

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2008**

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**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2008**

*(Brought in by the Minister for Justice, the Honourable David
Edward Llewellyn)*

A BILL FOR

An Act to amend the *Administration and Probate Act 1935*, the *Anti-Discrimination Act 1998*, the *Bills of Sale Act 1900*, the *Civil Liability Act 2002*, the *Civil Process Act 1870*, the *Community Protection (Offender Reporting) Act 2005*, the *Criminal Code Act 1924*, the *Fatal Accidents Act 1934*, the *Freedom of Information Act 1991*, the *Guardianship and Custody of Infants Act 1934*, the *Health Complaints Act 1995*, the *Judicial Review Act 2000*, the *Juries Act 2003*, the *Justices Act 1959*, the *Landlord and Tenant Act 1935*, the *Magistrates Court (Civil Division) Act 1992*, the *Public Trustee Act 1930*, the *Sentencing Act 1997*, the *Telecommunications (Interception) Tasmania Act 1999*, the *Terrorism (Preventative Detention) Act 2005* and the *Trustee Act 1898*

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

1. Short title

This Act may be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2008*.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 2

Part 1 – Preliminary

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 5 is taken to have commenced on 15 December 2005.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 2 – Administration and Probate Act 1935 Amended

s. 3

**PART 2 – ADMINISTRATION AND PROBATE ACT
1935 AMENDED**

3. Principal Act

In this Part, the *Administration and Probate Act 1935** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “judges” from the definition of “Probate Rules” in subsection (1) and substituting “judges, or a majority of them,”;
- (b) by inserting the following subsections after subsection (4):
 - (5) Any prescribed Probate Rules continue in force as if duly made under this Act as amended by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2008*.
 - (6) For the purposes of subsection (5) –

*No. 38 of 1935

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 5

Part 2 – Administration and Probate Act 1935 Amended

“prescribed Probate Rules”

means Probate Rules and any amendment to the Probate Rules –

- (a) made under this Act as in force before the commencement of the *Justice and Related Legislation (Miscellaneous Amendments) Act 2008*; and
- (b) in force immediately before the commencement of that Act.

5. Section 40 amended (Powers of personal representative as to appropriation)

Section 40(1)(d) of the Principal Act is amended by omitting “appointed under that Act,” and substituting “appointed,”.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 3 – Anti-Discrimination Act 1998 Amended

s. 6

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

6. Principal Act

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

7. Section 109 amended (Regulations)

Section 109 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Without limiting the generality of subsection (1), the regulations may provide for fees payable in respect of any application under this Act other than an application under Division 4 of Part 6.

*No. 46 of 1998

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 8

Part 4 – Bills of Sale Act 1900 Amended

PART 4 – BILLS OF SALE ACT 1900 AMENDED

8. Principal Act

In this Part, the *Bills of Sale Act 1900** is referred to as the Principal Act.

9. Section 33 amended (Power of Court to decide construction of bill of sale)

Section 33 of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 70 of 1900

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 5 – Civil Liability Act 2002 Amended

s. 10

PART 5 – CIVIL LIABILITY ACT 2002 AMENDED

10. Principal Act

In this Part, the *Civil Liability Act 2002** is referred to as the Principal Act.

11. Section 28B amended (Damages for gratuitous services)

Section 28B of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “only”;
- (b) by inserting the following subsection after subsection (3):
 - (4) Nothing in this section prevents the award of damages under the *Fatal Accidents Act 1934* for the loss of gratuitous services provided by a person whose death is caused by a wrongful act, neglect or default, within the meaning of that Act.

*No. 54 of 2002

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 12

Part 6 – Civil Process Act 1870 Amended

PART 6 – CIVIL PROCESS ACT 1870 AMENDED

12. Principal Act

In this Part, the *Civil Process Act 1870** is referred to as the Principal Act.

13. Section 2 substituted

Section 2 of the Principal Act is repealed and the following section is substituted:

2. Judges to make rules

- (1) The judges, or a majority of them, are to make Rules of Court –
 - (a) providing for the fees payable to the Sheriff, or the sheriff's officers, for the execution of civil process; and
 - (b) specifying whether the Sheriff or the Sheriff's officers may receive or retain any of those fees for personal use.
- (2) Any prescribed tables of fees continue in force as if they were Rules of Court duly made under this section as substituted by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2008*.

*No. 17 of 1870

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 6 – Civil Process Act 1870 Amended

s. 13

(3) For the purposes of subsection (2) –

“prescribed tables of fees” means
tables of fees and general rules –

- (a) made under this section as in force before the commencement of the *Justice and Related Legislation (Miscellaneous Amendments) Act 2008*; and
- (b) in force immediately before the commencement of that Act.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 14 Part 7 – Community Protection (Offender Reporting) Act 2005 Amended

**PART 7 – COMMUNITY PROTECTION (OFFENDER
REPORTING) ACT 2005 AMENDED**

14. Principal Act

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

15. Section 50A inserted

After section 50 of the Principal Act, the following section is inserted in Part 5:

50A. Appeals

- (1) An offender reporting order made by the Supreme Court under this Act may be appealed against in the Court of Criminal Appeal as if that order were a sentence imposed on conviction.
- (2) An appeal against an offender reporting order may be made by the prosecution or the person against whom the offender reporting order has been made.
- (3) On an appeal against an offender reporting order, the Court of Criminal Appeal may affirm, quash or vary the order.

*No. 61 of 2005

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 7 – Community Protection (Offender Reporting) Act 2005 Amended

s. 15

- (4) Nothing in this section restricts or affects any right of appeal that a person would have apart from this section.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 16

Part 8 – Criminal Code Act 1924 Amended

PART 8 – CRIMINAL CODE ACT 1924 AMENDED

16. Principal Act

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

17. Section 12 amended (Rules of Court)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “judges” and substituting “judges, or a majority of them,”;
- (b) by omitting from subsection (1) “the Code; and such rules may provide for all matters relating to procedure and practice on appeals to the Court of Criminal Appeal on questions reserved for the consideration and determination of that Court, or referred to that Court, pursuant to Chapter XLII of the Code, and in all proceedings before courts of trial, and all matters incidental thereto respectively.” and substituting “the Code.”;
- (c) by inserting the following subsection after subsection (1):

*No. 69 of 1924

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 8 – Criminal Code Act 1924 Amended

s. 17

(1A) The Rules of Court may provide for –

(a) all matters relating to procedure and practice –

(i) on appeals to the Court of Criminal Appeal on questions reserved for the consideration and determination of that Court, or referred to that Court, pursuant to Chapter XLII of the Code; and

(ii) on or after the committal of a defendant to the Supreme Court for sentence or trial; and

(iii) in all proceedings before courts of trial; and

(b) all incidental matters.

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 18

Part 8 – Criminal Code Act 1924 Amended

18. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting “organs.” from paragraph (d) of the definition of “female genital mutilation” in section 1 and substituting “organs;”;
- (b) by omitting from section 26A(1)(b) “it”;
- (c) by omitting from section 328 “law officer” and substituting “Law Officer”;
- (d) by omitting subparagraph (iii) from section 339A(f);
- (e) by omitting “committed for trial; or” from paragraph (a) of the definition of “the prescribed period” in section 368A(8) and substituting “so informed of those requirements; or”.

PART 9 – FATAL ACCIDENTS ACT 1934 AMENDED

19. Principal Act

In this Part, the *Fatal Accidents Act 1934** is referred to as the Principal Act.

20. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “partner” and substituting the following definition:

“**partner**”, in relation to a person, means an individual who, at the time when a wrongful act, neglect or default occurred in respect of the person, was in a personal relationship, within the meaning of the *Relationships Act 2003*, with the person;

21. Section 10 amended (Assessing damages)

Section 10(1)(b) of the Principal Act is amended by omitting “\$10 000” and substituting “\$250 000”.

*No. 30 of 1934

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 22

Part 9 – Fatal Accidents Act 1934 Amended

22. Schedule 1 repealed

Schedule 1 to the Principal Act is repealed.

**PART 10 – FREEDOM OF INFORMATION ACT 1991
AMENDED**

23. Principal Act

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

24. Section 32A inserted

After section 32 of the Principal Act, the following section is inserted in Part 3:

32A. Information relating to functions of Director of Public Prosecutions

(1) In this section –

“Director” means the person holding, or acting in, the office of Director of Public Prosecutions established by section 3(1) of the *Director of Public Prosecutions Act 1973*.

(2) Information is exempt information if –

(a) it is in the possession of the Director or a person whose services are provided or procured for the purposes of assisting the Director in the performance of

*No. 22 of 1991

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 24

Part 10 – Freedom of Information Act 1991 Amended

the Director's functions under the
*Director of Public Prosecutions
Act 1973*; and

- (b) it relates to the performance of those functions.

Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of

Part 11 – Guardianship and Custody of Infants Act 1934 Amended

s. 25

**PART 11 – GUARDIANSHIP AND CUSTODY OF
INFANTS ACT 1934 AMENDED**

25. Principal Act

In this Part, the *Guardianship and Custody of Infants Act 1934** is referred to as the Principal Act.

26. Section 19 amended (Rules as to procedure)

Section 19 of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 29 of 1934

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 27

Part 12 – Health Complaints Act 1995 Amended

**PART 12 – HEALTH COMPLAINTS ACT 1995
AMENDED**

27. Principal Act

In this Part, the *Health Complaints Act 1995** is referred to as the Principal Act.

28. Section 15 amended (Appointment of conciliators and professional mentors)

Section 15 of the Principal Act is amended by omitting subsection (3).

*No. 95 of 1995

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 13 – Judicial Review Act 2000 Amended

s. 29

PART 13 – JUDICIAL REVIEW ACT 2000 AMENDED

29. Principal Act

In this Part, the *Judicial Review Act 2000** is referred to as the Principal Act.

30. Schedule 1 amended (Decisions to which Act does not apply)

Schedule 1 to the Principal Act is amended by inserting after item 4 the following items:

5. A decision made under the *Coroners Act 1995*.
6. A decision made by the Tasmanian Industrial Commission, or a member of the Tasmanian Industrial Commission, under the *Industrial Relations Act 1984*.

*No. 54 of 2000

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 31

Part 14 – Juries Act 2003 Amended

PART 14 – JURIES ACT 2003 AMENDED

31. Principal Act

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

32. Section 67 amended (Rules of Court)

Section 67 of the Principal Act is amended by omitting “Court” first occurring and substituting “Court, or a majority of them,”.

*No. 48 of 2003

Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of

Part 15 – Justices Act 1959 Amended

s. 33

PART 15 – JUSTICES ACT 1959 AMENDED

33. Principal Act

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

34. Section 124 amended (Rules of court)

Section 124 of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 77 of 1959

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 35

Part 16 – Landlord and Tenant Act 1935 Amended

**PART 16 – LANDLORD AND TENANT ACT 1935
AMENDED**

35. Principal Act

In this Part, the *Landlord and Tenant Act 1935** is referred to as the Principal Act.

36. Section 49 amended (Charges for distraining)

Section 49(2) of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 42 of 1935

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

Part 17 – Magistrates Court (Civil Division) Act 1992 Amended

s. 37

**PART 17 – MAGISTRATES COURT (CIVIL DIVISION)
ACT 1992 AMENDED**

37. Principal Act

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

38. Section 31A amended (Enforcement of judgments and orders)

Section 31A of the Principal Act is amended by omitting “orders.” and substituting “orders, unless otherwise provided by the rules of court.”.

*No. 27 of 1992

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 39

Part 18 – Public Trustee Act 1930 Amended

PART 18 – PUBLIC TRUSTEE ACT 1930 AMENDED

39. Principal Act

In this Part, the *Public Trustee Act 1930** is referred to as the Principal Act.

40. Section 75 amended (Power of judges to make rules)

Section 75 of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 61 of 1930

PART 19 – SENTENCING ACT 1997 AMENDED

41. Principal Act

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

42. Section 27Y substituted

Section 27Y of the Principal Act is repealed and the following section is substituted:

27Y. Expiry of operation of Part

(1) In this section –

“**current prescribed date**” means the prescribed date that has most recently been prescribed as the prescribed date;

“**prescribed date**” means –

- (a) a date that is prescribed in the regulations in accordance with this section as in force immediately before the commencement of the *Justice and Related Legislation (Miscellaneous*

*No. 59 of 1997

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 42

Part 19 – Sentencing Act 1997 Amended

*Amendments) Act 2008;
or*

- (b) a date that is prescribed in the regulations in accordance with subsection (2).
- (2) The regulations may prescribe a date after which a court must not make a drug treatment order under this Part if those regulations take effect before the current prescribed date passes.
- (3) Despite section 7(ab), a court must not make a drug treatment order under this Part after the current prescribed date.

**PART 20 – TELECOMMUNICATIONS
(INTERCEPTION) TASMANIA ACT 1999 AMENDED**

43. Principal Act

In this Part, the *Telecommunications (Interception) Tasmania Act 1999** is referred to as the Principal Act.

44. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting “*Telecommunications (Interception) Act 1979*;” from the definition of “Commonwealth Act” and substituting “*Telecommunications (Interception and Access) Act 1979* of the Commonwealth;”.

45. Section 6 amended (Documents to be given to Minister)

Section 6(d)(i) of the Principal Act is amended by omitting “Part IX” and substituting “Part 2-8”.

*No. 36 of 1999

*Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of*

s. 46 Part 21 – Terrorism (Preventative Detention) Act 2005 Amended

**PART 21 – TERRORISM (PREVENTATIVE
DETENTION) ACT 2005 AMENDED**

46. Principal Act

In this Part, the *Terrorism (Preventative Detention) Act 2005** is referred to as the Principal Act.

47. Section 24 amended (Release of person from preventative detention)

Section 24(3)(b) of the Principal Act is amended by omitting “section 34D” and substituting “section 34E”.

*No. 71 of 2005

Justice and Related Legislation (Miscellaneous Amendments) Act
2008
Act No. of

Part 22 – Trustee Act 1898 Amended

s. 48

PART 22 – TRUSTEE ACT 1898 AMENDED

48. Principal Act

In this Part, the *Trustee Act 1898** is referred to as the Principal Act.

49. Section 62 amended (Power of judges to make rules under this Act)

Section 62 of the Principal Act is amended by omitting “judges” and substituting “judges, or a majority of them,”.

*No. 34 of 1898