

## DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

### *Surveillance Legislation Amendments (Police Personal Cameras) Bill 2018*

*\*check Hansard for delivery\**

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

The purpose of this Bill is to make amendments to the *Listening Devices Act 1991* and the *Police Powers (Surveillance Devices) Act 2006* to allow for the use of body-worn and hand held cameras by police officers whilst on duty.

Madam Speaker, in May 2017, the State Government announced funding of \$3.4 million over four years for Tasmania Police to roll out body-worn cameras to frontline members. Body-worn cameras have been adopted, or are in the process of being adopted, by the majority of Australian policing jurisdictions.

The rollout of the body-worn cameras for Tasmania Police will have several benefits for the service and the community as a whole, including:

- moderating the behaviour of people present at incidents, thereby improving safety for the public and responding police;
- improved and more accurate collection of evidence;
- the opportunity to review and improve police practices;
- improved officer conduct and professionalism; and
- a reduction in vexatious complaints against police.

Madam Speaker, to provide for the adoption of the body-worn cameras within Tasmania, legislative reform was considered necessary to ensure that their use in a range of policing contexts is lawful.

Body-worn cameras are designed to digitally record visual images and sounds from a first person perspective. Body-worn cameras are worn predominantly on the clothing or otherwise secured on the body of a person. However, there will be situations where police may alternatively use a hand-held camera, such as frequently occurs currently in the execution of search warrants, or for a body-worn camera to be hand-held to better record some incidents.

Rather than specifying the use of a 'body-worn camera', the Bill provides a definition of a 'personal camera', which is a device capable of recording visual images or sound, or both, and is normally used by being held in a person's hand, or worn on the body. The definition of personal camera is intended to provide greater flexibility and would, for example, permit a police officer to make a recording using a mobile phone, if necessary. It is not intended that the Bill provide for the use of any other type of camera that is not directly operated by a police officer who is present at an incident.

Madam Speaker, the *Listening Devices Act 1991* currently prohibits the recording of private conversations in certain circumstances, and the amendments made by this Bill ensure the overt use of body-worn and hand-held cameras by police is lawful in a range of policing contexts.

The amendments to the *Listening Devices Act 1991* provide exemptions to prohibitions on recording of private conversations, and to the subsequent use of those recordings, where they are obtained in accordance with requirements for the use of personal cameras by police that will be set out in amendments to the *Police Powers (Surveillance Devices) Act 2006*.

The *Police Powers (Surveillance Devices) Act 2006* was created to provide for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations. The Act does not prohibit the use of surveillance devices but instead grants police officers power to install, maintain and retrieve surveillance devices pursuant to warrants issued under that Act.

Madam Speaker, the Bill will amend this Act to provide that the use of overt use of personal cameras by police is permitted, without the need to obtain a warrant. In providing this authorisation, it will also stipulate requirements for the use of personal cameras by police, including that where a police officer is on duty the presence of the camera is overt, and where the personal camera is being used to record a private conversation to which the police officer is a party, that they are:

- in uniform; or
- have informed all parties to the private conversation that they are using the personal camera;  
or
- the circumstances are such that the parties ought reasonably expect the private conversation is being recorded.

Madam Speaker, the Bill also expands the definition of protected information within the *Police Powers (Surveillance Devices) Act 2006* to include information obtained by the use of a personal camera by a police officer when in compliance with the new provisions.

By doing so, use and disclosure of the recordings will be limited to specific circumstances as outlined in section 33 of the *Police Powers (Surveillance Devices) Act 2006*, such as the investigation of offences, the making of a decision whether or not to bring a prosecution, or where the use or communication is necessary to prevent or reduce the risk of serious violence to a person.

The Bill also permits the use, by a police officer, of protected information that does not contain a private conversation to provide for circumstances such as the recording of graduation ceremonies and for corporate and non-investigative purposes.

This Bill further expands the ability to use, communicate or publish protected information under section 33 to include the training of police officers. The use of protected information for the training of police officers is a valuable tool in the education of their members.

As two of the driving forces for Tasmania Police in adopting body-worn cameras are transparency and accountability, the Bill has provided that the *Right to Information Act 2009* and *Personal Information Protection Act 2004* apply to information obtained by police officers from the personal cameras, but only in circumstances where the use of that information would be permitted by police. This protects recordings made by the cameras that are not relevant to the reasons for which they have been deployed.

Madam Speaker, during drafting, a pre-existing error in the *Police Powers (Surveillance Devices) Act 2006* was identified. Section 33(4)(a) allows for the use of protected information for the investigation of a relevant offence under a corresponding law, but not for its use in the investigation of a relevant offence in Tasmania. An amendment in the Bill ensures that the protected information can be used, communicated or published for the purpose of investigating a relevant offence in Tasmania. This change is consistent with the other permitted uses in the subsection, and with the model provisions on which the Act was based. This amendment has also been made retrospective to the commencement of the Act to preserve the integrity of prior investigation and court decisions.

Following consultation, it was also identified that the existing wording of section 33(4) of the *Police Powers (Surveillance Devices) Act 2006* was problematic in that it limited the authorised uses of

information to *'if it is necessary to do so'*. Due to the use of phrase inviting legal argument as to the necessity, it has been removed, noting that the permitted uses are already narrow.

The measures contained within this Bill will ensure that Tasmania Police have the equipment they need to continue fulfilling their important role within the community.

The Bill will take effect upon the day it receives the Royal Assent and I commend the Bill to the House.