

TASMANIA

**CRIMINAL CODE (MISCELLANEOUS
AMENDMENTS) BILL 2003**

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CRIMINAL CODE (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 *Criminal Code Act 1924*

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 *Criminal Code (Miscellaneous Amendments) Act 2003*.

Commencement

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

Principal Act

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

*No. 69 of 1924

Schedule 1 amended (*Criminal Code*)**4. Schedule 1 to the Principal Act is amended as follows:**

- (a) by inserting the following definition after the definition of “criminally responsible” in section 1:

“Crown” means –

- (a) the Crown in right of Tasmania; or
 - (b) the State of Tasmania;
- (b) by inserting the following section after section 162:

Failing to report the killing of a person

162A. (1) In this section, **“proper authority”** means any of the following:

- (a) a police officer;
- (b) a correctional officer within the meaning of the *Corrections Act 1997*;
- (c) a probation officer within the meaning of the *Corrections Act 1997*;
- (d) a Crown Law Officer.

(2) A person is guilty of a crime if he or she –

- (a) discovers that another person has been killed; and

- (b) fails without reasonable excuse to report that discovery to a proper authority as soon as practicable.

Charge: Failing to report the killing of a person.

(3) A person is guilty of a crime if he or she –

- (a) discovers that another person is being subjected to conduct that, if repeated or continued, is reasonably likely to result in that other person being killed; and
- (b) fails without reasonable excuse to report that discovery to a proper authority as soon as practicable.

Charge: Failing to report the impending killing of a person.

(4) A person is guilty of a crime if he or she –

- (a) discovers that the killing of another person is being planned; and
- (b) fails without reasonable excuse to report that discovery to a proper authority as soon as practicable.

Charge: Failing to report the planned killing of a person.

(5) Without limiting the matters that may constitute a reasonable excuse for the purposes of subsection (2), (3) or (4), a person

is excused from reporting a discovery to a proper authority under this section if –

- (a) the person knows or reasonably suspects that –
 - (i) another person has already reported the discovery to a proper authority; or
 - (ii) a proper authority has already made the same discovery; or
- (b) reporting the discovery would disclose information that is privileged on the ground of legal professional privilege.
- (c) by omitting section 361A and substituting the following section:

Argument before jury is sworn

361A. (1) After an accused person has been called upon to plead as provided in section 351(1), all or any of the following may occur before a jury is sworn if the court thinks fit:

- (a) the accused person may make admissions under section 184 of the *Evidence Act 2001*;
- (b) the court may determine any question of law or procedure that has arisen or is expected to arise in the trial;
- (c) the court may determine any question of fact that may lawfully

be determined by a judge alone without a jury;

- (d) the court may determine any other question that it considers necessary or convenient to determine in order to ensure that the trial will be conducted fairly and expeditiously;
- (e) the court may give such directions as it thinks fit in order to resolve any issue or matter that it considers necessary or convenient to resolve before a jury is sworn.

(2) If –

- (a) an admission, determination or direction is made or given under subsection (1); and
- (b) a new trial of the indictment is had at the same or any future sittings of the court, whether before the same or a different judge –

the admission, determination or direction has the same status for the purposes of the new trial as if it had been made or given, between the arraignment of the accused and the empanelment of the jury, during that new trial.

- (d) by inserting in Appendix A after

Severing with intent to steal.

the following item:

s. 4

No.

*Criminal Code (Miscellaneous
Amendments)*

2003

Robbery.

- (e) by omitting Appendix C and substituting the following Appendix:

**APPENDIX C – FORMS OF INDICTMENT
FORM**

In the Supreme Court of Tasmania.

STATE OF TASMANIA *against* [JOHN JONES]. (a)

The day of 20 (b)

TASMANIA

(c) [HOBART] TO WIT.

A. B., Crown Law Officer, on behalf of the State of
Tasmania, charges (a) [John Jones] with —

Statement of Crime

(d) Stealing contrary to section 234 of the Criminal
Code.

Particulars

(a) *John Jones*, at (e) *Deloraine*, in the State of
Tasmania, (f) on the first day of June 1923, stole a cow the
property of (g) *William Smith*.

(Signed) A.B.,

Attorney-General [*or, as the case may be*].

Or,

[Heading and introductory part as above; and]

Statement of Crime

Being accessory after the fact to a crime contrary to
section 300 of the Criminal Code.

Particulars

John Jones, at Devonport, in the State of Tasmania, on the fourth day of January 1924, and on other days thereafter, knowing that *John Smith* had committed the crime of disabling with intent to facilitate the commission of an offence, received [or assisted] the said *John Smith* in order to enable him to escape punishment.

(Signed) [as above].

Or,

STATE OF TASMANIA *against* JOHN SMITH *and* JOHN JONES.

The day of 20 .

TASMANIA

[DEVONPORT] TO WIT.

A.B., &c., [as above] charges *John Smith* and *John Jones* with —

Statement of Crimes

John Smith, with disabling with intent to facilitate the commission of an offence contrary to section 168 of the Criminal Code.

John Jones, with being accessory after the fact to the same crime, contrary to section 300 of the Criminal Code.

Particulars

John Smith, at Latrobe, in the State of Tasmania, on the fourth day of January 1924, disabled *Mary Brown*, by violently taking her by the throat and rendering her incapable of resistance, with intent thereby to facilitate the commission of an offence.

John Jones, at Devonport, on the same day and other days thereafter, knowing that the said *John Smith* had committed the said crime, received [or assisted] him in order to enable him to escape punishment.

(Signed) [as above].

Or,

STATE OF TASMANIA *against* JOHN SMITH.

The day of 20 .

TASMANIA

[HOBART] TO WIT.

A.B., &c., [as above] charges *John Smith* with —

Statement of Crime

Burglary contrary to section 244 of the Criminal Code.

Particulars of Crime

John Smith at Hobart in the State of Tasmania entered the shop situated at No. 66, Harold Street as a trespasser with intent to commit the crime of stealing therein.

(a) Name of accused. (b) Date of filing indictment. (c) Place of trial.
(d) Description of crime charged. (e) Place where crime committed. (f) Date when crime committed. (g) Name of owner of property (if any).