

COMMUNITY LEGAL CENTRES TASMANIA

15 November 2024

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

via email: submissions.strategy.support@dpfem.tas.gov.au

To the Department of Police, Fire and Emergency Management,
Re: *Consultation on the Police Offences Amendment Bill 2023*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the consultation *on the Police Offences Amendment Bill 2024*.¹ We support the Tasmanian Government's commitment to making our community safer. However, increasing penalties for persons carrying a dangerous article will not make our community safer. We are also concerned that reducing thresholds for police to search a person if they have a reasonable suspicion a person may be in possession of a dangerous article will disproportionately impact disadvantaged communities.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Dangerous articles

Section 15C of the *Police Offences Act 1935* (Tas) provides as follows:

15C. Dangerous articles

(1) A person, without lawful excuse (proof of which lies on the person), must not have possession of, or carry or use, a dangerous article in a public place.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both.

(1A) Subsection (1) does not apply to –

- (a) a police officer acting in the performance of his or her duties; or*
- (b) a person, or group of persons, excluded in writing by the Commissioner from the application of that subsection.*

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

(2) *A police officer may stop, detain and search, without a warrant, any person in a public place whom the police officer reasonably believes has possession of, or carries, any dangerous article without lawful excuse and may stop, detain and search, without a warrant, the person's vehicle.*

(3) *A police officer may seize and detain any dangerous article found.*

(4) *A lawful excuse excludes self-defence but includes the following:*

(a) the pursuit of a lawful occupation, duty or activity using that dangerous article;

(b) the participation in a lawful sport, recreation or entertainment using that dangerous article;

(c) the lawful collection, display or exhibition of that dangerous article;

(d) the use of that dangerous article for the lawful purpose for which it was intended;

(e) religious observance.

(5) *If a person is convicted or found guilty of an offence under this section, the dangerous article to which the offence relates is forfeited and may be disposed of as the court orders.*

(6) *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.*

The Bill proposes to double the maximum fine able to be imposed from \$10,100 (50 penalty units) to \$20,200 (100 penalty units)² and increase the maximum term of imprisonment from two years to three years. Finally, the Bill proposes to reduce the threshold for police to search a person from “reasonably believe” to a “reasonable suspicion”.

Reasonable belief

The High Court case of *George v Rockett* considered the difference between ‘reasonable belief’ and ‘reasonable suspicion’. The High Court found that the standard of ‘reasonable belief’ required a higher level of certainty than a ‘reasonable suspicion’:³

Suspicion, as Lord Devlin said in Hussien v Chong Fook Kam [1970] AC 942 at 948, “in its ordinary meaning is a state of conjecture or surmise where proof is lacking: ‘I suspect but I cannot prove.’” The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief...

Expressed in another way, the High Court found that different states of mind are required for suspicion and belief with suspicion more easily achieved than belief.

Whilst the Tasmanian Law Reform Institute has not reviewed search powers, it has reviewed arrest powers and recommended that the higher standard of ‘reasonable belief’ should be

² A penalty unit is currently valued at \$202.00: Department of Justice, ‘Penalty units indexed amounts’. As found at <https://www.justice.tas.gov.au/about-us/legislation/penalty-units-indexed-amounts> (accessed 31 October 2024).

³ *George v Rockett* [1990] HCA 26 at para. 14.

adopted in Tasmanian legislation “because it sets a higher threshold for the application of coercive powers and incursions on the right to liberty”.⁴

We agree with the TLRI that the higher standard of reasonable belief should apply, not just to arrest warrants but also to searches. The reason that a higher standard should apply before persons are searched is because it interferes with the right of people to be free to go about their daily lives without interference. We are concerned that lowering the standard will disproportionately impact persons based on their age, race or appearance.

Recommendation: That ‘reasonably believe’ continue to be the standard required of police officers for stopping, detaining and searching of a dangerous article.

Improving community safety?

According to the Government, increasing penalties for persons carrying weapons and stronger police search powers “will improve community safety by helping get knives off our streets and will also protect our police officers”.⁵

As we observed earlier, a person who without lawful excuse has possession of a dangerous article in a public place may receive a fine of up to 50 penalty units or imprisonment for a term not exceeding 2 years. Relevantly, until 30 June 2021, the offence carried a maximum penalty of 10 penalty units.⁶

If increased penalties deter people from committing crime, then the amendments which became law from 1 July 2021 should have seen a significant drop in persons carrying a dangerous article as there was a five-fold increase in the maximum fine able to be imposed and up to 2 years imprisonment became a sentencing option.

According to Tasmania Police’s *Crime Statistics Supplement*, the number of assaults involving a knife in 2023-24 was four per cent.⁷ In 2022-23 it was also 4 per cent.⁸ In 2021-22 it was also 4 per cent.⁹ In 2020-21 it was only 3 per cent. In other words, there were proportionately *less* assaults involving a knife before the five-fold increase in fines or imprisonment of up to 2 years became a sentencing option.

However, it is also true that the number of recorded assaults is increasing. Over the last decade, the number of recorded assaults has increased by 65 per cent from 2493 in 2013/14 to 4108 in 2023/24.

⁴ Tasmania Law Reform Institute, *Consolidation of Arrest Laws in Tasmania* (Final Report No. 15) at 44.

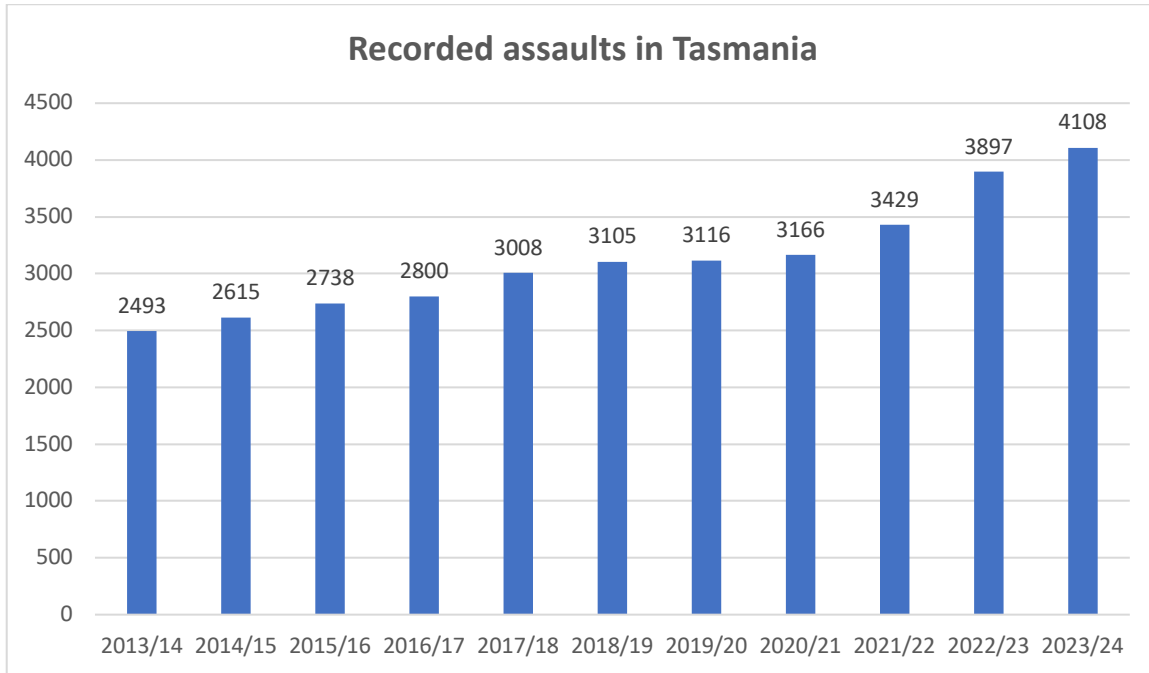
⁵ Felix Ellis, Minister for Police, Fire and Emergency Management, ‘New Bill to crack down on hooning and knife crime’, 26 September 2024. As found at <https://www.premier.tas.gov.au/latest-news/2024/september/new-bill-to-crack-down-on-hooning-and-knife-crime> (accessed 13 November 2024).

⁶ Section 15C of the *Police Offences Act 1935* (Tas) was amended following the passing of the *Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020* (Tas).

⁷ Department of Police, Fire and Emergency Management, *2023-24 Crime Statistics Supplement* at 4. As found at <https://www.police.tas.gov.au/uploads/Crime-Statistics-Supplement-2023-24.pdf> (accessed 13 November 2024).

⁸ Department of Police, Fire and Emergency Management, *2022-23 Crime Statistics Supplement* at 4. As found at <https://www.police.tas.gov.au/uploads/Crime-Statistics-Supplement-2022-23.pdf> (accessed 13 November 2024).

⁹ Department of Police, Fire and Emergency Management, *2020-21 Crime Statistics Supplement* at 4. As found at <https://www.police.tas.gov.au/uploads/Crime-Statistics-Supplement-2020-21.pdf> (accessed 13 November 2024).



Source: Department of Police, Fire and Emergency Management, *Crime Statistics Supplement*

What works

Early intervention initiatives have a much stronger track record of preventing violence and increasing safety. If there is evidence that particular groups may be more likely to be carrying knives and other dangerous articles, an emphasis should be placed on understanding why as well as seeking their thoughts on potential solutions and interventions.

Finally, as well as targeting early intervention, there also needs to be appropriate resourcing of youth detention and prison programs so that rehabilitation and behaviour change are able to be achieved.

Recommendation: Engage with groups more likely to carry dangerous articles and commit to early intervention initiatives. Also ensure that there is adequate resourcing of rehabilitation and behaviour change programs within youth detention and prison.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,

Benedict Bartl
 Policy Officer
Community Legal Centres Tasmania