ACTS AMENDMENT (JURISDICTION AND CRIMINAL PROCEDURE) ACT 1992

No. 53 of 1992

AN ACT to amend —
***The Criminal Code*;**
the *District Court of Western Australia Act 1969*;
the *Evidence Act 1906*;
the *Justices Act 1902*; and
the *Local Courts Act 1904*,
and for related purposes.

[*Assented to 9 December 1992.*]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992*.

Commencement

2. (1) Subject to subsection (2), the provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) Part 6 comes into operation on—

(a) the day on which this Act receives the Royal Assent; or

(b) the day on which the *Acts Amendment (Evidence of Children and Others) Act 1992* comes into operation,

whichever is the later.

PART 2 — *THE CRIMINAL CODE*

The Code

3. In this Part **"the Code"** means *The Criminal Code**.

[* *Reprinted as at 31 May 1991 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Act Compilation Act 1913. For subsequent amendments see 1991 Index to Legislation of Western Australia, pp. 49-51 and Acts Nos. 48 of 1991 and 1 of 1992.*]

Section 19B inserted

4. After section 19A of the Code the following section is inserted —

Plea of guilty may be taken into account

" **19B.** (1) A court in passing sentence for an offence on a person who pleaded guilty to the offence may take into account when fixing the sentence —

(a) the fact that the person pleaded guilty; and

(b) the stage in the proceedings at which the person pleaded guilty or indicated an intention to plead guilty.

(2) If under subsection (1) a court reduces the sentence that it would otherwise have passed on a person, the court must record that fact when passing sentence.

(3) The failure of a court to comply with subsection (2) does not invalidate any sentence or order imposed or made by the court. ".

Chapter LXA inserted

5. The Code is amended by inserting after Chapter LX the following chapter —

"

CHAPTER LXA — VIDEOTAPED INTERVIEWS

Interpretation

570. (1) In this Part, unless the contrary intention appears —

"interview" means an interview with a suspect by a member of the Police Force;

"lawyer" means a certificated practitioner under the *Legal Practitioner's Act 1893*;

"suspect" means a person suspected of having committed an offence;

"videotape" means any videotape on which is recorded an interview, whether or not it is the videotape on which the interview was originally recorded.

(2) In this Part, a reference to part of a videotape includes a reference to the visible part and to the audible part of the recording on the videotape.

Videotape of interview to be made available to the accused

570A. (1) If an interview is videotaped and the suspect is charged with an offence to which the interview relates, a videotape of the interview shall be made available to the suspect or the suspect's lawyer within 14 days after the suspect is so charged or, if

that is not practicable, as soon as possible after that period.

(2) No person is entitled to a transcript of an interview that is videotaped, or any part of such an interview; and a court shall not order that such a transcript be prepared unless satisfied that —

(a) words spoken in the interview cannot be understood satisfactorily; and

(b) it is practicable to prepare such a transcript.

Possession etc. of videotapes of interviews restricted

570B. (1) In this section —

"authorized person" means —

(a) the suspect or the suspect's lawyer;

(b) a member of the Police Force acting in the course of duty;

(c) a person authorized for the purposes of this chapter by the Commissioner of Police;

(d) the Director of Public Prosecutions or a person acting under the authority of the Director;

(e) a person acting at the direction of a court;

(f) a person prescribed to be an authorized person.

(2) A person, other than an authorized person, who has in his or her possession a videotape commits an offence.

(3) A person, other than a member of the Police Force acting in the course of duty, who plays a videotape to another person commits an offence except when —

(a) the videotape is played for purposes connected with the prosecution or defence of, or legal proceedings relating to, a charge to which the interview relates;

(b) the videotape is played under a direction of a court under section 570F; or

(c) the videotape is played under section 570H.

(4) A person, other than a member of the Police Force acting in the course of duty, who supplies, or offers to supply, a videotape to another who is not an authorized person commits an offence.

(5) A person, other than a person referred to in paragraph (b), (c), (d) or (e) of the definition of **"authorized person"**, who copies any part of a videotape, or who permits another person to make a copy of any part of a videotape, commits an offence.

(6) A person who erases a videotape commits an offence, except when the person is acting under —

(a) a direction under section 570F; or

(b) an authorization under section 570G (3).

(7) A person who commits an offence under this section is liable to a fine of $5 000.

Broadcast of interviews prohibited

570C. A person shall not broadcast a videotape or any part of a videotape unless the broadcast is made under a direction of a court under section 570F.

Penalty: Imprisonment for 12 months or to a fine of $100 000 or both.

Accused's admissions in serious cases inadmissible unless videotaped

570D. (1) In this section —

"admission" means an admission made by a suspect to a member of the Police Force, whether the admission is by spoken words or by acts or otherwise;

"serious offence" means an indictable offence of such a nature that, if a person over the age of 18 years is charged with it, it can not be dealt with summarily and in the case of a person under the age of 18 years includes any indictable offence for which the person has been detained.

(2) On the trial of an accused person for a serious offence, evidence of any admission by the accused person shall not be admissible unless —

(a) the evidence is a videotape on which is a recording of the admission; or

(b) the prosecution proves, on the balance of probabilities, that there is a reasonable excuse for there not being a recording on videotape of the admission; or

(c) the court is satisfied that there are exceptional circumstances which, in the interests of justice, justify the admission of the evidence.

(3) Subsection (2) does not apply to an admission by an accused person made before there were reasonable grounds to suspect that he or she had committed the offence.

(4) For the purposes of subsection (2), **"reasonable excuse"** includes the following:

(a) The admission was made when it was not practicable to videotape it.

(b) Equipment to videotape the interview could not be obtained while it was reasonable to detain the accused person.

(c) The accused person did not consent to the interview being videotaped.

(d) The equipment used to videotape the interview malfunctioned.

Jury to be able to play videotape

570E. If a videotape is admitted as evidence in a trial, the jury is entitled to play the videotape during its deliberations.

Court may give directions about videotapes

570F. The Supreme Court or, if the accused person is or was committed to the District Court, the District Court may give directions (with or without conditions) as to the supply, copying, editing, erasure, playing, or broadcast of a videotape.

Videotapes to be retained by police

570G. (1) If an interview is videotaped, the Commissioner of Police shall ensure that a videotape of the interview is kept in safe custody for at least 5 years.

(2) If the Supreme Court is satisfied there is good cause for keeping a videotape for more than 5 years, it may order the Commissioner of Police to keep a videotape of an interview for such additional period as the Court thinks fit.

(3) Subject to subsection (1), the Commissioner of Police may, in writing, authorize a person to erase videotapes.

Videotapes may be played for teaching purposes

570H. (1) A videotape may be played to prescribed persons for the purposes of instruction if —

(a) the suspect has been convicted of a charge to which the interview relates;

(b) all legal proceedings in relation to the subject matter of the interview have been concluded; and

(c) all reasonable measures are taken to prevent the identification of the suspect from the videotape when it is played.

(2) For the purposes of subsection (1), **"prescribed persons"** means —

(a) any member of the Police Force or any person training to become a member;

(b) any practitioner (as defined in the *Legal Practitioners Act 1893*) or any person studying to become a practitioner;

(c) any person prescribed for the purposes of this section. ".

Section 574 amended

6. Section 574 of the Code is amended in subsections (2) and (3) (d) by deleting "6 months" and substituting in each case the following —

" 12 months ".

Section 618 repealed and a section substituted

7. Section 618 of the Code is repealed and the following section is substituted —

Unconvicted persons committed for sentence

" **618.** (1) This section applies when a person (**"the accused person"**) has been committed by a court of petty sessions for sentence for an offence but has not been summarily convicted of the offence.

(2) The accused person is to be called on to plead to the indictment in the same manner as other persons and may plead any of the pleas listed in section 616.

(3) If —

(a) the accused person was committed for sentence under section 101 of the *Justices Act 1902* and pleads not guilty to the indictment; and

(b) the court is satisfied that before the court of petty sessions the accused person pleaded, or otherwise duly admitted, that he or she was guilty of the offence charged in the indictment,

the court shall, despite the plea of not guilty, direct that a plea of guilty be entered unless the court is satisfied the facts stated by the Crown under section 617A are materially different to those disclosed by the material served by the prosecution under section 100 (1) or 114 (a) of the *Justices Act 1902*; in which case the court shall —

(c) with the consent of the accused person, discharge the committal and remit the complaint to the court of petty sessions to be dealt with according to law; or

(d) enter the plea of not guilty and deal with the accused person according to law,

but otherwise the court shall enter the plea of not guilty and deal with the accused person according to law.

(4) If —

(a) the accused person was committed for sentence under an enactment other than section 101 of the *Justices Act 1902* and pleads not guilty to the indictment; and

(b) the court is satisfied that before the court of petty sessions the accused person pleaded, or otherwise duly admitted, that he or she was guilty of the offence charged in the indictment,

the court shall, despite the plea of not guilty, direct that a plea of guilty be entered; but otherwise shall enter the plea of not guilty and deal with the accused person according to law.

(5) If the accused person pleads guilty to the indictment and the court, after an examination of any depositions of witnesses and any statements tendered in evidence under section 69 of the *Justices Act 1902*, is satisfied that the accused person has not in fact committed the offence charged in the indictment, or any other offence of which the accused person might be convicted upon the indictment, the court shall, despite the plea of guilty, direct that a plea of not guilty be entered and deal with the accused person according to law.

(6) A plea directed to be entered by a court under this section has the same effect as if it had been actually pleaded. ".

PART 3 — *DISTRICT COURT OF WESTERN AUSTRALIA ACT 1969*

Principal Act

8. In this Part the *District Court of Western Australia Act 1969** is referred to as the principal Act.

[* *Reprinted as at 12 February 1987. For subsequent amendments see 1991 Index to Legislation of Western Australia, p. 58.*]

Part II, Division 5 amended and consequential amendments

9. (1) The heading to Division 5 of Part II of the principal Act is amended by deleting *"Registrar,"* and substituting the following —

" *Principal Registrar, Registrars,* ".

(2) Section 25 of the principal Act is amended —

(a) in subsection (1) by deleting "a Registrar of the Court and Deputy Registrars for the Court and such other officers" and substituting the following —

" a Principal Registrar and such Registrars, Deputy Registrars and other officers ";

and

(b) by repealing subsections (2), (3) and (4).

(3) The provisions of the principal Act referred to in Column 1 of the Table below are amended in the manner set out opposite them in Column 2.

TABLE

Column 1	*Column 2*
s. 6	Delete the definition of "the Registrar" and insert after the definition of "practice and procedure" the following definition — "**"Registrar"** means the Principal Registrar, a Registrar, or a Deputy Registrar, appointed under section 25; ".
s. 19	After subsection (3) insert the following subsection — " (3a) There shall be a registry of the Court at each place where the Court is held and the principal registry shall be at Perth. ".
s. 19 (4)	Delete "office of the Registrar" and substitute the following — " registry ".
s. 19 (5)	Delete "office of the Registrar" and substitute the following — " registry of the Court ".
s. 19 (6)	Delete "the Registrar" and substitute the following — " a Registrar ".
s. 19 (8)	Delete "the Registrar" and substitute the following — " a Registrar ".

s. 26 (1) Repeal the subsection and substitute the following subsection —

" (1) The functions of a Registrar are as set out in this Act and in the Rules of Court. ".

s. 34 Delete "The Registrar" and substitute the following —

" A Registrar ".

s. 41 (4) Repeal the subsection.

s. 48 (1) Repeal the subsection and substitute the following subsection —

" (1) For the purpose of the trial of any person on indictment, the Court may issue a *subpoena* requiring a person to appear before the Court and give evidence or produce any document or thing specified in the *subpoena*. ".

s. 53 (1) Delete "the Registrar of the Court appointed under section 25" and substitute the following —

" a Registrar who is or has been a practitioner as defined in the *Legal Practitioners Act 1893* ".

Delete "the Registrar, bailiff and other officers" and substitute the following —

" every Registrar, bailiff or other officer ".

s. 67 (1) Delete "the Registrar" in the 2 places where it occurs and substitute the following —

" a Registrar ".

Delete "the District Court Judge" and substitute the following —

" a District Court Judge ".

s. 86A (1) Delete "the Registrar" and substitute the following —

" a Registrar ".

s. 86A (2) Delete "the Registrar" and substitute the following —

" the Principal Registrar ".

s. 88 (2) (g) Delete "for the Registrar of the Court appointed under section 25, or any particular Deputy Registrar of the Court so appointed," and substitute the following —

" for a Registrar or any particular Registrar ".

s. 96 (1) Delete "The Registrar" and substitute the following —

" The Principal Registrar ".

(4) The *Juries Act 1957* is amended in sections 13 (b), 21 (b) and 32B (b) by inserting before "Registrar" where it occurs in each of those sections the following —

" senior ".

Section 42 amended and consequential amendments

10. (1) Section 42 (2a) of the principal Act is repealed and the following section is substituted —

" (2a) The Court has no jurisdiction to try an accused person charged with an offence described in Schedule 2. ".

(2) The Schedule to the principal Act is amended by deleting the heading —

" SCHEDULE

OATH ",

and substituting the following heading —

" **SCHEDULE 1**

[s. 11 (2)]

OATH ".

(3) The principal Act is amended by adding after the Schedule the following Schedule —

" **SCHEDULE 2**

[s. 42 (2a)]

OFFENCES NOT TRIABLE BY THE COURT

Enactment	*Description of offence or circumstances of commission of offence*
The Criminal Code	
s. 186 (1) (b)	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge; committed in circumstances which make the offender liable to imprisonment for 20 years

Chapter XXXI	Any offence under the Chapter for which the offender is liable to imprisonment for 20 years, or committed in circumstances which make the offender liable to imprisonment for 20 years
s. 398	Attempts at extortion by threats; committed in circumstances which make the offender liable to imprisonment for 20 years

".

Section 50 amended and consequential amendments

11. (1) Section 50 (1) of the principal Act is amended by —

(a) deleting "$80 000" wherever it appears and substituting the following —

" $250 000 "; and

(b) deleting "$40 000" wherever it appears and substituting the following —

" $125 000 ".

(2) Section 51 (1) of the principal Act is amended by —

(a) deleting "$80 000" wherever it appears and substituting the following —

" $250 000 "; and

(b) deleting "but not exceeding $120 000".

(3) Section 60 of the principal Act is amended by deleting "$80 000" wherever it appears and substituting the following —

" $250 000 ".

(4) Section 73 (2) of the principal Act is amended by deleting "$80 000" wherever it appears and substituting the following —

" $250 000 ".

Section 50 further amended

12. Section 50 (1) of the principal Act is further amended by inserting after paragraph (a) the following paragraph —

" (aa) an action brought claiming an indemnity where the action arises from or relates to another action that is before the Court or that has been heard and determined by the Court; ".

Section 63 amended

13. Section 63 (1) of the principal Act is amended by inserting after "District Court Judge concerned" the following —

" or, where any of the above acts or omissions are committed before or in respect of a Registrar, or in respect of a bailiff, clerk or officer of the Court, the Chief Judge ".

PART 4 — *JUSTICES ACT 1902*

Division 1 — General amendments

Principal Act

14. In this Part the *Justices Act 1902** is referred to as the principal Act.

[* *Reprinted as approved 9 November 1984. For subsequent amendments see 1991 Index to Legislation of Western Australia, pp. 106-7 and Act No. 48 of 1991.*]

Section 51 amended

15. Section 51 of the principal Act is amended by deleting "six months" and substituting the following —

" 12 months ".

Section 86A inserted

16. The principal Act is amended by inserting after section 86 the following section —

Videolink may be used for remands and adjournments

" **86A.** (1) If —

(a) the defendant has appeared personally before justices on a charge;

(b) the defendant is in custody, whether in relation to the charge or not;

(c) a videolink or other device exists whereby, at the same time, justices in one place can see and hear the defendant in another place and vice versa; and

(d) an order has not been made under subsection (2),

the person in whose custody the defendant is may, notwithstanding the warrant commanding that the defendant be brought before the justices, bring the defendant before the videolink or other device, and the justices may, in relation to the charge, exercise the powers in sections 79, 80 and 86 and comply with the *Bail Act 1982* as if the defendant were personally present before them.

(2) The justices may at any time, if satisfied it is necessary for the proper administration of justice to do so, order that a defendant be brought personally before them. ".

Section 96 amended and consequential amendments

17. (1) Section 96 (2) of the principal Act is repealed.

(2) Section 96 (3) of the principal Act is repealed.

(3) The Fourth Schedule to the principal Act is repealed.

(4) The Fifth Schedule to the principal Act is repealed.

Section 157 amended

18. Section 157 of the principal Act is amended by deleting "under the provisions hereinbefore contained".

Section 158 repealed, a section substituted and transitional provision

19. (1) Section 158 of the principal Act is repealed and the following section is substituted —

Where non-payment of a penalty etc., warrant of execution or commitment may issue

" **158.** (1) 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 either —

(a) subject to section 27, 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 167, 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 are sooner paid; or

(b) if requested to do so by the complainant or a clerk of petty sessions, issue (subject to subsection (2)) his warrant of execution in respect of the sum adjudged to be paid and all costs and charges including the issue and execution of the warrant.

(2) A warrant of execution shall not be issued under subsection (1) (b) if —

(a) a warrant of commitment in respect of the same conviction or order has been issued and not cancelled;

(b) a work and development order has been issued in respect of the same conviction or order; or

(c) the conviction or order includes an order made under subsection (3),

and any warrant issued contrary to this subsection is of no effect.

(3) When by a conviction or order justices adjudge or require the payment of a pecuniary penalty or compensation or sum of money or costs and the justices direct that in default of payment the person in default shall be imprisoned, the justices may order that a warrant of execution shall not be issued under subsection (1) (b).

(4) The amount of any penalty, compensation, sum of money or costs in respect of which a warrant is issued under this section shall be stated in the warrant and due credit shall be given and allowed in the warrant for any payments made before its issue. ".

(2) Subject to subsection (3), the principal Act as amended by subsection (1) applies in respect of convictions and orders made before the coming into operation of this section.

(3) A warrant of execution shall not be issued under section 158 (1) (b) of the principal Act as amended by subsection (1) in respect of a conviction or order made prior to the coming into operation of this section, except by a magistrate on the application of the complainant or a clerk of petty sessions and after notice of the application has been served on the person in default.

Section 168 amended

20. Section 168 of the principal Act is amended by deleting "Treasury." and substituting the following —

" Consolidated Revenue Fund. ".

Section 169 and 169A inserted

21. The principal Act is amended by inserting after section 168 the following sections —

Chief executive officer may make time to pay order

" **169.** (1) In this section **"chief executive officer"** means the chief executive officer for the department principally assisting the Minister with the administration of this Act.

(2) If —

(a) a person is liable as a result of a conviction or order, not being an enforcement order under section 171BF, to pay a sum or costs; and

(b) the sum or costs are required to be paid to the Consolidated Revenue Fund,

the person may, unless the justices have made an order under subsection (7), apply to the chief executive officer for a time to pay order.

(3) An application may be made —

(a) before or after the time for payment of the sum or costs or of any instalment allowed by the justices (if any) has passed;

(b) after the issue under section 155, 157 or 158 of a warrant of execution or commitment but before it is executed.

(4) On an application the chief executive officer may, if he or she thinks fit, require the applicant to undergo a means test.

(5) On an application the chief executive officer may, if he or she thinks fit, make a time to pay order which may —

(a) allow or extend the time for payment of the sum or costs;

(b) direct that the sum or costs be paid by instalments;

(c) vary any order by justices directing the payment of the sum or costs by instalments.

(6) The chief executive officer may vary or cancel a time to pay order.

(7) When by a conviction or order justices adjudge a sum or costs to be paid, the justices may order that a time to pay order shall not be made under subsection (5) in respect of the sum or costs.

(8) Notwithstanding sections 155, 157 and 158, upon the making of a time to pay order and while the order is in force and being complied with —

(a) no warrant of execution or commitment may be issued under any of those sections in respect of the sum or costs the subject of the order; and

(b) a warrant of execution or commitment that was issued in respect of the sum or costs the subject of the order but not executed before the making of the time to pay order shall be suspended.

(9) The chief executive officer may, in writing, delegate the powers under this section except this power of delegation.

Means tests

169A. (1) For the purposes of sections 169 and 171AA the Governor may make regulations for means testing applicants.

(2) Without limiting the generality of subsection (1), the regulations may require information supplied by an applicant to be verified by a statutory declaration. ".

Section 171AA and 171AB repealed and sections substituted and consequential amendments

22. (1) Sections 171AA and 171AB of the principal Act are repealed and the following sections are substituted —

" **Application for approval to issue work and development order**

171AA. (1) In this section **"chief executive officer"** means the chief executive officer of the department principally assisting the Minister with the administration of this Act.

(2) A person liable to pay a payment to which this Part applies may apply to the chief executive officer for written approval for the issue of a work and development order.

(3) An application may be made —

(a) before or after the time for payment of the sum or costs or of any instalment allowed by the justices (if any) has passed;

(b) after the issue under section 155, 157, 158 or 171BI of a warrant of commitment but before it is executed.

(4) On an application the chief executive officer may, if he or she thinks fit, require the applicant to undergo a means test.

(5) On an application the chief executive officer, if satisfied that —

(a) the payment the applicant is liable to pay is one to which this Part applies;

(b) the applicant has insufficient means to pay the sum or costs or, if the applicant were to pay the sum and costs, the applicant or the applicant's family would suffer economic hardship;

(c) an application for a warrant of execution under section 158 is not appropriate; and

(d) any warrant of execution issued in respect of the payment the applicant is liable to pay is unexecuted or has been returned under section 157,

shall give written approval for the issue of a work and development order.

(6) If the chief executive officer refus to give written approval under subsection (4) the ε plicant may appeal to 2 or more justices who shall ı -l ar the

application and may give or refuse to give written approval for the issue of a work and development order.

(7) The chief executive officer may, in writing, delegate the powers in this section except this power of delegation.

Issue of work and development order

171AB. (1) An applicant under section 171AA in respect of whom written approval for the issue of a work and development order has been given shall report to a community corrections officer.

(2) The supervisor of a community corrections centre shall issue to the applicant (in this Part referred to as the offender) a work and development order subject to the terms and conditions applicable to such orders under this Part and the *Offenders Community Corrections Act 1963*.

Issue of work and development order after execution of warrant of commitment

171ABA. (1) In this and the following sections in this Part **"chief executive officer"** has the same definition as in section 4 of the *Offenders Community Corrections Act 1963*.

(2) If under section 155, 157, 158 or 171BI a warrant of commitment is issued in respect of a payment to which this Part applies and a person is apprehended under the warrant, the person may, by notice in writing given to the chief executive officer, advise that officer of the issue and execution of the warrant.

(3) On receiving the notice under subsection (2), the chief executive officer, if satisfied that —

(a) the warrant of commitment relates to a payment to which this Part applies; and

(b) the person is in custody by reason only of the warrant of commitment,

shall issue to the person (in this Part referred to as the offender) a work and development order subject to the terms and conditions applicable to such orders under this Part and the *Offenders Community Corrections Act 1963* and shall cause the offender to be released forthwith from custody. ".

(2) Section 171AC (1) of the principal Act is amended by deleting "section 171AA or 171AB" and substituting the following —

" section 171AB or 171ABA ".

(3) Section 171AG (4) of the principal Act is amended by deleting "sections 171AA and 171AB" and substituting the following —

" sections 171AB and 171ABA ".

Section 171AI amended, consequential amendment and transitional provision

23. (1) Section 171AI (1) of the principal Act is repealed and the following subsection is substituted —

" (1) This Part applies —

(a) to a payment that consists of a penalty or costs ordered to be paid by justices; and

(b) to a payment that consists of an amount outstanding after the making of an enforcement order under Part VIBA. ".

(2) Section 171AC (1) of the principal Act is amended by deleting "in respect of which the offender is in default whether such payments arise from a court of petty sessions held at a place specified for the purposes of section 171AI or from some other court of petty sessions (including the court of petty sessions declared for the purposes of Part VIBA)." and substituting the following —

" , including any payment ordered to be made by the court of petty sessions under section 171BF, in respect of which the offender is in default. ".

(3) The principal Act as amended by this section applies to fines and penalties imposed after this section comes into operation.

Sixth Schedule repealed

24. The Sixth Schedule to the principal Act is repealed.

Division 2 — Amendments affecting preliminary hearings

Sections 101 and 101A repealed and sections 97 to 101A and headings inserted

25. The heading "Information Presented." after the heading to Part V of the principal Act is deleted and section 101 and the heading "Warrant—Committal." preceding it and section 101A of

the principal Act are repealed and the following is inserted after the heading to Part V of the principal Act —

"

Division 1 — Preliminary

Application

97. (1) This Part applies where a defendant is charged before justices with an indictable offence (**"the charge"**).

(2) If a defendant is charged with an offence under section 550 of *The Criminal Code* —

(a) the justices shall follow, with such modifications as are necessary, the procedure provided in sections 98 to 101A; and

(b) if the defendant elects to be prosecuted on indictment, the provisions relating to the examination, committal, and prosecution on indictment of persons charged with indictable offences shall, from the time the defendant so elects, apply as if the defendant were charged with an indictable offence.

Defendant not appearing may be arrested

97A. If a defendant —

(a) is served with a summons; and

(b) does not appear before justices at the time and place stated in the summons,

the justices, if satisfied the summons was served a reasonable time before that time, may issue a warrant

to apprehend the defendant and to bring him or her before justices to answer the charge and to be further dealt with according to law.

Division 2 — General procedure

Procedure on first appearance

98. (1) When the defendant appears for the first time before the justices on the charge, the justices shall —

(a) read the charge to the defendant; and

(b) if necessary, explain to the defendant the meaning of the charge.

(2) If the charge is one referred to in section 426 (2a) or (3) of *The Criminal Code*, the justices shall then give the prosecutor the opportunity to request them to deal with the charge summarily.

(3) If the charge is not one referred to in section 426 (2a) or (3) of *The Criminal Code* or if it is but the prosecutor does not request the justices to deal with it summarily, the justices shall then —

(a) tell the defendant he or she is not required to plead to the charge; and

(b) cause the defendant to be given a notice in the prescribed form explaining the procedures in this Part.

Procedure if offence may be dealt with summarily

99. (1) If the charge may be dealt with summarily and the justices, having regard to such matters as by law they are required to, consider that the charge can be adequately dealt with summarily, the justices shall —

(a) tell the defendant that he or she —

(i) has the right to have the charge dealt with by a Judge of the Supreme Court or of the District Court (as the case requires) and a jury; or

(ii) may elect to have the charge dealt with summarily by a court of petty sessions;

and

(b) ask the defendant to elect whether or not to have the charge dealt with by a court of petty sessions.

(2) If the defendant elects to have the charge dealt with summarily by a court of petty sessions, the justices shall deal with the charge according to law.

If charge not to be dealt with summarily, defendant to be supplied with statement of facts etc.

100. (1) If —

(a) the charge cannot be dealt with summarily;

(b) the justices decide the charge can not be adequately dealt with summarily; or

(c) under section 99 the defendant —

(i) elects not to have the charge dealt with summarily by a court of petty sessions; or

(ii) does not make an election,

the justices shall adjourn the complaint and the prosecution shall, unless an order under subsection (2) is made, as soon as is reasonably practicable, file with the clerk of petty sessions and serve on the defendant —

(d) a statement of the material facts relevant to the charge;

(e) a copy of —

(i) any statement signed by the defendant;

(ii) any record of interview with the defendant (signed or unsigned by the defendant); or

(iii) the substance of anything said by the defendant to a member of the Police Force that is material to the charge,

in the possession of the prosecution; and

(f) notice of any tape or videotape recording of conversations between the defendant and a person in authority in the possession of the prosecution.

(2) If, on the application of the prosecution, the justices are satisfied that at that stage of the proceedings —

(a) the prosecution is unable to comply with subsection (1); or

(b) it is not practicable for the prosecution to prepare a statement of the material facts,

the justices may order that compliance with subsection (1) by the prosecution be dispensed with.

Expedited committal if defendant pleads guilty

101. (1) Following the service by the prosecution of the material referred to in section 100 (1), the justices shall —

(a) tell the defendant he or she is not required to plead to the charge; and

(b) give the defendant the opportunity to plead to the charge.

(2) If the defendant pleads guilty to the charge, the justices shall, without convicting the defendant, commit the defendant to a court of competent jurisdiction for sentence.

(3) If the defendant is committed for sentence under subsection (2), the justices shall, as soon as possible after the committal, transmit to the Attorney General, or some other person duly appointed to present indictments, the complaint and the material filed by the prosecution under section 100 (1).

If no expedited committal, defendant to be served with statements

101A. If —

(a) an order is made under section 100 (2);

(b) under section 101 the defendant —

(i) pleads not guilty to the charge;

(ii) does not plead; or

(iii) enters any other plea other than a plea of guilty;

or

(c) the complaint is remitted under section 618 (3) of *The Criminal Code*,

the justices shall —

(d) address the defendant in the form of words prescribed in the Ninth Schedule, or in words to the like effect;

(e) direct the prosecutor to serve or cause to be served on the defendant, and filed with the clerk of petty sessions, at least 4 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 section 69 (2);

(f) give or cause to be given to the defendant a copy of the Ninth Schedule suitably adapted to the circumstances of the charge against the defendant; and

(g) adjourn the proceedings. ".

Section 101B amended

26. Section 101B (1) of the principal Act is repealed and the following subsection is substituted —

" (1) On the resumption of the proceedings adjourned under section 101A (g) and after the depositions of the witnesses, if any, called by the prosecution have been taken in accordance with section 73 (1), the defendant shall be required by the justices to elect whether or not to have a preliminary hearing. ".

Section 101C amended

27. Section 101C of the principal Act is amended by deleting "Where there is no preliminary hearing — " and substituting the following —

" Where the defendant elects not to have a preliminary hearing — ".

Section 107 amended

28. Section 107 of the principal Act is amended by —

(a) deleting "If there is no preliminary hearing and the defendant has pleaded not guilty" and substituting the following —

" If the defendant elects not to have a preliminary hearing and pleads not guilty ";

and

(b) deleting ", 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".

Sections 108 inserted

29. After section 107 of the principal Act the following section is inserted —

Committal for sentence

" **108.** If on a preliminary hearing the defendant pleads guilty to the charge in answer to the question asked under section 102 (1), the justices shall, without convicting the defendant, commit the defendant to a court of competent jurisdiction for sentence. ".

Section 114 repealed and a section substituted

30. Section 114 of the principal Act and the heading "Defendant admitting guilt." preceding it are repealed and the following section is substituted —

Prosecution may change statement of facts

" **114.** If under section 100 (1) the prosecution serves the defendant with a statement of the material facts relevant to the charge, the prosecution may serve the defendant with an amended statement —

(a) at any time before the defendant is given the opportunity to plead under section 101;

(b) if the defendant has pleaded guilty under section 101 and been committed for sentence — at any time before the defendant is called on to plead before the court to which he or she has been committed for sentence. ".

Section 123 repealed and a section substituted

31. Section 123 of the principal Act is repealed and the following section is substituted —

Defendant may be granted bail or kept in custody

" **123.** On committing the defendant for sentence or trial under this Part, the justices may —

(a) grant the defendant bail under the *Bail Act 1982*; or

(b) by their warrant, order the defendant to be kept in custody,

until the sittings of the court before which the defendant is committed. ".

Section 127 repealed and a section substituted

32. Section 127 of the principal Act is repealed and the following section is substituted —

On committal, complaint etc. to be sent to Attorney General

" **127.** If the defendant is committed for sentence under section 101C or 108, or for trial under section 101C or 107, the justices shall, as soon as possible after the committal, transmit to the Attorney General, or some other person duly appointed to present indictments, the complaint and all statements, depositions, exhibits and recognizances other than any statement of the material facts served under section 100 (1) or 114. ".

Ninth Schedule amended

33. The Ninth Schedule to the principal Act is amended —

(a) by deleting Parts A and B;

(b) in Part C by deleting the heading "Part C" and the paragraph preceding the paragraph beginning "The hearing is going to be adjourned" and substituting the following —

" For the purposes of section 101A (1) the prescribed words are — ".

PART 5 — *LOCAL COURTS ACT 1904*

Principal Act

34. In this Part the *Local Courts Act 1904** is referred to as the principal Act.

[* *Reprinted as approved 11 April 1984. For subsequent amendments see 1991 Index to Legislation of Western Australia, p. 119.*]

Jurisdiction of Local Courts increased

35. (1) The principal Act is amended by deleting "$10 000" wherever it appears in the provisions referred to in the Table to this subsection and substituting in each case the following —

" $25 000 ".

TABLE

s. 30	s. 32	s. 60	s. 106G
s. 31	s. 59	s. 87	

(2) The principal Act is amended by deleting "$15 000" wherever it appears in the provisions referred to in the Table to this subsection and substituting in each case the following —

" $25 000 ".

TABLE

s. 99	s. 100	s. 101	s. 103

PART 6 — *EVIDENCE ACT 1906*

Principal Act

36. In this Part the *Evidence Act 1906** is referred to as the principal Act.

[* *Reprinted as at 14 August 1986.*
For subsequent amendments see 1991 Index to Legislation of Western Australia, p. 68 and Act No. 14 of 1992.]

Section 106A amended

37. Section 106A of the principal Act is amended —

(a) in the definition of "video-taped recording" by deleting the full stop and substituting a semi-colon; and

(b) by inserting after that definition the following definition —

" **"video-taped recording of evidence"** means a video-taped recording of evidence made —

(a) pursuant to an order under section 106J; or

(b) in a pre-trial hearing held pursuant to an order under section 106K or 106R. ".

Section 106J amended

38. Section 106J of the principal Act is amended —

(a) by inserting after subsection (1) the following subsection —

" (1a) An order under subsection (1) —

) is to include directions, with or without conditions, as to the persons,

or classes of persons, who are authorized to have possession of the video-taped recording of the evidence; and

(b) may include directions and conditions as to the giving up of possession and as to the playing, copying or erasure of the recording. ";

and

(b) in subsection (2), by inserting after "revoked" the following —

" by the Judge who made the order or a Judge who has jurisdiction co-extensive with that Judge ".

Section 106K amended

39. Section 106K of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following subsection —

" (1) A Judge who hears an application under section 106I (1) (b) may make such order as the Judge thinks fit which is to include —

(a) directions, with or without conditions, as to the persons who may be present at the pre-trial hearing;

(b) directions, with or without conditions, as to the persons, or classes of persons, who are

authorized to have possession of the video-taped recording of the evidence,

and, without limiting section 106M, may include directions and conditions as to the giving up of possession and as to the playing, copying or erasure of the recording. ";

and

(b) in subsection (2), by inserting after "revoked" the following —

" by the Judge who made the order or a Judge who has jurisdiction co-extensive with that Judge ".

Sections 106MA and 106MB inserted

40. After section 106M of the principal Act the following sections are inserted —

" **Unauthorized possession or dealing in video-taped evidence**

106MA. (1) A person commits an offence who, without authority —

(a) has a video-taped recording of evidence in his possession; or

(b) supplies or offers to supply a video-taped recording of evidence to any person.

(2) A person commits an offence who, without authority plays, copies, erases or permits a person to copy or erase a video-taped recording of evidence.

(3) A person has authority for the purposes of subsection (1) or (2) only if he or she has possession of a video-taped recording of evidence or does anything mentioned in subsection (1) or (2), as the case may be —

(a) in the case of a public official, for a purpose connected with the proceeding for which the recording was made or any resulting proceeding by way of appeal; or

(b) in any other case, as authorized by a Judge under section 106J, 106K or 106R.

(4) A person who commits an offence against this section is liable to a fine of $5 000.

Broadcast of video-taped evidence

106MB. (1) A person shall not broadcast a video-taped recording of evidence or any part of such a recording except with approval of the Supreme Court and in accordance with any condition attached to the approval.

Penalty: $100 000 or imprisonment for 12 months, or both.

(2) An approval under subsection (1) is only to be given in exceptional circumstances.

(3) In subsection (1) **"broadcast"** means disseminate to the public by radio or television or otherwise by the transmission of light or sound ".

Section 106R amended

41. Section 106R of the principal Act is amended by inserting after subsection (4) the following subsection —

" (4a) Where evidence is to be given at a pre-trial hearing an order under this section is to include directions as to the matters referred to in subsection (1) of section 106K and may include directions as to the other matters referred to in that subsection. ".