

THE HONORARY  
JUSTICES'  
ASSOCIATION OF  
TASMANIA INC

**JOURNAL**  
**SUMMER EDITION**  
**2025**



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### Disclaimer

Opinions expressed in this Journal, whether editorially or by contributors, do not necessarily represent the views of The Honorary Justices' Association of Tasmania (Inc). On occasions articles are extracted or modified from other sources and the source of the article listed in the article.

Contributions on matters affecting Justices and their Associations are particularly welcome, but all contributions are subject to the discretion of the Editors.

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# Important information and dates

## Department of Justice resources for JPs

The Department of Justice has created a Resources for Justices of the Peace' webpage that they will develop and add to over time. The website is <https://www.justice.tas.gov.au/justice-of-the-peace/resources-for-justices-of-the-peace> on this page is also the **NEW and recently revised JP Handbook** [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0008/589481/Handbook-for-](https://www.justice.tas.gov.au/_data/assets/pdf_file/0008/589481/Handbook-for-)

**NO TRAINING DATES**

**HAVE YET**

**BEEN SET FOR 2025**



## FROM THE PRESIDENT

Welcome to the Summer 2025 edition of the HJAT Journal. I hope all members had a joyous and relaxing Christmas with family and friends, and I wish everyone the very best in 2025.

As we prepare for amalgamation, a shortened Journal this quarter, more of a “newsletter”.

By now, it was hoped that the three Tasmanian associations would have completed the steps necessary to amalgamate into the new statewide Tasmanian Association of Justices of the Peace Inc. (TAJPI). However, those steps have proven more complex than first anticipated and the process is still underway. But, we have not been idle! The three associations are confident that the TAJPI will be up and running by the middle of 2025.

There are many aspects to look at as each of the associations meld their existing activities into one. An example of this is establishing a sound financial bookkeeping system and audit-standard procedures.

Another is professional development: what is the best way to deliver PD for our JPs in a consistent and accessible manner across the state, while at the same time allowing for local face-to-face training sessions in situations where that is more advantageous? A small joint working group is already looking at ways we can do this.

No training dates for 2025 have yet been set.

### **OTHER NEWS**

#### **Document Signing Centre**

Another big year in the Association’s DSC in the C H Smith Centre, with just a few less than the record set in 2023 for the number of documents and other matters handled:

• Affidavits:	1366
• Statutory Declarations:	5143
• [Other] witnessed documents:	2280
• Certified documents:	20488
• Search Warrant applications:	351
• Other miscellaneous:	530
• <b>TOTAL:</b>	<b>30168</b>

A big thank you to all the office volunteers who make this valuable service possible. It's pleasing to report that new members joined the team in 2024, particularly as some of our long-serving members have been hit with health issues.

### **Justices of the Peace Act 2018**

The changes to the Justices of the Peace Act 2018 I foreshadowed last year are still to be passed into law. If passed, the most important changes will be:

- Section 5 provides that a person must complete training required by the Regulations. This to be amended to training required by the Secretary, which would be consistent with other sections of the Act and resolve training requirements.
- Section 6 amendment to include that a JP cannot undertake duties until their appointment has been advertised in the Gazette.
- Section 7 amendment to change the reappointment window from 6 months before and 6 months after to 12 months before expiry.
- Section 8(3) reappointment every 2 years from 75 years of age to change to every 5 years.

### **New “Reasonably Available and Active” Policy and New Complaints against JPs Guidelines**

Elsewhere in this newsletter you will find advice from the Department of Justice on where to find information on these two new policies. I urge members to follow the link and take a look.

Your Association was actively involved in a lengthy process with departmental officers in developing the reasonably available and active policy.

### **Changes to the Bail Act 1994**

The State Government is proposing in 2025 to introduce changes to the Bail Act



1994 and has invited the JP associations and individual JPs to make submissions. The updated closing date for submissions is the 2 March 2025.

An Explanatory Fact Sheet from the Legislative Division of the Department of Justice is elsewhere in this newsletter. You can have your say at:

[haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

### **From the Attorney-General**

Also in the newsletter is a letter from the Hon. Guy Barnett MP, Attorney-General, expressing his thanks to your association for supporting and representing the interests of justices of the peace.

David Plumridge, JP  
President

**From the Department of Justice**

## **New JP Guidelines**

The Department continues to develop new resources for JPs, recently publishing two new sets of guidelines to help JPs and the wider community better understand sections of the [Justices of the Peace Act 2018](#) (the Act) and the [Justices of the Peace \(Code of Conduct\) Regulations 2019](#), and how these apply in practice to the office of a JP.

### **Complaints against a Justice of the Peace Guidelines**

These guidelines outline how the Department handles complaints against JPs by following requirements set out in the Act.

The guidelines set out –

- How a complaint can be lodged
- Timeframes
- Categorisation of complaints
- Investigation
- Reporting
- Potential outcomes

### **Reasonably available and active Justice of the Peace Guidelines**

These guidelines outline and define the obligations and expectations of current and prospective JPs, in relation to being reasonably available and reasonably active to the community.

The guidelines also outline what a JP can do if they find they are no longer able to meet the criteria for reasonably available and active.

You can find both sets of the guidelines on the Department's website under [JP Resources](#).

The Department encourages all JPs to take the time to read through both guidelines. If you have any questions or issues accessing these, please contact the Manager Justices of the Peace [jp@justice.tas.gov.au](mailto:jp@justice.tas.gov.au)

# Explanatory Fact Sheet:

## Bail Bill 2024 - Consultation Draft

### General Overview

The Tasmanian Liberal Government is committed to modernising Tasmania's bail laws to reflect community expectations. The Government acknowledges that Tasmania's bail laws are not well understood by the community, reflecting in part the fact that the bail laws are spread across the common law and various pieces of legislation.

Tasmania is the only state to rely primarily on the common law (law found in cases and decisions) for considerations relevant to whether a person accused of an offence should be granted bail. Other Australian jurisdictions have moved to provide clear statutory frameworks for what a court should consider when granting bail. This Bill will bring Tasmania into line with other jurisdictions in that respect and assist in making the law more accessible to the general community.

The final version of the Bill will contain any required transitional provisions as well as consequential amendments to other pieces of legislation, such as the *Family Violence Act 2004* and the *Criminal Law (Detention and Interrogation) Act 1995*. Depending on the timing of the introduction of the Bill into Parliament, consequential amendments may also be needed to other legislation such as the *Justices Act 1959* and the *Magistrates Court (Criminal and General Division) Act 2019*.

### **What is bail, and what is the current law with regard to bail in Tasmania?**

'Bail' refers to the right of a person to be at liberty after being charged with an alleged offence (or similar matter),<sup>1</sup> pending the hearing and determination of that charge. Generally, that liberty is conditional (for example, on the person appearing in court as and when required). Decisions regarding bail in Tasmania are made by police officers (or 'approved operators') when a person is first charged, or by justices of the peace, magistrates and judges (usually in court).

The *Bail Act 1994* sets out procedural matters concerning bail in Tasmania but does not specify any general test for the granting of bail. Instead, the test for bail in Tasmania arises largely from a case called *R v Fisher* (1964) 14 Tas R 12 ('*Fisher's case*'), which provides that the essential question to be determined on any application for bail is whether or not the person charged with an offence will appear in court as and when required. There are various factors relevant to the assessment of whether a person is likely to appear as required in court, such as the

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<sup>1</sup> While the question of bail most commonly arises after a person has been charged with an offence, there are some other circumstances in which bail must be considered, including for an alleged breach of duty and an application for a restraint order. For the sake of simplicity, this fact sheet focuses largely on the question of bail in the context of a person being charged with an offence, given that is by far the most common scenario in which the question of bail arises.

nature of the offence, the strength of the evidence in support of the charge, and the severity of any sentence likely to be imposed if the person were found guilty of the charge.

Another relevant question to be considered is whether it would, for some other reason, be contrary to the public interest for the person to be granted bail. For example, if the person is likely to continue offending if released or is unlikely to comply with conditions of bail. However, these considerations must be balanced with others, such as the likely delay before the charge can be heard and determined, and the prejudice the person might suffer in the preparation of their defence.

The granting of bail is a fundamental aspect of the presumption of innocence, so while there is no *right* to bail, there is a general presumption that an accused person should be granted bail. As a consequence, in most cases, the onus is on the prosecution to make a clear case for the refusal of bail, with reference to the tests set out above (*Burton v R* [1974] 3 ACTR 77).

However, there are a number of exceptions to this general test. The first is in respect of murder. The common law provides that bail should only be granted on a charge of murder if the person charged shows 'exceptional circumstances'. This requirement reflects that the seriousness of such a charge creates an increased risk that the accused will abscond and not answer their bail.

The presumption of bail is also altered by s 12 of the *Family Violence Act 2004*, which provides that a person charged with a family violence offence is not to be granted bail unless a judge, court or police officer is satisfied that the release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child. The Full Court of the Supreme Court of Tasmania in *Director of Public Prosecutions (Acting) v JCN* [2015] TASFC 13 commented that section 12 puts the onus on the person charged to satisfy the court of those requirements, and in that sense, creates a presumption against bail (citing *Re S* (2005) 157 A Crim R 451), and the onus is on the person charged to displace the presumption (*Olsen v State of Tasmania* [2005] TASSC 40).

Finally, the presumption as to bail is similarly altered where a person has been taken into custody in respect of an application for a restraint order, or a breach of a restraint order. In such a case, section 35 of the *Justices Act 1959* provides that the court, in considering whether to admit the person to bail, must consider the protection and welfare of the person for whose benefit the restraint order was made to be of paramount importance, and must take into account any previous violence by that person against the person for whose benefit the restraint order

was made (or violence against any other person).<sup>2</sup>

In all cases, it is well established that refusal of bail ought not to be treated as a form of retribution for any guilt that might be supposed from the circumstances by which the defendant comes before the court (*R v Mahoney-Smith* [1967] 2 NSW 154).

A slightly different approach applies in respect of children and young people. Section 23 of the *Youth Justice Act 1997* provides that, subject to anything contained in that Act, the law of the state relating to arrest, bail, remand and custody apply to youth (with necessary adaptations). That means that, with some exceptions, youths are subject to the same bail laws as adults in Tasmania.

One exception, as provided in section 24B of the *Youth Justices Act*, is that a bail authority (whether a court, justice of the peace or police officer) who intends to admit a youth to bail is required to have regard to the principles in section 5 of the Act in determining whether to add conditions to that bail, and if so, which conditions. The principles in section 5 are general principles of youth justice (such as principles that youths are to be dealt with in a way that encourages the youth to accept responsibility for their behaviour and youths are not to be treated more severely than an adult would be). An additional area of difference compared with adults is that youths are not subject to an additional charge for breaches of bail conditions (only charges for failing to appear in court).

### **Why is this new Bill needed?**

This Bill establishes a more comprehensive framework for bail, bringing Tasmania into line with all other states and territories that have legislated to amend the common law relating to bail. Incorporating all of the bail laws into a single statute will improve transparency, providing a clear statutory framework for deciding when, or if, bail should be granted, and how that bail should be managed. In areas where existing practice, or the common law, is unclear, the Bill provides clarity. This Bill also implements changes to bail laws recommended by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. This is discussed in more detail below.

### **What does the Bill do?**

Clause 3 of the Bill outlines the purposes of the legislation, which are:

- To provide a legislative framework for deciding when, or if, bail should be granted;

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<sup>2</sup> See also section 34 of the *Justices Act*.

- To ensure that the safety of victims of crime, individuals and the community is taken into account when granting bail;
- To ensure that the presumption of innocence, and the general right of an individual to be at liberty, is taken into account when granting bail; and
- To promote impartiality, transparency and consistency when granting bail.

By way of summary, the Bill broadly addresses the following matters:

- Maintains a general presumption in favour of granting bail that will be displaced if a defendant is found by a court to pose an ‘unacceptable risk’. This updates the common law test from *Fisher’s* case.
- The new ‘unacceptable risk’ test involves two steps. It firstly asks the bail authority to consider whether the defendant poses a risk of one of the four identified behaviours (such as failing to attend court when required), and secondly, to determine whether or not that risk is unacceptable. The Bill contains a non-exhaustive list of factors the bail authority may consider as part of considering either step of that test. Case law from other jurisdictions with an ‘unacceptable risk’ test confirms that the test does involve a balancing exercise (see for example *Haidy v DPP* [2004] VSC 247).
- Retains an existing presumption against bail for crimes relating to murder and treason, or where the accused is believed to be a ‘terrorism-linked person’.
- Moves the specific provisions for bail in relation to family violence offences from the *Family Violence Act* to the new bill.
- Replaces the various tests for bail under the *Justices Act 1959*.
- In relation to those under the age of 18, requires bail authority to consider a number of factors when making a determination under the Act (such as the youth’s age, maturity and stage of development), and prohibits the refusal of bail to a youth on the sole ground that the youth does not have any, or adequate, accommodation. More information as to the basis of these provisions is provided at the bottom of the page.

The Bill does not amend the existing common law presumption in favour of granting bail. This is a move away from the provisions included in the draft Bail Bill 2021 that was released for public consultation during 2021. As noted above, the Government is aware of the experience of reforms to this presumption progressed in other jurisdictions and therefore is not seeking to make such reforms at the present time. The Bill provides a non-exhaustive list of conditions that may be placed on bail by a bail authority. This list now enables electronic monitoring to be made a condition of bail for any offences, under certain circumstances (for example, there must be a suitable method of electronic monitoring available). Importantly, the condition can

only be imposed if, without the condition being imposed, the person is likely to be refused bail.

### **Commission of Inquiry Work**

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings made multiple recommendations relating to bail for children and young people, as well as relating to broader youth justice issues, such as raising the minimum age of criminal responsibility and the types of government facilities that should be available for children and young people. There is a large volume of work underway in relation to these other aspects of reform of the youth justice system.

The amendments contained in this Bill are discrete ones that can be implemented in advance of those other reforms.

As mentioned previously, this Bill includes principles of youth justice (modelled on those contained in the Victorian *Bail Act 1977*) to be considered when making a bail decision in relation to children and young people. In addition, the Bill provides that bail cannot be refused solely on the basis that the child or young person does not have accommodation. This fulfils recommendation 12.14(a) of the Final Report of the Commission of Inquiry.

### **Feedback Sought**

The Government invites feedback from any interested persons or groups about all issues covered in the Bail Bill 2024, but in particular, encourages comment on policy issues relating to:

- Whether there are sufficient protections for people impacted by family violence offences who are not the affected person or an affected child. That is, if there are offences committed against the affected person's new partner or extended family, should these offences fall within clause 9(1)?
- Does the current 'paramount considerations' test for bail under sections 34 and 35 of the *Justices Act* work well for people in custody on applications for restraint orders and charges for breaches of restraint orders?

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**Tasmanian  
Government**

17 Dec 2024

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President

The Honorary Justices' Association of Tasmania

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Dear Mr Plumridge

I would like to take this opportunity to express my gratitude to the Honorary Justices' Association of Tasmania for your outstanding service in representing and supporting the interests of Justices of the Peace across the State. Your dedication to fostering a strong, united community of Justices of the Peace plays an essential role in ensuring the continued effectiveness and integrity of this important public service.

Tasmania is fortunate to have nearly 800 registered Justices of the Peace. The work done by Justices of the Peace is invaluable to our community and is greatly appreciated by the Tasmania Government.

Thank you once again for your dedication, and I wish you a safe and joyful Christmas season.

yours sincerely

A handwritten signature in blue ink, appearing to read 'Guy Barnett', with a horizontal line above it.

Hon Guy Barnett MP

**Deputy Premier**

**Attorney-General**

Minister for Justice



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(Founded 15 August 2006)

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## HJAT-NW Report

Another year bites the dust. I'm sure that the "time goes quicker" these days!!!!!! I confess that I have had enough wind already this spring/summer.

The Devonport signing centre is continuing well and the numbers are continually increasing. The Penguin centre opened in early October and the first month's stats are very encouraging and continues to grow each month. A very big thankyou to Garth Johnston JP for all his efforts in bringing this project to fruition.

The amalgamation of the three Associations into one remains ongoing. All three Associations have had AGMs and SGMs with all motions passed and accepted. All these details will have been covered in a previous Journal. At the AGM President, Registrar and Treasurer were re-elected for whatever part of this year is necessary. The makeup of the Committee remains the same as last year. It may be expected that the statewide Association will be operational for the FY 2025/26

The rescheduled information session on VAD organised for November, unfortunately has needed to be rescheduled again due to the unavailability of the speaker. We are hoping for early 2025. Date tba.

The Christmas Dinner was held again at the Ulverstone RSL. An excellent night was had by all. Again the trivia competition was a source of great amusement and apparently was "harder" than last year!!!!

Wishing all members a very happy New Year and all the best for 2025.