



TASMANIA

CRIMINAL PROCESS (IDENTIFICATION AND SEARCH PROCEDURES) AMENDMENT ACT 1995

No. 42 of 1995

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Part 1 heading inserted
Part 1—Preliminary
5. Section 2 amended (Interpretation)
6. Part 2 heading inserted
Part 2—Identification, Search and Examination
7. Part 3 inserted
Part 3—Fingerprinting of Young Persons
Division 1—Powers and procedures
7A—Interpretation of Part 3
7B—Young persons may be fingerprinted
7C—Young persons to be told certain matters before being fingerprinted
7D—Evidence of consent
7E—Fingerprinting of young persons must be witnessed
7F—Procedure for seeking magistrate's authority
7G—Telephone authorizations
Division 2—Use in evidence and destruction

7H—Young person's fingerprint evidence inadmissible in
certain cases

7I—Destruction of young person's fingerprint evidence

8. Part 4 heading inserted
Part 4—Miscellaneous

9. Schedule 2 inserted
Schedule 2



CRIMINAL PROCESS (IDENTIFICATION AND SEARCH PROCEDURES) AMENDMENT ACT 1995

No. 42 of 1995

AN ACT to amend the *Criminal Process (Identification and Search Procedures) Act 1976*

[Royal Assent 22 September 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 Process (Identification and Search Procedures) Amendment Act 1995*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Criminal Process (Identification and Search Procedures) Act 1976** is referred to as the Principal Act.

Part 1 heading inserted

4—Before section 1 of the Principal Act, the following Part heading is inserted:—

PART 1**PRELIMINARY****Section 2 amended (Interpretation)**

5—Section 2 of the Principal Act is amended as follows:—

- (a) by omitting “In this Act” and substituting “(1) In this Act”;
- (b) by adding the following subsection:—

(2) For the purposes of this Act, proceedings for an offence are taken to have been terminated by the conviction of a person if—

- (a) the person has been charged with and found guilty and convicted of the offence; or
- (b) the person has been charged with and found guilty of the offence but been discharged without being convicted; or
- (c) the person has been charged with and found guilty of the offence but the court hearing the charge has not proceeded to conviction because it has dealt with the person under the *Probation of Offenders Act 1973*; or
- (d) the offence has been taken into account by the court hearing the charge in sentencing the person for another offence.

*No. 30 of 1976. For this Act, as amended to 1 November 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 29 of 1984 and No. 66 of 1985.

Part 2 heading inserted

6—After section 2 of the Principal Act, the following Part heading is inserted:—

PART 2**IDENTIFICATION, SEARCH AND EXAMINATION****Part 3 inserted**

7—The Principal Act is amended by inserting the following Part after section 7:—

PART 3**FINGERPRINTING OF YOUNG PERSONS*****Division 1—Powers and procedures*****Interpretation of Part 3**

7A—In this Part—

“**independent witness**”, in relation to a young person, means a person who has attained the age of 18 years who is not a parent of the young person or a police officer;

“**parent**” includes a guardian, a foster parent and a person acting *in loco parentis*;

“**young person**” means a person who has attained the age of 10 years but not the age of 17 years.

Young persons may be fingerprinted

7B—A police officer may fingerprint a young person in accordance with this Part if the young person is in lawful custody having been arrested and charged with an offence referred to in Schedule 2 and—

- (a) the young person and a parent of the young person have consented to the fingerprinting; or
- (b) where such consent has not been obtained—the fingerprinting has been authorized by a magistrate.

Young persons to be told certain matters before being fingerprinted

7C—Before a young person is fingerprinted, a police officer must inform the young person and, if located, a parent of the young person, in language that they are likely to understand, of the following:—

- (a) the offence with which the young person has been charged;
- (b) that the young person may be fingerprinted—
 - (i) with the consent of the young person and a parent of the young person; or
 - (ii) if such consent is not obtained—on the authorization of a magistrate;
- (c) that the record of the young person's fingerprints may be used in evidence;
- (d) that the record of the young person's fingerprints will be destroyed if—
 - (i) proceedings in respect of the offence with which the young person has been charged are terminated other than by the conviction of the young person; or
 - (ii) the destruction of the record is ordered by a court under section 71 (1) (b).

Evidence of consent

7D—A young person and a parent of that young person are taken not to have consented to the fingerprinting of that young person unless the consent is recorded in writing and signed by the young person and the parent before the fingerprinting takes place.

Fingerprinting of young persons must be witnessed

7E—A police officer must not fingerprint a young person except in the presence of—

- (a) a parent of the young person; or
- (b) if a parent of the young person cannot be located after a reasonable attempt has been made to do so or no parent of the young person who has been located agrees to be present at the fingerprinting—an independent witness.

Procedure for seeking magistrate's authority

7F—(1) A police officer may apply to a magistrate for authorization to fingerprint a young person.

(2) An application under subsection (1) may be made in person or, if that is not practicable, by telephone.

(3) A magistrate to whom an application under subsection (1) is made may issue an order authorizing the fingerprinting of the young person if the magistrate is satisfied that—

- (a) there are reasonable grounds to believe that the young person has committed the offence with which he or she has been charged; and
- (b) in all the circumstances the order is justified.

(4) In determining whether to issue an order authorizing the fingerprinting of a young person a magistrate must take the following matters into account:—

- (a) the seriousness of the circumstances surrounding the commission of the offence with which the young person has been charged;
- (b) the alleged degree of participation by the young person in the commission of the offence;
- (c) the age of the young person.

(5) A magistrate must not issue an order authorizing the fingerprinting of a young person unless the applicant and the young person have been given an opportunity to be heard.

(6) A magistrate who issues an order authorizing the fingerprinting of a young person must, if the order is applied for in person—

- (a) make the order in writing; and
- (b) give a copy of the order to the applicant.

Telephone authorizations

7G—(1) A magistrate must not issue an order by telephone authorizing the fingerprinting of a young person if, in the magistrate's opinion, it would be practicable in the circumstances for a police officer to apply to a magistrate for such an order in person.

(2) A magistrate who issues an order by telephone authorizing the fingerprinting of a young person must cause a record to be made in writing of—

- (a) the name of the police officer who applied for the order; and
- (b) the location of that police officer when the application was made; and
- (c) the reasons given by the applicant as to why it was not practicable in the circumstances for the application to be made in person; and
- (d) the terms of the order as stated to the applicant; and
- (e) the date and time the order was issued.

(3) A police officer who obtains an order by telephone authorizing the fingerprinting of a young person must forthwith—

- (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 who issued the order and the date and time the order was issued.

Division 2—Use in evidence and destruction**Young person's fingerprint evidence inadmissible in certain cases**

7H—(1) In this section, "serious crime" means murder, attempted murder, manslaughter, rape or aggravated sexual assault.

(2) A record of fingerprints taken from a young person is inadmissible as evidence in proceedings other than—

- (a) proceedings in respect of an offence referred to in Schedule 2 committed after the commencement of the *Criminal Process (Identification and Search Procedures) Amendment Act 1995*; or
- (b) proceedings in respect of a serious crime committed before or after the commencement of the *Criminal Process (Identification and Search Procedures) Amendment Act 1995*.

(3) A record of fingerprints taken from a young person is inadmissible as evidence in proceedings if—

- (a) the court hearing the proceedings is satisfied that the record of fingerprints has not been obtained in accordance with this Part; or
- (b) the record of fingerprints should have but has not been destroyed pursuant to section 71.

(4) Notwithstanding subsection (3) (a), a court may allow a record of fingerprints taken from a young person to be admitted as evidence in proceedings contrary to that subsection if it is satisfied that exceptional circumstances justify the admission of that evidence.

(5) For the purposes of subsection (4), the matching of fingerprint evidence taken in connection with an offence referred to in Schedule 2 with a record of fingerprints taken from a young person does not constitute exceptional circumstances.

Destruction of young person's fingerprint evidence

71—(1) The Commissioner of Police must destroy the record of fingerprints taken from a young person if—

- (a) the proceedings in respect of the offence with which the young person has been charged are terminated other than by the conviction of the young person; or
- (b) a court that convicts the young person of the offence with which he or she has been charged orders that the record of fingerprints be destroyed.

(2) The power of the court under subsection (1) (b) is exercisable on the court's own motion or on an application on behalf of the young person.

(3) For the purposes of subsection (1), the record of fingerprints must be destroyed within the period of 7 days immediately following the day on which the proceedings are terminated or the order for destruction is made.

Part 4 heading inserted

8—After section 7I of the Principal Act, as inserted by section 7 of this Act, the following Part heading is inserted:—

PART 4

MISCELLANEOUS

Schedule 2 inserted

9—After Schedule 1 to the Principal Act, the following Schedule is inserted:—

SCHEDULE 2

Sections 7B and 7H

1. An offence that is punishable on indictment, whether or not in certain circumstances the offence may be dealt with as a simple offence.
2. An offence against section 34B (1) (a), 35, 36, 37 (1), 37B, 39 or 42 (2) of the *Police Offences Act 1935*.
3. An offence against section 45, 46, 48, 49, 51, 54 or 55 of the *Poisons Act 1971*.

*[Second reading presentation speech made in:—
House of Assembly on 29 November 1994
Legislative Council on 17 August 1995]*

