

SECOND READING SPEECH

POLICE OFFENCES AMENDMENT BILL 2014

MARINUS (RENE) HIDDING, MP

MINISTER FOR POLICE AND EMERGENCY MANAGEMENT

MADAM SPEAKER,

I move that the Bill now be read a second time.

As you are no doubt aware, Madam Speaker, a very similar Bill was introduced into this House in November 2013. It was supported by all parties and passed through this House. Unfortunately it was not debated by the Legislative Council before they adjourned sittings for 2013. As a result we begin the process again.

This particular Bill contains a number of amendments to the *Police Offences Act 1935*, along with consequential amendments to the *Forensic Procedures Act 2000* and the *Law of Animals Act 1962*.

The origins of the offences contained in the Act can be traced to the development of an organised police force in Tasmania. The Act was originally passed in 1935 with the aim of consolidating and amending the law in relation to minor criminal charges.

The object of the Act has changed as time and society has evolved. It is now used primarily to control behaviour which causes offence, inconvenience or danger and to provide for the control of criminal conduct

of a minor nature. In that regard the Act is essential and central to the policing role in Tasmania.

Madam Speaker, despite a number of amendments during the past 78 years, there are still sections which remain in the Act that are antiquated and require either repeal or amendment to ensure that this piece of legislation is relevant to modern society.

As a result, a review of the Act has been conducted to identify areas that require repeal or amendment to ensure that this legislation is consistent and contemporary with policy, practice and community standards. This review involved government and public consultation

Part of the review looked at the necessity to expand the number of offences for which an infringement notice can be issued. In Tasmania, infringement notices are currently issued for offences that relate to traffic, littering, liquor, fisheries, gaming and environmental issues. This method of dealing with offences has number of features which enhance its usefulness from a criminal justice system perspective.

The review identified a number of offences for which an infringement notice is an appropriate method of dealing with an offence, as an alternative to a summons or arrest.

Currently, New South Wales, Queensland and Victoria allow the issue of infringement notices for minor summary offences that are usually characterised as criminal in nature. In the United Kingdom summary or

public order offences are also able to be dealt with by way of a penalty notice.

The Bill provides for a number of offences to be dealt with by way of infringement notice. The use of infringement notices merely provides another option for police officers to deal with these existing offences. If appropriate, police officers will still be able to put a person before a Court or a person issued with an infringement notice can have the matter determined by a Court. An infringement notice can also be used as a cautioning mechanism.

The notice will state that the person may avoid a court action by paying the penalty set out in the notice. These notices are payable within 28 days of issue. There are several courses of action that can be taken by a person who will receive an infringement notice, as is the case with all current types of infringement notices.

The person may pay it in full, or apply to a Commander of Police for the withdrawal of the infringement notice if he or she believes it has been mistakenly issued or there are extenuating circumstances. The person may apply to the Director of the Monetary Penalties Enforcement Service for a variation of payment conditions or finally lodge with the Director a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.

It is a process that has benefits for all parties, with the overwhelming benefit that a person who has committed a minor offence is not arrested and deprived of their liberty and then has to go through the court process.

A summary offence for unlawfully setting fire to property or vegetation which causes damage to the property or vegetation not exceeding \$5000 in value, is included in the Bill. This means that, if appropriate, this offence is not a crime and can be heard summarily. This offence, however, will still require the ability for forensic samples to be taken and therefore the Bill contains a consequential amendment to the definition of 'serious offence' within the *Forensic Procedures Act 2000* to include this new offence.

In 2001, the Act was amended to decriminalise the tattooing of youths. The policy of the government at that time was that the tattooing of youths should be a health issue. Since that time recent public and government consultation supports the regulating of tattooing and piercing of youths through the criminal justices system.

As a result the Bill contains a new section which creates an offence for a person to perform a body modification on a youth (a person aged less than 18 years of age).

A body modification procedure includes:

- (a) tattooing;
- (b) body branding; and
- (c) body implantation; and
- (d) earlobe stretching; and
- (e) tongue splitting; and
- (f) body scarification; and
- (g) any other procedure prescribed by Regulations.

It also creates an offence for a person to perform an intimate body piercing on a youth, and an offence for a person to perform any other body piercing on a youth, unless the youth is aged at least 16 years old, without the youth's guardian being present at the time of the body piercing being carried out.

There are some defences to performing piercings or body modifications on a youth to safe guard the industry.

Madam Speaker, the Act currently provides for an offence for making a false report to a police officer or a person employed by the Department of Police and Emergency Management. This section has been amended to ensure that where a report is made to any person and the circumstances of such report are likely to be investigated by police, then action can be taken if it is found to be false. There have been several matters where reports of a life-threatening nature have been made via marine radio and reported to police.

In April 2010, a man reported via marine radio to Coast Radio Hobart that his boat was taking on water at Adventure Bay on the southern side of Bruny Island. This was subsequently reported to police to investigate, who responded deploying search and rescue services as one would rightly expect. Madam Speaker, the cost to the Tasmanian Community for this search was approximately \$76,000.

However, under the current legislation, no action was able to be taken against the person who made the false report. Therefore, the Bill extends

the provision of the Act to ensure that these types of situations are captured.

After an increase of acts of desecration of memorials nationally, the recent vandalism of the Ulverstone War Memorial, known as 'the Clock' and the vandalism of the Scottsdale war memorial 'Simpson and his Donkey', a specific summary offence for interfering with a war memorial or war memorial area is contained within the Bill.

The desecration of memorials to those who have given the ultimate sacrifice, their lives, to protect the freedom of our country is highly offensive not only to returned service personnel, their families and friends, but the wider community in general. The word 'interfere' means destroy, damage, move or mark it; and otherwise deal with it in a way that is likely to cause offence to a reasonable person.

A number of sections of the Act have been amended by this Bill to ensure that they are consistent and contemporary with policy, practice and community standards. The amendments also clarify and provide authority to police to ensure the effective exercise of their powers.

Such amendments include improvements to the legislation concerning:

- (a) the clamping and confiscation of vehicles;
- (b) the inclusion of search provisions for loitering near children and offences of a sexual nature; and

- (c) the ability for police officers to seize items, implements or instruments that are evidence relating to offences of a sexual nature or loitering with intent to commit a crime or an offence.

The remaining amendments are either administrative in nature and clarify aspects of the Act, or ensure the operation of the legislation is more efficient. Sections that are no longer relevant in today's society have been repealed.

Madam Speaker, the Bill also provides for increases to the penalties for some offences. For example, in March 2013 the Sentencing Advisory Council released its report examining the sentencing provisions that apply to assaults on emergency service workers. The Council recommended an increase in penalties under the Act for assaults against police and other emergency service workers, including those who support emergency service organisations in a volunteer capacity.

The report called for a maximum sentence of assaulting a police officer to be increased by one year to a three-year maximum. It also recommended that a new two-year maximum sentence for assaults on other public officers, including ambulance officers, fire-fighters and state emergency service workers.

As a result, the Bill contains a definition of an emergency service worker, a new offence of assaulting an emergency service worker, and the increase in the penalties as recommended.

Other sections of the Act have been reviewed and, if appropriate, increases to penalties for these sections have been included in this Bill.

Madam Speaker, I can advise that regulations will be drafted once the legislation has been passed to provide for procedures for implementing some of the substantive provisions of the Bill, for example, regulations relating to the penalties for the new infringement notice provisions. The Bill will become law on a date to be proclaimed.

I commend the Bill to the House.