

TASMANIA

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**JUSTICE AND RELATED LEGISLATION  
(FURTHER MISCELLANEOUS AMENDMENTS)  
BILL 2009**

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**CONTENTS**

**PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Repeal of Act

**PART 2 – CORRECTIONS ACT 1997 AMENDED**

4. Principal Act
5. Section 3 amended (Interpretation)
6. Section 72 amended (Release on parole)
7. Sections 87A and 87B inserted
  - 87A. Eligible persons register
  - 87B. Releasing information

**PART 3 – CRIMINAL CODE ACT 1924 AMENDED**

8. Principal Act
9. Principal Act amended

**PART 4 – CRIMINAL LAW (DETENTION AND INTERROGATION)  
ACT 1995 AMENDED**

10. Principal Act
11. Section 3 amended (Interpretation)

- 12. Section 16 amended (Duties of custody officer in relation to persons in custody)
- 13. Section 17 inserted
  - 17. Duties of correctional officer in relation to persons in custody

**PART 5 – JUSTICES ACT 1959 AMENDED**

- 14. Principal Act
- 15. Section 55 amended (Procedure when brought before justices)
- 16. Section 72AB inserted
  - 72AB. Perverting the course of justice triable summarily

**PART 6 – MAGISTRATES COURT (CIVIL DIVISION) ACT 1992 AMENDED**

- 17. Principal Act
- 18. Section 28 substituted
  - 28. Appeals to Supreme Court

**PART 7 – MENTAL HEALTH ACT 1996 AMENDED**

- 19. Principal Act
- 20. Section 3 amended (Interpretation)
- 21. Section 72P amended (Leave of absence for forensic patients generally)
- 22. Section 72Q amended (Leave of absence for forensic patients on restriction orders)
- 23. Section 72R amended (Notification of victims)
- 24. Section 73P amended (Notifying persons of release)

**PART 8 – POLICE POWERS (SURVEILLANCE DEVICES) ACT 2006 AMENDED**

- 25. Principal Act
- 26. Section 8 substituted
  - 8. Who may issue warrants?
- 27. Section 9 amended (Application for surveillance device warrant)

**PART 9 – RESIDENTIAL TENANCY ACT 1997 AMENDED**

- 28. Principal Act

29. Section 17 amended (Money other than rent)

**PART 10 – SENTENCING ACT 1997 AMENDED**

30. Principal Act
31. Section 24 substituted  
24. Suspended sentence to be conditional
32. Section 27 amended (Breach of order suspending sentence)
33. Section 36 substituted  
36. Breach of community service order  
36AA. Offences relating to community service orders
34. Section 42 substituted  
42. Breach of probation order  
42A. Offence relating to a probation order
35. Section 54A substituted  
54A. Contravention of rehabilitation program order
36. Section 68 amended (Compensation order)

**PART 11 – SUPREME COURT CIVIL PROCEDURE ACT 1932 AMENDED**

37. Principal Act
38. Section 197 amended (Power of judges to make Rules of Court)



**JUSTICE AND RELATED LEGISLATION  
(FURTHER MISCELLANEOUS AMENDMENTS)  
BILL 2009**

*(Brought in by the Minister for Justice, the Honourable  
Larissa Tahireh Giddings)*

**A BILL FOR**

**An Act to amend the *Corrections Act 1997*, the *Criminal Code Act 1924*, the *Criminal Law (Detention and Interrogation) Act 1995*, the *Justices Act 1959*, the *Magistrates Court (Civil Division) Act 1992*, the *Mental Health Act 1996*, the *Police Powers (Surveillance Devices) Act 2006*, the *Residential Tenancy Act 1997*, the *Sentencing Act 1997* and the *Supreme Court Civil Procedure Act 1932***

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 (Further Miscellaneous Amendments) Act 2009*.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 2

Part 1 – Preliminary

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**2. Commencement**

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Parts 5 and 10 commence on a day or days to be proclaimed.
- (3) Part 9 is taken to have commenced on 1 July 2009.

**3. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 2 – Corrections Act 1997 Amended

s. 4

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**PART 2 – CORRECTIONS ACT 1997 AMENDED**

**4. Principal Act**

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

**5. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended by inserting after the definition of “disciplinary officer” the following definition:

**“eligible persons register”** means the register kept under section 87A;

**6. Section 72 amended (Release on parole)**

Section 72 of the Principal Act is amended as follows:

(a) by omitting from subsection (2A) “victims register” and substituting “eligible persons register”;

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

(2AB) The Secretary may provide to the Board the name of the parent or

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\*No. 51 of 1997

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 6**

Part 2 – Corrections Act 1997 Amended

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guardian of a victim listed in the eligible persons register if the victim –

- (a) has not attained the age of 18 years; or
  - (b) is mentally incapable of making representations on his or her own behalf.
- (c) by omitting from subsection (2B) “victims register” and substituting “eligible persons register”;
- (d) by omitting from subsection (2B) “such victim” and substituting “such victim or, if subsection (2AB) applies, the parent or guardian of the victim”;
- (e) by omitting from subsection (2B)(b) “the victim” first occurring and substituting “the victim or, if subsection (2AB) applies, the parent or guardian of the victim”;
- (f) by omitting from subsection (2C) “a victim” and substituting “a victim or, if subsection (2AB) applies, the parent or guardian of the victim,”;
- (g) by omitting from subsection (2C)(b) “to the victim”;



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 2 – Corrections Act 1997 Amended

s. 6

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- (h) by omitting from subsection (2D) “victims register” and substituting “eligible persons register”;
  - (i) by omitting from subsection (2E) “victims” first occurring and substituting “victims or, if subsection (2AB) applies, parents or guardians of the victim,”;
  - (j) by omitting from subsection (2E)(a) “victims” and substituting “persons”;
  - (k) by omitting from subsection (2E)(b) “victim” and substituting “person”;
  - (l) by omitting from subsection (4)(ka) “a victim” and substituting “a victim, or, if subsection (2AB) applies, the parent or guardian of the victim,”;
  - (m) by omitting from subsection (7A) “a victim” and substituting “a victim or, if subsection (2AB) applies, the parent or guardian of the victim”;
  - (n) by omitting “*Sentencing Act 1997*,” from the definition of “restriction order” in subsection (11) and substituting “*Sentencing Act 1997*.”;
  - (o) by omitting the definition of “victims register” from subsection (11).

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 7

Part 2 – Corrections Act 1997 Amended

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**7. Sections 87A and 87B inserted**

After section 87 of the Principal Act, the following sections are inserted in Part 9:

**87A. Eligible persons register**

- (1) The Secretary must keep a register of persons who are eligible to receive information, under section 87B, about a prisoner who has been sentenced to a period of imprisonment for a violent offence or a sexual offence.
- (2) The following persons may apply to be listed in the eligible persons register as an eligible person:
  - (a) a victim of the offence;
  - (b) the parent or guardian of a person referred to in paragraph (a) if that person –
    - (i) has not attained the age of 18 years; or
    - (ii) is mentally incapable of making representations on his or her behalf;
  - (c) another person who proves, to the satisfaction of the Secretary –
    - (i) that the prisoner has been violent towards that person; or

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 2 – Corrections Act 1997 Amended

s. 7

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- (ii) that the person's life or physical safety could reasonably be expected to be endangered because of a connection between the person and the offence that resulted in the sentence of imprisonment.
  - (3) An application under this section is to be –
    - (a) in the form approved by the Secretary; and
    - (b) accompanied by proof, to the satisfaction of the Secretary, of the identity of the applicant.
  - (4) The Secretary may accept or refuse an application under this Part and is to notify the applicant in writing of the acceptance or refusal.
  - (5) The applicant may nominate to the Secretary a person or organisation to receive information under section 87B for, and on behalf of, the applicant.
  - (6) The Secretary may accept or refuse a nomination under subsection (5) and is to notify the applicant in writing of the acceptance or refusal of the nomination.
  - (7) In this section –

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 7

Part 2 – Corrections Act 1997 Amended

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**“sexual offence”** has the same meaning as in the *Evidence Act 2001*;

**“violent offence”** means an offence in which the victim suffers actual or threatened violence.

**87B. Releasing information**

- (1) If the Secretary reasonably considers it appropriate, the Secretary may release information about a prisoner to a person listed in the eligible persons register in respect of the prisoner including, but not limited to, information about any one or more of the following:
  - (a) the prisoner’s current location;
  - (b) the prisoner’s security classification;
  - (c) the prisoner’s transfer between prisons;
  - (d) the prisoner’s eligibility dates for discharge or release;
  - (e) the prisoner’s date of discharge or release;
  - (f) the results of the prisoner’s applications for parole orders;

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 2 – Corrections Act 1997 Amended

s. 7

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- (g) the death or escape of, or other exceptional events relating to, the prisoner.
  - (2) If a nomination under section 87A(5) has been accepted under section 87A(6), the Secretary may give the information to the person or organisation accepted as nominee.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 8

Part 3 – Criminal Code Act 1924 Amended

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**PART 3 – CRIMINAL CODE ACT 1924 AMENDED**

**8. Principal Act**

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

**9. Principal Act amended**

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (3) in section 400:

(4) The Associate Judge of the Supreme Court is to be an Associate Judge of the Court.

- (b) by inserting the following paragraph after paragraph (b) in section 401(2):

(ba) by leave of the Court, against a stay of proceedings; or

- (c) by inserting in section 410 “or Associate Judge” after “judge”;

- (d) by inserting the following section after section 418:

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\*No. 69 of 1924

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 3 – Criminal Code Act 1924 Amended

s. 9

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**418A. Powers of Associate Judge**

- (1) The following powers of the Court may be exercised by an Associate Judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions:
  - (a) the power to extend the time in which notice of appeal or of an application for leave to appeal may be given;
  - (b) the power to allow a person to be present at any proceedings where he or she is not entitled to be present without leave;
  - (c) the power to give leave for the withdrawal or discontinuance of an appeal;
  - (d) the power to dismiss an appeal under section 402(7);
  - (e) the power to give directions.
- (2) If an appellant applies to an Associate Judge under this section, and the Associate Judge

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 9**

Part 3 – Criminal Code Act 1924 Amended

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refuses the application, the  
appellant is entitled to have the  
application determined by the  
Court.



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 4 – Criminal Law (Detention and Interrogation) Act 1995 Amended

s. 10

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**PART 4 – CRIMINAL LAW (DETENTION AND  
INTERROGATION) ACT 1995 AMENDED**

**10. Principal Act**

In this Part, the *Criminal Law (Detention and Interrogation) Act 1995\** is referred to as the Principal Act.

**11. 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 “Commissioner”:

**“correctional officer”** has the same meaning as in the *Corrections Act 1997*;

- (b) by inserting the following definition after the definition of “legal practitioner”:

**“reception prison”** means a prison, in any of the following areas, in respect of which a proclamation has been made under section 9(2) of the *Corrections Act 1997*:

- (a) Hobart;

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\*No. 72 of 1995

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 12**      Part 4 – Criminal Law (Detention and Interrogation) Act 1995 Amended

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(b) Launceston.

**12. Section 16 amended (Duties of custody officer in relation to persons in custody)**

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “station.” and substituting “station; or”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (2):
  - (c) to the custody of a correctional officer of a reception prison.
- (c) by omitting from subsection (3) “subsection (2)” and substituting “subsection (2)(a) or (b)”;
- (d) by inserting the following subsection after subsection (3):
  - (4) If the custody officer transfers or permits the transfer of a person in custody in accordance with subsection (2)(c), the custody officer –
    - (a) is to record the transfer as if it were a transfer to another custody officer under section 15; and

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 4 – Criminal Law (Detention and Interrogation) Act 1995 Amended

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s. 13

- (b) in relation to that person, ceases to be subject to the duty imposed on the custody officer by subsection (1)(a) other than the duty imposed by that subsection in relation to section 4.

**13. Section 17 inserted**

After section 16 of the Principal Act, the following section is inserted:

**17. Duties of correctional officer in relation to persons in custody**

- (1) In relation to persons in custody who have been transferred in accordance with section 16(2)(c), a correctional officer at a reception prison must ensure that all persons so transferred are treated in accordance with any correctional standing orders referred to in subsection (2).
- (2) The Director of Corrective Services, within the meaning of the *Corrections Act 1997*, may make correctional standing orders in respect of the welfare, protection and management of persons in custody who have been transferred in accordance with section 16(2)(c).

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 13**      Part 4 – Criminal Law (Detention and Interrogation) Act 1995 Amended

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- (3) Section 26(3) of the *Corrections Act 1997* does not apply to a correctional officer who has custody of a person by virtue of section 16(2)(c).
- (4) If a request has been made by a police officer or a custody officer, the correctional officer who has custody of a person by virtue of section 16(2)(c) is to transfer or permit the transfer of that person to –
  - (a) a police officer referred to in section 16(2)(a) or (b); or
  - (b) the custody officer making the request.
- (5) In this section –
  - “correctional standing orders”**  
means standing orders under section 6(3) of the *Corrections Act 1997*.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 5 – Justices Act 1959 Amended

s. 14

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**PART 5 – JUSTICES ACT 1959 AMENDED**

**14. Principal Act**

In this Part, the *Justices Act 1959*\* is referred to as the Principal Act.

**15. Section 55 amended (Procedure when brought before justices)**

Section 55(5) of the Principal Act is amended by omitting “7 weeks” and substituting “4 weeks”.

**16. Section 72AB inserted**

After section 72A of the Principal Act, the following section is inserted in Part VIII:

**72AB. Perverting the course of justice triable summarily**

(1) In this section –

“**perverting the course of justice complaint**” means a complaint for an offence under section 105 of the *Criminal Code* that relates to an offence under the *Traffic Act 1925*, the *Vehicle and Traffic*

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\*No. 77 of 1959

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 16

Part 5 – Justices Act 1959 Amended

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*Act 1999 or the Road Safety  
(Alcohol and Drugs) Act 1970.*

- (2) If a person is brought before justices upon a perverting the course of justice complaint and the justices and prosecutor agree that the matter is one that should be tried summarily, the justices, pursuant to section 55 or 58 and in the prescribed form of words or in words of similar effect, may ask the defendant if he or she is willing to be tried or sentenced by the justices instead of by jury.
- (3) If a defendant to whom subsection (2) applies, or, if he or she is under the age of 17 years, his or her parent or guardian, does not object to his or her being tried or sentenced by the justices, the section creating the offence is taken to have created a simple offence and the complaint is to be dealt with accordingly, subject to the provisions of this section.

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**PART 6 – MAGISTRATES COURT (CIVIL DIVISION)  
ACT 1992 AMENDED**

**17. Principal Act**

In this Part, the *Magistrates Court (Civil Division) Act 1992\** is referred to as the Principal Act.

**18. Section 28 substituted**

Section 28 of the Principal Act is repealed and the following section is substituted:

**28. Appeals to Supreme Court**

- (1) If any party to a proceeding before the Court, other than a proceeding in respect of a minor civil claim, is aggrieved by any determination, order, ruling or direction of the Court, that party may appeal to a judge of the Supreme Court who may make such orders as the judge considers appropriate in the circumstances.
- (2) If a party to a proceeding in respect of a minor civil claim before the Court is aggrieved by any determination, order, ruling or direction of the Court, that party

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\*No. 27 of 1992

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 18**

Part 6 – Magistrates Court (Civil Division) Act 1992 Amended

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may appeal to a judge of the Supreme Court –

- (a) on one or more of the following grounds:
    - (i) that the magistrate lacked jurisdiction or exceeded his or her jurisdiction;
    - (ii) that the party was denied natural justice in the course of proceedings; or
  - (b) if a judge of the Supreme Court grants leave, on any other ground.
- (3) On an appeal under subsection (2), the judge may make any orders he or she considers appropriate in the circumstances.



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 7 – Mental Health Act 1996 Amended

s. 19

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**PART 7 – MENTAL HEALTH ACT 1996 AMENDED**

**19. Principal Act**

In this Part, the *Mental Health Act 1996*\* is referred to as the Principal Act.

**20. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

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

**“eligible persons register”** has the same meaning as in the *Corrections Act 1997*;

- (b) by omitting the definition of “Victims Register”.

**21. Section 72P amended (Leave of absence for forensic patients generally)**

Section 72P(7)(a) of the Principal Act is amended as follows:

- (a) by omitting “Victims Register” and substituting “eligible persons register”;

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\*No. 31 of 1996

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 22

Part 7 – Mental Health Act 1996 Amended

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- (b) by omitting “registered in relation to the forensic patient in that Register” and substituting “listed in relation to the forensic patient in that register”.

**22. Section 72Q amended (Leave of absence for forensic patients on restriction orders)**

Section 72Q(6)(a) of the Principal Act is amended as follows:

- (a) by omitting “Victims Register” and substituting “eligible persons register”;
- (b) by omitting “registered in relation to the forensic patient in that Register” and substituting “listed in relation to the forensic patient in that register”.

**23. Section 72R amended (Notification of victims)**

Section 72R of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “registered in the Victims Register” and substituting “listed in the eligible persons register”;
- (b) by omitting from subsection (2) “registered in the Victims Register” and substituting “listed in the eligible persons register”.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 7 – Mental Health Act 1996 Amended

s. 24

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**24. Section 73P amended (Notifying persons of release)**

Section 73P of the Principal Act is amended as follows:

- (a) by omitting “Victims Register and notify any victim registered in relation to the forensic patient in that Register” and substituting “eligible persons register and notify any person listed in that register in relation to the forensic patient”;
- (b) by omitting “victim” second occurring and substituting “person”.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 25

Part 8 – Police Powers (Surveillance Devices) Act 2006 Amended

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**PART 8 – POLICE POWERS (SURVEILLANCE  
DEVICES) ACT 2006 AMENDED**

**25. Principal Act**

In this Part, the *Police Powers (Surveillance Devices) Act 2006*\* is referred to as the Principal Act.

**26. Section 8 substituted**

Section 8 of the Principal Act is repealed and the following section is substituted:

**8. Who may issue warrants?**

- (1) The Supreme Court may issue any warrant under this Part.
- (2) A magistrate may issue –
  - (a) a surveillance device warrant, other than a warrant that authorises the use of a surveillance device outside Tasmania; or
  - (b) a retrieval warrant in respect of a surveillance device authorised under a warrant referred to in paragraph (a).

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\*No. 22 of 2006

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 8 – Police Powers (Surveillance Devices) Act 2006 Amended

s. 27

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**27. Section 9 amended (Application for surveillance device warrant)**

Section 9 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(c) “in this jurisdiction, in this and one or more participating jurisdictions or in one or more participating jurisdictions” after “device”;
- (b) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
  - (b) a magistrate in the case of an application for a surveillance device warrant that authorises the use, only in this jurisdiction, of a device for the purpose of investigating a relevant offence.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 28

Part 9 – Residential Tenancy Act 1997 Amended

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**PART 9 – RESIDENTIAL TENANCY ACT 1997  
AMENDED**

**28. Principal Act**

In this Part, the *Residential Tenancy Act 1997*\*  
is referred to as the Principal Act.

**29. Section 17 amended (Money other than rent)**

Section 17(4) of the Principal Act is amended by  
omitting “council” from the definition of “water  
consumption charge” and substituting “regulated  
entity, within the meaning of the *Water and  
Sewerage Industry Act 2008*,”.

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\*No. 82 of 1997

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**PART 10 – SENTENCING ACT 1997 AMENDED**

**30. Principal Act**

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

**31. Section 24 substituted**

Section 24 of the Principal Act is repealed and the following section is substituted:

**24. Suspended sentence to be conditional**

- (1) If a court makes an order suspending the whole or a part of a sentence of imprisonment, the order is subject to the following conditions during the period the order suspending the sentence of imprisonment is in force:
  - (a) that the offender does not commit another offence punishable by imprisonment;
  - (b) that the offender report within one clear working day to a probation officer at the place specified in the order;
  - (c) that the offender must not leave, or stay outside, the State without

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\*No. 59 of 1997

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 31**

Part 10 – Sentencing Act 1997 Amended

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the permission of a probation officer;

- (d) that the offender must notify a probation officer of a change in the offender's residence or employment before, or within 2 working days after, the change occurs.

- (2) In addition to the conditions specified in subsection (1), an order suspending the whole or a part of a sentence of imprisonment may be subject to any one or more of the following conditions:

- (a) that the offender is to perform community service;
- (b) that the offender is subject to the supervision of a probation officer;
- (c) that the offender is required to undertake a rehabilitation program;
- (d) any other condition as the court considers necessary or expedient.

- (3) A condition imposed under subsection (1) or (2) may in itself be made subject to any condition as the court considers necessary or expedient.

- (4) If a suspended sentence is made conditional on the performance of



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

**s. 31**

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community service, the following sections apply with such modifications as are necessary and, in particular, a reference to a community service order in those sections is taken to be a reference to the condition imposing community service:

- (a) section 28(c), (d) and (g);
  - (b) sections 30, 31, 32 and 33;
  - (c) section 34(a);
  - (d) section 36A.
- (5) If a suspended sentence is made conditional on supervision of the offender by a probation officer, the following sections apply with such modifications as are necessary and, in particular, a reference to a probation order in those sections is taken to be a reference to the condition imposing probation:
- (a) section 37(1)(c), (d) and (f);
  - (b) section 37(2) and (3);
  - (c) sections 38, 39 and 40.
- (6) Nothing in this section is intended to affect the operation of section 8(1).

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 32

Part 10 – Sentencing Act 1997 Amended

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**32. Section 27 amended (Breach of order suspending sentence)**

Section 27 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) If it appears to an authorised person that, during the period an order suspending a sentence of imprisonment is in force in relation to an offender, the offender has breached a condition of the suspended sentence, the authorised person may apply to the court, which made the order suspending the sentence of imprisonment, for an order under this section.

(b) by inserting in subsection (2) “under subsection (1)” after “application”;

(c) by omitting subsection (4) and substituting the following subsections:

(4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period an order suspending a sentence of imprisonment is in force in respect of the offender (in this section called the “new offence”), an authorised person –

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 32

- 
- (a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and
    - (b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.
  - (4A) If an application is made under subsection (4) to a court that is not the court that imposed the suspended sentence on the offender, the court hearing the application may do either of the following:
    - (a) deal with the application under this section;
    - (b) adjourn the application to the court that imposed the suspended sentence and either grant the offender bail or remand the offender in custody.
  - (4B) If, on the hearing of an application under this section, the court is satisfied that the offender

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 32

Part 10 – Sentencing Act 1997 Amended

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has been found guilty of a new offence, the court must activate the sentence of imprisonment that is held in suspense and order the offender to serve it.

(4C) If the court is of the opinion that an order under subsection (4B) would be unjust due to the exceptional circumstances which have arisen after the order suspending the sentence was made, the court may instead –

- (a) activate part of the sentence that is held in suspense and order the offender to serve it; or
- (b) order that a sentence (in this section called the “**substituted sentence**”) take effect in place of the suspended sentence; or
- (c) by order, vary the conditions on which the execution of the sentence was suspended, including extending the period of suspension in the order to a day no later than 12 months after the day the offender was found guilty of the new offence; or

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 32

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- (d) make no order in respect of the suspended sentence.
- (4D) If the court decides not to exercise the power referred to in subsection (4B) it must state the reasons for so deciding.
- (4E) If, on the hearing of an application under this section, the court is satisfied that the offender has breached, without reasonable excuse, a condition of the suspended sentence other than by committing a new offence, the court may –
  - (a) activate all or part of the sentence that is held in suspense and order the offender to serve it; or
  - (b) order that a sentence (in this section called the “**substituted sentence**”) take effect in place of the suspended sentence; or
  - (c) by order, vary the conditions on which the execution of the sentence was suspended, including extending the period of suspension in the order to

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 32

Part 10 – Sentencing Act 1997 Amended

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a day no later than 12 months after the day the offender was found guilty of the breach; or

(d) make no order in respect of the suspended sentence.

(d) by omitting from subsection (6A) “subsection (4)(a)” and substituting “subsection (4B), (4C) or (4E)”;

(e) by omitting from subsection (6B) “subsection (4)(b)” and substituting “subsection (4C) or (4E)”;

(f) by omitting subsection (7) and substituting the following subsection:

(7) If it is not possible for the court to immediately deal with an application under subsection (1) or (4) in respect of the offender, the court may –

(a) adjourn the proceedings;  
and

(b) either grant the offender bail or remand the offender in custody.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 33

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**33. Section 36 substituted**

Section 36 of the Principal Act is repealed and  
the following sections are substituted:

**36. Breach of community service order**

- (1) If it appears to an authorised person that, during the period a community service order is in force in relation to an offender, the offender has breached a condition of the community service order, the authorised person may apply to the court, which made the community service order, for an order under this section.
- (2) The authorised person must give notice of the application under subsection (1) to the offender.
- (3) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of the application.
- (4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a community service order is in force in respect of the offender (in this section called the “new offence”), an authorised person –
  - (a) may make an oral application to the court, while the offender is

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 33

Part 10 – Sentencing Act 1997 Amended

---

before the court in relation to the new offence, for an order under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(5) If an application is made under subsection (4) to a court that is not the court that imposed the community service order on the offender, the court hearing the application may do either of the following:

(a) deal with the application under this section;

(b) adjourn the application to the court that imposed the community service order and either grant the offender bail or remand the offender in custody.

(6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached a community service order, it may –

(a) confirm the order as originally made; or

(b) increase the number of hours of community service that the



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 33

---

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.
- (7) In determining how to deal with an offender who is found to have breached a community service order under this section, the court must take into account the extent to which the offender had complied with the community service order before committing the breach.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 34

Part 10 – Sentencing Act 1997 Amended

---

**36AA. Offences relating to community service orders**

- (1) An offender who is subject to a community service order who assaults, threatens, insults or uses abusive language to a probation officer or supervisor is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) A person is guilty of an offence if he or she –

- (a) disturbs or interferes with a person performing an activity under a community service order; or
- (b) prevents a person from performing such an activity.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

**34. Section 42 substituted**

Section 42 of the Principal Act is repealed and the following sections are substituted:

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**42. Breach of probation order**

- (1) If it appears to an authorised person that, during the period a probation order is in force in relation to an offender, the offender has breached a condition of the probation order, the authorised person may apply to the court, which made the probation order, for an order under this section.
- (2) The authorised person must give notice of the application under subsection (1) to the offender.
- (3) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of the application.
- (4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a probation order is in force in respect of the offender (in this section called the “new offence”), an authorised person –
  - (a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and
  - (b) is to provide the offender in writing with the grounds for the

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 34

Part 10 – Sentencing Act 1997 Amended

---

oral application, if directed to do  
so by the court.

- (5) If an application is made under subsection (4) to a court that is not the court that imposed the probation order on the offender, the court hearing the application may do either of the following:
- (a) deal with the application under this section;
  - (b) adjourn the application to the court that imposed the probation order and either grant the offender bail or remand the offender in custody.
- (6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached the probation order, it 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 the

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 34

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order 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.
- (7) If the period during which a probation order has effect is increased under subsection (6), the court is not to extend that period so that it continues for more than the relevant period in section 39.
- (8) In determining how to deal with an offender who is found to have breached a probation order under this section, the court must take into account the extent to which the offender had complied with the probation order before committing the breach.

**42A. Offence relating to a probation order**

An offender who is subject to a probation order who assaults, threatens, insults or

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

s. 35

Part 10 – Sentencing Act 1997 Amended

---

uses abusive language to a probation officer is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

**35. Section 54A substituted**

Section 54A of the Principal Act is repealed and the following section is substituted:

**54A. Contravention of rehabilitation program order**

- (1) If it appears to an authorised person that, during the period a rehabilitation program order is in force in relation to an offender, the offender has breached a condition of the rehabilitation program order, the authorised person may apply to the court, that made the rehabilitation program order, for an order under this section.
- (2) The authorised person must give notice of the application under subsection (1) to the offender.
- (3) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of the application.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 10 – Sentencing Act 1997 Amended

s. 35

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- (4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a rehabilitation program order is in force in respect of the offender (in this section called the “new offence”), an authorised person –
- (a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and
  - (b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.
- (5) If an application is made under subsection (4) to a court that is not the court that imposed the rehabilitation program order on the offender, the court hearing the application may do either of the following:
- (a) deal with the application under this section;
  - (b) adjourn the application to the court that imposed the rehabilitation program order and either grant the offender bail or remand the offender in custody.

*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

**s. 36**

Part 10 – Sentencing Act 1997 Amended

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- (6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached, without reasonable excuse, the rehabilitation program order or committed the new offence, the court may –
  - (a) order the offender to resume undertaking the program; or
  - (b) cancel the rehabilitation program order and deal with the offender in any manner in which the court could deal with the offender had it just found the offender guilty of the offence which gave rise to the order.
- (7) In determining how to deal with an offender found guilty of a breach of a rehabilitation program order under this section, the court must take into account the extent to which the offender had undertaken the rehabilitation program before committing the breach.

**36. Section 68 amended (Compensation order)**

Section 68(9) of the Principal Act is amended by inserting “compensation for injury,” after “amount of”.



*Justice and Related Legislation (Further Miscellaneous  
Amendments) Act 2009*  
*Act No. of*

Part 11 – Supreme Court Civil Procedure Act 1932 Amended

s. 37

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**PART 11 – SUPREME COURT CIVIL PROCEDURE  
ACT 1932 AMENDED**

**37. Principal Act**

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

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

Section 197(1)(f) of the Principal Act is amended by omitting “except in relation to –” and substituting “except for the determination and hearing of –”.

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\*No. 58 of 1932