



2 March 2025

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

via email: haveyoursay@justice.tas.gov.au

To the Department of Justice,

Re: *Justice Miscellaneous (Explosive Offences) Bill 2025*

Community Legal Centres Tasmania (CLC Tas) and the Tasmanian Council of Social Service (TasCOSS) welcome the opportunity to provide comment on the *Justice Miscellaneous (Explosive Offences) Bill 2025* ('the Bill').¹ We support the Tasmanian Government's aim to fill gaps in the current legislative arrangements concerning explosive devices and substances. However, we are concerned that the proposed introduction of a reasonable suspicion threshold will disproportionately impact disadvantaged communities.

Section 43K

Section 43K of the Bill will provide police officers with the power to detain and search a person or a vehicle because it is suspected that they are in possession of an explosive device or explosive substance. Whilst police officers should have the power to detain and search persons or vehicles, it should be because they have a reasonable belief that the person or vehicle is in possession of an explosive device or substance.

- *Reasonable belief v reasonable suspicion*

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':²

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...

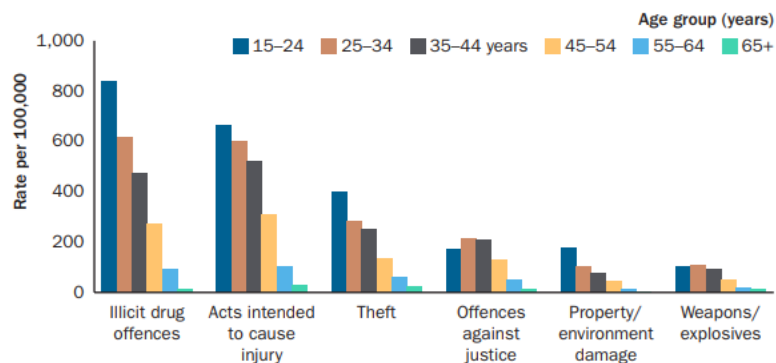
Expressed in another way, a belief is more than a possibility whereas a suspicion is thinking that something may be true. In practice, if the proposed amendment is passed, it will be easier for police to stop and search persons and vehicles suspected of carrying an explosive device or substance.

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

² *George v Rockett* [1990] HCA 26 at para. 14.

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.³ However, we are concerned that the lowering of the threshold will disproportionately target population groups who are particularly vulnerable in contact with the criminal legal system, including Aboriginal and Torres Strait Islander persons, young persons, persons with impacted intellectual or physical functioning and persons who are culturally and linguistically diverse. The Victorian Sentencing Advisory Council has reported for example that young people in Australia are disproportionately convicted for weapons/explosives offences:

Figure 3: Rate of convictions in Australia for six common offence types, by principal offence groups and age group, 2017–18⁴



Source: Victorian Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders* (December 2019)

We are also concerned at the risk of ‘net widening’ with vulnerable groups not only likely to be disproportionately targeted but also to experience increased risk of interaction with police. Concerns of this nature are well documented. In their submission to the recent Victorian inquiry into the criminal justice system,⁴ the Victorian Aboriginal Legal Service noted, ‘[e]xpansion of police powers, and the disproportionate use of these powers and of heavy public health fines against already marginalised communities, leads to engagement with police which ultimately lead to more arrests, more people unnecessarily taken into custody and higher incarceration rates’.⁵ In relation to children and young people, the National Children’s Commissioner has recently noted, ‘[s]ome children and young people reported feeling unsafe when interacting with police. They recalled incidents of abuse and mistreatment, racial profiling, and lack of support...’.⁶

We believe that reform should be focused toward reducing contact between children, young people and the criminal legal system – a position supported by the Commission of

³ 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 2 March 2025).

⁴ Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, *Inquiry into Victoria’s criminal justice system – Final Report* (2022).

⁵ Victorian Aboriginal Legal Service (2021), Submission to the Inquiry into Victoria’s Criminal Justice System. As found in Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, *Inquiry into Victoria’s criminal justice system – Final Report* (2022) at 191.

⁶ Australian Human Rights Commission, *‘Help way earlier!’: How Australia can transform child justice to improve safety and wellbeing* (2024) at 47-49.

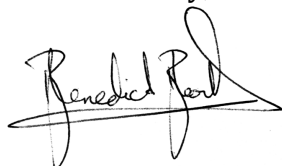
Inquiry who emphasised that children involved in the criminal legal system experience heightened disadvantage and are at risk of institutional and other abuse.⁷

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”.⁸ On the same grounds, we strongly recommend that the threshold for the stopping and searching of persons and vehicles suspected of carrying an explosive device or substance be reasonably believe and not reasonable suspicion.

Recommendation: That ‘reasonably believe’ be the standard required of police officers when stopping and search persons and vehicles suspected of carrying an explosive device or substance.

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

Yours faithfully,



Benedict Bartl
Policy Officer
Community Legal Centres Tasmania



Adrienne Picone
Chief Executive Officer
TasCOSS

⁷ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, Final Report, Vol. 5, Chapter 12.

⁸ Tasmania Law Reform Institute, *Consolidation of Arrest Laws in Tasmania* (Final Report No. 15) at 44.