

## **SECOND READING SPEECH**

*Police Miscellaneous Amendments (No.2) Bill 2009*

**Jim Cox MP**

**MINISTER FOR POLICE AND EMERGENCY MANAGEMENT**

MR SPEAKER,

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

Mr Speaker, this Bill contains amendments to the *Police Offences Act 1935* and the *Forensic Procedures Act 2000*.

Mr Speaker, the graffiti that is daubed across many buildings, walls, bridges and other structures across Tasmania is unsightly, very annoying and extremely costly to remedy, remove or repaint, only for those same structures to be attacked again a short time later. Actions of this nature presently cost rate payers in the Hobart City Council area in excess of \$70,000 annually. Whilst some graffiti, in areas that are designed and set aside for these people, is acceptable, the attack on the property of others which results in expense is not. Current Tasmanian legislation does not provide specific offences relating to graffiti. To ensure that offenders are held appropriately accountable for their actions, this Bill provides the offences of Marking Graffiti, and Possessing, Carrying or Using a Graffiti Implement without Lawful Excuse.

A lawful excuse may include the pursuit of a lawful occupation, duty or activity whilst using the graffiti equipment, or participation in a lawful sport, recreation or entertainment that involves the use of the graffiti equipment. Therefore, painters, teachers and others will quite properly be able to possess such equipment.

The offence of possessing, carrying or using a graffiti implement, that is “an aerosol paint container or other implements that may be prescribed” will not apply to a police officer acting in the performance of his or her duties, or a person or groups excluded in writing by the Commissioner from the application of the section. Application may be made by a simple letter and may be for a specific period or event.

Where a person is convicted of marking graffiti, the court may impose a court order that the offender perform community service. This court order can be imposed in addition to, or substitution for, any other penalty. Youth will continue to be dealt with appropriately, as required in accordance with the *Youth Justice Act 1997*, by informal or formal cautions and community conferences, and where appropriate by application of Community Respect Orders. These orders are operating very effectively in a number of areas in Tasmania under the watchful eye of Tasmania Police officers as part of the cautioning and conference process.

In addition, an offence of distributing, supplying or selling graffiti equipment, without a lawful excuse, to a person under the age of 18 years has also been included in the Bill. Retailer organisations have been consulted during the formulation of this legislation and will be provided with advice once Parliament approves the Bill.

Mr Speaker, the Bill provides an authority for police to stop, detain and search a person in a public place if they reasonably believe that the person has possession of any graffiti implement without a lawful excuse. These authorities also extend to persons in vehicles if it is in a public place, and are similar to that authority provided for the search of dangerous articles and alcohol in the Act.

These offences are introduced not to limit the creativity of people in our community, but to severely limit the use of aerosol paint in cans and other implements from being used inappropriately to disfigure structures.

Mr Speaker, the Bill introduces legislation to regulate the manufacture, distribution, supply, sale, possession and use of body armour. Body armour includes protective jackets, vests and suits that are designed to protect the body from the effects of a firearm or another prescribed device. Such legislation already exist in many other States.

The Bill provides that in order to manufacture, sell, distribute, supply or possess body armour a person must obtain a permit from the Commissioner of Police. The Commissioner must be satisfied that the applicant is 18 years of age, a fit and proper person, able to safely store the body armour and that they have a legitimate reason for requiring the permit. An application is to include details such as the type of body armour, means of storage, and the reason for its manufacture, distribution, supply, possession, sale or distribution.

Mr Speaker, this provision also provides police with the authority to seize any body armour that is manufactured, sold, distributed, supplied or possessed in contravention of this section, and where a person is found guilty of an offence, the body armour to which the offence relates is forfeited and may be disposed of as the court orders.

Mr Speaker, the issue of youth having access to alcohol has been and is being debated across the Nation, in our communities, in the media, by government agencies and in the Parliaments of the Commonwealth. The affects of alcohol on our youth have been researched and discussed widely by experts and others across our society. There may be significant

ramifications upon individuals and groups following binge drinking episodes resulting in self harm, injuries and death, as the result of assaults and other unfortunate accidents or intentional acts, and the following distress and anxiety for families, friends and other.

This Bill introduces legislation to regulate the supply of alcohol to young people on private property. It provides that a person must not provide alcohol to a youth on private property unless that person is a responsible adult for the youth. A responsible adult, who is a parent, step-parent or guardian of the youth, an adult who has parental rights and responsibilities for the youth, or an adult authorised by one of these people.

Mr Speaker, the Bill also provides that a responsible adult must not supply liquor to the youth unless the supply is consistent with the responsible supervision of the youth. In determining this, factors taken into consideration include: the level of intoxication of the responsible adult and the youth, the age of the youth, any food supplied to the youth, the quantity of liquor supplied and whether the consumption was directly supervised by the responsible adult.

Provisions have also been made to allow for the issue of an infringement notice for offences relating to the supply of liquor to youth. These amendments are contained within the Bill and in regulations to be proclaimed. It is expected that infringement notices may be issued for less serious offences, matters where a complaint has been made, police have statements and there is no significant injury or issues.

Mr Speaker, this amendment is concerned with responsible use of alcohol, and not prohibition, which has been attempted and failed elsewhere. The legislation has the potential to reinforce the culture of responsible

consumption of alcohol in the community and will provide a strong deterrent to those who may consider supplying alcohol to youth inappropriately or irresponsibly.

Mr Speaker, section 35 of the Act contains the offences of Aggravated Assault and Assault with Indecent Intent. These sections currently only apply to female victims and child victims up to 14 years of age. The Bill amends this section to reflect society's contemporary attitudes and beliefs and recognise the inappropriate behaviour that is occurring, and removes the age and gender restriction for a victim. This amendment recognises that there are incidents occurring in our neighbourhoods involving male on male behaviour that is both inappropriate and uncalled for.

Mr Speaker, the Bill amends section 43 of the Act which relates to found property. This section currently only allows a Justice to dispose of found property, to which no claim has been made, by sale. The amendments will allow for additional disposal options such as provision to a charitable institution.

This section has also been amended to allow an Officer in Charge of a Police Station to dispose of found property. Currently, only a Justice, or an Officer of or above the rank of Inspector, may dispose of property to the owner or finder of the property. This amendment will assist in situations where the owner, or finder, wishes to collect their property at country stations, or after hours, where an Inspector or Justice is not available to authorise the return of the property. Divisional Inspectors currently audit the financial transactions of their stations, which includes found property, which is also overseen by the "Office of Corporate Review". This will continue to ensure found property is handled appropriately and ethically.

Mr Speaker, cycling in Tasmania is a common activity for many people, those who are physically fit, children and those who simply enjoy cycling. Large groups of cyclists, though, can result in issues for both the cyclists, motorists, local authorities and others who may wish to use the roadways to be traversed by organised groups of cyclists. This may result in unsafe conditions on the roads, for both the cyclists, motorists and other road users. The present lack of a formal permit process leaves the way open for less responsible management to undertake significant events, without a reasonable level of consultation, planning and risk management to reduce the direct and indirect impact on all road users.

This Bill provides for the regulation of road cycle events that occur on Tasmanian roads. Where a bicycle event involves more than 70 cyclists and requires the use of public streets, the amendments require a permit to be obtained from a senior police officer. In determining the application, the senior officer will consider the safety and convenience of the public and participants, and other considerations including other events, road conditions and relevant advice from local government authorities, having regard to the time, nature and location of the activity. This is not dissimilar to the procedure that already occurs for cycle road events and public events using public streets which currently require permits in one form or another.

Consultation has occurred with Tasmanian Bicycle Council, which are content and comfortable with the regulation of over 70 riders. Correspondence has been provided to Bicycle Victoria, which arranges events such as the Great Tasmania Bike Ride, with no response.

Mr Speaker, police presently have the authority to proceed against a person for trespassing on the property of another by summons, but cannot arrest unless the person refuses to leave, after being directed by police, following a

request from the owner. The issue remains that once police leave, the trespass may reoccur, without interruption, as long as the trespasser leaves once directed to do so by police, even though the owner has previously required them to leave. This is an unacceptable situation where people severely disrupt industry or livelihoods, or the safety of the people employed to work on the affected land or property, and emergency personnel responding to the incident. In addition these trespass events remove from the local community significant police resources which would normally be expended on responding to crime, family violence matters and traffic incidents, or involved in providing proactive policing strategies to reduce such instances. Ultimately there is a need to deter people from putting themselves and others at risk and acting unlawfully.

Section 55(2C) of the *Police Offences Act 1935* requires that the authority to arrest people for trespass is not exercisable unless the police officer has requested the trespasser to leave the land and after such request the trespasser has failed to leave. The Bill amends section 55(2C) to ensure that police are not restricted by the 'requirement to leave' provisions. Police officers have significant discretion in this State in relation to the ability to arrest and the removal of this requirement will not mean that police officers will arrest on each and every occasion. The discretion to proceed by summons or not to prosecute at all still remains.

Mr Speaker, this government is committed and accepts that people should have the "right to protest and demonstrate lawfully, peacefully and safely". This message will continue to be articulated at protests and demonstrations and such events where appropriate, and Tasmania Police have designed and distributed leaflets to that effect, which are available to the community.

Mr Speaker, Tasmania Police attend scenes of crimes every day, but do not have the authority to block off roads, entry to houses or other buildings, or refuse entry to owners and occupant. There are those occasions where serious crimes do occur and there is to need to restrict or stop entry to buildings and areas. This Bill provides for the establishment of a crime scene and the authorities that may be exercised by police to establish and maintain that crime scene.

The Bill provides an authority for a police officer, of or above the rank of Inspector, who reasonably believes that an offence or crime has been committed in a place, or that there is evidence relevant to an offence or crime in a place, to declare the area a crime scene for the purpose of preserving, searching and gathering evidence. A crime scene declaration remains in force for a period of seven days unless withdrawn.

Mr Speaker, this declaration is to be put in writing at the earliest reasonable opportunity, with a copy provided to the property owner or person lawfully in possession of the property and the Police Commander of the District. An appeal provision to the Administrative Appeals Division of the Magistrates Court has also been established.

The declaration of a crime scene will provide authority for police to perform any necessary investigation, examination, inspection or process to obtain evidence of an offence or crime. It also provides police with the authority to direct people to leave a crime scene, not to enter a crime scene, or to remove any vehicle, vessel, or aircraft from the scene. An authority to arrest has been established for a person who fails to comply with a direction given by a police officer in relation to a crime scene.



Mr Speaker, the Bill also provides a police officer, of or above the rank of Inspector, with the authority to declare a 'Serious Incident Site'. That is an area that is affected by a serious incident such as the aftermath of a fire, mining disaster, traffic accident involving a gas tanker, or any other incident that is not covered by the *Emergency Management Act 2006*.

This declaration, in the same manner as the crime scene legislation, is to be provided in writing to the owner of the property and the District Police Commander responsible for the area as soon as practicable.

This declaration will be dependent upon the size, nature and location of the incident, and may occur in liaison with experts, including fire personnel, mining engineers and inspectors, local government authorities, and other State or Commonwealth Government agencies. This will allow police to restrict normal community activities and movement to ensure public safety, security of the affected premises, safety of emergency services personnel, and prevent any obstruction to emergency services and allow community relief and recovery as required.

Mr Speaker, the Bill establishes offence provisions for a person who fails to obey a lawful direction of police to leave a Serious Incident Site, and for persons who enter or attempt to enter a Serious Incident Site, or who fail to carry out other directions. An authority to arrest without warrant on reasonable grounds has also been provided for, where people fail to comply with these directions.

The Bill also provides a property owner, or other person lawfully in possession of the property to which a declaration has been made, with the ability to appeal the declaration to the Administrative Appeals Division of the Magistrates Court. A Magistrate will have the authority either to remove the declaration, alter it, maintain or extend it.

Mr Speaker, the Bill also amends the *Forensic Procedures Act 2000*, to include the offence of Prohibited Behaviour, under the *Police Offences Act 1935*, to be listed as a 'serious offence'. This amendment will allow for the taking of forensic material from a person charged or suspected of committing this offence.

These amendments that I have outlined will be welcomed in total by the law-abiding community of Tasmania and will, I am confident, further assist to make "Safe Communities".

I commend the Bill to the House.