

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

JUSTICE MISCELLANEOUS (COURT BACKLOG AND RELATED MATTERS) BILL 2020

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Madam Speaker, I move that the Bill now be read a second time.

As Attorney-General and Minister for Justice, I am committed to introducing reform to the State's court system. The passage last year of the *Magistrates Court (Criminal and General Division) Act* and *Consequential Amendments Act* as well as the *Restraint Orders Act* was the product of considerable hard work, consultation and collaboration by my Department, the courts and the legal profession, and I thank them all again for their extensive work in this regard over many years.

The significant task of implementing the reforms to the Magistrates Court is now underway, with the major legislation to commence when this project is complete.

At the time of the Magistrates Court legislative reform package, I acknowledged that delays in the court system continue to lead to a growing backlog of cases in the Supreme Court.

I therefore committed to, as a matter of priority, introducing legislation aimed at administrative and procedural change that would reduce the backlog. The *Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020* has been developed in close consultation with key legal stakeholders, including the Magistrate and Supreme Courts and the Office of the Director of Public Prosecutions.

The Bill includes a range of reforms already endorsed by this Parliament through the *Magistrates Court (Criminal and General Division) Act 2019*, that have been identified as changes that could be introduced earlier than the commencement of that Act.

The proposals have been developed with the assistance of the Steering Committee and Legislation Working Group of the Magistrates Court (Criminal and General Division) Reform Project which includes representation from the courts, Department of Justice, Department of Police Fire and Emergency Management, Director of Public Prosecutions, the Law Society, the Tasmanian Bar and Legal Aid Tasmania.

In addition to the extensive assistance provided by legal stakeholders through working and advisory groups, a consultation version of the Bill was also released for public consultation via the Department of Justice website.

Preliminary proceedings

The Bill includes a range of amendments to the *Justices Act 1959*, the *Criminal Code Act 1924* and related Acts to implement preliminary proceedings reforms.

Under the current provisions, a preliminary proceedings order can be requested by either the Defendant or the Crown. Such an order is requested to allow one of the parties to hear and test the evidence of one or more of the witnesses prior to the commencement of the trial.

Currently, once a defendant has entered a plea, the matter is committed to the Supreme Court from the Magistrates Court. An application for a preliminary proceedings order can be made in the Supreme Court and, if an order is made, the matter is returned to the Magistrates Court. At the conclusion of the preliminary proceedings hearing, the matter is returned back to the Supreme Court.

Under this Bill, Magistrates will deal with applications for preliminary proceedings orders prior to the committal of matters to the Supreme Court. These reforms will improve administrative efficiency in the courts by reducing the delay involved in matters moving back and forward between the Magistrates Court and the Supreme Court.

The Bill also contains provisions to ensure it is consistent with the new witness intermediary program, as provided for in the *Evidence (Children and Special Witness) Amendment Bill 2020* that was tabled in this House on 25 August 2020.

The witness intermediary program will establish a legislative framework for the use of intermediaries in Tasmanian courts.

This Bill, which contains reforms to preliminary proceedings, has been drafted to ensure it is consistent with the terminology and policy intent behind the *Evidence (Children and Special Witness) Amendment Bill 2020*.

The Bill includes amendments to:

- approve widening the cohort of witnesses in the 'affected witnesses' category for the purposes of preliminary proceedings; and
- introduce a rebuttable presumption to provide that in preliminary proceedings, an 'affected person' will give evidence by audio visual link and clarify that this should not prevent an affected person from giving evidence in the court room if they choose to.

The Bill has been developed to minimise unnecessary inefficiencies in the movement of matters between the Magistrates Court and the Supreme Court. There are however, valid reasons for some pre-trial matters to remain heard in the Supreme Court.

For example, in the event that a defendant's fitness to plead has been questioned, this will still be determined by the Supreme Court. However, the Bill introduces the power for Magistrates to order expert psychiatric and related reports at any time. This material can then be forwarded to the Supreme Court in preparation for consideration of the issue of the accused's fitness to plead.

The Bill clarifies that the current requirements for preliminary proceeding applications, including the judicial power to circumscribe cross-examination, and the requirement for applications to be made in writing, will be retained.

The Bill will not affect the status quo in relation to alibi notices and expert witness notices, including that an alibi notice will continue to be required at the first appearance in the Supreme Court.

Preliminary proceedings will be held in a closed court and will be subject to a prohibition on general publication. This is consistent with the provisions of the *Magistrates Court (Criminal and General Division) Act 2019*.

And finally, if an order is refused in the Magistrates Court under the reforms proposed above, defendants will still have the ability to apply for a preliminary proceeding order in the Supreme Court in a limited number of circumstances. Some of the circumstances outlined in the Bill reintroduce the provisions of the now repealed section 69A of the *Justices Act 1956*.

Bail applications

The Bill also includes amendments to bail provisions to improve efficiencies in the bail process and avoid unnecessary hearings for bail in the Supreme Court. These reforms will not affect an individual's right to bail but rather will ensure bail applications are heard in the appropriate place and do not cause unnecessary delays in the Supreme Court.

Specifically, the Bill makes amendments to the *Bail Act 1994* to introduce a requirement for a formal bail application, with submissions, to have been made before a Magistrate, before a bail appeal can be made to the Supreme Court. This brings forward the provisions already endorsed by Parliament in the *Magistrates Court (Criminal and General Division) Act 2019*.

Division 6 (Appeals relating to bail) of Part XI from the *Justices Act 1959* and section 305 (Bail Appeal from decision of Judge to Court of Criminal Appeal or Full Court) have been removed from the *Criminal Code* and updated provisions have been inserted in the *Bail Act 1994*.

The Bill also includes a modified version of section 304 of the *Criminal* in the *Bail Act 1994*. This imposes new limits on the ability of applicants to apply to the Supreme Court for bail.

Under this provision an application to the Supreme Court is only permitted in circumstances where the accused has been committed for trial and has appeared in the Supreme Court on the charges in question; or is charged with murder or treason and therefore, is not eligible to apply in the Magistrates Court for bail.

These reforms are consistent with the broader bail reforms which are currently under development.

Crimes to be tried summarily in the Magistrates Court

It was recognised during the development of the *Magistrates Court (Criminal and General Division) Act 2019* that the provisions in the *Justices Act* and the *Sentencing Act* for crimes to be tried summarily in the Magistrates Court were overly restrictive.

This Bill brings forward matters from the *Magistrates Court (Criminal and General Division) Act 2019*. That is, the Bill amends jurisdictional boundaries to allow the Magistrates Court to deal with a broader range of matters. It achieves this through amendments to both the *Justices Act 1959* and the *Sentencing Act 1997*.

Specifically, the amendments to the *Justices Act 1959* enable a broader range of offences to be dealt with summarily, and increase the property value threshold for minor offences from \$5000

to \$20 000 and for electable offences from \$ 20 000 to \$100 000. This is in line with the provisions of the *Magistrates Court (Criminal and General Division) Act 2019* and recognises the change in monetary value over time.

The amendments to section 13 of the *Sentencing Act 1997* increase the maximum term of imprisonment that can be imposed on an offender convicted of a crime that is triable summarily from 12 months to three years for a first offence while retaining five years as the term of imprisonment that can be imposed on an offender for a second or subsequent offence.

New minor summary offences that mirror more serious crimes

In addition, the Bill introduces a number of new minor summary offences that mirror more serious crimes. This enables the prosecution to exercise discretion and ensure the matter is dealt with in a way that is appropriate for the nature and scale of the specific offending.

These new offences to be introduced are:

- a mirror minor summary offence for trafficking in a controlled substance in the *Misuse of Drugs Act 2001* with a reverse onus presumption provision similar to the major indictable offence;
- a mirror minor summary offence for cultivating a controlled plant for sale in the *Misuse of Drugs Act 2001* with a reverse onus presumption provision similar to the major indictable offence; and
- a summary offence for 'stealing with force' in the *Police Offences Act 1935* similar to robbery under Section 240(1) of the *Criminal Code*.

The inclusion of mirror offences will provide prosecutors with the discretion to assess whether the accused's behaviour warrants a charge resulting in a Supreme Court trial or a charge resulting in a Magistrates Court trial.

At present, this discretion is not open to the prosecution in these cases and therefore, charges result in Supreme Court trials for offending that will likely result in sentencing options that could have been handed down in the Magistrates Court.

The Bill makes a number of amendments to existing offences to allow for more flexibility in prosecution, namely:

- an amendment to section 72 of the *Justices Act* to enable section 192 of the *Criminal Code* (Stalking and Bullying) and section 113 (false statutory declarations) to be electable if both the defence and prosecution consent to the matter being dealt with summarily. If both parties don't agree, the offence is not electable;
- an amendment to section 7B (Possession of implement or instrument) and 15C (dangerous articles) of the *Police Offences Act 1935* to increase the penalty to a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years;
- an amendment to section 37AA (Unlawfully setting fire to property) in the *Police Offences Act 1935* to remove the dollar value from section 37AA; and

- an amendment to the *Police Offences Act 1935* to extend the time to lodge complaints from six months to two years for computer related offences under sections 43A to 43D of the *Police Offences Act 1935*.

These amendments will enable the Magistrates Court to deal with cases where the behaviour resulting in the charges was at the minor end of the scale. The Office of the Director of Public Prosecutions will exercise its discretion in accordance with their prosecutorial guidelines to ensure matters are dealt with consistently and fairly.

These changes will ensure that the time of the Supreme Court is not unnecessarily used to deal with matters that could be more quickly and efficiently dealt with in the Magistrates Court.

As I mentioned earlier, many of the reforms in the Bill are bringing forward provisions of the 2019 Magistrates Court amendments early, so as to maximise the benefit to the workflow of the courts.

When the *Magistrates Court (Criminal and General Division) Act* implementation process is complete, that suite of legislation will commence and these reforms will continue through the relevant provisions of the *Magistrates Court (Criminal and General Division) Act* and related Acts. Some consequential amendments will be progressed to reflect the matters now being brought forward in this Bill.

I would like to take this opportunity to again sincerely thank the hard work of the various internal legal stakeholders, including the Chief Justice, Chief Magistrate, Deputy Chief Magistrate, the Administrator of the Magistrates Court, the Registrar of the Supreme Court, the Director of Public Prosecutions, and representatives from the Department of Police, Fire and Emergency Management and the Department of Justice who have developed a suite of reforms that will have a significant effect on the efficiency of the Tasmanian Courts.

I would also like to thank those in the legal profession who worked as part of an advisory group on this Bill, providing invaluable and extensive feedback on the proposed reforms over a period of time. This included the Law Society of Tasmania, the Tasmanian Bar and the Legal Aid Tasmania.

Madam Speaker, I commend this Bill to the House.