

Western Australia

**Criminal Law (Procedure) Amendment Act  
2002**

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No. 27 of 2002

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# Criminal Law (Procedure) Amendment Act 2002

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Western Australia

## **Criminal Law (Procedure) Amendment Act 2002**

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**No. 27 of 2002**

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**An Act —**

- **to amend the *Justices Act 1902* and *The Criminal Code* in relation to pretrial procedures; and**
- **to consequentially amend other Acts, and for related purposes.**

*[Assented to 25 September 2002]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Criminal Law (Procedure) Amendment Act 2002*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.



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**Part 2 — *Justices Act 1902* amended**

**3. The Act amended**

The amendments in this Part are to the *Justices Act 1902*\*.

[\* *Reprinted as at 8 October 2001.*

*For subsequent amendments see Act No. 53 of 2000.*]

**4. Section 4 amended**

Section 4 is amended by deleting the definition of “preliminary hearing”.

**5. Section 66 replaced**

Section 66 is repealed and the following section is inserted instead —

“

**66. Proceedings for the purposes of committal are not open court**

(1) Where for the purposes of the committal for trial or sentencing of a person charged with an indictable offence —

- (a) a witness is examined before justices; or
- (b) a written statement or other evidence is tendered to justices,

the room or place in which that occurs is not to be regarded as an open court, and the justices may order that no person is to be in the room or place without their permission.

(2) The justices are not to make an order under subsection (1) unless it appears to them that the ends of justice require them to do so.

”.

**6. Section 69 amended**

- (1) Section 69(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) Subject to subsection (3) and despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a written statement of any person may be tendered by the prosecution to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant if —
- (a) the statement complies with the conditions in subsection (4);
  - (b) before the statement is so tendered, it has been filed and served in accordance with section 103(1); and
  - (c) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (a) is accompanied by a copy or description of the other document or exhibit.
- (3) Despite any other written law, where a person is charged with an indictable offence and the charge is not dealt with summarily, a statement of an affected child, as defined in section 106A of the *Evidence Act 1906* may be tendered to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant if —
- (a) in the case of a written statement, it complies with the conditions in subsection (4);
  - (b) in the case of an electronically recorded statement, it complies with the conditions in subsection (5);

- (c) before the statement is so tendered, it has been filed and served in accordance with section 103(1); and
- (d) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (c) is accompanied by a copy or description of the other document or exhibit.

”.

(2) After section 69(7) the following subsection is inserted

“

- (7a) A written statement tendered under this section to a court of summary jurisdiction need not be signed by the judicial officer constituting the court.

”.

**7. Section 73 amended**

Section 73(2) to (5) are repealed.

**8. Section 97B inserted**

Before section 98 the following section is inserted in Part V Division 2 —

“

**97B. Interpretation**

In this Division —

“**committal mention**” means any hearing to which the complaint is adjourned under section 101A(g);

“**contempt offence**” means an offence under section 102(4) or 104(5).

”.

**9. Section 101 amended**

Section 101(1) is amended by deleting “Following” and inserting instead —

“

On the resumption of the hearing of the complaint following

”.

**10. Section 101A amended**

Section 101A is amended as follows:

- (a) by deleting paragraph (e); and
- (b) in paragraph (g), by deleting “proceedings” and inserting instead —  
“ complaint ”.

[Note: The heading to section 101A will be altered to read “**If no expedited committal, defendant to be informed of procedures**”.]

**11. Sections 101B to 108 replaced by sections 102 to 106**

Sections 101B to 108 are repealed and the following sections are inserted instead —

“

**102. Compulsory examination by the prosecution**

- (1) At any time before the committal mention a person may, without notice to the defendant, be summoned under section 74 or 78 to attend before the justices for the purpose of being examined by or on behalf of the prosecution or producing a document or thing.
- (2) The defendant —
  - (a) is not a party to an examination under subsection (1);
  - (b) is not to cross-examine a witness attending an examination under subsection (1); and

- (c) is not to address the justices on an examination under subsection (1).
- (3) The evidence of a witness under this section must be taken in the form of a deposition under section 73(1).
- (4) A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence taken on an examination under subsection (1), or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

**103. Disclosure by the prosecution**

- (1) The prosecution is required to serve on the defendant and file with the clerk of petty sessions —
  - (a) a copy of every statement or deposition, obtained by the prosecution, of any person who may be able to give relevant evidence at any resulting trial;
  - (b) notice of the name and, if known, the address of any person from whom no statement, report or deposition has been obtained but who the prosecution thinks may be able to give relevant evidence at any resulting trial and a description of the relevant evidence concerned;
  - (c) a copy of every other relevant document or exhibit or, if it is not practicable to copy the document or exhibit, a description of it and notice of where and when it can be inspected;
  - (d) a copy of the criminal history of the accused; and
  - (e) any other prescribed document.

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- (2) The requirements of subsection (1) must be complied with not later than 14 days before the day of the committal mention.
- (3) If a statement or deposition is recorded on video-tape, it is sufficient for the purposes of subsection (1)(a) to provide notice of the video-tape.
- (4) The justices may order that a particular requirement of subsection (1) be dispensed with if, on an application by the prosecution, the justices are satisfied that —
  - (a) there is a good reason for doing so; and
  - (b) no miscarriage of justice will result.
- (5) An application under subsection (4) may be made by the prosecution without notice to the defendant and may be heard and determined in the absence of the defendant.
- (6) The room or place in which the justices hear and determine an application under subsection (4) is not to be regarded as an open court, and the justices may order that no person is to be in the room or place without their permission.
- (7) If the prosecution does not comply with a requirement of subsection (1) and that requirement has not been dispensed with under subsection (4), the justices may discharge the defendant or adjourn the hearing of the complaint to enable compliance with that subsection, as the justices think fit.

**104. Procedure on committal mention**

- (1) On the committal mention the justices are to —
  - (a) require the defendant to plead to the charge;
  - (b) require that all written statements that are, under section 69, to be tendered to them are

tendered, and they are to receive those statements which are not to be read in court; and

- (c) require that any video-tape of evidence that is, under section 106T of the *Evidence Act 1906*, to be admitted is tendered, and they are to receive the video-tape which is not to be played in court.
- (2) The defendant is not to —
  - (a) give or tender any evidence; or
  - (b) submit to the justices that there is insufficient evidence before them to put the defendant on his or her trial for the offence.
- (3) Unless the defendant pleads guilty to the charge, the justices are to commit the defendant to a court of competent jurisdiction for trial.
- (4) If the defendant pleads guilty to the charge, the justices are, without convicting the defendant, to commit the defendant to a court of competent jurisdiction for sentence.
- (5) A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence tendered on a committal mention, or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

**105. Liability of body corporate for contempt offences**

Without affecting any other liability of any person for a contempt offence or otherwise —

- (a) a company or other body corporate is liable to any punishment or penalty for a contempt offence as if it were an individual so far as the

**s. 12**

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punishment or penalty is enforceable against a company or body corporate; and

- (b) if any director, manager, secretary, or officer of a company, or any member of the managing body of a body corporate commits, or knowingly authorises or permits, a contempt offence, he or she is liable to the punishment or penalty for the offence.

**106. Saving**

Nothing in section 102(4) or 104(5) applies to the publication of information —

- (a) with regard to any proceedings, punishment or penalty for a contempt offence; or
- (b) after the information is, at the trial or sentencing of the defendant, admitted into evidence or stated aloud under section 617A of *The Criminal Code*.

”.

**12. Section 124 amended**

Section 124 is amended by deleting “against or for the defendant”.

**13. Section 127 amended**

Section 127 is amended by deleting “sentence under section 101C or 108, or for trial under section 101C or 107,” and inserting instead —

“

trial under section 104(3) or for sentence under section 104(4),

”.



**14. Ninth Schedule replaced**

The Ninth Schedule is repealed and the following Schedule is inserted instead —

“

**Ninth Schedule**

[s. 101A]

The hearing is going to be adjourned to enable the prosecution to make available to you copies of statements of its witnesses or notice of statements recorded on video-tape. With these you will be given copies of any other relevant documents or exhibits or, if it is not practicable to copy a document or exhibit, a description of it and notice of where and when it can be inspected.

The prosecution may apply to have witnesses examined in court before the hearing resumes. The evidence of any witnesses so examined will be recorded in depositions and you will be provided with copies of those depositions or notice of depositions recorded on video-tape.

The statements, depositions and any other papers will be served on you or your solicitor at least 14 days before the resumption of the hearing.

When the hearing is resumed you will be required to plead to the charge [charges]. The prosecution will then be required to tender certain statements and video-tapes.

You will be committed to the Supreme Court [or District Court] for trial, or sentence, as the case requires. The evidence will be sent to the Supreme Court [or District Court] and will not be publicised before the trial.

The hearing will now be adjourned for . . . days.

Remand/Bail.

”.

**15. Transitional and savings**

- (1) In this section —
- “**commencement**” means the coming into operation of this Part;
- “**new provisions**” means the *Justices Act 1902* as amended by this Part;
- “**old provisions**” means the *Justices Act 1902* as it was immediately before commencement.
- (2) If immediately before commencement a complaint stands adjourned under section 101A(g) of the old provisions, then on and from commencement the new provisions operate in respect of the complaint and the complaint is to be regarded as having been adjourned to a committal mention under the new provisions.
- (3) If immediately before commencement proceedings had commenced but not been completed (whether or not they then stand adjourned) under section 101B of the old provisions in relation to a complaint, then —
- (a) on and from commencement the new provisions operate in respect of the complaint; and
- (b) at the first opportunity after commencement the justices must adjourn those proceedings to a committal mention under the new provisions.
- (4) If immediately before commencement a complaint stands adjourned under the old provisions to a date for a preliminary hearing but that hearing has not commenced, then —
- (a) on and from commencement the new provisions operate in respect of the complaint; and

- (b) on the date set for a preliminary hearing the justices must either —
  - (i) if both the prosecution and the defendant consent — conduct a committal mention under the new provisions in respect of the complaint; or
  - (ii) otherwise — adjourn the complaint to a committal mention under the new provisions.
- (5) If under subsection (4)(b)(i) the justices conduct a committal mention in respect of a complaint, section 103 of the new provisions does not operate in respect of the complaint.
- (6) If immediately before commencement a preliminary hearing had commenced but not been completed (whether or not the hearing then stands adjourned) under the old provisions in relation to a complaint, then on and from commencement the hearing is to be conducted and the complaint dealt with under the old provisions.

**Part 3 — *The Criminal Code* amended**

**16.        The Act amended**

The amendments in this Part are to *The Criminal Code*\*.

[\* *Reprinted as at 9 February 2001 as the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913.*

*For subsequent amendments see Acts Nos. 23 and 34 of 2001.]*

**17.        Section 611B and 611C inserted**

After section 611A, the following sections are inserted —

“

**611B.    Disclosure by the prosecution**

- (1) If an indictment has been presented to a court against a person, the prosecution is required to file and serve on the person —
  - (a) a copy of every statement or deposition, obtained by the prosecution, of any person who may be able to give relevant evidence at the trial;
  - (b) notice of the name and, if known, the address of any person from whom no statement, report or deposition has been obtained but who the prosecution thinks may be able to give relevant evidence at the trial and a description of the relevant evidence concerned;
  - (c) notice of any person whom the prosecution proposes to call as a witness at the trial;
  - (d) a copy of every other document or exhibit that the prosecution proposes to adduce at the trial or, if it is not practicable to copy the document

- or exhibit, a description of it and notice of where and when it can be inspected;
- (e) a copy of the criminal history of the accused; and
  - (f) any other document prescribed by rules of court.
- (2) The requirements of subsection (1) must be complied with as soon as practicable after the prosecution has obtained the document.
- (3) As soon as practicable after the requirements of subsection (1) have been complied with, the prosecution must file, and serve on the accused person, a certificate of compliance.
- (4) The certificate of compliance must —
- (a) be made by a person who was involved in, and who has knowledge of, the investigation of the charge in the indictment;
  - (b) certify that the prosecution has complied with subsection (1); and
  - (c) state the person's grounds for so certifying and any inquiries made by the person before so certifying where inquiry has been necessary.
- (5) A person who knowingly or without reasonable diligence makes a certificate of compliance that is false in a material particular commits an offence.
- Penalty: \$5 000.
- (6) The court may order that a particular requirement of subsection (1) be dispensed with if, on an application by the prosecution, the court is satisfied that —
- (a) there is a good reason for doing so; and
  - (b) no miscarriage of justice will result.

**611C. Disclosure by the accused person**

- (1) Where an accused person is committed for trial, the accused person is required to file and serve on the prosecution —
  - (a) a copy of every statement, report or deposition, obtained by the accused person, of any person who may be able to give relevant expert evidence at the trial;
  - (b) notice of the name and, if known, the address of any person from whom no statement, report or deposition has been obtained but who the accused person thinks may be able to give relevant expert evidence at the trial and a description of the relevant expert evidence concerned;
  - (c) notice of any factual elements of the offence which the accused may contend cannot be proved;
  - (d) notice of any objection by the accused person to —
    - (i) any document that the prosecution proposes to adduce at the trial; or
    - (ii) any evidence disclosed in the statement or deposition of a witness whom the prosecution proposes to call at the trial, and the grounds for that objection; and
  - (e) notice of any evidence tending to show that the accused person was not present when the offence is alleged to have been committed or an act or omission material to that offence is alleged to have occurred, including —
    - (i) details of the nature of the evidence; and

- (ii) details of the name and address of each person whom the accused person proposes to call to give the evidence, or other information sufficient to enable each such person to be located.
- (2) The requirements of subsection (1) must be complied with —
- (a) not later than 10 days before the date appointed for the commencement of the trial; or
  - (b) if after that time the accused person has obtained any evidence or information referred to in subsection (1), as soon as practicable after the accused person has obtained that evidence or information.
- (3) The court may order that a particular requirement of subsection (1)(a), (b), (c) or (d) be dispensed with if, on an application by the accused person, the court is satisfied that —
- (a) there is a good reason for doing so; and
  - (b) no miscarriage of justice will result.
- (4) The requirements of subsection (1) extend to any person representing the accused person in connection with the trial.

”.

**18. Section 617A amended**

Section 617A is amended by deleting “without a preliminary hearing”.

**19.        Section 636A replaced**

Section 636A is repealed and the following section is inserted instead —

“

**636A.    Failure to comply with a disclosure requirement**

(1) In this section —

“**disclosure requirement**” means any requirement imposed by or under this Code or the *Justices Act 1902* to file and serve a document.

(2) Where, on a trial on indictment, a document is not filed and served in accordance with a disclosure requirement, the court, on application being made by the relevant party for an adjournment of the trial, is to —

- (a) adjourn the trial for such period as the court considers sufficient to enable the party to complete a proper investigation of evidence relating to the document; or
- (b) if, in the circumstances, the court thinks fit, adjourn the trial and discharge the jury.

(3) Where a document is not filed and served in accordance with a disclosure requirement, nothing in subsection (2) limits or otherwise affects the discretion of the court to adjourn the trial if the court considers that, in the circumstances, the relevant party has not had sufficient time to complete a proper investigation of evidence relating to the document, or for any other reason.



- (4) On the resumption of a trial on indictment that has been adjourned to enable a party to investigate evidence relating to a document, the relevant party —
  - (a) may require any person, including an accused person, who has given evidence relating to the document to the court to be recalled as a witness and may cross-examine or further cross-examine any such person; and
  - (b) may adduce evidence in rebuttal of the evidence so adduced.
- (5) A failure to comply with a disclosure requirement may be the subject of adverse comment to the jury by the court, counsel for the accused person, or the prosecution.

”.

## **Part 4 — Consequential amendments**

### **Division 1 — *Bail Act 1982* amended**

**20. The Act amended**

The amendment in this Division is to the *Bail Act 1982*\*.

[\* *Reprinted as at 27 August 1999.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 32 and Act No. 23 of 2001.]*

**21. Section 31 amended**

Section 31(2)(d)(ii) is deleted.

### **Division 2 — *Children’s Court of Western Australia Act 1988* amended**

**22. The Act amended**

The amendments in this Division are to the *Children’s Court of Western Australia Act 1988*\*.

[\* *Reprinted as at 25 August 2000.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 62 and Act No. 53 of 2000.]*

**23. Section 19C amended**

(1) Section 19C(1) is amended as follows:

- (a) by deleting paragraph (c) and “or” after that paragraph;
- (b) in paragraph (d), by deleting “if there is no preliminary hearing or”.

(2) Section 19C(2) is repealed.

**24. Section 30 amended**

Section 30(3) is amended by deleting “and includes a decision made on a preliminary hearing”.

**Division 3 — *Criminal Law (Mentally Impaired Defendants) Act 1996* amended**

**25. The Act amended**

The amendments in this Division are to the *Criminal Law (Mentally Impaired Defendants) Act 1996*\*.

[\* *Act No. 70 of 1996.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 108 and Act No. 23 of 2001.]*

**26. Section 17 amended**

Section 17(2) is amended as follows:

- (a) by deleting “; and” after paragraph (b) and inserting instead a full stop;
- (b) by deleting paragraph (c).

**Division 4 — *Director of Public Prosecutions Act 1991* amended**

**27. The Act amended**

The amendment in this Division is to the *Director of Public Prosecutions Act 1991*\*.

[\* *Reprinted as at 1 June 2001.*]

**28. Section 11 amended**

Section 11(2) is repealed and the following subsection is inserted instead —

“

- (2) The function referred to in subsection (1) includes the conduct of a committal mention within the meaning of section 97B of the *Justices Act 1902*.

”.

**Division 5 — Evidence Act 1906 amended**

**29. The Act amended**

The amendments in this Division are to the *Evidence Act 1906*\*.

[\* Reprinted as at 4 January 2001.

For subsequent amendments see Act No. 23 of 2001.]

**30. Section 8 amended**

Section 8(1) is amended as follows:

- (a) by deleting the semicolon at the end of paragraph (g) and inserting instead a full stop;
- (b) by deleting paragraph (h).

**31. Section 9 amended**

Section 9(3) is repealed.

**32. Section 106A amended**

Section 106A is amended in the definition of “proceeding” by deleting “a preliminary hearing under the *Justices Act 1902* and”.

**33. Section 106T amended**

Section 106T(5) is amended in the definition of “hearing” by deleting paragraph (a).

