

CLAUSE NOTES

Justice and Related Legislation (Miscellaneous Amendments) Bill 2020

PART I – PRELIMINARY

Clause 1: Short Title.

This clause provides that, once passed, the Bill will be cited as the *Justice and Related Legislation (Miscellaneous Amendments) Act 2020*.

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 the Legal Aid Commission of Tasmania in relation to the appeal.

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 - Criminal Code Act 1924.

Clause 1: Makes the following amendments to schedule 1 of the *Criminal Code Act 1924*:

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 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 – 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. Under the proposed amendment, 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 – Oaths Act 2001

Clause 1: Amends section 12(2) to reflect updated Commonwealth regulations. Under the proposed amendment, 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 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 have become 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 – Sex Industry Offences Act 2005.

Clause 1: Amends the definition of 'sexually transmissible infection', which currently refers to guidelines that 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.

