

JUSTICES (No. 2).

No. 119 of 1976.

AN ACT to amend the Justices Act, 1902-1976.

[Assented to 1st December, 1976.]

BE 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 Act Amendment Act (No.2), 1976*.

Short title
and
citation.

(2) In this Act the Justices Act, 1902-1976, is referred to as the principal Act.

Approved for
reprint 17th
November,
1972
and further
amended by
Act No. 94 of
1972 as
amended by
Act No. 19
of 1973, and
by Act No. 72
of 1975 and
Act No. 33
of 1976.

(3) The principal Act as amended by this Act may be cited as the Justices Act, 1902-1976.

Section 24
amended.

2. Section 24 of the principal Act is amended—

- (a) by inserting after the section designation “24.” the subsection designation “(1)”;
- (b) by adding three new subsections as follows—

(2) The Governor may, by proclamation, order that Courts of Petty Sessions constituted by a Stipendiary Magistrate only shall be held at such places as he thinks fit; and may, in like manner, alter the place for the holding of such a court, or order that the holding of any such court be discontinued.

(3) The provisions of subsection (2) of this section shall not be construed as limiting or affecting the jurisdiction of any Stipendiary Magistrate under the other provisions of this Act or under any other Act.

(4) Where the Governor orders that a Court of Petty Sessions shall be held at any place pursuant to subsection (2) of this section—

- (a) the proclamation may provide that there shall be a seal of the court;
- (b) the Magistrate to whom a court is assigned shall attend to hold the court, at the place appointed by the Governor, at such times as are appointed by the Minister, but so that the court is held in the place once at least in such period of time as the Governor directs by proclamation;

- (c) notice of the days on which the court is appointed to be held shall be published in the *Government Gazette*, and posted in a conspicuous place at the court-house and also in the office of the clerk;
- (d) when by reason of the absence of a Magistrate the court cannot be held at the time appointed, the clerk, or, in his absence, a prescribed officer, shall adjourn the court; and
- (e) when the holding of the court is discontinued, all proceedings pending in that court shall be transferred to and continued in such other court as the Governor may direct by proclamation and all records of the court the holding of which is discontinued shall be transferred to such other court.

3. Section 96 of the principal Act is amended— Section 96 amended.

- (a) by deleting the word “and”, in line two, and substituting the word “including”; and
- (b) by adding after the word “Sessions”, in line four, the words “and appeals and providing for procedural matters relating thereto”.

4. Section 189 of the principal Act is amended Section 189 amended. by inserting after the word “Justices”, in line three, the words “and the recognisances”.

5. Section 190 of the principal Act is amended— Section 190 amended.

- (a) by inserting after the section designation “190.” the subsection designation “(1)”;

- (b) by redesignating the second sentence, in line twelve to line fifteen, as subsection (2);
- (c) by redesignating the third sentence, in lines sixteen and seventeen, as subsection (3); and
- (d) by adding a new subsection as follows—

(4) The Court or a prescribed officer may issue such memorandum of the decision and such warrants as may be necessary to carry into effect the decision of the Court.

Section 197
amended.

6. Section 197 of the principal Act is amended—

- (a) as to subsection (1), by inserting after the word “decision”, in line thirty-six, the passage “(hereinafter called “the respondent”);”;
- (b) by adding after the word “reviewed”, being the last word in subsection (1), the passage “and where, at any time within such period of two months from the giving of the decision whether at the time of the giving of the order to review or subsequently on the application of the appellant, the Judge determines that an appellant in custody should be liberated prior to the return of the order to review he may direct that the appellant be released from custody on the appellant entering into a recognisance on such terms and conditions including, where applicable, procuring sureties or giving security, as the Judge thinks fit”; and
- (c) by adding a new subsection as follows—

(5) In considering and determining any application for an order to review or for the release of an appellant from

custody the Judge may inform himself as to all the circumstances in such manner as he thinks fit. .

7. Section 200 of the principal Act is amended— Section 200 amended.

- (a) by inserting after the section designation “200.” the subsection designation “(1)”;
- (b) by inserting after the word “review”, in line two, the words “or such shorter period as may have been ordered on the determination of the application for that order and in any event prior to his release from custody”;
- (c) by deleting the passage “according (subject as hereinafter provided) to the decision of the Justice, in such sum (not less than fifty dollars) as the Justice shall determine”, in line four to line seven, and substituting the words “in such sum and on such terms and conditions as the Judge may have determined in granting the order”;
- (d) by deleting the passage “award, and the”, in line eleven and substituting the passage “award.”;
- (e) by inserting before the word “appellant”, in line eleven the passage “(2) The”;
- (f) by deleting the passage “fees:”, in line fifteen, and substituting the passage “fees.”;
- (g) by deleting the proviso and substituting a new subsection as follows—

(3) In no case shall any surety be accepted unless he justifies to the satisfaction of the Justice. .

Section 201
amended.

8. Section 201 of the principal Act is amended—

- (a) by inserting a new subsection to stand as subsection (1), as follows—

(1) Where an order for review or for the release of an appellant from custody is granted the Master of the Supreme Court shall cause to be sent to—

- (a) the clerk of petty sessions of the court from which the appeal was made;
- (b) the Attorney General; and
- (c) any person who is by the order for review called upon to show cause,

a memorandum of the decision of the Judge setting out the terms and conditions of the recognisance required. ;

- (b) by redesignating the existing provision to stand as subsection (2);
- (c) by inserting after the word “liberated”, in line five, the words “on presentation of a recognisance entered into in accordance with the order for his release to the person by whom he is held in custody”; and
- (d) by adding a new subsection, to stand as subsection (3), as follows—

(3) On receipt of a copy of a recognisance given by an appellant, the person by whom that appellant is held in custody shall verify that it is correctly entered into and shall thereupon release the appellant from custody and by memorandum report that fact to—

- (a) the Master of the Supreme Court; and
- (b) the Attorney General. .

9. Section 203 of the principal Act is amended— Section 203 amended.
- (a) by inserting after the section designation “203.” the subsection designation “(1)”;
 - (b) by inserting after the word “entered”, in line two, the words “by the appellant”; and
 - (c) by adding a new subsection as follows—
 - (2) No order for review shall be entered for hearing unless—
 - (a) a memorandum as to the release from custody of the appellant has been received pursuant to subsection (3) of section two hundred and one of this Act acknowledging receipt of a recognisance entered into pursuant to the order for review;
or
 - (b) such recognisance is presented at the time of making application for the entry for hearing. .
10. Section 205 of the principal Act is amended— Section 205 amended.
- (a) by inserting after the section designation “205.” the subsection designation “(1)”;
 - (b) by deleting the passage “*habeas corpus*:”, in line twenty-one, and substituting the passage “*habeas corpus*.”;
 - (c) by deleting the words “Provided that notwithstanding”, in lines twenty-one and twenty-two, and substituting the passage “(2) Notwithstanding”;
 - (d) by deleting the words “discharge the order”, in line twenty-five, and substituting the words “the order may be discharged”;

(e) by deleting the words "Provided further that the", in line twenty-seven, and substituting the passage "(3) The"; and

(f) by adding a new subsection as follows—

(4) The Court or a prescribed officer may issue such memorandum of the decision and such warrants as may be necessary to carry into effect the decision of the Court. .

Section 206D
amended.

11. Section 206D of the principal Act is amended by inserting immediately before the word "any", in line three, the words "the Attorney General or".

Section 206E
repealed and
re-enacted.

12. Section 206E of the principal Act is repealed and re-enacted as follows—

Evidentiary
provisions.

206E. The prescribed officer shall send to the proper clerk of petty sessions, any person having the appellant in custody, the Attorney General, and any party called upon by the order for review to show cause, a memorandum as to each decision given on or in relation to an application for an order for review, the order or the determination made on the return of the order, and such memorandum shall be sufficient evidence of the relevant facts therein specified. .

Section 216
amended.

13. Section 216 of the principal Act is amended—

(a) by inserting after the section designation "216." the subsection designation "(1)"; and

(b) by adding a new subsection as follows—

(2) Where any Justices exercise a power conferred by subsection (1) of this section, the proper clerk of petty sessions shall send a memorandum to the Master of the Supreme Court setting out the relevant circumstances and parties. .