



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:

Justice Miscellaneous (Explosive Offences) Bill 2025 Response

February 2025

INTRODUCTION

As an advocate for law reform, justice and equity for all Tasmanian Aboriginal peoples, the Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback on the *Justice Miscellaneous (Explosive Offences) Bill 2025*.

TALS is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) that specialises in criminal, civil and family law matters for Aboriginal Tasmanians. As an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations (ICN 9283), TALS is committed to improving the life outcomes of Aboriginal peoples.

In this submission, any reference to Aboriginal peoples is understood to encompass Torres Strait Islander peoples.

TALS’ strategic goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade. This is consistent with the identified objectives of the Tasmanian Government, who have committed to improving outcomes for all Tasmanian Aboriginal peoples and communities, and to address the entrenched inequalities faced by Aboriginal and Torres Strait Islander peoples.

TALS is also committed to addressing recidivism and recognises that Aboriginal people in Tasmania continue to be overrepresented in the Tasmanian prison population. As of September 2024, Aboriginal people made up almost 24% of the prison population in Tasmania.¹ Additionally, over 30% of Aboriginal people in the prison population are unsentenced.²

This submission aims to provide insight on the impact that the *Justice Miscellaneous (Explosive Offences) Bill 2025*, specifically Section 43K, will have on Aboriginal people in Tasmania.

¹ Tasmanian Government - Department of Justice, *Prisoners, detainees and community-based offenders output data* (23 October 2024).

² Australian Bureau of Statistics, *Prisoners in Australia* (25 January 2024).

Section 43K – Search of persons of vehicles for explosives

TALS recently prepared a submission responding to the *Police Powers and Responsibilities Act* proposal. In that submission, TALS raised concerns with regards to the threshold of ‘reasonable suspicion’ enabling police to exercise certain powers and were supportive of a higher ‘reasonable belief’ test. Concerns regarding the lower ‘reasonable suspicion’ threshold are the stimulus for this submission also, with focus being drawn to Section 43K (1) of the *Justice Miscellaneous (Explosive Offences) Bill 2025*.

Aboriginal people are policed, and charged, at higher rates than non-Indigenous and the gap is increasing.³ The *National Justice Project* states that policing continues to disproportionately impact Aboriginal people and communities due to systemic racism and bias in applying and enforcing legislation.⁴ On a localised level, TALS’ internal data shows that there were 3,553 arrest notifications made to our service during the 2023-24 financial year, a 20% increase on the previous financial year. Considering this data, it is difficult to argue that that the lower threshold of ‘reasonable suspicion’ does not have potential to have adverse impacts on Aboriginal people.

Whilst policing is governed by laws, an officer’s authority to search, detain, arrest and use force relies on standards that overwhelmingly rely on the ‘vague and flexible’ term ‘reasonable’.⁵ Given that police actions involve the invasion of privacy, and potential use of force, the indistinct line between reasonable and unreasonable could be said to be unclear and leave the application of discretion open to misjudgement or discrepancies.⁶

The counter argument would suggest that police will always act with sound judgement and professionalism. However, historically, police have acted in ways that cause and perpetuate harm against Aboriginal people.⁷ This instils little faith that, without proper training and strong standards, police discretion in deeming what is reasonable and unreasonable will continue to have adverse impacts on Aboriginal people and their relationship with the justice system.⁸

There is evidence that the wider Tasmanian community are apprehensive with police exercising power of discretion. Recent data collated by Tasmanian Police that reported only 57% of respondents described police as being ‘fair and equitable’.⁹ Additionally, only 17% of respondents agreed that increasing police presence is an effective method to decrease crime rates.¹⁰ These figures suggest that the wider Tasmanian community are sceptical when it is proposed that increasing the capacity and discretion of police officers is the solution to addressing crime rates.¹¹

³ Creative Spirits, *Law & Justice – Aboriginal-police relations* (15 September 2023).

⁴ The National Justice Project, *NJP position statement: Discriminatory Policing* (2022)

⁵ McLean, K., Nix, J., Stoughton, S., Adams, I. and Geoffrey, P., *An experimental look at reasonable suspicion and police discretion*, Griffith University (17 March 2023).

⁶ Ibid.

⁷ Creative Spirits (n 3)

⁸ Creative Spirits (n 3)

⁹ Tasmania Police, *Community Survey* (November 2023)

¹⁰ Ibid.

¹¹ Ibid

Police officers can only infringe on individual liberty when it is deemed objectively reasonable to do so. However the ambiguity in defining what is reasonable, subjective judgements on standards and the many factors that must be considered to arrive at determining 'reasonable suspicion' creates a 'mess' for decision makers.¹² Simplifying this complex series of assessment, and increasing the threshold that enables police power, can remove any bias or subjectivity, aid police in making sound decisions and instil more public confidence in police exercising power.

¹² McLean et al (n 5).

CONCLUSION

Laws that inform police functioning must be explicit and the threshold for exercising power (i.e. searching a person or their vehicle) must be higher than 'reasonable suspicion'. This will protect both the public from unnecessary interference in their private space and provide police officers with firm guidelines that will aid decision making. Overall, the higher threshold of 'reasonable belief' protects all parties from adverse outcomes.

Additionally, ensuring that Tasmania Police are appropriately trained in cultural awareness, with a particular focus on engaging with Aboriginal peoples from the diverse communities across the state, will ensure better overall relations. This training should be developed in consultation with Tasmanian Aboriginal communities and Elders to ensure it reflects the lived experiences and specific needs of Aboriginal people in Tasmania.

TALS welcomes opportunities to consult the government on law reform, justice and equity for all Tasmanian Aboriginal people. We also strongly advocate for greater engagement with Aboriginal community leaders and Elders in shaping policies to ensure they are culturally safe, effective, and accessible for all Aboriginal people.

If you have any questions or would like to discuss anything in the contents of this report, please reach out to me directly.

Warmest regards,



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