

FACT SHEET

Justice and Related Legislation (Miscellaneous Amendments) Bill 2021

The purpose of this Bill is to ensure legislation remains up-to-date and to correct minor errors that have become apparent after legislation has been operational for some time. A number of such minor and technical amendments have been identified in legislation administered by the Department of Justice as well as Acts administered by the Department of Premier and Cabinet and the Department of Police, Fire and Emergency Management.

The Bill amends:

- the *Appeal Costs Fund Act 1968* to:
 - clarify section 5(2) so there is no distinction in fee payment between indictable offences, and indictable offences tried summarily and any other offence processed in the Magistrates Court, other than a conviction or order made in the Supreme Court; and
 - allow the Court of Criminal Appeal to grant an indemnity certificate to an appellant who successfully appeals a conviction, except for where the person has received legal aid from the Tasmania Legal Aid in relation to the appeal;
- the *Commissioner for Children and Young People Act 2016* to replace outdated references to 'Legal Aid Commission of Tasmania' to that of its new name 'Tasmania Legal Aid';
- the *Constitution Act 1934* to provide that the oath of allegiance taken by Members of Parliament is deemed to relate to the Sovereign and the Sovereign's heirs and successors, meaning that it will be unnecessary for members to take the oath again when a new Sovereign is appointed;
- section 59B of the *Coroners Act 1995* to allow the Coroner to make orders in relation to the disposal or treatment of evidentiary material at their discretion, on application from the Commissioner of Police. The section retains the requirement for a photographic or audio-visual record of the evidentiary material, and where practicable samples to be taken before an order of the Coroner can be actioned;
- the *Crime (Confiscation of Profits) Act 1993* to remove the words 'in an urgent case' in relation to ex parte applications for restraining orders. Also to replace the outdated references to 'Legal Aid Commission of Tasmania' to that of 'Tasmania Legal Aid';
- the *Criminal Code Act 1924* to:
 - amend section 401 to refer to any order made under the *Sentencing Act 1997*; and

- amend sections 415 and 418 to provide a power to the Court or a single judge to stay or suspend the operation of sentencing orders of all types pending the hearing and determination of a criminal appeal;
- Rule 22(1) of the Criminal Rules 2006 to replace outdated references to 'Legal Aid Commission of Tasmania' to that of 'Tasmania Legal Aid';
- the *Dangerous Criminals and High Risk Offenders Act 2021* to clarify that the definition of relevant offender under section 24 includes an offender serving sentences for other offences against a law of Tasmania. Also to correct incorrect references to 'consecutively' with the term 'cumulatively' in sections 24(c)(iii) and 32(2)(b)(iii);
- section 6 of the *Evidence (Audio and Audio Visual Links) Act 1999* to broaden the use of audio link and audio visual links to any purpose the court directs. Section 6(1) currently allows a court to direct that evidence be taken or submissions made by audio link or audio-visual link;
- the *Evidence (Children and Special Witnesses) Act 2001* to:
 - broaden the definition of 'affected child' to include the offence of carjacking under section 240A of the Criminal Code; and
 - expand the definition of 'serious offence' in section 3 to include the offences under section 38B of the *Police Offences Act 1935* and sections 22A and 27AA of the *Misuse of Drugs Act 2001*;
- the *Industrial Relations Act 1984* to:
 - include a right of appeal where a former employee's application for termination of employment has been dismissed by the Industrial Relations Commission without a hearing under section 21 of the Act (section 70);
 - enable the President, or presiding member, sitting on the Full Bench of the Industrial Relations Commission to make procedural orders or directions to facilitate the hearing of an appeal (section 71); and
 - remove the two-step process to challenge a decision of the Full Bench of the Industrial Relations Commission. The two-step process is no longer required as the *Judicial Review Act 2000* has simplified the procedures for a review of administrative decisions. Under the proposed amendment, a person who wishes to challenge a decision of the Full Bench in respect of an appeal, may apply to the Supreme Court for review on an error of law (section 72);
- the *Interstate Transfer (Community-based Sentences) Act 2009* to clarify the definition of community-based sentence and its application to community correction orders under the *Sentencing Act 1997*;

- the *Justices Act 1959* to:
 - provide exemptions to the period of adjournment defined in section 55(5);
 - clarify when a judge may not commit a defendant to trial in the Supreme Court in relation to preliminary proceedings under section 60; and
 - provide for the justice to determine the period of adjournment under section 74B;
- the *Legal Aid Commission Act 1990* to update the definition of “Commission to Tasmania Legal Aid,” replace outdated references to ‘Legal Aid Commission of Tasmania’ to that of ‘Tasmania Legal Aid’ and provide for transitional arrangements;
- the *Legal Profession (Barristers) Rules 2016* to replace outdated references to ‘Legal Aid Commission of Tasmania’ to that of ‘Tasmania Legal Aid’;
- the *Magistrates Court (Children’s Division) Rules 2012* to replace outdated references to ‘Legal Aid Commission of Tasmania’ to that of ‘Tasmania Legal Aid’;
- section 12(2) of the *Oaths Act 2001* to reflect the requirements under the current Commonwealth Statutory Declarations Regulations;
- the *Police Offences Act 1935* to repeal section 15CA(2). This provision has become redundant as it relates to community service orders which are no longer made (as that term is no longer used) under the *Sentencing Act 1997*;
- the *Promissory Oaths Act 2015* to:
 - replace references to the now repealed section 4 of the *Justices Act 1959*, with the current legislative provision which is section 5 of the *Justices of the Peace Act 2018*; and
 - repeal subsections 9(5) - 9(9) as they refer to oaths for ‘extra-territorial justices,’ appointed under repealed provisions of the repealed *Justices Act 1959*; noting there are no equivalent provisions under the *Justices of the Peace Act 2018*;
- the *Retirement Villages Act 2004* to replace outdated references to ‘Legal Aid Commission of Tasmania’ to that of ‘Tasmania Legal Aid’; and
- the *Sex Industry Offences Act 2005* to update the definition of ‘sexually transmissible infection’, which currently refers to guidelines that no longer exist. The definition is a broad definition of sexually transmissible infections, including key types of infection, to support interpretation of section 12 of the Act. The definition also provides for ‘prescribed’ infections, so that regulations may include other diseases where they are identified as sexually transmissible and identification will assist in interpretation of section 12 of the Act.