

TASMANIA

**JUSTICE (MISCELLANEOUS
AMENDMENTS) BILL 2003**

CONTENTS

1. Short title
 2. Commencement
 3. Miscellaneous amendments
- Schedule 1 – Miscellaneous Amendments

JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2003

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

A BILL FOR

**An Act to amend the *Acts Interpretation Act 1931*,
the *Associations Incorporation Act 1964*, the
Coroners Act 1995, the *Corrections Act 1997*, the
Evidence Act 2001, the *Evidence (Children and
Special Witnesses) Act 2001*, the *Justices Act 1959*,
the *Legal Profession Act 1993*, the *Magistrates Court
(Civil Division) Act 1992*, the *Police Offences Act 1935*
and the *Supreme Court Civil Procedure Act 1932***

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:

Short title

1. This Act may be cited as the *Justice (Miscellaneous
Amendments) Act 2003*.

Commencement

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

s. 3

No. *Justice (Miscellaneous Amendments)* 2003

Miscellaneous amendments

3. The legislation specified in Schedule 1 is amended as specified in that Schedule.

SCHEDULE 1 – MISCELLANEOUS AMENDMENTS

Section 3

Acts Interpretation Act 1931

1. Section 41(1) is amended by inserting “, other than the Crown” after “unincorporate”.
2. Section 47(3) is amended as follows:
 - (a) by inserting in paragraph (a) “within 21 days after the day on which they are made” after “*Gazette*”;
 - (b) by inserting in paragraph (b) “within 21 days after the day on which they are made” after “*Gazette*”.

Associations Incorporation Act 1964

1. Section 3(2)(a) is amended by inserting “, section 31A” after “section 25B(1)”.
2. Section 24A(b) is amended by omitting “for Corporate Affairs”.
3. After section 31, the following section is inserted:

Administration of incorporated associations

31A. (1) The administration of an incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.3A (Administration of a company’s affairs with a view to executing a deed of company

arrangement) of the Corporations Act, subject to the following modifications:

- (a) the modifications referred to in subsection (2);
- (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(2) The following modifications to the text of the Corporations Act apply for the purposes of subsection (1):

- (a) a reference to a company or body is to be read as a reference to an incorporated association;
- (b) a reference to the directors of a company is to be read as a reference to the members of the committee of an incorporated association;
- (c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association;
- (d) a reference to the principal place of business of a company is to be read as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commissioner;
- (e) a reference to a company carrying on business or having a place of business is to be read as a reference to an incorporated association pursuing its objects;

- (f) a reference to ASIC is to be read as a reference to the Commissioner;
- (g) a reference to a document in the prescribed form is to be read as a reference to a document in the corresponding form prescribed under the Corporations Act with all necessary modifications;
- (h) a reference to the Court is to be read as a reference to the Supreme Court;
- (i) a reference to the lodgment of a document is to be read as a reference to lodgment of that document with the Commissioner;
- (j) a reference to a company's constitution is to be read as a reference to an incorporated association's rules;
- (k) a reference to a special resolution is to be read as a reference to a special resolution within the meaning of this Act;
- (l) a reference to an officer of a company is to be read as a reference to a member of the committee of an incorporated association and, where applicable, a reference to a past officer is a reference to a past member of the committee of an incorporated association;
- (m) a reference in section 446A to a contributory of a company is to be read as a reference to a member of an incorporated association.

Coroners Act 1995

1. After section 59, the following section is inserted in Part 8:

Power of police to secure evidence for coroner in an emergency

59A. (1) If a police officer reasonably believes that –

- (a) an article, substance or thing at a place where a death, fire or explosion has occurred is likely to have evidentiary value in a coroner's investigation into that death, fire or explosion; and
- (b) there is a danger that the article, substance or thing could be lost, concealed or destroyed, or its evidentiary value could be ruined or compromised, if it is not immediately secured –

the police officer, with assistance and using reasonable force if necessary, may enter and inspect the place and take possession of the article, substance or thing.

(2) Subject to subsection (3)(a), a police officer may exercise power under subsection (1) whether or not a coroner is investigating the death, fire or explosion at the relevant time.

(3) The following provisions apply to the exercise of the power specified in subsection (1) if at the relevant time a coroner is investigating the death, fire or explosion:

- (a) the power is to be exercised only if the police officer reasonably believes that in the circumstances it is impracticable to

obtain, or unsafe to wait for, authorisation under section 59(3);

- (b) as soon as practicable after exercising the power, the police officer is to give the coroner and the Chief Magistrate notice and full particulars of the police officer's action;
- (c) except as may otherwise be provided by an order in force under section 60(2), on the giving of the notice referred to in paragraph (b) the article, substance or thing is in the legal custody, care and control of the coroner.

(4) The following provisions apply to the exercise of the power specified in subsection (1) if at the relevant time a coroner is not investigating the death, fire or explosion:

- (a) the police officer may retain the article substance or thing pending the commencement of an investigation;
- (b) if an investigation is commenced within 12 months of the power being exercised –
 - (i) the police officer must immediately give the coroner and the Chief Magistrate notice and full particulars of the police officer's action; and
 - (ii) except as may otherwise be provided by an order under section 60(2), on the giving of the notice the article, substance or thing is in the legal custody, care and control of the coroner;

- (c) if an investigation is not commenced within 12 months of the power being exercised, the article, substance or thing is to be –
 - (i) returned to the person from whom it was taken or, if that person is not legally entitled to take possession of it, to the person who is so entitled; or
 - (ii) disposed of as the Commissioner of Police directs if it is illicit.
- 2.** Section 60(2) is amended by omitting “section 59” and substituting “section 59 or 59A”.
- 3.** Section 61(1) is amended by omitting “section 59” and substituting “section 59 or 59A”.

Corrections Act 1997

- 1.** Section 22(5) is amended by inserting “, means and assistance” after “force”.

Evidence Act 2001

- 1.** Section 3(1) is amended by inserting “125B,” after “125A, ” in paragraph (a) of the definition of “sexual offence”.
- 2.** Section 19(b) is amended by inserting “125B,” after “125A,”.
- 3.** Section 85A is amended as follows:

- (a) by omitting from subsection (1)(a) “a videotape” and substituting “an audio visual record”;
- (b) by omitting from subsection (1)(b) “a videotape” twice occurring and substituting “an audio visual record”;
- (c) by omitting from subsection (1)(c) “the videotape” and substituting “an audio visual record”;
- (d) by omitting from subsection (2)(a) “videotape it;” and substituting “make an audio visual record of it;”;
- (e) by omitting from subsection (2)(b) “videotape” and substituting “make an audio visual record of”;
- (f) by omitting from subsection (2)(c) “the interview being videotaped;” and substituting “an audio visual record being made of the interview;”;
- (g) by omitting from subsection (2)(d) “videotape” and substituting “make an audio visual record of”.

4. Section 194K(1)(a)(i) is amended by inserting “125B,” after “125A,”.

***Evidence (Children and Special Witnesses) Act
2001***

1. Section 3 is amended as follows:

- (a) by inserting “125B,” after “125A,” in paragraph (b)(i) of the definition of “affected child”;
- (b) by inserting “125B,” after “125A,” in paragraph (b) of the definition of “prescribed proceeding”.

Justices Act 1959

1. Section 3(1) is amended by inserting “125B,” after “125A,” in paragraph (a) of the definition of “affected person”.

2. Section 69A is amended as follows:

- (a) by omitting from subsection (2) “affected child” and substituting “affected person”;
- (b) by omitting from subsection (2A) “affected child” and substituting “affected person”;
- (c) by omitting from subsection (2B) “affected child” and substituting “affected person”;
- (d) by omitting from subsection (2B) “the child.” and substituting “that affected person.”.

3. Schedule 3 is amended by inserting in clause 1 of Part I “137,” after “127,”.

Legal Profession Act 1993

1. Section 54 is amended as follows:

- (a) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
- (d) on behalf or in the name of another person, take out any writ or process or commence, carry on, solicit, defend or appear in any action or other proceeding; or
- (b) by omitting paragraph (d) from subsection (2) and substituting the following paragraph:
- (d) acting on his or her own behalf in any legal proceedings or matters; or

Magistrates Court (Civil Division) Act 1992

1. After section 35, the following section is inserted in Part 7:

Expert reports

35A. (1) The Court may refer a question arising in any proceedings for investigation and report by a person with expertise in relation to that question.

(2) The expert to whom the question is referred becomes, for the purposes of the investigation, an officer of the Court and may exercise such of the Court's powers as it delegates to that expert.

(3) The Court may adopt the expert's report in whole or in part.

(4) Notwithstanding section 33, the costs of the expert's investigation and report are to be borne, in the first instance, equally by the parties or in such

other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred pursuant to this subsection.

Police Offences Act 1935

1. Section 3(1) is amended by inserting “125B,” after “125A,” in paragraph (b) of the definition of “sexual offence”.

Supreme Court Civil Procedure Act 1932

1. Section 34(2) is amended by omitting “rule 16 of Order 47 of Part I of the Rules of Court.” and substituting “the Rules of Court.”.