

WESTERN AUSTRALIA

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# JUSTICES AMENDMENT ACT 1991

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No. 33 of 1991

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**AN ACT to amend the *Justices Act 1902*.**

*[Assented to 4 December 1991]*

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Justices Amendment Act 1991*.

## **Commencement**

2. (1) Subject to subsection (2), this Act shall come into operation on such day as is fixed by proclamation.

(2) Section 5 shall come into operation on the day on which this Act receives the Royal Assent.

**Principal Act**

3. In this Act the *Justices Act 1902*\* is referred to as the principal Act.

[\*Reprinted as approved 9 November 1984.

For subsequent amendments, see 1990 Index to Legislation of Western Australia, p. 82 and Acts Nos. 33 of 1989 and 61 of 1990.]

**Section 4 amended**

4. Section 4 of the principal Act is amended in the definition of "work and development order" by deleting "or 158" and substituting the following—

" , 158 or 171BI ".

**Section 135 amended**

5. Section 135 of the principal Act is amended in subsection (2) (a) by deleting subparagraphs (i), (ii) and (iii) and substituting the following subparagraphs—

- " (i) the *Road Traffic Act 1974*;
- (ii) any enactment prescribed for the purposes of this subparagraph;
- (iii) any subsidiary legislation made under the *Road Traffic Act 1974* or under an enactment prescribed for the purposes of subparagraph (ii); or
- (iv) any subsidiary legislation made under an enactment prescribed for the purposes of this subparagraph, ".

**Section 171AA amended**

6. Section 171AA of the principal Act is amended in subsection (1) by deleting “or 158 a justice may issue a warrant of commitment” and substituting the following—

“ , 158 or 171BI a warrant of commitment may be issued ”.

**Section 171AB amended**

7. Section 171AB of the principal Act is amended in subsection (1) by deleting “and 158 a justice has issued a warrant of commitment” and substituting the following—

“ , 158 or 171BI a warrant of commitment has been issued ”.

**Section 171AC amended**

8. Section 171AC of the principal Act is amended in subsection (1) by inserting after “court of petty sessions” in the second place where it occurs the following—

“ (including the court of petty sessions declared for the purposes of Part VIBA) ”.

**Section 171AD amended**

9. Section 171AD of the principal Act is amended in subsection (5)—

(a) by deleting “and 158” and substituting the following—

“ , 158 and 171BI ”; and

(b) in paragraphs (a) and (c) by deleting “either” and substituting in each case the following—

“ any ”.

**Section 171AI amended**

10. Section 171AI of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) This Part applies to—

(a) a payment—

(i) that consists of a fine or penalty of a kind required to be paid to the Treasurer by the *Fines and Penalties Appropriation Act 1909*; and

(ii) subject to section 171AC, that arises from a court of petty sessions held at a place specified for the purposes of this section by the Minister by notice published in the *Gazette*;

and

(b) a payment that consists of an amount outstanding after the making of an enforcement order under Part VIBA (not being an enforcement order in respect of an infringement notice issued under an enactment of a kind referred to in section 2 (a), (b) or (c) of the *Fines and Penalties Appropriation Act 1909*). ”.

**Section 171BA amended**

11. Section 171BA of the principal Act is amended in subsection (1) by inserting in the appropriate alphabetical positions the following definitions—

“ “adult offender” means an alleged offender who had attained the age of 18 years at the date of the alleged offence; ”;

“ “juvenile offender” means an alleged offender who had attained the age of 16 years but had not attained the age of 18 years at the date of the alleged offence; ”.

**Section 171BB amended**

12. Section 171BB of the principal Act is amended by deleting “has not attained the age of 18 years” and substituting the following—

“ had not attained the age of 16 years at the date of the alleged offence ”.

**Section 171BE amended**

13. Section 171BE of the principal Act is amended—

(a) in subsection (7) by deleting “171BK (3)” and substituting the following—

“ 171BIA or 171BK (3) or (4) ”; and

(b) in subsection (8)—

(i) by deleting paragraph (a) and substituting the following paragraph—

“ (a) subsection (5) applies in respect of the amount for the time being outstanding under each infringement notice; ”; and

(ii) in paragraph (b) by deleting “the reference in section 171BK (3) to a copy of the certificate shall be read as if it were a reference” and substituting the following—

“ the references in sections 171BIA (2) (a) and 171BK (3) and (4) to a copy of the certificate shall be read as if they were references ”.

**Section 171BF amended**

14. Section 171BF of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting the following paragraph—

- “ (a) where the alleged offender is a natural person—
- (i) in the case of an adult offender, a warrant be issued under section 171BI for the imprisonment of the alleged offender; or
  - (ii) in the case of a juvenile offender, the failure to make payment be referred to the Children’s Court under section 171BIA; ”.

**Section 171BG amended**

15. Section 171BG of the principal Act is amended in subsection (1) by deleting paragraph (c) and substituting the following paragraph—

- “ (c) unless an election is made under section 171BK, failure to make payment as mentioned in paragraph (b) (i)—
- (i) in the case of an adult offender, will result in the issue of a warrant under this Part unless a work and development order is issued under section 171AA in respect of the payment in default;
  - (ii) in the case of a juvenile offender, may result in the issue of a warrant of commitment under the *Child Welfare Act 1947*;
  - (iii) in the case of an alleged offender who is not a natural person, will result in the issue of a warrant under this Part. ”.

**Section 171BH amended**

16. Section 171BH of the principal Act is amended in subsection (1) by inserting after “as a result of the enforcement order,” the following—

“ or, in the case of a juvenile offender, the referral to the Children’s Court under section 171BIA of the failure to make payment, ”.

**Section 171BI amended**

17. Section 171BI of the principal Act is amended in subsection (1) by deleting “a person” and substituting the following—

“ an alleged offender to whom section 171BIA does not apply ”.

**Section 171BIA inserted**

18. After section 171BI of the principal Act the following section is inserted—

**Referral to Children’s Court**

“ **171BIA.** (1) Where under section 171BG notice of an enforcement order has been served on a juvenile offender and, the time specified in the order having elapsed, neither payment as specified in the order (within the time required by the order or thereafter) nor an election under section 171BK has been made, the Registrar shall—

- (a) refer the failure to make payment to the Children’s Court; and
- (b) notify the alleged offender and the person who lodged the relevant certificate under section 171BE (1) that the failure to make payment has been so referred.

(2) Where under subsection (1) a failure to make payment is referred to the Children's Court, the Registrar shall forward to the relevant clerk of the Children's Court—

- (a) a copy of the certificate under section 171BE relating to the alleged offence; and
- (b) details of any amount paid under this Part by the alleged offender in respect of the alleged offence.

(3) Upon a failure to make payment being referred to the Children's Court under subsection (1), the Children's Court shall exercise in respect of that matter the powers conferred on that court by the *Child Welfare Act 1947* as if the amount outstanding under this Part were a fine or other sum of money ordered to be paid by a court under that Act on the day on which the enforcement order was made.

(4) A summons issued by the Children's Court under section 35 (3) or 36 (4) of the *Child Welfare Act 1947* in respect of a failure to make payment referred to that court under subsection (1) shall be served personally on the alleged offender and shall contain a statement to the effect that—

- (a) an enforcement order has been made in respect of an infringement notice issued to the alleged offender;
- (b) notice of the enforcement order has been served on the alleged offender;
- (c) payment as specified in the enforcement order has not been made;
- (d) if it is wished to have a complaint of the alleged offence heard and determined by the Children's Court an election to that effect must be made under subsection (5); and



- (e) the alleged offender is required to appear before the Children's Court on the day specified in the summons unless before that day either payment of the amount outstanding under this Part has been made in the manner specified in the summons or an election has been made under subsection (5).

(5) Where under subsection (1) a failure to make payment is referred to the Children's Court, the alleged offender or the person who lodged the relevant certificate under section 171BE (1) may at any time that is before either—

- (a) the amount outstanding under this Part has been paid; or
- (b) the Children's Court has dealt with the failure to make payment,

elect in the manner specified in subsection (6) to have a complaint of the alleged offence heard and determined by that Court.

(6) An election under subsection (5) may be made—

- (a) in person to the Children's Court on the day on which the alleged offender appears before that court in respect of the failure to make payment; or
- (b) in writing given to the relevant clerk of the Children's Court before the day referred to in paragraph (a).

(7) Where an election is made under subsection (5)—

- (a) any enforcement order made in respect of the infringement notice ceases to have effect; and
- (b) the Children's Court has power to deal with the alleged offender in respect of the alleged offence as if the certificate under section 171BE relating to the alleged offence were a complaint of the alleged offence that had, on the day when the certificate

was lodged under section 171BE (1), been made before the relevant clerk of the Children's Court by the person who gave the certificate, and the *Children's Court of Western Australia Act (No.2) 1988* applies accordingly.

(8) In this section a reference to the amount outstanding under this Part includes any fee payable by the alleged offender in respect of a summons issued under section 35 (3) or 36 (4) of the *Child Welfare Act 1947*. ”.

### **Section 171BJ amended**

19. Section 171BJ of the principal Act is amended in subsection (1) (b) by inserting after “executed,” the following—

“ or, as a result of failure to make payment, work is performed under a community service order made under the *Child Welfare Act 1947*, or a warrant of commitment issued under that Act is executed, ”.

### **Section 171BK repealed and a section substituted**

20. Section 171BK of the principal Act is repealed and the following section is substituted—

#### **Election for court hearing**

“ 171BK. (1) Notwithstanding any other provision of this Part, an alleged offender or the person who lodged the relevant certificate under section 171BE (1) may at any time that is—

(a) after the making of an enforcement order in respect of an infringement notice; but

- (b) before either the amount outstanding under this Part has been paid or—
  - (i) in the case of an adult offender, a work and development order has been issued under Part VIAA or a warrant under this Part has been executed;
  - (ii) in the case of a juvenile offender, the failure to make payment has been referred to the Children's Court under section 171BIA;
  - (iii) in the case of an alleged offender who is not a natural person, a warrant under this Part has been executed,

elect in writing given to the Registrar to have a complaint of the alleged offence heard and determined by a court.

(2) Where an election is made under subsection (1)—

- (a) any enforcement order made in respect of the infringement notice or warrant issued under this Part ceases to have effect; and
- (b) the Registrar shall—
  - (i) refer the matter to a court of petty sessions or the Children's Court, as the case requires;
  - (ii) notify the alleged offender and the person who lodged the relevant certificate under section 171BE (1) that the matter has been so referred; and
  - (iii) if a warrant has been issued that under paragraph (a) has ceased to have effect, forthwith notify the Commissioner of Police that the warrant has ceased to have effect.

(3) Where under subsection (2) (b) a matter is referred to a court of petty sessions, the Registrar shall forward to the clerk of that court a copy of the certificate under section 171BE relating to the alleged offence and proceedings in respect of the alleged offence are thereby commenced, and the provisions of this Act other than this Part apply in respect of the matter, as if the certificate were a complaint of the alleged offence that had, on the day when the certificate was lodged under section 171BE (1), been made as mentioned in section 50 before the clerk of petty sessions by the person who gave the certificate.

(4) Where under subsection (2) (b) a matter is referred to the Children's Court, the Registrar shall forward to the relevant clerk of the Children's Court a copy of the certificate under section 171BE relating to the alleged offence and proceedings in respect of the alleged offence are thereby commenced, and the provisions of the *Children's Court of Western Australia Act (No. 2) 1988* apply in respect of the matter, as if the certificate were a complaint of the alleged offence that had, on the day when the certificate was lodged under section 171BE (1), been made before the relevant clerk of the Children's Court by the person who gave the certificate. ”.

## **Section 171BL amended**

**21.** Section 171BL of the principal Act is amended—

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

“ (1) Where a courtesy letter has been served under this Part in respect of an infringement notice but—

(a) in the case of an adult offender, a work and development order has not been issued under Part VIAA and a warrant under this Part has not been executed;

- (b) in the case of a juvenile offender, work has not been performed under a community service order made under the *Child Welfare Act 1947* and a warrant of commitment under that Act has not been executed;
- (c) in the case of an alleged offender who is not a natural person, a warrant under this Part has not been executed,

in respect of the alleged offence and the matter has not been dealt with by a court other than under this Part, a person prescribed for the purposes of this subsection in respect of the principal enactment may, whether or not payment has been made of the amount for the time being outstanding, withdraw proceedings under this Part in respect of the alleged offence. ”; and

(b) in subsection (3)—

- (i) in paragraph (a) by inserting after “Part” the following—

“ , or summons, warrant or order under the *Child Welfare Act 1947*, ”;

- (ii) in paragraph (b) by deleting “section 171BK (3)” and substituting the following—

“ section 171BIA or 171BK (3) or (4) ”; and

- (iii) by deleting paragraph (c) and substituting the following paragraph—

“ (c) the Registrar shall—

- (i) if court proceedings have been commenced under section 171BIA or 171BK (3) or (4), forthwith

notify the clerk of the court in which the matter is proceeding that those proceedings are discontinued;

- (ii) if a warrant has been issued that under paragraph (a) has ceased to have effect, forthwith notify the Commissioner of Police that the warrant has ceased to have effect. ”.
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