

TASMANIA

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**JUSTICE AND RELATED LEGISLATION  
(MISCELLANEOUS AMENDMENTS) BILL 2006**

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**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**

**An Act to amend the *Building Act 2000*, the *Collections for Charities Act 2001*, the *Consumer Affairs Act 1988*, the *Corrections Act 1997*, the *Criminal Code Act 1924*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Fatal Accidents Act 1934*, the *Health Complaints Act 1995*, the *Ombudsman Act 1978*, the *Relationships Act 2003*, the *Second-hand Dealers and Pawnbrokers Act 1994*, the *Sentencing Act 1997*, the *Supreme Court Civil Procedure Act 1932* and the *Youth Justice Act 1997***

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*.

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

s. 2

Part 1 – Preliminary

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**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.

*Justice and Related Legislation (Miscellaneous Amendments) Act*  
2006  
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Part 2 – Building Act 2000 Amended

s. 3

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**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 Sections 252 and 253 repealed**

Sections 252 and 253 of the Principal Act are repealed.

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\*No. 100 of 2000

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

s. 5

Part 3 – Collections for Charities Act 2001 Amended

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**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:

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\*No. 28 of 2001



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

Part 3 – Collections for Charities Act 2001 Amended

**s. 8**

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- (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”;

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Act No. of*

s. 9

Part 3 – Collections for Charities Act 2001 Amended

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(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”;

(b) by omitting from subsection (3) “Director” first occurring and substituting “Commissioner”;

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2006  
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Part 3 – Collections for Charities Act 2001 Amended

**s. 11**

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- (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”.

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

s. 12

Part 4 – Consumer Affairs Act 1988 Amended

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**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.

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\*No. 53 of 1988

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

Part 5 – Corrections Act 1997 Amended

s. 14

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**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”.

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\*No. 51 of 1997

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

s. 16

Part 6 – Criminal Code Act 1924 Amended

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**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:

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\*No. 69 of 1924

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

Part 6 – Criminal Code Act 1924 Amended

s. 17

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**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:

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s. 17

Part 6 – Criminal Code Act 1924 Amended

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- (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



*Justice and Related Legislation (Miscellaneous Amendments) Act  
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Part 6 – Criminal Code Act 1924 Amended

s. 17

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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

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

**s. 17**

Part 6 – Criminal Code Act 1924 Amended

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and substituting “an offence under section 32(1) of the *Traffic Act 1925*”.

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Part 7 – Evidence (Children and Special Witnesses) Act 2001 Amended

s. 18

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**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”.

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\*No. 79 of 2001

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

s. 21

Part 8 – Fatal Accidents Act 1934 Amended

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**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*”.

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\*No. 30 of 1934

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

Part 9 – Health Complaints Act 1995 Amended

s. 23

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**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.

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\*No. 95 of 1995

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

s. 25

Part 10 – Ombudsman Act 1978 Amended

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**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”.

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\*No. 82 of 1978

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

Part 11 – Relationships Act 2003 Amended

s. 27

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**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”;

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\*No. 44 of 2003

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

s. 29

Part 11 – Relationships Act 2003 Amended

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**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.

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\*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

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**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”.

## **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*”.

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\*No. 59 of 1997

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

s. 37

Part 13 – Sentencing Act 1997 Amended

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**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.

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

Part 13 – Sentencing Act 1997 Amended

s. 38

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**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).

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2006  
Act No. of*

s. 38

Part 13 – Sentencing Act 1997 Amended

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- (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

*Justice and Related Legislation (Miscellaneous Amendments) Act  
2006  
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Part 13 – Sentencing Act 1997 Amended

s. 39

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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);

*Justice and Related Legislation (Miscellaneous Amendments) Act  
2006  
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s. 39

Part 13 – Sentencing Act 1997 Amended

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- (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



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

Part 13 – Sentencing Act 1997 Amended

**s. 39**

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- (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.

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

s. 40

Part 14 – Supreme Court Civil Procedure Act 1932 Amended

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**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

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\*No. 58 of 1932

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

Part 14 – Supreme Court Civil Procedure Act 1932 Amended

**s. 41**

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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).

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

s. 42

Part 15 – Youth Justice Act 1997 Amended

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**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”.

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\*No. 81 of 1997