

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000



**TASMANIAN ABORIGINAL
LEGAL SERVICE**

**Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:
Consultation on Police Powers and Responsibilities Act proposal paper
January 2025**

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcome the opportunity to provide feedback on the Police Powers and Responsibilities Act proposal paper.

TALS is a member-based, independent, not-for-profit Aboriginal and Torres Strait Islander Legal Service that specialises in the provision of criminal, civil and family law legal information, advice and representation, as well as justice programs, such as Community Legal Education and for Bail Support to assist Aboriginal and Torres Strait Islander peoples across Tasmania. TALS also operates a dedicated Family Violence and Prevention Legal Service, SiS Tasmania, to provide legal assistance and non-legal supports for victim/survivors of family violence and sexual abuse.

We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations. In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people. TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians.

Aboriginal and Torres Strait Islander peoples experience greater unmet legal need than any other group in the community¹. We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

¹ W, Mundy (2024) *Independent Review of the National Legal Assistance Partnership Final Report*, p.8

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Response

In response to this report TALS have taken into consideration the need for codification and centralisation of legislation as it relates to operational police matters. TALS recognises the complex landscape that police find themselves in when interpreting legislation and that in fact it is an onerous and difficult task which requires speciality knowledge. As such these considerations are reflected in our feedback below.

Caution in relation to broadening of police powers in general:

TALS has made previous submissions relating to the broadening police powers, and we echo those concerns once more in relation to this paper.² The Australian Bureau of Statistics, report crime in Australia is often linked to low socio-economic status, poor family relationships, unemployment, substance use disorders and low levels of educational attainment³. However, when we assess the measures that are used to address crime rates we are met with higher rates of policing, broadening of police powers and increase in penalties, none of which address the evidenced causal factors of crime. This disconnection between causation and response is of concern to TALS.

Broadening police powers is a knee jerk reaction to an issue faced by the community and often does not provide a solution to the problem⁴. Policing does not aim to solve the root causal factors of crime. TALS understands the community may ask for a law-and-order response to problematic behaviour; however, statistically we know these measures are unlikely to achieve the desired outcomes. It is likely to increase

²Tasmanian Aboriginal Legal Service, Written Submission: Consultation on the Police Offences Amendment Bill 2024, *Department of Police Fire and Emergency Management*, <https://tals.net.au/uploads/general/TALS-Submission-on-Police-Amendment-Bill-Oct-2024.pdf>

³ The Australian Bureau of Statistics, *Crime in Australia*, 2010, Measure of Australia Progress 1370.0

⁴ Petersen K, Weisburd D, Fay S, Eggins E, Mazerolle L. *Police stops to reduce crime: A systematic review and meta-analysis*. National Library of Medicine 2023 Jan 10;19(1):e1302.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

criminalisation with a greater cost to the taxpayer due to cost of prosecution, supervision and incarceration.⁵

TALS urges the Tasmanian Government to invest in true preventative measures of crime instead of knee jerk reactions which perpetuate higher rates of incarceration and the tough on crime narrative. We encourage the government to invest in community justice responses and restorative justice models that have greater long-term impact. We further encourage the government to invest in community service and non-government support mechanism which ultimately work to empower communities to thrive and support themselves without institutional and government intervention.

There is a vast amount of evidence that confirms First Nations people are policed at higher rates than non-First Nations people. Tasmania is no exception to this as we see 24% of the current prison population identify as First Nations, whilst only making up 5% of the general Tasmanian population. In addition, TALS' own data shows that there have been 3,553 arrest notifications made to our service within the 2023-24 year, compared with the year prior where that statistic sat at 2,907- a 20% increase. It will be difficult for the Tasmanian Government to refute that the broadening of police powers will not have adverse impacts on Tasmanian Aboriginal Communities. The National Justice Project states the following:

“Across all Australian States and Territories, discriminatory policing continues to disproportionately impact First Nations people and communities due to systemic racism and bias in the interpretation, application and enforcement of oppressive and overreaching legislation”⁶

⁵ Petersen K, Weisburd D, Fay S, Eggins E, Mazerolle L. *Police stops to reduce crime: A systematic review and meta-analysis*. National Library of Medicine 2023 Jan 10;19(1):e1302.

⁶ The National Justice Project, *NJP position statement: Discriminatory Policing* (2022) https://www.justice.org.au/wpcontent/uploads/2022.07.12_NJP_Position_Statement_Discriminatory_Policing-.pdf

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

This proposal paper makes many mentions that imply that police will always act with discretion and professionalism. TALS does not accept this. Historically, police have acted in ways that cause and perpetuate harm against Aboriginal people.

As such, the laws that inform their functioning must be explicit and fettered, without presuming members of the police force are beyond reproach purely because of the position they hold. Community apprehension is evident in a recent survey conducted by Tasmanian Police that reported only 57% of respondent described police as being fair and equitable.⁷ TALS further notes, that only 17% of respondent reported increased police presence as a suggestion to decrease crime rates, thus highlighting that the community does not necessarily believe that amplifying the capacity of the police force is the solution to impacting crime rates.⁸

Additionally, the Tasmanian Government should embed and strongly endorse the operational principle of police discretion, as it is described by the Australian Law Reform Commission:

“A key feature of policing in Australia is premised on the principle that ‘[s]trict adherence to the letter of the law in many cases would be too harsh and justice may be better served by not introducing an offender into the criminal justice process.’”

It is an unfortunate reality that at times legislation that expands the powers of police can have adverse impacts on the ways in which police practice and interact with communities, it is our hope that principles such as police discretion will continue to be encouraged and embedded as best practice.

⁷ Tasmania Police, *Community Survey* (2023) <https://www.police.tas.gov.au/survey/>

⁸ *ibid*

Children and Young People and inconsistency with Youth Justice Blueprint:

In the Minister's Foreword of this document, the Attorney General discusses the Government's commitment to the Youth Justice Blueprint and that the proposed post arrest procedures will not apply to children and young people.⁹

However, it is of concerns to TALS that all of the proposed pre-arrest expansions of power do apply to and will significantly impact children and young people. Pre-arrest procedures such as, search of a suspect being warranted due to 'reasonable suspicion' is a very low legal threshold and is likely to further criminalise children and young people if they refuse, attempt to run away or become non-compliant. Such powers to search under reasonable suspicion for example, may result in children and young people being targeted for behaviour that is merely associated with that of being an adolescent.

TALS believes that such pre-arrest procedures applying to children would not be considered diversionary or best practice because it is not dealing with the causal factors of crime. The more children and young people are exposed to pre arrest procedures and what might be considered proactive policing, there is an increased risk of emergence in and reoccurring contact with the criminal legal system, as well as a greater risk of spending time on remand. These measures appear to be significantly out of step with the intention of the youth justice blueprint, which aims to deter entry into the criminal legal system, and refrain from the use of detention in any capacity, particularly remand. Tasmania's Youth Justice Blueprint states the following:

“

⁹ Department of Justice (Tas), *Police Powers and Responsibilities Act: Proposal Paper* (2024) pp.4

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Even short periods of incarceration can have long lasting adverse impacts on children and young people, including subsequent youth justice system contact.”¹⁰

And:

“The experience of arrest can be traumatic for children and young people, with them often transitioning through watchhouses prior to being placed in a custodial settings. This can be de stabilising and heighten the risks of children and young people.”¹¹

It is of concern to TALS that the Government would introduce laws that increase the potential of children and young people coming in contact with and entering the Youth Justice system which may increase the likelihood of their criminalisation.

Specific legislative concerns:

General power to arrest without a warrant:

TALS is concerned that the proposed changes set out in this section may result in harsher treatment of people suspected of a crime. By issuing a summons the process of arrest can be avoided, the psychological impacts of arrest should not be minimised and should be avoided at all costs. The list of six circumstances that may preclude an officer from issuing a summons listed on page 15 are of concern to TALS, particularly dot point one: “ensure the attendance of the defendant before the Court in respect to offence”. This statement is particularly broad and does not appear to have any limitations or protections. Would this relate only to people who have had multiple instances of failure to appear before the court? Or could this be satisfied by issues such as having no fixed address? It is of concern to TALS that First Nations people may be disproportionately impacted by such measures if bail is imposed

¹⁰ Youth Justice Reform Taskforce, *Youth Justice Model of Care* (2024) Department of Premier and Cabinet pp.

36

¹¹ *Ibid* pp. 37

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

where a summons could have been, as Aboriginal people are disadvantaged in meeting bail criteria.¹² TALS believes rigorous protections are required to ensure that a summons is always issued where possible.

Obligations when making an arrest:

TALS agrees that police should not have to remember and recite the specific breaches of legislation upon making an arrest; however, are of the opinion that it should never be assumed that it is obvious to someone why they are being arrested, as per statements on page 21 of the document. There are many reasons people may engage in problematic behaviour and not be conscious of the consequences, for example, impairments due to mental health illness, intoxication and acquired brain injury. TALS is of the opinion all community members should be notified as to why they are being arrested, immediately, in plain English. And if a warrant has been issued, we support the notion of the arrested person receiving a copy of said warrant as soon as it is practicable.

TALS further highlights that Tasmanian Law should comply with international treaties to which Australia has adopted. Article 14.3 states of the United Nations International Covenant on Civil and Political Rights (ICCPR) states the following:

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”¹³

¹² *Royal Commission into Aboriginal deaths in custody* (National Report 1991) Vol 3, pp 21.4

¹³ International Covenant on Civil and Political Rights, 16 December 1966 (entered into force 23 March 1976) art 14.3

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Further to this TALS are supportive of legislating the notification process to the recognised and government funded Aboriginal and Torres Strait Islander Legal Service (ATSILS) operating in Tasmania. It is noted that because of the Royal Commission into Aboriginal Deaths in Custody many other jurisdictions (NSW, ACT, SA, VIC) have already embedded this process in legislation.

Power to enter premisses to effect arrest:

TALS is supportive of police being required to meet the threshold of reasonable belief relating to the presence of a suspect prior to entering a premises without a warrant. TALS further supports the notion that Police should not remain on the premises longer than required to effect said arrest or leave the premises if arrest is not viable and the requirement for police to identify themselves prior to entry.

Nevertheless, TALS is supportive of all the protections laid out in the Tasmanian Law Reform Institute (TLRI) report being implemented in relation to this section, including extra requirements to enter premises without a warrant between the hours of 9pm and 6am. This is because children are much more likely to be present in private residences within that time, and disruption to the family routine in these hours should not be carried out unless crucial to public safety. Children, where possible should always be spared from witnessing parents or loved ones being arrested, the detrimental impacts of such arrests on their mental health and development have been well documented.¹⁴ This would be in line with legislation of other Australian jurisdictions. Further to this, research has established that about 5% of children will experience the arrest and subsequent incarceration of a parent, however, that figure rises to about 20% for First Nations children in Australia.¹⁵ This number should be

¹⁴ Roberts YH, Snyder FJ, Kaufman JS, Finley MK, Griffin A, Anderson J, Marshall T, Radway S, Stack V, Crusto CA. *Children exposed to the arrest of a family member: Associations with mental health* (2014) *Journal of Child and Family Studies* Vol 23 pp214-224

¹⁵ Victorian Aboriginal Child Care Agency (VACCA), *Response to the Inquiry Into Children of Imprisoned Parents* (2022) pp.5

https://www.vacca.org/content/Document/VACCAsubmission_Inquiry_into_Children_of ImprisonedParents_29Apr22%5B71%5D.pdf

CONTACT US

T 1800 595 162
E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

forefront in the minds of the Tasmanian Government in relation to the forceful entry into the homes of Aboriginal children and their families.

TALS further notes that other jurisdictions (Victoria, Australian Capital Territory and the Commonwealth) require the offence threshold to be an offence of a 'serious' nature to enter the property without a warrant, regardless of the time of day. TALS is concerned that the offence threshold has not been defined in this document and would see the forceful entry of police into private dwellings for any offence, including minor ones. This needs further clarification from the Government. It is also noted that as per article 17.1 of the ICCPR that,

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation"¹⁶

And it could be argued that without adequate protections, these sorts of police powers would lead to arbitrary interference with privacy, family and home.

Power of arrest by private persons:

TALS accepts that this legislation is standard practice in many jurisdictions. However, TALS would like to see that the Tasmanian Government make efforts to ensure the community are equipped to understand their rights and limitations when carrying out a 'citizen's arrest', as there can be significant consequences for both the private person and the accused.

Power to search arrested persons:

TALS supports the position that Police will remain unable to carry out a body cavity search. It is noted that beyond this, the types of searches are not expanded on here

¹⁶ International Covenant on Civil and Political Rights, 16 December 1966 (entered into force 23 March 1976) art 17.1

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

and lack detail, TALS would like to have greater detail as to what searches police are able to carry out, particularly in public spaces.

In relation to other search tactics, if a person is being asked to remove clothing, privacy should be absolute, not merely 'reasonable'; and if a person is being asked to remove clothing and expose part of their body that the search is absolutely carried out by an officer of the same sex every time, not just 'where practicable'.

Further to this, consent should be highlighted here, police should always seek consent and provide an opportunity for the arrested person to provide that consent prior to carrying out a search of an arrested person. And, if there is an opportunity to use body scanning devices, that these should be used in the first instance prior to any physical search of an individual.

TALS would also encourage the wording of legislation to be plain and direct. For example, on page 27 it states, 'the search should be carried out in the least intrusive means possible' it would be preferable for such statements to offer more clarity for police officers, such as, 'searches that require the removal of clothing should only be used as an absolute last resort and should not be carried out in view of the public'. TALS appreciates that arrested individuals may have evidence on their person; however, the adverse impacts of strip searching are well documented, and this should be prevented by any means; particularly in relation to vulnerable groups such as, women, people living with disabilities and First Nations people.¹⁷

Power to identify suspect:

The Tasmanian Government have proposed to make it an offence for members of the community to refuse to provide their personal information, and as such it does not seem reasonable for that information to be demanded at a reasonable suspicion

¹⁷ V Sentas & M Grewcock, *Strip Searches, Police Power and the Infliction of Harm: An Analysis of the New South Wales Strip Search Regime* (2021) *International Journal of Crime, Justice and Social Democracy* Vol 10(3)

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

threshold. In other jurisdictions such as, Victoria, where it is an offence to refuse to provide your name and address or to provide false information, police must have a reasonable belief that community member has committed an offence prior to making that demand. As discussed previously, belief is a significantly higher threshold than to suspect.

TALS further notes that the Western Australia is the only other jurisdictions to demand date of birth details, it is of concern to TALS that police would be able to demand such identifiable information without having sufficient evidence an offence has occurred.

Power to search suspect for evidence and to seize:

TALS have concerns that the threshold of reasonable suspicion is very low in this instance, without further protections for members of the community. For example, if an individual was pulled over while driving, and police were able to establish reasonable suspicion, to then be able to thoroughly search an individual's vehicle and physical person is intrusive without having to establish a reasonable belief.

TALS notes that in Queensland, there are protections that searches of a suspected a person in a public place when there is not warrant. They include limiting the search to a 'frisk search' where possible, avoiding any personal embarrassment for the community member and conducting the search away from public view. In the Australian Capital Territory, search of a person without a warrant can only be conducted if they are suspected of committing a *serious* crime. This document merely states 'an offence', police discretion must be encouraged if such loose terminology is to be implemented.

TALS would also encourage the wording of legislation to be plain and direct. For example, on page 35 it states, 'the search should be carried out in the least intrusive means possible' it would be preferable for such statements to offer more clarity for police officers, such as, 'searches that require the removal of clothing should only be used as an absolute last resort and should not be carried out in view of the public'.

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

And if there is an opportunity to use body scanning devices, that these should be used in the first instance prior to any physical search of an individual.

Use of force:

TALS understands that there is standard practice across Australian jurisdictions that allow for police to use force; however, such powers should be used as an absolute last resort, and using the least amount of force necessary. This is an opportunity to ensure police are adequately trained and reminded to act with care and restraint when dealing with members of the public. And that standard practice should involve the use of body worn cameras and further reporting mechanisms for instances where force has been used. It is noted that on page 43 that police are not able to use force that would likely result in death or grievous bodily harm unless they are protecting life or preventing serious injury to another. Although this is understandable, TALS believes that the expectation to prevent any serious injury should be included in any other circumstances, grievous bodily harm is too high of a threshold and does not offer significant protection for the public.

TALS notes that there are proposed protections for children and young people in the document; however, such protections are not listed. TALS calls for further protections for children and vulnerable groups.

Conclusion:

If the government is sincere in its objectives to tackle crime, it should allocate appropriate resources to address social disadvantage rather than changing laws to further criminalise and arguably target the vulnerable people in our community.

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

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000

Warmest regards,



Jake Smith (He/Him)

Chief Executive Officer

P: 1800 595 162 | M: 0492 857 491 | E: jsmith@tals.net.au

Level 1, Office 1A, 67-69 Brisbane Street, Launceston