

Your Ref:
Our Ref:

21 February 2025

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

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

Dear Secretary

RE: Consultation draft – Police Offences (Knives and Other Weapons) Amendment Bill 2025

Thank you for the opportunity to comment on the consultation draft of the Police Offences (Knives and Other Weapons) Amendment Bill 2025 (the draft Bill).

There is no doubt that the unlawful possession of weapons in public places can pose a serious risk to community safety and wellbeing. However, measures to address this risk must be reasonable and proportionate and sensibly balanced to protect, promote and fulfil the rights of all members of the Tasmanian community, including children and young people.

I am grateful for the short extension of time to enable me to provide feedback on the draft Bill. However, I was disappointed, given my statutory role, not to be contacted directly to provide comment and advice on the proposed amendments, given their potential to affect the rights and wellbeing of children and young people. I have previously commented on the consultation draft of an earlier iteration of this Bill in 2024 (the 2024 Bill).¹ The 2024 Bill proposed amendments to a suite of provisions, across some 29 clauses, dealing with public safety and summary offences including issues regarding 'dangerous articles'. By contrast, the 2025 version of the draft Bill deals solely with the issue of 'dangerous articles' and includes a proposal that a police officer be empowered to conduct a metal detector (wandering) search on any person, in prescribed public places.

¹ The earlier version is called the Police Offences Amendment Bill 2024. The CCYP submission on this earlier Bill is available on the CCYP website at <https://childcomm.tas.gov.au/wp-content/uploads/2024/11/2024-11-08-FINAL-Submission-POA-Bill-2024.pdf>. All other public submissions lodged during the 2024 public consultation period can be found on the DPFEM website at [Consultation on the Police Offences Amendment Bill 2024 - Tasmania Police](#).



General observations

As currently drafted, this power could be exercised whether or not the police officer has formed a reasonable suspicion that the person has in their possession a dangerous article. This new provision would also authorise a police officer to detain a person for so long as reasonably necessary to exercise the search provision. Failure to comply with a requirement for a wand search may be taken as basis for a police officer to form a reasonable suspicion the person may be in possession of, carrying or using a dangerous article, thereby empowering the police officer to conduct a personal search.

It is important to convey the extent of the power proposed. The draft Bill proposes that police be able to use these powers in relation to anyone in places including (but not limited to) the following:

- Public transport hub – including a bus station, jetty, airport, car park and stop/set down facility for public transportation,
- Public passenger vehicle – within the meaning of the *Passenger Transport Services Act 2011*,
- Retail and shopping precinct – including a shopping centre, shopping mall, retail strip,
- Venue where sport is played or exhibited,
- Entertainment precinct – including licensed premises or other area where persons are gathered for the purposes of entertainment or an event,
- Medical or health facility, or any place where medical or health services are provided,
- Education facility – including a school, university, TAFE establishment, technical institute or any other place, building or service for the purpose of education or teaching,
- Place of worship – including any place where individuals or a group congregate to perform acts of devotion,
- Place of business or service provider, whether public or private,
- Any associated car park/set down area for the purposes of access or egress, or within a prescribed place.

The draft Bill stipulates no restrictions or procedures to be used to designate, on evidence-based grounds, a place as a *prescribed public place*, no time limits on the authority to conduct a wand search, no criteria for the designation of the places included in the list above (or indeed other places that could subsequently be included in regulation), and no conditions or requirements placed on police officers when conducting wand searches. The draft Bill includes no safeguards to protect the human rights of community members such as are commonly found in other jurisdictions.² Some of the safeguards included in mainland versions of similar laws include:

² See Part 3A of the *Police Powers and Responsibility Act 2000* (Qld) (ss 39A-39L), Part 4A of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (ss 45D-45R), the *Control of Weapons Act 1990* (Vic), Part 14C of the Summary Offences (Knives and Other Weapons)



- (a) that a scan must be conducted in the least invasive way as practicable in the circumstances;
- (b) the police officer conducting the scan should be of the same sex as the person scanned;
- (c) that a person must be detained only for so long as is reasonably necessary in the circumstances;
- (d) that a police officer must, if requested, provide their name, rank and station (including in writing, if requested); and
- (e) that the officer must inform the person that they are required to allow the scan to determine if the person is carrying a dangerous article and the possible consequences of failing to allow a scan (which could be a more invasive personal search).

Further, the draft Bill includes no evaluation mechanism to assess whether the proposed law has achieved the stated policy goals, nor any provision requiring a review of the operation of the legislation after a period of time.

This approach to law reform is in complete contrast to the Government's commitment in the *Youth Justice Blueprint 2024-34* to keep 'children and young people out of the youth justice system' and to implementing recommendations from the Commission of Inquiry, such as raising the minimum age of criminal responsibility (rec. 12.11) which involves the implementation of a range of evidence-based non-criminalising responses to prevent and respond to harmful behaviours.

It is critical to consider new legislative amendments through an evidence-based lens, including considering the potential impact of increased police presence and contact with children and young people (particularly within or near educational and health facilities) on their rights and wellbeing. Academic studies have shown that the younger that children are when they first encounter the criminal justice system, the more likely they are to encounter it again³.

In 2024 the Tasmanian Government released its 10-year Youth Justice Blueprint⁴, which makes a commitment to contemporary, rights-based, individualised, therapeutic and integrated approaches to youth justice. It is frustrating then that the draft Bill does not reflect this endorsed framework. I believe there is reason to pause and consider holistically how isolated pieces of legislative reform, such as that proposed by the draft Bill, fit within broader whole-of-government goals and commitments. The Youth Justice Blueprint provides an overview of multiple avenues that can be utilised to address community safety concerns, whilst also balancing the rights and wellbeing of children and young people. It is imperative that endorsed frameworks such as the Youth Justice Blueprint and the Youth Justice Model of

Amendment Bill 2025 (SA) (cl 66W-66ZG) tabled in the SA Parliament on 6 February 2025, Part 7A of the *Criminal Investigation Act 2005* (WA) (ss 61A-61G), and Part VII, Div 1C of the *Police Administration Act 1978* (NT) (ss 116K-116KO).

³ Australian Human Rights Commission, *Children's Rights Report – In Their Own Right*, 2019 (URL: <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>).

⁴ Department for Education, Children and Young People, *Youth Justice Blueprint 2024-2034*, 2023 (URL: <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>).



Care (which applies to police) are considered in the drafting process for any future legislative changes in this space.

Role of the Commissioner for Children and Young People

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 the Commissioner's general functions include:

- (a) advocating for all children and young people in the State generally;
- (b) advocating for individual children and young people detained under the *Youth Justice Act 1997*
- (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.
- (g) encouraging organisations to establish child-friendly mechanisms to assist children and young people to participate in matters that affect them.⁵

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 (UNCRC).⁶

Proposed amendments to s 15C of the *Police Offences Act 1935*

The draft Bill essentially proposes three amendments to the *Police Offences Act 1935*.

1. In relation to the existing stop and search power in s 15C of the Act, it is proposed:
 - (a) to increase the penalty for the offence of carrying a *dangerous article* from 50 penalty units or 2 years maximum imprisonment to 100 penalty units or 3 years maximum imprisonment; and
 - (b) to lower the threshold test to be met before a police officer may consider him or herself authorised to initiate a hands-on search without a warrant, from *reasonable belief to reasonable suspicion*;
2. To introduce a new provision (s 15CAA), on top of the existing stop and search power in s 15C referred to above, allowing police to conduct random searches of people in

⁵ Section 8(1) of the *Commissioner for Children and Young People Act 2016* (Tas).

⁶ Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas).



prescribed places (as defined) using electronic metal detection devices or wands. Crucially, it must be noted that this additional power has *no conditions* regulating its exercise. It does not require a threshold test of either reasonable belief or reasonable suspicion and it does not require a warrant; and

3. To introduce a new provision (s 15C(4A)) providing that a failure to comply with a requirement to undergo a wand search, may constitute a reasonable ground for suspicion that the person has possession of a dangerous article without lawful excuse. This threshold test would then authorise a police officer to conduct a more invasive, personal search pursuant to s 15C of the Act.

The two new sections provide as follows (proposed omissions have been struck-through and additions underlined):

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.~~

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 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.
- (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 reasonable grounds for suspecting 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.



- (4A) A failure to comply with a requirement to undergo an electronic metal detection device search in accordance with section 15CAA(2) may constitute a reasonable ground for suspicion that a person has possession of, or carries, a dangerous article without lawful excuse.
- (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.

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.

Key Issues

Absence of justification for the amendment or considered safeguarding measures consistent with the strategic direction of the Youth Justice Blueprint 2024-24

The only pre-condition for the conduct of a wand search is that the person searched is in a *prescribed place*.⁷

⁷ A *prescribed place* is defined in cl 8(2) of the draft Bill as meaning the following (some of these terms have specifically defined meanings in the draft Bill):

- (a) a public transport area;
- (b) a retail precinct;



It may immediately be noted that the safeguards and protections in relation to searches of children and young people included in the *Youth Justice Act 1997* do not apply in relation to these search powers because searches and their related safeguards under the *Youth Justice Act* are expressly limited to searches conducted within *custodial facilities*.⁸ By contrast, s 15C of the *Police Offences Act 1935* (in its existing and proposed form) and the newly proposed s 15CAA, apply in relation to searches of young people outside of custodial settings because s 23 of the *Youth Justice Act* otherwise preserves the operation of any provisions of the general law that are not inconsistent with the *Youth Justice Act*. This means that these two distinctly different search regimes that affect children and young people are allowed to co-exist in Tasmania.

The changes that the draft Bill proposes to s 15C of the Act are nearly identical to the amendments proposed in the 2024 Bill (save for the proposed addition of s 15C(4A) that is wholly new). Like the Tasmanian Aboriginal Legal Service (TALS), the Law Society of Tasmania, and Tasmania Legal Aid (TLA), I do not see there being a reasonable justification for the sweeping and significant increase to police powers and the consequential impact on the rights of young Tasmanians. The draft Bill is not demonstrably supported by evidence that establishes that the proposed measures (i.e. an unconditional power to stop, detain and search by wand anyone in a prescribed place) are proportionate to the perceived risk and necessary to meet the desired outcomes.

The proposed amendments go far beyond those introduced or considered in other Australian states and territories, and as noted above include minimal, if any, safeguards in relation to police powers. In August 2022, the Griffith Criminology Institute conducted an independent review of Queensland 'wandering' laws and published a report ('the Griffith Review') containing indicative findings and recommendations.⁹ Relevantly, the Griffith Review found (emphasis added):

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- (c) a large passenger vehicle within the meaning of the *Passenger Transport Services Act 2011*;
 - (d) a vessel used in the operation of a public ferry service;
 - (e) a place where sport is played or exhibited;
 - (f) a licenced premises or any place used for the assembly of members of the public for social, entertainment or recreational purposes;
 - (g) a facility or place where medical or health services are provided;
 - (h) an education facility;
 - (i) a place of worship or place where individuals or a group of persons congregate for religious or ritual purposes or to perform acts of devotion;
 - (j) a car park or set down area that forms part of, or is used for the purpose of access to, a place specified in this regulation.

⁸ Section 25B of the *Youth Justice Act* provides that Part 3, Division 3 of the Act dealing with clothed and unclothed searches of youths in custody only applies to searches in *custodial facilities*. Section 25A of the Act defines a *custodial facility* to mean:

- (a) a detention centre; and
- (b) a prison; and
- (c) a reception prison watch-house; and
- (d) a police watch-house.

⁹ Ransley, J. Connell, N. van Felius, M. and Walding, S., *Review of the Queensland Police Service Wandering Trial*, August 2022, Griffith Criminology Institute, Griffith University (URL: [5722T1863-952D.pdf](https://www.griffith.edu.au/research/griffith-review/5722T1863-952D.pdf)).



Key Finding 3. While wandering has been useful to better detect weapons (in one site only), there is *no evidence as yet of any deterrent effect*, given that there has been an increase in detections at one site, and no change at the other. *A longer term follow up may be needed to better assess these effects.*

(...)

Key Finding 7. In terms of equity, wandering has been *inconsistently used across different groups in the community*. While the targeting of young people was clearly intended under the legislation, and there is an evidence base *for selecting more males than females*, there is some evidence *of inappropriate use of stereotypes and cultural assumptions* by a small number of officers in determining who to select for wandering.

(...)

Key Finding 9. Given the increased number of drug detections linked to wandering in Surfers Paradise, care needs to be taken to ensure that wandering *does not lead to a by-passing of reasonable suspicion safeguards*, and *net-widening among minor offenders who are not carrying weapons*, but nevertheless come to police attention purely because of wandering practices. The entry of larger numbers of these individuals into formal criminal justice processes could have *many adverse flow-on effects*.¹⁰

I am aware that Tasmania Police is currently extending the trial of wandering that began in December 2024. I have not yet been briefed on data resulting from this trial. I would welcome an opportunity to review more in-depth statistics (beyond the number of weapons seized) to inform any further feedback. As matters currently stand, however, there is no clear relationship between the recent two month trial of police using the existing law (with perhaps a greater operational focus on scanning people using the test of *reasonable belief* as required by the current s 15C of the *Police Offences Act*) on the one hand and the proposed amendments which, (a) increase the penalty for the substantive offence, (b) lower the threshold test required to initiate a search and (c) institute a wholly new system of wandering with no threshold test or indeed, safeguards, conditioning its exercise, on the other. In essence, it is unclear that the recent trial provides a basis upon which to assess or evaluate the necessity or desirability of the proposed amendments.

Risk of bias

The broad nature of the proposed amendments to police scanning powers which includes an extensive list of prescribed places that police may search, and a reduced threshold for wandering, impacts all Tasmanians, including children and young people. I am concerned that such broad powers may lead to police bias (e.g. in selecting persons to stop, detain and search by wandering), and that this may have an inequitable impact on the rights of children and young people. I also agree with TALS, the TLA and TasCOSS that the effect of these suggested

¹⁰ Ibid., pp. iii – v.



amendments may be to criminalise disadvantage and unfairly target Aboriginal young people and those experiencing homelessness, mental ill health and other vulnerabilities.¹¹

As noted above, the Queensland Griffith Review found some evidence in that state of a small number of officers profiling persons selected for wandering using stereotypes and cultural assumptions (see Key Finding 7) as well as a danger that measures such as wandering risk net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wandering practices (see Key Finding 9).

Given that this proposed amendment to the *Police Offences Act 1935* would allow an extensive list of places in which police can enter without warrant and search children (or indeed any member of the community) using wands (such as places of worship, educational facilities, health services and retail precincts), I continue to hold concerns in relation to the impact of net-widening and risk of police bias in selecting children and young people for searches.

When one considers the Tasmanian landscape post Commission of Inquiry and the pressing need to shift cultural opinions about children and young people, I am troubled that legislative changes are being considered that would work on their face in opposition to creating the cultural change required to truly uphold the rights and wellbeing of children and young people in this state.

Fragmentation of stop and search powers in Tasmania

I note there are several distinct legal regimes or frameworks governing search powers that either currently, or in the future, will impact children and young people in Tasmania. They include:

- (a) The *Youth Justice Act 1999*;
- (b) The contemplated reforms under the Police Offences Amendment Bill 2025; and
- (c) The contemplated consolidation of police powers in a proposed Police Powers and Responsibilities Act.

I remain concerned about this fragmentation (or siloing) of government policy and frameworks across agencies charged with responsibility for administering these different legislative initiatives. Recently, this Office prepared a submission on the *Police Powers and Responsibilities Act Proposal Paper* which highlighted many similar issues to the proposed amendment to this Bill and which are also relevant to the draft Bill.¹²

¹¹ Tasmanian Aboriginal Legal Service, *Submission: Consultation on the Police Offences Amendment Bill 2024*, October 2024 (URL: <https://www.police.tas.gov.au/uploads/Tasmanian-Aboriginal-Legal-Service.pdf>) and Tasmania Legal Aid, *Submission: Police Offences Amendment Bill 2024*, 23 October 2024 (URL: <https://www.police.tas.gov.au/uploads/Tasmania-Legal-Aid.pdf>).

¹² Commissioner for Children and Young People, *Submission - Police Powers and Responsibilities Act – Proposal Paper*, 2025, (URL: https://childcomm.tas.gov.au/wp-content/uploads/2025/02/2025-02-07-CCYP-Submission-PPRA-Proposal-Paper_.pdf).



I encourage the government to harmonise these laws and lay the groundwork for youth justice system reform consistent with its unequivocal commitments arising from the Commission of Inquiry.

Conclusion

The possession of knives and other weapons in public places without reasonable excuse is in no way to be condoned. However, as is evident from this submission, I recommend that a rights-based approach be adopted to inform any related law reform, noting that a rights-based approach is by its very nature evidence-based and balances all interests. As it currently stands I am not convinced that the amendments proposed by the draft Bill are necessary, reasonable or proportionate to the stated aim. I invite you to reconsider the terms of the draft Bill in light of the issues discussed in this submission.

Thank you for the opportunity to comment on the draft Bill. I would welcome the opportunity for further discussion and comment on future amendments.

Yours sincerely

Isabelle Crompton

Interim Commissioner for Children and Young People

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