TASMANIA

JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2006

CONTENTS

PART 1 – PRELIMINARY
1. Short title
2. Commencement

PART 2 – BUILDING ACT 2000 AMENDED
3. Principal Act
4. Sections 252 and 253 repealed

PART 3 – COLLECTIONS FOR CHARITIES ACT 2001 AMENDED
5. Principal Act
6. Section 3 amended (Interpretation)
7. Section 5 amended (Permissible soliciting)
8. Section 6 amended (Approval of organisations for soliciting)
9. Section 15 amended (Prohibition of soliciting)
10. Section 16 amended (Appointment of administrator)
11. Section 18 amended (Regulations)

PART 4 – CONSUMER AFFAIRS ACT 1988 AMENDED
12. Principal Act
13. Section 12A inserted
   12A. Delegation

[Bill 17]-I
<table>
<thead>
<tr>
<th>PART 5 – CORRECTIONS ACT 1997 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. Principal Act</td>
</tr>
<tr>
<td>15. Section 8 amended (Confidentiality)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 6 – CRIMINAL CODE ACT 1924 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Principal Act</td>
</tr>
<tr>
<td>17. Principal Act amended</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 7 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT 2001 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. Principal Act</td>
</tr>
<tr>
<td>19. Section 4 amended (Support person for child)</td>
</tr>
<tr>
<td>20. Section 8 amended (Special witness)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 8 – FATAL ACCIDENTS ACT 1934 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>21. Principal Act</td>
</tr>
<tr>
<td>22. Section 10 amended (Assessing damages)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 9 – HEALTH COMPLAINTS ACT 1995 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>23. Principal Act</td>
</tr>
<tr>
<td>24. Section 76 repealed</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 10 – OMBUDSMAN ACT 1978 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>25. Principal Act</td>
</tr>
<tr>
<td>26. Section 3 amended (Interpretation)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 11 – RELATIONSHIPS ACT 2003 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>27. Principal Act</td>
</tr>
<tr>
<td>28. Section 3 amended (Interpretation)</td>
</tr>
<tr>
<td>29. Section 11 amended (Application to register deed of relationship)</td>
</tr>
<tr>
<td>30. Section 62 amended (Effect of agreements in certain proceedings)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART 12 – SECOND-HAND DEALERS AND PAWNBROKERS ACT 1994 AMENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>31. Principal Act</td>
</tr>
</tbody>
</table>
32. Section 9B inserted
   9B. Protection from liability
33. Section 11 amended (Duty to retain goods for 7 days)
34. Section 14 amended (Redemption of pledges)

PART 13 – SENTENCING ACT 1997 AMENDED
35. Principal Act
36. Section 4 amended (Interpretation)
37. Section 15 amended (Custodial sentence: whether concurrent or cumulative)
38. Section 36 amended (Breach of community service order)
39. Section 42 amended (Breach of probation order)

PART 14 – SUPREME COURT CIVIL PROCEDURE ACT 1932 AMENDED
40. Principal Act
41. Section 197 amended (Power of judges to make Rules of Court)

PART 15 – YOUTH JUSTICE ACT 1997 AMENDED
42. Principal Act
43. Section 89 amended (Period of custody on remand to be treated as detention on sentence)
JUSTICE AND RELATED LEGISLATION  
(MISCELLANEOUS AMENDMENTS) BILL 2006

(Brought in by the Minister for Justice and Workplace Relations, the Honourable Steven Kons)

A BILL FOR


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 – PRELIMINARY

1. Short title

This Act may be cited as the Justice and Related Legislation (Miscellaneous Amendments) Act 2006.
2. **Commencement**

(1) Except as specified in subsection (2), this Act commences on the day on which this Act receives the Royal Assent.

(2) Part 12 commences on a day to be proclaimed.
PART 2 – BUILDING ACT 2000 AMENDED

3. Principal Act

In this Part, the Building Act 2000* is referred to as the Principal Act.

4. Sections 252 and 253 repealed

Sections 252 and 253 of the Principal Act are repealed.

*No. 100 of 2000
PART 3 – COLLECTIONS FOR CHARITIES ACT 2001 AMENDED

5. Principal Act

In this Part, the Collections for Charities Act 2001* is referred to as the Principal Act.

6. Section 3 amended (Interpretation)

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

(a) by inserting the following definition after the definition of “charitable purpose”:

“Commissioner” means the Commissioner for Corporate Affairs holding office under section 4 of the Commissioner for Corporate Affairs Act 1980, and includes any person holding that office in an acting capacity;

(b) by omitting the definition of “Director”.

7. Section 5 amended (Permissible soliciting)

Section 5 of the Principal Act is amended as follows:

*No. 28 of 2001
(a) by omitting from subsection (1)(a) “Director” and substituting “Commissioner”;  

(b) by omitting from subsection (1)(b) “Director” and substituting “Commissioner”;  

(c) by omitting from subsection (2)(c) “Director” and substituting “Commissioner”.  

8. Section 6 amended (Approval of organisations for soliciting)  

Section 6 of the Principal Act is amended as follows:  

(a) by omitting from subsection (1) “Director” and substituting “Commissioner”;  

(b) by omitting from subsection (2) “Director” and substituting “Commissioner”;  

(c) by omitting from subsection (4) “Director” first occurring and substituting “Commissioner”;  

(d) by omitting from subsection (4)(b) “Director” and substituting “Commissioner”;
Justice and Related Legislation (Miscellaneous Amendments) Act 2006
Act No. of

s. 9 Part 3 – Collections for Charities Act 2001 Amended

(e) by omitting from subsection (5) “Director” and substituting “Commissioner”;

(f) by omitting from subsection (6) “Director” and substituting “Commissioner”.

9. Section 15 amended (Prohibition of soliciting)

Section 15(1) of the Principal Act is amended as follows:

(a) by omitting “Director” first occurring and substituting “Commissioner”;

(b) by omitting from paragraph (b) “Director” and substituting “Commissioner”.

10. Section 16 amended (Appointment of administrator)

Section 16 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “Director” and substituting “Commissioner”;
(c) by omitting from subsection (3)(b) “Director” and substituting “Commissioner”.

11. Section 18 amended (Regulations)

Section 18(2) of the Principal Act is amended as follows:

(a) by omitting from paragraph (b) “Director” and substituting “Commissioner”;

(b) by omitting from paragraph (c) “Director” and substituting “Commissioner”.
PART 4 – CONSUMER AFFAIRS ACT 1988 AMENDED

12. Principal Act

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

13. Section 12A inserted

After section 12 of the Principal Act, the following section is inserted in Part III:

12A. Delegation

The Director may delegate any of his or her functions or powers under this Act other than this power of delegation.

*No. 53 of 1988
PART 5 – CORRECTIONS ACT 1997 AMENDED

14. Principal Act

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

15. Section 8 amended (Confidentiality)

Section 8(1) of the Principal Act is amended by inserting “or detainee” after “prisoner” in paragraph (d) of the definition of “confidential information”.

*No. 51 of 1997
PART 6 – CRIMINAL CODE ACT 1924 AMENDED

16. Principal Act

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

17. Principal Act amended

Schedule 1 to the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (3) in section 21:

(4) It is lawful for a police officer who is charged by law with the duty of executing a lawful warrant issued by any court or justice or other person having jurisdiction to issue it, and who is required to arrest or detain a person under that warrant, to arrest or detain that person in accordance with section 301(4) and (5).

(b) by inserting the following section after section 26:

*No. 69 of 1924*
26A. Entry on premises for purposes of arrest

(1) A police officer may enter (using reasonable force if necessary), remain on and search premises, including a conveyance –

(a) on or in which the police officer has reasonable grounds for believing that a person named in a warrant for arrest is present; or

(b) for the purpose of making an arrest without warrant if it lawful to do so.

(2) Before entering any premises pursuant to subsection (1), a police officer must communicate or attempt to communicate to a person within the premises the police officer’s authority to enter the premises unless the police officer reasonably believes that communicating or attempting to communicate would be likely to endanger any person or frustrate the arrest.

(c) by inserting the following subsections after subsection (3) in section 301:
(4) Notwithstanding subsection (1), a police officer may arrest a person, whether or not the police officer has a warrant for the arrest of that person in his or her possession at the time of making the arrest, if the police officer has reasonable grounds for believing that a warrant for the arrest has been issued in relation to that person.

(5) If a police officer arrests a person under subsection (4), the police officer must, as soon as practicable –

(a) deliver that person into the custody of an officer in charge of a police station; and

(b) produce or cause to be produced to the person taken into custody the warrant or a certified facsimile of the warrant.

(6) If a person is delivered into the custody of an officer in charge of a police station under subsection (5), it is lawful for the officer in charge of the police station to detain the person until the warrant or certified facsimile
of the warrant is produced to that person.

(7) The warrant is taken to be executed at the time at which the warrant or certified facsimile of the warrant is produced in accordance with subsection (5) to the person taken into custody.

(8) For the purposes of this section, a certified facsimile is a facsimile that contains in the text printed from the facsimile machine –

(a) a statement signed by the person using the machine to send the facsimile that the person has seen the original warrant and that the facsimile is a copy of the original warrant; and

(b) a statement specifying the time that the facsimile was sent.

(9) A certified facsimile of a warrant may be used to execute the original warrant for a period not exceeding 8 hours from the time when the certified facsimile is sent by the facsimile machine.

(d) by omitting from section 334B “dangerous driving” second occurring
and substituting “an offence under section 32(1) of the Traffic Act 1925”.
PART 7 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT 2001 AMENDED

18. Principal Act

In this Part, the Evidence (Children and Special Witnesses) Act 2001* is referred to as the Principal Act.

19. Section 4 amended (Support person for child)

Section 4(1) of the Principal Act is amended by omitting “prescribed”.

20. Section 8 amended (Special witness)

Section 8(1) of the Principal Act is amended by omitting “prescribed”.

*No. 79 of 2001
PART 8 – FATAL ACCIDENTS ACT 1934 AMENDED

21. Principal Act

In this Part, the Fatal Accidents Act 1934* is referred to as the Principal Act.

22. Section 10 amended (Assessing damages)

Section 10(1)(d)(i) of the Principal Act is amended by omitting “Repatriation Act 1919” and substituting “Veterans’ Entitlements Act 1986”.

*No. 30 of 1934
Justice and Related Legislation (Miscellaneous Amendments) Act
2006
Act No. of

PART 9 – HEALTH COMPLAINTS ACT 1995
AMENDED

23. Principal Act

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

24. Section 76 repealed

Section 76 of the Principal Act is repealed.

*No. 95 of 1995
PART 10 – OMBUDSMAN ACT 1978 AMENDED

25. Principal Act

In this Part, the *Ombudsman Act 1978* is referred to as the Principal Act.

26. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “tribunal”.

*No. 82 of 1978*
PART 11 – RELATIONSHIPS ACT 2003 AMENDED

27. Principal Act

In this Part, the *Relationships Act 2003* is referred to as the Principal Act.

28. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

(a) by inserting the following definition after the definition of “child”:

“corresponding law” means a law of another State or a Territory that corresponds to the *Legal Profession Act 1993*;

(b) by inserting the following definition after the definition of “financial resources”:

“legal practitioner” means a legal practitioner within the meaning of the *Legal Profession Act 1993* or a “corresponding law”;

*No. 44 of 2003*
29. **Section 11 amended (Application to register deed of relationship)**

Section 11(3) of the Principal Act is amended as follows:

(a) by omitting “solicitor of the Supreme Court of Tasmania” and substituting “legal practitioner”;

(b) by omitting “solicitor” second occurring and substituting “legal practitioner”.

30. **Section 62 amended (Effect of agreements in certain proceedings)**

Section 62(1)(d) of the Principal Act is amended as follows:

(a) by omitting “solicitor of the Supreme Court of Tasmania” and substituting “legal practitioner”;

(b) by omitting “solicitor” second occurring and substituting “legal practitioner”.
PART 12 – SECOND-HAND DEALERS AND PAWNBROKERS ACT 1994 AMENDED

31. Principal Act

In this Part, the Second-hand Dealers and Pawnbrokers Act 1994* is referred to as the Principal Act.

32. Section 9B inserted

After section 9A of the Principal Act, the following section is inserted in Division 3:

9B. Protection from liability

No liability attaches to the Crown, the Commissioner of Police or a police officer in respect of the failure of the Commissioner of Police or police officer to inform a second-hand dealer or pawnbroker who has given notice under section 9A(1) of the receipt of prescribed second-hand goods that those goods are or may be goods that have been reported to the Commissioner of Police as stolen.

*No. 95 of 1994
Justice and Related Legislation (Miscellaneous Amendments) Act 2006
Act No. of

s. 33 Part 12 – Second-hand Dealers and Pawnbrokers Act 1994 Amended

33. **Section 11 amended (Duty to retain goods for 7 days)**

   Section 11(3) of the Principal Act is amended by inserting “other than prescribed second-hand goods” after “second-hand goods”.

34. **Section 14 amended (Redemption of pledges)**

   Section 14(1) of the Principal Act is amended by omitting “6” and substituting “3”.

26
PART 13 – SENTENCING ACT 1997 AMENDED

35. Principal Act

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

36. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

(a) by inserting the following definition after the definition of “DCS”:

“detention period” has the same meaning as in the Youth Justice Act 1997;

(b) by inserting the following definition after the definition of “driving disqualification order”:

“earliest release date” has the same meaning as in the Youth Justice Act 1997;

(c) by omitting “section 67(1) of the Corrections Act 1997” from paragraph (c) of the definition of “non-parole period” and substituting “section 68 of the Corrections Act 1997”.

*No. 59 of 1997
37. Section 15 amended (Custodial sentence: whether concurrent or cumulative)

Section 15 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “or detention period” after “sentence of imprisonment”;

(b) by inserting the following subsection after subsection (1):

(1A) If a court –

(a) sentences an offender to a term of imprisonment and the offender is already serving or liable to serve a detention period; and

(b) determines that the sentence of imprisonment ought not to be served concurrently with the uncompleted detention period –

the court may order that the sentence of imprisonment commence on the earliest release date in respect of the detention period.
38. **Section 36 amended (Breach of community service order)**

Section 36 of the Principal Act is amended by omitting subsections (4), (5) and (6) and substituting the following subsections:

(4) If, on the hearing of the complaint, the court is satisfied by evidence on oath or otherwise that the offender has committed an offence under subsection (1), the court may do either of the following:

(a) if the community service order was made by the Supreme Court and the court considers the breach to be a serious one, commit the offender to custody or release the offender on bail, with or without sureties, to be brought or to appear before the Supreme Court to be dealt with under subsection (5) or (6) or under both subsections (5) and (6);

(b) if the community service order was made by a court of petty sessions, or was made by the Supreme Court and the court does not consider the breach to be a serious one, deal with the offender under subsection (5) or (6) or under both subsections (5) and (6).
(5) The court or the Supreme Court, if the offender is committed to the Supreme Court under subsection (4)(a), may do either or both of the following:

(a) impose a fine not exceeding 10 penalty units;

(b) impose a term of imprisonment not exceeding 3 months.

(6) In addition to or instead of exercising its power under subsection (5), the court or the Supreme Court, if the offender is committed to the Supreme Court under subsection (4)(a), may –

(a) confirm the order as originally made; or

(b) increase the number of hours of community service that the offender is required to perform under the order; or

(c) cancel the order and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or

(d) cancel the order and, if it considers it appropriate, any other
order made by the court in respect of the offence in respect of which the community service order was made, and deal with the offender for that offence in any manner in which the court could deal with the offender had it just found the offender guilty of that offence.

39. **Section 42 amended (Breach of probation order)**

Section 42 of the Principal Act is amended by omitting subsections (4), (5) and (6) and substituting the following subsections:

(4) If, on the hearing of the complaint, the court is satisfied by evidence on oath or otherwise that the offender has committed an offence under subsection (1), the court may do either of the following:

(a) if the probation order was made by the Supreme Court and the court considers the breach to be a serious one, commit the offender to custody or release the offender on bail, with or without sureties, to be brought or to appear before the Supreme Court to be dealt with under subsection (5) or (6) or under both subsections (5) and (6);
(b) if the probation order was made by a court of petty sessions, or was made by the Supreme Court and the court does not consider the breach to be a serious one, deal with the offender under subsection (5) or (6) or under both subsections (5) and (6).

(5) The court or the Supreme Court, if the offender is committed to the Supreme Court under subsection (4)(a), may do either or both of the following:

(a) impose a fine not exceeding 10 penalty units;

(b) impose a term of imprisonment not exceeding 3 months.

(6) In addition to or instead of exercising its power under subsection (5), the court or the Supreme Court, if the offender is committed to the Supreme Court under subsection (4)(a), may –

(a) confirm the order as originally made; or

(b) increase the period during which the order has effect; or

(c) vary the special conditions to which the order is subject; or
(d) cancel the order and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or

(e) cancel the order and, if it considers it appropriate, any other order made by the court in respect of the offence in respect of which the probation order was made, and deal with the offender for that offence in any manner in which the court could deal with the offender had it just found the offender guilty of that offence.
PART 14 – SUPREME COURT CIVIL PROCEDURE ACT 1932 AMENDED

40. Principal Act

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

41. Section 197 amended (Power of judges to make Rules of Court)

Section 197(1) of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (c):

(ca) Authorising and providing for discovery –

(i) to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in court against that person; or

(ii) to enable a decision to be made whether to commence, continue or

*No. 58 of 1932
defend a proceeding in the court; or

(iii) to enable a party to a proceeding in the court to obtain information in relation to that proceeding from a person who is not a party;

(b) by omitting subparagraph (i) from paragraph (f).
PART 15 – YOUTH JUSTICE ACT 1997 AMENDED

42. Principal Act

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

43. Section 89 amended (Period of custody on remand to be treated as detention on sentence)

Section 89(1) of the Principal Act is amended by omitting “pending the determination of the proceedings for” and substituting “in relation to proceedings for or arising from”.

*No. 81 of 1997*