



TASMANIAN POLICE OFFENCES ACT 1935

2011 PUBLIC CONSULTATION



Since 2004 the *Police Offences Act 1935* (the Act) and *Regulations* have had 9 substantial amendments, as well as some minor amendments as part of consequential changes to other Acts. Major amendments were made to the Act in 2004 to allow for the confiscation of motor vehicles for prescribed offences, and further amendments in 2008 allowed for the clamping of motor vehicles for prescribed offences.

Other amendments were made in 2007 to address significant concerns involving invasion of privacy from people who covertly film or photograph people in circumstances that are regarded as private. The 2007 amendments also instituted provisions to address fortification of premises, provided a summary offence for 'drink spiking' and prescribe certain public places where the consumption of alcohol is prohibited.

The Act was first enacted in 1935, and since this time several sections of the Act have been amended or repealed. These changes have assisted to maintain legislation that is contemporary with community standards. For instance, such changes include the repeal in October 2000 of the section of the Act that prohibited men from wearing female apparel in public between sunset and sunrise.

The recommendations for amendment in the attached document are principally made by the Department of Police and Emergency Management (DPEM). Consultation on the proposed amendments has been conducted with all other government agencies and DPEM employees. The recommendations are not government policy: they may, as part of the development process, be modified.

Your comment is sought on the proposed amendments to seek a total community view, which will determine the advice to be provided to the Minister for Police and Emergency Management. If you require a printed copy to be mailed to you, please phone (03) 6230 2600.

Submissions will be received until 25 November 2011. Submissions marked "Confidential" will be deemed to be confidential and will not be released to any other party.

Submissions may be sent by:

- e-mail to: policeoffencesconsul@police.tas.gov.au
- mail to:
Public Consultation *Police Offences Act 1935*
Department of Police and Emergency Management
GPO Box 308
HOBART TAS 7000

PART 1 – PRELIMINARY

Item	Current Legislation	Proposed amendment and rationale
1	<p>3. Interpretation</p> <p>This section contains several definitions for the purpose of the Act.</p>	<p><u>Provide a definition of “firework”:</u></p> <p>It is proposed to provide a definition of “firework” for the purpose of section 13 of the Act. Section 13 relates to Public Annoyance offences that occur in a public place. This definition will relate specifically to section 13(1)(f), which provides that:</p> <p>A person shall not, in a public place throw, let off, or set for to any firework.</p> <p>The definition of “firework” should be in line with the <i>Dangerous Substances (Safe Handling) Regulations 2009</i>, which defines Type 1,2 and 3 fireworks as follows</p> <p>Type 1 fireworks include party poppers, bonbons and sparklers.</p> <p>Type 2 fireworks are small fireworks or consumer fireworks such as roman candles, small skyrockets and fountains and are intended for outdoor use;</p> <p>Type 3 are the professional, spectacular larger shell or mortar type fireworks that not only require a permit for sale, purchase and use, but a person wishing to conduct a display must also hold a shot-firer's permit endorsed for pyrotechnics.</p> <p>The definition within the <i>Police Offences Act 1935</i> should only include Type 2 and Type 3 fireworks. The possession and use of Type 1 fireworks will therefore not be restricted by section 13(1)(f).</p>

PART II – GENERAL POLICE PROVISIONS

DIVISION I - DRUNKENNESS, VAGRANCY, INDECENCY AND PUBLIC ANNOYANCES

Item	Current legislation	Proposed amendment and rationale
2	<p>4A. Custody of intoxicated persons</p> <p>(1) In this section –</p> <p>"intoxicated" means under the influence of alcohol, another drug or a combination of drugs;</p> <p>"place of safety" means a hospital, charitable institution or any other appropriate facility that is capable of caring for an intoxicated person and includes a place declared by the Minister under section 4C to be a place of safety for the purposes of this Act;</p> <p>"responsible person" means a person who a police officer reasonably believes is capable of taking adequate care of an intoxicated person.</p> <p>(2) If a police officer believes on reasonable grounds that a person in a public place is intoxicated and –</p> <p>(a) is behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or</p> <p>(b) is incapable of protecting himself or herself from physical harm –</p> <p>the police officer may take the person into custody.</p> <p>(3) A police officer may –</p>	<p><u>Consolidation of arrest, custody, search and seizure authorities</u></p> <p>Amendments proposed for the Act include a consolidation of all arrest and search authorities within the Act. This section provides an authority for a police officer to take a person into custody if a person is intoxicated in a public place and –</p> <p>(a) behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or</p> <p>(b) is incapable of protecting himself or herself from physical harm.</p> <p>Subsection (7) also provides a search authority for a person taken into custody under this section.</p> <p>These authorities should be consolidated in a schedule at the rear of the Act with other similar authorities, which will provide uniformity and consistency between all provisions of the Act.</p>

(a) at any time, without any further or other authority than this subsection, release a person taken into custody under subsection (2), or cause that person to be released, without that person entering into a recognisance or bail, to a place of safety, or into the care of a responsible person, willing to take that person into care; or

(b) hold that person in custody if it is not possible to release that person under paragraph (a).

(4) A person may only be held under subsection (3)(b) if a police officer has made reasonable inquiries to find a place of safety or a responsible person and has been unable to find a place of safety, or a responsible person, willing to take the person into care.

(5) A person taken into custody under subsection (2) is not to be released under subsection (3)(a) into the care of a person in charge of a place of safety or a responsible person if the person held in custody objects to being released into the care of that person.

(6) A person taken into custody under subsection (2) is to be released –

(a) at the expiration of the period of 8 hours after he or she was taken into custody; or

(b) when a police officer is of the opinion that it is reasonable to do so –

whichever is earlier.

(6A) If, on the expiration of the period of 8 hours referred to in subsection (6)(a), a police officer of or above the rank of inspector believes on reasonable

	<p>grounds that a person in custody remains –</p> <p>(a) likely to cause injury to himself, herself or another person, or damage to any property; or</p> <p>(b) incapable of protecting himself or herself from physical harm –</p> <p>the person may be detained for a further period of 4 hours.</p> <p>(7) A police officer may –</p> <p>(a) search or cause to be searched a person who has been taken into custody under subsection (2); and</p> <p>(b) remove or cause to be removed from that person for safe keeping, until the person is released from custody, any money or valuables that are found on or about that person and any item on or about that person that is likely to cause harm to that person or any other person or that could be used by that person or any other person to cause harm to that person or any other person.</p> <p>(8) A search of a person under subsection (7) is, if practical, to be conducted by a police officer of the same sex as the person being searched.</p>	
<p>3</p>	<p>6. Consorting</p> <p>(1) A person shall not habitually consort with reputed thieves.</p> <p>(1A) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not</p>	<p><u>Remove terminology 'lawful means of support'</u></p> <p>This offence is one that has been used in the past to deter known thieves from associating. The proviso for the charge is that the offender cannot establish to the satisfaction of the court 'a lawful means of support'. With the provision of social security and benefits afforded to persons who are most likely to fall into this category, it would be quite easy for an offender to establish 'lawful means of support' on a regular basis.</p> <p>An analysis has been conducted to determine if this offence is still being used.</p>

	<p>exceeding 6 months.</p> <p>(2) A person shall not be convicted of an offence against this section if he proves to the satisfaction of the court that he has sufficient lawful means of support and that he had good and sufficient reasons for consorting with the persons with whom he is charged with having consorted.</p> <p>(3) No proceedings under this section shall be taken by any person other than a police officer.</p>	<p>Over the past 3 years, 15 people have been charged with the offence of Consorting.</p> <p>Proposed amendment to the section is as follows: 6(2) A person shall not be convicted of an offence against this section if he proves to the satisfaction of the court that he has sufficient lawful means of support and that he had good and sufficient reasons for consorting with the persons with whom he is charged with having consorted.</p>
<p>4</p>	<p>7. Loiterers, &c.</p> <p>(1) A person, being a suspected person or reputed thief, shall not –</p> <p>(a) be in or upon any building whatsoever or in any enclosed yard, garden, or area for any unlawful purpose; or</p> <p>(b) frequent or loiter in or near any public place, or any river, or navigable stream with intent to commit a crime.</p> <p>(2) In proving under this section intent to commit a crime it shall not be necessary to show that the person charged was guilty of any particular act tending to show his intent, and he may be convicted if from the circumstances of the case and from his known character as proved to the court before which he is charged it appears to such court that his intent was to commit a crime.</p> <p>(3) A person shall not have in his possession without lawful excuse any implement or instrument with intent to commit a crime.</p>	<p><u>Authority to search</u></p> <p>This section relates to people who are suspected of intent to commit a crime or offence in the area in which they are loitering. Based on this suspicion, a search provision should be provided, to assist in determining whether any offence has been committed, and whether the suspected person is in possession of equipment, (which may include tools or scissors used to break into cars) capable of committing an offence, or other evidence that they intend to commit an offence.</p> <p>The search provision would be included in a schedule in the Act with all other search authorities.</p> <p>It is important that the search provision for this section relate to both public and private places. For example, if a person is found in the backyard of a house with no lawful excuse and is carrying a glasscutter and/or screwdriver, police should still be able to search for these items even though the person is in a private place.</p> <p>Another example may include, a person calling police to report that there is a stranger in their neighbour's backyard, acting suspiciously by looking in windows and crouching behind the fences. Police arrive and the person is still in the rear yard and cannot provide a reasonable excuse as to why he/she is there. It would assist police to be able to search the person to determine what, if any, items they had in their possession which may provide evidence of intent to commit a crime – eg a screwdriver, glasscutter.</p> <p>An analysis has been conducted to determine if this offence is still being used. Over the past 3 years, 66 people have been charged with the offence of Loitering.</p>

	<p>(4) Every such key, implement, or instrument may be taken from the offender by any police officer and shall, on conviction of the offender, become forfeit to the Crown.</p> <p>(5) A person who contravenes a provision of subsection (1) or (3) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months.</p>	<p>This offence should therefore remain within the Act.</p>
<p>5</p>	<p>7A. Loitering near children</p> <p>(1) For the purposes of this section, a person loiters near children if the person loiters at, or in the vicinity of –</p> <p>(a) a school; or</p> <p>(b) any of the following, while children are present:</p> <p>(i) a public toilet;</p> <p>(ii) a playground;</p> <p>(iii) a swimming pool;</p> <p>(iv) a games arcade;</p> <p>(v) any other place at which children are commonly present.</p> <p>(2) A person who has been found guilty of a sexual offence must not, without reasonable excuse, loiter near children.</p> <p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.</p>	<p><u>Authority to search</u></p> <p>This section prohibits a person who has been found guilty of a sexual offence from loitering near children, unless they have a reasonable excuse.</p> <p>Sexual offence is defined in section 3 of the Act and includes sexual offences within the <i>Criminal Code Act 1924</i>, and child exploitation offences contained within the <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>.</p> <p>The loitering must occur in places where children are commonly present, including schools, playgrounds, and swimming pools.</p> <p>It is proposed that a search provision should exist for this section to allow a police officer to search a suspected person who is loitering near children.</p> <p>Based on reasonable grounds, a search provision should be provided to police to assist in determining whether any criminal conduct has occurred, or if there is intent for criminal conduct to occur. It may be that the suspected person has a telephone/camera or other electronic device that may afford evidence of their intent or of them having committed an offence.</p>

<p>6</p>	<p>8. Begging, imposition, prostitution & c</p> <p>(1) A person shall not –</p> <p>(a) in a public place beg or expose wounds or deformities, or place himself or herself or otherwise act so as to induce, or attempt to induce, the giving of alms, or instigate or incite a child to do any of those things;</p> <p>(1AA) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.</p> <p>(1A) A person shall not –</p> <p>(a) wilfully and obscenely expose his person in any public place or in the view of persons therein;</p> <p>(1AB) A person who contravenes a provision of subsection (1A) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.</p>	<p><u>It is intended to remove the term ‘prostitution’ from the heading of this section</u></p> <p>This section has been extensively amended since the Act was first proclaimed.</p> <p>Prostitution is no longer an offence and all references to prostitution have been removed from the section, however the heading still contains reference. The term ‘prostitution’ will be sought to be removed from the heading of this section during amendment.</p> <p><u>Contemporary wording</u></p> <p>In subsection (1)(a) the term “<i>giving of alms</i>” is out-dated, and should be replaced with more contemporary wording such as “<i>money or other financial advantage</i>”.</p> <p><u>Instigating or inciting any person, not just children</u></p> <p>Subsection 8(1)(a) currently prohibits a person from instigating or inciting a child to beg, expose wounds or deformities, or otherwise act to induce or attempt to induce the giving of alms. This section should apply to instigating or inciting ‘<u>any other person</u>’ to beg, not just children. An example being an adult, who may, through intellectual impairment, be coerced into behaving in this manner for the benefit of another person.</p> <p>It will be recommended that this section be re-worded as follows:</p> <p>(1) A person shall not –</p> <p>(a) in a public place beg or expose wounds or deformities, or place himself or herself or otherwise act so as to induce, or attempt to induce, the giving of alms, or instigate or incite a child <u>another person</u> to do any of those things;</p> <p><u>Move the offence of wilful and obscene exposure to section 12 of Act</u></p> <p>Subsection 8(1A) relates to wilful and obscene exposure in a public place, or in the view of persons therein. Wilful and obscene exposure is prohibited behaviour and more appropriately fits within section 12 – Prohibited Language and Behaviour.</p>
<p>7</p>	<p>10. Disorderly houses</p> <p>(1) A person occupying or keeping any house,</p>	<p><u>Occupier to admit police</u></p> <p>Subsection (2) provides that an occupier or keeper of any premises shall admit any</p>

<p>shop, room, place of public resort or other premises shall not –</p> <p>(a) permit or suffer any breach of the peace or riotous or disorderly conduct therein;</p> <p>(1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.</p> <p>(2) The occupier or keeper of any such house, shop, room, or other premises shall admit any police officer thereto when required so to do.</p> <p>(3) The court before whom any such offender is convicted may further order him to find security, in a sum to be fixed by the court, for his good behaviour for a period not exceeding 12 months, under a penalty not exceeding 2 penalty units, and in the event of such security not being found, may sentence the person offending to imprisonment for a term not exceeding 2 months.</p> <p>(4) If any person is found guilty of any such offence a second time, it shall be lawful for the court, on the application of 3 householders, by warrant to order such person to be removed from the premises occupied, or kept by him, and to impose such further penalty on such offender, not exceeding 2 penalty units, as to the court may seem fit.</p>	<p>police officer when required to do so. It is proposed that the wording of this section does not provide adequate authority for a police officer to gain entry to a premises to effectively manage an offence committed against this section.</p> <p>The wording of the subsection is tenuous, for example – ‘<u>shall</u> admit any police officer thereto when required so to do’. This raises the question: Is a person required to admit a police officer at the police officers request alone, without any other grounds or circumstances?</p> <p>It is proposed that the authority to enter be reworded to ensure that there is a definite authority for police to enter in situations where an offence is being, or has been, committed.</p> <p>Police continue to be called to residential houses, places of entertainment and other areas at which fights regularly occur, there is substantial noise or behaviour which neighbours find alarming and which causes them concern for their own safety, or for the safety of their property.</p> <p><u>Authority to disperse</u></p> <p>Consideration has been given to allowing an authority to disperse people from disorderly houses in a similar way to the authority provided in section 15B of the Act, which allows for dispersal of persons from public places.</p> <p>Police regularly attend noisy and disorderly parties, and there are provisions to deal with noise related issues under the <i>Environmental Management and Pollution Control Act 1994</i>. This usually relates to noise caused by loud sound systems, and may result in police seizing the stereo system and issuing an Environmental Infringement Notice.</p> <p>Situations do exist where parties are riotous, and on many occasions people have “gate crashed” the event, the owner of the property is not present or cannot or will not act to evict the intruders. On some occasions this may not involve noise pollution by sound systems, or where the occupants have previously had their sound system seized by police and continue to behave in a disorderly manner within the identified premises. Examples of such behaviour can include occupants shouting and smashing bottles, causing apprehension and fear to neighbours.</p> <p>If this authority is approved, there will be strict safeguards put in place for its use to</p>
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		<p>provide conditions such as:</p> <ul style="list-style-type: none"> a) the authority to disperse can only be used where police have previously attended the premises in the past 24 hours in relation to a disturbance or disorderly behaviour; b) a person ordered to disperse is not an owner, occupant or resident of the premises; c) the police officer reasonably believes that the person to be dispersed has committed, is committing or will commit an offence. <p>It is proposed that a dispersal direction in this legislation should only be given by a police officer of or above the rank of Sergeant.</p>
<p>8</p>	<p>12. Prohibited language and behaviour</p> <p>(1) A person shall not, in any public place, or within the hearing of any person in that place –</p> <ul style="list-style-type: none"> (a) curse or swear; (b) sing any profane or obscene song; (c) use any profane, indecent, obscene, offensive, or blasphemous language; or (d) use any threatening, abusive, or insulting words or behaviour with intent or calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned. <p>(1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months.</p> <p>(2) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence there under is liable to double the penalty</p>	<p><u>It is proposed to remove the words “with intent”</u></p> <p>It is proposed to remove the words ‘with intent’ from section 12(1)(d). Currently, within this section, the onus to prove intent rests with police. If a person behaves in a threatening, abusive or insulting manner, or uses similar language, it would be deemed that the outcome of this is most likely to be a breach of the peace, as is clearly stated in the legislation. The words ‘with intent’ therefore serve no real purpose.</p> <p><u>Wilful and obscene exposure</u></p> <p>It is proposed to move section 8(1A) – Wilfully and obscenely expose person, into this section. The act of wilfully and obscene exposure is a prohibited behaviour and more appropriately belongs in this section.</p>

	prescribed in subsection (1) in respect of the offence in respect of which he is so convicted.	
9	<p>13. Public annoyance</p> <p>(1) A person shall not, in a public place –</p> <p>(a) behave in a violent, riotous, offensive, or indecent manner;</p> <p>(b) disturb the public peace;</p> <p>(c) engage in disorderly conduct;</p> <p>(d) jostle, insult, or annoy any person;</p> <p>(e) commit any nuisance; or</p> <p>(f) throw, let off, or set fire to any firework.</p> <p>(2) A person shall not recklessly throw or discharge a missile to the danger or damage of another person or to the danger or damage of the property of another person.</p> <p>(2A) A person shall not, in a public place, supply liquor to a person under the age of 18 years.</p> <p>(2B) A person under the age of 18 years shall not consume liquor in a public place.</p> <p>(2C) A person under the age of 18 years shall not have possession or control of liquor in a public place.</p> <p>(3) A person shall not wilfully disquiet or disturb any meeting, assembly, or congregation of persons</p>	<p><u>Authority to search</u></p> <p>It is proposed to allow search provisions for subsections 13(1), 13(2), 13(2A), 13(2B), 13(2C) and 13(3).</p> <p>13(3B) allows a police officer to seize liquor in the possession of a person if the officer reasonably believes that the person is committing an offence against 13(1), 13(2), 13(2A), 13(2B), 13(2C) and 13(3). This seizure authority currently exists without any authority to search for such liquor. The section therefore requires an authority to be able to detain and search for the liquor, as the person may have liquor concealed in a bag, pocket or somewhere else on their person.</p> <p>Concealment of liquor is a regular occurrence when people are approached by police in public places. In fact, it is a regular occurrence for people to carry liquor in soft drink containers to avoid detection by police.</p> <p>Section 58A provides an authority to search for liquor, however this only relates to adults and for offences under section 25 of the Act.</p> <p>Search provisions should also exist for items such as fireworks – as provided in 13(1)(f), and for missiles – as provided in subsection 13(2).</p> <p>The search and seizure provisions need to be consolidated in a schedule at the rear of the Act.</p> <p>Currently the Act has liquor related offences in section 13(2A-3D), 25 and 26 – It makes sense to provide one section that addresses all liquor related offences.</p> <p>Subsection 3B – 3D relate to seizure of liquor, these provisions should be consolidated at the rear of the Act with other seizure authorities.</p> <p><u>Infringement Notices</u></p> <p>It is proposed to allow infringement notices to be issued for offences against sections 13(1) (a), (b), (c), (e), (f), 13(2), 13(2A). The rationale for this proposed amendment is provided later in this document.</p>

assembled for religious worship.

(3AA) A person who contravenes a provision of subsection (1), (2), (2A), (2B), (2C) or (3) is guilty of an offence and is liable on summary conviction to –

(a) a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months, in the case of an offence under subsection (1) or (3); or

(b) a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2); or

(c) a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2A), (2B) or (2C).

(3A) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence there under is liable to double the penalty prescribed in respect of the offence in respect of which he is so convicted.

(3B) A police officer may seize liquor in the possession of a person the police officer reasonably believes is committing an offence under subsection (1), (2), (2A), (2B), (2C) or (3).

(3C) If a police officer has seized liquor in accordance with subsection (3B) and the person who has possession of the liquor is subsequently convicted of an offence under subsection (1), (2), (2A), (2B), (2C) or (3), the court that convicted the person may order that the liquor and its container

<p>be forfeited to the Crown.</p> <p>(3D) If –</p> <p>(a) a police officer has seized liquor in accordance with subsection (3B); and</p> <p>(b) subsequent to the seizure –</p> <p>(i) no proceedings are instituted within a reasonable time for an offence under subsection (1), (2), (2A), (2B), (2C) or (3); or</p> <p>(ii) proceedings are instituted for an offence under one of those subsections but no order for the forfeiture of the liquor is made –</p> <p>a magistrate may order that the liquor be given to a person the magistrate is satisfied has a right to its possession but if no such order is made or sought within a reasonable time the Commissioner may dispose of the liquor in such manner as the Commissioner considers most appropriate, and shall pay any proceeds into the Consolidated Fund.</p> <p>(4) A person shall not wilfully leave open any gate or slip-panel or make a gap in any fence for the purpose of permitting or causing any animal, or otherwise wilfully cause or procure any animal, to trespass.</p> <p>(4A) A person who contravenes a provision of subsection (4) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units.</p> <p>(5AB) A person who contravenes subsection (5A) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 2 penalty</p>	
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units.

(6) A person, being the owner or usual keeper of a stallion, bull, boar, or ram, shall not permit the animal to be in any public place unless it is under the immediate custody or control of some competent person.

(6A) A person who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units.

(7) A person, being the owner or usual keeper of a horse, mule, hinny, ass, ox, pig, sheep, or goat, other than those mentioned in subsection (6), shall not permit the animal to graze or stray in any public place.

(7A) A person who contravenes subsection (7) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 0.3 penalty unit or to a penalty not exceeding 3 penalty units for any fifth or subsequent offence within a period of 5 years.

(8) The provisions of subsection (7) do not apply in respect of a milch cow grazing in pursuance of an authority lawfully issued by the body controlling the public place where the cow is grazing; nor to an animal grazing on an unfenced road not within 2.5 kilometres of a city or town.

(9) The owner or usual keeper of any animal mentioned in subsection (7) which is found straying in a public place is liable to the penalty imposed by that subsection, unless he satisfies the court that the presence of the animal therein was not due to the negligence or default of himself, his servant, or

	agent.	
10	<p>13A. Observation or recording in breach of privacy</p> <p>(1) A person who observes or visually records another person, in circumstances where a reasonable person would expect to be afforded privacy –</p> <p>(a) without the other person's consent; and</p> <p>(b) when the other person –</p> <p>(i) is in a private place; or</p> <p>(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act –</p> <p>is guilty of an offence.</p> <p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.</p> <p>(2) A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable person would expect to be afforded privacy in relation to that region –</p> <p>(a) without the other person's consent; and</p> <p>(b) when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal</p>	<p><u>Search authority</u></p> <p>It is deemed that this section requires a search provision.</p> <p>This section applies to observation or visual recording in breach of a person's privacy. Visual recordings can be made on devices such as mobile phones, tablets, laptops, cameras, ipods and of course video recorders. In the case of mobile phones, itouches and ipods, most people carry these devices regularly in their possession. Where police find a person in a public place and have reasonable grounds to believe this offence has occurred, there should be an authority to search for a recording device. This is extremely pertinent with technological advancements enabling the upload of images and videos instantly to the web, or 'live streaming'.</p> <p>As previously intimated these search provisions would be consolidated at the rear of the Act in a schedule that will contain all other search authorities for police.</p> <p><u>Inclusion of female breast area within section 13A(2)</u></p> <p>Section 13A(2) relates to the filming of a persons genital or anal region in circumstances where a reasonable person would expect to be afforded privacy in relation to that region. It is proposed that the female breast area should also be included within this section, as a body region that a reasonable person would expect to be afforded privacy.</p>

	<p>region –</p> <p>is guilty of an offence.</p> <p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.</p> <p>(3) In subsection (2) –</p> <p>"genital or anal region", of a person, means the person's genital or anal region when that region is covered only by underwear or bare.</p>	
<p>11</p>	<p>13B. Publishing or distributing prohibited visual recording</p> <p>(1) A person who publishes or distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without lawful and reasonable excuse (proof of which lies on the first-mentioned person), is guilty of an offence.</p> <p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.</p> <p>(2) In this section –</p> <p>"distribute" includes –</p> <p>(a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and</p> <p>(b) make available for access by someone, whether by a particular person or not; and</p>	<p><u>Search authority</u></p> <p>It is believed that this section requires a search provision. Where police find a person in a public place and have reasonable grounds to believe this offence has occurred, there should be an authority to search for video recording equipment – for example phones, laptops, tablets, ipods, cameras. This is extremely pertinent with technological advancements enabling upload, or streaming, of images and videos to the web instantly.</p> <p>As previously intimated these search provisions would be consolidated at the rear of the Act in a schedule that will contain all other search authorities for police.</p>

	<p>(c) enter into an agreement or arrangement to do anything mentioned in paragraph (a) or (b); and</p> <p>(d) attempt to distribute;</p> <p>"prohibited visual recording" of another person means –</p> <p>(a) a visual recording of the person in a private place or engaging in a private act made in circumstances where a reasonable adult would expect to be afforded privacy; or</p> <p>(b) a visual recording of the person's genital or anal region, when it is covered only by underwear or bare, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.</p>	
12	<p>13C. Possession of prohibited visual recording</p> <p>(1) A person who has in his or her possession a prohibited visual recording having reason to believe it to be a prohibited visual recording is guilty of an offence.</p> <p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.</p> <p>(2) In this section –</p> <p>"prohibited visual recording" has the same meaning as in section 13B.</p>	<p><u>Search authority</u></p> <p>An amendment is proposed to provide a search provision for this section. Where police find a person in a public place and reasonably believe this offence has occurred, there should be an authority to search for video recording equipment – for example phones, ipods, cameras. This is extremely pertinent with technology advancements enabling upload, or streaming, of images and videos to the web instantly.</p> <p>As previously intimated these search provisions would be consolidated at the rear of the Act in a schedule that will contain all other search authorities for police.</p>

DIVISION IA - OFFENCES RELATING TO TRESPASS TO LANDS

	Current legislation	Proposed amendment and rationale
<p>13</p>	<p>14A. Peering into dwelling-houses, &c.</p> <p>(1) A person shall not without lawful excuse (proof whereof shall lie on him) –</p> <p>(a) peep or peer into the window or door of a dwelling-house; or</p> <p>(b) lurk, loiter, or secrete himself on any land within the curtilage of a dwelling-house.</p> <p>(2) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.</p>	<p><u>Search authority</u></p> <p>It is proposed that this section requires a search provision. The ability to search assists in determining the motives of the person – ie burglary, stealing, sexual offences. This search provision is particularly relevant with current technology to determine if a person was committing this offence and obtaining a prohibited visual recording of a person in private premises.</p> <p>This search provision should be consolidated in a schedule at rear of the Act.</p> <p><u>Contemporary terminology</u></p> <p>It is also recommended that subsection (1)(b) be re-worded, to make it contemporary. Suggested wording is as follows:</p> <p>Lurk, loiter or conceal himself or herself on any land within the boundary of a dwelling.</p>
<p>14</p>	<p>14B. Unlawful entry on land</p> <p>(1) A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.</p> <p>(2) A person who is convicted of an offence under this section is liable to a penalty of–</p> <p>(a) a fine not exceeding 10 penalty units or</p>	<p><u>Authority to search</u></p> <p>Subsection (5) provides an authority to seize a firearm from a person who is committing an offence against this section. There is no authority to search. A search provision is believed necessary for the offence of trespass, especially for trespass offences where a firearm is suspected of being in the possession of the person.</p> <p><u>Firearms forfeited to the Crown to be disposed of by the Commissioner</u></p> <p>Currently, under section 14B(2B), disposal of a firearm involves a laborious process of seeking Ministerial Delegation to provide the Commissioner, or Commissioner’s Delegate, with the authority to make these determinations. Realistically, the Commissioner of Police, should have the authority to determine the method of</p>

<p>imprisonment for a term not exceeding 12 months, in respect of entering or remaining in a dwelling-house; or</p> <p>(b) 5 penalty units or imprisonment for a term not exceeding 6 months, in respect of entering into, or remaining on, any other land, building, structure, premises, aircraft, vehicle or vessel.</p> <p>(2A) However, if the court that convicts a person of an offence under this section is satisfied that the person –</p> <p>(a) was in possession of a firearm during the actual commission of the offence; or</p> <p>(b) made any use of an aircraft, vehicle or vessel during the actual commission of the offence –</p> <p>the person is liable to a penalty not exceeding twice that provided for by subsection (2).</p> <p>(2B) If subsection (2A)(a) applies to the convicted person, the court may, in addition to any other penalty it may impose, do either or both of the following:</p> <p>(a) order that the firearm is forfeited to the Crown;</p> <p>(b) cancel all or any of the licences or permits that the convicted person may hold under the <i>Firearms Act 1996</i>.</p> <p>(2C) A firearm forfeited to the Crown pursuant to subsection (2B) is to be disposed of as the Minister determines.</p> <p>(3) Where a person is convicted of an offence under this section in respect of entering or</p>	<p>disposal once the firearm is forfeited to the Crown.</p> <p>Section 68 of the <i>Police Offences Act 1935</i> also has provisions relating to the disposal of firearms as the Minister determines. It is proposed to amend this section as well, to allow the Commissioner to determine the method of disposal.</p> <p>The majority of forfeited firearms are destroyed by Tasmania Police with a small number retained for the Ballistics Library (if the item is of evidentiary value).</p>
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<p>remaining in the dwelling-house of another person, the court or one of the justices may issue a warrant addressed to all police officers commanding them to enter the premises and give the possession thereof to the complainant.</p> <p>(4) For the purpose of executing a warrant under subsection (3), every police officer may, if necessary, break and enter the premises to which the warrant relates and eject the person convicted and any other person therefrom.</p> <p>(5) A police officer who reasonably suspects that a person in possession of a firearm is committing an offence under this section may seize that firearm.</p> <p>(6) Section 68 applies if a firearm is seized under subsection (5).</p>	
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DIVISION II - OFFENCES RELATING TO GOOD ORDER AND SAFETY

	Current legislation	Proposed amendment and rationale
15	<p>15. Obstructions in streets, writing on or defacing buildings, &c., throwing, &c., rubbish on street, &c.</p> <p>(1) A person shall not, in any street in any town –</p> <p>(b) write upon, soil, deface, or mark any wall, fence, hoarding, footpath, or building, or, without authority, affix, or cause to be affixed to any church, chapel, or school-house, or, without the consent of the owner or occupier, to any other building, or to any wall, fence, or hoarding, any bill or other notice, or wilfully break, destroy, or damage any part of such wall, fence, hoarding, or building, or any tree, shrub, seat, or other thing; or</p>	<p><u>PROPOSE REPEAL OF THIS SECTION</u></p> <p>In 2009 amendments were made to the Act to provide for offences relating to graffiti. Graffiti covers incidents that involve marking, drawing, writing or otherwise defacing property by any means so that the defacement is not readily removable by wiping with a dry cloth.</p> <p>With the insertion of graffiti offences, part of Section 15(1)(b) is now viewed as redundant.</p> <p>The subsection also overlaps with section 37 of the Act, “Offences relating to property”. Section 37 provides the offence of unlawfully destroying or injuring property.</p>

	<p>(7) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to—</p> <p>(a) a penalty not exceeding 2 penalty units; and</p>	<p>Section 13 of the <i>Litter Act 2007</i> covers bill posting. It reads:</p> <p style="padding-left: 40px;">A person must not affix any document on to any fixed structure without the express consent of the owner, occupier or manager of the structure or unless the person affixing the document is exercising a power given to the person under any law.</p> <p>Therefore, this entire section is now viewed as redundant and covered by either sections within the <i>Police Offences Act 1935</i> or the <i>Litter Act 2007</i>. It is sought to have this section repealed.</p>
<p>16</p>	<p>15A. Police offences in towns</p> <p>(1) A person shall not, in any town –</p> <p>(d) unlawfully make a drain leading into a street;</p> <p>(e) being the occupier of land permit or suffer water or drainage therefrom to flow upon the footway of a street.</p>	<p><u>PROPOSE REPEAL OF THIS SECTION</u></p> <p>This section has had several subsections repealed, the only remaining subsections (1)(d) and (e) relate to drains and water drainage. The <i>Drains Act 1954</i> provides legislation to regulate drainage systems in Tasmania.</p> <p>The regulation of drainage systems is not considered to be a police related matter, and this section no longer belongs in the <i>Police Offences Act 1935</i>.</p> <p>Section 42 of the <i>Drains Act 1954</i> adequately covers what is provided under section 15A of the <i>Police Offences Act 1935</i>.</p>
<p>17</p>	<p>15B. Dispersal of persons</p> <p>(1) A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person –</p> <p>(a) has committed or is likely to commit an offence; or</p> <p>(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or</p> <p>(c) is endangering or likely to endanger the safety of</p>	<p><u>Authority to request name and address where a police officer believes a person is likely to commit an offence</u></p> <p>Section 55A of the <i>Police Offences Act 1935</i> provides an authority for a police officer to request a persons name and address if they have reasonable grounds for believing that a person has committed, or is committing, an offence against this Act.</p> <p>Section 15B allows an officer to direct a person to leave a public place if they believe it is likely that the person may commit an offence as per subsection 15B(1)(a). Currently there is no authority for a police officer to request the details of the person that is given a direction prior to the commission of an offence, therefore making enforcement difficult. An authority to request a name and address in this situation (where a person is likely to commit an offence) should be</p>

	<p>any other person; or</p> <p>(d) has committed or is likely to commit a breach of the peace.</p> <p>(2) A person must comply with a direction under subsection (1).</p> <p>Penalty: Fine not exceeding 2 penalty units.</p>	<p>provided.</p> <p>In practice police will currently obtain a physical description and have had situations where offenders have changed clothes and returned to the exclusion area in defiance of the police direction. The ability to require a persons name and address in this situation may deter the offender from returning to the exclusion area as their details are known and circulated to other police working at the time.</p>
<p>18</p>	<p>15CA. Graffiti and graffiti equipment</p> <p>(1) A person must not, without lawful excuse, mark graffiti.</p> <p>Penalty: Fine not exceeding 20 penalty units.</p> <p>(2) In addition to, or in substitution for, any penalty imposed by a court under subsection (1), the court may order that the offender perform community service in accordance with Part 4 of the <i>Sentencing Act 1997</i>.</p> <p>(3) A person must not, without lawful excuse, distribute, supply or sell graffiti equipment to a youth.</p> <p>Penalty: Fine not exceeding 20 penalty units.</p> <p>(4) A person must not, without lawful excuse, have possession of, or carry or use, graffiti equipment in a public place.</p> <p>Penalty: Fine not exceeding 20 penalty units.</p> <p>(5) Subsection (4) does not apply to –</p> <p>(a) a police officer acting in the performance of his or</p>	<p><u>Consolidation of search and seizure authorities</u></p> <p>One of the major amendments proposed is for the consolidation of arrest and search authorities into one section of the Act. The search and seizure provisions for this section, contained in subsections (6) and (7), need to be consolidated in a schedule at the rear of the Act.</p> <p><u>Authority to arrest</u></p> <p>The provisions of section 55 of the Act provide a power of arrest for certain offences within the Act. This authority to arrest is only in situations where a police officer finds a person offending against the relevant section of the Act.</p> <p>Currently a police officer does not have the authority to arrest for the offence of marking graffiti.</p> <p>Graffiti costs communities, private property owners, small business and public agencies significant amounts of money each year to repair, replace, and clean up property defaced by graffiti vandalism. Together with countless man hours, this money and time could be otherwise spent on improving public services.</p> <p>Where a police officer has reasonable grounds for believing that a person has marked graffiti, the officer should have the discretion to arrest that person if it is deemed necessary.</p> <p>An example of a situation where this arrest authority may be utilised is as follows:</p> <p>A report is received of two youths marking graffiti on a local shop within the Elizabeth Street Mall. A police officer attends and finds two males standing near</p>

	<p>her duties; or</p> <p>(b) a person, or group of persons, excluded in writing by the Commissioner from the application of that subsection.</p> <p>(6) A police officer may stop, detain and search, without a warrant, any person in a public place who the police officer reasonably believes has possession of, or is carrying, any graffiti equipment without lawful excuse and may stop, detain and search, without a warrant, the person's vehicle.</p> <p>(7) A police officer may seize and retain any graffiti equipment found.</p> <p>(8) For the purposes of this section, a lawful excuse includes the following:</p> <p>(a) the pursuit of a lawful occupation, duty or activity using that graffiti equipment;</p> <p>(b) the participation in a lawful sport, recreation or entertainment using that graffiti equipment.</p> <p>(9) If a person is convicted or found guilty of an offence under this section, the graffiti equipment to which the offence relates is forfeited and is to be disposed of as the court orders.</p> <p>(10) For the purposes of this section, a person who is in a motor vehicle in a public place is taken to be in the public place.</p>	<p>the shop. The police officer notices paint on one of the males' hands which is the same colour as the graffiti on the local shop window. The paint has not yet dried on the shop window, and appears to be fresh on the males' hands. The police officer asks the male for an explanation for the paint on his hands to which he replies "I have been painting my fence at home".</p> <p>It is deemed that this situation provides the police officer with reasonable grounds to believe that the male was involved in the recent graffiti on the shop window. The police officer should be able to arrest the male for marking graffiti.</p> <p>If the arrest authority is approved, it should be added into the proposed schedule at the rear of the Act.</p>
<p>19</p>	<p>18. Discharge of distress signals</p> <p>(1) In this section –</p>	<p><u>Inclusion of Emergency Position Indicating Radio Beacons (EPIRBs)</u></p> <p>All vessels under 6 metres in length are now required to carry an EPIRB when operating outside sheltered waters. This requirement brings smaller vessels,</p>

	<p>"distress signal" means a flare that is normally used to signal distress.</p> <p>(2) A person must not, without reasonable excuse, discharge a distress signal.</p> <p>Penalty: Fine not exceeding 30 penalty units.</p> <p>(3) A person is not guilty of an offence under subsection (2) if the distress signal was discharged –</p> <p>(a) for an emergency; or</p> <p>(b) with the approval of the Marine and Safety Authority (established under the <i>Marine and Safety Authority Act 1997</i>); or</p> <p>(c) with the approval of a police officer of or above the rank of inspector.</p>	<p>which go offshore, into the same legislative requirements as larger vessels using the same waters that have always been required to carry an EPIRB. Therefore all vessels operating outside sheltered waters require an EPIRB.</p> <p>It is proposed to amend the definition of “distress signal” to include EPIRBs and any other electronic device with the capability to send a distress signal.</p> <p>Section 19 of the <i>Marine and Safety (Safe Operation) Regulations 2003</i> provides that a person on a vessel must not give a false alarm. This relates to the false activation of distress signals, but only applies to the activation of these devices whilst on a vessel. Section 18 of the <i>Police Offences Act 1935</i>, has wider scope, as it can apply to the activation of a device on land or water.</p>
21	<p>19A. Sports grounds</p> <p>(1) A person shall not –</p> <p>(a) enter the reserved area of a sports ground without lawful excuse; or</p> <p>(b) remain on the reserved area of a sports ground after having been requested to leave that area by a police officer or some person having authority to require him to leave that area.</p> <p>(1AA) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months.</p> <p>(1A) Subject to subsection (1B), a police officer may</p>	<p><u>Amendment to arrest authorities</u></p> <p>This section provides an authority to arrest. The authority to arrest can only be used:</p> <ol style="list-style-type: none"> 1. where a person fails to leave the reserved area of a sports ground when requested to do so by a police officer; and the police officer reasonably believes – <ol style="list-style-type: none"> a that the sport being played, or the game being conducted, on the reserved area of the sports ground is or will be interrupted or the use of that area be persons participating or having participated in the sport or game is or will ne interfered with or affected; or b that the commencement of the sport to be played, or the game to be conducted on that area will be delayed. <p>This section is at times problematic, for example – a stalker runs onto the Bellerive Oval in the middle of an international, and widely telecast, cricket match. Police chase the stalker, who is trying to evade police, but not leaving the oval.</p>

<p>arrest without warrant any person who fails to leave the reserved area of a sports ground –</p> <p>(a) where a sport is being played or a game is being conducted;</p> <p>(b) where a sport is to be played or a game is to be conducted; or</p> <p>(c) where a sport has been played or a game has been conducted –</p> <p>when requested to do so by that police officer.</p> <p>(1B) A police officer shall not exercise the power of arrest referred to in subsection (1) unless he reasonably believes –</p> <p>(a) that the sport being played, or the game being conducted, on the reserved area of the sports ground is or will be interrupted or the use of that area by persons participating or having participated in the sport or game is or will be interfered with or affected; or</p> <p>(b) that the commencement of the sport to be played, or the game to be conducted, on that area will be delayed.</p> <p>(2) In this section –</p> <p>"reserved area" means so much of a sports ground as is set apart or reserved for the playing of a game or the conducting of a sport;</p> <p>"sports ground" means a public place, not wholly contained within a building, to which the public are admitted, whether on payment or otherwise, to view a game or sport played or conducted on the</p>	<p>Technically a police officer should approach the person and request them to leave the sports ground. This is quite absurd, especially when you have a person running naked across a sports ground, trying to avoid police.</p> <p>In this type of situation it should be deemed that it is not practical to request a person to leave, and that person can therefore be automatically arrested and removed from the sports ground.</p> <p>The proposed amendment would allow an authority to arrest, or take the person into custody, without requesting that person to leave only if it is impractical at the time to request that person to leave.</p> <p><u>Consolidation of arrest authorities</u></p> <p>The arrest provisions for this section are subject to certain restrictions. These arrest provisions should be incorporated in a schedule at the rear of the Act.</p> <p>An amendment is proposed to allow infringement notices to be issued for these offences. These offences are minor offences and should allow an alternative method, such as infringement notice, for dealing with them.</p> <p><u>Definition of "sports ground"</u></p> <p>The definition of sports ground is as follows:</p> <p>"sports ground" means a public place, not wholly contained within a building, to which the public are admitted, whether on payment or otherwise, to view a game or sport played or conducted on the reserved area of that sports ground.</p> <p>The definition does not currently incorporate sports that are played in enclosed stadiums, such as the Derwent Entertainment Centre.</p> <p>Proposed re-wording of the definition to:</p> <p>"sports ground venue" means a public place, not wholly contained within a building, to which the public are admitted, whether on payment or otherwise, to view a game or sport played or conducted on the reserved area of that sports ground.</p>
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	reserved area of that sports ground.	
23	<p>20AA. Rescue and illegal impounding of distress damage feasant</p> <p>A person who –</p> <p>(a) impounds or detains any animal unlawfully; or</p> <p>(b) rescues any animal impounded or seized for the purpose of impounding –</p> <p>as a distress damage feasant is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units.</p>	<p><u>Contemporary wording</u></p> <p>An amendment to this section has been requested to make the terminology contemporary and easier to understand.</p> <p>The term “damage feasant” is a corruption of the French words “faisant dommage”, and signifies doing damage. This term is usually applied to the injury which animals belonging to one person do upon the land of another, by feeding there, treading down grass, corn, or other destruction of the earth. By common law, a distress of animals or things damage feasant is allowed.</p> <p>This section provides an offence for impounding or detaining an animal unlawfully as a distress damage feasant, and for rescuing an animal that is lawfully impounded or seized as a distress damage feasant.</p> <p>If this amendment is approved, advice will be taken from the Office of Parliamentary Counsel on the contemporary wording of this section.</p>

DIVISION III - FORTIFICATIONS

There are no proposed amendments for this Division

DIVISION IIIA – PROHIBITED BEHAVIOUR

	Current legislation	Proposed amendment and rationale
24	<p>21A. Unlawfully administering drug, &c.</p> <p>Any person who, without lawful and reasonable excuse, administers or causes another person to take a drug, liquor or other thing which is likely to impair the consciousness or bodily function of the other person without the other person's consent is guilty of an offence.</p> <p>Penalty: Fine not exceeding 100 penalty units or</p>	<p><u>Search and seizure authority</u></p> <p>The <i>Criminal Code Act 1924</i> provides adequate provisions to address the administration of drugs and/or alcohol to another person with the intention of facilitating sexual intercourse or the commission of another offence.</p> <p>Section 21A was inserted into the Act in 2007 to provide penalty for those people who ‘spike’ a person’s drink recklessly, as a nuisance, to cause harm or discomfort, or as a practical joke. This type of situation was not adequately covered in the <i>Criminal Code Act 1924</i>.</p>

	<p>imprisonment for a term not exceeding 2 years, or both.</p>	<p>The effect of ‘spiking’ a person’s drink can have serious consequences. Where a police officer reasonably believes that a person has committed the offence of ‘Unlawfully administering a drug’, there should be an authority to search such person for drugs, liquor or any other thing that may be evidence of the commission of the offence. An authority to seize any drug, liquor or other item found should also be provided.</p> <p>As previously intimated these search provisions would be consolidated at the rear of the Act in a schedule that will contain all other search authorities for police.</p>
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DIVISION IV - CONSUMPTION OF LIQUOR

	Current legislation	Proposed amendment and rationale
<p>25</p>	<p>25. Consumption of liquor in streets, &c.</p> <p>(1)</p> <p>(2) A person must not consume liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section.</p> <p>Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units.</p> <p>(3) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an opened or unsealed container of liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section.</p> <p>Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units.</p>	<p><u>Consolidate liquor offences in one section of the Act</u></p> <p>Currently sections 13, 25 and 26 provide offences and authorities related to liquor offences. This is confusing, and is further confused by the authorities provided within section 58A – Power to search for liquor. Section 58A provides an authority to detain, search and seize liquor where a police officer has reasonable grounds to believe that a person is contravening or is about to contravene section 25. The search authority is not provided for the offences in section 13, however an authority to seize liquor is provided for section 13.</p> <p>This demonstrates the inconsistency of authorities within the <i>Police Offences Act 1935</i>, especially when section references are used to enable authorities for offences.</p> <p>It is proposed to list all liquor offences within one section of the <i>Police Offences Act 1935</i>, and provide consistent search, detain and seizure authorities for all of these offences.</p>

<p>(4) This section does not apply to a person who is –</p> <p>(a) on licensed premises, within the meaning of the <i>Liquor Licensing Act 1990</i>, or on premises at which food is sold for consumption on those premises; or</p> <p>(b) within 50 metres of any such premises and is using furniture or other facilities lawfully provided by the proprietor or lessee of those premises for that purpose; or</p> <p>(c) in a place where the possession and consumption of liquor is permitted under a permit or licence in force under the <i>Liquor Licensing Act 1990</i>.</p> <p>(5) A person who is in a stationary motor vehicle in a public street or in a prescribed public place is taken to be in the public street or in the prescribed public place.</p> <p>(6) Regulations made for the purpose of this section may provide that a public place specified in the regulations is to be taken to be a public place to which this section applies only during specified periods and at specified times within those periods and, where the regulations so provide, this section applies in relation to that public place accordingly.</p>	
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DIVISION V - SALE OR SUPPLY OF LIQUOR TO YOUTHS

	Current legislation	Proposed amendment and rationale
26	<p>26. Sale or supply of liquor to youths</p> <p>(1) A person must not supply liquor to a youth at a private place unless the person is a responsible adult for the youth.</p>	<p><u>Consolidate liquor offences in one section of the Act</u></p> <p>Currently sections 13, 25 and 26 provide offences and authorities related to liquor offences. It is proposed to list all liquor offences within one section of the <i>Police Offences Act 1935</i>, and provide consistent search, detain and seizure authorities for</p>

<p>Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.</p> <p>(2) A responsible adult for a youth must not supply liquor to the youth at a private place unless the supply is consistent with the responsible supervision of the youth.</p> <p>Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.</p> <p>(3) For the purposes of subsection (2), the following factors are relevant in considering whether the supply is consistent with the responsible supervision of the youth:</p> <p>(a) whether the responsible adult is directly supervising the youth's consumption of the liquor;</p> <p>(b) whether the responsible adult is intoxicated;</p> <p>(c) whether the responsible adult provides food for the youth to consume with the liquor;</p> <p>(d) whether the youth is intoxicated;</p> <p>(e) the age of the youth;</p> <p>(f) the quantity and type of liquor supplied and the period over which it is supplied.</p> <p>(4) For the purposes of this section, each of the following persons is a responsible adult for a youth:</p> <p>(a) a parent, step-parent or guardian of the youth;</p> <p>(b) an adult who has parental rights and responsibilities for the youth;</p>	<p>all of these offences.</p> <p>The authorities currently provided within section 58A of the <i>Police Offences Act 1935</i> should not apply to section 26. Section 58A provides authorities to detain, search and seize liquor for offences contained in section 25 of the <i>Police Offences Act 1935</i>. These offences can only occur in a public street, or prescribed public place, therefore the authorities should not apply to section 26 as these offences occur within a private premises.</p>
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	(c) an adult authorised to supply liquor to the youth by a parent, step-parent or guardian of the youth or by an adult referred to in paragraph (b).	
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DIVISION VII - OFFENCES AGAINST PUBLIC AUTHORITY

	Current legislation	Proposed amendment and rationale
27	<p>34B. Resistance to, and obstruction of, public officers prohibited</p> <p>(1) A person shall not –</p> <p>(a) assault, resist, or wilfully obstruct –</p> <p style="padding-left: 20px;">(i) a police officer in the execution of his duty;</p> <p style="padding-left: 20px;">(ii) a person lawfully assisting a police officer in the execution of his duty; or</p> <p style="padding-left: 20px;">(iii) a person lawfully arresting another person;</p> <p>(b) threaten, intimidate, or use abusive language to any such police officer whilst in the performance or execution of his duty or a person assisting a police officer therein; or</p> <p>(c) instigate or incite a person to do any of the things mentioned in the foregoing provisions of this subsection.</p> <p>(1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units or to imprisonment for a term not</p>	<p><u>Consolidation of arrest authorities</u></p> <p>One of the major amendments proposed is for the consolidation of arrest and search authorities into one section of the Act. A police officer may arrest without warrant any person committing an offence against subsection (1) or (2)(a). This arrest provision should be consolidated in a schedule at the rear of the Act.</p>

<p>exceeding 2 years.</p> <p>(2) A person shall not –</p> <p>(a) assault, resist, intimidate, or wilfully obstruct a public officer in the execution of his duty, or lawfully performing a duty imposed on him by an Act, or in the exercise of a public duty or authority;</p> <p>(b) threaten or use abusive language to any such person so acting; or</p> <p>(c) instigate or incite a person to do any of the things mentioned in the foregoing provisions of this subsection.</p> <p>(2A) A person who contravenes a provision of subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 25 penalty units or to imprisonment for a term not exceeding 12 months.</p> <p>(3) A police officer may arrest without warrant any person committing an offence against subsection (1) or (2)(a).</p> <p>(4) In this section, "public officer" includes any person acting in good faith in the execution, or intended execution, of an Act or a public duty or authority.</p>	
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PART III – INJURIES TO THE PERSON

	Current Legislation	Proposed amendment and rationale
28	35. Common assault and aggravated assault (1) A person shall not unlawfully assault another	<u>Extension of statute of limitations</u> The current statute of limitations for common assault is 6 months. It is considered

<p>person.</p> <p>(1A) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months.</p> <p>(2) Where any person is charged with having unlawfully assaulted any other person, the court, if it considers the assault is of an aggravated nature, may sentence the offender to pay a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years.</p> <p>(3) A person who with indecent intent assaults any other person is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years.</p> <p>(4) If on a complaint under subsection (3) the court finds the assault proved but not the intent, it may amend the complaint to one under subsection (1) for the same assault and convict accordingly.</p> <p>(5) A complaint made for the purposes of the <i>Justices Act 1959</i> in relation to an offence under subsection (3) is to be made within 12 months after the date of the offence.</p>	<p>that this provision should be extended to allow time for forensic analysis and thorough investigation procedures to be carried out. The statute of limitations should be extended to 12 months, which is the current statute of limitations for section 37B - Motor Vehicle Stealing.</p> <p><u>Tattooing, piercing and other body modifications on youth</u></p> <p>It is proposed to insert a new provision to prevent tattooing, piercing and other body modification of a youth (persons 17 years and under) without the <u>consent and presence</u> of a parent or guardian. A parent or guardian should be present as it is considered too easy to falsify consent, for example a forged note.</p> <p>This new provision would be inserted in this section, as tattooing, piercing and other body modifications without consent fit within the definition of an assault provided by section 182(4) of the <i>Criminal Code Act 1924</i>:</p> <p>182. Definition of assault</p> <p>(1) An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any gesture to apply such force to the person of another if the person making the attempt or threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; or the act of depriving another of his liberty.</p> <p>(2) Words alone cannot constitute an assault.</p> <p>(3) An act which is reasonably necessary for the common intercourse of life if done only for the purpose of such intercourse, and which is not disproportionate to the occasion, does not constitute an assault.</p> <p>(4) Except in cases in which it is specially provided that consent cannot be given, or shall not be a defence, an assault is not unlawful if committed with the consent of the person assaulted unless the act is otherwise unlawful, and the injury is of such a nature, or is done under such circumstances, as to be injurious to the public, as well as to the person assaulted, and to involve a breach of the peace.</p>
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		<p>All other States, apart from Northern Territory, have legislation that relates to the tattooing, piercing or body modification of a youth. Some States, such as the Australian Capital Territory, Western Australia and New South Wales allow for tattooing, piercing and other modifications with the consent of a parent or guardian. South Australia, Queensland and Victoria prohibit the tattooing of a minor, even where the consent of a parent or guardian is given.</p>
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PART IV – INJURIES TO PROPERTY

The heading of this Part should be changed to ‘Offences relating to Property’.

	Current legislation	Proposed amendment and rationale
	<p>37. Offences relating to property</p> <p>(1) A person shall not unlawfully destroy or injure any property.</p> <p>(2) A person shall not unlawfully and maliciously kill, maim, or wound any animal the property of any other person.</p> <p>(2A) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.</p> <p>(3) A person shall not unlawfully remove, displace, deface, obliterate, or conceal any –</p> <p>(a) boundary mark;</p> <p>(b) beacon;</p> <p>(c) survey mark;</p>	<p><u>Repeal subsection (4)</u></p> <p>Subsection (4) relates specifically to the damage or destruction of street lights. This provision is covered by the normal ‘damage/destroy property’ and is no longer necessary. The owner of this property can easily be established (Council, power company) and there is no need to have a specific subsection related to street lights.</p> <p><u>Increase statute of limitations to 12 months</u></p> <p>It is proposed to increase the statute of limitations from 6 months to 12 months, to allow for forensic testing and thorough investigation of offences relating to destroying or damaging property.</p> <p>A statute of limitations time period commences when a crime or offence is complete. Without a statute providing a time limit as to when prosecution may be initiated, the time period would run without interruption from the time the offence is committed until the prosecution is commenced. There is not “statute of Limitations” for crimes.</p> <p>It is proposed to increase the statute of limitations for offences relating to property from 6 months to 12 months. This will allow for thorough forensic testing, which may include DNA analysis and matching, fingerprint comparison, and chemical or glass analysis. This along with a detailed investigation, which includes locating and interviewing witnesses, victims and suspects may exceed the current 6-month statute of limitations.</p>

<p>(d) mark used in setting out any work;</p> <p>(e) milestone or kilometre post;</p> <p>(f) sign post; or</p> <p>(g) notice –</p> <p>set up or posted by or on behalf of a public authority.</p> <p>(3A) A person who contravenes a provision of subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 2 penalty units.</p> <p>(4) A person shall not carelessly or negligently break, throw down, destroy, or damage a lamp erected to light a street in a town or a post, iron, cover, or other furniture of such a lamp.</p> <p>(4A) A person must not unlawfully damage or interfere with any work of a council or any material used or provided for that work.</p> <p>(5) A person who contravenes subsection (4) or (4A) is guilty of an offence and is liable on summary conviction to a penalty not exceeding one penalty unit.</p>	<p>A 12-month statute of limitations is considered fair, and still ensures that a prosecution is based on recent and reliable evidence.</p>
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PART IVA – OFFENCES INVOLVING VEHICLES

DIVISION I - MOTOR VEHICLE STEALING, & C.

	Current Legislation	Proposed amendment and rationale
	<p>37GA. Notice of demand</p> <p>(1) A police officer may serve a notice of demand on the owner or registered operator of a motor vehicle if the police officer is satisfied that the driver or an occupant of that motor vehicle has committed an offence.</p> <p>(2) A notice of demand is to –</p> <p>(a) indicate the offence to which it relates; and</p> <p>(b) specify the registration number of the motor vehicle that was involved in the offence; and</p> <p>(c) specify that the owner or registered operator is to provide to a police officer, within 7 days after the owner or registered operator is served with the notice, a statutory declaration stating –</p> <p>(i) the name, address and, if known, the date of birth and driver licence number of the driver or occupant of the motor vehicle at the time the offence was committed; or</p> <p>(ii) if the owner or registered operator does not know the details referred to in subparagraph (i) –</p> <p>(A) any information that may lead to the identification of the driver or occupant of the motor vehicle; or</p> <p>(B) the reasonable steps that the owner or</p>	<p><u>Removal of sections 37N(11) and (12)</u></p> <p>Currently there are two sections within the <i>Police Offences Act 1935</i> that relate to notices of demand.</p> <p>A notice of demand is a document that is served on the owner or registered operator of a motor vehicle. It is served in situations where the police officer is satisfied that the driver or an occupant of that motor vehicle has committed an offence. The purpose of the notice is to require the owner or registered operator to provide the details of the offending driver or occupant to police so that follow up enquiries can be made with those individuals.</p> <p>Section 37GA provides authority to issue a notice of demand for the commission of any offence. Section 37N(11) and (12) provide a notice of demand for prescribed offences relating to clamping and confiscation.</p> <p>It is proposed to remove section 37N(11) and (12) as a notice for prescribed offences can now be issued under section 37GA.</p>

<p>registered operator has taken to obtain such information.</p> <p>(3) An owner or registered operator must comply with the notice of demand.</p> <p>Penalty: Fine not exceeding 50 penalty units.</p>	
<p>37I. Tampering with vehicles</p> <p>A person must not unlawfully tamper or interfere with a motor vehicle or trailer.</p> <p>Penalty: Fine not exceeding 20 penalty units.</p>	<p><u>Search authority</u></p> <p>A search provision is proposed for this section, this will allow police officers who reasonably suspect a person of committing this offence to be able to search the person to locate any equipment or tools used in the commission of the offence.</p> <p>The proposed search provision should be consolidated in a schedule at the rear of the Act.</p>
<p>37J. Excessive noise, smoke, &c., from vehicles</p> <p>(1) A person must not, unless otherwise authorised under this or any other Act, operate or control a vehicle in a public place –</p> <p>(a) in a manner that makes or emits unnecessary and unreasonable noise; or</p> <p>(b) in an exhibition of speed, acceleration or sustained loss of traction; or</p> <p>(c) in a race against another vehicle.</p> <p>Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months, or both.</p> <p>(2) A court that convicts a person of an offence under subsection (1) may, in addition to the penalty specified in that subsection, disqualify the person</p>	<p><u>Exhibition of speed</u></p> <p>Magistrates have determined that the term ‘exhibition’ in subsection (1)(b) has the ordinary meaning of ‘to display or show’ and by definition this must be to another person who the offender knows is nearby.</p> <p>It was not the intention of Parliament that people displaying this type of driving behaviour would only be sanctioned when the offender was doing it for the viewing pleasure of others.</p> <p>This legislation is clearly meant to curb alarming, dangerous, aggressive and irresponsible driving behaviour, irrespective of whether an offender does it for the display of other persons. It is proposed to re-word this section to correct this interpretation. Advice will be sought from the Office of Parliamentary Counsel as to whether a definition of “exhibition” is appropriate, or the subsection requires re-wording to address this issue.</p>

	<p>from driving for a period not exceeding 2 years.</p> <p>(3) When a court imposes a disqualification from driving under this section, it must suspend or cancel any Australian driver licence held by the person on whom the disqualification is imposed as required by section 17 of the <i>Vehicle and Traffic Act 1999</i>.</p>	
	<p>37K. Interpretation of Division</p> <p>(1) In this Division, unless the contrary intention appears –</p> <p>"authorised period", of clamping or confiscation, means the period for which a vehicle may lawfully be clamped or confiscated under this Division;</p> <p>"clamp", a vehicle, means immobilise the vehicle by means of a clamping device (and "clamped" has a corresponding meaning);</p> <p>"clamped vehicle" means a vehicle clamped under section 37N;</p> <p>"clamping device" means –</p> <p>(a) a wheel clamp, steering wheel clamp or other mechanical device for rendering a vehicle immobile; or</p> <p>(b) an electronic device for rendering a vehicle immobile;</p> <p>"confiscated vehicle" means a vehicle confiscated under section 37N(1);</p> <p>"Court" means the Magistrates Court;</p>	<p><u>Amendment to definitions</u></p> <p>It is intended to amend the definition of "confiscated vehicle" to include that vehicle's keys. Having a vehicle's keys during the period of confiscation greatly assists in maintaining the vehicle within the holding yard. For example some owners may request that their confiscated vehicle be started once a week to maintain mechanical efficiency. IT also assists with placement of the vehicles within a holding yard.</p> <p>It is also proposed to amend the definition of "forfeiture order" to include the 'vehicle's keys'. This will assist in disposing of, and managing the forfeited vehicle.</p>

<p>"forfeiture order" means an order, under section 37Y, for the forfeiture of a vehicle to the Crown;</p> <p>"key", to a clamping device, includes, in the case of an electronic clamping device, an electronic key;</p> <p>"notice", of clamping or confiscation, means notice under section 37T;</p> <p>"offending driver" – see section 37T(1)(a);</p> <p>"prescribed offence" means an offence –</p> <p>(a) against section 14B involving the use of a vehicle, vessel or aircraft; or</p> <p>(b) against section 15B involving the use of a vehicle; or</p> <p>(c) against section 37J; or</p> <p>(d) against section 48; or</p> <p>(e) against section 32 of the <i>Traffic Act 1925</i>; or</p> <p>(f) against section 11A of the <i>Police Powers (Vehicle Interception) Act 2000</i>; or</p> <p>(g) that is prescribed by the regulations for the purposes of this Division.</p> <p>(2) In the application of this Division to the offence referred to in paragraph (a) of the definition of "prescribed offence" in subsection (1) –</p> <p>"vehicle" includes vessel and aircraft.</p>	
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<p>37N. Clamping and confiscation of vehicles</p> <p>(1) A police officer who finds a person committing a prescribed offence involving a vehicle may –</p> <p>(a) clamp the vehicle; or</p> <p>(b) confiscate the vehicle and have it moved to a holding yard and held in accordance with this Division.</p> <p>(2) Where a police officer finds a person committing a prescribed offence involving a vehicle and does not clamp or confiscate the vehicle at the time ("time of offence"), the vehicle may be clamped or confiscated by a police officer at any time during the 14-day period immediately following the time of offence.</p> <p>(3) For the purpose of clamping or confiscating a vehicle, a police officer may –</p> <p>(a) direct the person in control of the vehicle to stop the vehicle and keep it stationary for as long as the officer reasonably requires; and</p> <p>(b) direct the person in control of the vehicle, or in possession of the keys or any other thing necessary to enable the vehicle to be moved, to give the keys or other thing to the police officer; and</p> <p>(c) enter the vehicle, with the use of reasonable force if necessary; and</p> <p>(d) give any other direction or take any other action reasonably necessary for clamping or confiscating the vehicle.</p>	<p><u>Clarification of section</u></p> <p>The wording of the section has caused some confusion to police officers.</p> <p>Proposed re-wording :</p> <p>A police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that a vehicle that has been found by a police officer to have been used in the commission of a prescribed offence may be located.</p> <p><u>Repeal of subsections 37N(11) and (12)</u></p> <p>Currently there are two sections within the <i>Police Offences Act 1935</i> that relate to notices of demand.</p> <p>A notice of demand is a document that is served on the owner or registered operator of a motor vehicle. It is served in situations where the police officer is satisfied that the driver or an occupant of that motor vehicle has committed an offence. The purpose of the notice is to require the owner or registered operator to provide the details of the offending driver or occupant to police so that follow up enquiries can be made with those individuals.</p> <p>Section 37GA provides authority to issue a notice of demand for the commission of any offence. Section 37N(11) and (12) provide a notice of demand for prescribed offences relating to clamping and confiscation.</p> <p>It is proposed to remove section 37N(11) and (12) as a notice for prescribed offences can now be issued under section 37GA.</p>
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(3A) Without limiting subsection (3)(d) in its application to clamping, a police officer may, under that subsection, direct the person in control of the vehicle to ensure that the vehicle is available at a specified time and place so that it can be clamped at that time and place as provided by subsection (2).

(4) A police officer is to move a confiscated vehicle, or arrange for it to be moved, to a holding yard in any way that the police officer considers appropriate.

(5) A person who contravenes or fails to comply with a direction given under subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding 40 penalty units.

(6) A police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that a vehicle that has been found by a police officer to have been used in the commission of a prescribed offence may be located and –

(a) clamp the vehicle; or

(b) confiscate the vehicle and have it moved to a holding yard and held in accordance with this Division.

(7) A police officer may only exercise the authority conferred by subsection (6) within 14 days after the commission of the prescribed offence.

(8) The owner, registered operator or person having charge of a vehicle that has been found by a police officer to have been used in the commission of a prescribed offence must, on the

demand of any police officer, take that vehicle to a place specified by the police officer.

(9) Where a vehicle has been taken to a place specified by a police officer, it is to be held in accordance with this Division.

(10) Where a vehicle has been taken to a place specified by a police officer that is not a holding yard, it may be taken to a holding yard and held in accordance with this Division.

(11) Where any person is alleged to have committed a prescribed offence as the driver of any vehicle –

(a) the owner or registered operator of the vehicle, on demand by any police officer, must give to the police officer all such information as the police officer may require as to the identity and whereabouts of the driver of the vehicle at any time relevant to the charge; and

(b) if any information so required is not known to the owner or registered operator, he or she must as soon as possible with all reasonable diligence (proof of which lies on that person) take steps to obtain the information, and must report to the police officer within 7 days, or sooner if practicable, the result of the steps so taken; and

(c) upon demand being made to any person by a police officer for any information within the person's knowledge as to the identity of the driver of the vehicle, or as to any fact which may lead to the identification of the driver, the person must give the information to the police officer.

(12) If any person fails to comply with subsection (8) or any of the requirements of

	<p>subsection (11) he or she is guilty of an offence.</p> <p>Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.</p>	
	<p>37O. Period of clamping or confiscation for first prescribed offence</p> <p>(1) This section applies if –</p> <p>(a) a police officer finds a person offending in respect of a prescribed offence; and</p> <p>(b) the person has not previously been found offending in respect of a prescribed offence by a police officer.</p> <p>(2) The vehicle used in connection with the prescribed offence may be clamped or confiscated for a period of –</p> <p>(a) 7 days if the prescribed offence is an offence against section 14B or 15B; or</p> <p>(b) 28 days in the case of any other prescribed offence.</p>	<p><u>Clarification of section</u></p> <p>The current legislation requires that a police officer must <u>find</u> a person offending in respect of a prescribed offence before confiscation or clamping can occur. The issue has been raised that it is too difficult to ensure that all <u>previous</u> prescribed offences were found offending by a police officer.</p> <p>It is presumed that if a vehicle is confiscated for a prior offence, then the offender would have been found offending. However, on some occasions complaints can be lodged for offences such as disqualified driving, where the offender has not been found offending by a police officer.</p> <p>Propose amendment of this section along with section 37P and 37Q.</p> <p>Proposed re-wording:</p> <p>37O(1)(b) the person has not previously been charged with a prescribed offence.</p>
	<p>37P. Period of clamping or confiscation for second prescribed offence</p> <p>(1) This section applies if –</p> <p>(a) a police officer finds a person offending in respect of a prescribed offence (referred to in this section as "the new prescribed offence"); and</p>	<p><u>Clarification of section</u></p> <p>The current legislation requires that a police officer must find a person offending in respect of a prescribed offence before confiscation or clamping can occur. The issue has been raised that it is too difficult for a police officer, dealing with an offender on the street, to ensure that all previous prescribed offences were found offending by a police officer.</p> <p>It is presumed that if a vehicle is confiscated for a prior offence, then the offender</p>

	<p>(b) the person has previously been found offending in respect of a prescribed offence by a police officer on one occasion.</p> <p>(2) The vehicle used in connection with the new prescribed offence may be clamped or confiscated for a period of 3 months.</p>	<p>has been found offending for that prior offence. However, on some occasions complaints can be lodged for offences such as disqualified driving, where the offender has not been found offending by a police officer.</p> <p>It is proposed to amend this section along with section 37O and 37Q.</p> <p>Proposed re-wording:</p> <p>37P(1)(b) the person has previously been charged with a prescribed offence on one occasion.</p>
	<p>37Q. Period of clamping or confiscation for third or subsequent prescribed offence</p> <p>(1) This section applies if –</p> <p>(a) a police officer finds a person offending in respect of a prescribed offence (referred to in this section as "the new prescribed offence"); and</p> <p>(b) the person has previously been found offending in respect of a prescribed offence by a police officer on 2 or more occasions.</p> <p>(2) The vehicle used in connection with the new prescribed offence may be clamped or confiscated until the resolution of all existing charges against the person for those prescribed offences.</p>	<p><u>Clarification of section</u></p> <p>The current legislation requires that a police officer must find a person offending in respect of a prescribed offence before confiscation or clamping can occur. The issue has been raised that it is too difficult for a police officer, dealing with an offender on the street, to ensure that all previous prescribed offences were found offending by a police officer.</p> <p>It is presumed that if a vehicle is confiscated for a prior offence, then the offender has been found offending for that prior offence. However, on some occasions complaints can be lodged for offences such as disqualified driving, where the offender has not been found offending by a police officer.</p> <p>It is proposed to amend this section along with section 37O and 37P.</p> <p>Proposed re-wording:</p> <p>37Q(1)(b) the person has previously been charged with a prescribed offence on 2 or more occasions.</p> <p>It is also proposed to remove the word ‘clamping’ from the heading and the section to ensure it only applies to confiscation. In situations where an offender is detected for a 3rd or subsequent offence, the vehicle involved is likely to be subject to a forfeiture application. The vehicle should therefore be confiscated pending this forfeiture application.</p>
	<p>37S. Unlawful interference with, or removal of,</p>	<p><u>Authority to arrest</u></p>

<p>confiscated vehicle</p> <p>(1) A person must not unlawfully interfere with a confiscated vehicle, or take a confiscated vehicle from the person responsible for driving or transporting it to a holding yard.</p> <p>Penalty: Fine not exceeding 20 penalty units.</p> <p>(2) A person must not unlawfully remove a confiscated vehicle from a holding yard.</p> <p>Penalty: Fine not exceeding 40 penalty units.</p> <p>(3) If there is a contravention of subsection (1), or a confiscated vehicle is unlawfully removed from a holding yard, a police officer may seize and move the vehicle to a holding yard.</p> <p>(4) For the purposes of subsection (3), a police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that the vehicle may be located.</p>	<p>An authority to arrest for this offence is already provided within section 55 of the Act. This authority is reliant on a police officer finding the person offending. A police officer will rarely find a person offending against this section, as a vehicle is usually moved to a holding yard by a tow truck driver. In the case of an offence against subsection (2), a person unlawfully removing a confiscated vehicle from a holding yard, it is very unlikely that a police officer will find a person offending.</p> <p>Interference with the process of confiscation, taking a confiscated vehicle from the person responsible for transporting it to a yard, or unlawfully removing a confiscated vehicle from a holding yard are all serious offences. It is considered that this authority to arrest should be provided where the police officer has reasonable grounds to believe that a person has committed this offence. This allows a police officer to arrest a suspect and appropriately investigate the offence.</p> <p>The authority to arrest for 'reasonable grounds to believe' already exist for offences against the following sections:</p> <p>13A Observation or recording in breach of privacy 13B Publishing or distributing prohibited visual recording 13C Possession of prohibited visual recording 21 Prohibited behaviour 21A Unlawfully administering drug 35 Common assault and aggravated assault 37B Motor vehicle stealing</p>
<p>37SA. Unlawful interference with clamped vehicle, &c.</p> <p>(1) This section applies if a vehicle has been clamped by a police officer under this Division.</p> <p>(2) A person must not unlawfully drive or attempt to drive the clamped vehicle.</p> <p>Penalty: Fine not exceeding 40 penalty units.</p> <p>(3) A person must not unlawfully –</p>	<p><u>Authority to arrest</u></p> <p>An authority to arrest should be provided for offences against subsection 37SA (2) & (3) where a police officer has reasonable grounds to believe that such an offence has been committed. This authority should be consolidated in a schedule at the rear of the Act.</p> <p>The offence of unlawfully driving or attempting to drive a clamped vehicle can pose serious risks to public safety. A vehicle that has a steering wheel clamp applied is severely limited in its steering capability, and any attempt to drive would place members of the public, other drivers and pedestrians, at unnecessary risk. A police officer who has reasonable grounds to believe a person has committed this offence should be afforded the authority to arrest.</p>

<p>(a) interfere with the clamping device; or</p> <p>(b) paint or mark the clamping device; or</p> <p>(c) damage the clamping device; or</p> <p>(d) destroy the clamping device; or</p> <p>(e) release or attempt to release the clamping device; or</p> <p>(f) remove or attempt to remove the clamping device from the vehicle.</p> <p>Penalty: Fine not exceeding 40 penalty units.</p> <p>(4) If there is a contravention of subsection (3), a police officer may seize the vehicle and have it moved to a holding yard.</p> <p>(5) For the purposes of subsection (4), a police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects that the vehicle may be located.</p>	<p><u>Seizure of vehicle</u></p> <p>Subsection (4) currently allows for the seizure of a vehicle that contravenes subsection (3). This should be extended to allow for the seizure of a vehicle if a person contravenes subsection (2) – unlawfully driving or attempting to drive a clamped vehicle.</p> <p>Since inception of the legislation there have been people who have driven vehicles when a clamp has been applied, examples include:</p> <ul style="list-style-type: none"> a) a vehicle was driven from the Southern Outlet to Margate within fifteen minutes of the driver being bailed from Hobart; b) a vehicle was observed to be driven around the front yard of a property with the clamp on the vehicle; c) a vehicle was observed by police in the driveway of a house doing a burnout. <p><u>Notification of relocation</u></p> <p>It is sought to provide a subsection within this section to allow an owner to have a clamped vehicle towed to another location. If a vehicle is towed to another location, the owner must notify police of the new location of the clamped vehicle.</p> <p>Where a clamped vehicle is relocated, the owner or registered operator must notify police within 3 days of the new location of the vehicle.</p> <p>This amendment will also require an offence provision for failing to notify police of the relocation of a clamped vehicle.</p>
<p>37T. Notice of clamping or confiscation to be given</p> <p>(1) As soon as reasonably practicable after a vehicle is clamped or confiscated, a police officer is to give written notice of its clamping or confiscation to –</p> <p>(a) the person in control of the vehicle at the time of the relevant prescribed offence ("the offending</p>	<p><u>Authority to issue an amendment notice</u></p> <p>The confiscation and clamping legislation provides different periods of confiscation and clamping depending on how many prescribed offences the offender has previously been charged with.</p> <p>The period of clamping or confiscation for the first prescribed offence is 28 days.</p> <p>The period of confiscation or clamping for the second prescribed offence is 3 months.</p>

<p>driver"); and</p> <p>(b) any registered operator of the vehicle who can be ascertained after reasonable inquiry; and</p> <p>(c) any owner of the vehicle who can be ascertained after reasonable inquiry.</p> <p>(2) The notice is to include the information required under section 37U or 37V.</p>	<p>The period of confiscation or clamping for a third or subsequent offence is until the resolution of all existing charges against the person for the prescribed offences.</p> <p>Where a police officer intercepts a person who has committed a prescribed offence, they must determine how many previous prescribed offences the person has been charged with before they can decide what period of confiscation or clamping may apply to the offender. At times it can be difficult to determine the number of previous charges, as charges are recorded on separate police systems to convictions.</p> <p>The police officer dealing with the offender at the time may not have access to a computer to check the offenders pending charges and will not be able to determine whether any of these charges are for prescribed offences.</p> <p>Problems have been experienced with notices being given out with incorrect confiscation or clamping periods quoted. There are complexities involved when determining the period of confiscation/clamping as the number of prior convictions and pending charges need to be examined in detail.</p> <p>It is proposed that an amendment be provided to allow the period of confiscation or clamping to be amended as a result of an administrative error.</p>
<p>37Y. Application for forfeiture of vehicles</p> <p>(1) This section applies if –</p> <p>(a) a person ("offending driver") has been found offending in respect of a prescribed offence by a police officer; and</p> <p>(b) the vehicle used in connection with the prescribed offence has been clamped or confiscated pursuant to section 37N and, by virtue of the circumstances, section 37Q applies to the clamping or confiscation; and</p> <p>(c) the offending driver has been convicted of the prescribed offence.</p>	<p><u>Offenders driving a third parties vehicle</u></p> <p>Since the inception of the confiscation legislation in 2004, problems have been experienced where offenders have been caught driving another persons vehicle on a third or subsequent offence, and that vehicle is not able to be forfeited. Offenders who drive other people’s vehicles do not suffer the same consequences as an offender who drives his/her own vehicle. The legislation may encourage offenders to use or steal a third parties vehicles rather than use their own.</p> <p>To make the legislation equitable in such a situation, consideration should be given to allowing an application to be made for the forfeiture of a vehicle owned by the offender, or for the court to impose a monetary fine instead of a forfeiture order.</p> <p>For example:</p> <p>A court may, impose a forfeiture order on the offending parties registered vehicle in the event the relevant third or subsequent offence is committed in a third parties</p>

<p>is heard and determined.</p> <p>(8) The Court may, on making an order under subsection (7), impose such conditions on the use of the vehicle as it considers appropriate.</p> <p>(9) If under subsection (7) the Court orders the return or unclamping of the vehicle –</p> <p>(a) its owner must not sell or otherwise dispose of it, or substantially alter it, before the application for the forfeiture order has been determined or withdrawn; and</p> <p>(b) its registered operator must not sell or otherwise dispose of it, or substantially alter it, before the application for the forfeiture order has been determined or withdrawn.</p> <p>Penalty: Fine not exceeding 40 penalty units.</p>	<p>(or any of those persons jointly) may apply to the Court for the unclamping or return of the vehicle <u>under section 37ZD</u>.</p>
<p>37Z. Defence to show no knowledge and consent</p> <p>(1) In a proceeding for forfeiture of a clamped confiscated vehicle, it is a defence for the registered operator or owner of the vehicle to show that the relevant prescribed offence happened without his or her knowledge and consent.</p> <p>(2) If a Court is satisfied that the defence referred to in subsection (1) is established, the Court is to order that the vehicle be unclamped or, as the case may be, returned to the registered operator or owner on payment of the costs payable under section 37X(1).</p>	<p><u>Grammatical alteration</u></p> <p>Subsection 37Z(1) needs to be reworded for grammatical purposes. The word ‘or’ needs to be inserted as follows:</p> <p>(1) In a proceeding for forfeiture of a clamped <u>‘or’</u> confiscated vehicle.....</p>

37ZA. Powers for enforcing forfeiture order

If the Court orders the unclamping or return of a vehicle to its owner or registered operator under section 37Y(7) and later makes a forfeiture order in respect of the vehicle, the Court may, in the forfeiture order, authorise a police officer, without warrant and using such reasonable force, means and assistance as is necessary, to enter any place where the police officer reasonably believes the vehicle may be located and, as the case requires –

- (a) clamp the vehicle; or
- (b) seize the vehicle and move it to a holding yard.

Forfeiture order automatically provides authority for police to retrieve vehicle

When a court makes a forfeiture order for a vehicle, the court may include in that order the authority for a police officer to use reasonable force, means and assistance as is necessary to enter any place where the police officer reasonable believes the vehicle may be located to affect the forfeiture order.

There have been instances where a court has made a forfeiture order for a vehicle without including the authorities for a police officer to retrieve the vehicle if resistance is met from the offender.

A forfeiture order should automatically provide the authority for a police officer to use reasonable force, means and assistance as is necessary, to enter any place where the police officer reasonable believes the vehicle may be located for the purpose of enforcing the forfeiture order.

This will assist with situations where police meet resistance when attempting to enforce a forfeiture order, and will ensure that these important authorities are not inadvertently left out when a forfeiture order is made.

Section to apply to forfeiture in all cases

At the moment this section only provides the authority to recover a vehicle that is unclamped or returned on the grounds of severe hardship under 37Y(7). The authority to recover a vehicle that is forfeited needs to exist in all cases where a forfeiture order is made by the court.

To address both issues outlined, it is proposed to reword this section along the flowing lines:

Where the court orders the forfeiture of a vehicle under section 37Y, this order authorises a police officer, without warrant and using such reasonable force, means and assistance as is necessary, to enter any place where the police officer reasonably believes the vehicle may be located and, as the case requires –

- clamp the vehicle; or
- seize the vehicle and move it to a holding yard.

<p>37ZC. Unclamping or recovery of vehicle clamped or confiscated for prescribed offence</p> <p>(1) This section applies if –</p> <p>(a) a notice of clamping or confiscation has been given under section 37U or 37V in respect of a vehicle; and</p> <p>(b) the authorised period of clamping or confiscation has expired.</p> <p>(2) In the case of a clamped vehicle, an authorised claimant may, subject to the requirements of the notice, unclamp the vehicle by –</p> <p>(a) collecting a key to the clamping device from a police station during normal business hours; and</p> <p>(b) by means of the key, releasing the clamp and removing it from the vehicle; and</p> <p>(c) returning both the clamping device and the key to a police station during normal business hours within 4 days of collecting the key to the clamping device.</p> <p>(3) In the case of a confiscated vehicle, an authorised claimant may, subject to the payment of the costs payable under section 37X(1) and the other requirements of the notice, recover the vehicle by –</p> <p>(a) attending at the relevant holding yard during normal business hours; and</p> <p>(b) removing the vehicle from that holding yard.</p> <p>(4) If, in the case of a clamped vehicle, no person</p>	<p><u>Arrest authority</u></p> <p>This section relates to the unclamping or return of a vehicle after the confiscation or clamping period has expired.</p> <p>37ZC(6) provides offences for :</p> <p>(a) failing to return the key and the clamping device;</p> <p>(b) damaging the key to the clamping device; or</p> <p>(c) lends the key to another person, without the express instruction of an inspector of police or above.</p> <p>Subsection (7) provides an offence for copying or attempting to copy a key to a clamping device.</p> <p>There is currently an authority to arrest for these offences, where a person is found offending. There would be very few circumstances where a police officer would find a person damaging a clamping device or in the process of lending a clamp key to another person. This arrest authority is of no value, and it is proposed to include an arrest authority for these offences where a police officer has reasonable grounds to believe a person has committed an offence against this section.</p> <p>Of course, if this arrest authority is approved, a police officer would still have discretion to deal with an offence by way of summons.</p>
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seeks to have the vehicle unclamped within 10 days after the end of the authorised period of clamping, a police officer may unclamp the vehicle and retrieve the clamping device.

(5) For the purpose of subsection (4), the police officer may, without warrant and using such reasonable force, means and assistance as is necessary, enter any place where the police officer reasonably suspects the clamped vehicle may be located.

(6) A person who collects a key to a clamping device as provided by subsection (2) is guilty of an offence if he or she –

(a) fails, without reasonable excuse, to return the key and the clamping device as provided by that subsection; or

(b) damages the key or causes or allows another person to damage the key; or

(c) except on the express instructions of a police officer of or above the rank of inspector, lends the key to another person.

Penalty: Fine not exceeding 40 penalty units.

(7) A person must not, except on the express instructions of a police officer of or above the rank of inspector, copy or attempt to copy a key to a police clamping device.

Penalty: Fine not exceeding 40 penalty units.

(8) In this section –

"authorised claimant", of a clamped or confiscated

<p>vehicle, means –</p> <p>(a) the offending driver; or</p> <p>(b) the owner or registered operator of the vehicle; or</p> <p>(c) a person who has the written authority of the owner or registered operator of the vehicle;</p> <p>"police clamping device" means a clamping device used by the Police Service for the purposes of this Division.</p>	
<p>37ZD. Unclamping or recovery of vehicle clamped or confiscated for second or subsequent prescribed offence</p> <p>(1) If a vehicle is clamped or confiscated by a police officer under this Division, the person in control of the vehicle at the time of the prescribed offence, a registered operator or an owner may apply to the Court to have the vehicle unclamped or for the return of the vehicle.</p> <p>(2) If the Court is satisfied that the clamping or confiscation of a vehicle is causing, or will cause, severe hardship to a person, the Court may order that the vehicle be unclamped or returned to the registered operator or owner.</p> <p>(3) The Court may impose such conditions on an order under subsection (2) as it considers appropriate in the circumstances including conditions on the subsequent use of the vehicle.</p> <p>(4) A person must not substantially alter, sell or otherwise dispose of a vehicle unclamped or returned under subsection (2) until the charge</p>	<p><u>Confusion between section 37ZD and 37ZF</u></p> <p>This section provides for a person to apply for the return or unclamping of their vehicle during the period of clamping or confiscation. This section is currently being confused with section 37ZF, section 37ZF should be reworded to clarify the difference in these sections.</p> <p><u>Re-word subsection (4) in line with amendments to section 37Y</u></p> <p>It is proposed to remove subsections 37Y(7), (8) and (9). Currently these subsections provide unnecessary duplication with section 37ZD. Section 37ZD allows an owner or registered operator to apply for return of vehicle or unclamping of a vehicle as a result of severe hardship. This application under 37ZD can be made whilst the court is determining forfeiture under section 37Y.</p> <p>In line with amendments proposed for section 37Y, subsection (4) should be reworded as follows:</p> <p>(4) A person must not substantially alter, sell or otherwise dispose of a vehicle unclamped or returned under subsection (2) until the charge giving rise to the clamping or confiscation is determined, or a forfeiture order has been determined.</p> <p><u>Offence provision for contravening a court order</u></p> <p>An offence provision should also exist for a person who contravenes a condition of</p>

	<p>giving rise to the clamping or confiscation is determined.</p> <p>Penalty: Fine not exceeding 40 penalty units.</p>	<p>a court order as provided under subsection (3). Where a police officer has reasonable grounds to believe that a person has contravened a court order, there should be an authority to arrest. This arrest authority is no different to that already provided for an offender who breaches their court ordered bail.</p>
	<p>37ZE. Clamped or confiscated vehicle may be unclamped or returned in certain circumstances</p> <p>(1) If a police officer of or above the rank of inspector considers it necessary or desirable in the circumstances, he or she may authorise the immediate unclamping of a clamped vehicle or the immediate return of a confiscated vehicle on payment of the costs payable under section 37X(1), as determined by that police officer.</p> <p>(2) If a clamped or confiscated vehicle was, at the time of the prescribed offence, stolen or was being hired, the vehicle must be unclamped or returned to the registered operator or owner as soon as reasonably practicable during normal business hours.</p>	<p><u>Amend authority to release by a police officer of or above the rank of Inspector</u></p> <p>This section should be amended to allow the release of a vehicle by an Inspector or above only where an operational or administrative error has occurred during the confiscation or clamping.</p> <p>This section was originally inserted to allow an Inspector to release a vehicle where an error had been made during the confiscation process. For example – the vehicle had been confiscated for an offence that did not provide authority to confiscate.</p> <p>Currently this section requires less scrutiny to be applied to the release of the vehicle by an Inspector than by a court. An Inspector must only consider it ‘necessary or desirable in the circumstances’. A court must consider that the confiscation or clamping will ‘cause severe hardship to a person’.</p> <p>A court can rightly impose conditions on the early release of a vehicle (section 37ZD). These conditions are enforceable as they are court ordered. Any conditions imposed by an Inspector upon the release of a vehicle are not enforceable.</p>
	<p>37ZF. Unclamping or return of vehicle in case of severe hardship</p> <p>(1) If the Court is satisfied that the clamping, confiscation or forfeiture of a vehicle will cause severe hardship to a person, the Court may, instead of ordering the clamping, confiscation or forfeiture, order that –</p> <p>(a) the vehicle be unclamped or returned to the registered operator or owner or to the offending</p>	<p><u>Amendment to cease confusion with section 37ZD</u></p> <p>This section was originally inserted to deal with the situation where a person is convicted and the court is determining whether to order the forfeiture of the vehicle. The court can return the vehicle if it would cause severe hardship, and can then impose community service as opposed to the forfeiture of the vehicle.</p> <p>It needs to be reworded to cease confusion with section 37ZD.</p> <p>It is proposed to re-word this section to read: ‘Unclamping or return of vehicle in case of severe hardship upon conviction’</p>

	<p>driver; and</p> <p>(b) the person convicted of the prescribed offence perform not more than 240 hours of community service.</p> <p>(2) If the Court makes an order under subsection (1), the vehicle must be unclamped or returned as soon as reasonably practicable.</p>	
	<p>37ZJ. Voluntary transfer of ownership of vehicle to Crown</p> <p>(1) If a clamped or confiscated vehicle is not subject to any interest, charge, lien or encumbrance, the owner may agree to transfer ownership of the vehicle to the Crown at the end of the authorised period of clamping or confiscation.</p> <p>(2) The agreement is to be written and witnessed by a person who may witness a statutory declaration.</p> <p>(3) If the Crown agrees in writing to the transfer of the vehicle –</p> <p>(a) the vehicle becomes the property of the Crown; and</p> <p>(b) the Commissioner may sell or dispose of the vehicle and anything in it or on it in a way the Commissioner considers appropriate; and</p> <p>(c) before the vehicle is transferred, the owner or a person authorised by the owner may remove any contents from the vehicle that are not part of the vehicle or attached to it.</p>	<p><u>Voluntary transfer of ownership at any stage of confiscation or clamping</u></p> <p>Currently this section allows the owner to voluntarily transfer the ownership of a clamped or confiscated vehicle to the Crown at the end of the authorised period of clamping or confiscation.</p> <p>A lot of the vehicles that are clamped or confiscated are in poor condition and the owner may leave it on the side of the road for months, or may remove any valuables when it is confiscated and then will not want to come and pick it up.</p> <p>An amendment to this section should allow a clamped or confiscated vehicle to be transferred at any time during the authorised period of clamping or confiscation. This will prevent large numbers of vehicles being held in police compounds or being clamped and left on the side of the road.</p>

	<p>37ZK. Clamped or confiscated vehicle not to be sold or disposed of</p> <p>A clamped or confiscated vehicle must not be sold or otherwise disposed of during the authorised period of clamping or confiscation or whilst it is subject to a Court order under this Act.</p>	<p><u>Offence provision</u></p> <p>Evidence has been provided to indicate that this section requires an offence provision.</p> <p>There have been four occasions in the Southern District alone where owners have sold their vehicles during a clamping period:</p> <ol style="list-style-type: none"> 1. a female owner sold her vehicle to defacto partner to avoid forfeiture; 2. a vehicle was sold whilst clamped to an unknown person and the vehicle and clamp have not been located; 3. a vehicle clamp has been retrieved, however the vehicle has been sold to unknown person and cannot be located; 4. clamped vehicle burnt out to avoid forfeiture. <p>Vehicles that are clamped are currently being sold, damaged or destroyed to avoid forfeiture. An offence provision for this section should contain a substantial penalty to deter offenders from this type of action.</p>
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PART V – OFFENCES INVOLVING DISHONESTY

	Current legislation	Proposed amendment and rationale
	<p>39A. Offences in relation to sheep, cattle, and other stock</p> <p>(1) A person shall not –</p> <p>(a) receive or have in his possession the untanned skin of any sheep or ox from which a registered brand or prescribed brand within the meaning of the <i>Animal (Brands and Movement) Act 1984</i> has been cut away, or on which such a brand has been obliterated by cutting or alteration, unless the person is authorised under that Act to receive or possess such a skin;</p> <p>(b) have in his possession or upon his premises the</p>	<p><u>PROPOSE REPEAL OF SECTION</u></p> <p>This section deals with unlawful possession of the untanned skin, or the carcass of any sheep or ox. It also has a provision relating to possession of stock that is reasonably believed to be stolen. This section has a search provision at section 57B – Search for and detention of skins suspected to be stolen.</p> <p>These offence provisions are outdated, it relates specifically to unlawful possession and stolen property, which is already provided for in section 39. It does not make sense to have different sections dealing with different types of property. Cattle, sheep, pigs etc and skins are all a form of property.</p>

<p>skin of any sheep or ox or the carcase or any part, exceeding 3 kilograms in weight, of the carcase of any sheep or ox for the possession of which, or for the presence of which upon his premises, as the case may be, he cannot give a satisfactory account; or</p> <p>(c) have in his possession or under his control any stock which is reasonably believed to have been stolen, and for his possession or control of which he cannot give a satisfactory account.</p> <p>(2) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.</p>	
<p>40. Possession and sale of shipwrecked property</p> <p>(1) A person shall not –</p> <p>(a) be found in possession of;</p> <p>(b) knowingly have on his premises; or</p> <p>(c) sell or offer or expose for sale –</p> <p>any property whatever belonging to any vessel in distress or wrecked, stranded, or cast on shore, unless he satisfies the court before which he is charged with so doing that he lawfully came by such property.</p> <p>(1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable</p>	<p><u>PROPOSE REPEAL OF SECTION</u></p> <p>This section overlaps with section 39 (Possession of stolen property) and section 43 (Found property) of the <i>Police Offences Act 1935</i>. Where a person takes or finds property from a shipwreck, it may be dealt with as either stolen property, or found property that the person has failed to hand in to police.</p> <p>As stated above for section 39A, it does not make sense to have different offences depending on the type of property that is being taken by a person or found in the possession of a person.</p>

	<p>on summary conviction to imprisonment for a term not exceeding 6 months.</p> <p>(2) If any person offers or exposes for sale any property whatsoever which has been unlawfully taken, or is reasonably supposed to have been so taken, from any vessel in distress, or wrecked, or stranded, or cast on shore, any police officer may lawfully seize the same, and shall, with all convenient speed, deliver the same, or give notice of seizure thereof, to a justice; and, if the person who has offered or exposed the property for sale, being summoned before the court, does not satisfy the court that he came lawfully by the same, he may be ordered to pay the cost, if any, of such seizure and delivery in addition to any penalty imposed upon him.</p>	
	<p>New Offence – Stealing</p>	<p><u>Provide a parallel offence of Stealing</u></p> <p>Currently the crime of Stealing is provided for in section 234 of the <i>Criminal Code Act 1924</i>.</p> <p>Discussions have occurred with stakeholders concerning a lesser offence of Stealing being provided within the <i>Police Offences Act 1935</i>, which will then allow options for an infringement notice to be issued for this offence. This offence should allow for stealing matters up to a value of \$20,000. Above this value, people would be charged under the <i>Criminal Code Act 1924</i>.</p> <p>It is proposed to have the ability to issue an infringement notice to offenders who commit the offence of Stealing where the value of the property does not exceed a prescribed amount. The prescribed amount in the regulations is proposed to be \$500. Such an infringement notice cannot be provided for within the <i>Criminal Code Act 1924</i>.</p> <p><u>Justices Act 1959</u></p> <p>As indicated Stealing is a crime, provided for in section 234 of the <i>Criminal Code Act 1924</i>. There is, however, the ability for this crime to be heard summarily</p>

(before a magistrate) where the value of the property does not exceed \$5000, or if the value of the property is between \$5000 and \$20,000 and the defendant elects to have the matter heard summarily. This is provided with section 71 of the *Justices Act 1959*.

With the proposal to introduce the new lesser offence of Stealing set at \$20,000 or a lesser value, it provides a clear definition of the difference between the offence and crime by a monetary value. As a defendant is already allowed to elect summary hearing for value of property up to \$20,000, then this amount should be set as the limit for the new proposed offence within the *Police Offences Act 1935*.

This would provide easy interpretation of both stealing provisions, allowing a police officer to easily differentiate which Act they were to use when dealing with specific cases of stealing.

This proposal however would require an amendment to the *Justices Act 1959*, which currently has provisions relating to this in section 71 – Petty crimes triable summarily.

Infringement Notices

New South Wales Police currently issue infringement notices for the offence of stealing, where the offence is for property valued at less than \$300. The ability to do this is provided within the New South Wales *Criminal Procedure Act 1986*, which provides that police may issue penalty notices for certain offences (section 336) which are prescribed in the regulations. The Criminal Procedure Regulations prescribe penalty notice offences from the *Crimes Act 1900* and the *Summary Offences Act 1988*. These offences are listed in Schedule 3 of the regulations.

Tasmania does not have a *Criminal Procedure Act* similar to NSW, therefore this amendment option is not available.

Victoria Police is trialling infringement notices for the offence of 'shop theft'. The trial period for this offence will end in June 2012.

This proposed amendment will require stringent departmental policy to ensure infringement notices are only issued in certain circumstances, including circumstances where an admission is obtained from an offender and there is a prima facie case for stealing.

		<p>It is proposed that the regulations specify the penalty unit for first and second offences. Offenders who have been detected for a third or subsequent offence should not be eligible for an infringement notice.</p> <p><u>Authority to release a person from custody for purpose of issuing infringement notice</u></p> <p>The intention is that a person charged with this offence may still be arrested, or if they wish, freely accompany police to the station. The person will be interviewed, charged, processed, and then discharged. The amendment will require an authority to release a person from custody for the purpose of issuing an infringement notice as an alternative means of proceeding. The authority to release a person for this purpose should only be undertaken by a Custody Officer, who will also be the officer who issues the infringement notice.</p> <p><u>Infringement notices will not be issued to a youth or repeat offenders</u></p> <p>Youths should not be eligible for an infringement notice and should be dealt with as per the <i>Youth Justice Act 1997</i>.</p> <p>The issue of infringement notices, where a person has more than one prior conviction for stealing, is not appropriate. The legislation should provide that infringement notices must not be issued to a person who has 2 or more convictions for stealing.</p>
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PART VA – OFFENCES RELATING TO COMPUTERS

There are no amendments proposed for this Part.

PART VI – MISCELLANEOUS OFFENCES

DIVISION 1 - BOGUS ADVERTISEMENTS AND FALSE NOTICES

	Current Legislation	Proposed amendment and rationale
	<p>44A. False reports to police</p> <p>(1) A person shall not, falsely and with knowledge</p>	<p><u>Extension of section to cover other false reports</u></p> <p>In April this year a man reported, via a marine radio to Coast Radio Hobart, that his</p>

<p>of the falsity of his statement, represent to any police officer or any person employed in the Department that any act has been done, or that any circumstances have occurred, which act or circumstances as so represented are such as reasonably call for investigation by the police.</p> <p>(1A) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months.</p> <p>(2) In any proceedings instituted against any person under this section, the court, on the application of the complainant, may order that, in addition to or instead of a penalty, the offender shall pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by reason of such offence.</p> <p>(3) Any amount received by the complainant under this section shall be paid by him into the Consolidated Fund.</p> <p>(4) This section shall not be held to restrict the operation of any other Act or rule of law.</p>	<p>boat was taking on water at Adventure Bay on the southern side of Bruny Island. This was subsequently reported to police to investigate, who responded by deploying search and rescue. A total of six aircraft and eight vessels were involved in the search, and the expenditure of significant DPEM resources that cannot be retrieved. This distress call was later found to be a hoax.</p> <p>This recent Bruny Island case illustrates an incident that involved a false report that was investigated by police. This case involved a fake emergency call being made via a marine radio to Coast Radio Hobart. The call was then passed on to police to investigate, however because the caller did not directly make the fake emergency call to police, this section does not apply.</p> <p>This type of situation presents an indirect false report to police. The person making the report ought to be aware that the fake emergency will be passed on to police to investigate.</p> <p>This section should be amended to cover situations where a report is made to any person, and the circumstances of such report are likely to be passed on and investigated by police.</p> <p><u>Inadequate penalty</u></p> <p>The current penalty for this offence is 10 penalty units (\$1300) or imprisonment for a term not exceeding 6 months.</p> <p>In examining other jurisdictions legislation relating to false reports, it is clear that the penalty in Tasmania is inadequate.</p> <p>For example:</p> <p>In Victoria, the penalty for False Report to Police (s 53 of the <i>Summary Offences Act 1966</i>) is 120 penalty units or imprisonment for 1 year.</p> <p>In South Australia the penalty for False Report to Police (s 62 of the <i>Summary Offences Act 1953</i>) is a maximum fine of \$10,000 or imprisonment for 2 years.</p> <p>In the Northern Territory, False Report to Police (s 68A of the <i>Summary Offences Act</i>) carries a maximum penalty of \$11,000 or imprisonment for 2 years.</p> <p>In the Australian Capital Territory, the charge of Giving False or misleading</p>
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		<p>information (s338 of the <i>Criminal Code Act 2002</i>) carries a maximum penalty of 100 penalty units, imprisonment for 1 year or both.</p> <p>Western Australia have the charge of Creating a false belief (s171 of the <i>Criminal Code Act Compilation Act 1913</i>) which has a maximum penalty of a fine of \$12,000 or imprisonment for 1 year.</p> <p>A penalty increase is recommended for this section. An appropriate penalty is deemed to be 100 penalty units or imprisonment for 12 months, or both.</p>
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DIVISION III - MOTOR VEHICLE RACES AND RELIABILITY TRIALS

	Current legislation	Proposed amendment and rationale
	<p>49. Power of Commissioner of Police to grant permit</p> <p>(1) The Commissioner may grant to any person a permit for the holding of any motor-vehicle race, and every such permit—</p> <p>(a) shall specify the day and hours on and between which respectively, and the place in or upon which, the race may be held; and</p> <p>(b) may impose such conditions as to the holding thereof as the Commissioner shall determine and specify in the permit.</p> <p>(2) If such permit is granted in respect of any public street within the meaning of the <i>Traffic Act 1925</i>, the rate or speed of any motor-vehicle competing or taking part in any race to be held under the permit may, notwithstanding any law to the contrary, exceed, to the extent mentioned in the permit, the limit prescribed by such law.</p> <p>(3) Where the Commissioner grants a permit to a</p>	<p><u>Current prescribed fee inadequate</u></p> <p>The current fee for a motor vehicle race permit is prescribed at \$13.60. Advice from financial services is that this fee does not adequately cover the costs involved to assess and issue a permit.</p> <p>The process of providing approval of such a permit includes assessment of public safety issues, where and when road closures will take place, resource and staffing requirements for such closures, along with any other legislative provisions that will apply to the motor vehicle race. There is a significant resource implication from processing these permits.</p> <p>A more suitable fee is determined to be \$100. This amendment will be required to be made to the <i>Police Offences Regulations 2007</i>.</p>

person under this section, that person shall pay to the Commissioner the prescribed fee.

(3A)

(4) No permit granted under this section authorising the holding of a motor-vehicle race is of any effect unless there is in force in relation to that race a policy of insurance that complies with the requirements of this section.

(5) Subject to subsection (6), in order to comply with the requirements of this section a policy of insurance must be a policy that –

(a) the Motor Accidents Insurance Board confirms is issued by an insurer, or arranged by a broker, authorised by the Australian Prudential Regulation Authority to provide, or renew, insurance in Australia; and

(b) provides for insurance covering liability in respect of any person taking part in the motor-vehicle race jointly and each of them severally (including liability for costs) that may be incurred by any such person, whether jointly with any other person or severally –

(i) in respect of the death or bodily injury to any person caused by or arising out of the use of a motor-vehicle which is competing or taking part in that motor-vehicle race; and

(ii) where the race takes place on any public road or thoroughfare, insurance covering damage or injury to any property other than a motor-vehicle competing or taking part in a race arising from such use.

(6) A policy of insurance issued for the purposes of subsection (5) shall not be required to provide for –

(a) the payment by the insurer of any sum exceeding –

(i) the prescribed amount in respect of any claim in respect of the death of, or bodily injury to, any one person; or

(ii) the prescribed amount in respect of all claims arising out of the same accident in respect of the death of, or bodily injury to, more persons than one; or

(iii) the prescribed amount in respect of all claims arising out of the same accident in respect of damage or injury to property; or

(b) any contractual liability –

but shall provide for the payment of funeral expenses of any person dying as the result of any accident to which the policy relates.

(7) Notwithstanding any other law or rule of law to the contrary, an insurer who issues a policy of insurance under or for the purposes of this section is liable to indemnify any person taking part in the motor-vehicle race, and, on his death, his personal representatives, in respect of any liability incurred by that person which the policy purports to cover.

(8) Section 2 (3) of the *Motor Accidents (Liabilities and Compensation) Act 1973* has effect in relation to this section as it has effect in relation to that Act.

(9) The Motor Accidents Insurance Board is not liable for any action, liability, claim or demand in

	respect of any act or omission done in good faith under subsection (5).	
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DIVISION IIIAA - ACTIVITIES ON PUBLIC STREETS

There are no amendments proposed for this Division

DIVISION IIIA - PUBLIC ENTERTAINMENTS

There are no amendments proposed for this Division

PART VII - POWERS OF POLICE OFFICERS AND OTHER PERSONS

DIVISION 1 - ARREST

	Current legislation	Proposed amendment and rationale
	<p>55. Arrest</p> <p>(1) Any police officer may arrest, without warrant, any person found offending against any of the provisions of –</p> <p>(a) Division I of Part II;</p> <p>(b) Parts III to V; or</p> <p>(c) section 15B, 15C, 15D or 15F; or</p> <p>(ca) section 20K; or</p> <p>(d) section 37J(1).</p> <p>(2) Where a police officer is empowered to arrest any such person, it is the duty of such officer to</p>	<p>Consolidation of authorities</p> <p>This section creates powers of arrest without warrant for many, but not all of the summary offences contained within the Act. The authorities to arrest in this section are where a person is found offending.</p> <p>The way in which section 55 is currently constructed means that checking and cross checking of different Parts, Divisions and sections of the Act and also relevant provisions in the <i>Justices Act 1959</i> and the <i>Youth Justice Act 1997</i> is required to determine whether an authority to arrest is applicable.</p> <p>Subsection (3) causes confusion, as it allows an authority to arrest for any offence, provided that one of the conditions in (3)(a) – (e) apply. Subsection (4) also affects the arrest authority provided by s 55(3), providing broader determination of whether the conditions in subsection (3)(a) – (e) are present.</p> <p>Subsection (5) is provided to assist in the interpretation of ‘found offending’, which applies to all authorities to arrest under section 55. The intent if this subsection is to broaden the arrest authority beyond situations where a person is immediately</p>

<p>exercise such power unless he has reasonable grounds for believing that the purposes of this Act, or of the Act conferring such power, as the case may be, will be adequately served by proceeding against the offender by summons.</p> <p>(2A) A police officer may arrest, without warrant, any person found offending against section 14A.</p> <p>(2B) Subject to subsection (2C), a police officer may arrest, without warrant, any person whom he believes on reasonable grounds to be on any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.</p> <p>(2C) The power of arrest conferred by subsection (2B) is not exercisable –</p> <p>(a) unless the police officer has previously requested the person in relation to whom he seeks to exercise the power to leave the land, building, structure, premises, aircraft, vehicle or vessel concerned and that person has refused or failed to comply with the request or, having complied with the request, returns to the land, building, structure, premises, aircraft, vehicle or vessel concerned within 14 days after so complying without the consent of the owner or occupier; or</p> <p>(b) if the police officer has reasonable grounds for believing that that person has some reasonable or lawful excuse for being on that land, building, structure, premises, aircraft, vehicle or vessel.</p> <p>(2D) A police officer may, without warrant, arrest any person whom the police officer has reasonable grounds for believing has committed an offence</p>	<p>found committing an offence to those situations where it is believed that he or she has committed an offence.</p> <p>The Act is currently confusing, which causes risk that arrest authorities may be used unlawfully.</p> <p>All arrest provisions – found offending and reasonable grounds, need to be consolidated and clarified in a schedule that is easy to reference. When legislation is clearly organised, and there is one reference point for authorities, a desirable consequence is a reduction in disputes over the source and legitimacy of an authority.</p>
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under section 13A, 13B, 13C, 21, 21A or 35.

(2E) A police officer may, without warrant, arrest a person to facilitate the making of an application for a restraint order under Part XA of the *Justices Act 1959* or a family violence order, if the police officer has reasonable grounds for believing—

(a) that the person has intimidated another person; and

(b) that the intimidation is likely to continue and give rise to an assault.

(2F) For the purposes of subsection (2E), intimidation may be verbal, physical or both verbal and physical.

(2G) A police officer, without warrant, may arrest any person the police officer has reasonable grounds for believing has committed an offence under section 37B.

(3) Any person may arrest, without warrant, any person found offending against any provision of this Act if such offence involves –

(a) substantial injury to the person of another;

(b) serious danger of such injury;

(c) loss of any property of the person so arresting, or of any person by whom he is authorized to effect the arrest; or loss of any property of which the person arresting has charge;

(d) serious injury to any property; or

<p>(e) injury to the property of a public authority.</p> <p>(3A) The power of a police officer to arrest a person under this section is subject to the limits imposed on the power of arrest by section 24 of the <i>Youth Justice Act 1997</i>.</p> <p>(4) For the purposes of this section, an offence shall be deemed to involve any of the matters specified in subsection (3) if the person arresting has reasonable grounds for believing that such matter has been, or will be, the consequence of any act of the offender in committing such offence.</p> <p>(5) For the purposes of this section, a person is said to be "found offending" if he does any act, or makes any omission, or conducts or behaves himself, and thereby causes a person who finds him reasonable grounds for believing that he has, in respect of such act, omission, or conduct, committed an offence against this Act.</p>	
<p>55A. Names and addresses of offenders</p> <p>(1) Where a police officer becomes aware that, or has reasonable grounds for believing that, a person has committed or is committing an offence against this Act, he may require that person to state his name and the address of his place of abode, and a person who fails or refuses to comply with such a requirement or, in response to such a requirement, states a name or address that is false, is guilty of an offence and is liable on summary conviction to a penalty not exceeding 2 penalty units.</p> <p>(2) A police officer making a requirement under subsection (1) may arrest, without warrant, a person who fails or refuses to comply with that requirement or who, in response to the</p>	<p><u>Authority to request name and address where a police officer becomes aware that, or has reasonable grounds to suspect that a person is likely to commit an offence</u></p> <p>This section provides an authority for a police officer to request a persons name and address if they have reasonable grounds for believing that a person has committed or is committing an offence against this Act.</p> <p>Section 15B allows an officer to direct a person to leave a public place if they believe it is likely that the person may commit an offence as per subsection 15B(1)(a).</p> <p>Currently there is no authority for a police officer to request the details of the person that is given a direction in this situation, therefore making it difficult to determine if that person later breaches the direction. An authority to request a name in this situation (where a person is likely to commit an offence) should be provided.</p> <p>In practice police will currently obtain a physical description and have had situations</p>

	<p>requirement, gives a name or address that the police officer has reason to believe is false.</p>	<p>where offenders have changed clothes and returned to the exclusion area in defiance of the police direction. The ability to require a persons name and address in these types of situations may deter the offender from returning to the exclusion area as their details are known and circulated to other police working at the time. This authority would be restricted to the application of section 15B.</p> <p><u>Consolidation of arrest authorities</u></p> <p>The arrest authority for this section needs to be consolidated with other arrest authorities. It is proposed to have a schedule at the rear of the Act that provides all arrest authorities under this Act.</p>
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DIVISION II - ENTRY AND SEARCH

	Current legislation	Proposed amendment and rationale
	<p>57. Power of police officers to enter certain places</p> <p>(1) Any police officer of the rank of commander, inspector, or sergeant of police shall have power at any time to enter any building or part of a building, or other place, of the following description, namely:</p> <p>(a) Any place used for the purpose of any public entertainment, or for any public show or exhibition;</p> <p>(b) Any singing or dancing saloon, oyster-store, fishshop, restaurant, tea-room, or other such place;</p> <p>(c) Any house or building in which any alcoholic liquor is sold, whether such house or building is licensed or not;</p> <p>(d) Any house usually frequented by thieves or disorderly persons;</p> <p>(e) Any building or part of a building which is kept or used for a purpose in respect of which a licence</p>	<p><u>Consolidation of authorities</u></p> <p>Currently the Act provides search authorities for some, but not all, sections of the Act. These authorities are scattered through the Act in the relevant section, or provided at the rear of the Act and referenced to a particular section. This creates confusion, and leads to checking and cross checking different sections of the Act.</p> <p>This section should be consolidated with all other search provisions within the Act. A section at the rear of the Act should clearly indicate when a police officer has the authority to search a person, place, motor vehicle, vehicle, vessel etc.</p>

<p>is required by the provisions of any Act; or</p> <p>(f) Any vessel or aircraft not employed in His Majesty's service.</p> <p>(2) The powers conferred by subsection (1) on the officers therein specified may be exercised by any police officer who is authorized in that behalf either specially or generally by the Commissioner or a police officer of the rank of commander.</p> <p>(3) The keeper of any such building or other place, as aforesaid, or any servant or other person having the charge thereof, or the master or other person having charge of such vessel or aircraft, shall admit such police officer of the rank of commander, inspector, sergeant, or police officer when required.</p> <p>(4) A person who fails to comply with subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding one penalty unit.</p>	
<p>57A. Searching of hawkers, &c.</p> <p>(1) Any police officer may search a hawker's pack if he has reason to suspect that it contains goods which are stolen or which it is unlawful for the hawker to sell.</p> <p>(2) For the purposes of this section –</p> <p>"hawker" includes pedlar; "pack" includes any vehicle or container used by a hawker to carry the goods he hawks.</p>	<p><u>PROPOSE REPEAL OF SECTION</u></p> <p>This section provides a search provision for stolen goods relating to hawkers. The terminology 'hawker' is not commonly used in today's society, and neither is the practice of 'hawking' which is defined as:</p> <p>'to offer for sale by outcry in a street'.</p> <p>Historically this would have been an issue for the police and public, however it is no longer contemporary.</p>

<p>57B. Search for and detention of skins suspected to be stolen</p> <p>(1) A police officer who has reasonable ground to believe that the skin of any sheep or ox, which is alleged to have been stolen, may be found in or upon any premises, vehicle, vessel, or packhorse, may, without further authority than this section, search those premises, or that vehicle, or vessel, or the pack upon that horse for the skin.</p> <p>(2) If, upon any such search, any such skin is found, the police officer may detain it.</p> <p>(3) Every skin so detained shall be brought as soon as may be before a court of petty sessions or a magistrate, and—</p> <p>(a) where proceedings are taken against any person in respect of an offence relating to the skin, the justices adjudicating thereon, if sufficient evidence for that purpose is available, shall determine the ownership of the skin and make such order for its disposal as they may deem just; and</p> <p>(b) in any other case the justices may make such order for the advertising of the detention and notice to any person claiming the skin as they may think necessary, and, if within the time limited by the order, the owner of the skin does not claim it as directed by the order, and establish his ownership to the satisfaction of the justices, the skin shall be forfeited to His Majesty and may be sold as the justices may direct.</p>	<p><u>PROPOSE REPEAL OF SECTION</u></p> <p>This section relates to section 39A - Offences in relation to sheep, cattle and other stock. Section 39A provides that a person is not to receive or have possession of any untanned skin of any sheep or ox from which a registered or prescribed brand has been cut away.</p> <p>It is proposed to remove section 39A, therefore this section should also be removed.</p>
<p>58. Search of persons for poison</p> <p>(1) Any police officer, who has reasonable grounds for believing that any person has in his possession</p>	<p><u>Consolidation of authorities</u></p> <p>Currently the Act provides search authorities for some, but not all, sections of the Act. These authorities are scattered through the Act in the relevant section, or</p>

<p>any poisonous thing contrary to the provisions of section 19, may search such person, and may seize and detain any such poisonous thing which he may find upon such search.</p> <p>(2) Such police officer may require any person so found in possession of any such poisonous thing to tell his full name and place of abode, and, in case such person fails to tell his real name and place of abode or gives such general description of his place of abode as is illusory for the purposes of discovery, the police officer may arrest such person and cause him to be brought as soon as conveniently may be, before a justice to be dealt with according to law.</p>	<p>provided at the rear of the Act and referenced to a particular section. This creates confusion, and leads to checking and cross checking different sections of the Act.</p> <p>This section should be consolidated with all other search provisions within the Act. A section at the rear of the Act should clearly indicate when a police officer has the authority to search a person, place, motor vehicle, vehicle, vessel etc.</p>
<p>58A. Power to search for liquor</p> <p>(1) Where a police officer has reasonable grounds to suspect that a person is contravening or is about to contravene section 25, the police officer may –</p> <p>(a) detain and search that person; and</p> <p>(b) seize any liquor found in the possession of that person.</p> <p>(2) A police officer may at any time dispose of any liquor seized under subsection (1) that is in an opened or unsealed container.</p> <p>(3) If any liquor seized under subsection (1) is in an unopened or sealed container, the person from whom the liquor was seized is entitled to have the liquor returned to him or her on request made at least 2 days and not more than 7 days after the liquor was seized.</p> <p>(4) A request under subsection (3) is to be made to a police officer at the police station nearest to the place where the liquor was seized or at such other</p>	<p><u>Search authority for all liquor offences</u></p> <p>The authority to search under this section relates only to liquor offences provided under section 25 of the Act. The Act provides other liquor related offences under sections 13(2A), (2B) and (2C) as follows:</p> <p>13(2A) A person shall not, in a public place, supply liquor to a person under the age of 18 years.</p> <p>13(2B) A person under the age of 18 years shall not consume liquor in a public place.</p> <p>13(2C) A person under the age of 18 years shall not have possession or control of liquor in a public place.</p> <p>Section 13(3B) allows a police officer to seize liquor in the possession of a person if the officer reasonably believes that the person is committing an offence against sections 13(1), 13(2), 13(2A), 13(2B), 13(2C) and 13(3). This seizure authority currently exists without any authority to search for such liquor. These sections therefore require an authority to be able to detain and search for the liquor, as the person may have the liquor concealed in a bag, pocket or somewhere else on their person.</p> <p>Such concealment of liquor is a regular occurrence when people are approached by police in public places. In fact, it is a regular occurrence for people to carry</p>

<p>police station as a police officer may reasonably direct.</p> <p>(5) Where a request is made under subsection (3), a police officer must make the liquor to which the request relates available for collection by the person who made the request on the next day when the relevant police station is open to the public and during the hours when it is so open or at such other time as may be agreed.</p> <p>(6) A police officer may dispose of any liquor referred to in subsection (3) that is not the subject of a request under that subsection or that is not collected as mentioned in subsection (5).</p>	<p>liquor in soft drink containers to avoid detection by police.</p> <p>It is proposed to consolidate all liquor offences within one section of the Act, which will assist in providing consistency when determining search and seizure authorities, which should be provided for all liquor related offences.</p> <p>Section 25(5) provides that a person who is in a stationary motor vehicle in a public street or in a prescribed public place is taken to be in the public street or in the prescribed public place.</p>
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DIVISION IV - LIQUOR INFRINGEMENT NOTICES

Current legislation	Proposed amendment and rationale
<p>61. Liquor infringement notices</p> <p>(1) Where a police officer is satisfied that a person has committed an offence against section 25 or section 26, he or she may serve on that person liquor infringement notice in respect of that offence by delivering it to that person or by sending it to that person by post.</p> <p>(2) A liquor infringement notice is to be in accordance with section 14 of the <i>Monetary Penalties Enforcement Act 2005</i>.</p>	<p><u>Infringement notice offences</u></p> <p>It is proposed to amend the Act to provide a section to allow for the issue of infringement notices for prescribed offences. A detailed explanation of this proposal is provided at the end of this document.</p> <p>This amendment aims to include the ability to issue infringement notices for liquor and other offences. The provisions of this section can therefore be contained in this newly proposed section.</p>

PART VIII – DECLARATION OF CRIME SCENES AND SERIOUS INCIDENTS

DIVISION I - CRIME SCENES

There are no amendments proposed for this Division

DIVISION 2 - SERIOUS INCIDENT SITES

	Current legislation	Proposed amendment and rationale
	<p>63B. Declaration of serious incident site</p> <p>(1) An officer of or above the rank of inspector, if of the opinion that because of the size, nature or location of an incident it is necessary to exclude persons from the area of the incident, may declare the area to be a serious incident site so as to ensure –</p> <p>(a) public safety; or</p> <p>(b) the security of evacuated premises; or</p> <p>(c) the safety of, prevention of obstruction of, hindrance of or interference with emergency services.</p> <p>(2) A police officer may establish a serious incident site in any way that is reasonably appropriate in the circumstances.</p> <p>(3) The police officer who declares a serious incident site is to put the declaration in writing as soon as practicable after making it and is to give a copy of the declaration to –</p> <p>(a) the owner or person lawfully in possession of the place to which the declaration relates, if the place is not a public place; and</p>	<p>Subsection 63B(9) refers to ‘crime scene’ – this reference needs to be changed to ‘serious incident site’.</p>

(b) the District Police Commander responsible for the relevant region.

(4) A declaration of a serious incident site remains in force for 7 days unless it is sooner revoked.

(5) A revocation of a declaration of a serious incident site –

(a) may be made by a police officer of or above the rank of inspector; and

(b) is to be put in writing as soon as practicable after it is made and a copy given to the persons who have been given a copy of the declaration under subsection (3).

(6) Before a declaration of a serious incident site lapses or is revoked, a police officer of or above the rank of inspector may re-declare the site to be a serious incident site.

(7) A re-declaration of a serious incident site under subsection (6) may be made one or more times and subsections (3), (4), (5), (8) and (9) apply to a re-declaration as if it were a declaration under those subsections.

(8) The owner or person lawfully in possession of the place to which a declaration of a serious incident site relates may appeal against the declaration to the Magistrates Court (Administrative Appeals Division).

(9) The Magistrates Court (Administrative Appeals Division) may confirm, amend or revoke, or add conditions to, a declaration of a crime scene.

PART IX – PROCEDURE AND SUPPLEMENTAL PROVISIONS

	Current legislation	Proposed amendment and rationale
	<p>68. Procedure for seized firearms</p>	<p><u>Firearms forfeited to the Crown to be disposed of by the Commissioner</u></p> <p>The Department of police and Emergency Management are in the process of conducting a full review of the <i>Firearms Act 1996</i>. Included is a proposal to amend section 149(3A) of the <i>Firearms Act 1996</i> to provide for the Commissioner of Police to determine the disposal of firearms that are forfeited to the Crown by a court.</p> <p>The current disposal of firearms involves a laborious process of seeking Ministerial Delegation to provide the Commissioner, or Commissioner’s Delegate, with the authority to make these determinations. Realistically, the decision should be legislated to allow the Commissioner, in the first instance, the authority to determine the disposal.</p> <p>Section 14B, <i>Police Offences Act 1935</i> deals with unlawful entry on land and at Section 14B (2B) provides for instances, where firearms are involved, for the firearms to be forfeited to the Crown.</p> <p>Section 14B(2C) provides that a firearm forfeited to the Crown pursuant to subsection (2B) is to be disposed of as the Minister determines.</p> <p>It is sought to amend this section in the same manner as those amendments proposed for the <i>Firearms Act 1996</i>, to allow the Commissioner to determine disposal of firearms that are forfeited to the Crown.</p> <p>Section 68 of the <i>Police Offences Act 1935</i> also has provisions relating to the disposal of firearms as the Minister determines. These provisions relate to disposal of a firearm based on the following circumstances:</p> <ul style="list-style-type: none"> • Whether the Commissioner is satisfied that the person was in lawful possession or unlawful possession of the firearm at the time of the offence; and • Whether the person is convicted or not convicted of the offence; and • Whether the court makes an order for forfeiture of the firearm; or • Whether the person is not prosecuted, or can no longer be prosecuted for the offence.

		<p>Section 68 provides that disposal of a firearm can occur by:</p> <ul style="list-style-type: none"> • Returning the firearm to the person at the conclusion of the proceedings if the firearm is registered and the person is entitled to possess it (where a person has lawful possession at the time of the offence); or • Passing the firearm, if it is registered, to any claimant who can establish ownership of it and an entitlement to possess it under the Firearms Act 1996; or • In any other case, dispose of the firearm as the Minister determines. <p>It is proposed to amend this section to allow the Commissioner to determine disposal <i>in any other case</i>.</p> <p>The majority of forfeited firearms are destroyed by Tasmania Police with a small number retained for the Ballistics Library (if the item is of evidentiary value).</p> <p>Amendment to sections 14B and 68 of this Act, along with the proposed amendments to the <i>Firearms Act 1996</i>, will ensure that both Acts are consistent in referring to disposal requirements for firearms.</p>
	<p>PROPOSED NEW SECTION</p> <p>Infringement Notice offences</p>	<p>A detailed explanation of the proposed amendments for Infringement Notices can be found below.</p> <p>This section should provide that an infringement notice may be issued for an “infringement offence”. An “infringement offence” is to be those offences that are prescribed in the Regulations to be an offence for which an infringement notice may be issued.</p> <p>Section 61 – Liquor infringement notices can be incorporated within this new provision.</p> <p>Should this proposed amendment be accepted, the Regulations will require amending to list the prescribed offences for which an infringement notice may be issued.</p> <p>The infringement notices will be in accordance with section 14 of the <i>Monetary Penalties Enforcement Act 2005</i> and will not relate to more than 2 offences.</p>

	<p>PROPOSED NEW SECTION</p> <p>Application for costs</p>	<p><u>Application for court order in relation to costs</u></p> <p>It is proposed that a new section be provided to allow Government agencies to apply for an order to be made by the court in relation to costs incurred in responding to offences under this Act, such as trespass and nuisance offences. Tasmania Police is regularly required to hire equipment and contractors to facilitate the removal of protestors trespassing who place themselves in positions, which are dangerous to their health and that of others and which require the use of special resources, such as cranes or tree climbers, to effect their removal.</p> <p>Such costs cannot be recovered under section 68 of the <i>Sentencing Act 1997</i>, and confirmed in written advice from the Solicitor General.</p> <p>A similar provision already exists within section 44A of the Act, False reports to police. Subsection (2) states:</p> <p style="padding-left: 40px;">In any proceedings instituted against any person under this section, the court, on the application of the complainant, may order that, in addition to or instead of a penalty, the offender shall pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by reason of such offence.</p> <p>This proposal only seeks to allow application for recovery of costs incurred above and beyond normal policing resources and payment to the Department of Police and Emergency Management. For example if a crane is required for the removal of a protestor who is trespassing then Tasmania Police may only apply for the recovery of the cost of hiring the crane.</p>
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INFRINGEMENT NOTICES FOR MINOR OFFENCES

Background:

Infringement notices are currently used for a myriad of relatively minor offences including minor traffic offences, littering, minor liquor offences, fisheries offences and gaming offences. Currently New South Wales, Queensland and Victoria (still in trial period) allow for the issue of infringement notices for minor summary offences that are usually characterised as criminal in nature. In the United Kingdom summary or public order offences such as being drunk and disorderly and threatening behaviour are able to be dealt with by way of a Penalty Notice for Disorder.

Currently New South Wales issue criminal infringement notices for the following offences:

- Larceny (less than \$300);
- Offensive Behaviour;
- Offensive Language;
- Unlawful entry of a vehicle/ boat;
- Obstruct Traffic;
- Obtain Benefit by Deception;
- Goods in Custody.

The fines for New South Wales offences range from \$150- \$350

Queensland Police Service can issue public nuisance infringement notices for the following offences:

- Disorderly Behaviour;
- Offensive Behaviour;
- Threatening Behaviour;
- Violent Behaviour;
- Language Offence;
- Public urination;
- Obstruct a police officer;
- Disobey requirement by a police officer to state correct name and address.

The fines for Queensland offences range from \$100- \$300.

Victoria passed legislation in 2008 to commence a trial of infringement notices for the following offences:

- Offensive Behaviour
- Indecent Language
- Permit consumption of liquor on unlicensed premises
- Failure by a drunk, quarrelsome or violent person to leave licensed premises when requested
- Permitting or allowing unauthorised consumption of liquor on a party bus
- Wilful damage (up to value of \$500)
- Shop theft of goods (up to a value of \$600)

The authority to issue infringement notices for these offences has a sunset clause in the legislation to 30 June 2011, however a Bill is currently with the Victorian Parliament to allow infringement notices to be issued after this date. An extension of the trial for the offences of wilful damage and shop theft is being recommended until 30 June 2012.

Recording of convictions for payment of notices

New South Wales, Victoria and Queensland all provide that payment of these infringement notices does not result in the recording of a criminal conviction. Substantial debate has occurred in relation to this. In April 2005 the New South Wales Ombudsman released a report in relation to *The Trial of the Criminal Infringement Notices by NSW Police*. The following recommendations regarding this issue were made:

Recommendation 19: That Parliament establish safeguards, by means of legislation, against the presentation to courts of Criminal Infringement Notice histories where those matters have been satisfied by the payment of a prescribed penalty.

Recommendation 20: That records of Criminal Infringement Notices issued, and whether they have been paid or not, be maintained and police have access to those records to determine whether or not it is appropriate to issue a Criminal Infringement Notice to an offender

New South Wales police were opposed to Recommendation 19, stating that *“It is vital that a prior history of offending be provided to the courts. The inclusion of a Criminal Infringement Notice in that history would be consistent with legislation that a bond with no conviction can be included in sentencing considerations”*.

Where the suggestion that a record of infringement notices issued, paid or not paid, constitute part of the offender's criminal record has been considered in New South Wales, Victoria and Queensland, there has generally been acceptance of the proposition that payment of the fine does not constitute an admission of guilt or liability, and accordingly should not be considered to be a conviction nor permitted to form part of the offender's criminal record. This position is shared by the New South Wales Law Reform Commission, the New South Wales Ombudsman, the Australian Law Reform Commission and the Commonwealth Attorney General.

Based on this, it is proposed that a record of an infringement notice, paid or not paid, in Tasmania will not be entered or constitute part of the offender's criminal record.

Current situation in Tasmania specific to *Police Offences Act 1935*:

Currently the *Police Offences Act 1935* allows for the issue of liquor infringement notices, under section 61, for the following offences:

- Section 25(2) Consume liquor in a public street or a public place as prescribed by regulations (1 penalty unit);
- Section 25(3) Possess an open container of liquor in a public street or a public place as prescribed by regulations (1 penalty unit);
- Section 26(1) Supply liquor to a youth at a public place (3 penalty units);
- Section 26(2) As a responsible adult supply liquor to a youth at a private place unless the supply is consistent with the responsible supervision of the youth (3 penalty units).

Proposal:

The proposal is to provide an amendment that allows police officers to issue infringement notices for prescribed offences under the *Police Offences Act 1935*, and to prescribe the offences and relevant penalties within the *Police Offences Regulations 2007*.

It is proposed to allow infringement notices to be issued for several offences within the *Police Offences Act 1935*. These offences will be minor summary offences. The issuing of infringement notices for these proposed offences will simply provide another option for police officers to attend to existing offences, with the exception of the offence of Stealing, which is a new proposed offence within this Act. Where appropriate, police officers will still be able to commence a court proceeding against a person for these offences as opposed to issuing an infringement notice.

Where a police officer issues an infringement notice, they will be required to complete a statutory declaration detailing the offence; this will then be attached to a copy of the infringement notice and filed.

This proposal aims to:

- reduce the need for people to attend court to plead guilty for these offences;
- allows for the matter to be dealt with rapidly, without having to employ legal representation to attend court and lose time from their employment;
- reduce administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest;
- reduce the time taken by police in preparation of court files;
- reduce the time taken by police in preparation for and appearance in court;
- allow police to remain operational rather than having to take the offender back to the police station;
- provide police with greater flexibility in their response to criminal behaviour; and
- move to save the court system the cost of having to deal with relatively minor offences, allowing them to deal more efficiently with more serious offenders.

The following safeguards should be provided with the amendment:

- infringement notices will not be issued to a child;
- authority to allow a police officer of or above the rank of inspector to withdraw an infringement notice at anytime;
- where a person is arrested for a prescribed infringement offence, a custody officer may release the arrested person from custody for the purpose of issuing the person an infringement notice for the prescribed offence;
- authority should still exist to allow the taking of fingerprints, photographs and DNA for certain offences, as is currently provided; and
- a police officer will complete a statutory declaration regarding the facts of the offence for which the infringement notice was issued.

The table below indicates the offences for which an ability to issue an infringement notice is sought:

Section	Offence
12(1)(a)	Curse or swear in a public place or within hearing of person in a public place
12(1)(b)	Sing any profane or obscene song in a public place or within hearing of person in a public place
12(1)(c)	Use profane, indecent, obscene, offensive or blasphemous language in a public place or within hearing of person in a public place
12(1)(d)	Use any threatening, abusive, or insulting words or behaviour calculated to provoke a breach of the peace, or whereby a breach of the peace may be occasioned in a public place

13(1)(a)	Behave in a violent riotous, offensive or indecent manner
13(1)(b)	Disturb the public peace
13(1)(c)	Engage in disorderly conduct
13(1)e)	Commit a Nuisance
13(1)(f)	Throw, let off or set fire to any firework
13(2)	Recklessly discharge a missile
13(4)	Wilfully leave gate open to allow animal to trespass
13(6)	Allow stallion, bull, boar or ram in public place without immediate control
13(7)	Allow animal to graze or stray in public place
14B	Unlawful entry on land (Trespass)
14C	Trespass offender refuse, fail or give false name and address to owner or occupier of land
15	Unlawfully affix a bill or notice
15B	Dispersal of persons
15CA(1)	Mark graffiti
15CA(4)	Possess or use graffiti equipment in public place
16(2)	Fail to comply with request by police officer to cease public entertainment that may be a danger to the public
19A(1)(a)	Enter the reserved area of a sports ground without lawful excuse
19A(1)(b)	Remain on the reserved area of a sports ground after having been requested to leave by police officer or another authority
25(2)	Consume liquor in a public street or prescribed public place
25(3)	Have possession of open or unsealed container of liquor in a public place or prescribed public place
37G(1)	Owner/registered operator fail to provide details of driver or occupant to police officer upon demand
37GA(3)	Owner/registered operator fail to comply with notice of demand
37JA	Use of spotlights on vehicles on public streets
41	Advertise reward for return of stolen property
48	Conduct a motor vehicle race without a permit
49AB(1)	Organise demonstration, fundraising drive, procession, road cycle race, road cycle event without a public street permit
49AB(8)	Permit holder fail to comply with permit conditions or to produce permit to police officer
49B	Hold public entertainment after prohibited to do so
	<p><u>Proposed new offence of Stealing.</u> Issuing an infringement notice for this offence of stealing will only occur in certain circumstances, including where an admission is obtained from an offender and there is a prima facie case for stealing. Infringement notices will also only be issued for offences where the value of property stolen does not exceed a prescribed amount, for example \$500.</p> <p>It is proposed that the regulations specify the penalty unit for first and second offences. Offenders who have been detected for a third or subsequent offence should not be eligible for an infringement notice.</p>