



TASMANIA

**CRIMINAL LAW (DETENTION AND INTERROGATION)
ACT 1995**

No. 72 of 1995

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**CRIMINAL LAW (DETENTION AND INTERROGATION)
ACT 1995**

No. 72 of 1995

**AN ACT to provide for certain procedures relating to the
detention and interrogation of persons lawfully arrested
and to consequentially amend other Acts**

[Royal Assent 14 November 1995]

BE it enacted by His 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:—

Short title

1—This Act may be cited as the *Criminal Law (Detention
and Interrogation) Act 1995*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

- 3—(1) In this Act, unless the contrary intention appears—
- “**Commissioner**” means the Commissioner of Police;
 - “**designated police station**” means a police station which is designated by the Commissioner under section 13;
 - “**legal practitioner**” means—
 - (a) a barrister as defined in the *Legal Profession Act 1993*; or
 - (b) a legal practitioner as defined in paragraph (a) of the definition of “legal practitioner” in the *Legal Profession Act 1993*;
 - “**police officer**” means a police officer as defined in the *Police Regulation Act 1898*;
 - “**standing orders**” means standing orders or policy documents issued by the Commissioner under section 12.

(2) For the purposes of this Act, a person is in custody if he or she is—

- (a) under lawful arrest by warrant; or
- (b) under lawful arrest under section 27 of the *Criminal Code* or a provision of any other Act.

Detention of person in custody

4—(1) Subject to subsection (2), every person taken into custody must be brought before a magistrate or a justice as soon as practicable after being taken into custody unless released unconditionally or released under subsection (3) or under section 34 of the *Justices Act 1959*.

(2) Every person who has been taken into custody may be detained by a police officer—

- (a) for a reasonable time after being taken into custody for the purposes of questioning the person, or carrying out investigations in which the person participates, in order to determine his or her involvement, if any, in relation to an offence; and
- (b) during the period reasonably required to arrange to bring the person before a magistrate or justice and to transport the person to a magistrate or justice.

(3) Where the reasonable time referred to in subsection (2) (a) expires, the person in custody may be admitted to bail by a person mentioned in section 34 of the *Justices Act 1959*.

(4) In determining what constitutes a reasonable time for the purposes of subsection (2) (a), consideration must be taken of, but is not limited to, the following matters:—

- (a) the number and complexity of the offences to be investigated;
- (b) any need of the police officer to read and collate relevant material or to take any other steps that are reasonably necessary by way of preparation for the questioning or investigation;
- (c) any need to transport the person from the place of apprehension or detention to a place where facilities are available to conduct an interview or investigation;
- (d) the number of other people who need to be questioned during the period of custody in respect of the offence for which the person is in custody;
- (e) any need to visit the place where the offence is believed to have been committed or any other place reasonably connected with the investigation of the offence;
- (f) the time during which questioning is deferred or suspended to allow the person to communicate with a legal practitioner, friend, relative, parent, guardian or independent person or, in the case of a child, a person called by the police officer conducting the investigation to accompany the child;
- (g) any time taken by a legal practitioner, friend, relative, parent, guardian, independent person or interpreter or, in the case of a child, a person called by the police officer conducting the investigation to accompany the child to arrive at the place where the questioning or investigation is to take place;
- (h) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to receive medical attention;
- (i) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to rest or receive refreshment;

- (j) the period of time when the person cannot be questioned because of his or her intoxication, illness or other physical condition;
- (k) the need to detain the person whilst an identification parade is being arranged or conducted;
- (l) the need to detain the person whilst searches or forensic examinations are carried out;
- (m) any other matters reasonably connected with the investigation of the offence.

(5) Before any questioning or investigation may commence, a police officer must ensure that the person in custody is informed that he or she does not have to say anything but that anything the person does say may be given in evidence.

(6) The person in custody must be informed of the matters referred to in subsection (5) in a language in which the person is able to communicate with reasonable fluency, but need not be informed in writing.

Right to an interpreter

5—(1) If a person in custody does not have a knowledge of the English language that is sufficient to enable the person to understand the questioning or investigation, the police officer conducting the investigation must, before any questioning or investigation under section 4 may commence, arrange for the presence of a competent interpreter and defer the questioning or investigation until the interpreter is present.

(2) This section does not apply to questioning or investigation in connection with an offence under section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*.

Right to communicate with friend, relative and legal practitioner

6—(1) Before any questioning or investigation under section 4 may commence, the police officer conducting the investigation must inform the person in custody that he or she—

- (a) may communicate with, or attempt to communicate with, a friend or relative to inform the friend or relative of the whereabouts of the person in custody; and
- (b) may communicate with, or attempt to communicate with, a legal practitioner.

(2) Where a person in custody requests—

- (a) to communicate with a friend or relative to inform that person of his or her whereabouts; or
- (b) to communicate with a legal practitioner; or
- (c) to communicate with a friend or relative to inform that person of his or her whereabouts and with a legal practitioner—

the police officer conducting the investigation must, subject to subsection (3), defer the questioning and investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.

(3) Where a person in custody is of or over the age of 17 years, the police officer conducting the investigation may deny the person in custody communication with all or any of the persons referred to in subsection (2) (a), (b) or (c) for a period not exceeding 4 hours if the police officer believes on reasonable grounds that—

- (a) any communication referred to in subsection (2) is likely to result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed.

(4) The police officer conducting the investigation or another police officer acting on his or her behalf may, before the expiration of the 4 hour period referred to in subsection (3), apply to a magistrate for an order authorising the police officer to deny the person in custody communication with all or any of the persons referred to in subsection (2) (a), (b) or (c) for a further period.

(5) An application under subsection (4) for an order specified in that subsection—

(a) is, except as provided in section 7, to be made in writing; and

(b) is to set out the grounds for seeking that order.

(6) If the magistrate is satisfied that there are reasonable grounds for doing so, the magistrate may make an order authorising the police officer to deny the person in custody communication with all or any of the persons referred to in subsection (2) (a), (b) or (c) for such period as is specified in the order.

(7) Subject to subsections (3) and (6), if a person in custody wishes to communicate with a friend, relative or legal practitioner, the police officer in whose custody the person is—

(a) must afford the person reasonable facilities as soon as practicable to enable the person to do so; and

(b) must allow the person's legal practitioner to communicate with the person in custody in circumstances in which as far as practicable the communication will not be overheard.

(8) This section does not apply to questioning or investigation in connection with an offence under section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*.

Orders made by telephone

7—(1) Subject to this section—

(a) an application under section 6 (4) may be made by telephone if the applicant is of or above the rank of sergeant; and

(b) a magistrate may under section 6 (6) make an order that has been applied for by telephone.

(2) A magistrate makes an order under section 6 (6) that has been applied for by telephone by stating the terms of the order.

(3) A magistrate must not make an order under section 6 (6) that has been applied for by telephone if the magistrate is of the opinion that it would be practicable in the circumstances for the police officer to apply to a magistrate for the order in person.

(4) A magistrate who makes an order under section 6 (6) that has been applied for by telephone is to cause a record to be made in writing of—

- (a) the name and rank of the police officer who applied for the order; and
- (b) the location of the police officer at the time the application was made; and
- (c) the reasons given by the police officer as to why it was not practicable in the circumstances for the police officer to apply to a magistrate for an order in person; and
- (d) the full name of the person to whom the order relates; and
- (e) the terms of the order as stated to the police officer; and
- (f) the date and time the order was made.

(5) The police officer must—

- (a) cause a record to be made in writing setting out the terms of the order; and
- (b) endorse the record with the name of the magistrate by whom, and the date and time when, the order was made.

Accused person's admissions to a police officer in serious cases inadmissible unless videotaped

8—(1) In this section—

“confession or admission” means a confession or an admission—

- (a) that was made by an accused person who, at the time when the confession or admission was made, was or ought reasonably to have been suspected by a police officer of having committed an offence; and
- (b) that was made in the course of official questioning;

“official questioning” means questioning by a police officer in connection with the investigation of the commission or the possible commission of an offence;

“serious offence” means an indictable offence of such a nature that, if a person of or over the age of 17 years is charged with it, the indictable offence cannot be dealt with summarily without the consent of the accused person and, in the case of a person under the age of 17 years, includes any indictable offence for which the person has been detained.

(2) On the trial of an accused person for a serious offence, evidence of any confession or admission by the accused person is not admissible unless—

- (a) there is available to the court a videotape of an interview with the accused person in the course of which the confession or admission was made; or
- (b) if the prosecution proves on the balance of probabilities that there was a reasonable explanation as to why a videotape referred to in paragraph (a) could not be made, there is available to the court a videotape of an interview with the accused person about the making and terms of the confession or admission or the substance of the confession or admission in the course of which the accused person states that he or she made a confession or an admission in those terms or confirms the substance of the admission or confession; or
- (c) the prosecution proves on the balance of probabilities that there was a reasonable explanation as to why the videotape referred to in paragraphs (a) and (b) could not be made; or
- (d) the court is satisfied that there are exceptional circumstances which, in the interests of justice, justify the admission of the evidence.

(3) For the purposes of subsection (2), **“reasonable explanation”** includes but is not limited to the following:—

- (a) the confession or admission was made when it was not practicable to videotape it;
- (b) equipment to videotape the interview could not be obtained while it was reasonable to detain the accused person;
- (c) the accused person did not consent to the interview being videotaped;
- (d) the equipment used to videotape the interview malfunctioned.

Right to remain silent, &c., not affected

9—Nothing in sections 4, 5 and 6 affects—

- (a) the right of a person suspected of having committed an offence to refuse to answer questions or to participate in investigations except where required to do so by or under an Act or a Commonwealth Act; or
- (b) the onus on the prosecution to establish the voluntariness of an admission or confession made by a person suspected of having committed an offence; or
- (c) the discretion of a court to exclude unfairly obtained evidence; or
- (d) the discretion of a court to exclude illegally or improperly obtained evidence.

No power to detain person not under arrest

10—Nothing in sections 4, 5 and 6 confers a power to detain against his or her will a person who is not under arrest.

Police officer not prevented from exercising certain powers

11—Nothing in sections 4, 5 and 6 prevents a police officer from asking or causing a person to do anything that the police officer is authorised by law to ask or cause the person to do.

Standing orders, &c.

12—The Commissioner may issue standing orders and policy documents relating to the treatment of persons in custody.

Designated police stations

13—(1) The Commissioner must designate the police stations in this State which are to be used for the purpose of detaining arrested persons.

(2) The Commissioner's duty under subsection (1) is to designate police stations which appear to the Commissioner to provide sufficient facilities for the purpose of detaining arrested persons.

Custody officers at police stations

14—(1) The Commissioner must appoint one or more police officers as custody officers for each designated police station.

(2) A police officer who is below the rank of sergeant may not be appointed as a custody officer for a designated police station unless there is no person of that rank or above that rank deployed at the designated police station.

(3) A police officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(4) Subject to subsections (5) and (6) and section 16 (3), none of the functions of a custody officer in relation to a person are to be performed by a police officer who at the time the function is to be performed is involved in the investigation of an offence for which that person is in custody at that time.

(5) Nothing in subsection (4) is to be taken to prevent a custody officer—

- (a) doing anything in connection with the identification of a suspect; or
- (b) doing anything under the *Road Safety (Alcohol and Drugs) Act 1970*.

(6) Where a person in custody is taken to a police station which is not a designated police station, the functions in relation to that person which at a designated police station would be the functions of a custody officer are to be performed—

- (a) by a police officer who is not involved in the investigation of an offence for which that person is in custody, if such an officer is readily available; and
- (b) if no such police officer is readily available, by the officer who took the person to the station or any other officer.

(7) References to a custody officer in sections 15 and 16 include references to a police officer other than the custody officer who is performing the functions of a custody officer by virtue of subsection (3) or (6).

Recording of information in respect of persons in custody

15—(1) Where a person is in custody and is taken to a police station or is arrested and taken into custody at a police station, the person must be brought before a custody officer without delay and placed in the custody of the custody officer.

(2) When a person is brought before a custody officer, the custody officer must—

- (a) record the time of the person's arrival at the police station and the time when the person came into the custody officer's custody; and
- (b) in the presence of the person in custody make a written record of the grounds for that person's detention; and
- (c) inform the person in custody of the reason for that person's detention.

(3) The police officer conducting the investigation must advise the custody officer—

- (a) if the person in custody is questioned, the time of the commencement and ending of the questioning; and
- (b) if the person in custody is denied the right under section 6 to communicate with all or any of the persons referred to in section 6 (2) (a), (b) or (c), the reason for the denial of the right to communicate, the time when the person was denied that right and the time when the person was allowed to communicate.

(4) The custody officer must also record—

- (a) any transfer of custody of a person brought before the custody officer; and
- (b) the details of the advice received by the custody officer under subsection (3).

(5) In so far as it is practicable to do so, the recording of any matters referred to in subsections (2) and (4) must be made contemporaneously with the matter recorded.

(6) A custody officer may transfer a person in custody into the custody of another custody officer.

(7) If a person in custody is transferred into the custody of another custody officer, the custody officer into whose custody the person is transferred must acknowledge in writing the acceptance of the transfer of that person.

Duties of custody officer in relation to persons in custody

16—(1) Subject to subsection (2), the custody officer at a police station must ensure—

- (a) that all persons in custody at that station are treated in accordance with this Act and any standing orders; and
- (b) that all matters relating to persons in custody at the station which are required by this Act or by those standing orders to be recorded are recorded in the custody records relating to those persons.

(2) A custody officer may transfer or permit the transfer of a person in custody—

- (a) to the custody of a police officer investigating the offence for which the person is in custody; or
- (b) to the custody of a police officer who has charge of that person outside the police station.

(3) If the custody officer transfers or permits the transfer of a person in custody in accordance with subsection (2), the custody officer ceases in relation to that person to be subject to the duty imposed on the custody officer by subsection (1) (a) and the police officer to whom the transfer is made must ensure that the person is treated in accordance with the provisions of this Act and any standing orders mentioned in subsection (1).

***Child Welfare Act 1960* amended**

17—Section 19 of the *Child Welfare Act 1960** is amended as follows:—

- (a) by omitting subsection (1);

* No. 48 of 1960. For this Act, as amended to 1 October 1977, see the continuing Reprint of Statutes. Subsequently amended by Nos. 36, 70 and 99 of 1982, No. 29 of 1984, No. 45 of 1987, No. 5 of 1990, No. 17 of 1993, Nos. 10, 67 and 68 of 1994 and No. 20 of 1995.

(b) by omitting subsection (2) and substituting the following subsection:—

(2) Where a person who has not attained the age of 17 years is arrested and not released or brought before a magistrate or a justice within 24 hours of being arrested, or it is not practicable within that time to bring that person before a magistrate or a justice, a person referred to in paragraph (a), (b) or (c) of section 34 of the *Justices Act 1959* must proceed as specified in that section.

(c) by omitting subsection (3);

(d) by omitting subsection (10).

***Criminal Code* amended**

18—Section 303 of the *Criminal Code** is amended as follows:—

(a) by omitting subsection (1);

(b) by omitting from subsection (2) all the words after “charged with an” and substituting “offence”.

***Police Offences Act 1935* amended**

19—Section 56 of the *Police Offences Act 1935*† is amended as follows:—

(a) by omitting subsection (1);

(b) by omitting from subsection (2) all the words after “charged with an” and substituting “offence”.

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992, Nos. 9, 72 and 89 of 1993, Nos. 4, 7, 10, 21, 61, 68, 72 and 96 of 1994 and Nos. 43 and 65 of 1995.

† 26 Geo. V No. 44. For this Act, as amended to 1 October 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 117 of 1976, Nos. 86 and 87 of 1981, Nos. 51, 63, 74 and 99 of 1982, No. 42 of 1984, Nos. 1, 51 and 100 of 1985, No. 93 of 1986, Nos. 13, 90 and 112 of 1987, Nos. 5, 13 and 44 of 1990, Nos. 34, 43 and 46 of 1991, Nos. 4 and 21 of 1992, Nos. 2 and 68 of 1994 and Nos. 30 and 45 of 1995.

Administration of Act

20—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

*[Second reading presentation speech made in:—
House of Assembly on 4 May 1995
Legislative Council on 17 August 1995]*