

# TRANSPORT COMMISSION.

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No. 24 of 1976.

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AN ACT to amend the Transport Commission Act,  
1966-1975.

[Assented to 9th June, 1976.]

**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 *Transport Commission Act Amendment Act, 1976*.

Short title  
and citation.

(2) In this Act the Transport Commission Act, 1966-1975 is referred to as the principal Act.

Reprinted  
as approved  
for reprint  
20th Feb-  
ruary, 1973  
as amended  
by Acts  
Nos. 83 of  
1973 and 51  
of 1975.

(3) The principal Act as amended by this Act may be cited as the Transport Commission Act, 1966-1976.

Commence-  
ment.

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

Sections 56A  
and 56B  
added.

3. The principal Act is amended by adding after section 56 sections as follows—

Affidavit  
evidence.

56A. (1) Where a complaint is made of an offence under this Act and a summons appointing the time and place for the hearing and determination of the complaint is duly served on the defendant at least fourteen days before that time, the summons may be accompanied by—

- (a) copies of affidavits of evidence in support of the matters alleged in the complaint; and
- (b) a notice in the prescribed form advising the defendant that he may, by election in writing in the prescribed form (copies of which form shall be attached to the notice) delivered by post or otherwise to the complainant and also to the clerk of petty sessions at the place so appointed not later than seven days before the time so appointed, elect to appear or not on the hearing of the complaint but that if he does not so appear the Court may proceed—
  - (i) to hear and determine the complaint in his absence;
  - (ii) to permit those affidavits to be tendered in evidence; and
  - (iii) to determine the complaint on such particulars in the affidavits in support of the matters alleged in the complaint as would, under the laws of evidence apart from this section, be admissible if given orally before the Court, and not on any other particulars,

(which in this section and section fifty-six B of this Act is referred to as the alternative procedure).

(2) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of this section and does not appear on the hearing of the complaint, whether or not he has, pursuant to that subsection, elected to do so, the Court may use the alternative procedure.

(3) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of this section and elects, pursuant to that subsection, not to appear on the hearing of the complaint, or makes no election at all pursuant to that subsection, but does appear at the time and place appointed in the summons, the Court shall, on the application of the complainant, adjourn the hearing of the complaint for at least such time as is shown to the satisfaction of the Court to be necessary to enable the complainant to proceed otherwise than by the alternative procedure.

(4) For the purposes of this section an affidavit of evidence in support of the matters alleged in a complaint may be taken by, and made and sworn before, any Magistrate, Justice, or clerk of petty sessions appointed under section twenty-five A of the Justices Act, 1902, or Commissioner for taking Affidavits appointed under section one hundred and seventy-five of the Supreme Court Act, 1935.

56B. (1) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and it is alleged

Proof of  
prior  
convictions  
when  
complaint  
proceeds on  
affidavit  
evidence.

that he has been previously convicted of an offence, the summons may also be accompanied by a copy of a separate document in the prescribed form signed by the complainant setting out particulars of the alleged prior convictions.

(2) The document setting out the alleged prior convictions shall be endorsed with a notice in the prescribed form advising the defendant that if—

- (a) he does not appear on the hearing of the complaint to which the summons refers; and
- (b) he is convicted of the offence alleged in that complaint,

that separate document shall be admissible evidence that he was convicted of the offences alleged in that separate document, and of the particulars relating to the convictions set out in it.

(3) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and by a copy of a separate document as mentioned in subsections (1) and (2) of this section and does not appear on the hearing of the complaint to which the summons refers and the Court uses the alternative procedure, the Court may receive that separate document as evidence that the defendant was convicted of the offences alleged in that separate document and of the particulars relating to the convictions set out in it.

(4) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and by a copy of a separate document as mentioned in subsections (1) and

(2) of this section and he appears on the hearing of the complaint to which the summons refers—

- (a) the fact that a copy of the separate document was served on the defendant shall not be communicated to the Court or any member of the Court unless and until the defendant has been convicted of the offence alleged in that complaint, if the disclosure of the prior convictions alleged in the separate document is not admissible under the laws of evidence apart from this section; and
- (b) the separate document shall not be tendered in evidence without the consent of the defendant, if the separate document is not admissible under the laws of evidence apart from this section.

(5) Without in any way limiting the generality of the provisions of the law with respect to the re-hearing of complaints it is hereby declared that, where evidence of prior convictions is tendered pursuant to the provisions of this section, the Court may set aside on such terms as to costs or otherwise as the Court thinks just any conviction or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted of the offences as alleged in the document. .

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