

TASMANIA

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

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

*(Brought in by the Minister for Police and Emergency
Management, the Honourable James Glennister Cox)*

A BILL FOR

**An Act to amend the *Police Offences Act 1935* and the
*Forensic Procedures Act 2000***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police
Miscellaneous Amendments Act (No. 2) 2009*.

2. Commencement

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

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Part 2 – Police Offences Act 1935 Amended

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

3. Principal Act

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

4. Section 3 amended (Interpretation)

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

- (a) by inserting the following definition before the definition of “child”:

“body armour” includes protective jackets, protective vests, protective suits, anti-ballistic articles and 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 prescribed device –

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

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

“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;
- (c) by inserting the following definition after the definition of “gain access”:

“graffiti equipment” means –

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

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- (d) by inserting the following definition after the definition of “liquor infringement notice”:

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

- (e) by omitting “vehicle.” from the definition of “vehicle” and substituting “vehicle;”;

- (f) by inserting the following definition after the definition of “vehicle”:

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

5. Section 15CA inserted

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

15CA. Graffiti and graffiti equipment

- (1) A person must not, without lawful excuse, mark graffiti.

Penalty: Fine not exceeding 20 penalty units.

- (2) In addition to, or in substitution for, any penalty imposed by a court under subsection (1), the court may order that

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the offender perform community service in accordance with Part 4 of the *Sentencing Act 1997*.

- (3) A person must not, without lawful excuse, distribute, supply or sell graffiti equipment to a youth.

Penalty: Fine not exceeding 20 penalty units.

- (4) A person must not, without lawful excuse, have possession of, or carry or use, graffiti equipment in a public place.

Penalty: Fine not exceeding 20 penalty units.

- (5) Subsection (4) 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.

- (6) A police officer may stop, detain and search, without a warrant, any person in a public place who the police officer reasonably believes has possession of, or is carrying, any graffiti equipment without lawful excuse and may stop, detain and search, without a warrant, the person's vehicle.

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- (7) A police officer may seize and retain any graffiti equipment found.
- (8) For the purposes of this section, a lawful excuse includes the following:
 - (a) the pursuit of a lawful occupation, duty or activity using that graffiti equipment;
 - (b) the participation in a lawful sport, recreation or entertainment using that graffiti equipment.
- (9) If a person is convicted or found guilty of an offence under this section, the graffiti equipment to which the offence relates is forfeited and is to be disposed of as the court orders.
- (10) 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.

6. Section 15E inserted

After section 15D of the Principal Act, the following section is inserted in Division II:

15E. Body armour

- (1) A person must not manufacture, distribute, supply, sell or possess body armour unless he or she holds a permit from the Commissioner to do so.

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Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) A person may apply to the Commissioner for a permit to manufacture, distribute, supply, sell or possess body armour.
- (3) An application for a permit is to –
 - (a) be in a form approved by the Commissioner; and
 - (b) include details of the following:
 - (i) the type of body armour;
 - (ii) the reason for its manufacture, distribution, supply, sale or possession;
 - (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 of age; and

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- (b) is a natural person; and
 - (c) is a fit and proper person to manufacture, distribute, supply, sell or possess body armour; and
 - (d) is able to safely store the body armour; and
 - (e) has a legitimate reason for manufacturing, distributing, supplying, selling or possessing body armour.
- (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 body armour for an unlawful purpose;
 - (b) the mental 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) whether the person is subject to a restraint order or interim restraint order under Part XA of the

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Justices Act 1959, or a family violence order, or has at any time within the previous 5 years been subject to such an order;

- (f) whether the person is subject to a recognisance, granted in Tasmania or elsewhere, to keep the peace.
- (7) A person issued with a permit under this section must produce a copy of the permit on the demand of a police officer while the person is manufacturing, distributing, supplying, selling or in possession of body armour.
- Penalty: Fine not exceeding 20 penalty units.
- (8) A police officer may seize and retain any body armour manufactured, distributed, supplied, sold or possessed in contravention of this section.
- (9) If a person is convicted or found guilty of an offence under this section, the body armour to which the offence relates is forfeited and is to be disposed of as the court orders.
- (10) Nothing in this section prevents a person from being prosecuted for the manufacture, distribution, supply, sale or possession of body armour in contravention of another Act.

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7. Part II, Division V inserted

Divison V of Part II of the Principal Act is amended by omitting the heading to that Division and inserting the following Division:

Division V – Sale or supply of liquor to youths

26. Sale or supply of liquor to youths

- (1) A person must not supply liquor to a youth at a private place unless the person is a responsible adult for the youth.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.

- (2) A responsible adult for a youth must not supply liquor to the youth at a private place unless the supply is consistent with the responsible supervision of the youth.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.

- (3) For the purposes of subsection (2), the following factors are relevant in considering whether the supply is consistent with the responsible supervision of the youth:

- (a) whether the responsible adult is directly supervising the youth's consumption of the liquor;

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- (b) whether the responsible adult is intoxicated;
 - (c) whether the responsible adult provides food for the youth to consume with the liquor;
 - (d) whether the youth is intoxicated;
 - (e) the age of the youth;
 - (f) the quantity and type of liquor supplied and the period over which it is supplied.
- (4) For the purposes of this section, each of the following persons is a responsible adult for a youth:
- (a) a parent, step-parent or guardian of the youth;
 - (b) an adult who has parental rights and responsibilities for the youth;
 - (c) an adult authorised to supply liquor to the youth by a parent, step-parent or guardian of the youth or by an adult referred to in paragraph (b).

8. Section 35 amended (Common assault and aggravated assault)

Section 35 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (2) “child who, in the opinion of the court, is under the age of 14 years, or any female” and substituting “other person”;
- (b) by omitting subsection (3) and substituting the following subsection:
 - (3) A person who with indecent intent assaults any other person is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years.

9. Section 43 amended (Finding property)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “a justice or” and substituting “a justice,”;
- (b) by inserting in subsection (4) “or the police officer in charge of the station” after “inspector”;
- (c) by omitting from subsection (6) “justice or” and substituting “justice,”;
- (d) by inserting in subsection (6) “or the police officer in charge of the station” after “inspector”;
- (e) by omitting from subsection (6) “and” third occurring and substituting “or”;

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- (f) by omitting from subsection (6) “and” fourth occurring and substituting “and, if sold,”;
- (g) by omitting from subsection (7) “and” second occurring and substituting “or”;
- (h) by omitting from subsection (7) “and” third occurring and substituting “and, if sold,”.

10. Section 49AA amended (Interpretation of Division)

Section 49AA of the Principal Act is amended by inserting after the definition of “public street” the following definition:

“**road cycle event**” means an event that –

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

11. Section 49AB amended (Public street permits)

Section 49AB(1) of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraphs:

- (d) a road cycle race;
- (e) a road cycle event.

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12. Section 55 amended (Arrest)

Section 55(2C) of the Principal Act is amended by omitting paragraph (a).

13. Section 61 amended (Liquor infringement notices)

Section 61(1) of the Principal Act is amended by inserting “or section 26” after “section 25”.

14. Part VIII inserted

After section 62 of the Principal Act, the following Part is inserted:

**PART VIII – DECLARATION OF CRIME SCENES
AND SERIOUS INCIDENT SITES**

Division 1 – Crime scenes

63. Declaration of crime scene

- (1) For the purpose of preserving, searching for or gathering evidence, a police officer of or above the rank of inspector may declare any public place or other place to be a crime scene if –
 - (a) the officer reasonably believes that it is necessary, for that purpose, to exercise powers in section 63A(1) or to exclude persons from the place; and

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- (b) the officer reasonably believes that –
 - (i) an offence or a crime has been committed at or near that place; or
 - (ii) there is evidence at that place that is relevant to an offence or crime.
- (2) A police officer may establish a crime scene in any way that is reasonably appropriate in the circumstances.
- (3) The police officer who declares a crime scene is to put the declaration in writing as soon as practicable after making it and is to give a copy of the declaration to –
 - (a) the owner or person lawfully in possession of the place to which the declaration relates, if the place is not a public place; and
 - (b) the District Police Commander responsible for the relevant region.
- (4) A declaration of a crime scene remains in force for 7 days unless it is sooner revoked.
- (5) A revocation of a declaration of a crime scene –

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- (a) may be made by a police officer of or above the rank of inspector; and
 - (b) is to be put in writing as soon as practicable after it is made and a copy given to the persons who have been given a copy of the declaration under subsection (3).
- (6) Before a declaration of a crime scene lapses or is revoked, a police officer of or above the rank of inspector may re-declare the place to be a crime scene.
- (7) A re-declaration of a crime scene under subsection (6) may be made one or more times and subsections (3), (4), (5), (8) and (9) apply to a re-declaration as if it were a declaration under those subsections.
- (8) The owner or person lawfully in possession of the place to which a declaration of a crime scene relates may appeal against the declaration to the Magistrates Court (Administrative Appeals Division).
- (9) The Magistrates Court (Administrative Appeals Division) may confirm, amend or revoke, or add conditions to, a declaration of a crime scene.

63A. Authority at crime scene

- (1) For the purpose of preserving, searching for or gathering evidence at a crime scene, a police officer is authorised to do any or all of the following at or in relation to the crime scene:
 - (a) direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene;
 - (b) remove from the crime scene –
 - (i) a person who fails to leave the crime scene when directed to do so; or
 - (ii) a vehicle, vessel or aircraft that a person fails to remove from the crime scene when directed to do so;
 - (c) direct a person not to enter the crime scene;
 - (d) prevent a person from entering the crime scene;
 - (e) prevent a person from removing evidence from, or otherwise interfering with, the crime scene or anything in it and, for that purpose, detain and search the person;

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- (f) remove, or cause to be removed, an obstruction from the crime scene;
- (g) perform any necessary investigation including, for example, searching the crime scene without warrant and inspecting anything in it to obtain evidence of the commission of an offence or crime;
- (h) for the purpose of performing any necessary investigation, conduct any examination or process;
- (i) open anything at the crime scene whether or not it is locked;
- (j) take electricity, gas or any other utility for use at the crime scene;
- (k) 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 at the premises;
- (l) photograph or otherwise record the crime scene and anything in it;
- (m) seize and detain all or part of a thing that might provide evidence of the commission of an offence or crime;

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- (n) dig up anything at the crime scene;
 - (o) remove roofing material, wall or ceiling linings or floors of a building, or panel linings of a vehicle;
 - (p) any other function reasonably necessary or incidental to a function conferred by this subsection.
- (2) A person must not fail to comply with a direction given under subsection (1).
- Penalty: Fine not exceeding 80 penalty units.
- (3) A police officer may arrest, without warrant, a person who fails to comply with a direction given under subsection (1).
- (4) An authorisation conferred by this section to seize and retain a thing includes –
- (a) the authority to remove the thing from the crime scene when it is found; and
 - (b) the authority to guard the thing in or on the crime scene.
- (5) A police officer may use such force as is reasonably necessary for the purposes of

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exercising an authorisation conferred by this section.

- (6) Nothing in this Division prevents a police officer who is lawfully on premises from using an authorisation referred to in subsection (1) or doing any other thing if the occupier of the premises consents.

Division 2 – Serious incident sites

63B. Declaration of serious incident site

- (1) An officer of or above the rank of inspector, if of the opinion that because of the size, nature or location of an incident it is necessary to exclude persons from the area of the incident, may declare the area to be a serious incident site so as to ensure –
- (a) public safety; or
 - (b) the security of evacuated premises; or
 - (c) the safety of, prevention of obstruction of, hindrance of or interference with emergency services.
- (2) A police officer may establish a serious incident site in any way that is reasonably appropriate in the circumstances.

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- (3) The police officer who declares a serious incident site is to put the declaration in writing as soon as practicable after making it and is to give a copy of the declaration to –
 - (a) the owner or person lawfully in possession of the place to which the declaration relates if the place is not a public place; and
 - (b) the District Police Commander responsible for the relevant region.
- (4) A declaration of a serious incident site remains in force for 7 days unless it is sooner revoked.
- (5) A revocation of a declaration of a serious incident site –
 - (a) may be made by a police officer of or above the rank of inspector; and
 - (b) is to be put in writing as soon as practicable after it is made and a copy given to the persons who have been given a copy of the declaration under subsection (3).
- (6) Before a declaration of a serious incident site lapses or is revoked, a police officer of or above the rank of inspector may re-declare the site to be a serious incident site.

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- (7) A re-declaration of a serious incident site under subsection (6) may be made one or more times and subsections (3), (4), (5), (8) and (9) apply to a re-declaration as if it were a declaration under those subsections.
- (8) The owner or person lawfully in possession of the place to which a declaration of a serious incident site relates may appeal against the declaration to the Magistrates Court (Administrative Appeals Division).
- (9) The Magistrates Court (Administrative Appeals Division) may confirm, amend or revoke, or add conditions to, a declaration of a crime scene.

63C. Authority at serious incident site

- (1) A police officer is authorised to do any or all of the following at or in relation to a serious incident site:
 - (a) close any road, footpath or other open space;
 - (b) direct a person to leave the serious incident site or remove a vehicle, vessel or aircraft from the site;
 - (c) remove from the serious incident site –

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- (i) a person who fails to leave the site when directed to do so; or
 - (ii) a vehicle, vessel or aircraft that a person fails to remove from the site when directed to do so;
 - (d) direct a person not to enter the serious incident site;
 - (e) prevent a person from entering the serious incident site;
 - (f) allow a person to enter or remain in the serious incident site subject to such conditions as the officer considers appropriate;
 - (g) perform any other function reasonably necessary or incidental to a function conferred by this subsection.
- (2) A person must not fail to comply with a direction given under subsection (1).
- Penalty: Fine not exceeding 40 penalty units.
- (3) A police officer may arrest, without warrant, a person who fails to comply with a direction given under subsection (1).

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- (4) Nothing in this Division prevents a police officer who is lawfully on premises from using an authorisation referred to in subsection (1) or doing any other thing if the occupier of the premises consents.

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**PART 3 – FORENSIC PROCEDURES ACT 2000
AMENDED**

15. Principal Act

In this Part, the *Forensic Procedures Act 2000** is referred to as the Principal Act.

16. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “21,” after “13C, ” in paragraph (b) of the definition of “serious offence”.

*No. 101 of 2000

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Part 4 – Repeal

PART 4 – REPEAL

17. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.