

Your Ref:
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8 November 2024

Commissioner of Police
Department of Police, Fire and Emergency Management
GPO Box 308
HOBART 7001

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

Dear Commissioner,

Re: Submission – Consultation draft – Police Offences Amendment Bill 2024

Thank you for the opportunity to comment on the Consultation Draft of the Police Offences Amendment Bill 2024 (draft Bill). I also appreciate having been provided with an extension to the submission deadline.

I would like to take the opportunity to comment on an aspect of the draft Bill that I believe would benefit from further consideration prior to the tabling of the Bill. This submission is not intended to be exhaustive, and I reserve the right to comment on other aspects of the draft Bill in the future.

Role of the Commissioner for Children and Young People

My perspective is governed by a child rights framework and the United Nations Convention on the Rights of the Child. The *Commissioner for Children and Young People Act 2016* (CCYP Act), which establishes the office of the Commissioner for Children and Young People, provides that my general functions include:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;



- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives; and
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.¹

In performing these and other functions under the CCYP Act, the Commissioner is required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- observe any relevant provisions of the United Nations Convention on the Rights of the Child (CRC).²

Focus of this submission

The focus of this submission is on the legislative amendments regarding section 15C of the *Police Offences Act 1935* regarding possession of dangerous articles in public places.

Clause 6 of the draft Bill proposes to amend s.15C of the *Police Offences Act* as follows:

6. Section 15C amended (Dangerous articles)

Section 15C of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

- (b) by inserting in subsection (2) “in relation to” after “place”;
- (c) by omitting from subsection (2) “reasonably believes” and substituting “forms a reasonable suspicion that the person”.

Additionally, clause 4 of the Bill proposes to expand the definition of *public place* to include ‘any vehicle that is being used in the operation of a passenger transport service within the meaning of the *Passenger Transport Services Act 2011*.’

The effect of the proposed amendment would be:

- to increase the penalty in subsection 15C(1) from 50 penalty units or 2 years maximum imprisonment to 100 penalty units or 3 years maximum imprisonment.
- to permit police officers to search any person in a *public place* expanded to include ‘public and passenger transport services and vehicles’ (e.g. buses, taxis and ferries).

¹ Section 8(1) of the *Commissioner for Children and Young People Act 2016* (Tas).

² Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas).



- to amend the language of subsection 15C(2) so that it would read as follows (proposed omissions have been struck-through and proposed additions underlined):

15C. Dangerous articles

(...)

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

The amendments to subsection 15C(2) would reduce the legal threshold³ to *stop, detain and search* without a warrant any person (including children and young people⁴) in a public place.

By comparison, human rights-based safeguards apply to all personal searches of children and young people in custody in a custodial facility. See Division 3 of Part 3 in the *Youth Justice Act* (comprising ss. 25A – 25L), which commenced on 1 December 2022.

These reforms were introduced in response to a formal Advice by the former Commissioner for Children and Young People, Leanne McLean.⁵ The intent of the 2022 reforms was to bring about '*a paradigm shift ... ensuring a trauma-informed approach to keeping children and young people safe in our facilities. It builds safeguards around personal searches including 'unclothed searches'*'.⁶

The Attorney-General also made express reference to the amending Bill being consistent with '*national standards and international conventions relating to the treatment of young offenders*' and highlighted the vulnerability of children and young people as one of the drivers of the amendments. She said:

*In drafting the Bill, I am particularly mindful that young people are among the most vulnerable members of our community. Our Government recognises that the way we engage with young offenders must reflect this vulnerability.*⁷

The *Fact Sheet* tabled in Parliament to accompany the Bill states that it:

delivers on the Tasmanian Government's commitment to provide for a consistent decision-making framework in respect to how youth are searched in police watch-houses, prisons and detention centres. This Bill includes the powers of search, seizure, limitations on the use of force and requirements to report use of force.

The Bill includes controls to safeguard the exercise of those powers, including a principles-based framework governing the conduct of searches, the establishment

³ *George v Rocket* [1990] HCA 26; (1990) 170 CLR 104 at 115-116.

⁴ Section 23, *Youth Justice Act 1997*

⁵ Commissioner for Children and Young People's *Memorandum of Advice – Searches of children and young people in custody in custodial facilities*, 7 May 2019 (URL: <https://childcomm.tas.gov.au/wp-content/uploads/2023/07/2019-05-06-amended-FINAL-Advice-to-Ministers-Searches-of-children-and-young-people-in-custody-in-custodial-facilities.pdf>).

⁶ Hansard, Tasmanian Parliament, House of Assembly, 2022, p. 1 (URL: https://www.parliament.tas.gov.au/data/assets/pdf_file/0026/47078/9_of_2022-srs.pdf)..., pp. 1-2.

⁷ *Ibid.*, p. 2.



of a search register and ensuring relevant information on searches is available to youths, their advocates and the public.⁸

In the Clause Notes to the amending Act that introduced this provision into the *Youth Justice Act*, it was stated that the requirement on a search officer to consider the information identified in s.25E(3) preliminary to conducting a search, would ensure ‘a trauma-informed approach.’⁹

By contrast, and notwithstanding the potential for greater numbers of children and young people to be stopped, detained and searched as a consequence of the proposed amendments, the *Police Offences Act* and the draft Bill do not include any such principled framework or safeguards.

In its final report, the Commission of Inquiry scrutinised the innovations introduced by the 2022 amendments to the *Youth Justice Act* as advocated for by the former Commissioner. The Commission of Inquiry endorsed the amendments and proposed further amendments to strengthen the safeguards.¹⁰ In my view, it is both appropriate and desirable that police stop, detain and search powers that apply to children and young people in public places include legislated child-specific safeguards like those contained in the Youth Justice Act.¹¹

Finally, I note that criminal justice measures alone do not address the complex reasons for carrying dangerous articles in public places. The evidence indicates that effective approaches to crime prevention are multi-faceted and involve collaboration across the public health continuum as recognised in the Youth Justice Blueprint 2024–2034.

I would welcome the opportunity to discuss this brief submission in further detail.

Yours sincerely,

Isabelle Crompton
Interim Commissioner for Children and Young People

cc Hon. Guy Barnett, Attorney General
Hon. Roger Jaensch, Minister for Children and Youth
Hon. Felix Ellis, Minister for Police, Fire and Emergency Management

⁸ Department of Justice, *Fact Sheet*, Youth Justice Amendment (Searches in Custody) Bill 2022, p. 1 (URL: https://www.parliament.tas.gov.au/data/assets/pdf_file/0023/52079/9_of_2022-fact20sheet.pdf).

⁹ Department of Justice, *Clause Notes*, Youth Justice Amendment (Searches in Custody) Bill 2022, p. 3 (URL: https://www.parliament.tas.gov.au/data/assets/pdf_file/0024/53268/9_of_2022-clause20notes.pdf).

¹⁰ Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children* (Volume 5 (Book 3): Chapter 12), p. 206 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

¹¹ I note that Section 2.35 of the Tasmanian Police Manual provides guidance on a range of matters involving day-to-day policing, including searches of children and young people. However, the safeguards contained in the Police Manual are not included in either the existing Police Offences Act or the draft Bill and in any event, lack many of the safeguards included in the Youth Justice Act.