

CLAUSE NOTES

Justice and Related Legislation (Miscellaneous Amendments) **Bill 2012**

Clause 1: Short Title

Clause 2: Commencement dates

Clause 3: Principal Act for Part 2 – *Appeal Costs Fund Act 1968*

Clause 4: Amends section 2 of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 5: Amends section 5(1) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 6: Amends section 5A(3) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 7: Principal Act for Part 3 – *Bail Act 1994*

Clause 8: Amends section 7 of the Principal Act to clarify that a Crown Law Officer may advise a person admitted to bail of an alteration to the time and place of the court hearing on more than one occasion and that the person must attend on the last date so advised.

Clause 9: Principal Act for Part 4 – *Building and Construction Industry Security of Payment Act 2009*

Clause 10: Inserts a new section 4A to clarify that the definition of “business day” so that every half day or regional holiday is considered a full day state wide holiday and to provide for the period between Christmas and New Year’s Day to not be classed as business days.

Clause 11: Amends section 19(2) to ensure that the minimum period under that subsection is 20 business days for residential home owners.

Clause 12: Amends section 20 to ensure that the minimum payment period for home owners is 20 days.

Clause 13: Principal Act for Part 5 – *Business Names Act 1962*

Clause 14: Amends section 14 of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)” and to replace “commissioner of courts of requests” with “magistrate”

Clause 15: Principal Act for Part 6 – *Civil Liability Act 2002*

Clause 16: Inserts a new subsection 4(6) to provide that Part 10B only applies to a cause of action accrued after the commencement of that Part

Clause 17: Amends section 26(1) so that the cap on damages for loss of earning capacity applies to a claim for damages made pursuant to the *Fatal Accidents Act 1934*

Clause 18: Inserts a new Part 10B (Rights Between Employer and Employee) (consisting of section 49B) which prevents an employer who is vicariously liable for an employee’s tort from claiming indemnification or contribution from the employee and requires the employer to indemnify the employee in respect of liability incurred by the employee for the tort.

The new section does not apply where the conduct constituting the tort was serious or wilful misconduct or did not occur in the course of, or arise out of, the employment of the employee.

Clause 19: Principal Act for Part 7 – *Consumer Affairs Act 1988*

Clause 20: Amends section 22(2) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 21: Principal Act for Part 8 – *Corrections Act 1997*

Clause 22: Amends section 87A so that it applies to an adult forensic patient within the meaning of the *Mental Health Act 1996* who is subject to a restriction order, or a supervision order if the forensic patient has been apprehended under section 31 of the *Criminal Justice (Mental Impairment) Act 1999*, in respect of a violent offence or a sexual offence.

Clause 23: Amends section 87B to include references to “a forensic patient” where there is a reference to “prisoner”.

Clause 24: Principal Act for Part 9 – *Criminal Justice (Mental Impairment) Act 1999*

Clause 25: Amends section 10(2) by removing references to committal hearings and substituting references to preliminary proceedings.

Clause 26: Principal Act for Part 10 – *Evidence (Audio and Audio Visual Links) Act 1999*

Clause 27: Inserts a new subsection in section 4 that states that the amendments inserted by this Act apply to any proceeding pending in a Tasmanian court on commencement of the subsection.

Clause 28: Amends subsection 6(1) to extend the places from where evidence and submissions may be taken by audio or audio-visual link. New Zealand is not included as it is covered by the *Commonwealth Evidence and Procedure (New Zealand) Act 1994*. Amends subsection 6(3) to clarify that the

subsection only applies where evidence is given from another Australian jurisdiction.

Clause 29: Inserts new sections 10C and 10D. Section 10C provides that for the purpose of laws relating to evidence, procedure, contempt of court or perjury any place within Tasmania or outside Australia at which audio link or audio visual link facilities are being used is taken to be part of a Tasmanian court. (Evidence being given from participating jurisdictions is dealt with by section 6 (3) and the fact that the Act is based on nationally uniform legislation)
Section 10D provides for the administration of oaths and affirmations and excepts from the giving of an oath or affirmation a person giving evidence from a country where a law in force either does not permit the giving of an oath or affirmation or would make it inconvenient to give evidence on oath or affirmation.

Clause 30: Principal Act for Part 11 – *Integrity Commission Act 2009*

Clause 31: Amends section 5 of the Act to include the University of Tasmania

Clause 32: Amends section 11 of the Act to provide that the Annual Report is for the period ending on 30 June of each year for consistency with the *State Service Act 2000* and the *Financial Management and Audit Act 1990*.

Clause 33: Amends section 62 of the Act to limit the number of members on an Integrity Tribunal to three.

Clause 34: Principal Act for Part 12 – *Juries Act 2003*

Clause 35: Amends section 39 to allow a court to excuse a juror from jury service if the court suspects on reasonable grounds that the juror may not be able to consider the case impartially.

Clause 36: Amends section 40 to allow a court, during a trial, to discharge a juror if the court suspects on reasonable grounds that the juror may not be able to consider the case impartially.

Clause 37: Amends section 41 by omitting the phrase “in an emergency”.

Clause 38: Principal Act for Part 13 – *Landlord and Tenant Act 1935*

Clause 39: Amends section 51 of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”.

Clause 40: Amends section 53(4) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 41: Principal Act for Part 14 – *Legal Profession Act 2007*

Clause 42: Amends section 607 of the Act to remove any requirement that the Secretary be employed under the *State Service Act 2000*.

Clause 43: Principal Act for Part 15 – *Married Women’s Property Act 1935*

Clause 44: Amends section 7A(3) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 45: Amends section 10(3) of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”

Clause 46: Amends section 10A(1) of the Principal Act to replace references to “court of requests” with references to “Magistrates Court (Civil Division)”

Clause 47: Principal Act for Part 16 – *Monetary Penalties Enforcement Act 2005*.

Clause 48: Amends the definition of “fine” in section 3 of the Principal Act to include an order made by a Criminal injuries Compensation Commissioner under section 7A of the *Victims of Crime Assistance Act 1976*

Clause 49: Principal Act for Part 17 – *Police Powers (Controlled Operations) Act 2006*.

Clause 50: Amends the time within which a report must be made in section 32(4) of the Principal Act

Clause 51: Principal Act for Part 18 – *Police Powers (Surveillance Devices) Act 2006*

Clause 52: Amends the time within which a report must be made in section in section 42 of the Principal Act.

Clause 53: Principal Act for Part 19 – *Public Interest Disclosures Act 2000*

Clause 54: Amends section 4(1) of the Principal Act to include the University of Tasmania

Clause 55: Principal Act for Part 20 – *Right to Information Act 2009*

Clause 56: Amends section 5(1) of the Principal Act to include the University of Tasmania

Clause 57: Principal Act for Part 21 – *Supreme Court Civil Procedure Act 1932*

Clause 58: Amends section 186 of the Principal Act to replace “court of requests” with “Magistrates Court (Civil Division)”.

Clause 59: Repeals section 191A (Withdrawal of matters from Associate Judge) of the Principal Act.

Clause 60: Amends section 191B(2) to provide that an appeal from a an interlocutory order or decision of an Associate Judge be made to a judge and an appeal from any other judgement, order or decision of the Associate Judge be made to the Court of Appeal.

Clause 61: Amends section 197(1) by replacing “determination and hearing” with “hearing and determination” and inserts a new paragraph to allow for the making of rules to prescribe certain judgements or types of judgements of the Associate Judge as final judgements.

Clause 62: Principal Act for Part 22 – *Victims of Crime Assistance Act 1976*

Clause 63: Amends section 7A of the Principal Act to require the making of a provisional order, to provide an opportunity for an offender to object to the making of a provisional order, to specify the content of a provisional order, to specify how a notice of objection may be made, to require a Commissioner to hear an offender if a notice of objection is filed, to set out what a Commissioner may do following hearing of an objection and to allow the Commissioner to provide a sealed copy of a confirmed order to the Director, Monetary Penalties Enforcement Service for collection.

Clause 64: Revokes the proclamations and statutory rules under the *Trustee Act 1898* specified in Schedule I.

Clause 65: Repeals this Act 90 days after the amendments contained in it are made to the Principal Acts.