

TASMANIA

**MAGISTRATES COURT (CRIMINAL AND
GENERAL DIVISION) (CONSEQUENTIAL
AMENDMENTS) BILL 2012**

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DRAFT

**MAGISTRATES COURT (CRIMINAL AND
GENERAL DIVISION) (CONSEQUENTIAL
AMENDMENTS) BILL 2012**

*(Brought in by the Minister for Justice, the Honourable Dr
Vanessa Goodwin)*

A BILL FOR

**An Act to consequentially amend certain Act on the
enactment of the *Magistrates Court (Criminal and General
Division) Act 2012***

Be it enacted by His 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 – BAIL ACT 1994 AMENDED

1. Short title

This Act may be cited as the *Magistrates Court
(Criminal and General Division) (Consequential
Amendments) Act 2012*.

2. Commencement

This Act commences on the day on which the
*Magistrates Court (Criminal and General
Division) Act 2012* commences.

**THIS BILL IS COGNATE WITH THE MAGISTRATES COURT (CRIMINAL AND GENERAL
DIVISION) BILL 2017**

Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of

s. 3

Part 1 – Bail Act 1994 Amended

3. Principal Act

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

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “clerk of petty sessions;” from paragraph (b) of the definition of *appropriate officer* in subsection (1) and substituting “district registrar;”;
- (b) by inserting the following definition after the definition of *appropriate officer* in subsection (1):

charge means an allegation of a summary offence, indictable offence or breach of duty;

- (c) by inserting the following definitions after the definition of *contravene* in subsection (1):

court attendance notice has the same meaning as in the *Magistrates Court (Criminal and General Division) Act 2017*;

Director means the Director, Monetary Penalties Enforcement Service

*No. 9 of 1994

Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of

Part 1 – Bail Act 1994 Amended

s. 4

appointed under section 8 of the
Monetary Penalties Enforcement
Act 2005;

district registrar means a person
appointed to the office of district
registrar under section 16A of the
Magistrates Court Act 1987;

- (d) by omitting the definition of *restraint order* from subsection (1) and substituting the following definitions:

justice means a justice appointed
under section 5 of the *Justices of*
the Peace Act 2017;

Magistrates Court (Criminal and General Division) means the
division of the Magistrates Court
of that name established by
section 9 of the *Magistrates*
Court (Criminal and General
Division) Act 2017;

prosecutor includes a person who
makes and files a court
attendance notice under the
Magistrates Court (Criminal and
General Division) Act 2017;

restraint order has the same meaning
as in the *Restraint Orders Act*
2017.

- (e) by omitting subsection (2).

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(Consequential Amendments) Act 2012
Act No. of

s. 5

Part 1 – Bail Act 1994 Amended

5. Section 4A inserted

Before section 5 of the Principal Act, the following section is inserted in Part 2:

4A. Power of certain officers to admit person to bail

(1) In this section –

interim restraint order has the same meaning as in the *Restraint Orders Act 2017*;

prescribed officer means –

(a) a police officer; and

(b) in the case of an offence against the *Road Safety (Alcohol and Drugs) Act 1970*, an approved operator within the meaning of section 3(6) of that Act;

protected person means a person for whose benefit a restraint order, interim restraint order or telephone interim restraint order is sought or was made;

restrained person means a person taken into custody to facilitate the making of an application for a restraint order;

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Part 1 – Bail Act 1994 Amended

s. 5

summary offence has the same meaning as in the *Magistrates Court (Criminal and General Division) Act 2017*;

telephone interim restraint order has the same meaning as in the *Restraint Orders Act 2017*.

- (2) If a person has been taken into custody in respect of a summary offence or a breach of duty, or in pursuance of a warrant issued under section 12 or to facilitate the making of an application for a restraint order, a prescribed officer must –
- (a) inquire into the case; and
 - (b) admit that person to bail unless there are reasonable grounds for believing that such a course would not be desirable in the interests of justice.
- (3) In determining whether there are reasonable grounds for believing that it would not be desirable in the interests of justice for a restrained person to be admitted to bail, the prescribed officer –
- (a) must consider the protection and welfare of the protected person to be of paramount importance; and
 - (b) must take into account any previous violence by the

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(Consequential Amendments) Act 2012
Act No. of

s. 6

Part 1 – Bail Act 1994 Amended

restrained person against the protected person or any other person, whether or not the restrained person was convicted of an offence, or had a prior restraint order made against him or her, in respect of that previous violence.

- (4) Subsection (2) does not apply if the restrained person is detained under section 4(2) of the *Criminal Law (Detention and Interrogation) Act 1995*.
- (5) If a restrained person has been refused bail under this section, he or she may not appeal against that refusal.
- (6) A person refused bail under this section is to be taken before the Magistrates Court (Criminal and General Division) as soon as is reasonably practicable.

6. Section 5 amended (Police bail)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 34 of the *Justices Act 1959*” and substituting “section 4A of this Act”;
- (b) by omitting from subsection (1)(a) “notice specifying the day on which and the time and place at which he or she is

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(Consequential Amendments) Act 2012
Act No. of

Part 1 – Bail Act 1994 Amended

s. 6

- required to appear before justices;” and substituting “court attendance notice;”;
- (c) by omitting from subsection (2) “section 34 of the *Justices Act 1959*” and substituting “section 4A of this Act”;
 - (d) by omitting from subsection (2)(a) “justices” and substituting “the Magistrates Court (Criminal and General Division)”;
 - (e) by inserting in subsection (2)(a) “court attendance” after “a”;
 - (f) by omitting from subsection (2)(b) “justices” and substituting “the Magistrates Court (Criminal and General Division)”;
 - (g) by inserting in subsection (3)(b) “court attendance” after “the”;
 - (h) by omitting from subsection (3A)(c) “section 106B (1) of the *Justices Act 1959*” and substituting “section 6(1) of the *Restraint Orders Act 2017*”;
 - (i) by omitting from subsection (5) “justices” first occurring and substituting “the Magistrates Court (Criminal and General Division)”;
 - (j) by omitting from subsection (5) “the justices” and substituting “that Court”;

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s. 6

Part 1 – Bail Act 1994 Amended

- (k) by inserting in subsection (5A) “court attendance” after “contravene, a”;
- (l) by omitting from subsection (5B) “a justice, the justice” and substituting “the Magistrates Court (Criminal and General Division), that Court”;
- (m) by omitting from subsection (5B) “section 34A of the *Justices Act 1959*.” and substituting “section 17 of the *Magistrates Court (Criminal and General Division) Act 2017*.”;
- (n) by omitting from subsection (6) “section 34 of the *Justices Act 1959*” and substituting “section 4A of this Act”;
- (o) by omitting from subsection (6) “justices” and substituting “the Magistrates Court (Criminal and General Division)”;
- (p) by omitting from subsection (6) “notice.” and substituting “court attendance notice referred to in subsection (1)(a).”;
- (q) by omitting from subsection (7) “clerk of petty sessions” and substituting “district registrar”.

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(Consequential Amendments) Act 2012
Act No. of

Part 1 – Bail Act 1994 Amended

s. 7

7. Section 7 amended (Conditions to which bail is subject)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (d) and (e) from subsection (1) and substituting the following paragraphs:
 - (d) a district registrar; or
 - (e) an officer of the Magistrates Court appointed in writing by a district registrar; or
- (b) by omitting from subsection (3) “bail, except an order made under section 117A (2) of the *Justices Act 1959*,” and substituting “bail”.

8. Section 11 amended (Power of Magistrates Court (Criminal and General Division) and judges to deal with arrested person)

Section 11(1) of the Principal Act is amended as follows:

- (a) by omitting “a justice, the justice” and substituting “the Magistrates Court (Criminal and General Division), that Court”;
- (b) by omitting from paragraph (a) “the *Justices Act 1959* –” and substituting “section 4A or under the *Magistrates*

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(Consequential Amendments) Act 2012
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Part 1 – Bail Act 1994 Amended

*Court (Criminal and General Division)
Act 2017 –”.*

9. Section 12 amended (Power of judge or Magistrates Court (Criminal and General Division) to issue warrant for arrest)

Section 12 of the Principal Act is amended by omitting “a justice” and substituting “the Magistrates Court (Criminal and General Division)”.

10. Section 20 amended (Offences against this Act)

Section 20 of the Principal Act is amended by omitting “a justice,” and substituting “the Magistrates Court (Criminal and General Division),”.

11. Section 22 amended (Oral application for bail)

Section 22 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a justice” and substituting “the Magistrates Court (Criminal and General Division)”;
- (b) by omitting from subsection (2) “a justice” and substituting “the Magistrates Court (Criminal and General Division)”.

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(Consequential Amendments) Act 2012
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Part 1 – Bail Act 1994 Amended

s. 12

12. Section 23 amended (Application for bail or variation of conditions)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “justices,” first occurring and substituting “the Magistrates Court (Criminal and General Division),”;
- (b) by omitting from subsection (2)(a) “charged”;
- (c) by omitting from subsection (2)(a) “justices,” and substituting “the Magistrates Court (Criminal and General Division),”;
- (d) by omitting from subsection (2)(b) “those justices.” and substituting “the Magistrates Court (Criminal and General Division).”;
- (e) by omitting from subsection (3) “section 34 of the *Justices Act 1959*” and substituting “this Act, the *Magistrates Court (Criminal and General Division) Act 2017*”;
- (f) by omitting from subsection (3) “justices” and substituting “the Magistrates Court (Criminal and General Division)”;

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(Consequential Amendments) Act 2012
Act No. of

s. 13

Part 1 – Bail Act 1994 Amended

- (g) by inserting in subsection (3) “court attendance” after “in a”.

13. Section 24 amended (Application to revoke bail, &c.)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “complainant,”;
- (b) by omitting from subsection (3) “justices,” first occurring and substituting “the Magistrates Court (Criminal and General Division),”;
- (c) by inserting in subsection (3)(a) “or the applicant” after “charged”;
- (d) by omitting from subsection (3)(a) “justices,” and substituting “Magistrates Court (Criminal and General Division),”;
- (e) by omitting from subsection (3)(b) “those justices.” and substituting “the Magistrates Court (Criminal and General Division).”.

14. Section 26 amended (Arrest of person admitted to bail by person bound by recognizance)

Section 26 of the Principal Act is amended as follows:

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Part 1 – Bail Act 1994 Amended

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- (a) by omitting from subsection (2) “a justice.” and substituting “the Magistrates Court (Criminal and General Division).”;
- (b) by omitting from subsection (3) “a justice, the justice” and substituting “the Magistrates Court (Criminal and General Division), that Court”;
- (c) by omitting from subsection (3)(a) “*Justices Act 1959 –*” and substituting “*Magistrates Court (Criminal and General Division) Act 2017 –*”;
- (d) by omitting from subsection (3)(b) “justice.” and substituting “Magistrates Court (Criminal and General Division).”.

Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of

s. 15

Part 2 – Consumer Affairs Act 1988 Amended

PART 2 – CONSUMER AFFAIRS ACT 1988 AMENDED

15. Principal Act

In this Part, the *Consumer Affairs Act 1988** is referred to as the Principal Act.

16. Section 20 amended (Offences against this Act)

Section 20(1)(b) of the Principal Act is amended as follows:

- (a) by omitting from subparagraph (i) “matter of complaint arose;” and substituting “alleged offence occurred;”;
- (b) by omitting from subparagraph (ii) “matter of complaint” and substituting “alleged offence”.

17. Section 24A inserted

After section 24 of the Principal Act, the following section is inserted in Part V:

24A. Minister may set time limit for commencing proceedings for offences under this and other Act

- (1) The Minister, by order, may declare this Act or another Act, or a provision of this Act or another Act, to be an Act or

*No. 53 of 1988

*Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of*

Part 2 – Consumer Affairs Act 1988 Amended

s. 17

provision to which section 67(1)(a) of the *Magistrates Court (Criminal and General Division) Act 2017* does not apply.

- (2) Proceedings for a summary offence –
- (a) against an Act or provision that has been declared under subsection (1) to be an Act or provision to which 67(1)(a) of the *Magistrates Court (Criminal and General Division) Act 2017* does not apply; and
 - (b) that is not also an indictable offence referred to in Schedule 2 or Schedule 3 to the *Magistrates Court (Criminal and General Division) Act 2017* –

must be commenced within 3 years after the time when the alleged offence occurred, but not later than 6 months after the day on which the alleged offence came to the attention of the Director.

- (3) An order under subsection (1) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

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(Consequential Amendments) Act 2012
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s. 18

Part 3 – Coroners Act 1995 Amended

PART 3 – CORONERS ACT 1995 AMENDED

18. Principal Act

In this Part, the *Coroners Act 1995** is referred to as the Principal Act.

19. Section 15 amended (Coroner’s associates)

Section 15(3) of the Principal Act is amended by omitting “clerk of petty sessions and a deputy clerk of petty sessions” and substituting “district registrar, and a deputy district registrar, appointed under section 16A of the *Magistrates Court Act 1987*”.

20. Section 25 amended (Procedure at inquest where person charged with an offence)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “justices” and substituting “the Magistrates Court (Criminal and General Division)”;
- (b) by inserting the following subsection after subsection (2):
 - (2A) If –

*No. 73 of 1995

*Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of*

Part 3 – Coroners Act 1995 Amended

s. 20

(a) a public officer commences criminal proceedings against a person for an offence referred to in subsection (2) and the offence or the circumstances of the offence have resulted in the death of another person; and

(b) the proceedings are commenced before the commencement of, or the making of a finding in, an inquest into that death –

the public officer is to notify, in writing, the relevant district registrar of the commencement of those proceedings and that the person may be a person of relevance to the inquest.

(2B) In subsection (2A) –

district registrar means a person appointed as a district registrar under section 16A of the *Magistrates Court Act 1987*.

*Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of*

s. 21

Part 3 – Coroners Act 1995 Amended

- (c) by omitting from subsection (6) “clerk to the justices” and substituting “district registrar of the Magistrates Court (Criminal and General Division)”.

21. Section 66 repealed

Section 66 of the Principal Act is repealed.

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*Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of*

Part 4 – Family Violence Act 2004 Amended

s. 22

PART 4 – FAMILY VIOLENCE ACT 2004 AMENDED

22. Principal Act

In this Part, the *Family Violence Act 2004** is referred to as the Principal Act.

23. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by omitting the definition of *Chief Clerk of Petty Sessions*;
- (b) by inserting the following definition after the definition of *Director, MPES*:

district registrar means a person appointed as a district registrar under section 16A of the *Magistrates Court Act 1987*;

24. Section 5 amended (Meaning of “court”)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a court of summary jurisdiction within the meaning of the *Justices Act 1959*.” and substituting “the Magistrates Court (Criminal and General Division).”;

*No. 67 of 2004

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(Consequential Amendments) Act 2012
Act No. of

s. 25

Part 4 – Family Violence Act 2004 Amended

(b) by omitting subsection (2) and substituting the following subsection:

(2) The court when constituted by one or more bench justices, within the meaning of the *Magistrates Court (Criminal and General Division) Act 2017*, may only exercise jurisdiction in relation to a proceeding under this Act if the rules of court referred to in section 132 of that Act prescribe that one or more such bench justices may exercise jurisdiction in relation to that proceeding.

25. Section 11 amended (Power of Magistrates Court (Criminal and General Division) and judges to deal with arrested person)

Section 11(2) of the Principal Act is amended by omitting “section 34 of the *Justices Act 1959*.” and substituting “section 4A of the *Bail Act 1994*.”.

26. Section 12 amended (Power of judge or Magistrates Court (Criminal and General Division) to issue warrant for arrest)

Section 12(3) of the Principal Act is amended by omitting “Section 34 of the *Justices Act 1959*” and substituting “Section 4A of the *Bail Act 1994*”.

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(Consequential Amendments) Act 2012
Act No. of*

Part 4 – Family Violence Act 2004 Amended

s. 27

27. Section 14 amended (Police family violence orders)

Section 14(2) of the Principal Act is amended by omitting “Chief Clerk of Petty Sessions.” and substituting “district registrar.”.

28. Section 27 amended (Registration of external family violence order)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Clerk of Petty Sessions” and substituting “district registrar”;
- (b) by omitting from subsection (3) “The Clerk of Petty Sessions” and substituting “A district registrar”;
- (c) by omitting from subsection (4) “Clerk of Petty Sessions” and substituting “district registrar”.

29. Section 31 amended (Procedure in relation to hearing and determining applications)

Section 31(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a)(ii) “a complaint for a simple offence;” and substituting “an application under the *Magistrates Court (Criminal and General Division) Act 2017*;”;

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(Consequential Amendments) Act 2012
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s. 30

Part 4 – Family Violence Act 2004 Amended

(b) by omitting from paragraph (b) “a complainant.” and substituting “an applicant under the *Magistrates Court (Criminal and General Division) Act 2017*.”.

30. Section 35 amended (Contravention of FVO or PFVO)

Section 35(3) of the Principal Act is amended by omitting “complaint” and substituting “court attendance notice, within the meaning of the *Magistrates Court (Criminal and General Division) Act 2017*.”.

*Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of*

Part 5 – Magistrates Court Act 1987 Amended

s. 31

**PART 5 – MAGISTRATES COURT ACT 1987
AMENDED**

31. Principal Act

In this Part, the *Magistrates Court Act 1987** is referred to as the Principal Act.

32. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *Administrator of the Magistrates Court*:

authorised justice means a justice who has been authorised under section 13(1) of the *Magistrates Court (Criminal and General Division) Act 2017*;

bench justice has the same meaning as in the *Magistrates Court (Criminal and General Division) Act 2017*;

- (b) by inserting the following definitions after the definition of *Deputy Chief Magistrate*:

*No. 45 of 1987

Magistrates Court (Criminal and General Division)
(Consequential Amendments) Act 2012
Act No. of

s. 33

Part 5 – Magistrates Court Act 1987 Amended

deputy district registrar means a person appointed as a deputy district registrar under section 16A(1);

district registrar means a person appointed as a district registrar under section 16A(1);

(c) by omitting paragraph (b) from the definition of *lower courts*.

33. Section 3A amended (Creation of the Magistrates Court)

Section 3A of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(3) The Magistrates Court consists of –

- (a) the Chief Magistrate, the Deputy Chief Magistrate and the magistrates; and
- (b) coroners appointed under the *Coroners Act 1995* when constituting the Magistrates Court (Coronial Division); and
- (c) bench justices when constituting the Magistrates Court (Criminal and General Division); and

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Part 5 – Magistrates Court Act 1987 Amended

s. 34

- (d) authorised justices when constituting the Magistrates Court (Criminal and General Division).

34. Section 10A amended (Immunities)

Section 10A of the Principal Act is amended as follows:

- (a) by inserting “coroner, bench justice or authorised justice,” after “A magistrate,”;
- (b) by inserting “coroner, bench justice or authorised justice” after “of magistrate,”.

35. Section 15 amended (Arrangement of business of courts, and administrative matters)

Section 15 of the Principal Act is amended as follows:

- (a) by inserting in subsection (5) “bench justice, authorised” after “magistrate,”;
- (b) by omitting from subsection (7) “other” and substituting “coroners, bench justices and authorised”;
- (c) by inserting the following subsections after subsection (8):
- (9) The Magistrates Court may sit and act at any time on any day, including a statutory holiday

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s. 36

Part 5 – Magistrates Court Act 1987 Amended

within the meaning of the
Statutory Holidays Act 2000.

- (10) The Magistrates Court is to sit at such times and places as the Chief Magistrate directs.
- (11) The Chief Magistrate may vary or revoke a direction made under subsection (10).

36. Section 15AAA inserted

After section 15 of the Principal Act, the following section is inserted in Part II:

15AAA. Persons allowed in courtroom

- (1) Subject to this Act and any other Act, the room or place in which the Magistrates Court sits is an open and public court to which all persons may have access so far as it can conveniently contain them.
- (2) If at any time during a hearing the Magistrates Court considers it appropriate, the Court may order all or any members of the public or all or any witnesses, other than the witness being examined or a party, to leave the room or place in which the Court is sitting and remain outside that room or place and beyond the hearing of the Court until permitted to re-enter.

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(Consequential Amendments) Act 2012
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Part 5 – Magistrates Court Act 1987 Amended

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(3) Without limiting the reasons for which the Magistrates Court may make an order under subsection (2), the Court may make such an order for any of the following reasons:

- (a) to ensure that the national or international security of Australia is not endangered;
- (b) to ensure that the administration of justice is not prejudiced;
- (c) to ensure that the physical safety of any person is not endangered;
- (d) to prevent undue distress or embarrassment to the complainant in a proceeding that relates to a charge for a sexual offence;
- (e) to prevent undue distress or embarrassment to a witness under examination in a proceeding that relates to a charge for an offence where the conduct constituting the offence consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration.

(4) In subsection (3) –

sexual offence means –

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s. 36

Part 5 – Magistrates Court Act 1987 Amended

- (a) a crime under section 122, 124(1), 125, 125A(2), 125B(1), 125C(2) or (3), 125D(1) or (3), 126(1), 127(1), 127A(1), 129, 130, 133(1) or (2), 137, 178(1), 185(1) or 186(1) or (2) of the *Criminal Code*; or
- (b) a crime under section 298, 299 or 300 of the *Criminal Code* in relation to a crime specified in a section referred to in paragraph (a); or
- (c) an offence under section 35(3) of the *Police Offences Act 1935*;

sexual penetration means –

- (a) the introduction, to any extent, by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission or semen; or
- (b) the introduction, to any extent, by a person of an object or part of his or her body other than the penis

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Part 5 – Magistrates Court Act 1987 Amended

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into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes.

- (5) If at any time during a hearing the Magistrates Court considers that the behaviour of a party to the proceedings is significantly hindering the Court's capacity to carry out its functions and duties, the Court may order that party to leave the room or place in which the Court is sitting and remain outside that room or place and beyond the hearing of the Court until permitted by the Court to re-enter.
- (6) If the Magistrates Court, other than the Magistrates Court when constituted by a coroner, under subsection (5) excludes a party from a room or place, it must arrange for the excluded party to be provided with a means of hearing and observing the proceedings from another room or place unless it is not practicable to provide those means.
- (7) Except as provided in subsection (5), a party to proceedings may not be excluded from the room or place in which the Magistrates Court is sitting.

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- (8) If a person wilfully disobeys an order under subsection (2) or (5), the person is guilty of a contempt of the Magistrates Court and may be punished as provided in section 17A.

37. Section 15AE amended (Committee may make rules of court)

Section 15AE(1) of the Principal Act is amended by omitting paragraph (b).

38. Section 15A substituted

Section 15A of the Principal Act is repealed and the following section is substituted:

15A. District registries

A district registry is established for each of the following areas of Tasmania:

- (a) the northern region;
- (b) the north-western region;
- (c) the southern region.

39. Section 17 amended (Delegation)

Section 17 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “under this or any other Act” after “delegation”;

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(b) by inserting the following subsection after subsection (2):

(2A) A district registrar may, by instrument in writing, delegate to a person employed in the Department the performance and exercise of such of the functions and powers of the district registrar (other than this power of delegation) under this or any other Act as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.

(c) by omitting from subsection (5) “Magistrate or the Administrator,” and substituting “Magistrate, Administrator or district registrar,”;

(d) by omitting from subsection (6) “Magistrate or the Administrator,” twice occurring and substituting “Magistrate, Administrator or district registrar,”.

40. Section 17A amended (Contempt of Court)

Section 17A(1) of the Principal Act is amended as follows:

(a) by omitting “3 months” and substituting “6 months”;

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- (b) by omitting “5 penalty units.” and substituting “10 penalty units.”.

41. Sections 17AB and 17AC inserted

After section 17A of the Principal Act, the following sections are inserted in Part IV:

17AB. Vexatious litigants

- (1) In this section –

institute, in relation to a proceeding, includes, but is not limited to –

- (a) for a civil proceeding or breach of duty proceeding, the taking of a step or the making of an application that may be necessary before the proceeding can be commenced against or in relation to a party; and
- (b) for a criminal proceeding, the laying of a charge or the issue of a warrant for the arrest of an alleged offender, whichever first occurs; and
- (c) for a proceeding referred to in paragraph (c) of the definition of *proceedings*,

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the taking of a step or the making of an application that may be necessary to commence the proceeding;

proceedings includes, but is not limited to –

- (a) a cause, matter, action, suit, proceeding, trial, complaint and inquiry of any kind within the jurisdiction of a court or tribunal; and
- (b) a proceeding (including an interlocutory proceeding) taken in connection with or incidental to a proceeding before a court or tribunal; and
- (c) a calling into question of a determination, whether or not a final determination, of the Magistrates Court a court or tribunal, whether by appeal, challenge, review or any other way;

vexatious litigant means a person who has habitually, persistently and

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without reasonable grounds instituted vexatious proceedings in the Magistrates Court or a lower court, or any other court or tribunal in this State or elsewhere in Australia;

vexatious proceeding includes, but is not limited to –

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted to harass, annoy, cause delay or detriment or achieve another wrongful purpose; and
- (c) a proceeding conducted in the Magistrates Court in such a manner so as to harass, annoy, cause delay or detriment or achieve another wrongful purpose.

- (2) If the Magistrates Court or a lower court is satisfied that a person has instituted, or is seeking to institute, in the Magistrates Court or lower court a vexatious proceeding and is a vexatious litigant, the Magistrates Court or lower court may make one or more of the following orders:

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- (a) an order that any proceeding, or any proceeding against another particular person, instituted in the Magistrates Court or lower court by the person may not be continued without the leave of the Magistrates Court or lower court;
- (b) that the person may not institute any proceeding, or any proceeding against a particular person, in the Magistrates Court or lower court without the leave of the Magistrates Court or lower court.
- (3) An order under subsection (2) may be made on the application, filed in the Magistrates Court or lower court –
- (a) of a person against whom the alleged vexatious litigant has instituted or conducted a proceeding in the Magistrates Court or lower court; or
- (b) of a person who has sufficient interest in the matter; or
- (c) of the Attorney-General, Solicitor General or Director of Public Prosecutions; or
- (d) of a district registrar.

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- (4) The Magistrates Court or a lower court must not grant a vexatious litigant, against whom an order under subsection (2) is in force, leave to continue or institute a proceeding unless satisfied that –
- (a) the proceeding is not a vexatious proceeding; and
 - (b) there is a *prima facie* ground for the proceeding.
- (5) The Magistrates Court or a lower court may revoke or vary an order made under subsection (2).

17AC. Power to control process

The Magistrates Court has the same powers to control its process as the Supreme Court.

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Part 6 – Supreme Court Civil Procedure Act 1932 Amended

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**PART 6 – SUPREME COURT CIVIL PROCEDURE ACT
1932 AMENDED**

42. Principal Act

In this Part, the *Supreme Court Civil Procedure Act 1932** is referred to as the Principal Act.

43. Section 9 amended (Application of Act)

Section 9 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(d) “Part XI of the *Justices Act 1959*.” and substituting “Part 12 of the *Magistrates Court (Criminal and General Division) Act 2017*.”;
- (b) by omitting from subsection (2) “a court of summary jurisdiction” and substituting “the Magistrates Court (Criminal and General Division) established by section 9 of the *Magistrates Court (Criminal and General Division) Act 2017*”.

44. Section 194G amended (Vexatious litigants)

Section 194G(1) of the Principal Act is amended by omitting “whether in the Court or any inferior court and”.

*No. 58 of 1932