



**IN THE HIGH COURT OF AUSTRALIA**

**HOBART REGISTRY**

**No H2 of 2018**

**BETWEEN:**

**JOHN GRAHAM PRESTON**

Appellant

**AND:**

**ELIZABETH AVERY**

First Respondent

10

**AND:**

**SCOTT WILKIE**

Second Respondent

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**APPELLANT'S SUPPLEMENTARY SUBMISSIONS**

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DL Legal Lawyers  
Suite 2, Karingal Chambers, 35 Bell Street Mall  
TOOWOOMBA QLD 4350  
Phone: 0412 715 937  
Email: [Randall.Gibbens@DLLegal.com.au](mailto:Randall.Gibbens@DLLegal.com.au)  
Ref: Randall Gibbens, Principal Lawyer

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Telephone: 0412 715 937  
Fax: N/A      -

## Part I: Certification

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1. This document is in a form suitable to be placed on the internet.

## Part II: Argument

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### Overview

2. The privacy, dignity, physical safety and psychological wellbeing of people accessing premises where terminations are provided are protected by a variety of criminal and civil laws.<sup>1</sup>
3. Full copies of the relevant statutory provisions are in the Annexure, save in respect of the Local Laws in respect of which the Hobart City Council By-Laws are provided and references are provided for by-laws in other council areas.

### Physical safety

4. Common assault: *Criminal Code Act 1924* (Tas) Sch 1, ss 182, 184 (*Criminal Code*).
5. Assault on a pregnant woman: *Criminal Code* s 184A.
6. Unlawful injury to property: *Criminal Code* s 273.
7. Disturbing the peace: *Police Offences Act 1935* (Tas) s 13 (*Police Offences Act*).
8. Jostling: *Police Offences Act* s 13(1).
9. Nuisance: *Police Offences Act* s 13(1).
10. Criminal trespass to land: *Police Offences Act* s 14B.
11. Move on directions: *Police Offences Act* s 15B.
12. Common assault: *Police Offences Act* s 35.
13. Unlawful injury to property: *Police Offences Act* s 37.
14. Demonstration or procession on a public street without a permit: *Police Offences Act* s 49AB.
15. Holding an assembly or rally: *Hobart City Council Public Spaces By-Law No 4 of 2018*<sup>2</sup> Part 2 Division 2 cl 6 (*HCCPS*), Part 4 Division 6 cls 69 and 70, Salamanca Market By-Law No 1 of 2010 cl 21 (*SM*).
16. Common law – tort of false imprisonment.

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<sup>1</sup> Including paragraphs (a), (c) and (d) of the definition of “prohibited behaviour” in s 9(1) of the *Reproductive Health (Access to Terminations) Act 2013* (Tas).

<sup>2</sup> This by-law replaced the Parks Recreation and Natural Areas By-Law No 5 of 2008.

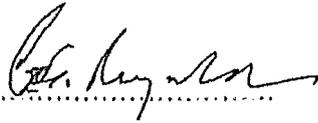
- 17. Common law – tort of battery.
- 18. Common law – tort of trespass to land.

**Privacy and dignity**

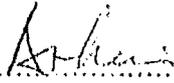
- 19. Stalking: *Criminal Code* s 192.
- 20. Indecent, obscene, offensive, abusive or insulting language or behaviour: *Police Offences Act* s 12.
- 21. Insulting or annoying a person: *Police Offences Act* s 13(1).
- 22. Observing or recording a person in breach of the person's privacy when the person is engaging in a private act (even if in public): *Police Offences Act* s 13A(1).
- 10 23. Use of listening devices to record a private conversation: *Listening Devices Act 1991* (Tas) s 5.
- 24. Distributing handbills: *HCCPS* Part 2 Division 3 cl 21 and *SM* cl 24.
- 25. Common law – torts of private and public nuisance.
- 26. Common law – tort of defamation (as modified by the *Defamation Act 2005* (Tas)).

**Psychological wellbeing**

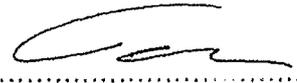
- 27. Unlawful assembly: *Criminal Code* s 73.
- 28. Obscene publications: *Criminal Code* s 138.
- 29. Criminal nuisance: *Criminal Code* ss 140, 141.
- 30. Stalking: *Criminal Code* s 192.
- 20 31. Loitering: *Police Offences Act* s 7.
- 32. Threatening words or behaviour: *Police Offences Act* s 12.
- 33. Indecent or offensive behaviour: *Police Offences Act* s 21.
- 34. Common law – tort of assault.
- 35. Common law – tort of intimidation.
- 36. Common law – tort of defamation (as modified by the *Defamation Act 2005* (Tas)).



G. O' Reynolds



E. C. Brohier



D. P. Hume

**ANNEXURE A- TASMANIAN AND COMMONWEALTH LEGISLATION**

**Criminal Code Act 1924 Schedule 1**

Version current from 12 December 2017 to date (accessed 4 October 2018 at 12:54)

**73. Unlawful assembly: Lawful assembly becoming unlawful: Riot**

(1) An assembly of 3 or more persons –

(a) with an intent to effect any common purpose, lawful or unlawful, in such a manner that firm and courageous persons in the neighbourhood of such assembly have reasonable grounds for alarm;

10 (b) with an intent to assist each other in resisting any person opposing the execution of the common purpose; and

(c) who manifest such intentions as aforesaid in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace –

is an unlawful assembly.

(2) Persons lawfully assembled may become an unlawful assembly if they form and manifest such intentions as aforesaid in manner aforesaid.

(3) An unlawful assembly which has begun to put into execution the common purpose is a riot.

**74. Taking part in unlawful assembly**

20 Any person who takes part in an unlawful assembly is guilty of a crime.

Charge: Taking part in an unlawful assembly.

**138. Obscene publications**

(1) Any person who knowing, or having a reasonable opportunity of knowing, the nature thereof –

(a) . . . . .

(b) publicly exhibits any disgusting object or indecent show –

is guilty of a crime.

Charge: Exhibiting obscene matter.

(2) In any prosecution for a crime under this section it shall be a defence to prove that the act alleged was done for the public good.

(3) The questions whether any such act as aforesaid was capable of being for the public good, and whether there is any evidence in the circumstances of excess beyond the requirements of the public good, are questions of law.

(4) The questions whether any such act as aforesaid was for the public good, and whether there was any such excess as aforesaid, are questions of fact.

#### 140. Common nuisance defined

10 (1) A common nuisance is an unlawful act or an omission to discharge a legal duty, such act or omission being one which endangers the lives, safety, health, property, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.

(2) For the purposes of this section the comfort of the public shall be deemed to be affected by any pollution of the environment within the meaning of the Environmental Management and Pollution Control Act 1994 .

#### 141. Common nuisances that are punishable

(1) A person who commits any common nuisance which endangers the lives, safety, or health of the public, or which occasions injury to the person of any individual, is guilty of a crime.

20 Charge: Creating a nuisance.

(2) A person who commits a common nuisance of a kind mentioned in subsection (1) and causes or suffers it to continue is guilty of a crime.

Charge: Creating and continuing a nuisance.

(3) A person who commits a common nuisance of a kind not mentioned in subsection (1) and causes or suffers it to continue is guilty of a crime.

Charge: Continuing a nuisance.

(4) A person guilty of a crime under subsection (3) is not liable to be punished otherwise than as provided in chapter XLIIA .

#### 182. Definition of assault

30 (1) An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any gesture to apply such force to the person of another if the person making the attempt or threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; or the act of depriving another of his liberty.

- (2) Words alone cannot constitute an assault.
- (3) An act which is reasonably necessary for the common intercourse of life if done only for the purpose of such intercourse, and which is not disproportionate to the occasion, does not constitute an assault.
- (4) Except in cases in which it is specially provided that consent cannot be given, or shall not be a defence, an assault is not unlawful if committed with the consent of the person assaulted unless the act is otherwise unlawful, and the injury is of such a nature, or is done under such circumstances, as to be injurious to the public, as well as to the person assaulted, and to involve a breach of the peace.

10    **184. Common assault**

Any person who unlawfully assaults another is guilty of a crime.

Charge: Assault.

**184A. Assault on pregnant woman**

Any person who unlawfully assaults a woman, knowing that woman to be pregnant is guilty of a crime.

Charge: Assault on pregnant woman.

**192. Stalking**

- 20    (1) A person who, with intent to cause another person physical or mental harm or to be apprehensive or fearful, pursues a course of conduct made up of one or more of the following actions:
- (a) following the other person or a third person;
- (b) keeping the other person or a third person under surveillance;
- (c) loitering outside the residence or workplace of the other person or a third person;
- (d) loitering outside a place that the other person or a third person frequents;
- (e) entering or interfering with the property of the other person or a third person;
- (f) sending offensive material to the other person or a third person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the other person or a third person;
- 30    (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the other person or a third person;
- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the other person to be apprehensive or fearful;

(i) contacting the other person or a third person by postal, telephonic, electronic or any other means of communication;

(j) acting in another way that could reasonably be expected to cause the other person to be apprehensive or fearful –

is guilty of a crime.

Charge: Stalking.

(2) For the purposes of subsection (1) –

(a) a person pursues a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion; and

10 (b) if the conduct occurs on more than one occasion, it is immaterial whether the actions that make up the conduct on one of those occasions are the same as, or different from, the actions that make up the conduct on another of those occasions.

(3) A person who pursues a course of conduct of a kind referred to in subsection (1) and so causes another person physical or mental harm or to be apprehensive or fearful is taken to have the requisite intent under that subsection if at the relevant time the person knew, or ought to have known, that pursuing the course of conduct would, or would be likely to, cause the other person physical or mental harm or to be apprehensive or fearful.

20 (4) Subsection (3) does not apply to a person who, in good faith, pursues a course of conduct of a kind referred to in subsection (1) in the course of performing official duties to –

(a) enforce the criminal law; or

(b) administer an Act; or

(c) enforce a law imposing a pecuniary penalty; or

(d) execute a warrant; or

(e) protect the public revenue.

### 273. Unlawful injuries in general

Any person who unlawfully destroys or injures any property is guilty of a crime.

Charge: Unlawfully injuring property.

## POLICE OFFENCES ACT 1935

### 30 7. Loiterers, &c.

(1) A person, being a suspected person or reputed thief, shall not –

(a) be in or upon any building whatsoever or in any enclosed yard, garden, or area for any unlawful purpose; or

(b) frequent or loiter in or near any public place, or any river, or navigable stream with intent to commit a crime or an offence.

(2) In proving under this section intent to commit a crime or an offence it shall not be necessary to show that the person charged was guilty of any particular act tending to show his intent, and he may be convicted if from the circumstances of the case and from his known character as proved to the court before which he is charged it appears to such court that his intent was to commit a crime or an offence.

10 (3) If a police officer has reasonable grounds to believe that a person is contravening subsection (1), the police officer may, using such force, means and assistance as is reasonably necessary –

(a) detain and search that person; and

(b) seize any implement or instrument found on that person that the police officer considers could be used for an unlawful purpose or to commit a crime or an offence.

(4) On conviction of a person of an offence against subsection (1)(a) or (b), any implement or instrument seized under subsection (3)(b) is forfeited to the Crown.

(5) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months.

20 **12. Prohibited language and behaviour**

(1) A person shall not, in any public place, or within the hearing of any person in that place –

(a) curse or swear;

(b) sing any profane or obscene song;

(c) use any profane, indecent, obscene, offensive, or blasphemous language; or

(d) use any threatening, abusive, or insulting words or behaviour calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

30 (1A) A person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months.

(2) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence thereunder is liable to double the penalty prescribed in subsection (1) in respect of the offence in respect of which he is so convicted.

### 13. Public annoyance

- (1) A person shall not, in a public place –
- (a) behave in a violent, riotous, offensive, or indecent manner;
  - (b) disturb the public peace;
  - (c) engage in disorderly conduct;
  - (d) jostle, insult, or annoy any person;
  - (e) commit any nuisance; or
  - (f) throw, let off, or set fire to any firework.
- (2) A person shall not recklessly throw or discharge a missile to the danger or damage of another person or to the danger or damage of the property of another person.
- (2A) A person shall not, in a public place, supply liquor to a person under the age of 18 years.
- (2B) A person under the age of 18 years shall not consume liquor in a public place.
- (2C) A person under the age of 18 years shall not have possession or control of liquor in a public place.
- (3) A person shall not wilfully disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship.
- (3AAA) If a police officer has reasonable grounds to believe that a person is contravening or has contravened subsection (1)(f) or subsection (2), the police officer may, without warrant and using such force, means and assistance as is reasonably necessary –
- (a) detain and search that person; and
  - (b) seize –
    - (i) in relation to a contravention under subsection (1)(f), any firework found on that person; and
    - (ii) in relation to a contravention of subsection (2), any missile found on that person.
- (3AAB) On conviction of a person of an offence against subsection (1)(f) or subsection (2) any firework or missile seized under subsection (3AAA)(b) is forfeited to the Crown.
- (3AA) A person who contravenes a provision of subsection (1), (2), (2A), (2B), (2C) or (3) is guilty of an offence and is liable on summary conviction to –
- (a) a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months, in the case of an offence under subsection (1) or (3); or

(b) a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2) ; or

(c) a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2A) , (2B) or (2C) .

(3A) A person convicted in respect of an offence under this section committed within 6 months after he has been convicted of that or any other offence thereunder is liable to double the penalty prescribed in respect of the offence in respect of which he is so convicted.

10 (3B) A police officer may seize liquor in the possession of a person the police officer reasonably believes is committing an offence under subsection (1) , (2) , (2A) , (2B) , (2C) or (3) .

(3C) If a police officer has seized liquor in accordance with subsection (3B) and the person who has possession of the liquor is subsequently convicted of an offence under subsection (1) , (2) , (2A) , (2B) , (2C) or (3) , the court that convicted the person may order that the liquor and its container be forfeited to the Crown.

(3D) If –

(a) a police officer has seized liquor in accordance with subsection (3B) ; and

(b) subsequent –

20 (i) no proceedings are instituted within a reasonable time for an offence under subsection (1) , (2) , (2A) , (2B) , (2C) or (3) ; or

(ii) proceedings are instituted for an offence under one of those subsections but no order for the forfeiture of the liquor is made –

a magistrate may order that the liquor be given to a person the magistrate is satisfied has a right to its possession but if no such order is made or sought within a reasonable time the Commissioner may dispose of the liquor in such manner as the Commissioner considers most appropriate, and shall pay any proceeds into the Consolidated Fund.

(4) A person shall not wilfully leave open any gate or slip-panel or make a gap in any fence for the purpose of permitting or causing any animal, or otherwise wilfully cause or procure any animal, to trespass.

30 (4A) A person who contravenes a provision of subsection (4) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 3 penalty units.

(6) A person, being the owner or usual keeper of a stallion, bull, boar, or ram, shall not permit the animal to be in any public place unless it is under the immediate custody or control of some competent person.

(6A) A person who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units.

(7) A person, being the owner or usual keeper of a horse, mule, hinny, ass, ox, pig, sheep, or goat, other than those mentioned in subsection (6), shall not permit the animal to graze or stray in any public place.

(7A) A person who contravenes subsection (7) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 1 penalty unit or to a penalty not exceeding 3 penalty units for any fifth or subsequent offence within a period of 5 years.

10 (8) The provisions of subsection (7) do not apply in respect of a milch cow grazing in pursuance of an authority lawfully issued by the body controlling the public place where the cow is grazing; nor to an animal grazing on an unfenced road not within 2.5 kilometres of a city or town.

(9) The owner or usual keeper of any animal mentioned in subsection (7) which is found straying in a public place is liable to the penalty imposed by that subsection, unless he satisfies the court that the presence of the animal therein was not due to the negligence or default of himself, his servant, or agent.

#### 13A. Observation or recording in breach of privacy

(1) A person who observes or visually records another person, in circumstances where a reasonable person would expect to be afforded privacy –

(a) without the other person's consent; and

(b) when the other person –

20 (i) is in a private place; or

(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act –

is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable person would expect to be afforded privacy in relation to that region, when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal region is guilty of an offence.

30 Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2A) It is a defence to proceedings for an offence against subsection (2) for the defendant to provide evidence that the observation or visual recording was carried out with the consent of the person observed or visually recorded.

(2B) If a police officer has reasonable grounds to believe that a person is contravening or has contravened subsection (1) or (2), the police officer may, without warrant and using such force, means and assistance as is reasonably necessary –

(a) detain and search that person; and

(b) seize any visual recording, item or instrument found on that person that the police officer considers could be used for observing or visually recording contrary to subsection (1) or (2).

10 (2C) The court may, if it considers any visual recording, item or instrument that was seized under subsection (2B)(b) may have been used during the commission of an offence against subsection (1) or (2), order that the visual recording, item or instrument be forfeited to the Crown.

(2D) The court may make an order under subsection (2C) whether or not the person is convicted of an offence against subsection (1) or (2).

(2E) On conviction of a person of an offence against subsection (1) or (2), any visual recording, item or instrument seized under subsection (2B)(b) is forfeited to the Crown.

(3) In subsection (2) –

genital or anal region, of a person, means the person's genital or anal region when that region is covered only by underwear or bare.

#### 14B. Unlawful entry on land

20 (1) A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.

(2) A person who is convicted of an offence under this section is liable to a penalty of–

(a) a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, in respect of entering or remaining in a dwelling-house; or

(b) 25 penalty units or imprisonment for a term not exceeding 6 months, in respect of entering into, or remaining on, any other land, building, structure, premises, aircraft, vehicle or vessel.

30 (2A) However, if the court that convicts a person of an offence under this section is satisfied that the person –

(a) was in possession of a firearm during the actual commission of the offence; or

(b) made any use of an aircraft, vehicle or vessel during the actual commission of the offence –

the person is liable to a penalty not exceeding twice that provided for by subsection (2) .

(2B) If subsection (2A)(a) applies to the convicted person, the court may, in addition to any other penalty it may impose, do either or both of the following:

(a) order that the firearm is forfeited to the Crown;

(b) cancel all or any of the licences or permits that the convicted person may hold under the Firearms Act 1996 .

(2C) A firearm forfeited to the Crown pursuant to subsection (2B) is to be disposed of as the Commissioner determines.

10 (3) Where a person is convicted of an offence under this section in respect of entering or remaining in the dwelling-house of another person, the court or one of the justices may issue a warrant addressed to all police officers commanding them to enter the premises and give the possession thereof to the complainant.

(4) For the purpose of executing a warrant under subsection (3) , every police officer may, if necessary, break and enter the premises to which the warrant relates and eject the person convicted and any other person therefrom.

(5) If a police officer has reasonable grounds to believe that a person is contravening subsection (1) , the police officer may, without warrant and using such force, means and assistance as is reasonably necessary –

(a) detain and search that person; and

20 (b) seize any firearm found in the possession of that person.

(6) Section 68 applies if a firearm is seized under subsection (5) .

#### **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

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

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

Penalty: Fine not exceeding 2 penalty units.

#### **21 Prohibited behaviour**

A person must not, wilfully and without reasonable excuse, do any act or behave in a manner that a reasonable person is likely to find indecent or offensive in all the circumstances, if that person knew or should have known that his or her conduct was being, or may have been, viewed by another person.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

### 37. Offences relating to property

(1) A person shall not unlawfully destroy or injure any property.

10 (2) A person shall not unlawfully and maliciously kill, maim, or wound any animal the property of any other person.

(2A) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

(3) A person shall not unlawfully remove, displace, deface, obliterate, or conceal any –

(a) boundary mark;

(b) beacon;

(c) survey mark;

(d) mark used in setting out any work;

(e) milestone or kilometre post;

20 (f) sign post; or

(g) notice –

set up or posted by or on behalf of a public authority.

(3A) A person who contravenes a provision of subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 2 penalty units.

(4A) A person must not unlawfully damage or interfere with any work of a council or any material used or provided for that work.

(5) A person who contravenes subsection (4A) is guilty of an offence and is liable on summary conviction to a penalty not exceeding one penalty unit.

30 (6) A complaint made for the purposes of the Justices Act 1959 in relation to an offence against subsection (2A) in relation to subsection (1) is to be made within 12 months after the date of the offence.

### 49AB. Public street permits

(1) A person must not organise or conduct any of the following activities without a permit if it is to be held, wholly or partly, on a public street:

- (a) a demonstration;
- (b) a fundraising drive;
- (c) a procession;
- (d) a road cycle race;
- (e) a road cycle event.

Penalty: Fine not exceeding 10 penalty units.

10 (2) A permit for this section may be issued by a senior police officer and any person may apply in writing for such a permit.

(3) In the case of fundraising –

(a) a permit may only be issued to or in respect of an organisation that is permitted under section 5 of the Collections for Charities Act 2001 to solicit funds or contributions for a charitable purpose; and

(b) the number of fundraising days authorised by permit in any one city or town in any one year is not to exceed, in aggregate, 45 or, if another number of days is prescribed, the prescribed number.

(4) In determining whether or not to grant an application for a permit, a senior police officer may consider –

20 (a) the safety and convenience of the public; and

(b) the arrangements made for the safety and convenience of participants in the proposed activity; and

(c) such other considerations as appear relevant having regard to the time and nature of the proposed activity and its location or, if applicable, its route.

(5) A permit –

(a) is to be in such form as the senior police officer issuing it determines; and

30 (b) may be made subject to such conditions as that officer considers necessary or expedient for the safety and convenience of participants and the public, including, if applicable, conditions about public notification, compliance with police directions, marshals and escort vehicles; and

(c) may be made subject to a condition that the organisers of the activity enter into a policy of insurance regarding any deaths, personal injuries or property damage that may arise from the activity; and

(d) must specify the name of the permit holder and the name, or a description, of the activity for which it is issued; and

(e) must specify the location or, if applicable, route of the activity for which it is issued and the date, dates or period when that activity will be held.

(6) A permit for a road cycle race may, if the issuing senior police officer considers it necessary or expedient to do so, provide that any escort vehicle preceding, accompanying or following the race may, or must, display a flashing yellow light.

(7) A permit may be surrendered but is not capable of being amended, renewed or transferred.

10 (8) The holder of a permit must –

(a) comply with its conditions; and

(b) immediately produce it to any police officer who demands to see it.

Penalty: Fine not exceeding 10 penalty units.

### **LISTENING DEVICES ACT 1991**

#### **PART 2 - Offences Relating to Listening Devices Prohibition on use of listening devices**

##### Section 5

(1) A person shall not use, or cause or permit to be used, a listening device –

(a) to record or listen to a private conversation to which the person is not a party; or

20 (b) to record a private conversation to which the person is a party.

(2) Subsection (1) does not apply to –

(a) the use of a listening device pursuant to a warrant granted under Part 4 ; or

(b) the use of a listening device pursuant to an authority granted by or under the Telecommunications (Interception) Act 1979 of the Commonwealth or any other law of the Commonwealth; or

(ba) the use of a surveillance device pursuant to an authority granted by or under the Police Powers (Surveillance Devices) Act 2006 or by or under a corresponding law as defined in section 3 of that Act; or

(c) the use of a listening device to obtain evidence or information in connection with –

30 (i) an imminent threat of serious violence to persons or of substantial damage to property;  
or

(ii) a serious narcotics offence –

if the person using the listening device believes on reasonable grounds that it was necessary to use the device immediately to obtain that evidence or information; or

(d) the unintentional hearing of a private conversation by means of a listening device; or

(e) the use of a listening device for the recording of an interview between a police officer and a person suspected by a police officer of having committed an offence against any Act.

(2A) For the purposes of subsection (2)(e), police officer includes a person appointed by or under an Australian law whose functions include the prevention or investigation of offences.

10 (3) Subsection 1 (b) does not apply to the use of a listening device by a party to a private conversation if –

(a) all of the principal parties to the conversation consent, expressly or impliedly, to the listening device being so used; or

(b) a principal party to the conversation consents to the listening device being so used and –

(i) the recording of the conversation is reasonably necessary for the protection of the lawful interests of that principal party; or

(ii) the recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

20 (4) Where a listening device is used in the circumstances referred to in subsection (2) (c) and its use would, but for subsection (2) (c), be contrary to this section, the person who used the device shall, within 3 days after first using the device, furnish a report to the Chief Magistrate containing particulars of the circumstances in which the device is being, or was, used.

(5) If, on receipt of a report referred to in subsection (4), the Chief Magistrate is not satisfied that the use of the listening device was justified under subsection (2) (c), the Chief Magistrate shall order that the use of the device immediately cease.

30 (6) Where the Chief Magistrate has ordered that the use of a listening device cease, a person shall not use the listening device after such an order is made unless it is used pursuant to a warrant granted under Part 4 .

(7) If, on receipt of a report referred to in subsection (4), the Chief Magistrate is satisfied that the use of the listening device was justified under subsection (2) (c), the Chief Magistrate shall so notify the person using the device and that person shall, within one month after the device ceases to be used, furnish a report in writing to the Chief Magistrate

(a) specifying the name, if known, of any person whose private conversation was recorded or listened to by the use of the device; and

(b) specifying the period during which the device was used; and

(c) containing particulars of any premises on which the device was installed or any place at which the device was used; and

(d) containing particulars of the general use made or to be made of any evidence or information obtained by the use of the device.

**ANNEXURE B- HOBART CITY COUNCIL BY-LAWS AND REFERENCES TO  
OTHER BY- LAWS**

**PUBLIC SPACES LOCAL LAW NO 4 OF 2018**

**Occupation of Public Spaces**

6. A person must not occupy a public space unless they have a been issued with a permit to do so.

**Display of Items**

21. A person must not ...distribute any ...handbill ...in a public space except:

(c) if the person has obtained a permit to do so.

**10 Noisy activities**

69. A person must not in a public space:

(a) deliver any address or speak to an assembly of people;

(b) play any musical instrument or sing;

(c) play or reproduce any music or sound so that it is able to be heard outside a parked vehicle; pr

(d) conduct any amusement or entertainment for financial reward;

Except if the person has first obtained a permit.

Penalty: 2 penalty units.

**20 Meetings**

70. A person must not conduct, take part or attend a meeting in or on a public space unless the General Manager has issued a permit authorising the meeting.

Penalty: 2 penalty units.

**Salamanca Market By-Law**

**Meetings**

21. A person must not conduct or take an active part in a meeting in the market area, except in yjay part of the market area known as "speaker corner", unless that person has first obtained the written authority of the General Manager.

**30** Penalty: 1 penalty units.

**Certain activities may be requested to cease**

24. (1) The General Manager or an authorised officer may direct a person who is not a stallholder to cease any of the following activities:

(a) the carrying about, giving out, displaying or distribution of any handbills, placard, notice, advertisement, picture, postcard, book, brochure, pamphlet, leaflet or petition in the market place, or

(b) the soliciting of donations or the sale of raffle tickets, buttons and the like in the market area.

(2) A person must comply with a direction under sub-clause 1.

10 Penalty: 1 penalty unit.

**References to Other By- Laws.**

Burnie City Council Public Reserves and Public Buildings By-Law No.1 cl 7 and 14; Clarence City Council Public Places By-Law c 33 and 38; Devonport City Council Reserves, Parks and Gardens by-law cl 6 and 11; Hobart City Council Salamanca Markets By-Law cls 21, 24, 25 and Public Places By-law No 4 cl 69 and 70; Huon Valley Council Roads (Local Highways) By-law cl 11; Council Land and Recreational Facilities By-law 2017 cls 21, 40, 41 and 43; Kentish Council Reserves By-law No. 1 of 2010 cl 10;

20 Kingsborough Council Parks By-Law 2011 cls 9, 31, 32 and 34; Launceston City Council Malls By-law No 10.