

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2007**

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**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2007**

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

An Act to amend the *Acts Interpretation Act 1931*, the *Bail Act 1994*, the *Magistrates Court Act 1987* and the *Mental Health Act 1996*

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2007*.

2. Commencement

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

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 3

Part 2 – Acts Interpretation Act 1931 Amended

**PART 2 – ACTS INTERPRETATION ACT 1931
AMENDED**

3. Principal Act

In this Part, the *Acts Interpretation Act 1931** is referred to as the Principal Act.

4. Section 37 amended (Effect of specifying penalties in Acts)

Section 37 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (5A) Where in an Act a penalty specified in respect of an offence against the Act or a provision of the Act is a fine or term of imprisonment, the offence is, unless the contrary is expressly provided, punishable by the fine, or by the term of imprisonment, or both.

*No. 59 of 1931

PART 3 – BAIL ACT 1994 AMENDED

5. Principal Act

In this Part, the *Bail Act 1994** is referred to as the Principal Act.

6. Section 5 amended (Police bail)

Section 5(4) of the Principal Act is amended by omitting “fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months” and substituting “fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, or both”.

7. Section 9 amended (Contravention, &c., of condition of bail order to be offence)

Section 9 of the Principal Act is amended by omitting “fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both.” and substituting “fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.”.

*No. 9 of 1994

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 8

Part 4 – Magistrates Court Act 1987 Amended

**PART 4 – MAGISTRATES COURT ACT 1987
AMENDED**

8. Principal Act

In this Part, the *Magistrates Court Act 1987** is referred to as the Principal Act.

9. Section 3B amended (Jurisdiction and divisions of the Magistrates Court)

Section 3B of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “himself” and substituting “himself or herself”;
- (b) by omitting from subsection (4) “he” and substituting “he or she”;
- (c) by omitting from subsection (6) “he” and substituting “he or she”.

10. Section 4 amended (Appointment of magistrates)

Section 4 of the Principal Act is amended as follows:

*No. 45 of 1987

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 4 – Magistrates Court Act 1987 Amended

s. 10

- (a) by omitting from subsection (1) “he” and substituting “the Governor”;
- (b) by inserting the following subsections after subsection (1C):
 - (1D) A person appointed as a permanent full-time magistrate may, by written agreement with the Chief Magistrate made with the approval of the Attorney-General, perform the duties of that office on a part-time basis for a period specified in the agreement.
 - (1E) An agreement under subsection (1D) is to specify the hours of duty that the magistrate concerned will ordinarily be expected to work whilst performing the duties of that office on a part-time basis, expressed as a proportion of the time that a permanent full-time magistrate is ordinarily expected to work.
 - (1F) The hours of duty specified in an agreement under subsection (1D) may be varied by written agreement between the magistrate concerned and the Chief Magistrate made with the approval of the Attorney-General.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 11

Part 4 – Magistrates Court Act 1987 Amended

- (1G) Subsection (1D) does not apply to the Deputy Chief Magistrate.
- (c) by omitting subsection (2) and substituting the following subsection:
- (2) A magistrate is not subject to the *State Service Act 2000* but a State Service officer or State Service employee who is appointed as a magistrate retains all of his or her existing and accruing rights as if his or her service as a magistrate were a continuation of the State Service employment.
- (d) by omitting from subsection (3) “his” twice occurring and substituting “the person’s”;
- (e) by omitting from subsection (4) “he” and substituting “the Governor”;
- (f) by omitting from subsection (4) “instrument of his” and substituting “person’s instrument of”.

11. Section 6 amended (Deputy Chief Magistrate)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “his” and substituting “his or her”;

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 4 – Magistrates Court Act 1987 Amended

s. 12

- (b) by omitting from subsection (4) “he is”;
- (c) by omitting from subsection (7) “he is”.

12. Section 7 amended (Oaths to be taken)

Section 7 of the Principal Act is amended by omitting “his” and substituting “his or her”.

13. Section 8 amended (Qualification for appointment)

Section 8(2) of the Principal Act is amended by omitting “he” and substituting “he or she”.

14. Section 9 amended (Tenure of office)

Section 9(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “he” and substituting “he or she”;
- (b) by omitting from paragraph (a) “his” twice occurring and substituting “his or her”;
- (c) by omitting from paragraph (b) “he” and substituting “he or she”.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 15

Part 4 – Magistrates Court Act 1987 Amended

15. Section 10 amended (Terms and conditions of service of magistrates)

Section 10 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1AA) Subsection (1) has effect subject to any proportional adjustment that may be temporarily required consequent on an agreement under section 4(1C).

16. Section 13 amended (Jurisdiction and powers of magistrates)

Section 13(4) of the Principal Act is amended by omitting “his” and substituting “his or her”.

17. Section 15A amended (Registries)

Section 15A(1) of the Principal Act is amended by omitting “he” and substituting “the Governor”.

18. Section 17A amended (Contempt of Court)

Section 17A(2) of the Principal Act is amended by omitting “he” and substituting “he or she”.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 4 – Magistrates Court Act 1987 Amended

s. 19

19. Section 19 amended (Transitional provisions)

Section 19 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “he” and substituting “he or she”;
- (b) by omitting from subsection (3) “his” and substituting “his or her”.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 20

Part 5 – Mental Health Act 1996 Amended

PART 5 – MENTAL HEALTH ACT 1996 AMENDED

20. Principal Act

In this Part, the *Mental Health Act 1996** is referred to as the Principal Act.

21. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of “official visitor” the following definition:

“ordinary member”, of the Forensic Tribunal, means a member other than the President of the Board or Mental Health Tribunal;

22. Section 72B amended (Admission of involuntary patients)

Section 72B of the Principal Act is amended by inserting after subsection (5) the following subsection:

(5A) As soon as practicable after exercising the power conferred by subsection (5), the Chief Forensic Psychiatrist is to give the Mental Health Tribunal and the

*No. 31 of 1996

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 5 – Mental Health Act 1996 Amended

s. 23

person responsible for the patient notice
of the extension.

**23. Section 72C amended (Review of admission under
section 72B)**

Section 72C of the Principal Act is amended as
follows:

(a) by omitting subsection (1) and
substituting the following subsection:

(1) The Mental Health Tribunal is
to –

(a) review the admission of
an involuntary patient to a
secure mental health unit
within 3 days after being
notified of that admission
under section 72B(4); and

(b) review any extension of
the period of that
admission within 3 days
after being notified of that
extension under
section 72B(5A).

(b) by inserting in subsection (3) “or any
extension of the period of that
admission” after “a secure mental health
unit”;

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 24

Part 5 – Mental Health Act 1996 Amended

- (c) by inserting in subsection (3)(a) “or extension” after “admission”;
- (d) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) confirm the admission or extension but shorten the period of detention; or

24. Section 73U substituted

Section 73U of the Principal Act is repealed and the following section is substituted:

73U. Membership of Forensic Tribunal

- (1) The Forensic Tribunal consists of –
 - (a) if the Presidents of the Board and Mental Health Tribunal are both available –
 - (i) those 2 Presidents; and
 - (ii) one other person; or
 - (b) if only one of those Presidents is available –
 - (i) the available President; and
 - (ii) 2 other persons.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 5 – Mental Health Act 1996 Amended

s. 25

- (2) Ordinary members are appointed by the Minister from the Forensic Tribunal Member Register for the term or for the purposes of a particular matter determined by the Minister.
- (3) The chairperson of the Forensic Tribunal is –
 - (a) if it is constituted as provided by subsection (1)(a), the President of the Mental Health Tribunal; or
 - (b) if it is constituted as provided by subsection (1)(b), the available President.
- (4) Schedule 1A has effect with respect to the membership of the Forensic Tribunal.
- (5) An act or decision of the Forensic Tribunal is not invalidated by reason only of a defect or irregularity in the appointment of a member.

25. Section 74KA inserted

After section 74K of the Principal Act, the following section is inserted in Division 2:

74KA. General regulation of proceedings

Except as otherwise provided by this Act, the Forensic Tribunal may regulate its own proceedings.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 26

Part 5 – Mental Health Act 1996 Amended

26. Section 74L amended (Forensic Tribunal Member Register)

Section 74L(1) of the Principal Act is amended by omitting “the member of the Forensic Tribunal referred to in section 73U(1)(c) is” and substituting “ordinary members of the Forensic Tribunal are”.

27. Schedule 1A amended (Membership of Forensic Tribunal)

Schedule 1A to the Principal Act is amended as follows:

- (a) by omitting the definition of “appointed member” from clause 1 and substituting the following definition:

“chairperson” means chairperson of the tribunal;

- (b) by omitting the definition of “member” from clause 1 and substituting the following definitions:

“member” means member of the tribunal;

“President” means President of the Board or Mental Health Tribunal;

“tribunal” means the Forensic Tribunal.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

Part 5 – Mental Health Act 1996 Amended

s. 27

- (c) by omitting clause 4 and substituting the following clause:

4. Extension of term of office

- (1) If a person who is a President is a member of the tribunal and the person's term as such President expires after the tribunal has commenced (but before it has finalised) hearing any matter –
- (a) the person is taken for the purposes of that matter to continue in office as such President until that matter is finalised by the tribunal; and
 - (b) another person appointed as such President is taken, for those purposes and until that matter is finalised, not to be such President.
- (2) If the term for which an ordinary member is appointed expires after the tribunal has commenced (but before it has finalised) hearing any matter, that term is extended until the matter is finalised.
- (d) by omitting from clause 5(3) “appointed” and substituting “ordinary”;

*Justice and Related Legislation (Miscellaneous Amendments) Act
2007
Act No. of*

s. 27

Part 5 – Mental Health Act 1996 Amended

- (e) by omitting clause 6;
- (f) by omitting from clause 7(1) “appointed” and substituting “ordinary”;
- (g) by omitting from clause 7(2) “appointed” and substituting “ordinary”;
- (h) by omitting from clause 7(3) “a member under section 73U(1)(c)” and substituting “an ordinary member”;
- (i) by omitting from clause 8 “appointed” first occurring and substituting “ordinary”.