



# Update on Protest Laws

October 2016

This Fact Sheet describes recent changes to protest laws. It covers new aggravated trespass offences, expanded offences for interfering with a mine, and new police powers. These changes [commenced on 1 June 2016](#) apart from the changes to police powers, which [commenced on 1 November 2016](#).<sup>1</sup>

This Fact Sheet is a guide only and is not a substitute for legal advice. To request free legal advice, please call EDO NSW on 02 9262 6989 or 0438 455 157.

## Trespassing – Entering or remaining on inclosed lands without a lawful excuse

### *What are ‘inclosed lands’?*

‘Inclosed lands’ means **any land, either public or private** that is surrounded by a fence, wall or other erection, or partly by a fence and partly by a natural feature (like a river or cliff) that makes the land’s boundaries recognisable. Inclosed lands also include certain premises (such as schools, hospital and nursing homes).<sup>2</sup>

### *When will I be trespassing on inclosed lands?*

You will be trespassing if you:

- (a) **enter** onto inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands

AND/OR

- (b) **remain** on inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands after they have asked you to leave

AND

- (c) do not have a lawful excuse.

<sup>1</sup> <http://www.legislation.nsw.gov.au/regulations/2016-277.pdf>;  
<http://www.legislation.nsw.gov.au/regulations/2016-641.pdf>.

<sup>2</sup> *Inclosed Lands Protection Act 1901* (NSW), s 3.

This means that even if you have permission to enter a particular place, such as the foyer of a bank, and you are asked to leave by security or the manager of the bank or a person apparently in charge, and you do not, you may be committing the offence of remaining on inclosed lands.<sup>3</sup>

### **New offence of ‘aggravated unlawful entry on inclosed lands’**

A new offence of ‘aggravated unlawful entry on inclosed lands’ has been created. You could be guilty of this new offence of aggravated trespass if you:

- (a) enter inclosed lands on which any **business** or **undertaking** is conducted

AND

- (b) while on those lands, interfere, attempt to interfere, or intend to interfere with the conduct of the **business** or **undertaking**.

### ***What does ‘interfere with’ mean?***

‘Interfere’ is not defined and is likely to have its ordinary meaning found in the dictionary.

### ***What is the penalty for this offence?***

The maximum penalty for this offence is a \$5,500 fine.

### **Interfering with a mine under the Crimes Act<sup>4</sup>**

There are specific offences for ‘interfering with a mine’. These offences have been expanded and include a coal seam gas operation in the definition of a mine.

You could be guilty of an offence and face imprisonment for 7 years if you intentionally or recklessly:

- (a) cause water to run into a mine or any subterranean channel connected to it,
- (b) destroy, damage or obstruct any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine,
- (c) destroy, damage or render useless any equipment, building, road or bridge belonging to or associated with a mine, or

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<sup>3</sup> *Inclosed Lands Protection Act 1901* (NSW), s 4(1).

<sup>4</sup> *Crimes Act 1900* (NSW), s 201.

- (d) hinder the working of equipment belonging to or associated with a mine,

The word 'mine' was not previously defined. It now includes:<sup>5</sup>

- (a) a place at which gas or other petroleum is extracted from the ground, or
- (b) a place at which exploration for minerals, or for gas or other petroleum, is undertaken by mechanical means that disturb the ground, or
- (c) a place at which works are being carried out to enable the extraction of minerals, or of gas or other petroleum, from the ground, or
- (d) a former mine at which works are being carried out to decommission the mine or make it safe.

### **Destroy, damage or render useless – 201(c)**

For an offence under section 201(c) police would be required to prove beyond reasonable doubt that at the specified date and time, you:

- (a) Intentionally or recklessly did an act

AND

- (b) That act 'destroyed' 'damaged' or 'rendered useless' any 'equipment', 'building', 'road' or 'bridge'

AND

- (c) That 'equipment', 'building', 'road' or 'bridge' 'belonged to' or was 'associated with' a mine.

### **Hinder the working of equipment – 201(d)**

For an offence under section 201(d) police would be required to prove beyond reasonable doubt that at the specified date and time, you:

- (a) Intentionally or recklessly did an act

AND

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<sup>5</sup> *Crimes Act 1900* (NSW), s 201(2).

(b) That act 'hindered the working of' any 'equipment'

AND

(c) That 'equipment', 'belonged to' or was 'associated with' a mine.

This means that if a person locks onto equipment associated with a mine or CSG site or blocks a truck from entering or exiting a mine or CSG site, they could be guilty of this offence.

### ***What is the penalty for these offences?***

The maximum penalty for these offences is 7 years imprisonment.

### **New police powers – note that these powers commenced on 1 November 2016**

#### **Additional search and seizure powers in relation to things used to interfere with business or undertaking**

Under existing laws, police may stop, search and detain you and items in your possession if they have a reasonable suspicion that you:

- (a) possess something stolen
- (b) possess something used, or intended to be used, in certain serious offences
- (c) possess a prohibited drug.<sup>6</sup>

Police may seize and detain:

- (a) items that a police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
- (b) items that a police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
- (c) any dangerous article, and
- (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985* (NSW).

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<sup>6</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 21(1).

Property seized under these circumstances, should be returned if police are satisfied that:

(a) Holding onto it as evidence is no longer required

AND

(b) It is lawful for you to have possession of the property.<sup>7</sup>

But, under the new laws, a police officer may stop, search and detain a person, vehicle, vessel, or aircraft without a warrant if the police officer suspects **on reasonable grounds** that the person has in his or her possession or under his or her control (or that the vehicle, vessel or aircraft contains) anything that is:

(a) intended to be used to lock-on

OR

(b) anything that is intended to secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of business or undertaking

AND

(c) that is likely to be used in a manner that will give rise to **serious risk to the safety of any person**.<sup>8</sup>

### ***Can property seized under this power be returned?***

Property seized under this power is forfeited and may be destroyed or otherwise disposed of. A person whose property is seized under this power **will not** have an opportunity to make an application to the court for the return of property seized.<sup>9</sup>

### **New exception to existing limitation on police move-on powers**

Under existing laws police are not authorised to give move-on directions in relation to:<sup>10</sup>

(a) an industrial dispute, or

(b) an apparently genuine demonstration or protest, or

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<sup>7</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 218(1).

<sup>8</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 45C. For further information about what is a 'serious risk', see below.

<sup>9</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 45C.

<sup>10</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 200.

- (c) a procession, or
- (d) an organised assembly

Now there is an exception to this existing limitation upon police use of move-on powers in relation to genuine protests. Police can now give a move on order in circumstances where:

- (a) They believe 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;

OR

- (b) The demonstration, protest, procession or assembly is *not* authorised under the *Summary Offences Act 1988* or it is not being held **substantially in accordance with** any such authority;

AND

- (c) The direction is limited to the persons who are obstructing traffic

### ***What is a serious risk?***

It is to be noted that existing laws already enable police to move on any person who is:

- (a) obstructing traffic; or
- (b) harassing or intimidating another person or persons; or
- (c) behaving in a way which is causing or likely to cause fear to another person or persons.<sup>11</sup>

However, police will now be allowed to exercise their discretion to move people on in circumstances where they have a **reasonable belief** that it 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.

What will be a **serious risk** to the safety of the person to whom the direction is given or to any other person is not yet clear. It will depend on the circumstances and ultimately be determined by the court on a case by case basis.

### ***What is a “reasonable belief?”***

The law does not define “reasonable belief” however it is commonly used in legislation. What is important is the **state of mind of the officer** at the time they give the direction.

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<sup>11</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 197.

### ***What are the obligations of police when giving a direction?***

Before issuing a direction to a **single person**, a police officer **must** provide:

- (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
- (b) the name of the police officer and his or her place of duty,
- (c) the reason for the exercise of the power.

A police officer may give a direction to a **group of people**. The police officer is not required to repeat the direction to each person in the group.

If a police officer gives a direction to a **group of people**, the police officer **must** as soon as possible provide:

- (a) evidence that they are a police officer (unless the police officer is in uniform),
- (b) the reason for the exercise of the power.

The police officer **may** also provide their name and place of duty, although failure to do so will not mean that the direction is invalid.

But if you ask a police officer who gives a move on direction to a group of people for their name and place of duty, they **must** provide it.

### ***What are the penalties for failing to comply with a direction?***

If you fail to comply with a direction you could be guilty of an offence. The maximum penalty for this offence is a fine of \$220.