

TASMANIA

**POLICE OFFENCES AMENDMENT BILL
2004**

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**POLICE OFFENCES AMENDMENT BILL
2004**

*(Brought in by the Minister for Police and Public Safety,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Police Offences Act 1935*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Police Offences Amendment Act 2004*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Police Offences Act 1935** is referred to as the Principal Act.

*No. 44 of 1935

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “court”:

“crossbow” means a device, consisting of a bow fitted transversely on a stock that has a groove or barrel, designed to direct an arrow or bolt;

- (b) by inserting the following definition after the definition of “data”:

“found offending” has the meaning assigned to it in section 55(5);

Section 4A amended (Custody of intoxicated persons)

5. Section 4A of the Principal Act is amended by inserting after subsection (6) the following subsection:

(6A) If, on the expiration of the period of 8 hours referred to in subsection (6)(a), a police officer of or above the rank of inspector believes on reasonable grounds that a person in custody remains –

- (a) likely to cause injury to himself, herself or another person, or damage to any property; or
- (b) incapable of protecting himself or herself from physical harm –

the person may be detained for a further period of 4 hours.

Section 15C amended (Dangerous articles)

6. Section 15C of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) Subsection (1) does not apply to –

(a) a police officer acting in the performance of his or her duties; or

(b) a person, or group of persons, excluded in writing by the Commissioner from the application of that subsection.

- (b) by inserting in subsection (2) “and may stop, detain and search, without a warrant, the person’s vehicle” after “excuse”;

- (c) by inserting the following subsection after subsection (5):

(6) For the purposes of this section, a person who is in a motor vehicle in a public place is taken to be in the public place.

Section 15D inserted

7. After section 15C of the Principal Act, the following section is inserted in Division II:

Use, carriage and possession of crossbows

15D. (1) A person must not use, carry or have possession of a crossbow unless he or she is authorised in writing by the Commissioner to do so.

Penalty: Fine not exceeding 20 penalty units.

(2) A person may apply to the Commissioner for a permit to use, carry or have possession of a crossbow.

(3) An application for a permit is to –

- (a) be in an approved form; and
- (b) include details of the following:
 - (i) the type of crossbow;
 - (ii) the reason for its possession, carriage or use;
 - (iii) the means by which it is to be stored when not in use;
 - (iv) any other prescribed matter.

(4) The Commissioner may grant an application subject to any conditions the Commissioner considers appropriate.

(5) The Commissioner must not grant an application unless the Commissioner is satisfied that the applicant –

- (a) is at least 18 years old; and
- (b) is a natural person; and
- (c) is a fit and proper person to use, carry or have possession of a crossbow; and
- (d) is able to safely store the crossbow; and
- (e) has a legitimate reason for using, carrying or possessing a crossbow, including for the purpose of conducting

research, hunting vermin or another purpose the Commissioner considers appropriate.

(6) In deciding whether a person is a fit and proper person, the Commissioner is to take into account the following:

- (a) any likelihood of the person using a crossbow –
 - (i) for an unlawful purpose; or
 - (ii) to harm himself or herself;
- (b) the mental and physical condition of the person;
- (c) any criminal activity of the person, whether in Tasmania or elsewhere;
- (d) any offence committed by the person under this Act, the *Guns Act 1991* or the *Firearms Act 1996*;
- (e) the ability of the person to exercise continuous and responsible control over a crossbow;
- (f) whether the person is subject to a restraint order or an interim restraint order or has at any time within the previous 5 years been subject to such an order;
- (g) whether the person is subject to a recognisance, granted in Tasmania or elsewhere, to keep the peace.

(7) A person authorised under this section must carry a copy of the authorisation at all times

while he or she has possession of, or is carrying or using, a crossbow.

Penalty: Fine not exceeding 10 penalty units.

(8) A police officer may seize and detain any crossbow used, carried or kept in contravention of this section.

(9) If a person is convicted or found guilty of an offence under this section, the crossbow to which the offence relates is forfeited and may be disposed of as the court orders.

(10) Nothing in this section prevents a person from being prosecuted for the use, carriage or possession of a crossbow in contravention of another Act.

(11) A person does not commit an offence under subsection (1) in respect of the possession of a crossbow if the person lawfully obtained the crossbow before the commencement of that subsection.

(12) Subsection (11) expires on 31 December 2004.

Part IVA, Division 1: Heading inserted

8. Part IVA of the Principal Act is amended by inserting the following heading before section 37A:

Division 1 – Motor vehicle stealing, &c.

Section 37J inserted

9. After section 37I of the Principal Act, the following section is inserted in Division 1:

Excessive noise, smoke, &c., from vehicles

37J. (1) A person must not, unless otherwise authorised under this or any other Act, operate or control a vehicle in a public place –

- (a) in a manner that makes or emits unnecessary and unreasonable noise; or
- (b) in an exhibition of speed, acceleration or sustained loss of traction; or
- (c) in a race against another vehicle.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) A court that convicts a person of an offence under subsection (1) may, in addition to the penalty specified in that subsection, disqualify the person from driving for a period not exceeding 2 years.

(3) When a court imposes a disqualification from driving under this section, it must suspend or cancel any Australian driver licence held by the person on whom the disqualification is imposed as required by section 17 of the *Vehicle and Traffic Act 1999*.

Part IVA, Division 2 inserted

10. After section 37I of the Principal Act, the following Division is inserted in Part IVA:

Division 2 – Confiscation of vehicles for certain offences

Subdivision 1 – Preliminary

Interpretation of Division

37K. In this Division, unless the contrary intention appears –

“**confiscated vehicle**” means a vehicle confiscated under section 37N(1);

“**Court**” means the Magistrates Court;

“**forfeiture order**” means an order under section 37Y;

“**prescribed offence**” means an offence against –

- (a) section 15B involving the use of a motor vehicle; or
- (b) section 37J; or
- (c) section 48.

Application of Division

37L. (1) This Division applies where a police officer reasonably believes a person is committing, or has committed, a prescribed offence.

(2) A reference in this Division to a prescribed offence is a reference to a prescribed offence committed after the commencement of this Division.

(3) Nothing in this Division, except for section 37Y(5), affects the rights of a creditor under the Consumer Credit (Tasmania) Code.

Punishment under Division additional to other punishment

37M. The confiscation or forfeiture of a vehicle or the imposition of a period of community service on a person under this Division arising out of the commission of a prescribed offence is in addition to any other penalty that may be imposed on the person for the prescribed offence.

Subdivision 2 – Confiscation of vehicles

Confiscation of vehicles

37N. (1) If a police officer reasonably believes that a prescribed offence involving a vehicle has been, or is being, committed, the police officer may –

- (a) confiscate the vehicle; and
- (b) have the vehicle moved to a holding yard and held in accordance with this Division.

(2) A police officer must not confiscate a vehicle more than 10 days after the commission of the prescribed offence.

(3) For the purpose of confiscating a vehicle, a police officer may –

- (a) direct the person in control of the vehicle to stop the vehicle and keep it stationary

for as long as the officer reasonably requires; and

- (b) direct the person in control of the vehicle, or in possession of the keys or any other thing necessary to enable the vehicle to be moved, to give the keys or other thing to the police officer; and
- (c) enter the vehicle, with the use of reasonable force if necessary; and
- (d) take any other action reasonably necessary for confiscating the vehicle.

(4) A police officer is to move a confiscated vehicle, or arrange for it to be moved, to a holding yard in any way that the police officer considers appropriate.

(5) A person who contravenes or fails to comply with a direction given under subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

Period of confiscation for first prescribed offence

370. If a person is found offending in respect of a prescribed offence by a police officer and that person has not been found offending in respect of a prescribed offence in the preceding 12 months, the vehicle used in connection with the offence may be confiscated for a period of 48 hours.

Period of confiscation for second prescribed offence

37P. If a person is found offending in respect of a prescribed offence by a police officer and that person has been found offending in respect of a prescribed offence on one or 2 occasions in the preceding 12 months, the vehicle used in connection with the offence may be confiscated for a period of 3 months.

Period of confiscation for third or subsequent offence

37Q. If a person is found offending in respect of a prescribed offence by a police officer and that person has been found offending in respect of a prescribed offence on 3 or more occasions in the preceding 12 months, the vehicle used in connection with the offence may be confiscated until the resolution of all existing charges against the person for those offences.

Transportation of vehicle to holding yard

37R. (1) A police officer may arrange for a confiscated vehicle to be driven or transported to a holding yard.

(2) A person responsible for driving or transporting a confiscated vehicle must drive or transport the vehicle –

- (a) directly to a particular holding yard, if so directed by a police officer; or

- (b) if no such direction is given, directly to the holding yard to which the person usually transports confiscated vehicles.

Penalty: Fine not exceeding 20 penalty units.

Unlawful interference with, or removal of, confiscated vehicle

37S. (1) A person must not unlawfully interfere with a confiscated vehicle, or take a confiscated vehicle from the person responsible for driving or transporting it to a holding yard.

Penalty: Fine not exceeding 20 penalty units.

(2) A person must not unlawfully remove a confiscated vehicle from a holding yard.

Penalty: Fine not exceeding 40 penalty units.

(3) If there is a contravention of subsection (1), or a confiscated vehicle is unlawfully removed from a holding yard, a police officer may seize and move the vehicle to a holding yard.

(4) For the purposes of subsection (3), a police officer may, without warrant, enter any place where the police officer reasonably suspects that the vehicle may be found.

Notice of confiscation to be given

37T. (1) As soon as reasonably practicable after a vehicle is confiscated, a police officer is to give written notice of its confiscation to –

- (a) the person in control of the vehicle at the time of the relevant prescribed offence; and
- (b) any registered operator of the vehicle who can be ascertained after reasonable inquiry; and
- (c) any owner of the vehicle who can be ascertained after reasonable inquiry.

(2) The notice is to include the information required under section 37U or 37V.

Content of notice for first offence

37U. A notice of confiscation where a person has committed, or has been charged with committing, a first prescribed offence is to include the following:

- (a) a statement that the vehicle is confiscated for 48 hours and will not be released before that time without the order of the Court or the written authority of a police officer of or above the rank of inspector;
- (b) directions as to how the registered operator or owner of the confiscated vehicle may recover the vehicle;
- (c) a statement that, before the vehicle may be recovered, the person recovering the vehicle will be required –
 - (i) to produce to the person responsible for the holding yard satisfactory evidence of his or her identity and a written authority

from the registered operator or owner of the vehicle to collect the vehicle; and

- (ii) to pay the costs of moving the vehicle to, keeping the vehicle in and releasing the vehicle from the holding yard;
- (d) notice of the penalty for unlawfully removing the vehicle from the place at which it is held.

Content of notice for second or subsequent offence

37V. A notice of confiscation where a person has committed, or been charged with committing, a second or subsequent prescribed offence is to state the following:

- (a) the period for which the vehicle is confiscated;
- (b) that an application may be made to the Court by a police officer for the forfeiture of the vehicle;
- (c) that the person in control of the vehicle at the time the prescribed offence was committed or the registered operator or owner may apply to the Court, at any time before the application is heard and determined, for the return of the vehicle until the application is heard and determined;
- (d) that, in support of an application under paragraph (c), the registered operator or

owner may be required to produce satisfactory evidence of the ownership of the vehicle;

- (e) that, if the vehicle is returned under paragraph (c), the Court may impose conditions on its return;
- (f) that, before the vehicle may be recovered, the person recovering the vehicle will be required –
 - (i) to produce to the person responsible for the holding yard satisfactory evidence of his or her identity and authority to collect the vehicle; and
 - (ii) to pay the costs of moving the vehicle to, keeping the vehicle in and releasing the vehicle from the holding yard; and
- (g) the penalty for unlawfully removing the vehicle from the holding yard at which it is held.

Advice to registered operator of date of hearing

37W. As soon as reasonably practicable after a date is set for the hearing of an application for a forfeiture order for a confiscated vehicle, the Court is to give written notice of the date, time and place of the hearing to –

- (a) the person in control of the vehicle at the time of the relevant prescribed offence; and

- (b) any registered operator of the vehicle who can be ascertained after reasonable inquiry; and
- (c) any owner of the vehicle who can be ascertained after reasonable inquiry.

Costs of confiscation

37X. (1) A vehicle confiscated under this Division is not to be returned until the costs of moving the vehicle to, keeping the vehicle in and releasing the vehicle from a holding yard have been paid.

(2) If a person is found not guilty of the prescribed offence or offences for which they are charged, or the proceeding is withdrawn, the Crown is liable to pay the costs of moving, keeping and releasing the vehicle.

Subdivision 3 - Forfeiture orders

Application for forfeiture order

37Y. (1) Within 3 months after a vehicle is confiscated in accordance with section 37Q, a police officer may apply to the Court for forfeiture of the vehicle.

(2) The Court may make an order that a confiscated vehicle be forfeited to the Crown, if the driver has, within 12 months before the day when the vehicle was confiscated, been convicted of an earlier prescribed offence on 2 or more occasions.

(3) On the making of a forfeiture order for a vehicle –

- (a) the vehicle becomes the property of the Crown; and
- (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles Securities Act 1984* against a person other than the State by taking possession of the vehicle is extinguished.

(4) An application under subsection (1) is to be made to the Court even though the value of the vehicle may be more than the monetary jurisdiction of the Court.

(5) The driver, registered operator or owner of a vehicle confiscated under section 37Q may apply to the Court, at any time before the application for forfeiture is heard and determined, for the return of the vehicle.

(6) If the Court is satisfied that the confiscation or forfeiture of a vehicle will cause severe hardship to a person, the Court may order that the vehicle be returned to the registered operator or owner until the application for forfeiture is heard and determined.

(7) The Court may, on the return of the vehicle under subsection (6), impose such conditions on the use of the vehicle as it considers appropriate.

(8) The registered operator or owner of the vehicle must not substantially alter, sell or otherwise dispose of a vehicle returned under subsection (6) until the application for forfeiture is determined or withdrawn.

Penalty: Fine not exceeding 40 penalty units.

Defence to show no knowledge and consent

37Z. (1) In a proceeding for forfeiture of a confiscated vehicle, it is a defence for the registered operator or owner of the vehicle to show that the prescribed offence happened without his or her knowledge and consent.

(2) If a Court is satisfied that the defence referred to in subsection (1) is established, the Court is to order that the vehicle be returned to the registered operator or owner on payment of the costs payable under section 37X(1).

Powers for enforcing forfeiture order

37ZA. If the Court orders the return of a vehicle to its registered operator under section 37Y(6) and later makes a forfeiture order for the vehicle, the Court may, in the order, authorise a police officer, without warrant, to enter any place where the police officer reasonably believes the vehicle may be found and search for, seize and move the vehicle to a holding yard.

Third party protection from forfeiture order

37ZB. (1) A person, other than the defendant, who did not appear at the hearing of an application for forfeiture and has an interest in the relevant vehicle may apply to the Court for an order under subsection (5).

(2) Unless the Court gives leave, the application must be made within 6 months after the day on which the forfeiture order was made.

(3) Unless the Court gives leave, a person who was given notice of the application for forfeiture may not apply to the Court for an order under subsection (5).

(4) The Court may give leave for a later application if it is satisfied that the delay in applying was not due to the applicant's neglect.

(5) On an application, an order may be made –

- (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the vehicle; and
- (b) directing the Crown –
 - (i) if the vehicle is still vested in the Crown, to transfer the vehicle to the applicant; or
 - (ii) if the vehicle is no longer vested in the Crown, to pay to the applicant the value of the applicant's interest in the vehicle after taking into account any amount paid to the holder of a registered security interest under section 37ZL(1)(c).

(6) The Court must, and may only, make the order if it is satisfied that –

- (a) the applicant has or, but for the forfeiture, would have had a lawful interest in the vehicle; and
- (b) the relevant prescribed offence happened without the knowledge or consent of the applicant.

(7) For the purposes of an application under this Division, including an application for leave to apply –

- (a) the applicant must give notice of the making of the application to the Commissioner; and
- (b) the party given notice is to be a party to the application.

(8) In this section –

“**defendant**” means the person convicted of the prescribed offence in respect of which the forfeiture order was made;

“**relevant prescribed offence**” means the prescribed offence in respect of which the forfeiture order was made.

Subdivision 4 – Recovery and return of vehicles

Recovery of vehicle confiscated for first prescribed offence

37ZC. If a notice under section 37U has been served on a person, the confiscated vehicle may, on payment of the costs payable under section 37X(1), be recovered from the holding yard as soon as reasonably practicable during normal business hours after the expiration of 48 hours after the vehicle is confiscated.

Return of vehicle confiscated for second or subsequent prescribed offence

37ZD. (1) If a vehicle is confiscated by a police officer under section 37P or 37Q, the person in control of the vehicle at the time of the prescribed offence, a registered operator or an owner may apply to the Court for the return of the vehicle.

(2) If the Court is satisfied that the confiscation of a vehicle is causing, or will cause, severe hardship to a person, the Court may order that the vehicle be returned to the registered operator or owner.

(3) The Court may, on the return of the vehicle, impose such conditions as it considers appropriate on the use of the vehicle.

(4) A person must not substantially alter, sell or otherwise dispose of a vehicle returned under subsection (2) until the charge giving rise to the confiscation is determined.

Penalty: Fine not exceeding 40 penalty units.

Confiscated vehicle to be returned in certain circumstances

37ZE. (1) If a police officer of or above the rank of inspector considers it necessary or desirable in the circumstances, he or she may authorise the immediate return of a confiscated vehicle on payment of the costs payable under section 37X(1).

(2) If a confiscated vehicle was, at the time of the prescribed offence, stolen or was being hired, the vehicle must be returned to the registered operator

or owner as soon as reasonably practicable during normal business hours.

Return of vehicle in case of severe hardship

37ZF. (1) If the Court is satisfied that the confiscation or forfeiture of a vehicle will cause severe hardship to a person, the Court may, instead of ordering the confiscation or forfeiture, order that –

- (a) the vehicle be returned to the registered operator or owner; and
- (b) the person convicted of the prescribed offence perform not more than 240 hours of community service.

(2) If the Court makes an order under subsection (1), the vehicle must be returned as soon as reasonably practicable.

Return of vehicle if driver found not guilty, &c.

37ZG. If a person is found not guilty of a prescribed offence or the proceeding is discontinued, and the relevant vehicle is not the subject of another confiscation order under this Division, the vehicle must be returned to its registered operator or owner as soon as reasonably practicable during normal business hours.

Disposal of confiscated vehicle

37ZH. (1) If, within 2 months after a period of confiscation of a vehicle ends, the vehicle is not recovered, the Commissioner may sell or dispose of the vehicle and anything in or on it in a way the Commissioner considers appropriate.

(2) The Commissioner must –

- (a) advertise the proposed sale or disposal in a newspaper circulating in the locality where the vehicle was confiscated; and
- (b) give written notice of the proposed sale or disposal of the vehicle to the registered operator.

Disposal of forfeited vehicle

37ZI. (1) The Commissioner may sell a vehicle forfeited to the Crown under this Division or otherwise dispose of it in a way the Commissioner considers appropriate.

(2) Before the vehicle is sold or otherwise disposed of, the registered operator or a person authorised by the registered operator may remove any contents from the vehicle that are not part of the vehicle or attached to it.

Voluntary transfer of ownership of vehicle to Crown

37ZJ. (1) If a confiscated vehicle is not subject to any interest, charge, lien or encumbrance, the owner

may agree to transfer ownership of the vehicle to the Crown at the end of the period of confiscation.

(2) The agreement is to be written and witnessed by a person who may witness a statutory declaration.

(3) If the Crown agrees in writing to the transfer of the vehicle –

- (a) the vehicle becomes the property of the Crown; and
- (b) the Commissioner may sell or dispose of the vehicle and anything in it or on it in a way the Commissioner considers appropriate; and
- (c) before the vehicle is transferred, the owner or a person authorised by the owner may remove any contents from the vehicle that are not part of the vehicle or attached to it.

Confiscated vehicle not to be sold, &c., while confiscated

37ZK. A confiscated vehicle must not be sold or otherwise disposed of during the period of confiscation or whilst it is subject to a Court order under this Act.

Application of proceeds of sale

37ZL. (1) If the Commissioner sells a vehicle under section 37ZH or 37ZI, the proceeds of the sale of the vehicle are to be paid as follows:

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of the costs of and incidental to confiscating and keeping the vehicle;
- (c) thirdly, if there is an amount owing to a person under a security interest registered for the vehicle under the *Motor Vehicles Securities Act 1984*, in payment of the amount owing to the holder of the security interest;
- (d) fourthly –
 - (i) if the vehicle is sold under section 37ZH, to the owner; or
 - (ii) if the vehicle is sold under section 37ZI, to the Consolidated Fund.

(2) Compensation is not recoverable against the Crown in relation to a payment made under this section.

Protection from liability

37ZM. (1) A police officer acting in good faith is not liable for any damage to, or depreciation, loss or loss of use of, the vehicle during the confiscation of the vehicle or the period for which it is held under this Act.

(2) A liability which, but for subsection (1), attaches to a police officer, instead attaches to the Crown.

(3) If a police officer arranges the transportation of a vehicle under section 37R to a holding yard, the Crown is not liable for any damage, loss or depreciation to the vehicle while it is being driven or transported to, or confiscated in, the holding yard.

Section 55 amended (Arrest)

11. Section 55(1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraphs:

- (c) section 15B, 15C or 15D; or
- (d) section 37J(1).