

TASMANIA

**JUSTICE MISCELLANEOUS (COURT BACKLOG
AND RELATED MATTERS) BILL 2020**

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**JUSTICE MISCELLANEOUS (COURT BACKLOG
AND RELATED MATTERS) BILL 2020**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Bail Act 1994*, the *Criminal Code Act 1924*, the *Criminal Justice (Mental Impairment) Act 1999*, the *Justices Act 1959*, the *Misuse of Drugs Act 2001*, the *Police Offences Act 1935* and the *Sentencing Act 1997*

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 (Court Backlog and Related Matters) Act 2020*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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Part 1 – Preliminary

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This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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Part 2 – Bail Act 1994 Amended

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PART 2 – BAIL ACT 1994 AMENDED

4. Principal Act

In this Part, the *Bail Act 1994** is referred to as the Principal Act.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting after the definition of *contravene* the following definition:

Director of Public Prosecutions means the Director within the meaning of the *Director of Public Prosecutions Act 1973*;

6. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted in Part 3:

7A. Circumstances in which Supreme Court may grant bail order

- (1) An application for an order for bail may only be made to the Supreme Court in respect of a person if –
 - (a) the person is charged with either or both of the following crimes:

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Part 2 – Bail Act 1994 Amended

- (i) murder;
 - (ii) treason; or
 - (b) the person has been committed to the Supreme Court in respect of an offence and has appeared in that court in respect of the offence.
- (2) An application for an order for bail made to the Supreme Court under this section is to be made to a judge in chambers.
- (3) A person who has applied for bail in accordance with subsection (2) must serve a copy of the application on the Director of Public Prosecutions.

7. Part 4A inserted

After section 21 of the Principal Act, the following Part is inserted:

PART 4A – APPEALS RELATING TO BAIL

21A. Appeal to Supreme Court

- (1) A person referred to in subsection (2) may appeal, to a judge of the Supreme Court, a decision of a magistrate to –
- (a) grant an order for bail in respect of a person; or

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- (b) impose a condition on an order for bail made in respect of a person; or
 - (c) refuse to make an order for bail in respect of a person.
- (2) An appeal under subsection (1) may only be made by one or more of the following persons:
 - (a) the person –
 - (i) admitted to bail under the order to which the appeal relates; or
 - (ii) refused the order for bail to which the appeal relates;
 - (b) a Crown Law Officer within the meaning of section 1 of the *Criminal Code*;
 - (c) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth –
 - (i) the Director of Public Prosecutions of the Commonwealth; or
 - (ii) a person acting on behalf of the Director of Public

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Part 2 – Bail Act 1994 Amended

Prosecutions of the
Commonwealth.

- (3) An appeal under subsection (1) –
- (a) may only be made by the defendant if the decision of the magistrate being appealed was made on an application for bail, whether orally or in writing, where submissions were made in support of the application; and
 - (b) must be made within 21 days after the order, to which the appeal relates, was made or was refused; and
 - (c) is to be commenced by filing a notice of appeal, with the Registrar of the Supreme Court, that specifies which orders are sought.
- (4) Within 7 days after filing a notice of appeal in accordance with subsection (3)(c), the appellant must serve a copy of the notice of appeal on –
- (a) if the appellant is a person referred to in subsection (2)(a) –
 - (i) the Director of Public Prosecutions; and

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- (ii) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth, the Director of Public Prosecutions of the Commonwealth; or
 - (b) if the appellant is a person referred to in subsection (2)(b) or (c), the person who is admitted to bail under the order to which the appeal relates.
- (5) A judge may, at his or her discretion –
- (a) extend the period specified in subsection (4) if the judge is satisfied that it is reasonable to do so; or
 - (b) waive a requirement for service under subsection (4) if the judge is satisfied that it is in the interests of justice to do so.

21B. Appeal to Court of Criminal Appeal or Full Court

- (1) A person referred to in subsection (2) may appeal, to the relevant court specified in subsection (3), a decision of a judge of the Supreme Court to –

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Part 2 – Bail Act 1994 Amended

- (a) grant an order for bail in respect of a person; or
 - (b) impose a condition on an order for bail made in respect of a person; or
 - (c) refuse to make an order for bail in respect of a person.
- (2) An appeal under subsection (1) may only be made by one or more of the following persons:
- (a) the person –
 - (i) admitted to bail under the order to which the appeal relates; or
 - (ii) refused the order for bail to which the appeal relates;
 - (b) a Crown Law Officer within the meaning of section 1 of the *Criminal Code*;
 - (c) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth –
 - (i) the Director of Public Prosecutions of the Commonwealth; or

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- (ii) a person acting on behalf of the Director of Public Prosecutions of the Commonwealth.
- (3) An appeal under subsection (1) –
 - (a) is to be commenced by filing a notice of appeal, in the registry of the relevant court, that specifies which orders are sought; and
 - (b) is to be made to –
 - (i) if the appeal relates to an order for bail that requires the person admitted to bail under the order to appear before the Court of Criminal Appeal, that court; or
 - (ii) in any other case, the Full Court of the Supreme Court; and
 - (c) must be made within 21 days after the order, to which the appeal relates, was made or was refused.
- (4) Within 7 days after filing a notice of appeal in accordance with subsection (3)(a), the appellant must serve a copy of the notice of appeal on –

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Part 2 – Bail Act 1994 Amended

- (a) if the appellant is a person referred to in subsection (2)(a) –
 - (i) the Director of Public Prosecutions; and
 - (ii) if the appeal relates to an order for bail, or a refusal to grant bail, in respect of an offence against a law of the Commonwealth, the Director of Public Prosecutions of the Commonwealth; or
 - (b) if the appellant is a person referred to in subsection (2)(b) or (c), the person who is admitted to bail under the order to which the appeal relates.
- (5) A judge may, at his or her discretion –
- (a) extend the period specified in subsection (4) if the judge is satisfied that it is reasonable to do so; or
 - (b) waive a requirement for service under subsection (4) if the judge is satisfied that it is in the interests of justice to do so.

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21C. Appeal to be by way of new hearing

An appeal under this Part is to be by way of a new hearing.

21D. Powers on appeal

A judge hearing an appeal under this Part may do any one or more of the following in respect of the appeal:

- (a) dismiss the appeal;
- (b) confirm, vary, set aside or quash the order to which the appeal relates;
- (c) make an order for bail, or an order of remand, in respect of the person to whom the appeal relates;
- (d) make any other order that the judge considers appropriate in the circumstances.

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Part 3 – Criminal Code Act 1924 Amended

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

8. Principal Act

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

9. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting sections 304 and 305;
- (b) by omitting from section 331B(2)(a) “the defendant” and substituting “subject to subsection (2A), the defendant”;
- (c) by omitting subsection (2A) from section 331B and substituting the following subsection:

(2A) An application may only be made under subsection (2)(a) if the applicant is granted leave of the Court to apply as a result of one or more of the following special circumstances:

- (a) if the applicant is the defendant, relevant evidence in respect of the witness to which the

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Part 3 – Criminal Code Act 1924 Amended

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application relates was not disclosed to the defendant before the committal order in respect of the offence was made;

- (b) if the applicant is a Crown Law Officer, it is in the interests of justice to allow the Crown to examine the witness to which the application relates;
- (c) the witness to which the application relates is ill or is going to leave the jurisdiction indefinitely;
- (d) both the defendant and the Crown Law Officer agree that a preliminary proceedings order should be made under the application;
- (e) it is in the interests of justice, on any other grounds, for the preliminary proceedings order to be made under the application.

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s. 10 Part 4 – Criminal Justice (Mental Impairment) Act 1999 Amended

**PART 4 – CRIMINAL JUSTICE (MENTAL
IMPAIRMENT) ACT 1999 AMENDED**

10. Principal Act

In this Part, the *Criminal Justice (Mental Impairment) Act 1999** is referred to as the Principal Act.

11. Section 10 amended (Reservation of question of fitness to stand trial)

Section 10 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) If, at preliminary proceedings for an indictable offence, the question of a defendant's fitness to stand trial arises –
 - (a) the question is to be reserved for determination by the Supreme Court; and
 - (b) after the question is so determined –
 - (i) the preliminary proceedings are to be completed in accordance with the relevant criminal procedures; and

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Part 4 – Criminal Justice (Mental Impairment) Act 1999 Amended

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- (ii) if appropriate, the Supreme Court may return the preliminary proceedings to the relevant court for completion.

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Part 5 – Justices Act 1959 Amended

PART 5 – JUSTICES ACT 1959 AMENDED

12. Principal Act

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

13. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of *affected person* and substituting the following definition:

affected person means a person who is
an affected person under
section 61(2);

- (b) by omitting “of justices” from the definition of *preliminary proceedings*;

- (c) by omitting the definition of *preliminary proceedings order* and substituting the following definition:

preliminary proceedings order means
an order requiring the giving of
evidence on oath in preliminary
proceedings –

- (a) made under section 62; or

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Part 5 – Justices Act 1959 Amended

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- (b) made by the Supreme Court under section 331B of the *Criminal Code*;

14. Section 60 amended (Committal of defendant to Supreme Court)

Section 60 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) Despite subsection (1), the justices may refuse to make an order under that subsection in respect of a defendant charged with an indictable offence if –
 - (a) subsection (1)(b) applies in respect of the defendant; and
 - (b) the justices are satisfied that preliminary proceedings have commenced, or are to commence, under Division 3 in relation to the offence.

15. Part VII, Division 3 substituted

Division 3 of Part VII of the Principal Act is repealed and the following Division is substituted:

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Division 3 – Preliminary proceedings

61. Interpretation

(1) In this Division –

audio visual link has the same meaning as in the *Evidence (Audio and Audio Visual Links) Act 1999*;

certified, in relation to a transcript of evidence recorded by means other than direct recording on paper, means the certification by the person who transcribed the recording that the transcript is a true and accurate record of the recording;

crown law officer has the same meaning as in section 1 of the *Criminal Code*;

endorsed recording, in relation to the statement of an affected person, means a copy of a written or other recording of a statement made by the affected person that is endorsed with, or accompanied by, a certificate that –

(a) purports to be made by a person who was present

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when the affected person
made the statement; and

- (b) states that the copy of the recording is a true and accurate copy;

examination, of a witness, includes cross-examination or re-examination of the witness;

transcribe means transcribe, or print, onto paper.

- (2) A person in respect of an indictable offence is an affected person if the person –

- (a) is a person upon whom, or in respect of whom, another person is charged with having committed one or more of the following crimes:

- (i) a crime under section 122, 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 133, 137, 158, 159, 170, 170A, 172, 178, 185, 186 or 189 of the *Criminal Code*;

- (ii) a crime under section 127A of the *Criminal Code*, as in force immediately before the

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- commencement of the *Criminal Code Amendment (Sexual Assault) Act 2017*;
- (iii) a crime under section 298, 299 or 300 of the *Criminal Code* if the crime relates to a crime referred to in subparagraph (i);
- (iv) an offence under section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*;
- (v) a child sexual offence within the meaning of the *Evidence (Children and Special Witnesses) Act 2001*;
- (vi) an offence under the *Family Violence Act 2004* if the offence involves, or relates to, family violence within the meaning of that Act;
- (vii) an offence under section 4, 7, 8(2) or 9 of the *Sex Industry Offences Act 2005*; or

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-
- (b) has not attained the age of 17 years at the time an application is made, under this Division, to examine the witness in respect of the offence; or
 - (c) is a member of a class of persons prescribed for the purposes of this Division.
- (3) In this Division, a reference to a defendant is a reference to the defendant in respect of the indictable offence for which a preliminary proceedings order is sought or granted.

62. Preliminary proceedings orders

- (1) At any appearance of a defendant before a magistrate in respect of a charge for an indictable offence, on any plea to the charge other than a plea of guilty –
- (a) one or more of the following persons may apply in writing for an order that a witness named in the application give evidence on oath in preliminary proceedings:
 - (i) the defendant;
 - (ii) a crown law officer;
 - (iii) if the indictable offence is a Commonwealth matter,

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the Director of Public Prosecutions of the Commonwealth or a person acting on behalf of the Director of Public Prosecutions of the Commonwealth; and

- (b) the magistrate may make such an order.
- (2) A magistrate may only make an order under subsection (1) in respect of a witness if –
- (a) in the application for the order, the applicant has –
 - (i) identified a matter in respect of which the witness specified in the application is to be questioned; and
 - (ii) specified why the evidence of the witness is relevant to that matter; and
 - (iii) specified why examination of the witness is justified; and
 - (b) if the witness is an affected person, the magistrate is satisfied that exceptional circumstances

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require the witness to give evidence on oath at the preliminary proceedings; and

- (c) the magistrate is satisfied that the order is necessary in the interests of justice.
- (3) If an application, or part of an application, under subsection (1) relates to whether the defendant is fit to stand trial in respect of an indictable offence –
- (a) the application, or that part of the application, is to be determined by the Supreme Court; and
 - (b) section 10(2) of the *Criminal Justice (Mental Impairment) Act 1999* applies to the determination of that matter by the Supreme Court.
- (4) An order under subsection (1) –
- (a) if the witness to be examined under the order is an affected person –
 - (i) must limit the matters in respect of which the witness may be examined under the order; and
 - (ii) may impose conditions in relation to such

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examination under the
order; and

(b) in respect of any other witness,
may do either or both of the
following:

(i) limit the matters in
respect of which the
witness may be examined
under the order;

(ii) impose conditions in
relation to such
examination under the
order.

(5) If a magistrate makes an order under
subsection (1), the magistrate is to
remand the defendant in custody or admit
him or her to bail to appear before a
magistrate, or justice, at the time and on
the day specified in the order.

**63. Proceedings on preliminary proceedings
order generally**

(1) On the receipt by the clerk of petty
sessions of a copy of a preliminary
proceedings order, a magistrate or justice
is to conduct preliminary proceedings in
accordance with the order.

(2) The defendant must be present during
preliminary proceedings unless the

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magistrate, or justice, conducting the proceedings permits the proceedings to proceed in the absence of the defendant.

- (3) During preliminary proceedings –
- (a) the evidence of a witness, other than an affected person, is to be taken by the examination of the witness before the magistrate, or justice, conducting the proceedings; and
 - (b) the evidence of an affected person, given by audio visual link in accordance with section 65(1), is to be taken by the receipt, by the magistrate or justice conducting the proceedings, of the endorsed recording of the statement of the witness and the examination of the witness; and
 - (c) the evidence of a witness given in examination is to be transcribed and the transcript is to be certified.
- (4) If, during preliminary proceedings in respect of an offence, the defendant's fitness to stand trial for the offence is raised –
- (a) the magistrate, or justice, conducting the preliminary proceedings may order expert

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evidence, including psychiatric reports, on that matter; and

- (b) if expert evidence is ordered under paragraph (a), the clerk of petty sessions is to forward the expert evidence to the Supreme Court; and
- (c) that matter is to be determined by the Supreme Court in accordance with section 10(2) of the *Criminal Justice (Mental Impairment) Act 1999*.

64. Preliminary proceedings to be in closed court

- (1) The room or place in which preliminary proceedings are conducted is a closed court.
- (2) Despite subsection (1), the following persons may not be excluded from the room or place in which the preliminary proceedings are conducted:
 - (a) the prosecutor;
 - (b) the defendant;
 - (c) the legal representative of the prosecutor and of the defendant;
 - (d) a person who has been appointed, by a court under the *Evidence*

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*(Children and Special Witnesses)
Act 2001*, to assist in the examination of the witness in the proceedings to which the preliminary proceedings relate.

- (3) On the application of the prosecutor or the defendant, the magistrate, or justice, conducting the preliminary proceedings may allow a person to be present in the room or place in which preliminary proceedings are conducted so as to provide a witness, or the defendant, with support.
- (4) The magistrate, or justice, conducting preliminary proceedings may only allow, under subsection (3), a person to be present in the room or place in which preliminary proceedings are conducted if satisfied that the person is not, or is not likely to be, a witness in or a party to –
 - (a) the preliminary proceedings; or
 - (b) the hearing of the charge for the offence to which the preliminary proceedings relate.

65. Affected persons at preliminary proceedings

- (1) If a witness to be examined as part of preliminary proceedings is an affected person, the witness is to give evidence by audio visual link unless –

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- (a) the witness requests otherwise; or
 - (b) an order has been made under section 7 of the *Evidence (Children and Special Witnesses) Act 2001* in respect of the affected person in relation to proceedings to which the preliminary proceedings relate.
- (2) An affected person may only –
- (a) be examined on matters specified in the preliminary proceedings order in accordance with the conditions and limitations specified in that order; and
 - (b) be examined on matters not provided for in the preliminary proceedings order if the magistrate, or justice, conducting the proceedings is satisfied that –
 - (i) to do so would not conflict with the preliminary proceedings order; and
 - (ii) exceptional circumstances exist; and
 - (iii) it is necessary to do so in the interests of justice.

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- (3) A decision under subsection (2)(b) to allow the examination of an affected person on matters not provided for in the preliminary proceedings order is final and is not subject to appeal or other review.
- (4) For the avoidance of doubt, if the *Evidence (Children and Special Witnesses) Act 2001* applies to an affected person under this Division, the provisions of this Division are in addition to and do not derogate from the requirements of that Act.

66. Attendance of defendant and witnesses and production of documents

- (1) A magistrate, or justice, may issue a summons in respect of preliminary proceedings to one or more of the following persons:
 - (a) the defendant, requiring the defendant to attend the proceedings at a time and place mentioned in the summons;
 - (b) the witness specified in the relevant preliminary proceedings order, requiring the witness to attend the proceedings, at a time and place mentioned in the summons, to testify what he or

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she knows concerning the offence to which the proceedings relate;

(c) a person specified in the summons, requiring the person –

(i) to attend the proceedings at a time and place mentioned in the summons; and

(ii) as part of the proceedings and for the purposes of evidence, to produce a document or thing in the possession or under the control of the person.

(2) If a person fails to attend preliminary proceedings as required by a summons issued under this section, the magistrate, or justice, conducting the proceedings may issue a warrant requiring that the person be apprehended and brought before the magistrate or justice.

67. Guidance on preliminary proceedings

(1) At any time during preliminary proceedings conducted by a justice, the justice may request that a magistrate give directions in relation to the conduct or finalisation of the preliminary proceedings.

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- (2) A magistrate who receives a request under subsection (1) may give such directions relating to the conduct or finalisation of the preliminary proceedings as the magistrate considers appropriate.

68. Conclusion of preliminary proceedings

On the conclusion of preliminary proceedings, or if preliminary proceedings cannot proceed or proceed further –

- (a) the magistrate, or justice, conducting the proceedings must remand the defendant in custody or admit the defendant to bail to appear before the Supreme Court on a day to be fixed by the Supreme Court; and
- (b) the clerk of petty sessions is to forward the transcripts of all evidence given in the preliminary proceedings, and all endorsed recordings of the statements of affected persons used in the preliminary proceedings, to each of the following persons:
 - (i) the Supreme Court;
 - (ii) the Director of Public Prosecutions;

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(iii) the lawyer representing the defendant or, if the defendant is not so represented, the defendant; and

(c) the clerk of petty sessions is to forward all exhibits tendered in evidence in the preliminary proceedings to the Director of Public Prosecutions.

69. Defendant may be committed to Supreme Court

A defendant in relation to a charge may be committed to the Supreme Court in respect of the charge whether or not an application for a preliminary proceedings order has been made in respect of the charge.

69A. Prohibition on publishing preliminary proceedings

(1) Unless otherwise permitted by a magistrate or judge, a person must not publish –

(a) information given or produced in evidence in preliminary proceedings; or

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(b) an account of the preliminary proceedings; or

(c) any information relating to preliminary proceedings.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 24 months, or both.

(2) Subsection (1) does not apply to the publication of information, or an account, if –

(a) the prosecutor, or the defendant, publishes the information or account to another person and the publication to that person is necessary for the prosecutor or defendant to effectively conduct his or her case in relation to the prosecution of the offence to which the preliminary proceedings relate; or

(b) the prosecutor publishes the information or account to another person and the publication to that person is necessary in respect of any other criminal proceedings where such matters may be lawfully disclosed.

(3) Subsection (1) prevails over an inconsistent provision in any other Act,

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unless the other Act specifically provides otherwise.

16. Section 71 amended (Petty crimes triable summarily)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “\$5 000” and substituting “\$20 000”;
- (b) by omitting paragraph (ab) from subsection (1) and substituting the following paragraph:
 - (ab) section 244 or 245(a)(iii) of the *Criminal Code*, except where it is alleged in the complaint that –
 - (i) in the circumstances in which the offence was committed, property to the value of more than \$20 000 was stolen; or
 - (ii) in the commission of the offence, the person intended to commit a crime other than stealing; or
- (c) by omitting from subsection (1)(b) “\$5 000” and substituting “\$20 000”;

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- (d) by omitting from subsection (1) “subsection (2)” and substituting “subsection (1A) and (2)”;
- (e) by inserting the following subsection after subsection (1):
- (1A) Subsection (1) does not apply in respect of a person brought before justices upon a complaint for an offence referred to in that subsection if –
- (a) the person is brought before justices for more than one offence referred to in this section that –
- (i) are joined in a single complaint;
or
- (ii) are substantially from the same course of conduct or founded on the same facts; and
- (b) the total value specified in the charges for those offences exceeds \$20 000.

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17. Section 72 amended (Other crimes triable summarily)

Section 72 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “\$5 000” and substituting “\$20 000”;
- (b) by omitting from subsection (1)(b) “\$20 000” and substituting “\$100 000”;
- (c) by inserting in subsection (1)(c) “in respect of property the value of which exceeds \$20 000” after “*Criminal Code*”;
- (d) by omitting from subsection (1)(c)(i) “\$20 000” and substituting “\$100 000”;
- (e) by omitting paragraph (ca) from subsection (1);
- (f) by omitting from subsection (1)(d) “\$5 000” and substituting “\$20 000”;
- (g) by omitting from subsection (1)(d) “\$20 000” and substituting “\$100 000”;
- (h) by inserting the following subsections after subsection (2):

(3) Where –

- (a) a person is brought before justices for more than one offence referred to in section 71(1) that –

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- (i) are joined in a single complaint;
or
 - (ii) are substantially from the same course of conduct or founded on the same facts; and
- (b) the total value specified in the charges for those offences exceeds \$20 000 but does not exceed \$100 000 –

the person may elect to have the offence tried or sentenced by the justices.

(4) Where –

- (a) a person is brought before justices upon a complaint for an offence under –
 - (i) section 113 of the *Criminal Code*; or
 - (ii) section 192 of the *Criminal Code*; and
- (b) the prosecutor of the complaint consents –

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the person may elect to have the offence tried or sentenced by the justices.

- (5) A person may not elect, under this section, to have an offence tried or sentenced by the justices if –
- (a) the person is brought before justices for more than one offence referred to in this section that –
 - (i) are joined in a single complaint; or
 - (ii) are substantially from the same course of conduct or founded on the same facts; and
 - (b) the total value specified in the charges for those offences exceeds \$100 000.

18. Part XI, Division 6 repealed

Division 6 of Part XI of the Principal Act is repealed.

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19. Schedules 2 and 3 substituted

Schedules 2 and 3 to the Principal Act are repealed and the following Schedules are substituted:

**SCHEDULE 2 – PETTY CRIMES TRIABLE
SUMMARILY**

Section 71

1. Section 234.
2. Section 235.
3. Section 236.
4. Section 237.
5. Section 238.
6. Section 239.
7. Section 250.
8. Section 251.
9. Section 252.
10. Section 252A.
11. Section 253.
12. Section 258.
13. Section 259.
14. Section 260.

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- 15.** Section 261(a).
- 16.** Section 261(b).
- 17.** Section 264.
- 18.** Section 265.
- 19.** Section 266(1).
- 20.** Section 266(2).
- 21.** Section 280(a).
- 22.** Section 280(b).
- 23.** Section 280(c).
- 24.** Section 281.
- 25.** Section 282.
- 26.** Section 284.
- 27.** Section 293(a).
- 28.** Section 293(b).
- 29.** Section 293(c).
- 30.** Section 293(d).
- 31.** Section 293(e).
- 32.** Section 293(f).
- 33.** Section 293(g).
- 34.** Section 293(h).

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35. Section 293(i).
 36. Section 293(j).
 37. Section 293(k).
 38. Section 293(l).
 39. Section 293(m).
 40. Section 293(n).
 41. Section 293(o).
 42. Section 294(a).
 43. Section 294(b).
 44. Section 295(1)(a).
 45. Section 295(1)(b).
 46. Section 295(1)(c).
 47. Section 296(1).
 48. Section 300 (if it relates to a crime to which this Part applies).

**SCHEDULE 3 – OTHER CRIMES TRIABLE
SUMMARILY**

Section 72

PART I – CRIMES TRIABLE SUMMARILY

1. Section 107.
2. Section 108.

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3. Section 119.
4. Section 120.
5. Section 121.
6. Section 127.
7. Section 137.
9. Section 300 (if it relates to a crime to which this Part applies).

**PART II – CRIMES TRIABLE SUMMARILY IN RESPECT OF
CERTAIN PROPERTY**

1. Section 234.
2. Section 235.
3. Section 236.
4. Section 237.
5. Section 238.
6. Section 239.
7. Section 250.
8. Section 251.
9. Section 252.
10. Section 252A.
11. Section 253.
12. Section 258.

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- 13.** Section 259.
- 14.** Section 260.
- 15.** Section 261(a).
- 16.** Section 261(b).
- 17.** Section 264.
- 18.** Section 265.
- 19.** Section 266(1).
- 20.** Section 266(2).
- 21.** Section 280(a).
- 22.** Section 280(b).
- 23.** Section 280(c).
- 24.** Section 281.
- 25.** Section 282.
- 26.** Section 284.
- 27.** Section 293(a).
- 28.** Section 293(b).
- 29.** Section 293(c).
- 30.** Section 293(d).
- 31.** Section 293(e).
- 32.** Section 293(f).

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- 33.** Section 293(g).
- 34.** Section 293(h).
- 35.** Section 293(i).
- 36.** Section 293(j).
- 37.** Section 293(k).
- 38.** Section 293(l).
- 39.** Section 293(m).
- 40.** Section 293(n).
- 41.** Section 293(o).
- 42.** Section 294(a).
- 43.** Section 294(b).
- 44.** Section 295(1)(a).
- 45.** Section 295(1)(b).
- 46.** Section 295(1)(c).
- 47.** Section 296(1).
- 48.** Section 300 (if it relates to a crime to which this Part applies).

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Part 6 – Misuse of Drugs Act 2001 Amended

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PART 6 – MISUSE OF DRUGS ACT 2001 AMENDED

20. Principal Act

In this Part, the *Misuse of Drugs Act 2001** is referred to as the Principal Act.

21. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Division 2:

22A. Cultivating controlled plant for sale

- (1) A person must not cultivate a controlled plant –
 - (a) with the intention of selling the controlled plant or any of its products; or
 - (b) in the belief that another person intends to sell the controlled plant or any of its products.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 4 years.

- (2) If it is proved in proceedings for an offence under subsection (1) that the accused cultivated a trafficable quantity of a controlled plant, it is presumed,

*No. 94 of 2001

*Justice Miscellaneous (Court Backlog and Related Matters) Act
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Part 6 – Misuse of Drugs Act 2001 Amended

unless the accused on the balance of probabilities proves otherwise, that the accused had the relevant intention or belief concerning the sale of the controlled plant or its products required to constitute the offence.

22. Part 3, Division 4: Heading amended

Division 4 of Part 3 of the Principal Act is amended by omitting “*Sale and supply*” from the heading to that Division and substituting “*Sale, supply and trafficking*”.

23. Section 27AA inserted

After section 27 of the Principal Act, the following section is inserted in Division 4:

27AA. Trafficking controlled substances

- (1) A person must not traffic in a controlled substance.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 4 years.

- (2) If it is proved in proceedings for an offence under subsection (1) that the accused –
- (a) prepared a trafficable quantity of a controlled substance for supply;
or

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- (b) transported a trafficable quantity of a controlled substance; or
- (c) guarded or concealed a trafficable quantity of a controlled substance; or
- (d) possessed a trafficable quantity of a controlled substance; or
- (e) imported a trafficable quantity of a controlled substance into Tasmania –

it is presumed, unless the accused on the balance of probabilities proves otherwise, that the accused had the relevant intention or belief concerning the sale of the controlled substance required to constitute the offence.

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Part 7 – Police Offences Act 1935 Amended

PART 7 – POLICE OFFENCES ACT 1935 AMENDED

24. Principal Act

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

25. Section 7B amended (Possession of implement or instrument)

Section 7B(3) of the Principal Act is amended as follows:

- (a) by omitting “25 penalty units” and substituting “50 penalty units”;
- (b) by omitting “6 months” and substituting “2 years”.

26. Section 15C amended (Dangerous articles)

Section 15C(1) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both.

*No. 44 of 1935

*Justice Miscellaneous (Court Backlog and Related Matters) Act
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Part 7 – Police Offences Act 1935 Amended

s. 27

27. Section 37AA amended (Unlawfully setting fire to property)

Section 37AA(1) of the Principal Act is amended by omitting “not exceeding \$5 000 in value”.

28. Section 38B inserted

After section 38A of the Principal Act, the following section is inserted in Part V:

38B. Stealing with force

- (1) A person must not use, or threaten to use, force on any person in order to steal, or unlawfully obtain, property.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

- (2) Subsection (1) applies whether the use, or threat, of force occurs immediately before, during or immediately after the time when the property was stolen or unlawfully obtained.

29. Section 43F inserted

After section 43E of the Principal Act, the following section is inserted in Part VA:

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Part 7 – Police Offences Act 1935 Amended

43F. Period during which complaint may be made

A complaint, made for the purposes of the *Justices Act 1959*, in relation to an offence against a section within this Part, is to be made within 2 years after the date of the offence.

30. Section 55 amended (Arrest)

Section 55(2D) of the Principal Act is amended by omitting “(7) or section 37ZD(3A) or (4)” and substituting “(7), section 37ZD(3A) or (4) or section 38B(1)”.

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Part 8 – Sentencing Act 1997 Amended

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PART 8 – SENTENCING ACT 1997 AMENDED

31. Principal Act

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

32. Section 13 amended (Maximum prison term imposable by court of petty sessions for crime triable summarily)

Section 13(a) of the Principal Act is amended by omitting “12 months” and substituting “3 years”.

*No. 59 of 1997