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Robyn Webb  
Chief Parliamentary Counsel  
Dated 12 March 2019



TASMANIA

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## **CRIMINAL LAW (DETENTION AND INTERROGATION) ACT 1995**

**No. 72 of 1995**

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### **CONTENTS**

1. Short title
2. Commencement
3. Interpretation
4. Detention of person in custody
5. Rights to an interpreter
6. Right to communicate with friend, relative and legal practitioner
7. Orders made by telephone
- [8. *Repealed*]
9. Right to remain silent, &c., not affected
10. No power to detain person not under arrest
11. Police officer not prevented from exercising certain powers
12. Standing orders, &c.

- 13. Designated police stations
- 14. Custody officers at police stations
- 15. Recording of information in respect of persons in custody
- 16. Duties of custody officer in relation to persons in custody
- 17. Duties of correctional officer in relation to persons in custody
- 18 – 19 . . . . .
- 20. Administration of Act



## **CRIMINAL LAW (DETENTION AND INTERROGATION) ACT 1995**

**No. 72 of 1995**

**An Act to provide for certain procedures relating to the  
detention and interrogation of persons lawfully arrested  
and to consequentially amend other Acts**

**[Royal Assent 14 November 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:

### **1. Short title**

This Act may be cited as the *Criminal Law (Detention and Interrogation) Act 1995*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 3

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### 3. Interpretation

- (1) In this Act, unless the contrary intention appears

—  
**Commissioner** means the Commissioner of Police;

**correctional officer** has the same meaning as in the *Corrections Act 1997*;

**designated police station** means a police station which is designated by the Commissioner under section 13;

**legal practitioner** means an Australian legal practitioner;

**reception prison** means a prison, in any of the following areas, in respect of which a proclamation has been made under section 9(2) of the *Corrections Act 1997*:

- (a) Hobart;
- (b) Launceston.

**standing orders** means standing orders or policy documents issued by the Commissioner under section 12.

- (2) For the purposes of this Act, a person is in custody if he or she is —

- (a) under lawful arrest by warrant; or

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 4

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- (b) under lawful arrest under section 27 of the *Criminal Code* or a provision of any other Act.

**4. Detention of person in custody**

- (1) Subject to subsection (2), every person taken into custody must be brought before a magistrate or a justice as soon as practicable after being taken into custody unless released unconditionally or released under subsection (3) or subsection (5) or under section 34 of the *Justices Act 1959*.
- (2) Every person who has been taken into custody may be detained by a police officer –
  - (a) for a reasonable time after being taken into custody for the purposes of questioning the person, or carrying out investigations in which the person participates, in order to determine his or her involvement, if any, in relation to an offence; and
  - (ab) if the police officer believes on reasonable grounds that the person –
    - (i) is under the influence of alcohol, another drug or a combination of drugs (in this section referred to as being *intoxicated*); and
    - (ii) is behaving in a manner likely to cause injury to himself, herself or another person or cause damage

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 4

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to any property, or is incapable of protecting himself or herself from physical harm –

until the person may be released under subsection (5); and

- (b) during the period reasonably required to arrange to bring the person before a magistrate or justice and to transport the person to a magistrate or justice.
- (3) Where the reasonable time referred to in subsection (2)(a) expires, the person in custody may be admitted to bail by a person mentioned in section 34 of the *Justices Act 1959*.
- (4) In determining what constitutes a reasonable time for the purposes of subsection (2)(a), consideration must be taken of, but is not limited to, the following matters:
  - (a) the number and complexity of the offences to be investigated;
  - (b) any need of the police officer to read and collate relevant material or to take any other steps that are reasonably necessary by way of preparation for the questioning or investigation;
  - (c) any need to transport the person from the place of apprehension or detention to a place where facilities are available to conduct an interview or investigation;

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 4

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- (d) the number of other people who need to be questioned during the period of custody in respect of the offence for which the person is in custody;
- (e) any need to visit the place where the offence is believed to have been committed or any other place reasonably connected with the investigation of the offence;
- (f) the time during which questioning is deferred or suspended to allow the person to communicate with a legal practitioner, friend, relative, parent, guardian or independent person or, in the case of a child, a person called by the police officer conducting the investigation to accompany the child;
- (g) any time taken by a legal practitioner, friend, relative, parent, guardian, independent person or interpreter or, in the case of a child, a person called by the police officer conducting the investigation to accompany the child to arrive at the place where the questioning or investigation is to take place;
- (h) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to receive medical attention;
- (i) any time during which the questioning or investigation of the person is suspended

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 4**

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- or delayed to allow the person to rest or receive refreshment;
- (j) the period of time when the person cannot be questioned because of his or her intoxication, illness or other physical condition;
  - (k) the need to detain the person whilst an identification parade is being arranged or conducted;
  - (l) the need to detain the person whilst searches or forensic examinations are carried out;
  - (m) any other matters reasonably connected with the investigation of the offence.
- (5) A person referred to in subsection (2)(ab) may be admitted to bail by a person mentioned in section 34 of the *Justices Act 1959* if he or she believes on reasonable grounds that the person –
- (a) is no longer intoxicated; or
  - (b) although still intoxicated, can safely be released into the care of a person who is capable of taking adequate care of him or her; or
  - (c) although still intoxicated, can safely be released into the care of a hospital or a charitable institution, or other facility, capable of caring for an intoxicated person; or

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 4

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- (d) although still intoxicated –
  - (i) is not likely to cause injury to himself, herself or another person; and
  - (ii) is not likely to damage property; and
  - (iii) is capable of protecting himself or herself from physical harm.
- (6) A person referred to in subsection (2)(ab) who is being detained only because a police officer believes on reasonable grounds that the person may not be released under subsection (5) must be admitted to bail by a person mentioned in section 34 of the *Justices Act 1959* on being in custody for a period of 8 hours or such extended period as may be determined under subsection (7).
- (7) If –
  - (a) the 8-hour period referred to in subsection (6) is close to expiration; and
  - (b) a commissioned police officer believes on reasonable grounds that, at the expiration of that period, the conditions for release of the person set out under subsection (5) will not be met –  
the person may be detained for such further period, not exceeding 4 hours, as the commissioned police officer determines necessary to enable the person to meet the

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 5

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conditions for release specified in subsection (5).

## **5. Rights to an interpreter**

- (1) If a person in custody does not have a knowledge of the English language that is sufficient to enable the person to understand the questioning or investigation, the police officer conducting the investigation must, before any questioning or investigation under section 4 may commence, arrange for the presence of a competent interpreter and defer the questioning or investigation until the interpreter is present.
- (2) This section does not apply to questioning or investigation in connection with an offence under –
  - (a) section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
  - (b) section 13(1), 16(1), 21(2), 22(3), 24(2), 26(2), 28(3), 33(3) or 38(3) of the *Marine Safety (Misuse of Alcohol) Act 2006*.

## **6. Right to communicate with friend, relative and legal practitioner**

- (1) Before any questioning or investigation under section 4 may commence, the police officer conducting the investigation must inform the person in custody that he or she –

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 6

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- (a) may communicate with, or attempt to communicate with, a friend or relative to inform the friend or relative of the whereabouts of the person in custody; and
  - (b) may communicate with, or attempt to communicate with, a legal practitioner.
- (2) Where a person in custody requests –
- (a) to communicate with a friend or relative to inform that person of his or her whereabouts; or
  - (b) to communicate with a legal practitioner; or
  - (c) to communicate with a friend or relative to inform that person of his or her whereabouts and with a legal practitioner –
- the police officer conducting the investigation must, subject to subsection (3), defer the questioning and investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.
- (3) Where a person in custody is of or over the age of 18 years, the police officer conducting the investigation may deny the person in custody communication with all or any of the persons referred to in subsection (2)(a), (b) or (c) for a period not exceeding 4 hours if the police officer believes on reasonable grounds that –

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 6**

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- (a) any communication referred to in subsection (2) is likely to result in the escape of an accomplice or the fabrication or destruction of evidence; or
  - (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed.
- (4) The police officer conducting the investigation or another police officer acting on his or her behalf may, before the expiration of the 4 hour period referred to in subsection (3) or such further period as a magistrate has granted under subsection (6), apply to a magistrate for an order authorising the police officer to deny the person in custody communication with all or any of the persons referred to in subsection (2)(a), (b) or (c) for a further period.
- (5) An application under subsection (4) for an order specified in that subsection –
- (a) is, except as provided in section 7, to be made in writing; and
  - (b) is to set out the grounds for seeking that order.
- (6) If the magistrate is satisfied that there are reasonable grounds for doing so, the magistrate may make an order authorising the police officer to deny the person in custody communication with all or any of the persons referred to in subsection (2)(a), (b) or (c) for such period as is specified in the order.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 7

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- (7) Subject to subsections (3) and (6), if a person in custody wishes to communicate with a friend, relative or legal practitioner, the police officer in whose custody the person is –
  - (a) must afford the person reasonable facilities as soon as practicable to enable the person to do so; and
  - (b) must allow the person's legal practitioner to communicate with the person in custody in circumstances in which as far as practicable the communication will not be overheard.
- (8) This section does not apply to questioning or investigation in connection with an offence under –
  - (a) section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
  - (b) section 13(1), 16(1), 21(2), 22(3), 24(2), 26(2), 28(3), 33(3) or 38(3) of the *Marine Safety (Misuse of Alcohol) Act 2006*.

## **7. Orders made by telephone**

- (1) Subject to this section –
  - (a) an application under section 6(4) may be made by telephone if the applicant is of or above the rank of sergeant; and

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 7

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- (b) a magistrate may under section 6(6) make an order that has been applied for by telephone.
- (2) A magistrate makes an order under section 6(6) that has been applied for by telephone by stating the terms of the order.
- (3) A magistrate must not make an order under section 6(6) that has been applied for by telephone if the magistrate is of the opinion that it would be practicable in the circumstances for the police officer to apply to a magistrate for the order in person.
- (4) A magistrate who makes an order under section 6(6) that has been applied for by telephone is to cause a record to be made in writing of –
  - (a) the name and rank of the police officer who applied for the order; and
  - (b) the location of the police officer at the time the application was made; and
  - (c) the reasons given by the police officer as to why it was not practicable in the circumstances for the police officer to apply to a magistrate for an order in person; and
  - (d) the full name of the person to whom the order relates; and
  - (e) the terms of the order as stated to the police officer; and

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 8

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- (f) the date and time the order was made.
- (5) The police officer must –
- (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 by whom, and the date and time when, the order was made.

8. . . . .

**9. Right to remain silent, &c., not affected**

Nothing in sections 4, 5 and 6 affects –

- (a) the right of a person suspected of having committed an offence to refuse to answer questions or to participate in investigations except where required to do so by or under an Act or a Commonwealth Act; or
- (b) the onus on the prosecution to establish the voluntariness of an admission or confession made by a person suspected of having committed an offence; or
- (c) the discretion of a court to exclude unfairly obtained evidence; or
- (d) the discretion of a court to exclude illegally or improperly obtained evidence.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 10

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**10. No power to detain person not under arrest**

Nothing in sections 4, 5 and 6 confers a power to detain against his or her will a person who is not under arrest.

**11. Police officer not prevented from exercising certain powers**

Nothing in sections 4, 5 and 6 prevents a police officer from asking or causing a person to do anything that the police officer is authorised by law to ask or cause the person to do.

**12. Standing orders, &c.**

The Commissioner may issue standing orders and policy documents relating to the treatment of persons in custody.

**13. Designated police stations**

- (1) The Commissioner must designate the police stations in this State which are to be used for the purpose of detaining arrested persons.
- (2) The Commissioner's duty under subsection (1) is to designate police stations which appear to the Commissioner to provide sufficient facilities for the purpose of detaining arrested persons.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 14

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#### **14. Custody officers at police stations**

- (1) The Commissioner must appoint one or more police officers as custody officers for each designated police station.
- (2) A police officer who is below the rank of sergeant may not be appointed as a custody officer for a designated police station unless there is no person of that rank or above that rank deployed at the designated police station.
- (3) A police officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.
- (4) Subject to subsections (5) and (6) and section 16(3), none of the functions of a custody officer in relation to a person are to be performed by a police officer who at the time the function is to be performed is involved in the investigation of an offence for which that person is in custody at that time.
- (5) Nothing in subsection (4) is to be taken to prevent a custody officer –
  - (a) doing anything in connection with the identification of a suspect; or
  - (b) doing anything under the *Road Safety (Alcohol and Drugs) Act 1970* or *Marine Safety (Misuse of Alcohol) Act 2006*.
- (6) Where a person in custody is taken to a police station which is not a designated police station,

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 15**

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the functions in relation to that person which at a designated police station would be the functions of a custody officer are to be performed –

- (a) by a police officer who is not involved in the investigation of an offence for which that person is in custody, if such an officer is readily available; and
  - (b) if no such police officer is readily available, by the officer who took the person to the station or any other officer.
- (7) References to a custody officer in sections 15 and 16 include references to a police officer other than the custody officer who is performing the functions of a custody officer by virtue of subsection (3) or (6).

**15. Recording of information in respect of persons in custody**

- (1) Where a person is in custody and is taken to a police station or is arrested and taken into custody at a police station, the person must be brought before a custody officer without delay and placed in the custody of the custody officer.
- (2) When a person is brought before a custody officer, the custody officer must –
  - (a) record the time of the person's arrival at the police station and the time when the person came into the custody officer's custody; and

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 15

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- (b) in the presence of the person in custody make a written record of the grounds for that person's detention; and
  - (c) inform the person in custody of the reason for that person's detention.
- (3) The police officer conducting the investigation must advise the custody officer –
- (a) if the person in custody is questioned, the time of the commencement and ending of the questioning; and
  - (b) if the person in custody is denied the right under section 6 to communicate with all or any of the persons referred to in section 6(2)(a), (b) or (c), the reason for the denial of the right to communicate, the time when the person was denied that right and the time when the person was allowed to communicate.
- (4) The custody officer must also record –
- (a) any transfer of custody of a person brought before the custody officer; and
  - (b) the details of the advice received by the custody officer under subsection (3).
- (5) In so far as it is practicable to do so, the recording of any matters referred to in subsections (2) and (4) must be made contemporaneously with the matter recorded.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 16**

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- (6) A custody officer may transfer a person in custody into the custody of another custody officer.
- (7) If a person in custody is transferred into the custody of another custody officer, the custody officer into whose custody the person is transferred must acknowledge in writing the acceptance of the transfer of that person.
- (8) This section does not apply to a person in custody in respect of whom it is not proposed to conduct any questioning, or carry out any investigation, as mentioned in section 4(2).

**16. Duties of custody officer in relation to persons in custody**

- (1) Subject to subsection (2), the custody officer at a police station must ensure –
  - (a) that all persons in custody at that station are treated in accordance with this Act and any standing orders; and
  - (b) that all matters relating to persons in custody at the station which are required by this Act or by those standing orders to be recorded are recorded in the custody records relating to those persons.
- (2) A custody officer may transfer or permit the transfer of a person in custody –

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 16**

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- (a) to the custody of a police officer investigating the offence for which the person is in custody; or
  - (b) to the custody of a police officer who has charge of that person outside the police station; or
  - (c) to the custody of a correctional officer of a reception prison.
- (3) If the custody officer transfers or permits the transfer of a person in custody in accordance with subsection (2)(a) or (b), the custody officer ceases in relation to that person to be subject to the duty imposed on the custody officer by subsection (1)(a) and the police officer to whom the transfer is made must ensure that the person is treated in accordance with the provisions of this Act and any standing orders mentioned in subsection (1).
- (4) If the custody officer transfers or permits the transfer of a person in custody in accordance with subsection (2)(c), the custody officer –
- (a) is to record the transfer as if it were a transfer to another custody officer under section 15; and
  - (b) in relation to that person, ceases to be subject to the duty imposed on the custody officer by subsection (1)(a) other than the duty imposed by that subsection in relation to section 4.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

s. 17

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**17. Duties of correctional officer in relation to persons in custody**

- (1) In relation to persons in custody who have been transferred in accordance with section 16(2)(c), a correctional officer at a reception prison must ensure that all persons so transferred are treated in accordance with any correctional standing orders referred to in subsection (2).
- (2) The Director of Corrective Services, within the meaning of the *Corrections Act 1997*, may make correctional standing orders in respect of the welfare, protection and management of persons in custody who have been transferred in accordance with section 16(2)(c).
- (3) Section 26(3) of the *Corrections Act 1997* does not apply to a correctional officer who has custody of a person by virtue of section 16(2)(c).
- (4) If a request has been made by a police officer or a custody officer, the correctional officer who has custody of a person by virtue of section 16(2)(c) is to transfer or permit the transfer of that person to –
  - (a) a police officer referred to in section 16(2)(a) or (b); or
  - (b) the custody officer making the request.
- (5) In this section –

***correctional standing orders*** means standing orders under section 6(3) of the *Corrections Act 1997*.

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**18 - 19**

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**18 - 19.** *The amendments effected by these sections have been incorporated into the authorised version of the appropriate Acts.*

**20. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

**NOTES**

The foregoing text of the *Criminal Law (Detention and Interrogation) Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 10 December 2018 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Criminal Law (Detention and Interrogation) Act 1995</i>	No. 72 of 1995	2.12.1996
<i>Criminal Law (Detention and</i>	No. 60 of 1999	24.11.1999

*Criminal Law (Detention and Interrogation) Act 1995*  
*Act No. 72 of 1995*

**s. 20**

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Act	Number and year	Date of commencement
<i>Interrogation) Amendment Act 1999</i>		
<i>Youth Justice (Consequential Amendments) Act 1999</i>	No. 49 of 1999	1.2.2000
<i>Evidence (Consequential Amendments) Act 2001</i>	No. 80 of 2001	1.7.2002
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Marine Safety (Misuse of Alcohol) Act 2006</i>	No. 25 of 2006	23.12.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	11.12.2009
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018

**TABLE OF AMENDMENTS**

Provision affected	How affected
Section 3	Amended by No. 76 of 2003, Sched. 1, No. 66 of 2007, Sched. 1 and No. 76 of 2009, s. 11
Section 4	Amended by No. 80 of 2001, Sched. 1 and No. 29 of 2018, s. 23
Section 5	Amended by No. 25 of 2006, Sched. 2
Section 6	Amended by No. 49 of 1999, Sched. 1, No. 25 of 2006, Sched. 2 and No. 29 of 2018, s. 24
Section 8	Amended by No. 49 of 1999, Sched. 1 Repealed by No. 80 of 2001, Sched. 1
Section 14	Amended by No. 25 of 2006, Sched. 2
Section 15	Amended by No. 60 of 1999, s. 4
Section 16	Amended by No. 76 of 2009, s. 12
Section 17	Inserted by No. 76 of 2009, s. 13