

BROWN & ANOR v THE STATE OF TASMANIA (H3/2016)

Date Special Case referred to Full Court: 13 December 2016

The issue in this proceeding is whether the *Workplace (Protection from Protesters Act) 2014 (Tas)* ('the Act'), in whole or in part, contravenes the implied freedom of political communication in the Commonwealth Constitution.

The plaintiffs were each arrested and charged, purportedly under the Act, in early 2016 as a result of their onsite political protest against the proposed logging of the Lapoinya Forest in Tasmania. The respective criminal proceedings against them were abandoned by the police after the commencement of this proceeding. The plaintiffs contend that the Act is either wholly invalid or, at the least, is invalid in so far as it applies to forestry operations on forestry land as defined in s 3 of the Act.

The Act allows police officers to prevent the commencement or continuation of an onsite political protest that they reasonably believe is preventing, hindering or obstructing or is about to prevent, hinder or obstruct a "business activity" at any "business premises" or "business access area" as defined in s 3 of the Act, anywhere in Tasmania. The key provisions empower police officers to prevent the commencement or continuation of onsite political protests by directing the protesters to leave and stay away from business premises and business access areas for up to three months under pain of arrest and of criminal penalties if they do not do so.

The plaintiffs contend that ss 6 and 7 of the Act target and single out for prevention and punishment onsite political protest and protesters without any broader purpose of preserving, enhancing or protecting political communication. Further, they contend that no reasonable provision has been made in the Act to preserve or protect political communication.

The defendant contends that the Act protects (amongst other things) business activity lawfully carried out on land in the lawful possession of a business operator, and that the plaintiffs are seeking to prevent, hinder or obstruct activity of that nature. They submit that the Act does not restrict protest activity on land other than business premises or business access areas; it has a narrow operation and effect; it is compatible with the freedom and is in any event reasonably and appropriately adapted to the fulfilment of a legitimate purpose.

On 13 December 2016 Gordon J referred the Special Case for consideration by the Full Court. Notices of Constitutional Matter have been served. The Attorneys-General for the Commonwealth, Victoria, New South Wales, Queensland, and South Australia have filed Notices of Intervention. The Human Rights Law Centre has been granted leave to appear as *amicus curiae*, limited to submissions in writing.

The question in the Special Case is:

- Is the *Workplace (Protection from Protesters) Act 2014 (Tas)*, either in its entirety or in its operation in respect of forestry land, invalid because it impermissibly burdens the implied freedom of political communication contrary to the Commonwealth Constitution?