

## JUSTICES.

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No. 120 of 1981.

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### AN ACT to amend the Justices Act 1902-1980.

[Assented to 14 December 1981.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Justices Amendment Act 1981*.

Short title  
and citation.

(2) In this Act the Justices Act 1902-1980 is referred to as the principal Act.

Reprinted as  
approved 30  
November  
1977 and  
amended by  
Acts Nos.  
6 and 67 of  
1979 and 67  
of 1980.

(3) The principal Act as amended by this Act may be cited as the Justices Act 1902-1981.

2. This Act shall come into operation on a day to be fixed by proclamation.

Commence-  
ment.

Section 54  
repealed and  
substituted.

3. Section 54 of the principal Act is repealed and the following section is substituted—

Contents of  
summons.

“ 54. A summons issued under this Act shall—

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

Section 86  
amended.

4. Section 86 of the principal Act is amended by deleting “In any case of a charge” and substituting the following—

“ Subject to section 136 of this Act, in any case of a charge ” .

5. Section 134 of the principal Act is amended by deleting "If, upon the day" and substituting the following—

Section 134  
amended.

" Subject to section 136 of this Act, if, upon the day " .

6. Section 135 of the principal Act is amended in subsection (1)—

Section 135  
amended.

(a) by deleting "Where, at the time and place appointed by the summons for the hearing and determining of a complaint of a simple offence," and substituting the following—

" Subject to section 136 of this Act, if, at the time and place appointed by a summons for the hearing and determining of a complaint of a simple offence that is not an indictable offence, " ;

(b) by deleting "the summons, within" and substituting the following—

" that summons, within " ;

(c) by inserting, after "the complaint" in paragraph (a), the following—

" to which that summons relates " ;

and

(d) by deleting paragraph (b) and substituting the following paragraph—

" (b) adjourn the hearing of the complaint to which that summons relates and may issue their warrant

to apprehend the defendant and to bring him before Justices to answer that complaint and to be dealt with further according to law, ” .

Section 136  
inserted.

7. After section 135 of the principal Act, the following section is inserted—

Procedure  
when  
summons  
defendant  
notifies  
his wish  
to plead  
not guilty.

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

(a) state—

- (i) that he wishes to plead not guilty to that charge; and
- (ii) the address for service on him of notices;

and

(b) write his signature,

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

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

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

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

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

- (a) appear at that time before the Court of Petty Sessions concerned; and
- (b) consent to the hearing and determining of that complaint at that time,

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

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

that subsection a time and place for the hearing and determining of the complaint concerned—

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

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

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

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

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

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

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

- (b) may, if the defendant does not appear at that time and place when called and due service of notice referred to in paragraph (a) of this subsection is proved—
- (i) proceed to hear and determine that complaint in the absence of the defendant; or
  - (ii) adjourn the hearing of that complaint and may issue their warrant to apprehend the defendant and to bring him before Justices to answer that complaint and to be dealt with further according to law;

and

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

“officer” means officer of the Court of Petty Sessions by which the defendant is dealt with under this section. ” .

8. Section 137 of the principal Act is repealed and the following section is substituted—

Section 137 repealed and substituted.

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

Procedure when both parties appear.

- (a) personally; or

(b) by counsel or solicitor,

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

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

(a) under section 135 of this Act of his wish to plead guilty; or

(b) under section 136 of this Act of his wish to plead not guilty,

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

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

(a) appears at the time and place appointed by that summons;

(b) elects that that charge be dealt with summarily;

and

(c) pleads not guilty to that charge,

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

Fourth  
Schedule  
amended.

9. The Fourth Schedule to the principal Act is amended by deleting the form headed—

“6.—*Summons to the defendant upon complaint.*”.