

COMMUNITY
LEGAL CENTRES
TASMANIA

27 August 2020

The Honourable Craig Farrell
President of the Legislative Council
Parliament House
Hobart TAS 7000

via email: craig.farrell@parliament.tas.gov.au

Dear Craig,

Re: Police Offences Amendment (Repeal of Begging) Bill 2019

Community Legal Centres Tasmania (CLC Tas) is writing to urge members of the Legislative Council to support the repeal of begging from the *Police Offences Act 1935* (Tas) ('the Act').

However, we are strongly opposed to clauses 15B(1)(ca) and 15B(1A) of the *Police Offences Amendment (Repeal of Begging) Bill 2019* ('the Bill'). If the Bill is passed in full, section 15B of the Act will read as follows:

15B Dispersal of persons

(1) A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person –

(a) has committed or is likely to commit an offence; or

(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or

(c) is endangering or likely to endanger the safety of any other person; or

(ca) by, or in the course of, or in connection with, begging in that place has –

(i) intimidated, or harassed, a person; or

(ii) prevented or deterred persons from entering, or the conduct of, a business that is in, or in the vicinity of, the place; or

(iii) prevented or deterred persons from using a public facility that is in, or in the vicinity of, the place; or

(d) has committed or is likely to commit a breach of the peace.

(1A) For the purposes of subsection (1)(ca) – public facility includes –

(a) a toilet or shower facility; and

(b) a barbeque facility; and

(c) playground equipment; and

(d) a structure for the provision of shelter; and

(e) a parenting room; and

(f) a water fountain.

(2) A person must comply with a direction under subsection (1).

Penalty: Fine not exceeding 2 penalty units.

We strongly believe that there is already sufficient scope within section 15B of the Act without the need for additional 'move on' powers as proposed in clause 15B(1)(ca). Currently, section 15B of the Act provides that persons can be moved on if the police believes on reasonable grounds that a person:

(a) has committed or is likely to commit an offence; or

(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or

(c) is endangering or likely to endanger the safety of any other person; or

(d) has committed or is likely to commit a breach of the peace.

The High Court has consistently held that the objective of statutory interpretation is to give effect to the parliament's purpose as expressed in the language of the legislation.¹ This applies to both the courts in *interpreting* legislation and the police in *applying* legislation.

Amongst the many definitions of 'obstruct' and 'obstruction', the *Macquarie Dictionary*² provides the following definitions:

¹ *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at 381. See also *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* [2012] HCA 56; 248 CLR 378 at para. [88].

² *The Macquarie Dictionary* (Macquarie University, Third Edition: 2001) at 1323.

obstruct 1. to block or close up, or make difficult of passage, with obstacles, as a way, road, channel, or the like. 2. To interrupt, make difficult, or oppose the passage, progress, course, etc.

obstruction 1. something that obstructs; an obstacle or hindrance. 2. The act of obstructing.

Similarly, 'breach of the peace' is defined as follows:³

breach of the peace any disturbance of public order whereby harm is caused or threatened to persons or property, including the specific offences of assault, affray, riot and unlawful assembling.

Section 15B(1)(b) already provides the police with the power to move on persons who are "obstructing or likely to obstruct" persons prevented or deterred from entering public facilities or businesses because the definition of 'obstruct' and 'obstruction' includes "to block or close up, or make difficult of passage" and "to interrupt, make difficult or oppose the passage...". In our opinion, the insertion of clause 15B(1)(ca)(ii)-(iii) and the intention to move on persons "prevented or deterred from entering" either a business or public facility is a duplication of section 15B(1)(b). In other words, both clause 15B(1)(ca)(ii)-(iii) are unnecessary and should be scrapped.

Clause 15B(1)(ca)(i) provides that police officers can move on a person/s who have "intimidated or harassed a person". Again, we reiterate that there is already sufficient scope within section 15B of the Act to move on persons who have intimidated or harassed others. Importantly, the *Tasmanian Police Manual* appears to agree with our interpretation with the following noted about section 15B of the Act:⁴

2.22.3 DISPERSAL OF PERSONS FROM PUBLIC PLACES ORDER

(1) Police officers who intend to rely upon the provisions of section 15B of the *Police Offences Act 1935* (dispersal of persons in a public place) shall, before effecting an arrest:

- (a) if in plain clothes identify themselves as police officers, stating their name rank and station; and
- (b) direct the person/s to leave the public place; and
- (c) on failure or refusal, the directed person/s must again be directed to leave. A failure to comply at this point completes the offence and the person/s are subject to arrest and prosecution.

³ *The Macquarie Dictionary* (Macquarie University, Third Edition: 2001) at 235.

⁴ Tasmania Police Manual – as at 18 December 2018. As found at <https://www.police.tas.gov.au/uploads/TPM-RTI-18-December-2018.pdf> (Accessed 27 August 2020).

(2) These provisions are not to be applied to resolve demonstrations, disputes or processions which are being conducted lawfully and in a peaceful manner.

(3) Section 15B of the *Police Offences Act 1935* provides police officers with the power to disperse individuals or groups who are behaving in a threatening or disorderly manner. This type of behaviour can escalate to violence or intimidation requiring strong police intervention [emphasis added].

(4) Section 15B of the *Police Offences Act 1935* also provides police officers with the power to require a person or group of persons in a public place to disperse where they interfere with police investigating an offence or incident. This includes motor vehicle accidents, disturbances, crime scenes and other incidents where interference may impact on the way an investigation is conducted, or where interference may impact on the safety of victims or other people in the vicinity.

Expressed in another way, Tasmania Police believe that section 15B of the Act already allows police officers to intervene and move on persons even before the escalation to intimidation. According to Tasmania Police, persons behaving in “a threatening or disorderly manner” is sufficient to warrant the issuing of a move on order. In other words, section 15B of the Act contains a lower threshold for moving on persons than that contained in clause 15B(1)(ca)(i).

Finally, we would note that seeking to single out poor people with specific move on powers will further entrench stigmatisation against an already marginalised group.

In summary, we support the repeal of begging as an offence. However, we strongly believe that clauses 15B(1)(ca) and 15B(1A) are unnecessary duplication and should not be inserted into section 15B of the Act.

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

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

cc: All members of the Legislative Council