

POLICE MISCELLANEOUS AMENDMENTS (No. 2) BILL 2009

CLAUSE NOTES

Background:

The Bill introduces legislation to accord with the Tasmania *Together* Community Goal, 'to have confident, friendly and safe communities'. It introduces contemporary legislation to address emerging societal issues and concerns.

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

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

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

Clause 3: Principal Act

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

Clause 4: Section 3 amended (Interpretation)

Section 3 is amended by inserting the following definitions:

“body armour” includes protective jackets, protective vests, protective suits, anti-ballistic articles or other similar articles –

- (a) able to be worn, either independently or as a part of something else, on the human body; and
- (b) designed or adapted to protect the human body from the effects of a firearm or any other device –

but does not include anti-ballistic articles used for eye or hearing protection;

“emergency services” means –

- (a) the State Emergency Service within the meaning of the *Emergency Management Act 2006*; and
- (b) the Tasmanian Ambulance Service established under the *Ambulance Service Act 1982*; and
- (c) the Tasmania Fire Service established under the *Fire Service Act 1979*; and
- (d) the Police Service;

“graffiti equipment” means –

- (a) an aerosol paint container; and
- (b) any other implement prescribed for the purposes of this definition

“mark graffiti” means mark, draw, write or otherwise deface property by any means so the defacement is not readily removable by wiping with a dry cloth;

“youth” means a person who has not attained the age of 18 years

Clause 5: Section 15A inserted

15A Graffiti and graffiti equipment

This clause provides new offences relating to graffiti and graffiti equipment.

Subsection (1) provides the specific offence of marking graffiti. A person must not, without a lawful excuse, mark graffiti. The penalty for this offence is a fine not exceeding 20 penalty units. This clause also allows the court to order that the offender perform community service in accordance with Part 4 of the *Sentencing Act 1997*. This order can be in addition to a penalty imposed, or in substitution for a penalty.

Subsection (3) provides an offence for distributing, supplying or selling graffiti equipment to a person under the age of 18 years. Where a person has a lawful excuse this offence does not apply. The penalty for this offence is a fine not exceeding 20 penalty units.

Subsection (4) provides that a person must not, without lawful excuse, have possession of, or carry or use graffiti equipment in a public place. This section, however, does not apply to a police officer acting in the performance of his or her duties, or to a person or group of people who are excluded in writing by the Commissioner from the application of this section.

This clause also provides a police officer with an authority to stop, detain and search any person in a public place if the police officer reasonably believes that the person has possession of any graffiti equipment without a lawful excuse. This authority also extends to the persons vehicle, and subsection (10) provides that a person who is in a motor vehicle in a public place is taken to be in the public place.

Subsection (7) authorises the police officer to seize and detain any graffiti equipment located in the search.

The amendment specifies that a ‘lawful excuse’ relating to possession or use of graffiti equipment may include the pursuit of a lawful occupation, duty or activity that involves the use of the graffiti equipment, or the participation is a lawful sport, recreation or entertainment that involves the use of the graffiti equipment.

Where a person is convicted or found guilty of an offence under section 15CA, the graffiti equipment to which the offence relates is forfeited and may be disposed of as the court orders.

Clause 6: Section 15E inserted

15E Body Armour

This clause provides offences relating to the manufacture, possession, distribution, supply or sale of body armour without a permit.

Subsection (1) specifies that a person must not manufacture, distribute, supply, sell or possess body armour unless he or she holds a permit to do so. The penalty for this offence is a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months or both.

The amendments allow for a person to apply to the Commissioner for a permit to manufacture, possess, distribute, supply or sell body armour. A permit must be in an approved form and include details relating to the type of body armour, the reason for requiring the permit, the means of storage for the body armour and any other prescribed matter.

The amendment allows the Commissioner to grant a permit subject to any conditions he or she considers appropriate.

An applicant for a permit must be at least 18 years of age, a fit and proper person, able to safely store the body armour and must have a legitimate reason for manufacturing, distributing, supplying, selling or possessing the body armour.

Before granting a permit the Commissioner must be satisfied that a person is a 'fit and proper person'. This amendment provides that the Commissioner must take into account:

- any likelihood of the person using body armour for an unlawful purpose;
- the mental condition of the person;
- any criminal activity of the person, in Tasmania or elsewhere;
- any offence committed by the person under this Act, the Guns Act 1991 or the Firearms Act 1996; and
- whether the person is subject to a recognisance, granted in Tasmania or elsewhere, to keep the peace.

This clause also provides that consideration be given to whether a person is, or has within the last 5 years, been subject to a restraint order or interim restraint order.

A person who is issued with a permit must be able to produce a copy of the permit on demand by a police officer while the person is manufacturing, distributing, supplying, selling or in possession of body armour. The penalty for not being able to produce a permit is a fine not exceeding 20 penalty units.

This clause authorises a police officer to seize and detain any body armour that is manufactured, distributed, supplied, sold or possessed in contravention of section 15CA.

Where a person is convicted or found guilty of an offence under this section, the body armour to which the offence relates is forfeited and may be disposed of as the court orders.

The amendment also stipulates that nothing in section 15CA prevents a person from being prosecuted for the manufacture, distribution, supply, sale or possession of body armour in contravention of another Act, for example under the *Customs (Prohibited Imports) Regulations 1956*.

Clause 7: Part II, Division V inserted

Division V – Sale or Supply of Liquor to Youths

This amendment provides offences relating to the supply of liquor to youth at a private place.

It establishes the offence for a person, who is not a responsible adult, supplying liquor to a youth at a private place. The penalty for this offence is a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.

The clause defines a responsible adult as:

- (a) a parent, step-parent or guardian of the youth; or
- (b) an adult who has parental rights and responsibilities for the youth; or
- (c) an adult authorised by a parent, step-parent, guardian of the youth or by an adult referred to in paragraph (b).

A responsible adult must not supply liquor to a youth at a private place unless the supply is consistent with the responsible supervision of the youth. The penalty for this offence is a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.

Factors that are relevant in considering whether the supply of liquor is consistent with the responsible supervision of the youth include:

- whether the responsible adult is directly supervising the youth's consumption of the liquor;
- whether the responsible adult is intoxicated;
- whether the responsible adult provides food for the youth to consume with the liquor;
- whether the youth is intoxicated;
- the age of the youth;
- the quantity and type of liquor supplied and the period over which it was supplied.

Clause 8: Section 35 amended (Common assault and aggravated assault)

This clause amends section 35(2) and 35(3) of the Act, which relate to the offences of aggravated assault and assault with indecent intent. Currently, these offences only apply to victims who are female or children aged 14 years or under. The exclusion of male victims from sexually oriented offences is considered obsolete.

The Bill amends this provision to include male victims, and remove the age restriction relating to both offences.

The penalty for these offences remains the same, 50 penalty units or imprisonment for a term not exceeding 2 years.

Clause 9: Section 43 amended (Finding property)

This clause amends section 43 of the Act to allow additional options for disposal of found property. Currently this section does not provide for a Justice to authorise anything other than the sale of the found property.

This amendment will allow for the disposal of property to charitable institutions and by other means other than by sale.

At present the return of property to the owner, on attendance at a police station, or the finder, after 3 months, may only be facilitated by a Justice or Police Inspector. There are both times and areas of the State where a Justice or Inspector is not readily available. The Bill amends sections 43(4) and 43(6) to allow an ‘Officer in Charge of a Police Station’ to dispose of found property as is currently provided for a justice or an officer of or above the rank of Inspector. This will assist in returning or disposing of property in situations where a Justice or an officer of or above the rank of Inspector are not available. Such situations occur in isolated areas of the State, some distance away from Inspectors or Justices, and also during after hours incidents when an Inspector or Justice of the peace may not be available.

Divisional Inspectors currently audit the books and transactions, relating to found property, of the stations for which they have responsibility. This process and auditing is also overseen by the Office of Corporate Review Services who report directly to the Deputy Commissioner of Police. This will continue to ensure found property is handled appropriately and ethically.

Clause 10: Section 49AA amended (Interpretation of Division)

Section 49AA is amended by inserting the following definition:

“road cycle event” means an event that –

- (a) involves 70 or more cyclists; and
- (b) requires the use of public roads;

Clause 11: Section 49AB amended (Public street permits)

This clause amends section 49AB to ensure that a person must obtain a permit before organising or conducting a “road cycle event” on a public street. Application for a permit is in writing and may be issued by a senior police officer.

The amendment will ensure that a road cycle event will require a permit to be obtained from a senior police officer. In determining the application the senior officer may consider the safety and convenience of the public and participants and other considerations in consultation with such people as local government authorities, and other events that may be occurring that are relevant having regard to the time, nature

and location of the activity. This is not dissimilar to the procedure that already occurs for other events that currently require permits.

Clause 12: Section 55 amended (Arrest)

This clause amends section 55(2C) by removing paragraph (a).

Section 55(2C) of the *Police Offences Act 1935*, which was included in an amendment to the Act in 1982, requires that the authority to arrest for trespass is not exercisable unless the police officer has requested the trespasser to leave the land and after such request the trespasser has failed to leave. The Bill amends section 55(2C) by omitting 55(2C)(a) to ensure that police are not restricted by the 'requirement to leave' provisions.

The removal of this requirement does not mean that police officers will arrest on each and every occasion. Section 55(2B) indicates that a police officer 'may' arrest, and the officer's discretion to proceed by summons still remains. This is not dissimilar to other State legislation where police officers are required to use their discretion in deciding how to proceed, and may often arrest but do not.

Clause 13: Section 61 amended (Liquor infringement notices)

This clause amends section 61 to allow the issue of infringement notices for offences relating to the sale or supply of liquor to youth.

This will allow infringement notices to be issued for less serious offences committed under section 26 of the Act, matters where a complaint has been made, police have statements and there is no significant injury or issues.

Clause 14: Part VIII Inserted

Part VIII – Declaration of Crime Scenes and Serious Incident Sites

This clause inserts a new Part into the Act relating to the declaration of crime scenes and serious incident sites.

Division 1 – Crime Scenes

63 Declaration of a crime scene

This clause provides for the declaration of crime scenes by police.

For the purpose of preserving, searching for or gathering evidence, a police officer of or above the rank of inspector may declare any public or private place to be a crime scene.

The amendment provides an authority for a police officer, of or above the rank of Inspector, who reasonably believes that an offence or crime has been committed in a place, or that there is evidence relevant to an offence or crime in a place, to declare the area a crime scene for the purpose of preserving, searching for and gathering evidence.

A police officer may establish a crime scene in any way that is reasonably appropriate in the circumstances.

A declaration of a crime scene remains in force for a period of 7 days, unless it is revoked earlier by a police officer of or above the rank of inspector. Before the expiry of 7 days a re-declaration can be made if the crime scene is required for longer than the original 7 day period. The re-declaration must be made by an officer of or above the rank of inspector.

A crime scene declaration must be put in writing as soon as practicable after it has been made. This is to be completed by the police officer who made the declaration, and copies given to the owner or person lawfully in charge of the place to which the declaration relates, and the District Police Commander responsible for the relevant region.

This clause also provides the owner or person lawfully in possession of the place to appeal the crime scene declaration to the Magistrates Court Administrative Appeals Division, who may confirm, amend, revoke or add conditions to the declaration.

63A Authority at crime scene

This clause provides police authorities for the purpose of preserving, searching for or gathering evidence at a crime scene.

A police officer may give the following directions at a crime scene:

- direct a person to leave a crime scene, or to remove a vehicle, vessel or aircraft from the crime scene; or
- direct a person not to enter a crime scene; or
- direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity to the premises.

This clause creates an offence for any person who fails to comply with a direction given by a police officer under this section. The penalty for this offence is a fine not exceeding 80 penalty units.

A power of arrest without warrant is provided for a person who fails to comply with a direction given by a police officer under this section.

Where a person fails to comply with a direction to leave the crime scene, a police officer may remove that person, or any vehicle, vessel or aircraft that the person fails to remove from the crime scene. A police officer may also prevent any person from entering a crime scene, and remove, or cause any obstruction to be removed.

A police officer may prevent a person from removing evidence from, or from interfering with, a crime scene, and for this purpose a police officer may detain and search a person.

This clause allows a police officer to perform any necessary investigation, examination, or process at a crime scene to enable the preservation, searching for and gathering of evidence related to a crime or offence. This includes taking

electricity, gas or any other utility to the scene, opening anything that is locked within the scene, digging up anything and removing any roofing material, wall or ceiling linings, floors or panel linings of a building or vehicle.

The crime scene may be photographed or otherwise recorded and police may seize and detain all or part of a thing that might provide evidence of the commission of an offence or crime. This authority to seize and detain includes the ability to remove the thing from the scene and the authority to guard the thing in or on the crime scene.

For the purposes of exercising any authorisation within this section, the clause provides that a police officer may use such force as is reasonably necessary.

This clause stipulates that nothing prevents a police officer who is lawfully on a premises from using an authorisation within this section if the occupier of the premises consents.

Division 2 – Serious incident sites

63B Declaration of serious incident site

This clause provides for the declaration of serious incident sites by police.

If an officer of or above the rank of inspector is of the opinion that, because of the size, nature or location of an incident, it is necessary to exclude persons from the area, he or she may declare that area a 'serious incident site'. The declaration must be to ensure public safety or the security of an evacuated premises or the safety of, or prevention of obstruction of, hindrance of or interference with emergency services.

A police officer may establish a serious incident site in any way that is reasonably appropriate in the circumstances.

A declaration of a serious incident site remains in force for a period of 7 days, unless it is revoked earlier by a police officer of or above the rank of inspector. Before the expiry of 7 days a re-declaration can be made if the serious incident site is required for longer than the original 7 day period. The re-declaration must be made by an officer of or above the rank of inspector.

A serious incident site declaration must be put in writing as soon as practicable after it has been made. This is to be completed by the police officer who made the declaration, and copies given to the owner or person lawfully in charge of the place to which the declaration relates, and the District Police Commander responsible for the relevant region.

This clause also provides the owner or person lawfully in possession of the place to appeal the serious incident site declaration to the Magistrates Court Administrative Appeals Division, who may confirm, amend, revoke or add conditions to the declaration.

63C Authority at serious incident site

This section determines a police officer's authorities when establishing, or in attendance at, a serious incident site.

Subsection (1) allows a police officer to

- (a) close any road, footpath, or other open space;
- (b) remove from the serious incident site any person who fails to comply with a direction to leave the site, or removal of a vehicle vessel or aircraft that a person fails to remove after being directed to do so;
- (c) direct a person not to enter the site;
- (d) prevent a person from entering the site;
- (e) allow a person to enter or remain in the site subject to any conditions the officer considers appropriate;
- (f) perform any other function reasonably necessary or incidental to a function conferred within this section.

The section provides an offence for a person who fails to comply with a direction given under subsection (1). The penalty for this offence is a fine not exceeding 40 penalty units.

This clause also provides a power of arrest for a person who fails to comply with a direction given under subsection (1).

The amendment also clarifies that, where a police officer is lawfully on a premises and the occupier consents to the police officers presence, a police officer is still entitled to use any of the authorities listed in subsection (1).

PART 3 FORENSIC PROCEDURES ACT 2000 AMENDED

Clause 15: Principal Act

Specifies that in this part the *Forensic Procedures Act 2000* is referred to as the Principal Act.

Clause 16: Section 3 amended (Interpretation)

This clause amends the definition of "serious offence" to include an offence under section 21 of the *Police Offences Act 1935*, 'Prohibited Behaviour'. This amendment will allow for the taking of forensic material (including DNA, fingerprints, and photographs) from a suspect or offender.