

JUSTICE MISCELLANEOUS (EXPLOSIVES OFFENCES) BILL 2025 (No. 47)

Second Reading

[5.04 p.m.]

Mr BARNETT (Lyons - Minister for Justice, Corrections and Rehabilitation) - Honourable Speaker, I move -

That the bill be now read the second time.

This bill amends the *Criminal Code 1924* and the *Police Offences Act 1935* to create new criminal offences and police powers relating to explosive devices, substances and related material.

Whilst the new provisions capture explosives in all contexts, including commercial ones, the bill is specifically intended to fill legislative gaps regarding homemade or improvised explosive devices and substances.

Homemade or improvised explosives are often unstable and pose significant danger to the community. Use, possession, supply or manufacture of these devices and substances, whether for the purposes of experimentation, causing harm or as a form of intimidation, poses a high risk of danger to the person themselves as well as to other members of the community and property. These devices and substances also pose a high risk to police who have reported

locating such items when undertaking duties such as responding to reports of dangerous situations or when executing search warrants relating to controlled drugs and firearms. In several cases, these materials have been found at the residences of people associated with organised crime.

Despite these risks, gaps in the current legislative framework mean that, depending on the circumstances, there may not be suitable offences to respond to this conduct. For example, the *Police Offences Act* does not contain any provisions specific to explosive devices or substances. Some existing offences which could potentially apply, such as those found in Sections 170 and 181 of the Criminal Code, require a specific intent, which can be difficult to prove in the absence of clear evidence as to what the person was intending to do with the device or substance. Other potentially applicable offences, such as Section 141 of the Criminal Code, require an impact on members of the public, which limits the circumstances in which they may be used.

Relevant provisions in other legislation, such as the *Explosives Act 2012*, *Security Sensitive Dangerous Substances Act 2005* and the *Work Health and Safety Act 2012*, are problematic as they are more closely related to commercial and or industrial explosives and regulatory in nature and in some instances are investigated by WorkSafe Tasmania inspectors, not police. Further, many of these offences are punishable by a pecuniary penalty only, which may be inadequate in some circumstances.

This bill addresses these gaps by introducing new offences, ensuring that Tasmania Police has statutory provisions available to it to investigate and, where appropriate, charge people for offences relating to homemade explosives. It also provides the powers necessary to search for, seize, deconstruct and dispose of explosive devices, substances and materials. For the most part, the bill will not impact existing laws and frameworks that have provisions that relate to or could relate to explosives. There are several pieces of legislation in Tasmania that have provisions providing some form of authority for explosives to be used or regulated in a particular way, such as the *Explosives Act 2012* or the *Security-sensitive Dangerous Substances Act 2005*.

A person whose conduct is authorised by legislation will not be captured. Similarly, the bill will not impact on existing laws concerning terrorism-related offending. There are already comprehensive laws which would be used in the case of terrorism-related offending involving explosives and, as such, this bill is not targeted towards that type of offending. This bill is at least in part modelled on similar legislation passed in South Australia, which is considered by Tasmania Police to reflect best practice. Like South Australia's legislation, the bill creates a distinction between explosive devices and explosive substances.

I will now address the particular provisions in the bill. By way of overview, the bill inserts several minor offences into both the *Police Offences Act 1935* and the Criminal Code. Inserting the offences into both pieces of legislation ensures there is avenue for more serious examples of the offence to be dealt with in the Supreme Court, while less serious examples can be dealt with in the Magistrates Court. Each of the summary offences will be punishable by fine not exceeding 50 penalty units and imprisonment for a period not exceeding two years. The indictable offences will be reserved for more serious examples of the offences and will be subject to the default maximum penalty of 21 years imprisonment.

The bill contains a definition of 'explosive device' which is based on the South Australian legislation with some adjustments to fit the Tasmanian context. In summary, the bill defines an 'explosive device' as being an apparatus or similar item that is capable of causing or aiding in causing an explosion, as well as apparatus or item that is adopted to cause or aid in causing an explosion. However, any part of one of those items, whether complete or incomplete, is also covered, as is a device that is missing something from it or otherwise is defective.

The definition also enables certain devices to be either included or excluded from the definition by regulations, should that be necessary in the future.

The offence provisions relating to explosive devices are proposed new sections 181A of the *Criminal Code* and 43H in the *Police Offences Act*. Each of those new sections contains three discrete offences relating to explosive devices.

The first offence applies where a person uses, possesses or supplies an explosive device without lawful and reasonable excuse. The second offence applies where a person performs one or more of the specified actions for the purposes of manufacturing an explosive device without lawful and reasonable excuse. Those actions include things such as acquiring equipment, substances or material, or transporting those items.

The third offence concerns the possession or supply of information as to how to manufacture an explosive device, and once again, that needs to be without lawful and reasonable excuse to constitute the offence.

The element of 'without lawful and reasonable excuse' is a very important one, both in respect of the explosive device offences but also in respect of the other offences in the bill that I will speak about shortly.

In this context, 'lawful' means not forbidden by law. This element recognises that there are very legitimate and lawful uses for explosive devices, substances and information relating to manufacture. Explosive products are lawfully able to be used in a variety of circumstances, such as in mining and forestry activities or during cracker night.

This element is intended to preserve lawful use of these items. However, recognising that 'not forbidden by law' covers quite a broad range of conduct, the excuse must also be reasonable. This element means a court would be empowered to look not only at the legality of the excuse, but also at the circumstances of the particular case and the purpose of the provision.

The requirement for the excuse to be 'reasonable' would be unlikely to impact cases where someone's conduct is positively authorised by law, such as where they have a permit authorising their conduct.

The bill contains a definition of 'explosive substance', which again is based on the South Australian legislation with some adjustments as necessary.

In summary, the bill defines an 'explosive substance' as being a substance that produces, is capable of producing, or is manufactured to produce a practical effect by explosion, or an incendiary effect. It also extends to substances that would be an explosive substance if it did not have something missing from it or a defect.

As with the 'explosive devices' definition, the definition of 'explosive substances' also enables certain substances to be either included or excluded by regulations, should that be necessary in the future.

The offence provisions relating to explosive substances are proposed new section 181B in the *Criminal Code* and 43I in the *Police Offences Act*. The first offence applies where a person uses, possesses or supplies an explosive substance in dangerous or suspicious circumstances without lawful and reasonable excuse. This contains an additional element compared with the equivalent offence for explosive devices. The 'dangerous or suspicious circumstances' element is necessary given many common everyday substances could fall within the definition of 'explosive substance'. The equivalent offence in the South Australian legislation also contains this extra element; however, only referring to suspicious circumstances accompanied by a different definition, as such.

The second new offence relating to explosive substances concerns possessing or supplying equipment or information as to how to manufacture an explosive substance. Again, this has to be in dangerous or suspicious circumstances and without lawful and reasonable excuse.

The bill includes an offence concerning bomb hoaxes, which is contained in proposed new section 181C of the *Criminal Code* and 43J of the *Police Offences Act*.

In short, this offence applies where a person places or sends an article or substance somewhere with the intention of inducing another person to falsely believe that the article or substance is likely to explode, ignite or discharge a dangerous or deleterious matter. This differs from a similar existing offence in section 276AA of the *Criminal Code* because it specifically involves placing or sending an article somewhere. In contrast, the offence of making false threats of danger in section 276AA of the *Criminal Code* concerns the making of a statement or conveying of information.

In respect of police powers, broadly speaking, the bill introduces three new police powers into the *Police Offences Act*. These powers are more specifically targeted to explosives-related offending than existing powers. The new powers relate to the search of persons or vehicle for explosives - proposed new section 43K. Rendering safe or inert, destructing or disposing of explosive generally - proposed new section 43L. Rendering safe or inert, destructing or disposing of evidentiary material that cannot be practicably or safely held - Proposed new section 43M.

The bill contains a power for the forfeiture and disposal of explosive devices, substances or related material after a person has been convicted of irrelevant offence contained in proposed new section 43N of the *Police Offences Act*.

Proposed new section 43O of the *Police Offences Act* will allow a court, upon application by the Crown, to make an order that the defendant pay the reasonable costs and expenses associated with testing, analysing, storing or disposing of any explosive device or substance. This is similar to the existing power in section 36B of the *Misuse of Drugs Act 2001*, relating to the analysis or examination of controlled substances and plants. In both cases, such an order is not automatic. The court has the discretion whether to make the order.

In concluding, I emphasise that this bill is not intended to impact use of explosive devices or substances that is in accordance with any law, permit, or other authorisation. Similarly, it is not intended to capture people who might have everyday items such as pressure cookers, pipes, or even petrol, if those people are using those items for their lawful and intended purpose. The purpose of the bill is to protect the community from the risks posed by the unlawful or unreasonable use and possession of explosive devices and substances that may cause harm to individuals or damage to property. This is but one example of the action this government is taking to support our police force and ensure that the legislation in this state enables police to do their job in keeping Tasmanians safe.

I commend the bill to the House.

