

DRAFT SECOND READING SPEECH

HON. M.T. (RENE) HIDDING MP

Police Legislation (Miscellaneous Amendments) Bill 2016

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Madam Speaker

I move that the Bill now be read a second time.

The purpose of the Bill is to make several miscellaneous amendments to the *Police Offences Act 1935* and the *Police Service Act 2003*.

The amendments to both Acts are intended to enhance the operation of existing provisions, and do not introduce any new provisions. In their development, consultation has been undertaken within government, with representatives of the Tasmanian Sikh community, and with the Police Association of Tasmania.

The amendments to the *Police Offences Act 1935* primarily deal with the existing offence of possession, carriage or use of a dangerous article in a public place, found in the current section 15C of the Act. This offence was introduced into the *Police Offences Act 1935* in 2001, and was intended to enhance community safety by limiting the availability of weapons. Specifically, it was noted during the second reading of the amendment Bill that the provision was intended to address an increase in incidents involving *knives* and *syringes*.

While the existing provision provides an exemption from the offence for those possessing, carrying or using a dangerous article for a lawful purpose, it was noted when the offence was introduced that: “...whilst providing adequate exemptions for the carriage of knives and similar weapons used in connection with the normal course of employment, ceremonial occasions, sporting events and exhibitions[, a] person carrying the same items at a nightclub or hotel late at night, or other public place, would be required to provide some explanation and would be deemed to be acting illegally if no satisfactory explanation is forthcoming.” However, recent court decisions have identified the provision does not provide this in practice.

The major issue highlighted by the recent decisions is that the provision prohibits the possession, carriage or use of dangerous articles, but a dangerous article is defined as a weapon or article intended to be used as a weapon. A knife is not by default a weapon, having lawful uses, and is therefore not prohibited unless the police can prove, beyond a reasonable doubt, that the person in possession of it intended to use it as a weapon. Consequently, to achieve the original intent of the provision, it is sought to specifically include knives as articles prohibited in public places, unless there is a lawful excuse for the possession.

A review of provisions across other Australasian jurisdictions indicates every other Australian jurisdiction (except Western Australia) and New Zealand has a general prohibition on knives in public places, without either reasonable or lawful excuse.

In addition, a review of the existing provision has highlighted that it is for the police to prove beyond a reasonable doubt that the person possessed the article without lawful excuse, rather than the stated intention that the person found with the knife must give a satisfactory explanation for their possession of it. For this reason, it is also proposed to clarify that proof of lawful excuse lies with the accused. They would not necessarily need to provide this excuse to police, but if they did not, and were charged, they would need to prove the lawful excuse to the court.

The potential danger to the public of public place knife possession is highlighted by woundings with knives that have occurred in entertainment districts within Hobart. Further, analysis of police crime statistics in the development of this amendment revealed well over a hundred serious offences per year are committed with knives, including assaults, wounding and grievous bodily harm, robberies, rapes, and murders.

The ability of police to proactively remove knives from people in public, without lawful excuse for their possession, reduces the likelihood of serious injury and death.

In amending this provision, it is also sought to make clear that possession for religious observance is a lawful excuse, along with the other lawful excuses that are currently provided for. This is in response to concerns raised by the Sikh community, who have unease the existing legislation is in conflict with the requirements of their religion.

All initiated Sikhs are mandated to wear five articles of faith once baptised. These are the Kes (uncut hair), Karaa (iron/steel bangle), Kunga (wooden comb), Kucchayraa (prescribed undershorts) and Kirpan (ceremonial dagger shaped object). For all Sikhs, these religious articles have deep personal, spiritual and practical significance, and by this amendment, it is intended to make clear that carriage of the Kirpan by practicing Sikhs is a lawful purpose, providing exemption from the offence provisions.

The final amendment to the *Police Offences Act 1935* is one intended to correct an omission introduced in the last round of amendments to the Act. Amendments in late 2014, introduced a range of new offences for which police may issue infringement notices, where previously this had been limited to a small number of liquor related offences. In making these amendments, the offences of supplying liquor to a youth at a private place (unless authorised) and supplying liquor inconsistent with the responsible supervision of the youth, were inadvertently left off, despite having been included in the pre-amendment Act. Therefore, this amendment seeks to address this oversight.

Madam Speaker, with regard to the *Police Service Act 2003*, the amendments are intended to address the occupational drug testing of police officers.

When the Act commenced on the 1st of January 2004, replacing the prior *Police Regulations Act 1898*, it included provisions within section 50 for the occupational alcohol and drug testing of police officers. That testing may either be incident related, where police duties result in a person being killed or seriously injured, or random or targeted.

Targeted and incident related testing has been used as required since the provisions commenced, and a random alcohol testing program commenced on the 14th of April 2014. However, random drug testing has not been able to be implemented as a result of the current provisions effectively requiring laboratory analysis of all samples, which is cost prohibitive.

To address this, it is proposed to introduce a screening test, similar to what is used in drug testing drivers of motor vehicles, before moving to the collection of samples for analysis. Following a positive screening test, the preferred process will be to collect saliva samples for analysis, this being

the least invasive process. Consistent with the current Australian Standard, it is proposed two samples of saliva will be collected by way of swabs. One of these will be the analysis sample, and the other will serve as the control sample.

To enable this requires amendment to the current subsection 50(6) of the Act, which currently requires that a single sample be taken and divided into three approximately equal parts. This is not practical with samples of small volume, such as saliva.

The Bill will become law on the day on which it receives Royal Assent, although amendments will subsequently be required to the *Police Regulations 2014* before the infringement notice changes can come into effect.

I commend the Bill to the House.