty units (\$220,000) in the case of individuals. Section 378B of the *Mining Act 1992* carries a maximum penalty of 100 penalty units (\$11,000).
- <sup>47</sup> Section 3 of the [Inclosed Lands Protection Act 1901](#).
- <sup>48</sup> The maximum penalty for an offence against section 4(1) is 5 penalty units (\$550) or 10 penalty units (\$1,100) in the case of prescribed premises (such as schools or hospitals).
- <sup>49</sup> The maximum penalty for an offence against section 4B of the [Inclosed Lands Protection Act 1901](#) is 50 penalty units (\$5,500).
- <sup>50</sup> Section 201(2) of the *Crimes Act 1900*. The definition of "mine" also includes: a place at which exploration for minerals, or for gas or other petroleum, is undertaken by mechanical means that disturb the ground; a place at which works are being carried out to enable the extraction of minerals, or of gas or other petroleum, from the ground; and a former mine at which works are being carried out to decommission the mine or make it safe.
- <sup>51</sup> [Section 45A](#) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
- <sup>52</sup> Section 198A of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
- <sup>53</sup> Section 200(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002*. Another exception relating to protests that obstruct traffic is set out in section 200(4).
- <sup>54</sup> [Inclosed Lands, Crimes and Law Enforcement Legislation Amendment \(Interference\) Bill 2016, Protest](#), *NSW Hansard*, 17 March 2016, p 7,646–7,647.
- <sup>55</sup> Searle A, [Inclosed Lands, Crimes and Law Enforcement Legislation Amendment \(Interference\) Bill 2016](#), *NSW Hansard*, 15 March 2016, p 7.377.
- <sup>56</sup> [2017] HCA 43 at [285] and [287], per Nettle J.
- <sup>57</sup> [2017] HCA 43 at [287], per Nettle J; *Inclosed Lands Protection Act (1901)* (NSW), [s 3\(1\)](#), definitions of "Inclosed lands" and "prescribed premises".
- <sup>58</sup> Koziol M, [Protesting laws in activists' sights after Bob Brown wins landmark High Court case](#), *Sydney Morning Herald*, 18 October 2017.
- <sup>59</sup> Nicholls S, [Call to scrap NSW anti-protest laws after High Court decision](#), *Sydney Morning Herald*, 19 October 2017.

Information about Research Publications can be found on the Internet at the:  
[NSW Parliament's Website](#)

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

© 2017

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior consent from the Manager, NSW Parliamentary Research Service, other than by Members of the New South Wales Parliament in the course of their official duties.

ISSN 1838-0204