

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL
2004**

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**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL
2004**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Admission to Courts Act 1916*, the *Anti-Discrimination Act 1998*, the *Coroners Act 1995*, the *Corrections Act 1997*, the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Forensic Procedures Act 2000*, the *Freedom of Information Act 1991*, the *Justices Act 1959*, the *Magistrates Court (Civil Division) Act 1992*, the *Magistrates Court Act 1987*, the *Sentencing Act 1997* and the *Supreme Court Civil Procedure Act 1932*

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:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2004*.

Commencement

2. (1) This Act, except Parts 4 and 5, commences on the day on which this Act receives the Royal Assent.

(2) Part 4 commences 30 days after the day on which this Act receives the Royal Assent.

(3) Part 5 commences 3 months after the day on which this Act receives the Royal Assent.

**PART 2 – ADMISSION TO COURTS ACT 1916
AMENDED**

Principal Act

3. In this Part, the *Admission to Courts Act 1916*^{*} is referred to as the Principal Act.

Section 2 amended (Regulations)

4. Section 2(2)(c) of the Principal Act is amended by omitting “to be dangerous” and substituting “is likely to adversely affect the security, good order or management of the court”.

^{*}No. 12 of 1916

**PART 3 – ANTI-DISCRIMINATION ACT 1998
AMENDED**

Principal Act

5. In this Part, the *Anti-Discrimination Act 1998** is referred to as the Principal Act.

Section 3 amended (Interpretation)

6. Section 3 of the Principal Act is amended as follows:

- (a) by omitting “or” second occurring from paragraph (b) of the definition of “family responsibilities”;
- (b) by omitting paragraph (c) from the definition of “family responsibilities”;
- (c) by inserting “or partner” after “spouse” in paragraph (a) of the definition of “immediate family member”;
- (d) by inserting “or partner” after “spouse” in paragraph (b) of the definition of “immediate family member”;
- (e) by inserting the following definition after the definition of “parental status”:

“partner” means a partner within the meaning of the *Relationships Act 2003*;

*No. 46 of 1998

Section 22 amended (Areas of activity)

7. Section 22(1) of the Principal Act is amended as follows:

- (a) by inserting “by or” after “hatred,”;
- (b) by omitting from paragraph (f) “and” and substituting “or”;
- (c) by omitting from paragraph (g) “and” and substituting “or”.

Section 68 amended (Withdrawal of complaints)

8. Section 68(4)(c) of the Principal Act is amended by omitting “section 95” and substituting “section 99A”.

Section 72 amended (Review of rejection or dismissal)

9. Section 72(2) of the Principal Act is amended by omitting “or dismissal”.

Section 86A inserted

10. After section 86 of the Principal Act, the following section is inserted in Division 4:

Security for costs

86A. (1) On the application of a party to an inquiry or review, the Tribunal may at any time order –

- (a) that another party to the inquiry or review give security for the applicant’s costs within the time specified in the order; and

- (b) if the Tribunal thinks fit, that proceedings in the inquiry or review be stayed until the security is given.

(2) If the security for the applicant's costs is not given within the time specified in the order, the Tribunal may make an order dismissing the complaint as against the applicant.

Section 90 amended (Enforcement of orders)

11. Section 90 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(c) "or agreement" after "order";
- (b) by inserting in subsection (2) "or agreement" after "Tribunal".

Section 95 substituted

12. Section 95 of the Principal Act is repealed and the following section is substituted:

Costs

95. Subject to section 99A, each party to an inquiry is to pay his or her own costs.

Section 99 amended (Dismissal of complaint)

13. Section 99 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) The Tribunal may dismiss a complaint at any time if it is satisfied that –

- (a) the complaint is trivial, vexatious, misconceived or lacking in substance; or
- (b) dismissing the complaint would, for some other reason, be just and appropriate.

Section 99A inserted

14. After section 99 of the Principal Act, the following section is inserted in Division 5:

Order for costs

99A. The Tribunal may make an order as to costs in relation to any inquiry or review before it if the Tribunal considers circumstances justify the order.

Section 103 substituted

15. Section 103 of the Principal Act is repealed and the following sections are substituted:

Immunities

103. (1) The Commissioner and the chairperson and members of the Tribunal have, in exercising any power or performing any function of their respective offices, the same immunity as a judge of the Supreme Court.

(2) Subsection (1) has effect notwithstanding the *Statutory Authorities (Protection from Liability of Members) Act 1993*.

(3) A person acting for or at the direction of the Commissioner or the chairperson or a member of the Tribunal is not personally liable for an honest

act or omission done or made in the exercise or purported exercise of a power, or in the performance or purported performance of a function, under this Act.

Commissioner and Tribunal members not required to give evidence in certain cases

103A. The Commissioner and the chairperson and members of the Tribunal are not compellable witnesses before a court or tribunal, or in any judicial or other proceedings, in respect of anything that came to their knowledge in exercising and performing their respective powers and functions under this Act.

PART 4 – CORONERS ACT 1995 AMENDED**Principal Act**

16. In this Part, the *Coroners Act 1995** is referred to as the Principal Act.

Section 29 amended (Record of investigation)

17. Section 29(1) of the Principal Act is amended by omitting “in the prescribed form”.

Section 32 amended (Certificate of burial)

18. Section 32(1) of the Principal Act is amended by omitting “in the prescribed form”.

Section 46 amended (Record of findings and comments)

19. Section 46(1) of the Principal Act is amended by omitting “in the prescribed form”.

Section 58 substituted

20. Section 58 of the Principal Act is repealed and the following Part is substituted:

*No. 73 of 1995

PART 7A – REVIEW**Chief Magistrate may reopen investigation**

58. (1) The Chief Magistrate may reopen an investigation and re-examine some or all of its findings, or direct another coroner to do so, if the Chief Magistrate is satisfied that –

- (a) the investigation was or may have been tainted by fraud; or
- (b) the investigation was not sufficiently thorough or was compromised by evidentiary or procedural irregularity; or
- (c) there are mistakes in the record of the findings; or
- (d) new facts or evidence affecting the findings have come to light; or
- (e) the findings were not supported by the evidence; or
- (f) there is another compelling reason to reopen the investigation.

(2) The Chief Magistrate's power under subsection (1) may be exercised on –

- (a) the Chief Magistrate's own initiative; or
- (b) the application of a person who the Chief Magistrate considers has a sufficient interest in the findings of the investigation.

(3) However, the Chief Magistrate is not to exercise power under subsection (1) if an application under section 58A in respect of the investigation–

- (a) is before the Supreme Court; or
- (b) has been rejected by the Supreme Court and the Chief Magistrate's reasons for exercising the power would be the same or substantially the same as the grounds of that application.

(4) A coroner who is directed to reopen an investigation under this section may, but need not be, the same coroner who conducted the investigation.

(5) A coroner who is re-examining some or all of the findings of an investigation that has been reopened under this section may do any of the following:

- (a) affirm the findings;
- (b) quash the findings;
- (c) vary the findings.

(6) Subsection (5) does not prevent the coroner from exercising any other power or performing any other function under this Act in respect of the reopened investigation.

(7) A person may appeal to the Supreme Court if the Chief Magistrate refuses an application made by the person under subsection (2)(b) seeking the reopening of an investigation other than an inquest.

(8) On hearing the appeal, the Supreme Court may –

- (a) affirm the Chief Magistrate's decision; or
- (b) quash the Chief Magistrate's decision.

(9) If subsection (8)(b) applies, the Supreme Court –

- (a) is to order the Chief Magistrate to exercise power under subsection (1) in accordance with such directions as the court may specify in the order; and
- (b) may make such further orders as the court thinks fit in the circumstances.

Supreme Court may order inquest findings void, &c.

58A. (1) Any person may apply to the Supreme Court for an order that all or any of the findings of an inquest are void.

(2) Subsection (1) has effect even if the Chief Magistrate has refused an application by any person to reopen the inquest under section 58.

(3) On an application under subsection (1), the Supreme Court may make the order applied for if the court is satisfied that –

- (a) the inquest was or may have been tainted by fraud; or
- (b) the inquest was not sufficiently thorough or was compromised by evidentiary or procedural irregularity; or
- (c) there are mistakes in the record of the findings; or
- (d) new facts or evidence affecting the findings have come to light; or

- (e) the findings were not supported by the evidence; or
- (f) there is another compelling reason to reopen the inquest.

(4) If the Supreme Court orders that all or any of the findings of the inquest are void, it is to further order the Chief Magistrate to –

- (a) reopen the inquest and re-examine any of its findings or hold a new inquest; or
- (b) direct another coroner to reopen the inquest and re-examine any of its findings or hold a new inquest.

(5) If subsection (4)(b) applies, the Supreme Court may require that the other coroner not be the same coroner who held the first inquest.

(6) An applicant under subsection (1) may adduce any evidence, or raise any grounds, whether or not the evidence or grounds have been adduced or raised before the Chief Magistrate on an application under section 58.

Section 64 substituted

21. Section 64 of the Principal Act is repealed and the following section is substituted:

Coroner not required to give evidence in certain cases

64. A coroner is not a compellable witness before a court or tribunal, or in any judicial or other proceedings, in respect of anything that came to the

coroner's knowledge in exercising and performing his or her powers and functions under this Act.

Section 68 amended (Manner of making applications)

22. Section 68 of the Principal Act is amended as follows:

- (a) by omitting "58(1)" and substituting "58A(1)";
- (b) by inserting "or an appeal under section 58(7)" after "63".

PART 5 – CORRECTIONS ACT 1997 AMENDED**Principal Act**

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

Schedule 1 substituted

24. Schedule 1 to the Principal Act is repealed and the following Schedule is substituted:

SCHEDULE 1 – PRISON OFFENCES

Section 3

PART 1 – PRELIMINARY**Interpretation**

1. In this Schedule –

“**authorised**” means authorised in accordance with the standing orders or as otherwise authorised by the Director.

PART 2 – PRISON OFFENCES

1. Mutiny.
2. Open incitement to mutiny.
3. Assaulting a correctional officer.
4. Assaulting a person other than a correctional officer.
5. Engaging in riotous behaviour.

*No. 51 of 1997

6. Instigating or encouraging another prisoner or detainee to engage in riotous behaviour.
7. Resisting or obstructing a correctional officer, or any other person who has authority in a prison, in the execution of his or her duties.
8. Committing a nuisance or engaging in disorderly conduct.
9. Instigating or encouraging another prisoner or detainee to commit a nuisance or engage in disorderly conduct.
10. Maiming, injuring or tattooing himself or herself or any other prisoner or detainee.
11. Intentionally endangering the health of another person.
12. Committing any act contrary to the good order or maintenance of prison discipline or security.
13. Damaging, defacing or destroying any prison property.
14. Setting anything alight if not authorised.
15. Stealing, unlawfully receiving or embezzling anything.
16. Trafficking with another prisoner or detainee or any other person.
17. Giving or lending to, or borrowing from, another prisoner or detainee anything if not authorised.
18. Having in the prisoner's possession anything that is not authorised.
19. Sending a letter that is threatening or harassing.

20. Sending an article of mail containing an item or substance that is not authorised.
21. Using a telephone in any way or for any purpose that is not authorised.
22. Refusing or failing to allow a sample to be taken under section 28 for the purpose of substance testing.
23. Adulterating, substituting, or otherwise tampering or interfering with a sample taken under section 28.
24. Being in possession of, or consuming, alcohol or a drug if not authorised.
25. Being drunk or under the influence of an illegal drug.
26. Refusing to comply with a direction under section 33.
27. Being idle or negligent at work, or mismanaging any work.
28. Feigning illness.
29. Knowingly making a false or frivolous complaint.
30. Behaving disruptively or disrespectfully at or during a religious service or any other authorised meeting, gathering or event.
31. Failing to comply with any condition or restriction of leave under section 42.
32. Leaving or attempting to leave the place where the prisoner or detainee has been directed or authorised to be, or being in a place if not authorised.
33. Failing to obey an order lawfully given by a person having authority in the prison.

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- 34. Cursing or swearing.
- 35. Using language or behaving in a manner that is indecent, insulting, insolent or threatening.
- 36. Breaching the regulations.
- 37. Attempting to commit a prison offence.

**PART 6 – CRIMINAL CODE AMENDMENT (LIFE
PRISONERS AND DANGEROUS CRIMINALS) ACT
1994 AMENDED**

Principal Act

25. In this Part, the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994** is referred to as the Principal Act.

Section 9 amended (Resentencing)

26. Section 9 of the Principal Act is amended by omitting subsection (4) and substituting the following subsections:

(4) In resentencing an existing life prisoner under this Part –

- (a) the court is not to take into account the applicant's conduct as a life prisoner under the original sentence; but
- (b) the court may take into account the term of any other sentence of imprisonment that the applicant, since becoming a life prisoner, has been subject to.

(5) If the court exercises its discretion under subsection (4)(b), it may order that the sentence it imposes under subsection (1) is to commence at a date later than the date on which the original sentence was imposed.

(6) Subsection (5) applies despite anything to the contrary in the *Sentencing Act 1997*.

*No. 96 of 1994

**PART 7 – EVIDENCE (CHILDREN AND SPECIAL
WITNESSES) ACT 2001 AMENDED****Principal Act**

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

Section 3 amended (Interpretation)

28. Section 3 of the Principal Act is amended as follows:

- (a) by inserting “137, 178,” after “133,” in paragraph (b)(i) of the definition of “affected child”;
- (b) by omitting “section 35(3) of the *Police Offences Act 1935*” from paragraph (c) of the definition of “affected child” and substituting “section 8(1A)(a) or 35(3) of the *Police Offences Act 1935*”;
- (c) by inserting “137, 178,” after “133,” in paragraph (b) of the definition of “prescribed proceeding”;
- (d) by omitting “section 35(3) of the *Police Offences Act 1935*” from paragraph (d) of the definition of “prescribed proceeding” and substituting “section 8(1A)(a) or 35(3) of the *Police Offences Act 1935*”.

*No. 79 of 2001

**PART 8 – FORENSIC PROCEDURES ACT 2000
AMENDED**

Principal Act

29. In this Part, the *Forensic Procedures Act 2000** is referred to as the Principal Act.

Section 57 amended (Registration of orders)

30. Section 57 of the Principal Act is amended as follows:

- (a) by omitting “order.” from the definition of “certified copy” in subsection (1) and substituting “order;”;
- (b) by inserting the following definition after the definition of “certified copy” in subsection (1):

“order” means an order authorising the carrying out of forensic procedures.

- (c) by omitting subsections (2) and (3) and substituting the following subsections:

(2) The Minister may enter into an arrangement with the responsible Minister of a participating jurisdiction, providing for and in relation to –

- (a) the registration in this State of orders made under a corresponding law of that participating jurisdiction; or

*No. 101 of 2000

- (b) the registration in that participating jurisdiction of orders made under this Act.

(2A) For the purposes of subsection (2)(a), the Commissioner of Police may establish and maintain a register of orders.

(3) An order made under a corresponding law of a participating jurisdiction is registered in this State when a certified copy of the order is registered, in accordance with the relevant arrangement entered into under subsection (2), in the register maintained under subsection (2A).

- (d) by omitting from subsection (4) “is registered” and substituting “made under a corresponding law of a participating jurisdiction is registered in this State”;
- (e) by omitting from subsection (5) “authorising the carrying out of a forensic procedure, or for cancellation of registration of such an order” and substituting “in this State, or for the cancellation of registration of an order”.

**PART 9 – FREEDOM OF INFORMATION ACT 1991
AMENDED****Principal Act**

31. In this Part, the *Freedom of Information Act 1991** is referred to as the Principal Act.

Section 22 amended (Reasons, &c., to be given)

32. Section 22(4) of the Principal Act is amended by omitting “25 or 28” and substituting “25, 28 or 28A”.

Section 28A inserted

33. After section 28 of the Principal Act, the following section is inserted in Part 3:

**Information affecting national security,
defence or international relations**

28A. Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –

- (a) endanger the security of the Commonwealth or any of its States or Territories; or
- (b) endanger the defence of the Commonwealth; or
- (c) adversely affect the international relations of the Commonwealth.

*No. 22 of 1991

PART 10 – JUSTICES ACT 1959 AMENDED**Principal Act**

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

Section 3 amended (Interpretation)

35. Section 3(1) of the Principal Act is amended by inserting “137, 178,” after “133,” in paragraph (a) of the definition of “affected person”.

Section 56A amended (Procedure when brought before justices)

36. Section 56A of the Principal Act is amended by inserting after subsection (1A) the following subsection:

(1B) The justices are not required to comply with subsection (1)(a) if they are satisfied that the defendant has received a copy of, and understands, the nature of the charge.

Section 71 amended (Petty crimes triable summarily)

37. Section 71(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) “\$500” and substituting “\$5 000”;

*No. 77 of 1959

- (b) by omitting from paragraph (b) “\$500” and substituting “\$5 000”.

Section 72 amended (Other crimes triable summarily)

38. Section 72(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “\$500” and substituting “\$5 000”;
- (b) by omitting from paragraph (b) “\$5 000” and substituting “\$20 000”;
- (c) by omitting from paragraph (c)(i) “\$5 000” and substituting “\$20 000”;
- (d) by omitting from paragraph (d) “\$500” and substituting “\$5 000”;
- (e) by omitting from paragraph (d) “\$5 000” and substituting “\$20 000”.

Section 74A amended (Procedure where defendant not represented)

39. Section 74A of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) The justices are not required to comply with subsection (1)(a) if they are satisfied that the defendant has received a copy of, and understands, the nature of the charge.

Section 141 amended (Payment of fees)

40. Section 141 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) If a justice or clerk of petty sessions is satisfied that paying a fee would cause a person undue hardship, the justice or clerk of petty sessions may –

- (a) waive the fee; or
- (b) reduce the fee; or
- (c) refund the whole or any part of the fee already paid; or
- (d) allow time to pay the whole or any part of the fee.

**PART 11 – MAGISTRATES COURT (CIVIL
DIVISION) ACT 1992 AMENDED**

Principal Act

41. In this Part, the *Magistrates Court (Civil Division) Act 1992** is referred to as the Principal Act.

Section 38A inserted

42. After section 38 of the Principal Act, the following section is inserted in Part 7:

Reduction or waiver of fee, &c.

38A. If a magistrate or registrar is satisfied that paying a fee would cause a person undue hardship, the magistrate or registrar may –

- (a) waive the fee; or
- (b) reduce the fee; or
- (c) refund the whole or any part of the fee already paid; or
- (d) allow time to pay the whole or any part of the fee.

*No. 27 of 1992

PART 12 – MAGISTRATES COURT ACT 1987
AMENDED**Principal Act**

43. In this Part, the *Magistrates Court Act 1987** is referred to as the Principal Act.

Section 10B amended (Magistrates not required to give evidence in certain cases)

44. Section 10B of the Principal Act is amended as follows:

- (a) by omitting “court or judicial proceedings” and substituting “court, tribunal or any judicial or other proceedings”;
- (b) by omitting “carrying out” and substituting “performing and exercising”.

*No. 45 of 1987

PART 13 – SENTENCING ACT 1997 AMENDED**Principal Act**

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

Section 15 amended (Custodial sentence: whether concurrent or cumulative)

46. Section 15(6) of the Principal Act is amended by inserting “other than section 9(5) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*” after “enactment”.

*No. 59 of 1997

**PART 14 – SUPREME COURT CIVIL PROCEDURE
ACT 1932 AMENDED**

Principal Act

47. In this Part, the *Supreme Court Civil Procedure Act 1932** is referred to as the Principal Act.

Section 3 amended (Interpretation)

48. Section 3(1) of the Principal Act is amended by omitting the definition of “inferior court of civil jurisdiction” and substituting the following definition:

“inferior court of civil jurisdiction” includes any court instituted under the *Magistrates Court Act 1987* when exercising a civil jurisdiction;

*No. 58 of 1932