

TASMANIA

**JUSTICE MISCELLANEOUS (ROYAL
COMMISSION AMENDMENTS) BILL 2022**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – ANNULLED CONVICTIONS ACT 2003 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)

**PART 3 – CLASSIFICATION (PUBLICATIONS, FILMS AND
COMPUTER GAMES) ENFORCEMENT ACT 1995
AMENDED**

5. Principal Act
6. Section 79 amended (Proceedings on prosecutions)
7. Section 88E inserted
88E. Transitional provisions (2022 amendments)

**PART 4 – COMMUNITY PROTECTION (OFFENDER REPORTING)
ACT 2005 AMENDED**

8. Principal Act
9. Schedule 2 amended (Class 2 offences)

PART 5 – CORRECTIONS ACT 1997 AMENDED

10. Principal Act

11. Section 3 amended (Interpretation)

PART 6 – CRIMINAL CODE ACT 1924 AMENDED

12. Principal Act
13. Schedule 1 amended (*Criminal Code*)

**PART 7 – CRIMINAL LAW (DETENTION AND INTERROGATION)
ACT 1995 AMENDED**

14. Principal Act
15. Section 4 amended (Detention of person in custody)

**PART 8 – DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS
ACT 2021 AMENDED**

16. Principal Act
17. Schedule 1 amended (Serious Offences)

PART 9 – EVIDENCE ACT 2001 AMENDED

18. Principal Act
19. Section 3 amended (Interpretation)
20. Section 19 amended (Compellability of spouses and others in certain proceedings)
21. Section 94 amended (Application of Part)
22. Section 97A inserted
 - 97A. Admissibility of tendency evidence in proceedings involving child sexual offences
23. Section 98 amended (Coincidence rule)
24. Section 101 amended (Further restrictions on tendency evidence and coincidence evidence adduced by the prosecution)
25. Section 194K amended (Publication of certain identifying particulars prohibited)

**PART 10 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES)
ACT 2001 AMENDED**

26. Principal Act
27. Section 3 amended (Interpretation)
28. Section 5A inserted

- 5A. Audio visual statement of certain witnesses admissible as evidence in chief
- 29. Section 6A substituted
 - 6A. Special hearing to take and record person's evidence in full
- 30. Section 7H amended (Functions of witness intermediary)
- 31. Section 7I amended (Assessment report)
- 32. Section 7J amended (Use of witness intermediary)

PART 11 – JUSTICES ACT 1959 AMENDED

- 33. Principal Act
- 34. Section 61 amended (Interpretation)

PART 12 – MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) ACT 2019 AMENDED

- 35. Principal Act
- 36. Section 4 amended (Interpretation)

PART 13 – POLICE OFFENCES ACT 1935 AMENDED

- 37. Principal Act
- 38. Section 3 amended (Interpretation)
- 39. Section 35 amended (Common assault and aggravated assault)

PART 14 – SENTENCING ACT 1997 AMENDED

- 40. Principal Act
- 41. Section 4 amended (Interpretation)
- 42. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)
- 43. Section 27A amended (Interpretation of Part)

PART 15 – VICTIMS OF CRIME ASSISTANCE ACT 1976 AMENDED

- 44. Principal Act
- 45. Section 7 amended (Procedure for determining applications for awards)

PART 16 – REPEAL OF ACT

- 46. Repeal of Act

JUSTICE MISCELLANEOUS (ROYAL COMMISSION AMENDMENTS) BILL 2022

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*
24 November 2022

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

A BILL FOR

An Act to amend the *Annulled Convictions Act 2003*, the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*, the *Community Protection (Offender Reporting) Act 2005*, the *Corrections Act 1997*, the *Criminal Code Act 1924*, the *Criminal Law (Detention and Interrogation) Act 1995*, the *Dangerous Criminals and High Risk Offenders Act 2021*, the *Evidence Act 2001*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Justices Act 1959*, the *Magistrates Court (Criminal and General Division) Act 2019*, the *Police Offences Act 1935*, the *Sentencing Act 1997* and the *Victims of Crime Assistance Act 1976*

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:

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 1

Part 1 – Preliminary

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice Miscellaneous (Royal Commission Amendments) Act 2022*.

2. Commencement

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

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 2 – Annulled Convictions Act 2003 Amended

s. 3

**PART 2 – ANNULLED CONVICTIONS ACT 2003
AMENDED**

3. Principal Act

In this Part, the *Annulled Convictions Act 2003** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124A,” after “section 124, ” in paragraph (a) of the definition of *sexual offence*.

*No. 46 of 2003

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 5 Part 3 – Classification (Publications, Films and Computer Games)
Enforcement Act 1995 Amended

**PART 3 – CLASSIFICATION (PUBLICATIONS, FILMS
AND COMPUTER GAMES) ENFORCEMENT ACT 1995
AMENDED**

5. Principal Act

In this Part, the *Classification (Publications, Films and Computer Games) Enforcement Act 1995** is referred to as the Principal Act.

6. Section 79 amended (Proceedings on prosecutions)

Section 79 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraphs:

- (a) proceedings for an offence against section 72, 72A or 73 may be commenced at any time; and
- (ab) proceedings for an offence against section 73A, 74 or 74A may be commenced at any time within a period of 2 years after the time when the offence is alleged to have been committed; and

7. Section 88E inserted

After section 88D of the Principal Act, the following section is inserted in Division 2:

*No. 105 of 1995

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 3 – Classification (Publications, Films and Computer Games)
Enforcement Act 1995 Amended

s. 7

88E. Transitional provisions (2022 amendments)

The amendments to section 79 effected by section 6 of the *Justice Miscellaneous (Royal Commission Amendments) Act 2022* apply in respect of proceedings for an offence against sections 72, 72A or 73 –

- (a) whether or not that offence was committed before or after the commencement of that Act; and
- (b) whether or not a limitation period previously applying to the offence has expired before the commencement of that Act.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 8 Part 4 – Community Protection (Offender Reporting) Act 2005 Amended

**PART 4 – COMMUNITY PROTECTION (OFFENDER
REPORTING) ACT 2005 AMENDED**

8. Principal Act

In this Part, the *Community Protection (Offender Reporting) Act 2005** is referred to as the Principal Act.

9. Schedule 2 amended (Class 2 offences)

Schedule 2 to the Principal Act is amended by inserting after

Section 124

Penetrative sexual abuse of a child [*or* young person]

the following item:

Section 124A

Penetrative sexual abuse of a child [*or* young person] by a person in a position of authority

*No. 61 of 2005

PART 5 – CORRECTIONS ACT 1997 AMENDED

10. Principal Act

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

11. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting “124A,” after “124, ” in paragraph (b) of the definition of *sexual offence*.

*No. 51 of 1997

Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022

s. 12

Part 6 – Criminal Code Act 1924 Amended

PART 6 – CRIMINAL CODE ACT 1924 AMENDED

12. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

13. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following section after section 124:

124A. Penetrative sexual abuse of child or young person by person in position of authority

- (1) In this section –

child means a person under the age of 18 years;

parent, of a child, includes –

- (a) a step-parent, surrogate parent, adoptive parent, foster parent and guardian of the child; and

*No. 69 of 1924

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 6 – Criminal Code Act 1924 Amended

s. 13

- (b) any other person who has parental responsibility for the child;

person in a position of authority, in relation to a child, includes the following persons:

- (a) a person who is a teacher, if the child is a pupil of the teacher or a pupil at the educational institution at which the teacher works;
- (b) a parent of the child or a person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with a parent of the child;
- (c) a person who provides religious, sporting, musical or other

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

- instruction to the child;
- (d) a person who is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child;
 - (e) a health professional or social worker providing professional services to the child;
 - (f) a person who is responsible for the care of the child if that child has a cognitive impairment;
 - (g) a person employed or providing services in a

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

prison, within the meaning of the *Correctional Services Act 1997*, or a detention centre, within the meaning of the *Youth Justice Act 1997*, or a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child;

- (h) a person employed or providing services in a child care service, within the meaning of the *Children and Young Persons and Their Families Act 1997*, or a person engaged in the administration of that Act, acting in the course of the person's duties in relation to the child;

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

- (i) a person who provides child care to, or a child care service in respect of, the child for fee or reward;
 - (j) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).
- (2) Any person who is 18 years of age or older is guilty of a crime if that person is in a position of authority in relation to a child and that person has sexual intercourse with that child.

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 6 – Criminal Code Act 1924 Amended

s. 13

Charge: Penetrative sexual abuse of a child [*or* young person] by a person in a position of authority.

- (3) Consent to sexual intercourse is not a defence to a charge under this section.
- (4) This section does not apply to sexual intercourse between persons who are married to each other.

(b) by inserting the following section after section 125D:

125E. Failure by a person in authority to protect a child from a sexual offence

(1) In this section –

child means a person who is under the age of 18 years;

organisation means a body of persons, whether incorporated or unincorporated;

person associated, in relation to a relevant organisation, includes but is not limited to a person who is an officer, employee, manager, owner, volunteer, contractor, or

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

agent, of the organisation but does not include a person solely because the person receives services from the organisation;

relevant child means a child (whether identifiable or not) who is, or may come, under the care, supervision or authority of a relevant organisation;

relevant organisation means –

- (a) an organisation that exercises care, supervision or authority over children, whether as its primary function or otherwise, and includes but is not limited to –
 - (i) a religious organisation;
and
 - (ii) a school, within the meaning of the *Education Act 2016*; and

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

- (iii) an education and care service within the meaning of the *Education and Care Services National Law (Tasmania)*; and
- (iv) a child care service licensed under the *Child Care Act 2001*; and
- (v) a hospital; and
- (vi) a council; and
- (vii) a State Service Agency; and
- (viii) a sporting group; and
- (ix) a youth organisation; and
- (x) a charity or benevolent organisation; and
- (xi) an organisation providing out-

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

of-home care
and
accommodation
services; and

(xii) a community
service
organisation;
and

(b) an organisation
that, in accordance
with an agreement
or arrangement
with an
organisation
referred to in
paragraph (a), is
required or
permitted to
engage in
activities
associated with
the care,
supervision or
authority over
children exercised
by the
organisation
referred to in
paragraph (a);

religious confession has the
same meaning as in

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 6 – Criminal Code Act 1924 Amended

s. 13

section 127 of the
Evidence Act 2001;

sexual offence means –

- (a) an offence against section 8(2) or 9 of the *Sex Industry Offences Act 2005*; or
- (b) an offence against section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*; or
- (c) a crime under section 124, 124A, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 133, 178A or 185; or
- (d) a crime under section 298, 299 or 300 in relation to a crime specified in a section referred to in paragraph (c).

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

- (2) A person (the *accused person*) is guilty of a crime if –
- (a) the accused person occupies a position within, or in relation to, a relevant organisation; and
 - (b) the accused person has a reasonable belief that there is a substantial risk that a relevant child may become the victim of a sexual offence committed by another person (the *perpetrator*) who is –
 - (i) 18 years of age or more; and
 - (ii) a person associated with the relevant organisation; and
 - (c) the accused person, by reason of the person's position, has the power or responsibility to reduce or remove that risk; and
 - (d) the accused person fails to take all reasonable steps in the circumstances to reduce or remove that risk.

Charge: Failing to protect a child.

- (3) For the avoidance of doubt, in a prosecution for an offence against subsection (2), it is not necessary to prove that a sexual offence has been committed.
- (4) It is immaterial that some or all of the circumstances constituting an offence against subsection (2) occurred outside Tasmania, so long as the relevant child was in Tasmania at any time while the substantial risk referred to in subsection (2)(b) existed.
- (5) It is immaterial that both the accused person and the relevant child were outside Tasmania at the time at which some or all of the circumstances constituting an offence against subsection (2) occurred, so long as the sexual offence was at risk of occurring in Tasmania.
- (6) Despite section 127 of the *Evidence Act 2001*, a member of the clergy of any church or religious denomination is not entitled to refuse to comply with subsection (2) on the grounds that that he or she gained the knowledge as a consequence of information communicated to that

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

member of the clergy during a religious confession.

- (c) by inserting “124A,” after “124,” in paragraph (a) of the definition of *sexual offence* in section 326A(1);
- (d) by inserting the following paragraph after paragraph (a) in section 335:
 - (ab) penetrative sexual abuse of a child [*or* young person] by a person in a position of authority;
- (e) by inserting the following paragraph after paragraph (a) in section 336:
 - (ab) penetrative sexual abuse of a child [*or* young person] by a person in a position of authority;
- (f) by inserting the following section after section 336A:

336B. Child sexual abuse by a person in a position of authority

Upon the indictment for penetrative sexual abuse of a child [*or* young person] by a person in a position of authority, the accused person may be convicted of –

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 6 – Criminal Code Act 1924 Amended

s. 13

- (a) penetrative sexual abuse of a child [*or* young person]; or
 - (b) persistent sexual abuse of a child [*or* young person]; or
 - (c) incest; or
 - (d) indecent assault; or
 - (e) assault.
- (g) by inserting the following paragraph after paragraph (a) in section 337:
- (ab) penetrative sexual abuse of a child [*or* young person] by a person in a position of authority;
- (h) by inserting the following paragraph after paragraph (c) in section 337B(1):
- (ca) penetrative sexual abuse of a child [*or* young person] by a person in a position of authority;
- (i) by inserting in Appendix D after

Section 124 Penetrative sexual abuse of a child [*or* young person]

the following item:

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 13

Part 6 – Criminal Code Act 1924 Amended

Section 124A Penetrative sexual abuse of a child [*or*
young person] by a person in a position
of authority

PART 7 – CRIMINAL LAW (DETENTION AND INTERROGATION) ACT 1995 AMENDED

14. Principal Act

In this Part, the *Criminal Law (Detention and Interrogation) Act 1995** is referred to as the Principal Act.

15. Section 4 amended (Detention of person in custody)

Section 4(4) of the Principal Act is amended by inserting after paragraph (h) the following paragraph:

- (ha) any time during which the questioning or investigation of the person is suspended or delayed to facilitate the use of a witness intermediary, within the meaning of the *Evidence (Children and Special Witnesses) Act 2001*, in respect of the person or in respect of a witness in a proceeding;

*No. 72 of 1995

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 16 Part 8 – Dangerous Criminals and High Risk Offenders Act 2021 Amended

**PART 8 – DANGEROUS CRIMINALS AND HIGH RISK
OFFENDERS ACT 2021 AMENDED**

16. Principal Act

In this Part, the *Dangerous Criminals and High Risk Offenders Act 2021** is referred to as the Principal Act.

17. Schedule 1 amended (Serious Offences)

Schedule 1 to the Principal Act is amended by inserting after Section 124 in item 1 the following item:

Section 124A

Penetrative sexual abuse of a child [*or* young person] by a person in a position of authority

*No. 2 of 2021

PART 9 – EVIDENCE ACT 2001 AMENDED

18. Principal Act

In this Part, the *Evidence Act 2001** is referred to as the Principal Act.

19. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124A,” after “124, ” in paragraph (a) of the definition of *sexual offence*.

20. Section 19 amended (Compellability of spouses and others in certain proceedings)

Section 19(b) of the Principal Act is amended by inserting “124A,” after “section 124,”.

21. Section 94 amended (Application of Part)

Section 94 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) To avoid doubt, any principle or rule of the common law or equity that prevents or restricts the admissibility of evidence about propensity or similar fact evidence in a proceeding is not relevant when applying this Part to tendency evidence

*No. 76 of 2001

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 22

Part 9 – Evidence Act 2001 Amended

or coincidence evidence about a defendant.

- (5) In determining the probative value of tendency evidence or coincidence evidence for the purposes of section 97(1)(b), 97A(4), 98(1)(b) or 101(2), it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

22. Section 97A inserted

After section 97 of the Principal Act, the following section is inserted in Part 6:

97A. Admissibility of tendency evidence in proceedings involving child sexual offences

- (1) This section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.
- (2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 97(1)(b) and 101(2):
- (a) tendency evidence about the sexual interest that the defendant has or had in children (even if the

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 9 – Evidence Act 2001 Amended

s. 22

defendant has not acted on the interest);

- (b) tendency evidence about the defendant acting on a sexual interest that the defendant has or had in children.
- (3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, or any other child or children generally.
 - (4) Despite subsection (2), the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.
 - (5) The following matters (whether considered individually or in combination) are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters (whether considered individually or in combination) to warrant taking them into account:
 - (a) the sexual interest or act to which the tendency evidence relates (the *tendency sexual interest or act*) is different from the sexual

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 22

Part 9 – Evidence Act 2001 Amended

interest or act alleged in the proceeding (the *alleged sexual interest or act*);

- (b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
- (c) the personal characteristics of the subject of the tendency sexual interest or act (for example, the subject's age, sex or gender) are different to those of the subject of the alleged sexual interest or act;
- (d) the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;
- (e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;
- (f) the tendency sexual interest or act and alleged sexual interest or act

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 9 – Evidence Act 2001 Amended

s. 22

do not share distinctive or unusual features;

(g) the level of generality of the tendency to which the tendency evidence relates.

(6) In this section –

child means a person under 18 years of age;

child sexual offence means each of the following offences (however described and regardless of when it occurred):

(a) an offence against, or arising under, a law of this State involving sexual intercourse with, or any other sexual offence against, a person who was a child at the time of the offence;

(b) an offence against, or arising under, a law of this State involving an unlawful sexual act with, or directed towards, a person who was a child at the time of the offence;

(c) an offence against, or arising under, a law of the Commonwealth, another

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 23

Part 9 – Evidence Act 2001 Amended

State, a Territory or a foreign country that, if committed in this State, would have been an offence of a kind referred to in paragraph (a) or (b) –

but does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

23. Section 98 amended (Coincidence rule)

Section 98 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue in the proceeding.

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 9 – Evidence Act 2001 Amended

s. 24

24. Section 101 amended (Further restrictions on tendency evidence and coincidence evidence adduced by the prosecution)

Section 101 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “substantially outweighs any prejudicial effect it may have on” and substituting “outweighs the danger of unfair prejudice to”;
- (b) by omitting subsection (5).

25. Section 194K amended (Publication of certain identifying particulars prohibited)

Section 194K(1)(b) of the Principal Act is amended by inserting “124A,” after “section 124,”.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 26 Part 10 – Evidence (Children and Special Witnesses) Act 2001 Amended

**PART 10 – EVIDENCE (CHILDREN AND SPECIAL
WITNESSES) ACT 2001 AMENDED**

26. Principal Act

In this Part, the *Evidence (Children and Special Witnesses) Act 2001** is referred to as the Principal Act.

27. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “124A,” after “124,” in paragraph (b)(i) of the definition of *affected child*;
- (b) by inserting “124A,” after “section 124,” in the definition of *child sexual offence*;
- (c) by inserting “124A,” after “124,” in paragraph (b) of the definition of *prescribed proceeding*;
- (d) by inserting “124A,” after “124,” in paragraph (a) of the definition of *specified offence*.

28. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Part 2:

*No. 79 of 2001

5A. Audio visual statement of certain witnesses admissible as evidence in chief

(1) In this section –

audio visual statement means a statement made by a witness and recorded by any means;

investigating official has the same meaning as in the *Evidence Act 2001*;

sexual offence has the same meaning as in the *Evidence Act 2001*.

(2) This section applies in respect of a witness in a criminal proceeding if the witness is –

(a) a child, other than the defendant, who is to give evidence in respect of an offence; or

(b) the alleged victim of a sexual offence; or

(c) the alleged victim of a family violence offence; or

(d) a special witness.

(3) An audio visual statement taken by an investigating official in respect of an offence may be tendered or treated as all or part of the evidence in chief of the witness that made the statement in a proceeding for that offence.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 29 Part 10 – Evidence (Children and Special Witnesses) Act 2001 Amended

- (4) Subsection (3) does not apply if a judge of the court hearing the proceeding considers that the tendering or treating of the audio visual statement as evidence in chief would be contrary to the interests of justice.
- (5) Nothing in this section prevents a defendant from being given the opportunity to cross-examine a witness in a proceeding.
- (6) This section does not affect the operation of section 61 of the *Justices Act 1959*.

29. Section 6A substituted

Section 6A of the Principal Act is repealed and the following section is substituted:

6A. Special hearing to take and record person's evidence in full

- (1) A judge who hears an application under section 6(1)(a), or on the judge's own motion, may make such orders in relation to the affected person's evidence as the judge thinks fit.
- (2) A judge may, in a prescribed proceeding or a specified proceeding, make an order for the holding of a special hearing to take and record a witness's evidence in full if –

- (a) the judge is satisfied that it is in the interests of justice to hold a special hearing; and
- (b) both parties consent to the special hearing.

30. Section 7H amended (Functions of witness intermediary)

Section 7H of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

- (3) Subject to subsection (4), a person must take an oath, or make an affirmation, in accordance with Schedule 1 before acting as a witness intermediary in a proceeding.
- (4) A witness intermediary is not required to take an oath, or make an affirmation, before –
 - (a) preparing and providing an assessment report about a witness’s communication and other related needs; or
 - (b) attending a ground rules hearing.

31. Section 7I amended (Assessment report)

Section 7I of the Principal Act is amended as follows:

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 32 Part 10 – Evidence (Children and Special Witnesses) Act 2001 Amended

- (a) by omitting paragraph (b) from subsection (3);
- (b) by omitting subsection (5) and substituting the following subsection:
 - (5) The judge in a specified proceeding may make such orders as the judge considers necessary or appropriate regarding –
 - (a) the provision of materials relevant to the preparation of an assessment report; and
 - (b) the distribution and security of all or part of an assessment report.

32. Section 7J amended (Use of witness intermediary)

Section 7J of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (1):
 - (1A) A judge may, at any time, make an order that a witness intermediary be used in respect of a witness in a specified proceeding if –
 - (a) that witness is a witness referred to in

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 10 – Evidence (Children and Special Witnesses) Act 2001 Amended

s. 32

section 7I(1)(a), (b), (c) or
(d); and

(b) the judge is satisfied that
it is in the interests of
justice.

(1B) Without limiting the matters that
may be taken into account in
determining the interests of
justice under subsection (1A), the
judge is to take into account
whether the witness does or does
not wish the order to be made.

(b) by inserting in subsection (2) “or (1A)”
after “(1)”;

(c) by inserting the following subsections
after subsection (2):

(3) For the avoidance of doubt, a
judge may make an order under
subsection (1A) in respect of a
witness regardless of whether or
not an assessment report has been
provided to the judge in respect
of that witness.

(4) An order made under this section
is not subject to review or appeal.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 33

Part 11 – Justices Act 1959 Amended

PART 11 – JUSTICES ACT 1959 AMENDED

33. Principal Act

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

34. Section 61 amended (Interpretation)

Section 61(2)(a)(i) of the Principal Act is amended by inserting “124A,” after “124,”.

*No. 77 of 1959

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 12 – Magistrates Court (Criminal and General Division) Act 2019
Amended

s. 35

**PART 12 – MAGISTRATES COURT (CRIMINAL AND
GENERAL DIVISION) ACT 2019 AMENDED**

35. Principal Act

In this Part, the *Magistrates Court (Criminal and General Division) Act 2019** is referred to as the Principal Act.

36. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended by inserting “124A,” after “124, ” in paragraph (a) of the definition of *affected person*.

*No. 43 of 2019

Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022

s. 37

Part 13 – Police Offences Act 1935 Amended

PART 13 – POLICE OFFENCES ACT 1935 AMENDED

37. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

38. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124A,” after “section 124, ” in paragraph (b) of the definition of *sexual offence*.

39. Section 35 amended (Common assault and aggravated assault)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (5) “A complaint” and substituting “Subject to subsection (5A), a complaint”;
- (b) by inserting the following subsections after subsection (5):
 - (5A) Subsection (5) does not apply to a complaint made for the purposes of the *Justices Act 1959* in relation to –
 - (a) an offence under subsection (3); or

*No. 44 of 1935

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 13 – Police Offences Act 1935 Amended

s. 39

- (b) an offence under subsection (1) if, under subsection (4), the complaint for the same assault was amended from a complaint under subsection (3) to a complaint under subsection (1).
- (5B) The amendments to this section effected by section 39 of the *Justice Miscellaneous (Royal Commission Amendments) Act 2022* apply in respect of proceedings for an offence –
- (a) whether or not that offence was committed before or after the commencement of that Act; and
 - (b) whether or not a limitation period previously applying to the offence had expired before the commencement of that Act.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 40

Part 14 – Sentencing Act 1997 Amended

PART 14 – SENTENCING ACT 1997 AMENDED

40. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

41. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended by inserting “124A,” after “section 124, ” in the definition of *child sexual offence*.

42. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

Section 11A(1) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (d) in the definition of *aggravating circumstance*:
 - (da) the victim being under the age of 18 years and the offender being a person in a position of authority in relation to the victim (regardless of whether the offence is under section 124A of the *Criminal Code*, or any other section of the *Criminal Code*);

*No. 59 of 1997

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 14 – Sentencing Act 1997 Amended

s. 43

- (b) by inserting the following definition after the definition of *disability*:

person in a position of authority has the same meaning as in section 124A of the *Criminal Code*;

- (c) by inserting “124A,” after “section 124,” in paragraph (a) of the definition of *sexual offence*.

43. Section 27A amended (Interpretation of Part)

Section 27A of the Principal Act is amended by inserting “124A,” after “124, ” in paragraph (a) of the definition of *sexual offence*.

Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022

s. 44

Part 15 – Victims of Crime Assistance Act 1976 Amended

**PART 15 – VICTIMS OF CRIME ASSISTANCE ACT
1976 AMENDED**

44. Principal Act

In this Part, the *Victims of Crime Assistance Act 1976** is referred to as the Principal Act.

45. Section 7 amended (Procedure for determining applications for awards)

Section 7 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1A) “subsections (1B), (1C) and (1D)” after “Subject to”;
- (b) by omitting from subsection (1A) “subsections (1B) and (1C)”;
- (c) by inserting the following subsection after subsection (1C):
 - (1D) Subsections (1A) and (1B) do not apply in respect of an application for an award that involves an allegation of child sexual abuse.
- (d) by inserting the following subsections after subsection (10):

*No. 32 of 1976

Justice Miscellaneous (Royal Commission Amendments) Act 2022
Act No. of 2022

Part 15 – Victims of Crime Assistance Act 1976 Amended

s. 45

- (11) The provisions of this section, as amended by section 45 of the *Justice Miscellaneous (Royal Commission Amendments) Act 2022*, apply in relation to an application for an award –
- (a) whether or not the cause of action accrued before the amendment day; and
 - (b) whether or not a period of limitation under this section as in force before the amendment day, had, before the amendment day, expired in respect of the relevant offence.

- (12) In this section –

amendment day means the day on which the *Justice Miscellaneous (Royal Commission Amendments) Act 2022* commenced.

*Justice Miscellaneous (Royal Commission Amendments) Act
2022
Act No. of 2022*

s. 46

Part 16 – Repeal of Act

PART 16 – REPEAL OF ACT

46. Repeal of Act

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