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Scan QR Code
above for vCard

30 January 2017

The Chair
Criminal Law Committee
Law Society of Tasmania
Jackie.Hartnett@justice.tas.gov.au

Dear Madam

TASMANIA POLICE “REQUEST FOR INFORMATION” INDEMNITY

1. The purpose of this letter is to express concern about the Tasmania Police requiring a “defence lawyer” to enter into a broad scope unlimited indemnity when applying for a client’s prior conviction record using the Tasmania Police “Request for Information” template.

2. **Attached*** is a copy of the December 2014 version of the Request for Information template provided by the Tasmania Police Information Services. The broad scope indemnity (**the Indemnity**) is as follows:

I hereby indemnify the services of the CrimTrac Agency, other police jurisdictions and the State of Tasmania, its servants and agents including all members, servants, agents and employees of the Department of Police and Emergency Management against all actions, suits, proceedings, causes of action, costs, claims and demands whatsoever that may be brought or made against it or them by any body or personnel by reason of, or arising out of, the release of police information recorded against the provided name or purporting to either relate or concern that person.

3. The Indemnity appears to have been derived from section 7 of the **attached**** “Consent to Check and Release a National Police Certificate” form which I understand is completed by the client themselves rather than a legal practitioner on their behalf. No concerns arise directly for LST members in relation to this form.

4. The broad scope of the Indemnity contained in the Request for Information template should be of great concern to the LST's members. Although there may be some contest over whether the Indemnity is contractually binding as it may fail for a lack of consideration, the acceptance of the indemnity may form the basis for an equitable estoppel. It is not inconceivable that the Commissioner of Police would seek indemnification from a legal practitioner on a proceeding, frivolous or otherwise, brought by a client of the practitioner relating to the release of the police record where the record is released by the client or a third party outside the control of the legal practitioner applicant. There may also be an issue adverse to a practitioner in relation to their professional indemnity insurance cover.

5. A Request for Information purports to be an application "made pursuant to section 6(1) of the *Record of Offences (Access) Act 1981*". The Tasmanian statutory provision is as follows:

6. Duty of recording authority to produce prescribed record for inspection, &c.

(1) Subject to this section, where a person who believes that a recording authority is or may be keeping a prescribed record in relation to him makes a written application to the authority requesting it to produce for his inspection such prescribed records as it has in relation to him, the authority shall, within 14 days after the receipt of the application, comply with the request or, if it has no such records, notify him in writing that it has no prescribed records relating to him.

(2) A recording authority may, before complying with a request in an application made under [subsection \(1\)](#), require the applicant to produce reasonable evidence of his identity.

(3) A recording authority shall take reasonable steps to ensure that a prescribed record which a person is entitled to inspect under this section is produced in a form that is readily intelligible to that person and, if he so requests, provide him with a copy of the record or any part of the record that he specifies.

(4) A person who makes a request in an application under [subsection \(1\)](#) is entitled to be provided with a copy of a prescribed record relating to him without charge except where he has been provided under that subsection with such a copy within the period of 12 months immediately preceding the request, in which case he is only so entitled if he pays to the recording authority the prescribed fee.

(5) A request in an application made under subsection (1) may be made by an Australian legal practitioner on behalf of a person to whom a prescribed record relates.

6. I am hopeful that the Criminal Law Committee will resolve to put the issues to Council for approval for a submission to the Commissioner of Police requesting that the Indemnity be removed from the template for the following reasons:

-
- (a) The Indemnity is an unreasonable broad scope indemnity including matters potentially outside the legal practitioner applicant's control.
 - (b) There may be professional indemnity insurance cover issues adverse to the legal practitioner applicant.
 - (c) There is no basis under the *Record of Offences (Access) Act 1981 (the Act)* for requesting a legal practitioner to enter into the Indemnity.
 - (d) Any refusal by the Commissioner of Police as a "recording authority" to provide a "prescribed record" on the basis that the Indemnity has not been entered into by the legal practitioner applicant will be a breach of the Commissioner's statutory duty under section 6 of the Act. Such unjustifiable refusal may lead to a costly application to a magistrate for an order directing that the prescribed record be produced pursuant to section 8 of the Act. Whilst the magistrate has the power under subsection 8(8) to place conditions on the applicant in relation to an order, it is inconceivable that a magistrate would require the applicant to enter into a broad scope indemnity such as the Indemnity. An order for costs against the Commissioner may also follow under section 9 of the Act.

7. I look forward to hearing the Committee's position on the issues I have raised. Please treat this letter an open letter if doing so assists in identifying the issues to Council or the Commissioner of Police, Mr Darren Hine.

Yours faithfully



PHILLIP J GRAY
Barrister



REQUEST FOR INFORMATION

V0.4L
12/14

Information Services
Fax: 03 6230 2200
Phone: 03 6173 2241
Email: ois_enquiries@police.tas.gov.au

REQUESTING FIRM:

DATE/TIME OF REQUEST:

/

DETAILS OF PERSON ON WHOM INFORMATION REQUIRED

*Primary Name:	(Family Name)	(1st Given Name)	(2nd Given Name)
*ALL Previous Name(s): (including Maiden)	(Alias 1)	(Alias 2)	
*Date of Birth:		*Gender:	Male <input type="checkbox"/> Female <input type="checkbox"/>
*Place of Birth:	(Town)	(State)	(Country)
*Address: (Current / Last Known)	(Street)	(Suburb)	(State & Postcode)
Person requesting	*		

NOTE: *ALL the above information is mandatory. A check will be conducted on the basis of the details supplied by the requesting organisation. Failure to provide details will delay or prevent the checking of police records.

PURPOSE / CATEGORY

Defence lawyer – Request for client record ☐ Witness Priors ☐

Related Matter Number: _____

Court Appearance Date: _____

(Matter # compulsory for court related requests.)

☐ Full Police Record

☐ Partial / Convictions only

(Application is hereby made pursuant to
Section 6(1) of the Record of Offences
(Access) Act 1981)

Statement of Consent and Indemnity

I hereby certify that the details provided on this form are correct and that authorisation has been provided to request a check of the records of Tasmania Police and other Australian police jurisdictions. I hereby indemnify the services of the CrimTrac Agency, other police jurisdictions and the State of Tasmania, its servants and agents including all members, servants, agents and employees of the Department of Police and Emergency Management against all actions, suits, proceedings, causes of action, costs, claims and demands whatsoever that may be brought or made against it or them by any body or personnel by reason of, or arising out of, the release of police information recorded against the provided name or purporting to either relate or concern that person

Person Requesting Information

Surname: _____

Given Names: _____

Position: _____

Phone No.: () _____

FORWARDING THIS REQUEST FOR INFORMATION TO TASMANIA POLICE ACKNOWLEDGES ACCEPTANCE OF THE ABOVE INDEMNITY

The information contained on this message maybe confidential information, and may also be the subject of legal privilege, public interest immunity or legal professional privilege. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorised. If you have received this document in error, please telephone (03) 6173 2241.

Office

☐ NOT Recorded

☐ Recorded (See Attached)

Processed by: _____

Additional Information: _____



CONSENT TO CHECK AND RELEASE A NATIONAL POLICE CERTIFICATE

National Police Record Check – \$45.00

A check will be made of the police records held in all Australian police jurisdictions.

A National Police Certificate will contain all disclosable prior convictions in accordance with the *Annulled Convictions Act 2003* (Tas). For most employment purposes some convictions may be annulled subject to a period of good behaviour.

If you are seeking employment or one of the privileges set out in Schedule 1 of the *Annulled Convictions Act*, then all convictions and findings of guilt will appear on your National Police Certificate.

National Police Record and Fingerprint Check – \$120.00

A check will be made of the police and fingerprint records held by all Australian police jurisdictions.

Applicants must attend their local Police Station to have their fingerprints taken. A copy of your prints will be attached to and released with your National Police Certificate.

INSTRUCTIONS FOR COMPLETING APPLICATION FORM:

- Please use **BLOCK LETTERS** and complete in blue or black ink only.
- **Sign and date** the form and have your **signature witnessed**.
- You must copy and attach the required **100 points of identity**.
- You must include **payment details**.
- **Volunteers:** Individuals seeking to undertake volunteer work with previously authorised organisations, may be eligible to receive a National Police Certificate at a concession rate.
 - Please contact the organisation concerned to determine whether you are eligible to receive this concession rate.
 - If applicable, have an authorised officer from the organisation complete the declaration of Volunteers Status on page 3.

INCOMPLETE FORMS WILL BE RETURNED TO THE APPLICANT

BEFORE SUBMITTING YOUR FORM:

- Have you selected a box in sections 2 and 3? ☐
- Have you attached required ID? (see section 6) ☐
- Have you included payment details? ☐
- Have you provided your signature of consent and had it witnessed? ☐

RETURN FORM AND ATTACHMENTS TO:

CRIMINAL HISTORY SERVICES
TASMANIA POLICE
GPO BOX 308
HOBART TAS 7001

Email: criminalhistoryservices@police.tas.gov.au
Fax: 03 6230 2927

If you require assistance to complete this form contact:
CRIMINAL HISTORY SERVICES
during business hours on 6173 2928 or 6173 2929

SECTION 1: APPLICANT INFORMATION

Family Name:	<input type="text"/>		
First Given Name:	<input type="text"/>	Other Given Names:	<input type="text"/>
<small>All previous or alternative names:</small>			
Previous Family Name(s):	<input type="text"/>		
Previous Given Name(s):	<input type="text"/>		
Date of Birth:	<input type="text"/> / <input type="text"/> / <input type="text"/>	Gender:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>
Place of Birth:	Suburb / Town: <input type="text"/>	State: <input type="text"/>	Country: <input type="text"/>
Current Residential Address:			
Unit / Street Number / Street: <input type="text"/>			
Suburb / Town: <input type="text"/>		State: <input type="text"/>	Postcode: <input type="text"/>
Postal Address: If you want your certificate delivered to a postal address or third party organisation, please provide the details below:			
For Attention of / Organisation Name: <input type="text"/>			
PO Box / Organisation Street Address: <input type="text"/>			
Suburb / Town: <input type="text"/>		State: <input type="text"/>	Postcode: <input type="text"/>
Drivers Licence No. and Issuing State:	<input type="text"/>	Business Hours Telephone No.:	<input type="text"/>

SECTION 2: TYPE OF POLICE RECORD CHECK REQUIRED / FEES - (Tick appropriate box)

National Police Record Check	\$45.00*	<input type="checkbox"/>
National Police Record and Fingerprint Check	\$120.00	<input type="checkbox"/>

Applicant must attend their local Police Station to have their fingerprints taken.

SECTION 3: PURPOSE OF RECORD CHECK - (Please tick one box in one option)

Option 1 - Employment/Privilege under Schedule 1

<input type="checkbox"/> - CHILD CARE	<input type="checkbox"/> - CHILD RELATED HEALTH	<input type="checkbox"/> - TEACHING / NON TEACHING EDUCATION STAFF
<input type="checkbox"/> - ADOPTION / FOSTER PARENT	<input type="checkbox"/> - JUSTICE OF THE PEACE	<input type="checkbox"/> - YOUTH JUSTICE
<input type="checkbox"/> - SCOUT VOLUNTEER	<input type="checkbox"/> - BOOKMAKER	<input type="checkbox"/> - GAMING LICENCE
<input type="checkbox"/> - LIQUOR LICENCE	<input type="checkbox"/> - STIPENDIARY STEWARD	<input type="checkbox"/> - DRIVER / PUBLIC PASSENGER LICENCE
<input type="checkbox"/> - LEGAL / JUDICIAL APPOINTMENT	<input type="checkbox"/> - SECURITY / CROWD CONTROL	<input type="checkbox"/> - POPPY ADVISORY & CONTROL BOARD
<input type="checkbox"/> - FIREARMS LICENCE	<input type="checkbox"/> - PRISONS / CORRECTIVE SERVICES	<input type="checkbox"/> - SCHOOL-CROSSING PATROL OFFICER
<input type="checkbox"/> - FIRE SERVICE	<input type="checkbox"/> - POLICE / LAW ENFORCEMENT	<input type="checkbox"/> - AUTHORISED OFFICER (TRAFFIC ACT 1925)
<input type="checkbox"/> - POISONS ACT 1971		

Option 2 - Annulled record - Prior convictions only

<input type="checkbox"/> - AGED CARE	<input type="checkbox"/> - OTHER HEALTH	<input type="checkbox"/> - OTHER RACING INDUSTRY
<input type="checkbox"/> - CHURCH GROUP	<input type="checkbox"/> - RENTAL / HOUSING	<input type="checkbox"/> - STUDENT
<input type="checkbox"/> - VISA	<input type="checkbox"/> - GENERAL EMPLOYMENT	<input type="checkbox"/> - ADULT DISABLED CARE
<input type="checkbox"/> - OTHER EMPLOYMENT, INDUSTRY or PURPOSE (please specify): <input type="text"/>		

SECTION 4: PAYMENT OPTIONS / FEES

National Police Record Check: A check will be made of the records held in Australian police jurisdictions. A National Police Certificate will be provided - **\$45.00***

National Police Record and Fingerprint Check: A check will be made of the police and fingerprint records held by all Australian police jurisdictions. A National Police and Fingerprint Certificate will be provided - \$120.00

Please note that the above fees are exempt from GST.

PAYMENT METHODS

CHEQUE OR MONEY ORDER - Please attach your cheque or money order to this form made payable to "Tasmania Police"

CREDIT CARD - Payment can also be made by completing the following credit card authorisation:

RECEIPTS: - Receipts for payments will only be provided upon prior request. Please tick the box if you require a receipt: ☐

Card No.

Name of Cardholder

Expiry Date/.....

Signature

VISA

☐

Master Card

☐

SECTION 5: DECLARATION OF VOLUNTEER / CONCESSION STATUS

*Applicants requiring a National Police Check in order to undertake volunteer work with an organisation registered with Tasmania Police may be eligible to access the concession rate of \$5.00. Further information for organisations about registering with Tasmania Police and eligibility can be obtained by contacting Criminal History Services on 6173 2928 or 6173 2929 or visiting the website on <http://www.police.tas.gov.au/services-online/police-history-record-checks/>

In order to access the concession eligible applicants must arrange for an authorised officer from your organisation to complete the following declaration.

Declaration:

I declare that the applicant named in section 1 of this form will be undertaking volunteer work for this organisation described hereunder and they will receive no payment for their services:

Name of Organisation:

Role of Volunteer / Applicant:

Date: / /

Signature of
Authorised Officer:

Printed name of
Authorised Officer:

SECTION 6: EVIDENCE OF IDENTITY - 100 point checklist

Applicants for a National Police Check must provide a minimum of 100 points of identity. **This must include at least ONE photo ID document from Category A.** No Certificate will be issued without evidence of identity being provided. **All identity documents must be CERTIFIED COPIES ONLY of the required documentation and must be attached to your application.**

Evidence of Identity Documents		Points	Attached
Category A			
Current Australian Passport	Photo	70	
Security Agent / Crowd Controller Licence	Photo	70	
Current Driver's Licence	Photo	40	
Current Overseas Passport	Photo	40	
Current Firearms Licence	Photo	40	
Service Tasmania Personal Information Card	Photo	40	
Current Tertiary Student ID Card	Photo	20	
Category B			
Full Birth Certificate		70	
Citizenship Certificate		70	
Immigration Documents (Visa)		70	
Marriage Certificate (BDM issue only)		40	
Legal Name Change / Deed Poll Certificate		40	
Professional Board Registration Certificate / Trade Certificate		40	
Centrelink / Pensioner Health or Concession Card		40	
Bank / Financial Institution Card		40	
Tenancy Agreement or Lease		20	
Medicare Card / Private Health Fund		20	
Rates Notice		20	
Utility Account		20	
Employment Records / Employer Reference (confirming name & address)		10	
TOTAL POINTS PROVIDED (minimum 100)			

SECTION 7: STATEMENT OF CONSENT AND INDEMNITY

I certify that I am the applicant named on this form and that all details herein provided by me are true and correct. I consent to a check of the records of Tasmania Police and other Australian police jurisdictions, and to the release of information recorded against my name for the purposes of managing my request for a Police Certificate. I understand that Tasmania Police will maintain the privacy of my information and manage it in accordance with the *Personal Information Protection Act 2004*. I hereby indemnify the CrimTrac Agency, the State of Tasmania, each of the Australian State/Territory Police Services and their employees, members, servants and agents against all actions, suits, proceedings, causes of action, costs, claims and demands which may be brought or made against it or them arising out of, or in any way connected with the release of information recorded against my name or purporting to concern me.

Signature of Applicant: Signature of Witness: Printed Name of Applicant: Printed Name of Witness:

Date: / /

Date: / /

CONTACT DETAILS

**CRIMINAL HISTORY SERVICES
TASMANIA POLICE
GPO BOX 308
HOBART TAS 7001**

Telephone during business hours: **03 6173 2928** or **03 6173 2929**Email: criminalhistoryservices@police.tas.gov.auWebsite: <http://police.tas.gov.au/services-online/police-history-record-checks/>



tasmanian legislation

TASMANIA'S CONSOLIDATED LEGISLATION ONLINE

[VIEW SUMMARY](#)

The legislation that is being viewed is valid for **30 Jan 2017**.

Records of Offences (Access) Act 1981 (No. 61 of 1981)

Requested:30 Jan 2017

Consolidated:30 Jan 2017

INFORMATION

Notes: Not specified

Links: Not specified

Table of Amending Instruments: [\(click to view Table of Amendments\)](#)

Responsible Minister and Department: Not specified

6. Duty of recording authority to produce prescribed record for inspection, &c.

(1) Subject to this section, where a person who believes that a recording authority is or may be keeping a prescribed record in relation to him makes a written application to the authority requesting it to produce for his inspection such prescribed records as it has in relation to him, the authority shall, within 14 days after the receipt of the application, comply with the request or, if it has no such records, notify him in writing that it has no prescribed records relating to him.

(2) A recording authority may, before complying with a request in an application made under subsection (1), require the applicant to produce reasonable evidence of his identity.

(3) A recording authority shall take reasonable steps to ensure that a prescribed record which a person is entitled to inspect under this section is produced in a form that is readily intelligible to that person and, if he so requests, provide him with a copy of the record or any part of the record that he specifies.

(4) A person who makes a request in an application under subsection (1) is entitled to be provided with a copy of a prescribed record relating to him without charge except where he has been provided under that subsection with such a copy within the period of 12 months immediately preceding the request, in which case he is only so entitled if he pays to the recording authority the prescribed fee.

(5) *[Section 6 Subsection (5) amended by No. 66 of 2007, Sched. 1, Applied:31 Dec 2008]* A request in an application made under subsection (1) may be made by an Australian legal practitioner on behalf of a person to whom a prescribed record relates.



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Links: Not specified
Table of Amending Instruments: [\(click to view Table of Amendments\)](#)
Responsible Minister and Department: Not specified

8. Right to apply to magistrate for an order directing prescribed record to be produced for inspection or correction

(1) Where –

(a) a person has made an application to a recording authority under [section 6](#) but the request in the application has been refused or has not been complied with within the permitted time; or

(b) a person has made such an application and the recording authority has complied with the request in the application but the person is dissatisfied with the contents of the notice given by the authority in response to the request –

he may, in accordance with the rules, apply to a magistrate for an order directing the recording authority to produce its prescribed records for the inspection of the magistrate.

(2) Where a person served with a notice referred to in [section 7\(3\)](#) is dissatisfied with the contents of the notice on the ground that –

(a) no amendment to the prescribed record relating to him has been made; or

(b) such an amendment has been made but the prescribed record is, in his opinion, still incorrect –

he may, in accordance with the rules, apply to a magistrate for an order directing the recording authority concerned to make such amendment as may be necessary to correct that record.

(3) The recording authority concerned shall be the respondent to an application made under [subsection \(1\)](#) or [\(2\)](#) and shall be entitled –

(a) to receive a copy of the application; and

(b) to be heard at the hearing of the application by the magistrate.

(4) Subject to subsection (5), the hearing of an application made under subsection (1) or (2) shall be in accordance with the rules.

(5) Except with the agreement of the applicant, no person other than the magistrate, the clerk, the parties and their legal representatives, witnesses, and any other person of a class or description prescribed in the rules for the purpose of this subsection shall be entitled to be present at the hearing of an application made under subsection (1) or (2).

(6) On the hearing of an application made under subsection (1), the magistrate shall, if he –

(a) is satisfied that the recording authority has refused the request referred to in that subsection unjustifiably or has failed to comply with that request; or

(b) is of the opinion that the authority's purported compliance with the request is unsatisfactory in some respect –

make the order in the terms applied for, but if he is not so satisfied or of that opinion, he shall refuse the application.

(7) On compliance by a recording authority with an order made under subsection (6), the magistrate shall peruse the prescribed records kept by the authority and, if satisfied that those records include a prescribed record relating to the person on whose application the order was made, make a further order directing the authority to produce that record to that person for his inspection and to comply with such other directions as may be specified in the order.

(8) In making an order under subsection (7), the magistrate may direct that the order need not be complied with unless the applicant complies with such conditions as may be specified in the order.

(9) On the hearing of an application made under subsection (2), the magistrate shall, if satisfied that the prescribed record to which the application relates is incorrect, make an order in the terms applied for, but if he is not so satisfied he shall refuse the application.

(10) Where a magistrate makes an order under any of the preceding provisions of this section, he may also make such ancillary orders as he considers necessary to give effect to the order.

(11) Where at a hearing a magistrate makes an order under this section, the recording authority to which the order relates shall comply with the directions of the order –

(a) if that authority appears at the hearing as respondent – within 7 days after the date on which the order is made; or

(b) if that authority does not so appear – within 7 days after the date on which the order or a copy of the order is served on it.



tasmanian legislation

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9. Costs in relation to the hearing of an application made under section 8

(1) Without limiting his powers under section 8, a magistrate hearing an application made under that section may award costs to the applicant or respondent at the hearing and may assess the amount of those costs.

(2) Where the magistrate awards costs under subsection (1), those costs are recoverable in the same manner as costs ordered to be paid to a complainant or defendant on a conviction entered or an order made under the Justices Act 1959.

(3) In the application of the provisions of the Justices Act 1959 to costs awarded under subsection (1), any reference in those provisions to a justice, or 2 or more justices, shall be construed as a reference to a magistrate.