

TASMANIA

**JUSTICE (AMENDMENT OF CUSTODY
LEGISLATION) BILL 2002**

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JUSTICE (AMENDMENT OF CUSTODY LEGISLATION) BILL 2002

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

**An Act to amend the *Criminal Code Act 1924*, the
Criminal Justice (Mental Impairment) Act 1999, the
Mental Health Act 1996 and the *Sentencing 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:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Justice (Amendment of
Custody Legislation) Act 2002*.

Commencement

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

PART 2 – CRIMINAL CODE ACT 1924 AMENDED**Principal Act**

3. In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

Schedule 1 amended (*Criminal Code*)

4. Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from section 106 “pursuant to –” and substituting “pursuant to any of the following:”;
- (b) by inserting in section 106 the following paragraphs after paragraph (c):
 - (d) a restriction order made under Part 4 of the *Criminal Justice (Mental Impairment) Act 1999*;
 - (da) a continuing care order made under section 23(d) or section 27(d) of the *Criminal Justice (Mental Impairment) Act 1999*;
- (c) by omitting from paragraph (e) of section 106 “and”;
- (d) by omitting paragraph (f) from section 106 and substituting the following paragraphs:

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- (f) an assessment order made under section 72 of the *Sentencing Act 1997*;
- (g) a continuing care order made under section 75(1) of the *Sentencing Act 1997*;
- (h) a restriction order made under section 75(1) of the *Sentencing Act 1997*.

**PART 3 – CRIMINAL JUSTICE (MENTAL
IMPAIRMENT) ACT 1999 AMENDED**

Principal Act

5. In this Part, the *Criminal Justice (Mental Impairment) Act 1999** is referred to as the Principal Act.

Section 41 amended (Arrest of person escaping from detention or absent without leave)

6. Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “under this Act –” and substituting “pursuant to a restriction order made under this Act or the *Sentencing Act 1997* –”;
- (b) by inserting the following subsections after subsection (1):

(1A) If a judge of a court by which a person is committed to detention under this Act is satisfied that there are proper grounds to suspect that the person –

- (a) has escaped from the detention or is absent, without proper authority, from the place of detention; and
- (b) has left the State –

the judge may issue a warrant for the arrest of the person and for his or her return to the place of detention.

*No. 21 of 1999

(1B) If a judge or magistrate of a court by which a person is made the subject of a continuing care order within the meaning of the *Mental Health Act 1996* is satisfied that there are proper grounds to suspect that the person –

(a) has escaped or is absent without leave of absence from an approved hospital within the meaning of that Act; and

(b) has left the State –

the judge or magistrate may issue a warrant for the arrest of the person and for his or her return to the approved hospital.

- (c) by omitting from subsection (2) “A” and substituting “If a”;
- (d) by omitting from subsection (2) “may, if” and substituting “is”;
- (e) by inserting in subsection (2) “the judge or magistrate may” after “order,”.

PART 4 – MENTAL HEALTH ACT 1996 AMENDED**Principal Act**

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

Section 52 amended (Reviews of continuing care orders and community treatment orders)

8. Section 52(3) of the Principal Act is amended by omitting “Part 12” and substituting “Division 1 of Part 12”.

Part 12: Heading amended

9. Part 12 of the Principal Act is amended by omitting “**TRANSFER OF INVOLUNTARY PATIENTS BETWEEN JURISDICTIONS**” from the heading to that Part and substituting “**INTERGOVERNMENTAL AGREEMENTS**”.

Part 12, Division 1: Heading inserted

10. Part 12 of the Principal Act is amended by inserting the following heading before section 82:

Division 1 – Humanitarian transfer

*No. 31 of 1996

Section 82 amended (Transfer agreements)

11. Section 82 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) The Minister may enter into an agreement with the Minister responsible for the administration of a corresponding law providing for the transfer of involuntary patients.

Section 83 amended (Effect of transfer agreements)

12. Section 83(1) of the Principal Act is amended by omitting “Part” and substituting “Division”.

Part 12, Division 2 inserted

13. After section 83 of the Principal Act, the following Division is inserted in Part 12:

***Division 2 – Apprehension and return of
absconding involuntary patients***

Interpretation of Division

83A. In this Division –

“affected jurisdiction”, in relation to a corresponding law, means the State in which that law is in force;

“continuing care order” includes any continuing care order to which this Act applies by virtue of section 5A;

“corresponding law” means a law of another State that is prescribed as a

corresponding law for the purposes of this Division;

“involuntary patient” includes a person who is subject to a continuing care order within the meaning of this Division;

“mental health facility” means a hospital or other facility at which, under a corresponding law, persons with mental illnesses may be detained involuntarily and treated;

“State” includes Territory.

Agreements for the return, &c., of absconding involuntary patients

83B. (1) The Minister may enter into an agreement with the Minister responsible for the administration of a corresponding law providing for either or both of the following:

- (a) the apprehension, detention and return of involuntary patients who abscond or are absent without leave of absence from the approved hospital where they are being lawfully detained in this State and are found at large in the affected jurisdiction;
- (b) the apprehension, detention and return of persons who abscond or are absent without leave of absence from the mental health facility at which they are being detained under the corresponding law and are found at large in this State.

(2) The Minister must give notice in the *Gazette* of the making or amendment of an agreement under this section and of the terms of the agreement or amendment.

Tasmanian officers may act under corresponding laws

83C. (1) An authorised officer may exercise a power or perform a function conferred on the authorised officer under a corresponding law.

(2) Subsection (1) has effect subject to the provisions of any intergovernmental agreement under this Division about the exercise of the power or the performance of the function by the authorised officer.

Interstate officers may act in this State

83D. (1) A person who is authorised to exercise a power or perform a function under a corresponding law may exercise the power or perform the function in this State.

(2) Subsection (1) has effect subject to the provisions of any intergovernmental agreement under this Division about the exercise of the power or the performance of the function by the person referred to in that subsection.

Apprehension, &c., of involuntary patients from interstate

83E. (1) If a person –

- (a) absconds or is absent without leave of absence from the mental health facility at which the person is being detained under a corresponding law or contravenes a condition subject to which the person has been granted leave of absence from that facility; and
- (b) is found at large in this State –

the person may be apprehended by –

- (c) an authorised officer; or
- (d) a person who, under the corresponding law, would be authorised to apprehend the person at large had that person been found at large in the affected jurisdiction.

(2) For the purposes of subsection (1), a warrant or other instrument that, under the corresponding law, would authorise the apprehension of the person at large if he or she were found at large in the affected jurisdiction also authorises that person's apprehension in this State.

(3) A person who is apprehended under subsection (1) –

- (a) is to be taken to a mental health facility of the affected jurisdiction; but
- (b) may be admitted to and detained in an approved hospital pending his or her return to that jurisdiction.

(4) For the purpose of apprehending a person under subsection (1) –

- (a) an authorised officer may exercise any powers that he or she may exercise under section 15 in relation to persons being taken into protective custody; and
- (b) a person referred to in subsection (1)(d) has the same powers as an authorised officer.

Apprehension, &c., of involuntary patients found interstate

83F. If an involuntary patient –

- (a) absconds or is absent without leave of absence from the approved hospital where he or she is being detained or contravenes a condition subject to which he or she has been granted leave of absence from that approved hospital; and
- (b) is found at large in another State –

he or she may be apprehended and returned to that approved hospital by –

- (c) an authorised officer; or
- (d) a person who, under the law of the affected jurisdiction, is authorised to take the involuntary patient to a mental health facility in that jurisdiction.

PART 5 – *SENTENCING ACT 1997* AMENDED**Principal Act**

14. In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

Part 10: Heading amended

15. Part 10 of the Principal Act is amended by omitting “**HOSPITAL**” from the heading to that Part and substituting “**CONTINUING CARE**”.

Sections 79A and 79B inserted

16. After section 79 of the Principal Act, the following sections are inserted in Part 10:

Arrest of assessment order detainees who abscond

79A. (1) If a court by which a person is made the subject of an assessment order is satisfied that there are proper grounds to suspect that the person has escaped or is absent without proper authority from the institution in which he or she has been detained under the order, the court may issue a warrant for the arrest of the person and for his or her return to the court.

(2) When the person is returned under the warrant, the court may make a new assessment order in respect of the person if the court is satisfied

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that, because of the escape or unauthorised absence, its original assessment order –

- (a) expired before the person's assessment under that order could be completed; or
- (b) will expire before the person's assessment under that order is completed.

Arrest of detainees who flee the State

79B. (1) In this section, “**approved hospital**” means an approved hospital within the meaning of the *Mental Health Act 1996*.

(2) If a court by which a person is made the subject of a continuing care order is satisfied that there are proper grounds to suspect that the person –

- (a) has escaped or is absent without leave of absence from an approved hospital; and
- (b) has left the State –

the court may issue a warrant for the arrest of the person and for his or her return to the approved hospital.

(3) If a court by which a person is committed to detention under a restriction order is satisfied that there are proper grounds to suspect that the person –

- (a) has escaped or is absent without proper authority from the place of detention; and
- (b) has left the State –

the court may issue a warrant for the arrest of that person and for his or her return to the place of detention.