DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Magistrates Court (Criminal and General Division) Bill 2019

check Hansard for delivery

Madam Speaker, I move that the Bill now be read a second time.

Over the years the various jurisdictions of the Magistrates Court have been statutorily created as Divisions of that Court - for example, the Administrative Appeals Division, the Children's Division, the Civil Division, and the Coronial Division.

Each of the divisions of the Magistrates Court have been created by a separate Act and operate in accordance with a purpose-specific set of Rules.

The only summary jurisdiction that has not yet been incorporated as a division of the Magistrates Court is that currently known as the Court of Petty Sessions, which deals with the vast majority of matters coming before the Magistrates Court, including summary criminal matters and general matters such as applications for restraint orders and family violence orders.

The Court of Petty Sessions is currently governed by the *Justices Act 1959*. The *Justices Act* is an out-dated piece of legislation that uses out-moded language and does not provide the necessary legislative basis upon which to operate a modern Court. This 60 year old piece of legislation also pre-dates the modern computer age and fails to provide a proper or modern procedural foundation upon which a new Court and Corrections technology platform can be built.

Work has been underway for many years to draft a suite of legislation to replace and update the *Justices Act 1959*. This Bill is the culmination of over 18 years of work, and establishes the "high level" framework for the criminal and general jurisdiction of the Magistrates Court.

The Government is committed to improving access to justice and the efficiency of our Courts in Tasmania. In the 2019-20 State Budget the Government made a number of significant commitments in this area, including increased resourcing, and procedural and technological reform across the Courts and Corrective Services to address court criminal backlogs and improve access to justice, including significant new funding for the Justice Connect technology replacement project.

The *Magistrates Court (Criminal and General Division) Bill 2019* will provide the legislative framework to support a modern Court system and set the foundation for the Justice Connect project to be designed, built and delivered. The design of the Justice Connect solution is currently pending the final form of this Bill – there is little point spending time and money to design and build a modern technology solution to match the out-dated and at times less efficient and paper-based procedures currently contained in the *Justices* Act.

The Government is also undertaking a number of related reforms to the justice system in Tasmania, including the reform of bail law and the laws in place for dangerous criminals in Tasmania. These proposed reforms will be progressed separately to this Bill, which will set down what is informally known as the 'core operating procedures' for the Criminal and General Division of the Magistrates Court.

As I mentioned earlier the *Justices Act* is an out-dated piece of legislation that needs replacing and does not provide the necessary legislative basis upon which to operate a modern Court.

For example, despite considerable amendment over the years, the *Justices Act 1959* is still principally expressed in terms of the functions and powers of lay Justices of the Peace. It does not reflect the fact that the Court is now largely presided over by professional Magistrates.

The *Justices Act 1959* also does not provide a clear statutory framework for the various reforms that have been introduced over the years to promote efficiencies, such as the "contest mention hearing" process, which aims to narrow the issues in dispute and facilitate early pleas of guilty before the matter proceeds to a full hearing.

An Evaluation Report on Contest Mention Hearings completed in November 2012 by the Magistrates Court recommended that legislation be developed to provide statutory authority for the Magistrates Court to conduct contest mention hearings and to make relevant directions.

In the early years of the last decade, a number of other State jurisdictions commissioned reviews into the management, conduct and processes associated with the hearing of summary and indictable offences.

The recommendations resulting from those reviews recommended that jurisdictions enact legislation to:

- reorient criminal justice procedures away from the trial as the likely outcome, to facilitate early and fair dispositions of criminal matters;
- require prosecution authorities to disclose evidence and exhibits;

- discourage delaying tactics in the court or hearing processes by constructing limits around the right to an adjournment;
- encourage early pleas of guilty;
- provide an ability for parties to engage in conferencing;
- provide for the summary disposition of less serious indictable offences; and
- broaden the sentencing jurisdiction of the Magistrates Court to some indictable matters.

The move to develop legislation to replace the *Justices Act 1959* was approved in broad terms by a previous Government in 2001, and the project has continued and evolved since that time.

The impetus for the project has largely come from the Magistrates Court itself with successive Chief Magistrates, Magistrates and court staff finding time, despite their busy schedules, to progress the project. I would like to take this opportunity to express my thanks for the significant work that has been put in by Magistrates and staff over the years.

I would also like to recognise the very important work of the recently convened Magistrates Court Steering Committee, comprising the Chief (or Deputy Chief) Magistrate, Director of Public Prosecutions, Registrar of the Supreme Court, Secretary of the Department of Justice and Deputy Secretary of the Department of Police, Fire and Emergency Management.

This Committee has overseen the final development of the Bill over the last approximately 18 months, considering, consulting and making recommendations on procedural changes which appear in this Bill.

There has been significant consultation undertaken on the Bill.

Public and stakeholder consultation was undertaken on a consultation draft *Magistrates Court (Criminal and General Division) Bill* and three cognate Bills in 2017, being the *Restraint Orders Bill*, the *Justices of the Peace Bill* and a *Consequential Amendments Bill*.

Submissions made during that process informed a number of changes to the *Magistrates Court (Criminal and General Division) Bill.* A second round of consultation was undertaken on a revised Bill in 2019, with further changes resulting from consultation. As part of this process, a workshop was held with the Law Society of Tasmania and the Legal Aid Commission to address various matters raised during the consultation.

I am very proud to be the Attorney-General who prioritised and finally brought this project to fruition in the form of four new Bills that have been developed to replace the *Justices Act 1959* with a contemporary legislative framework.

The *Justices of the Peace Bill 2018* was passed by the Parliament last year and commenced on 1 July 2019.

The *Restraint Orders Bill 2019* and the *Magistrates Court (Criminal and General Division) (Consequential Amendments) Bill 2019* have been tabled as cognate Bills with the *Magistrates Court (Criminal and General Division) Bill*.

As I mentioned earlier, the *Magistrates Court (Criminal and General Division) Bill 2017* establishes the "high level" framework for the criminal and general jurisdiction of the Magistrates Court.

To give some context for the number of matters the criminal and general jurisdiction of the Magistrates Court deals with, there were 16,648 criminal lodgements for adults and 16,176 criminal finalisations for adults in 2018-19. The Magistrates Court Annual Report indicates that in 2017-18 the criminal and general jurisdiction of the Magistrates Court finalised 18,047 criminal complaints, 4,403 breaches of orders, and 1,644 other applications in that financial year. The 2017-18 figures do not include restraint orders and family violence applications.

The purpose of this Bill is to provide updated legislation that meets current demands on the Court system, and also provides a sound statutory basis for initiatives to enhance justice and improve efficiencies which have been trialled and evaluated empirically.

Besides establishing the Criminal and General Division of the Magistrates Court, the objects of this Bill are to provide for the administration of justice in that division to:

- provide for enhanced access to justice;
- facilitate the timely dispensing of justice according to law;
- ensure that all proceedings are conducted fairly; and
- to facilitate and improve the case management of proceedings.

The Bill provides the legislative foundation for a number of initiatives, procedural changes and changes to the law. In brief, the more significant changes include:

- the establishment of the court to be known as the Magistrates Court (Criminal and General Division), the composition of the Court and the jurisdiction of that Court;

- the replacement of references to "justices" with specific references to the Court as constituted by a "Magistrate", a "bench justice" or an "authorised justice", as the case requires. The Bill expressly defines the powers of each of these categories of the Court;

- the commencement of proceedings by filing with the Court either a "court attendance notice" or a "charge sheet", whichever occurs first;

- a new framework for disclosure of prosecution evidence in summary offences to ensure that defendants receive free disclosure of the case against them at the earliest opportunity;

- an obligation on defendants to provide notice of an alibi and admissible opinion evidence similar to the requirements which are currently in the *Criminal Code Act 1924*;

- a specific statutory basis for case management procedures and sentence indication powers to promote the just and efficient determination of matters;

- an increase in the property value threshold for minor property crimes to $20,000 and for electable property offences to $100,000, together with a revised list of crimes that fall into these categories;

- provisions which outline the process for electing to have eligible indictable offences dealt with by either the Magistrates Court or the Supreme Court;

- an express provision for a witness or party to attend court by audio or video link;

- a prohibition on the publication of any evidence, an account of, or any information connected with preliminary proceedings, unless the Court permits this to occur; and

- tightening of the procedure for appeals against bail applications.

I will now speak in more detail on the more innovative changes which will be introduced by these reforms.

More efficient commencement of proceedings

The new mechanism to commence court proceedings by filing either a charge sheet or a court attendance notice with the Court, will give prosecutors more flexibility by allowing a court attendance notice to be issued by a prescribed prosecutor "in the field".

For example, a police officer who observes an offence being committed will be able to serve the alleged perpetrator then and there with a court attendance notice, which requires that person to attend court at the place and on the day and time specified in the notice.

This will be a much more efficient process, as a police officer will no longer be required to track down an alleged perpetrator at a later date in order to serve a summons to attend court on them.

A prosecutor will then have up to seven days to file with the Court, either a copy of the court attendance notice or the prescribed information which is detailed on a court attendance notice. This process will commence proceedings.

It should be noted that there is the option for the prescribed information or a copy of the actual court attendance notice, to be filed by the prosecutor with the court. This recognises that in the future the transfer of electronic data both in the court and between the court, prosecutors and defence council will be more commonplace.

If a prosecutor has commenced proceedings by filing a court attendance notice, he or she is then required to file a charge sheet for the offence no later than 21 days before the court attendance date specified in the notice.

The charge sheet will:

- specify the offence;
- identify the statutory provisions that create the offence;
- state the particulars of the defendant's alleged conduct that constitutes that offence; and
- if the offence relates to property, the estimated value of the property.

Proceedings may also be commenced by filing a charge sheet with the Court.

The Bill also contains provisions that allow for both a court attendance notice and charge sheet to be withdrawn without the leave of the Court at or prior to a defendant's first appearance, or with the leave of the Court after that time period.

These reforms will introduce more flexibility into the prosecution process and reduce the time that elapses from the date of charging to the completion of the matter. In combination with the new requirements for disclosure that I will come to in a moment, these changes will create significant efficiencies in the Court and contribute to a fairer and more efficient justice system for Tasmania

More timely disclosure

The more timely disclosure of information for summary offences is another significant piece of reform which is introduced by this Bill. Currently under the *Justices Act 1959*, prosecuting authorities are not required to disclose any information to the Defendant for summary matters. Any disclosure that currently occurs is because of informal arrangements that have been established by Tasmania Police.

In contrast, the Bill requires the preliminary disclosure of:

- the charge sheet;
- a summary of the material facts;
- a copy of the record of interview; and
- where the prosecutor is a police officer or the Director of Public Prosecutions, the defendant's criminal history.

With these reforms an adjournment on the first appearance in Court will become discretionary, to be granted or refused by the Magistrate according to the particular circumstances. This will ensure that the first appearance of a defendant can be meaningful, and in combination with early disclosure, is likely to have a number of benefits, including reduced court backlogs and fewer delays and adjournments.

The requirement for police to disclose material at an earlier date will help defendants be ready to plead earlier and with full knowledge of the case against them.

The is because defendants will be able to use the information disclosed to them to obtain legal advice prior to their first appearance before the Court. This will increase the likelihood of a defendant being able to enter a plea of either guilty or not guilty on that appearance.

In short, this is likely to result in defendants being able to have their matters finalised more efficiently and quickly than is currently the case and the Court will need fewer resources to resolve these matters.

The average total number of attendances per finalisation of matters in the Criminal and General Division jurisdiction of the Court has increased in recent years, from an average of 3.8 attendances per finalisation in 2011-12, to an average of 4.4 attendances in 2017-18.

These changes aim to ensure that every appearance in the Criminal and General Division of the Magistrates Court will be a meaningful one and it is expected to reduce not only the time that will elapse from the date of charging to the completion of the matter, but also the average number of attendances per finalisation.

Where a defendant has received a court attendance notice or bail notice, preliminary disclosure information is to be provided to the Defendant at least 21 days before the court date, which is the Defendant's first appearance before a Magistrate on that particular matter. However, this does not apply where the Defendant's first attendance before the Court occurs following his or her arrest for an offence, or to facilitate the making of a protective order, such as family violence order or restraint order. In these

circumstances, the information is to be provided at or as soon as reasonably practicable after the first attendance.

Additionally, if a defendant pleads not guilty, the prosecutor must provide a full summary offence brief at least 28 days before a case management hearing or before the hearing of the charge. The contents of a full summary offence brief are extensive.

Disclosure provisions in relation to indictable offences remain as they are under the *Justices Act 1959,* except that the material required by the preliminary brief is now provided prior to a first appearance.

The Bill also includes important safeguards for victims which ensure that "sensitive material", such as obscene or indecent material, or a recording of an alleged victim of a sexual offence, are not required to be provided to the Defendant but must be made available for viewing under controlled circumstances.

The Bill also mirrors provisions in the *Criminal Code* that require a defendant to disclose an intention to use admissible opinion evidence so that the prosecution has time to consider this evidence, and if it considers necessary, arrange for the examination of the Defendant by another person qualified to give admissible opinion evidence.

Formalising Case Management Hearings

The Bill sets out the procedures for dealing with a summary offence, including provisions relating to case management and sentence indication.

Case management hearings have a number of benefits, including assisting with the identification of the issues in dispute, exploring the possibility of finalising charges other than by way of a hearing, enabling hearing times to be more accurately assessed and determining what evidence can be provided by affidavit or by agreement.

While case management hearings are already current practice in the Court of Petty Sessions, as it is currently known, the Bill will provide a specific statutory basis for this practice for the first time. The Bill also provides a statutory basis for victims to make a statement to the Court, before the Court is permitted to provide to the Defendant an indication of the sentence.

Increasing flexibility for Court attendance by audio or audio visual link

The Bill provides for the Court on its own motion, or for a party or witness to proceedings to apply to attend court via an audio or audio visual link. Before the Court is entitled to make the order directing a person to attend proceedings in this manner, the Court is to take into account any difficulties that the person might have in attending court in person, and whether the interests of justice would be affected by allowing or refusing to allow such a person to attend by audio or audio visual link.

This is a general provision that is designed to improve the flexibility and efficiency in the courts. Examples of when this provision might be useful include where an expert witness, who is located interstate, is unable to attend court, or where a party is unable to attend court because of illness.

Preliminary proceeding evidence

The Magistrates Court conducts preliminary proceedings, which allow for the initial examination and cross-examination of witnesses in indictable crimes. The *Justices Act 1959* contains no prohibition on the publication of information relating to preliminary proceedings.

A new measure which is introduced by the Bill is a prohibition on the publication of information relating to preliminary proceedings without the express permission of the Court. Evidence given at preliminary proceedings may be inadmissible in a trial, and the publication of such information may prejudice the possibility of a person receiving a fair trial.

The Bill also requires preliminary proceedings to be conducted in a court that is closed to the public. The general rule is that criminal matters in the Magistrates Court are conducted in a court that is open to the public, and there is currently no requirement under the *Justices Act 1959* to conduct preliminary proceedings in a closed court.

However, examination of a witness in preliminary proceedings is usually limited to confined points and the justice who conducts preliminary proceedings usually has nothing to decide.

Closed courts will allow the exploration of evidence that may be controversial without the risk of the evidence becoming public knowledge (for example, prior convictions for the same offence that may be inadmissible at trial). This was a provision fully supported by the Chief Magistrate, the Director of Public Prosecutions and the Law Society as the publication of evidence given at a preliminary proceedings hearing has the potential to prejudice the fair trial of an accused person.

Increasing the jurisdiction of the Magistrates Court - Minor Crimes and Electable Offences

The Magistrates Court generally deals with summary offences, such as the stealing of property with a low value. These are comparatively less serious criminal offences that are usually prosecuted by Tasmania Police. By contrast, the Supreme Court generally deals with more serious indictable offences that are prosecuted by the Director of Public Prosecutions.

In some circumstances, the Magistrates Court can deal with indictable offences. The Bill sets out the procedures for the Court when dealing with an indictable offence that is either automatically treated as a summary offence or which is categorised as one where the Defendant may elect to have it dealt with summarily.

The most significant area of reform in this area is an increase in the property value thresholds. Under the Bill, the property value threshold for indictable offences which are treated as summary offences increases from $5,000 to $20,000, and for electable property offences the threshold increases from $20,000 to $100,000. These figures are more in line with current property values.

The Bill also expands the number of indictable offences that can be dealt with by the Magistrates Court if the Defendant chooses.

The list of crimes that fall into these categories has also been reviewed and updated to correct anomalies and to ensure they reflect the expectations of contemporary society. For example, the Bill sets out the circumstances in which the crime of fraud as a clerk or servant can be dealt with in the Magistrates Court.

Tightening procedure for appeal against bail applications

The Bill also sets out the procedures for dealing with an indictable offence where the Defendant will be committed for trial in the Supreme Court.

Provisions for the appeal and review of orders made by the Court are also provided for under the Bill. These provisions largely replicate the existing appeal and review provisions under the *Justices Act 1959*.

One change that is included in this Bill is a requirement for a formal application to be made for an appeal against bail, with submissions, before an appeal can be made to the Supreme Court. This change aims to address an issue raised by the Chief Justice where at present an appeal to the Supreme Court can be made without a formal application.

In addition to the Bills which are before the House today, several pieces of supporting rules and legislation are being developed to support this Bill, which will be finalised prior to commencement of the Bill.

The *Magistrates Court (Criminal and General Division) Rules* are being developed to provide for procedural matters under the new legislation.

A further consequential amendment Bill will also be developed to make a myriad of minor but important changes, such as changing out-dated references to the governing Act and the Court in all other Tasmanian legislation.

It is envisaged that an implementation period of at least 12 to18 months will be required before the Bill and its cognate Bills can commence operation. In order to ensure that there is a smooth transition to the new regime established by this package of Bills, extensive consultation with key government and non-government stakeholders will be undertaken during this period.

The Government will also continue to give consideration to any further or related legislative reforms that may support a more efficient, fair and effective justice system for Tasmania, including potential changes to the current process for preliminary proceedings and the reform of bail law in Tasmania.

The Government may also consider whether it is appropriate to commence a number of discrete changes in the Bill at an earlier time if this is considered necessary to address backlog issues in the Supreme Court. These might include the changes to jurisdictional boundaries that will allow additional matters to be heard in the Magistrates Court and the changes to bail applications that I have just outlined.

I mentioned earlier the range of current initiatives the Government is undertaking to support and complement the new legislation, and I would like to briefly discuss those initiatives now.

The Government has provided significant funding in the 2019-20 State Budget for a range of initiatives to support an efficient Court system and improve access to justice in Tasmania.

These include significant additional funding for an additional Supreme Court judge, a new Magistrate for southern Tasmania, a replacement Magistrate for northwest Tasmania, additional funding for Supreme Court Acting judges, the Legal Aid Commission of Tasmania and the Office of the Director of Public Prosecutions, as well as significant new funding for Justice Connect.

The Government has provided $24.5 million over four years from 2019-20 for Justice Connect, to deliver an ICT system that will support an efficient Court and Corrections System, enhance efficiencies and improve policy outcomes through better information sharing, access to timely and trusted information and integration across government with relevant critical ICT systems, including systems within the Department of Police, Fire and Emergency Management.

All of these changes will support increased access to a more efficient, fair and effective justice system in Tasmania.

Madam Speaker, I commend the Bill to the House.