



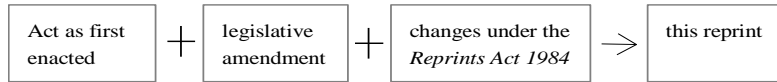
Western Australia

Police Act 1892

Reprint 11: The Act as at 10 September 2004

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

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Western Australia

Reprinted under the
Reprints Act 1984 as
at 10 September 2004

Police Act 1892

An Act to consolidate and amend the law relating to the police in Western Australia.

[1. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

2. **Interpretation**

In this Act, unless the context otherwise requires —

“**chairman**” of the local government includes mayor of a city or town and president of a shire;

“**lock-up**” includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

“**street**” includes road, thoroughfare, and public place;

“**thoroughfare**” includes any bridge, tunnel, under-pass, arcade, pavement, footpath, court, or passage to or through which access is permitted to the public, whether or not on private property;

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“valuable security” includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property.

[Section 2 amended by No. 10 of 1959 s. 2; No. 28 of 1964 s. 2; No. 29 of 1979 s. 2; No. 73 of 1994 s. 4; No. 14 of 1996 s. 4; No. 47 of 1999 s. 29.]

3. Short title

This Act may be cited as the *Police Act 1892*¹.

[Section 3 amended by No. 11 of 1928 s. 2; No. 15 of 1952 s. 5; No. 28 of 1953 s. 3; No. 25 of 1954 s. 3; No. 28 of 1964 s. 3; No. 18 of 1975 s. 2; No. 146 of 1976 s. 3; No. 57 of 1981 s. 23; No. 108 of 1982 s. 3; No. 21 of 1983 s. 4; No. 14 of 1996 s. 4; No. 10 of 1998 s. 59.]

**Part I — As to the appointment of officers and
constables of the Police Force**

[4. *Omitted under the Reprints Act 1984 s. 7(4)(e).]*

5. Commissioner of Police, appointment and functions of

The Governor may from time to time appoint a fit and proper person to be Commissioner of Police throughout the said State, and as occasion shall require may remove any Commissioner of Police and appoint another in his stead; and every Commissioner of Police shall be charged and vested with the general control and management of the Police Force of the said State, and also of any special constables who may be appointed as hereinafter provided.

6. Commissioned officers, appointment and control of

The Governor may appoint such officers of police as may be found necessary, who shall hold commissions under the hand of the Governor for such appointments; and such commissioned officers shall be subject to the control and discipline of the Commissioner of Police, and shall be respectively charged with the government and superintendence of such portion of the Police Force as such Commissioner may from time to time direct.

[Section 6 amended by No. 24 of 1969 s. 2; No. 6 of 1978 s. 2.]

7. Non-commissioned officers, appointment and functions of

- (1) The Commissioner of Police may appoint so many non-commissioned officers and constables of different grades as he shall deem necessary for preservation of peace and order throughout the said State, subject, however, to the approval of the Governor; and such non-commissioned officers and constables shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by

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the common law, or by virtue of any statute law now or hereafter to be in force in the said State.

- (2) The Minister, or a person authorised by him, may appoint persons to be police cadets who shall have such powers and privileges and be liable to such duties and obligations as may be prescribed, but shall not be members of the Police Force.

[Section 7 amended by No. 6 of 1978 s. 3.]

8. Commissioned and non-commissioned officers, removal of

- (1) The Governor may, from time to time as he shall see fit, remove any commissioned officer of police, and upon any vacancy for a commissioned officer, by death, removal, disability, or otherwise, the Governor may appoint some other fit person to fill the same; and the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in case of any vacancy in the Police Force by reason of the death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.
- (2) The powers of removal referred to in subsection (1) can be exercised only if the Commissioner of Police has complied with section 33L and that removal action has not been revoked under section 33N(1).
- (3) Subsection (2) does not apply where a person is removed from a commissioned office to be appointed to another commissioned office so long as that appointment —
- (a) is to an office at a level not less than the level of the office from which the person was removed; or
 - (b) is made with the consent of the person.
- (4) Subsection (2) does not apply to the removal of a police probationary constable.

[Section 8 amended by No. 24 of 1969 s. 3; No. 7 of 2003 s. 4.]

Part II — As to the regulations, duties and discipline of the Police Force

9. Commissioner may make regulations etc. governing Police Force and police cadets

The Commissioner of Police may, from time to time, with the approval of the Minister, frame rules, orders, and regulations for the general government of the members of the Police Force and of police cadets, as well with respect to their places of residence, their classification, grade, distribution, particular service, and inspection, as to the description of the arms, accoutrements, and other necessaries to be furnished to them and all such other rules, orders, and regulations relative to the Police Force and cadets, and the control, management, and discipline thereof as may be necessary for rendering the same efficient for the discharge of the several duties thereof, and for the purpose of preventing neglect or abuse; and as the Minister considers necessary or desirable for establishing and conducting a Police Force Canteen.

[Section 9 amended by No. 40 of 1958 s. 8; No. 91 of 1975 s. 3; No. 6 of 1978 s. 4.]

10. Engagement to be subscribed by officers and constables

No person shall be capable of holding any office, or appointment in the Police Force, or of acting in any way therein, until he shall have subscribed the following engagement, namely —

I, A.B., engage and promise that I will well and truly serve our Sovereign Lady the Queen, in the office of [*Commissioner of Police, inspector, sub-inspector, or other officer, or constable, as the case may be*], without favour or affection, malice, or illwill, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the same; and that, while I shall continue to hold the said office, I

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will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

And the said engagement shall be subscribed in the presence of and attested by a Justice or commissioned officer of the Force.

[Section 10 amended by No. 91 of 1975 s. 4.]

11. Person subscribing engagement bound to serve as member of the Police Force

Every person, on subscribing such engagement, shall be thereby bound to serve Her Majesty as a member of the Police Force, at the current rate of pay for such member, and until legally discharged, from the day on which such engagement shall have been subscribed: Provided that no such engagement shall be set aside for the want of reciprocity: Provided further, that such engagement may be cancelled at any time by the lawful discharge, dismissal, or removal from office of any such person, or by the resignation of any such person being accepted by the Commissioner of Police.

12. Non-commissioned officer and constable not to resign without leave or notice

No non-commissioned officer or constable shall be at liberty to resign his office, or to withdraw himself from the duties thereof, notwithstanding the period of his engagement shall have expired, unless expressly authorised in writing to do so by the Commissioner of Police, or unless he shall have given to such Commissioner 3 calendar months' notice of his intention so to resign or withdraw, if stationed north of the 18th parallel of south latitude or one calendar month's notice if stationed elsewhere, and every member who shall so resign or withdraw himself without such leave or notice shall, upon conviction thereof by any 2 or more Justices, be liable to forfeit all arrears of pay then due to him, and to a penalty of not more than \$50, or may be committed to prison for a period not exceeding 14 days.

[Section 12 amended by No. 28 of 1964 s. 4; No. 113 of 1965 s. 8; No. 91 of 1975 s. 5.]

13. Former members of Police Force to return uniforms, etc.

Every member of the Police Force, whether special or ordinary, having been dismissed from, or having ceased to hold his office, shall forthwith deliver to the Commissioner of Police, or to such person, and at such time and place, as the said Commissioner or a commissioned officer of the Force may direct, all and every the clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and other property which have been supplied to him for the execution of his duty, or which may be in his custody by virtue of his office; and in default of such delivery shall, on conviction thereof by 2 or more Justices, be liable to a penalty not exceeding \$300, in addition to the value of the property not so delivered; and any Justice may issue his warrant to search for and seize all and every the clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and property not so delivered, wherever the same may be found.

[Section 13 amended by No. 28 of 1964 s. 5; No. 113 of 1965 s. 8; No. 91 of 1975 s. 6; No. 51 of 1992 s. 16(3); No. 78 of 1995 s. 147.]

14. Officers and constables subject to duty in any part of the State, as if no Police District had been established

Notwithstanding the establishment of any Police District, all officers and constables belonging to the Police Force who may be stationed in any such district shall continue as part of such Force and be subject to the same authority, and be liable, if required, to perform the same duty in any part of the said State or elsewhere, as if no such Police District had been established; and if any members of the Police Force be employed beyond the limits of the said State every member so employed shall be amenable to and obey in all respects the lawful commands of his superior officers, and shall be liable to the same penalties, forfeitures, and punishments, in all respects, for any offence against the discipline of the Police Force, in any service in which he may be so employed beyond the limits of the said

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State, in the same manner as if such offence against the discipline of the Police Force had been committed within the said State.

[Section 14 amended by No. 6 of 1978 s. 5.]

15. Members of the Force taking bribes

Any member of the Police Force who shall take any bribe, pecuniary, or otherwise, either directly or indirectly, to forego his duty, or who shall in any manner aid, abet, assist, or connive at the escape, or any attempt or preparation to escape, of any prisoner from lawful custody, or who shall desert his post, or assault his superior officer, shall for every such offence, without prejudice to any other penalties or punishment to which he shall by law be liable, upon conviction thereof before any 2 or more Justices, forfeit and pay a penalty not exceeding \$4 000, or may, either instead of or in addition to such forfeiture and payment, be imprisoned for a term not exceeding 12 months.

[Section 15 amended by No. 28 of 1964 s. 6; No. 113 of 1965 s. 8; No. 91 of 1975 s. 7; No. 50 of 2003 s. 85(2).]

16. Personating or attempting to bribe etc., members of the Force

- (1) If any person, not being a member of the Police Force, shall have in his possession any arms or ammunition, or any article of clothing, accoutrements, or appointments supplied to any member of the Police Force and shall not be able satisfactorily to account for his possession thereof, or shall put on or assume the dress, name, designation, or description of any member of the Police Force, or shall pretend or assert that he is a member of such Force, or shall give, or offer, or promise to give any bribe, recompense, or reward, or shall make any collusive agreement with any member of the Police Force to induce him to neglect his duty, or to conceal or connive at any act whereby any rule, order, or regulation relating to the Police Force in operation in the said State may be evaded, every person so offending shall, in addition to any other punishment to which he

may be liable for such offence, forfeit for every such offence, on conviction thereof before any 2 or more Justices, a sum not exceeding \$4 000 or may, either instead of or in addition to such forfeiture, be imprisoned for a term not exceeding 12 months.

- (2) On the trial of a person charged with an offence under subsection (1) the averment in the complaint that he was not at some particular time a member of the Police Force is sufficient evidence of the fact until the contrary is proved.
- (3) A person who, with the consent of the Commissioner, puts on or assumes the dress of any member of the Police Force in the course of his duties as a supervisor of a Police and Citizens' Youth Club or as a member of the Police Band does not thereby commit an offence against subsection (1).

[Section 16 amended by No. 28 of 1964 s. 7; No. 113 of 1965 s. 8; No. 24 of 1969 s. 4; No. 91 of 1975 s. 8; No. 71 of 1980 s. 3; No. 50 of 2003 s. 85(3).]

16A. "Detective", unauthorised use of the term

- (1) Any person, not being either a member of the Police Force of this State or a member of the Police Force of the Commonwealth or of any other State of the Commonwealth temporarily residing in this State, who uses in any manner whatsoever the word "detective" as descriptive of the nature of his business, vocation, calling, or means of livelihood with a view to soliciting, procuring or obtaining the engagement or employment by other persons of his service as an inquiry agent or investigator in respect of matters in relation to which such other persons require information or evidence shall be guilty of an offence.
Penalty: \$2 500.
- (2) On the trial of a person charged with an offence under subsection (1) the averment in the complaint that he was not at some particular time either a member of the Police Force of this State or a member of the Police Force of the Commonwealth or

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any other State of the Commonwealth is sufficient evidence of the fact until the contrary is proved.

[Section 16A inserted by No. 5 of 1945 s. 2; amended by No. 28 of 1964 s. 8; No. 113 of 1965 s. 8; No. 24 of 1969 s. 5; No. 91 of 1975 s. 9; No. 50 of 2003 s. 85(4).]

17. Repute to be evidence of appointment

If any question shall arise as to the right of the Commissioner of Police, or any other officer or member of the Police Force, to hold or execute his office, common reputation shall to all intents and purposes be deemed sufficient evidence of such right, and it shall not be necessary to have or produce any written appointment, or any oath, or other document or matter whatsoever, in proof of such right.

18. Supplying liquor to constables on duty

Any person whosoever, who shall, by himself or his servant, permit any constable to be supplied with fermented or spirituous liquors when on duty, except during such time as such constable is travelling on duty, or who shall permit any constable to become drunk on his premises, and knowing him in every such case to be a member of the Police Force and any person who shall knowingly harbour or entertain any constable, or permit such constable to abide or remain in his premises during any part of the time appointed for such constable to be on duty elsewhere, on conviction thereof by any 2 or more Justices, shall, for every such offence, forfeit and pay a sum not exceeding \$100.

[Section 18 amended by No. 28 of 1964 s. 9; No. 113 of 1965 s. 8; No. 91 of 1975 s. 10.]

[19. Repealed by No. 6 of 1978 s. 6.]

20. Hindering etc. police

If any person shall disturb, hinder, or resist any member of the Police Force in the execution of his duty, or shall aid or incite any

person thereto, every such offender, being convicted thereof before any 2 or more Justices, shall for every such offence, forfeit and pay a sum not exceeding \$500; and also such further sum of money as shall appear to the convicting Justices to be a reasonable compensation for any damage or injury caused by such offender to the uniform, clothing, accoutrements, horse or vehicle of such member of the Force, or of any medicine or other expenses incurred in consequence of personal injury sustained by him thereby, or may either instead of or in addition to such forfeiture and payment, be imprisoned for a term not exceeding 9 months.

[Section 20 amended by No. 28 of 1964 s. 10; No. 113 of 1965 s. 8; No. 91 of 1975 s. 12; No. 50 of 2003 s. 85(5).]

21. Non-commissioned officers and constables to execute court process

Every non-commissioned officer and constable of the Police Force shall execute all process to him directed for levying the amount of any recognisance forfeited to Her Majesty, or of any fine imposed on any jurors, witnesses, parties, or persons, at any Court of Judicature, or any other fine imposed under any Act in force in the said State, and any process, or any other warrant or command of any Justice directed, delivered, or given to any such non-commissioned officer or constable, shall or may be executed and enforced by any other such officer or constable, or his assistants; and every such lastmentioned officer, constable, and his assistants, shall have all and every the same rights, powers, and authorities for and in the execution of such process, order, warrant, or command, as if the same had originally been directed to him or them expressly by name. And a breach of the condition of a recognisance may be proved before a Justice upon ex parte proof on oath thereof.

[Section 21 amended by No. 92 of 1994 s. 32.]

22. Constables to attend courts of petty sessions

The Commissioner or other commissioned officer of police in each magisterial district shall take care that a sufficient number

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of police constables shall be available to every Justice sitting as a court of petty sessions in the district for the purpose of executing such summonses and warrants as may be directed to them, and returning the same.

[Section 22 amended by No. 30 of 1983 s. 3; No. 47 of 1999 s. 30.]

Inquiries into misconduct and penalties

23. Disciplinary measures

- (1) The Commissioner, or an officer appointed by the Commissioner for the purpose, may examine on oath any member of the Police Force and any police cadet upon a charge of an offence against the discipline of the Police Force being made against any member of the Force or cadet.
- (2) Where the member of the Force against whom the charge is alleged is an officer, an examination under this section shall be conducted by an officer of the rank of Chief Superintendent or above.
- (3) The Commissioner or officer conducting an examination under this section shall have the same power to summon and examine witnesses and to administer oaths as a Justice.
- (4) Where the Commissioner or officer conducting an examination under this section determines as a result of that examination that any other member of the Police Force or any police cadet has committed an offence against the discipline of the Police Force, he shall record that determination in writing and, subject to the provisions of subsection (5), may thereupon caution such member or cadet or by order in writing impose on him one or more of the following punishments —
 - (a) a reprimand;
 - (b) a fine of not more than 3% of the annual base rate of pay of the member or cadet;
 - (c) reduction to a lower rank;

- (d) reduction in salary to a specified rate within the limits of salary fixed in relation to the rank held by him;
 - (e) suspension from duty;
 - (f) discharge or dismissal from the Force.
- (5) An order made under subsection (4) for reduction in rank or salary, suspension from duty, discharge or for dismissal, shall not have effect unless or until —
- (a) in the case of a member who is not an officer, or of a cadet, it is imposed or confirmed by the Commissioner; or
 - (b) in the case of an officer, it is confirmed by the Governor.
- (6) An order made under subsection (4) which is subject to confirmation by the Governor shall not be submitted to the Governor for such confirmation unless or until —
- (a) the time within which an appeal to the Board against the punishment, decision or finding to which the order relates may be made under this Act has elapsed and no such appeal has been instituted; or
 - (b) such an appeal to the Board has been instituted and has been determined by the Board in accordance with the provisions of this Act.
- (7) A fine imposed pursuant to this section may be recovered —
- (a) by deduction from the salary of the member or cadet on whom it is imposed; or
 - (b) in like manner to a fine imposed by a Justice under this Act,

or partly in the one way and partly in the other.

[Section 23 inserted by No. 6 of 1978 s. 7; amended by No. 7 of 2003 s. 5.]

[24-25. Repealed by No. 6 of 1978 s. 7.]

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[26. *Repealed by No. 25 of 1954 s. 6.*]

[27. *Repealed by No. 28 of 2003 s. 156.*]

[28. *Repealed by No. 6 of 1978 s. 8.*]

29. Bankruptcy

If any member of the Force becomes bankrupt, or by any deed or other writing compound with his creditors, or make an assignment of his salary or wages for their benefit, he shall be deemed to have forfeited his office.

30. Bankrupt may be reinstated

When any such member of the Force has so forfeited his office, if he prove to the satisfaction of the Governor that such embarrassment has not been caused or attended by any fraud, extravagance, or dishonourable conduct, the Governor may reinstate such member of the Force in his former position in the service.

31. Obtaining admission into the Force by fraud

Any person having been dismissed from the Force who shall, by concealing the fact of such dismissal, or any person who shall by any false or forged certificates or any false representations, obtain admission into the Force, or who by any such means shall receive any pay, gratuity, or pension, shall be liable, on conviction thereof before any 2 or more Justices, to a fine not exceeding \$2 500.

[Section 31 amended by No. 28 of 1964 s. 11; No. 113 of 1965 s. 8; No. 91 of 1975 s. 16; No. 50 of 2003 s. 85(6).]

32. Members of the Force not to influence voters at elections

No member of the Force shall in any manner influence any elector in giving his vote for the choice of any person to be a member to serve in the Legislative Council or Legislative Assembly; and if any person being a member of the Force shall

offend herein he shall forfeit a sum not less than \$10 nor exceeding \$200, to be recovered by any person who shall first sue for the same by action in a Local Court to be commenced within 6 months after commission of the offence; but nothing herein contained shall subject any member of the Force to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

[Section 32 amended by No. 113 of 1965 s. 8.]

33. Fines and penalties for misconduct payable to Treasurer

- (1) All fines and penalties imposed on any member of the Police Force by virtue of this part of this Act shall be received, collected and recovered by the Commissioner of Police or other officer appointed by the Governor and, when so received, collected, and recovered shall be paid to the Treasurer of the State for the public uses of the State.
- (2) This section shall have effect and operate and shall be deemed to have had effect and to have been in operation as from and after 29 June 1939.

[Section 33 inserted by No. 19 of 1940 s. 2.]

Part IIA — Police Appeal Board

[Heading inserted by No. 25 of 1954 s. 7.]

33A. Interpretation

In this Part unless the context requires otherwise —

“**Board**” means the Police Appeal Board constituted under this Part;

“**Chairman**” means the Chairman of the Board;

“**Commissioner**” means the person for the time being holding the office of Commissioner of Police;

“**member**” means a member of the Board.

[Section 33A inserted by No. 25 of 1954 s. 7.]

33B. Constitution of Board

- (1) A Police Appeal Board is constituted in accordance with this Part.
- (2) The Board consists of 3 members —
 - (a) a stipendiary magistrate appointed by the Governor and who shall be Chairman;
 - (b) a person appointed by the Commissioner; and
 - (c) a member of the Police Force elected by the members of the Police Force in manner prescribed.
- (3) Each member of the Board is entitled to such allowances for out of pocket expenses as the Minister may determine.

[Section 33B inserted by No. 25 of 1954 s. 7.]

33C. Tenure of office

- (1) Subject to the provisions of subsection (2), every member shall hold office until 30 June in the second year after the year in which he was appointed or elected and at the expiration of his term is eligible for reappointment.

- (2) If any member —
- (a) dies or resigns his office;
 - (b) becomes incapable of continuing as a member;
 - (c) is guilty of misbehaviour or of incapacity;
 - (d) ceases to hold the required qualifications to be a member;
 - (e) is required to carry out duties the location or nature of which in the opinion of the Minister make it inconvenient or undesirable that he continue as a member,

his office on the Board becomes vacant and a successor shall be appointed who shall hold office for the residue of the term for which his predecessor was appointed.

- (3)
- (a) Where the office of the elective member becomes vacant or the person holding that office is for any reason temporarily unable to act in his office, the member of the Police Force who received the second highest number of votes at the last previous election held under this Part, shall be appointed by the executive of the Police Union of Workers of Western Australia to fill the vacancy for the remainder of the term for which his predecessor was elected, or shall be so appointed to be acting member during the period of inability as the case may be.
 - (b) Where there is only one candidate at the election or if for any reason the person who received the second highest number of votes at the election is unable to act the executive of the union may appoint a member of the Police Force to fill the vacancy or be the acting member.
- (4) Where the office of the Chairman or the member appointed by the Commissioner becomes vacant or the person holding the office is temporarily unable to act in his office, the Governor may appoint a stipendiary magistrate or the Commissioner may appoint a person as the case may require, to fill the vacancy for

s. 33D

the remainder of the term for which his predecessor was appointed or to be acting Chairman or member during the period of inability as the case may be.

[Section 33C inserted by No. 25 of 1954 s. 7.]

33D. Appointment of secretary

The Minister shall appoint a person to be secretary to the Board, who shall convene all meetings of the Board, keep a record of all its proceedings and decisions and carry out such other duties as may be prescribed.

[Section 33D inserted by No. 25 of 1954 s. 7.]

33E. Right of appeal

Where under the provisions of this Act a member of the Police Force or a police cadet has been convicted upon a summary investigation by the Commissioner or other officer appointed by the Commissioner, of an offence against the discipline of the Police Force, if that member or cadet is punished by the Commissioner or other officer as the case may be, by being discharged or dismissed from the Police Force, suspended from duty, reduced in rank, fined or transferred by way of punishment, he may appeal to the Board in accordance with the provisions of this Act against the punishment and against any decision or finding on which the punishment was based.

[Section 33E inserted by No. 25 of 1954 s. 7; amended by No. 6 of 1978 s. 9.]

33F. Institution of appeal

- (1) An appeal shall be instituted by a notice of appeal containing the matters prescribed given by the appellant to the secretary of the Board within 14 days from the date the punishment, decision or finding appealed against is given and the Board shall hear the appeal within 30 days from the date the notice of appeal is so lodged.

- (2) The Chairman shall fix a time and place for the appeal and the secretary shall give the appellant and the Commissioner at least 7 days' notice of the time and place so fixed.
- (3) Where the hearing of the appeal is not commenced within the period of 30 days as prescribed by subsection (1), the punishment, decision or finding appealed against is rescinded and the appellant shall be reimbursed from moneys appropriated by Parliament for the administration of this Act, any loss of salary or expenses he has incurred as a result of the punishment, decision or finding, but if the hearing of the appeal is commenced within the period of 30 days the Board may allow any adjournment it thinks fit.

[Section 33F inserted by No. 25 of 1954 s. 7.]

33G. Witnesses at and evidence taken on appeal

- (1) Upon the hearing of the appeal the Board may —
 - (a) take evidence on oath or affirmation;
 - (b) admit evidence taken at any summary investigation held under the provisions of sections 23 and 24 and at which the appellant was present and had an opportunity of hearing the evidence and of giving evidence;
 - (c) admit as evidence any statement or document which in its opinion is relevant to the subject matter of the appeal.
- (2) The Board may —
 - (a) issue summonses under the hand of the Chairman or the secretary of the Board requiring any witnesses to attend before the Board and give evidence, or to produce to the Board any books, documents or writings in his possession or under his control, which are relevant to the subject matter of the appeal;
 - (b) require any person before the Board to take an oath or affirmation and answer questions put to him by the Board or by or on behalf of any party to the appeal.

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- (3) A person who —
- (a) refuses or fails to comply with any requirement of a summons issued by the Board under this section and served on him;
 - (b) refuses to take an oath or affirmation when required by the Board;
 - (c) without lawful excuse refuses to answer a question which the Board requires him to answer;
 - (d) wilfully interrupts the proceedings of the Board or in the course of the proceedings behaves offensively to the Chairman or a member,

is guilty of an offence.

Penalty: \$100.

- (4) In any proceedings before the Board any party to the appeal may respectively be represented by his counsel, solicitor or agent duly appointed in writing for the purpose, who may examine and cross examine witnesses and address the Board.

[Section 33G inserted by No. 25 of 1954 s. 7; amended by No. 113 of 1965 s. 8.]

33H. Determination of appeal

- (1)
- (a) Upon an appeal the Board may confirm, modify or reverse any decision, finding or punishment appealed against or make such other order thereon which the Board deems just and the decision of the Board is final.
 - (b) The Board may fix the costs of any appeal and direct by whom and the proportions in which they are payable but in every case the Board shall award costs against an appellant whose appeal is considered by the Board to be trivial, frivolous or vexatious.
 - (c) Costs awarded against an appellant are recoverable in a court of competent jurisdiction as a debt due to the Crown.

- (d) Costs awarded to an appellant shall be paid from moneys appropriated by Parliament for the purpose of the administration of this Act.
- (2) The decision of any 2 members is the decision of the Board; but the deliberations of the Board and the individual views of a member except of his own volition shall not be disclosed or published.

[Section 33H inserted by No. 25 of 1954 s. 7.]

33I. Decision to be sent to Commissioner

The Chairman shall forward to the Commissioner a copy, certified by the Chairman as correct, of the decision of the Board and the Commissioner shall give effect to the decision of the Board.

[Section 33I inserted by No. 25 of 1954 s. 7.]

33J. Regulations

The Governor may make regulations prescribing any matters necessary or convenient to be prescribed for giving effect to this Part and without limiting the generality of this power, with respect to —

- (a) the nomination and election of members;
- (b) the mode of appealing and the practice and procedure on appeal; and
- (c) the duties to be performed by the secretary of the Board.

[Section 33J inserted by No. 25 of 1954 s. 7.]

Part IIB — Removal of members

[Heading inserted by No. 7 of 2003 s. 6.]

Division 1 — Preliminary

[Heading inserted by No. 7 of 2003 s. 6.]

33K. Interpretation

In this Part, unless the contrary intention appears —

“**appellant**” means a person who institutes an appeal under section 33P;

“**Chief Commissioner**” has the same meaning as it has in the *Industrial Relations Act 1979*;

“**industrial Commissioner**” has the same meaning as “Commissioner” has in the *Industrial Relations Act 1979*;

“**legal practitioner**” has the same meaning as “practitioner” has in the *Legal Practitioners Act 1893*;

“**member**” means —

- (a) a commissioned officer;
- (b) a non-commissioned officer;
- (c) a constable;
- (d) an aboriginal aide;

“**removal action**” means —

- (a) a recommendation by the Commissioner of Police that the Minister advise the Governor to remove a commissioned officer under section 8;
- (b) a recommendation by the Commissioner of Police that the Minister approve the removal of a non-commissioned officer or constable under section 8;
- (c) the revocation of the appointment of an aboriginal aide under section 38A(1a);

“removal from office” means —

- (a) a removal under section 8; or
- (b) a revocation of the appointment of an aboriginal aide under section 38A(1a);

“Senior Commissioner” has the same meaning as it has in the *Industrial Relations Act 1979*;

“WAIRC” means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*.

[Section 33K inserted by No. 7 of 2003 s. 6.]

Division 2 — Removal of members

[Heading inserted by No. 7 of 2003 s. 6.]

33L. Notice of loss of confidence to be given before the removal action is taken

- (1) If the Commissioner of Police does not have confidence in a member’s suitability to continue as a member, having regard to the member’s integrity, honesty, competence, performance or conduct, the Commissioner may give the member a written notice setting out the grounds on which the Commissioner does not have confidence in the member’s suitability to continue as a member.
- (2) If a notice is given to a member under subsection (1), the member may, before the expiration of the period of 21 days after the day on which the notice is given or such longer period as is allowed by the Commissioner of Police, make written submissions to the Commissioner of Police in respect of the grounds on which the Commissioner has lost confidence in the member’s suitability to continue as a member.
- (3) After the end of the period referred to in subsection (2), the Commissioner of Police shall —
 - (a) decide whether or not to take removal action; and

- (b) give the member written notice of the decision.
- (4) The Commissioner of Police shall not decide to take removal action unless the Commissioner —
 - (a) has taken into account any written submissions received from the member under subsection (2) during the period referred to in that subsection; and
 - (b) still does not have confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct.
- (5) If the Commissioner of Police decides to take removal action —
 - (a) the notice under subsection (3)(b) shall advise the member of the reasons for the decision;
 - (b) except to the extent that the regulations otherwise provide, the Commissioner shall, within 7 days of giving the notice of the decision under subsection (3)(b), provide to the member a copy of any documents and make available to the member for inspection any other materials that were examined and taken into account by the Commissioner in making the decision; and
 - (c) the removal action may be taken when, or at any time after, the notice under subsection (3)(b) is given.

[Section 33L inserted by No. 7 of 2003 s. 6.]

33M. Maintenance payment

- (1) If removal from office occurs by or as a result of removal action taken in accordance with section 33L, the member is entitled to receive a maintenance payment for the period of 28 days after the day on which the member is removed.
- (2) In relation to a period after the 28 day period referred to in subsection (1), the Minister may, in exceptional circumstances, direct that a maintenance payment shall be paid to the member for a specified period.

- (3) For the purpose of subsection (2), the specified period is such period not exceeding 6 months as is specified by the Minister but in any event ending on the day any appeal instituted under section 33P is determined by the WAIRC.
- (4) Any maintenance payment is to be calculated on the basis of the salary of the member at the time of removal from office.
[Section 33M inserted by No. 7 of 2003 s. 6.]

33N. Revocation of removal action

- (1) If removal action has been taken in accordance with section 33L but removal from office has not resulted from it, the Commissioner of Police may, by notice in writing to the Minister, revoke the removal action.
- (2) If removal from office has occurred by or as a result of removal action taken in accordance with section 33L, the Commissioner of Police may, by notice in the *Gazette*, revoke the removal action.
- (3) The Commissioner of Police shall not revoke removal action under subsection (2) in the case of a commissioned officer without the approval of the Minister.
- (4) Subsection (2) applies even if an appeal has been instituted under section 33P in respect of the decision under section 33L to take removal action.
- (5) Despite any other enactment, if removal action is revoked under subsection (2) the removal from office is to be taken to be of no effect and to have never had any effect.
- (6) If the Commissioner of Police revokes removal action in relation to a member under subsection (2), the member is not entitled to be paid his or her salary for any period the member received a maintenance payment under section 33M.

[Section 33N inserted by No. 7 of 2003 s. 6.]

33O. Resignation of member who has been removed

- (1) Even if a member has been removed from office by or as a result of removal action taken in accordance with section 33L, the member may resign at any time before the expiration of the period of 28 days after the day on which the removal occurs.
- (2) Subsection (1) does not apply if an appeal has been instituted under section 33P in respect of the decision to take removal action.
- (3) A resignation under subsection (1) takes effect at the end of the 28 day period referred to in the subsection.
- (4) Despite any other enactment, if a member resigns under subsection (1), the removal from office is to be taken to be of no effect and to have never had any effect.

[Section 33O inserted by No. 7 of 2003 s. 6.]

Division 3 — Appeal in relation to removal

[Heading inserted by No. 7 of 2003 s. 6.]

33P. Appeal right

- (1) A member who has been removed from office by or as a result of removal action taken in accordance with section 33L may appeal to the WAIRC on the ground that the decision of the Commissioner of Police to take removal action relating to the member was harsh, oppressive or unfair.
- (2) The appellant shall institute an appeal by a notice to the Commissioner of Police stating —
 - (a) the reasons for the decision the subject of the appeal being harsh, oppressive or unfair; and
 - (b) the nature of the relief sought.
- (3) The appeal shall not be instituted later than 28 days after the day on which the member was removed from office and shall not be instituted if the member has resigned under section 33O(1).

- (4) For the purposes of proceedings relating to an appeal instituted under this section the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least one of whom shall be the Chief Commissioner or the Senior Commissioner.
- (5) The parties to an appeal are the appellant and the Commissioner of Police and no other person may be a party to the appeal.

[Section 33P inserted by No. 7 of 2003 s. 6.]

33Q. Proceedings on appeal

- (1) On the hearing of an appeal instituted under this Part, the WAIRC shall proceed as follows —
 - (a) first, it shall consider the Commissioner of Police's reasons for deciding to take removal action;
 - (b) secondly, it shall consider the case presented by the appellant as to why that decision was harsh, oppressive or unfair;
 - (c) thirdly, it shall consider the case presented by the Commissioner in answer to the appellant's case.
- (2) The appellant has at all times the burden of establishing that the decision to take removal action was harsh, oppressive or unfair.
- (3) Subsection (2) has effect despite any law or practice to the contrary.
- (4) Without limiting the matters to which the WAIRC is otherwise required or permitted to have regard in determining the appeal, it shall have regard to —
 - (a) the interests of the appellant; and
 - (b) the public interest which is taken to include —
 - (i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force; and

- (ii) the special nature of the relationship between the Commissioner of Police and members of the Force.

[Section 33Q inserted by No. 7 of 2003 s. 6.]

33R. New evidence

- (1) New evidence shall not be tendered to the WAIRC during a hearing of an appeal instituted under this Part unless the Commission grants leave under subsection (2) or (3).
- (2) The WAIRC may grant the Commissioner of Police leave to tender new evidence if —
 - (a) the appellant consents; or
 - (b) it is satisfied that it is in the interests of justice to do so.
- (3) The WAIRC may grant the appellant leave to tender new evidence if —
 - (a) the Commissioner of Police consents; or
 - (b) the Commission is satisfied that —
 - (i) the appellant is likely to be able to show that the Commissioner of Police has acted upon wrong or mistaken information;
 - (ii) the new evidence might materially have affected the Commissioner of Police's decision to take removal action; or
 - (iii) it is in the interests of justice to do so.
- (4) In the exercise of its discretion under subsection (3) the Commission shall have regard to —
 - (a) whether or not the appellant was aware of the substance of the new evidence; and
 - (b) whether or not the substance of the new evidence was contained in a document to which the appellant had reasonable access,

before his or her removal from office.

- (5) If the Commissioner of Police is given leave to tender new evidence under subsection (2), the WAIRC shall give the appellant a reasonable opportunity to consider the new evidence and the appellant may tender new evidence without the leave of the WAIRC under this section in response to the new evidence tendered by the Commissioner.
- (6) If the appellant is given leave to tender new evidence under subsection (3), the WAIRC shall give the Commissioner a reasonable opportunity to consider the new evidence.
- (7) If, having considered any new evidence, the Commissioner of Police revokes the removal action under section 33N(2), the Commissioner shall give the WAIRC notice of the revocation and the hearing of the appeal is discontinued when the WAIRC receives the notice.
- (8) If the Commissioner of Police does not give notice under subsection (7), the hearing of the appeal shall continue but the Commissioner of Police may —
 - (a) reformulate his or her reasons for not having confidence in the appellant's suitability to continue as a member, having regard to the appellant's integrity, honesty, competence, performance or conduct; and
 - (b) tender new evidence without the leave of the WAIRC under this section in response to the new evidence tendered by the appellant.
- (9) Reasons reformulated under subsection (8)(a) may differ from, or be additional to, the reasons given to the appellant under section 33L(5)(a).
- (10) If the Commissioner of Police reformulates reasons under subsection (8)(a) —
 - (a) the Commissioner shall give the WAIRC and the appellant notice in writing of the reasons before the resumption of the hearing of the appeal; and

- (b) the WAIRC shall consider the reasons as if they had been reasons given to the appellant under section 33L(5)(a).

(11) In this section —

“new evidence” means evidence other than evidence of —

- (a) any document or other material that was examined and taken into account by the Commissioner of Police in making a decision to take removal action;
- (b) the notice given under section 33L(1);
- (c) a written submission made to the Commissioner of Police by the appellant under section 33L(2);
- (d) the notice given under section 33L(3)(b); and
- (e) a notification of the removal from office.

[Section 33R inserted by No. 7 of 2003 s. 6.]

33S. Application of *Industrial Relations Act 1979* to appeals

The provisions of the *Industrial Relations Act 1979* listed in the Table to this section apply, subject to this Part, any necessary modifications, and any specific modifications set out in that Table, to and in relation to an appeal and a determination of an appeal instituted under this Part.

Table

s. 26(1)(a) and (b)	
s. 26(3)	
s. 27(1)(b), (c), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v)	An order under section 27(1)(o) may be made by any one of the industrial Commissioners constituting the WAIRC to hear the appeal.
s. 27(1a)	
s. 28	But only in relation to powers conferred by section 27 listed in this Table.

- s. 31(1) Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs —
- “ (b) with the leave of the
 Commission, by an
 agent; or
- (c) by a legal practitioner. ”.
- s. 31(3)
- s. 31(5)
- s. 31(6)
- s. 32 Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall, unless it” were a reference to “Where the Commission is dealing with an appeal instituted under section 33P of the *Police Act 1892*, a member of the Commission may recommend that the parties to the appeal, unless he or she”.
- References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.
- For the purposes of subsections (2) and (3), “Commission” does not include an industrial Commissioner constituting the WAIRC to hear the appeal.
- Subsections (4), (6), (7) and (8) do not apply.
- s. 33 A summons shall not be issued under section 33(1)(a) to the Governor.
 A summons may be issued to the Commissioner of Police or the Minister but only at the direction of a Commissioner appointed under the *Industrial Relations Act 1979* if that Commissioner is satisfied that there are extraordinary grounds for doing so.

A summons may not be issued to any other person except at the direction of a Commissioner.

- s. 34 A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.
A reference in subsection (3) to “the President, the Full Bench, or the Commission” is to be read as if it were a reference to “the Commission”.
A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.

s. 35

s. 36

s. 86

But not in relation to costs and expenses other than expenses of witnesses.

s. 90

A reference in subsection (1) to “any decision of the President, the Full Bench, or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under section 33U of the *Police Act 1892*”.

[Section 33S inserted by No. 7 of 2003 s. 6.]

33T. Adjourment in relation to an appellant charged with a relevant offence

- (1) If an appellant has been —
- (a) charged with an offence relating to any matter, act or omission that was taken into account by the Commissioner of Police in deciding that he or she did not have confidence in the appellant’s suitability to continue as a member; and

(b) the charge has not been finally determined by a court or otherwise disposed of,

the Commissioner or the appellant may apply to the WAIRC for an adjournment of the hearing of the appeal.

- (2) If an application is made by the Commissioner of Police, the WAIRC may adjourn the hearing of the appeal if it considers that it is in the interests of justice to do so.
- (3) If an application for an adjournment is made by the appellant, the WAIRC shall adjourn the hearing of the appeal.
- (4) An adjournment under subsection (3) shall be for such period not exceeding 12 months as is requested by the appellant.
- (5) If the charge is finally determined by a court or otherwise disposed of before the expiration of the period of the adjournment, the Commissioner of Police or the appellant may apply to the WAIRC for the hearing of the appeal to be resumed on a date specified by the Commission.
- (6) Before the expiration of any period of adjournment under this section, the Commissioner of Police or the appellant may apply to the WAIRC for a further adjournment under this section and, if it is in the interests of justice to do so, the WAIRC may grant a further adjournment for a period specified by it.
- (7) Subsections (2) and (6) do not affect any other power of the WAIRC to grant an adjournment.

[Section 33T inserted by No. 7 of 2003 s. 6.]

33U. Decision by the WAIRC

- (1) This section applies if the WAIRC decides on an appeal that the decision to take removal action relating to the appellant was harsh, oppressive or unfair.
- (2) If this section applies and unless an order is made under subsection (3) the WAIRC may order that the appellant's

removal from office is and is to be taken to have always been of no effect.

- (3) If, and only if, the WAIRC considers that it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, the Commission may instead of making an order under subsection (2), subject to subsections (5) and (6), order the Commissioner of Police to pay the appellant an amount of compensation for loss or injury caused by the removal.
- (4) In considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect it is relevant to consider —
 - (a) whether the position occupied by the appellant at the time of his or her removal is vacant; and
 - (b) whether there is another suitable vacant position in the Police Force.
- (5) In deciding the amount of compensation for the purpose of making an order under subsection (3), the WAIRC shall have regard to —
 - (a) the efforts, if any, of the Commissioner of Police and the appellant to mitigate the loss suffered by the appellant as a result of the removal;
 - (b) any maintenance payment received by the appellant under section 33M;
 - (c) any redress the appellant has obtained under another enactment where the evidence necessary to establish that redress is also the evidence necessary to establish on the appeal that the removal was harsh, oppressive or unfair; and
 - (d) any other matter that the WAIRC considers relevant.
- (6) The amount ordered to be paid under subsection (3) shall not exceed 12 months' remuneration as a member.

- (7) For the purpose of subsection (5), the WAIRC may calculate the amount on the basis of the average rate of remuneration as a member received by the appellant during any relevant period of service.
- (8) If the WAIRC makes an order under subsection (2), the appellant shall not be entitled to be paid his or her remuneration as a member for any period the appellant received a maintenance payment under section 33M.
- (9) An order under this section may require that it be complied with within a specified time.

[Section 33U inserted by No. 7 of 2003 s. 6.]

33V. Restriction on publication

- (1) If the WAIRC is satisfied that it is in the public interest, it may direct either or both that —
 - (a) any evidence given before the Commission;
 - (b) the contents of any document produced to the Commission,

on an appeal must not be published or must not be published except in such manner, and to such persons, as the Commission specifies.

- (2) A person must not make a publication in contravention of a direction given under this section.

Penalty: Imprisonment for 12 months and a fine of \$4 000.

[Section 33V inserted by No. 7 of 2003 s. 6.]

Division 4 — General

[Heading inserted by No. 7 of 2003 s. 6.]

33W. Effect of charge for an offence or an acquittal

To avoid doubt, it is declared that if a member —

- (a) has been charged with committing an offence; or

(b) has been acquitted of an offence,

that charge, the existence of proceedings relating to that charge or the acquittal does not preclude the Commissioner of Police from taking any action under this Part in relation to any matter, act or omission relating to or being an element of the offence.

[Section 33W inserted by No. 7 of 2003 s. 6.]

33X. Failure to comply with procedure

An act or omission of the Governor, the Minister or the Commissioner of Police shall not be invalid or called in question on the ground of a failure to comply with the procedure prescribed under Division 2 or regulations relating to the removal of members on the ground of a failure to comply with the procedure prescribed under that Division or those regulations if the failure is not substantive.

[Section 33X inserted by No. 7 of 2003 s. 6.]

33Y. Transfer, standing down and leave of member

(1) Nothing in this Part derogates from the Commissioner of Police's power to —

- (a) transfer a member;
- (b) stand a member down from performing that member's usual duties on full pay until the member is directed by the Commissioner to return to those duties; or
- (c) allocate duties to a member other than the member's usual duties.

(2) If the Commissioner stands down a member who is being dealt with under this Part, the Commissioner shall review the decision to stand the member down every 60 days and advise the member in writing of the result of the review.

(3) The Commissioner shall not direct a member who is being dealt with under this Part to take leave during the period the member is being dealt with under this Part unless the leave is leave that

has accrued during any period that the member is stood down from performing the member's usual duties.

[Section 33Y inserted by No. 7 of 2003 s. 6.]

33Z. Review of Part

- (1) In this section —
 “commencement day” means the day on which section 6 of the *Police Amendment Act 2003* comes into operation.
- (2) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiration of 24 months after the commencement day and in the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the Part;
 - (b) the need for the retention of the Part; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) Without limiting subsection (2), in carrying out a review under that subsection, the Minister shall consult with and have regard to the views of the Chief Commissioner of The Western Australian Industrial Relations Commission, the Commissioner of Police and the Western Australian Police Union of Workers.
- (4) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 30 months after the commencement day), cause it to be laid before each House of Parliament.

[Section 33Z inserted by No. 7 of 2003 s. 6.]

Part III — As to the appointment and regulation of special constables

34. Appointment of special constables in emergencies

- (1) In all cases where it shall be made to appear to any stipendiary magistrate or any 2 or more Justices, upon the oath of any credible person, that any tumult, riot, felony or civil emergency has taken place, or may be reasonably apprehended in any place in the said State, and any such magistrate or Justices shall be of opinion that the ordinary constables or officers appointed for preserving the peace are not sufficient for the preservation thereof, and for the protection of the inhabitants, and the security of the property of such place, or where, without such oath or evidence as aforesaid, any such magistrate or Justices shall be of opinion that the constables or officers aforesaid are not sufficient for the preservation, protection, or security as aforesaid, or for the apprehension of any offenders, it shall be lawful for any such magistrate or Justices to appoint, by precept in writing under his or their hand or hands so many as they may think fit of the persons (not legally exempt from serving the office of constable), residing in such place as aforesaid, to act as special constables for such time and in such manner as to the said magistrate or Justices shall seem fit and necessary for the public peace, and for the protection of the inhabitants, and the security of property in such place; and any Justice of the Peace is hereby authorised to cause every person so appointed to subscribe the following engagement —

I, A.B., engage and promise that I will well and truly serve Her Majesty The Queen in the office of special constable for the (city, town, or district of) _____ without favour or affection, malice, or ill-will, and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects, and that while I continue to hold the said office I will, to the

best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

Provided always, that whenever it shall be deemed necessary to appoint such special constables as aforesaid, the notice of such appointments, and of the circumstances which have rendered such appointment necessary, shall be forthwith transmitted by the magistrate or Justices making such appointment to the Minister.

- (2) In this section, “**civil emergency**” means a natural or man-made disaster which causes or threatens to cause loss of life or property or injury to persons or property or distress to persons.

[Section 34 amended by No. 71 of 1980 s. 4.]

35. Special constables may act in any district although not resident

All persons willing to act as special constables under the provisions of this Act, shall be capable of being appointed and acting, and may be appointed and act, as such special constables, notwithstanding they may not be resident in such place as aforesaid, or in the neighbourhood thereof; and any person appointed and acting as special constable under the provisions of this section, shall have all the same powers, and be entitled to and enjoy all the same privileges and benefits, and be subject to all the same duties and obligations, as any constable duly appointed under the other provisions of this Act.

35A. Appointment of special constables by Commissioner

- (1) The Commissioner of Police may appoint special constables.
- (2) Any person appointed a special constable shall have all the same powers and be entitled to and enjoy all the same privileges and be subject to the same duties and obligations as any constable duly appointed under this Act.
- (3) Any special constable may receive such payment for his services, and may be provided with such equipment and

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necessaries as may be allowed and provided to a special constable appointed under the provisions of this Act.

[(4) Omitted under the Reprints Act 1984 s. 7(4)(e).]

[Section 35A amended by No. 13 of 1915 s. 2 (as amended by No. 15 of 1952 s. 7).]

36. Penalty for refusing to subscribe the engagement

If any person residing within any place in the said State, being appointed a special constable, shall refuse to subscribe the engagement aforesaid when thereunto required by the magistrate or Justices so appointing him, he shall, on conviction thereof, before any 2 or more Justices, forfeit and pay any sum of money not exceeding \$40 and if any person being appointed a special constable shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of subscribing such engagement or having been appointed as special constable and called upon to serve, shall neglect or refuse to serve as such special constable or to obey such lawful orders and directions as may be given to him for the performance of the duties of his office every person so offending shall on conviction thereof before any 2 or more Justices, forfeit and pay for any such neglect or refusal any sum of money not exceeding \$40, unless such person shall prove, to the satisfaction of the said Justices, that he was prevented by sickness, or other such unavoidable cause as shall in the judgment of the said Justices be a sufficient cause.

[Section 36 amended by No. 28 of 1964 s. 12; No. 113 of 1965 s. 8.]

37. Commissioner may terminate special constables

The Commissioner of Police may suspend or determine the services of all or any of the said special constables, as to the Commissioner of Police shall seem meet, and notice of such suspension or determination shall be forthwith transmitted to the Minister, and to the magistrate or Justice appointing them.

38. Allowances to and costs of special constables

The Minister may, upon the recommendation of the Commissioner of Police, order from time to time such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables who shall have served or be then serving as he may deem proper; and he may further order the payment of such expenses as may have been incurred in providing arms, equipment, and necessaries for such special constables.

Part IIIA — Aboriginal aides

[Heading inserted by No. 18 of 1975 s. 3.]

38A. Aboriginal aides

- (1) The Commissioner of Police and any commissioned officer of police authorised in that behalf by the Commissioner may, in writing, appoint an aboriginal person to be an aboriginal aide.
- (1a) Subject to section 33L(5)(c), the Commissioner of Police may, by order, revoke any appointment under subsection (1).
- (2) Any aboriginal aide appointed under subsection (1) —
 - (a) shall, except as specified to the contrary in his instrument of appointment, have all of the powers, privileges, duties and obligations as has any constable duly appointed under this Act; and
 - (b) shall receive such remuneration and allowances as are determined by the Minister.
- (3) A reference in any other law of the State (not being a law relating to condition of service of members of the Police Force) to a member of the Police Force shall be read as including an aboriginal aide appointed under this section.

[Section 38A inserted by No. 18 of 1975 s. 3; amended by No. 7 of 2003 s. 7.]

Part IV — As to the establishment of Police Districts

39. Police Districts

- (1) The city, towns, and places in the said State which have already been established or proclaimed as Police Districts, shall continue to be Police Districts within the meaning and for the purposes of this Act; and the Governor may, by notice in the *Government Gazette*, vary the same and establish other Police Districts wherein portions of the Police Force may be stationed; and in every notice establishing any Police District in any part of the said State, the limits of such Police District shall be defined.
- (2) Notwithstanding the provisions of subsection (1), the Commissioner may for the purposes of the administration of the Police Force by order in writing divide the State, or any part of the State, into regions, divisions, sub-divisions, sections, branches, or sub-branches wherein portions of the Police Force may be stationed or carry out duties.

[Section 39 amended by No. 6 of 1978 s. 10.]

Part IVA — Use of police property in relation to advertising

[Heading inserted by No. 49 of 1995 s. 3.]

39A. Interpretation

In this Part —

“**contract**” means a contract of a kind provided for under section 39B;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**Fund**” means the account established under section 39C(1);

“**police property**” means property of the State that is under the management or control of the Police Force or the Department;

“**Treasury**” means the Treasury of the State.

[Section 39A inserted by No. 49 of 1995 s. 3.]

39B. Contracts for advertising using police property

- (1) The Commissioner of Police, with the approval of the Minister may, on behalf of the State, enter into a written contract under which police property specified in the contract can be used for the purposes of advertising in return for money, goods or services.
- (2) The Commissioner shall not enter into a contract if either the Commissioner or the Minister is of the view that the proposed use of the police property or the presence or nature of the proposed advertising would —
 - (a) interfere with; or
 - (b) otherwise be inappropriate having regard to,any operation or function of the Police Force or the Department.

- (3) Subject to subsections (1) and (2) and to section 39C, a contract shall be on such terms and conditions as are set out in the contract.

[Section 39B inserted by No. 49 of 1995 s. 3.]

39C. Financial provisions relating to contracts

- (1) There shall be an account at the Treasury called the “Police Fund” which shall form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
- (2) Moneys received on behalf of the State under a contract shall be credited to the Fund.
- (3) Without limiting section 12 of the *Financial Administration and Audit Act 1985*, moneys received under a contract and credited to the Fund may be applied for the purposes of providing, maintaining or operating the police property that is the subject of the contract but if so applied, shall be applied in a manner not inconsistent with the contract.
- (4) The administration of the Fund shall, for the purposes of section 52 of the *Financial Administration and Audit Act 1985*, be deemed to be a service of the Department.

[Section 39C inserted by No. 49 of 1995 s. 3.]

Part V — As to the powers of the Police Force and the apprehension of offenders

40. Police may board and search vessels

Any officer of the Police Force or senior constable in charge of a Police Station shall, by virtue of his office, be an Officer of Customs within the meaning of the law relating to the Customs for the time being and shall have power, by virtue of his office, to enter at all times, with such constables as he shall think necessary, as well by night as by day, into or upon every ship, boat, or other vessel (not being then actually employed in Her Majesty's service, and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power) lying or being in any of the waters of the said State, or any dock thereto adjacent, and into every part of such vessel, for the purpose of searching and inspecting the same, and of inspecting and observing the conduct of all persons who shall be employed on board any such ship or vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and for preserving peace and good order on board of any such ship or vessel and for the effectual prevention or detection of any felonies or misdemeanours.

[Section 40 amended by No. 24 of 1969 s. 6.]

41. Police may detain and board vessels to search for offenders and stolen property and to prevent offences

- (1) Any officer of the Police Force, or senior constable in charge of a Police Station, having reasonable or probable cause to suspect that any offence has been, or is about to be committed on board of any ship, boat, or other vessel (not being then actually employed in Her Majesty's service, and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power), lying or being in any

of the waters of the said State, or that any person who has committed an offence rendering him liable to apprehension, either with or without warrant, or that any person against whom any warrant shall have been issued by any Justice is harboured, secreted, or concealed on board of any such ship, boat, or vessel, may stop and detain such ship, boat, or vessel, and may enter at all times, with such constables as he shall think necessary, as well by night as by day, into and upon every such ship, boat, or other vessel, and into every part thereof, and may search and inspect the same, and therein take all necessary measures for the effectual prevention and detection of all such suspected offences, and for the apprehension of all such suspected persons as aforesaid, and may and shall take into custody all persons suspected or being concerned in such offences, or liable to apprehension as aforesaid, and shall also take charge of all property suspected to be stolen; and if the master of any such ship or vessel, or any other person, shall resist or wilfully prevent or obstruct any officer or constable of the Police Force whilst stopping, detaining, entering, or endeavouring to stop, detain, or enter upon such ship, boat or vessel, or whilst searching and inspecting the same as and for the purposes aforesaid, or shall harbour or conceal, or rescue or attempt to rescue, or assist any such suspected persons, such master and every other person so offending shall be deemed to have committed a misdemeanour, and shall suffer such punishment by fine, not exceeding \$4 000, and such imprisonment for a term not exceeding 12 months, as any 2 or more Justices before whom such offender shall be convicted, shall determine.

- (2) Any officer or constable of the Police Force who has reasonable cause to believe that any ship, boat or other vessel is being, or is likely to be, used for a voyage the purpose of which is to do or attempt to do any act which if done in the State would constitute an offence may, without warrant other than this Act, enter at all times into and upon and take charge of or secure any such ship, boat or vessel or may otherwise take such steps in relation thereto as may be expedient for the purpose of preventing that

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voyage, using for that purpose such assistance and reasonable force as he may think necessary, and, subject to subsection (3), may detain the vessel for so long as he has reasonable cause to suspect that any such voyage may be undertaken.

- (3) An officer or constable of the Police Force who has detained any vessel pursuant to the provisions of subsection (2), or any person who is aggrieved by any exercise of the power conferred by that subsection, may apply to a stipendiary magistrate for an order in the matter, and that magistrate may thereupon —
- (a) order the release of the vessel unconditionally;
 - (b) order the release of the vessel subject to such conditions as that magistrate may impose;
 - (c) order that the vessel be detained for a specified period;
 - (d) make an order as to the expenses incurred or to be incurred in relation to the seizure, detention or safe keeping of that vessel; and
 - (e) make such order as to costs,

as he may think fit and effect shall be given thereto.

- (4) The terms of any conditions imposed on an order made pursuant to subsection (3) may relate not only to the release of the vessel but also as to the use to which the vessel may be put within the period specified in the order, and the order may also be made subject to the requirement that a person enters into a recognisance with or without sureties conditioned upon the observance of the terms imposed in relation to the release and use of the vessel.
- (5) An amount ordered in payment of expenses or costs under subsection (3) may be recovered in the same manner as moneys ordered to be paid by Justices upon a conviction for a simple offence.
- (6) The detention of any vessel, or the exercise of any other power conferred by subsection (2), shall not be taken to be unlawful only by reason that it subsequently appears or is found that the

vessel was not to be used in the manner, or the circumstances were not such as, the member of the Police Force believed.

- (7) Any person who resists, or wilfully obstructs, any member of the Police Force or other person lawfully assisting such a member of the Police Force in the exercise of the powers conferred by subsection (2), or who endeavours by any unlawful means to prevent any such power from being exercised shall be deemed to have committed a misdemeanour, and shall suffer such punishment by fine, not exceeding \$4 000, and such imprisonment, not exceeding 12 months, as any 2 or more Justices before whom such offender shall be convicted may determine.

[Section 41 amended by No. 24 of 1969 s. 7; No. 91 of 1975 s. 17; No. 6 of 1978 s. 11; No. 51 of 1992 s. 16(3); No. 50 of 2003 s. 85(7).]

42. Police may enter places of public entertainment; removal of disorderly people

Any officer or constable of the Police Force may enter into any house, room, premises, or place where any public table, board, or ground is kept for playing billiards, bagatelle, bowls, fives, rackets quoits, skittles, or ninepins, or any game of the like kind, when and so often as any such member shall think proper; and may enter into any house, room or place kept or used in the said State for any theatrical or any public entertainments, or exhibitions, or for any show of any kind whatsoever, whether admission thereto is obtained by payment of money or not, at any time when the same shall be open for the reception of persons resorting thereto and may remove from such house, room, or place any common prostitute, or reputed thief, or other loose, idle, or disorderly person who shall be found therein, and may order any such common prostitute, reputed thief, or disorderly person to leave the said house, room or place, and in case such person shall refuse to leave the same, may take such person into custody, and every such person remaining in such

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house, room, or place after having been so ordered to leave, shall on conviction be liable to a fine not exceeding \$300.

[Section 42 amended by No. 28 of 1964 s. 13; No. 113 of 1965 s. 8; No. 91 of 1975 s. 18; No. 78 of 1995 s. 147.]

43. Police may apprehend offenders, disorderly people, loiterers, etc.

- (1) Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night may apprehend any person whom he may find conducting himself in a disorderly manner, or using profane, indecent, or obscene language, or who shall use any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, in any street, public vehicle, or passenger boat; and also any person who shall ride or drive on or through any street, so negligently, carelessly, or furiously that the safety of any person may thereby be endangered; and also any person who shall cruelly or wantonly beat, ill-treat, overdrive, overload, abuse or torture any living thing, or cause the same to be done, and also any person who shall convey or carry any living thing in any street, in such a manner or position as to cause unnecessary pain or suffering, and all persons whom he shall have just cause to suspect of having committed or being about to commit any offence, or of any evil designs, and all persons whom he shall find or who shall have been lying or loitering in any street, yard, or other place, and not giving a satisfactory account of themselves, and shall detain any person so apprehended in custody, until he can be brought before a Justice, to be dealt with for such offence.
- (2) Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom he shall have just cause to suspect of having committed an offence in any place other than the State which, if committed in the State, would be an indictable offence (including an indictable offence that may be dealt with summarily) and shall detain any person so apprehended in

custody, until he can be brought before a Justice to be dealt with according to law, and the apprehension of a person pursuant to this subsection shall not be taken to be unlawful only by reason that it subsequently appears or is found that the person apprehended did not commit the offence alleged.

[Section 43 amended by No. 50 of 1977 s. 2; No. 87 of 1982 s. 43; No. 35 of 1989 s. 4.]

44. Police may board vessels and enter licensed premises to apprehend disorderly people and offenders

Any constable, when so ordered by any officer of police, and any officer or constable of the Force whenever called upon by the master or any officer of any ship or vessel (not being then actually employed in Her Majesty's service and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power), lying in any of the waters of the State or any dock thereto adjacent, may enter into and upon such ship or vessel, and without any warrant other than this Act, apprehend any person whom he may find behaving himself in an indecent or disorderly manner, or using profane, indecent, or obscene language, or using any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace; and any officer or constable of the Force may enter at any hour of the day or night into any house licensed for the sale of fermented or spirituous liquors, or any licensed boarding, eating, or lodging house, and without any warrant other than this Act, apprehend any person whom he may find behaving himself in an indecent or disorderly manner, or using any such language as aforesaid or words or behaviour as aforesaid, with intent or calculated to provoke a breach of the peace; and to search therein for offenders and otherwise perform his duty, using as little annoyance to the inmates as possible; and any person so apprehended shall be detained in custody until he can be brought before a Justice to be dealt with for such offence; and every such person so apprehended shall unless a different

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penalty for his offence be prescribed by this Act be liable on conviction to a fine not exceeding \$300.

[Section 44 amended by No. 28 of 1964 s. 14; No. 113 of 1965 s. 8; No. 91 of 1975 s. 19; No. 87 of 1982 s. 44; No. 35 of 1989 s. 5; No. 78 of 1995 s. 147.]

45. Police may apprehend serious offenders and those for whom an arrest warrant has been issued

Any officer or constable of the Police Force may, without a warrant, take into custody any person whom he may have reasonable and probable cause for believing or suspecting to be a person for whose apprehension a warrant shall have been issued and any person who shall be charged by any other person with having committed, or whom he shall have reasonable and probable cause for believing has committed any felony or misdemeanour, punishable on information by the Supreme Court, or The District Court of Western Australia, in cases when by reason of the recent commission of the offence a warrant could not have been obtained for the arrest of the offender. And any warrant of arrest under this or any other Act may be executed by any police officer or constable on any day.

[Section 45 amended by No. 49 of 1997 s. 5.]

46. Police may apprehend any offender whose name and residence are not known

Any officer or constable of the Police Force, and all persons whom he shall call to his assistance may take into custody, without a warrant, any person who, within view of such officer or constable, shall offend in any manner against this Act, and whose name and residence shall be unknown to, and cannot readily be ascertained, by him.

47. Any person may apprehend known offenders

Any person whosoever, with or without a warrant, may apprehend any reputed common prostitute, thief, loose, idle or

disorderly person, who, within view of such person apprehending, shall offend against this Act, and shall forthwith deliver him to any constable or police officer of the place where he shall have been apprehended, to be taken and conveyed before a Justice, to be dealt with according to law, and any constable who shall refuse or wilfully neglect to take such offender into custody, or to take and convey him before a Justice, or who shall not use his best endeavours to apprehend and to convey him before a Justice, shall be deemed guilty of neglect of duty and shall, on conviction, be punished in such manner as herein directed.

[Section 47 amended by No. 91 of 1975 s. 20.]

[48. *Repealed by No. 87 of 1982 s. 45.]*

**49. Police and property owners may apprehend offenders;
police may search vehicles and people for stolen property**

Any person found committing any offence punishable in a summary manner may be taken into custody without a warrant by any officer or constable of the Police Force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by his servant, or any person authorised by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every police officer or constable may also stop, search, and detain any cart, carriage, or vehicle, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property or liquor shall be offered to be sold, pawned, or delivered (if he shall have reasonable cause to suspect that any offence has been committed with respect to such property or liquor, or that the same, or any part thereof, has been stolen, or otherwise unlawfully obtained, or is intended to be used for an unlawful purpose), may apprehend and detain the person offering any such property or liquor as aforesaid, and as

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soon as may be deliver him into the custody of a constable, together with such property or liquor, to be dealt with according to law; and every person taken into custody without warrant for any offence against the provisions of this Act, or for any offence punishable in a summary manner, shall be detained in custody until he can be brought before a Justice to be dealt with according to law or until he shall have given bail for his appearance before a Justice in manner hereinbefore provided.

[50. *Repealed by No. 6 of 2002 s. 96.*]

50A. Police may prosecute breach of local laws

Every member of the Police Force may prosecute for any breach of or offence against any local law made by a local government.

[Section 50A inserted by 62 Vict., No. 21 s. 3 (as amended by No. 15 of 1952 s. 7); amended by No. 14 of 1996 s. 4.]

50AA. Police may take identifying particulars from people in custody

- (1) Where any person is in lawful custody for any offence punishable on indictment or summary conviction, other than an offence that is a serious offence within the meaning of the *Criminal Investigation (Identifying People) Act 2002*, any officer or constable of the Police Force may take or cause to be taken all such particulars as he may think necessary or desirable for the identification of that person, including his photograph, measurements, fingerprints, and palmprints.
- (2) Where the photographs, fingerprints, palmprints or other identification particulars of a person are taken under subsection (1) and that person is found not to be guilty of any offence arising out of the circumstances leading to the taking of those particulars, the original negatives and all other copies available of the photograph, fingerprints, palmprints and other particulars taken shall, if so requested by that person, be destroyed in his presence but not until the time for an appeal

from the finding has expired or an appeal from the finding has been resolved in favour of the accused person.

[Section 50AA inserted by No. 41 of 1974 s. 2; amended by No. 6 of 2002 s. 96.]

51. Mad dogs, etc.

Any officer or constable of the Police Force may destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state, and the owner of any such dog or animal who shall permit the same to go at large after having information or reasonable ground for believing it to be in a rabid state or to have been bitten by any dog or other animal in a rabid state, shall on conviction be liable to a penalty of not more than \$20.

[Section 51 amended by No. 28 of 1964 s. 15; No. 113 of 1965 s. 8.]

52. Police may control processions, crowds, etc.

- (1) The Commissioner of Police, from time to time, and as occasion shall require, may give instructions to members of the Police Force for the purpose of regulating the route and pace to be observed by all vehicles, horses, and persons, and for preventing obstruction of the streets and thoroughfares by processions, meetings, or assemblies or in case of fires, and to provide for keeping order and for preventing any obstructions of the thoroughfares in the immediate neighbourhood of all public buildings and offices, theatres, and other places of public resort, and in any case where the streets or thoroughfares may be thronged or may be liable to be obstructed, and to prevent any interference with or annoyance of any congregation, or meeting engaged in divine worship in any building consecrated or otherwise, and for keeping order and preventing obstructions on and near the water on which any sporting event or other

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assembly is held, but no such instruction shall be given for the purpose of frustrating —

- (a) the holding of a meeting or the conduct of a procession authorised pursuant to a permit or order granted under the *Public Meetings and Processions Act 1984*; or
 - (b) the holding or conduct of an event on a road closed pursuant to an order granted under Part VA of the *Road Traffic Act 1974*.
- (2) A member of the Police Force acting in accordance with instructions given under subsection (1) may give such directions as may seem expedient to him to give effect to those instructions.
- (3) Every person who, after being acquainted with the same, fails to observe or contravenes any directions given under subsection (2) commits an offence.
- Penalty: \$100.
- (4) The power vested in the Commissioner of Police by subsection (1) may be exercised by any member of the Police Force of or above the rank of sergeant duly authorised by the Commissioner of Police for the purpose.

[Section 52 amended by No. 28 of 1964 s. 16; No. 113 of 1965 s. 8; No. 91 of 1975 s. 21; No. 146 of 1976 s. 4; No. 29 of 1979 s. 3; No. 23 of 1984 s. 12; No. 64 of 1988 s. 7.]

52A. Detention to be subject to the *Bail Act 1982*

Nothing in this Act shall be read as limiting or affecting —

- (a) the right conferred by section 5 of the *Bail Act 1982* on every person taken into the custody of a police officer or constable for an offence, as provided by this Act, to have his case for bail considered under and in accordance with the *Bail Act 1982* or to be brought before a court as soon as is practicable;

- (b) the duties imposed on police officers by section 6 of that Act.

[Section 52A inserted by No. 87 of 1982 s. 46.]

[Part VA repealed by No. 50 of 2000 s. 30.]

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[Heading inserted by No. 108 of 1982 s. 5.]

54. Disorderly conduct

Every person who shall be guilty of any disorderly conduct on any street, public place, or in any passenger boat or vehicle, and Police Station, or lock-up, shall, on conviction, be liable to a penalty of not more than \$2 500.

[Section 54 amended by No. 28 of 1964 s. 17; No. 113 of 1965 s. 8; No. 91 of 1975 s. 23; No. 51 of 1992 s. 16(3); No. 50 of 2003 s. 85(8).]

54A. Disorderly assembly

- (1) A disorderly assembly is an assembly of 3 or more persons who assemble in such a manner or who so conduct themselves when they are assembled as to give persons in the neighbourhood of the assembly reasonable grounds to apprehend that the persons so assembled —
 - (a) will disturb the peace; or
 - (b) will by that assembly needlessly provoke other persons to disturb the peace.
- (2) Persons lawfully assembled may become a disorderly assembly if being assembled they conduct themselves in such a manner as is referred to in subsection (1).

- (3) Any member of a disorderly assembly who, after being warned by a member of the Police Force to disperse immediately and go peaceably to his home or his lawful business, neglects or refuses to do so, commits an offence.

Penalty: \$2 500.

[Section 54A inserted by No. 85 of 1970 s. 3; amended by No. 91 of 1975 s. 24; No. 50 of 2003 s. 85(9).]

[54B. Repealed by No. 23 of 1984 s. 12.]

[55-56. Repealed by 1 and 2 Edw. VII, No. 14 s. 3.]

57. Negligent or furious driving

Every person who shall ride or drive in any street so negligently, carelessly, or furiously, that the safety of any other person might thereby be endangered, shall, on conviction, be liable to a penalty of not more than \$100, except where the offence is in respect of so riding or driving a vehicle that is a vehicle within the meaning of the *Road Traffic Act 1974*, in which case like provisions shall apply to the offender as apply under that Act.

[Section 57 amended by No. 28 of 1964 s. 18; No. 113 of 1965 s. 8; No. 91 of 1975 s. 25.]

[58. Repealed by No. 85 of 1970 s. 4.]

58A. Damage to animals, plants etc. in gardens

Whoever wilfully or wantonly does or attempts to do any act which may, directly or indirectly, damage, injure, or destroy —

- (a) any beast, bird, reptile, fish, or other living creature, or any egg or spawn thereof; or
- (b) any garden, flower bed, tree, shrub, plant, or flower; or

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(c) any building, structure, or other property, in any place maintained and used as a garden for zoological, botanical, or acclimatisation purposes, or for public resort and recreation, is guilty of an offence.

Penalty: \$4 000 and imprisonment for 12 months.

[Section 58A inserted by 2 Edw. VII, No. 31 s. 10 (as amended by No. 15 of 1952 s. 7); amended by No. 6 of 1954 s. 3; No. 113 of 1965 s. 8; No. 85 of 1970 s. 5; No. 91 of 1975 s. 26; No. 50 of 2003 s. 85(10).]

59. Obscenity and other offences

Every person who in any street or public place or to the annoyance of the inhabitants or passengers, shall sing any obscene song or ballad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language, shall be deemed guilty of disorderly conduct and be punishable accordingly, and any person who shall use any threatening, abusive, or insulting words or behaviour in any public or private place, whether calculated to lead to a breach of the peace, or not, or who shall extinguish wantonly any light set up for public convenience, shall forfeit and pay on conviction any sum not exceeding \$2 500.

[Section 59 amended by No. 28 of 1964 s. 20; No. 113 of 1965 s. 8; No. 78 of 1995 s. 147; No. 17 of 2000 s. 64; No. 50 of 2003 s. 85(11).]

[60. Repealed by No. 44 of 1963 s. 4.]

61. Restriction on games on certain days

- (1) Any person who, in any room or place, keeps by way of trade or business any billiard table or amusement machine, or any person having the care or management of any such room or place or in any manner assisting in conducting the business thereof who shall permit or suffer any person to play a game of

the kind referred to in subsection (3), or any such machine, on Christmas Day or Good Friday, or on any other day except during the permitted hours referred to in subsection (2), commits an offence.

Penalty: \$1 000.

- (2) For the purposes of subsection (1) the following are the permitted hours —
- (a) between 8 a.m. and midnight on any day other than a Sunday, Christmas Day or Good Friday;
 - (b) between 10 a.m. and 8 p.m. on any Sunday, not also being Christmas Day; or
 - (c) such other hours as may be authorised pursuant to a gaming permit issued under the *Gaming and Wagering Commission Act 1987*.
- (3) In subsection (1) “**billiard table**” means any table used or designed for use for the playing of billiards, snooker, pool of any kind, skitla, or any like game.

[Section 61 amended by No. 28 of 1964 s. 21; No. 113 of 1965 s. 8; No. 7 of 1972 s. 2; No. 91 of 1975 s. 27; No. 74 of 1987 s. 49; No. 35 of 2003 s. 175(2).]

[62. *Repealed by 1 and 2 Edw. VII, No. 14, s. 3.]*

[62A. *Repealed by No. 91 of 1975 s. 28.]*

63. Taking dog into gazetted public gardens

Every person who shall knowingly bring or take any dog into any public garden, declared such by notice published in the *Government Gazette*, or shall suffer any dog to remain in any such garden, shall for every such offence be liable on conviction to a penalty of not more than \$1.

[Section 63 amended by No. 113 of 1965 s. 8.]

64. Challenge to fight for money; prize-fighting

Every person who shall send or accept, either by word or letter, or publish any challenge to fight for money, or shall engage in any prize-fight, shall upon conviction thereof by any 2 or more Justices, forfeit and pay a sum not more than \$1 000 and the convicting justices may, if they shall think fit, also require the offender to find sureties for keeping the peace.

[Section 64 amended by No. 113 of 1965 s. 8; No. 91 of 1975 s. 29; No. 51 of 1992 s. 16(3); No. 78 of 1995 s. 147.]

64A. Valueless cheques

- (1) Any person who obtains any chattel, money or valuable security by passing a cheque within a period of 60 days from and commencing on the day of the opening of the account on which the cheque is drawn, which cheque is not paid on presentation, shall unless he proved —

- (a) that he had reasonable grounds for believing that that cheque would be paid in full on presentation; and
- (b) that he had no intent to defraud,

be liable on summary conviction to a fine of \$4 000 or imprisonment for 12 months, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn, at the time it was passed.

- (2) No prosecution for the offence defined in this section shall be commenced without the written consent of the Commissioner of Police or a commissioned officer of police, authorised for the purpose in writing by the Commissioner of Police.

[Section 64A inserted by No. 10 of 1959 s. 3; amended by No. 22 of 1965 s. 2; No. 113 of 1965 s. 8; No. 24 of 1969 s. 8; No. 91 of 1975 s. 30; No. 24 of 2000 s. 54; No. 50 of 2003 s. 85(12).]

65. Miscellaneous offences

Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding \$2 500 —

- (1) Every person having no visible lawful means of support or insufficient lawful means of support, who being thereto required by any Justice, or who having been duly summoned for such purpose, or brought before any Justice, shall not give a good account of his means of support to the satisfaction of such Justice.
 - (2) Every person who has in his possession any thing with the intention of using it to cause damage consisting of graffiti.
 - (3) Every person wandering abroad, or from house to house, or placing himself in any public place, street, highway, court, or passage to beg or gather alms, or causing, or procuring, or encouraging any person to do so, or begging or gathering alms in any other place and not quitting such place whenever thereto bidden or requested.
 - (4) Every person found in possession of any weapon or instrument or thing capable of being used for the purpose of disguise, who being thereto required, shall not give a good account of his means of support, and assign a valid and satisfactory reason for such possession.
- [(4a) *repealed*]
- (4aa) Every person who, not being an exempt person, has in his possession any protective jacket, vest, or other article of apparel designed to resist the penetration of a projectile discharged from a firearm; and in this paragraph “**exempt person**” means —
- (a) a person who is a member of —

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- (i) the Police Force of this State (which for the purposes of this paragraph includes a police cadet and a person appointed under section 35A or 38A);
 - (ii) the Police Force of the Commonwealth; or
 - (iii) the armed forces of the Crown, and has any such jacket, vest, or article in his possession in the course of his duties;
- (b) a person who has any such jacket, vest, or article in his possession pursuant to, and in accordance with the conditions, if any, specified in, the written permission of the Commissioner of Police (which permission the Commissioner of Police is hereby authorised to give and which conditions the Commissioner of Police is hereby authorised to impose); or
- (c) a person who has any such jacket, vest, or article in his possession in the course of and for the purpose of supplying or delivering it to any person referred to in subparagraph (a) or (b) to fulfil an order previously made for such supply and delivery.
- (4b) Every person who, without lawful excuse, carries or has in his possession any jumper leads, silver paper, wire hooks, cutting implements or other implement or device to facilitate the unlawful driving or use of a motor vehicle.
- (5) Every person having in his possession, without lawful excuse, the proof of which excuse shall be on such person, any deleterious drug.
- [(6) *repealed*]
- (7) The occupier of any house which shall be frequented by reputed thieves, prostitutes, or persons who have no visible means of support.

- (8) Every common prostitute wandering in the public streets or highways, or being in any thoroughfare or place of public resort, and behaving in a riotous or indecent manner.
- (9) Every person who habitually consorts with reputed criminals or known prostitutes or persons who have been convicted of having no visible lawful means of support.

Every such weapon, instrument, and thing shall, on conviction of the offender, become forfeited to the Crown.

A person is presumed to have had the intention referred to in paragraph (2) if —

- (a) the person had possession of the thing in circumstances that give reasonable grounds for suspecting that the person had the intention; and
- (b) the contrary is not proved.

[Section 65 amended by No. 8 of 1955 s. 2; No. 20 of 1956 s. 2; No. 7 of 1972 s. 3; No. 41 of 1974 s. 3; No. 91 of 1975 s. 31; No. 30 of 1983 s. 4; No. 35 of 1989 s. 8; No. 51 of 1992 s. 16(1); No. 47 of 1998 s. 4; No. 18 of 1999 s. 21; No. 50 of 2003 s. 85(13).]

66. Subsequent offences against s. 65; other miscellaneous offences

Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding \$4 000 or to imprisonment for any term not exceeding 12 calendar months —

- (1) Every person committing an offence against section 65, having been previously convicted of an offence against that section.
- (2) Every person imposing or endeavouring to impose upon any charitable institution or private individual, by any false or fraudulent representation, either verbally or in

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writing, with a view to obtain money or any other benefit or advantage.

(2a) Any person who, by wilfully making any false statement or representation —

- (a) as to any sum or sums of money being his own personal property then in his possession or power; or
- (b) as to any property real or personal then owned by him; or
- (c) as to any sum of money then receivable by him by way of income, gift, or allowance; or
- (d) as to any sum of money received by him as salary or wages over any period; or
- (e) as to any employment in which he was engaged over any period; or
- (f) as to any sustenance relief received by him over any period; or
- (g) as to the number of persons then dependent on his earnings; or
- (h) as to the financial position of persons then dependent on his earnings,

obtains or attempts to obtain under any scheme for the relief of unemployed destitute or indigent persons any work or employment or any benefit in money or money's worth either for himself or for any other person.

(2b) Any person continuing to receive or attempting to receive any such work, employment, or benefit after he shall to his knowledge have become disentitled to receive the same.

(3) Every person pretending to tell fortunes, or using any subtle craft, means, or device, to deceive and impose upon any person.

- (4) Every person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person), any picklock, key, crow, jack, bit, or other implement of housebreaking or any explosive substance.
- (5) Every person exposing to view in any street, road, thoroughfare, highway, or public place, or who shall expose or cause to be exposed in any window, or other part of any shop or other building situate in any public place, or highway, or who shall offer for sale or attempt to dispose of any obscene print, picture, drawing, or representation.
- [(6) *repealed*]
- (7) Every person apprehended for an offence against section 65, and violently resisting any constable or other officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended.
- (8) Every person being found in or upon any place, stable, or outhouse for any unlawful purpose.
- (9) Every person wandering about or lodging in any outhouse, deserted or unoccupied building, or in the open air, or in any vehicle, not having any visible lawful means of support, and not giving a good account of himself.
- [(10) *repealed*]
- (11) Any person wilfully and obscenely exposing his person in any street or public place, or in the view thereof, or in any place of public resort.
- (12) Any person fraudulently manufacturing or aiding in the manufacture of any spurious or mixed metal or substance, and any person fraudulently selling or fraudulently offering for sale, as unmanufactured gold, or as gold in its natural state, any metal or mixed or

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adulterated metal or other substance, whether partly composed of gold or not.

- (13) Any person who is or has been, without lawful excuse, in or upon any premises or the curtilage, whether enclosed or fenced or not, of any premises.

And each such picklock, key, crow, jack, bit, and other implement of housebreaking, and any such explosive substance, shall, on conviction of the offender, become forfeited to the Crown.

[Section 66 amended by No. 19 of 1933 s. 2; No. 29 of 1962 s. 2; No. 7 of 1967 s. 2; No. 91 of 1975 s. 32; No. 108 of 1982 s. 6; No. 51 of 1992 s. 16(1); No. 28 of 2003 s. 157; No. 50 of 2003 s. 85(14).]

67. Escaping legal custody; subsequent offences against s. 66; obstructing licence holders

Every person who shall commit any of the next following offences shall, on conviction before 2 or more Justices, be liable to a fine not exceeding \$6 000 or to imprisonment for any term not exceeding 18 calendar months —

- (1) Every person who shall break or escape out of any legal custody.
- (2) Every person committing any offence against section 66, having been previously convicted of an offence against that section.
- (3) Every person apprehended for an offence against section 66, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended.
- (4) Every person who, without lawful authority and with intent —
 - (a) to compel another person to abstain from carrying on any activity which pursuant to any law of the State or of the Commonwealth that

person is by virtue of a licence, permit or authorisation issued thereunder empowered to do; or

- (b) to prevent such an activity being carried on; or
- (c) to obstruct any such activity,

manifests that intention by doing any act in relation to that other person, the property of that other person or the activity so empowered, or by failing or omitting to do any act in relation thereto which he is lawfully required to do.

Provided that nothing shall prevent such offender being committed to the nearest gaol, there to remain until the next Sessions of The District Court of Western Australia to be held in the district wherein or nearest to which the said offence shall be committed.

Provided further that it shall be a defence to a charge of an offence contrary to paragraph (4) to show that the intention was manifested in the course of a bona fide trade dispute between an employer and workmen engaged in the activity so empowered, and that the act, failure or omission complained of was committed by a person who was a party to that dispute.

[Section 67 amended by No. 91 of 1975 s. 33; No. 6 of 1978 s. 12; No. 51 of 1992 s. 16(1); No. 50 of 2003 s. 85(15).]

67A. Aiding an escaped prisoner

Any person who aids, harbours, maintains, or employs another person who, to his knowledge, has broken or escaped out of any legal custody and is illegally at large, commits an offence and is liable on summary conviction to a fine not exceeding \$1 000 or to a term of imprisonment not exceeding 9 months or both.

[Section 67A inserted by No. 91 of 1975 s. 34; amended by No. 50 of 2003 s. 85(16).]

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67B. Search and seizure powers for offences under s. 65 to 67

- (1) A police officer or constable may without warrant —
 - (a) stop, detain and search any person who the officer or constable suspects on reasonable grounds to be committing an offence under section 65, 66 or 67; and
 - (b) seize any thing that the officer or constable suspects on reasonable grounds relates to the commission of the offence.
- (2) When a police officer or constable proposes to carry out a search under this section, the officer or constable must explain to the person to be searched that failure to comply with the demand is an offence against this Act.

[Section 67B inserted by No. 47 of 1998 s. 5.]

68. Search and seizure powers in respect of offenders under s. 65 to 67

Any constable or other person apprehending any person charged with an offence against section 65, 66 or 67 may seize any horse or other cattle, or any money, goods, or vehicle in the possession or use of the person so apprehended and charged, and may take and convey the same as well as such persons before a Justice or Justices, and the Justice or Justices by whom any person is convicted of an offence against section 65, 66 or 67 may order that such offender be searched, and that his trunks, boxes, bundles, parcels, or packages, and any cart or other vehicle which may have been found in his possession or use, or under his control, shall be inspected and searched; and the said Justice or Justices may order that any money which may then be found with or upon such offender shall be paid and applied to defray the expense of apprehending and conveying to gaol and maintaining such offender during the time for which he shall have been committed, and the expense of the keep of any horse or other cattle so seized, during the time such horse or cattle shall be detained; and if, upon such search, money sufficient for the purposes aforesaid be not found, such Justice or Justices

may order that such horse, cattle, and so much as is necessary of such other effects then found shall be sold, and that the produce of such sale shall be paid and applied as aforesaid, and also that the surplus of such money or effects, after deducting the charges for such sale, shall be returned to the said offender. And when any person shall be taken into custody on a charge of felony, his premises and property may be inspected and searched by any officer or constable of the Police Force.

[Section 68 amended by No. 91 of 1975 s. 35.]

69. Possession of property reasonably suspected to be unlawfully obtained

Every person who shall be brought before any Justice charged with having on his person or in any place, or conveying, in any manner any thing which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such Justice how he came by the same, shall be liable to a penalty of not more than \$2 000, or in the discretion of the Justice may be imprisoned for any term not exceeding 2 years.

[Section 69 amended by No. 28 of 1964 s. 23; No. 113 of 1965 s. 8; No. 85 of 1970 s. 6; No. 91 of 1975 s. 36; No. 51 of 1992 s. 16(3).]

70. Search warrant for stolen or unlawfully obtained property

If information shall be given on oath to any Justice that there is reasonable cause for suspecting that any thing stolen or unlawfully obtained is concealed or lodged in any place or in any vehicle or package, it shall be lawful for such Justice, by special warrant under his hand directed to any police constable, to cause every such place to be entered, and the same and every such vehicle or package to be searched at any time of the day or by night, and on any day; and the said Justice, if it shall appear to him necessary, may empower such police constable with such assistance as may be found necessary, such police constable having previously made known such his authority, to use force

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for the effecting of such entry, whether by breaking open doors or otherwise, and if upon search thereupon made any such thing shall be found, then to convey the same before a Justice or to guard the same on the spot until the offenders are taken before a Justice, or otherwise dispose thereof in some place of safety, and moreover to take into custody and carry before a Justice every person found in such house or place, or whom he shall have reasonable cause to suspect to have been privy to the deposit of any such thing knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained.

[Section 70 amended by No. 49 of 1997 s. 5.]

71. Justice to examine person supplying stolen goods

When any person shall be brought before any Justice charged with having or conveying any thing stolen or unlawfully obtained, and shall declare that he receive the same from some other person, or that he was employed as a carrier, agent, or servant, to convey the same for some other person, such Justice is hereby authorised and required to cause every such person, and also if necessary every former or pretended purchaser or other person through whose possession the same shall have passed, to be brought before him and examined, and to examine witnesses upon oath touching the same; and if it shall appear to such Justice that any person shall have had possession of such thing and had reasonable cause to believe the same to have been stolen or unlawfully obtained every such person shall be deemed guilty of a misdemeanour; and the possession of a carrier or agent or servant shall be deemed to be the possession of the person who shall have employed him to convey the same; and every such person shall on conviction be liable to a penalty of not more than \$1 000, or to be imprisoned for any term not exceeding 12 calendar months.

[Section 71 amended by No. 28 of 1964 s. 24; No. 113 of 1965 s. 8; No. 91 of 1975 s. 37; No. 51 of 1992 s. 16(3).]

72. Justice may order pawnbrokers etc. to deliver property to owner in certain cases

If any goods shall be stolen or unlawfully obtained from any person, or being lawfully obtained shall be unlawfully deposited, pawned, pledged, sold or exchanged, and complaint shall be made thereof to any Justice, and that such goods are in the possession of any broker, or dealer, or of any person who shall have advanced money upon the credit of such goods, it shall be lawful for such Justice to issue a summons or warrant for the appearance of such broker or dealer, and for the production of the goods, and to order such goods to be delivered up to the owner thereof either without any payment or upon payment of such sum and at such a time as the Justice shall think fit; and every broker or dealer who being so ordered shall refuse or neglect to deliver up the goods, or who shall dispose of or make away with the same after notice that such goods were stolen or unlawfully obtained as aforesaid, shall forfeit to the owner of the goods the full value thereof to be determined by the Justice: Provided always, that no such order shall bar any broker or dealer from recovering possession of such goods by suit or action at law from the person into whose possession they may come by virtue of the Justice's order, so that such action be commenced within 6 calendar months next after such order shall be made.

73. Justice may order return of property unlawfully pawned etc.

It shall be lawful for any Justice to order that any goods unlawfully pawned, pledged, or exchanged which shall be brought before him, and the ownership of which shall be established to the satisfaction of such Justice, shall be delivered up to the owner by the party with whom they were so unlawfully pawned, pledged, or exchanged, either without compensation or with such compensation to the party in question as the Justice may think fit.

74. Justice may order return of stolen etc. property in possession of police

If any goods or money charged to be stolen or unlawfully obtained shall be in the custody of any police officer or constable by virtue of any warrant of a Justice, or in prosecution of any charge of felony or misdemeanour in regard to the obtaining of such goods or money, or pursuant to or by a seizure made under section 25 or 31 of the *Gaming and Wagering Commission Act 1987*, and the person charged shall not be found, or shall have been summarily convicted or discharged, or shall have been tried and acquitted, or if such person shall have been tried and found guilty, but the property so in custody shall not have been included in any information upon which he shall have been found guilty, it shall be lawful for any Justice to make an order for the delivery of that property to the party who shall appear to be the rightful owner thereof, or in case the owner cannot be ascertained then to make such order with respect to that property as to such Justice shall seem meet: Provided always, that no such order shall be any bar to the right of any person or persons to sue the party to whom that property shall be delivered, and to recover that property from him by action at law, so that such action shall be commenced within 6 calendar months next after such order shall be made.

[Section 74 amended by No. 108 of 1982 s. 7; No. 74 of 1987 s. 50; No. 35 of 2003 s. 175(2).]

75. Police may sell unclaimed stolen etc. property after 6 months

- (1) Where any goods or money charged to be stolen or unlawfully obtained and of which the owner is unknown are in the custody of a member of the Police Force then, if no person appears to claim ownership, that member after the expiration of a period of 6 months may and within a period of 12 months shall —
 - (a) pay such money in his custody as aforesaid to the Treasurer of the State;

- (b) sell or dispose of such goods in his custody as aforesaid and pay the net proceeds of such sale or disposition to the Treasurer of the State.
- (2) All moneys paid to the Treasurer of the State under the authority of subsection (1) shall be received by him for the public uses of the State.

[Section 75 inserted by No. 19 of 1940 s. 3; amended by No. 7 of 1972 s. 4.]

76. Police may sell unclaimed goods

- (1) Any goods and chattels which have lawfully come to the possession of any member of the Police Force and which are unclaimed shall and may be sold and disposed of by the direction of the Commissioner of Police by public auction (a notice of such sale having been previously published thrice in the *Government Gazette*); and the clear produce of such sale shall be paid to the Treasurer to the use of Her Majesty, her heirs and successors, for the public use of the said State; and every such sale shall be valid against all persons; and no person selling any goods or chattels under the provisions hereof shall be subject or liable to pay any auction or other duty in consequence of such sale.
- (2) Despite subsection (1), if —
 - (a) possession of the goods or chattels is unlawful; or
 - (b) the Commissioner of Police is satisfied that the goods or chattels are valueless,

the Commissioner may dispose of the goods or chattels in such manner as the Commissioner thinks fit.

[Section 76 amended by No. 47 of 1998 s. 6.]

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76A. Possession of gold, pearl or uncut diamond suspected of being stolen

Any person who —

- (1) is charged before any stipendiary magistrate with having —
 - (a) on his person or on any animal, or in any cart or other vehicle or in any boat or vessel; or
 - (b) in his possession on any premises of which he is the tenant or occupier, or reputed tenant or occupier,any gold, pearl or uncut diamond reasonably suspected of being stolen or unlawfully obtained; and
- (2) does not prove to the satisfaction of the magistrate that such gold, pearl or uncut diamond was lawfully obtained,

is liable, on summary conviction, to a fine not exceeding \$10 000, or to imprisonment for any term not exceeding 2 years.

[Section 76A inserted by 2 Edw. VII, No. 31 s. 2 (as amended by No. 10 of 1907 s. 2 and No. 15 of 1952 s. 7); amended by No. 113 of 1965 s. 8; No. 91 of 1975 s. 38; No. 107 of 1981 s. 2; No. 51 of 1992 s. 16(3).]

76B. Occupier of premises where gold etc. found deemed to be in possession thereof

Any person being the reputed tenant or occupier of any premises at the time when any gold, pearl or uncut diamond reasonably suspected of being stolen or unlawfully obtained is found thereon and seized by any police officer shall be deemed to have been in possession of such gold, pearl or uncut diamond until the contrary is proved.

[Section 76B inserted by 2 Edw. VII, No. 31 s. 3 (as amended by No. 10 of 1907 s. 2 and No. 15 of 1952 s. 7); amended by No. 107 of 1981 s. 3.]

76C. Persons found upon premises where stolen gold etc. seized may be convicted

- (1) Any person who —
- (a) is charged before any stipendiary magistrate with being present at the time when any gold, pearl or uncut diamond reasonably suspected of being stolen or unlawfully obtained is found and seized by any police officer on any premises; and
 - (b) is unable to give an account of his presence there to the satisfaction of the magistrate,

is liable, on summary conviction, to a fine not exceeding \$10 000 or to imprisonment for any term not exceeding 2 years.

- (2) A person may be convicted under this section notwithstanding that no charge is laid or conviction obtained against the tenant or occupier or reputed tenant or occupier of the premises.

[Section 76C inserted by 2 Edw. VII, No. 31 s. 4 (as amended by No. 10 of 1907 s. 2 and No. 15 of 1952 s. 7); amended by No. 113 of 1965 s. 8; No. 91 of 1975 s. 39; No. 107 of 1981 s. 4; No. 51 of 1992 s. 16(3).]

76D. Accessories to offences under s. 76A

- (1) Any person charged before any stipendiary magistrate with having assisted in the commission of an offence under section 76A, who is unable to give an account of himself to the satisfaction of the magistrate, is liable to a penalty of not more than \$5 000, or to imprisonment for any term not exceeding one year.
- (2) For the purpose of this section any person proved —
- (a) to have been watching or patrolling outside and in the vicinity of any premises on or about which any gold, pearl or uncut diamond reasonably suspected of being stolen or unlawfully obtained is found and seized by any police officer; or

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- (b) to have been accompanying any person having on his person, or on any animal, or in any cart or vehicle, any gold, pearl or uncut diamond reasonably suspected of being stolen or unlawfully obtained and, which is seized by any police officer,

shall be deemed to be a person who has assisted in the commission of an offence under subsection (1), unless the contrary is proved to the satisfaction of the magistrate.

[Section 76D inserted by 2 Edw. VII, No. 31 s. 5 (as amended by No. 10 of 1907 s. 2 and No. 15 of 1952 s. 7); amended by No. 113 of 1965 s. 8; No. 91 of 1975 s. 40; No. 107 of 1981 s. 5; No. 51 of 1992 s. 16(3).]

76E. Restitution of gold etc. on conviction under s. 76A, 76C or 76D

Upon a conviction under any of sections 76A, 76C and 76D, the magistrate may order the gold, pearl or uncut diamond to be delivered to the person whose right to the same shall have been found by such magistrate, and failing any such person, the gold, pearl or uncut diamond shall be forfeited to the Crown. In this and the preceding sections the word “**pearl**” includes baroque pearl and blister pearl and the expression “**uncut diamond**” includes any crushed diamond, diamond dust, diamond fragment or partly cut or partly processed diamond.

[Section 76E inserted by 2 Edw. VII, No. 31 s. 6 (as amended by No. 10 of 1907 s. 2 and No. 15 of 1952 s. 7); amended by No. 107 of 1981 s. 6.]

76F. Keeping etc. premises for prostitution

Any person who —

- (1) keeps or manages, or acts, or assists in the management of any premises for purposes of prostitution; or

- (2) being the tenant, lessee, or occupier of any premises, knowingly permits such premises, or any part thereof, to be used for purposes of prostitution; or
- (3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, or collects the rent with the knowledge that such premises, or some part thereof, are or is to be used for purposes of prostitution, or is a party to the continued use of such premises, or any part thereof, for purposes, of prostitution, is liable, on summary conviction —
 - (a) to a fine not exceeding \$100; and
 - (b) on a second or subsequent conviction, to a fine not exceeding \$200, or to imprisonment not exceeding 12 months.

It is immaterial whether the premises kept or occupied for prostitution are kept or occupied by one person or more than one person.

[Section 76F inserted by 2 Edw. VII, No. 31 s. 7 (as amended by No. 15 of 1952 s. 7); amended by No. 28 of 1964 s. 25; No. 113 of 1965 s. 8; No. 51 of 1992 s. 16(1) and (3); No. 50 of 2003 s. 85(17).]

76G. Living on earnings of prostitution; soliciting for immoral purposes

- (1) Every person who —
 - (a) knowingly lives wholly or in part on the earnings of prostitution; or
 - (b) in any public place persistently solicits or importunes for immoral purposes,

shall be deemed to have committed an offence against section 66, and may be dealt with accordingly.

- (2) Where a person lives with, or is habitually in the company of a prostitute, and has no visible means of subsistence, he shall,

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unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

- (3) If it be made to appear by information on oath to any stipendiary magistrate that there is reason to suspect that any house or part of a house is used by any female for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the said female, such magistrate may issue a warrant authorising any police constable to enter and search the house, and to arrest such person.

[Section 76G inserted by 2 Edw. VII, No. 31 s. 8 (as amended by No. 15 of 1952 s. 7); amended by No. 26 of 1968 s. 2; No. 146 of 1976 s. 6.]

[76H. Repealed by No. 17 of 1979 s. 4.]

76I. Definitions for s. 76A to 76G

For the purposes of sections 76A to 76H inclusive —

“**gold**” means gold bullion, retorted gold, gold ores, gold amalgam, gold alloys, precipitates containing gold, slag, concentrates, tailings, and residues.

“**police officer**” includes any constable or officer of police.

“**premises**” include any house, shop, room, building, erection, yard, or other place.

[Section 76I inserted by 2 Edw. VII, No. 31 s. 11 (as amended by No. 15 of 1952 s. 7).]

[77. Repealed by No. 91 of 1975 s. 42.]

78. Justices may order delivery of goods unlawfully detained to the owner

On complaint made to any Justice by any person claiming to be entitled to the property or possession of any goods which are detained by any other person, the value of which shall not be greater than \$100, and not being deeds, muniments, or papers

relating to any property of greater value than \$100, it shall be lawful for such Justice to summon the person complained of before any 2 or more Justices who shall inquire into the title thereto or to possession thereof, and if it shall appear to the said Justices that such goods have been detained without just cause after due notice of the claim made by the person complaining, or that the person detaining such goods has a lien or right to detain the same by way of security for the payment of money or the performance of any act by the owner thereof, it shall be lawful for the said Justices to order the goods to be delivered to the owner thereof either absolutely or upon tender of the amount appearing to be due by such owner (which amount the said Justices are hereby authorised to determine), or upon performance or upon tender and refusal of the performance of the act for the performance whereof such goods are detained as security, or if such act cannot be performed, then upon tender of amends for the non-performance thereof (the nature or amount of which amends the said Justices are hereby authorised to determine), and every person who shall neglect or refuse to deliver up the goods according to such order shall forfeit to the party aggrieved the full value of such goods not greater than the sum of \$100, such value to be determined by the said Justices. Provided always that no such order shall bar any person from recovering possession of the goods or money so delivered or forfeited by suit or action at law from the person to whose possession such goods or money shall come by virtue of such order, so that such action be commenced within 6 calendar months next after such order shall be made.

[Section 78 amended by No. 113 of 1965 s. 8.]

[79. Repealed by No. 33 of 1912 s. 2.]

79A. Unlawfully taking animals

Whosoever takes and works or otherwise uses or takes for the purpose of working or using any cattle or dog the property of another person, without the consent of the owner or person in lawful possession thereof, or who takes any such cattle or dog

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for the purpose of secreting the same or obtaining a reward for the restoration or pretended finding thereof or for any other fraudulent purpose, shall be guilty of a misdemeanour, and on conviction before 2 Justices shall be liable to imprisonment for a term not exceeding 12 months, or to pay a fine not exceeding \$1 000.

The term “**cattle**” mentioned in this section shall include any camel, horse, mare, gelding, colt, foal, filly, ass, mule, bull, cow, ox, steer, heifer, calf, wether, ram, ewesheep, lamb, pig, goat, deer, alpaca, llama, or vicuna, and every hybrid or cross thereof.

[Section 79A inserted by 56 Vict., No. 10 s. 14 (as amended by No. 15 of 1952 s. 7); amended by No. 28 of 1964 s. 26; No. 91 of 1975 s. 43.]

80. Wilful damage to property

- (1) Every person who destroys or damages any real or personal property of any kind, whether owned by the Crown or any public authority or local government or by any other person, is guilty of an offence.

Penalty: Subject to section 80A, \$4 000 and imprisonment for 12 months.

- (2) Subsection (1) does not apply —
- (a) where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of; or
 - (b) where the act complained of was done in the course of hunting or fishing, or in the pursuit of game and was not done with an intention to destroy or damage the property.

[Section 80 inserted by No. 85 of 1970 s. 7; amended by No. 91 of 1975 s. 44; No. 71 of 1980 s. 5; No. 2 of 1994 s. 3; No. 14 of 1996 s. 4; No. 78 of 1995 s. 106; No. 50 of 2003 s. 85(18).]

80A. Graffiti, punishment etc.

(1) In this section —

“public property” means property owned by, vested in, or under the control or management of —

- (a) the State;
- (b) the Crown, or an agent or instrumentality of the Crown;
- (c) a body corporate established by a written law; or
- (d) a local government or a regional local government;

“relevant offender” means a person guilty of an offence under section 80(1) where the damage consists of —

- (a) graffiti which are visible to the public; or
- (b) graffiti done on public property.

(2) A relevant offender is liable to a fine not exceeding \$1 000.

(3) A court convicting a relevant offender may, in addition to imposing any penalty and in addition to making a compensation order under Part 16 of the *Sentencing Act 1995*, order the relevant offender to pay to any person who has obliterated the graffiti or caused it to be obliterated such sum as it considers reasonable for doing so.

(4) An order under subsection (3) is to be treated as if it were a compensation order made under Part 16 of the *Sentencing Act 1995*.

[Section 80A inserted by No. 2 of 1994 s. 4; amended by No. 78 of 1995 s. 106; No. 14 of 1996 s. 4.]

81. Using boats etc. without owner’s consent

A person who takes, uses, or assumes control of any boat, flat, or barge or any fitting or equipment, including any motor, thereon without previously obtaining the consent of the owner or person in charge thereof is liable to a fine of \$2 000 or imprisonment for 2 years and in addition, on conviction, shall forfeit and pay to the

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party aggrieved such a reasonable sum as shall appear to the convicting Justice to be compensation for any loss of work, or loss of time, or damage sustained by the owner or person in charge of such vessel or fitting or equipment, by reason of such unauthorised removal or use thereof.

[Section 81 amended by No. 28 of 1964 s. 27; No. 113 of 1965 s. 8; No. 1 of 1970 s. 4; No. 91 of 1975 s. 45.]

82. Stealing; destroying property with intent to steal; unlawfully retaining or disposing of property

Every person who shall commit any of the next following offences as to any articles of property in this section mentioned (or who shall receive any of the same knowing them to have been stolen or unlawfully come by), shall on conviction for the first offence be liable to the punishment, and for any second or subsequent offence to double the amount of punishment hereinafter specified in each case —

- (1) Every person who shall steal, or damage with intent to steal any part of any live or dead fence, or any post, pale, or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, shall pay to the party aggrieved the value of the property stolen, or the amount of the damage done, and shall also be liable to a fine not exceeding \$300:
- (2) Every person who shall steal or shall cut, break, root up, or otherwise destroy or damage, with intent to steal the whole or any part of any growing tree, sapling, shrub, or underwood, or any growing fruit, mushroom or other fungus or vegetable production, or any growing cultivated root or plant, shall (in case the value of the property stolen, or the amount of the damage done, shall not exceed \$10) pay to the party aggrieved the value of the property stolen, or the amount of the injury done, and shall be liable to a fine not exceeding \$300:

- (3) Every artificer, workman, journeyman, apprentice, or other person who shall unlawfully dispose of or retain in his possession without the consent of the person by whom he shall be hired, retained, or employed, any goods, wares, work or materials committed to his care or charge (the value of such goods, wares, work, or materials, not exceeding the sum of \$20), shall pay to the party aggrieved such compensation as the convicting Justice shall think reasonable, and shall also be liable to a fine not exceeding \$1 000; and any person to whom any such property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, is hereby authorised to arrest without a warrant, and with all convenient speed, cause to be delivered into the custody of a constable, the person offering the same, together with such property to be dealt with according to law; and in every such case any such stolen property shall by order of the Justice by whom such case shall be heard and determined, be delivered over to the rightful owner, if known, or if the rightful owner shall not be known, the same shall be retained and sold, and the proceeds thereof applied in like manner as any penalties awarded under this Act.

[Section 82 amended by No. 42 of 1963 s. 2; No. 28 of 1964 s. 28; No. 113 of 1965 s. 8; No. 91 of 1975 s. 46; No. 51 of 1992 s. 16(3); No. 78 of 1995 s. 147.]

82A. Trespassing on enclosed land

- (1) Every person who shall, without lawful excuse, enter into the enclosed land of another person, without the consent of the owner, occupier or person in charge thereof, and shall cause damage or injury to any property such as is mentioned in section 82 shall pay to the party aggrieved the amount of any damage or injury done and shall be liable to a fine not exceeding \$100.

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- (2) The owner, occupier or person in charge of enclosed land who shall find a person on the land whom he has just cause to suspect of having entered into the land without consent may demand and require of that person his name and address, and any such person who shall neglect or refuse to give his name and address or who shall give a false name and address when applied to as aforesaid shall upon conviction be liable to a fine not exceeding \$20.
- (3) The provisions of this section shall be read and construed as in aid of, and not in derogation from, the provisions of section 82 and not in derogation from the rights of a person at law.

The term “**enclosed land**” mentioned in this section means any land, either public or private, that is enclosed or surrounded by a fence, wall or other erection, or partly by a fence, wall or other erection, and partly by some natural feature, such as a river or cliff, by which the boundaries thereof may be known or recognised; but does not include any road enclosed with the land.

[Section 82A inserted by No. 42 of 1963 s. 3; amended by No. 28 of 1964 s. 29; No. 113 of 1965 s. 8; No. 91 of 1975 s. 47.]

82B. Unlawfully remaining on premises

- (1) A person shall not, without lawful authority, remain on any premises after being warned to leave those premises —
- (a) in the case of premises occupied by the Crown or a public authority, by a person in charge of the premises or by a member of the Police Force;
 - (b) in the case of premises other than premises occupied by the Crown or a public authority, by the owner or a person in charge or occupation of the said premises or by a member of the Police Force.

Penalty: \$2 500.

- (2) A person who for the purposes of and in accordance with subsection (1) warns some other person to leave premises may, at the same time as he gives the warning, indicate to such person that part of the premises which the person concerned is required to leave and in any such circumstances the part of the premises so indicated shall constitute the premises for the purposes of that subsection.
- (3) A person shall not, without lawful authority, prevent, obstruct, or hinder any lawful activity which is being, or is about to be, carried on upon any premises.

Penalty: \$2 500.

- (4) In this section —

“premises” includes any land, building, structure, or any part thereof;

“public authority” means an authority or body (not being an incorporated company or association) constituted by or under a law of the State or the Commonwealth.

[Section 82B inserted by No. 71 of 1980 s. 6; amended by No. 50 of 2003 s. 85(19).]

83. Selling unfit, adulterated or unwholesome food

Every person who shall commit any of the next following offences shall, on conviction before any 2 Justices, be liable to the punishments hereafter specified in each case —

- (1) Every person who shall sell, or offer for sale, as food for human consumption, any grain, flour, meat, fish, fruit, or vegetable, which shall, in the whole or in part be unfit for human consumption, or in any manner adulterated, shall forfeit the same, to be disposed of as such Justices shall direct, and shall also be liable to a fine not exceeding \$600.

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- (2) Every person who shall exhibit for sale any unwholesome or fraudulently prepared provisions, meat or other food of any kind for man or beast, or shall practise any deceit or fraud in respect to the quality of any such provisions or food, shall forfeit all such provisions, to be disposed of as such Justices shall direct, and shall be liable to a fine not exceeding \$600; and any Justice may seize, or cause to be seized, any of the articles hereinbefore lastmentioned as to which any such offence shall have been committed.

[Section 83 amended by No. 28 of 1964 s. 30; No. 113 of 1965 s. 8; No. 91 of 1975 s. 48; No. 51 of 1992 s. 16(1) and (3); No. 78 of 1995 s. 147.]

[83A. Repealed by No. 108 of 1982 s. 8.]

84. Permitting disorderly behaviour in public premises etc.

- (1) Every person who shall have or keep any house, shop, or room, or any place of public resort, and who shall wilfully and knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein, shall, on conviction for every such offence, be liable to a fine not exceeding \$1 000: Provided always, that if the offender be a person licensed under the *Liquor Act 1970*², this enactment shall not be construed to exempt him from the penalties or penal consequences to which he may be liable for committing an offence against that Act or the regulations made thereunder.
- (2) Every person who, being the occupier, keeper or person having the charge or control of a shop or other place of public resort, shall knowingly permit or suffer a child apparently under the age of 16 years to enter and remain therein, under such circumstances as shall indicate that the mental, physical or moral welfare of such child is likely to be in jeopardy, shall on

conviction for every such offence, be liable to a fine not exceeding \$300.

[Section 84 amended by No. 6 of 1954 s. 5; No. 42 of 1963 s. 4; No. 28 of 1964 s. 31; No. 113 of 1965 s. 8; No. 91 of 1975 s. 49; No. 108 of 1982 s. 9; No. 78 of 1995 s. 147.]

[Division 2 (s. 84A-84H) repealed by No. 35 of 2003 s. 177.]

[Division 3 (s. 84I) repealed by No. 29 of 1985 s. 5.]

[Divisions 4-6 (s. 85-89C) repealed by No. 74 of 1987 s. 58, 59 and 60.]

Division 7 — Obstruction, false reports, and forfeiture

[Heading inserted by No. 108 of 1982 s. 5.]

90. Obstructing police

Any person who shall wilfully prevent any constable or officer authorised under the provisions of this Act to enter any premises or place from entering the same, or any part thereof, or who shall obstruct or delay any such constable or officer in so entering, and any person who by any bolt, bar, chain, or other contrivance shall secure any external or internal door of or means of access to any premises or place so authorised to be entered, or shall use any means or contrivance whatsoever, for the purposes of preventing, obstructing, or delaying the entry of any constable or officer authorised as aforesaid into any such premises or place or any part thereof, shall be liable on conviction to a penalty of not more than \$2 000 or in the discretion of the Justices before whom he shall be convicted of the offence to be committed to the nearest gaol for any term not exceeding 2 years.

[Section 90 amended by No. 113 of 1965 s. 8; No. 91 of 1975 s. 55; No. 108 of 1982 s. 22; No. 51 of 1992 s. 16(1).]

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90A. False reports to police

- (1) Every person who, by a written or oral statement made to a member of the Police Force, represents, contrary to the fact and without a genuine belief in the truth of his statement, the existence of a circumstance reasonably calling for police investigation or inquiry commits an offence.
- (2) Every person who does any act, with the intention of creating the belief or suspicion that —
 - (a) an offence has been committed; or
 - (b) human life has, or may have, been lost; or
 - (c) a person's safety is, or may be, endangered,knowing, at the time of doing that act, that the circumstance with respect to which he intends to create the belief or suspicion does not exist, commits an offence.
- (3) A court convicting a person of an offence under this section may, in addition to, or without, imposing any penalty, order that person to pay the amount of any wages attributable to, or expenses reasonably incurred with respect to, any investigation, inquiry or search made, whether by a member of the Police Force or otherwise, as a result of the statement or act by reason of which the person is convicted.
- (4) An order made under subsection (3) —
 - (a) shall specify to whom and in what manner the amount is to be paid; and
 - (b) may be enforced as though the amount so ordered to be paid were a penalty imposed under this section.
- (5) A person guilty of an offence against this section is liable on conviction to a fine not exceeding \$4 000 and to imprisonment for a term not exceeding 12 months, or both.

[Section 90A inserted by No. 29 of 1962 s. 4; amended by No. 28 of 1964 s. 32; No. 113 of 1965 s. 8; No. 41 of 1974 s. 4; No. 91 of 1975 s. 56; No. 50 of 2003 s. 85(20).]

90B. Embargo notices; forfeiture

- (1) A court shall not order any thing to be forfeited, under this Part, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (2) Where anything liable to be seized under this Part cannot, or cannot readily, be so seized and detained, a Justice, on the application of a police officer or constable and if the Justice is satisfied that there is reasonable cause to believe that the thing may be required as evidence for the purposes of proceedings under this Act or is liable to forfeiture under this Act, may grant to that officer or constable an embargo notice and that officer or constable —
 - (a) shall, if it is practicable to do so, forthwith serve, or cause to be served, a copy of the embargo notice on —
 - (i) the possessor of the thing to which the embargo notice relates; and
 - (ii) on any other person on whose behalf or for whose benefit he has reason to believe that thing is possessed by the possessor;and
 - (b) may serve or cause to be served a copy of the embargo notice on a person other than a person referred to in paragraph (a).
- (3) Subject to subsections (6) and (7), a possessor of any thing to which an embargo notice relates who sells, leases, moves, transfers or otherwise deals with that thing or any part of it within a period of 21 days from the date of the embargo notice or, if an application in respect of that thing is made to the District Court under section 90C within that period, before that application is finally disposed of is guilty of an offence.

Penalty: \$2 000.

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- (4) The possessor of any thing to which an embargo notice relates may apply to the District Court for leave to sell, lease, move, transfer or otherwise deal with that thing or any part of it.
- (5) The District Court may, on receiving an application under subsection (4), give the applicant leave in writing to sell, lease, move, transfer or otherwise deal with the thing or any part of the thing to which the embargo notice concerned relates on such conditions, if any, as the District Court thinks fit to attach to that leave.
- (6) A person to whom leave has been given under subsection (5) may sell, lease, move, transfer or otherwise deal with the thing or any part of the thing to which that leave relates in accordance with any conditions attached to that leave.
- (7) A person who is the possessor of the thing to which an embargo notice relates may move that thing or any part of that thing for the purpose of protecting and preserving the same within the period referred to in subsection (3) or before the application referred to in that subsection is finally disposed of, as the case requires, with the prior consent of the officer or constable to whom the embargo notice was granted in accordance with any conditions attached to that consent.
- (8) Notwithstanding anything in any other Act, a sale, lease, movement, transfer or other dealing with any thing which constitutes an offence under subsection (3) is null and void.

[Section 90B inserted by No. 108 of 1982 s. 23.]

90C. Embargo notices, District Court may make orders as to

- (1) A police officer or constable to whom an embargo notice has been granted may at any time, and a person aggrieved by the embargo notice may within a period of 21 days from the date of the embargo notice, apply on notice of motion to the District Court for an order in respect of the thing to which the embargo notice concerned relates.

- (2) On receiving an application made under subsection (1), the District Court may —
- (a) before, during or after the consideration of that application adjourn the proceedings on that application for such period or periods as it thinks fit;
 - (b) before making any order on that application, require notice to be given to, and hear, a person claiming to have a financial or other interest in the thing to which that application relates or any part of that thing; and
 - (c) after considering that application —
 - (i) if it is satisfied that the thing to which that application relates or any part of that thing is likely to be required as evidence for the purposes of proceedings under this Act or to be liable to forfeiture under this Act, order that that thing or part of that thing continue to be subject to the embargo notice until the proceedings concerned are finally disposed of;
 - (ii) if it is not so satisfied, order that that thing or part of that thing be released to the person named in that order or cancel the embargo notice concerned, as the case requires; or
 - (iii) if it is satisfied that the thing or any part of the thing has been ordered to be forfeited to the Crown under this Act, make such order as may be necessary to give effect thereto,and in any such case make such other order in respect of the thing to which that application relates or any part of that thing as the justice of the case requires, and may make such ancillary orders, including orders as to costs, as it considers necessary or desirable.
- (3) For the purposes of section 90B, an application under this section is finally disposed of when an appeal or further appeal,

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as the case requires, cannot be made unless an extension of time is granted —

- (a) where the District Court makes an order under subsection (2)(c)(i), in the proceedings in relation to which the embargo notice was granted; and
- (b) in any other case, under this section.

[Section 90C inserted by No. 108 of 1983 s. 23.]

[91-92. Repealed by No. 108 of 1982 s. 20.]

[93. Repealed by 56 Vict., No. 10.]

[94. Repealed by No. 108 of 1982 s. 24.]

[94A-94E. Repealed by No. 57 of 1981 s. 24.]

[94F-94H. Repealed by No. 146 of 1976 s. 13.]

**Part VII — Provisions as to offences: not to apply
where similar provisions made by local law**

[Heading amended by No. 14 of 1996 s. 4.]

95. Application of Part

This Part shall cease to have any force or effect wherever any local laws for effecting the same or a similar object are lawfully made by any local government.

[Section 95 amended by No. 14 of 1996 s. 4.]

96. Prohibition of nuisances by persons in streets

Every person shall, on conviction, be liable to a penalty of not more than \$40 who shall in any street commit any of the following offences —

- (1) Every person who shall, to the annoyance of the inhabitants or passengers, expose for show or sale (except in a market lawfully appointed for that purpose), or feed or fodder any horse or other animal (horses in vehicles on any public stand excepted), or shall shoe, bleed, or farry any horse or other animal (except in case of accident), or clean, dress, exercise, train, or break any horse or animal, or clean, make, or repair any part of any carriage or cart (except in cases of accident where repair on the spot is necessary).
- (2) Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge or permit any dog or other animal to attack, worry or put in fear any person, horse, or other animal.
- (3) Every person who shall drive any horses or cattle (except milch cows, or horses or oxen attached to any vehicle for the purpose of draught), excepting between 10 p.m. and 8 a.m.; and the local government is hereby empowered to define, by notice to be published in the *Government Gazette*, the route by which any horses,

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cattle, and sheep, with the exception as aforesaid, shall be driven, and after such publication no cattle, horses, or sheep shall be driven by other route.

- (4) Every person who, by negligence or ill usage in driving any such stock, shall cause any mischief to be done by such stock, or who shall in any wise misbehave himself in the driving, care, or management thereof; and also every person not being hired or employed to drive such stock who shall wantonly pelt, hunt or drive the same.
- (5) Every driver of any wagon, wain, cart, or dray of any kind who shall ride upon any such carriage, not having some person on foot to guide the same (such as are drawn by horses and properly driven with reins only excepted); and the driver of any carriage whatsoever who shall wilfully be at such a distance from such carriage, or in such a situation whilst it shall be passing upon any street, road, thoroughfare or public place that he cannot have the direction and government of the horses or cattle drawing the same; and every person who shall ride upon the shafts of any wagon, cart, dray, or other carriage whatsoever; and every person riding on horseback, or the driver or propeller of any carriage, machine, or vehicle whatsoever, who on meeting any person riding on horseback, or driving or propelling any other carriage, machine, or vehicle aforesaid, shall not keep his horse, carriage, machine or vehicle aforesaid on the left or near side of the road except in the case of a led horse or horses, and every person who shall in any manner wilfully prevent any other person from passing him or any carriage, machine, or vehicle under his care upon any street, road, thoroughfare, or public place, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any carriage, machine, vehicle, or person so in or upon the same.
- (6) Every person who shall cause any cart, hackney carriage, truck, or barrow, with or without horses, to

stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers (except hackney carriages standing for hire in any place not forbidden by law), or who by means of any cart, carriage, truck, vehicle, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction.

- (7) Every person who, without the consent of the owner or occupier, shall affix any posting bill, placard, or other paper, against or upon any building, wall, fence, tree, or pale, or write upon, soil, deface, or mark any such building, wall, fence, tree, or pale, with chalk or paint or in any other way whatsoever.
- (8) Every person who shall wantonly discharge any firearm, or burn or set alight to anything or throw or discharge any stone or other missile to the damage, annoyance, or danger of any person, or property, or throw or set fire to any firework, without having the consent, in writing, of the chairman of the local government having jurisdiction in the locality.
- (9) Every person who shall wilfully or wantonly disturb any inhabitant by pulling or ringing any door-bell, or knocking at any house without lawful excuse, or who shall wilfully and unlawfully extinguish the light or break the glass of any lamp.
- (10) Every person who shall fly any kite, or play any game or use any shanghai or other sling or instrument to the annoyance of the inhabitants or passengers, or to the common danger of the passengers.
- (11) Every person who shall turn loose, or suffer any kind of animals, belonging to him or under his charge, to stray or go about, or to be tethered or depastured in any street.
- (12) Every person who shall stand or loiter about, to the annoyance of the passers by, or who shall interfere with or impede the free passage of foot passengers.

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- (13) Every person who shall lead or ride any horse or other animal, or draw, drive, or propel any carriage, cart, sledge, truck, barrow, or other vehicle or machine (not being a bath chair or perambulator), upon any footway or kerbstone, or fasten any horse or animal so that it can stand across or upon any footway.
- (14) Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder plank, pole, showboard, or placard upon any footway except for the purpose of loading or unloading any cart or carriage or of crossing the footway.
- (15) Every person who in any street shall burn, dress, or cleanse any cork, or hoop, cleanse, fire, wash, or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slack, sift, or screen any lime.
- (16) Every person who shall throw or lay in any street, any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials or rubbish thereby occasioned, which shall be placed or enclosed as hereinafter provided so as to prevent any mischief happening to passengers).
- (17) Every person who in any street shall beat or shake any carpet, rug or mat (except door mats before 8 a.m.), or throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, bottles, broken glass, or rubbish, or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream, or watercourse, pond or reservoir for water, or cause any offensive matter to run from any manufactory, brewery, slaughter house, butcher's shop, or dung-hill into any street, or any uncovered place whether or not surrounded by a wall or fence.
- (18) Every person who shall pick, take, or injure any flowers, fruit, shrubs, or trees in any public or private garden, unless with the consent of the owner, caretaker or other person authorised to give such consent, or throw any missile at any tree growing in any street or public place.

- (19) Every person who shall expose anything for sale upon or so as to hang over any carriageway or footway, or on the outside of any house, or shop, or who shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop or other building, so as to cause any annoyance or obstruction in any street.
- (20) Any driver or guard of a public vehicle for the conveyance of passengers wilfully delaying on the road, using any abusive or insulting language to any passenger or by reason of intoxication, negligence or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.

And it shall be lawful for any constable to take into custody, without warrant, any person who shall commit any such offence within view of such constable.

[Section 96 amended by No. 28 of 1964 s. 33; No. 113 of 1965 s. 8; No. 14 of 1996 s. 4; No. 57 of 1997 s. 96(2).]

97. Destruction of acclimatised animals or birds

Every person who shall wilfully injure or destroy, or attempt to injure or destroy, any native or acclimatised animals or birds which may be on any park or public road or reserve, without the authority of the person having the care and management of such park, public road, or reserve, as the case may be, shall be liable, on conviction, to a penalty not exceeding \$4 000.

[Section 97 amended by No. 6 of 1954 s. 6; No. 113 of 1965 s. 8; No. 91 of 1975 s. 63; No. 50 of 2003 s. 85(21).]

98. Street musicians to depart when desired to do so

Every householder personally, or by his servant, or by any police constable, may require any street musicians to depart from the neighbourhood of the house of such householder, on account of the illness of any inmate of such house, or for any

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reasonable cause; and every person who shall sound or play upon any musical instrument in any street, near to, and so as to be heard at such house, after being so required to depart, shall, on conviction, be liable to a penalty of not more than \$20; and every person who shall play or sound upon any musical instrument in any street, and against whom any information may be laid by any inhabitant (who may be annoyed by the playing or sounding of such musical instrument), or by any constable, upon the written complaint of such inhabitant, shall be liable, on conviction, to a penalty of not more than \$20.

[Section 98 amended by No. 28 of 1964 s. 34; No. 113 of 1965 s. 8.]

99. Cannon etc. not to be fired near dwelling houses

Every person other than persons acting in obedience to lawful authority, who shall discharge any cannon or other firearm of greater calibre than a common fowling piece within 300 metres of any dwelling house within any city or town to the annoyance of any inhabitant thereof, after being warned of the annoyance by any inhabitant, shall on conviction be liable to a penalty of not more than \$40.

[Section 99 amended by No. 28 of 1964 s. 35; No. 113 of 1965 s. 8; No. 94 of 1972 s. 4.]

100. Hog-sties and nuisances not removed on complaint

In case any privy, pig-sty, or any other place, matter, or thing, shall be or become a nuisance to any of the inhabitants in any city or town, any 2 or more Justices, upon complaint, on oath, thereof to them made by any such inhabitant, and after due investigation into such complaint, may order that every or any such privy, pig-sty, or other place, matter, or thing being a nuisance, shall be remedied or removed within 7 days after notice shall have been given to the owner or occupier of the premises wherein such nuisance shall exist, to remedy or remove the same, and any such notice may be left for such owner or occupier at his or her last or usual place of abode, or

on the said premises; and every such occupier neglecting to remedy or remove such nuisance pursuant to such notice, and to the satisfaction of such Justices shall forfeit, and pay, on conviction before such Justices a sum not exceeding \$40 for every such neglect and disobedience; and such Justices may order at the same time such nuisance to be removed, taken down, and abated, at the expense of the person in default, and payment thereof may be enforced as a penalty on summary conviction.

[Section 100 amended by No. 113 of 1965 s. 8.]

101. Butchers' shambles and slaughter houses

It shall be lawful for any Justice and for any constable authorised and deputed by any writing under the hand of a Justice, from time to time, and when and as often as he or either of them shall see occasion, to visit and inspect any butchers' shambles and slaughter houses and slaughter house yards, and to give such directions concerning the cleansing the said shambles, slaughter houses, and slaughter house yards, both within and without, as to him shall seem needful; and any butcher and the owner or occupier of any such shambles, slaughter house, or slaughter house yard who shall obstruct or molest any such Justice or constable in the inspection thereof, or who shall refuse or neglect to comply with such directions within a reasonable time, shall on conviction on the complaint of any such Justice, or constable, forfeit and pay a sum not exceeding \$40.

[Section 101 amended by No. 28 of 1964 s. 36; No. 113 of 1965 s. 8.]

102. Inspection of meat

Any constable may at any time enter into any slaughter house, shambles, shop, or other premises where meat is prepared or exposed for sale, and inspect and examine any meat there found, and if in his opinion any such meat shall be unfit for human consumption, he shall at once summon the person who has prepared or exposed for sale such meat before a Justice, who, on

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being satisfied that the meat so complained of is unfit for human consumption, may order it to be destroyed; and such person shall also be deemed guilty of an offence, and, upon conviction, shall be liable to a penalty not exceeding \$300. Any meat which shall be blown for the purpose of improving its appearance shall be deemed unfit for human consumption.

[Section 102 amended by No. 28 of 1964 s. 37; No. 113 of 1965 s. 8; No. 91 of 1975 s. 64; No. 78 of 1995 s. 147.]

103. Private avenues to be kept clean

Any owner or occupier of any house or place who shall neglect to keep clean all private avenues, passages, yards, and ways, within the said premises, so as by such neglect to cause a nuisance by offensive smell or otherwise, shall, on conviction, forfeit and pay a sum not exceeding \$40, for every such offence.

[Section 103 amended by No. 28 of 1964 s. 38; No. 113 of 1965 s. 8.]

104. Bathing prohibited within certain limits

No person shall bathe, unless in proper bathing costume, near to or within view of any public wharf, quay, jetty, bridge, street, road, or other place of public resort, between 6 a.m. and 8 p.m.; and any person who shall offend against this regulation shall, on conviction, forfeit and pay a sum not exceeding \$40; and any constable may take into custody any person who shall commit any such offence within view of such constable.

[Section 104 amended by No. 28 of 1964 s. 39; No. 113 of 1965 s. 8.]

105. Damaging public buildings

Every person who shall damage any public building, wall, parapet, sluice, bridge, road, street, sewer, watercourse, or other public property, shall pay the cost of repairing the same; and if

the same be wilfully done shall, on conviction, forfeit and pay a further sum not exceeding \$40.

[Section 105 amended by No. 28 of 1964 s. 40; No. 113 of 1965 s. 8.]

106. Polluting etc. watercourses

Every person who shall cast any bottles, earthenware, filth, rubbish, or any noxious substance into any watercourse, drain, river, ornamental water, canal, or reservoir, or shall obstruct or divert from its channel any public sewer, watercourse, drain or canal, shall, on conviction, forfeit a sum not exceeding \$40, and shall pay the cost of removing such filth or obstruction, or of restoring such sewer, watercourse, drain, or canal to its proper channel.

[Section 106 amended by No. 28 of 1964 s. 41; No. 113 of 1965 s. 8.]

107. Damaging etc. public fountains

Every person who shall injure any public fountain, pump, cock, or water-pipe, or any pipe thereof, shall pay the cost of repairing the same; and if the injury be wilfully done, shall, on conviction, forfeit and pay a further sum not exceeding \$500; and every person who shall have in his possession any private key for the purpose of opening any cock, or who shall in any matter clandestinely or unlawfully appropriate to his use any water from any public fountain or pipe, shall, on conviction, forfeit a sum not exceeding \$40; and every person who shall open, or leave open any cock or any public fountain or pump, so that the water shall or may run to waste, shall, on conviction, forfeit a sum not exceeding \$20; and every person who shall wash any clothes or animal at any public fountain or pump shall, on conviction, forfeit and pay a sum not exceeding \$10.

[Section 107 amended by No. 6 of 1954 s. 7; No. 28 of 1964 s. 42; No. 113 of 1965 s. 8; No. 91 of 1975 s. 65; No. 50 of 2003 s. 85(22).]

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108. Slops, night-soil, etc., to be conveyed away only at certain hours

If any person shall drive or cause to be driven any cart or other carriage with any night-soil or ammoniacal liquor or other such offensive matter therein through or in any street, between 5 a.m. and 11.30 p.m., or who shall at any time use for any such purpose any cask, tank, cart, or carriage not having a proper covering, or shall fill any cart or other carriage so as to turn over or cast any night-soil, ammoniacal liquor, or such other offensive matter, in or upon any of such streets, public places, or thoroughfares, it shall and may be lawful for any person whomsoever to seize and apprehend, and to assist in seizing and apprehending, the offender, and to hand him over to the custody of any constable until he can be brought before a Justice, and every such person so offending and his employer and also the owner of any such cart or carriage shall, on conviction of such offence, forfeit and pay any sum not exceeding \$40.

[Section 108 amended by No. 28 of 1964 s. 43; No. 113 of 1965 s. 8.]

109. Hours of removing night-soil, etc.

If any person shall empty, or begin to empty, any privy, or take away any night-soil, or shall go with carts or carriages for that purpose, except between 11.30 p.m. and 5 a.m.; and if any person shall put in or cast out of any cart, or tub, or otherwise, any offensive matter, in or near any street, every such offender shall, upon conviction, be liable to a penalty not exceeding \$300: and the owner of any carts, carriages, horses, or beasts employed in and about emptying and removing such night-soil, or going for that purpose (save and except within the hours hereby allowed), and the employers of any person who shall so put or cast out any such night-soil, shall, on conviction, forfeit and pay a sum not exceeding \$40 for every such offence.

[Section 109 amended by No. 28 of 1964 s. 44; No. 113 of 1965 s. 8; No. 91 of 1975 s. 66; No. 78 of 1995 s. 147.]

110. Persons in charge of stock to remove such as may die on public road or highway, or bury the same

The person in charge of any animal travelling along any public road or highway shall remove the bodies of any that may die on such road or highway to a distance of 100 metres from such road or highway, or bury the same one metre beneath the surface of the ground; and in default of so doing such person shall, on conviction, be liable to a fine not exceeding \$40. And if any person shall throw, or cause to be thrown, any dead animal into any harbour, river, creek, water hole, or cove, in, near, or adjacent to any city or town, or leave or cause the same to be left upon the shores thereof, or in any manner pollute or render useless any well in any city or town, or any well or spring or pool on any unfenced or unenclosed land in the said State, he shall, on conviction, forfeit and pay any sum not exceeding \$40; and it shall be lawful for any police constable, without warrant, to seize any person whom he shall find committing the said offence, and to take him before any Justice, or cause him to be detained in any police station, or lock-up, or other place of security, until he can be brought before a Justice, to be dealt with according to law, and every such offender shall in addition to such fine pay the expense of cleaning, restoring, and purifying such well, pool, or spring.

[Section 110 amended by No. 28 of 1964 s. 45; No. 113 of 1965 s. 8; No. 94 of 1972 s. 4.]

111. No turf, gravel, etc., to be removed from streets without permission

Every person who shall form, dig or open any drain or sewer, or remove, or cause to be removed, any turf, clay, sand, soil, gravel, or stone, or other material used in the formation of the streets, roads, or other public highways in or from any part of the carriage or foot ways within any city, town, or suburb without the leave first had and obtained of the chairman of the local government or who shall wantonly break up or otherwise damage the said streets, roads, carriage or foot ways shall, on

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conviction forfeit and pay for every such offence any sum not exceeding \$40.

[Section 111 amended by No. 28 of 1964 s. 46; No. 113 of 1965 s. 8; No. 14 of 1996 s. 4.]

112. Drawing or trailing timber, etc.

If any person shall haul or draw, or cause to be hauled or drawn, upon any road, street, thoroughfare, bridge, causeway, or public place, any timber, stone, or other material or thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other material or thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon any part of such road, street, thoroughfare, bridge, causeway, or public place to the injury thereof, or to hang over and beyond any part of any such carriage, so as to occupy or obstruct the road beyond the breadth of the said carriage, every such person so offending shall, on conviction, forfeit and pay for every such offence a sum not exceeding \$40 together with the damages occasioned thereby: Provided that nothing herein contained shall apply to vehicles loaded with hay, wool, or rushes.

[Section 112 amended by No. 28 of 1964 s. 47; No. 113 of 1965 s. 8.]

113. Entrances to cellars, coal-holes, etc. to be covered and secured

If the owner or occupier of any house, building, or premises, having any iron or wooden rails or bars over the areas, or openings to any kitchens or cellars, or other part or parts of the said house, building, or premises beneath the level of the footway of any street, or public places, or having any doorway or entrance into the basement or cellar story thereof, shall not either keep the same, and the rails of such kitchens or cellars, in sufficient and good repair, or safely and securely guard, and constantly keep the same securely guarded by rail, or cover the same over with a strong flap or trap-door according to the nature of the case, and so as to prevent danger to any persons passing

and repassing; or if any such owner or occupier do or shall leave open, or not sufficiently and substantially cover, and keep covered and secured, any hole, funnel, trap-door, or cellar-flap belonging to or connected with his house, building, or premises (save and except only during such reasonable times as any coal, wood, casks, or other things shall be putting down or taking up out of any such vault or basement storey, or during such reasonable times as the flap, trap-door, or covering thereof shall be altering, repairing, or amending); or if such owner or occupier shall not repair, and from time to time keep in good and substantial repair, all and every, or any such iron or wooden rails, guard-rails, flaps, trap-doors, and other covering, then, and in every such case, the persons neglecting so to do, for every such offence, shall on conviction, forfeit and pay any sum not exceeding \$40.

[Section 113 amended by No. 28 of 1964 s. 48; No. 113 of 1965 s. 8.]

114. Cellars or openings beneath the surface of footways prohibited

No person shall make any cellar, or any opening, door, or window, in or beneath the surface of the footway of any street or public place, and if any person shall offend in the premises he shall, on conviction, forfeit and pay a sum not exceeding \$40 and also the expense of remedying or removing any such cellar, opening, door, or window made contrary to the provisions hereof.

[Section 114 amended by No. 28 of 1964 s. 49; No. 113 of 1965 s. 8.]

115. Wells to be covered over

Every person having a well situated between his dwelling house, or the appurtenances thereof, and in any street or footway, or at the side thereof, or in any yard or place, open and exposed to such street or footway, who shall not cause such well to be securely and permanently covered over or otherwise secured shall, upon conviction, for every such offence, forfeit

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and pay the sum of \$2 for every day that such well shall remain open or uncovered contrary to the provisions of this Act.

[Section 115 amended by No. 28 of 1964 s. 50; No. 113 of 1965 s. 8.]

116. Holes made for vaults, etc. to be enclosed

Any person who, being the owner or occupier of any vacant ground, or any house, tenement, or building erected, or being erected, or about to be erected, before, adjoining, or at the side of which, and adjoining to any road, street, or public place, or thoroughfare formed, or to be formed, or in course of formation, shall dig or make, or cause to be dug or made, any hole, or cause to be left any hole, for the purpose of making any vault, or the foundation to such house or other buildings, or for any other purposes whatsoever, and shall not forthwith enclose the same in a good and sufficient manner, or who shall keep up, or cause to be kept up and continued, any such enclosure for any time which shall be longer than shall be absolutely necessary, or shall not, when thereunto required by any Justice, well and sufficiently fence or enclose any such hole, or area, or space, opened, or left open, and intended for an area, foundation, or for any other purpose whatsoever, in the front of, or behind, or on the site of any such vacant ground, house, or other tenement or building, 24 hours after he shall be required to do so by any Justice, and in the manner, and with such materials, as he shall direct, and to his satisfaction, and shall not place a light upon the said enclosure, and keep the same constantly burning from sunset to sunrise, during the continuance of such enclosure; then every person so offending shall on conviction forfeit and pay for every such offence, and for every such refusal or neglect, any sum not exceeding \$40.

[Section 116 amended by No. 28 of 1964 s. 51; No. 113 of 1965 s. 8.]

117. Stalls, etc. not to be set on foot or carriage ways

If any person shall set or place, or cause or permit to be set or placed any stall, board, chopping blocks, showboard (on hinges or otherwise), basket wares, merchandise, casks, or goods of any kind whatsoever, or shall hoop, place, wash or cleanse, or cause to be hooped, placed, washed or cleansed any pipe, barrel, cask, or vessel in or upon or over any of the carriage or footways in any such streets or public places of any city or town; or if any person shall set or place or cause to be set or placed in or upon or over any of the said carriage or footways, any timber, stones, bricks, lime, or other materials, or things for building whatsoever (unless with the permission in writing of the chairman of the local government), or any other matters or things whatsoever, or shall hang out or expose, or shall cause or permit to be hung out or exposed any meat or offal or other thing or matter whatsoever from any house or houses or other buildings or premises over any part of either or any part of such footways or carriageways, or over any area or areas of any house or other buildings or premises, or any other matter or thing from and on the outside of the front or any other part of any house or houses or other buildings or premises over or next unto any such street or public place, and shall not immediately remove all or any such matters or things, being thereto required by any Justice, or chairman of the local government, or by any police constable, and shall not continue and keep the same so removed; or if any person having in pursuance of any such requisition as aforesaid removed or caused to be removed any such stall, board, showboard, chopping blocks, basket wares, merchandise, timber, stone, bricks, lime, meat, offal, or other matters or things, shall at any time thereafter again set, lay, place or expose, or put, or cause, procure, permit, or suffer to be laid, placed, exposed, or put out the same or any of them, or any other stall, board, showboard, chopping block, basket wares, merchandise, goods, timber, stones, bricks, lime, meat, offal, or other things or matters whatsoever (save and except as aforesaid), in, upon, or over any of the carriage or footways of or next unto any street or public places as aforesaid, then and in

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every such case every person so offending shall upon conviction, forfeit and pay a sum not exceeding \$40.

[Section 117 amended by No. 28 of 1964 s. 52; No. 113 of 1965 s. 8; No. 14 of 1996 s. 4.]

118. Not to prevent awnings being erected in front of shops

Nothing in this Act contained shall be deemed to prevent any person from placing an awning in front of his shop or house: Provided, however, that such awning be at least 2 metres above the height of the footway in front of such house or shop and that the posts be placed close up to the kerbstone or outer edge of such footway and subject to the approval of the chairman of the local government.

[Section 118 amended by No. 94 of 1972 s. 4; No. 14 of 1996 s. 4.]

119. Rain not to be allowed from eaves of houses on footways

If at any time any house or buildings in any city or town shall not be provided with gutters or otherwise so constructed as to prevent rain from dropping from the eaves thereof upon any of the footways of any street or public place within such city or town, the owner or occupier of such house or building shall on conviction forfeit and pay the sum of \$2 and a like sum for every day that the same may not be prevented or remedied by gutters or otherwise.

[Section 119 amended by No. 28 of 1964 s. 53; No. 113 of 1965 s. 8.]

120. Boards to be erected, but not without licence

No person or persons whatsoever shall erect, place, set up, or build in any street or public place within any city or town, any board or scaffolding, or place or erect any posts, bars, rails, boards, or other things by way of enclosure for the purpose of making mortar, or of depositing, sifting, screening, or slacking any brick, stone, lime, sand, or any other materials for building

or repairing any house or other tenement or erection or for other works, or for any other purpose without leave or licence first had and obtained under the hand of the chairman of the local government, who is hereby required to grant the same forthwith for the purpose of making mortar and depositing or sifting, screening, or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, specifying therein the length of time for which the same when so erected and set up may be continued, and giving such other directions respecting the same as he may think necessary, on being paid by every person so applying for such licence the sum of 25 cents; and if any person or persons shall place, set up, erect, or build, or cause or permit to be erected, placed, set up, or built any such board or scaffolding, or any enclosure post, bars, or rails, or any other matter or thing, for the purposes aforesaid or for any other purpose, without the leave or licence signed as aforesaid of the said chairman so had and obtained, or shall erect, set up, or build, or cause or permit the same to be erected, set up, or built, in any other manner, or be continued for any longer time than shall be allowed or expressed in such licence, then and in either of the said cases such person, or the persons, or the person or persons by whom he or they shall or may be employed, shall forfeit and pay the sum of \$2 for every day that the same shall have been or shall be set up and continued; and also it shall and may be lawful for the said chairman to cause the same to be pulled down and removed and the same and all the materials thereof and of every part thereof to be kept and detained until such person or persons shall and do pay the said chairman, or to the person or persons in whose custody the same shall be, all the penalties incurred by such person or persons, together with the charges of pulling down, removing, and keeping the same, to be ascertained and determined by the said chairman; and in case the same shall not be claimed, and the said penalties and charges aforesaid shall not be paid within the space of 5 days next after the pulling down and removing thereof, then it shall and may be lawful to and for the said chairman to order or cause the same to be

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appraised and sold, and the money arising therefrom, after deducting the said charges, shall be appropriated to the uses of the said local government.

[Section 120 amended by No. 28 of 1964 s. 54; No. 113 of 1965 s. 8; No. 14 of 1996 s. 4.]

121. Blasting rock without notice

Every person who shall be desirous of blasting any stone, rock, tree, or other matter within the limits of any city or town shall first give notice in writing 24 hours previously, to the chairman of the local government, or to the stipendiary magistrate of any city or town, who shall appoint a time when the same may take place, and give such other directions in writing as he may deem necessary for the public safety; and if any person shall blast or cause to be blasted any rock or other matter within the limits aforesaid without giving such notice and obtaining such directions, or shall not conform to the directions given to him, he shall on conviction forfeit and pay a sum not exceeding \$40.

[Section 121 amended by No. 28 of 1964 s. 55; No. 113 of 1965 s. 8; No. 14 of 1996 s. 4.]

Part VIII — Miscellaneous provisions

122. Lodging houses, etc. may be searched

Any Justice, upon information on oath that any person who has been convicted of an offence against section 65, 66 or 67, is, or is suspected to be, in any place, kept or purporting to be kept for the reception, lodging, or entertainment of travellers or others or that any place is a disorderly house, house of ill-fame, brothel, or bawdy-house, or place where liquor is reasonably suspected of being illegally sold may enter the same at any time by day or night, or issue his warrant authorising any constable or other person in like manner to enter the same, from time to time and to apprehend and bring before him, or any other Justice, every such convicted person, and to seize any liquor found therein, to be dealt with according to law.

[Section 122 amended by No. 91 of 1975 s. 67.]

123. Horses, carriages, etc. of offenders may be detained

Whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing, shall be taken into custody of any police constable under the provisions of this Act, it shall be lawful for any police constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expenses which may have been necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any Justice before whom the case shall have been heard, to order such horse, cart, carriage, or boat, or such other animal or thing to be sold, for the purpose of satisfying such penalty and reasonable expenses in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and reasonable expenses.

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124. General penalty

Every offence against this Act for which no special penalty is appointed shall render the offender liable, on conviction before a Justice, to a penalty of not more than \$2 500.

[Section 124 amended by No. 28 of 1964 s. 56; No. 113 of 1965 s. 8; No. 91 of 1975 s. 68; No. 51 of 1992 s. 16(1); No. 78 of 1995 s. 147; No. 50 of 2003 s. 85(23).]

125. Compounding informations

In case any person shall lodge any information before any Justice for any offence alleged to have been committed, by which he was not personally aggrieved, and shall afterwards directly or indirectly receive, without the permission of such Justice, any sum of money or other reward for compounding, delaying, or withdrawing the information, he shall, on conviction, be liable to a fine not exceeding \$500.

[Section 125 amended by No. 28 of 1964 s. 57; No. 113 of 1965 s. 8; No. 91 of 1975 s. 69; No. 50 of 2003 s. 85(24).]

126. This Act not to prevent the indictment of offenders, or liability for higher penalties

Nothing in this Act contained shall be construed to save any person from being indicted or prosecuted for any indictable offence made punishable on summary conviction by this Act, or to prevent any person from being liable to any higher or other penalty or punishment than is provided for such offence by this Act, so nevertheless that no person be punished twice for the same offence.

[127. Repealed by No. 4 of 2004 s. 58.]

128. Amends for frivolous informations

In every case in which any information or complaint of any offence shall be laid or made before any Justice, and shall not be further prosecuted, or in which if further prosecuted it shall

appear to the Justice by whom the case shall be heard that there was no sufficient ground for making the charge, such Justice shall have power to award, in addition to costs, such amends, not more than the sum of \$100, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, as to such Justice shall seem fit: Provided that this section shall not apply to any information or charge preferred by any police officer or constable.

[Section 128 amended by No. 28 of 1964 s. 58; No. 113 of 1965 s. 8; No. 50 of 2003 s. 85(25).]

[129. Repealed by No. 78 of 1995 s. 106.]

[130-132. Repealed by 2 Edw. VII, No. 11, s. 2.]

133. Employer may be prosecuted for acts of employee

In any case where under this Act any offence is created and it appears to the Justice before whom the complaint or information against any person for the commission of any such offence may be heard that the person committing the same has acted only under the orders or by the sanction of any master or employer of any such person, and that such master or employer is in fact the offending party, either solely or as well as such person so rendered liable, such Justice may summon and proceed against such master or employer as if the information or complaint had originally been laid or made against any such master or employer, and may either discharge such person so first informed or complained against, or may otherwise proceed against both as such Justice may see fit.

134. Offence punishable summarily

All offences against this Act shall, except where otherwise provided, be summarily punishable on conviction before any Justice in petty sessions.

[Section 134 amended by No. 78 of 1995 s. 106.]

s. 136

[135. *Repealed by No. 78 of 1995 s. 106.*]

136. Interpretation for s. 137 and 138

- (1) In sections 137 and 138 —
“**member of the Police Force**” means a person appointed under Part I, III or IIIA.
- (2) In sections 137 and 138, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 136 inserted by No. 42 of 1999 s. 5.]

137. Protection from personal liability

- (1) This section —
 - (a) is in addition to section 5 of the *Criminal Code Act 1913*; and
 - (b) does not affect any right to recover damages from the owner or driver of a motor vehicle in respect of the death of or bodily injury to a person directly caused by, or by the driving of, the motor vehicle,but otherwise applies despite any other written law.
- (2) This section applies to and in respect of anything done after the commencement of the *Acts Amendment (Police Immunity) Act 1999*.
- (3) An action in tort does not lie against a member of the Police Force for anything that the member has done, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.
- (4) An action in tort does not lie against a person for anything that the person has done, without corruption or malice, in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.

- (5) The Crown is liable for a tort that results from —
- (a) anything done by a member of the Police Force, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law;
 - (b) anything done by a person, without corruption or malice, in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.
- (6) The Crown's liability under subsection (5) does not extend to exemplary or punitive damages.
- (7) If a person to whom subsection (3) or (4) applies does not cooperate fully with the Crown in the defence of an action in tort against the Crown in respect of anything done by the person, the Crown may recover from the person the Crown's costs of defending the action and any damages and costs awarded against the Crown in the action.
- (8) For the purposes of subsection (7), a person does not cooperate fully with the Crown if the person refuses —
- (a) to answer any question, including a question the answer to which is or may be self-incriminating; or
 - (b) to produce any object or recorded information in the person's possession or control,
- that is relevant to the defence of the action.
- (9) If a person, in cooperating with the Crown in the defence of an action referred to in subsection (8), gives an answer that is or may be self-incriminating, the answer is not admissible in any criminal or disciplinary proceedings against the person except proceedings for a criminal or disciplinary offence arising from the giving of a false answer.

[Section 137 inserted by No. 42 of 1999 s. 5.]

s. 138

138. Corrupt or malicious acts by police

- (1) This section applies if a person (“**the claimant**”), in an action in tort, is awarded damages —
 - (a) against a member of the Police Force (“**the defendant**”) for anything that the member has done maliciously or corruptly while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law; or
 - (b) against a person (“**the defendant**”) for anything that the person has done maliciously or corruptly in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law,and the thing was done after the commencement of the *Acts Amendment (Police Immunity) Act 1999*.
- (2) The claimant may request the Treasurer to pay the damages awarded to the claimant, other than exemplary or punitive damages, and any costs ordered to be paid to the claimant.
- (3) The Treasurer may pay the claimant all or some of the damages and costs if satisfied —
 - (a) that the claimant is unlikely to recover them from the defendant; and
 - (b) that there is no relationship or connection between the claimant and the defendant, or a close relative of the defendant, that is likely to result in a benefit or advantage to the defendant if the claimant were paid the damages and costs.
- (4) Any amount paid by the Treasurer to the claimant is a debt due to the Crown by the defendant and may be recovered in a court of competent jurisdiction.

- (5) In this section —
“**close relative**”, in relation to a person, includes a de facto partner of the person.

[Section 138 inserted by No. 42 of 1999 s. 6; amended by No. 28 of 2003 s. 158.]

138A. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act, are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may impose penalties not exceeding in any case \$100, in respect of the contravention of any provision thereof.
- (3) The regulations may prescribe fees that may be charged for the issue of certificates or the provision of services, including the services of escorts or guards.
- (4) Without limiting subsection (1), regulations may be made —
- (a) requiring and regulating the provision of documents or other material by the Commissioner of Police to a member who has been given a notice under section 33L(1);
 - (b) prescribing the procedure to be followed in relation to a removal from office under section 8 or the revocation of an appointment under section 38A;
 - (c) prescribing restrictions in relation to any period during which consideration is being given to a member’s suitability to continue as a member of the Police Force on the exercise of any power of the Commissioner of Police or the Governor to suspend the member’s pay; and

s. 142

- (d) prescribing the means of service of documents that are required to be served under Part IIB or regulations relating to that Part.

[Section 138A inserted by No. 85 of 1970 s. 13; amended by No. 71 of 1980 s. 7; No. 7 of 2003 s. 8.]

[139-141. Repealed by 2 Edw. VII, No. 11, s. 2.]

142. Commencement of Act

This Act shall come into force on 1 April 1892.

Schedules

[The First Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]

The Second Schedule

[s. 89]

Form of Warrant

To wit. } TO constable

Whereas it appears to me, a Justice of the Peace, by the information on oath of A.B. of in the of [yeoman] that the house [room, premises or place] known as (here insert a description of the house, room, premises, or place by which it may be readily known and found) is kept and used as a common gaming house or place for gaming within the meaning of the Police Act 1892: this is therefore, in the name of the Crown, to require you, with such assistants as you may find necessary, to enter into the said house [room, premises, or place], and if necessary to use force for making such entry whether by breaking open doors or otherwise, and there diligently to search for all instruments of unlawful gaming and related furnishings which may be therein, and to arrest search, and bring before me, or some other of the Justices of the Peace, as well the keepers of the same, as also the persons, instruments and related furnishings there found, to be dealt with according to law, and for so doing this shall be your warrant.

J.P.

Given under my hand at this day of 20 .

[The Second Schedule amended by No. 8 of 1955 s. 4; No. 87 of 1982 s. 47; No. 108 of 1982 s. 25.]

[The Third Schedule deleted by No. 30 of 1983 s. 5.]



Notes

¹ This reprint is a compilation as at 10 September 2004 of the *Police Act 1892* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>The Police Act 1892</i> ³	55 Vict., No. 27	18 Mar 1892	1 Apr 1892 (see s. 142)
<i>The Police Act Amendment Act 1893</i> (No. 1)	56 Vict., No. 10 (as amended by No. 15 of 1952 s. 7(1))	13 Jan 1893	13 Jan 1893
<i>The Police Act 1892 Amendment Act 1894</i> (No. 2)	58 Vict., No. 26 (as amended by No. 15 of 1952 s. 7(1))	23 Nov 1894	23 Nov 1894
<i>Police Act Amendment Act 1898</i>	62 Vict., No. 21 (as amended by No. 15 of 1952 s. 7(1))	28 Oct 1898	28 Oct 1898
<i>Criminal Code Act 1902</i> s. 3(2)	1 & 2 Edw. VII, No. 14	19 Feb 1902	1 May 1902 (see s. 2)
<i>Justices Act 1902</i> s. 2	2 Edw. VII, No. 11	18 Nov 1902	18 Nov 1902
<i>Police Act Amendment Act 1902</i>	2 Edw. VII, No. 31 (as amended by No. 15 of 1952 s. 7(1))	20 Dec 1902	20 Dec 1902
<i>Police Act Amendment Act 1907</i>	10 of 1907 (as amended by No. 15 of 1952 s. 7(1))	20 Dec 1907	20 Dec 1907
<i>Prevention of Cruelty to Animals Act 1912</i> s. 2	33 of 1912	10 Oct 1912	10 Oct 1912

Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1915</i>	13 of 1915 (as amended by No. 15 of 1952 s. 7(1))	18 Feb 1915	18 Feb 1915
<i>Ministers' Titles Act 1925</i> s. 2	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Police Offences (Drugs) Act 1928</i> s. 2	11 of 1928 (as amended by No. 15 of 1952 s. 7(1))	23 Nov 1928	23 Nov 1928
<i>Police Act Amendment Act 1933</i>	19 of 1933	13 Nov 1933	13 Nov 1933
<i>Police Act Amendment Act 1940</i>	19 of 1940	29 Nov 1940	29 Nov 1940
<i>Police Act Amendment Act 1945</i>	5 of 1945	27 Nov 1945	27 Nov 1945
<i>Police Act Amendment Act 1902 Amendment Act 1945</i>	6 of 1945 (as amended by No. 15 of 1952 s. 7(1))	27 Nov 1945	27 Nov 1945
<i>Police Act Amendment Act 1952</i>	15 of 1952	7 Nov 1952	19 Jun 1953 (see s. 2 and <i>Gazette</i> 19 Jun 1953 p. 1225)
Reprint of the <i>Police Act 1892</i> approved 23 Mar 1953 in Volume 6 of Reprinted Acts (includes amendments listed above)			
<i>Police Act Amendment Act 1953</i>	28 of 1953	18 Dec 1953	1 Jan 1955 (see s. 2 and <i>Gazette</i> 26 Feb 1954 p. 304)
<i>Police Act Amendment Act 1954</i>	6 of 1954	25 Aug 1954	25 Aug 1954
<i>Police Act Amendment Act (No. 2) 1954</i>	25 of 1954	20 Oct 1954	18 Mar 1955 (see s. 2 and <i>Gazette</i> 18 Mar 1955 p. 517)
<i>Betting Control Act 1954</i> s. 5	63 of 1954	30 Dec 1954	1 Aug 1955 (see s. 2(1) and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Police Act Amendment Act 1955</i>	8 of 1955	19 Oct 1955	19 Oct 1955
<i>Police Act Amendment Act 1956</i>	20 of 1956	19 Nov 1956	19 Nov 1956
<i>Licensing (Police Force Canteen) Act 1958</i> Pt. III	40 of 1958	11 Dec 1958	18 Jul 1959 (see s. 2 and <i>Gazette</i> 10 Jul 1959 p. 1829)

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Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1959</i>	10 of 1959	25 Sep 1959	25 Sep 1959
<i>Totalisator Agency Board Betting Act 1960 s. 20</i>	50 of 1960	28 Nov 1960	31 Dec 1960 (see s. 2 and <i>Gazette</i> 23 Dec 1960 p. 4073)
<i>Police Act Amendment Act 1961</i>	71 of 1961	28 Nov 1961	28 Nov 1961
Reprint of the <i>Police Act 1892</i> approved 26 Jun 1962 (not in a Volume) (includes amendments listed above)			
<i>Police Act Amendment Act 1962</i>	29 of 1962	4 Oct 1962	4 Oct 1962
<i>Police Act Amendment Act 1963</i>	42 of 1963	25 Nov 1963	25 Nov 1963
<i>Factories and Shops Act 1963 s. 4</i>	44 of 1963	3 Dec 1963	1 Jan 1964 (see s. 2 and <i>Gazette</i> 13 Dec 1963 p. 3836)
<i>Police Act Amendment Act 1964</i>	28 of 1964	4 Nov 1964	4 Nov 1964
<i>Police Act Amendment Act (No. 2) 1964</i>	71 of 1964	11 Dec 1964	1 Jul 1965 (see s. 2 and <i>Gazette</i> 29 Jun 1965 p. 1933)
<i>Police Act Amendment Act 1965</i>	22 of 1965	1 Oct 1965	1 Oct 1965
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Police Act Amendment Act 1967</i>	7 of 1967	5 Oct 1967	5 Oct 1967
<i>Police Act Amendment Act (No. 2) 1967</i>	52 of 1967	5 Dec 1967	5 Dec 1967
Reprint of the <i>Police Act 1892</i> approved 15 Dec 1967 in Volume 21 of Reprinted Acts (includes amendments listed above)			
<i>Police Act Amendment Act 1968</i>	26 of 1968	25 Oct 1968	25 Oct 1968
<i>Police Act Amendment Act 1969</i>	24 of 1969	16 May 1969	16 May 1969
<i>Police Act Amendment Act 1970</i>	1 of 1970	29 Apr 1970	29 Apr 1970
<i>Police Act Amendment Act (No. 2) 1970</i>	85 of 1970	30 Nov 1970	1 Jul 1971 (see s. 2 and <i>Gazette</i> 18 Jun 1971 p. 2147)

Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1972</i>	7 of 1972	25 May 1972	25 May 1972
Reprint of the Police Act 1892 approved 7 Jun 1972 (not in a Volume) (includes amendments listed above)			
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 3)	4 Dec 1972	Relevant amendments (see First Sch. ⁴) took effect on 1 Jul 1973 (see s. 4(2) and <i>Gazette</i> 18 May 1973 p. 1261)
<i>Police Act Amendment Act 1974</i>	41 of 1974	15 Nov 1974	15 Nov 1974
<i>Police Act Amendment Act 1975</i>	18 of 1975	13 May 1975	13 May 1975
<i>Police Act Amendment Act (No. 2) 1975</i>	91 of 1975	20 Nov 1975	1 Mar 1976 (see s. 2 and <i>Gazette</i> 23 Jan 1976 p. 111)
<i>Police Act Amendment Act 1976</i>	146 of 1976	13 Dec 1976	14 Jan 1977 (see s. 2 and <i>Gazette</i> 14 Jan 1977 p. 49)
<i>Police Act Amendment Act 1977</i>	50 of 1977	18 Nov 1977	18 Nov 1977
<i>Police Act Amendment Act 1978</i>	6 of 1978	11 May 1978	11 May 1978
Reprint of the Police Act 1892 approved 11 Jul 1978 (includes amendments listed above)			
<i>Sunday Entertainments Act 1979 s. 4</i>	17 of 1979	30 Aug 1979	8 Feb 1980 (see s. 1(2) and <i>Gazette</i> 1 Feb 1980 p. 283)
<i>Police Act Amendment Act 1979</i>	29 of 1979	21 Sep 1979	21 Sep 1979
<i>Police Act Amendment Act (No. 3) 1979</i>	83 of 1979	11 Dec 1979	15 Jul 1980 (see s. 2 and <i>Gazette</i> 4 Jul 1980 p. 2114)
<i>Police Amendment Act 1980</i>	71 of 1980	26 Nov 1980	24 Dec 1980 (see s. 2)
<i>Act Amendment (Misuse of Drugs) Act 1981 Pt. V</i>	57 of 1981 (as amended by No. 8 of 1982)	13 Oct 1981	1 Sep 1982 (see s. 2 and <i>Gazette</i> 20 Aug 1982 p. 3250)
<i>Acts Amendment (Lotto) Act 1981 Pt. III</i>	103 of 1981	2 Dec 1981	18 Dec 1981 (see s. 2 and <i>Gazette</i> 18 Dec 1981 p. 5163)
<i>Police Amendment Act 1981</i>	107 of 1981	4 Dec 1981	4 Dec 1981

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Bail) Act 1982 Pt. IV</i>	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Betting and Gaming) Act 1982 Pt. II</i>	108 of 1982	7 Dec 1982	31 Dec 1982 (see s. 2 and <i>Gazette</i> 31 Dec 1982 p. 4968)
Reprint of the Police Act 1892 approved 18 Apr 1983 (includes amendments listed above)			
<i>Acts Amendment (Trade Promotion Lotteries) Act 1983 Pt. III</i>	21 of 1983	22 Nov 1983	22 Nov 1983
<i>Police Amendment Act 1983</i>	30 of 1983	1 Dec 1983	29 Dec 1983 (see s. 2)
<i>Acts Amendment (Soccer Football Pools) Act 1984 Pt. II</i>	22 of 1984	31 May 1984	13 Jul 1984 (see s. 2 and <i>Gazette</i> 6 Jul 1984 p. 2017)
<i>Public Meetings and Processions Act 1984 s. 12</i>	23 of 1984	31 May 1984	1 Dec 1984 (see s. 2 and <i>Gazette</i> 30 Nov 1984 p. 3945)
<i>Acts Amendment and Validation (Casino Control) Act 1985 Pt. II</i>	10 of 1985	25 Mar 1985	19 Feb 1985 (see s. 2)
<i>Acts Amendment (Lotteries) Act 1985 Pt. IV</i>	19 of 1985	19 Apr 1985	19 Apr 1985 (see s. 2(1))
<i>Acts Amendment (Gaming and related provisions) Act 1985 Pt. IV</i>	29 of 1985	24 Apr 1985	1 Jun 1985 (see s. 2 and <i>Gazette</i> 31 May 1985 p. 1877)
<i>Acts Amendment and Repeal (Gaming) Act 1987 Pt. VI</i>	74 of 1987	26 Nov 1987	2 May 1988 (see s. 2 and <i>Gazette</i> 29 Apr 1988 p. 1292)
<i>Acts Amendment (Events on Roads) Act 1988 Pt. 3</i>	64 of 1988	8 Dec 1988	1 Feb 1991 (see s. 2 and <i>Gazette</i> 1 Feb 1991 p. 511)
<i>Acts Amendment (Detention of Drunken Persons) Act 1989 Pt. 2</i>	35 of 1989	21 Dec 1989	27 Apr 1990 (see s. 2 and <i>Gazette</i> 27 Apr 1990 p. 2089)
<i>Lotteries Commission Act 1990 s. 33</i>	16 of 1990	31 Jul 1990	1 Jan 1991 (see s. 2 and <i>Gazette</i> 28 Dec 1990 p. 6369)
Reprint of the Police Act 1892 as at 24 Apr 1992 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1) and (3)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Police Amendment (Graffiti) Act 1994</i>	2 of 1994	11 Apr 1994	9 May 1994
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 17</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Hospitals Amendment Act 1994 s. 18</i>	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Police Amendment Act 1995</i>	49 of 1995	6 Nov 1995	6 Nov 1995 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 65 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2(1))
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 15</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the <i>Police Act 1892</i> as at 31 Jan 1997 (includes amendments listed above except those in the <i>Mental Health (Consequential Provisions) Act 1996</i>)			
<i>Sunday Observance Laws Amendment and Repeal Act 1997 s. 5</i>	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 96</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 59</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Police Amendment Act 1998 Pt. 2</i>	47 of 1998	19 Nov 1998	5 Dec 1998 (see s. 2 and <i>Gazette</i> 4 Dec 1998 p. 6447)
<i>Weapons Act 1999 s. 21</i>	18 of 1999	16 Jun 1999	1 Mar 2000 (see s. 2(2))
<i>Acts Amendment (Police Immunity) Act 1999 Pt. 2</i>	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999 Pt. 9</i>	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
Reprint of the Police Act 1892 as at 1 Apr 2000 (includes amendments listed above)			
<i>Prostitution Act 2000 s. 64</i>	17 of 2000	22 Jun 2000	29 Jul 2000 (see s. 2 and <i>Gazette</i> 28 Jul 2000 p. 3987)
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 33 and 54</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Protective Custody Act 2000 s. 30</i>	50 of 2000	28 Nov 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
Reprint of the Police Act 1892 as at 12 Jan 2001 (includes amendments listed above) (Correction to reprint in <i>Gazette</i> 27 Feb 2001 p. 1209)			
<i>Criminal Investigation (Identifying People) Act 2002 s. 96</i>	6 of 2002	4 Jun 2002	Sch. 2 cl. 5(1): 29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037); Sch. 2 cl. 5(2): 20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Police Amendment Act 2003⁵</i>	7 of 2003	27 Mar 2003	27 Aug 2003 (see s. 2 and <i>Gazette</i> 26 Aug 2003 p. 3753)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 48</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 s. 175(2) and Pt. 10⁶</i>	35 of 2003	26 Jun 2003	30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 85</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

Short title	Number and year	Assent	Commencement
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Reprint 11: The <i>Police Act 1892</i> as at 10 Sep 2004 (includes amendments listed above)			

- ² *Liquor Act 1970* repealed by the *Liquor Licensing Act 1988*.
- ³ Now known as the *Police Act 1892*; short title changed (see note under s. 3).
- ⁴ The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973* s. 3.
- ⁵ The *Police Amendment Act 2003* s. 9 reads as follows:
“

9. Transitional provisions

- (1) In this section —
 - “**commencement day**” means the day on which section 6 of this Act comes into operation;
 - “**member**” has the same meaning as it has in section 33K of the *Police Act 1892* (as inserted by section 6 of the *Police Amendment Act 2003*).
- (2) If on or after 5 July 2002 and before the commencement day —
 - (a) a person is removed under section 8 of the *Police Act 1892*; or
 - (b) a person’s appointment is revoked under section 38A(1)(b) of that Act,

because the Commissioner of Police does not have confidence in the person’s suitability to continue as a member, the provisions of Part IIB of the *Police Act 1892*, listed in the Table to this subsection, as inserted by section 6 of the *Police Amendment Act 2003*, apply to that removal or revocation as if the removal or revocation took place on the commencement day but subject to any necessary modifications and any modifications set out in the Table.

Table

s. 33K	
s. 33N	The reference to removal action taken under section 33L and removal from office is to be read as if it referred to action referred to in paragraph (a) or (b).

s. 33P Subsection (1) does not apply but the section is to be read as if it contained the following subsection —
“
(1) A person —
(a) who is removed under section 8 of the *Police Act 1892*; or
(b) whose appointment is revoked under section 38A(1)(b) of that Act,
may appeal to the WAIRC on the ground that the removal or revocation decision of the Commissioner of Police was harsh, oppressive or unfair.
”

s. 33Q

s. 33R In subsections (9) and (10)(b), the references to the “reasons given to the appellant under section 33L(5)(a)” are to be read as a reference to reasons given by the Commissioner of Police to the appellant before the commencement day relating to or arising out of the member’s removal under section 8 of the *Police Act 1892* or revocation of appointment under section 38A(1)(b) of that Act.

In subsection (11), in the definition of “new evidence” —

- (a) in paragraph (a), the reference to removal action is to be read as a reference to action referred to in paragraph (a) or (b) of this subsection;
- (b) paragraphs (b), (c), (d) and (e) do not apply but the definition is to be read as if it contained the following paragraphs —

- “
- (b) any notice given to the appellant by the Commissioner of Police before the day on which section 6 of the *Police Amendment Act 2003* comes into operation relating to or arising out of the member’s removal under section 8 or revocation of appointment under section 38A(1)(b) of the *Police Act 1892*;
 - (c) any written submission made before the day on which section 6 of the *Police Amendment Act 2003* comes into operation by the appellant to the Commissioner of Police

relating to or arising out of the member's removal under section 8 or revocation of appointment under section 38A(1)(b) of the *Police Act 1892*;

- (d) a notification before the day on which section 6 of the *Police Amendment Act 2003* comes into operation by the Commissioner of Police to the appellant that the appellant was removed under section 8 of the *Police Act 1892* or that the appellant's appointment was revoked under section 38A(1)(b) of that Act.

”.

s. 33S-33Y

- (3) If before the commencement day the Commissioner of Police has lost confidence in a member's suitability to continue as a member and has given the member a notice of intention but has not —
 - (a) removed the member under section 8 of the *Police Act 1892*; or
 - (b) revoked the member's appointment under section 38A(1)(b) of that Act,

Part IIB of the *Police Act 1892*, as inserted by section 6 of the *Police Amendment Act 2003*, applies with any necessary modifications as if —

- (c) that notice were a notice given under section 33L(1) of the *Police Act 1892*; and
 - (d) the notice were given to the member on the commencement day.
- (4) Part IIB of the *Police Act 1892*, as inserted by section 6 of the *Police Amendment Act 2003*, does not affect any legal proceedings commenced before, on or after the commencement day relating to —
 - (a) the removal of a person under section 8 of the *Police Act 1892*; or
 - (b) the revocation of a person's appointment under section 38A(1)(b) of that Act,

before the commencement day.

”.

⁶ The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 and 178 read as follows:

“

19. Power to amend regulations

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

178. Savings provision

Despite section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995* and the repeal by section 177 of a provision of the *Police Act 1892* that creates an offence —

- (a) an investigation or legal proceedings in respect of any such offence alleged to have been committed before the commencement of section 177 may be commenced or continued; and
- (b) a person may be sentenced or otherwise dealt with for the alleged offence as if the provision had not been repealed.

”

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
appellant.....	33K
billiard table	61(3)
Board.....	33A
cattle.....	79A
chairman.....	2
Chairman.....	33A
Chief Commissioner	33K
civil emergency	34(2)
claimant.....	138(1)
close relative	138(5)
commencement day	33Z(1)
Commissioner	33A
contract.....	39A
defendant.....	138(1)(a), 138(1)(b)
Department.....	39A
enclosed land.....	82A(3)
exempt person	65(4aa)
Fund	39A
gold	76I
industrial Commissioner	33K
legal practitioner	33K
lock-up	2
member	33A, 33K
member of the Police Force	136(1)
new evidence.....	33R(11)
pearl	76E
police officer	76I
police property	39A
premises	76I, 82B(4)
public authority	82B(4)
public property	80A(1)
relevant offender	80A(1)
removal action.....	33K
removal from office	33K
Senior Commissioner.....	33K
street.....	2
thoroughfare.....	2
Treasury	39A

Defined Terms

uncut diamond.....	76E
valuable security	2
WAIRC	33K