

# **POLICE OFFENCES AMENDMENT (LASER POINTERS) BILL 2010**

## **CLAUSE NOTES**

---

### **Background:**

The Bill introduces legislation to amend the *Police Offences Act 1935* to provide for the regulation of laser pointers.

On 1 July 2008, the Commonwealth Government prohibited the importation of laser pointers designed or adapted to emit a laser beam greater than 1 milliwatt (mW) under the *Customs (Prohibited Imports) Regulations 1956*. The prohibition followed a series of incidents where high-powered laser pointers were used inappropriately to target aircraft and their pilots. Most of these incidents involved the use of green laser pointers. Unlike other types of laser pointers, green laser pointers remain visible to the operator over a greater distance, which enables easier targeting of aircraft and painting with intense light the cockpits and pilots' view. Permanent eye damage can also result from a laser pointer being shone into someone's eyes.

Most incidents that have been reported have occurred interstate, some of which have resulted in the courts imposing custodial sentences due to the serious nature of the incident. In Tasmania, an incident involving an unknown passenger on a Metro bus shining a laser beam in the rear view mirror of the bus driver has been reported. Fortunately, the incident did not result in an accident as the person ceased directing the laser beam at the mirror.

Since these events, the issue of high powered laser pointers has been considered at a number of high level meetings and national forums, including the Ministerial Council for Police and Emergency Management. Most other jurisdictions now have legislation to regulate the use of laser pointers in some form.

The provisions contained in the Bill will enable police to respond appropriately in instances where laser pointers are misused. The Bill will make it an offence for a person to possess carry or use a laser pointer in a public place, without a lawful excuse. The Bill also makes it an offence for a person, by means of a laser pointer, to intentionally or recklessly direct a laser beam at any person, animal, vehicle, aircraft or vessel, without a lawful excuse.

### **PART 1 – PRELIMINARY MATTERS**

#### **Clause 1: Short title**

Specifies the name of the proposed Act.

#### **Clause 2: Commencement**

Specifies this Act commences on a day on which this Act receives Royal Assent.

#### **Clause 3: Principal Act**

Specifies that the *Police Offences Act 1935* is referred to as the Principal Act.

#### **Clause 4: Section 15F inserted**

Section 15F makes it an offence for a person to possess, carry or use a laser pointer in a public place, without having a lawful excuse. The onus on proving the lawful excuse lies on the person claiming the lawful excuse. The penalty for this offence is a fine not exceeding 20 penalty units.

Section 15F also makes it an offence for a person to intentionally or recklessly direct a laser beam from a laser pointer at any person, animal, vehicle, vessel or aircraft, without having a lawful excuse. Again, the onus on proving the lawful excuse lies on the person claiming the lawful excuse. The penalty for this offence is a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

The offence provisions do not apply to a police officer or State Service employee from the Department of Police and Emergency Management who is acting in the performance of his or her duties, or a person or group of persons who are excluded in writing by the Commissioner of Police. These provisions specifically relates to speed measuring devices which use a laser and permits the Commissioner of Police to exclude others where the argument has been put and assessed.

Section 15F also provides a police officer with the authority to, without a warrant, stop, detain and search a person or any vehicle, vessel or aircraft the person is in, appears to have been in or be about to get in, or any vehicle, vessel or aircraft the person appears to have put anything in. This authority may be exercised if the police officer reasonably suspects that the person has contravened the offence provision relating to the possession, carriage or use of a laser pointer in a public place or the offence provision relating to intentionally or recklessly directing a laser beam from a laser pointer at any person, animal, vehicle, vessel or aircraft.

Authority to take specified action is also conferred on a police officer who reasonably suspects that the safety of any person, or the safe operation of any vehicle, vessel or aircraft has been, or is about to be, put at serious and immediate risk due to a person intentionally or recklessly directing a laser beam from a laser pointer at any person, animal, vehicle, vessel or aircraft.

In such circumstances, the police officer may, without warrant, enter and search any premises from which the laser beam appears to have been or be about to be directed, and search any person on those premises. A police officer may also, without warrant, stop, detain and search any vehicle, vessel or aircraft from which the relevant laser beam appears to have been or be about to be directed, along with any person in that vehicle, vessel or aircraft.

Section 15F provides that a police officer may use reasonable force and assistance, and any available form of relevant detection technology, in the exercise of the powers conferred under the section. However, if the use of reasonable force is required, it must cause no more damage than is reasonably necessary to find the suspected laser pointer.

Any laser pointer found in the course of a search conducted under this section, may be seized, deactivated and detained by a police officer.

The clause also details that, for the purposes of the section, a lawful excuse includes:

- a) the pursuit of a lawful occupation, duty or activity in which laser pointers have a generally recognised application;

- b) participation in a lawful sport, recreation or entertainment in which laser pointers have a generally recognised application;
- c) the use of laser pointers for the specific lawful purpose for which they were manufactured;
- d) the lawful display or exhibition of laser pointers;
- e) the use of laser pointers under and in accordance with a valid licence under the *Radiation Protection Act 2005*; and
- f) any excuse prescribed by the regulations under the Act.

Where a person is convicted or found guilty of an offence under the section, the laser pointer to which the offence relates is forfeited to the Crown and may be disposed of as the Commissioner of Police determines.

Under section 15F, a person who is in a vehicle in a public place is taken to be in the public place. Further, in determining whether any article found in the course of a search is a laser pointer within the meaning of the section, a police officer is entitled to disregard whether, when found, the article is actively capable of emitting a laser beam.

A “laser pointer” is defined as a device designed or adapted to emit a laser beam capable of being used for the purposes of aiming, targeting and pointing.

For the purposes of the section, the current definition for “vehicle” in the *Police Offences Act 1935* is expanded to include any kind of vessel or aircraft. The current definition for “vehicle” is “every description of wheeled vehicle”.

#### **Clause 5: Section 55 amended (Arrest)**

This clause provides police with the authority to arrest a person without warrant, where a person is found offending under the offence provisions relating to laser pointers.

#### **Clause 6: Repeal of Act**

This clause repeals this amending Act on the ninetieth day from the day of commencement. This provision will result in this particular Act of Parliament being repealed, on the ninetieth day from the day of commencement, once it has inserted the provisions into the *Police Offences Act 1935*. This Act will therefore not remain on the statutes.