

# FACT SHEET

## *POLICE MISCELLANEOUS AMENDMENTS (No.2) BILL 2009*

### *POLICE OFFENCES (LIQUOR) AMENDMENT REGULATIONS 2009*

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The Government has introduced legislation into Parliament to amend the *Police Offences Act 1935* and the *Forensic Procedures Act 2000*.

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

The ***Police Miscellaneous Amendments (No.2) Bill 2009*** amends the *Police Offences Act 1935* to:

- amend section 43(4), (6) and (7) of the *Police Offences Act 1935* to allow for the disposal of found property, to which no claim has been made, by sale or other means and permit the 'police officer in charge of a police station' to return property to the owner or finder;
- prevent the secondary supply of alcohol to young persons on private property without the direct approval of a parent, step-parent or guardian of the youth who has lawful responsibility for the youth's care and welfare, and provide offences relating to the supply of alcohol to young persons on private property;
- amend Division IIIAA to include a definition of 'road cycle event' to provide that certain bicycle events conducted on public streets are to required to have a permit;
- provide authority for police officers to control serious incidents on both public and private property;
- provide authority for police officers to control crime scenes;
- provide that the authority to arrest for the offence of trespass is not subject to the 'requirement to leave' provision outlined in section 55(2C),
- provide that the offence of assault with indecent intent apply to all male victims as well as females and children of all ages;
- prohibit the possession, use, supply, manufacture and sale of military and law enforcement-style body armour unless an exemption is provided by the Commissioner of Police;
- provide offences for marking graffiti, possessing a graffiti implement without lawful excuse, together with an authority to search, and to regulate the sale of aerosol spray paint to a person under the age of 18 years; and

The *Police Further Miscellaneous Amendments (No.2) Bill 2009* amends the *Forensic Procedures Act 2000*, to provide that the offence of Prohibited Behaviour, section 21 of

the Police Offences Act 1935, be listed as a serious offence and thereby allow for the taking of forensic material for a person charged or suspected of having committed the offence.

## ***POLICE OFFENCES ACT 1935***

### **Found property**

Section 43 of the *Police Offences Act 1935* relates to found property. It has been identified that found property, to which no claim has been made, can only be disposed of by sale. This section does not provide for a Justice to authorise anything other than the sale of the found property.

The Bill amends this section to allow for additional options for the disposal of found property, to which no claim has been made. Such disposals include provisions to provide items directly to a charitable institution.

Sections 43(4) and 43(6) have been amended 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 some distance away from Inspectors or Justices of the Peace, and also during after hours incidents.

### **Supply of alcohol to a young person on private property**

Tasmania has legislation regulating the supply of alcohol from a licensed premises, and in public places. However, there is no legislation prohibiting the supply of alcohol to youth on private property. New South Wales and Queensland are the only jurisdictions where the supply of alcohol to a youth requires the direct approval of a parent or guardian.

The Bill will regulate the secondary supply of alcohol to a youth on private property without the direct approval of a parent, step-parent or guardian of the youth who has lawful responsibility for the youth's care and welfare. Further amendments are sought to ensure that a youth who has approval to consume alcohol is appropriately supervised whilst consuming the alcohol, and offences relating to the provision of more than the approved quantity of alcohol and supplying alcohol to a youth who is drunk.

### **Provision to regulate major bicycle events**

Section 49AB of the *Police Offences Act 1935* relates to public street permits. The section requires that a permit must be obtained from a senior police officer if any of the following activities are to be held on a public street:

- a. a demonstration;
- b. a fundraising drive;
- c. a procession;
- d. a road cycle race.

The definitions of these activities does not adequately cover large group bicycle events such as the 'Great Tasmanian Bike Ride' and 'Century Ride' which can host several

hundred bike riders, cause serious disruption to traffic, and affect the safety and convenience of the public and the riders without a formal risk assessment or referral to Tasmania Police.

The Bill amends Division IIIAA to include a definition of a 'road cycle event' and provide that a person must not organise or conduct a road cycle event for more than 70 people on a public street without a permit.

The Bill does not seek to restrict any bicycle riding activity, but aims to establish a safe environment for all road users. The proposed amendments 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 will consider the safety and convenience of the public and participants and other considerations 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.

### **Provision for police officers to control crime scenes**

At present police authority to establish and manage crime scenes is implied from common law. Legislative clarification of this authority will allow for appropriate preservation and investigation of crime scenes. The Bill provides when a crime scene may be established and the authority that may be exercised by police to establish and maintain that crime scene, when required.

The Bill 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 and gathering evidence. This declaration is to be put in writing at the earliest reasonable opportunity, with a copy provided to the property owner or person lawfully in possession of the property and the Police Commander of the District. An appeal provision to the Administrative Appeals Division of the Magistrates Court has also been established.

The declaration of a crime scene will provide authority for police to perform any necessary investigation, examination, inspection or process to obtain evidence of the offence or crime.

New South Wales, Queensland and Western Australia have enacted legislation that provides authority for police officers to establish and control crime scenes.

### **Amendment to trespass offence provisions**

Division IA of the Act provides offences relating to trespass to lands. Contained in this Division is the offence of 'Unlawful entry on land', commonly referred to as 'Trespass'.

Significant problems are caused by offenders who trespass for a specific purpose, including the intent to severely disrupt the industry, livelihood or safety of the people employed to work on the land or property, and emergency personnel responding to the incident.

Police presently have the authority to proceed against a person for trespassing (by summons), but cannot arrest unless the person refuses to leave upon police direction. The issue remains that once police leave, the trespass may reoccur continuously, without interruption, as long as the trespasser leaves once directed to do so by police, even though the owner has previously required them to leave.

Section 55(2C) of the *Police Offences Act 1935* 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) 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, and the officer's discretion to proceed by summons still remains. This is not dissimilar to other State legislation where police officers use their discretion in deciding how to proceed.

Government continues to accept that people should have the "right to protest and demonstrate lawfully, peacefully and safely". This message will continue to be articulated by DPEM, with the distribution of leaflets, media releases and demonstrated at such events where appropriate.

### **Assault with indecent intent – provision for male victims**

The Bill amends section 35(2) and 35(3) of the *Police Offences Act 1935* 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, which reflects society's contemporary attitudes and beliefs in relation to gender equality.

### **Regulation of body armour**

Tasmania does not have legislation which regulates the manufacture, use, supply, sale or possession of military and law enforcement style body armour. Body armour is a prohibited import under the *Customs (Prohibited Imports) Regulations 1956*. The Bill will regulate the supply, sale, use and possession of this type of body armour, with an exemption provision on approval by the Commissioner of Police. This amendment will bring Tasmania in line with South Australia, New South Wales, Victoria, Northern Territory, and the Australian Capital Territory.

### **Graffiti offences**

Current Tasmanian legislation does not provide specific offences that relate to graffiti. Graffiti offenders are currently charged with Injure Property under the *Police Offences Act 1935*. It is considered that the offence of Injure Property does not always appropriately describe the act of applying graffiti to a structure.

The Bill provides a specific offence for marking graffiti, and for possessing a graffiti implement without lawful or reasonable excuse, with a search provision. This provision will allow police officers to seize aerosol paint cans and other graffiti equipment from individuals who cannot provide a reasonable or lawful excuse for possessing it. This is not

dissimilar to the current dangerous article provision that exists under section 15C of the Act.

As many graffiti offenders are under the age of 18 years, restricting the sale of aerosol paint cans to adults should assist to reduce graffiti activity. The regulation and provision of an offence for the sale of aerosol paint cans to a person less than 18 years of age is included in the Bill. Government will provide advice to retailer peak organisations once the legislation is approved by Parliament.

Youth will continue to be dealt with appropriately as required in accordance with the *Youth Justice Act 1997*.

### **Declaration of serious incident site**

It is sought to provide a police officer, of or above the rank of Inspector, with the authority to declare a 'Serious Incident Site'. This declaration is to be endorsed by the Police District Commander within 24 hours, with formal notification to the Commissioner of Police. The serious incident site is to exist for a maximum of 7 days, unless re-declared.

A 'Serious Incident Site', being an area that is affected by a serious incident, may include the aftermath site of a fire, mining disaster, traffic accident involving a gas tanker, or any other incident which is not covered by the *Emergency Management Act 2006*. This declaration will be dependent upon the size, nature and location of the incident, and may occur in liaison with experts, including fire personnel, mining engineers and inspectors, local government authorities, and other State or Commonwealth Government agencies. This will allow police to restrict normal community activities and movement to ensure public safety, security of the affected premises, safety of emergency services personnel, and prevent any obstruction to emergency services and allow 'community relief and recovery' as required.

The Bill establishes offence provisions for a person who fails to obey a lawful direction of police to leave a serious incident site, and for persons who enter or attempt to enter a serious incident site, or fail to carry out other directions. The Bill also provides an authority to arrest without warrant on reasonable grounds for persons who fail to comply with these directions.

The Bill also provides that a property owner, or other person who has pecuniary interest in the area that has been declared, can appeal the 'Serious Incident Site' declaration to the Administrative Appeal Division of the Magistrates Court. A magistrate will have the authority either to remove the declaration, alter it, maintain or extend it.

### ***FORENSIC PROCEDURES ACT 2000***

#### **Prohibited behaviour to be listed as a serious offence**

The Bill provides for amendments to the *Forensic Procedures Act 2000* to provide that the offence of 'Prohibited Behaviour', section 21 of the Police Offences Act 1935 is listed as a serious offence. This amendment will allow for the taking of forensic material from a person charged or suspected of committing this offence.

***POLICE OFFENCES (LIQUOR) AMENDMENT REGULATIONS 2009***

The amendments to the Regulations support clause 13 of the Bill by prescribing the penalty on issue of a liquor infringement notice for an offence against section 26 of the *Police Offences Act 1935*. The prescribed penalty for an offence under section 26 is 3 penalty units.