

CLAUSE NOTES

Justice and Related Legislation (Further Miscellaneous Amendments) Bill 2009

Clause 1: Short Title

Clause 2: Commencement dates The Residential Tenancy change is to have effect from the commencement of the new water and sewerage laws and the changes to committal proceedings and sentencing will commence on proclamation as there will be a need for preliminary work including practice directions before they can commence.

Clause 3: Automatic repeal of Act after commencement of provisions

Clause 4: Principal Act – *Corrections Act 1997*

Clause 5: Inserts definition of “eligible persons register”.

Clause 6: Amends section 72 to replace “victims register” with “eligible persons register” and to provide for the parent or guardian of a victim who is a minor or a person with a mental incapacity to be notified and to provide a written statement on the victim’s behalf.

Clause 7: Inserts new sections 87A and 87B which provide for the keeping of an eligible persons register and set out who may apply to be listed on the register and other related matters and the information that may be released by the Secretary to a person on the eligible persons register.

Clause 8: Principal Act – *Criminal Code Act 1924*

Clause 9: Amends section 400 by inserting a new subsection to provide that the Associate Judge of the Supreme Court is

also an Associate Judge of the Court of Criminal Appeal and making a consequential amendment to section 410

Amends section 401 by inserting a new paragraph providing for an appeal by the prosecution against a stay of proceedings with leave of the Court.

Inserts a new section 418A setting out the powers of the Associate Judge in the Court of Criminal Appeal.

Clause 10: Principal Act – *Criminal Law (Detention and Interrogation) Act 1995*

Clause 11: Inserts definitions of “correctional officer” and “reception prison” in section 3.

Clause 12: Amends section 16 to provide that a custody officer may transfer a person in custody to a correctional officer of a reception prison and that when that has been done the custody officer has no further duties under the Act except for the duties imposed by section 4.

Clause 13: Inserts a new section 17 which sets out the duties of the correctional officer in relation to a person in custody which are to treat the person in accordance with any correctional standing orders made by the Director of Corrective Services and to transfer, or permit the transfer of the person in custody on request to a police officer or a custody officer.

Clause 14: Principal Act – *Justices Act 1959*

Clause 15: Amends section 55(5) to reduce the time limit between first appearance and committal to the Supreme Court from 7 weeks to 4 weeks.

Clause 16: Inserts a new section 72AB in the Act which provides for an offence under section 105 of the *Criminal Code Act 1924* that relates to an offence under the *Traffic Act 1925*, the *Vehicle and Traffic Act 1999* or the *Road Safety (Alcohol and Drugs) Act 1970* in the circumstances set out in the section to be dealt with as a summary offence.

Clause 17: Principal Act – *Magistrates Court (Civil Division) Act 1992*

Clause 18: Substitutes a new section 28 which excepts a minor civil claim from the general right of appeal and provides that a minor civil claim may only be appealed to the Supreme Court if the magistrate lacked jurisdiction or exceeded his or her jurisdiction or if the party was denied natural justice. The section also provides for an appeal to the Supreme Court on any other ground if a judge of the Supreme Court gives leave. Following any appeal from a minor civil claim the judge may make any orders he or she considers appropriate.

Clause 19: Principal Act – *Mental Health Act 1996*

Clause 20: Inserts a definition of “eligible persons register” in section 3 and omits the definition of “victims register”

Clause 21: Replaces “victims register” with “eligible persons register” in section 72P

Clause 22: Replaces “victims register” with “eligible persons register” in section 72Q

Clause 23: Replaces “victims register” with “eligible persons register” in section 72R

Clause 24: Replaces “victims register” with “eligible persons register” and replaces “notify any victim registered” with “notify any

person recorded on the eligible persons register” in section 73P.

Clause 25: Principal Act – *Police Powers (Surveillance Devices) Act 2006*

Clause 26: Substitutes a new section 8 for the existing section to clarify that a Magistrate may issue a surveillance device warrant that authorises the use of a surveillance device only within Tasmania.

Clause 27: Inserts certain words in subsection (1)(c) of section 9 for consistency with paragraph (1)(b) and clarifies that an application is to be made to a Magistrate in relation to the use of a surveillance device only within Tasmania.

Clause 28: Principal Act – *Residential Tenancy Act 1997*

Clause 29: Amends section 17(4) to replaces the word “council” in the definition of “water consumption charge” with “regulated entity, within the meaning of the *Water and Sewerage Industry Act 2008*”

Clause 30: Principal Act – *Sentencing Act 1997*

Clause 31: Substitutes a new section 24 intended to bolster the effect of suspended sentences by enabling the court to impose community service, probation and rehabilitation obligations by way of conditions attached to a single order suspending a sentence of imprisonment rather than by making multiple or combined orders in respect of a single offence.

Clause 32: Amends section 27: to enable the prosecution or complainant to make an oral application to a court which finds a person guilty of an offence punishable by imprisonment committed during the operational period of

the suspended sentence, while the offender is before the court in relation to the new offence; and to introduce a presumption of activation of a sentence held in abeyance and the offender imprisoned, unless the offender can satisfy the court that it would be unjust in the circumstances which have arisen after the order suspending the term of imprisonment was made.

Clause 33: Amends section 36: by introducing a new process whereby an offender who is subject to a community service order will be brought before the court on an application, rather than by complaint, to answer to the court on any allegation that they are in breach of a condition of the order, and this process is intended to achieve a certain level of streamlining of the process for bringing similar breaches before the court; and it inserts a new section 36AA which restates the offence provisions formerly in section 36(1)(b) and (c) which have been separated by this amendment Act from the breach of condition provision in former section 36(1)(a).

Clause 34: Amends section 42: by introducing a new process whereby an offender who is subject to a probation order will be brought before the court on an application, rather than by complaint, to answer to the court on any allegation that they are in breach of a condition of the order, and this process is intended to achieve a certain level of streamlining of the process for bringing similar breaches before the court; and it inserts a new section 42A which restates the offence provision formerly in section 42(1)(b) which has been separated by this amendment Act from the breach of condition provision in former section 42(1)(a).

Clause 35: Amends s 54A by introducing a new process whereby an offender who is subject to a rehabilitation program order will be brought before the court on an application, rather

than by complaint, to answer to the court on any allegation that they are in breach of the order; and this process is intended to achieve a certain level of streamlining of the process for bringing similar breaches before the court.

Clause 36: Inserts a reference to compensation for personal “injury” into section 68(9) making the subsection consistent with subsection (1).

Clause 37: Principal Act – *Supreme Court Civil Procedure Act 1932*

Clause 38: Amends section 197(1)(f) to reflect that the Associate Judge’s role in the appellant jurisdiction of the court will not include the determination and hearing of the listed matters.