

COMMUNITY LEGAL CENTRES TASMANIA

18 February 2025

Submissions at Strategy and Support
Department of Police, Fire and Emergency Management
GPO Box 308
Hobart TAS 7001

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

To the Department of Police, Fire and Emergency Management,
Re: *Police Offences Amendment (Knives and Other Weapons) Bill 2025*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Police Offences Amendment (Knives and Other Weapons) Bill 2025*.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 the Bill is not limited to the carrying out of searches in public places and that the reasonable suspicion threshold 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

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

(b) a person, or group of persons, excluded in writing by the Commissioner from the application of that subsection.

(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 officers to search a person from “reasonably believe” to “has reasonable grounds for suspecting”.

- 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, a belief is more than a possibility whereas a suspicion is thinking that something may be true. In practice, if the proposed amendment is passed,

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 18 February 2025).

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

it will be easier for police to stop and search persons suspected of carrying a dangerous article.

Lowering the threshold from reasonable belief to reasonable suspicion is consistent with the Department of Justice's *Police Powers and Responsibilities Proposal Paper* which argued that police search powers should be broadened.⁴ However, we are concerned that the broadening of police search powers will disproportionately target vulnerable groups including Aboriginal and Torres Strait Islander persons, young persons, persons who have impaired intellectual or physical functioning and persons of non-English speaking backgrounds. We are also concerned at the risk of 'net widening' with vulnerable groups not only likely to be disproportionately targeted but also finding themselves at risk of further police interaction.

Both of these concerns are well-founded with a recent review in Queensland finding "evidence of inappropriate use of stereotypes and cultural assumptions by a small number of officers in determining who to select for wandering"⁵ and "net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wandering practices".⁶

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 adopted in Tasmanian legislation "because it sets a higher threshold for the application of coercive powers and incursions on the right to liberty".⁷ On the same grounds, we strongly recommend that the threshold be reasonable belief and not reasonable suspicion. We also recommend that all police officers receive specific training to ensure that people are being selected based on a belief that they may have a dangerous article and are not being selected as a means of detecting other criminal behaviour.

Recommendations:

(1) That 'reasonable belief' continue to be the standard required of police officers when carrying out a search.

(2) That specific training is provided to police officers to ensure that people are not being stereotyped but rather are being selected based on a belief that they may have a dangerous article and that people are not being selected as a means of detecting other criminal behaviour.

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".⁸

⁴ Department of Justice *Police Powers and Responsibilities proposal paper* (November 2024). As found at https://www.justice.tas.gov.au/_data/assets/pdf_file/0011/790976/Proposal-Paper-Police-Powers-and-Responsibilities-Act-November-2024.pdf (accessed 18 February 2025).

⁵ Griffith Criminology Institute, *Review of the Queensland Police Service Wandering Trial* (August 2022) at iv.

⁶ Griffith Criminology Institute, *Review of the Queensland Police Service Wandering Trial* (August 2022) at v.

⁷ Tasmania Law Reform Institute, *Consolidation of Arrest Laws in Tasmania* (Final Report No. 15) at 44.

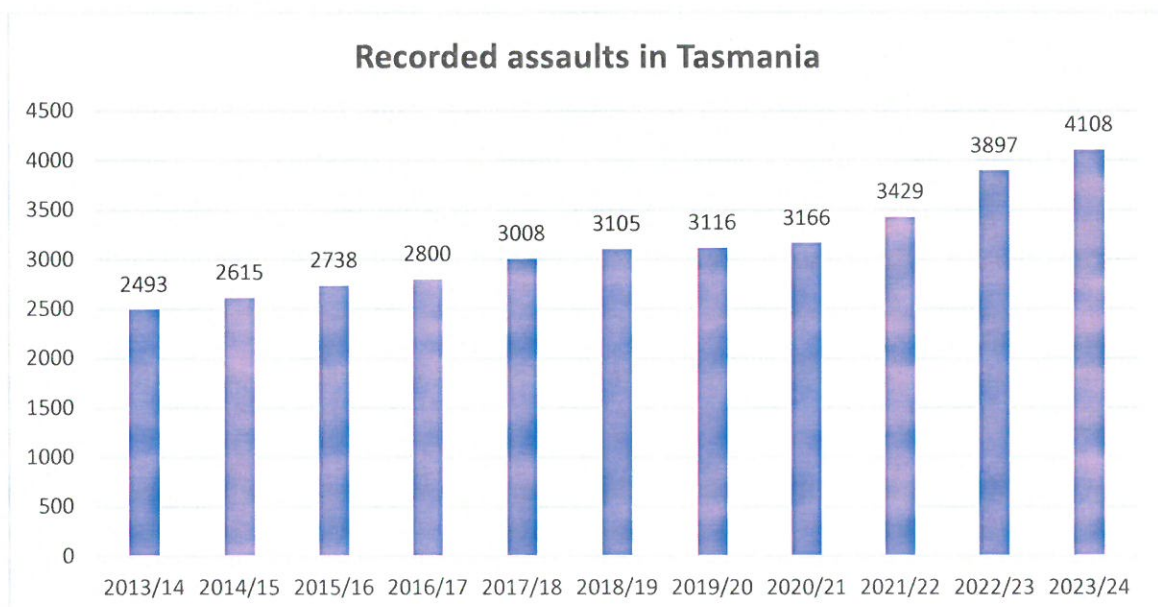
⁸ Felix Ellis, Minister for Police, Fire and Emergency Management, 'New Bill to crack down on hooning and knife crime', 26 September 2024. As found at <https://www.premier.tas.gov.au/latest->

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.⁹

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.¹⁰ In 2022-23 it was also 4 per cent.¹¹ In 2021-22 it was also 4 per cent.¹² 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.



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

[news/2024/september/new-bill-to-crack-down-on-hooning-and-knife-crime](https://www.police.tas.gov.au/news/2024/september/new-bill-to-crack-down-on-hooning-and-knife-crime) (accessed 13 November 2024).

⁹ 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).

¹⁰ 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 18 February 2025).

¹¹ 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 18 February 2025).

¹² 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 18 February 2025).

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.

Use of electronic metal detection device

The Bill follows the introduction of a five-month trial (December 2024 – April 2025) in which Tasmania Police have been able to use an electronic metal detection device to conduct non-invasive searches for knives.¹³ The Bill proposes to introduce a new section 15CAA into the *Police Offences Act 1935* (Tas) which would read as follows:

15CAA. Use of electronic metal detection device

(1) In this section –

electronic metal detection device means an electronic device that is capable of detecting the presence of metallic objects;

electronic metal detection device search means a search of a person conducted by –

(a) passing an electronic metal detection device over or in close proximity to the person's outer clothing; or

(b) requiring the person to pass through such a device.

(2) A police officer in a prescribed place may, without a warrant, require any person within that prescribed place to undergo an electronic metal detection device search.

(3) A police officer may stop and detain a person for so long as reasonably necessary to conduct an electronic metal detection device search in accordance with subsection (2).

(4) For the avoidance of doubt, nothing in this provision affects the ability of a police officer to use an electronic metal detection device under any power, and in any circumstance, as authorised under this or any other Act.

¹³ Tasmanian Government, Backing in our Police as they crack down on crime, 14 December 2024. As found at <https://www.premier.tas.gov.au/latest-news/2024/december/backing-in-our-police-as-they-crack-down-on-crime> (accessed 18 February 2025). Also see Tasmanian Government, Metal detection wand trial continuing to keep Tasmanians safe, 13 January 2025. As found at <https://www.premier.tas.gov.au/latest-news/2025/january/metal-detection-wand-trial-continuing-to-keep-tasmanians-safe> (accessed 18 February 2025).

The Bill then sets out in the *Police Offences Regulations 2024* (Tas) that a prescribed place includes educational facilities consisting of schools, universities, TAFE, vocational educational facilities and other places used for the purpose of education. The concern with including educational facilities is that it may have the unintended consequence of students failing to attend school because of an increased police presence. It is also worth noting that in NSW and Queensland the use of electronic metal detection devices ('wanding') is limited to public spaces including safe night precincts, public transport facilities, licenced premises, retail premises, shopping centres and sporting or entertainment venues.¹⁴

Recommendation: That the use of electronic metal detection devices by police officers is limited to public spaces.

Finally, it is recommended that an evaluation study of the proposed legislation take place in 12 months' time. This was a recommendation from the review of the Queensland trial and would provide an opportunity to evaluate whether the search powers are working.

Recommendation: That an evaluation be carried out 12 months after the proposed laws come into effect.

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

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

¹⁴ Part 3A of the *Police Powers and Responsibilities Act 2000* (Qld). Also see Divisions 2-3 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which limits the use of a hand-held scanner to public transport stations, shopping precincts, sporting venues and other public places including special events and events that are part of or support the night-time economy.