

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2021**

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JUSTICE AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
25 November 2021

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Justices Act 1959* and other justice-related legislation

Be it enacted by Her 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

1. Short title

This Act may be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2021*.

2. Commencement

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

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s. 3

Part 1 – Preliminary

3. Consequential amendments

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

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Part 2 – Repeal of Act

s. 4

PART 2 – REPEAL OF ACT

4. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 3

Appeal Costs Fund Act 1968

1. Section 5(2) is amended by omitting “complaint in respect of an indictable offence, including an indictable offence triable summarily by virtue of that Act” and substituting “conviction or order made in the Supreme Court”.
2. Section 10 is repealed and the following section is substituted:
 10. **Power of Supreme Court to grant indemnity certificate to successful appellant in certain cases**
 - (1) Where –
 - (a) there is an appeal from the decision of a court of summary jurisdiction to the Supreme Court; and
 - (b) the respondent does not appear either in the proceedings before the court of summary jurisdiction or on the appeal; and
 - (c) the appeal succeeds but the Supreme Court refuses to order the respondent to pay the appellant’s costs of the appeal –

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the Supreme Court may, on application made in that behalf, grant to the appellant in the appeal or to one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.

- (2) Notwithstanding subsection (1)(b), where an appeal succeeds in criminal proceedings, the Supreme Court may grant to the appellant in the appeal or to one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.
- (3) Subsection (2) does not apply in respect of an appellant to whom legal aid, within the meaning of the *Legal Aid Commission Act 1990*, has been provided.

Commissioner for Children and Young People Act 2016

1. Section 14(1)(e) is amended as follows:

- (a) by omitting “the Legal Aid Commission of Tasmania” first occurring and substituting “Tasmania Legal Aid”;
- (b) by omitting “the Legal Aid Commission of Tasmania” second occurring and substituting “Tasmania Legal Aid”.

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Constitution Act 1934

- 1.** Section 30 is repealed and the following section is substituted:

30. Oath to be taken by Members

- (1) No Member of either House may act or vote in the House until he or she has either –
- (a) after becoming a Member and before the day on which the *Promissory Oaths Act 2015* commences, taken before the Governor, or before another person authorised by the Governor to administer it, the oath of allegiance prescribed by the former *Promissory Oaths Act 1869*; or
 - (b) after becoming a Member and after the day on which the *Promissory Oaths Act 2015* commences, taken and subscribed under section 3(1) of that Act the oath of allegiance.
- (2) It is not necessary for a Member who has taken the oath of allegiance to take that oath again after any demise of the Crown, including by or on abdication.

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Coroners Act 1995

1. Section 59B is amended as follows:

- (a) by omitting subsection (2);
- (b) by omitting from subsection (3) “may order the Commissioner of Police” and substituting “, on application by the Commissioner of Police, may order the Commissioner”.

Crime (Confiscation of Profits) Act 1993

- 1. Section 28(3) is amended by omitting “, in an urgent case,”.**
- 2. Section 193(2)(a) is amended by omitting “the Tasmanian Legal Aid Commission” and substituting “Tasmania Legal Aid”.**

Criminal Code Act 1924

1. Schedule 1 is amended as follows:

- (a) by omitting subsection (3) from section 401 and substituting the following subsection:
 - (3) For the purposes of subsection (2)(c), ***sentence***, in relation to –
 - (a) a person convicted on indictment, includes an

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order under the
Sentencing Act 1997; or

(b) a person convicted under
the provisions of
section 331C, includes an
order under the
Sentencing Act 1997.

(b) by inserting the following subsection
after subsection (2) in section 415:

(3) The Court may, if it thinks fit,
stay proceedings on any order
under the *Sentencing Act 1997* or
suspend the operation of any such
order *ab initio* pending the
determination of an appeal.

(c) by inserting the following paragraph after
paragraph (c) in section 418(1):

(ca) the power to, pending the
determination of an appeal, stay
proceedings on any order under
the *Sentencing Act 1997* or
suspend the operation of any such
order *ab initio*;

Criminal Rules 2006

1. Rule 22(1) is amended by omitting “the Legal Aid Commission” and substituting “Tasmania Legal Aid”.

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Dangerous Criminals and High Risk Offenders Act 2021

1. Paragraph (c)(iii) of the definition of *relevant offender* in section 24 is amended as follows:
 - (a) by inserting “this State,” after “law of”;
 - (b) by omitting “consecutively” twice occurring and substituting “cumulatively”.
2. Section 33(2)(b)(iii) is amended by omitting “consecutively” twice occurring and substituting “cumulatively”.

Evidence (Audio and Audio Visual Links) Act 1999

1. Section 6(1) is amended by omitting “direct that evidence be taken, or submissions made, by” and substituting “direct the use, for any purpose, of”.

Evidence (Children and Special Witnesses) Act 2001

1. Section 3 is amended by omitting “or 240” from paragraph (b)(i) of the definition of *affected child* and substituting “, 240 or 240A”.

Forensic Procedures Act 2000

1. The definition of *serious offence* in section 3(1) is amended as follows:

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- (a) by inserting in paragraph (b) “, 38B” after “37B”;
- (b) by omitting paragraph (c) and substituting the following paragraph:
 - (c) against section 20, 21, 22A, 26, 27 or 27AA of the *Misuse of Drugs Act 2001*; or

Industrial Relations Act 1984

1. Section 70(1) is amended by inserting after paragraph (b) the following paragraph:
 - (ba) a decision made by the Commission to dismiss, or refrain from further hearing, a matter, or part of a matter, under section 21(2)(c) by the party who applied for the hearing; and
2. Section 71 is amended by inserting after subsection (10) the following subsections:
 - (10A) In respect of a matter in relation to which an appeal has been lodged, the President or presiding member may make or give any procedural order or direction, not involving the decision of the matter, that he or she considers necessary or proper to prevent prejudice to the rights or claims of any party to the matter.

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(10B) An order or direction under subsection (10A) may be discharged or varied by a Full Bench.

3. Section 72 is amended by omitting subsections (2) and (3) and substituting the following subsection:

(2) A person who wishes to challenge, on the basis of an error of law, a decision of a Full Bench in respect of an appeal may apply, by originating application, to the Supreme Court for the decision to be quashed wholly, or in part, on that basis.

Interstate Transfer (Community-based Sentences) Act 2009

1. The definition of *community-based sentence* in section 3(1) is amended as follows:

- (a) by inserting in paragraph (ba) “within the meaning of the *Sentencing Act 1997*” after “order”;
- (b) by omitting from paragraph (d)(i) “or (b)” and substituting “, (b) or (ba)”.

Justices Act 1959

1. Section 55 is amended by inserting after subsection (5) the following subsection:

(6) Subsection (5) does not apply if –

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- (a) the offence as charged is one in respect of which the defendant is entitled under section 72 to elect to be tried or sentenced either by justices or the Supreme Court and the defendant has elected to have the offence dealt with by justices; or
 - (b) the offence as charged is one in respect of which the justices, under a provision of another Act, may determine that the offence be dealt with either by the justices or the Supreme Court and the justices have determined that the offence be dealt with by them.
- 2. Section 60(4) is amended by omitting paragraph (b) and substituting the following paragraph:
 - (b) the justices are satisfied that –
 - (i) preliminary proceedings have commenced under Division 3 in relation to the offence; or
 - (ii) a preliminary proceedings order is being, or will be, sought or has been granted in relation to the offence.

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3. Section 74B is amended by omitting subsections (1) and (2) and substituting the following subsection:

- (1) If for any reason a complaint is not heard and determined on the day on which the defendant is first brought before a court of summary jurisdiction in respect of it and an adjournment is ordered, the court may –
 - (a) remand the defendant in custody; or
 - (b) admit the defendant to bail; or
 - (c) if the defendant appeared before the court in accordance with his or her bail, continue that bail (with or without a variation to the conditions of that bail) to the time at, and the day and place to, which the proceedings are adjourned; or
 - (d) order the defendant to appear before the court at the time, on the day and at the place to which the proceedings are adjourned.

Legal Aid Commission Act 1990

1. Section 3 is amended by omitting the definition of *Commission* and substituting the following definition:

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Commission means Tasmania Legal Aid
constituted under section 4;

2. Section 4(1) is amended by omitting “the Legal Aid Commission of Tasmania” and substituting “Tasmania Legal Aid”.
3. After section 53B, the following section is inserted in Part 7:

53C. Further savings and transitional provisions

The savings and transitional provisions in
Schedule 5 have effect.

4. After Schedule 4, the following Schedule is inserted:

**SCHEDULE 5 – FURTHER SAVINGS AND
TRANSITIONAL PROVISIONS**

Section 53C

1. Interpretation

In this Schedule –

commencement day means the day on
which the *Justice and Related
Legislation (Miscellaneous
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commences;

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former Act means this Act as in force immediately before the commencement day.

2. References to Legal Aid Commission of Tasmania, &c.

- (1) If, in any proceedings commenced before the commencement day, a reference is made to Tasmania Legal Aid, that reference is taken to be a reference to the Legal Aid Commission of Tasmania as constituted under the former Act.
- (2) On and after the commencement day, a reference in any legislation, contract, agreement, document or proceedings to the Legal Aid Commission of Tasmania, the Legal Aid Commission or the Tasmanian Legal Aid Commission is to be taken to be a reference to Tasmania Legal Aid.

Legal Profession (Barristers) Rules 2016

1. Clause 2(c) of Schedule 1 is amended by omitting “the Legal Aid Commission” first occurring and substituting “Tasmania Legal Aid”.

Legal Profession Act 2007

1. Section 4(1) is amended as follows:

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- (a) by omitting the definition of *Legal Aid Commission*;
- (b) by inserting the following definition after the definition of *supervised legal practice*:

Tasmania Legal Aid means the commission constituted under section 4 of the *Legal Aid Commission Act 1990*;

- 2. Section 361(2)(a) is amended by omitting “the Legal Aid Commission of Tasmania” and substituting “Tasmania Legal Aid”.

Magistrates Court (Children’s Division) Rules 2012

- 1. Rule 3(1) is amended as follows:
 - (a) by omitting the definition of *Legal Aid Commission of Tasmania*;
 - (b) by omitting “Act.” from the definition of *separate representative* and substituting “Act;”;
 - (c) by inserting the following definition after the definition of *separate representative*:

Tasmania Legal Aid means the commission constituted under section 4 of the *Legal Aid Commission Act 1990*.

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2. Rule 41 is amended by omitting “the Legal Aid Commission of Tasmania” and substituting “Tasmania Legal Aid”.
3. Rule 42 is amended as follows:
 - (a) by omitting “the Legal Aid Commission of Tasmania” first occurring and substituting “Tasmania Legal Aid”;
 - (b) by omitting from paragraph (a) “the Legal Aid Commission of Tasmania” and substituting “Tasmania Legal Aid”;
 - (c) by omitting from paragraph (b) “the Legal Aid Commission of Tasmania” and substituting “Tasmania Legal Aid”.

Oaths Act 2001

1. Section 12(2) is amended by omitting paragraphs (a) and (b) and substituting the following paragraph:
 - (a) a prescribed person under regulation 7 of the *Statutory Declarations Regulations 2018* of the Commonwealth; or

Police Offences Act 1935

1. Section 15CA is amended by omitting subsection (2).

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Promissory Oaths Act 2015

1. Section 9 is amended as follows:

- (a) by omitting from subsection (1) “section 4 of the *Justices Act 1959*” and substituting “section 5 of the *Justices of the Peace Act 2018*”;
- (b) by omitting from subsection (4) “section 4 of the *Justices Act 1959*” and substituting “section 5 of the *Justices of the Peace Act 2018*”;
- (c) by omitting subsections (5), (6), (7), (8) and (9).

Retirement Villages Act 2004

1. Schedule 3 is amended by omitting

Have I sought advice on the documents relating to the village from an Australian legal practitioner, the Legal Aid Commission or some other appropriate source?

and substituting:

Have I sought advice on the documents relating to the village from an Australian legal practitioner, Tasmania Legal Aid or some other appropriate source?

Sex Industry Offences Act 2005

1. Section 3(1) is amended by omitting the definition of *sexually transmissible infection* and substituting the following definition:

sexually transmissible infection means an infection that is transmitted through sexual contact between people, including the following:

- (a) syphilis;
- (b) gonorrhoea;
- (c) chlamydia;
- (d) human immunodeficiency virus;
- (e) hepatitis;
- (f) any other prescribed infection.