

CLAUSE NOTES

Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020

Part 1 – Preliminary

Clause 1 Short title

Cites the short title of the Act, when commenced, as the Justice Miscellaneous (Court Backlog and Related Matters) Act 2020.

Clause 2 Commencement

The Act commences on the day or days of proclamation.

Clause 3 Repeal of Act

This Act will automatically be repealed one year after all the provisions within it are commenced.

Part 2 – BAIL ACT 1994 AMENDED

Clause 4 Principal Act

For the purposes of Clauses 4, 5, 6 and 7 the Principal Act is the *Bail Act 1994*.

Clause 5 Section 3 amended

This clause inserts an additional definition into the interpretation section of the *Bail Act 1994*. This is a definition for the term “Director of Public Prosecutions”.

Clause 6 Section 7A inserted

The Bill inserts a new section 7A into the *Bail Act 1994*.

This provides for the basis on which a person may apply for bail in the Supreme Court.

Clause 7 Part 4A inserted

This clause inserts a new Part 4A into the *Bail Act 1994*. This new Part includes new sections 21A, 21B, 21C and 21D.

Section 21A outlines that an appeal can be made to the Supreme Court in relation to a grant of bail by a Magistrate, a condition imposed on an order of bail by a Magistrate or a refusal of bail by a Magistrate. An appeal under this section can only be made by the person admitted to or refused bail or by a Crown Law Officer.

The section limits an appeal under the section to when a decision is made by a Magistrate following an application for bail, where submissions were made in support of the application.

The section provides how an appeal is to be commenced and the timeframe for making an appeal. The section also outlines who is to be notified and specifies a timeframe for this.

Section 21B outlines the requirements for an appeal from the decision of a judge of the Supreme Court in relation to bail to the Court of Criminal Appeal or the Full Court of the Supreme Court. An appeal under this section can only be made by the person granted or refused bail or by a Crown Law Officer.

The section sets down how an appeal is to be commenced and the timeframe for making an appeal. The section also outlines who is to be notified and specifies a timeframe for this.

Section 21C sets out that an appeal under the new Part is to be by way of a new hearing.

Section 21D sets out that a judge hearing an appeal under this Part has the power to dismiss, confirm, vary, set aside or quash the relevant order. A judge also has the power to make an order for bail or remand or make any other order that the judge considers appropriate in the circumstances.

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

Clause 8 Principal Act

The Principal Act for the purpose of Part 3 is the *Criminal Code Act 1924*.

Clause 9 Schedule 1 amended (Criminal Code)

This clause makes a number of changes to Schedule 1 (Criminal Code) in relation to bail as well as preliminary proceedings in the Supreme Court.

Clause 9 removes section 304 and 305 from the Criminal Code.

Clause 9 also amends section 331B of the Criminal Code in relation to seeking a preliminary proceedings order in the Supreme Court.

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

Clause 10 Principal Act

The Principal Act for the purpose of Part 4 is the *Criminal Justice (Mental Impairment) Act 1999*.

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

This clause clarifies that the question of fitness to stand trial is reserved for consideration by the Supreme Court. The Supreme Court has the ability to return the matter to the court hearing the preliminary proceedings for completion of those proceedings.

PART 5 – JUSTICES ACT 1959 AMENDED

Clause 12 Principal Act

The Principal Act for the purpose of Part 5 is the *Justices Act 1959*.

Clause 13 Section 3 amended (interpretation)

Clause 13 replaces the existing definition of affected person in the *Justices Act 1959*.

This clause also amends the definition of preliminary proceedings and replaces the definition of preliminary proceedings order.

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

Clause 14 amends section 60 to ensure justices are able to refuse to make an order under the section where a defendant or the Prosecution has commenced or intends to commence preliminary proceedings under Division 3.

Clause 15 Part VII Division 3 substituted

Clause 14 replaces the entirety of Division 3 of Part VII of the *Justices Act 1959*.

The clause includes a number of new definitions for the purpose of the Division.

The clause sets out, in section 61(2), who an “affected person” is, for the purpose of an indictable offence.

Section 62 provides a magistrate with the power to make a preliminary proceedings order in a range of circumstances.

This section also clarifies that if an application, or part of an application, relates to a question of whether the accused is fit to stand trial, that application (or part thereof) must be determined by the Supreme Court and must be conducted in accordance with the *Criminal Justice (Mental Impairment) Act 1999*.

Section 62(4) limits the scope of a preliminary proceedings order in relation to an affected witness.

Section 63 provides for the general conduct of the preliminary proceedings. Subsection (4) provides for the procedure if a defendant's fitness to stand trial for the offence is raised during preliminary proceedings.

Section 64 provides that preliminary proceedings are to be conducted in a closed court. The section also provides who may be excluded from, and who the Court may permit to be present at, the room or place in which preliminary proceedings are conducted.

Section 65 provides for the taking of evidence of affected witnesses in preliminary proceedings.

Section 66 provides that a summons may be issued in respect of preliminary proceedings for the attendance of relevant people. A magistrate or justice may issue a warrant for a person to be apprehended and brought before the magistrate or justice if the person fails to attend.

Section 67 provides for a magistrate to give directions to the conduct or finalisation of preliminary proceedings.

Section 68 provides for the procedure at the conclusion of preliminary proceedings.

Section 69 provides that a defendant can be committed to the Supreme Court whether or not an application for a preliminary proceedings order has been made in respect of the charge.

Section 69A prohibits the publishing of information given in preliminary proceedings or an account of preliminary proceedings unless the Court approves such publication.

Subsection (2) clarifies that the prohibition does not prohibit publishing of information if it is required to effectively conduct the relevant case or relevant to another offence that the person has been charged with.

Clause 16

Section 71 amended (Petty crimes triable summarily)

Clause 15 amends section 71(1)(a) and (b) to increase the monetary threshold in respect of property to the value of \$20,000.

Clause 15 replaces section 71(1)(ab) to clarify that a crime under section 244 or 245(a)(iii) of the Criminal Code will be deemed to have created a simple offence provided that the value does not exceed \$20,000.

Clause 15 inserts subsection (1A) to clarify that subsection (1) does not apply where a defendant is charged with more than one offence referred to in the section and the total value specified in the charges for those offences exceeds \$20,000.

Clause 17 Section 72 amended (Other crimes triable summarily)

Clause 16 amends section 72 to increase the monetary threshold that applies to offences referenced in Part 1 or Part 2 of Schedule 3 that a person may elect to be tried or sentenced by justices.

Subsection (3) is inserted to allow that a person may elect to have an offence tried or sentenced by justices if they are subject to more than one offence referred to in section 71(1) of the Justices Act and the offences are joined in a single complaint or are substantially from the same course of conduct or founded on the same facts. The total value of the charges must not exceed \$100,000 but can exceed \$20,000.

Subsection (4) is inserted to allow that a person may elect to have an offence under section 113 or 192 of the Criminal Code tried or sentenced by justices subject to the consent of the prosecution.

Subsection (5) is inserted to allow that a person may not elect to have an offence tried or sentenced by justices if the person is charged with more than one relevant offence that are joined in a single complaint or are substantially from the same conduct or same facts and the total value specified in the charges for those offences exceeds \$100,000.

Clause 18 Part XI, Division 6 repealed

Clause 17 repeals Part XI, Division 6 of the *Justices Act 1959*.

Clause 19 Schedules 2 and 3 amended

Clause 18 repeals Schedule 2 and 3 and substitutes a new Schedule 2 and 3.

Clause 18 inserts Schedule 2 to specify the crimes under the Criminal Code that are triable summarily subject to section 71 of the *Justices Act 1959*.

Clause 18 inserts Schedule 3 to specify the crimes under the Criminal Code that are triable summarily on election subject to section 72 of the *Justices Act 1959*.

PART 6 – MISUSE OF DRUGS ACT 2001 AMENDED

Clause 20 Principal Act

The Principal Act for the purpose of Part 6 is the *Misuse of Drugs Act 2001*.

Clause 21 Section 22A inserted

Clause 20 inserts section 22A to create a new summary offence for cultivating a plant for sale. Clause 20 inserts a new penalty of a fine not exceeding 100 penalty units or imprisonment not exceeding four years.

Clause 22 Part 3, Division 4: Heading amended

Clause 21 amends the Division 4 heading.

Clause 22 Section 27AA inserted

Clause 22 inserts section 27AA to create a new summary offence for trafficking in controlled substances. Clause 22 inserts a new penalty of a fine not exceeding 100 penalty units or imprisonment not exceeding four years.

PART 7 – POLICE OFFENCES ACT 1935 AMENDED

Clause 24 Principal Act

The Principal Act for the purpose of Part 7 is the *Police Offences Act 1935*.

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

Clause 24 amends section 7B to increase the penalty units to 50 penalty units and the term of imprisonment to a period not exceeding two years.

Clause 26 Section 15C amended (Dangerous articles)

Clause 25 amends section 15C(1) to increase the penalty to 50 penalty units or imprisonment for a period not exceeding two years, or both.

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

Clause 26 amends section 37AA to remove the monetary value limit from the offence.

Clause 28 Section 38B inserted

Clause 27 inserts a new section 38B to create a new summary offence of 'Stealing with force'. Clause 27 inserts a new penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding three years, or both.

Clause 29 Section 43F inserted

Clause 28 inserts a new section 43F to increase the time to lodge a complaint relevant to Part VA (Offences Relating to Computers) of the *Police Offences 1959* from six months to two years.

Clause 30 Section 55 amended (Arrest)

Clause 29 inserts a power of arrest for the new 'stealing with force' offence created by the insertion of section 38B.

PART 8 – SENTENCING ACT 1997 AMENDED

Clause 31 Principal Act

The Principal Act for the purpose of Part 8 is the *Sentencing Act 1997*.

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

Clause 31 amends section 13(a) to increase the maximum prison term imposable by a court of petty sessions from 12 months to three years.