

# TASMANIA

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

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**SCHEDULE 1 – LEGISLATION REPEALED**

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

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

**A BILL FOR**

**An Act to amend the *Administration and Probate Act 1935*, the *Crime (Confiscation of Profits) Act 1993*, the *Debtors Act 1870*, the *Director of Public Prosecutions Act 1973*, the *Fatal Accidents Act 1934*, the *Guardianship and Administration Act 1995*, the *Hospitals Act 1918*, the *Justices Act 1959*, the *Mental Health Act 1996*, the *Motor Accidents (Liabilities and Compensation) Act 1973*, the *Parole Orders (Transfer) Act 1983*, the *Public Trustee Act 1930*, the *Trades Unions Act 1889*, the *Travel Agents Act 1987* and the *Trustee Companies Act 1953* and to repeal the *Independent Order of Rechabites (Agreement) Act 1981***

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 2009*.

*Justice and Related Legislation (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) Part 11 is taken to have commenced on 28 April 2008.

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

Part 2 – Administration and Probate Act 1935 Amended

s. 3

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**PART 2 – ADMINISTRATION AND PROBATE ACT  
1935 AMENDED**

**3. Principal Act**

In this Part, the *Administration and Probate Act 1935\** is referred to as the Principal Act.

**4. Section 54 amended (Power of personal representative to advertise for claims)**

Section 54 of the Principal Act is amended by inserting after subsection (9) the following subsection:

- (10) Subsections (4) and (8) do not apply to an estate if the net value of the estate does not exceed the prescribed amount for the purpose of section 20A(1) of the *Public Trustee Act 1930*.

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\*No. 38 of 1935

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

s. 5

Part 3 – Crime (Confiscation of Profits) Act 1993 Amended

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**PART 3 – CRIME (CONFISCATION OF PROFITS) ACT  
1993 AMENDED**

**5. Principal Act**

In this Part, the *Crime (Confiscation of Profits) Act 1993*\* is referred to as the Principal Act.

**6. Section 27 amended (Grounds for making restraining orders)**

Section 27(7) of the Principal Act is amended by inserting “Director of Public Prosecutions on behalf of the” after “if the”.

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\*No. 20 of 1993



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**PART 4 – DEBTORS ACT 1870 AMENDED**

**7. Principal Act**

In this Part, the *Debtors Act 1870*\* is referred to as the Principal Act.

**8. Section 21 substituted**

Section 21 of the Principal Act is repealed and the following section is substituted:

**21. Warrant of attorney and *cognovit actionem* to be signed in presence of Australian legal practitioner**

A warrant of attorney to confess judgment in a personal action or a *cognovit actionem* is invalid unless –

- (a) the nature and effect of the warrant of attorney or *cognovit actionem* is, before the person signs it, explained to the person by the person’s Australian legal practitioner; and
- (b) the person’s Australian legal practitioner is present when the person signs the warrant of attorney or *cognovit actionem* and

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\*No. 33 of 1870

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

**s. 8**

Part 4 – Debtors Act 1870 Amended

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attests, by signing as a witness,  
the signature of the person.

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

Part 5 – Director of Public Prosecutions Act 1973 Amended

s. 9

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**PART 5 – DIRECTOR OF PUBLIC PROSECUTIONS  
ACT 1973 AMENDED**

**9. Principal Act**

In this Part, the *Director of Public Prosecutions Act 1973*\* is referred to as the Principal Act.

**10. Section 17 inserted**

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

**17. Immunity from personal liability**

- (1) No personal liability attaches to the Director or a person assisting the Director under this Act for an act done or omitted to be done in good faith in the performance or exercise, or the purported performance or exercise, of any function, power or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against the Director or a person assisting the Director, lies instead against the Crown.

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\*No. 11 of 1973

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

s. 11

Part 6 – Fatal Accidents Act 1934 Amended

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**PART 6 – FATAL ACCIDENTS ACT 1934 AMENDED**

**11. Principal Act**

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

**12. Section 7 amended (Plaintiff to deliver particulars)**

Section 7 of the Principal Act is amended by omitting “his attorney” and substituting “the defendant’s Australian legal practitioner”.

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\*No. 30 of 1934

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**PART 7 – GUARDIANSHIP AND ADMINISTRATION  
ACT 1995 AMENDED**

**13. Principal Act**

In this Part, the *Guardianship and Administration Act 1995*\* is referred to as the Principal Act.

**14. Section 34 amended (Revocation or amendment of appointment by Board)**

Section 34 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) The Board may, on an application under this section and after a hearing, declare that the instrument of appointment of an enduring guardian is invalid if the Board is satisfied that –
- (a) the donor did not have the mental capacity to make it; or
  - (b) it is contrary to the provisions of this Act; or
  - (c) the donor was induced to make it by reason of dishonesty or undue influence.

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\*No. 44 of 1995

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

s. 15

Part 7 – Guardianship and Administration Act 1995 Amended

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**15. Section 73A amended (Interim order on adjournment)**

Section 73A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) If the Board adjourns the hearing of an application under this Act and it considers that there may be grounds for making, in respect of a person, a guardianship order or administration order or a further guardianship order or further administration order then it may –
  - (a) make an interim order appointing, as the case may be, the Public Guardian as the person’s guardian or The Public Trustee as the administrator of the person’s estate; and
  - (b) make or give any related orders or directions it considers appropriate in the circumstances.

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

Part 8 – Hospitals Act 1918 Amended

s. 16

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**PART 8 – HOSPITALS ACT 1918 AMENDED**

**16. Principal Act**

In this Part, the *Hospitals Act 1918*\* is referred to as the Principal Act.

**17. Section 70J amended (Institution of appeals)**

Section 70J(4)(c) of the Principal Act is amended by omitting “counsel, attorney,” and substituting “Australian legal practitioner”.

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\*No. 70 of 1918

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

s. 18

Part 9 – Justices Act 1959 Amended

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**PART 9 – JUSTICES ACT 1959 AMENDED**

**18. Principal Act**

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

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

Section 3(1) of the Principal Act is amended by inserting after the definition of “interim restraint order” the following definition:

“**lawyer**” means an Australian legal practitioner as defined in section 6 of the *Legal Profession Act 2007*;

**20. Section 27 amended (Proceedings may be commenced by complaint)**

Section 27(1) of the Principal Act is amended by omitting “his attorney” and substituting “his or her lawyer”.

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\*No. 77 of 1959



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

Part 9 – Justices Act 1959 Amended

s. 21

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**21. Section 38 amended (Representation of parties by counsel, &c.)**

Section 38 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:

- (1) A complainant may, in person or by the complainant's lawyer, conduct his or her case and examine and cross-examine witnesses.
- (2) A defendant must, in person or by the defendant's lawyer, be admitted to make his or her full answer and defence to the complaint and to examine and cross-examine witnesses.
- (3) If the complainant is a public officer, the complainant may, in person or by the complainant's lawyer or another public officer, conduct his or her case and examine and cross-examine witnesses.

**22. Section 47 amended (Place of committal when defendant on remand)**

Section 47(12)(b) of the Principal Act is amended by omitting "Australian legal practitioner" and substituting "lawyer".

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

s. 23

Part 9 – Justices Act 1959 Amended

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**23. Section 50B amended (Adjournment of proceedings)**

Section 50B(2) of the Principal Act is amended by omitting “attorneys” and substituting “lawyers”.

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

Section 55(1) of the Principal Act is amended by omitting “legal practitioner” and substituting “lawyer”.

**25. Section 56 amended (Duties during adjournment)**

Section 56 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “legal practitioner” and substituting “lawyer”;
- (b) by omitting from subsection (2)(b) “legal practitioner” and substituting “lawyer”;
- (c) by omitting from subsection (3) “legal practitioner” twice occurring and substituting “lawyer”;
- (d) by omitting from subsection (4) “legal practitioner” twice occurring and substituting “lawyer”.

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

Part 9 – Justices Act 1959 Amended

s. 26

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**26. Section 57 amended (Duty to provide further witness statements and summary of facts)**

Section 57(2) of the Principal Act is amended by omitting “legal practitioner” twice occurring and substituting “lawyer”.

**27. Section 61 amended (Proceedings following preliminary proceedings order by Supreme Court)**

Section 61(11)(b)(iii) of the Principal Act is amended by omitting “legal practitioner” and substituting “lawyer”.

**28. Section 106E amended (Procedure in relation to hearing and determining applications under this Part)**

Section 106E(1A)(b) of the Principal Act is amended by omitting “an Australian legal practitioner” and substituting “a lawyer”.

**29. Section 113A amended (Alternative appeals in certain cases)**

Section 113A of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) The Chief Magistrate is to give –

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

**s. 30**

Part 9 – Justices Act 1959 Amended

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(a) the appellant or his or her lawyer;  
and

(b) the person concerned in  
upholding the order or his or her  
lawyer –

14 days’ notice of the day on which and  
the place at which an appeal under this  
section is to be heard.

**30. Section 130 amended (Notice of action)**

Section 130 of the Principal Act is amended as  
follows:

- (a) by inserting in subsection (1) “or her”  
after “by him”;
- (b) by inserting in subsection (1) “or her”  
after “of his”;
- (c) by inserting in subsection (1) “or her”  
after “for him”;
- (d) by inserting in subsection (1) “or her”  
after “at his”;
- (e) by omitting from subsection (1) “his  
Australian legal practitioner” and  
substituting “his or her lawyer”;
- (f) by omitting from subsection (3) “his  
Australian legal practitioner” and  
substituting “his or her lawyer”;

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

Part 9 – Justices Act 1959 Amended

**s. 31**

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- (g) by omitting from subsection (3) “Australian legal practitioner” second occurring and substituting “lawyer”.

**31. Section 131 amended (Where action may be brought)**

Section 131(2) of the Principal Act is amended by omitting “his attorney” and substituting “his or her lawyer”.

**32. Section 134 amended (Costs)**

Section 134 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “Australian legal practitioner” and substituting “lawyer”;
- (b) by omitting from subsection (2) “Australian legal practitioner” and substituting “lawyer”.

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

s. 33

Part 10 – Mental Health Act 1996 Amended

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**PART 10 – MENTAL HEALTH ACT 1996 AMENDED**

**33. Principal Act**

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

**34. Section 26 amended (Initial order for admission)**

Section 26 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) The approved medical practitioner who does the examination must not be the medical practitioner who made the initial order.

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\*No. 31 of 1996

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

Part 11 – Motor Accidents (Liabilities and Compensation) Act 1973  
Amended

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s. 35

**PART 11 – MOTOR ACCIDENTS (LIABILITIES AND  
COMPENSATION) ACT 1973 AMENDED**

**35. Principal Act**

In this Part, the *Motor Accidents (Liabilities and Compensation) Act 1973*\* is referred to as the Principal Act.

**36. Section 24 amended (Exclusions from scheduled benefits)**

Section 24 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) Paragraph (b) of subsection (2) does not apply in a case where, at the time of the relevant motor accident –
- (a) a driver licence of the person referred to in that paragraph was suspended under section 55 of the *Monetary Penalties Enforcement Act 2005*; and
  - (b) were it not for that suspension, the person would not have been driving unlawfully.

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\*No. 71 of 1973

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

s. 37

Part 12 – Parole Orders (Transfer) Act 1983 Amended

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**PART 12 – PAROLE ORDERS (TRANSFER) ACT 1983  
AMENDED**

**37. Principal Act**

In this Part, the *Parole Orders (Transfer) Act 1983\** is referred to as the Principal Act.

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

Section 3 of the Principal Act is amended by omitting the definition of “Registrar” and substituting the following definition:

**“Registrar”** means the secretary of the Parole Board appointed under section 66 of the *Corrections Act 1997*;

**39. Section 4 repealed**

Section 4 of the Principal Act is repealed.

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\*No. 67 of 1983



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**PART 13 – PUBLIC TRUSTEE ACT 1930 AMENDED**

**40. Principal Act**

In this Part, the *Public Trustee Act 1930*\* is referred to as the Principal Act.

**41. Section 36A amended (Dealing with unclaimed moneys)**

Section 36A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “in accordance with an order of the Supreme Court directing them so to be paid” and substituting “with the approval of the Public Trustee”;
- (b) by omitting from subsection (2) “Consolidated Fund” and substituting “Public Account”;
- (c) by omitting subsection (3) and substituting the following subsection:
  - (3) If a claim is made for a sum of money that has been paid into the Public Account pursuant to subsection (2), the Treasurer may, without further

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\*No. 61 of 1930

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

s. 42

Part 13 – Public Trustee Act 1930 Amended

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appropriation than this section,  
pay that sum to the claimant if  
satisfied on the advice of the  
Public Trustee that the claim is  
valid.

- (d) by omitting from subsection (4) “no  
application shall” and substituting “no  
claim may”.

**42. Section 65 amended (Power of Public Trustee to  
distribute estate when no claims received)**

Section 65 of the Principal Act is amended as  
follows:

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

- (1) If the Public Trustee cannot  
distribute an estate because a  
person entitled to it cannot be  
located, then –

- (a) in the case of a small  
estate, the Public Trustee  
may distribute the estate  
without regard to the  
person entitled to the  
estate who cannot be  
located; or
- (b) in the case of any other  
estate, the Public Trustee

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

Part 13 – Public Trustee Act 1930 Amended

s. 42

must, by advertisement in a newspaper, call on the person entitled to the estate who cannot be located to identify himself or herself to the Public Trustee within the time specified in the advertisement.

- (b) by omitting from subsection (2) “subsection (1) does not send his claim” and substituting “subsection (1)(b) does not identify himself or herself”;
- (c) by inserting the following subsection after subsection (3):
  - (3A) The Public Trustee has no liability in respect of a distribution of a small estate pursuant to subsection (1)(a) if the Public Trustee, after making the distribution, files an affidavit with the Court stating that no claimant, other than those to whom the estate was distributed, could be located prior to the distribution.
- (d) by inserting the following subsection after subsection (4):
  - (5) In this section –

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

s. 42

Part 13 – Public Trustee Act 1930 Amended

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**“estate”** includes part of an estate;

**“small estate”** means an estate where the net value does not, in the estimation of the Public Trustee, exceed the prescribed amount for the purpose of section 20A(1).

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

Part 14 – Trades Unions Act 1889 Amended

s. 43

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**PART 14 – TRADES UNIONS ACT 1889 AMENDED**

**43. Principal Act**

In this Part, the *Trades Unions Act 1889*\* is referred to as the Principal Act.

**44. Section 11 amended (Treasurer, &c., to account)**

Section 11(4) of the Principal Act is amended by omitting “attorney” and substituting “Australian legal practitioner”.

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\*No. 27 of 1889

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

s. 45

Part 15 – Travel Agents Act 1987 Amended

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**PART 15 – TRAVEL AGENTS ACT 1987 AMENDED**

**45. Principal Act**

In this Part, the *Travel Agents Act 1987*\* is referred to as the Principal Act.

**46. Section 51 amended (Who may take proceedings for offences)**

Section 51(3) of the Principal Act is amended by omitting “counsel or attorney” and substituting “Australian legal practitioner”.

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\*No. 111 of 1987

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

Part 16 – Trustee Companies Act 1953 Amended

s. 47

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**PART 16 – TRUSTEE COMPANIES ACT 1953  
AMENDED**

**47. Principal Act**

In this Part, the *Trustee Companies Act 1953*\* is referred to as the Principal Act.

**48. Section 32 amended (Trustee company to pay certain unclaimed moneys to Public Trustee)**

Section 32 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) The Public Trustee must not pay over to any person money that has been paid to the Public Trustee pursuant to this section, nor any interest on that money, unless satisfied that the person is entitled to that money or interest.

**49. Section 35 repealed**

Section 35 of the Principal Act is repealed.

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\*No. 72 of 1953

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

s. 50

Part 16 – Trustee Companies Act 1953 Amended

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**50. Section 37 substituted**

Section 37 of the Principal Act is repealed and the following section is substituted:

**37. Unclaimed money to be paid to Treasurer, &c.**

- (1) This section applies to money that is paid to the Public Trustee pursuant to section 32.
- (2) If the money is not claimed within 6 years, the Public Trustee must pay it to the Treasurer to the credit of the Public Account.
- (3) If any person claims the money within 10 years after it is credited to the Public Account, the Treasurer, without further appropriation than this section, may pay it to the claimant if satisfied on the advice of the Public Trustee that the claim is valid.
- (4) In this section, a reference to money is to be read as including a reference to securities, to interest on money and to a part of an amount of money.



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

Part 17 – Legislation repealed

**s. 51**

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**PART 17 – LEGISLATION REPEALED**

**51. Legislation repealed**

The legislation specified in Schedule 1 is repealed.

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

**sch. 1**

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**SCHEDULE 1 – LEGISLATION REPEALED**

Section 51

*Independent Order of Rechabites (Agreement) Act 1981* (No. 5  
of 1981)