

**DRAFT** SECOND READING SPEECH  
HON ELISE ARCHER MP  
*Justices (Validation) Bill 2021*

\*check Hansard for delivery\*

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

In 1988 and 2004 respective governments introduced Tasmania's restraint order and family violence order frameworks under the *Justices Act 1959* and the *Family Violence Act 2004*.

It has been longstanding policy in Tasmania under these frameworks that an applicant or respondent in the Magistrates Court may apply for a summons to compel a witness to attend Court or provide evidence relevant to the proceedings. As Attorney-General and Minister for Justice, I understand that summonses are issued frequently.

It recently became apparent that the *Justices Act 1959* is problematic in its provision of power for justices in the Magistrates Court to issue these summonses because this power is not specifically provided for. It is a technical issue of statutory interpretation that requires urgent legislative amendment. This is why I have acted quickly to introduce this Bill.

The *Justices (Validation) Bill 2021* will amend the *Justices Act 1959* to rectify this technical issue at law. The Bill also validates previous summonses and warrants purportedly issued in these proceedings under the *Justices Act 1959*.

I will now turn to the clauses of this Bill.

Clause 3 of the Bill provides for the validation of summonses and warrants purportedly issued pursuant to section 41 of the *Justices Act 1959*.

The intention of this provision is to validate only those summonses and warrants that would have been validly issued if the justice had had the relevant power when they issued them and lawfully exercised that power.

The validation of warrants is required as some persons may have been convicted for failing to appear in response to a summons pursuant to section 42 of the *Justices Act 1959*. Moreover, witnesses may have relied, in good faith, on the summonses when giving or producing otherwise confidential evidence to the Court.

It is not proposed for clause 3 to be inserted as an amendment in the *Justices Act 1959*. The *Justices Act 1959* is scheduled for repeal upon the commencement of the *Magistrates Court (Criminal and General Division) Act 2019*. This Act is scheduled to commence in late 2022 upon the completion of the remainder of the related legislation to implement the new Magistrates Court Criminal and General Division.

In other words, if the validation clause was inserted into *Justices Act 1959*, it would no longer exist upon the repeal of that Act, and the invalidity issue that the clause validated would spring back to life.

Mr Speaker, clauses 5 and 6 of the Bill provide justices with the sufficient express powers required to issue summonses in restraint order and family violence order proceedings, to overcome the issue that has arisen.

The clauses will amend:

- the general powers of a justice at section 23 of the *Justices Act 1959*; and
- the specific powers of a justice to summon a witness at section 41 of the *Justices Act 1959*.

The Bill remedies this issue, as a matter of priority, to ensure that proceedings are not frustrated due to the Court's lack of power.

Mr Speaker, as I mentioned earlier, the *Magistrates Court (Criminal and General Division) Act 2019* will repeal the *Justices Act 1959*.

The *Magistrates Court (Criminal and General Division) Act 2019* and related legislation provides for a new witnesses and production of documents framework that will replace the existing framework under the *Justices Act 1959* and address this recently identified legislative gap.

Given the *Magistrates Court (Criminal and General Division) Act 2019* will not commence until late 2022, this legislative amendment to ensure justices have sufficient power to issue summonses, and then warrants if necessary, in restraint order and family violence order proceedings is urgently required.

Mr Speaker, this is an important Bill to rectify this technical issue at law and I wish to thank the Department for Justice and the Office of Parliamentary Counsel for their work to urgently deliver this Bill to the Parliament.

I commend the Bill to the House.