

RECORDS OF OFFENCES (ACCESS) ACT 1981

No. 61 of 1981

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RECORDS OF OFFENCES (ACCESS) ACT 1981

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 No. 61 of 1981
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AN ACT to confer on persons a right to have access to records of offences kept in relation to those persons and to provide for related matters.

[Royal Assent 9 December 1981]

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:—

1—This Act may be cited as the *Records of Offences (Access) Act* Short title. 1981.

2—(1) This section and section 1 shall commence on the date Commence- of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such date as may be fixed by proclamation.

Interpretation.

3—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“ amendment ”, in relation to a prescribed record, includes an addition, deletion, or substitution;

“ commencement day ” means the day fixed under section 2 (2);

“ prescribed record ” means a record kept in Tasmania which—

(a) records the finding of a court on the trial of a person charged with an offence or records that a person has been so charged;

(b) records that a person has been served with an infringement notice in respect of an offence or records information as to whether or not such a notice has been satisfied; or

(c) records particulars of demerit points kept under section 43F of the *Traffic Act 1925*,

but does not include a record so kept which is compiled by a recording authority with respect to an investigation as to whether an offence has or has not been committed or as to whether any particular person has or has not or may or may not have committed the offence;

“ record ” includes any writing or document and any other record of information however compiled, recorded, or stored, whether in printed form or on microfilm or by electronic process or other means;

“ recording authority ” means—

(a) the Commissioner of Police;

(b) the Transport Commission; or

(c) any authority declared by order-in-council made under subsection (2) to be a recording authority for the purposes of this Act;

“ the rules ” means rules made and in force under section 12.

(2) The Governor may, by order-in-council, declare any person or body who or which appears to him to keep prescribed records to be a recording authority for the purposes of this Act.

(3) A reference in this Act to an offence is a reference to an offence triable summarily or on indictment, and includes a reference to an offence committed or alleged to have been committed before the commencement day and an offence committed or alleged to have been committed outside Tasmania.

4—This Act binds the Crown in right of Tasmania.

Act to bind
Crown.

5—It is the duty of a recording authority to adopt all procedures that are reasonably practicable for ensuring the accuracy of the contents of prescribed records kept by the authority.

Duty of
recording
authoritv

6—(1) Subject to this section, where a person who believes that a recording authority is or may be keeping a prescribed record in relation to him makes a written application to the authority requesting it to produce for his inspection such prescribed records as it has in relation to him, the authority shall, within 14 days after the receipt of the application, comply with the request or, if it has no such records, notify him in writing that it has no prescribed records relating to him.

Duty of
recording
authority to
produce pre-
scribed record
for inspection,
&c.

(2) A recording authority may, before complying with a request in an application made under subsection (1), require the applicant to produce reasonable evidence of his identity.

(3) A recording authority shall take reasonable steps to ensure that a prescribed record which a person is entitled to inspect under this section is produced in a form that is readily intelligible to that person and, if he so requests, provide him with a copy of the record or any part of the record that he specifies.

(4) A person who makes a request in an application under subsection (1) is entitled to be provided with a copy of a prescribed record relating to him without charge except where he has been provided under that subsection with such a copy within the period of 12 months immediately preceding the request, in which case he is only so entitled if he pays to the recording authority the prescribed fee.

(5) A request in an application made under subsection (1) may be made by a legal practitioner on behalf of a person to whom a prescribed record relates.

Correction
of errors.

7—(1) Where a person to whom a recording authority produces a prescribed record under section 6 claims that record is incorrect, he may, by notice in writing served on the authority, object to the record on the ground of its incorrectness.

(2) Where, pursuant to subsection (1), a person claims that a prescribed record that relates to him is incorrect, the recording authority concerned shall forthwith take all necessary steps to have the record corrected, unless the authority is satisfied that the record is correct, in which case it shall reject the claim.

(3) Where a person has served on a recording authority a notice claiming that a prescribed record relating to him is incorrect, the authority shall, within 14 days after the date on which the notice was served on it—

- (a) serve on that person a notice in writing informing him whether or not the authority has made any amendment to the particulars of the record; and
- (b) if the authority has made any such amendment, include in the notice referred to in paragraph (a) particulars of the amendment.

8—(1) Where—

- (a) a person has made an application to a recording authority under section 6 but the request in the application has been refused or has not been complied with within the permitted time; or
- (b) a person has made such an application and the recording authority has complied with the request in the application but the person is dissatisfied with the contents of the notice given by the authority in response to the request,

he may, in accordance with the rules, apply to a magistrate for an order directing the recording authority to produce its prescribed records for the inspection of the magistrate.

(2) Where a person served with a notice referred to in section 7 (3) is dissatisfied with the contents of the notice on the ground that—

- (a) no amendment to the prescribed record relating to him has been made; or

Right to apply
to magistrate
for an order
directing pre-
scribed record
to be produced
for inspection
or correction.

(b) such an amendment has been made but the prescribed record is, in his opinion, still incorrect,

he may, in accordance with the rules, apply to a magistrate for an order directing the recording authority concerned to make such amendment as may be necessary to correct that record.

(3) The recording authority concerned shall be the respondent to an application made under subsection (1) or (2) and shall be entitled—

(a) to receive a copy of the application; and

(b) to be heard at the hearing of the application by the magistrate.

(4) Subject to subsection (5), the hearing of an application made under subsection (1) or (2) shall be in accordance with the rules.

(5) Except with the agreement of the applicant, no person other than the magistrate, the clerk, the parties and their legal representatives, witnesses, and any other person of a class or description prescribed in the rules for the purpose of this subsection shall be entitled to be present at the hearing of an application made under subsection (1) or (2).

(6) On the hearing of an application made under subsection (1), the magistrate shall, if he—

(a) is satisfied that the recording authority has refused the request referred to in that subsection unjustifiably or has failed to comply with that request; or

(b) is of the opinion that the authority's purported compliance with the request is unsatisfactory in some respect, make the order in the terms applied for, but if he is not so satisfied or of that opinion, he shall refuse the application.

(7) On compliance by a recording authority with an order made under subsection (6), the magistrate shall peruse the prescribed records kept by the authority and, if satisfied that those records include a prescribed record relating to the person on whose application the order was made, make a further order directing the authority to produce that record to that person for his inspection and to comply with such other directions as may be specified in the order.

(8) In making an order under subsection (7), the magistrate may direct that the order need not be complied with unless the applicant complies with such conditions as may be specified in the order.

(9) On the hearing of an application made under subsection (2), the magistrate shall, if satisfied that the prescribed record to which the application relates is incorrect, make an order in the terms applied for, but if he is not so satisfied he shall refuse the application.

(10) Where a magistrate makes an order under any of the preceding provisions of this section, he may also make such ancillary orders as he considers necessary to give effect to the order.

(11) Where at a hearing a magistrate makes an order under this section, the recording authority to which the order relates shall comply with the directions of the order—

- (a) if that authority appears at the hearing as respondent—
within 7 days after the date on which the order is made; or
- (b) if that authority does not so appear—within 7 days after the date on which the order or a copy of the order is served on it.

Costs in relation to the hearing of an application made under section 8.

9—(1) Without limiting his powers under section 8, a magistrate hearing an application made under that section may award costs to the applicant or respondent at the hearing and may assess the amount of those costs.

(2) Where the magistrate awards costs under subsection (1), those costs are recoverable in the same manner as costs ordered to be paid to a complainant or defendant on a conviction entered or an order made under the *Justices Act 1959*.

(3) In the application of the provisions of the *Justices Act 1959* to costs awarded under subsection (1), any reference in those provisions to a justice, or 2 or more justices, shall be construed as a reference to a magistrate.

Offences.

10—(1) Any recording authority which fails to comply with section 7 (3) or 8 (11) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 and, in the case of a continuing offence, is liable to a further penalty not exceeding \$50 for each day during which the offence continues.

(2) A complaint for an offence under subsection (1) may be laid by the Attorney-General or by a person claiming to be aggrieved by the matter to which the offence relates.

(3) Any person who obtains information from a prescribed record without lawful authority or by means of a deception or bribe is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 or to imprisonment for a term not exceeding 12 months, or both.

(4) Without limiting the generality of the meaning of the expression "without lawful authority" in subsection (3), a person obtains information without lawful authority for the purpose of that subsection if he obtains that information with the authority of a person employed by or for the purposes of a recording authority in circumstances in which he knows, or ought to know, that the person so employed is not authorized by the authority to provide that information.

(5) For the purpose of subsection (3), "deception" means any deception, whether deliberate or reckless, by words or conduct as to fact or law, including a deception as to the present intention of the person using the deception or of any other person.

11—Where under this Act a notice is required or authorized to be given to or served on a person, that notice may be given or served—

Service of notices, &c.

- (a) in the case of a natural person, by delivering it to that person personally or by sending it by registered post to that person at the address of that person last known to the sender; or
- (b) in the case of a corporation, by delivering it to the secretary or some other person concerned in the management of the corporation personally or by sending it by registered post to the corporation at the address of the registered office, or of the principal or only place of business in this State, of the corporation.

Rules of
procedure and
practice of
magistrates.

12—(1) The Governor may make rules regulating the procedure and practice to be followed in the hearing of applications made under section 8 and, without limiting the generality of the foregoing, those rules may—

- (a) empower the magistrate at any such hearing to direct the attendance of witnesses to give evidence or produce documents at the hearing;
- (b) prescribe travelling and subsistence allowances payable to any such witnesses;
- (c) provide for the kinds of evidence that are admissible at any such hearing and the circumstances in which evidence of those kinds is admissible;
- (d) prescribe forms of application or notice for the purposes of this Act; and
- (e) prescribe fees for those purposes.

(2) Where the rules include rules empowering a magistrate to give directions as referred to in subsection (1) (a), they may provide for it to be an offence to fail to comply with those directions and prescribe in respect of any such offence a penalty not exceeding \$500.

Consequential
amendment
to section 43F
of *Traffic Act*
1925.

13—Section 43F of the *Traffic Act* 1925* is amended by omitting subsections (3) to (7).

* 16 Geo. V No. 38. For this Act, as amended to 1974, see Appendix B to the Annual Volume of Statutes for 1974. Subsequently amended by No. 108 of 1974, Nos. 58 and 66 of 1975, Nos. 37 and 96 of 1976, Nos. 58 and 92 of 1977, Nos. 10, 52, 75, and 83 of 1978, Nos. 17 and 76 of 1979, and Nos. 10, 11, 74, and 107 of 1980.