

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Justice and Related Legislation (Miscellaneous Amendments) Bill 2020*

*\*check Hansard for delivery\**

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

The Tasmanian Government is committed to ensuring that Tasmanians have access to an effective and efficient justice system. Consistent with that commitment this Bill proposes minor amendments to clarify or improve the operation of a number of Acts.

I will now outline the reason behind each of the proposed changes.

#### Amendments to the *Appeal Costs Fund 1968*

The Appeal Costs Fund is established under the *Appeal Costs Fund Act 1968* and its purpose is to assist in the payment of costs incurred by litigants through no fault of their own in certain circumstances, such as when decisions are upset on appeal or proceedings are rendered futile.

The Bill amends section 5(2) of the *Appeal Costs Fund 1968* to replace the words “(other than a complaint in respect of an indictable offence, including an indictable offence triable summarily by virtue of that Act)” with “(other than a conviction or order made in the Supreme Court)”.

This amendment will mean there is no distinction in fee payment between indictable offences, and indictable offences tried summarily and any other offence, other than a conviction or order made in the Supreme Court, and will support the efficiency of the Magistrate Court.

This amendment, requested by the Chief Justice, will allow the Court of Criminal Appeal to grant an indemnity certificate to a person who successfully appeals a conviction, except where the person has received legal aid from the Legal Aid Commission of Tasmania in relation to the appeal.

The Court of Criminal Appeal currently has the power to make an order for costs against the Crown under section 414 of the *Criminal Code*, when an appeal against a conviction succeeds and the appellant does not have legal aid from the Legal Aid Commission.

However, as a result of the decision of the Court of Criminal Appeal in *Templar v The Queen*, such orders for costs will not simply be made because the appellant succeeded in the appeal but rather, there needs to be an additional reason for making the order.

Indemnity certificates can currently be granted under section 10 of the *Appeal Costs Fund Act 1968* where an appeal is successful, but only if the appellant has not appealed in the lower court or the Supreme Court.

An indemnity certificate entitles the appellant to be paid from the Fund an amount equal to the appellant's taxed costs of the appeal in respect of which the certificate was granted, and an

amount equal to the costs incurred by the appellant in having those costs taxed, up to a maximum of \$300.

Granting an indemnity certificate would allow a successful appellant an additional reason for costs against the Crown, as the Court, in granting the indemnity certificate, has acknowledged that the appeal has succeeded.

The Bill amends section 10 of the Act to provide a power for the granting of an indemnity in criminal proceedings, but excludes appellants with legal aid from the Legal Aid Commission. This is consistent with an informal agreement between the Director of Public Prosecutions and the Legal Aid Commission, whereby costs are not sought by or against a legally aided person.

### Amendment to the Constitution Act 1934

This amendment provides that the oath of allegiance taken by members of the Tasmanian Parliament is deemed to relate to the Sovereign and their heirs and successors, so that it is unnecessary for members to take the oath again when a new Sovereign is appointed.

Currently, section 30 of the *Constitution Act 1934* requires a Member of Parliament to take an oath of allegiance before they can act or vote in Parliament. The wording of the oath in the *Promissory Oaths Act 2015* refers to 'Her Majesty the Queen'.

The Bill seeks to address an ambiguity as to whether Members of Parliament need to retake the oath of allegiance on appointment of the Queen's successor. The amendment to section 30 reflects a similar clause in the New South Wales *Constitution Act 1902*.

### Amendments to the Coroners Act 1995

Section 59B was inserted into the *Coroners Act 1995* by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2017* to allow a Coroner to order evidentiary material be rendered safe or inert, or destroyed or disposed of prior to conclusion or adjournment of an investigation.

The Bill repeals section 59B(2) and amends 59B(3) to allow the section to operate as originally intended by permitting the Coroner to dispose of evidentiary material on their own discretion upon application from the Commissioner of Police.

The section retains the requirement for a photographic or audio-visual record of the evidentiary material, and where practicable samples, to be taken before an order of the Coroner can be actioned. This amendment was requested by the Department of Police, Fire and Emergency Management (DPFEM) and is supported by the Magistrates Court.

### Amendments to the Criminal Code 1924

The Bill amends section 401 of the *Criminal Code*. Section 401 provides a right of appeal for a person convicted before a court of trial and a right of appeal for the Attorney-General. The right of appeal for the Attorney-General includes a right to appeal "against the sentence."

Currently, the provision refers to specific orders (namely probation orders) under the *Sentencing Act 1997*. Under this Bill, this is amended to ensure the provision refers to all orders made under this Act. The Bill also removes the reference to 'probation orders', a term no longer used following the commencement of the *Sentencing Amendment Act 2016*.

The Chief Justice has also requested a power be included in the *Criminal Code* for the Supreme Court to stay or suspend the operation of sentencing orders of all types pending the hearing and determination of a criminal appeal, consistent with the powers of a Magistrate, under section 109(1)(c) of the *Justices Act 1959*, to "stay proceedings on the order or suspend the operation thereof *ab initio*" or 'from the beginning'. The Bill amends sections 415 and 418 of the *Criminal Code* to provide this power and allow it to apply to both the 'court' and a single judge.

### **Amendment to the Evidence (Audio and Audio Visual Links) Act 1999**

The Bill amends section 6 of the *Evidence (Audio and Audio Visual Links) Act 1999* to broaden the use of audio link and audio visual links. The provision is currently limited to taking evidence or making submissions, however the potential application within the court system is much broader.

This has been demonstrated during the COVID-19 State of Emergency where the limited access to the Court has resulted in greater reliance on audio and audio visual methods to continue to meet the requirements of open justice. The proposed amendment will allow the use of audio link or audio visual link for any purpose the Court directs.

### **Amendments to the Industrial Relations Act 1984**

The Bill amends the *Industrial Relations Act 1984* to address an inconsistency in appeal rights in relation to unfair dismissal cases. Under section 70 of the Act, there is a right of appeal in relation to orders made by the Commission under section 31(1) after a hearing in respect of the mode, terms or conditions of employment, or any termination of employment.

However, there is no right of appeal where an application for unfair dismissal has been dismissed without hearing. The Bill ensures there is an appeal process for such decisions made under the Act.

The Bill also enables the President or other presiding member sitting on the Full Bench of the Industrial Relations Commission to make procedural orders or directions to facilitate the hearing of an appeal. Currently, such orders or directions must be made by all members of the Full Bench. In amending section 71, the Bill removes the logistical issues and unnecessary delays in hearing appeals associated with the current process.

This Bill removes the two-step appeal process under section 72 of the *Industrial Relations Act 1984*. This process is no longer required as the *Judicial Review Act 2000* has simplified the procedures for a review of administrative decisions.

The Bill amends section 72 to allow a person who wishes to challenge a decision of the Full Bench in respect of an appeal to apply to the Supreme Court for review on the basis of an error of law.

#### Amendment to the Oaths Act 2001

The Bill makes an amendment to section 12(2) of the *Oaths Act 2001* to reflect updated Commonwealth regulations. Under the current provision, a person is a Commissioner for Declarations if that person is authorised to practise as a member of a profession listed in a schedule to the Commonwealth *Statutory Declaration Regulations 1993*.

Under the proposed amendments, the provision will be updated to provide that a person is a Commissioner for Declarations if the person is a prescribed person under section 7 of the *Statutory Declarations Regulations 2018* of the Commonwealth; or a member of a group of persons declared by the Minister to be an occupational group for the purposes of that section.

#### Amendment to the Police Offences Act 1935

The Bill removes section 15CA(2) of the *Police Offences Act 1935*. The current provision allows the court to make an order for community service in accordance with Part 4 of the *Sentencing Act 1997*. This subsection is now redundant as it relates to community service orders which are no longer made under Part 4 of the *Sentencing Act 1997*.

#### Amendments to the Promissory Oaths Act 2015

The Bill updates the *Promissory Oaths Act 2015* in response to recent legislative changes. Section 9 of the Act makes reference to section 4 of the *Justices Act 1959*, which has been repealed.

The Bill replaces these references with the current legislative provision which is section 5 of the *Justice of the Peace Act 2018*. The Bill also repeals subsections (5)-(9) of section 9 of the *Promissory Oaths Act 2015*.

These provisions have become redundant as they refer to oaths for appointed 'extra-territorial justices,' appointed under repealed provisions of the *Justices Act 1959* and there are no equivalent provisions under the *Justices of the Peace Act 2018*.

#### Amendment to the Sex Industry Offences Act 2005

This amendment updates the definition of 'sexually transmissible infection' in the *Sex Industry Offences Act 2005*.

The current definition refers to guidelines which are no longer applicable. The definition has been agreed to by the Department of Health and is consistent with the Macquarie Dictionary definition for 'sexually transmitted disease.'

The definition also provides for other diseases to be added where they are identified as sexually transmissible.

In conclusion, the purpose of this Bill is to ensure legislation remains up-to-date and to correct minor errors that may become apparent after legislation has been operational for some time.

A number of such minor amendments have been identified in legislation administered by the Department of Justice as well as Acts administered by the Department of Premier and Cabinet and the Department of Police, Fire and Emergency Management.

This Bill makes minor amendments to those 10 identified Acts.

The amendments arise from requests from various stakeholders to clarify or improve the operation of particular pieces of legislation. Those stakeholders, as well as the legal profession, have informed the development of these amendments through targeted consultation.

Madam Speaker, I commend the Bill to the House.