

CLAUSE NOTES
Justice and Related Legislation (Miscellaneous Amendments) Bill 2021

PART 1 – PRELIMINARY

Clause 1: Short Title.

This clause provides that the Bill will be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2021*.

Clause 2: Commencement

This clause provides for the amendments to commence on the day on which the Act receives the Royal Assent.

Clause 3: Consequential Amendments

This clause provides for miscellaneous amendments to legislation as specified in Schedule 1.

Part 2 – REPEAL OF ACT

Clause 4: Repeal of Act

This clause provides for the automatic repeal of the Amendment Act one year after commencement, as the amendments are incorporated into the relevant amended legislation.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Principal Act – *Appeal Costs Fund Act 1968*.

Clause 1: Amends section 5(2) 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)”, so 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.

Clause 2: Amends section 10 to provide a power for the Court of Criminal Appeal to grant an indemnity certificate to a person who successfully appeals a conviction, except for where the person has received legal aid from Tasmania Legal Aid in relation to the appeal.

Principal Act – *Commissioner for Children and Young People Act 2016.*

Clause 1: Amends the references to 'the Legal Aid Commission of Tasmania' in section 14(1)(e) to 'Tasmania Legal Aid'.

Principal Act – *Constitution Act 1934.*

Clause 1: Amends section 30 to provide that the oath of allegiance taken by members of the Tasmanian Parliament is deemed to relate to the Sovereign and their heirs and successors. It is therefore unnecessary for members to take the oath again when a new Sovereign is appointed.

Principal Act – *Coroners Act 1995.*

Clause 1: Amends section 59B to allow the Coroner to make orders to dispose of evidentiary material at their discretion on 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.

Principal Act – *Crime (Confiscation of Profits) Act 1993.*

Clause 1: Amends section 28(3) of the Act to remove the words 'in an urgent case' in relation to the Supreme Court making a restraining order on an application without notice.

Clause 2: Amends the reference to 'the Legal Aid Commission of Tasmania' in section 193(2)(a) to 'Tasmania Legal Aid'.

Principal Act - *Criminal Code Act 1924.*

Clause 1: Makes the following amendments to schedule 1:

Amends section 401 to refer to any order made under the *Sentencing Act 1997*.

Amends sections 415 and 418 to provide a power to the Court and a Single judge of the Court to stay or suspend the operation of sentencing orders of all types pending the hearing and determination of a criminal appeal. This is 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'".

Principal Statute – *Criminal Rules 2006*

Clause 1: Amends the reference to 'the Legal Aid Commission of Tasmania' in Rule 22(1) to 'Tasmania Legal Aid'.

Principal Statute – *Dangerous Criminals and High Risk Offenders Act 2021*

Clause 1: Amends the definition of *relevant offender* under section 24 to clarify that it includes an offender serving concurrent sentences against a law of Tasmania and replaces references to 'consecutively' with the term 'cumulatively'.

Clause 2: Amends section 32(2)(b)(iii) to replace references to 'consecutively' with the term 'cumulatively'.

Principal Act - *Evidence (Audio and Audio Visual Links) Act 1999*.

Clause 1: Amends section 6(1) to broaden the use of audio link and audio visual links from evidence and submissions, to any purpose the court directs. Section 6(1) currently allows a court to direct that evidence be taken or submissions made by audio link or audio-visual link. Under the proposed amendment, the court will be able to direct the use of audio link or audio-visual link for any purpose.

Principal Act - *Evidence (Children and Special Witnesses) Act 2001*.

Clause 1: Amends the definition of 'affected child' in section 3 to include the crime of carjacking under section 240A of the Criminal Code.

Principal Act – *Forensic Procedures Act 2000*.

Clause 1: Amends the definition of 'serious offence' to include the offences under section 38B of the *Police Offences Act 1935* and sections 22A and 27AA of the *Misuse of Drugs Act 2001*.

Principal Act – *Industrial Relations Act 1984*

Clause 1: Amends section 70(1) to include a right of appeal against the dismissal of an application by the Industrial Relations Commissioner pursuant to section 21, where a former employee has applied to the Commission for a hearing under section 29.

Clause 2: Amends section 71 to enable the President, or other presiding member, sitting on the Full Bench of the Industrial Commission to make procedural orders or directions to facilitate the hearing of an appeal.

Clause 3: Amends section 72 to remove the two-step process to challenge a decision of the Full Bench of the Industrial Relations Commission. The two-step process is no longer required as the *Judicial Review Act 2000* has simplified the procedures for a review of administrative decisions. The amendment will provide that a person who wishes to challenge a decision of the Full Bench in respect of an appeal, may apply to the Supreme Court for review on an error of law.

Principal Act – *Interstate Transfer (Community-based Sentences) Act 2009.*

- Clause 1: Amends the definition of ‘community-based sentence’ to clarify its application to community correction orders under the *Sentencing Act 1997*.

Principal Act – *Justices Act 1959.*

- Clause 1: Inserts subsection (6) to section 55 to provide exemptions to the period of adjournment defined in subsection (5).
- Clause 2: Amends section 60(4) to clarify when a judge may not commit a defendant to trial in the Supreme Court in relation to preliminary proceedings.
- Clause 3: Amends section 74B to provide for the justice to determine the period of adjournment.

Principal Act – *Legal Aid Commission Act 1990*

- Clause 1: Amends the definition of Commission in section 3 to state that the Commission means Tasmania Legal Aid constituted under section 4.
- Clause 2: Amends the reference to ‘the Legal Aid Commission of Tasmania’ in section 4(1) to ‘Tasmania Legal Aid’
- Clause 3: Inserts section 53C to provide a saving and transitional provision relating to the change of name of the Commission.
- Clause 4: Inserts Schedule 5 that ensures any reference to Legal Commission of Tasmania (or other legislative reference) is a reference to Tasmania Legal Aid.

Principal Statute – *Legal Profession (Barristers) Rules 2016*

- Clause 1: Amends the reference to ‘the Legal Aid Commission of Tasmania’ in Clause 2(c) of Schedule 1 to ‘Tasmania Legal Aid’.

Principal Act – *Legal Profession Act 2007*

- Clause 1: Amends the definition of Legal Aid Commission in Section 4(1) to reference a definition for Tasmania Legal Aid.
- Clause 2: Amends the reference to ‘the Legal Aid Commission of Tasmania’ in section 361(2)(a) to ‘Tasmania Legal Aid’.

Principal Statute – *Magistrates Court (Children’s Division) Rules 2012*

- Clause 1: Amends the definition of ‘the Legal Aid Commission’ in Rule 3(1) to ‘Tasmania Legal Aid’.

Clause 2: Amends the reference to 'the Legal Aid Commission of Tasmania' in Rule 41 to 'Tasmania Legal Aid'.

Clause 3: Amends the references to 'the Legal Aid Commission of Tasmania' in Rule 42 to 'Tasmania Legal Aid'

Principal Act – *Oaths Act 2001*

Clause 1: Amends section 12(2) to reflect updated Commonwealth regulations. The amendment provides 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 this section.

Principal Act – *Police Offences Act 1935*

Clause 1: Repeals section 15CA(2). This provision is now redundant as it relates to community service orders which are no longer made (as that term is no longer used) under Part 4 of the *Sentencing Act 1997*.

Principal Act – *Promissory Oaths Act 2015*

Clause 1: Amends section 9 to replace references to the now repealed section 4 of the *Justices Act 1959*, with the current legislative provision which is section 5 of the *Justices of the Peace Act 2018*. This clause also repeals subsections (5) – (9) of section 9. These provisions are redundant as they refer to oaths for '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*.

Principal Act – *Retirement Villages Act 2004*

Clause 1: Amends Schedule 3 to replace the reference to 'the Legal Aid Commission of Tasmania' with 'Tasmania Legal Aid'.

Principal Act – *Sex Industry Offences Act 2005*.

Clause 1: Updates the definition of 'sexually transmissible infection', which currently refers to guidelines that no longer exist. The definition is a broad definition of sexually transmissible infections, including key types of infection, to support interpretation of section 12 of the Act. The definition also provides for 'prescribed' infections, so that regulations may include other diseases where they are identified as sexually transmissible and identification will assist in interpretation of section 12 of the Act.