

Western Australia

Acts Amendment (Court of Appeal) Act 2004

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No. 45 of 2004

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Acts Amendment (Court of Appeal) Act 2004

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Western Australia

Acts Amendment (Court of Appeal) Act 2004

No. 45 of 2004

An Act —

- **to amend the *Supreme Court Act 1935* to establish the Court of Appeal; and**
 - **to amend various Acts as a consequence of establishing the Court of Appeal,**
- and for related purposes.**

[Assented to 9 November 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Court of Appeal) Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for section 6(2), 14, 20, 28, 31 or 36 or for Schedule 1 Division 2 or for any amendment in a Table to or in any of those provisions.

Part 2 — *Supreme Court Act 1935* amended

3. The Act amended

The amendments in this Part are to the *Supreme Court Act 1935**.

[* *Reprinted as at 9 February 2001.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 381-2.]

4. Section 4 amended

Section 4(1) is amended as follows:

- (a) by deleting the definition of “Full Court”;
- (b) by inserting in the appropriate alphabetical positions the following definitions —

“

“Court of Appeal” means the division of the Supreme Court referred to in section 7(1)(b).

“Court of Appeal Registrar” means the Court of Appeal Registrar appointed as described in section 155(1) and includes a duly appointed acting Court of Appeal Registrar.

“judge of appeal” means a judge of the Supreme Court who also holds a commission as a judge of appeal.

“President” means the President of the Court of Appeal.

”.

5. Sections 6 and 7 replaced by sections 6, 7 and 7A, and transitional provision

- (1) Sections 6 and 7 are repealed and the following sections are inserted instead —

“

6. Supreme Court of Western Australia

- (1) The previously established court called the Supreme Court of Western Australia continues in existence for the State of Western Australia.
- (2) The Court is a superior court of record.
- (3) The Court consists of —
 - (a) any judge holding office under an appointment made under section 7A(1);
 - (b) any acting judge holding office under an appointment made under section 11;
 - (c) any auxiliary judge holding office under an appointment made under section 11AA;
 - (d) any commissioner holding office under an appointment made under section 49;
 - (e) any master holding office under an appointment made under section 11A; and
 - (f) any acting master holding office under an appointment made or deemed to have been made under section 11D.

7. Divisions of the Court

- (1) The exercise of the Court’s jurisdiction is divided between —
 - (a) the General Division; and
 - (b) the Court of Appeal.
- (2) The General Division consists of —
 - (a) the Chief Justice;
 - (b) each other judge who is not either the President or a judge of appeal;

- (c) any judge of appeal who under section 10C is approved to sit in the General Division;
 - (d) any acting judge holding office under an appointment made under section 11;
 - (e) any auxiliary judge holding office under an appointment made under section 11AA;
 - (f) any commissioner holding office under an appointment made under section 49;
 - (g) any master holding office under an appointment made under section 11A; and
 - (h) any acting master holding office under an appointment made or deemed to have been made under section 11D.
- (3) The Court of Appeal consists of —
- (a) the Chief Justice;
 - (b) the President;
 - (c) each other judge of appeal; and
 - (d) any other judge, and any acting judge or auxiliary judge, who under section 10B(1) or (2) is authorised to act as a judge of appeal.
- (4) The General Division exercises all of the jurisdiction of the Supreme Court other than the jurisdiction referred to in section 58(1).
- (5) The Chief Justice is the principal judicial officer of the Supreme Court including the Court of Appeal.
- (6) Subject to the Chief Justice's directions, the President is responsible for the administration of the Court of Appeal including its sitting dates.

7A. Appointment of judges, judges of appeal, Chief Justice and President

- (1) The Governor may appoint a duly qualified person to be a judge of the Supreme Court.
- (2) The Governor may appoint as many judges of the Supreme Court as are needed to deal with the workload of the Supreme Court.
- (3) The Governor may appoint a judge of the Supreme Court to be also a judge of appeal.
- (4) The Governor may appoint as many judges of appeal as are needed to deal with the workload of the Court of Appeal.
- (5) The Governor may appoint one of the judges of the Supreme Court to be also the Chief Justice of Western Australia.
- (6) The Governor may appoint one of the judges of appeal to be also the President of the Court of Appeal.
- (7) A person cannot hold both the office of Chief Justice and the office of President.
- (8) A person who does not hold the office of judge cannot be appointed to be, and cannot hold the office of, Chief Justice, President or judge of appeal.
- (9) A person may be appointed as the Chief Justice at the time of being appointed as a judge or afterwards.
- (10) A person may be appointed as the President or as a judge of appeal at the time of being appointed as a judge or afterwards.
- (11) The appointment of a judge, a judge of appeal, the Chief Justice, or the President, is to be by a commission under the Public Seal of the State issued by the Governor.

”.

- (2) A person who holds any of the offices of which the Court consists immediately before the coming into operation of subsection (1) continues to hold the corresponding office in the General Division when subsection (1) comes into operation.

6. Section 9 amended

- (1) After section 9(1) the following subsections are inserted —

“

- (1a) All judges of appeal, the Chief Justice and the President shall hold their offices while they hold office as a judge, subject to section 9A(2), (3) and (4).
- (1b) A person cannot be removed from the office of judge of appeal or Chief Justice or President except by removing the person from the office of judge.

”.

- (2) Section 9(2) is amended by inserting after “Court” —

“ or a judge of appeal ”.

7. Sections 9A and 9B inserted

After section 9 the following sections are inserted —

“

9A. Resignation of judges

- (1) This section is in addition to and does not affect the operation of the *Judges' Retirement Act 1937*.
- (2) With the Governor's approval a person may resign from the office of Chief Justice, President, or judge of appeal, without resigning from the office of judge.
- (3) With the Governor's approval a person may resign from the office of President without resigning from the office of judge of appeal.

- (4) With the Governor's approval a person may resign from the office of Chief Justice without resigning from the office of judge of appeal.

9B. Seniority

- (1) Judges in the General Division have seniority according to the following order —
- (a) the Chief Justice;
 - (b) the other judges, excluding the judges of appeal, according to the dates of their commissions of appointment as judges.
- (2) Judges of appeal have seniority according to the following order —
- (a) the Chief Justice;
 - (b) the President;
 - (c) the other judges of appeal according to the dates of their commissions of appointment as judges of appeal.
- (3) Masters have seniority according to the dates of their commissions of appointment as masters.
- (4) If 2 or more persons receive commissions dated the same day, their seniority as between them is to be determined —
- (a) according to the dates on which they begin in office; or
 - (b) if they are to begin in office on the same day, by the Governor when appointing them.
- (5) For the purposes of any other written law or any matter connected with the administration of the State, the seniority of judges is to be determined under subsections (1) and (4).

”.

8. Section 10 amended

- (1) Section 10(1) is amended by inserting after “senior Judge” at the end of the subsection —
“ in the General Division ”.
- (2) Section 10(2) is amended by inserting after “devolve upon the Judge” —
“ in the General Division ”.

9. Section 10A inserted

After section 10 the following section is inserted —

“

10A. Acting President

- (1) During any vacancy in the office of President, or when and so often as the President is absent on leave or in consequence of sickness, or for any reason is temporarily unable to perform the duties of his office, all the duties and powers of the President shall during such vacancy, absence, or inability devolve upon the senior judge of appeal other than the Chief Justice.
- (2) In the case of the absence or inability of the judge of appeal upon whom the powers and duties of the President devolve under subsection (1), such powers and duties shall during such absence or inability devolve upon the judge of appeal who is next in seniority.
- (3) Where the office of President is vacant or the President is, or is expected to be, absent or for any reason unable to perform the duties of his office, the Governor by commission under the Public Seal of the State may appoint a judge of appeal to act in the office of President for such period as the Governor thinks fit and specifies in the commission.

”.

10. Sections 10B and 10C inserted

Before section 11 the following sections are inserted —

“

10B. Acting judges of appeal

- (1) If the Chief Justice and the President agree that the Court of Appeal needs an acting judge of appeal, the Chief Justice in writing may authorise a judge, acting judge, or auxiliary judge, who is willing to do so, to act as a judge of appeal for a period specified in the authorisation of not more than 6 months.
- (2) If —
 - (a) the Chief Justice and the President agree that a particular judge, acting judge or auxiliary judge should act as a judge of appeal in a particular proceeding before the Court of Appeal; and
 - (b) the particular judge, acting judge or auxiliary judge is willing to do so,the Chief Justice in writing may authorise the judge, acting judge, or auxiliary judge to do so.
- (3) A judge, acting judge, or auxiliary judge who is authorised to act as a judge of appeal under this section has the same powers and may exercise the same jurisdiction as a judge of appeal.
- (4) An acting judge of appeal may complete any proceeding that is pending before him as an acting judge of appeal immediately before he ceases to be an acting judge of appeal.

10C. Judge of appeal may sit in General Division if approved

A judge of appeal may sit in the General Division with the prior approval of the Chief Justice given after consulting the President.

”.

11. Section 11A amended

- (1) Section 11A(2)(b) is amended by inserting after “Principal Registrar” —
“ or the Court of Appeal Registrar ”.
- (2) Section 11A(5) is repealed.

12. Section 11B amended

Section 11B(4) and (5) are repealed.

13. Section 11C repealed

Section 11C is repealed.

14. Section 13 amended

Section 13 is amended by deleting “be a Judge, an acting Judge, an auxiliary Judge, a Master, an acting Master, or a commissioner, of the Court,” and inserting instead —

“
an office referred to in section 6(3) or to the office of judge of appeal, Chief Justice or President,

”.

15. Section 20 replaced

Section 20 is repealed and the following section is inserted instead —

“

20. Appellate jurisdiction

- (1) The Supreme Court has jurisdiction to hear and determine any application, or any appeal, whether by case stated or otherwise, that the Court or a Judge is empowered by a written law to hear and determine.

s. 16

- (2) Any such application or appeal must be heard and determined subject to the written law concerned.

”.

16. Section 38 amended

Section 38 is amended as follows:

- (a) by inserting before “The Supreme” the subsection designation “ (1) ”;
- (b) by inserting the following subsection —

“

- (2) Two or more sittings of the Court may be conducted at the same time.

”.

17. Section 41 amended

Section 41(3) is amended by inserting after “chambers” —

“

or, if this or another Act or the Rules of Court confer any of that jurisdiction on a Master, by a single Master, whether sitting in court or in chambers

”.

18. Heading amended

The heading immediately before section 57 is amended by deleting “Full Court” and inserting instead —

“ *Court of Appeal* ”.

19. Section 57 replaced

Section 57 is repealed and the following section is inserted instead —

“

57. Court of Appeal, constitution of

- (1) The Court of Appeal shall be constituted by 2 or more judges of appeal.
- (2) When hearing and determining an application or appeal under Chapter LXIX of *The Criminal Code* the Court of Appeal shall be constituted —
 - (a) if the application or appeal relates solely to a sentence imposed for an offence, by 2 or more of the judges of appeal;
 - (b) otherwise, by an uneven number of the judges of appeal being not less than 3.
- (3) If a judge of appeal's judgment or decision is the subject of an appeal to the Court of Appeal, the court shall not be constituted so as to include the judge.
- (4) When the Court of Appeal is constituted by 3 or more judges of appeal to hear and determine —
 - (a) an appeal that is not under Chapter LXIX of *The Criminal Code*; or
 - (b) an appeal that is under Chapter LXIX of *The Criminal Code* and relates solely to a sentence imposed for an offence,

and one or more of the judges for any reason becomes unable to continue as a member of the court for the purpose of hearing and determining the appeal, the remaining judges may continue to hear and determine the appeal if not less than 2 judges remain and all parties to the appeal consent.

- (5) When the Court of Appeal is sitting, the presiding judge of appeal is —
 - (a) if the court is constituted so as to include the Chief Justice, the Chief Justice;

s. 20

- (b) if the court is constituted so as to not include the Chief Justice but to include the President, the President;
 - (c) if the court is constituted so as to not include either the Chief Justice or the President, the senior judge of appeal.
- (6) For the purposes of delivering judgment in an appeal —
- (a) despite subsections (1) to (4), the Court of Appeal may be constituted by any one or more judges of appeal, none of whom needs to have been a member of the court when it heard the appeal;
 - (b) the written judgment of any of the judges of appeal before whom the appeal was heard may be made public by any judge of appeal; and
 - (c) a judgment delivered in accordance with this subsection has the same effect as if each member of the Court of Appeal that heard the appeal had been present in court and delivered his judgment in person.

”.

20. Section 58 amended

Section 58(1) is amended as follows:

- (a) by deleting “Full Court” in each place it occurs and in each place inserting instead —
“ Court of Appeal ”;
- (b) by deleting paragraph (g) and inserting —
“
 - (f) applications and appeals under Chapter LXIX of *The Criminal Code* to the Court of Appeal;

”;

(c) by deleting paragraph (h) and inserting —

“

(g) appeals under Part VIII of the *Criminal Procedure (Summary) Act 1902* that are ordered to be dealt with by the Court of Appeal;

(h) applications and appeals under Part VIII of the *Criminal Procedure (Summary) Act 1902* from a judge to the Court of Appeal;

”;

(d) by deleting paragraph (i) and inserting instead —

“

(i) appeals to the Court of Appeal under the *Magistrates Court (Civil Proceedings) Act 2003*;

”;

(e) by deleting paragraph (j).

21. Section 59 amended

Section 59(6) is amended by deleting “relating to appeals from a Judge to a Full Court”.

22. Section 60 amended

Section 60(1)(f)(iv) and (v), and “and” after paragraph (v), are deleted and the following is inserted instead —

“ and ”.

23. Section 61 replaced

Section 61 is repealed and the following section is inserted instead —

“

61. Powers of single judge of appeal and master

- (1) In relation to an appeal or application before the Court of Appeal, a single judge of appeal may exercise any jurisdiction or powers of the Court of Appeal that are conferred on a single judge of appeal by Rules of Court.
- (2) In relation to an appeal or application before the Court of Appeal, a master may exercise any jurisdiction or powers of the Court of Appeal that are conferred on a master by Rules of Court.
- (3) A person who is dissatisfied with a decision or order made by a single judge of appeal or a master may apply to the Court of Appeal to set aside or vary the decision or order.
- (4) Any decision or order made by a single judge of appeal or a master may be set aside or varied by the Court of Appeal.

”.

24. Section 62 replaced

Section 62 is repealed and the following section is inserted instead —

“

62. Divided decisions, effect of

- (1) If the judges of appeal constituting the Court of Appeal are divided on the decision to be given on a question, the question shall be decided according to the decision of the majority, if there is a majority.
- (2) If the Court of Appeal is constituted by more than 3 judges of appeal and they are equally divided on the decision to be given on a question, the question shall be

decided according to the decision of the presiding judge of appeal.

- (3) If the Court of Appeal is constituted by 2 judges of appeal and they are divided on the decision to be given on a question —
- (a) any party to the appeal may, within one month after the date the judgments are delivered, serve the Court of Appeal Registrar and each other party with a written notice requiring the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal;
 - (b) if the appeal is against a judgment or order of a court other than the Supreme Court, either or both of the 2 judges of appeal may, of their own motion, order the appeal to be reheard by the Court of Appeal constituted by 3 or more judges of appeal.
- (4) If a party gives notice under subsection (3)(a) or an order is made under subsection (3)(b) the appeal shall be reheard by the Court of Appeal constituted by 3 or more judges of appeal.
- (5) If no party gives notice under subsection (3)(a) or if no order is made under subsection (3)(b), the appeal shall not be reheard and the judgment or order against which the appeal was taken shall remain unaltered.

”.

25. Section 155 amended

- (1) Section 155(1) is amended by inserting after “Registrar” —
- “ , a Court of Appeal Registrar, ”.

- (2) Section 155(3) is repealed and the following subsection is inserted instead —

“

- (3) In relation to appeals, applications, causes, matters or proceedings within the jurisdiction of the Court of Appeal —
- (a) the Court of Appeal Registrar shall have all the duties, including the taxation of costs, that are conferred on Registrars under this or any other Act or on the Court of Appeal Registrar by Rules of Court; and
 - (b) a reference to the Principal Registrar or a Registrar is to be taken to be a reference to the Court of Appeal Registrar, unless the context requires otherwise.

”.

26. Section 167 amended

Section 167(1) is amended as follows:

- (a) by inserting after paragraph (b) the following paragraphs —

“

- (ba) For conferring on a single judge of appeal, either generally or in particular cases and under such circumstances and on such conditions as are prescribed, such of the jurisdiction and powers of the Court of Appeal as the rules specify.
- (bb) For conferring on a master or the Court of Appeal Registrar, either generally or in particular cases and under such circumstances and on such conditions as are prescribed, such of the jurisdiction and powers of the Court of Appeal as the rules specify.

- ”;
- (b) by inserting after paragraph (i) the following paragraph —
- “
- (ia) For allowing the Court of Appeal to review any decision made by a single judge of appeal or the Court of Appeal Registrar.
- ”;
- (c) in paragraph (j) by deleting “from inferior courts”.

27. References to “Full Court” changed to “Court of Appeal”

The Act is amended in each provision listed in the Table to this section by deleting “Full Court” wherever it appears and in each place inserting instead —

“ Court of Appeal ”.

Table

s. 41(1)	s. 59(1)	s. 60(1)
s. 43(1)	s. 59(4)	s. 60(3)
s. 43(2)	s. 59(5)	
s. 58(2)	s. 59(6)	

Part 3 — Various other Acts amended

28. Bail Act 1982 amended

- (1) The amendments in this section are to the *Bail Act 1982**.

[* *Reprinted as at 27 August 1999.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 28 and Acts Nos. 50 of 2003 and 4 of 2004.]

- (2) Section 52(2)(a) is deleted and the following paragraphs are inserted instead —

“

- (a) by a judge of the Supreme Court in any case where the defendant was bound to appear before the General Division of the Supreme Court;
- (ab) by a judge of appeal in any case where the defendant was bound to appear before the Court of Appeal;

”.

- (3) Section 53 is repealed and the following section is inserted instead —

“

53. Appeals against decisions made under s. 52

- (1) A person who is dissatisfied with a decision (as defined in section 4 of the *Criminal Procedure (Summary) Act 1902*) made under section 52 may, with the leave of the Court of Appeal, appeal against it.
- (2) For the purposes of subsection (1), Part VIII of the *Criminal Procedure (Summary) Act 1902*, with any necessary changes, applies as if —
 - (a) the decision referred to in subsection (1) were a decision of a court of summary jurisdiction;

- (b) a reference in that Part to a court of summary jurisdiction were a reference to the court that made the decision referred to in subsection (1); and
 - (c) a reference in that Part to commencing an appeal were a reference to applying for leave to appeal.
- (3) Despite section 195A of the *Criminal Procedure (Summary) Act 1902*, the appeal is to be dealt with by the Court of Appeal.

”.

- (4) The Act is amended as set out in the Table to this section.

Table

s. 3(1)	<p>In the definition of “appropriate judicial officer”, delete paragraph (b) and insert instead —</p> <p>“</p> <p style="padding-left: 40px;">(b) if the court is the Court of Appeal, means a judge of appeal;</p> <p>”.</p> <p>In the definition of “court”, delete paragraphs (f) and (g) and insert instead —</p> <p>“</p> <p style="padding-left: 40px;">(f) the Court of Appeal;</p> <p>”.</p>
s. 7A(1)	<p>In paragraph (a), delete “Full Court” in the first 3 places where it occurs and in each place insert instead —</p> <p>“ Court of Appeal ”.</p> <p>In paragraph (a), delete “the Full Court” in the fourth place where it occurs and insert instead —</p> <p>“ a judge of appeal ”.</p>
s. 15(1)(b)	<p>Delete “Full Court or the Court of Criminal Appeal” and insert instead —</p> <p>“ Court of Appeal ”.</p>

Acts Amendment (Court of Appeal) Act 2004

Part 3

Various other Acts amended

s. 28

s. 52(1)	Delete “Court of Criminal Appeal, the Full Court of the Supreme Court, the Supreme Court constituted by a single Judge,” and insert instead — “ Supreme Court ”.
s. 52(3)(a)	After “subsection (2)(a)” insert — “ or (ab) ”.
Sch. 1 Pt. A cl. 4(a)	Delete the content of the Second Column and insert instead — “ If the appeal is being determined by a single judge, a single judge; If the appeal is being determined by the Court of Appeal, the Court of Appeal or a single judge of appeal; ”.
Sch. 1 Pt. A cl. 4(b)	In the First Column, before “appeal” insert — “ application for leave to appeal or an ”. Delete the content of the Second Column and insert instead — “ The Court of Appeal or a single judge of appeal; ”.
Sch. 1 Pt. A cl. 4(d)	Delete the content of the Second Column and insert instead — “ The Court of Appeal or a single judge of appeal; ”.

Sch. 1 Pt. A cl. 4(e)(i)	Delete the content of the Second Column and insert instead — “ <div style="text-align: center;"> If the appeal was determined by a single judge, a single judge; If the appeal was determined by the Court of Appeal, the Court of Appeal or a single judge of appeal; ”.</div>
Sch. 1 Pt. A cl. 4(e)(ii)	Delete the content of the Second Column and insert instead — “ <div style="text-align: center;"> The Court of Appeal or a single judge of appeal; ”.</div>
Sch. 1 Pt. A cl. 4(f)	Delete the content of the Second Column and insert instead — “ <div style="text-align: center;"> The Court of Appeal or a single judge of appeal; ”.</div>

29. Children’s Court of Western Australia Act 1988 amended

- (1) The amendments in this section are to the *Children’s Court of Western Australia Act 1988**.

[* *Reprinted as at 25 August 2000.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 54 and Act No. 4 of 2004.]

- (2) The Act is amended as set out in the Table to this section.

Table

s. 3	Delete the definition of “Court of Criminal Appeal”. Delete the definition of “Full Court”.
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s. 30

s. 40(8) s. 43(1) s. 43(3) s. 43(4)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 43(2)	Delete “Full Court” in the first place it occurs and insert instead — “ Court of Appeal ”. Delete “and for the purposes of such appeals, the Full Court has the powers of the Court of Criminal Appeal”.

30. The Criminal Code amended

- (1) The amendments in this section are to *The Criminal Code**.

[* *Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).*
For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 95 and Acts Nos. 50 of 2003 and 4 of 2004.]

- (2) Section 687(1) is amended as follows:
- (a) by deleting “Full Court (as defined by section 57 of the *Supreme Court Act 1935*)” and inserting instead —
“ Court of Appeal ”;
 - (b) by deleting “, and the expression Court of Criminal Appeal in this Code shall mean the said Full Court”.
- (3) Section 687(2), (4), (5), (6) and (7) are repealed.
- (4) Section 702 is repealed.
- (5) Section 703 is amended by inserting after the last paragraph the following paragraph —

“

The expression “**Registrar**” means the Court of Appeal Registrar appointed under the *Supreme Court Act 1935*.

”.

- (6) *The Criminal Code* is amended in each provision listed in the Table to this section by deleting “Court of Criminal Appeal” wherever it appears and in each place inserting instead —

“ Court of Appeal ”.

Table

s. 655	s. 691(2)	s. 694(2)
s. 687(3)	s. 693(1)	s. 695(1)
s. 688(1)	s. 693(1a)	s. 696
s. 688(1a)	s. 693(2)	s. 697
s. 688(2)	s. 693(3)	s. 699(1)
s. 689(1)	s. 693A(1)	s. 703
s. 689(2)	s. 693A(2)	s. 747
s. 689(3)	s. 693A(3)	
s. 689(4)	s. 693A(4)	

31. *Criminal Procedure (Summary) Act 1902* amended

- (1) The amendments in this section are to the *Criminal Procedure (Summary) Act 1902**.

[* *Reprint 14 as at 16 May 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 203 and Acts Nos. 50 of 2003 and 4 of 2004.]

- (2) Section 183 is amended by deleting the definition of “Full Court”.
- (3) Section 195A(1) is amended by inserting after “Judge” —
- “ sitting in the General Division of the Supreme Court ”.

s. 32

- (4) Section 206A(3) is repealed and the following subsections are inserted instead —

“

- (3) An application for leave to appeal must be made to the Court of Appeal constituted by a single judge of appeal.
- (3a) If a single judge of appeal refuses an application for leave to appeal, the applicant may apply to the Court of Appeal to set aside the refusal and determine the application afresh.

”.

- (5) The Act is amended in each provision listed in the Table to this section by deleting “Full Court” wherever it appears and in each place inserting instead —

“ Court of Appeal ”.

Table

s. 195A(2)	s. 199(1)(e)	s. 206A(1)
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32. District Court of Western Australia Act 1969 amended

- (1) The amendments in this section are to the *District Court of Western Australia Act 1969**.

[* Reprinted as at 19 January 2001.

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 108.]

- (2) Section 79(1a) is repealed and the following subsection is inserted instead —

“

- (1a) Notwithstanding anything in this section, an appeal to the Court of Appeal in respect of a judgment, order or determination in proceedings in the Court under the *Commercial Arbitration Act 1985* may be made only by leave of the Court of Appeal.

- ”.
- (3) Section 79(2) is repealed and the following subsection is inserted instead —

“

- (2) An appeal under this section shall be made in the same way as an appeal from a judgment or order of the Supreme Court or a Judge thereof, may be made to the Court of Appeal, and in all respects the practice and procedure of the Court of Appeal in the appeal shall be the same as though the appeal were an appeal to the Court of Appeal from a judgment or order of the Supreme Court or a Judge thereof.

”.

- (4) The Act is amended as set out in the Table to this section.

Table

s. 49	Delete “Full Court sitting as a Court of criminal appeal” and insert instead — “ Court of Appeal ”.
s. 79(1)(a)	Delete “Full Court constituted under the <i>Supreme Court Act 1935</i> ” and insert instead — “ Court of Appeal ”.
s. 79(1)(b)	Delete “Supreme Court or a Judge thereof, appeal to such Full Court” and insert instead — “ Court of Appeal, appeal to the Court of Appeal ”.
s. 79(3) s. 79(4)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.

33. Interpretation Act 1984 amended

- (1) The amendment in this section is to the *Interpretation Act 1984**.

[* *Reprint 4 as at 6 February 2004.*

For subsequent amendments see Act No. 4 of 2004.]

s. 34

- (2) Section 5 is amended by inserting in the appropriate alphabetical position the following definition —

“

“**Court of Appeal**” means the Court of Appeal established under the *Supreme Court Act 1935*;

”.

34. Judges’ Retirement Act 1937 amended

- (1) The amendment in this section is to the *Judges’ Retirement Act 1937**.

[* *Reprint 2 as at 5 December 2003.*]

- (2) Section 2 is amended in the definition of “Judge” as follows:

- (a) by inserting after paragraph (a) the following paragraph —

“

(aa) President of the Court of Appeal; or

”;

- (b) by inserting after paragraph (c) the following paragraph —

“

(ca) Master or acting Master of the Supreme Court of Western Australia; or

”.

- (3) Section 3 is amended as follows:

- (a) by deleting “, save for the purpose of completing the trial of any action as next hereinafter provided, and such office may, notwithstanding the pendency of any such trial, be filled by the appointment of any qualified person”;

- (b) in the first proviso by deleting “the trial of any action which he had entered upon and had not completed before” and inserting instead —

“

the hearing and determination of any action, cause, matter, trial or proceeding that was pending before him immediately before

”.

- (4) After section 3 the following section is inserted —

“

4. Resignation of judges

- (1) A Judge may at any time resign from office by giving his written and signed resignation to the Governor.
- (2) If the Governor agrees to the resignation, it takes effect on the day on which the Governor agrees to it or on any later day that it may specify.
- (3) A Judge who resigns from office may complete the hearing and determination of any action, cause, matter, trial or proceeding that was pending before him immediately before his resignation took effect and for that purpose the Judge’s appointment is to be taken to be extended until he has done so.

”.

35. Judges’ Salaries and Pensions Act 1950 amended

- (1) The amendments in this section are to the *Judges’ Salaries and Pensions Act 1950**.

[* *Reprint 5 as at 19 September 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 197.]

- (2) Section 2 is amended by inserting after the definition of “retirement” the following definition —

“

“**Senior Puisne Judge**” means the senior Judge of the Supreme Court who is neither the Chief Justice of Western Australia, the President of the Court of Appeal nor a judge of appeal;

”.

- (3) Section 3 is amended as follows:

- (a) by inserting after “Australia” in the first place where it occurs —

“ , the President of the Court of Appeal ”;

- (b) by deleting “section 7” and inserting instead —

“ section 7A ”.

- (4) Section 5(1) is repealed and the following subsection is inserted instead —

“

- (1) The rate of the annual salary payable to a Judge while his commission remains in force shall be determined from time to time under section 7 of the *Salaries and Allowances Act 1975* but —

- (a) the rate of the annual salary payable to the President of the Court of Appeal shall not exceed that payable to the Chief Justice of Western Australia;

- (b) the rate of the annual salary payable to the senior judge of appeal, other than the Chief Justice of Western Australia and the President of the Court of Appeal, shall not exceed that payable to the Senior Puisne Judge.

”.

- (5) Section 5(1a) is amended by deleting “section 7(1)(a)” and inserting instead —

“ section 7A(5) ”.

- (6) After section 5(1a) the following subsection is inserted —

“

- (1aa) A judge of appeal who is appointed to act in the office of President under section 10A(3) of the *Supreme Court Act 1935* shall be entitled, for so long as his commission remains in force, to be remunerated and to receive other allowances and reimbursements as if he had been appointed substantively to the office of President under section 7A(6) of the *Supreme Court Act 1935*.

”.

- (7) After section 5(3) the following subsections are inserted —

“

- (4) A person who holds more than one office under the *Supreme Court Act 1935* is entitled to the rate of annual salary of only one of those offices.
- (5) If a Judge is appointed to be also a judge of appeal and as a result ceases to be the Senior Puisne Judge, he is entitled to retain the rate of annual salary of the Senior Puisne Judge if that rate is higher than his rate of annual salary as a judge of appeal.

”.

36. Justices Act 1902 amended

- (1) The amendments in this section are to the *Justices Act 1902**.

[* *Reprint 14 as at 16 May 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 203 and Acts Nos. 50 of 2003 and 4 of 2004.]

s. 36

- (2) Section 183 is amended by deleting the definition of “Full Court”.
- (3) Section 187(3)(a) is amended by inserting after “Judge” —
“ sitting in the General Division of the Supreme Court ”.
- (4) Section 206A(3) is repealed and the following subsections are inserted instead —
“
(3) An application for leave to appeal must be made to the Court of Appeal constituted by a single judge of appeal.
(3a) If a single judge of appeal refuses an application for leave to appeal, the applicant may apply to the Court of Appeal to set aside the refusal and determine the application afresh.
”.
- (5) The Act is amended in each provision listed in the Table to this section by deleting “Full Court” wherever it appears and in each place inserting instead —
“ Court of Appeal ”.

Table

s. 183 “Court”	s. 189(2)	Heading before s. 206A
s. 187(3)(b)	s. 190(2)	s. 206A(1)
s. 189(1)	s. 199(1)(e)	

Part 4 — Minor amendments to various Acts

37. Various Acts amended

Each Act listed in Schedule 1 is amended as set out in that Schedule.

Part 5 — Transitional provisions

38. Appeals pending before Full Court or Court of Criminal Appeal

- (1) If on the commencement of this Act an appeal or an application for leave to appeal is pending before —
- (a) the Full Court of the Supreme Court; or
 - (b) the Court of Criminal Appeal,

the appeal or application is to be taken to have been commenced or made and to be pending before the Court of Appeal.

- (2) Despite subsection (1), if on the commencement of this Act an appeal or an application for leave to appeal is part heard by —
- (a) the Full Court of the Supreme Court; or
 - (b) the Court of Criminal Appeal,

then the hearing and determination of the appeal or application may be completed by the Full Court or the Court of Criminal Appeal, as the case requires, as if this Act had not commenced.

39. References to “Full Court” or “Court of Criminal Appeal” to be read as references to “Court of Appeal”

- (1) A reference in a written law or book, document or writing to the Full Court of the Supreme Court (whether those or some other words are used) is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Court of Appeal.
- (2) A reference in a written law or book, document or writing to the Court of Criminal Appeal is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Court of Appeal.

Schedule 1 — Minor amendments to various Acts

[s. 37]

Division 1 — Amendments not affected by impending legislation

1. Adoption Act 1994

Heading to Part 5 Division 4	Delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 118(1) s. 119	In each provision, delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”

2. Constitution Acts Amendment Act 1899

s. 41(1) s. 41(2) s. 41(3)	In each provision, delete “Supreme Court” and insert instead — “ Court of Appeal ”.
s. 41(4)	Repeal the subsection.

3. Corporations (Western Australia) Act 1990

s. 3(1)	Delete the definition of “Full Court”.
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4. Criminal Injuries Compensation Act 2003

s. 56(2)(e) s. 58	In each provision, delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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5. Family Court Act 1997

s. 211(3) s. 211(5)	In each provision, delete “Full Court of the Supreme Court” in each place it occurs and in each place insert instead — “ Court of Appeal ”.
s. 211(3)	Delete “Full Court” in the third place it occurs and insert instead — “ Court of Appeal ”.

Acts Amendment (Court of Appeal) Act 2004

Schedule 1 Minor amendments to various Acts

6. Federal Courts (State Jurisdiction) Act 1999

s. 6(c)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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7. Guardianship and Administration Act 1990

s. 18(1)	In the definition of “Court” delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
s. 19(b) s. 37A	In each provision, delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
Heading to Part 3 Division 4	Delete “Full Court” and insert instead — “ Court of Appeal ”.

8. Income Tax Assessment Act 1937

s. 173(5)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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9. Jurisdiction of Courts (Cross-vesting) Act 1987

s. 6(9) s. 7(1) s. 7(3) s. 7(7)(a) s. 7(8)	In each provision, delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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10. Katanning Electricity Supply Undertaking Acquisition Act 1961

s. 7(2)	Delete “Full Court of the Supreme Court of Western Australia” and insert instead — “ Court of Appeal ”.
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11. Legal Aid Commission Act 1976

s. 40(6a)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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12. Legal Practice Act 2003

s. 3	Delete the definition of “Full Court”. Insert the following definition in the appropriate alphabetical position — “ “Supreme Court (full bench)” means the Supreme Court constituted by at least 3 judges; ”.
s. 28(1) s. 30(1) s. 34(1) s. 34(2) s. 185(2)(a) s. 185(3) s. 190(4)(b) s. 190(5) s. 194(1) s. 194(2) s. 194(3) s. 204(3)(b) s. 204(6)	In each provision, delete “Full Court” in each place it occurs and in each place insert instead — “ Supreme Court (full bench) ”.

13. Liquor Licensing Act 1988

s. 27(2) s. 28(4)(a)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.
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Acts Amendment (Court of Appeal) Act 2004

Schedule 1 Minor amendments to various Acts

14. Mining Act 1978

s. 146(5)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”. Delete “Full Court” in the second and third place it occurs and in each place insert instead — “ Court of Appeal ”.
s. 146(6) s. 146(7)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.

15. Newspaper Libel and Registration Act 1884 Amendment Act 1888

s. 3	Delete “full Court” and insert instead — “ Court of Appeal ”.
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16. Prisons Act 1981

s. 23	Delete “Court of Criminal Appeal or a Judge of that Court” and insert instead — “ Court of Appeal or a judge of appeal ”. Delete “a Registrar of the Supreme Court” and insert instead — “ the Court of Appeal Registrar ”.
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17. Prostitution Act 2000

s. 47(4) s. 47(5) s. 47(6)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 47(7)	Repeal the subsection.

18. Public Notaries Act 1979

s. 3	Insert the following definition in the appropriate alphabetical position — “ “Supreme Court (full bench)” means the Supreme Court constituted by at least 3 judges. ”.
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s. 6(2) s. 9 s. 10(2) s. 12 s. 16(1)	In each provision, delete “Full Court” and insert instead — “ Supreme Court (full bench) ”.
s. 11	Delete “Court” in the first place it occurs and insert instead — “ Supreme Court (full bench) ”.

19. Restraining Orders Act 1997

s. 64(4) s. 64(5) s. 64(6) s. 64(6a)(b)	In each provision, delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 64(7)	Repeal the subsection.

20. Salaries and Allowances Act 1975

s. 7(1)	Delete “section 5(1b)” and insert instead — “ section 5(1) and (1b) ”.
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21. Sentencing Act 1995

s. 140(1) s. 140(2)	In each provision, delete “Court of Criminal Appeal” and insert instead — “ Court of Appeal ”.
s. 143(1)	Delete “Full Court of the Supreme Court or the Court of Criminal Appeal” and insert instead — “ Court of Appeal ”.

**Division 2 — Amendments that may be affected by impending
legislation**

22. Land Administration Act 1997

s. 237(2)	Delete “Full Court” and insert instead — “ Court of Appeal ”.
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Acts Amendment (Court of Appeal) Act 2004

Schedule 1 Minor amendments to various Acts

23. Legal Practice Act 2003

s. 202(2)	Delete “Full Court” and insert instead — “ Supreme Court (Full Bench) ”.
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24. Local Courts Act 1904

s. 107	Delete “Full Court of the Supreme Court” or “Full Court” wherever they occur and in each place insert instead — “ Court of Appeal ”.
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25. Magistrates Court (Civil Proceedings) Act 2004 [261—2]

s. 41(1)	Delete “Supreme Court” and insert instead — “ Court of Appeal ”. Delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 41(3)	Delete “Supreme Court” and insert instead — “ Court of Appeal ”. Delete “Full Court” in the 2 places it occurs and in each place insert instead — “ Court of Appeal ”.
s. 41(4)	Delete “Supreme Court” in the first place it occurs and insert instead — “ Court of Appeal ”. Delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 42(1)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
s. 42(3) s. 42(5) s. 43(7)(e)	In each provision, delete “Full Court” in each place it occurs and in each place insert instead — “ Court of Appeal ”.

26. Royal Commissions Act 1968

s. 16(2) s. 17	In each provision, delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
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27. State Administrative Tribunal Act 2004 [213—2]

s. 104(3)(a)	Delete “Full Court” and insert instead — “ Court of Appeal ”.
s. 104(4)	Repeal the subsection.

28. Workers’ Compensation and Rehabilitation Act 1981

s. 84ZX	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
s. 84ZY	Delete “Full Court” wherever it appears and in each place insert instead — “ Court of Appeal ”.

29. Workers’ Compensation and Injury Management Act 1981

s. 251(1) s. 252(1)	Delete “Full Court of the Supreme Court” and insert instead — “ Court of Appeal ”.
s. 254(1)	Delete “Supreme Court appeal to the Supreme Court” and insert instead — “ Court of Appeal appeal to the Court of Appeal ”.
s. 254(2)	Repeal the subsection.

