

TASMANIA

JUSTICE MISCELLANEOUS (COMMISSION OF INQUIRY) BILL 2024

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JUSTICE MISCELLANEOUS (COMMISSION OF INQUIRY) BILL 2024

(Brought in by the Minister for Justice, the Honourable Guy Barnett)

A BILL FOR

An Act to amend the *Civil Liability Act 2002*, the *Corrections Act 1997*, the *Criminal Code Act 1924*, the *Police Offences Act 1935*, the *Registration to Work with Vulnerable People Act 2013* and the *Sentencing Act 1997* and to consequentially amend the *Annulled Convictions Act 2003*, the *Child and Youth Safe Organisations Act 2023*, the *Community Protection (Offender Reporting) Act 2005*, the *Evidence Act 2001*, the *Evidence (Children and Special Witnesses) Act 2001* and the *Justices Act 1959*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice Miscellaneous (Commission of Inquiry) Act 2024*.

2. Commencement

- (1) Except as provided by this section, the provisions of this Act commence 30 days after

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

s. 3

Part 1 – Preliminary

the day on which this Act receives the Royal Assent.

- (2) Part 4 is taken to have commenced on 1 May 2020.

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

Part 2 – Annulled Convictions Act 2003 Amended

s. 4

**PART 2 – ANNULLED CONVICTIONS ACT 2003
AMENDED**

4. Principal Act

In this Part, the *Annulled Convictions Act 2003** is referred to as the Principal Act.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124B, 124C,” after “124A, ” in paragraph (a) of the definition of *sexual offence*.

*No. 46 of 2003

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

s. 6

Part 3 – Child and Youth Safe Organisations Act 2023 Amended

**PART 3 – CHILD AND YOUTH SAFE
ORGANISATIONS ACT 2023 AMENDED**

6. Principal Act

In this Part, the *Child and Youth Safe Organisations Act 2023** is referred to as the Principal Act.

7. Section 7 amended (Meaning of *reportable conduct*)

Section 7(1) of the Principal Act is amended by inserting “124A, 124B, 124C,” after “124,” in paragraph (a) of the definition of *sexual offence*.

*No. 6 of 2023

PART 4 – CIVIL LIABILITY ACT 2002 AMENDED

8. Principal Act

In this Part, the *Civil Liability Act 2002** is referred to as the Principal Act.

9. Section 3B amended (Civil liability excluded from Act)

Section 3B(1A) of the Principal Act is amended by omitting “Part 10C applies” and substituting “Parts 4 and 10C apply”.

10. Section 6B inserted

After section 6A of the Principal Act, the following section is inserted in Part 4:

6B. Interpretation

In this Part –

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, which does not contain an admission of fault or liability in connection with a matter;

child abuse has the same meaning as in section 49J(3);

*No. 54 of 2002

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

s. 11

Part 4 – Civil Liability Act 2002 Amended

organisation has the same meaning as
in Part 10C.

11. Section 7 amended (Effect of apology on liability)

Section 7 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) This section does not apply to an apology in respect of child abuse.

12. Sections 7AA and 7AB inserted

After section 7 of the Principal Act, the following sections are inserted in Part 4:

7AA. Effect of apology on liability of organisation

- (1) An apology made by or on behalf of an organisation, in respect of child abuse allegedly perpetrated by an individual associated with the organisation –
 - (a) does not constitute an express or implied admission of fault or liability by the organisation in respect of the child abuse; and
 - (b) is not relevant to the determination of fault or liability in connection with the child abuse; and
 - (c) is not admissible in any civil proceedings as evidence of the

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

Part 4 – Civil Liability Act 2002 Amended

s. 12

organisation's fault or liability in connection with the child abuse.

(2) An apology referred to in subsection (1) –

(a) if it is reasonable to do so, is to be made by a senior representative of the organisation or by such representative as is requested by the person who suffered the alleged child abuse or the person's representative; and

(b) may include as part of the apology, if relevant –

(i) an acknowledgement of the abuse and the impact of that abuse; and

(ii) information about the time the person spent under the responsibility of the organisation; and

(iii) information about what steps the organisation has taken, or will take, to protect against further child abuse of children for whom it has responsibility.

(3) This section does not apply to an apology in respect of child abuse that is given by or on behalf of an organisation, if the

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Act No. of 2024

s. 12

Part 4 – Civil Liability Act 2002 Amended

apology is made by the alleged perpetrator of the abuse.

(4) For the avoidance of doubt, this section applies to an apology in respect of child abuse, that is given by or on behalf of an organisation, to which one or more of the following applies:

(a) the apology was given before the *Justice Miscellaneous (Commission of Inquiry) Act 2024* received the Royal Assent;

(b) the apology relates to child abuse that occurred before the commencement of this Act;

(c) at the time that the child abuse is alleged to have occurred, the organisation –

(i) was responsible for the child and for exercising care, supervision or authority in respect of the child; or

(ii) was obliged by law to be, or was otherwise purportedly, so responsible for the child –

regardless of whether all or any part of that responsibility had been delegated to another organisation;

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Act No. of 2024

Part 4 – Civil Liability Act 2002 Amended

s. 12

- (d) the apology does not meet all of the requirements of subsection (2).

7AB. Existing proceedings not affected

For the avoidance of doubt, the amendments made to this Part, by the *Justice Miscellaneous (Commission of Inquiry) Act 2024*, do not apply to civil proceedings that –

- (a) have been determined before that Act received the Royal Assent; and
- (b) have commenced, but have not been determined, before that Act received the Royal Assent.

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

s. 13 Part 5 – Community Protection (Offender Reporting) Act 2005 Amended

**PART 5 – COMMUNITY PROTECTION (OFFENDER
REPORTING) ACT 2005 AMENDED**

13. Principal Act

In this Part, the *Community Protection (Offender Reporting) Act 2005** is referred to as the Principal Act.

14. Schedule 2 amended (Class 2 offences)

Schedule 2 to the Principal Act is amended by inserting after

Section 124A	Penetrative sexual abuse of a child [<i>or</i> young person] by a person in a position of authority
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the following items:

Section 124B	Indecent act with or directed at a child [<i>or</i> young person] by a person in a position of authority
Section 124C	Indecent assault of child [<i>or</i> young person] by a person in a position of authority

*No. 61 of 2005

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

Part 6 – Corrections Act 1997 Amended

s. 15

PART 6 – CORRECTIONS ACT 1997 AMENDED

15. Principal Act

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

16. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting “124B, 124C,” after “124A,” in paragraph (b) of the definition of *sexual offence*.

*No. 51 of 1997

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Act No. of 2024

s. 17

Part 7 – Criminal Code Act 1924 Amended

PART 7 – CRIMINAL CODE ACT 1924 AMENDED

17. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

18. Principal Act amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting in section 124A(3) “other than in circumstances where the age difference between the accused and the complainant is not more than 2 years” after “section”;
- (b) by inserting the following sections after section 124A:

124B. Indecent act with or directed at child or young person by person in position of authority

- (1) In this section –

child has the same meaning as in section 124A;

person in a position of authority has the same meaning as in section 124A.

*No. 69 of 1924

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Part 7 – Criminal Code Act 1924 Amended

s. 18

- (2) Any person who is 18 years of age or older is guilty of a crime if that person is in a position of authority in relation to a child and that person performs an indecent act with, or directed at, that child.

Charge: Indecent act with or directed at a child [*or young person*] by a person in a position of authority.

- (3) Consent to an indecent act is not a defence to a charge under this section other than in circumstances where the age difference between the accused and the complainant is not more than 2 years.

124C. Indecent assault of child or young person by person in position of authority

- (1) In this section –

child has the same meaning as in section 124A;

person in a position of authority has the same meaning as in section 124A.

- (2) Any person who is 18 years of age or older is guilty of a crime if that person is in a position of

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Act No. of 2024

s. 18

Part 7 – Criminal Code Act 1924 Amended

authority in relation to a child and that person unlawfully and indecently assaults that child.

Charge: Indecent assault of child
[or young person] by a
person in a position of
authority.

- (3) Consent to an indecent assault is not a defence to a charge under this section other than in circumstances where the age difference between the accused and the complainant is not more than 2 years.
- (c) by omitting from section 125A(1) “section 124, 125B, 126, 127, 133 or 185” and substituting “section 124, 124A, 124B, 124C, 125B, 126, 127, 133 or 185”;
- (d) by omitting subsection (2) from section 125A and substituting the following subsection:
- (2) A person is guilty of a crime if –
- (a) the person commits the persistent sexual abuse of a young person; and
 - (b) at the time of the abuse, the young person is under the age of 17 and is not married to the accused.

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Part 7 – Criminal Code Act 1924 Amended

s. 18

Charge: Persistent sexual abuse of
a child [*or* young person].

- (e) by omitting from section 125A(3) “having committed an offence” and substituting “the persistent sexual abuse of a young person”;
- (f) by omitting from section 125A(4)(a) “unlawful sexual acts were” twice occurring and substituting “persistent sexual abuse was”;
- (g) by omitting from section 125A(6)(a) “the sexual relationship between the accused and the young person was maintained” and substituting “the persistent sexual abuse occurred”;
- (h) by omitting from section 125A(6B) “sexual relationship maintained” and substituting “persistent sexual abuse”;
- (i) by inserting “124B, 124C,” after “124A,” in paragraph (c) of the definition of *sexual offence* in section 125E(1);
- (j) by inserting the following subsection after subsection (2) in section 125E:
 - (2A) Subsection (2) does not apply if the accused person has not attained the age of 18 years.
- (k) by inserting “124B, 124C,” after “124A,” in paragraph (a) of the definition of *sexual offence* in section 326A(1);

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Part 7 – Criminal Code Act 1924 Amended

- (l) by inserting the following paragraphs after paragraph (e) in section 335:
 - (ea) indecent act with or directed at a child [*or* young person] by a person in a position of authority;
 - (eb) indecent assault of child [*or* young person] by a person in a position of authority;
- (m) by inserting the following paragraphs after paragraph (ab) in section 336:
 - (b) indecent act with or directed at a child [*or* young person] by a person in a position of authority;
 - (ba) indecent assault of child [*or* young person] by a person in a position of authority;
- (n) by inserting the following paragraphs after paragraph (b) in section 336B:
 - (ba) indecent act with or directed at a child [*or* young person] by a person in a position of authority;
 - (bb) indecent assault of child [*or* young person] by a person in a position of authority;
- (o) by inserting the following paragraphs after paragraph (b) in section 337:

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Part 7 – Criminal Code Act 1924 Amended

s. 18

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- (c) indecent act with or directed at a child [*or* young person] by a person in a position of authority;
 - (ca) indecent assault of child [*or* young person] by a person in a position of authority;
 - (p) by inserting the following paragraphs after paragraph (e) in section 337B(1):
 - (ea) indecent act with or directed at a child [*or* young person] by a person in a position of authority;
 - (eb) indecent assault of child [*or* young person] by a person in a position of authority;
 - (q) by omitting from section 361A(1) “After an accused person has been called upon to plead as provided in section 351(1),” and substituting “If an accused person is to be tried for a crime,”;
 - (r) by inserting the following subsection after subsection (2) in section 361A:
 - (3) Subsection (2) does not apply to an admission, determination or direction made or given under subsection (1) in respect of a matter if a judge presiding over a trial for the matter is satisfied that –

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s. 18

Part 7 – Criminal Code Act 1924 Amended

- (a) it is not in the interest of justice for the admission, determination or direction to remain in force; or
- (b) the admission, determination or direction is inconsistent with another order, or determination, made in respect of the matter on appeal.
- (s) by inserting in section 371A “or a crime under section 170A or relating to family violence within the meaning of the *Family Violence Act 2004*,” after “XX,”;
- (t) by inserting the following section after section 429:

430. Effect of failure to submit evidence relating to certain offences

- (1) In this section –

coincidence evidence has the same meaning as in the *Evidence Act 2001*;

family violence offence means a family violence offence within the meaning of the *Family Violence Act 2004*;

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Part 7 – Criminal Code Act 1924 Amended

s. 18

first charge evidence means evidence that could have been offered by the prosecution in a hearing of an offence that is a first charge within the meaning of this section;

sexual offence means an offence of a sexual or indecent nature;

tendency evidence has the same meaning as in the *Evidence Act 2001*.

(2) If –

- (a) a person is charged with a family violence offence or a sexual offence (the *first charge*) in a court of summary jurisdiction but is acquitted because the prosecution has informed the court that it will not be offering any evidence in support of the first charge; and
- (b) the person is charged with another family violence offence or sexual offence (the *second charge*), regardless of which court

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s. 18

Part 7 – Criminal Code Act 1924 Amended

the second charge is to be
determined by –

the acquittal of the first charge
does not prevent the admission, in
a hearing on the second charge,
of first charge evidence as
evidence of the relationship
between the person and another
person, tendency evidence or
coincidence evidence.

**PART 8 – EVIDENCE (CHILDREN AND SPECIAL
WITNESSES) ACT 2001 AMENDED**

19. Principal Act

In this Part, the *Evidence (Children and Special Witnesses) Act 2001** is referred to as the Principal Act.

20. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “124B, 124C,” after “124A,” in paragraph (b)(i) of the definition of *affected child*;
- (b) by inserting “124B, 124C,” after “124A,” in the definition of *child sexual offence*;
- (c) by inserting “124B, 124C,” after “124A,” in paragraph (b) of the definition of *prescribed proceeding*;
- (d) by inserting “124B, 124C,” after “124A,” in paragraph (a) of the definition of *specified offence*.

*No. 79 of 2001

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

s. 21

Part 9 – Evidence Act 2001 Amended

PART 9 – EVIDENCE ACT 2001 AMENDED

21. Principal Act

In this Part, the *Evidence Act 2001** is referred to as the Principal Act.

22. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124B, 124C,” after “124A,” in paragraph (a) of the definition of *sexual offence*.

23. Section 19 amended (Compellability of spouses and others in certain proceedings)

Section 19(b) of the Principal Act is amended by inserting “124B, 124C,” after “124A,”.

24. Section 194K amended (Publication of certain identifying particulars prohibited)

Section 194K(1)(b) of the Principal Act is amended by inserting “124B, 124C,” after “124A,”.

*No. 76 of 2001

Justice Miscellaneous (Commission of Inquiry) Act 2024
Act No. of 2024

Part 10 – Justices Act 1959 Amended

s. 25

PART 10 – JUSTICES ACT 1959 AMENDED

25. Principal Act

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

26. Section 61 amended (Interpretation)

Section 61(2)(a)(i) of the Principal Act is amended by inserting “124B, 124C,” after “124A,”.

*No. 77 of 1959

PART 11 – POLICE OFFENCES ACT 1935 AMENDED

27. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

28. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “124B, 124C,” after “124A,” in paragraph (b) of the definition of *sexual offence*.

29. Section 39A inserted

After section 39 of the Principal Act, the following section is inserted in Part V:

39A. Effect of failure to submit evidence relating to certain offences

(1) In this section –

coincidence evidence has the same meaning as in the *Evidence Act 2001*;

family violence offence means a family violence offence within the meaning of the *Family Violence Act 2004*;

first charge evidence means evidence that could have been offered by

*No. 44 of 1935

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Part 11 – Police Offences Act 1935 Amended

s. 29

the prosecution in a hearing of an offence that is a first charge within the meaning of this section;

sexual offence means an offence of a sexual or indecent nature;

tendency evidence has the same meaning as in the *Evidence Act 2001*.

(2) If –

- (a) a person is charged with a family violence offence or a sexual offence (the ***first charge***) in a court of summary jurisdiction but is acquitted because the prosecution has informed the court that it will not be offering any evidence in support of the first charge; and
- (b) the person is charged with another family violence offence or sexual offence (the ***second charge***), regardless of which court the second charge is to be determined by –

the acquittal of the first charge does not prevent the admission, in a hearing on the second charge, of first charge evidence as evidence of the relationship between the person and another person,

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Part 11 – Police Offences Act 1935 Amended

tendency evidence or coincidence
evidence.

**PART 12 – REGISTRATION TO WORK WITH
VULNERABLE PEOPLE ACT 2013 AMENDED**

30. Principal Act

In this Part, the *Registration to Work with Vulnerable People Act 2013** is referred to as the Principal Act.

31. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of *additional risk assessment* and substituting the following definition:

additional risk assessment means a risk assessment to which section 46(2)(a) applies;

32. Section 26 amended (Risk assessment order)

Section 26(2)(a) of the Principal Act is amended by omitting “section 28(1A)” and substituting “section 28”.

33. Section 28 amended (Risk assessments)

Section 28 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

*No. 65 of 2013

Justice Miscellaneous (Commission of Inquiry) Act 2024
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s. 33 Part 12 – Registration to Work with Vulnerable People Act 2013 Amended

(1AA) Without limiting what the Registrar may consider as part of a risk assessment, a risk assessment of a person requires consideration of each of the following questions, separately, in relation to the person:

(a) whether or not any allegations of previous harm by the person are proven on the balance of probabilities;

(b) whether the person poses an unacceptable risk of harm to a vulnerable person, regardless of whether any allegations of previous harm by the person are proven on the balance of probabilities.

(b) by inserting the following subsection after subsection (1A):

(1B) When determining as part of a risk assessment whether a person poses a risk of harm to vulnerable persons, the Registrar –

(a) must consider all of the regulated activities the person will be permitted to engage in, if registered under this Act, and not

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Part 12 – Registration to Work with Vulnerable People Act 2013 Amended

s. 34

just the regulated activities specified in the person's application for registration; and

- (b) may take into account any other matter that the Registrar considers relevant; and
- (c) may inform himself or herself on any matter as the Registrar thinks fit and is not bound by the rules of evidence including, but not limited to, any rules of evidence relating to tendency, coincidence and credibility.

34. Section 29 inserted

After section 28 of the Principal Act, the following section is inserted in Division 3:

29. Matters not to be taken into account as part of risk assessment

In performing a risk assessment in relation to a person under this Act, the Registrar must not take into account –

- (a) if the risk assessment relates to a person being registered under this Act, the impact that a failure to

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s. 35 Part 12 – Registration to Work with Vulnerable People Act 2013 Amended

register the person may have,
either directly or indirectly, on
the person; or

- (b) if the risk assessment relates to a person who already holds registration under this Act, the impact that suspension, or cancellation, of that registration may have, either directly or indirectly, on the person.

35. Section 32 amended (Refusal to register a person and negative notices)

Section 32 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is to” and substituting “must”;
- (b) by omitting from subsection (2) “is to” and substituting “must”;
- (c) by omitting from subsection (2A) “is to” and substituting “must”;
- (d) by inserting the following subsection after subsection (5):
 - (6) If the Registrar is required to refuse registration to a person under this section, any registration given to the person in contravention of this section is void.

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Part 12 – Registration to Work with Vulnerable People Act 2013 Amended

s. 36

36. Section 46 amended (Additional risk assessments)

Section 46(5) of the Principal Act is amended by omitting “all the classes of vulnerable person” and substituting “a class of vulnerable persons”.

37. Section 49 amended (Grounds for suspension or cancellation of registration)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(b) “all the classes” and substituting “a class”;
- (b) by inserting the following subsection after subsection (3):
 - (4) For the avoidance of doubt, the Registrar –
 - (a) is to apply a lower threshold when making a determination to suspend a person’s registration than would be applied to a determination to cancel the person’s registration; and
 - (b) must suspend a person’s registration if the Registrar is of the opinion that it is necessary for the safety, welfare or

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s. 38 Part 12 – Registration to Work with Vulnerable People Act 2013 Amended

protection of vulnerable
persons.

38. Section 49A amended (Immediate suspension in certain circumstances)

Section 49A(2)(a) of the Principal Act is amended as follows:

- (a) by omitting “may” and substituting “must”;
- (b) by omitting “and” first occurring and substituting “or”.

39. Section 51 amended (Suspension or cancellation of registration)

Section 51(1) of the Principal Act is amended by omitting “is to” and substituting “must”.

PART 13 – SENTENCING ACT 1997 AMENDED

40. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

41. Section 4 amended (Interpretation)

The definition of *child sexual offence* in section 4 of the Principal Act is amended as follows:

- (a) by omitting “17 years” and substituting “18 years”;
- (b) by inserting “124B, 124C,” after “124A,”.

42. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

Section 11A of the Principal Act is amended as follows:

- (a) by inserting “124B, 124C,” after “124A,” in paragraph (a) of the definition of *sexual offence* in subsection (1);
- (b) by omitting subsection (3) and substituting the following subsection:
 - (3) In determining the appropriate sentence for an offender

*No. 59 of 1997

Justice Miscellaneous (Commission of Inquiry) Act 2024
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Part 13 – Sentencing Act 1997 Amended

convicted of a child sexual offence –

- (a) any alleged consent, or other alleged acquiescence, made or given by the victim is not a mitigating factor; and
- (b) the sentencing patterns and practices at the time of sentencing are a mitigating factor.

43. Section 27A amended (Interpretation of Part)

Section 27A of the Principal Act is amended by inserting “124B, 124C,” after “124A,” in paragraph (a) of the definition of *sexual offence*.