



TASMANIA

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**POLICE OFFENCES AMENDMENT (PROHIBITED  
INSIGNIA) ACT 2018**

**No. 13 of 2018**

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# **POLICE OFFENCES AMENDMENT (PROHIBITED INSIGNIA) ACT 2018**

**No. 13 of 2018**

**An Act to amend the *Police Offences Act 1935***

**[Royal Assent 14 September 2018]**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **1. Short title**

This Act may be cited as the *Police Offences Amendment (Prohibited Insignia) Act 2018*.

## **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

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**3. Principal Act**

In this Act, the *Police Offences Act 1935\** is referred to as the Principal Act.

**4. Sections 6A and 6B inserted**

After section 6 of the Principal Act, the following sections are inserted in Division I:

**6A. Display of certain insignia, &c., prohibited**

(1) In this section –

*identified organisation* means an organisation that has been prescribed under subsection (3);

*participant in*, in relation to an organisation, means a person –

(a) who –

- (i) has been accepted as a member of the organisation, whether informally or through a process set by the organisation; and
- (ii) has not ceased to be a member of

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\*No. 44 of 1935

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the organisation;  
or

- (b) who is an honorary member of the organisation; or
- (c) who is a prospective member of the organisation; or
- (d) who is an office holder of the organisation; or
- (e) who identifies himself or herself in any way as belonging to the organisation; or
- (f) whose conduct in relation to the organisation would reasonably lead another person to consider the person to be a participant in the organisation;

***prohibited item*** means any piece of clothing, jewellery, or other accessory, that displays –

- (a) the name of an identified organisation; or
- (b) the club patch, insignia or logo of an identified organisation; or

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- (c) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, an identified organisation, including –
  - (i) the symbol “1%”;  
and
  - (ii) the symbol “1%er”; and
  - (iii) any image, symbol, abbreviation, acronym or other form of writing that is prescribed;

***proposed prohibited item***, in relation to an organisation, means an item that would be a prohibited item if the organisation were an identified organisation;

***relevant offence*** means an offence involving –

- (a) a public act of violence to a person; or
- (b) a public act of damage to property; or

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- (c) disorderly, offensive, threatening or violent behaviour, in public.
- (2) The objects of this section are, as far as practicable –
- (a) to ensure that members of the public may lawfully use and pass through public places without experiencing fear or intimidation because other persons are visibly wearing or carrying prohibited items; and
  - (b) to reduce the likelihood of public disorder or acts of violence in public places; and
  - (c) to reduce the membership of organisations, members of which may, by wearing or carrying prohibited items –
    - (i) cause members of the public to feel threatened, fearful or intimidated; or
    - (ii) have an undue adverse effect on the health or safety of members of the public; or
    - (iii) increase the likelihood of public disorder or acts of violence.

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- (3) Regulations may prescribe an organisation to be an identified organisation.
- (4) Regulations may only prescribe an organisation to be an identified organisation on the recommendation of the Minister.
- (5) The Minister may recommend that an organisation be prescribed to be an identified organisation, but only if he or she has –
  - (a) received from the Commissioner a recommendation under subsection (6) in relation to the organisation, together with the document required, in accordance with subsection (7), to accompany the Commissioner's recommendation; and
  - (b) received from the Attorney-General a recommendation under subsection (9) in relation to the organisation, together with the document required, in accordance with subsection (10), to accompany the Attorney-General's recommendation.
- (6) The Commissioner may, by notice to the Minister, recommend that an organisation be prescribed to be an identified organisation.

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- (7) A recommendation of the Commissioner under subsection (6) is to be accompanied by a document setting out –
- (a) reasons for the recommendation; and
  - (b) a summary of the evidence taken into account by the Commissioner in deciding whether to make the recommendation.
- (8) The Commissioner is to provide to the Attorney-General –
- (a) a copy of a recommendation made under subsection (6); and
  - (b) a copy of the document that, in accordance with subsection (7), accompanied the Commissioner's recommendation.
- (9) The Attorney-General, after having considered –
- (a) the document that, in accordance with subsection (8), was provided to the Attorney-General; and
  - (b) any other evidence that the Attorney-General thinks fit –
- may, by notice to the Minister, recommend to the Minister that the

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organisation be prescribed to be an identified organisation.

- (10) A recommendation of the Attorney-General under subsection (9) is to be accompanied by a document setting out –
- (a) reasons for the recommendation; and
  - (b) a summary of the other evidence, if any, that, in addition to the evidence received by the Attorney-General under subsection (8), was, in accordance with subsection (9)(b), taken into account in deciding whether to make the recommendation.
- (11) The Minister, the Commissioner and the Attorney-General may only make a recommendation under this section that an organisation be prescribed to be an identified organisation if the Minister, the Commissioner or the Attorney-General, respectively, is satisfied that the wearing or carrying of a proposed prohibited item, in relation to the organisation, by a person in a public place –
- (a) may cause members of the public to feel threatened, fearful or intimidated; or

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- (b) may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence; or
  - (c) may encourage persons to become or remain members of an organisation, the members of which may, by wearing or carrying proposed prohibited items –
    - (i) cause members of the public to feel threatened, fearful or intimidated; or
    - (ii) have an undue adverse effect on the health or safety of members of the public; or
    - (iii) increase the likelihood of public disorder or acts of violence.
- (12) In determining whether to make a recommendation under this section, the Minister, the Commissioner and the Attorney-General, respectively, must have regard to whether any person has, while a member of, or a participant in, the organisation, engaged in serious criminal activity or committed a relevant

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offence of which the person had been convicted.

- (13) Regulations, for the purpose of subsection (3), that prescribe an organisation to be an identified organisation are of no effect until a notice, setting out that the regulations have been made and the effect of the regulations, appears in as many daily Tasmanian newspapers as circulate generally in the State.
- (14) A person who is in a public place must not wear or carry a prohibited item that, if another person were in the public place, would be visible to the other person.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 20 penalty units; or
- (b) a subsequent offence, a fine not exceeding 40 penalty units.
- (15) A person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item that, if another person were in the public place, would be visible to the other person.

Penalty: In the case of –

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- (a) a first offence, a fine not exceeding 20 penalty units; or
  - (b) a subsequent offence, a fine not exceeding 40 penalty units.
- (16) It is a defence to proceedings for an offence against subsection (14) or (15) for the defendant to provide evidence that –
- (a) the defendant engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal or law enforcement purpose; and
  - (b) the defendant’s conduct was, in the circumstances, reasonable for that purpose.

**6B. Search, seizure and forfeiture of prohibited items**

- (1) If a police officer has reasonable grounds to believe that a person who is in a public place is contravening, or has contravened, section 6A(14) or (15), the police officer may, using such force, means and assistance as is reasonably necessary –

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- (a) detain that person and search the person, including any clothing of the person; and
  - (b) stop and detain any vehicle in or on which the person is, or was when the provision was being contravened, and search the vehicle and any container found in or on the vehicle; and
  - (c) seize any item, found during a search under this subsection, that the police officer is of the opinion is a prohibited item within the meaning of section 6A(1).
- (2) On conviction of a person of an offence against section 6A(14) or (15), any prohibited item, within the meaning of section 6A(1), to which the offence relates that is lawfully in the possession of the Crown is forfeited to the Crown.

**5. Section 55 amended (Arrest)**

Section 55(2D) of the Principal Act is amended by inserting “section 6A(14) or (15),” after “under”.

**6. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.

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*[Second reading presentation speech made in:–  
House of Assembly on 21 August 2018  
Legislative Council on 29 August 2018]*