

Our Ref:
Reply to: Hobart Office

23 October 2024

Department of Police, Fire and Emergency Management
GPO Box 308
Hobart
Tasmania 7001

By email to submissions.strategy.support@DPFEM.tas.gov.au

Tasmania Legal Aid Submission: Police Offences Amendment Bill 2024

TLA welcomes the opportunity to provide a submission to the Department of Tasmania Police on the draft *Police Offences Amendment Bill 2024*.

TLA also welcomes all opportunities to participate in stakeholder consultations on this and any future proposals to implement recommendations.

About Tasmania Legal Aid (TLA)

We are an independent statutory body established to sustainably provide legal services in Tasmania in an effective, efficient and economical manner.

TLA provides legal services to help Tasmanians understand their rights, navigate the system to resolve their legal issues, and get the assistance they need. We support and advocate for Tasmanian's experiencing hardship, vulnerability and marginalisation and work with our clients, staff, service partners and community to improve the legal system.

As the primary provider of criminal law legal services to adults and children in Tasmania's justice system, TLA is uniquely placed to contribute to the proposed amendments to the *Police Offences Act*.

Section 14B – Unlawful entry on land etc.

Nothing that the existing provisions use the term "actual commission of the offence" and the proposed amendments also use the term "actual commission of the offence" it is not clear what the term "actual" means in the context of "commission of the offence" and how the meaning "actual commission of the offence" is different from "commission of the offence".

TLA recommends the word "actual" be removed or defined.

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Section 15C – Dangerous Article

The proposed amendments with regard to this section seek to:

- Increase the penalty from a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 2 years or both to a fine not exceeding 100 penalty units and a term of imprisonment not exceeding 3 years or both.
- Changing the standard of belief for searches without a warrant for the offence from “reasonable belief” to “reasonable suspicion”

TLA strongly oppose increasing both the fine and the term of imprisonment. Historically, this offence carried no term of imprisonment and the current penalty of not exceeding two years’ imprisonment was only introduced in July 2021. In the absence of sentencing data for recent decisions involving convictions for this offence, it is not understood why a significant increase in the penalty is necessary or justified. The proposed increase in penalty is disproportionate to the seriousness of the offence and is not supported by TLA.

TLA strongly oppose any amendment to lowering the standard of belief of a police officer from reasonable belief to reasonable suspicion. This is a significant change to the standard of belief and provides the police with a wide power to stop, detain and search a person without warrant. We are concerned about the impact of widening this power and the potential effects on vulnerable members of the community. It will increase their contact and therefore conflict with police. This will disproportionately affect homeless people, young people, people who identify as Aboriginal or Torres Strait Islander and other ethnic minorities.

Moreover, lowering the threshold for unwarranted searches is a policy that has no empirical basis for the notion that it reduces crime.

Section 35 Common assault and aggravated assault

The proposed amendments with regards to this section seek to:

- With respect to the offence of common assault, increase the penalties from 20 penalty units or to a term of imprisonment not exceeding 12 months to 50 penalty units and a term of imprisonment not exceeding 18 months.
- With respect to the offence of common assault in aggravating circumstances, increase the penalties from 50 penalty units or to a term of imprisonment not exceeding 2 years to 100 penalty units and a term of imprisonment not exceeding 3 years.
- Increasing the offence of indecent assault to 100 penalty units or a term of imprisonment not exceeding 3 years.

TLA do not support the proposed increases in penalties for the reasons contained above – that is, they are disproportionate to the seriousness of the offences. Moreover, the option to charge with an indictable crime already exists, which

properly takes into account the seriousness of the offence and the circumstances of the offending.

Section 37 – Offences relating to property

The proposed amendments seek to:

- Increase the penalties from 10 penalty units or to a term of imprisonment not exceeding 12 months to 50 penalty units and a term of imprisonment not exceeding 2 years

It is difficult to reconcile why an increase in the term of imprisonment for assault is expressed as from 12 months to 18 months, but for destroy property it is from 12 months to 2 years. As with the above paragraphs, TLA do not support the increase in penalties as they are disproportionate to the seriousness of the offence. Again an alternative charge for more serious offending already exists under the *Criminal Code*.

Section 37FA – Road Rage

Section 10 of *The Bill* creates a new offence of ‘Road Rage’ by inserting s 37FA into the *POA*. The elements of this new offence would be:

- (1) Without reasonable excuse driving or using a vehicle or performing a driving related act on a public street, in a manner that
 - a. They knew or ought to have known will likely cause alarm distress, apprehension or fear in another person and;
 - b. It results in –
 - i. Damage to property
 - ii. Injury to a person
 - iii. A collision with another vehicle
 - iv. A risk of danger to a person.
 - v. Alarm, distress, apprehension, or fear in another person.

The Bill also outlines in s 10(2) that verbal abuse and threatening and obscene gestures would be included as a ‘driving related act.’

TLA strongly opposes the creation of this new offence and queries the rationale for the for its introduction. There currently exist multiple offences that are capable of, and indeed do, capture conduct that might be considered ‘road rage’. For example, a charge of common assault, assault pursuant to the *Criminal Code*, or causing grievous bodily harm by dangerous driving, where it is alleged that a vehicle was used in the commission of the aforementioned crimes.

TLA also considers that the proposed section 37FA is far too wide. Proposed amendment 10(b)(iv) creates an offence where there is ‘a risk of danger’ to a person. Arguably the risk of danger exists every time a person gets into a vehicle. If the provision is to remain the words “a risk of” should be deleted.

Moreover, the offence is committed if a driver *knew or ought to have known* that the

manner of using the vehicle or performing a driving related caused alarm, distress, apprehension or fear in another and also if it in fact results in another person feeling alarmed, distressed, apprehensive or fearful including as a result of verbal abuse or threatening or obscene gestures. It is concerning how these tests could be objectively measured. For example, a person may claim to be alarmed or distressed by a rude gesture or loud or extreme sounding of a horn in circumstances that may be objectively reasonable. If this provision is to remain, TLA recommends removing section (1)(b) (v).

If the provision is to remain, it is strongly recommended that further consideration be given to the rewording and/or amending the section to ensure that there is a distinction between behaviour which poses a threat to other road users (and is already the subject of criminal sanctions) and behavior which is merely offensive. Offensive behaviour may also be arguably covered by the current section 12 of the *Police Offences Act* which created the offence of prohibited language and behaviour.

Section 37N, 37O, 37P and 37Q – Clamping and confiscation of vehicles

The above proposed sections all substitute the term “finds a person offending” to “has reasonable grounds for believing”. TLA repeats the above submission in regards to searches for dangerous articles. This creates a significant increase in police powers over persons who have not been found guilty of any offence (thus eroding the presumption of innocence).

The requirement to be found offending also provides greater certainty that the relevant behaviour **has** occurred before actions are taken by police, that may have significant consequences for the driver of the vehicle.

Section 67A – Evidentiary Provisions

This section of *Bill* proposes to improve evidentiary provisions as they relate to property complaint and sorting offences.

Currently s 67A of the *Police Offences Act* only relates to offences related to the consumption of alcohol where it is only necessary to prove that the place mentioned in the complaint was not licensed under the *Liquor Licencing Act 1990*.

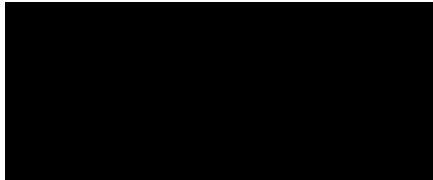
This provision lives on; however the proposed amendments have been expanded to include provisions related to the crime of consorting under 20C of the *Police Offences*, destroy/injure property under s 37 of the *Act* and motor vehicle stealing under s 37B of the *Act*. All of these amendments allow for the assertion of facts to be taken as evidence thereof.

TLA considers that the inclusion of these evidentiary provisions affect the right of individuals to a fair hearing by assisting the prosecution in the discharge of its legal onus. Complaints for destroy or injure property and motor vehicle stealing are charges that many young and vulnerable people commonly face. Given the proposed increased penalties for section 37 and 37B include a potential penalty of imprisonment, it is appropriate that the State be required to prove the elements of the offence to the requisite standard.

Conclusion

Thank you for the opportunity to comment on the draft Bill and TLA welcomes future opportunity for comment or consultations about further amendments or implementation.

Yours sincerely



DIRECTOR OF LEGAL AID