



# **CRIMINAL PROCEDURE (ATTENDANCE OF WITNESSES) ACT 1996**

**No. 13 of 1996**

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# **CRIMINAL PROCEDURE (ATTENDANCE OF WITNESSES) ACT 1996**

**No. 13 of 1996**

**An Act to provide for securing the attendance of witnesses in criminal proceedings in the Supreme Court and to make consequential amendments to the *Criminal Code* and the *Evidence Act 1910***

**[Royal Assent 10 July 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**

### **Short title**

1. This Act may be cited as the *Criminal Procedure (Attendance of Witnesses) Act 1996*.

### **Commencement**

2. This Act commences on a day to be proclaimed.

### **Interpretation**

3. In this Act, unless the contrary intention appears –

**"Court"** means the Supreme Court of Tasmania;

**"criminal proceeding"** includes –

- (a) a proceeding for contempt of court; and
- (b) a proceeding under section 357, 380 or 409 of the *Criminal Code*; and
- (c) a hearing on a plea of guilty; and
- (d) any other proceeding held for the purposes of the criminal jurisdiction of the Court;

**"final notice"** means a final notice to a witness issued under section 10;

**"intended witness"** means a person named as a witness in a preliminary notice or final notice;

**"preliminary notice"** means a preliminary notice to a witness issued under section 5;

**"recognisance"** means a recognisance in force under section 12;

**"Registrar"** means the Registrar of the Court.

### **Application of Act**

4. This Act does not apply to a person who –

- (a) under any other Act or law, may not be compelled to attend as a witness in a criminal proceeding; or

- (b) is required by writ of *habeas corpus ad testificandum* or *habeas corpus ad respondendum* to attend court and give evidence.

## **PART 2 – NOTICES TO WITNESS**

### ***Division 1 – Preliminary notices***

#### **Preliminary notice to witness**

5. (1) On application by the prosecutor or the accused person, the Registrar must issue a preliminary notice in the prescribed form to any person named in the notice requiring that person to attend and give evidence at a criminal proceeding.

(2) A person is not required to attend as a witness under subsection (1) until he or she is served with a final notice on behalf of the prosecutor or the accused person.

(3) As soon as practicable after the issue of a preliminary notice, the prosecutor or the accused person must cause the notice to be served on the intended witness.

#### **Change of address or inability to attend**

6. (1) Where a person served with a preliminary notice proposes to change his or her place of residence, employment or business from the address specified in the notice, that person must –

- (a) as early as practicable before the change occurs, give notice in writing of the change to the person who caused the notice to be issued; or
- (b) if it is not practicable to do so, give oral notice of the change to that person.

(2) Where a person served with a preliminary notice is of opinion that circumstances have arisen or may arise

that will, or may, prevent that person from attending and giving evidence, either generally or during a particular period, in a criminal proceeding, that person must –

- (a) as soon as practicable after the relevant facts have come to his or her knowledge, give notice in writing of those facts to the person who caused the notice to be issued; or
- (b) if it is not practicable to do so, give oral notice of those facts to that person.

### **Limitation of obligations under preliminary notice**

7. The obligations arising under a preliminary notice cease on the expiration of 6 months after the date on which it is served.

### **Notice to state effect of this Division**

8. A preliminary notice is to include a statement specifying the duties imposed on an intended witness under this Division.

### **Effect of preliminary notice**

9. A preliminary notice is not affected by a postponement or adjournment of the criminal proceeding in respect of which the notice was issued.

***Division 2 – Final notices***

**Issue of final notice**

10. (1) The Registrar must, on application by the prosecutor or the accused person and whether or not a preliminary notice has been issued, cause a final notice in the prescribed form to be issued to an intended witness requiring him or her to attend in a criminal proceeding to give evidence and to produce such documents, articles or things as may be specified in the notice.

(2) A final notice is to include a statement specifying –

- (a) the date, time and place at which the intended witness is required to attend; and
- (b) the penalties to which the intended witness may be subject on failure to comply with the notice –

and is to be served by the prosecutor or the accused person as soon as practicable after it has been issued.

***Division 3 – Discharge of notices***

**Discharge of notices to witnesses**

11. A preliminary notice and a final notice cease to have effect when the accused person is discharged from all proceedings in respect of the offence or offences to which the notice relates.

***Division 4 – Recognisances*****Recognisance to secure attendance of witness**

**12.** (1) On application by the prosecutor or the accused person, a judge may require an intended witness to enter into a recognisance in such terms as the judge thinks fit in order to secure the attendance of that person as a witness or the production of documents, articles or things in his or her possession or custody in a criminal proceeding.

(2) If a person bound by a recognisance fails to appear and give evidence in a criminal proceeding pursuant to the recognisance, the Court, on production of the recognisance, may order that the amount of the recognisance be forfeited to the Crown.

(3) In proceedings for an order under subsection (2), it is a defence if the intended witness can show that he or she was unable to afford the reasonable cost of transport to the criminal proceeding.

(4) An intended witness who is bound by a recognisance may, within such time as may be appointed by the Court, show cause before a judge why a condition of the recognisance should not be enforced and, on cause being shown, a judge must inquire into the circumstances of the case and, if the judge thinks fit, may order the discharge of the whole or any part of the amount ordered to be forfeited.

### **PART 3 – INTENDED WITNESSES**

#### **Issue of warrant for arrest of intended witness**

**13. (1)** Where, on application by a prosecutor or the accused person, it appears to a judge that there are reasonable grounds for believing that an intended witness –

- (a) will leave Tasmania in order to avoid giving evidence in a criminal proceeding; or
- (b) has failed, or is about to fail, to comply with the terms of a recognisance binding him or her to appear and give evidence in a criminal proceeding –

the judge may issue a warrant for the arrest of that person.

**(2)** At the hearing of an application under subsection (1), the judge may inform himself or herself in any manner that he or she thinks fit.

#### **Power to excuse intended witness**

**14. (1)** An intended witness may, before the hearing of a criminal proceeding, apply to the Registrar for an order that the intended witness be excused from giving evidence at the trial.

**(2)** If the application under subsection (1) is opposed by the prosecutor or the accused person –

- (a) the Registrar must refer the application to a judge; and

- (b) the judge, if satisfied that it is in the interests of justice to do so, may order that the intended witness be excused from giving evidence at the hearing.

(3) Without limiting subsection (2), matters which may be considered by the judge include –

- (a) whether the intended witness is unable to give material evidence; and
- (b) whether the intended witness is unable to produce material documents, articles or things; and
- (c) whether the intended witness will incur unreasonable hardship by attending Court; and
- (d) whether the evidence of the intended witness is otherwise available to the Court.

(4) At the hearing of an application under subsection (1), the judge may inform himself or herself in any manner that he or she thinks fit.

## **PART 4 – MISCELLANEOUS AND SUPPLEMENTAL**

### **Requirement for continued attendance at court**

15. A person who has been served with a final notice is required to attend in a criminal proceeding on the date specified in the notice and from day to day until excused by the Court from further attendance.

### **Requirement to tender conduct money abolished**

16. (1) The requirement for the tender of conduct money for the appearance of a person as a witness in a criminal proceeding is abolished.

(2) Nothing in subsection (1) affects the right of a person to recover as money had and received any money paid as conduct money before the commencement of this Act.

### **Expenses of witnesses**

17. (1) A person who attends before the Court to give evidence in a criminal proceeding is entitled to be paid expenses in accordance with this section if –

- (a) he or she so attends in obedience to a final notice issued by the prosecutor; or
- (b) the Court so orders in a case where there was no final notice.

(2) Subject to subsection (1), where a person –

- (a) in obedience to a final notice attends to give evidence; or

- (b) without a final notice, appears and gives evidence –

the Court may order the payment of expenses to that person.

(3) The amount of expenses payable to a person under this section is to be ascertained by the Registrar in accordance with the prescribed scale.

(4) On production of a certificate from the examining justices before whom an accused person has been charged with an indictable offence that –

- (a) a person who has given evidence before them against the accused person; or
- (b) a person bound by recognisance to appear and give evidence for the accused person upon his trial –

is entitled to payment of the expenses (calculated in accordance with the prescribed scale) specified in the certificate, that person is entitled, subject to subsections (5) and (6), to receive the amount mentioned in the certificate in addition to the amount, if any, to which he or she may be entitled under subsection (1) or (2).

(5) If, in a criminal proceeding –

- (a) the Court has reason to believe that any such person has attempted to evade service of the final notice or has failed to appear in obedience to the notice or in pursuance of his or her recognisance; or
- (b) the conduct or demeanour of any such person before the Court is in the opinion of the Court unsatisfactory or improper –

the Court may order that that person is to be deprived of all or any of the amount payable to him or her under this section.

(6) If the Court is of opinion that the amount certified by the examining justices to be payable under subsection (4) to a person is excessive, the Court may order the payment of such reduced amount as it thinks fit.

(7) An amount payable under this section is to be paid by the Registrar to the person entitled or to another person on his or her written order out of money provided by Parliament for that purpose.

(8) A witness is not entitled to expenses for attending before the examining justices unless he or she produces to the Registrar a certificate under subsection (4).

**Abolition of *subpoenae ad testificandum* and *duces tecum* in criminal proceedings**

18. (1) On and from the commencement of this Act a *subpoena ad testificandum* and a *subpoena duces tecum* may not be issued or used in criminal proceedings.

(2) Nothing in subsection (1) affects a *subpoena ad testificandum* or a *subpoena duces tecum* that was issued and in force immediately before the commencement of this Act and a prosecutor or an accused person is competent to bring proceedings arising from any such subpoena notwithstanding this Act.

**Failure of intended witness to appear**

19. (1) If an intended witness –

- (a) fails to appear and give evidence in a criminal proceeding as required by a final notice or a recognisance; and
- (b) is unable to show that there was a reasonable cause for the failure and that he or she took all steps reasonably available in order to comply with the requirements of the notice –

the intended witness is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 6 months, or both.

(2) In a prosecution for an offence against subsection (1), it is a defence if the intended witness can show that he or she was unable to afford the reasonable costs of transport to the criminal proceeding.

## **Regulations**

**20.** (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision with respect to –

- (a) the procedure for making an application under this Act; and
- (b) the service of notices and applications to the Court or Registrar for the purposes of this Act; and
- (c) the issue of summonses against intended witnesses who fail to comply with notices or recognisances; and
- (d) the payment of expenses to witnesses.

***Criminal Code amended***

21. Sections 429A, 430, 431 and 432 of the *Criminal Code*\* are repealed.

***Evidence Act 1910 amended***

22. Section 91 of the *Evidence Act 1910*† is amended as follows:

- (a) by omitting from subsection (1) "legal" and substituting "civil";
- (b) by omitting subsection (2) and substituting the following subsection:

(2) The judge may direct that the expenses of any witness called by him or her in the proceeding are to be costs in the cause.

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\* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992, Nos. 9, 72 and 89 of 1993, Nos. 4, 7, 10, 21, 61, 68, 72 and 96 of 1994 and Nos. 43, 65, 72, 75 and 96 of 1995.

† 1 Geo. V No. 20. For this Act, as amended to 1 June 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1981, Nos. 60 and 75 of 1982, No. 29 of 1984, Nos. 5, 21 and 51 of 1985, No. 34 of 1986, Nos. 55 and 77 of 1987, Nos. 4 and 25 of 1988, No. 5 of 1990, Nos. 1, 25, 27 and 46 of 1991, Nos. 13 and 36 of 1992, Nos. 5, 57, 73, 89 and 100 of 1993, Nos. 25, 64, 68 and 72 of 1994 and Nos. 30, 37, 70 and 75 of 1995.

***Justices Act 1959* amended**

**23.** Section 45 of the *Justices Act 1959*\* is amended as follows:

- (a) by omitting from subsection (2) "430 of the *Criminal Code*." and substituting "17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996*";
- (b) by omitting from subsection (6) "included in a certificate under section 430(4) of the *Criminal Code*" and substituting "entitled under section 17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996*";
- (c) by omitting subsection (10) and substituting the following subsection:-

**(10)** Payment under subsection (7) is taken as satisfaction of an entitlement under section 17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996* in respect of the same attendance of a witness.

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\* No. 77 of 1959. For this Act, as amended to 1 May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48 and 55 of 1984, Nos. 9, 51 and 121 of 1985, Nos. 45, 77, 93 and 115 of 1986, Nos. 45, 57 and 82 of 1987, Nos. 8 and 15 of 1988, Nos. 13 and 34 of 1989, Nos. 5 and 13 of 1990, Nos. 41, 43 and 46 of 1991, Nos. 15 and 21 of 1992, Nos. 10, 71 and 73 of 1993, Nos. 8, 10, 64, 65 and 68 of 1994 and Nos. 30, 38, 50, 66 and 107 of 1995.

**Administration of Act**

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

- (a) this Act is administered by 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.

*[Second reading presentation speech made in:–  
House of Assembly on 15 May 1996  
Legislative Council on 19 June 1996]*