

JUSTICES.

No. 33 of 1976.

AN ACT to amend the Justices Act, 1902-1975.

[Assented to 9th June, 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, 1976*.

Short title
and citation.

(2) In this Act the Justices Act, 1902-1975 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.

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

Commence-
ment.

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

Section 4
amended.

3. Section 4 of the principal Act is amended by adding after the interpretation "Police Officer" an interpretation as follows—

"Preliminary Hearing" means a hearing to determine whether there is sufficient evidence for a person charged with an indictable offence to be committed to a Court of competent jurisdiction for trial or sentence; .

Section 69
amended.

4. Section 69 of the principal Act is amended—

(a) by adding after the section number "69." the subsection designation "(1)"; and

(b) by adding at the end of the section subsections as follows—

(2) Notwithstanding any other provision in any Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a written statement of any person—

(a) may, on a preliminary hearing, be tendered to the Justices in evidence and is admissible as evidence before them to the like extent as oral evidence to the like effect by that person; or

(b) may, where there is no preliminary hearing, be tendered to the Justices to be used in evidence for the purposes of the trial or sentencing of the defendant,

if the conditions mentioned in subsection (3) of this section are complied with.

(3) The conditions referred to in subsection (2) of this section are as follows—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true;
- (c) before the statement is so tendered, a copy of the statement has been served, by or on behalf of the party proposing to tender it, on each other party to the proceedings and, where the party proposing to tender it is the prosecutor, it has been served and lodged in accordance with subparagraph (ii) of paragraph (b) of subsection (1) of section one hundred and one A of this Act;
- (d) before the statement is so tendered, no other party to the proceedings objects to its tender;
- (e) where the statement is made by a person under the age of eighteen years, it gives his age;
- (f) where the statement is made by a person who cannot read, it is read aloud to him before he signs it, and it is accompanied by

a declaration of the person who read the statement to the effect that it was so read; and

- (g) where the statement refers to any other document or exhibit, the copy of the statement served, under paragraph (c) of this subsection, is accompanied by a copy or description of the other document or exhibit.

(4) A written statement is deemed to be tendered in evidence under this section at the time that the statement is tendered to the Justices.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section is deemed to have been produced before the Justices and identified by the maker of the statement.

(6) A written statement tendered in evidence under this section is admissible as evidence before any Court of competent jurisdiction, to the like extent that a deposition of the person who made the statement would be so admissible.

(7) Any person who, in a written statement tendered in evidence under this section, has wilfully included anything which he knew to be false or did not believe to be true is guilty of a crime and is liable to imprisonment with hard labour for seven years, but a person shall not be convicted of the crime upon the uncorroborated testimony of one witness. .

Section 73
amended.

5. Section 73 of the principal Act is amended—

- (a) by adding after the section number “73.” the subsection designation “(1)”;

- (b) by adding after the word "shall", in line three, the passage ", if the charge is not dealt with summarily," ; and
- (c) by adding at the end of the section a subsection as follows—

(2) Where, on a preliminary hearing, a written statement is tendered in evidence under section sixty-nine of this Act, the Justices—

- (a) shall read aloud, or cause to be read aloud before them, such part of the statement as is admissible in evidence by virtue of paragraph (a) of subsection (2) of that section;
- (b) shall sign the statement; and
- (c) may, on their own motion or on the application of any party to the proceedings, require the person who made the statement to attend before them and give evidence if they are satisfied that the presence of that person as a witness is necessary in the interests of justice. .

6. The principal Act is amended by adding after section 101 sections as follows—

Sections 101A to 101F inclusive added.

101A. (1) Where a person is charged before Justices with an indictable offence—

Procedure where person is charged before Justices with an indictable offence.

- (a) when he is first brought before the Justices, the Justices—
 - (i) shall read and explain to him the offence with which he is charged;
 - (ii) shall address him in the form of words prescribed in Part A of the Ninth Schedule to this Act, or in words to the like effect; and

- (iii) shall, where the charge may be dealt with summarily at the election of the defendant, address him in the form of words prescribed in Part B of the Ninth Schedule to this Act, or in words to the like effect, and, if he so wishes, shall adjourn the proceedings in accordance with the provisions of this Act; and
- (b) where, immediately after being addressed in accordance with subparagraph (iii) of paragraph (a) of this subsection or after an adjournment granted under that subparagraph, he elects not to have the charge dealt with summarily, or where the charge cannot be dealt with summarily, the Justices—
 - (i) shall address him in the form of words prescribed in Part C of the Ninth Schedule to this Act, or in words to the like effect;
 - (ii) shall direct the prosecutor to serve or cause to be served on the defendant, and lodged with the Clerk of Petty Sessions, at least four 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 subsection (2) of section sixty-nine of this Act;
 - (iii) shall give or cause to be given to the defendant a copy of Part C of the Ninth Schedule to this Act suitably adapted to the circumstances of the charge against him; and
 - (iv) shall adjourn the proceedings in accordance with the provisions of this Act.

(2) Where a person is charged before Justices with an offence under section four hundred and ninety-six or five hundred and fifty of the Criminal Code—

- (a) the Justices shall follow, with such modifications as are necessary, the procedure provided in subsection (1) of this section; and
- (b) if the defendant elects to be prosecuted on indictment, the other provisions of this Act relating to the examination, committal, and prosecution on indictment of persons charged with indictable offences shall, from the time he so elects, apply to and in respect of him as if he were charged with an indictable offence.

101B. (1) On the resumption of the hearing adjourned under subparagraph (iv) of paragraph (b) of subsection (1) of section one hundred and one A of this Act and after the depositions of the witnesses, if any, called by the prosecution have been recorded in accordance with subsection (1) of section seventy-three of this Act, the defendant shall be required by the Justices to elect whether or not to have a preliminary hearing.

Defendant
to elect for
or against
preliminary
hearing.

(2) A defendant is deemed to have elected to have a preliminary hearing if he—

- (a) stands mute or does not answer directly to the question putting him to his election; or
- (b) objects to any statement being tendered under section sixty-nine of this Act.

(3) If the defendant, or if, where there is more than one defendant, one of the defendants elects to have a preliminary hearing there shall be a preliminary hearing but otherwise there shall not be a preliminary hearing.

Proceedings
where no
preliminary
hearing.

101C. Where there is no preliminary hearing—

(a) a defendant—

- (i) shall not cross-examine any witnesses before the Justices;
- (ii) shall not give or tender before the Justices any evidence other than written statements tendered under section sixty-nine of this Act; and
- (iii) shall not submit to the Justices that there is insufficient evidence before them to put him on his trial for the offence;

(b) the Justices—

- (i) shall require the defendant to plead to the charge;
- (ii) shall require that all written statements that are, under section sixty-nine of this Act, to be tendered to them to be used in evidence shall be so tendered and shall receive and sign those statements, which shall not be read in Court; and
- (iii) shall, without any consideration of the contents of the depositions, if any, or the written statements, forthwith commit the defendant for trial or sentence, as the case requires; and

(c) a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public the contents, or any part thereof, of the depositions, if any, or the written statements, or attempts to do so, before those contents or part thereof, as the case may be, are, at the trial or sentencing of the defendant, admitted

as evidence, or stated aloud under section six hundred and seventeen A of the Criminal Code, commits a contempt of the Supreme Court and is punishable accordingly by that Court.

101D. Where there is a preliminary hearing the Justices may at any time state that in their opinion in the interests of justice it is undesirable that any report of or relating to the evidence or any of the evidence given or tendered at the proceedings before them should be published and thereafter a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public such report or any part thereof, or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that Court.

Justices
may restrict
publication
of evidence
in prelim-
inary
hearing.

101E. Without affecting any other liability of any person under section one hundred and one C or one hundred and one D of this Act or otherwise, a company or other body corporate is liable to any punishment or penalty for any offence under either of those sections as if it were a private person so far as the punishment or penalty is enforceable against a company or body corporate; and 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, an offence under either of those sections he is liable to the punishment or penalty for the offence.

Liability
of body
corporate
for offences
against
Section 101C
or 101D.

101F. Nothing in section one hundred and one C or one hundred and one D of this Act applies to the publication of information with regard to any proceedings under either of those sections for contempt of court or for punishment or penalty. .

Saving.

Section 102
amended.

7. Section 102 of the principal Act is amended by substituting for the passage beginning with the word "Except", in line one, and ending with the word "completed", in line six, a passage as follows—

On a preliminary hearing, the Justices—

- (a) shall examine all the witnesses called by the prosecution, or called under paragraph (c) of subsection (2) of section seventy-three of this Act in respect of written statements tendered in evidence by the prosecution under section sixty-nine of this Act; and
- (b) shall read aloud, or cause to be read aloud, the parts of written statements tendered in evidence by the prosecution that are required to be so read under paragraph (a) of subsection (2) of section seventy-three of this Act,

and thereupon the Justices or one of the Justices.

Section 103
amended.

8. Section 103 of the principal Act is amended by substituting for the words "any such statement made by him", in line two, the passage "any statement made by him when he is required to plead to the charge under subparagraph (i) of paragraph (b) of section one hundred and one C or when he is asked the question required under section one hundred and two of this Act".

Section 105
repealed and
re-enacted.

9. Section 105 of the principal Act is repealed and re-enacted as follows—

Evidence for
the defence.

105. (1) After addressing the defendant as required by section one hundred and two of this Act and after taking the statement, if any, of the defendant, the Justices or one of the Justices shall ask the defendant whether he desires to give evidence or call any witnesses, or to tender any written statements under section sixty-nine of this Act.

(2) If the defendant gives evidence or calls any witnesses or any witnesses are called under paragraph (c) of subsection (2) of section seventy-three of this Act in respect of written statements tendered in evidence by the defendant under section sixty-nine of this Act, the Justices shall, in the presence of the defendant, take the statement on oath, both examination and cross-examination, of the defendant or of the witnesses so called who know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the defendant.

(3) If the defendant tenders any written statements in evidence under section sixty-nine of this Act the Justices shall read aloud, or cause to be read aloud, the parts of those written statements that are required to be so read under paragraph (a) of subsection (2) of section seventy-three of this Act. .

10. Section 106 of the principal Act is amended by adding after the word "When", in line one, the passage ", on a preliminary hearing,".

Section 106
amended.

11. Section 107 of the principal Act is amended by adding after the word "If", in line one, the passage "there is no preliminary hearing and the defendant has pleaded not guilty or if, on a preliminary hearing".

Section 107
amended.

12. Section 114 of the principal Act is amended—

Section 114
amended.

- (a) by adding after the word "If", in line one, the passage "there is no preliminary hearing and the defendant has pleaded guilty or if, on a preliminary hearing,"; and
- (b) by adding after the word "law", being the last word in the section, the words "or admitted to bail as hereinafter mentioned".

Section 116
amended.

13. Section 116 of the principal Act is amended—
- (a) by substituting for the passage “except a capital crime, the crime of murder, or”, in lines two and three, the passage “not being a capital crime or the crime of murder, or with”; and
 - (b) by adding after the word “tried”, in the last line, the words “or sentenced”.

Section 117
amended.

14. Section 117 of the principal Act is amended—
- (a) by adding after the word “trial”, in line three, the words “or await his sentence”; and
 - (b) by adding after the word “tried”, in line five, the words “or sentenced”.

Section 121
amended.

15. Section 121 of the principal Act is amended—
- (a) by adding after the word “if”, in line three, the passage “there is no preliminary hearing, or if, on a preliminary hearing,”;
 - (b) by adding after the word “trial”, in line five, the passage “, or if the defendant pleads guilty”;
 - (c) by adding after the word “tried”—
 - (i) in line nine; and
 - (ii) in line fourteen,
the words “or sentenced”; and
 - (d) by adding after the word “trial”, in line eleven, the words “or to await his sentence”.

16. The principal Act is amended by adding after the Eighth Schedule to the Act a schedule as follows—

Ninth
Schedule
added.

S. 101A.

NINTH SCHEDULE.

Part A.

After the charge is [charges are] read and explained to the defendant the Justices or one of them will say—

You are not required to plead to this charge [these charges] now but your rights will be explained to you.

Part B.

Where the charge of an indictable offence may be dealt with summarily at the election of the defendant, the Justices or one of them will then say—

This is a charge on which you have the right to be dealt with by the Supreme Court [or a District Court]. You may, however, choose to be dealt with by a Court of Petty Sessions.

[If the charge is one which may be dealt with summarily only if the accused pleads guilty, the Justices or one of them shall add the words "if you plead guilty"].

If you wish for time to consider the matter or seek legal advice the case shall be adjourned. Do you want an adjournment?

Part C.

Where, immediately after being addressed in accordance with subparagraph (iii) of paragraph (a) of subsection (1) of section one hundred and one A of this Act or after an adjournment granted under that subparagraph the defendant elects not to have the charge dealt with summarily, or where the charge cannot be dealt with summarily the Justices or one of them will then say—

The hearing is going to be adjourned to enable the prosecution to make available to you copies of written statements of its witnesses. With these you will be given a copy or description of any documents or other exhibits intended to be produced by the prosecution at your trial. These papers will be served on you or your solicitor at least four days before the resumption of the hearing. When the hearing is resumed the prosecution may call witnesses to give oral evidence.

If it does, that evidence will be recorded in depositions and you will be provided with copies, and given an opportunity to consider them. You will then be asked to elect whether or not you require a preliminary hearing.

A preliminary hearing is not a trial but an inquiry by a Court of Petty Sessions to determine whether there is sufficient evidence to put you on trial for the offence [offences] before a Judge and a jury. At this inquiry the prosecution may call witnesses to give oral evidence; it may also if you have not objected or do not object offer as evidence the written statements served on you. These statements will be read aloud in Court. If you have objected or do object, the statements will not be tendered as evidence but the persons who made them may be called as witnesses.

You yourself will not be required to say anything or give evidence at the preliminary hearing, though you may do so but whatever you say will be taken down in writing and may be given in evidence at your trial. You may also call witnesses to give oral evidence and, if the conditions mentioned in subsection (3) of section sixty-nine of the Justices Act, 1902 are complied with, you may tender written statements in evidence. Such parts of those statements as are admissible in evidence shall be read aloud.

The evidence of each witness who gives oral evidence at the preliminary hearing will be taken down in writing and if you are committed you will before the trial be given copies of the depositions of each of these witnesses.

If you (and all the other defendants) elect *not* to have a preliminary hearing you will be required to plead to the charge [charges] and then, without any consideration of the evidence by the Court of Petty Sessions, you will be committed to the Supreme Court [or District Court] for trial, or sentence, as the case requires, on the written statements and depositions of the witnesses (if any) who were called to give oral evidence. If there is no preliminary hearing the written statements will not be read in Court, and the evidence (including the depositions if any) will not be publicized, before the trial.

The hearing will now be adjourned for days.

Remand/Bail. .