



## HIGH COURT OF AUSTRALIA

18 October 2017

### BROWN & ANOR v THE STATE OF TASMANIA [2017] HCA 43

Today the High Court held invalid certain provisions of the *Workplaces (Protection from Protesters) Act 2014* (Tas) ("the Protesters Act") in their operation in respect of forestry land and business access areas relating to forestry land.

Various provisions of the Protesters Act prohibit "protesters" – that is, persons engaging in conduct in furtherance of, or 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" – from engaging in certain conduct on "business premises" or "business access areas". "Business premises" relevantly comprises "forestry land", which includes land on which "forest operations" are being carried out. "Business access area" is defined as so much of an area of land, outside business premises, as is reasonably necessary to enable access to an entrance to, or to an exit from, business premises. Police officers may direct any person to leave or stay away from "business premises" or "business access areas" in certain circumstances under pain of arrest or criminal penalty.

The plaintiffs were present in the Lapoinya Forest in North West Tasmania when forest operations were being conducted there. The plaintiffs were each arrested and charged with offences under the Protesters Act in relation to their conduct in opposing the logging of part of a coupe in that forest. The charges against each plaintiff were not later pursued. It was not disputed that, but for directions made under the Protesters Act, and to the extent permitted by other laws, the plaintiffs would have gone back to the Lapoinya Forest for the purpose of raising public awareness of logging in that forest.

In the High Court, the plaintiffs challenged the validity of certain provisions of the Protesters Act on the basis that the Constitution protects freedom of political communication and that those provisions impermissibly burden that freedom.

A majority of the High Court held that, in their operation in respect of forestry land and business access areas relating to forestry land, the impugned provisions of the Protesters Act effectively burdened the implied freedom of political communication. A majority of the Court held that the Protesters Act pursued the legitimate purpose of protecting businesses and their operations by ensuring that protesters do not prevent, hinder or obstruct the carrying out of business activities on business premises. However, by majority, the Court held that the burden imposed by the impugned provisions on the implied freedom of political communication was impermissible because those provisions were not reasonably appropriate and adapted, or proportionate, to the pursuit of that purpose in a manner compatible with the maintenance of the system of representative and responsible government that the Constitution requires. A majority of the Court therefore declared that the impugned provisions were invalid in their operation in respect of forestry land and related business access areas.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*