

JUSTICES ACT 1902.

ARRANGEMENT.

PART I.—PRELIMINARY.

Sec.

1. Short title and division of Act.
2. Repeal of existing Acts.

Commencement of Act.

3. Commencement of Act.

Interpretation.

4. Interpretations.
5. General saving of powers of justices.

PART II.—JUSTICES.

6. Appointment of justices generally.
7. Removal from office.
8. Resignation.
9. Chief elective executive officers of municipalities to be justices.
10. Prohibition on acting.
- [11. *Repealed*].
12. Judges etc. to be Justices of the Peace.
13. Justices beyond the State.
14. Acts done beyond the State.
15. Jurisdiction of justices.
16. Oath of Office.
17. Oath of office need not be taken a second time.

Description.

18. Justices, how described.
19. Certain signatures to be *prima facie* authentic.

PART III.—JURISDICTION.

General Provisions.

20. General provisions.
21. Authentication of acts of justices.
22. Warrants may be executed throughout State.
23. Presumption of jurisdiction.

Courts of Petty Sessions.

24. Magisterial districts.
25. Existing magisterial districts to continue under this Act until altered.
- 25A. Clerks of petty sessions.

(ii)

Powers of one Justice.

- Sec.
26. Acts by one justice.
27. After decision, one justice may issue warrant of execution or commitment.
28. Warrants of execution after appeal.

Hearing and Quorum.

29. Hearing of complaints.
30. Majority to decide.
31. When two justices required, they must be present throughout the case.
32. Jurisdiction of one justice in certain circumstances.

Magistrates.

33. Special powers of magistrates who may in all cases act alone.
34. Duties of clerks of petty sessions may be discharged by magistrate.

Extent of jurisdiction.

35. Justices may act outside jurisdiction.
36. Warrants of commitment and remand by justices of limited jurisdiction.
37. Duty of police officers to obey warrants, etc.
38. Summons or warrant not avoided by justice dying or ceasing to hold office.
39. Order in lieu of mandamus.
40. Power to order delivery of possession of goods charged to have been stolen or fraudulently obtained and in custody of police officer.

Interruption of Proceedings.

41. Penalty for insulting or interrupting justices.

PART IV.—GENERAL PROCEDURE.

Complaints.

42. Complaint, by whom laid.
43. Only one matter of complaint.
44. Description of persons and property.
45. What is sufficient description of offence.

Variance and Amendment.

46. Want of form or variance in warrant, etc.
47. Amendment.
48. Minute of amendment.

Complaints, how made.

49. Complaint on oath where warrant issued.
50. Where summons issued.

Limitation.

51. Limitation of proceedings.

(iii)

Sec. *Summons.*

- 52. When a justice may issue summons.
- 53. Summons may be issued by clerk of petty sessions.
- 54. Contents of summons.
- 55. *Ex parte* proceedings.

Service, Indorsement, and Proof of Service.

- 56. Mode of service.
- 56A. Power to serve summonses relating to certain offences by post.
- 57. Proof of service.

Warrants in the first instance.

- 58. Warrant and summons, in what cases issued.
- 59. Warrant in the first instance for simple offence.

Direction of Warrants.

- 60. Direction of warrant.

Form of Warrant.

- 61. What warrants shall order.
- 62. Warrant in force till executed.

Sunday Warrants.

- 63. Warrants may be issued and executed on Sunday.

Arrest without Warrant.

- 64. Bail of persons arrested without a warrant.

Publicity.

- 65. Open court.
- 66. Exclusion of strangers.
- 67. Counsel or solicitor not to be excluded.

Counsel and Solicitor.

- 68. Conduct of case.

Evidence.

- 69. Evidence how taken.
- 70. Prosecutor or complainant a competent witness.
- 71. Defendant and wife or husband, when competent.
- 72. Proof of negative, etc.
- 73. Mode of taking evidence.

Witnesses in General.

Sec.

- 74. Power of justice to summon witnesses to attend and give evidence.
- 75. After summons, warrant may issue.
- 76. Warrant in the first instance.
- 77. Witness not answering.
- 78. Production of documents.

Remand and Adjournment.

- 79. Remand of defendant.
- 80. Verbal remand.
- 81. Bringing up during remand.
- 82. Bail of defendant during examination.
- 83. Remand to another place.
- 84. Effect of depositions, etc.
- 85. Defendant may have to pay expense.
- 86. Adjournment of hearing.

Committal and Recognisance.

- 87. Place of committal or detention.
- 88. Place to which committal to be made.
- 89. Witness may be discharged on recognisance.
- 90. Recognisances.
- 91. Issue of warrant for non-appearance.

Recognisances generally.

- 92. Recognisances taken out of court.
- 93. Forfeited recognisances, how to be enforced.
- 94. Arrest of principal by sureties.
- 94A. Revocation of order of bail.

Execution of Warrants of Commitment.

- 95. Conveying prisoners to gaol.

Regulations and Forms.

- 96. Regulations, forms, and fees.

PART V.—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

Information Presented.

- 97. Certificate where information is presented.
- 98. Warrant thereon.
- 99. Committal.
- 100. Detainer of prisoner in gaol.

Warrant—Committal.

Disobedience of summons.

- 101A. Procedure where person is charged before justices with an indictable offence.
- 101B. Defendant to elect for or against preliminary hearing.
- 101C. Proceedings where no preliminary hearing.
- 101D. Justices may restrict publication of evidence in preliminary hearing.
- 101E. Liability of body corporate for offences against section 101C or 101D.
- 101F. Saving.
- 102. Statement of defendant.
- 103. Statement may be put in evidence at trial.
- 104. Saving.
- 105. Evidence for the defence.
- 106. Discharge of defendant.
- 107. Committal of defendant.
- [108. *Repealed.*]
- 109. Depositions of persons dead or absent.
- 110. Power to take statements of witnesses dangerously ill.
- 111. How statements to be taken.
- 112. Depositions when admissible in evidence.
- 113. Prisoner to be present when statement taken.

Defendant admitting guilt.

- 114. If defendant admits guilt he may be committed for sentence.

Bail.

- 115. Bail in capital crimes or the crime of murder.
- 116. Bail where persons charged with crimes and misdemeanours.
- 117. Bail after commitment for trial.
- 118. Certificate.
- 119. Duplicate where surety unable to attend.
- 120. Procedure.
- 121. Bail for persons charged with other misdemeanours.
- 121A. Variation of recognisances.

Transmission of Recognisances of Bail.

- 122. Recognisance, how transmitted.

Warrant of Deliverance.

- 123. Warrant of deliverance.

Witnesses where Committal for Trial.

- 124. Recognisance of witnesses, etc.
- 125. Signature of justices; notice to witnesses.
- 126. Justices may commit refractory witness.

Transmission of Depositions, etc.

- 127. Transmissions of depositions to Attorney General.
- 128. Duty of Attorney General.
- 129. Authority of Judge.

Recommittal.

Sec.

130. Recommittal in case of error.

Restitution of Property.

131. Restitution of property.
132. Payment in lieu of restitution of property.
[133. *Repealed.*]

PART VI.—PROCEEDINGS IN CASE OF SIMPLE OFFENCES
AND OTHER MATTERS.

Complainant's Default.

134. Dismissal or adjournment in absence of complainant.

Defendant's Default.

135. Hearings in the absence of defendant.
136. Procedure when summonsed defendant notifies his wish to plead not guilty.

*Jurisdiction of Justices to Set Aside Decisions Given in Default of Appearance
of Any Party.*

- 136A. Jurisdiction of justices to set aside decisions given in default of appearance
of any party.
136B. Proceedings against young persons.

Hearing.

137. Procedure when both parties appear.
138. Proceedings at the hearing on defendant's confession.
139. Where defendant does not admit the case.
140. Justices may proceed to hearing in absence of both parties or of either party.

Practice

141. Conduct of summary proceedings regulated.

Dismissal.

142. Dismissal of complaint.
[143. *Repealed.*]
144. Payment by instalments of, or security taken for payment of, money.
145. Fine inflicted for assault may be awarded to person assaulted.
146. Formal record of conviction not necessary, except for special purposes.

No Certiorari.

147. No *certiorari*.

Copies of Depositions, etc.

148. Copies of proceedings in summary cases.

Imprisonment.

149. Imprisonment in first instance.
150. Imprisonment for a subsequent offence.

Costs.

- Sec.
151. Costs on conviction or order.
152. Costs on dismissal.
153. The sum allowed for costs to be specified in the conviction or order.
154. Costs, how recoverable.

Enforcement of Recognisance.

- 154A Enforcing recognisances.

Execution

155. Enforcement of convictions and orders.
[155A. Repealed.]
[155B. Repealed.]
[155C. Repealed.]
155D. Repealed.]
156. Discharge or detainer of defendant.
157. In default of execution defendant committed.
158. Commitment for non-payment of a penalty or sum ordered to be paid.
159. Commitment in other cases.

Satisfaction of Execution by Payment.

160. Discharge of defendant.

Payment under Execution.

161. To whom payments to be made.

Warrants of Execution.

162. Warrant may be executed throughout State.

Mode of Execution.

163. Procedure on execution.
164. Satisfaction of execution by payment.
165. No person executing defective warrant to be deemed a trespasser.
165A. Interpleader.

Punishment.

166. Mitigation of punishment by justices.
166A. Apportionment of fines in certain cases.
166B. Rectification of certain orders by justices.
167. Scale of imprisonment for non-payment of money.

Duty of Clerk of Petty Sessions.

168. Clerk of petty sessions to pay over to Treasurer.
[169. Repealed.]

Remission.

170. Remission of penalty.
171. Fines payable to informers to be retained seven days.

PART VIA.—RECIPROCAL ENFORCEMENT OF FINES AGAINST
BODIES CORPORATE.

- 171A. Interpretation and application.
- 171B. Appointment of reciprocating States and Territories and reciprocating courts.
- 171C. Enforcement of interstate fine against body corporate.
- 171D. Effect of enforcement by reciprocating court.

PART VII.—ORDERS TO KEEP THE PEACE.

- 172. Orders to keep the peace.
- 173. Breach of order to keep the peace.
- 174. Variation or revocation of order.
- [175. *Repealed.*]
- [176. *Repealed.*]
- [177. *Repealed.*]
- [178. *Repealed.*]
- [179. *Repealed.*]
- [180. *Repealed.*]
- [181. *Repealed.*]
- [182. *Repealed.*]
- [182A. *Repealed.*]

PART VIII.—APPEALS FROM THE DECISION OF JUSTICES.

Ordinary Appeal.

- 183. Appeal to a Judge at Perth or in a circuit district.
- 184. Notice of appeal.
- 185. Entry of appeal for hearing.
- 186. Service of notices.
- 187. Security for appearance of appellant.
- 188. Appeal not a stay unless appellant gives security.
- 189. Copies of proceedings to be transmitted.
- 190. Hearing of appeal.
- 191. Appeal to be on original materials, unless rehearing ordered or agreed to.
- 192. Procedure where decision reversed on appeal.
- 193. Effect of affirming decision.
- 194. Committal on default.
- 195. If costs not paid, certificate to be granted.
- 196. Enforcement of order for costs.

Appeal by way of Order to review.

- 197. Order to review.
- 198. Order to review. Before whom returnable.
- 199. Grounds to be stated in order.
- 200. Appellant to give security.
- 201. Stay of execution. Release of appellant on further recognisance.
- 202. Service of Order to review.
- 203. Entry of Order to review for hearing.
- 204. Appeal from refusal to grant order to review.
- 205. Powers of Full Court or Judge on return of Order to review.
- 206. Costs.
- 206A. No appeal from Judge.

Sec.

- 206B. Enlargement or abridgment of time.
- 206C. Evidence of proceedings in court below.
- 206D. Dismissal for want of prosecution.
- 206E. Evidentiary provisions.
- 206F. Enforcement of decision of Supreme Court.
- 206G. If costs not paid certificate to be granted.
- 206H. Enforcement of order for costs.
- 206I. Appellant by way of order to review deemed to have abandoned other rights of appeal.

Habeas Corpus.

- 207. Control of Supreme Court over summary convictions.
- 208. Amendment.
- 209. Notice dispensed with.
- 210. Power of court or Judge to admit to bail.

Amendment—Informalities.

- 211. Proceedings not to be quashed for want of form.
- 212. Respecting the amendment of convictions, etc.
- 213. Want of summons or complaint.
- 214. Distribution of penalty.

Service of Notices.

- 215. Service by or upon solicitor acting for party.

Abandoned Appeals.

- 216. Enforcement of conviction when appeal abandoned.
- 217. Absconding appellant may be arrested.

No Certiorari necessary.

- 218. *Certiorari* not to be required for proceedings under this Act.

Costs.

- 219. No order for costs to be made against justices or police officers.

Rules.

- 220. Rules.
- 221. All appeals to be subject to this Act.

PART IX.—PROTECTION OF JUSTICES IN THE EXECUTION OF
THEIR OFFICE.

Where Action Lies Against Justices.

- 222. Justice sued for act not within his jurisdiction.
- 223. Warrant by one justice upon an order of another.
- 224. No action for acts done under order of Supreme Court.
- 225. No action where proceeding confirmed on appeal.
- 226. Proceedings may be stayed or set aside if action not maintainable.

(x)

Sec. *Limitation.*

[227. *Repealed.*]

Notice.

[228. *Repealed.*]

Amends and Payment into Court.

[229. *Repealed.*]

Statement of Claim and Plaintiff.

230. Justice only liable in case of malice and absence of reasonable and probable cause.

Evidence.

[231. *Repealed.*]

Damages.

232. Damages against a justice where guilt or liability of plaintiff is proved.

PART X.—MAINTENANCE AND DESTRUCTION OF COURT RECORDS.

233. Interpretation.

233A. Application of Part X.

234. Negatives of court records.

235. Destruction of court records generally.

236. Destruction of court records when negatives held.

236A. Preservation orders.

237. Evidentiary provision.

THE FIRST SCHEDULE.

Provisions repealed.

THE SECOND SCHEDULE.

Form of Commission of the Peace.

THE THIRD SCHEDULE.

Forms of oath of allegiance and of office.

THE FOURTH SCHEDULE.

Forms.

Originating Proceedings.

Form

1. Complaint to secure surety of the peace or for good behaviour.
2. Complaint to ground search warrant.
3. Complaint in all other cases.
4. Certificate of indictment being found.
5. Certificate that costs of appeal are not paid.

Summonses.

- [6. Deleted.]
7. Summons of a witness.
8. Warrant in the first instance to apprehend a person charged with an indictable offence, or a simple offence.
9. Search warrant.

Mesne Warrants.

10. Warrant to apprehend defendant where the summons is disobeyed.
- 10A. Bench warrant.
11. Warrant to apprehend a person required to give surety of the peace or for good behaviour.
12. Warrant where a witness has not obeyed a summons to attend the examination of a person charged with an indictable offence, or the hearing of a charge of a simple offence or breach of duty.
13. Warrant for a witness in first instance.
14. Warrant on certificate of indictment having been found to apprehend person indicted.

Remands.

15. Warrant remanding a prisoner.
16. Warrant of committal for safe custody during an adjournment of the hearing.

Recognisances, etc.

17. Certificate of consent to bail by the committing justice indorsed on the commitment.
18. The like on a separate paper.
19. Recognisance for the appearance of a defendant where case is adjourned or not at once proceeded with.
20. Notice of such recognisance to be given to the defendant and his surety.
21. Certificate of non-appearance or default to be endorsed on the defendant's recognisance.
22. Recognisance of bail on committal for trial.
23. Notice of recognisance to be given to the defendant and his bail.
24. Recognisance of the peace or for good behaviour.
25. Notice of such recognisance to be given to the defendant and his sureties.
26. Recognisance to give evidence.
27. Notice of recognisance to be given to the witnesses.
28. Recognisance on appeal.

Depositions, etc.

Form

- 29. Depositions of witnesses.
- 30. Statement of the defendant.

Convictions.

- 31. Convictions for a penalty to be levied by execution, and in default of sufficient execution, imprisonment.
- 32. Conviction for a penalty, and in default of payment, imprisonment.
- 33. Conviction when the punishment is imprisonment.
- 34. Conviction when the punishment is imprisonment, and costs are awarded to be levied by execution.
- 35. Conviction where the defendant is made subject to police supervision.
- 36. Summary conviction for indictable offence (Criminal Code, Chapter XLIII.)
- 37. Summary conviction for indictable offence (Criminal Code, Chapter XLVII.)
- 38. Summary conviction of a child for indictable offence. (Criminal Code, Chapter LXIX.)
- 39. Summary conviction of young person for indictable offence. (Criminal Code, Chapter LXX.)

Order and Certificates of Dismissal.

- 40. Order of dismissal of complaint.
- 41. Certificate of dismissal.

Orders.

- 42. Order for payment of money to be levied by execution, and in default of execution, imprisonment.
- 43. Order for payment of money, and, in default of payment, imprisonment.
- 44. Order for any matter where the disobeying of it is punishable with imprisonment.

Warrants of Execution, etc.

- 45. Warrant of execution upon a conviction for a penalty.
- 46. Warrant of execution upon an order for the payment of money.
- 47. Warrant of execution for costs upon an order for dismissal of a complaint.
- 48. Warrant of execution for costs upon a conviction where the offence is punishable by imprisonment.
- 49. Warrant of execution for costs upon an order where the disobeying of the order is punishable with imprisonment.
- 50. Warrant of execution for costs of an appeal against a conviction or order.
- 51. Return to a warrant of execution.

Warrants of Committal, etc.

- 52. Warrant of commitment for trial or for sentence.
- 53. Warrant to convey accused person before a justice of the place in which the offence was committed.
- 54. Warrant of commitment of a person indicted.
- 55. Warrant to detain a person indicted who is already in custody for another offence.
- 56. Warrant of commitment of a witness for refusing to be sworn or to give evidence.

Form

- 57. Warrant of commitment for want of sureties of the peace or for good behaviour.
- 58. Commitment of witness for refusing to enter into recognisance.
- 59. Warrant of commitment upon a conviction for a penalty in the first instance.
- 60. Warrant of commitment on an order in the first instance.
- 61. Warrant of commitment on an order where the disobeying is punishable by imprisonment.
- 62. Warrant of commitment on a conviction where the punishment is by imprisonment.

Execution and Imprisonment.

- 63. Warrant of commitment for want of execution upon conviction for penalty or upon an order for payment of money.
- 64. Warrant of commitment for want of execution for costs on dismissal of a complaint.
- 65. Warrant of commitment for want of execution for costs where offence is punishable by imprisonment, or upon an order where disobeying the order is punishable by imprisonment.
- 66. Warrant of commitment for want of execution for costs of appeal against conviction or order.

Gaoler's Receipt.

- 67. Gaoler's receipt for the prisoner.

Deliverance.

- 68. Warrant of discharge on bail being given for a prisoner already committed.
- 69. Warrant to discharge a person committed for want of sureties of the peace or for good behaviour.
- 70. Order to discharge a witness upon prisoner not being committed for trial.
- 71. Case stated.

THE FIFTH SCHEDULE.

Table of fees.

THE SIXTH SCHEDULE.

Misdemeanours in which bail discretionary.

[*Seventh Schedule deleted by No. 22 of 1968, s.39.*]

THE EIGHTH SCHEDULE.

Recovery of costs, etc., under certain enactments (s.155(6)).

THE NINTH SCHEDULE.

Words prescribed for the purposes of S.101A.

WESTERN AUSTRALIA.

JUSTICES.

No. 11 of 1902.

(Affected by Acts Nos. 11 of 1956, s. 2; 43 of 1964, s. 5;
and 113 of 1965, s. 8)

[As amended by Acts:

No. 19 of 1919 assented to 28 October 1919;
No. 28 of 1920 assented to 31 December 1920;
No. 34 of 1926 assented to 8 December 1926;
No. 26 of 1932 assented to 15 December 1932;
No. 11 of 1936 assented to 3 December 1936;
No. 14 of 1942 assented to 26 November 1942;
No. 29 of 1948 assented to 9 December 1948;
No. 73 of 1954,¹ assented to 14 January 1955;
No. 9 of 1957,² assented to 20 August 1957;
No. 7 of 1959 assented to 7 September 1959;
No. 29 of 1961 assented to 11 June 1962;
No. 24 of 1962,³ assented to 4 October 1962;
No. 10 of 1964 assented to 2 October 1964;
No. 77 of 1964 assented to 14 December 1964;
No. 83 of 1965,⁴ assented to 7 December 1965;
No. 109 of 1965,⁵ assented to 17 December 1965;
No. 24 of 1967 assented to 27 October 1967;
No. 22 of 1968 assented to 16 October 1968;
No. 48 of 1971 assented to 10 December 1971;
No. 17 of 1972,⁶ assented to 26 May 1972;
No. 94 of 1972,⁷ (as amended by No. 19 of 1973);
No. 72 of 1975,⁸ assented to 7 November 1975;
No. 33 of 1976,⁹ assented to 9 June 1976;
No. 119 of 1976, assented to 1 December 1976;
No. 41 of 1977, assented to 7 November 1977;
No. 6 of 1979,¹⁰ assented to 17 May 1979;
No. 67 of 1979,¹¹ assented to 21 November 1979;
No. 67 of 1980,¹² assented to 26 November 1980;

¹ Came into operation on 1 March 1955. See *Gazette*, 18/2/55, p. 343.

² Came into operation on 25 October 1957. See *Gazette*, 25/10/57, p. 2965.

³ Came into operation on 1 December 1962. See *Gazette*, 30/11/62, p. 3833.

⁴ Came into operation on 1 May 1966. See *Gazette*, 4/3/66, p. 589.

⁵ Came into operation on 1 March 1966. See *Gazette*, 25/2/66, p. 550.

⁶ Came into operation on 1 July 1972. See *Gazette*, 30/6/72, p. 2098.

⁷ Metric Conversion Act 1972-1973. The relevant amendments included in this reprint effective from 1 January 1974; See *Gazette*, 2/11/73, p. 4108.

⁸ Came into operation on 1 December 1976; See *Gazette*, 12/11/76, p. 4265.

⁹ Came into operation on 3 September 1976; See *Gazette*, 3/9/76, p. 3271.

¹⁰ Section 3 deemed to operate from 7 November 1977. Balance came into operation on 7 December 1979; See *Gazette*, 7/12/79, p. 3770.

¹¹ Came into operation on 11 February 1980; See *Gazette*, 8/2/80, p. 383.

¹² Came into operation 28 days after assent ie. 24/12/1980.

No. 120 of 1981,¹³ assented to 14 December 1981;

No. 20 of 1982, assented to 27 May 1982;

No. 124 of 1982, assented to 10 December 1982;

No. 125 of 1982,¹⁴ assented to 10 December 1982;

No. 44 of 1984,¹⁵ assented to 5 September 1984;

No. 52 of 1984,¹⁶ assented to 5 September 1984,

and reprinted pursuant to the Amendments Incorporation Act 1938]

AN ACT to consolidate and amend the Laws relating to Justices of the Peace and their Powers and Authorities.

BE it enacted— [Assented to 18 November 1902.]

PART I.—PRELIMINARY.

1. This Act may be cited as the *Justices Act* 1902. It is divided into parts, as follows:—

PART I.—PRELIMINARY.

PART II.—JUSTICES.

PART III.—JURISDICTION.

PART IV.—GENERAL PROCEDURE.

PART V.—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

PART VI.—PROCEEDINGS IN CASE OF SIMPLE OFFENCES AND BREACHES OF DUTY.

PART VIA.—RECIPROCAL ENFORCEMENT OF FINES AGAINST BODIES CORPORATE.

PART VII.—ORDERS TO KEEP THE PEACE.

PART VIII.—APPEALS FROM THE DECISIONS OF JUSTICES.

PART IX.—PROTECTION OF JUSTICES IN THE EXECUTION OF THEIR OFFICE.

PART X.—MAINTENANCE AND DESTRUCTION OF COURT RECORDS.

2. The several Acts mentioned in the First Schedule are hereby repealed and amended to the extent in the said schedule indicated, but no

Short title and division of Act.
Amended by No. 72 of 1975, s. 3; No. 125 of 1982, s. 3.

Repeal of existing Acts.

¹³ Came into operation on 1 September 1982; See *Gazette*, 13/8/82, p. 3105.

¹⁴ Came into operation on 20 May 1983; See *Gazette*, 20/5/83, p. 1521.

¹⁵ Came into operation 3 October 1984.

¹⁶ Came into operation 3 October 1984.

proceedings or acts or things done under any of the said Acts before the commencement of this Act shall be invalidated or affected by such repeal; and all proceedings initiated before the commencement of this Act shall be carried on, as far as practicable, according to the provision of this Act, and subject thereto, according to the provisions of the said repealed Acts respectively, which shall for that purpose be deemed to continue in force notwithstanding the repeal thereof; and all persons lawfully in custody or bound by recognisance, at the commencement of this Act, under the provisions of any of the said repealed Acts, shall be deemed to be in lawful custody or to be so bound as aforesaid under the provisions of this Act, and may be dealt with accordingly.

Commencement of Act.

3. This Act shall commence and take effect on and from the first day of January, one thousand nine hundred and three.

Commence-
ment of Act.

Interpretation.

4. In the interpretation of this Act, unless the context otherwise requires—

“Charge of an indictable offence” means charge of an indictable offence as such and in order to a committal for trial therefor;

“Complaint” includes the terms “information”, “information and complaint”, and “charge”, and, unless the contrary appears, means an information and complaint before justices;

“Decision” includes a committal for trial and an admission to bail as well as a conviction, order, order of dismissal, or other determination;

“Defendant” means a person complained against before justices for an indictable offence, simple offence or other matter;

Interpretations.
Amended by
No. 19 of
1919, ss. 2 and
4; No. 22 of
1968, s. 2; No.
17 of 1972, s.
4; No. 33 of
1976, s. 3; No.
72 of 1975, s.
4.

- “Goal” includes prison and police gaol;
- “Hearing” includes the examination of a person charged with an indictable offence;
- “Indictable Offence” means an offence which may be prosecuted before the Supreme Court, or other court having jurisdiction in that behalf, by information in the name of the Attorney General or other authorized officer;
- “Indictment” means an information for an indictable offence presented to a court having jurisdiction to try the accused person by the Attorney General or other authorized officer;
- “Jurisdiction” when necessary, means the place in which jurisdiction may be lawfully exercised;
- “Justices” means Justices of the Peace having jurisdiction where the act in question is or is to be performed, and includes one justice where one justice has jurisdiction to do the act in question;
- “Keeper of a Gaol” includes superintendent of a prison;
- “Magistrate” means a stipendiary magistrate appointed and holding office, whether temporarily or permanently, under the Stipendiary Magistrates Act 1957, the Interpretation Act 1984, or the Public Service Act 1978;
- “Matter” means any act, omission, fact, or event (except an indictable offence not punishable summarily) upon complaint whereof justices may give any decision against or in respect of any person;
- “Minister” means the Attorney General or other Minister charged with the supervision of Justices of the Peace;
- “Oath” includes solemn affirmation or declaration when such affirmation or declaration may by law be made instead of

taking an oath, and also includes any promise or other undertaking to tell the truth that may be made under the provisions of any Act relating to giving evidence in courts of justice;

“Order” means an order made upon a complaint of any matter (not being a simple offence);

“Police Officer” means any constable or other member of the police force;

“Preliminary Hearing” means a hearing to determine whether there is sufficient evidence for a person charged with an indictable offence to be committed to a court of competent jurisdiction for trial or sentence;

“Simple Offence” means any offence (indictable or not) punishable, on summary conviction, by fine, imprisonment or otherwise;

“Summary Conviction” or “Conviction” means a conviction for a simple offence;

When one word or phrase includes another, the derivatives of the one include those of the other.

5. Nothing in this Act shall be construed to diminish or affect any power or authority conferred on Justices of the Peace by any other Act, except so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

General saving of powers of justices.

PART II.—JUSTICES.

6. The Governor may appoint such and so many justices male and female as may from time to time be deemed necessary to keep the peace in the State of Western Australia, or in any magisterial district therein.

Appointment of justices generally.
Amended by No. 19 of 1919, s. 3.

Such justices may be so appointed either by a General Commission of the Peace under the Great Seal of the State in the form contained in the Second Schedule or to the like effect, or by a special appointment of the Governor notified in the *Government Gazette*. In the latter case the justices so appointed shall be deemed to be included in the then subsisting General Commission of the Peace for the State, or for such magisterial district, as the case may be, from the time when they are so appointed.

Any justice may be appointed to keep the peace in more than one magisterial district.

Removal from
office.

7. A justice may be removed or discharged from his office either by the issue of a new General Commission of the Peace for the State, or for the magisterial district, as the case may be, omitting his name, or by an order of the Governor notified in the *Government Gazette*, without any writ of *supersedeas* or other formal writ.

Resignation.

8. A justice may at any time resign his office by writing, addressed to the Minister, and upon such resignation being accepted by the Governor, and such acceptance being notified in the *Government Gazette*, his office shall be vacated.

Chief elective
executive
officers of
municipalities
to be justices.
Substituted by
No. 41 of
1977, s. 2.

9. (1) A person who is for the time being—

(a) the mayor of a city or town; or

(b) the president of a shire,

within the meaning and for the purposes of the Local Government Act 1960, shall, by virtue of his office and without any further commission or authority than this Act, be a Justice of the Peace for the magisterial district or districts in which the municipal district of the city, town or shire, as the case may be, is situated.

(2) The Under Secretary for Law shall keep a special roll of persons who are for the time being mayors or presidents as mentioned in subsection (1) of this section, but he shall not enter therein the name of any such person unless and until he receives a certificate from the relevant town clerk or shire clerk, as the case may be, to the effect that the person holds such an office.

(3) When a person's name is entered in the special roll as mentioned in subsection (2) of this section, the Under Secretary for Law shall give notice thereof in writing to that person.

(4) A person who becomes a justice pursuant to subsection (1) of this section shall not exercise any of the powers and authorities of a Justice of the Peace unless and until he receives the notice in writing as mentioned in subsection (3) of this section.

10. The Governor may by order prohibit any person who is a Justice of the Peace pursuant to section nine of this Act from acting as such a justice, and from the time of the notification in the *Government Gazette* of such an order he shall be and remain incapable of acting as a Justice of the Peace unless and until—

Prohibition on
acting.
Substituted by
No. 41 of
1977, s. 3.

- (a) he has been again elected to the office of mayor or president as mentioned in section nine of this Act and that section has again been complied with; or
- (b) he has been appointed by the Governor to be a Justice of the Peace.

[Section 11 repealed by No. 22 of 1968, s. 3.]

Judges etc. to
be Justices of
the Peace.

Substituted by
No. 41 of
1977, s. 4.

Amended by
No. 6 of 1979,
s. 3.

12. A person who is for the time being—

- (a) a member of the Executive Council of the State;
- (b) a Judge of the Supreme Court;
- (c) a Judge of The District Court of Western Australia;
- (d) a Judge of the Family Court of Western Australia;
- (e) a magistrate; or
- (f) a Coroner,

or who is for the time being acting in such an office or exercising the powers thereof, shall, by virtue of that office and without any further commission or authority than this Act, be a Justice of the Peace for the State.

Justices
beyond the
State.

13. Any person may be appointed to be a Justice of the Peace for Western Australia although he is not a resident in the State.

Acts done
beyond the
State.

14. Any act done by a justice by virtue of his office out of Western Australia for the purpose of the authentication of the signature of any person to any instrument intended to take effect within Western Australia, and any oath administered by any such justice by virtue of his office out of Western Australia in any case in which an oath may be administered by a Justice of the Peace for Western Australia, shall, unless such act or oath is required by law to be done or administered within Western Australia, be valid and effectual within Western Australia.

Jurisdiction of
justices.
Amended by
No. 72 of
1975, s. 5.

15. (1) Justices of the Peace shall have and may exercise within and for their jurisdiction the several powers and authorities conferred upon them by this Act, or any other Act, or by a General Commission of the Peace.

(2) No justice shall be disqualified from acting in the discharge of his duties in any matter relating to any municipality, board of health, or any local authority by reason only of being a ratepayer or interested in common with the public.

16. A justice other than a justice appointed by virtue of section twelve of this Act shall not exercise any of the functions of his office until he has taken or made an Oath or Affirmation of Allegiance and the Oath or Affirmation of Office prescribed in the Third Schedule.

Oath of office.
Amended by
No. 34 of
1926, s. 4; No.
22 of 1968, s.
5.

Such oaths or affirmations may be taken or made before, and may be administered or received by, a Judge of the High Court of Australia or of the Supreme Court of any State, or a magistrate or any person authorized in that behalf by the Governor.

17. When a person has once taken or made such oaths or affirmations on his appointment to the office of Justice of the Peace for the State or for a magisterial district, and afterwards ceases or has ceased to hold such office, it shall not be necessary for him to again take such oaths or affirmations on his again becoming a Justice of the Peace for the State or for the same or any other district.

Oath of office
need not be
taken a second
time.

Description.

18. When a justice is described as a Justice of the Peace for the State of Western Australia, such description shall, unless there is something to denote a different meaning, be taken to mean that he is a Justice of the Peace for the State generally.

Justices, how
described.

19. (1) The words, "Stipendiary Magistrate", or the letters "S.M.", and the words "Justice of the Peace", or the letters, "J.P.", following the signature to a magisterial act, are respectively *prima facie* evidence of the signature being that of a magistrate or justice having jurisdiction in the matter to which the magisterial act relates.

Certain
signatures to
be *prima facie*
authentic.
Substituted by
No. 22 of
1968, s. 6.

(2) The words, "Clerk of Petty Sessions", or the letters, "C.P.S.", following the signature to a document capable of being issued by a clerk of petty sessions under this Act are *prima facie* evidence that the signature is that of a clerk of petty sessions duly appointed for the magisterial district in which the document was issued.

PART III.—JURISDICTION.

General Provisions.

General
provisions.
Amended by
No. 17 of
1972, s. 5.

20. (1) Whenever by any Act past or future, or by this Act, any person is made liable to a penalty or punishment, or to pay a sum of money—

- (a) for any offence made punishable on summary conviction; or
- (b) for any offence, act, or omission, and such offence, act, or omission is not by the Act declared to be treason, felony, a crime, or a misdemeanour, and no other provision is made for the trial of such person,

the matter may, subject to subsection (2) of this section, be heard and determined by two or more justices in a summary manner under the provisions of this Act.

(2) Where for any indictable offence offenders may, in some circumstances, be punished summarily, a person shall not be charged with the offence before justices, and justices shall not deal with the charge or examine the defendant or commit him for trial, if there is a magistrate available or the defendant does not consent, in which case a reference in this Act to any number of justices shall be read and construed, with such modifications as are necessary, as a reference to a magistrate.

Authentication
of acts of
justices.

21. All summonses, warrants, convictions, and orders (not being by law authorized to be made by word of mouth only) shall be under the hands of the justices issuing or making the same.

22. When a justice issues any warrant or summons purporting on the face thereof to have been issued within the limits of his jurisdiction, such warrant may be executed, and such summons may be served within any part of Western Australia, although beyond the limits of such jurisdiction.

Warrants may be executed throughout State.

23. Every act done or purporting to have been done by or before a justice shall be taken to have been done within his jurisdiction without an allegation to that effect unless and until the contrary is shown.

Presumption of jurisdiction

Courts of Petty Sessions.

24. (1) The Governor may, subject to the provisions of the Magisterial Districts Act 1886, appoint magisterial districts for the purposes of courts of petty sessions.

Magisterial districts.
Amended by No. 119 of 1976, s. 2.
See 50 Vict. No. 17.

(2) The Governor may, by proclamation, order that courts of petty sessions constituted by a stipendiary magistrate only shall be held at such places as he thinks fit; and may, in like manner, alter the place for the holding of such a court, or order that the holding of any such court be discontinued.

(3) The provisions of subsection (2) of this section shall not be construed as limiting or affecting the jurisdiction of any stipendiary magistrate under the other provisions of this Act or under any other Act.

(4) Where the Governor orders that a court of petty sessions shall be held at any place pursuant to subsection (2) of this section—

- (a) the proclamation may provide that there shall be a seal of the court;
- (b) the magistrate to whom a court is assigned shall attend to hold the court, at the place appointed by the Governor, at such times as are appointed by the Minister, but so that the court is held in the place once at least in such period of time as the Governor directs by proclamation;

- (c) notice of the days on which the court is appointed to be held shall be published in the *Government Gazette*, and posted in a conspicuous place at the courthouse and also in the office of the clerk;
- (d) when by reason of the absence of a magistrate the court cannot be held at the time appointed, the clerk, or, in his absence, a prescribed officer, shall adjourn the court; and
- (e) when the holding of the court is discontinued, all proceedings pending in that court shall be transferred to and continued in such other court as the Governor may direct by proclamation and all records of the court the holding of which is discontinued shall be transferred to such other court.

Existing
magisterial
districts to
continue under
this Act until
altered.

25.¹ The districts heretofore appointed to be magisterial districts shall, until altered, be deemed to be districts for the purposes of courts of petty sessions, and shall be deemed to have been appointed under this Act.

Clerks of petty
sessions.
Inserted by No.
22 of 1968, s.
7.

25A. The Minister may appoint a person to the office of clerk of petty sessions for a magisterial district and may appoint such number of clerks of petty sessions for each magisterial district as may, in his opinion, be necessary for the due administration of this Act.

Powers of One Justice.

Acts by one
justice.

26. One justice out of sessions may receive a complaint, and grant a summons or warrant thereon, and may issue his summons or warrant to compel the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, notwithstanding that the case must be heard and determined by two or more justices.

¹ See G.G. 8/11/40, pp. 1981-1986.

27. (1) After a case has been heard and determined, one justice may, subject to subsection (2) of this section, issue any warrant of execution or commitment thereon, and the justice who so acts need not be the justice or one of the justices by whom the case was heard and determined.

After decision, one justice may issue warrant of execution or commitment. Amended by No. 22 of 1968, s. 8.

(2) Where a warrant of execution or commitment is not issued within the period of twelve months after the final hearing and determination of a case, such a warrant shall not, except for the enforcement of an order for the making of periodical payments, issue without the leave of a magistrate.

28. After an appeal against a conviction or order has been decided against the appellant, any justice may, subject to section twenty-seven of this Act, issue a warrant of execution or commitment for execution of the same as if no appeal had been brought.

Warrants of execution after appeal. Amended by No. 22 of 1968, s. 9.

Hearing and Quorum.

29. Subject to this Act, and notwithstanding the provisions of any other Act, every complaint for an indictable offence or a simple offence or other matter may be heard by and before two or more justices:

Hearing of complaints. Substituted by No. 19 of 1919, s. 5. Amended by No. 28 of 1920, s. 2.; No. 17 of 1972, s. 6.

Provided that, with the consent of all parties concerned, any such complaint may be heard by and before one justice, but a memorandum of such consent shall be forthwith made and signed by the justice.

30. Except as hereinafter provided, when two or more justices are present and acting at the hearing of any matter and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion, the case shall be reheard at a time to be appointed by the justices present, or a majority of them, or if they are equally divided, by the senior justice present:

Majority to decide. Amended by No. 19 of 1919, s. 4; No. 14 of 1942, s. 2; No. 22 of 1968, s. 10; No. 17 of 1972, s. 7.

Provided that, upon a complaint for an indictable offence, any two or more of the justices may commit the defendant for trial notwithstanding that a majority of the justices are of opinion that the defendant should be discharged. In any such case a memorandum of the dissent of the majority of the justices shall be made upon or attached to the depositions.

When two justices required, they must be present throughout the case.

31. Where a complaint must be heard and determined, or a conviction or order must be made, by two or more justices, the justices making the decision must be present and act together during the whole of the hearing and determination.

Jurisdiction of one justice in certain circumstances. See 14 Vict., No. 5, s. 32. Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

32. Any one justice may exercise the jurisdiction of two justices under this or any other Act whenever no other justice usually residing in the district can be found at the time within a distance of sixteen kilometres; provided that the justice, on any conviction, certifies, in writing, that no other justice can be found within sixteen kilometres; but no sentence of whipping imposed by one justice may be carried out until approved by the Governor.

A certificate under this section shall be conclusive evidence of the fact stated.

Sub-heading amended by No. 22 of 1968, s. 11.

Magistrates.

Special powers given to magistrates who may in all cases act alone. Amended by No. 19 of 1919, s. 6; No. 22 of 1968, s. 12; No. 17 of 1972, s. 8.

33. (1) Every magistrate shall have power to do alone whatever might be done by two or more justices sitting in petty sessions, and shall have power to do alone any act which by any law is or shall be directed to be done by more than one justice.

(2) Where two or more justices, one of whom is a magistrate, are present and acting at the hearing of any matter and do not agree, the decision of the magistrate shall prevail, notwithstanding that a majority of the justices are of a different opinion.

34. In any place appointed for holding courts of petty sessions in which a clerk of petty sessions is not appointed, or from which the clerk of petty sessions is absent, a magistrate may discharge the duties of clerk of petty sessions, and all acts done by a magistrate in pursuance hereof shall be as valid as if done by such clerk, and all notices required to be given to such clerk, and all other matters and things required to be done with or in reference to such clerk, may be given to or done with or in reference to a magistrate, and shall have the like force and effect.

Duties of clerks of petty sessions may be discharged by magistrate. Amended by No. 22 of 1968, s. 13.

Provided that the justices in petty sessions assembled or the Minister may require that any of such duties, acts, matters, and things as they or he shall think convenient shall be done by, with, or in reference to some police officer, and thereupon such acts, matters, and things if so done shall be as valid as if done by, with, or in reference to a clerk of petty sessions.

Extent of Jurisdiction.

35. No act done by a justice shall be invalid merely by reason of the fact that at the time of doing such act he was outside the limits of his jurisdiction, and it shall not be necessary that any conviction, order, or other proceeding should appear to be made or done within the geographical limits of the jurisdiction of the justice making or doing the same.

Justices may act outside jurisdiction.

36. A warrant of commitment or of remand shall be valid throughout the State, notwithstanding that the gaol or other place to which the defendant is committed or remanded, or any place into or through which he is taken by virtue of the warrant, is outside the limits of the jurisdiction of the justice by whom the warrant is granted.

Warrants of commitment and remand by justices of limited jurisdiction.

37. All police officers are hereby required to obey the warrants, orders, and directions of a justice which in that behalf are granted, given, or done, and to do and perform their several offices and duties in respect thereof under the pains and penalties to which a police officer is liable for a neglect of duty.

Duty of police officers to obey warrants, etc.

Summons or warrant not avoided by justice dying or ceasing to hold office.

38. A warrant or summons issued by a justice shall not be avoided by reason of such justice dying or ceasing to hold office.

Order in lieu of mandamus.

39. When a justice refuses to do any act relating to the duties of his office as such justice, the party requiring such act to be done may apply to the Supreme Court, or a Judge thereof, upon affidavit of the facts, for an order calling upon such justice, and also the party to be affected by such act, to show cause why such act should not be done, and if after due service of such order good cause is not shown against it, the court or Judge may make the same absolute.

A justice, upon being served with an order absolute, shall obey the order and do the act required by it to be done.

Power to order delivery of possession of goods charged to have been stolen or fraudulently obtained and in custody of police officer.
Amended by No. 22 of 1968, s. 14.

40. When property charged to have been stolen or fraudulently obtained is in the custody of a police officer by virtue of a search warrant, or otherwise in the course of the prosecution of any person for an indictable offence in regard to the obtaining of such property, and the prosecution has terminated, whether by the conviction or discharge of the defendant or otherwise, or the defendant cannot be found, a magistrate may make an order for the delivery of the property to the person who appears to be the rightful owner thereof.

But no order shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order: Provided that the action shall be brought within six months next after the order is made.

Interruption of Proceedings.

Penalty for insulting or interrupting justices.
Amended by No. 113 of 1965, s. 8.

41. Any person who insults any justices sitting in the exercise of their jurisdiction under this or any other Act, or wilfully interrupts the proceedings of justices so sitting, may be excluded from the court by order of the justices, and may, whether he is so

excluded or not, be summarily convicted by the justices on view, and on conviction shall be liable to a penalty not exceeding ten dollars, and in default of payment to be imprisoned for a period not exceeding seven days.

No summons need be issued against any such offender, nor need any evidence be taken on oath, but he may be taken into custody then and there by a police officer by order of the justices, and called upon to show cause why he should not be convicted.

PART IV.—GENERAL PROCEDURE.

Complaints.

42. Proceedings before justices shall be commenced by a complaint, which may be made or laid by the complainant in person, or by his counsel or solicitor or other person authorized in that behalf.

Complaint, by whom laid.

43. Every complaint shall be for one matter only, and not for two or more matters:

Only one matter of complaint.
Amended by No. 19 of 1919, s. 7.

Provided that—

- (1) in the case of indictable offences, if the matters of complaint are such that they may be charged in one indictment; and
- (2) in other cases, if the matters of complaint are substantially of the same act or omission on the part of the defendant,

such matters may be joined in the same complaint.

Provided also, that when several simple offences are alleged to be constituted of the same acts or omissions or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such offences may be joined in the same complaint against the same person; but if in any such case it appears to the justices that the defendant is likely to be prejudiced by such joinder, they may require the complainant to elect upon which of the charges he will proceed or may direct that the defendant shall be tried separately on each or any of the charges.

Description of
persons and
property.

44. Such description of persons or things as would be sufficient in an indictment shall be sufficient in complaints.

What is
sufficient
description of
offence.

45. The description of any offence in the words of the Act, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

Variance and Amendment.

Want of form
or variance in
warrant, etc.

46. No objection shall be taken or allowed to any complaint, or to any summons or warrant to apprehend a defendant issued upon any complaint, for any alleged defect therein, in substance or in form, or for any variance between it and the evidence in support thereof, and any such variance shall be amended by order of the justices at the hearing.

Amendment.

47. If any such variance appears to the justices to be such that the defendant has been thereby deceived or mislead, they may, and at the request of the defendant shall, upon such terms as they think fit, adjourn the hearing of the case to some future day, and in the meantime may commit the defendant, or discharge him upon recognisance for his appearance at the time and place to which the hearing is adjourned.

Minute of
amendment.

48. Every order for the amendment of a variance shall be entered on the proceedings of the justices, and a minute thereof, if required, shall be given to the party against whom it was made.

Complaints, how made.

Complaint on
oath where
warrant issued.

49. When it is intended to issue a warrant in the first instance against the party charged, the complaint must be in writing and on oath, which oath may be made either by the complainant or some other person.

50. When it is intended to issue a summons instead of a warrant in the first instance, the complaint need not be in writing or on oath, but may be verbal merely, and without oath, whether any previous Act under which the complaint is laid requires it to be in writing or not.

Where
summons
issued.

Limitation.

51. In any case of a simple offence or other matter, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within six months from the time when the matter of complaint arose.

Limitation of
proceedings.
Amended by
No. 19 of
1919, s. 4.

Summons.

52. When a complaint is made before a justice that any person is guilty of, or is suspected of having committed or is liable to be dealt with in respect of, any indictable offence, simple offence, or other matter, within the jurisdiction of such justice, then such justice may issue his summons.

When a justice
may issue
summons.
Amended by
No. 19 of
1919, s. 4.

53. Any such complaint may be made before the clerk of petty sessions, who may sign and issue his summons, which shall have the same force and effect as if issued by a justice.

Summons may
be issued by
clerk of petty
sessions.

54. A summons issued under this Act shall—

- (a) be directed to the defendant;
- (b) state shortly the matter of the complaint as a result of which it was so issued;
- (c) in the case of a summons for an indictable offence, require the defendant to appear at a time and place appointed by that summons, before such justices as shall then be there, to be dealt with according to law; and
- (d) in the case of a summons for a simple offence that is not an indictable offence—
 - (i) require the defendant, subject to sections 135 and 136 of this Act, to appear at a time and place appointed

Contents of
summons.
Substituted by
No. 120 of
1961, s. 3.

by that summons, before such justices as shall then be there, to be dealt with according to law; and

- (ii) advise the defendant of the procedures which may be followed under sections 135 and 136 of this Act in the circumstances described in those sections.

Ex parte
proceedings.

55. Nothing herein contained shall oblige any justice or clerk of petty sessions to issue a summons in any case where the application for an order of justices is by law to be made *ex parte*.

Service, Indorsement, and Proof of Service.

Mode of
service.
Amended by
No. 11 of
1936, s. 2;
No. 83 of
1965, s. 3;
No. 22 of
1968, s. 15.

56. Subject to section fifty-six A of this Act, a summons must be served upon the person to whom it is directed by delivering a duplicate thereof to him personally, or, if he cannot be found, by leaving it with some person for him at his last known place of abode.

Provided that a magistrate or clerk of petty sessions may, if satisfied that to effect service in the manner above prescribed would involve undue expense, and that the offence is not an indictable offence, and that its nature is such that personal service might reasonably be dispensed with, and that the hearing will not be unduly delayed thereby, allow service by post.

Service by post shall be effected by the clerk of petty sessions despatching the summons through the post as a prepaid registered letter addressed to the person to be served at his place of abode, and the magistrate may accept as proof of service a certificate of the clerk of the due posting of the summons as a prepaid registered letter; provided that the clerk has received through the post an acknowledgement of delivery of such letter purporting to be signed by the person to whom the same was addressed.

56A. (1) Notwithstanding the provisions of section fifty-six of this Act, any summons requiring a person to appear at a time and place therein specified before justices to answer the complaint for a simple offence against—

- (a) the Road Traffic Act 1974;
- (b) any Act¹ prescribed for the purposes of this section; or
- (c) any regulation, rule, by-law or order made under the Road Traffic Act 1974, or any Act so prescribed,

may be served upon the person to whom it is directed by posting not less than fourteen days before the return day by prepaid registered post, a true copy of the summons in an envelope addressed to that person at his last known place of residence or business.

(2) Without prejudice to the operation of subsection (1) of this section, in the absence of any circumstances making it appear that the person to whom the summons is directed resides or carries on business elsewhere, where the offence specified in the summons—

- (a) arises out of the driving or use of a motor vehicle, the address appearing as the address of that person in the driver's licence, if any, produced by him at the time of the alleged offence or upon any investigation thereof;
- (b) is an offence alleged to have been committed by the person to whom the summons is directed as the owner of a motor vehicle, the address appearing as the address of that person as owner in the vehicle licence for the motor vehicle, for the time being in force;
- (c) is an offence against any Act prescribed for the purposes of this section or against any regulation, rule, by-law or order made under that Act, the address appearing as his address in any licence, registration or prescribed document for the time being in

Power to serve
summons
relating to
certain
offences by
post.
Inserted by No.
83 of 1965,
s. 4.
Amended by
No. 24 of
1967, s. 2.

¹ See Justices (Service of Summons by Post) Regulations 1982.

force, whether of himself or any premises of which he is the owner or occupier, and which that person holds or has effected or been given pursuant to the Act by or under which the offence he is alleged in the summons to have committed was constituted,

shall be deemed and taken to be the last known place of residence or business of the person to whom the summons is directed.

(3) A summons posted to a person to whom it is directed pursuant to this section shall be posted—

- (a) by an officer of the court of petty sessions before which the person is required by the summons to appear; or
- (b) by the person who made the complaint in respect of which the summons is issued or by a person authorized in writing to post the summons by the first mentioned person.

(4) The justices hearing the complaint to which the summons relates—

- (a) may accept as proof of service a certificate of the officer or any person referred to in paragraph (a) or (b) of subsection (3) of this section of the due posting by him of the summons in accordance with this section;
- (b) shall not impose a sentence of imprisonment in respect of the offence mentioned in the complaint unless and until the person to whom the summons is directed is personally before the justices.

(5) Where a summons posted pursuant to this section does not, in fact, come to the notice of the defendant prior to his being convicted of the matter of complaint stated in the summons, he may, within fourteen days after his becoming aware of the conviction or within such extension of that period as the justices may allow, serve upon the clerk of petty sessions, at the place where he was so convicted, a notice requiring a rehearing of the complaint to which the summons relates.

(6) The clerk shall, as soon as may be practicable after the receipt of a notice served pursuant to subsection (5) of this section, fix a day and time for a rehearing of the complaint and shall, by notice sent by prepaid registered post or served personally (whichever may be the more practicable or convenient), notify the complainant and the defendant of the day and time so fixed.

(7) The justices shall, on the day fixed pursuant to subsection (6) of this section, proceed to consider the requirement for a rehearing and shall confirm or set aside the conviction, as they think fit; and, where the conviction is set aside, the justices shall proceed to rehear the complaint or adjourn the rehearing to a day fixed by them, as they think fit.

57. (1) The service of any summons where service has not been effected by post may be proved by an indorsement on the summons, signed by the person by whom it was served, setting forth the day, place, and mode of service; or such person may depose to the service on oath at the hearing.

Proof of service.
Amended by
No. 11 of
1936, s. 3.

(2) The signature to an indorsement of service shall be *prima facie* evidence that the indorsement was signed by the person whose signature it purports to be.

(3) Any false statement in an indorsement of service shall render the person making the same liable, on summary conviction, to imprisonment, with or without hard labour, not exceeding six months.

Warrants in the First Instance.

58. When complaint is made before a justice—

- (1) that a person is suspected of having committed an indictable offence within the limits of the jurisdiction of such justice; or
- (2) that a person charged with having committed any such offence elsewhere in Western Australia is suspected of being within such limits; or

Warrant and summons, in what cases issued.

- (3) that a person charged with having committed an indictable offence on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have, or claim to have, jurisdiction, or on land outside Western Australia, of which offence cognisance may be taken by the courts of Western Australia, is suspected of being within such limits,

the justice may issue his warrant to apprehend such person, and to cause him to be brought before justices in any jurisdiction to answer the complaint, and to be further dealt with according to law.

Provided that the justice, if he thinks fit, instead of issuing his warrant in the first instance to apprehend the person charged, may proceed by summons, and issue a summons against him accordingly.

Notwithstanding the issue of a summons, any justice may issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

Warrant in the first instance for simple offence.

59. When complaint is made before a justice of a simple offence, the justice may, upon oath being made before him substantiating the matter of the complaint instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant, and to cause him to be brought before justices to answer the complaint and to be further dealt with according to law.

Direction of Warrants.

Direction of warrant.

60. (1) A warrant to apprehend a defendant that he may answer a complaint may be directed either to any police officer or officers by name, or generally to all police officers within the State, without naming them, or to both.

(2) Any police officer may execute any warrant as if it was directed specially to him by name.

Form of Warrant.

61. A warrant shall state shortly the offence or matter of the complaint on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before justices in any jurisdiction to answer the complaint and to be further dealt with according to law.

What warrants shall order.

62. A warrant need not be returnable at any particular time, but may remain in force until executed, and may be executed by apprehending the defendant at any place within the State.

Warrant in force till executed.

Sunday Warrants.

63. A justice may grant or issue any warrant and any warrant may be executed on a Sunday as on any other day.

Warrants may be issued and executed on Sunday.

Arrest without Warrant.

64. A person taken into custody for an offence without a warrant shall be brought before a justice as soon as practicable after he is taken into custody; and if it is not practicable to bring him before a justice within twenty-four hours after he is so taken into custody, a clerk of petty sessions or an inspector or sub-inspector of police, or other police officer who is of equal or superior rank, or who is in charge of a police station, may and shall inquire into the case, and, except where the offence appears to such clerk of petty sessions, inspector, sub-inspector, or other police officer, to be of a serious nature, shall discharge the defendant upon his entering into a recognisance, with or without sureties for a reasonable amount, to appear before justices at the day, time, and place named in the recognisance.

Bail of persons arrested without a warrant.

Open court.

65. The room or place in which justices sit to hear and determine any complaint upon which a conviction or order may be made shall be deemed an open and public court, to which all persons may have access so far as the same can conveniently contain them.

Provided that in any case in which, in the opinion of the justices, the interests of public morality require that all or any persons should be excluded from the court, the justices may exclude such persons therefrom accordingly.

Exclusion of
strangers.

66. The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission; but they shall not make such order unless it appears to them that the ends of justice require them so to do.

Counsel or
solicitor not to
be excluded.

67. The power to exclude any person shall not be exercised for the purpose of excluding any counsel or solicitor engaged in the case.

Counsel and Solicitor.

Conduct of
case.

68. Every complainant shall be at liberty to conduct his case and to have the witnesses examined and cross-examined by his counsel or solicitor; and every defendant shall be admitted to make his full answer and defence to the charge, and to have the witnesses examined and cross-examined by his counsel or solicitor.

69. (1) Every witness shall be examined upon oath, or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice.

Evidence, how
taken.
Amended by
No. 33 of
1976, s. 4.

(2) Notwithstanding any other provision in any Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a written statement of any person—

- (a) may, on a preliminary hearing, be tendered to the justices in evidence and is admissible as evidence before them to the like extent as oral evidence to the like effect by that person; or
- (b) may, where there is no preliminary hearing, be tendered to the justices to be used in evidence for the purposes of the trial or sentencing of the defendant,

if the conditions mentioned in subsection (3) of this section are complied with.

(3) The conditions referred to in subsection (2) of this section are as follows—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true;
- (c) before the statement is so tendered, a copy of the statement has been served, by or on behalf of the party proposing to tender it, on each other party to the proceedings and, where the party proposing to tender it is the prosecutor, it has been served and lodged in

accordance with subparagraph (ii) of paragraph (b) of subsection (1) of section one hundred and one A of this Act;

(d) before the statement is so tendered, no other party to the proceedings objects to its tender;

(e) where the statement is made by a person under the age of eighteen years, it gives his age;

(f) where the statement is made by a person who cannot read, it is read aloud to him before he signs it, and it is accompanied by a declaration of the person who read the statement to the effect that it was so read; and

(g) where the statement refers to any other document or exhibit, the copy of the statement served, under paragraph (c) of this subsection, is accompanied by a copy or description of the other document or exhibit.

(4) A written statement is deemed to be tendered in evidence under this section at the time that the statement is tendered to the justices.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section is deemed to have been produced before the justices and identified by the maker of the statement.

(6) A written statement tendered in evidence under this section is admissible as evidence before any court of competent jurisdiction, to the like extent that a deposition of the person who made the statement would be so admissible.

(7) Any person who, in a written statement tendered in evidence under this section, has wilfully included anything which he knew to be false or did not believe to be true is guilty of a crime and is liable

to imprisonment with hard labour for seven years, but a person shall not be convicted of the crime upon the uncorroborated testimony of one witness.

70. Upon any complaint of an indictable offence, or simple offence or other matter, the prosecutor or complainant shall be a competent witness to support such complaint.

Prosecutor or complainant a competent witness.
Amended by No. 19 of 1919, s. 4.

71. (1) Except as in The Criminal Code is otherwise provided, and subject to the provisions therein contained, upon any complaint of an indictable offence, the defendant, and the wife or husband of the defendant, shall be a competent but not a compellable witness.

Defendant and wife or husband, when competent.
Amended by No. 19 of 1919, s. 4

(2) Upon any complaint of an indictable offence against morality the husband or wife of a defendant shall be a competent and compellable witness when the husband or wife of an accused person would be a competent or compellable witness on the trial of such person.

(3) Upon any complaint of a simple offence or other matter the husband or wife of the defendant shall be a competent and compellable witness.

72. If the complaint in any case of a simple offence or other matter negatives any exemption, exception, proviso, or condition contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in his defence.

Proof of negative, etc.
Amended by No. 19 of 1919, s. 4.

73. (1) When a person is charged with an indictable offence, the depositions of the witnesses shall be reduced to writing, and shall, if the charge is not dealt with summarily, be read over to and signed respectively by the witnesses, and shall be signed also by the justices.

Mode of taking evidence.
Amended by No. 33 of 1976, s. 5.

(2) Where, on a preliminary hearing, a written statement is tendered in evidence under section sixty-nine of this Act, the justices—

- (a) shall read aloud, or cause to be read aloud before them, such part of the statement as is admissible in evidence by virtue of paragraph (a) of subsection (2) of that section;
- (b) shall sign the statement; and
- (c) may, on their own motion or on the application of any party to the proceedings, require the person who made the statement to attend before them and give evidence if they are satisfied that the presence of that person as a witness is necessary in the interests of justice.

Witnesses in General.

Power of justice to summon witnesses to attend and give evidence.
Amended by No. 11 of 1936, s. 4.

74. (1) Any justice or clerk of petty sessions may issue his summons to any person requiring him to be and appear as a witness at a time and place mentioned in the summons before such justices as shall then be there to testify what he knows concerning the matter of the complaint.

(2) A summons to a witness must be served, and proof of service may be given in the same manner as hereinbefore prescribed in the case of a summons to a defendant except that the provisions relating to service by post shall not apply to a summons to a witness.

After summons, warrants may issue.
Amended by No. 113 of 1965, s. 8.

75. (1) If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal, then (after proof that the summons was duly served upon such person, and, except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance) the justices before whom such person was summoned to appear may then and there impose upon him in his absence a

penalty not exceeding forty dollars, which may be recovered in the same manner as penalties imposed upon a summary conviction as hereinafter provided.

(2) The justices may also issue their warrant to bring and have such person at a time and place to be therein mentioned before such justices as shall then be there to testify as aforesaid.

(3) No payment or tender of expenses shall be necessary in the case of indictable offences.

76. If the justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled so to do, then, instead of issuing a summons he may issue his warrant in the first instance.

Warrant in the first instance.

77. If on the appearance of a person before justices, either voluntarily or in obedience to a summons, or upon being brought before them by virtue of a warrant, such person refuses to be examined upon oath concerning the matter, or refuses to take an oath, or having taken an oath refuses to answer such questions concerning the matter as are then put to him, without offering any just excuse for such refusal, any justice then present and having there jurisdiction may by warrant commit the person so refusing to gaol, there to remain and be imprisoned for any time not exceeding seven days, unless in the meantime he consents to be examined and to answer concerning the matter.

Witness not answering.

78. When justices have authority to summon any person as a witness, they shall have the like authority to require and compel him to bring and produce, for the purpose of evidence, all documents and writings in his possession or power, and to proceed against him in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

Production of documents

Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Remand and Adjournment.

Remand of
defendant.
Amended by
No. 19 of
1919, s. 4.

79. In any case of a charge of an indictable offence, if from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the justices before whom the defendant appears or is brought may adjourn such hearing to the same or some other place, and may, by their warrant, from time to time remand the defendant to some gaol, or other place of security, for such period as they may in their discretion deem reasonable (but not exceeding eight clear days at any one time) to be there kept, and to be brought before the same or such other justices as shall be acting at the time or place appointed for continuing the hearing.

The powers given by this and the next succeeding section may be exercised by one justice if only one is present.

Verbal
remand.

80. If the remand is for a time not exceeding three clear days, the justices may verbally order the person in whose custody the defendant then is, or any other person named by the justices in that behalf, to keep the defendant in his custody, and to bring him before the same or such other justices as shall be acting at the time and place appointed for continuing the hearing.

Bringing up
during remand.

81. Any justices may order the defendant to be brought before them at any time before the expiration of the time for which he was so remanded, and the officer in whose custody he then is shall duly obey such order.

82. Instead of the defendant being remanded in custody, or remaining in custody pursuant to being so remanded, any one justice before whom the defendant appears or is brought may, notwithstanding the provisions of sections seventy-nine, eighty and eighty-one of this Act relating to the remand of the defendant in custody but otherwise subject to this Act, order his discharge upon recognisance to appear at the time and place specified in the recognisance, which time may, if the justice thinks fit, exceed eight clear days, but shall not, unless the defendant consents thereto, exceed thirty clear days.

Bail of
defendant
during
examination.
Substituted by
No. 48 of
1971, s. 2.

83. In any case of a charge of an indictable offence, the justices before whom the defendant appears may, if they think fit, bind over such witnesses as they have examined by recognisance to give evidence, and may, by warrant, order the defendant to be taken before justices having jurisdiction in or near the place where the offence is alleged to have been committed, or in any other place in Western Australia where any of the witnesses to be examined are, and shall at the same time deliver the complaint, and also the depositions and recognisances so taken by them, to the officer who has the execution of the lastmentioned warrant, to be by him delivered to the justices before whom he shall take the defendant in obedience to such warrant.

Remand to
another place.

84. Such depositions and recognisances shall be deemed to be taken in the case, and shall be treated as if they had been taken by or before the lastmentioned justices, and shall, together with such depositions and recognisances as such lastmentioned justices shall take in the matter of the charge against the defendant, be transmitted to the proper officer in the manner and at the time hereinafter mentioned, if the defendant is committed for trial upon the charge or discharged upon recognisances.

Effect of
depositions,
etc.

Provided that, if the lastmentioned justices do not think the evidence against the defendant sufficient to put him upon his trial, and discharge him without recognisances, every recognisance so taken by the firstmentioned justices shall be null and void.

Defendant may
have to pay
expense.

85. If it appears to the justices by whom any defendant is committed for trial or for sentence that he has money sufficient to pay the whole or some part of the expenses of conveying him from the place where he was first brought before justices to the place where he was committed, such justices may order that, in the event of his conviction, such money or a sufficient part thereof shall be applied to such purpose.

Adjourn-
ment of
hearing.
Amended by
No. 19 of
1919, s. 4; No.
120 of 1981,
s. 4

86. Subject to section 136 of this Act, in any case of a charge of a simple offence or other matter, the justices present, or, if only one justice is present, such one justice, may adjourn the hearing to a certain time and place to be then appointed and stated, in the presence and hearing of the party or parties, or their respective counsel or solicitors then present, and in the meantime may suffer the defendant to go at large, or may commit him, or may order his discharge upon his entering into a recognisance conditioned for his appearance at the time and place appointed for continuing the hearing.

Committal and Recognisance.

Place of
committal or
detention.

87. When justices commit a defendant by way of remand or upon an adjournment, or at any time before the decision, they may commit to the gaol, or any other place of security in the place for which they are then acting, or to such other safe custody as they think fit.

Place to which
committal to
be made.

88. When justices commit a witness or person sought to be made a witness, and when they commit a defendant after the decision, they must commit to a goal.

89. A witness or person sought to be made a witness may be discharged upon recognisance.

Witness may be discharged on recognisance.

90. When justices are authorized to discharge a defendant, witness, or other person upon recognisance they may order his discharge upon his entering into a recognisance, with or without a surety or sureties at their discretion, conditioned for his appearance at the time and place to which the hearing is adjourned, or which is named in the recognisance.

Recognisances.

91. If a defendant, witness, or other person, does not appear at the time and place mentioned in the recognisance, then the justices who are there present may adjourn the hearing, and may issue a warrant for his apprehension as hereinbefore provided.

Issue of warrant for non-appearance.

Recognisances generally.

92. When justices have fixed, as regards any recognisance, the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, need not be entered into before the same justices, but may be entered into by the parties before the same or any other justice or justices or before any clerk of petty sessions, or before an inspector or sub-inspector of police or other police officer who is of equal or superior rank, or who is in charge of a police station, or, where any one of the parties is in gaol, before the keeper of such gaol; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before justices shall apply as if the recognisances had been entered into before such justices as heretofore by law required.

Recognisances taken out of court.

93. When the conditions, or any of them, in any recognisance that is referred to in subsection (1) of section one hundred and fifty-four A are not complied with, any justice may certify upon the back of the recognisance in what respect the conditions

Forfeited recognisances, how to be enforced.
Amended by No. 19 of 1919, s. 8; No. 17 of 1972, s. 9.

have not been observed, and transmit the same to the proper officer, to be proceeded upon in like manner as other recognisances, and such certificate shall be deemed sufficient *prima facie* evidence of the recognisance having been forfeited and such justice shall on demand by or on behalf of any law officer (as defined by the Crown Suits Act 1898¹), certify by writing under his hand, in the form contained in the Fourth Schedule to the said Act or to the like effect, that such forfeiture has taken place.

Arrest of
principal by
sureties.

94. When a recognisance is conditioned for the appearance of a person on a certain day before justices, or to take his trial before the Supreme Court, or The District Court of Western Australia, the sureties bound by such recognisance may, before the day so appointed, apprehend their principal and bring him before justices or deliver him into the custody of the keeper of the gaol named in the warrant of committal, as the case may be; and any police officer shall, if required by such sureties, assist them in such apprehension.

Revocation of
order of bail.
Inserted by No.
34 of 1926, s.
5.
Amended by
No. 22 of
1968, s. 16.

94A. When a recognisance is conditioned for the appearance of a person on a certain day before justices or to take his trial before the Supreme Court or The District Court of Western Australia, a magistrate may, if satisfied that it is in the interests of justice so to do, revoke the order admitting such person to bail or discharging him on recognisance, and order him to be committed to prison, and may thereupon issue his warrant for that purpose in the prescribed form.

Execution of Warrants of Commitment.

Conveying
prisoners to
gaol.

95. The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of such gaol

¹ Repealed by Crown Suits Act 1947 (No. 11 of 1947).

or place, who shall thereupon give the person delivering the prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such keeper.

Regulations and Forms.

96. (1) The Governor may make regulations for carrying out this Act, including prescribing the forms to be used in and the fees to be taken in courts of petty sessions and appeals and providing for procedural matters relating thereto.

Regulations, forms, and fees.
Amended by No. 24 of 1967, s. 3; No. 119 of 1976, s. 4.

(2) Until other forms are prescribed, the forms in the Fourth Schedule, or forms to the like effect, may be used for the purposes to which they are respectively applicable, and instruments in such forms shall be deemed sufficient in law, notwithstanding that any other form is prescribed by any Act heretofore passed, but such forms or any of them may be varied for the purpose of adapting the same to circumstances.

(3) The fees in the Fifth Schedule shall be taken until other fees are prescribed.¹

PART V.—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

Information Presented.

97. Where an information is presented in the Supreme Court, or in The District Court of Western Australia, against any person then at large, whether he is bound by any recognisance to appear to answer to the same or is not so bound, the person acting as clerk of arraigns at such court shall, at any time after the end of the sessions at which the information was presented, if such person has not already appeared and pleaded to the information, grant to the prosecutor, upon his application, a certificate of the information having been presented.

Certificate where information is presented.

¹See Justices Act (Courts of Petty Sessions Fees) Regulations (Gazette 9/4/57 and subsequently amended.)

Warrant
thereon.

98. Upon production of such certificate to any justice for any jurisdiction or place in which the offence is in the information alleged to have been committed, or in which the person informed against is supposed or suspected to be, such justice shall issue his warrant to apprehend such person, and to cause him to be brought before justices, to be dealt with according to law.

Committal.

99. If such person is thereupon apprehended and brought before justices, they upon it being proved upon oath before them that the person so apprehended is the same person who is so informed against, shall, without further inquiry or examination, commit him for trial or discharge him on recognisances.

Detainer of
prisoner in
gaol.

100. If the person so informed against is, at the time of such application and production of the certificate to the justice, confined in any gaol for any other offence than that charged in the information, the justice, upon proof upon oath that the person so informed against and the person so confined are one and the same, shall issue his warrant directed to the keeper of the gaol in which the person so informed against is then confined, commanding him to detain such person in his custody until he is lawfully removed therefrom for the purpose of being tried upon the information, or until he is otherwise removed or discharged out of his custody by due course of law.

Warrant—Committal.

Disobedience
of summons.

101. When a person charged with an indictable offence, and against whom a summons has been issued, does not appear before the justices at the time and place mentioned in the summons, and it is made to appear to the justices that the summons was duly served upon him a reasonable time before the time therein appointed for appearing to it, then such justices may issue their warrant to apprehend the defendant and to bring him before justices to answer the complaint, and to be further dealt with according to law.

101A. (1) Where a person is charged before justices with an indictable offence—

Procedure
where person
is charged
before justices
with an
indictable
offence.
Inserted by No.
33 of 1976, s.
6.

(a) when he is first brought before the justices, the justices—

(i) shall read and explain to him the offence with which he is charged;

(ii) shall address him in the form of words prescribed in Part A of the Ninth Schedule to this Act, or in words to the like effect; and

(iii) shall, where the charge may be dealt with summarily at the election of the defendant, address him in the form of words prescribed in Part B of the Ninth Schedule to this Act, or in words to the like effect, and, if he so wishes, shall adjourn the proceedings in accordance with the provisions of this Act; and

(b) where, immediately after being addressed in accordance with subparagraph (iii) of paragraph (a) of this subsection or after an adjournment granted under that subparagraph, he elects not to have the charge dealt with summarily, or where the charge cannot be dealt with summarily, the justices—

(i) shall address him in the form of words prescribed in Part C of the Ninth Schedule to this Act, or in words to the like effect;

(ii) shall direct the prosecutor to serve or cause to be served on the defendant, and lodged with the clerk of petty sessions, at least four days before the hearing is to be resumed, a copy of the written statement of each person which the prosecution proposes to tender in evidence or to be used in evidence under subsection (2) of section sixty-nine of this Act;

- (iii) shall give or cause to be given to the defendant a copy of Part C of the Ninth Schedule to this Act suitably adapted to the circumstances of the charge against him; and
- (iv) shall adjourn the proceedings in accordance with the provisions of this Act.

(2) Where a person is charged before justices with an offence under section four hundred and ninety-six or five hundred and fifty of The Criminal Code—

- (a) the justices shall follow, with such modifications as are necessary, the procedure provided in subsection (1) of this section; and
- (b) if the defendant elects to be prosecuted on indictment, the other provisions of this Act relating to the examination, committal, and prosecution on indictment of persons charged with indictable offences shall, from the time he so elects, apply to and in respect of him as if he were charged with an indictable offence.

Defendant to elect for or against preliminary hearing.
 Inserted by No. 33 of 1976, s. 6.

101B. (1) On the resumption of the hearing adjourned under subparagraph (iv) of paragraph (b) of subsection (1) of section one hundred and one A of this Act and after the depositions of the witnesses, if any, called by the prosecution have been recorded in accordance with subsection (1) of section seventy-three of this Act, the defendant shall be required by the justices to elect whether or not to have a preliminary hearing.

(2) A defendant is deemed to have elected to have a preliminary hearing if he—

- (a) stands mute or does not answer directly to the question putting him to his election; or
- (b) objects to any statement being tendered under section sixty-nine of this Act.

(3) If the defendant, or if, where there is more than one defendant, one of the defendants elects to have a preliminary hearing there shall be a preliminary hearing but otherwise there shall not be a preliminary hearing.

101C. Where there is no preliminary hearing—

Proceedings
where no
preliminary
hearing.
Inserted by No.
33 of 1976,
s. 6.

(a) a defendant—

- (i) shall not cross-examine any witnesses before the justices;
- (ii) shall not give or tender before the justices any evidence other than written statements tendered under section sixty-nine of this Act; and
- (iii) shall not submit to the justices that there is insufficient evidence before them to put him on his trial for the offence;

(b) the justices—

- (i) shall require the defendant to plead to the charge;
- (ii) shall require that all written statements that are, under section sixty-nine of this Act, to be tendered to them to be used in evidence shall be so tendered and shall receive and sign those statements, which shall not be read in court; and
- (iii) shall, without any consideration of the contents of the depositions, if any, or the written statements, forthwith commit the defendant for trial or sentence, as the case requires; and

(c) a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public the contents, or any

part thereof, of the depositions, if any, or the written statements, or attempts to do so, before those contents or part thereof, as the case may be, are, at the trial or sentencing of the defendant, admitted as evidence, or stated aloud under section six hundred and seventeen A of The Criminal Code, commits a contempt of the Supreme Court and is punishable accordingly by that court.

Justices may restrict publication of evidence in preliminary hearing.
Inserted by No. 33 of 1976, s. 6.

101D. Where there is a preliminary hearing the justices may at any time state that in their opinion in the interests of justice it is undesirable that any report of or relating to the evidence or any of the evidence given or tendered at the proceedings before them should be published and thereafter a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public such report or any part thereof, or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

Liability of body corporate for offences against section 101C or 101D.
Inserted by No. 33 of 1976, s. 6.

101E. Without affecting any other liability of any person under section one hundred and one C or one hundred and one D of this Act or otherwise, a company or other body corporate is liable to any punishment or penalty for any offence under either of those sections as if it were a private person so far as the punishment or penalty is enforceable against a company or body corporate; and if any director, manager, secretary, or officer of a company or any member of the managing body of a body corporate commits, or knowingly authorizes or permits, an offence under either of those sections he is liable to the punishment or penalty for the offence.

Saving.
Inserted by No. 33 of 1976, s. 6.

101F. Nothing in section one hundred and one C or one hundred and one D of this Act applies to the publication of information with regard to any proceedings under either of those sections for contempt of court or for punishment or penalty.

102. On a preliminary hearing, the justices—

Statement of
defend-
ant.

Amended by
No. 33 of
1976, s. 7.

- (a) shall examine all the witnesses called by the prosecution, or called under paragraph (c) of subsection (2) of section seventy-three of this Act in respect of written statements tendered in evidence by the prosecution under section sixty-nine of this Act; and
- (b) shall read aloud, or cause to be read aloud, the parts of written statements tendered in evidence by the prosecution that are required to be so read under paragraph (a) of subsection (2) of section seventy-three of this Act,

and thereupon the justices or one of the justices shall say to the defendant these words, or words to the like effect:—

“Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial.”

And whatever the defendant shall then say in answer thereto shall be taken down in writing and read to him, and shall be signed by the justices, and by the defendant, if he so desires, and shall be kept with the depositions of the witnesses, and shall be transmitted with them to the proper officer as hereinafter provided.

Provided that if all or any of the depositions of the witnesses have been previously read to the defendant, either at one time or at several times, it shall not be necessary to read them again to the defendant, unless he desires that they be again read to him.

103. Afterwards, upon the trial of the defendant, any statement made by him when he is required to plead to the charge under subparagraph (i) of paragraph (b) of section one hundred and one C or when he is asked the question required under section

Statement may
be put in
evidence at
trial.

Amended by
No. 33 of
1976, s. 8.

one hundred and two of this Act may, if necessary, be given in evidence against him without further proof thereof, if the same purports to be signed by the justice or justices by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by the justice or justices by whom it purports to be signed.

Saving.

104. Nothing herein contained shall prevent the prosecutor in any case from giving, in evidence, any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against such person.

Evidence for
the defence.
Substituted by
No. 33 of
1976, s. 9.

105. (1) After addressing the defendant as required by section one hundred and two of this Act and after taking the statement, if any, of the defendant, the justices or one of the justices shall ask the defendant whether he desires to give evidence or call any witnesses, or to tender any written statements under section sixty-nine of this Act.

(2) If the defendant gives evidence or calls any witnesses or any witnesses are called under paragraph (c) of subsection (2) of section seventy-three of this Act in respect of written statements tendered in evidence by the defendant under section sixty-nine of this Act, the justices shall, in the presence of the defendant, take the statement on oath, both examination and cross-examination, of the defendant or of the witnesses so called who know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the defendant.

(3) If the defendant tenders any written statements in evidence under section sixty-nine of this Act the justices shall read aloud, or cause to be read aloud, the parts of those written statements that are required to be so read under paragraph (a) of subsection (2) of section seventy-three of this Act.

106. When, on a preliminary hearing, all the evidence offered upon the part of the prosecution against a person charged with an indictable offence, as such, has been heard, if the justices then present are of opinion that it is not sufficient to put the defendant upon his trial for any indictable offence, the justices shall forthwith order the defendant, if he is in custody, to be discharged as to the complaint then under inquiry.

Discharge of
defendant.
Amended by
No. 33 of
1976, s. 10.

107. If there is no preliminary hearing and the defendant has pleaded not guilty or if, on a preliminary hearing in the opinion of the justices, the evidence is sufficient to put the defendant upon his trial for an indictable offence, then they shall order him to be committed to take his trial for the offence before some court of competent jurisdiction, and in the meantime shall, by their warrant, commit him to gaol, to be there safely kept until the sittings of the court before which he is to be tried, or until he is delivered by due course of law or admitted to bail as hereinafter mentioned.

Committal of
defendant.
Amended by
No. 33 of
1976, s. 11.

[Section 108 repealed by No. 19 of 1919, s. 4.]

109. When a person has been charged before justices with an indictable offence, as such, and has been committed for trial, then if, upon the subsequent trial of the person so charged, it is proved that any person whose deposition has been taken in manner hereinbefore prescribed at the hearing of such charge before the justices is dead, or out of the State, or so ill as not to be able to travel, and if such deposition purports to be signed by the justice by or before whom the same purports to have been taken, such deposition may be read as evidence on the trial without further proof thereof, unless it is proved that it was not in fact signed by the justice by whom it purports to be signed.

Depositions of
persons dead
or absent.

110. If a person dangerously ill and unable to travel is believed to be able to give material and important information relating to an indictable offence, or to a person accused thereof, and it is

Power to take
statements of
witnesses
dangerously ill.
See 37 Vict.,
No. 4, s. 4.

desirable, in the interests of truth and justice, that means should be provided for perpetuating such testimony and rendering the same available in the event of the death of the person giving the same, the proceedings described in the next section may take place.

How
statements to
be taken.
Amended by
No. 22 of
1968, s. 17.

111. Whenever it is made to appear to the satisfaction of any justice that any such person is dangerously ill and not likely to recover from such illness, and that it is not practicable for any justice to take a deposition, in accordance with the provisions of Part IV. of this Act, of such person, the justice may take, in writing, the statement on oath or affirmation of such person, and the justice shall thereupon subscribe the same, and add thereto a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and if the same relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the court for trial at which the accused person has been committed or bailed; and in all other cases he shall transmit the same to the magistrate for the district in which he has taken the same, who shall preserve the same and file it of record.

Depositions,
when
admissible, in
evidence.

112. A statement taken as described in sections one hundred and ten and one hundred and eleven may be read in evidence either for or against the accused upon his trial, if the person who made the same is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, without further proof thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such

person or his counsel or solicitor had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the same, unless it is proved that any of the requisitions of the Act were not complied with.

113. Whenever a prisoner in actual custody has served or received notice of an intention to take a statement as mentioned in sections one hundred and ten and one hundred and eleven, a Judge or the justice by whom the prisoner was committed, or the visiting justices of the prison in which he is confined may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner or cause him to be conveyed accordingly and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison.

Prisoner to be present when statement taken.

Defendant admitting guilt.

114. If there is no preliminary hearing and the defendant has pleaded guilty or if, on a preliminary hearing, the defendant, on being asked, as provided in section one hundred and two, whether he wishes to say anything in answer to the charge, says that he is guilty of the charge, the justices, instead of committing the defendant for trial as hereinbefore provided, shall order him to be committed for sentence before some court of competent jurisdiction, and in the meantime shall, by their warrant, commit him to gaol, to be there safely kept until the sittings of that court, or until he is delivered by due course of law or admitted to bail as hereinafter mentioned.

If defendant admits guilt, he may be committed for sentence.
Amended by No. 33 of 1976, s. 12.

Bail.

115. No person charged with a crime punishable with strict security life imprisonment or the crime of murder shall be admitted to bail except by order of the Supreme Court or a Judge thereof.

Bail in capital crimes, or the crime of murder.
Amended by No. 29 of 1961, s. 2; No. 52 of 1984, s. 6.

Bail where
persons
charged with
crimes and
mis-
demeanours.
Amended by
No. 29 of
1961, s. 3;
No. 22 of
1968, s. 18;
No. 33 of
1976, s. 13;
No. 52 of
1984, s. 47.

116. When any person is charged before justices with any crime not being a crime punishable with strict security life imprisonment or the crime of murder, or with any of the misdemeanours stated in the Sixth Schedule, such justices may admit the person charged to bail, upon his entering into a recognisance with such surety or sureties as in the opinion of the justices will be sufficient to ensure his appearance at the time and place when and where he is to be tried or sentenced for the offence.

Bail after
commitment
for trial
Amended by
No. 22 of
1968, s. 19;
No. 33 of
1976, s. 14.

117. When a person charged with any such crime or misdemeanour is committed to gaol to take his trial or await his sentence for the same, then at any time before the first day of the sitting or session at which he is to be tried or sentenced, or before the day to which such sitting or session is adjourned, the justices who have signed the warrant for his commitment or a magistrate may admit such defendant to bail.

Certificate.

118. When the committing justices are of opinion that for any alleged crime or misdemeanour the defendant ought to be admitted to bail, they shall certify, on the back of the warrant of commitment, their consent to the defendant being bailed, stating also the amount of bail which ought to be required.

Duplicate
where surety
unable to
attend.
Amended by
No. 22 of
1968, s. 20.

119. If it is inconvenient for the surety or sureties to attend to join with the defendant in the recognisance of bail, the committing justices or a magistrate may make a duplicate of such certificate; and upon the same being produced to any person authorized by this Act in that behalf, such lastmentioned person may thereupon take the recognisance of the surety or sureties in conformity with such certificate.

Procedure.

120. Upon the recognisance being duly taken and produced, together with the certificate on the warrant of commitment, to the keeper of the gaol in which the defendant is detained, the defendant shall be discharged out of custody as to that commitment.

121. When any person is charged before justices with any misdemeanour other than those referred to in section one hundred and sixteen, the justices, if there is no preliminary hearing, or if, on a preliminary hearing, in their opinion the evidence is sufficient to put the defendant upon his trial, or if the defendant pleads guilty shall, instead of committing him to gaol for such offence, admit him to bail with or without sureties in such reasonable sum as they think sufficient to ensure his appearance at the time and place where he is to be tried or sentenced for the offence; but if he fails to give bail he shall be committed to gaol to take his trial or to await his sentence for the offence.

Bail for persons charged with other misdemeanors. Amended by No. 33 of 1976, s. 15.

If he has been committed to gaol and applies to any justice, before the first day of the sitting or session at which he is to be tried or sentenced, or before any day to which such sitting or session is adjourned, to be admitted to bail, such justice shall admit him to bail accordingly, with or without sureties, in such reasonable sum as aforesaid.

121A. Where the recognisance of a person put upon his trial and admitted to bail is conditioned upon that person's appearance at the time and place of the first day of the sitting or session at which he is to be tried, the Clerk of Arraignment or, as the case may be, the Registrar of The District Court of Western Australia may, by notice served personally on that person and on his surety or sureties (if any) or by notice sent by prepaid registered post to him and to his surety or sureties (if any), each at his last known place of residence or business address, fix some other and later time for the person's appearance and the recognisance shall, thereupon, be deemed to be conditioned upon his appearance in accordance with the notice.

Variation of recognisances. Inserted by No. 22 of 1968, s. 21.

Transmission of Recognisances of Bail.

122. When a defendant in custody is admitted to bail by a justice other than the committing justices the justice so admitting him to bail shall forthwith transmit the recognisance or recognisances of bail to the committing justices, or one of them, or to the

Recognisances, how transmitted.

clerk of petty sessions, to be by them or him transmitted with the depositions to the proper officer.

Warrant of Deliverance.

Warrant of
deliver-
ance.

123. When justices admit to bail any person then in any gaol charged with an offence for which he is so admitted to bail, such justices shall send to or cause to be lodged with the keeper of the gaol a warrant of deliverance, requiring the keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with the keeper, he shall forthwith obey the same.

Witnesses where Committal for Trial.

Recognis-
ance of
witnesses, etc.

124. The justices before whom any witnesses are examined may bind every such witness by recognisance, in such sum as they may think fit, to appear at the court at which the defendant is to be tried, then and there to give evidence against or for the defendant, and shall so bind over all witnesses called for the prosecution if so required by the defendant.

Signatures of
justices; notice
to witnesses.

125. Every such recognisance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the justices before whom it is acknowledged; and a notice thereof, signed by the justices, shall at the same time be given to every person bound thereby.

Justices may
commit
refractory
witness.

126. If a witness refuses to enter into such recognisance, the justices may, by warrant, commit him to gaol, there to be safely kept until after the trial of the defendant, unless in the meantime such witness duly enters into such recognisance before a justice.

Provided that, if afterwards, from want of sufficient evidence in that behalf or other cause, the justices before whom the defendant has been brought

do not commit him or admit him to bail for the offence with which he is charged, or if the Attorney General or person appointed to present indictments declines to file an information against the defendant for the offence, any justice, upon being duly informed of the fact, may, by his order in that behalf, order and direct the keeper of the gaol where such witness is in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly as to that warrant.

Transmission of Depositions, etc.

127. When a defendant is committed for trial or for sentence, all informations, depositions, exhibits, statements, and recognisances shall be transmitted by the justices, as soon as possible after the conclusion of the case before them, to the Attorney General, or the person appointed to present indictments in the district, according as the defendant is committed to be tried or to be sentenced before the Supreme Court in Perth, or within a circuit district or before The District Court of Western Australia.

Trans-
mission of
depositions to
Attorney
General.

128. The Attorney General, and the person appointed to present indictments shall, respectively, after such transmission and before the day of trial, have and be subject to the same duties and liabilities in respect of the said several documents upon a *certiorari* directed to them respectively, or upon a rule or order directed to them in lieu of that writ, as the justices would have had and been subject to upon a *certiorari* to them if such documents had not been so transmitted.

Duty of
Attorney
General.

129. The Attorney General and the person appointed to present indictments in a district respectively, and any officer prosecuting for the Attorney General shall, at any time after the opening of the court at the sittings or sessions at which the trial is to be held, or the sentence passed, deliver the said documents, or any of them, to the proper officer of the court, if and when the presiding Judge so directs.

Authority of
Judge.

Recommittal in
case of error.
Amended by
No. 19 of
1919, s. 9.

130. If in any case a defendant is committed to take his trial or for sentence before a court which has not jurisdiction to try the case or pass sentence upon him, or before which he ought not to be committed to take his trial, or for sentence, or the Judge whereof is by reason of interest or otherwise incapacitated from trying the case or passing sentence, the committing justices or any other justices may, at any time before the time appointed for holding such court, direct the defendant and the warrant of commitment, if any, to be brought before them, whether the defendant has been admitted to bail or not, and may, upon production of the depositions and without further evidence, cancel the warrant of commitment, and may commit the defendant afresh to take his trial, or for sentence, before another and the proper court, and may, in a proper case, admit him to bail as hereinbefore provided, or enlarge his bail, if he has been already admitted to bail; or if the defendant is brought before the court at the time appointed for holding the same, the court may, notwithstanding such defect of jurisdiction or incapacity, remand him to take his trial, or for sentence, before another and the proper court, and may, in a proper case, admit him to bail, subject to the provisions hereinbefore contained, or enlarge his bail if he has been already admitted to bail.

When a fresh commitment or remand has been so made, the same or any other justices, or such court, may bind the witnesses by fresh recognisance to appear and give evidence at the court to which the defendant is so committed or remanded, and for that purpose may summon and compel the attendance of the witnesses before the justices or the court in the manner hereinbefore provided for compelling the attendance of witnesses to give evidence.

Every direction of justices to bring a defendant before them under this section shall be reduced into writing and signed and have effect as a warrant, and shall be obeyed and carried into effect by all constables, gaolers, and other persons to whom it is directed, according to its tenor.

Restitution of Property.

131. When a defendant is summarily convicted of an indictable offence, or the justices are of opinion that the offence is proved, they may order restitution of the property in respect of which the offence was committed to the owner thereof or his representative.

Restitution of property.

132. If such property is not then forthcoming the same justices, whether they award punishment or otherwise, may inquire into and ascertain the value of the property in money, and, if they think proper, may order payment of the amount of such value to the true owner by the defendant either at one time or by instalment, at such periods as the justices deem reasonable, and the amount so ordered to be paid may be recovered in the same manner as moneys ordered to be paid by justices upon a conviction for a simple offence.

Payment in lieu of restitution of property.

[Section 133 and heading repealed by No. 22 of 1968, s. 22.]

PART VI.—PROCEEDINGS IN CASE OF SIMPLE OFFENCES AND OTHER MATTERS.

Complainant's Default.

134. Subject to section 136 of this Act, if, upon the day and at the time and place appointed by the summons for hearing and determining a complaint of a simple offence or other matter, the defendant attends voluntarily in obedience to the summons, or is brought before the justices by virtue of a warrant, and the complainant (having had notice of such day, time, and place) does not appear by himself, his counsel, or solicitor, the justices shall dismiss the complaint, unless for some reason they think proper to adjourn the hearing of the same to some other day, in which case they may adjourn the hearing accordingly, upon such terms as they think fit, and may commit the defendant in the meantime, or may

Dismissal or adjournment in absence of complainant. Amended by No. 19 of 1919, s. 4; No. 120 of 1981, s. 5.

discharge him upon recognisances conditioned for his appearance at the time and place to which the hearing is so adjourned.

Defendant's Default.

Hearings in the
absence of
defendant.
Substituted by
No. 22 of
1968, s. 23.
Amended by
No. 48 of
1971, s. 3; No.
6 of 1979, s. 4;
No. 120 of
1981, s. 4.

135. (1) Subject to section 136 of this Act, if, at the time and place appointed by a summons for the hearing and determining of a complaint of a simple offence that is not an indictable offence, the defendant does not appear when called and due service of that summons, within a reasonable time before that appointed for his appearance, is proved as provided by section fifty-six, fifty-six A or fifty-seven of this Act, the justices may—

- (a) proceed to hear and determine the complaint to which that summons relates, in the absence of the defendant; or
- (b) adjourn the hearing of the complaint to which that summons relates and may issue their warrant to apprehend the defendant and to bring him before justices to answer that complaint and to be dealt with further according to law,

but if the defendant has by written notification notified the clerk of petty sessions that he wishes to plead guilty to the charge the justices shall, subject to subsection (1a) of this section, proceed to hear and determine the complaint as though the defendant were present and pleaded guilty thereto but shall not impose a sentence of imprisonment until the defendant is before them, in person, for which purpose they may issue their warrant.

(1a) Where a defendant has notified the clerk of petty sessions that he wishes to plead guilty to a charge in the manner referred to in subsection (1) of this section and by further notification received by the clerk before the hearing the defendant or his solicitor intimates to the clerk that the defendant wishes to withdraw the plea then, if the defendant does not appear when called and due service of the summons, within a reasonable time before that

appointed for his appearance, is proved as provided by section fifty-six, fifty-six A or fifty-seven of this Act, the justices may—

- (a) proceed to hear and determine the complaint in the absence of the defendant; or
- (b) adjourn the hearing of the complaint and may issue their warrant to apprehend the defendant and to bring him before justices to answer the complaint and to be further dealt with according to law.

(1b) For the purposes of this section any notification signed or purporting to be signed by the defendant or by the solicitor of the defendant on his behalf shall be receivable in evidence and shall, unless the contrary is proved, be deemed to have been signed by the defendant or by the solicitor of the defendant on his behalf, as the case requires.

(2) Where the justices proceed to hear and determine the complaint in the absence of the defendant, then—

- (a) if the complaint is of a simple offence against—
 - (i) the Road Traffic Act 1974;
 - (ii) any other Act¹ prescribed for the purposes of this subsection; or
 - (iii) any regulation, rule, by-law or order made under an Act such as is mentioned in subparagraph (i) or (ii) of this paragraph,

the justices may receive affidavits of evidence in support of the matters alleged in the complaint and may determine the complaint on the evidence so received; and

- (b) the justices shall not impose a sentence of imprisonment in respect of an offence that is a matter of the complaint until the defendant is before them, in person, for which purpose they may issue their warrant.

¹ See Justices Act (Evidence by Affidavit) Regulations.

(2a) For the purposes of subsection (2) of this section an affidavit may be taken by, and made and sworn before, any magistrate, justice, clerk of petty sessions appointed under section twenty-five A of this Act, or Commissioner for taking Affidavits appointed under section one hundred and seventy-five of the Supreme Court Act 1935.

(3) Where a person is apprehended under a warrant issued pursuant to this section, he shall be detained in safe custody, until he can be brought before justices at a time and place of which the complainant has had due notice.

[*Previous section 136 repealed by No. 22 of 1968, s. 24.*]

Procedure
when
summons
defendant
notifies his
wish to plead
not guilty.
Inserted by No.
120 of 1981,
s. 7.

136. (1) A person on whom a summons for a simple offence that is not an indictable offence is served (in this section called "the defendant") may, if he wishes to plead not guilty to the charge set out in that summons—

(a) state—

(i) that he wishes to plead not guilty to that charge; and

(ii) the address for service on him of notices;

and

(b) write his signature,

in the place provided for the purpose in the duplicate of that summons received by him and, as soon as possible after receiving that duplicate, transmit it to the clerk of petty sessions in the place at which that summons is returnable.

(2) Subject to subsection (3) of this section, if the clerk of petty sessions to whom a duly completed duplicate of the summons referred to in subsection (1) of this section has been transmitted under the latter subsection receives that duplicate before the

time appointed by that summons for the hearing and determining of the complaint to which that summons relates—

- (a) that clerk of petty sessions or an officer authorized by him in writing for the purpose shall forthwith notify the complainant concerned of that receipt;
- (b) it shall not be necessary for the defendant or the complainant or for the witnesses, if any, or the solicitor or counsel, if any, of the defendant or the complainant to appear before the court of petty sessions at that time;
- (c) that complaint shall not be heard at that time; and
- (d) the justices shall fix a time and place for the hearing and determining of that complaint.

(3) If, notwithstanding the receipt by the clerk of petty sessions referred to in subsection (2) of this section of a duly completed duplicate of the summons concerned before the time appointed by that summons for the hearing and determining of the complaint to which that summons relates, both the defendant and the complainant—

- (a) appear at that time before the court of petty sessions concerned; and
- (b) consent to the hearing and determining of that complaint at that time,

the justices may hear and determine that complaint at that time.

(4) The clerk of petty sessions referred to in subsection (2) of this section or an officer authorized by him in writing for the purpose shall, as soon as the

justices have fixed under that subsection a time and place for the hearing and determining of the complaint concerned—

(a) serve on the defendant notice in the prescribed form that he is required to attend at that time and place—

(i) at the address for service on the defendant of notices stated by the defendant under subsection (1) (a) (ii) of this section; or

(ii) if the defendant has not stated an address for service referred to in subparagraph (i) of this paragraph, at the address at which the summons referred to in subsection (1) of this section was served on the defendant,

by posting that notice to that address by prepaid registered post in an envelope addressed to the defendant; and

(b) notify the complainant that he is required to attend at that time and place.

(5) The justices hearing the complaint concerned at the time and place fixed under subsection (2) of this section—

(a) may accept as proof of the service on the defendant of notice of that time and place the certificate in the prescribed form of the clerk of petty sessions concerned, or of an officer authorized by him in writing for the purpose, of the due posting by him of that notice under subsection (4) of this section;

(b) may, if the defendant does not appear at that time and place when called and due service of notice referred to in paragraph (a) of this subsection is proved—

(i) proceed to hear and determine that complaint in the absence of the defendant; or

(ii) adjourn the hearing of that complaint and may issue their warrant to apprehend the defendant and to

bring him before justices to answer that complaint and to be dealt with further according to law;

and

- (c) shall not, if they convict the defendant in his absence of the simple offence charged in the summons referred to in subsection (1) of this section or of any other simple offence (other than an indictable offence) of which the defendant may be convicted on that charge, impose a sentence of imprisonment in respect of that conviction unless and until the defendant is personally before them, for which purpose they may issue their warrant to apprehend the defendant.

(6) In this section—

“officer” means officer of the court of petty sessions by which the defendant is dealt with under this section.

Jurisdiction of Justices to Set Aside Decisions Given in Default of Appearance of Any Party.

136A. (1) Where, after the coming into operation of the Justices Act Amendment Act 1957, a decision is given by justices pursuant to jurisdiction conferred on them by this Act, but in default of appearance by the complainant or by the defendant, the party who did not appear may, within twenty-one days next after the giving of the decision, or within such further period as the court may direct, serve on the clerk of petty sessions of the court in which the decision was given, notice in writing of his intention to apply to the court to set the decision aside, and of the grounds of the application.

Jurisdiction of justices to set aside decisions given in default of appearance of any party.
Inserted by No. 9 of 1957, s. 3.
Amended by No. 22 of 1968, s. 25; No. 17 of 1972, s. 10.
[Cf. s. 66 of the Justices Act 1928, of Victoria, No. 3708.]

(2) On payment by the applicant of the fee prescribed as that payable on a complaint, the clerk of petty sessions shall appoint a time and place for

the hearing of the application by the court of petty sessions and shall in writing notify the applicant of the time and place.

(3) All the provisions of sections one hundred and eighty-seven and one hundred and eighty-eight of this Act that apply to and in relation to the release, and security for appearance, of an appellant who is in custody apply, as if they were repeated in this section, to and in relation to the release, and security for appearance, of an applicant who is in custody, but as if any reference in those provisions to the expressions "appellant" and "appeal" respectively were references to the expressions "applicant" and "application" respectively.

(4) At the time and place appointed by the clerk of petty sessions for the hearing of the application, the court of petty sessions shall, unless the applicant was released from custody on recognisance pending the decision on the application and has not complied with the requirements of this section relating to security for appearance of the applicant, proceed to hear the application and may,

- (a) refuse the application to set aside the decision; or
- (b) adjourn the hearing of the application to a time and place appointed by the court, and direct that the applicant give to the other party written notice of the time and place so appointed by the court and that the other party may, if he thinks fit, then and there appear to oppose the application, and the court may at the time and place appointed by the court set aside the decision in respect of which the application is made on such terms as the court thinks fit, or the court may refuse to set aside the decision; and
- (c) in any case, make such order as to costs as the court thinks fit.

(5) If the court to which the application to set aside the decision is made, refuses the application pursuant to paragraph (a) of subsection (4) of this section, or refuses to set aside the decision pursuant to paragraph (b) of that subsection, and if the decision contained a sentence of imprisonment but the appellant was released from custody on recognisance pending the decision of the application, the court may order the return of the applicant to custody according to the decision in respect of which the application was made.

(6) The provisions of this section are in addition to, and not in derogation of, any of the provisions of Part VIII, of this Act, which latter provisions, if applicable in the circumstances of the case, may be applied in respect of a decision of justices in respect of an application made under this section.

Proceedings
against young
persons.
Inserted by No.
22 of 1968, s.
26.

136B. (1) Notwithstanding the provisions of any other Act, where the justices proceed to hear and determine a complaint against a person who is or, at the material time, was under the age of eighteen years, in the belief that the person is or, at the material time, was of or over that age, the proceedings are not on that account invalidated, the determination shall, subject to subsection (2) of this section, be and remain of full force and effect and anything done pursuant to the determination is lawful.

(2) Where the justices make a determination such as is mentioned in subsection (1) of this section, a party to the complaint or the Minister may apply to justices or, if the determination is the subject of an appeal or of an application for an order to review, apply to the court or Judge hearing that appeal or application for an order setting aside the determination; and the justices, court or Judge shall, if satisfied that the application is well founded, set aside the determination, remit any penalty that may have been imposed and transmit the complaint for hearing and determination to the children's court by which it might have been heard and determined, in the first instance.

Procedure
when both
parties appear.
Substituted by
No. 120 of
1981, s. 8.

137. (1) If both the defendant and the complainant appear—

- (a) personally; or
- (b) by counsel or solicitor,

then the justices may, subject to section 136 of this Act and this section, proceed to hear and determine the complaint.

(2) If the defendant has not, prior to the time of the appearance referred to in subsection (1) of this section, being the time appointed by a summons for a simple offence that is not an indictable offence, notified the clerk of petty sessions concerned—

- (a) under section 135 of this Act of his wish to plead guilty; or
- (b) under section 136 of this Act of his wish to plead not guilty,

to the charge concerned, the justices shall not proceed to hear and determine the complaint at that time unless the complainant consents thereto.

(3) If a person on whom is served a summons for a charge of an indictable offence, being a charge which may be dealt with summarily at the election of that person—

- (a) appears at the time and place appointed by that summons;
- (b) elects that that charge be dealt with summarily;
- and
- (c) pleads not guilty to that charge,

the justices shall not proceed to hear and determine that complaint at the time referred to in paragraph (a) of this subsection unless the complainant consents thereto.

138. When the defendant is present at the hearing, the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him; and if he has no cause to show, then the justices present at the hearing may convict him or, make an order against him accordingly.

Proceedings at the hearing on defendant's confession.

139. But if he does not admit the truth of the complaint, then the justices shall proceed to hear the complainant and his witnesses, and also the defendant and his witnesses, and also such witnesses as the complainant may examine in reply, if the defendant has given any evidence other than as to his general character; and the justices, having heard the evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant or dismiss the complaint, as justice may require.

Where defendant does not admit the case.

140. If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor, the justices then present may proceed to such hearing or further hearing as if such party or parties were present; or if the complainant does not appear the justices may dismiss the complaint with or without costs.

Justices may proceed to hearing in absence of both parties or of either party.

Practice.

141. The practice before justices upon the hearing of a complaint of a simple offence or other matter shall, in respect of the examination and cross-examination of witnesses be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law. But the complainant, his counsel, or solicitor shall not, without the leave of the justices, be entitled to make any observations in reply upon the evidence given by the defendant; nor shall the defendant, his counsel, or solicitor without such leave be entitled to make any observations in reply upon any evidence given by the complainant in reply.

Conduct of summary proceedings regulated. Amended by No. 19 of 1919, s. 4.

Dismissal.

Dismissal of
complaint.

142. If the justices dismiss a complaint, they may, if required so to do, and if they think fit, make an order of dismissal, and give the defendant a certificate thereof, which certificate shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same person.

[Section 143 repealed by No. 19 of 1919, s. 10.]

Payment by
instalments of,
or security
taken for
payment of,
money.

144. When, by a conviction or order, any sum or costs is or are adjudged to be paid, the justices may do all or any of the following things, namely:—

- (1) allow time for the payment of the sum or costs;
- (2) direct payment of the sum or costs to be made by instalments;
- (3) direct that the person liable to pay the sum or costs shall be at liberty to give, to the satisfaction of such person as shall be specified by the justices, security, with or without a surety or sureties, for the payment of the sum or costs, or of any instalment thereof; and such security may be given and enforced in manner provided by this Act.

When a sum or costs is or are directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if the original conviction or order had adjudged the payment of all the instalments then remaining unpaid and default had been made therein.

The justices directing the payment of a sum or cost, or of an instalment of a sum or costs, may direct such payment to be made at such time or times and in such place or places and to such person or persons as may be specified; and every person to whom any such sum or costs or instalment is or are paid, if he is not the clerk of petty sessions, shall, as soon as may be, pay over or account for the same to the clerk of petty sessions.

145. (1) On the summary conviction of any person of an assault, the justices may award that the fine or part thereof shall be paid to the person assaulted.

Fine inflicted for assault may be awarded to person assaulted.
Amended by No. 9 of 1957, s.4

(2) The order of the justices shall be a sufficient authority to the clerk of petty sessions receiving such fine for payment to the person assaulted.

(3) In order to resolve any doubt, it is expressly enacted that an award made pursuant to subsection (1) or an order made pursuant to subsection (2) of this section, has, and shall be given, effect according to its tenor, and is not, and shall be deemed never to have been, affected by the Fines and Penalties Appropriation Act 1909.

146. It shall not be necessary for justices formally to draw up a conviction or order or any other record of a decision, except on summary conviction for an indictable offence, unless the same is required by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeus corpus* or other writ from the Supreme Court.

Formal record of conviction not necessary, except for special purposes.

No Certiorari.

147. No conviction or order shall be quashed for want of form, or be removed by *certiorari* or otherwise into the Supreme Court, and no warrant of commitment on a conviction shall be held void by reason of any formal defect therein; provided it is therein alleged that the party has been duly convicted, and there is a good and valid conviction to sustain it.

No *certiorari*.

Copies of Depositions, etc.

148. When a conviction or order is made, or a complaint is dismissed by justices, all parties interested therein shall be entitled to demand and have copies of the complaint and depositions, and of the conviction or order, from the officer or person

Copies of proceedings in summary cases.
Amended by No. 113 of 1965, s. 8.

having the custody thereof, on payment of a reasonable sum for the same, not exceeding two and one-half cents for each folio of seventy-two words, or at such other rate as may be prescribed by regulation.¹

Imprisonment.

Imprisonment in first instance.

149. When the justices, upon a conviction, adjudge the defendant to be imprisoned with or without hard labour, they shall issue their warrant of commitment accordingly.

Imprisonment for a subsequent offence.
Amended by No. 19 of 1919, s. 4; No. 22 of 1968, s. 27; No. 20 of 1982, s. 16.

150. (1) When justices, upon making a conviction for a simple offence, adjudge the defendant to be imprisoned, and the defendant has previously been adjudged to be imprisoned upon a conviction for any other offence (whether an indictable offence or not) the justices may, if they think fit (whether the defendant is actually undergoing imprisonment or not) adjudge that the imprisonment for such subsequent offence shall commence at the expiration of the term of imprisonment which the defendant is then undergoing or liable to undergo.

(1a) Where justices, upon making a conviction for a simple offence, adjudge the defendant to be imprisoned and the defendant is adjudged at the same petty sessions to be imprisoned for any other simple offence, the justices may, if they think fit, adjudge that the imprisonment for one offence shall commence at the expiration of the term of imprisonment to which he is sentenced in respect of the other offence.

(1b) Justices may exercise the powers conferred by subsection (1) or (1a) of this section whether or not the term of imprisonment at the expiration of which another term of imprisonment is adjudged to commence is a term of imprisonment imposed for an offence against the law of Western Australia.

¹ See now Justices Act (Courts of Petty Sessions Fees) Regulations (*Gazette* 9/4/57 and subsequently amended).

(2) Except as provided by subsection (1) or (1a) of this section and by subsections (6) and (7) of section one hundred and sixty-seven of this Act, every term of imprisonment imposed by justices under this Act shall commence to run from the time when the defendant is first imprisoned under the warrant of commitment.

Costs.

151. In all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.

Costs on conviction or order.

152. When justices, instead of convicting or making an order, dismiss the complaint, they may, by their order of dismissal, order that the complainant shall pay to the defendant such costs as to them seem just and reasonable.

Costs on dismissal.

153. The sum so allowed for the costs shall, in all cases, be specified in the conviction or order or order of dismissal.

The sum allowed for costs to be specified in the conviction or order.

154. Subject to the express provisions of subsection (6) of section one hundred and fifty-five the sum allowed for costs in a conviction or order by which a penalty or sum of money is adjudged to be paid shall be recoverable in the same manner and under the same warrants as the penalty or sum of money adjudged to be paid by the conviction or order is recoverable.

Costs, how recoverable. Amended by No. 26 of 1932, s. 3.

Enforcement of Recognisances.

Enforcing
recognisances.
Inserted by No.
19 of 1919, s.
11.

Substituted by
No. 34 of
1926, s. 6.

Amended by
No. 17 of
1972, s. 11.

154A. (1) When any person bound with or without sureties by any recognisance entered into—

- (a) pursuant to this Act;
- (b) pursuant to an order or decision of any court of summary jurisdiction;
- (c) in respect of any matter cognisable by such a court; or
- (d) to attend or appear before such a court,

fails in any condition of the recognisance, complaint thereof may be made against those bound by the recognisance, or any one or more of them, and proceedings in respect thereof may be issued and taken as in the case of a matter cognisable under this Act and courts of summary jurisdiction, whether constituted under this or any other Act, may hear and determine them, and on the hearing an order may be made forfeiting the recognisance and ordering the payment by the person or persons proceeded against of the sum or sums in which he or they is or are respectively bound.

(2) The provisions of this section shall be without prejudice to any other method of enforcement.

(3) This section shall apply and have effect whether the failure in the condition of the recognisance has occurred before or after the commencement of this Act.

Execution.

Enforcement
of convictions
and orders.

Substituted by
No. 19 of
1919, s. 12.

Amended by
No. 34 of
1926, s. 7; No.
26 of 1932, s.
2; No. 22 of
1966, s. 28.

155. (1) When a conviction or order adjudges or requires the payment of a pecuniary penalty or compensation or sum of money or costs, then the conviction or order shall direct that the same shall be recoverable in default of payment by execution against the goods and chattels of the person liable, and that in default of payment and of sufficient goods and chattels he shall be imprisoned for a period determined in accordance with the provisions

of section one hundred and sixty-seven, and subject to the provisions of that section: Provided that the justices may, in lieu of directing that such penalty, compensation, or sum of money or costs shall be recoverable by execution, direct that in default of payment the person in default shall be imprisoned as aforesaid.

(2) This section applies to an order directing any person to make any periodical payments, and such order shall direct that whenever and as often as default is made in any such payment, the person in default shall be liable to such process of execution and imprisonment or to such imprisonment only as is hereinbefore provided.

(2a)¹ It shall not be necessary for the person entitled to receive the said periodical payments to enforce such order for and in respect of each such payment as and whenever default has been made in payment thereof, and whenever default has been made in respect of more than one periodical payment the person in default shall be liable in respect of the aggregate amount in payment whereof default has been made to such process of execution and imprisonment or imprisonment only as he would be liable to if the default were in respect of one payment equal to the said aggregate amount: Provided such aggregate amount shall not exceed the sum of periodical payments for six months.

(3) Every such conviction or order as aforesaid shall have effect according to its tenor, and any necessary warrant of execution or commitment may, subject to section twenty-seven of this Act, be issued for the purpose of enforcing the same.

(4) The provisions of this section shall apply to all convictions or orders of justices, notwithstanding the provisions of any other Act: Provided that nothing herein shall render any person liable to imprisonment who is expressly exempted from such liability by any Act.

¹ Section 7(2) of Act No. 34 of 1926 provides as follows:

(2) The subsection hereby added to section one hundred and fifty-five shall have effect in respect of defaults made before or after the commencement of this Act.

(5) Every conviction or order adjudging or requiring the payment (whether periodically or otherwise) of a pecuniary penalty or compensation, or sum of money or costs, which has been heretofore pronounced or made by justices or which has heretofore or shall hereafter become enforceable as if so pronounced or made, shall, for the purposes of enforcement, be deemed to direct recovery in default of payment by execution and imprisonment as aforesaid, and this section shall apply thereto accordingly.

(6) Notwithstanding anything contained in the preceding subsections in case of proceedings under any of the specified sections or provisions of the enactments set out in the first column of the Eighth Schedule to this Act, where any money which the justices order to be paid is on account of any of the matters specified in the second column of that Schedule, the justices shall not make any direction under subsection (1) of this section that such money shall be recoverable in default of payment as therein mentioned, but in regard to every such order, notwithstanding the amount thereof, the following provisions shall apply:—

- (a) the sum ordered to be paid, including any costs relating thereto, and in connection with any steps or proceedings under this section, is hereby made recoverable in the same manner as a judgment of a local court;
- (b) at the request of the party entitled to recover such sum, the clerk of petty sessions or other officer having the custody of the record of the order of the justices shall deliver to such party a certified copy thereof under his hand;
- (c) such party may register the certified copy in the local court nearest to the place where the order was made, and thereupon the same may be enforced in the same way as if it had been a judgment of such local court;
- (d) where the justices make any order to which this subsection applies, and in the same proceedings make an order in respect of any

other matter or simple offence which they have jurisdiction to try and determine, they shall exclude from any order as to costs enforceable under the preceding subsections any costs which would not in their opinion have been necessarily or reasonably incurred had the matter to which this subsection relates not been before them. If the justices make any order for the payment of such costs, excluded as aforesaid, then the provisions of the preceding paragraphs (a), (b), and (c) of this subsection shall apply.

[Sections 155A to 155D (inclusive) inserted by No. 24 of 1962, s.3. Repealed by No. 109 of 1965. s.4.]

156. When a justice issues a warrant of execution, he may suffer the person against whom the warrant is issued to go at large, or he may verbally, or by writing, order such person to be kept and detained in safe custody until return is made to the warrant of execution, unless such person gives sufficient security, by recognisance or otherwise, to the satisfaction of the justice for his appearance at the time and place appointed for the return of the warrant of execution.

Discharge or
detainer of
defendant.

157. In any case in which a warrant of execution may be issued under the provisions hereinbefore contained, if at the time and place appointed for the return of the warrant the officer who has the execution of the same returns that he could find no goods or chattels, or no sufficient goods or chattels, whereon he could levy the sum therein mentioned, together with the costs of or occasioned by levying the same, the justice before whom the same is returned may issue his warrant of commitment of the person, against whom the warrant of execution is issued, to gaol there to be imprisoned with or without hard labour for a period determined according to the scale in section one hundred and sixty-seven, subject to any reduction ordered under that section unless the sum adjudged to be paid and all costs and charges of the execution, and also, if the justice thinks fit so

In default of
execution
defendant
committed.
Amended by
No. 19 of
1919, s. 13;
No. 7 of 1959,
s. 2.

to order, the costs and charges including the issue and execution of the warrant of commitment and of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid.

When portion of the penalty, compensation, sum of money, or costs directed to be levied by the warrant of execution has been levied or paid, due credit shall be given and allowed for such portion in the warrant of commitment.

Commitment
for non-
payment of a
penalty or sum
ordered to be
paid.
Substituted by
No. 19 of
1919, s. 14.
Amended by
No. 7 of 1959,
s. 3; No. 22 of
1968, s. 29.

158. In any case in which a conviction or order for a penalty or compensation or for the payment of a sum of money or costs does not direct that the same shall be recoverable by execution, but directs that in default of payment the person in default shall be imprisoned, then any justice may, subject to section twenty-seven of this Act, issue his warrant of commitment of the person in default to gaol, there to be imprisoned for a period determined according to the scale in section one hundred and sixty-seven, subject to any reduction ordered under that section, unless the sum adjudged to be paid and all costs and charges including the issue and execution of the warrant and of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid. Due credit shall be given and allowed in the warrant of commitment for any portion of such penalty, compensation, sum of money or costs paid before the issue thereof.

Commitment in
other cases.

159. When an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned with or without hard labour, then, if the defendant neglects or refuses to do such Act, the justices making such order, or some other justice, may issue his warrant of commitment of the defendant to gaol there to be imprisoned with or without hard labour, as the case may be, for such time as the justices making the order directed.

Satisfaction of Execution by Payment.

160. When a person is imprisoned for non-payment of a penalty, compensation, or sum of money, or costs, he may pay to the keeper of the gaol in which he is imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person if he is in his custody for no other matter, and shall forthwith pay the sum so received to the clerk of petty sessions.

Discharge of
defendant.

Payment under Execution.

161. In every warrant of execution, the person to whom it is directed shall be thereby ordered to pay the amount of the sum and costs to be levied thereunder to the clerk of petty sessions, and if any person convicted of any penalty, or ordered by justices to pay any sum of money or costs, pays the same to any other person, such other person shall forthwith pay the same to such clerk of petty sessions.

To whom
payments to be
made.

Warrants of Execution.

162. When any justice issues a warrant of execution purporting to have been issued within the limits of his jurisdiction, such warrant may be executed within any part or parts of the State although beyond the limits of such jurisdiction, and, if necessary, from time to time until satisfaction thereof.

Warrant may
be executed
throughout
State.

Mode of Execution.

163. With respect to warrants of execution issued by justices, the following provisions shall have effect:—

Procedure on
execution.
Amended by
No. 113 of
1965, s. 8; No.
17 of 1972,
s. 12.

- (1) The warrant shall be executed by seizure and sale of the goods and chattels of the person against whom the warrant is issued, and shall be executed by or under the direction of a police officer.

- (2) The wearing apparel of a person to the value of one hundred dollars and of his wife to the value of one hundred dollars and of his family to the value of fifty dollars for each member thereof dependent on him; household furniture and effects to a value not exceeding in the aggregate three hundred dollars, tools and implements of trade and all beds and bedding, family portraits and photographs shall not be taken in execution.
- (3) Except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and except in the case of perishable goods forty-eight hours, at the least, shall intervene between the making of the levy and the sale.
- (4) Subject as aforesaid, the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of fourteen days from the date of making the levy, unless the sum for which the warrant was issued, together with the charges of the execution, are sooner paid.
- (5) The police officer charged with the execution of a warrant of execution may deduct out of the amount realized by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.
- (6) A written account of the costs and charges incurred in respect of the execution of any warrant of execution shall be sent by the police officer charged with the execution of the warrant to the clerk of petty sessions; and the person against whom the warrant was issued may, at any time within one

month after the levy, inspect such account, at any reasonable time, and take a copy of such account.

164. When a person pays or tenders to the police officer charged with the execution of a warrant of execution the sum mentioned in such warrant, or produces the receipt for the same of the clerk of petty sessions, and also pays the amount of the costs and charges of the execution up to the time of such payment or tender, the officer shall not execute the warrant.

Satisfaction of execution by payment.

165. No execution made under the authority of this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser by reason of any defect or want of form in the conviction order or warrant of execution, nor shall any such person be deemed a trespasser from the beginning by reason of any irregularity which may afterwards be committed by him, but any person aggrieved by such irregularity may recover satisfaction for every special damage by action at law.

No person executing defective warrant to be deemed a trespasser.

165A. (1) If a claim is made to or in respect of goods seized under a warrant of execution or in respect of the proceeds or value of the goods by a person not being the person against whom the process has been issued, the clerk of the local court nearest to where the seizure was made, upon application of the officer charged with the execution of the warrant whether an action has been brought against the officer or not, may enter an interpleader plaint, and may issue a summons thereon calling before the court the person making the claim, and thereupon any action which has been brought in the Supreme or any other court in respect of the claim shall be stayed.

Interpleader.
Inserted by No.
19 of 1919,
s. 15.

(2) The clerk shall also, if the magistrate so directs, by the same summons call before the court any other person whom the magistrate may deem interested in the proceedings.

(3) Upon the return of the summons the magistrate of the local court shall have and may exercise such and the same powers as a Judge of the Supreme Court has, and may exercise upon the application of the Sheriff in the case of goods taken in execution under process issued from the Supreme Court, and may without any consent of parties dispose of the merits of the claim, and decide the same in a summary manner and on such terms as shall be just.

(4) The magistrate may allow any person to intervene and take part in the proceedings at any stage.

(5) The Governor may by rules made in manner provided in the Local Courts Act 1904, prescribe, with regard to proceedings under this section, such and the like matters as he is empowered to prescribe under section one hundred and fifty-eight of that Act.

Sub-heading.
Substituted by
No. 22 of
1968, s. 30.

Punishment.

Mitigation of
punishment by
justices.

Amended by
No. 113 of
1965, s. 8. No.
72 of 1975,
s. 6.

166. Subject as in this Act mentioned, and notwithstanding any enactment to the contrary, when justices have authority under this Act or under any other Act, whether past or future, to impose imprisonment with hard labour or to impose a fine for an offence punishable on summary conviction, such justices may, in the case of imprisonment, impose the same without hard labour, and may reduce the prescribed period thereof or do either of such acts; and in the case of a fine, if it is imposed as in respect of a first offence, may reduce the prescribed amount thereof.

And where, in a case where either imprisonment or fine is imposed, there is prescribed a requirement for the defendant to enter into his recognisance and to find sureties for keeping the peace or being of good behaviour, and observing some other condition, or to do any of such things, the justices may dispense with any such requirement or any part thereof.

And where justices have authority under an Act other than this Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and have not authority to impose a penalty for that offence, they may notwithstanding, when adjudicating on that offence, if they think that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding five hundred dollars, and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the penalty, to any greater term of imprisonment than that to which he is liable under the Act authorizing the imprisonment.

166A. (1) Where two or more persons are charged with, and are severally convicted of, a simple offence of such a nature that the offence might not, in the peculiar circumstances of the case, have been committed by one of those persons without being committed by the other or others of them, then, if the offence is punishable by a fine, the justices convicting them may apportion among those persons, either equally or in such other proportions as the justices think fit, the fine that they might have imposed on one of them, had he been the only person convicted of the offence.

Apportionment
of fines in
certain cases.
Inserted by No.
24 of 1967,
s. 4.

(2) Where the offence mentioned in subsection (1) of this section is an offence for which a minimum fine, irreducible in mitigation, is provided, that provision is satisfied by the apportionment, pursuant to this section, of not less than that minimum fine among the persons convicted.

166B. (1) Where the justices convict a defendant and impose a punishment that is contrary to, or fail to impose a punishment in conformity with, the provisions of the Act under which the complaint is made, the justices may, of their own motion or on the application of a party to the complaint, after giving the parties an opportunity of being heard, recall the order made in that regard and impose a punishment that is not contrary to, or that is in conformity with, those provisions.

Rectification of
certain orders
by justices.
Inserted by No.
22 of 1968, s.
31.

(2) For the purposes of this section, the term, "punishment", includes a forfeiture, disqualification and loss or suspension of a licence or privilege; and nothing in this section affects the operation of any provision of Part VIII of this Act.

Scale of imprisonment for non-payment of money.

Substituted by No. 19 of 1919, s. 16.

Amended by No. 7 of 1959, s. 4; No. 113 of 1965, s. 8; No. 22 of 1968, s. 32; No. 48 of 1971, s. 4; No. 67 of 1980, s. 3; No. 20 of 1982, s. 17.

167. (1) The period of imprisonment to be inserted in a warrant of commitment issued under section one hundred and fifty-seven or one hundred and fifty-eight of this Act shall be calculated at the rate of one day for every twenty dollars payable and also for any fractional part of twenty dollars payable.

(2) Any such imprisonment shall in general be without hard labour, but shall be with hard labour if the justices pronouncing or making the conviction or order shall have determined that such imprisonment shall be with hard labour, which determination such justices are hereby empowered to make notwithstanding that the imposition of hard labour be not expressly authorized by the Act on which the conviction or order is founded.

(3) Notwithstanding anything in this section, when an order or conviction does not order the payment of any penalty or compensation or sum of money, but orders the payment of costs and when a complaint is dismissed with costs to be paid by the complainant, the period of imprisonment to be inserted pursuant to this section in the warrant of commitment issued in such case shall not exceed one month.

(4) When the person imprisoned under any such warrant of commitment shall pay any portion of the amount payable under the warrant, then the period of imprisonment shall be thereby reduced by a period which shall bear the same ratio to the period of imprisonment as the portion paid bears to the total amount that was payable, and the prisoner shall be entitled to be released on the expiry of the reduced period. In calculating any reduction hereunder fractional parts of days shall be disregarded.

(5) Notwithstanding anything herein, any justices giving any decision may thereby order that the period of imprisonment to be inserted in any warrant of commitment to be issued in respect of any penalty, compensation, sum of money, or costs payable under the decision shall be reduced to such an extent as the justices think just.

(6) Where imposing a sentence on a convicted person, the justices,—

- (a) if imposing a sentence of imprisonment, may direct that the imprisonment commence to run from the expiry of any period of imprisonment that the person may then be serving under a warrant of commitment; and
- (b) if imposing a monetary penalty, or making an order for the payment of any sum of money (including costs), or doing both those things, in respect of more than one offence, and directing that the person be imprisoned on default of payment of any of them, may direct that the period of imprisonment served in respect of any one default be cumulative on that served in respect of any other.

(7) Where a person is liable to imprisonment on default of payment of a monetary penalty imposed on him or on default of payment of any other sum of money (including costs) ordered to be paid by him, the justice issuing his warrant on default may direct that the imprisonment under the warrant commence to run from the expiry of any term or period of imprisonment that the person may then be serving.

(8) Justices or a justice, as the case may be, may exercise the powers conferred by subsection (6) or (7) of this section whether or not the term or period of imprisonment at the expiration of which another term or period of imprisonment is directed to commence to run, is a term or period of imprisonment, imposed for an offence against the law of Western Australia or on default of payment of a monetary penalty imposed for an offence against the law of Western Australia.

Heading.

Amended by
No. 72 of
1975, s. 7.Clerk of petty
sessions to
pay over to
Treasurer.*Duty of Clerk of Petty Sessions.*

168. All sums received by a clerk of petty sessions as the proceeds of a warrant of execution shall be paid by him to the person to whom the same respectively are to be paid, according to the directions of the Act under which the complaint was made, and if the Act contains no directions for the payment thereof to any person, then the clerk of petty sessions shall pay the same into the Treasury.

[Section 169 repealed by No. 22 of 1968, s. 33.]

*Remissions.*Remission of
penalty.

170. The Governor may remit the whole or any part of any fine, penalty, forfeiture, or costs imposed by a conviction, whether any part thereof is payable to any person other than Her Majesty or not; and upon such remission the conviction shall cease to have effect either wholly or partially, as the case may be.

Fines payable
to informers to
be retained
seven days.
See Vict., 39
No. 20, s. 2.

171. When any fine or penalty imposed by a conviction, or any part thereof, is payable to any person other than Her Majesty, the clerk of petty sessions, on such fine or penalty being paid, shall retain the same, and shall not pay over the same, or any part thereof, to any such person until after the expiration of seven days from the payment thereof, or such further period as the justices may direct.

After a fine or penalty has been paid to any such person, it shall not be recoverable from Her Majesty, notwithstanding that the conviction may afterwards be set aside.

PART VIA.—RECIPROCAL ENFORCEMENT OF FINES
AGAINST BODIES CORPORATE.

Interpretation
and
application.
Inserted by No.
72 of 1975,
s. 8.

171A. In this Part—

“fine” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction;

“reciprocating court” means a court of a reciprocating State or Territory declared by proclamation under section 171B of this Act to be a reciprocating court;

“reciprocating State or Territory” means another State or Territory of the Commonwealth declared by proclamation under section 171B of this Act to be a reciprocating State or Territory.

171B. (1) The Governor may by proclamation published in the *Government Gazette*—

- (a) declare another State or Territory of the Commonwealth, being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a court of petty sessions or other court having summary jurisdiction in this State against a body corporate in that State or Territory, to be a reciprocating State or Territory for the purposes of enforcement in this State of a fine payable under a conviction or order of a court having summary jurisdiction in the other State or in the Territory against a body corporate in this State; and
- (b) declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court for the purposes of the enforcement in this State of a fine payable under a conviction or order of that court against a body corporate in this State.

(2) For the purposes of subsection (1) of this section a court may be declared singly or in conjunction with another or others by such description or class or by means of such references as the Governor thinks fit.

(3) The Governor may by a subsequent proclamation vary or cancel any proclamation made under this section.

Appointment of reciprocating States and Territories and reciprocating courts.
Inserted by No. 72 of 1975, s. 8.

Enforcement
of interstate
fine against
body
corporate.
Inserted by No.
72 of 1975,
s. 8.

171C. (1) Where, under a conviction or order of a reciprocating court made in exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in this State, and the clerk of the court of petty sessions at or near to a place where the body corporate has or appears to have property receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

- (a) a certified copy of the conviction or order; and
- (b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order,

he shall—

- (c) register the conviction or order by filing in the court of petty sessions the certified copy of the conviction or order; and
- (d) note the date of the registration on the copy.

(2) Upon the registration of a conviction or order under subsection (1) of this section—

- (a) the conviction or order shall for the purposes of this Part be deemed to be a conviction or order of the court of petty sessions requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (1) of this section as outstanding;
- (b) the clerk of the court of petty sessions shall for the purposes of this Part issue a warrant of execution for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate; and
- (c) the warrant so issued shall be deemed to be a warrant of execution issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(3) Where the clerk of petty sessions receives, subsequent to the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount of the fine outstanding, he shall—

- (a) note the particulars of such payment on the certified copy of the conviction or order filed in the court; and
- (b) arrange for the return of the warrant issued pursuant to subsection (2) of this section if it is unexecuted, and
 - (i) withdraw it, if the amount of the fine has been paid in full; or
 - (ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and thereafter the warrant shall be enforced in respect of such altered amount.

(4) A sum of money paid to or received by a clerk of petty sessions in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (2) of this section shall be remitted forthwith to the clerk or corresponding officer of the reciprocating court by which the conviction or order was made.

171D. A sum of money paid to or received by a clerk of petty sessions in this State from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of a court having summary jurisdiction enforced by the reciprocating court shall be paid to or received by and applied by the clerk of petty sessions as if the sum had been paid to him by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

Effect of
enforcement
by
reciprocating
court.
Inserted by No.
72 of 1975, s.
8.

Heading.
Substituted by
No. 125 of
1982, s. 4.

PART VII.—ORDERS TO KEEP THE PEACE.

Orders to keep
the peace.
Substituted by
No. 125 of
1982, s. 4.

172. (1) Where, upon a complaint made in accordance with subsection (2) of this section, justices are satisfied on the balance of probabilities—

(a) that—

- (i) the defendant has caused personal injury or damage to property; and
- (ii) the defendant is, unless restrained, likely again to cause personal injury or damage to property;

(b) that—

- (i) the defendant has threatened to cause personal injury or damage to property; and
- (ii) the defendant is, unless restrained, likely to carry out that threat; or

(c) that—

- (i) the defendant has behaved in a provocative or offensive manner;
- (ii) the behaviour is such as is likely to lead to a breach of the peace; and
- (iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

the justices may make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner.

(2) A complaint under this section may be made by—

- (a) a police officer; or
- (b) a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed.

(3) An order under this section may be made in the absence of the defendant if the defendant was summoned to appear at the hearing of the complaint and failed to appear in obedience to the summons.

(4) An order under this section may be made in the absence of the defendant and notwithstanding that he was not summoned to appear at the hearing of the complaint, but in that case the justices shall summon the defendant to appear before them to show cause why the order should not be confirmed and the order shall not be effective after the conclusion of the hearing to which the defendant is summoned unless the defendant does not appear at that hearing in obedience to the summons or the justices having considered the evidence of the defendant and any other evidence adduced by him confirm the order.

(5) Justices may make an order under this section restraining the defendant from entering premises, or limiting his access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making such an order the justices shall consider—

- (a) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings; and
- (b) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings.

(6) Where an order under this section is made by justices, the clerk of petty sessions shall cause a copy of the order to be served personally on the defendant and shall forward a copy of the order to the Commissioner of Police and, where the complainant is not a police officer, the complainant.

173. (1) A person who, having been served personally with an order made under section 172 of this Act, contravenes or fails to comply with the order commits an offence.

Breach of
order to keep
the peace.
Substituted by
No. 125 of
1982, s. 4.

Penalty: 6 months imprisonment.

(2) Where a police officer has reasonable cause to suspect that a person has committed an offence under subsection (1) of this section, he may, without warrant, arrest and detain that person.

(3) Where a suspected offender is arrested and detained under subsection (2) of this section, he shall be brought as soon as practicable (and in any event not later than 24 hours after the time of the arrest) before justices to be dealt with for the offence.

(4) In calculating whether, for the purposes of subsection (3) of this section, 24 hours has elapsed since the time of an arrest, no period falling on a Saturday, Sunday or public holiday shall be taken into account.

Variation or
revocation of
order.
Substituted by
No. 125 of
1982, s. 4.

174. (1) A party to proceedings in which an order has been made under section 172 of this Act may at any time apply to justices for variation or revocation of the order and the justices may, after all parties have had an opportunity to be heard on the matter, vary or revoke the order.

(2) Where an order made under section 172 of this Act is varied or revoked by justices under this section, the clerk of petty sessions shall cause a copy of the order as so varied or notice of the revocation, as the case may be, to be served personally on the defendant and shall also notify the Commissioner of Police and, where the complainant is not a police officer, the complainant, of the variation or revocation.

[Sections 175 to 182 repealed by No. 125 of 1982, s. 4.]

[Section 182A inserted by No. 19 of 1919, s. 17.
Repealed by No. 125 of 1982, s. 4.]

PART VIII.—APPEALS FROM THE DECISIONS OF JUSTICES.

Ordinary Appeal.

183. When any person is summarily convicted, or an order is made against any person by justices, and—

Appeal to a Judge at Perth or in a circuit district.

Amended by No. 19 of 1919, s. 18; No. 29 of 1948, s. 3.

- (a) imprisonment is adjudged without the option of a fine; and

[*Paragraph (b) deleted by No. 19 of 1919, s. 18.*]

- (c) such person did not plead guilty or admit the truth of the complaint,

he may appeal, subject to the following provisions—

- (a) the appeal shall be made to a Judge at Perth.
- (b) A Judge may, on the application of a party to the appeal, order that the appeal shall be made to a Judge in a circuit district and at a time to be named in the order; and, on the order being made, the appeal shall, for the purpose of the remaining sections of this Act, be deemed to have been made to the court named in the order, and the consequences shall be the same in all respects and with regard to all persons as if the appeal had been so made.

184. The appellant shall, within the time prescribed, or, if no time is prescribed, within seven days after the day on which the decision appealed from was given, serve on the prosecutor or other party, and on the clerk of petty sessions of the court in which the decision appealed from was given, notice in writing of his intention to appeal, and on the grounds of such appeal.

Notice of appeal.
Amended by No. 22 of 1968, s. 34.

185. The appellant shall enter the appeal for hearing by a Judge in Perth, within the prescribed time, or, if no time is prescribed, within fifteen days after the day on which the decision appealed from was given.

Entry of appeal for hearing.
Amended by No. 29 of 1948, s. 4.

Service of
notices.
Amended by
No. 41 of
1977, s. 5.

186. Every notice required to be given by an appellant shall be in writing, signed by him or by his solicitor, and may be served by delivering the same to the person to whom it is addressed or by sending the same in a registered letter through the post addressed to such person at his usual or last known place of abode, in which case such notice shall be deemed to have been served at the time when the letter would be delivered in the ordinary course by post.

Security for
appearance of
appellant.
Amended by
No. 19 of
1919, s. 19;
No. 29 of
1948, s. 5; No.
9 of 1957, s. 5;
No. 113 of
1965, s. 8; No.
22 of 1968,
s. 35.

187. The appellant shall, within the prescribed time, or, if no time is prescribed, within three days after the day on which he gives notice of appeal, enter into a recognisance before a court of petty sessions in such sum as the court of petty sessions thinks fit, and with or without sureties as such court of petty sessions may direct conditioned to appear before the court to which the appeal is made, and to submit to the judgment of the court to which the appeal is made, and to pay such costs as the court to which the appeal is made may award; or the appellant may, if the court of petty sessions before whom the appellant appears to enter into a recognisance thinks it expedient, in addition to entering into a recognisance but instead of procuring sureties thereto give such other security by deposit of money with the clerk of petty sessions or otherwise as such court of petty sessions may deem sufficient.

Provided that in no case shall the security required by the recognisance or money deposited be less than fifty dollars.

Provided further that, notwithstanding anything hereinbefore contained, in no case shall any surety be accepted unless he justifies to the satisfaction of the court of petty sessions, and that sureties shall not be dispensed with, except by a magistrate, unless a deposit of money is made as aforesaid.

Appeal not a
stay unless
appellant gives
security.
Amended by
No. 29 of
1948, s. 6.

188. Where the appellant is in custody a court of petty sessions shall, on the appellant entering into such a recognisance and, where applicable, procuring sureties or giving security as provided by the last preceding section, by order release him from custody;

but no appeal shall in any case operate as a stay of execution unless and until the appellant enters into such recognisance and where applicable, procures sureties or gives such security as aforesaid.

189. A copy of the complaint, depositions, the conviction or order, and other proceedings before the justices and the recognisances shall be transmitted by the clerk of petty sessions to the court to which the appeal is made.

Copies of proceedings to be transmitted.
Amended by No. 119 of 1976, s. 4.

190. (1) The court to which the appeal is made may adjourn the hearing of the appeal, and, upon the hearing thereof, may confirm, reverse, or modify the decision appealed from, or remit the matter, with the opinion of the court, to the court of petty sessions, or may make such other order in the matter as the court may think just, and may, by such order, exercise any power which the court of petty sessions might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the court of petty sessions.

Hearing of appeal.
Amended by No. 119 of 1976, s. 5.

(2) Except as provided in section two hundred and nineteen the court may make such order as to costs to be paid by either party as the court may think just.

(3) The decision of the court shall be final between the parties.

(4) The court or a prescribed officer may issue such memorandum of the decision and such warrants as may be necessary to carry into effect the decision of the court.

191. If the court to which the appeal is made so orders, or the parties so agree, the appeal shall be by way of rehearing; but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the justices.

Appeal to be on original materials unless rehearing ordered or agreed to.

Procedure
where decision
reversed on
appeal.
Amended by
No. 22 of
1968, s. 36;
No. 72 of
1975, s. 9.

192. Whenever a decision is not confirmed by the court to which the appeal is made, the associate, or the Registrar of the Supreme Court, as the case may be, shall send to the clerk of petty sessions of the court from which the appeal was made, for entry in his register, a memorandum of the decision of the court to which the appeal was made; and where any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the decision in every case where such copy or certificate would be sufficient evidence of such conviction or order.

Effect of
affirming
decision.

193. If upon the hearing of the appeal the decision of the justices by which the appellant was aggrieved is affirmed, the appellant shall forthwith pay the penalty or amount ordered to be paid and costs, if any, together with any costs adjudged to be paid by the court to which the appeal is made, or, if such decision contains a sentence of imprisonment, the appellant may be committed by such court or any justice to gaol according to the conviction or order, and for the space of time therein mentioned.

Committal on
default.

194. If the penalty imposed, or the amount ordered to be paid, or the costs awarded by the justices is not or are not then paid, the same or any other justice may enforce the payment thereof in the same manner in which payment might have been enforced if there had been no appeal, or by putting the recognisance (if any) in suit, or in both such modes, unless the same is or are sooner paid.

If costs not
paid,
certificate to
be granted.
Amended by
No. 72 of
1975, s. 10.

195. If the costs ordered to be paid by either party to an appeal are not paid, the associate, or the Registrar of the Supreme Court, as the case may be, upon application of the party entitled to such costs, or of any person on his behalf, shall grant to the party so applying a certificate that such costs have not been paid.

196. Upon production of such certificate to any justice, the payment of such costs may be enforced in the same mannner as is hereinbefore provided for enforcing the payment of costs awarded by justices, or by putting the recognisance (if any) in suit, or in both of such modes.

Enforcement
of order for
costs.

Appeal by way of Order to Review.

197. (1) When—

- (a) a person who feels aggrieved as complainant, defendant, or otherwise by the decision of any justices shows, or the Attorney General shows by affidavit to a Judge sitting in court or chambers, a *prima facie* case of error or mistake in law or fact on the part of the justices, or that the justices had no jurisdiction in giving the decision or exceeded their jurisdiction in giving the decision, or that the penalty or sentence imposed was, according as the person aggrieved or the Attorney General may allege, inadequate or excessive in the circumstances of the case; or
- (b) a person who has been convicted by justices after he has pleaded guilty or a person against whom an order has been made by justices after he has admitted the truth of the complaint shows, or, in respect of such a case, the Attorney General shows, by affidavit to the satisfaction of such Judge so sitting, that in the circumstances of the case there are reasons which are sufficient to show that the decision of the justices in convicting the person or making the order should be reviewed,

Order to
review.
Substituted by
No. 10 of
1964, s. 2.
Amended by
No. 17 of
1972, s. 13;
No. 119 of
1976, s. 6.

the Judge may, unless the applicant has the right of appeal under section one hundred and eighty-three of this Act, but otherwise, whether any other remedy is provided by law or not, within two months from the giving of the decision, grant the applicant (hereinafter called the “appellant”) an order (hereinafter called an “order to review”) calling upon

the party interested in maintaining the decision (hereinafter called "the respondent") and also, if the Judge for any special reason so directs, upon the justices to show cause, at a time to be specified in the order to review or so soon thereafter as the matter can come on for hearing, why the decision should not be reviewed and where, at any time within such period of two months from the giving of the decision whether at the time of the giving of the order to review or subsequently on the application of the appellant, the Judge determines that an appellant in custody should be liberated prior to the return of the order to review he may direct that the appellant be released from custody on the appellant entering into a recognisance on such terms and conditions including, where applicable, procuring sureties or giving security, as the Judge thinks fit.

(2) The right of the Attorney General to be an appellant is irrespective of, and does not affect—

(a) any right that another person has to be an appellant or to appeal under section one hundred and eighty-three of this Act; or

(b) any other remedy that is provided by law to any person,

in respect of the same decision.

(3) Where the Attorney General and another person are appellants in respect of the same decision, the Judge may consider and determine their applications for an order to review at the same time.

(4) Where the Attorney General is an appellant the provisions of sections two hundred, two hundred and six G, and two hundred and six H of this Act do not apply to or in respect of him but the other provisions of this Act relating to an appellant for an order to review do, with any necessary modifications, so apply.

(5) In considering and determining any application for an order to review or for the release of an appellant from custody the Judge may inform himself as to all the circumstances in such manner as he thinks fit.

198. (1) An order to review may be made returnable before the Supreme Court sitting as the Full Court or before a single Judge sitting in court.

Order to review. Before whom returnable. Substituted by No. 19 of 1919, s. 21. Amended by No. 17 of 1972, s. 14.

(2) Where orders to review have been granted to the Attorney General and another person in respect of the same decision, the court or a Judge may, at any time, direct that the orders shall be heard together.

199. The order to review shall state the grounds upon which it is sought to review the decision appealed against, but on the return of the order the court or Judge shall have power to amend or add to the grounds stated.

Grounds to be stated in order. Substituted by No. 19 of 1919, s. 21.

200. (1) The appellant shall, within ten days after the granting of an order to review or such shorter period as may have been ordered on the determination of the application for that order and in any event prior to his release from custody, enter into a recognisance before a justice with or without a surety or sureties in such sum and on such terms and conditions as the Judge may have determined in granting the order conditioned to prosecute his appeal without delay to appear before the court to which the appeal is made and to submit to the judgment on the order to review and to pay such costs as the court or Judge may thereon award.

Appellant to give security. Substituted by No. 19 of 1919, s. 21. Amended by No. 29 of 1948, s. 8; No. 113 of 1965, s. 8; No. 22 of 1968, s. 37; No. 119 of 1976, s. 7.

(2) The appellant shall before proceeding to set the order down for hearing pay the clerk of the petty sessions at which the decision complained of was delivered the prescribed fees.

(3) In no case shall any surety be accepted unless he justifies to the satisfaction of the justice.

Stay of execution.
Release of appellant on further recognisance.
Substituted by No. 19 of 1919, s. 21.
Amended by No. 29 of 1948, s. 9, No. 119 of 1976, s. 8; No. 67 of 1979 s. 40; No. 44 of 1984, s. 2.

201. (1) Where an order for review or for the release of an appellant from custody is granted the Principal Registrar of the Supreme Court shall cause to be sent to—

- (a) the clerk of petty sessions of the court from which the appeal was made;
- (b) the Attorney General; and
- (c) any person who is by the order for review called upon to show cause,

a memorandum of the decision of the Judge setting out the terms and conditions of the recognisance required.

(2) On such recognisance being given, execution shall be stayed until the order to review is disposed of or the Supreme Court or a Judge, otherwise orders, and the appellant, if then in custody, shall be liberated on presentation of a recognisance entered into in accordance with the order for his release to the person by whom he is held in custody.

(3) On receipt of a copy of a recognisance given by an appellant, the person by whom that appellant is held in custody shall verify that it is correctly entered into and shall thereupon release the appellant from custody and by memorandum report that fact to—

- (a) the Master of the Supreme Court; and
- (b) the Attorney General.

(4) Where a recognisance referred to in subsection (1) of this section is given following an order to review granted in relation to a conviction under the Road Traffic Act 1974 any disqualification from holding or obtaining a licence to drive a vehicle pursuant to that Act in respect of such conviction is suspended until the order to review is disposed of and any period during which the disqualification is so suspended shall not be taken into account in determining the period of the disqualification.

202. The appellant shall, within the time fixed by the Judge who granted the order, cause an official copy of the order to review to be served on each party, who is thereupon called upon to show cause, and such service shall be effected such number of days before the hearing as is indicated below, that is to say:—

Service of order to review.
Substituted by No. 19 of 1919, s. 21.
Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973.)

Where the distance from the place where the order is returnable to the place where the service is effected is—

The number of days which must elapse between the service and the hearing shall be—

Not more than 322 kilometres.....	Ten days.
More than 322 but not more than 644 kilometres.....	Sixteen days.
More than 644 but not more than 966 kilometres.....	Twenty-one days.
More than 966 kilometres.....	Thirty days.

203. (1) Every order to review shall, within the time fixed by the Judge who granted the order, be entered by the appellant for hearing in the central office of the Supreme Court, and shall be inserted in the proper list, and come on for hearing as the Chief Justice may direct.

Entry of order to review for hearing.
Substituted by No. 19 of 1919, s. 21.
Amended by No. 119 of 1976, s. 9.

(2) No order for review shall be entered for hearing unless—

- (a) a memorandum as to the release from custody of the appellant has been received pursuant to subsection (3) of section two hundred and one of this Act acknowledging receipt of a recognisance entered into pursuant to the order for review; or
- (b) such recognisance is presented at the time of making application for the entry for hearing.

204. An appeal from the refusal of a Judge, whether sitting in court or chambers, to grant an order to review or to grant it upon any ground or grounds, shall be to the Full Court as defined in the Supreme Court Act 1880.¹

Appeal from refusal to grant order to review.
Substituted by No. 19 of 1919, s. 21.

¹ See now Supreme Court Act 1935.

Powers of Full
Court or Judge
on return of
order to
review.

Substituted by
No. 19 of
1919, s. 21.

Amended by
No. 29 of
1948, s. 10;
No. 119 of
1976, s. 10.

205. (1) On the return of the order to review, the court or Judge may, on a consideration of the evidence and materials adduced and brought before the justices, and if the court or Judge thinks fit, of any further evidence either oral or by affidavit, discharge such order to review, or may confirm, vary, amend, rescind, set aside, or quash the decision appealed against, and any order, conviction, warrant, or other proceeding founded thereon, and may remit the case for hearing or rehearing to the said justices or to any other justices, with or without any direction in law, and may prohibit the justices and all other persons concerned from proceeding or further proceeding in respect of the decision, and may make such other order as to such court or Judge seems just, and may also, for such purposes or any of them and without prejudice to the generality of the powers hereinbefore conferred, exercise all or any of the powers or jurisdiction which the court possesses or might exercise upon *certiorari*, *mandamus*, prohibition or, *habeas corpus*.

(2) Notwithstanding that the court or Judge may be of opinion that any point raised by the order to review might be decided in favour of the appellant, the order may be discharged if he or it considers that no substantial miscarriage of justice has occurred.

(3) The power to vary or amend the order or conviction founded upon the decision appealed against shall include a power to vary, reduce or increase the penalty or sentence imposed by the justices upon such order or conviction.

(4) The court or prescribed officer may issue such memorandum of the decision and such warrants as may be necessary to carry into effect the decision of the court.

Costs.

Substituted by
No. 19 of
1919, s. 21.

Amended by
No. 17 of
1972, s. 15.

206. (1) Subject to this Act the court or Judge may make such order as to costs as it or he deems just.

(2) Where the Attorney General is an appellant and costs are allowed against him to another person, such costs are not recoverable from the Attorney General but the Registrar of the Supreme Court shall give to that other person a certificate sealed with the seal of the Supreme Court showing the amount of such costs and on production of the certificate to the Treasurer, that other person shall be paid such amount out of the Consolidated Revenue Fund.

206A. There shall be no appeal to the Full Court from any determination of a single Judge made on the return of any order to review, but the Judge on such return may, if he thinks it desirable, refer such order to review for hearing and determination by the Full Court at the request of any party thereto.

No appeal from Judge.
Inserted by No. 19 of 1919, s. 21.

206B. The Supreme Court or a Judge shall have power to enlarge or abridge the time appointed by the preceding sections one hundred and eighty-three to two hundred and six A both inclusive of this Part or fixed by any order for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

Enlargement or abridgment of time.
Inserted by No. 19 of 1919, s. 21.
Amended by No. 29 of 1946, s. 11.

206C. The court or Judge, on the hearing of an order to review, shall have power to determine and ascertain what evidence was given or what proceedings taken before the justices on such evidence or statement of what occurred before the justices, including the notes of the justices (if any) as the court or Judge may deem sufficient, and may rehear the testimony of any witness.

Evidence of proceedings in court below.
Inserted by No. 19 of 1919, s. 21.

206D. If any appellant makes default in prosecuting his appeal without delay or in taking any necessary steps in the presentation thereof, the Attorney General or any other party may apply to the Judge in chambers by summons served on such appellant for an order discharging the order to review, and the judge shall make such order as shall be just with regard to the subject matter of the application and to costs.

Dismissal for want of prosecution.
Inserted by No. 19 of 1919, s. 21.
Amended by No. 119 of 1976, s. 11.

Evidentiary
provisions.
Substituted by
No. 119 of
1976, s. 12.

206E. The prescribed officer shall send to the proper clerk of petty sessions, any person having the appellant in custody, the Attorney General, and any party called upon by the order for review to show cause, a memorandum as to each decision given on or in relation to an application for an order for review, the order or the determination made on the return of the order, and such memorandum shall be sufficient evidence of the relevant facts therein specified.

Enforcement
of decision of
Supreme
Court.
Inserted by No.
19 of 1919,
s. 21.

206F. Any conviction, sentence or order affirmed, amended, varied, adjudged, imposed or made by the decision of the Supreme Court or a Judge thereof in relation to any order to review, may be enforced (subject to any variation made therein) by any justices (whether the justices in respect of whose decision the order to review was granted or not) in the same way as if it had been adjudged, imposed, or made by them, and any justices may issue, make, adjudge, or impose all such summonses, warrants, orders, convictions, and sentences as may be necessary to carry into effect any directions contained in any decision of the Supreme Court or Judge given in relation to any order to review, and no action or proceedings shall be taken against any justices for enforcing any such conviction, sentence, or order notwithstanding any defect therein.

If costs not
paid,
certificate to
be granted.
Inserted by No.
19 of 1919,
s. 21.
Amended by
No. 26 of
1932, s. 4.

206G. Subject to the proviso to section two hundred and six H, if any costs ordered to be paid by either party to an appeal hereunder are not paid, the prescribed officer shall, upon application of the party entitled to such costs, grant to him a certificate that such costs have not been paid, and shall therein specify the amount of such costs.

Enforcement
of order for
costs.
Inserted by No.
19 of 1919,
s. 21.
Amended by
No. 26 of
1932, s. 5.

206H. Upon production of such certificate to any justice, the payment of such costs may be enforced in the same manner as is hereinbefore provided for enforcing the payment of costs awarded by justices, but the provisions of this section are without prejudice to any other method of enforcement.

Provided that, where such appeal relates wholly or partly to an order made by justices for the payment of money in regard to any of the matters specified in the Eighth Schedule, no order for payment of costs in connection with any such appeal shall be enforceable under the provisions of this section.

206I. Any person who appeals by way of order to review against any decision of justices, from which he is by law entitled to appeal in any other manner, shall be taken to have abandoned any such other right of appeal.

Appellant by way of order to review deemed to have abandoned other rights of appeal.

Inserted by No. 19 of 1919, s. 21.

Habeas Corpus.

207. No person brought before the Supreme Court, or a Judge thereof, on habeas corpus shall be discharged from custody by reason of any defect or error in a warrant of commitment of any justices exercising a summary jurisdiction, unless such justices, or one of them, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for such discharge. Such notice shall require them to transmit or cause to be transmitted to the court or Judge the conviction or order, if any, on which the commitment was founded, together with the depositions and complaint, if any, intended to be relied on in support of such conviction or order, or certified copies thereof.

Control of Supreme Court over summary convictions.

208. If any such conviction or order, complaint, and depositions, or certified copies, are so transmitted, and the offence charged or intended to be charged thereby appears to have been established, and the judgment of the justices thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the justices, the court or Judge shall allow the warrant of commitment, and the conviction or order, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to his former custody.

Amendment.

Notice
dispensed
with.

209. The notice hereby prescribed may be given either before or after the issue of the writ of habeas corpus: Provided that when the copies of the conviction or order and depositions are produced at the time of applying for the writ, the court or Judge may dispense with such notice.

Power of court
or Judge to
admit to bail.

210. When any person committed to gaol by virtue of a summary conviction or order is brought up by writ of habeas corpus, and the court or Judge postpones the final decision of the case, such court or Judge may discharge the person upon his recognisance, with or without sureties for his appearance at such time and place, and upon such conditions, as the court or Judge may appoint.

If the judgment of the court or Judge is against any person so brought up, the court or Judge may remand him to his former custody, there to serve the rest of the term for which he was committed.

Amendment—Informalities.

Proceedings
not to be
quashed for
want of form.

211. No complaint, conviction, order, or other proceeding before any justices shall be quashed or set aside, or adjudged void, or insufficient for want of form.

Respecting the
amendment of
convictions,
etc.

212. Whenever the facts or evidence appearing by the depositions in substance support the adjudication of the justices, and if such facts or evidence would have justified the justices in making any necessary allegation or finding omitted in such adjudication, or in the formal conviction or order, or any warrant issued in pursuance of such adjudication, all necessary amendments shall be made by the court or Judge, and when in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder; and all amendments shall be subject to such order as to costs and otherwise as the court or Judge thinks fit.

213. When the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no complaint or summons or amendment thereof, unless he objected at the hearing that there was no complaint or summons or amendment thereof.

Want of
summons or
complaint.

214. No conviction or order shall be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture.

Distribution of
penalty.

Service of Notices.

215. Where a party acts or is represented by a solicitor, any document, notice, or proceeding required under this Part of this Act to be served by or upon such party may be served by or upon such solicitor, and service of any such document, notice, or proceeding upon such solicitor or delivery of the same at his office or sending the same to him properly addressed by post prepaid shall be deemed to be good service upon the party whom such solicitor represents, or for whom he acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered.

Service by or
upon solicitor
acting for
party.
Substituted by
No. 19 of
1919, ss. 22-
23.

Abandoned Appeals.

216. (1) When an appeal is not duly set down for hearing, the justices from whose decision the appeal was made, or any other justices, may enforce the conviction or order as if no notice of appeal had been given, and, if the appellant has been released from custody, may estreat the recognisance (if any), and, if the decision contains a sentence of imprisonment, issue a warrant for the arrest of the appellant and commit him to gaol according to the conviction.

Enforcement
of conviction
when appeal
abandoned.
Amended by
No. 119 of
1976, s. 13;
No. 67 of
1979, s. 40.

(2) Where any justices exercise a power conferred by subsection (1) of this section, the proper clerk of petty sessions shall send a memorandum to the Principal Registrar of the Supreme Court setting out the relevant circumstances and parties.

Absconding
appellant may
be arrested.

217. If it is made to appear on oath to any justice that any person within the jurisdiction of such justice is under such recognisance as aforesaid, and that such person is about to leave Western Australia, such justice may issue his warrant for the apprehension of such person so under recognisance, and upon being satisfied that the ends of justice would be otherwise defeated, may commit such person, when arrested, to gaol, there to be kept until the time mentioned in the recognisances for the appearance of such person to receive judgment or render himself in execution.

No Certiorari necessary.

Certiorari not
to be required
for
proceedings
under this Act.

218. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other decision, in relation to which a case is stated under this Part of this Act, or otherwise for obtaining the judgment or determination of the Supreme Court on such case.

Costs.

No order for
costs to be
made against
justices or
police officers.
Amended by
No. 29 of
1948, s. 12.

219. No costs shall be allowed against any justice or police officer in respect or by reason of any appeal under this Act, or of any proceeding in the Supreme Court in its control over summary convictions.

Provided that where, on an appeal brought by a police officer, the decision appealed against is confirmed, or, if not confirmed, has involved, in the opinion of the court or Judge hearing the appeal, a point of law of exceptional public importance, costs may be allowed to the respondent. Such costs shall not be recoverable from the police officer, but the Registrar of the Supreme Court shall, in any case where costs are so allowed, give to the respondent a certificate sealed with the seal of the Supreme Court showing the amount of such costs, and, on production of the certificate to the Treasurer, the respondent shall be paid such amount out of the Consolidated Revenue Fund.

Rules.

220. The Judges of the Supreme Court, or any two of them, may make general rules and orders to regulate the practice and procedure under this Part of this Act, and may prescribe the fees to be taken ~~and the costs to be allowed.~~ Rules. *CS 1987*

221. Notwithstanding anything contained in any other Act to the contrary, there shall be no appeal from any summary conviction or order of justices except as provided by this Act. All appeals to be subject to this Act.

PART IX.—PROTECTION OF JUSTICES IN THE EXECUTION OF THEIR OFFICE.

Where Action Lies Against Justices.

222. No action shall be maintainable against any justice for any act done under any conviction or order made or warrant issued by a justice in any matter of which by law he has not jurisdiction or in which he has exceeded his jurisdiction until after the conviction or order has been quashed or set aside upon appeal. Justice sued for act not within his jurisdiction.

Nor shall any such action be maintainable for anything done under any such warrant which was issued by the justice to procure the appearance of the person charged, and which has been followed by a conviction or order in the same matter, until after such conviction or order has been so quashed or set aside.

If such lastmentioned warrant has not been followed by a conviction or order, or if it is a warrant upon a complaint of an alleged indictable offence, then if a summons issued previously to the warrant being issued, and such summons was served upon the person charged either personally or by leaving the same for him with some person at his last known place of abode, and he did not appear according to the exigency of the summons, in such case no action shall be maintainable against the justice for anything done under such warrant.

Warrant by one
justice upon an
order of
another.

223. When a conviction or order is made by one or more justice or justices, and a warrant of execution or of commitment is granted thereon by some other justice bona fide and without collusion, no action shall be maintainable against the justice who granted such warrant, by reason of any defect in the conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made the conviction or order.

No action for
acts done
under order of
Supreme
Court.

224. When a justice does an act in obedience to an order of the Supreme Court or a Judge thereof, no action shall be maintainable against him for obeying such order and doing the act thereby required.

No action
where
proceeding
confirmed on
appeal.

225. When a warrant of execution or of commitment is granted by a justice upon a conviction or order which either before or after the granting of the warrant is confirmed upon appeal, no action shall be maintainable against the justice who granted such warrant for anything done under it by reason of any defect in such conviction or order.

Proceedings
may be stayed
or set aside.

226. If an action is brought against a justice which by this Act is declared to be not maintainable, a Judge of the court in which the action is brought, upon application of the defendant and upon affidavit of the facts, may set aside or stay the proceedings in such action with or without costs.

Limitation.

[Section 227 repealed by No. 73 of 1954, s. 5.]

Notice.

[Section 228 repealed by No. 73 of 1954, s. 5.]

Amends and Payment into Court.

[Section 229 repealed by No. 73 of 1954, s. 5.]

Statement of Claim and Complaint.

230. In an action against a justice for any act done by him in the execution of his duty as such justice, it must be expressly alleged in the statement of claim or complaint that the act was done maliciously and without reasonable and probable cause, and if such allegations are denied, and at the trial of the action the plaintiff fails to prove them, judgment shall be given for the defendant with costs.

Justice only liable in case of malice and absence of reasonable and probable cause.

Evidence.

[Section 231 repealed by No. 73 of 1954, s. 5]

Damages.

232. When the plaintiff in an action against a justice is entitled to recover, and he proves the levying or payment of any penalty or sum of money under a conviction or order as parcel of the damages which he seeks to recover, or proves that he was imprisoned under such conviction or order, and seeks to recover damages in respect of such levying or payment or imprisonment, then, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and, in case of imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum which he was so ordered to pay, he shall not be entitled to recover the amount of the penalty or sum so levied or paid, or any sum beyond the sum of a farthing as damages for such imprisonment, or any costs of suit whatsoever.

Damages against a justice where guilt or liability of plaintiff is proved.

PART X.—MAINTENANCE AND DESTRUCTION OF COURT RECORDS.

Part X inserted by No. 17 of 1972, s. 16.

233. In this Part—

“charge sheet” means book or document containing, in relation to a complaint, an official record of—

(a) the name of the defendant;

Interpretation. Inserted by No. 17 of 1972, s. 16.

Amended by No. 124 of 1982, s. 2.

(b) the particulars of the offence with which the defendant was charged; and

(c) the determination of the complaint, whether or not that book or document also contains any other matter relating to the complaint;

“court record” means official record of any proceedings in any court of petty sessions and includes any document filed in the court, or in the custody of the court, in relation to the proceedings; and

“document”, “negative” and “reproduction” have the same respective meanings as they have in and for the purposes of sections 73A to 73V, inclusive, of the Evidence Act 1906;

“official record” includes—

(a) any document, book, plan, paper, photograph or parchment; or

(b) any material (other than material referred to in paragraph (a) of this definition) or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them,

made or received by a court of petty sessions or person acting judicially under this Act.

Application of
Part X.
Inserted by No.
124 of 1982,
s.3.

233A. This Part shall not be construed so as to derogate in any way from the Library Board of Western Australia Act 1951.

Negatives of
court records.
Inserted by No.
17 of 1972, s.
16.

234. A negative of a court record may be made at any time to be held by or on behalf of the court.

235. Subject to sections 233A, 236 and 236A of this Act, a court record—

Destruction of court records generally. Substituted by No. 124 of 1982, s. 4.

- (a) which is a charge sheet may be destroyed after the expiration of 53 years; or
- (b) which is not a charge sheet may be destroyed after the expiration of 15 years,

from the time when it became such a court record.

236. Subject to sections 233A and 236A of this Act—

Destruction of court records when negatives held. Substituted by No. 124 of 1982, s. 4.

- (a) a court record may, if a negative thereof is held by or on behalf of the court of petty sessions concerned, be destroyed at any time after the expiration of 3 years from the time when it became a court record; and
- (b) a negative referred to in paragraph (a) of this section shall be held by or on behalf of the court of petty sessions concerned until—
 - (i) in the case of a negative of a charge sheet, the expiration of 53 years from the time when the charge sheet; or
 - (ii) in the case of a negative of a court record which is not a charge sheet, the expiration of 15 years from the time when that court record,

became a court record.

236A. (1) A clerk of petty sessions may, of his own motion or on the application of the complainant or defendant or any other person interested in any proceedings in the court of petty sessions concerned, which proceedings have not yet been completed—

Preservation orders. Inserted by No. 124 of 1982, s. 4.

- (a) order in writing that all or any of the court records relating to those proceedings be preserved from destruction for a period of one year;
- and
- (b) from time to time renew in writing for a period of one year an order made under this subsection.

(2) A person shall not destroy a court record to which an order made or renewed under subsection (1) of this section relates while that order is in force.

Penalty: \$100.

Evidentiary
provision.
Inserted by No.
17 of 1972, s.
16.

237. For the purposes of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the court, the negative is deemed to be the court record and shall be treated as such by any court of petty sessions, and any other court, without any enquiry as to whether or not the court record has been destroyed.

THE FIRST SCHEDULE.

Section 2.

Date of Act	Title of Act	Extent of Repeal
14 Vict., No. 1	An Ordinance to protect Justices of the Peace from Vexatious Actions for acts done by them in the execution of their office	The whole
14 Vict., No. 4	An Ordinance to facilitate the Performance of the Duties of Justices of the Peace out of Quarter Sessions in Western Australia with respect to Persons charged with Indictable Offences	The whole
14 Vict., No. 5	An Ordinance to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within the Colony of Western Australia with respect to Summary Convictions and Orders	The whole, except Section 32
23 Vict., No. 3	An Ordinance to improve the Administration of the Law so far as respects summary proceedings before Justices of the Peace	The whole
37 Vict., No. 1	An Act to amend the Law concerning Warrants of Distress	The whole
37 Vict., No. 4	An Act to remove some Defects in the Administration of the Criminal Law	The whole, except Sections 3 and 7
39 Vict., No. 20	An Act to amend the Law concerning Remission of Penalties	Section 2
55 Vict., No. 27	The Police Act 1892.....	Sections 130, 131, 132, 136, 139, 140, and 141
57 Vict., No. 8	The Criminal Law Appeal Act 1893.....	Section 4
59 Vict., No. 11	The Justices' Appointment Act 1895.....	The whole
60 Vict., No. 30	An Act to facilitate the Administration of Justice and the taking of Statutory Declarations	Section 3
62 Vict., No. 13	The Prevention of Crimes Act 1898.....	Section 3
62 Vict., No. 30	The Interpretation Act 1898.....	In section 17 the words "Petty Sessional Court" are struck out, and the words "Court of Petty Sessions" inserted in lieu thereof
1 & 2 Ed. VII., No. 14	The Criminal Code.....	Section 672 of the First Schedule

THE SECOND SCHEDULE.

Elizabeth the Second, by the Grace of God, etc.

To A.B. of

C.D. of

etc.

First Assignment.—Know Ye, that We have assigned you, and each and every of you, to be Our Justices to keep Our Peace in [the Magisterial District in] Our State of Western Australia [and its Dependencies], either alone or with any one or more of Our Justices that hereafter shall be appointed in Our said State and its Dependencies [or the said District], and to keep and to cause to be kept all laws, for the preservation of the Peace, and for the quiet rule and good government of Our people, in Our said State and its Dependencies [or the said District] according to the form and effect of the same, and to punish all persons offending against them, or any of them, in the said State and its Dependencies [or the said District], as by the said laws is provided, and to cause to come before you all persons within Our said State and its Dependencies [or the said District] who use threats to any of Our People, to find security for keeping the peace or for their good behaviour towards US and Our People: And if they refuse to find such security, then to cause them to be safely kept until they find such security:

Second Assignment.—We have also assigned you, and each and every of you, either alone or with any one or more of such Justices to be appointed as aforesaid, to inquire the truth concerning all manner of crimes, misdemeanours, and offences, concerning which Our Justices of the Peace may lawfully or ought to inquire, by whomsoever and in what manner soever done, perpetrated, or attempted in Our said State and its Dependencies [or the said District]: And upon all complaints before you to issue such process against the persons charged until they are taken or surrender themselves, as may by law be issued.

Third Assignment.—We have also assigned you, and each and every of you, either alone or with any one or more of such Justices to be appointed as aforesaid, to have, exercise, and discharge all other the powers, authorities, and duties which under or by virtue of any law of Our Realm or of Our said State belong or appertain to the office of Justices of the Peace in or for Our said State.

And therefore We command you and each and every of you that you diligently apply yourselves to keep and cause to be kept the peace and all laws of Our Realm and of Our said State, and that at certain days and places duly appointed for these purposes, you make inquiries into the premises and hear and determine all and singular the matters aforesaid, and perform

and fulfill the duties aforesaid, doing therein what is just according to the laws of Our Realm and of Our said State: And we command Our Sheriff and other officers of Our said State to aid you by all lawful means in the performance and due execution of the premises.

In testimony whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Our said State to be hereunto affixed.

Witness Our Trusty and Well-beloved, etc., etc., etc., Governor,
etc., at this day of in the year of our
Lord one thousand nine hundred and

THE THIRD SCHEDULE.

Section 16.

OATH OF ALLEGIANCE.

I, A.B., do *sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia and Her other Realms and Territories. So help me God!

OATH OF OFFICE.

I, A.B., do *sincerely promise and swear that as a Justice of the Peace I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the laws and statutes of the Realm and of this State to the best of my knowledge and ability, without fear, favour, or affection. So help me God!

*In the case of an affirmation in lieu of oath, substitute "solemnly and sincerely promise and affirm" for "sincerely promise and swear". Omit, in the case of affirmation in lieu of oath.

THE FOURTH SCHEDULE.

Section 96.
Amended by
No. 22 of
1968, s. 38.

ORIGINATING PROCEEDINGS.

1.—*Complaint to secure surety of the peace or for good behaviour.*

Western Australia,
[Perth] to wit.

The complaint of C.D., of in the said State,
, made this day
of 19, before the undersigned, one of Her
Majesty's Justices of the Peace for the said State [or for the
Magisterial District of , in the said State], who

says that A.B., of _____, on the _____ day of _____ last, at _____, declared and threatened [*here state the defendant's threats*], and that the said C.D. is therefore afraid that the said A.B. will do him [or the said _____] some bodily injury [or commit a breach of the peace towards him (or the said _____), or burn (or injure) his house, (or procure some bodily injury to be done to him, or as the case may be) [or that the said A.B. is a person of evil fame and character, making his living by dishonest means, or as the case may be]; and the said C.D. therefore prays that the said A.B. may be required to find sureties to keep the peace towards him [or the said _____] [or be of good behaviour]; And the said C.D. says that he does not make this complaint from any malice or ill-will [*in case of surety of the peace add* but merely for the preservation of his life and person (and property) (or the life and person of the said _____) from injury].

Sworn before me the day and year first mentioned, at _____ in the said State.

J.S., J.P.

2.—Complaint to ground search warrant.

Western Australia,
[Perth] to wit.

The complaint of C.D., of _____ in the said State, _____, made this day of _____, 19____, before the undersigned, one of Her Majesty's Justices of the Peace for the said State [or for the Magisterial District of _____, in the said State], who says that the following goods of [him], the said C.D., to wit [*describe them*] were, on the _____ day of _____ [or have lately been] feloniously stolen, taken, and carried away, from and out of the dwelling-house [or as the case may be] of the said C.D., situated at _____, in the said State; and that he, the said C.D. has reasonable cause to suspect, and does suspect, that the said goods, or part thereof, are concealed in the dwelling-house or premises [or as the case may be] in the occupation of A.B., situated at _____, in the said State. [*Here state grounds of suspicion*]

Sworn [or made] before me, the day and year first abovementioned, at _____, in the said State.

J.S., J.P.

3.—*Complaint in all other cases.*

Western Australia,
[Perth] to wit.

The complaint of C.D., of _____, in the said State, _____, made this _____ day of _____, 19____, before the undersigned, one of Her Majesty's Justices of the Peace for the said State [or for the Magisterial District of], who says that on the _____ day of _____, 19____, at _____, at _____, [etc., stating the offence or subject-matter].

Sworn [or made] before me, the day and year first abovementioned, at _____, in the said State.

J.S., J.P.

4.—*Certificate of indictment being found.*

I hereby certify that at the Criminal Sittings of the Supreme Court of Western Australia [or as the case may be], held at _____, in the said State, on the _____ day of _____, 19____, an information was presented against A.B., therein described as A.B., late of _____ in the said State, _____, for that he, on the _____ day of _____, 19____, at _____ [etc., stating shortly the offence]; and that the said A.B. did not appear or plead to the said information.

Dated this _____ day of _____, 19____.

J.D.,

Registrar of the Supreme Court.

5.—*Certificate that the costs of an appeal are not paid.*

In The District Court of Western Australia [or as the case may be] holden at _____.

[Title of the Appeal]

I hereby certify that at a sitting of The District Court of Western Australia [or as the case may be], holden at _____ on the _____ day of _____, 19____, an appeal by A.B. against a [conviction] of J.S., Esquire, [one] of Her Majesty's Justices of the Peace for the said State [or etc.], came on to be tried and was then heard and determined, and the said Court thereupon ordered that the

Dated the day of , 19 .

G.H.

Registrar of the said Court [*or as the case may be*].

[Form 6 deleted by No. 120 of 1981, s. 9.]

7.—*Summons of a witness.*

Whereas a complaint was, on the _____ day of _____, 19____, made before the undersigned, one of _____

Her Majesty's Justices of the Peace for the said State [or etc.], that A.B. [etc., as in the summons or warrant against the defendant]: These are therefore to require you to appear at _____ in the said State, on the _____ day of _____, 19____, at _____ o'clock in the forenoon, before such Justices as may then be there, to testify what you know concerning the matter of the said complaint [and you are further required to bring with you and produce at the time and place abovenamed] [*Here describe the documents to be produced*].

Given under my hand, at _____ in the said
State, this _____ day of _____, 19____.

[or Clerk of Petty Sessions].

Indorsement of Service.

On the _____ day of _____, 19____, at _____,
I served the within-named E.F. with the within
summons by delivering a duplicate of it to him personally [or by
leaving a duplicate of it for him with _____ at _____, his last
known place of abode].

(Signature)
(Date)

8.—*Warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence.*

To the principal police officer at _____, in the State of Western Australia, and to all other police officers in the said State.

Whereas a complaint has this day been made upon oath before the undersigned, one of Her Majesty's Justices of the Peace for the said State [or, etc.], for that A.B., on the _____ day of _____, 19____, at _____ [here state shortly the offence or matter of the complaint]: These are therefore to command you, in Her Majesty's name forthwith to apprehend the said A.B. and to bring [him] before some one or more of Her Majesty's Justices of the Peace, to answer to the said complaint, and be further dealt with according to law.

Given under my hand, at _____ in the said State, this _____ day of _____, 19____,
J.S., J.P.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas out of any jurisdiction or place in the State of Western Australia, and within the jurisdiction of the Admiralty of England."

For offences committed abroad for which the parties may be indicted in this State the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of the State of Western Australia, to wit, at _____" as the case may be.

9.—*Search Warrant.*

To the principal police officer at _____, in the said State of Western Australia, and all other police officers in the said State.

Whereas a complaint has this day been made upon oath before the undersigned, one of Her Majesty's Justices of the Peace for the said State [or, etc.], for that [etc., as in Form 2 to the end, then thus]: These are therefore to command you, in Her Majesty's name, forthwith, with proper assistance, to enter the said dwelling-house and premises [or as the case may be] of the said A.B. [in the day time], and there diligently search for the said goods; and if the same, or any part thereof, are found upon search, that you attach the goods so found [and apprehend

Justices.

the said A.B., and bring (him) before some one or more of Her Majesty's Justices of the Peace, to give an account of how he came by the said goods, and to be further dealt with according to law.]

Given under my hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

MESNE WARRANTS.

10.—*Warrant to apprehend defendant where the summons is disobeyed.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State.

Whereas on the _____ day of _____, 19 ____, a
complaint was made that A.B. [*etc., as in the summons*], and a
summons was then issued to the said A.B. commanding [him] to
appear at _____ at _____, in the said State, on
the _____ day of _____, 19 ____, at _____ o'clock in the
forenoon, before such justices as might then be there, to answer
the said complaint: And whereas the said A.B. neglected to
appear at the time and place appointed by the said summons,
and it has been proved that the said summons was duly served
upon the said A.B.: These are therefore to command you, in Her
Majesty's name, forthwith to apprehend the said A.B. and to
bring [him] before some one or more of Her Majesty's Justices
of the Peace, to answer the said complaint, and to be further
dealt with according to law.

Given under [*my*] hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

10A.—*Bench Warrant.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State:

Whereas on the _____ day of _____
19 ____ (hereinafter called "the
defendant"), was brought before _____, on
a warrant issued for the defendant's arrest, charging the

defendant that at _____, on the
 _____ day of _____, 19____, the
 defendant did _____, and
 whereas on the defendant so appearing before
 _____, the said _____ discharged the
 defendant upon recognisance to appear and answer the said
 charge at _____ on the
 _____ day of _____, 19____, at _____ o'clock in
 the _____ noon, before such Justices as might then be there:
 And whereas the defendant did not appear at the time and
 place mentioned in the said recognisance to answer the said
 charge: These are therefore to command you, in Her Majesty's
 name, forthwith to apprehend and bring the defendant before
 some one or more of Her Majesty's Justices of the Peace, to
 answer the said charge and to be further dealt with according to
 law.

Given under _____ hand _____, at _____, in
 the said State, this _____ day of _____, 19____.

11.—*Warrant to apprehend a person required to give surety of the peace or for good behaviour.*

[As in the above warrant, and conclude as follows, instead of "and to be further dealt with," etc.:—] and to find sufficient sureties to keep the peace towards Her Majesty and Her people, and especially towards the said C.D. [or be of good behaviour] for such term as shall be directed.

Given under my hand, at, etc.

J.S., J.P.

12.—*Warrant where a witness has not obeyed a summons to attend the examination of a person charged with an indictable offence or the hearing of a charge of a simple offence or breach of duty.*

To the principal police officer at _____, in the State of Western Australia, and all other officers in the said State.

Whereas on the _____ day of _____, 19____, a complaint was made that A.B. [etc., as in the summons or warrant], and a summons was duly issued to E.F., of _____ in the said State _____ requiring [him] to appear on _____ day of _____, 19____, at _____ in the said State, before such justices as might then be there, to testify what [he] knew concerning the matter of the said complaint: And whereas proof has been made that such summons was duly served upon the said E.F.: And whereas the said E.F. neglected to appear at the time and place appointed

by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said E.F. and bring [him] before [me] at _____, in the said State, or before such other justices as may then be there, to testify what [he] knows concerning the matter of the said complaint.

Given under [my] hand at _____, in the said
State, this _____ day of _____, 19 ____.
J.S., J.P.

13.—*Warrant for a witness in the first instance.*

To the principal police officer at _____, in the State of Western Australia, and all other police officers in the said State.

Whereas on the _____ day of _____, 19 ____, at _____ a complaint was made that A.B. [*etc., as in the summons or warrant*], and it being made to appear before me on oath that E.F., of _____, in the said State _____ is likely to give material evidence on behalf of the prosecution [*or as the case may be*] in the matter, and it is probable that the said E.F. will not attend to give evidence without being compelled so to do: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said E.F. and bring [him] before me at _____ in the said State, or before such other justices as may be there, to testify what [he] knows concerning the matter of the said complaint.

Given under my hand, at _____, in the said
State, this _____ day of _____, 19 ____.
J.S., J.P.

14.—*Warrant on certificate of indictment having been found to apprehend person indicted.*

To the principal police officer at _____, in the State of Western Australia, and all other police officers in the said State.

Whereas it has been certified by [the Registrar of the Supreme Court or as the case may be] that [*etc., stating the certificate (Form 4)*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring him before me or some other justice or Justices of the Peace, to be dealt with according to law.

Given under my hand, at _____, in the said
State, this _____ day of _____, 19 ____.
J.S., J.P.

REMANDS.

15.—*Warrant remanding a prisoner.*

To the principal police officer at _____, in the State of Western Australia, and to all other police officers in the said State, and to the superintendent of Her Majesty's prison [or keeper of the (police) gaol] at _____, in the said State.

Whereas A.B. was this day charged before the undersigned [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], for that [etc., as in the warrant to apprehend], and it appears to [me] to be necessary to remand the said A.B.: These are therefore, to command you, the said police officers, in Her Majesty's name, forthwith to convey the said A.B. to Her Majesty's prison [or to the gaol at _____], and there to deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] hereby command you, the said superintendent [or keeper], to receive the said A.B. into your custody in the said prison [or gaol] and there safely keep [him] until the _____ day of _____, 19____ or such earlier day as may be lawfully ordered in that behalf, when [I] hereby command you to have [him] at _____, in the said State, at _____ o'clock in the forenoon, before such justices as may then be there, further to answer the said charge.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

16.—*Warrant of committal for safe custody during an adjournment of the hearing.*

To the principal police officer at _____, in the State of Western Australia, and to all other police officers in the said State, and to the superintendent of Her Majesty's prison [or keeper of the (police) gaol] at _____, in the said State.

Whereas on the _____ day of _____, 19____, complaint was made before the undersigned [or as the case may be], [one] of Her Majesty's Justice's of the Peace for the said State [or, etc.], for that [etc., as in the summons or warrant], and whereas the hearing of the same is adjourned to the _____ day of _____, 19____, at _____ o'clock in the forenoon, at _____, in the said State, and it is necessary that the said A.B. should in the meantime be kept in safe custody: These are therefore to command you, the said police officers, in Her Majesty's name, forthwith to convey the said A.B. to Her Majesty's prison [or to the (police) gaol] at _____, and there deliver [him] into the custody of the superintendent [or keeper] thereof, together with this warrant,

and [I] hereby command you, the said superintendent [or keeper], to receive the said A.B. into your custody in the said prison [or gaol], and there keep [him] until the day of , 19 , when; [I] hereby require you to convey and have [him] the said A.B., at the time and place to which the said hearing is so adjourned as aforesaid, before such justices as may then be there to answer further the said complaint, and to be further dealt with according to law.

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

RECOGNISANCES, Etc.

17.—*Certificate of consent to bail by the committing justice indorsed on the commitment.*

[I] hereby certify that [I] consent to the within-named A.B. being bailed by recognisance, himself in the sum of and [two] sureties in the sum of [each].

J.S., J.P.

18.—*The like on a separate paper.*

Whereas A.B. was, on the day of , 19 , committed by [me] to the prison [or gaol] at , in the State of Western Australia charged with [etc., naming the offence shortly]:

[I] hereby certify that [I] consent to the said A.B. being bailed by recognisance, himself in the sum of and [two] sureties in the sum of [each].

Dated this day of , 19 .

J.S., J.P.

19.—*Recognisance for the appearance of a defendant, where the case is adjourned or not at once proceeded with.*

Western Australia,
[Perth] to wit.

Be it remembered that on the day of , 19 , A.B., of , in the said State , and L.M., of in the said State , personally came before the undersigned,

[one] of Her Majesty's Justices of the Peace for the said State [or, etc.], and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following—that is to say, the said A.B. the sum of , and the said L.M. the sum of , to be made and levied of their several goods and chattels, lands, and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if [he], the said A.B., shall fail in the condition indorsed

Taken and acknowledged before [me] the day and year
first above mentioned, at , in the said
State.

Condition.

The condition of the within-written recognisance is such that if the said A.B. charged upon the complaint of C.D. with (*here insert briefly nature of charge such as larceny, assault, etc.*), shall personally appear at in the said State, on the day of , 19 , at o'clock in the forenoon, before such Justices as may then be there, [further] to answer the said charge made by C.D. against the said A.B., then the said recognisance to be void, or else to stand in full force and virtue.

J.S., J.P.

20.—Notice of such recognisance to be given to the defendant and his surety.

Take notice that you, A.B., of , in the State of Western Australia, , are bound in the sum of , and you, L.M., of , in the said State, , in the sum of , that you, A.B., appear personally at , in the said State, on the day of , 19 , at o'clock in the forenoon, before such Justices of the Peace as shall then be there, to answer further a certain charge made by C.D., the further hearing of which was adjourned to the said time and place; and unless you appear accordingly the recognisance entered into by you, A.B., and by L.M., as your surety, will forthwith be put in suit and enforced against you and him.

Dated this day of , 19 .

J.S., J.P.

Justices.

21.—*Certificate of non-appearance or default to be indorsed on the defendant's recognisance.*

[I] hereby certify that the said A.B. did not appear at the time and place in the condition of the within-written recognisance mentioned.

J.S., J.P.

22.—*Recognisance of bail on committal for trial.*
[Same as recognisance, form 19.]

J.S., J.P.

Condition.

The condition of the within recognisance is such that whereas the said A.B. was this day charged before [me], the justice within mentioned, that [*etc., as in the warrant*]: if, therefore, the said A.B. shall appear at the next criminal sittings of the Supreme Court [*or as the case may be*] to be held at _____, in the State of Western Australia, on the _____ day of _____, 19____, and surrender [himself] into the custody of the superintendent [*or keeper*] of Her Majesty's prison [*or gaol*] there, and to plead to such information as may be filed against [him] in respect of the charge aforesaid, and take [his] trial upon the same, and not depart from the said court, without leave, then the said recognisance to be void, or else to stand in full force and virtue.

23.—*Notice of recognisance to be given to the defendant and his bail.*

Take notice that you A.B., of _____, in the State of Western Australia, _____, are bound in the sum of _____, and you, L.M. and N.O., in the sum of _____ each, that you, A.B., appear [*etc., as in the condition of the recognisance*], and do not depart from the said court without leave; and unless you, the said A.B., personally appear and plead and take your trial accordingly, the recognisance entered into by you and your sureties will forthwith be put in suit and enforced against you and them.

Dated this _____ day of _____, 19____.

J.S., J.P.

24.—*Recognisance of the peace or for good behaviour.*
[Same as recognisance, form 19.]

Condition.

The condition of the within-written recognisance is such, that if the said A.B. shall keep the peace towards Her Majesty the Queen and Her people, and especially towards C.D., of [or be of good behaviour] for the term of [six months] now next ensuing, then the said recognisance to be void, or else stand in full force and virtue.

25.—*Notice of such recognisance to be given to the defendant and his sureties.*

Take notice that you, A.B., of [], in the State of Western Australia, [], and you, L.M. of [], and N.O., of [], in the sum of [], that you, A.B., keep the peace towards Her Majesty the Queen and Her people, and especially towards C.D., of [or be of good behaviour] for the term of [six months] from the [] day of [last], and unless you so keep the peace [or as the case may be] accordingly, the recognisance entered into by you, A.B., and by L.M. and N.O. as your sureties, will forthwith be put in suit and enforced against you and them.

Dated this [] day of [], 19 [].
J.S., J.P.

26.—*Recognisance to give evidence.*

Western Australia,
[Perth] to wit.

Be it remembered that on the [] day of [] 19 [], C.D. of [], in the said State, [], came before [me] one of Her Majesty's Justices of the Peace in and for the said State [or, etc.], and acknowledged [himself] to owe to our Sovereign Lady the Queen the sum of [], to be made and levied of [his] goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if [he] the said C.D. shall fail in the condition indorsed.

Taken and acknowledged before [me] the day and year first abovementioned, at [], in the said State.

J.S., J.P.

*Justices.**Condition.*

The condition of the within-written recognisance is such that whereas A.B. was this day charged before [me], J.S., the Justice of the Peace within-mentioned, for that [*etc., as in the caption of the depositions*]: If, therefore [he], the said C.D., shall appear at the next criminal sitting of the Supreme Court [*or as the case may be*], to be holden at _____, in the State of Western Australia, on _____, the _____ day of _____ 19____, and there give evidence upon an information to be then preferred against the said A.B. for the offence aforesaid, then the said recognisance to be void, or else to stand in full force and virtue.

27.—*Notice of recognisance to be given to the witnesses.*

Western Australia,
[Perth] to wit.

Take notice that you, C.D., of _____, in the said State, are bound in the sum of _____, to appear at the next [*as in the Condition*], and then and there to give evidence against A.B., and unless you then appear and give evidence accordingly the recognisance entered into by you will be forthwith put in suit and enforced against you.

Dated this _____ day of _____, 19____.

J.S., J.P.

28.—*Recognisance on appeal.*
[Same as recognisance, form 19.]*Condition.*

Whereas the said A.B. was, on the _____ day of _____, 19____, at _____, convicted before E.F. [and others], [one of] Her Majesty's Justices of the Peace for the said State [*or, etc.*] of an offence against the provisions of the _____ section of the _____ Act [*or as the case may be, describing the Act or by-law under which the offence is created*]; and it was by the said conviction adjudged that the said A.B., should for such [his] offence forfeit and pay [*etc., as in the conviction*], and should also pay to the said C.D. the sum of _____ [his] costs [*or* Whereas on the _____ day of _____, at _____, upon the hearing of a complaint made by C.D., of _____, against A.B., of _____ E.F. [and others], [one of] Her Majesty's Justices for the said State [*or, etc.*], adjudged that the said A.B. should pay to the said C.D. the sum of _____, on or before the _____, then next, and should also pay to the

said C.D. the sum of for costs]; And whereas the said A.B. has given notice of his intention to appeal from the said conviction [or order] to the Supreme Court [or as the case may be], holden at . Now, the condition of the within-written recognisance is such that if the said A.B. shall prosecute the said appeal without delay and submit to the judgment of the said court, and pay such costs as the said court shall award, then this said recognisance to be void, or else to stand in full force and virtue.

DEPOSITIONS, Etc.

29.—*Depositions of witnesses.*

Western Australia,
[Perth] to wit.

The examination of C.D., of , and E.F., of , taken this day of 19 , at in the said State, before the undersigned [one], of Her Majesty's Justices of the Peace for the said State [or, etc.], in the presence and hearing of A.B., who is charged this day before [me] that [he] [etc., describing the offence as in a warrant of commitment.]

C.D., on his oath [or affirmation] says as follows [etc., state the deposition of the witness as nearly as possible in the words he uses, and when his deposition is complete let him sign it].

E.F., upon his oath [or affirmation] say as follows [etc.]

Taken and sworn [or affirmed] before [me]
at in the said State, on the day and
year first abovementioned.

J.S., J.P.

30.—*Statement of the defendant.*

Western Australia,
[Perth] to wit,

A.B. stands charged before the undersigned [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], this day of 19 , that [he], [etc., as in the caption of the depositions], and the charge being read to the said A.B. and the witnesses for the prosecution, C.D. and E.F. being severally examined in [his] presence, the said A.B. is now addressed by [me] as follows:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be

given in evidence against you upon your trial." Whereupon the said A.B. says as follows—[*here state whatever the prisoner may say, and in his very words, as nearly as possible: get him to sign it if he will*]. A.B.

Taken before [me] at _____ in the said State, the day and year first abovementioned.

J.S., J.P.

CONVICTIONS.

31.—*Conviction for a penalty to be levied by execution, and in default of sufficient execution imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the _____ day of _____, 19____, at _____ in the said State, A.B., of _____ in the said State, [____], is convicted before the undersigned, [one] of her Majesty's Justices of the Peace for the said State [or etc.], that [he], the said A.B. [*etc., stating the offence and the time and place when and where it was committed*], and [I] adjudge the said A.B. for [his] said offence to forfeit and pay the sum of [*stating the penalty and compensation, if any*] to be paid and applied according to law, and also to pay to the said C.D. the sum of _____ for [his] costs, and if the said several sums are not paid forthwith [or on or before _____ next] then* [I] order that the same be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods or chattels* [I] adjudge the said A.B. to be imprisoned in Her Majesty's prison [or] the (police) gaol at _____ in the said State [there to be kept to hard labour], for the space of _____, unless the said several sums and all costs and charges of the said execution [and of taking and conveying the said A.B. to prison] are sooner paid.

Given under [my] hand, at _____, in the said State, the day and year first abovementioned.

J.S., J.P.

*Or where the issuing of warrant of execution would be more injurious to the defendant or his family, than imprisonment or it appears that he has no goods whereon to levy, then instead of the words between the asterisks** say—"Inasmuch as it appears to [me] that the issuing of a warrant of execution would be more injurious to the said A.B. and his family than imprisonment" [or "that the said A.B. has no goods or chattels whereon to levy the said sums, [I] adjudge" [etc., as above, to the end, but omitting the words "of the said execution and"]].

32.—*Conviction for a penalty, and in default of payment imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the day
of , 19 , at in the said State,
A.B. of , in the said State , is convicted
before the undersigned [one] of Her Majesty's Justices of the
Peace for the said State [or, etc.], that [he] the said A.B. [etc.,
*stating the offence and the time and place when and where it
was committed*], and [I] adjudge the said A.B. for [his] said
offence to forfeit and pay the sum of [*stating the penalty and
the compensation, if any*] to be paid and applied according to
the law, and also to pay to the said C.D. the sum
of for [his] costs, and if the said several sums are
not paid forthwith [or on or before next] [I] adjudge the
said A.B. to be imprisoned in Her Majesty's prison [or the
(police) gaol] at , in the said State [there to be kept
to hard labour], for the space of , unless the said
several sums [and the costs and charges of commitment and of
conveying the said A.B. to prison] are sooner paid.

Given under [my] hand, at , in the said
State, the day and year first abovementioned.

J.S., J.P.

33.—*Conviction when the punishment is imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the day
of , 19 , at A.B.,
of , is convicted before the undersigned [two] of
Her Majesty's Justices of the Peace [or a magistrate] for the
said State [or for the magisterial district of], that
[he] the said A.B. [*stating the offence and the time and place
when and where it was committed*], and [we] adjudge the said
A.B. for [his] said offence be imprisoned in Her Majesty's
prison [or the (police) gaol] at in the said State [there
to be kept at hard labour] for the space of

Given under [our] hand, at , the day
and year first above-written.

J.S., J.P.

H.M., J.P.

34.—*Conviction when the punishment is imprisonment, and costs are awarded to be levied by execution.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the day
of , 19 , at A.B.,
of [], is convicted before the
undersigned [two] of Her Majesty's Justices of the Peace for the
said State, [or, etc.,] that [he], the said A.B. [etc., stating the
offence and the time and place when and where it was
committed], and [we] adjudge the said A.B. for [his] said
offence to be imprisoned in Her Majesty's Prison [or in the
(police) gaol] at in the said State [there to be kept
to hard labour], for the space of , and [we] also
adjudge the said A.B. to pay the said C.D. the sum
of for [his] costs; and if the said sum for costs is
not paid forthwith [or on or before next] then*
[we] order that the said sum be levied by execution against the
goods and chattels of the said A.B., and in default of sufficient
goods and chattels* [we] adjudged the said A.B. to be
imprisoned in the said prison for the term of , to
commence at and from the termination of [his] imprisonment
aforesaid, unless the said sum for costs and all costs and charges
of the said execution [and of taking and conveying the said A.B.
to prison] are sooner paid.

Given under [our] hand, at , in the said
State, the day and year first abovementioned.

J.S., J.P.

H.M., J.P.

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family, than imprisonment or it appears that he has no goods whereon to levy, then instead of the words between the asterisks* say—"Inasmuch as it appears to [us] that the issuing of a warrant of execution would be more injurious to the said A.B. and his family than imprisonment" [or "that the said A.B. has no goods or chattels whereon to levy the said sums], [we] adjudge" [etc., as above, to the end, but omitting the words "of the said execution and"].

35.—*Conviction where the defendant is made subject to police supervision.*

Western Australia,
[Perth] to wit.

Be it remembered, etc.[proceed as in Form 34 to the words
"said offence" and conclude as follows:] be subject to police
supervision for the term of .

Given under [our] hand, at , in the said
State, the day and year first abovementioned.

J.S., J.P.

H.M., J.P.

36.—*Summary conviction for indictable offence.*
(*Criminal Code Chapter XLIII*)

Western Australia,
[Perth] to wit.

Be it remembered that on the day
of , 19 , at , A.B. being charged
before [us] the undersigned, [two] of Her Majesty's Justices of
the Peace [or magistrate] for the said State [or for
the magisterial district of], that [he], the said A.B.
[*stating the offence and the time and place when and where
committed*], and the value of the property in question not
exceeding one hundred dollars [or the said A.B. having pleaded
guilty to the charge], and the said A.B. consenting to our dealing
with the offence summarily, he is convicted of the charge, and
[we] adjudge the said A.B. for his said offence to be imprisoned
in Her Majesty's prison [or the (police) gaol] at ,
[there to be kept at hard labour] for the term of .

Given under [our] hand at , in the said
State, the day and year first abovementioned.

J.S., J.P.

H.M., J.P.

37.—*Summary conviction for indictable offence.*
(*Criminal Code Chapter XLVII.*)

Western Australia,
[Perth] to wit.

Be it remembered that on the day
of , 19 , at , A.B. being charged
before [us], the undersigned, [two] of Her Majesty's Justices of
the Peace [or a magistrate] for the said State [or
for the magisterial district of], that [he], the said
A.B. [*stating the offence and the time and place when and
where committed*], and the amount of injury done not exceeding
one hundred dollars [or the said A.B. having pleaded guilty to
the charge], and the said A.B. consenting to our dealing with the
offence summarily [*proceed as in last form to end*].

Given under [our] hand, at , in the said
State the day and year first abovementioned.

J.S., J.P.

H.M., J.P.

38.—*Summary conviction of child for indictable offence.*
*(Criminal Code Chapter LXIX.)**

Western Australia,
 [Perth] to wit.

Be it remembered that on the day
 of 19 , at , A.B., being charged
 before [us], the undersigned, [two] of Her Majesty's Justices of
 the Peace [or a magistrate], for the said State [or for the
 magisterial district of], that [he], the said A.B.
 [stating the offence and the time and place when and where
 committed], and the age of the said A.B. on
 the day of [date of offence] having
 in [our] opinion not exceeded twelve years and C.D., the parent
 [or guardian] of the said A.B., consenting to [our] deciding upon
 the charge summarily, the said A.B. is therefore convicted
 before [us] of the said offence, and [we] adjudge the said A.B.
 for [his] said offence, to be imprisoned in the gaol
 at [there to be kept at hard labour] for the term
 of [or, if a fine is imposed, proceed as in other forms of
 conviction in such case], [and to be privately whipped with [six]
 strokes of a birch rod (or cane or leather strap) in the presence
 of (the persons described in Chapter LXIX of the Criminal
 Code)].

Given under [our] hand at , in the said
 State, the day and year first abovementioned.

J.S., J.P.
 H.M., J.P.

39.—*Summary conviction of young person for*
indictable offence.
*(Criminal Code, Chapter LXX.)**

Western Australia,
 [Perth] to wit.

Be it remembered that on the day
 of 19 , at , A.B. being charged before
 [us], the undersigned, [two] of Her Majesty's Justices of the
 Peace [or a magistrate] for the said State to [or for the
 magisterial district of], that [he] the said A.B.
 [stating the offence and the time and place, when and where
 committed], and the age of the said A.B. on the day
 of [date of offence], having been over twelve years,
 but not having in [our] opinion exceeded sixteen years, and the
 said A.B. having consented to our deciding on the charge
 summarily, the said A.B. is therefore convicted before [us] of
 the said offence, and [we] adjudge [proceed as in the last form
 inserting Chapter LXX. instead of Chapter LXIX].

Given under [our] hand at , in the said
 State, the day and year first abovementioned.

J.S., J.P.
 H.M., J.P.

*Ss. 708-710 Criminal Code repealed by No. 91 of 1965 s. 10.

ORDER AND CERTIFICATES OF DISMISSAL.

40.—*Order of dismissal of complaint.*

Western Australia,
[Perth] to wit.

Be it remembered that on the day
of 19 , a complaint was made that [*etc., as in
the summons to the defendant or warrant*], and on this day
of 19 , at , in the said State,
the said complaint came on for hearing before the undersigned
[*one*] of Her Majesty's Justices of the Peace for the said State
[*or, etc.*] whereupon it appears to [*me*] that the said complaint
is not proved [*or the complainant did not appear*], and [*I*]
therefore dismiss the said complaint [and adjudge that the said
C.D., pay to the said A.B. the sum of for the costs
incurred by [*him*] in [*his*] defence, and if the said sum is not
paid forthwith [*or on or before*], * [*I*] order that the
same be levied by execution against the goods and chattels of
the said C.D., and in default of sufficient goods and chattels* [*I*]
adjudge the said C.D. to be imprisoned in Her Majesty's prison
[*or the (police) gaol*] at for the term
of unless the said sum and all costs and charges of the
said execution [and of taking and conveying the said C.D. to
prison] are sooner paid].

Given under [*my*] hand, at , in the said
State this day of 19 .
J.S., J.P.

* *Or where the issuing of warrant of execution would be more injurious to the defendant or his family, than imprisonment, or it appears that he has no goods whereon to levy, then instead of the words between the asterisks** say—"Inasmuch as it appears to [*me*] that the issuing of a warrant of execution would be more injurious to the said A.B. and his family than imprisonment" [or "that the said A.B. has no goods or chattels whereon to levy the said sums], [*I*] adjudge" [*etc., as above, to the end, but omitting the words "of the said execution and"*].*

41.—*Certificate of Dismissal.*

Western Australia,
[Perth] to wit.

[*I*] the undersigned [*one*] of Her Majesty's Justices of the Peace for the said State [*or, etc.*], hereby certify that on the day of , 19 , at , in the said State, A.B. was charged before [*me*], that [*he*] the said A.B. [*etc., stating the offence and the time and place when and where alleged to have been committed*], and that [*I*] thereupon dismissed the said complaint.

Given under [*my*] hand, at , in the said
State this day of 19 .
J.S., J.P.

Justices.

ORDERS.

42.—*Order for payment of money to be levied by execution, and in default of execution imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the day of
19 , complaint was made before the undersigned,
[one] of Her Majesty's Justices of the Peace for the said State
[or, etc.], that [*stating the facts entitling the complainant to the
order, with the time and place when and where they occurred*],
and on the day of , 19 ,
at in the said State, having heard the said
complaint, [I] adjudge the said A.B. to pay to the said C.D. the
sum of forthwith [*or as the case may be*], and also
to pay to the said C.D. forthwith [*or as the case may be*], the
sum of for costs, and if the said several sums are
not paid as aforesaid * [I] order that the same be levied by
execution against the goods and chattels of the said A.B., and in
default of sufficient goods and chattels * [I] adjudge the said
A.B. to be imprisoned in Her Majesty's prison [or the (police)
gaol] at , [there to be kept to hard labour], for the
term of , unless the said several sums and all costs
and charges of the said execution [and the costs and charges of
commitment and of conveying the said A.B. to prison] are
sooner paid.

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family, than imprisonment or it appears that he has no goods whereon to levy, then instead of the words between the asterisks ** say—"Inasmuch as it appears to [me] that the issuing of a warrant would be more injurious to the said A.B. and his family than imprisonment" [or "that the said A.B. has no goods or chattels whereon to levy the said sums]. [I] adjudge" [etc., as above, to the end, but omitting the words "of the said execution and"].

43.—*Order for payment of money, and in default of payment imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that, on the day of
19 , complaint was made before the undersigned,
[one] of Her Majesty's Justices of the Peace for the said State
[or, etc.], that [*stating the facts entitling the complainant to the
order, with the time and place when and where they occurred*],
and on the day of ,
at , in the said State, having heard the said
complaint, [I] adjudge the said A.B. to forfeit and pay to the

said C.D. the sum of forthwith, [or as may be], and also to pay to the said C.D. the sum of for costs, and if the said several sums be not paid as aforesaid [forthwith], [I] adjudge the said A.B. to be imprisoned in Her Majesty's prison [or the (police) gaol] at , [there to be kept to hard labour] for the term of unless the said several sums [and the costs and charges of commitment and of conveying the said A.B. to prison] are sooner paid.

Given under [my] hand, at , in the said
State this day of , 19 .
J.S., J.P.

44.—*Order for any matter where the disobeying of it is punishable with imprisonment.*

Western Australia,
[Perth] to wit.

Be it remembered that on the day of , 19 , complaint was made before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and on the day of at , in the said State, having heard the said complaint, [I] adjudge the said A.B. to [here state the matter required to be done], and if upon a copy of the minute of this order being served upon the said A.B. either personally or by leaving the same for [him] at [his] last known or usual place of abode, [he] shall neglect or refuse to obey the same, [I], adjudge the said A.B. to be imprisoned in Her Majesty's prison [or the (police) gaol] at , [there to be kept to hard labour] for the term of [unless the said order is sooner obeyed if the statute authorize this], and [I] also adjudge the said A.B. to pay to the said C.D. the sum of for costs, and if the said sum is not paid forthwith [or on or before next], [I] order the same to be levied by execution against the goods and chattels of the said A.B. and in default of sufficient goods and chattels [I] adjudge the said A.B. to be imprisoned in the said prison for the term of , to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs, and all the costs and charges of the said execution [and of taking and conveying the said A.B. to prison] are sooner paid.

Given under [my] hand, at , in the said
State, this day of , 19 .
J.S., J.P.

WARRANTS OF EXECUTION, Etc.

45.—*Warrant of execution upon a conviction for a penalty.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State.

Whereas A.B., late of _____ in the said State of
Western Australia _____, was on the _____ day
of _____, 19____, at _____ convicted before E.F.
[and others] [one of] Her Majesty's Justices of the Peace for the
said State [or, etc.], of an offence against the provisions of
the _____ section of the _____ Act [or as the case may
be, describing the Act or by-law under which the offence is
created], and it was thereby adjudged that the said A.B. should
for such [his] offence forfeit and pay [etc., as in the conviction],
and should also pay to the said C.D. the sum
of _____ [his] costs, and it was thereby ordered that if the
said several sums should not be paid [forthwith] the same
should be levied by execution against the goods and chattels of
the said A.B.*: And whereas the said A.B. being [now] required
to pay the said sums, has not paid the same [or any part
thereof]: These are therefore to command you, in Her Majesty's
name, forthwith to take the goods and chattels of the said A.B.,
and if within the space of _____ days after taking them
the said sums, together with the reasonable charges of taking
and keeping the goods and chattels, are not paid, that then you
sell the said goods and chattels and pay the money arising by
such sale to the clerk of petty sessions at _____ in the
said State, and if no goods and chattels can be found that you
certify the same to me.

Given under my hand, at _____, in the said
State, this _____ day of _____, 19____.
J.S., J.P.

*See Form 63.

46.—*Warrant of execution upon an order for the payment of money.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State.

Whereas on the _____ day of _____, 19____,
at _____, upon hearing of a complaint made by C.D.
of _____, against A.B. of _____, E.F. [and others]
[one of] Her Majesty's Justices of the Peace for the said State
[or, etc.], adjudged that the said A.B. should pay to the said
C.D. the sum of _____ of _____ on _____ before
the _____ then next [or as the case may be], and
also should pay to the said C.D. the sum of _____ for
costs, and it was thereby ordered that if the said several sums

were not paid on or before the said day of then next, the same should then be levied by execution against the goods and chattels of the said A.B.*: And whereas the said C.D. has not paid the said several sums of [or any part thereof]: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of days after taking them the said last-mentioned sums, together with the reasonable charges of taking and keeping the said goods and chattels are not paid, that then you sell the said goods and chattels and pay the money arising from such sale to the clerk of petty sessions at in the said State, and if no goods and chattels can be found, then that you certify the same to me.

Given under my hand, at , in the said State, this day of , 19 .

J.S., J.P.

*See Form 63.

47.—*Warrant of execution for costs upon an order for dismissal of a complaint.*

To the principal police officer at , in the state of Western Australia, and all other police officers in the said State.

Whereas on the day of , 19 , at , upon the hearing of a complaint made by C.D. against A.B. before E.F. [and others] [one of] Her Majesty's Justices of the Peace for the said State [or, etc.], dismissed the complaint, and adjudged that the said C.D. should pay to the said A.B. the sum of costs, and that if the said sum were not paid [forthwith] the same should be levied by execution against the goods and chattels of the said C.D.* And whereas the said C.D. being [now] required to pay to the said A.B. the said sum for costs, has not paid the same or any part thereof: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said C.D., and if within the space of days next after taking them the said sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the clerk of petty sessions at , in the said State, and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at , in the said State, this day of , 19 .

J.S., J.P.

*See Form 64.

48.—*Warrant of execution for costs upon a conviction where the offence is punishable by imprisonment.*

To the principal police officer at _____, in the State of Western Australia, and all other police officers in the said State.

Whereas A.B., of _____, in the said State of Western Australia [_____,] was on the _____ day of _____ 19_____, convicted before E.F. [and others], [one of] Her Majesty's Justices of the Peace for the said State [or, etc.], of an offence against the provisions of the _____ section of the _____ Act [or as the case may be, describing the Act or by-law under which the offence is created], and it was adjudged that the said A.B. should be imprisoned in Her Majesty's prison [or the (police) gaol] at _____, [there to be kept to hard labour], for the term of _____, and it was also adjudged that the said A.B. should pay to the said C.D. the sum of _____ for costs, and it was thereby ordered that if the said sum of _____ for costs should not be paid [forthwith] the same should be levied by execution against the goods and chattels of the said A.B.* And whereas the said A.B., being required to pay the sum of _____, has not paid the same [or any part thereof]: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days next after taking them the said lastmentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels and pay the money arising from such sale to the clerk of petty sessions at _____, in the said State, and if no goods and chattels can be found that you certify the same to me.

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

*See Form 65.

49.—*Warrant of execution for costs upon an order where the disobeying of the order is punishable with imprisonment.*

To the principal police officer at _____, in the State of Western Australia, and all other police officers in the said State.

Whereas on the _____ day of _____, 19_____, at _____ upon a complaint made by C.D., of _____, against A.B., of _____, E.F. [and others] [one of] Her Majesty's Justices of the Peace for the said State [or, etc.], adjudged that the said A.B. should [etc., as in the order], and it was thereby also adjudged that the said A.B. should pay to the

said C.D. the sum of _____ for costs, and it was ordered that if the said sum should not be paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said A.B., and that in default of sufficient goods and chattels the said A.B. should be imprisoned in Her Majesty's prison [or the (police) gaol] at _____ for the term of _____, to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs and all costs and charges of the said execution and of the commitment should be sooner paid.* And whereas a copy of the minute of the said order was served upon the said A.B., but the said A.B., has not paid the said sum for costs, or any part thereof: These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days after taking them the said lastmentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the clerk of petty sessions at _____, in the said State, and if no goods and chattels can be found then that you certify the same to me.

Given under my hand, at _____, in the said
State, this _____ day of _____, 19 _____.

J.S., J.P.

*See Form 65.

50.—*Warrant of execution for costs of an appeal against a conviction or order.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State.

Whereas [*etc., as in the warrants of execution (Forms 44 and 45) to the end of the statement of the conviction or order, then thus*]: And whereas the said A.B. appealed to [*as the case may be*] _____, against the said conviction [or order], in which appeal the said A.B. was the appellant, and the said C.D. was the respondent, and which said appeal was heard at the said court on the _____ day of _____, 19 _____, and the said court thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of _____ for his costs of the said appeal, which said sum was to be paid to the clerk [*or as the case may be*] of the said court at _____, on or before _____ day of _____, 19 _____: And whereas the

Justices.

clerk [or as the case may be] of the said court on the day of , 19 , duly certified that the said sum for costs had not then been paid:* These are therefore to command you, in Her Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of day next after the taking them the said lastmentioned sum, together with the reasonable charges of taking and keeping the said goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the clerk of petty sessions at , in the said State, and if no goods and chattels can be found, then that you certify the same to me.

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

*See Form 66.

51.—*Return to a warrant of execution.*

I, W.T., police officer of , in the State of Western Australia, hereby to J.S., Esquire, one of Her Majesty's Justices of the Peace for the State of Western Australia [or etc.], that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A.B., and that I can find no sufficient goods or chattels of the said A.B., whereon to levy the sums within-mentioned.

Witness my hand, this day of ,
19 .

W.T.

WARRANTS OF COMMITTAL, Etc.

52.—*Warrant of commitment for trial or for sentence.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at , in the said State.

Whereas A.B. was this day charged before me, J.S., one of Her Majesty's Justices of the Peace for the said State [or, etc.], on the oath of C.D., of , in the State of and others, that [etc.], *stating shortly the indictable offence*, [and

the said A.B. being asked admitted that he is guilty of the said offence]. And thereupon it was ordered that the said A.B. should be committed to take his trial [or to be sentenced] for the said offence at the criminal sittings of the Supreme Court [or as the case may be], to be holden at, etc.: These are therefore to command you, the said police officers, to convey the said A.B. to Her Majesty's prison [or gaol] at _____ and deliver [him] to the superintendent [or keeper] thereof, together with this warrant; and [I] hereby command you, the said superintendent [or keeper] of the said prison, [or gaol] to receive the said A.B. into your custody in the said prison, [or gaol] and [him] there keep until the said sittings of the said court, or until [he] shall be thence delivered by due course of law.

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

53.—*Warrant to convey accused person before a justice of the place in which the offence was committed.*

To the principal police officer at _____, in the State of
Western Australia, and all other police officers in the said
State.

Whereas A.B. of _____, in the said State has this day been charged before the undersigned [one] of Her Majesty's Justices of the Peace for the said State [or etc.] that [etc., as in the summons or warrant]: And whereas [I] have taken the deposition of C.D., a witness examined by me in this behalf, but [I] am informed that the principal witnesses to prove the said offence against the said A.B. reside at _____, in the said State, where the said offence is alleged to have been committed: These are therefore to command you forthwith to convey the said A.B. to _____, in the said State, and take [him] before some justice or justices in and near to the place where the offence is alleged to have been committed to answer further the said complaint before him or them; and [I] hereby further command you to deliver to the said justice or justices, the complaint in this behalf, and also the said deposition of C.D. now given into your possession for that purpose, together with this warrant.

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

54.—*Warrant of commitment of a person indicted.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the said State.

Whereas by warrant under [my] hand, dated the day of _____, 19____, after reciting that it had been certified by J.D. [etc., as in the certificate], [I] commanded the principal police officers at _____, in the State of Western Australia, and all other police officers of the said, State, in Her Majesty's name, forthwith to apprehend the said A.B. and to bring [him] before some justice or justices for the said State [or etc.]: And whereas the said A.B. having been apprehended and brought before [me], it is proved to [me] upon oath that the said A.B. is the same person who is charged in the said information: These are therefore to command you in Her Majesty's name, forthwith to convey the said A.B. to Her Majesty's prison [or the gaol] at _____ and deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] command you, the said superintendent [or keeper] of the said prison [or gaol] to receive the said A.B. into your custody in the said prison [or gaol] and to keep [him] there until [he] shall be thence delivered by due course of law.

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19____.

J.S., J.P.

55.—*Warrant to detain a person indicted who is already in custody for another offence.*

To the superintendent [or keeper] of Her Majesty's prison [or the gaol] _____, in the State of Western Australia.

Whereas it has been duly certified by the Registrar of the Supreme Court [or as the case may be], that [etc., stating the certificate Form 4]: And whereas [I] am informed that the said A.B. is in your custody in the said prison [or gaol] at _____, charged with some offence or other matter, and it is now proved upon oath before [me] that the said A.B. so indicted as aforesaid, and the said A.B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A.B. in your custody in the prison aforesaid until [he] shall be lawfully removed therefrom for the purpose of being tried upon the said information, or until [he] shall otherwise be removed or discharged out of your custody by due course of law.

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19____.

J.S., J.P.

56.—*Warrant of commitment of a witness for refusing to be sworn or to give evidence.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the said State.

Whereas on the _____ day of _____, 19____, upon the hearing of a charge before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], that [etc., as in the summons or warrant] E.F., of _____, in the said State _____, being required to make oath [or affirmation] as a witness to testify what [he] knew concerning the said charge, refused so to do [or being duly sworn as a witness, refused to answer certain questions concerning the premises which were put to him] without offering any just excuse for such refusal: These are therefore to command you the said police officers to convey the said E.F. to Her Majesty's prison [or the gaol] at _____, in the said State, and deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] hereby command you the said superintendent [or keeper] of the said prison [or gaol] to receive the said E.F. into your custody in the said prison, [or gaol] and keep [him] there for the space of _____ days for [his] contempt, unless in the meantime he consents to be examined and to answer concerning the premises.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

57.—*Warrant of commitment for want of sureties of the peace or for good behaviour.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the said State.

Whereas on the _____ day of _____, 19____, upon the hearing of a charge before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], that [etc., as in the complaint] the said A.B., being ordered to enter into his own recognisance in the sum of \$ _____, with [two] sufficient sureties in the sum of \$ _____ each, to keep the peace, etc. [or as the case may be—see condition of the recognisance to keep the peace, etc., ante, Form 25], refused and neglected, and still refuses and neglects so to do: These are therefore to command you, the said police officers, to convey the said A.B. to Her Majesty's prison [or the gaol] at _____ and deliver him to the said superintendent [or keeper] thereof, together with the warrant. And [I] command you, the said superintendent [or keeper] of the said prison [or gaol], to

receive the said A.B. into your custody, and there keep [him] for term of [six months], unless he in the meantime enters into such recognisances with such sureties as aforesaid to keep the peace, etc. [*or as the case may be*].

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

58.—*Commitment of witness for refusing to enter into recognisance.*

To all police officers in the State of Western Australia, and to the superintendent [*or keeper*] of Her Majesty's prison [*or the gaol*] at _____, in the said State.

Whereas on the _____ day of _____, 19 ____, and upon the hearing of a charge before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [*or, etc.*] that [*etc., as in the summons or warrant*] E.F., of _____, in the said State _____, having been examined as a witness touching the premises, and being required to enter into a recognisance conditioned to give evidence against the said A.B., refused so to do: These are therefore to command you, the said police officers, to convey the said E.F. to Her Majesty's prison [*or the gaol*] at _____, in the said State, and deliver [him] to the said superintendent [*or keeper*] thereof, together with this warrant, and [I] hereby command you the said superintendent [*or keeper*] of the said prison [*or gaol*], to receive the said E.F. into your custody in the said prison [*or gaol*], there to keep [him] until after the trial of the said A.B. for the offence aforesaid, unless in the meantime the said E.F. duly enters into such recognisance as aforesaid in the sum of _____ dollars, before some Justice of the Peace, conditioned to appear at the next criminal sittings of the Supreme Court [*or as the case may be*] to be held at _____ in the said State, on the _____ day of _____ [*or as the case may be*], and there to give evidence upon any complaint which may be then and there preferred against the said A.B. for the offence aforesaid, and also to give evidence upon the trial of the said A.B. for the said offence.

Given under [my] hand, at _____, in the said
State, this _____ day of _____, 19 ____.

J.S., J.P.

59.—*Warrant of commitment upon a conviction for a penalty in the first instance.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the said State.

Whereas A.B., of _____, in the State of Western Australia, _____ was on the _____ day of _____, 19____, convicted before the undersigned [one] of Her Majesty's Justices of the Peace in and for the State of Western Australia, [or etc.], for that [stating the offence as in the conviction], and it was adjudged that the said A.B. for [his] said offence should forfeit and pay the sum of _____ [etc., as in the conviction], and should pay to the said C.D. the sum of _____ costs, and it was further adjudged that if the said several sums should not be paid [forthwith] the said A.B. should be imprisoned in Her Majesty's prison [or the gaol] at _____, [and there kept to hard labour] for the term of _____, unless the said several sums, [and the costs and charges of conveying the said A.B. to prison] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A.B. has not paid the same or any part thereof: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the prison [or gaol] at _____ aforesaid, and deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] hereby command you, the said superintendent [or keeper] of the said prison [or gaol], to receive the said A.B. into your custody in the said prison [or gaol], there to imprison [him] [and keep [him] to hard labour] for the term of _____ unless the said several sums [and the costs and charges of conveying, [him] to the said prison [or gaol], amounting to the further sum of _____] are sooner paid.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

60.—*Warrant of commitment on an order in the first instance.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the said State.

Whereas on the _____ day of _____, 19____, upon the hearing of a complaint before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], that [etc., as in the order], [I] adjudged the said A.B. to pay to the said C.D. the sum of _____, on or before the _____ day of _____, 19____, and also to pay to the said C.D. the sum of _____ costs, and [I] also adjudged that if the said several

sums should not be paid on or before the said day of , 19 , the said A.B. should be imprisoned in Her Majesty's prison [or the gaol] at [and there be kept to hard labour] for the term of , unless the said several sums and the costs and charges of conveying A.B. to the said prison [or gaol] should be sooner paid: And whereas the said A.B. has not paid the said sums or any part thereof: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the said prison [or gaol] at aforesaid, and there deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] hereby command you, the said superintendent [or keeper] to receive the said A.B. into your custody in the said prison [or gaol], there to imprison [him] and keep [him] to hard labour for the term of unless the said several sums [and the costs and charges of conveying [him] to the said prison [or gaol], amounting to the further sum of], are sooner paid.

Given under [my] hand, at , in the said State, this day of , 19 .

J.S., J.P.

61.—*Warrant of commitment on an order where the disobeying of it is punishable by imprisonment.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at , in the said State.

Whereas on the day of , 19 , upon the hearing of a complaint before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.], that [etc., as in the order], [I] adjudged the said A.B. to [etc., as in the order], and ordered that if upon a copy of the minute of that order being served upon the said A.B. either personally or by leaving the same for [him] at [his] last known or usual place of abode [he] should refuse or neglect to obey the same, the said A.B. should be imprisoned in Her Majesty's prison [or the gaol] at in the said State [there to be kept to hard labour] for the term of , unless the said order should be obeyed: And whereas it is now proved to [me] that after making of the said order a copy of the minute thereof was duly served upon the said A.B., but [he] then refused [or neglected] to obey the same, and has not as yet obeyed the said order: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the prison [or gaol] at aforesaid, and deliver him to the superintendent [or keeper] thereof, together with this warrant and [I] hereby command you, the said superintendent or officer

in charge of the said prison, [or gaol] to receive the said A.B. into your custody in the said prison [or gaol], there to imprison [him] and keep [him] to hard labour for the term of .

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

62.—*Warrant of commitment on a conviction where the punishment is by imprisonment.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol] at , in the said State.

Whereas A.B., of [], was this day duly convicted before the undersigned, [one] of Her Majesty's Justices of the Peace for the said State [or etc.], that [stating the offence as in the conviction as in Forms 33, 36 and 37], and it was adjudged that the said A.B. should be imprisoned in Her Majesty's prison [or the gaol], at , [there to be kept to hard labour] for the term of : These are therefore to command you, the said police officers, to convey the said A.B. to the prison [or gaol], at , aforesaid, and deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and [I] command you, the said superintendent [or keeper] of the said prison [or gaol] to receive the said A.B. into your custody in the said prison [or gaol] there to imprison [him] and keep [him] to hard labour for the term of .

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

EXECUTION AND IMPRISONMENT.

63.—*Warrant of commitment for want of execution upon a conviction for a penalty or upon an order for payment of money.*

To all police officers in the State of Western Australia, and to the superintendent [or keeper] of Her Majesty's prison [or the gaol], at , in the said State.

Whereas [etc., as in either of the foregoing warrants of execution Forms 45 and 46, to the asterisk (*), and then thus]: And it was adjudged that in default of sufficient goods and chattels the said A.B. should be imprisoned in Her Majesty's prison [or the gaol] at , [there to be kept to hard labour] for the term of , unless the said several sums

and all costs and charges of the said execution and of taking and conveying the said A.B. to prison should be sooner paid: And whereas, on the day of in the year aforesaid, a warrant was issued to the principal officer of police at in the said State, commanding him to levy the said sums of and by execution against the goods and chattels of the said A.B.: And whereas it appears to me as well by the return of the said police officer to the said warrant of execution as otherwise that no sufficient goods and chattels could be found whereon to levy the sums abovementioned: These are therefore to command you, the said police officers, to apprehend the said A.B. and convey [him] to the prison [or gaol] at aforesaid, and deliver [him] to the superintendent [or keeper] thereof, together with this warrant, and I hereby command you, the said superintendent [or keeper] to receive the said A.B. into your custody in the said prison [or gaol], there to imprison [him] and keep [him] to hard labour for a term of unless the said several sums and all the costs and charges of the said execution [and of the commitment and conveying of the said A.B. to the said prison (or gaol)] amounting to the further sum of , are sooner paid to you.

Given under [my] hand, at , in the said
State, this day of , 19 .

J.S., J.P.

64.—*Warrant of commitment for want of execution for costs on dismissal of a complaint.*

To all police officers in the State of Western Australia and to the superintendent [or keeper] of Her Majesty's prison [or the gaol], at , in the said State.

Whereas [etc., as in Form 47 to the asterisk (*), and then proceed as in Form 63, "And it was adjudged, etc.," reciting order of dismissal according to its terms].

65.—*Warrant of commitment for want of execution for costs where offence is punishable by imprisonment, or upon an order where disobeying the order is punishable with imprisonment.*

To all police officers in the State of Western Australia and to the superintendent [or keeper] of Her Majesty's prison [or the gaol], at , in the said State.

Whereas [etc., as in Forms 48 and 49 respectively, to the asterisk (*), and then proceed as in Form 63, "And it was adjudged, etc.," reciting conviction or order according to its terms].

66.—*Warrant of commitment for want of execution for costs of appeal against conviction or order.*

To all police officers in the State of Western Australia and to the superintendent [or keeper] of Her Majesty's prison [or the gaol], at _____, in the said State.

Whereas [etc., as in form 50 to the asterisk (*), and then thus: "And whereas on the _____ day of _____ in the year aforesaid, a warrant was issued, etc.," and then proceed as in Form 63].

GAOLER'S RECEIPT.

67.—*Gaoler's receipt for the prisoner.*

I hereby certify that I have received from W.T., police officer, of _____, in the State of Western Australia, the body of A.B., in good health [or as the case may be], together with a warrant under the hand of J.S., Esquire, [one] of Her Majesty's Justices of the Peace for the said State [or, etc.].

P.K.,
Superintendent [or keeper] of the Prison.

DELIVERANCE.

68.—*Warrant of discharge on bail being given for a prisoner already committed.*

To the Superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the State of Western Australia.

Whereas A.B., late of _____, in the said State, has, before the undersigned [one] of Her Majesty's Justices of the Peace for the said State [or etc.], entered into his own recognisance and found sufficient sureties for [his] appearance at the next Criminal Sittings of the Supreme Court [or as the case may be], to be held at _____ in the said State, to answer a charge that [etc., as in the commitment] for which [he] was committed to your said prison [or gaol]. These are therefore to command you, in Her Majesty's name, that if the said A.B. is now in your custody in the said prison for the said cause and for no other you forthwith suffer [him] to go at large.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

J.S., J.P.

69.—*Warrant to discharge a person committed for want of sureties of the peace or for good behaviour.*

To the Superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____ in the State of Western Australia.

Whereas A.B., late of _____, in the said State, has, before the undersigned [one] of Her Majesty's Justices of the Peace for the said State [or etc.] entered into his own recognisance and found sufficient sureties to keep the peace [etc., as in the condition of the recognisance]. These are therefore to command you [etc., as in the preceding Warrant of Discharge].

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

J.S., J.P.

70.—*Order to discharge a witness upon prisoner not being committed for trial.*

To the Superintendent [or keeper] of Her Majesty's prison [or the gaol] at _____, in the State of Western Australia.

Whereas by a warrant, dated the _____ day of _____ 19 _____, under the hand of L.M. [one] of Her Majesty's Justices of the Peace for the said State [or etc.], reciting that upon the hearing of a charge against one A.B. for a certain offence therein mentioned, E.F. having been examined as a witness, refused to enter into a recognisance, to give evidence against the said A.B., the said L.M. committed the said E.F. to your custody, and required you to keep [him] until after the trial of the said A.B. for the offence aforesaid, unless in the meantime the said E.F. should enter into such recognisance as aforesaid: And whereas the said A.B. has not been committed for trial or held to bail for the said offence, but has been discharged: These are therefore to direct you to discharge the said E.F. out of your custody and suffer [him] to go at large as to the said commitment.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

J.S., J.P.

71.—*Case stated.*

In the Supreme Court,
Western Australia.
Between [A.B.] appellant
and
[C.D.] respondent.

Perth,
to wit.

1. This is a case stated by us, two of Her Majesty's Justices of the Peace for the said State (or for the magisterial district of), sitting at , being a court of petty sessions under the Justices Act 1902, on the application in writing of the appellant, who was dissatisfied with our decision as being erroneous in point of law as hereinafter stated.

2. At the said court a complaint was preferred by (hereinafter called the appellant [or respondent]) under the statute [*here quote statute*], against (hereinafter called the respondent [or appellant]) for that he [*etc., as in the complaint*], which complaint was heard by us on the day of , 19 , when we [*here set out the adjudication*].

3. And whereas the appellant being dissatisfied with our said decision as being erroneous in point of law [*or in excess of jurisdiction*] has, pursuant to Section 197 of the Justices Act 1902, duly applied to us, in writing, to state and sign a case, setting forth the facts and grounds of such decision for the opinion of the Supreme Court, and has duly entered into a recognisance as required in that behalf.

4. Now therefore we the said justices, in compliance with the said application, do hereby state and sign the following case:—

Case.

5. Upon the hearing of the said complaint the following facts were proved before us [*set out in regular sequence, and in numbered paragraphs such facts as were found by the court*].

6. On the part of the appellant it was contended that, etc.

7. On the part of the respondent it was contended that, etc.

8. Our attention was called to the several reported cases hereinafter set out [*set out cases referred to (if any) with references*].

Opinion.

9. [*Here set out the opinion formed by the justices either in convicting, making the order, or dismissing the complaint.*]

*Justices.**Question.*

10. The question on which the opinion of the Supreme Court is desired is whether we, the said justices, upon the above statement of facts in deciding that [*state point decided*], came to a correct decision in point of law, and if not, what should be done in the premises.

Dated the day of , 19 .

J.S., J.P.

H.M., J.P.

THE FIFTH SCHEDULE.

[*The fees contained in this Schedule were substituted by the Justices Act (Courts of Petty Sessions Fees) Regulations, published in the Gazette on 9/4/57, p. 1079 and subsequently amended*]

THE SIXTH SCHEDULE.

Abduction of girl under sixteen.
 Assault punishable under Section 316 of the Criminal Code.
 Attempt to commit a crime.
 Attempt to obtain money by false pretences.
 Concealing birth of child by secret burying or otherwise.
 Indecent assault.
 Offences against morality (Chapter XXII. of Criminal Code).
 Perjury and subornation of perjury.
 Riot.

[SEVENTH SCHEDULE.

Deleted by No. 22 of 1968, S. 39.]

EIGHTH SCHEDULE.

Section 155
(6).
Inserted by No.
26 of 1932,
s.6.

First Column—Enactment and Section (or provision)	Second Column—Subject matter
Perth Gas Company's Act 1886 (50 Vic., 33)—sec. 54	Recovery of gas rates ; rent; price of gas fittings ; expenses of disconnecting service.
Fremantle Gas Company's Act 1886 (50 Vic., 34)—sec. 54	Recovery of gas rates ; rent; price of gas fittings ; expenses of disconnecting service.
Police Act 1892 (55 Vic., 27)—sec. 73	Recovery of compensation payable to person who is ordered to deliver up goods which have been unlawfully pawned or pledged with him or taken in exchange by such person.
Masters and Servants Act 1892 (55 Vic., 28)— sec. 7 and 8..... sec. 9.....	Recovery of wages, remuneration, damages for breach of contract, or compensation for misusage, misconduct, ill-treatment, or injury to the person or property of either party to a contract of service. Enforcement of recognisance for fulfilment of contract of service.
¹ Electric Lighting Act 1892 (55 Vic., 33)—sec. 61	Recovery of amends, compensation, expenses of examination or inquiry, or loss, damage or injury.
Water Supply Act 1893 (57 Vic., 20)—sec. 4	Recovery of water charges.
² Dentists Act 1894 (58 Vic., 19)—sec. 18	Recovery of fees.
Medical Act 1894 (58 Vict., 36)—sec. 26	Recovery of fees.
³ Stock Diseases Act 1895 (59 Vic., 34)—sec. 21	Recovery from owner of expenses of complying with order of inspector.
Cemeteries Act 1897 (61 Vic., 23)—sec. 40	Recovery of fees.
⁴ Droving Act 1902 (2 Ed. VII., 30)—sec. 18	Recovery of travelling charges from owner of sheep or cattle.

¹ Now see Electricity Act 1945, section 45.

² Now see Dental Act 1939, section 63.

³ Repealed by Stock Diseases (Regulations) Act 1968.

⁴ Repealed by Stock (Brands and Movement) Act 1970.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
¹ Goldfields Water Supply Act 1902 (2 Ed. VII., 33)—	
sec. 42.....	Recovery of expenses of repairs and alterations to system.
sec. 77.....	Recovery of rates and water charges.
sec. 106.....	Recovery of expenses relating to breach of by-law.
² Dog Act, 1903 (Appendix 1928, Sessional Volume of Statutes)—sec. 32	Recovery of damages done by dog or in relation to the wrongful sale or disposal of any dog.
Water Boards Act 1904 (No. 4 of 1904)—	
sec. 61a.....	Recovery of the cost of installation of storage tanks by a water board.
sec. 68.....	Recovery of cost of repairs and alterations to defective fittings.
sec. 102.....	Recovery of rates.
Government Railways Act 1904 (23 of 1904)—sec. 52	Recovery of damage caused by neglect or wrong doing of railway servant.
³ Katanning Electric Lighting and Power (Private) Act 1904 (1903-1904, Sessional Volume, page 619)—	
sec. 35.....	Recovery of damages in respect of the careless or accidental breaking or throwing down, or damaging of any works, the property of an undertaker under the Act.
sec. 25.....	Recovery of moneys due for electricity supplied ; rent or price of meter and other fittings or apparatus, and cost of disconnecting service.
⁴ Inspection of Machinery Act 1904 (No. 53 of 1904)—sec. 77	Recovery of fees payable under the Act.

¹Now see Country Areas Water Supply Act 1947, section 42, 77 and 107.²Repealed by Dog Act 1976.³Repealed by Katanning Electricity Supply Undertaking Acquisition Act 1961.⁴Now see Machinery Safety Act 1974.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
¹ Navigation Act 1904 (No. 59 of 1904)—sec. 102	Recovery of expenses or sums of money payable under the Act (other than fines, penalties and forfeitures expressly designated as such therein).
² Municipalities Act 1906 (No. 32 of 1906)—	
sec. 268.....	Recovery of cost of removing encroachment
sec. 274.....	Recovery of expense of certain works to roof flats and gutters.
sec. 282.....	Recovery of cost of paving footway or path.
sec. 286.....	Recovery of cost of crossing.
sec. 287.....	Recovery of cost of crossing and expenses of keeping same in repair.
sec. 315.....	Recovery of cost of carrying out requisition relating to dangerous building.
sec. 317.....	Recovery of cost of carrying out requisition relating to ruinous or dilapidated or neglected building.
sec. 318.....	Recovery of fees in respect of dilapidated or neglected building.
sec. 372.....	Recovery of stallages, rents, tolls, or dues.
sec. 373.....	Recovery of moneys ordered to be paid in disputes as to stallages, rents, tolls or dues.
Licensed Surveyors Act 1909 (No. 25 of 1909)—sec. 19 (2)	Recovery of cost of correction of error in survey from licensed surveyor responsible.
Metropolitan Water Supply, Sewerage, and Drainage Act 1909 (No. 43 of 1909)—	
sec. 49 (3).....	Recovery of cost of repairs and renewals to defective fittings and alterations to system.
sec. 59 (3).....	Recovery of cost of installation of drainage system, ventilating shafts, pipes and tubes.

¹ Repealed by Western Australian Marine Act 1982.² Now see Local Government Act 1960, sections 332, 341, 354, 358, 360, 405, 409, 410, 499 and 500.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
sec. 64 (2c)	Recovery of cost of removal of unauthorized works.
sec. 65.....	Recovery of cost of inspection of private drain.
sec. 109	Recovery of rates.
¹ Goldfields Water Supply Act Amendment Act 1911 (No. 50 of 1911)—sec. 8	Recovery of cost of installation of storage tanks and appliances.
² Game Act 1912-1913 (Appendix 1913, Sessional Vol., p. 543)—sec. 23a	Recovery of royalty.
Rights in Water and Irrigation Act 1914 (No. 19 of 1914)—	
sec. 40 (3)	Recovery of irrigation rates.
sec. 42 (3)	Recovery of water charges.
Plant Diseases Act 1914-1926 (No. 23 of 1914)—	
secs. 8a (3); 10 (4); 12 (2); 14 (3)	Recovery of expenses incurred by inspector in eradicating and/or preventing spread of disease.
sec. 20	Recovery of expenses incurred under the Act from persons liable.
³ Government Electric Works Act 1915 (No. 29 of 1915)—sec. 13 (v)	Recovery of charges for electricity and rent of meters, fittings, and other apparatus recoverable summarily under the provisions of the by-laws.
⁴ Fire Brigades Act 1917 (No. 13 of 1917)—sec. 71	Recovery of charges by fire brigade in attending uninsured house or building.
⁵ Vermin Act 1918 (No. 2 of 1919)—sec. 62 (b) ii	Recovery of rates.
⁶ Roads Act 1919 (No. 38 of 1919)—sec. 99 (e)	Recovery of costs ordered to be paid by candidate in connection with proceedings relating to disputed returns.

¹ Now see Country Areas Water Supply Act 1947, section 42.² Now see Wildlife Conservation Act 1950, section 18.³ Now see State Energy Commission Act 1945, section 43(g).⁴ Now see Fire Brigades Act 1942, section 65.⁵ Repealed by Agriculture and Related Resources Protection Act 1976.⁶ Now see Local Government Act 1960, sections 137, 405, 409 and 410.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
<i>Second Schedule:</i> Regulation 21	Recovery of expenses incurred in relation to dangerous building.
Regulation 23	Recovery of expenses incurred in relation to ruinous, dilapidated, or neglected buildings.
Regulation 24	Recovery of prescribed fees payable to a board in connection with any dilapidated or neglected building.
Stamp Act 1922 (No. 10 of 1922)—sec. 39	Recovery of stamp duty and fines for late stamping.
¹ Inspection of Machinery Act 1922 (No. 11 of 1922)—sec. 77	Recovery of fees payable under the Act.
² Inspection of Scaffolding Act 1924 (No. 39 of 1924)— sec. 14 (9)	Recovery of cost of inquiry concerning accident.
sec. 23	Recovery of fees payable under the Act.
³ Industrial Arbitration Act 1912 (Appendix, 1925, Sessional Volume of Statutes)—sec. 149	Recovery of fines, fees, levies and dues payable to an industrial union or association.
⁴ Coal Mines Regulation Act 1902 (Appendix 1926, Sessional Volume of Statutes)— secs. 13 (6); 13 (10)	Recovery of cost of proceedings for removal of check weigher.
sec. 26 (1)	Recovery of cost of inquiry as to competency of manager, under manager or overman.
Legal Practitioners Act 1893 (Appendix 1927, Sessional Volume of Statutes)—sec. 52	Recovery of fees payable under the Act or rules.
Education Act 1928 (No. 33 of 1928)—sec. 12 (2)	Recovery of fees for instruction.
Pawnbrokers' Ordinance 1860 (Appendix 1928, Sessional Volume of Statutes)—sec. 23	Recovery of sum ordered to be paid to pawnbroker who is ordered to deliver up goods unlawfully deposited, pawned, pledged, sold or exchanged.

¹ Now see Machinery Safety Act 1974.² Repealed by Construction Safety Act 1972.³ Repealed by Industrial Arbitration Act 1979.⁴ Now see Coal Mines Regulation Act 1946, section s. 31 and 44.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
Health Act, 1911 (Appendix 1931, Sessional Volume of Statutes)—	
sec. 64 (c)	Recovery of contributions as between owners for expenses incurred in constructing drains.
sec. 68.....	Recovery of cost of inspecting and removing stagnant water from cellar.
sec. 69.....	Recovery by occupier from owner of premises of statutory expenses incurred in connection with paving, asphaltting, or draining cellar.
sec. 75 (2)	Recovery of sum fixed as cost of sewerage communication or connection to premises.
sec. 89.....	Recovery of sum fixed for cost of inspection and works done in connection with bacteriolytic plant.
sec. 98.....	Recovery of costs of cleansing courts, private ways, common yards, urinals, sanitary conveniences, and common passages.
sec. 108 (2)	Recovery of cost of right-of-way by local authority from owner of premises.
sec. 109.....	Recovery of expenses incurred by local authority under Division 6 of Part IV. of the Act.
sec. 146.....	Recovery of expense incurred by local authority in cleaning up nuisance.
sec. 149.....	Recovery of expense incurred by local authority in abating nuisance.
sec. 160.....	Recovery of cost of putting slaughter house in condition conforming to requirements of the Act.
sec. 165.....	Recovery of expenses incurred by local authority in the examination, detention, seizure, or destruction of any animal or food where the justices find that the animal or food or any portion thereof was diseased, unsound, or unwholesome, or unfit for human consumption.
sec. 212.....	Recovery by local authority of cost of sanitary work or of remedying sanitary defect.

EIGHTH SCHEDULE—*continued.*

Enactment and Section	Subject matter
sec. 216 (5).....	Recovery by local authority of cost of cleansing or disinfecting premises and articles.
sec. 220 (2).....	Recovery from infected person of the cost of disinfecting vehicle which the infected person has entered.
sec. 314.....	Recovery of moneys, costs, and expenses payable under the Act, regulations or by-laws (other than fines, penalties and forfeitures designated as such).

NINTH SCHEDULE.

Part A.

After the charge is [charges are] read and explained to the defendant the justices or one of them will say—

You are not required to plead to this charge [these charges] now but your rights will be explained to you.

S. 101A, Ninth
Schedule
added by No.
33 of 1976, s.
16.

Part B.

Where the charge of an indictable offence may be dealt with summarily at the election of the defendant, the justices or one of them will then say—

This is a charge on which you have the right to be dealt with by the Supreme Court [or a District Court]. You may, however, choose to be dealt with by a court of petty sessions.

[If the charge is one which may be dealt with summarily only if the accused pleads guilty, the justices or one of them shall add the words "if you plead guilty"].

If you wish for time to consider the matter or seek legal advice the case shall be adjourned. Do you want an adjournment?

Part C.

Where, immediately after being addressed in accordance with subparagraph (iii) or paragraph (a) of subsection (1) of section one hundred and one A of this Act or after an adjournment granted under that subparagraph the defendant elects not to

have the charge dealt with summarily, or where the charge cannot be dealt with summarily the justices or one of them will then say—

The hearing is going to be adjourned to enable the prosecution to make available to you copies of written statements of its witnesses. With these you will be given a copy or description of any documents or other exhibits intended to be produced by the prosecution at your trial. These papers will be served on you or your solicitor at least four days before the resumption of the hearing. When the hearing is resumed the prosecution may call witnesses to give oral evidence. If it does, that evidence will be recorded in depositions and you will be provided with copies, and given an opportunity to consider them. You will then be asked to elect whether or not you require a preliminary hearing.

A preliminary hearing is not a trial but an inquiry by a court of petty sessions to determine whether there is sufficient evidence to put you on trial for the offence [offences] before a Judge and a jury. At this inquiry the prosecution may call witnesses to give oral evidence; it may also if you have not objected or do not object offer as evidence the written statements served on you. These statements will be read aloud in court. If you have objected or do object, the statements will not be tendered as evidence but the persons who made them may be called as witnesses.

You yourself will not be required to say anything or give evidence at the preliminary hearing, though you may do so but whatever you say will be taken down in writing and may be given in evidence at your trial. You may also call witnesses to give oral evidence and, if the conditions mentioned in subsection (3) of section sixty-nine of the Justices Act 1902 are complied with, you may tender written statements in evidence. Such parts of those statements as are admissible in evidence shall be read aloud.

The evidence of each witness who gives oral evidence at the preliminary hearing will be taken down in writing and if you are committed you will before the trial be given copies of the depositions of each of these witnesses.

If you (and all the other defendants) elect *not* to have a preliminary hearing you will be required to plead to the charge [charges] and then, without any consideration of the evidence by the court of petty sessions, you will be committed to the Supreme Court [or District Court] for trial, or sentence, as the case requires, on the written statements and depositions of the witnesses (if any) who were called to give oral evidence. If there is no preliminary hearing the written statements will not be read in court, and the evidence (including the depositions if any) will not be publicized, before the trial.

The hearing will now be adjourned for days.

Remand/Bail.