

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL (No. 2)
2023**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Repeal of Act

PART 2 – CORONERS ACT 1995 AMENDED

4. Principal Act
5. Section 3 amended (Interpretation)
6. Section 24 amended (Jurisdiction of coroner to hold inquest into a death)
7. Section 24B inserted
 - 24B. Procedure where person charged with an offence before inquest
8. Section 25 amended (Procedure at inquest where person charged with an offence)
9. Section 26B inserted
 - 26B. Inquests relating to family violence
10. Section 72AA inserted
 - 72AA. Transitional provisions consequent on commencement of *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023*

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

11. Principal Act
12. Section 4A inserted
 - 4A. Appointment of Crown Law officers
13. Schedule 1 amended (*Criminal Code*)

PART 4 – LEGAL PROFESSION ACT 2007 AMENDED

14. Principal Act
15. Section 359 amended (Minister to approve funding)

PART 5 – POLICE OFFENCES ACT 1935 AMENDED

16. Principal Act
17. Section 12 amended (Prohibited language and behaviour)
18. Section 35 amended (Common assault and aggravated assault)

PART 6 – VARIATION OF TRUSTS ACT 1994 AMENDED

19. Principal Act
20. Section 5 amended (Application for variation of trust)

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL (No. 2)
2023**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*
16 November 2023

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Coroners Act 1995*, the *Criminal Code Act 1924*, the *Legal Profession Act 2007*, the *Police Offences Act 1935* and the *Variation of Trusts Act 1994*

Be it enacted by Her 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 (No. 2) 2023*.

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 2

Part 1 – Preliminary

2. Commencement

- (1) Except as provided in this section, the provisions of this Act commence on the day on which this Act receives the Royal Assent.
- (2) Part 2 commences on a day to be proclaimed.

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

PART 2 – CORONERS ACT 1995 AMENDED

4. Principal Act

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

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *detention centre* the following definition:

family violence has the same meaning as in the *Family Violence Act 2004*;

6. Section 24 amended (Jurisdiction of coroner to hold inquest into a death)

Section 24(1) of the Principal Act is amended as follows:

- (a) by omitting “section 25” and substituting “sections 24B and 25”;
- (b) by inserting the following paragraph after paragraph (ea):
 - (eb) the coroner suspects that family violence has materially contributed to the death of the deceased; or

*No. 73 of 1995

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 7

Part 2 – Coroners Act 1995 Amended

7. Section 24B inserted

After section 24A of the Principal Act, the following section is inserted in Part 5:

24B. Procedure where person charged with an offence before inquest

- (1) This section applies to a death, a fire or an explosion if –
 - (a) the coroner intends to hold an inquest in relation to the death, fire or explosion; and
 - (b) before that inquest commences, a person has been charged before justices with one or more of the following offences:
 - (i) the murder of the deceased;
 - (ii) the manslaughter of the deceased;
 - (iii) the infanticide of the deceased;
 - (iv) causing grievous bodily harm to the deceased;
 - (v) causing the death of the deceased by dangerous driving;

Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023

Part 2 – Coroners Act 1995 Amended

s. 7

- (vi) dangerous driving, where the driving caused an accident that resulted in the death of the deceased;
 - (vii) an offence under section 32(1) of the *Traffic Act 1925* arising out of an accident that resulted in the death of the deceased;
 - (viii) arson in relation to the fire;
 - (ix) unlawfully causing the fire;
 - (x) unlawfully causing the explosion.
- (2) The coroner may decide not to start an inquest in respect of a death, or a fire or an explosion, to which this section applies if, after the conclusion of the criminal proceedings for the relevant offence under subsection (1)(b), the coroner is of the opinion that there is no longer sufficient cause to hold the inquest.
- (3) An inquest that is held in respect of a death, or a fire or an explosion, to which this section applies, must not contain any finding which is inconsistent with the facts as determined during the criminal

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 8

Part 2 – Coroners Act 1995 Amended

proceedings held in respect of the
relevant offence under subsection (1)(b).

**8. Section 25 amended (Procedure at inquest where
person charged with an offence)**

Section 25 of the Principal Act is amended by
omitting subsection (4) and substituting the
following subsection:

- (4) If, in the course of the criminal
proceedings for an offence referred to in
subsection (2), a person has been charged
in respect of the offence, the inquest, on
its resumption, must not contain any
finding which is inconsistent with the
facts as determined during those
proceedings.

9. Section 26B inserted

After section 26A of the Principal Act, the
following section is inserted in Part 5:

26B. Inquests relating to family violence

- (1) Despite section 24B(2) and section 25(3),
a coroner may only decide not to hold, or
resume, an inquest pursuant to
section 24(1)(eb) into a death if –
- (a) the family violence, that the
coroner suspects materially
contributed to the death –

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

Part 2 – Coroners Act 1995 Amended

s. 9

- (i) is the subject of criminal proceedings in any court; or
 - (ii) has been referred to in connection with criminal proceedings in any court; and
 - (b) as a result of the facts as determined during the criminal proceedings, the coroner –
 - (i) no longer suspects that family violence materially contributed to the death; or
 - (ii) is satisfied that the contribution that family violence made to the death has been addressed and it would not be in the public interest to hold the inquest.
- (2) For the avoidance of doubt, subsection (1) applies to holding, or resuming, an inquest pursuant to section 24(1)(eb) into a death even if another provision in section 24(1) also applies in respect of the death.

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 10

Part 2 – Coroners Act 1995 Amended

10. Section 72AA inserted

After section 72 of the Principal Act, the following section is inserted in Part 8:

72AA. Transitional provisions consequent on commencement of *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023*

- (1) Section 24, as in force immediately before the commencement of Part 2 of the *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023*, applies to a death that occurred before the commencement of that Part.
- (2) Section 25, as in force immediately before the commencement of Part 2 of the *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023*, applies to an inquest that has commenced before the commencement of that Part.
- (3) For the avoidance of doubt, section 24B does not apply in respect of an inquest that has commenced before the commencement of Part 2 of the *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023*.
- (4) Section 26B does not apply in respect of a death that occurred before the commencement of that section.

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

Part 3 – Criminal Code Act 1924 Amended

s. 11

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

11. Principal Act

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

12. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted:

4A. Appointment of Crown Law officers

- (1) The Governor may appoint a person to institute or prosecute criminal proceedings in the Supreme Court.
- (2) On the commencement of this section, section 5 of the *Australian Courts Act 1828* ceases to be in force and have effect in respect of this State.
- (3) For the avoidance of doubt, the fact that section 5 of the *Australian Courts Act 1828* ceases to be in force and have effect on the commencement of this section does not affect the validity of a person appointed under that section before the commencement of this section.

*No. 69 of 1924

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 13

Part 3 – Criminal Code Act 1924 Amended

13. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting section 119;
- (b) by inserting the following section after section 130G:

131. Production or possession of bestiality product

- (1) In this section –

bestiality product has the same meaning as in section 71 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*;

produce includes make, film, print, photograph, record and otherwise reproduce.

- (2) A person who –

- (a) produces, or does any thing to facilitate the production of, a bestiality product; and
- (b) knows, or ought to have known, that the product is or will be a bestiality product –

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

Part 3 – Criminal Code Act 1924 Amended

s. 13

is guilty of a crime.

Charge: Producing bestiality
product.

(3) A person who –

(a) is in possession of a
bestiality product; and

(b) knows, or ought to have
known, that the product is
a bestiality product –

is guilty of a crime.

Charge: Possessing bestiality
product.

(c) by inserting in section 371A “or a crime
under section 170A or relating to family
violence within the meaning of the
Family Violence Act 2004,” after “XX,”.

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 14

Part 4 – Legal Profession Act 2007 Amended

PART 4 – LEGAL PROFESSION ACT 2007 AMENDED

14. Principal Act

In this Part, the *Legal Profession Act 2007** is referred to as the Principal Act.

15. Section 359 amended (Minister to approve funding)

Section 359 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) The Minister may approve, under this section, an amount to be paid from the Guarantee Fund that results in the Guarantee Fund being less, or remaining less, than the amount at which it is required to be maintained, under section 358(3)(b), at the time of the approval, if the amount in the Guarantee Fund after the payment is made remains more than the amount specified in section 358(3)(a).

*No. 24 of 2007

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

Part 5 – Police Offences Act 1935 Amended

s. 16

PART 5 – POLICE OFFENCES ACT 1935 AMENDED

16. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

17. Section 12 amended (Prohibited language and behaviour)

Section 12(1)(c) of the Principal Act is amended by omitting “obscene, offensive, or blasphemous language” and substituting “obscene or offensive language”.

18. Section 35 amended (Common assault and aggravated assault)

Section 35 of the Principal Act is amended as follows:

(a) by omitting from subsection (5) “subsection (5A)” and substituting “subsections (5A) and (5B)”;

(b) by omitting subsection (5B) and substituting the following subsections:

(5B) A complaint made for the purposes of the *Justices Act 1959* in relation to one of the following

*No. 44 of 1935

*Justice and Related Legislation (Miscellaneous Amendments) Act
(No. 2) 2023
Act No. of 2023*

s. 18

Part 5 – Police Offences Act 1935 Amended

offences may be made at any time after the date of the offence:

- (a) an offence under subsection (3); or
 - (b) an offence under subsection (1) if, under subsection (4), the complaint for the same assault was amended from a complaint under subsection (3) to a complaint under subsection (1).
- (5C) The amendments to this section effected by the *Justice and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2023* apply in respect of proceedings for an offence –
- (a) whether or not that offence was committed before or after the commencement of section 18 of that Act; and
 - (b) whether or not a limitation period previously applying to the offence had expired before the commencement of section 18 of that Act.

**PART 6 – VARIATION OF TRUSTS ACT 1994
AMENDED**

19. Principal Act

In this Part, the *Variation of Trusts Act 1994** is referred to as the Principal Act.

20. Section 5 amended (Application for variation of trust)

Section 5 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) In this section –

original purposes, in relation to a charitable trust, means the purposes for which the property of the trust is being required, or permitted, to be applied, regardless of whether those purposes of the trust have been varied or regulated previously.

*No. 52 of 1994