

## CLAUSE NOTES

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

#### **Part 1 – Preliminary**

**Clause 1:** Short Title

**Clause 2:** Commencement – Apart from Part 5 (Civil Liability Act 2002) which is to be taken to have commenced on 15 December 2005 the Act will commence on Royal Assent.

#### **Part 2 – *Administration and Probate Act 1935***

**Clause 3:** Principal Act

**Clause 4:** Amends the definition of ‘Probate Rules’ in section 3 to allow a majority of the judges to make rules, and also inserts at the end of section 3 a provision confirming that any rules made under this Act before the commencement of this Bill are to continue in force.

**Clause 5:** Amends section 40 to remove an obsolete reference to another Act.

#### **Part 3 – *Anti-Discrimination Act 1998***

**Clause 6:** Principal Act

**Clause 7:** Inserts a subsection in section 109 to allow for the regulations made under the Act to provide for fees payable in respect of any application under the Act (other than under Div 4 of Part 6).

#### **Part 4 – *Bills of Sale Act 1900***

**Clause 8:** Principal Act

**Clause 9:** Amends section 33 to allow a majority of the judges to make rules of court.

#### **Part 5 – *Civil Liability Act 2002***

**Clause 10:** Principal Act

**Clause 11:** Amends section 28B to clarify that that section does not prevent the award of damages for the loss of gratuitous services under the Fatal Accidents Act 1934.

**Part 6 – *Civil Process Act 1870***

**Clause 12:** Principal Act

**Clause 13:** Repeals section 2 and substitutes a new section 2 with updated language, to allow a majority of the judges to make rules, and also inserts a provision confirming that any rules made under this Act before the commencement of this Bill are to continue in force.

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

**Clause 14:** Principal Act

**Clause 15:** Inserts new section 50A to give a right of appeal to the Court of Criminal Appeal from a reporting order made under the Act by a judge. The Court of Criminal Appeal may affirm, vary or quash the order. The new provision clarifies that this appeal right does not interfere with any other rights of appeal the person may have.

**Part 8 – *Criminal Code Act 1924***

**Clause 16:** Principal Act

**Clause 17:** Amends section 12 to achieve 2 outcomes:

- to allow a majority of the judges to make rules of court, and
- to allow rules of court to be made governing procedures of the court applying at any point of time after committal to the Supreme Court.

**Clause 18:** Amends Schedule 1 of the Act to make five minor editorial changes:

(a) inserting a semicolon at the end of paragraph (d) of the definition of ‘female genital mutilation’ in section 1;

(b) omitting the word ‘it’ from section 26A(1)(b) (Entry on premises for purposes of arrest);

(c) substituting capital letters for lower case letters at the beginnings of the words ‘law officer’ in section 328 (Duty to furnish copy of indictment, &c.);

(d) omitting subparagraph (iii) relating to the obsolete alternative charge of ‘assault with intent to rob’ from section 339A (Robbery, &c.)

(e) correcting the definition of ‘prescribed period’ in s.368A(8) to allow the period to run from when the defendant is informed of the requirements by a judge, rather than when they are committed for trial.

**Part 9 – *Fatal Accidents Act 1934***

**Clause 19:** Principal Act

**Clause 20:** Omits the definition of ‘partner’ and substitutes a definition that does not include requirements that a partner has been cohabiting with the deceased or is financially dependent on the deceased.

**Clause 21:** Amends section 10(1)(b) to omit the amount ‘\$10 000’ and substitute ‘\$250 000’.

**Clause 22:** Repeals Schedule 1 of the Act.

**Part 10 – *Freedom of Information Act 1991***

**Clause 23:** Principal Act

**Clause 24:** Inserts new section 32A to define ‘Director of Public Prosecutions’ and add an exemption from the Act for material in the possession of the DPP or a member of his staff where that material relates to the functions of the Director of Public Prosecutions under the DPP Act.

**Part 11 – *Guardianship and Custody of Infants Act 1934***

**Clause 25:** Principal Act

**Clause 26:** Amends section 19 to allow a majority of the judges to make rules of court.

**Part 12 – *Health Complaints Act 1995***

**Clause 27:** Principal Act

**Clause 28:** Amends section 15 by omitting subsection (3) which prevents investigators under the Act also being appointed as conciliators under the Act.

**Part 13 – *Judicial Review Act 2000***

**Clause 29:** Principal Act

**Clause 30:** Amends Schedule 1 to add a decision under the Coroners Act 1995, and a decision made by the Tasmanian Industrial Commission or a member of the Tasmanian Industrial Commission to the list of decisions to which the Act does not apply. Both have their own review/appeal processes.

**Part 14 – *Juries Act 2003***

**Clause 31:** Principal Act

**Clause 32:** Amends section 67 to allow a majority of the judges to make rules of court.

**Part 15 – *Justices Act 1959***

**Clause 33:** Principal Act

**Clause 34:** Amends section 124 to allow a majority of the judges to make rules of court.

**Part 16 – *Landlord and Tenant Act 1935***

**Clause 35:** Principal Act

**Clause 36:** Amends section 49 to allow a majority of the judges to make rules of court.

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

**Clause 37:** Principal Act

**Clause 38:** Amends section 31A to allow the Magistrates Court Rules Committee to make specific rules for use in enforcement proceedings.

**Part 18 – *Public Trustee Act 1930***

**Clause 39:** Principal Act

**Clause 40:** Amends section 75 to allow a majority of the judges to make rules of court.

**Part 19 – *Sentencing Act 1997***

**Clause 41:** Principal Act

**Clause 42:** Repeals section 27Y and replaces it with a new section that will allow a series of ongoing extensions to the operation of Part 3A of the Act (dealing with the Court Mandated Drug Diversion program).

**Part 20 - Telecommunication (Interception) Tasmania Act 1999**

**Clause 43:** Principal Act

**Clause 44:** Amends section 3 to update the name of the Commonwealth Act from Telecommunications (Interception) Act 1979 to Telecommunications (Interception and Access) Act 1979.

**Clause 45:** Amends section 6(d)(i) to update a cross-reference to the Commonwealth Act by substituting “Part 2–8” for “Part IX”.

**Part 21 – Terrorism (Preventative Detention) Act 2005**

**Clause 46:** Principal Act.

**Clause 47:** Amends section 24(3)(b) to align with section numbering changes to the ASIO Act by substituting “section 34E” for “section 34D”.

**Part 21 – Trustee Act 1898**

**Clause 48:** Principal Act

**Clause 49:** Amends section 62 to allow a majority of the judges to make rule of court.