

DRAFT SECOND READING SPEECH

HON. M.T. (RENE) HIDDING MP

Misuse of Drugs Amendment Bill 2015

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Madam Speaker, the purpose of this Bill is to amend the *Misuse of Drugs Act 2001* to provide the Commissioner of Police with a statutory power to exempt a person from the operation of provisions of the *Misuse of Drugs Act* in relation to that person performing particular duties as directed by the Commissioner.

At times, in very limited and controlled circumstances, the Commissioner of Police requires a person, usually a serving police officer, to possess and supply a controlled substance.

For example, Tasmania has committed to participating in a national project to increase national forensic capability to identify illicit drugs and to track supply networks of these compounds across jurisdictions.

The project is the Enhancing National Intelligence Project for Illicit Drugs initiative.

As part of the Enhancing National Intelligence Project for Illicit Drugs, the Commissioner of Police committed through a Memorandum of Understanding with the Australian Federal Police, to supply the Australian Federal Police with samples of heroin, MDMA (ecstasy) and methamphetamine which have been confiscated in Tasmania, so that the samples can be forensically analysed.

In 2011, prior to Tasmania committing to the Enhancing National Intelligence Project for Illicit Drugs, the Commissioner of Police sought advice from the Director of Public Prosecutions as to whether the functions required to be undertaken for the project were supported by Tasmanian legislation.

At that time, the Director of Public Prosecutions advised that the State laws did not support those activities but gave an assurance that no police officer would be prosecuted for possessing and supplying the illicit drug samples to Australian Federal Police agents under the Enhancing National Intelligence Project for Illicit Drugs, on the understanding that statutory amendments to the State's laws would be sought.

The Commissioner of Police has requested that he be provided with this statutory power.

The proposed amendment is appropriate to the Commissioner's responsibilities for the efficient, effective and economic management and superintendence of the Police Service under section 7 of the *Police Service Act 2003*.

It is also appropriate that the proposed power be conferred upon the Commissioner under the *Misuse of Drugs Act 2001* to ensure that his officers are not exposed to the risk of prosecution under this Act in relation to activities they undertake at the Commissioner's direction.

Another instance where Tasmania Police officers are required to possess illicit drugs for operational purposes is for training drug identification dogs to identify the presence of specific illicit substances.

At present, Tasmania Police relies on what is purported to be an authorisation given, in writing, by the Minister for Health under section 55(2) of the *Poisons Act 1971*. It had been thought that the authorisation provided police officers with legal powers and protections from prosecution in relation to the possession of illicit drugs for all operational purposes. There is some uncertainty as to whether the section of the *Poisons Act* under which the purported authorisation was given can operate to support that practice.

Therefore clarification of the legal basis for these law enforcement activities is essential.

There may be other instances when the Commissioner of Police requires that specified officers possess illicit substances for the purposes of and in the course of performing their duties.

In Tasmania, the *Poisons Act 1971* and the *Misuse of Drugs Act 2001* provide for the regulation, control and prohibition of certain substances and prohibit the misuse of drugs and activities associated with the misuse of drugs.

Amongst other things, the possession, sale and supply of such substances is an offence under these Acts unless the person is authorised to engage in the specified conduct.

The *Poisons Act 1971* is the Tasmanian legislation which regulates the possession, manufacture, supply and sale of drugs for therapeutic and medical purposes, through a licensing scheme.

Those who are entitled to hold a licence under the *Poisons Act* are: medical practitioners, pharmaceutical chemists, dentists and veterinary surgeons.

The *Poisons Act* also provides for the monitoring of compliance with those licences.

The *Poisons Act* also empowers the Minister for Health to provide written authorisation for a nurse or midwife to be in possession of restricted substances and the Secretary of the Department of Health and Human Services is empowered to provide written authorisation for a nurse-practitioner to perform some functions involving scheduled substances.

The substances which are restricted or controlled by State licensing schemes for therapeutic and medicinal uses are assessed under the *Therapeutic Goods Act 1989* of the Commonwealth and published as the Uniform Standard. Part 4 of the Uniform Standard is adopted under section 14 of the Tasmanian *Poisons Act*, as the *Poisons List*. The Uniform Standard contains a number of Schedules and the substances in each Schedule are classified with reference to criteria such as whether a prescription is required in order to obtain the substance and whether it is capable of causing various degrees of harm.

The *Misuse of Drugs Act 2001* is the legislation which prohibits the misuse of drugs and engaging in activities associated with the misuse of drugs.

The *Misuse of Drugs Act* operates alongside the *Poisons Act* and creates indictable crimes and summary offences including:

- possessing a thing intended for use in the manufacture of a controlled substance for sale;
- possessing a thing intended for use in the cultivation of a controlled plant for sale;
- possessing, using or administering a controlled drug;

- possessing or using a controlled plant or its products;
- selling or supplying a controlled drug;
- selling or supplying a controlled plant or its products.

In relation to the enforcement of the *Misuse of Drugs Act* and the prosecution of offences against it, Part 4 of the *Misuse of Drugs Act* currently contains provisions which empower the Commissioner of Police to hold and to dispose of drugs which are evidentiary material in specified ways and requires him to comply with any Guidelines issued by the Minister for Justice relating to the management of such evidentiary material.

For example, the Commissioner of Police is authorised under section 37A(3) of the *Misuse of Drugs Act* to cause evidentiary material to be rendered safe or inert (if necessary by treating, repackaging or breaking up the material) or to destroy or otherwise dispose of such evidentiary material.

The Commissioner of Police has the responsibility of ensuring that samples which are to be used for evidentiary purposes are kept securely.

However, as described above, the Commissioner of Police is responsible for a number of activities which require his officers to be in possession of, and to supply others, such as the Australian Federal Police, with controlled substances for purposes other than providing evidence to a court in the prosecution of an alleged offender or for keeping the substances secure until such time as they are required by a court for evidentiary purposes.

Those other purposes and circumstances are not currently dealt with under the Act.

The Commissioner's undertaking in respect of the Enhancing National Intelligence Project for Illicit Drugs is important to the national effort to minimise the harm caused by the use of controlled substances, that is, illicit drugs.

It is appropriate that the Commissioner be provided with the power necessary to enable him to perform his functions and that by the exercise of that power provide statutory protection against prosecution of his officers while acting in the performance of their duties.

The Commissioner's office advises that the Chief Pharmacist has indicated support for a general provision to be inserted into the *Misuse of Drugs Act* to avoid the need for the Commissioner of Police to obtain permission from another authority in respect of Tasmania Police operational matters.

The proposed amendment will meet the expectation of the Director of Public Prosecutions that statutory amendments to the State's laws would be sought.

The Director of Public Prosecutions, Tasmania Police and the Chief Pharmacist are content with the provisions in this Bill.

This Bill will expressly clarify a source of authority for Tasmania Police in its operational practices and I therefore commend the Bill to the House.