

17 October 2024

Submissions at Strategy & Support
Department of Police, Fire & Emergency Management
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By email: submissions.strategy.support@dpfem.tas.gov.au

Dear Sir/Madam

Proposed Amendments to the Police Offences Act 1935

I refer to the Police website and the request for input on the proposed amendments to the *Police Offences Act 1935* (POA).

The proposed amendments to the POA have been considered by the Society's specialist Criminal Law Committee which makes the following comments:

Section 14B – Unlawful entry on land etc

While noting the existing provisions use the term “actual commission of the offence” and the proposed sub-sections 2A and 2BA continue the use of the term “actual commission of the offence”, the Committee questions what it is intended that term mean and how is its meaning different from “commission of the offence”?

Section 15C – Dangerous Articles

The amendment firstly seeks to change the required state of mind required of a police officer before they are permitted to stop, detain and search without a warrant. At present, that may occur where the officer reasonably believes a person has possession of or carries any dangerous article. The amendment seeks to change the required state of mind to the lesser standard of a police officer forming a reasonable suspicion. The change from reasonably believing to forming a reasonable suspicion is significant. The proposed change is a much lesser standard. In effect, it provides police with an extremely wide power to stop, detain and search a person without a warrant. That change is not supported by the Committee, as it is a significant encroachment on the personal freedoms of members of the community.

The second proposed change is to double the maximum number of penalty units that can be imposed by way of fine and increase the maximum period of imprisonment from 2 years to 3 years.

Leaving the issue of fines aside, it is the Committee's view that any increase to the maximum term of imprisonment is entirely unnecessary. Historically the offence carried no term of imprisonment. A term of imprisonment not exceeding 2 years was only introduced to the section from 1 July 2021; prior to that date imprisonment was not an available sentence. In summary, the proposed increase in penalty is disproportionate to the seriousness of the offence and is not supported by the Committee.

Section 35 – Common assault and aggravated assault

The Committee does not support the proposed increases in penalties for the reason given in the above paragraph. That is, they are disproportionate to the seriousness of the offences. This is particularly the case when there is the option of charging a defendant with an indictable offence for more serious circumstances.

Section 37FA – Road Rage

The Committee questions the need for the introduction of this offence. There already exist a number of offences that are capable of dealing with conduct that might be thought of as "road rage". By way of example, there are multiple instances where defendants have been charged with either common assault or criminal code assault, grievous bodily harm etc where it is alleged that a vehicle was used in the commission of those assaults.

The proposed provision is also far too broad.

1(b)(iv) creates an offence where there is 'a risk of danger' to a person. If the provision is to remain the words "a risk of" should be deleted.

The offence is committed if it results in another person feeling alarmed, distressed, apprehensive or fearful, including as a result of verbal abuse or threatening or obscene gestures, (having regard to the definition of "driving related act"). The words 'alarm', 'distress', 'apprehensive' and 'fearful' are extremely broad, and cannot be measured objectively, which may result in a person claiming to feel distressed, alarmed, apprehensive or fearful in circumstances where this is objectively not reasonable. As an example, a person who is shown the middle finger by another driver may claim to have been alarmed, placing the driver at risk of being arrested without warrant, fined and or imprisoned.

A distinction must be maintained between behaviour which poses a threat to other road users and is already the subject of criminal sanctions and behaviour which is offensive. Whilst the latter behaviour is not to be encouraged, it should certainly not be criminalised.

The provision as drafted and because of its breadth creates a danger of the criminal law being weaponized and unnecessarily diverting police resources.

Section 37N - Clamping and confiscation of vehicles

The proposed sections 37N, 37O, 37P and 37Q substitute the term "finds a person offending" to "has reasonable grounds for believing". The Committee does not support

these amendments, particularly when the actions taken under those sections are taken prior to any court proceedings. They arise from the decision by Police and not a court. The requirement to be found offending accords with this. It provides greater certainty that the relevant behaviour has taken place before actions are taken by police that may have significant consequences for the driver of the vehicle. It follows that the requirement that a person be found offending should remain in s.37Y.

Section 37Y – Forfeiture of vehicles

The amendment to sub-section 3 seeks to remove the discretion of the court. That is not appropriate.

Section 67A – Evidentiary provisions

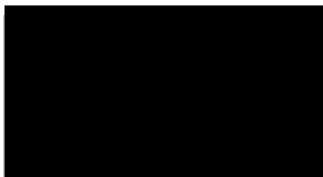
It is appropriate for criminal offences where imprisonment may result that the State be required to prove the elements of the offence to the requisite standard. The evidentiary provisions therefore with respect to section 37 and 37B should not be implemented.

Conclusion

The Committee has a number of not insignificant concerns with respect to the draft bill. It would welcome the opportunity to discuss them.

Although giving the public an opportunity to provide a submission is a positive, the Society records its disappointment that it was not contacted directly by Tasmania Police regarding the proposed amendments.

Yours faithfully

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EXECUTIVE DIRECTOR