

TASMANIA

YOUTH JUSTICE AMENDMENT BILL 2007

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YOUTH JUSTICE AMENDMENT BILL 2007

*(Brought in by the Minister for Health and Human Services,
the Honourable Larissa Tahireh Giddings)*

A BILL FOR

An Act to amend the *Youth Justice Act 1997*

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. Short title

This Act may be cited as the *Youth Justice Amendment Act 2007*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Youth Justice Act 1997** is referred to as the Principal Act.

*No. 81 of 1997

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4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “contravene”;
- (b) by inserting the following definition after the definition of “offence-affected property”:

“police investigation” means the questioning by police officers of a detainee, or the carrying out by police officers of an investigation in which a detainee participates, in order to determine the detainee’s involvement, if any, in relation to an offence;

- (c) by inserting the following subparagraph after subparagraph (i) in paragraph (c) of the definition of “prescribed offence”:

(ia) an offence under section 37J of the *Police Offences Act 1935*; and

- (d) by omitting the definition of “youth justice worker” and substituting the following definition:

“youth justice worker” – see section 166A.

5. Part 2, Division 4: Heading amended

Division 4 of Part 2 of the Principal Act is amended by omitting “*Instructions by Commissioner of Police*” from the heading to that Division and substituting “*Provisions of general application*”.

6. Part 2, Division 5: Heading repealed

Part 2 is amended by omitting the heading “*Division 5 — Confidentiality*”.

7. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Division 4:

22A. Forfeiture of articles used in commission of offences

- (1) This section applies if –
- (a) a youth has admitted committing an offence; and
 - (b) an article used in connection with, or obtained during or as a result of, the commission of the offence has been seized; and
 - (c) the matter is dealt with by way of a diversionary procedure.

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- (2) At the conclusion of the diversionary procedure, a commissioned police officer, by an instrument in writing called a forfeiture declaration, may declare that the seized article is forfeit.
- (3) In deciding whether or not to make the forfeiture declaration, the commissioned police officer may have regard to –
 - (a) the prescribed guidelines, if any; and
 - (b) any relevant instructions issued under section 21; and
 - (c) such other matters as the commissioned police officer considers relevant and fair in the circumstances.
- (4) However –
 - (a) the forfeiture declaration must be made if –
 - (i) the manufacture, use or possession of the seized article is prohibited under a law of the State or the Commonwealth; or
 - (ii) the seized article would, under a law of the State, be automatically forfeited to the Crown or to an officer or agency of the

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Crown if the youth were to be convicted or found guilty of the offence by a court; and

- (b) the forfeiture declaration must not be made if paragraph (a) does not apply and the seized article is owned by a person other than the youth and the owner had no knowledge of or involvement in the commission of the offence.
- (5) If the forfeiture declaration is made and the identity and address of the owner of the seized article have been established (and the owner is a person other than the youth) –
- (a) the commissioned police officer is to give the owner a copy of the forfeiture declaration as soon as practicable; and
 - (b) the owner may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision to make the forfeiture declaration; and
 - (c) subject to the making of such an application for review and its outcome, the forfeiture declaration takes effect

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immediately after the appeal period.

- (6) If the forfeiture declaration is made but it has not been possible to establish the identity and address of the owner of the seized article despite the making of reasonable inquiries in that regard (or the owner is or appears to be the youth) the forfeiture declaration takes effect as soon as it is made.
- (7) If the forfeiture declaration takes effect, the seized article is forfeited to the Crown and may be disposed of as the Commissioner of Police thinks fit.
- (8) For the purposes of this section, the police officer responsible for the diversionary procedure (or another police officer) is to warn the youth of the prospective forfeiture before, or as soon as practicable after, the diversionary procedure begins.
- (9) However, a failure to comply with subsection (8) does not affect the operation of other provisions of this section.
- (10) For the purposes of this section, a diversionary procedure is taken to have been concluded once (depending on the procedure) –

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- (a) an informal caution has been administered to the youth under section 8(1); or
- (b) a formal caution against further offending has been administered to the youth, put in writing and signed by the youth under section 10(4)(d); or
- (c) a copy of the decision of a community conference has been provided to the youth under section 19(1)(b).

(11) In this section –

“appeal period” means the period within which, under the *Magistrates Court (Administrative Appeals Division) Act 2001*, a person may apply for a review of a decision;

“diversionary procedure” means a procedure under section 8(1) or section 9(1) or (2);

“owner”, of an article, means the person who, but for the making of a forfeiture declaration, would be entitled to possession of the article.

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8. Section 124 amended (Management of detention centre)

Section 124(2) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) contact between detainees and police officers; and

9. Sections 133A, 133B, 133C and 133D inserted

After section 133 of the Principal Act, the following sections are inserted in Division 3:

133A. Secretary may allow police to visit detainee in connection with police investigation

- (1) The Secretary may allow a police officer to visit a detainee in a detention centre if satisfied that –
 - (a) it is for the purposes of a police investigation; and
 - (b) the detainee has no objection.
- (2) The visit is to be on such conditions as to time, duration, termination, supervision, setting, secrecy or otherwise as the Secretary determines and it is the duty of the police officer and detention centre manager to comply with those conditions.

- (3) The Secretary, by any available means, may vary the conditions at any time.
- (4) The detainee has the following rights in respect of the visit:
 - (a) to confer, on request, with a legal representative before it takes place, either in person or by telephone or video link;
 - (b) to have, on request, a legal representative, a parent or other relative, a guardian or an independent person present;
 - (c) to refuse to answer any question that may be put to the detainee;
 - (d) to end the visit at any time.
- (5) The visitation of a detainee in a detention centre under and in accordance with this section is lawful notwithstanding the terms of any detention order or the operation of any other law.

133B. Secretary may allow temporary removal of detainee in connection with police investigation

- (1) The Secretary may allow a police officer to remove a detainee from a detention centre for a period not exceeding 6 hours if satisfied that –

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- (a) it is for the purposes of a police investigation; and
 - (b) police access or further access to the detainee under section 133A would not suffice for those purposes or cannot for any reason take place; and
 - (c) the detainee has no objection.
- (2) The detainee's removal is to be on such conditions as to time, duration, termination, supervision, secrecy, reporting or otherwise as the Secretary thinks fit and it is the duty of the detention centre manager and all police officers to comply with those conditions.
- (3) The Secretary, by any available means, may vary the conditions at any time.
- (4) The detainee has the following rights in respect of the removal:
- (a) to confer, on request, with a legal representative before it takes place, either in person or by telephone or video link;
 - (b) to be accompanied, on request, by a legal representative, a parent or other relative, a guardian or an independent person;
 - (c) to refuse to answer any question that may be put to the detainee;

- (d) to refuse to participate in any activity related to the police investigation;
 - (e) to be returned, on request made or signified by any means at any time, to the detention centre.
- (5) The removal of a detainee from a detention centre under and in accordance with this section is lawful notwithstanding the terms of any detention order or the operation of any other law.

133C. Court may authorise temporary removal of detainee in connection with police investigation

- (1) The Court, on the application of a commissioned police officer, may issue a warrant authorising that commissioned police officer or another police officer to remove a detainee from a detention centre temporarily if the Court is satisfied that –
- (a) it is for the purposes of a police investigation; and
 - (b) police access or further access to the detainee under section 133A would not suffice for those purposes or cannot for any reason take place; and

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- (c) the removal cannot, for any reason, be effected under section 133B.
- (2) If issued, the warrant is authority for the detention centre manager to allow the police officer named in the warrant to remove the detainee from the detention centre, once, for such temporary period and on such terms as the Court specifies in the warrant.
- (3) The Court may revoke the warrant at any time before it would otherwise expire.
- (4) In determining the terms of the warrant, the Court may have regard to –
 - (a) the nature of the police investigation; and
 - (b) the physical and mental condition, and cultural background, of the detainee; and
 - (c) the principles in section 5; and
 - (d) such other considerations as the Court thinks fit.
- (5) For the purposes of subsection (4)(b), the Court may direct the applicant for the warrant to obtain a report on the detainee from the Secretary and furnish that report to the Court within such time as the Court, by the direction, specifies.

- (6) For the avoidance of doubt, a warrant under this section –
- (a) is not capable of being applied for or issued by telephone; and
 - (b) is not to authorise the temporary removal of a detainee from a detention centre on more than one occasion; and
 - (c) is not conditional on anybody's express or implied consent.

- (7) In this section –

“temporary” means no longer than 12 hours.

133D. Other police powers unaffected

Nothing in section 133A, 133B or 133C is to be taken as preventing or restricting police officers from –

- (a) exercising ordinary investigative, enforcement or other powers as regards unlawful conduct by detainees or other persons in detention centres; or
- (b) exercising, in respect of detainees, powers under the *Forensic Procedures Act 2000*; or
- (c) doing, in respect of detainees or detention centres, anything else

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that may be authorised by or
under other laws or by any court.

10. Section 166 amended (Evidentiary matters)

Section 166(2)(a) of the Principal Act is amended by inserting “, authorisation” after “appointment”.

11. Section 166A inserted

After section 166 of the Principal Act, the following section is inserted in Part 9:

166A. Youth justice workers

- (1) The Secretary may –
 - (a) appoint a State Service officer or State Service employee employed in the Department to be a youth justice worker for the purposes of this Act; and
 - (b) with the consent of the Head of another State Service Agency, appoint a State Service officer or State Service employee employed in that Agency to be a youth justice worker for the purposes of this Act.
- (2) A person appointed as a youth justice worker under this section may hold that

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office in conjunction with State Service employment.

- (3) The Secretary may authorise a person who is not a State Service officer or State Service employee to perform the functions and exercise the powers of a youth justice worker for the purposes of this Act.