

CLAUSE NOTES

POLICE OFFENCES AMENDMENT (MISCELLANEOUS) BILL 2010

Background:

The Bill introduces legislation to accord with the Tasmania *Together* Community Goal, 'to have confident, friendly and safe communities'.

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

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

Clause 3: Principal Act

Specifies that in this Act the *Police Offences Act 1935* is referred to as the Principal Act.

Clause 4: Section 15E amended (Body armour)

Section 15E of the Act provides for the regulation of Body armour. This section prohibits the manufacture, distribution, supply, sale or possession of body armour unless an exemption is provided by the Commissioner of Police.

Whilst section 15E currently allows a permit to be issued to any person by the Commissioner of Police to possess, manufacture, distribute, supply or sell body armour, it is considered that a specific legislative exemption should be provided for police officers. Police officers are issued with ballistic vests at the commencement of each shift and use this equipment to perform their duties to protect the community.

The current process for an exemption requires an application to be made to the Commissioner of Police. The Bill amends this section to exempt all police officers, allowing them to use and possess body armour whilst acting in the performance of their duties. The Bill is also amended to allow the Commissioner of Police to exclude in writing, a person, or group of persons from the application of section 15E.

Clause 5: Section 37MA amended (Special Compulsory penalty for prescribed offences)

The current wording of the section 37MA(1) states:

- (1) A court that convicts a person of a prescribed offence must order the person to pay a special compulsory penalty.

This section was added to the Act in 2009 and relates to the special compulsory penalty for offenders convicted of committing prescribed offences under section 37K of the Act. It was the intent of the Parliament that the special penalty would only apply to convictions for prescribed offences where a vehicle was confiscated or clamped. This intent is clearly stated in the second reading speech and the previous Cabinet Minute that amended the Act. However, the current wording of the Act does not limit the special penalty to situations where clamping or confiscation occur. This effectively means that a person who is convicted of any prescribed offence, such as speeding at or in excess of 45km/h or disqualified driving (2nd occasion) must have the mandatory penalty of \$600 imposed where the vehicle is not confiscated or clamped.

The Bill amends this section to ensure that the special penalty provision only applies to convictions for prescribed offences where a vehicle is confiscated or clamped.

Clause 6: Section 37D amended (Unclamping or recovery of vehicle clamped or confiscated for second or subsequent prescribed offences)

Section 37ZD relates to unclamping or recovery of a vehicle clamped or confiscated for a second or subsequent offence. Under this section a registered operator or owner may apply to the court for the unclamping or return of a vehicle. The court may order that the vehicle be returned or unclamped if satisfied that the clamping or confiscation will cause severe hardship.

When the original amendments were made to the Act in 2004, to provide for the confiscation of vehicles, a first offence only attracted a first confiscation period of 48 hours. The first offence was not included in section 37ZD at this time because, by the time the court received an application, the 48 hour confiscation period would have already expired and the owner would have their vehicle returned. The confiscation period was extended to 7 days in 2007, with the external review process not allowed for, again due to the return of the car before an application could be made to a court on most occasions.

In 2009 the confiscation, and now clamping, period for a first offence was extended from 7 days to 28 days for most prescribed offences. This occurred during the Parliamentary process for amendments to the *Police Offences Act 1935*, but failed to allow for the external review process that was in place for second and third confiscation periods.

The Bill amends this section to allow a person who has their vehicle clamped or confiscated for 28 days (first prescribed offence) to apply to the court for the unclamping or return of their vehicle in line with the present wording of the section.

Clause 7: Repeal of Act

This clause provides that the *Police Offences Amendment (Miscellaneous) Act 2010* is repealed on the ninetieth day from that day on which it commences.