

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2020**

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**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2020**

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

A BILL FOR

An Act to amend the *Appeal Costs Fund Act 1968*, the *Constitution Act 1934*, the *Coroners Act 1995*, the *Criminal Code Act 1924*, the *Evidence (Audio and Audio Visual Links) Act 1999*, the *Industrial Relations Act 1984*, the *Oaths Act 2001*, the *Police Offences Act 1935*, the *Promissory Oaths Act 2015* and the *Sex Industry Offences Act 2005*

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 and Related Legislation (Miscellaneous Amendments) Act 2020*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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Part 1 – Preliminary

3. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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PART 2 – REPEAL OF ACT

4. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 3

Appeal Costs Fund Act 1968

1. Section 5(2) is amended by omitting “complaint in respect of an indictable offence, including an indictable offence triable summarily by virtue of that Act” and substituting “conviction or order made in the Supreme Court”.
2. Section 10 is repealed and the following section is substituted:
 10. **Power of Supreme Court to grant indemnity certificate to successful appellant in certain cases**
 - (1) Where –
 - (a) there is an appeal from the decision of a court of summary jurisdiction to the Supreme Court; and
 - (b) the respondent does not appear either in the proceedings before the court of summary jurisdiction or on the appeal; and
 - (c) the appeal succeeds but the Supreme Court refuses to order the respondent to pay the appellant’s costs of the appeal –

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the Supreme Court may, on application made in that behalf, grant to the appellant in the appeal or to one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.

- (2) Notwithstanding subsection (1)(b), where an appeal succeeds in criminal proceedings, the Supreme Court may grant to the appellant in the appeal or to one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.
- (3) Subsection (2) does not apply in respect of an appellant to whom legal aid, within the meaning of the *Legal Aid Commission Act 1990*, has been provided.

Constitution Act 1934

1. Section 30 is repealed and the following section is substituted:

30. Oath to be taken by Members

- (1) No Member of either House may act or vote in the House until he or she has either –
 - (a) after becoming a Member and before the day on which the *Promissory Oaths Act 2015* commences, taken before the

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Governor, or before another person authorised by the Governor to administer it, the oath of allegiance prescribed by the former *Promissory Oaths Act 1869*; or

- (b) after becoming a Member and after the day on which the *Promissory Oaths Act 2015* commences, taken and subscribed under section 3(1) of that Act the oath of allegiance.
- (2) It is not necessary for a Member who has taken the oath of allegiance to take that oath again after any demise of the Crown, including by or on abdication.

Coroners Act 1995

1. Section 59B is amended as follows:

- (a) by omitting subsection (2);
- (b) by omitting from subsection (3) “may order the Commissioner of Police” and substituting “, on application by the Commissioner of Police, may order the Commissioner”.

Criminal Code Act 1924

1. Schedule 1 is amended as follows:

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- (a) by omitting from section 401(3)(a)(ii) “a probation order” and substituting “an order”;
- (b) by omitting from section 401(3)(b) “a probation order” and substituting “an order”;
- (c) by inserting the following subsection after subsection (2) in section 415:
 - (3) Pending the determination of an appeal, the Court may stay proceedings on any order under the *Sentencing Act 1997* or suspend the operation of any such order *ab initio*.
- (d) by inserting the following paragraph after paragraph (c) in section 418(1):
 - (ca) the power to, pending the determination of an appeal, stay proceedings on any order under the *Sentencing Act 1997* or suspend the operation of any such order *ab initio*;

Evidence (Audio and Audio Visual Links) Act 1999

1. Section 6(1) is amended by omitting “direct that evidence be taken, or submissions made, by” and substituting “direct the use, for any purpose, of”.

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Industrial Relations Act 1984

1. Section 70(1) is amended by inserting after paragraph (b) the following paragraph:
 - (ba) a decision made by the Commission to dismiss, or refrain from further hearing, a matter, or part of a matter, under section 21(2)(c) by the party who applied for the hearing; and

2. Section 71 is amended by inserting after subsection (10) the following subsections:
 - (10A) In respect of a matter in relation to which an appeal has been lodged, the President or presiding member may make or give any procedural order or direction, not involving the decision of the matter, that he or she considers necessary or proper to prevent prejudice to the rights or claims of any party to the matter.
 - (10B) An order or direction under subsection (10A) may be discharged or varied by a Full Bench.

3. Section 72 is amended by omitting subsections (2) and (3) and substituting the following subsection:
 - (2) A person who wishes to challenge, on the basis of an error of law, a decision of a Full Bench in respect of an appeal may

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apply, by originating application, to the Supreme Court for the decision to be quashed wholly, or in part, on that basis.

Oaths Act 2001

1. Section 12(2) is amended by omitting paragraphs (a) and (b) and substituting the following paragraph:
 - (a) a prescribed person under regulation 7 of the *Statutory Declarations Regulations 2018* of the Commonwealth; or

Police Offences Act 1935

1. Section 15CA is amended by omitting subsection (2).

Promissory Oaths Act 2015

1. Section 9 is amended as follows:
 - (a) by omitting from subsection (1) “section 4 of the *Justices Act 1959*” and substituting “section 5 of the *Justices of the Peace Act 2018*”;
 - (b) by omitting from subsection (4) “section 4 of the *Justices Act 1959*” and substituting “section 5 of the *Justices of the Peace Act 2018*”;

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- (c) by omitting subsections (5), (6), (7), (8) and (9).

Sex Industry Offences Act 2005

1. Section 3(1) is amended by omitting the definition of *sexually transmissible infection* and substituting the following definition:

sexually transmissible infection means an infection that is transmitted through sexual contact between people, including the following:

- (a) syphilis;
- (b) gonorrhoea;
- (c) chlamydia;
- (d) human immunodeficiency virus;
- (e) herpes;
- (f) hepatitis;
- (g) genital warts;
- (h) any other prescribed infection.