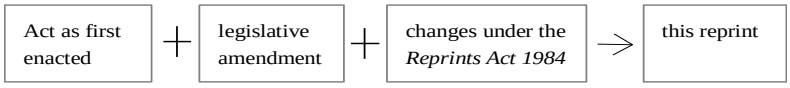
Western Australia

Justices Act 1902

Reprinted as at 8 October 2001

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   - removed (because it was repealed or deleted from the law); or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.

Reprinted under the *Reprints Act 1984* as at 8 October 2001

Western Australia

Justices Act 1902

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Western Australia

Reprinted under the *Reprints Act 1984* as at 8 October 2001

Justices Act 1902

An Act to consolidate and amend the laws relating to Justices of the Peace and their powers and authorities.

Part I — Preliminary

1. Short title

This Act may be cited as the *Justices Act 1902* [1].

[Section 1 inserted by No. 27 of 1988 s. 4.]

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

Commencement of Act

3. Commencement of Act

This Act shall commence and take effect on and from 1 January 1903.

Interpretation

4. Interpretation

In the interpretation of this Act, unless the context otherwise requires —

"charge of an indictable offence" means charge of an indictable offence as such and in order to a committal for trial therefor;

"complaint" includes the terms **"information"**, **"information and complaint"**, and **"charge"**, and, unless the contrary appears, means an information and complaint before justices;

"decision" means —

(a) a conviction or a finding whether made following a plea of guilty or an admission of the truth of any matter or following trial;

[(b) deleted]

(c) the dismissal of a complaint;

(d) any other final determination of a proceeding, including a determination that justices had no jurisdiction to deal with a proceeding; and

(e) a sentence imposed or order made consequent on any such conviction, finding, dismissal or determination,

but does not include any decision relating to bail under the *Bail Act 1982*;

"defendant" means a person complained against before justices for an indictable offence, simple offence or other matter;

"gaol" includes prison and police gaol;

"hearing" includes the examination of a person charged with an indictable offence;

"indictable offence" means an offence which may be prosecuted before the Supreme Court, or other court having jurisdiction in that behalf, by information in the name of the Attorney General or other authorised officer;

"indictment" means an information for an indictable offence presented to a court having jurisdiction to try the accused person by the Attorney General or other authorised officer;

"jurisdiction" when necessary, means the place in which jurisdiction may be lawfully exercised;

"justices" means —

(a) Justices of the Peace having jurisdiction where the act in question is, or is to be, performed;

(b) a magistrate acting under section 33;

(c) one justice where one justice may exercise the jurisdiction of justices referred to in paragraph (a);

"keeper of a gaol" includes superintendent of a prison;

"magistrate" means a stipendiary magistrate appointed and holding office, whether temporarily or permanently, under the *Stipendiary Magistrates Act 1957*, the *Interpretation Act 1984*, or the *Public Sector Management Act 1994* [2];

"matter" means any act, omission, fact, or event (except an indictable offence not punishable summarily) upon complaint whereof justices may give any decision against or in respect of any person;

"Minister" means the Attorney General or other Minister charged with the supervision of Justices of the Peace;

"oath" includes solemn affirmation or declaration when such affirmation or declaration may by law be made instead of taking an oath, and also includes any promise or other undertaking to tell the truth that may be made under the provisions of any Act relating to giving evidence in courts of justice;

"order" means an order made upon a complaint of any matter (not being a simple offence);

"police officer" means any constable or other member of the police force;

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

"simple offence" means any offence (indictable or not) punishable, on summary conviction, by fine, imprisonment or otherwise;

"summary conviction" or **"conviction"** means a conviction for a simple offence.

When one word or phrase includes another, the derivatives of the one include those of the other.

[Section 4 amended by No. 19 of 1919 s. 2 and 4; No. 22 of 1968 s. 2; No. 17 of 1972 s. 4; No. 72 of 1975 s. 4; No. 33 of 1976 s. 3; No. 87 of 1982 s. 4; No. 38 of 1988 s. 7; No. 33 of 1989 s. 4; No. 33 of 1991 s. 4; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 36 of 1996 s. 34.]

4A. *Bail Act 1982* to prevail over this Act

Nothing in this Act empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the *Bail Act 1982*.

[Section 4A inserted by No. 87 of 1982 s. 5.]

5. General saving of powers of justices

Nothing in this Act shall be construed to diminish or affect any power or authority conferred on Justices of the Peace by any other Act, except so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

Part II — Justices

6. Appointment of justices generally

The Governor may appoint such and so many justices male and female as may from time to time be deemed necessary to keep the peace in the State of Western Australia, or in any magisterial district therein.

Such justices may be so appointed either by a General Commission of the Peace under the seal of the State in the form contained in the Second Schedule or to the like effect, or by a special appointment of the Governor notified in the *Government Gazette*. In the latter case the justices so appointed shall be deemed to be included in the then subsisting General Commission of the Peace for the State, or for such magisterial district, as the case may be, from the time when they are so appointed.

Any justice may be appointed to keep the peace in more than one magisterial district.

[Section 6 amended by No. 19 of 1919 s. 3; No. 73 of 1994 s. 4.]

7. Removal from office

A justice may be removed or discharged from his office either by the issue of a new General Commission of the Peace for the State, or for the magisterial district, as the case may be, omitting his name, or by an order of the Governor notified in the *Government Gazette*, without any writ of *supersedeas* or other formal writ.

8. Resignation

A justice may at any time resign his office by writing, addressed to the Minister, and upon such resignation being accepted by the Governor, and such acceptance being notified in the *Government Gazette*, his office shall be vacated.

9. Mayors and presidents of local governments to be justices

(1) A person who is for the time being —

(a) the mayor of a city or town; or

(b) the president of a shire,

within the meaning and for the purposes of the *Local Government Act 1995*, shall, by virtue of his office and without any further commission or authority than this Act, be a Justice of the Peace for the magisterial district or districts in which the city, town or shire, as the case may be, is situated.

(2) The chief executive officer shall keep a special roll of persons who are for the time being mayors or presidents as mentioned in subsection (1), but he shall not enter therein the name of any such person unless and until he receives a certificate from the chief executive officer of the relevant local government to the effect that the person holds such an office.

(3) When a person's name is entered in the special roll as mentioned in subsection (2), the chief executive officer shall give notice thereof in writing to that person.

(4) A person who becomes a justice pursuant to subsection (1) shall not exercise any of the powers and authorities of a Justice of the Peace unless and until he receives the notice in writing as mentioned in subsection (3).

(5) In subsections (2) and (3), **"chief executive officer"** means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act.

[Section 9 inserted by No. 41 of 1977 s. 2; amended by No. 31 of 1993 s. 49; No. 14 of 1996 s. 4.]

10. Prohibition on acting

The Governor may by order prohibit any person who is a Justice of the Peace pursuant to section 9 from acting as such a justice, and from the time of the notification in the *Government Gazette*

of such an order he shall be and remain incapable of acting as a Justice of the Peace unless and until —

(a) he has been again elected to the office of mayor or president as mentioned in section 9 and that section has again been complied with; or

(b) he has been appointed by the Governor to be a Justice of the Peace.

[Section 10 inserted by No. 41 of 1977 s. 3.]

*[**11.** Repealed by No. 22 of 1968 s. 3.]*

12. Judges etc. to be justices

A person who is for the time being —

(a) a member of the Executive Council of the State;

(b) a Judge of the Supreme Court;

(c) a Judge of The District Court of Western Australia;

(d) a Judge of the Family Court of Western Australia;

(da) a Judge of the Children's Court of Western Australia;

(db) a magistrate of the Children's Court of Western Australia;

(e) a magistrate; or

(f) a Coroner,

or who is for the time being acting in such an office or exercising the powers thereof, shall, by virtue of that office and without any further commission or authority than this Act, be a Justice of the Peace for the State.

[Section 12 inserted by No. 41 of 1977 s. 4; amended by No. 6 of 1979 s. 3; No. 49 of 1988 s. 51.]

13. Non resident may be appointed as justice

Any person may be appointed to be a Justice of the Peace for Western Australia although he is not a resident in the State.

14. Acts done by justices outside the State

Any act done by a justice by virtue of his office out of Western Australia for the purpose of the authentication of the signature of any person to any instrument intended to take effect within Western Australia, and any oath administered by any such justice by virtue of his office out of Western Australia in any case in which an oath may be administered by a Justice of the Peace for Western Australia, shall, unless such act or oath is required by law to be done or administered within Western Australia, be valid and effectual within Western Australia.

15. Jurisdiction of justices

(1) Justices of the Peace shall have and may exercise within and for their jurisdiction the several powers and authorities conferred upon them by this Act, or any other Act, or by a General Commission of the Peace.

(2) No justice shall be disqualified from acting in the discharge of his duties in any matter relating to any local government by reason only of being a ratepayer or interested in common with the public.

[Section 15 amended by No. 72 of 1975 s. 5; No. 14 of 1996 s. 4.]

16. Oath of office

A justice other than a justice appointed by virtue of section 12 shall not exercise any of the functions of his office until he has taken or made an oath or affirmation of allegiance and the oath or affirmation of office prescribed in the Third Schedule.

Such oaths or affirmations may be taken or made before, and may be administered or received by, a Judge of the High Court of Australia or of the Supreme Court of any State, or a magistrate or any person authorised in that behalf by the Governor.

[Section 16 amended by No. 34 of 1926 s. 4; No. 22 of 1968 s. 5.]

17. Oath of office need not be taken a second time

When a person has once taken or made such oaths or affirmations on his appointment to the office of Justice of the Peace for the State or for a magisterial district, and afterwards ceases or has ceased to hold such office, it shall not be necessary for him to again take such oaths or affirmations on his again becoming a Justice of the Peace for the State or for the same or any other district.

Description

18. Justices, how described

When a justice is described as a Justice of the Peace for the State of Western Australia, such description shall, unless there is something to denote a different meaning, be taken to mean that he is a Justice of the Peace for the State generally.

19. Certain signatures to be *prima facie* evidence

(1) The words, "Stipendiary Magistrate", or the letters "S.M.", and the words, "Justice of the Peace", or the letters, "J.P.", following the signature to a magisterial act, are respectively *prima facie* evidence of the signature being that of a magistrate or justice having jurisdiction in the matter to which the magisterial act relates.

(2) The words, "Clerk of Petty Sessions", or the letters, "C.P.S.", following the signature to a document capable of being issued by a clerk of petty sessions under this Act are *prima facie* evidence that the signature is that of a clerk of petty sessions duly appointed for the magisterial district in which the document was issued.

[Section 19 inserted by No. 22 of 1968 s. 6.]

Part III — Jurisdiction

20. General jurisdiction

(1) Whenever by any Act past or future, or by this Act, any person is made liable to a penalty or punishment, or to pay a sum of money —

(a) for any offence made punishable on summary conviction; or

(b) for any offence, act, or omission, and such offence, act, or omission is not by the Act declared to be treason, felony, a crime, or a misdemeanour, and no other provision is made for the trial of such person,

the matter may, subject to subsection (2), be heard and determined by 2 or more justices in a summary manner under the provisions of this Act.

(2) Where for any indictable offence offenders may in some circumstances be punished summarily, a person shall not be charged with the offence before justices, and justices shall not deal with the charge or examine the defendant or commit him for trial, if there is a magistrate available or the defendant does not consent, in which case a reference in this Act to any number of justices shall be read and construed, with such modifications as are necessary, as a reference to a magistrate.

[Section 20 amended by No. 17 of 1972 s. 5.]

21. Authentication of acts of justices

All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands of the justices issuing or making the same.

22. Warrants may be executed throughout State

When a justice issues any warrant or summons purporting on the face thereof to have been issued within the limits of his jurisdiction, such warrant may be executed, and such summons

may be served within any part of Western Australia, although beyond the limits of such jurisdiction.

23. Presumption of jurisdiction

Every act done or purporting to have been done by or before a justice shall be taken to have been done within his jurisdiction without an allegation to that effect unless and until the contrary is shown.

Courts of petty sessions

24. Magisterial districts

(1) The Governor may, subject to the provisions of the *The Magisterial Districts Act 1886*, appoint magisterial districts for the purposes of courts of petty sessions.

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

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

(4) Where the Governor orders that a court of petty sessions shall be held at any place pursuant to subsection (2) —

(a) the proclamation may provide that there shall be a seal of the court;

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

(c) notice of the days on which the court is appointed to be held shall be published in the *Government Gazette*, and posted in a conspicuous place at the courthouse and also in the office of the clerk;

(d) when by reason of the absence of a magistrate the court cannot be held at the time appointed, the clerk, or, in his absence, a prescribed officer, shall adjourn the court; and

(e) when the holding of the court is discontinued, all proceedings pending in that court shall be transferred to and continued in such other court as the Governor may direct by proclamation and all records of the court the holding of which is discontinued shall be transferred to such other court.

[Section 24 amended by No. 119 of 1976 s. 2.]

25. Existing magisterial districts to continue under this Act until altered

The districts heretofore appointed to be magisterial districts shall, until altered, be deemed to be districts for the purposes of courts of petty sessions, and shall be deemed to have been appointed under this Act [3].

25A. Clerks of petty sessions

The Minister may appoint a person to the office of clerk of petty sessions for a magisterial district and may appoint such number of clerks of petty sessions for each magisterial district as may, in his opinion, be necessary for the due administration of this Act.

[Section 25A inserted by No. 22 of 1968 s. 7.]

Powers of one justice

26. Powers of one justice

One justice out of sessions may receive a complaint, and grant a summons or warrant thereon, and may issue his summons or warrant to compel the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, notwithstanding that the case must be heard and determined by 2 or more justices.

27. After decision, one justice may issue warrant of execution or commitment

(1) After a case has been heard and determined, one justice may, subject to subsection (2), issue any warrant of commitment thereon, and the justice who so acts need not be the justice or one of the justices by whom the case was heard and determined.

(2) Where a warrant of commitment is not issued within the period of 12 months after the final hearing and determination of a case, such a warrant shall not, except for the enforcement of an order for the making of periodical payments, issue without the leave of a magistrate.

[Section 27 amended by No. 22 of 1968 s. 8; No. 92 of 1994 s. 20.]

*[**28.** Repealed by No. 33 of 1989 s. 5.]*

Hearing and quorum

29. Hearing of complaints

Subject to this Act, and notwithstanding the provisions of any other Act, every complaint for an indictable offence or a simple offence or other matter may be heard by and before 2 or more justices:

Provided that, with the consent of all parties concerned, any such complaint may be heard by and before one justice, but a

memorandum of such consent shall be forthwith made and signed by the justice.

[Section 29 inserted by No. 19 of 1919 s. 5; amended by No. 28 of 1920 s. 2; No. 17 of 1972 s. 6.]

30. Majority to decide

Except as hereinafter provided, when 2 or more justices are present and acting at the hearing of any matter and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion, the case shall be reheard at a time to be appointed by the justices present, or a majority of them, or if they are equally divided, by the senior justice present:

Provided that, upon a complaint for an indictable offence, any 2 or more of the justices may commit the defendant for trial notwithstanding that a majority of the justices are of opinion that the defendant should be discharged. In any such case a memorandum of the dissent of the majority of the justices shall be made upon or attached to the depositions.

[Section 30 amended by No. 19 of 1919 s. 4; No. 14 of 1942 s. 2; No. 22 of 1968 s. 10; No. 17 of 1972 s. 7.]

31. When 2 justices required, they must be present throughout the case

Where a complaint must be heard and determined, or a conviction or order must be made, by 2 or more justices, the justices making the decision must be present and act together during the whole of the hearing and determination.

32. Jurisdiction of one justice in certain circumstances

Any one justice may exercise the jurisdiction of 2 justices under this or any other Act whenever no other justice usually residing in the district can be found at the time within a distance of 16 kilometres; provided that the justice, on any conviction, certifies, in writing, that no other justice can be found within 16 kilometres.

A certificate under this section shall be conclusive evidence of the fact stated.

[Section 32 amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973 s. 4); No. 51 of 1992 s. 16(1).]

Magistrates

[Heading amended by No. 22 of 1968 s. 11.]

33. Magistrates may in all cases act alone

(1) Every magistrate shall have power to do alone whatever might be done by 2 or more justices sitting in petty sessions, and shall have power to do alone any act which by any law is or shall be directed to be done by more than one justice.

(2) Where 2 or more justices, one of whom is a magistrate, are present and acting at the hearing of any matter and do not agree, the decision of the magistrate shall prevail, notwithstanding that a majority of the justices are of a different opinion.

[Section 33 amended by No. 19 of 1919 s. 6; No. 22 of 1968 s. 12; No. 17 of 1972 s. 8.]

34. Duties of clerks of petty sessions may be discharged by magistrate

In any place appointed for holding courts of petty sessions in which a clerk of petty sessions is not appointed, or from which the clerk of petty sessions is absent, a magistrate may discharge the duties of clerk of petty sessions, and all acts done by a magistrate in pursuance hereof shall be as valid as if done by such clerk, and all notices required to be given to such clerk, and all other matters and things required to be done with or in reference to such clerk, may be given to or done with or in reference to a magistrate, and shall have the like force and effect.

Provided that the justices in petty sessions assembled or the Minister may require that any of such duties, acts, matters, and things as they or he shall think convenient shall be done by,

with, or in reference to some police officer, and thereupon such acts, matters, and things if so done shall be as valid as if done by, with, or in reference to a clerk of petty sessions.

[Section 34 amended by No. 22 of 1968 s. 13.]

Extent of jurisdiction

35. Justices may act outside jurisdiction

No act done by a justice shall be invalid merely by reason of the fact that at the time of doing such act he was outside the limits of his jurisdiction, and it shall not be necessary that any conviction, order, or other proceeding should appear to be made or done within the geographical limits of the jurisdiction of the justice making or doing the same.

36. Warrants of commitment and remand by justices of limited jurisdiction

A warrant of commitment or of remand shall be valid throughout the State, notwithstanding that the gaol or other place to which the defendant is committed or remanded, or any place into or through which he is taken by virtue of the warrant, is outside the limits of the jurisdiction of the justice by whom the warrant is granted.

37. Duty of police officers to obey warrants, etc.

All police officers are hereby required to obey the warrants, orders, and directions of a justice which in that behalf are granted, given, or done, and to do and perform their several offices and duties in respect thereof under the pains and penalties to which a police officer is liable for a neglect of duty.

38. Summons or warrant not avoided by justice dying or ceasing to hold office

A warrant or summons issued by a justice shall not be avoided by reason of such justice dying or ceasing to hold office.

39. Order in lieu of *mandamus*

When a justice refuses to do any act relating to the duties of his office as such justice, the party requiring such act to be done may apply to the Supreme Court, or a Judge thereof, upon affidavit of the facts, for an order calling upon such justice, and also the party to be affected by such act, to show cause why such act should not be done, and if after due service of such order good cause is not shown against it, the court or Judge may make the same absolute.

A justice, upon being served with an order absolute, shall obey the order and do the act required by it to be done.

40. Orders in respect of stolen goods

When property charged to have been stolen or fraudulently obtained is in the custody of a police officer by virtue of a search warrant, or otherwise in the course of the prosecution of any person for an indictable offence in regard to the obtaining of such property, and the prosecution has terminated, whether by the conviction or discharge of the defendant or otherwise, or the defendant cannot be found, a magistrate may make an order for the delivery of the property to the person who appears to be the rightful owner thereof.

But no order shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order: Provided that the action shall be brought within 6 months next after the order is made.

[Section 40 amended by No. 22 of 1968 s. 14.]

Interruption of proceedings

41. Penalty for insulting or interrupting justices

Any person who insults any justices sitting in the exercise of their jurisdiction under this or any other Act, or wilfully interrupts the proceedings of justices so sitting, may be

excluded from the court by order of the justices, and may, whether he is so excluded or not, be summarily convicted by the justices on view, and on conviction shall be liable to imprisonment for a term not exceeding 12 months, or to a fine not exceeding $5 000, or to both, or in default of immediate payment of the fine imposed to imprisonment —

(a) until the fine is paid; or

(b) for a term not exceeding 12 months,

whichever may be the shorter period.

No summons need be issued against any such offender, nor need any evidence be taken on oath, but he may be taken into custody then and there by a police officer or a person who is authorised to exercise a power set out in clause 3 of Schedule 2 to the *Court Security and Custodial Services Act 1999*, by order of the justices, and called upon to show cause why he should not be convicted.

[Section 41 amended by No. 113 of 1965 s. 8; No. 71 of 1986 s. 9; No. 47 of 1999 s. 17.]

Part IV — General procedure

Complaints

42. Complaint, by whom laid

Unless otherwise provided, proceedings before justices shall be commenced by a complaint, which may be made or laid by the complainant in person, or by his counsel or solicitor or other person authorised in that behalf.

[Section 42 amended by No. 19 of 1997 s. 80(1).]

43. Only one matter of complaint

Every complaint shall be for one matter only, and not for 2 or more matters:

Provided that —

(1) in the case of indictable offences, if the matters of complaint are such that they may be charged in one indictment; and

(2) in other cases, if the matters of complaint are substantially of the same act or omission on the part of the defendant,

such matters may be joined in the same complaint.

Provided also, that when several simple offences are alleged to be constituted of the same acts or omissions or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such offences may be joined in the same complaint against the same person; but if in any such case it appears to the justices that the defendant is likely to be prejudiced by such joinder, they may require the complainant to elect upon which of the charges he will proceed or may direct that the defendant shall be tried separately on each or any of the charges.

[Section 43 amended by No. 19 of 1919 s. 7.]

44. Description of persons and property in complaint

Such description of persons or things as would be sufficient in an indictment shall be sufficient in complaints.

45. Description of offence in complaints

The description of any offence in the words of the Act, order, local law, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

[Section 45 amended by No. 14 of 1996 s. 4.]

Variance and amendment

46. Want of form or variance in warrant, etc.

No objection shall be taken or allowed to any complaint, or to any summons or warrant to apprehend a defendant issued upon any complaint, for any alleged defect therein, in substance or in form, or for any variance between it and the evidence in support thereof, and any such variance shall be amended by order of the justices at the hearing.

47. Amendment

If any such variance appears to the justices to be such that the defendant has been thereby deceived or mislead, they may, and at the request of the defendant shall, upon such terms as they think fit, adjourn the hearing of the case to some future day, and in the meantime may commit the defendant for his appearance at the time and place to which the hearing is adjourned.

[Section 47 amended by No. 87 of 1982 s. 6.]

48. Minute of amendment

Every order for the amendment of a variance shall be entered on the proceedings of the justices, and a minute thereof, if required, shall be given to the party against whom it was made.

Complaints, how made

49. Complaint on oath where warrant issued

When it is intended to issue a warrant in the first instance against the party charged, the complaint must be in writing and on oath, which oath may be made either by the complainant or some other person.

50. Where summons issued

When it is intended to issue a summons instead of a warrant in the first instance, the complaint need not be in writing or on oath, but may be verbal merely, and without oath, whether any previous Act under which the complaint is laid requires it to be in writing or not.

Limitation

51. Limitation of proceedings

In any case of a simple offence or other matter, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within 12 months from the time when the matter of complaint arose.

[Section 51 amended by No. 19 of 1919 s. 4; No. 53 of 1992 s. 15.]

Summons

52. When a justice may issue summons

When a complaint is made before a justice that any person is guilty of, or is suspected of having committed or is liable to be dealt with in respect of, any indictable offence, simple offence, or other matter, within the jurisdiction of such justice, then such justice may issue his summons.

[Section 52 amended by No. 19 of 1919 s. 4.]

53. Summons may be issued by clerk of petty sessions

Any such complaint may be made before the clerk of petty sessions, who may sign and issue his summons, which shall have the same force and effect as if issued by a justice.

54. Contents of summons

A summons issued under this Act shall —

(a) be directed to the defendant;

(b) state shortly the matter of the complaint as a result of which it was so issued;

(c) in the case of a summons for an indictable offence, require the defendant to appear at a time and place appointed by that summons, before such justices as shall then be there, to be dealt with according to law; and

(d) in the case of a summons for a simple offence that is not an indictable offence —

(i) require the defendant, subject to sections 135 and 136, to appear at a time and place appointed by that summons, before such justices as shall then be there, to be dealt with according to law; and

(ii) advise the defendant of the procedures which may be followed under sections 135, 136 and 136AA in the circumstances described in those sections.

[Section 54 inserted by No. 120 of 1981 s. 3; amended by No. 10 of 1999 s. 5.]

55. *Ex parte* proceedings

Nothing herein contained shall oblige any justice or clerk of petty sessions to issue a summons in any case where the application for an order of justices is by law to be made *ex parte*.

Service, endorsement, and proof of service

56. Mode of service

Subject to section 56A, a summons must be served upon the person to whom it is directed by delivering a duplicate thereof to him personally, or, if he cannot be found, by leaving it with some person for him at his last known place of abode.

Provided that a magistrate or clerk of petty sessions may, if satisfied that to effect service in the manner above prescribed would involve undue expense, and that the offence is not an indictable offence, and that its nature is such that personal service might reasonably be dispensed with, and that the hearing will not be unduly delayed thereby, allow service by post.

Service by post shall be effected by the clerk of petty sessions despatching the summons through the post as a prepaid registered letter addressed to the person to be served at his place of abode, and the magistrate may accept as proof of service a certificate of the clerk of the due posting of the summons as a prepaid registered letter; provided that the clerk has received through the post an acknowledgment of delivery of such letter purporting to be signed by the person to whom the same was addressed.

[Section 56 amended by No. 11 of 1936 s. 2; No. 83 of 1965 s. 3; No. 22 of 1968 s. 15.]

56A. Power to serve some summonses by post

(1) Notwithstanding section 56, a summons requiring a person to appear before justices at a stated time and place to answer the complaint for —

(a) an offence under a written law, or under a code or similar provision adopted or enacted by a written law, which is not an indictable offence; or

(b) an offence under a law, or under a code or similar provision adopted or enacted by a law, of the Commonwealth that is a summary offence,

may be served upon the person by posting by prepaid registered post, not less than 14 days before the date stated in the summons for his appearance, a true copy of the summons in an envelope addressed to that person at his last known place of residence or business.

(2) Without prejudice to the operation of subsection (1), in the absence of any circumstances making it appear that the person to whom the summons is directed resides or carries on business elsewhere, where the offence specified in the summons —

(a) arises out of the driving or use of a motor vehicle, the address appearing as the address of that person in the driver's licence, if any, produced by him at the time of the alleged offence or upon any investigation thereof;

(b) is an offence alleged to have been committed by the person to whom the summons is directed as the owner of a motor vehicle, the address appearing as the address of that person as owner in the vehicle licence for the motor vehicle, for the time being in force;

(c) is an offence of a type set out in subsection (1)(a) or (b), the address appearing as the address of that person, or of any premises of which he is the owner or occupier, in any licence, permit or similar document issued and in force under —

(i) the law under which the offence is alleged to have been committed; or

(ii) a law connected with the law under which the offence is alleged to have been committed,

(whether a law of this State or of the Commonwealth),

shall be deemed and taken to be the last known place of residence or business of the person to whom the summons is directed.

(2a) For the purposes of subsection (2)(c), a law is connected with the law under which the offence is alleged to have been committed if —

(a) it is subsidiary legislation made under that law;

(b) it is the law empowering the making of that law as subsidiary legislation;

(c) it is a code or similar provision adopted or enacted by that law; or

(d) it is the law that adopted or enacted that law as a code or similar provision.

(3) A summons posted to a person to whom it is directed pursuant to this section shall be posted —

(a) by an officer of the court of petty sessions before which the person is required by the summons to appear; or

(b) by the person who made the complaint in respect of which the summons is issued or by a person authorised in writing to post the summons by the first mentioned person.

(4) The justices hearing the complaint to which the summons relates may accept as proof of service a certificate of the officer or any person referred to in subsection (3)(a) or (b) of the due posting by him of the summons in accordance with this section.

(5) Where a summons posted pursuant to this section does not, in fact, come to the notice of the defendant prior to his being convicted of the matter of complaint stated in the summons, he may, within 14 days after his becoming aware of the conviction or within such extension of that period as the justices may allow, serve upon the clerk of petty sessions, at the place where he was so convicted, a notice requiring a rehearing of the complaint to which the summons relates.

(6) The clerk shall, as soon as may be practicable after the receipt of a notice served pursuant to subsection (5), fix a day and time for a rehearing of the complaint and shall, by notice sent by

prepaid registered post or served personally (whichever may be the more practicable or convenient), notify the complainant and the defendant of the day and time so fixed.

(7) The justices shall, on the day fixed pursuant to subsection (6), proceed to consider the requirement for a rehearing and shall confirm or set aside the conviction, as they think fit; and, where the conviction is set aside, the justices shall proceed to rehear the complaint or adjourn the rehearing to a day fixed by them, as they think fit.

(8) If justices set aside the conviction, any licence suspension order made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of any fine imposed is to be taken as having been cancelled as at the time the licence suspension order was made.

[Section 56A inserted by No. 83 of 1965 s. 4; amended by No. 24 of 1967 s. 2; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 14 of 1996 s. 4; No. 36 of 1996 s. 35.]

57. Proof of service

(1) The service of any summons where service has not been effected by post may be proved by an endorsement on the summons, signed by the person by whom it was served, setting forth the day, place, and mode of service; or such person may depose to the service on oath at the hearing.

(2) The signature to an endorsement of service shall be *prima facie* evidence that the endorsement was signed by the person whose signature it purports to be.

(3) Any false statement in an endorsement of service shall render the person making the same liable, on summary conviction, to imprisonment not exceeding 6 months.

[Section 57 amended by No. 11 of 1936 s. 3; No. 51 of 1992 s. 16(1).]

57A. Summons, amendment of time following non-service

(1) If a summons issued under this Act on the making of a complaint is not served before the time stated in the summons for the appearance of the defendant, any justice or clerk of petty sessions, on being satisfied that the complaint was made, may amend the summons by substituting a later time for the appearance of the defendant.

(2) An amendment under subsection (1) must be initialled by the justice or clerk of petty sessions making the amendment.

(3) An amendment of the time mentioned in a summons under subsection (1) does not recommence proceedings.

[Section 57A inserted by No. 36 of 1996 s. 36.]

Warrants in the first instance

58. Warrant and summons, in what cases issued

When complaint is made before a justice —

(1) that a person is suspected of having committed an indictable offence within the limits of the jurisdiction of such justice; or

(2) that a person charged with having committed any such offence elsewhere in Western Australia is suspected of being within such limits; or

(3) that a person charged with having committed an indictable offence on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have, or claim to have, jurisdiction, or on land outside Western Australia, of which offence cognizance may be taken by the courts of Western Australia, is suspected of being within such limits,

the justice may issue his warrant to apprehend such person, and to cause him to be brought before justices in any jurisdiction to answer the complaint, and to be further dealt with according to law.

Provided that the justice, if he thinks fit, instead of issuing his warrant in the first instance to apprehend the person charged, may proceed by summons, and issue a summons against him accordingly.

Notwithstanding the issue of a summons, any justice may issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

59. Warrant in the first instance for simple offence

When complaint is made before a justice of a simple offence, the justice may, upon oath being made before him substantiating the matter of the complaint, instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant, and to cause him to be brought before justices to answer the complaint and to be further dealt with according to law.

Direction of warrants

60. Direction of warrant

(1) A warrant to apprehend a defendant that he may answer a complaint may be directed either to any police officer or officers by name, or generally to all police officers within the State, without naming them, or to both.

(2) Any police officer may execute any warrant as if it was directed specially to him by name.

Form of warrant

61. Contents of warrants

A warrant shall state shortly the offence or matter of the complaint on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before justices in any jurisdiction to answer the complaint and to be further dealt with according to law.

62. Warrant in force until executed

A warrant need not be returnable at any particular time, but may remain in force until executed, and may be executed by apprehending the defendant at any place within the State.

[Heading repealed by No. 49 of 1997 s. 5.]

*[**63.** Repealed by No. 49 of 1997 s. 5.]*

*[**64.** Repealed by No. 87 of 1982 s. 7.]*

[Heading repealed by No. 14 of 1992 s. 19.]

65. Court to be open: Publicity

(1) Unless expressly provided otherwise, the court-room or place of hearing where justices sit to hear and determine any complaint is an open and public court to which all persons may have access so far as is practicable.

(2) If satisfied that it is necessary for the proper administration of justice to do so, justices may —

(a) order any or all persons or any class of persons to be excluded from the court-room or place of hearing during the whole or any part of the trial or other criminal proceeding;

(b) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings;

(c) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings except in accordance with directions by the justices.

(3) On an application by the prosecution or an accused person justices may order any person who may be called as a witness in the trial or other criminal proceeding to leave the court-room or place of hearing and to remain outside and beyond the hearing of the court until called to give evidence.

(4) Counsel or a solicitor engaged in the trial or other criminal proceeding shall not be excluded from the court-room or place of hearing under this section.

(5) A person who contravenes or fails to comply with an order made under this section commits an offence punishable —

(a) by the Supreme Court as for contempt; or

(b) after summary conviction, by imprisonment for 12 months or a fine of $10 000.

(6) Only the Attorney General or a person on his behalf may take proceedings for a contravention of or a failure to comply with an order made under this section.

[Section 65 inserted by No. 14 of 1992 s. 19.]

66. Preliminary hearings not open court

The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission; but they shall not make such order unless it appears to them that the ends of justice require them so to do.

67. Counsel or solicitor not to be excluded

The power to exclude any person shall not be exercised for the purpose of excluding any counsel or solicitor engaged in the case.

Counsel and solicitor

68. Conduct of case

Every complainant shall be at liberty to conduct his case and to have the witnesses examined and cross-examined by his counsel or solicitor; and every defendant shall be admitted to make his full answer and defence to the charge, and to have the witnesses examined and cross-examined by his counsel or solicitor.

Evidence

69. Evidence of witnesses, statements may be admitted on indictable charges

(1) Every witness shall be examined upon oath, or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice.

(2) Subject to subsection (3) and despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a written statement of any person —

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

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

if —

(c) the statement complies with the conditions in subsection (4);

(d) before the statement is so tendered, a copy of it has been served, by or on behalf of the party proposing to tender it, on each other party to the proceedings and, where the party proposing to tender it is the prosecutor, it has been served and lodged in accordance with section 101A(e);

(e) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (d) is accompanied by a copy or description of the other document or exhibit; and

(f) before the statement is so tendered, no other party to the proceedings objects to its tender.

(3) Despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a

statement of an affected child, as defined in section 106A of the *Evidence Act 1906* —

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

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

if —

(c) in the case of a written statement, it complies with the conditions in subsection (4);

(d) in the case of an electronically recorded statement, it complies with the conditions in subsection (5);

(e) before the statement is so tendered, a copy of it has been served and lodged in accordance with section 101A(e); and

(f) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (e) is accompanied by a copy or description of the other document or exhibit.

(4) The conditions with which a written statement must comply are as follows —

(a) where the statement is made by a person under the age of 18 years, it gives his age;

(b) unless the statement is made by a person under the age of 12 years, it contains a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true;

(c) the statement purports to be signed by the person who made it; and

(d) where the statement is made by a person who cannot read, it is read aloud to him before he signs it, and it is accompanied by a declaration of the person who read the statement to the effect that it was so read.

(5) The conditions with which an electronically recorded statement must comply are as follows —

(a) the statement identifies the person making it;

(b) the statement gives the age of the person making it; and

(c) unless the statement is made by a person under the age of 12 years, it contains a declaration by the person who made it to the effect that —

(i) the recording of the statement (without this declaration) has been played back to him; and

(ii) the statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true.

(6) A statement is deemed to be tendered in evidence under this section at the time that the statement is tendered to the court.

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

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

(9) Any person who, in a statement tendered in evidence under this section, has wilfully included anything which he knew to be

false or did not believe to be true is guilty of a crime and is liable to imprisonment for 7 years.

[Section 69 inserted by No. 71 of 2000 s. 32.]

70. Prosecutor or complainant a competent witness

Upon any complaint of an indictable offence, or simple offence or other matter, the prosecutor or complainant shall be a competent witness to support such complaint.

[Section 70 amended by No. 19 of 1919 s. 4.]

71. Mental fitness to stand trial

If a question about a defendant's mental fitness to stand trial arises before justices on the hearing of a complaint for an offence, it is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 71 inserted by No. 69 of 1996 s. 49.]

72. Proof of negative, etc.

If the complaint in any case of a simple offence or other matter negatives any exemption, exception, proviso, or condition contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in his defence.

[Section 72 amended by No. 19 of 1919 s. 4.]

73. Depositions of witnesses for indictable charges

(1) When a person is charged with an indictable offence, the depositions of the witnesses shall be —

(a) reduced to writing; or

(b) recorded by means of sound-recording apparatus in the manner prescribed [4].

(1a) A deposition reduced to writing under subsection (1)(a) shall, if the charge is not dealt with summarily, be read over to and signed by the witness who has given the evidence and shall be signed also by the justices by or before whom it is taken.

(1b) Where a recording made under subsection (1)(b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of that recording.

(1c) The Governor may make regulations —

(a) prescribing the procedures to be adopted in relation to the taking and recording of depositions under this section and the reproduction and transmission of such depositions;

(b) with respect to the appointment of persons to record or transcribe depositions, or to check transcripts, for the purposes of this section;

(c) prescribing the functions and duties of persons appointed to record or transcribe depositions, or to check transcripts;

(d) requiring a person appointed to record or transcribe depositions, or to check transcripts, to take an oath that he will faithfully discharge his functions and duties and prescribing the form of such an oath;

(e) requiring a person appointed to record or transcribe depositions, or to check transcripts, to make a statutory declaration in any circumstances prescribed in the regulations;

(f) with respect to the preparation and checking of transcripts of recorded depositions and the form and manner of certification of such transcripts;

(g) with respect to the custody and destruction of recordings and transcripts made under this section and the period for which, or the circumstances in which, they are to be retained;

(h) with respect to such other matters necessary or expedient to be prescribed for the purpose of ensuring that a transcript of a recording is correct.

(2) Where, on a preliminary hearing, a written statement is tendered in evidence under section 69(2) or (3), the justices —

(a) shall, if any party to the proceeding so requests, read aloud, or cause to be read aloud before them, such part of the statement as is admissible in evidence by virtue of section 69(2)(a) or (3)(a);

(b) shall sign the statement; and

(c) may, unless subsection (3) or (4) applies, on their own motion or on the application of any party to the proceedings, require the person who made the statement to attend before them and give evidence if they are satisfied that the presence of that person as a witness is necessary in the interests of justice.

(3) If a written statement tendered in evidence under section 69(2) contains a relevant statement (as defined in section 106H of the *Evidence Act 1906*), the justices shall not require the affected child to attend before them and give evidence unless they are satisfied that there are special circumstances that justify the child being so called.

(4) Where, on a preliminary hearing a statement of an affected child (as defined in section 106A of the *Evidence Act 1906*) is tendered in evidence under section 69(3), the justices —

(a) shall not require the affected child to attend before them and give evidence unless they are satisfied that there are special circumstances that justify the child being so called; and

(b) shall, if the statement is electronically recorded and if a party to the proceeding so requests, cause to be played before them, such part of the statement as is admissible in evidence by virtue of section 69(3)(a).

(5) Where, on a preliminary hearing, a video-tape of evidence of an affected child is admitted under section 106T of the *Evidence Act 1906*, the justices —

(a) shall not require the affected child to attend before them and give evidence unless they are satisfied that there are special circumstances that justify the child being so called, notwithstanding section 106T(3) of that Act; and

(b) shall, if a party to the proceeding so requests, cause to be played before them, such part of the video-tape as is admissible in evidence.

[Section 73 amended by No. 33 of 1976 s. 5; No. 81 of 1986 s. 8; No. 71 of 2000 s. 33.]

73A. Offences in respect of recording of depositions

Any person who —

(a) personates a person appointed under this Act to record or transcribe depositions, or to check transcripts, on an occasion when the latter is required to do any act or attend in any place by virtue of his appointment;

(b) falsely represents himself to be a person appointed under this Act to record or transcribe depositions, or to check transcripts, and assumes to do any act, or attend in any place for the purposes of doing any act, by virtue of his pretended appointment;

(c) falsifies or, except in accordance with the prescribed procedures, interferes with, alters, adds to, or causes any omission in a transcript of any recording made under section 73;

(d) having the duty of transcribing a recording made under section 73 or checking a transcript of that recording, provides a certificate in respect of any transcript so made, which certificate that person knows to be false in a material particular,

commits an offence.

Penalty: $5 000 or imprisonment for 2 years.

[Section 73A inserted by No. 81 of 1986 s. 9.]

Witnesses in general

74. Summoning witnesses

(1) Any justice or clerk of petty sessions may issue his summons to any person requiring him to be and appear as a witness at a time and place mentioned in the summons before such justices as shall then be there to testify what he knows concerning the matter of the complaint.

(2) A summons to a witness must be served, and proof of service may be given in the same manner as hereinbefore prescribed in the case of a summons to a defendant except that the provisions relating to service by post shall not apply to a summons to a witness.

[Section 74 amended by No. 11 of 1936 s. 4.]

75. After summons, warrants may issue

(1) If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal, then (after proof that the summons was duly served upon such person, and, except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance) the justices before whom such person was summoned to appear may then and there impose upon him in his absence a penalty not exceeding $40, which may be recovered in the same manner as penalties imposed upon a summary conviction as hereinafter provided.

(2) The justices may also issue their warrant to bring and have such person at a time and place to be therein mentioned before such justices as shall then be there to testify as aforesaid.

(3) No payment or tender of expenses shall be necessary in the case of indictable offences.

[Section 75 amended by No. 113 of 1965 s. 8.]

76. Warrant in the first instance

If the justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled so to do, then, instead of issuing a summons he may issue his warrant in the first instance.

77. Witness not answering

If on the appearance of a person before justices, either voluntarily or in obedience to a summons, or upon being brought before them by virtue of a warrant, such person refuses to be examined upon oath concerning the matter, or refuses to take an oath, or having taken an oath refuses to answer such questions concerning the matter as are then put to him, without offering any just excuse for such refusal, any justice then present and having there jurisdiction may by warrant commit the person so refusing to gaol, there to remain and be imprisoned for any time not exceeding 7 days, unless in the meantime he consents to be examined and to answer concerning the matter.

78. Production of documents

When justices have authority to summon any person as a witness, they shall have the like authority to require and compel him to bring and produce, for the purpose of evidence, all documents and writings in his possession or power, and to proceed against him in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently

described in the summons, or which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Remand and adjournment

79. Remand of defendant on charge of indictable offence

(1) In any case of a charge of an indictable offence, if from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the justices before whom the defendant appears or is brought may adjourn such hearing to the same or some other place, and may, by their warrant, from time to time remand the defendant to some gaol, or other place of security, for such period, subject to subsection (3), as they may in their discretion deem reasonable to be there kept, and to be brought before the same or such other justices as shall be acting at the time or place appointed for continuing the hearing.

(2) The powers given by this and the next succeeding section may be exercised by one justice if only one is present.

(3) The justices may remand a defendant under subsection (1) —

(a) in the case of a defendant who is undergoing a term of imprisonment at the time of the remand, for a period not exceeding 8 clear days or, with the consent of the defendant, to a day not later than the day on which his term of imprisonment will expire; or

(b) in any other case, for a period not exceeding 8 clear days or such longer period not exceeding 30 clear days as may be consented to by the defendant.

[Section 79 amended by No. 19 of 1919 s. 4; No. 15 of 1985 s. 2.]

80. Verbal remand

If the remand is for a time not exceeding 3 clear days, the justices may verbally order the person in whose custody the defendant then is, or any other person named by the justices in

that behalf, to keep the defendant in his custody, and to bring him before the same or such other justices as shall be acting at the time and place appointed for continuing the hearing.

81. Bringing up during remand

Any justices may order the defendant to be brought before them at any time before the expiration of the time for which he was so remanded, and the person in whose custody he then is shall duly obey such order.

[Section 81 amended by No. 47 of 1999 s. 18.]

*[**82.** Repealed by No. 87 of 1982 s. 7.]*

83. Defendant on charge of indictable offence may be remanded to another place

In any case of a charge of an indictable offence, the justices before whom the defendant appears may, if they think fit, bind over such witnesses as they have examined by recognizance to give evidence, and may, by warrant, order the defendant to be taken before justices having jurisdiction in or near the place where the offence is alleged to have been committed, or in any other place in Western Australia where any of the witnesses to be examined are, and shall at the same time deliver the complaint, and also the depositions and recognizances so taken by them, to the person who has the execution of the last-mentioned warrant, to be by him delivered to the justices before whom he shall take the defendant in obedience to such warrant.

[Section 83 amended by No. 47 of 1999 s. 19.]

84. Effect of depositions, etc.

Such depositions and recognizances shall be deemed to be taken in the case, and shall be treated as if they had been taken by or before the last-mentioned justices, and shall, together with such depositions and recognizances as such last-mentioned justices

shall take in the matter of the charge against the defendant, be transmitted to the proper officer in the manner and at the time hereinafter mentioned, if the defendant is committed for trial upon the charge.

[Section 84 amended by No. 87 of 1982 s. 8.]

85. Defendant may have to pay expense

If it appears to the justices by whom any defendant is committed for trial or for sentence that he has money sufficient to pay the whole or some part of the expenses of conveying him from the place where he was first brought before justices to the place where he was committed, such justices may order that, in the event of his conviction, such money or a sufficient part thereof shall be applied to such purpose.

86. Adjournment of hearing

Subject to section 136, in any case of a charge of a simple offence or other matter, the justices present, or, if only one justice is present, such one justice, may adjourn the hearing to a certain time and place to be then appointed and stated, in the presence and hearing of the party or parties, or their respective counsel or solicitors then present, and in the meantime may commit the defendant to appear at the time and place appointed for continuing the hearing.

[Section 86 amended by No. 19 of 1919 s. 4; No. 120 of 1981 s. 4; No. 87 of 1982 s. 9.]

86A. Videolink may be used for remands and adjournments

(1) If —

(a) the defendant has appeared personally before justices on a charge;

(b) the defendant is in custody, whether in relation to the charge or not;

(c) a videolink or other device exists whereby, at the same time, justices in one place can see and hear the defendant in another place and *vice versa*; and

(d) an order has not been made under subsection (2),

the person in whose custody the defendant is shall, unless an order is made under subsection (2), notwithstanding the warrant commanding that the defendant be brought before the justices, bring the defendant before the videolink or other device, and the justices may, in relation to the charge, exercise the powers in sections 79, 80 and 86 and comply with the *Bail Act 1982* as if the defendant were personally present before them.

(2) The justices may, on their own initiative or on the application of a party to the proceeding, at any time, if satisfied it is necessary for the proper administration of justice to do so, order that a defendant be brought personally before them.

[Section 86A inserted by No. 53 of 1992 s. 16; amended by No. 48 of 1998 s. 11.]

Committal and recognizance

87. Place of committal or detention

When justices commit a defendant by way of remand or upon an adjournment, or at any time before the decision, they may commit to the gaol, or any other place of security in the place for which they are then acting, or to such other safe custody as they think fit.

88. Committal to be made to a gaol

When justices commit a witness or person sought to be made a witness, and when they commit a defendant after the decision, they must commit to a gaol.

89. Witness may be discharged on recognizance

A witness or person sought to be made a witness may be discharged upon recognizance.

90. Recognizances

When justices are authorised to discharge a witness or other person upon recognizance they may order his discharge upon his entering into a recognizance, with or without a surety or sureties at their discretion, conditioned for his appearance at the time and place to which the hearing is adjourned, or which is named in the recognizance.

[Section 90 amended by No. 87 of 1982 s. 10.]

91. Issue of warrant for non-appearance

If a witness or other person, does not appear at the time and place mentioned in the recognizance, then the justices who are there present may adjourn the hearing, and may issue a warrant for his apprehension as hereinbefore provided.

[Section 91 amended by No. 87 of 1982 s. 11.]

Recognizances generally

92. Recognizances taken out of court

When justices have fixed, as regards any recognizance, the amount in which the principal and sureties (if any) are to be bound, the recognizance, notwithstanding anything in this or any other Act, need not be entered into before the same justices, but may be entered into by the parties before the same or any other justice or justices or before any clerk of petty sessions, or before an inspector or sub-inspector of police or other police officer who is of equal or superior rank, or who is in charge of a police station, or, where any one of the parties is in gaol, before the keeper of such gaol; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognizances taken before justices shall apply as if the

recognizances had been entered into before such justices as heretofore by law required.

93. Forfeited recognizances, how to be enforced

When the conditions, or any of them, in any recognizance that is referred to in section 154A(1) are not complied with, any justice may certify upon the back of the recognizance in what respect the conditions have not been observed, and transmit the same to the proper officer, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the recognizance having been forfeited and such justice shall on demand by or on behalf of any law officer (as defined by the *Crown Suits Act 1898* [5]), certify by writing under his hand, in the form contained in the Fourth Schedule to the said Act or to the like effect, that such forfeiture has taken place.

[Section 93 amended by No. 19 of 1919 s. 8; No. 17 of 1972 s. 9.]

*[**94, 94A.** Repealed by No. 87 of 1982 s. 12.]*

Execution of warrants of commitment

95. Conveying prisoners to gaol

The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of such gaol or place, who shall thereupon give the person delivering the prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such keeper.

Regulations and forms

96. Regulations, forms, and fees

(1) The Governor may make regulations for carrying out this Act, including prescribing the forms to be used in and the fees to be taken in courts of petty sessions and appeals and providing for procedural matters relating thereto.

[(2) and (3) repealed]

(4) Regulations made under subsection (1) may provide for the waiver, reduction, refund or deferral of payment of the prescribed fees.

(5) Where provision for the reduction, waiver, refund or deferral of payment of a prescribed fee is made in the regulations, such reduction, waiver, refund or deferral of payment may be expressed to apply or be applicable either generally or specifically —

(a) when an event happens or ceases to happen;

(b) in respect of certain persons or classes of person; or

(c) in respect of a combination of such events and persons,

and may be expressed to apply or to be applicable subject to such conditions as may be specified in the regulations or in the discretion of any person specified in the regulations.

[Section 96 amended by No. 24 of 1967 s. 3; No. 119 of 1976 s. 4; No. 69 of 1984 s. 4; No. 53 of 1992 s. 17.]

Part V — Proceedings in case of indictable offences

Division 1 — Preliminary

[Heading inserted by No. 53 of 1992 s. 25.]

97. Application

(1) This Part applies where a defendant is charged before justices with an indictable offence (**"the charge"**).

[(2) repealed]

[Section 97 inserted by No. 53 of 1992 s. 25; amended by No. 82 of 1994 s. 13(5).]

97A. Defendant not appearing may be arrested

(1) If a defendant —

(a) is served with a summons; and

(b) does not appear before justices at the time and place stated in the summons,

the justices, if satisfied the summons was served a reasonable time before that time, may issue —

(c) another summons, and if that is not obeyed, a warrant to apprehend the defendant; or

(d) a warrant to apprehend the defendant.

(2) A summons issued under subsection (1)(c) may be served by post on the defendant.

[Section 97A inserted by No. 36 of 1996 s. 37.]

Division 2 — General procedure

[Heading inserted by No. 53 of 1992 s. 25.]

98. Procedure on first appearance

(1) When the defendant appears for the first time before the justices on the charge, the justices shall —

(a) read the charge to the defendant; and

(b) if necessary, explain to the defendant the meaning of the charge.

(2) If the charge is one referred to in section 426(2a) or (3) of *The Criminal Code* or in section 23D(2) of the *Firearms Act 1973*, the justices shall then give the prosecutor the opportunity to request them to deal with the charge summarily.

(3) If the charge is not one referred to in section 426(2a) or (3) of *The Criminal Code* or in section 23D(2) of the *Firearms Act 1973* or if it is but the prosecutor does not request the justices to deal with it summarily, the justices shall then —

(a) tell the defendant he or she is not required to plead to the charge; and

(b) cause the defendant to be given a notice in the prescribed form explaining the procedures in this Part.

[Section 98 inserted by No. 53 of 1992 s. 25; amended by No. 59 of 1996 s. 51.]

99. Procedure if offence may be dealt with summarily

(1) If the charge may be dealt with summarily and the justices, having regard to such matters as by law they are required to, consider that the charge can be adequately dealt with summarily, the justices shall —

(a) tell the defendant that he or she —

(i) has the right to have the charge dealt with by a Judge of the Supreme Court or of the District Court (as the case requires) and a jury; or

(ii) may elect to have the charge dealt with summarily by a court of petty sessions;

and

(b) ask the defendant to elect whether or not to have the charge dealt with by a court of petty sessions.

(2) If the defendant elects to have the charge dealt with summarily by a court of petty sessions, the justices shall deal with the charge according to law.

[Section 99 inserted by No. 53 of 1992 s. 25.]

100. If charge not to be dealt with summarily, defendant to be supplied with statement of facts etc.

(1) If —

(a) the charge cannot be dealt with summarily;

(b) the justices decide the charge can not be adequately dealt with summarily; or

(c) under section 99 the defendant —

(i) elects not to have the charge dealt with summarily by a court of petty sessions; or

(ii) does not make an election,

the justices shall adjourn the complaint and the prosecution shall, unless an order under subsection (2) is made, as soon as is reasonably practicable, file with the clerk of petty sessions and serve on the defendant —

(d) a statement of the material facts relevant to the charge;

(e) a copy of —

(i) any statement signed by the defendant;

(ii) any record of interview with the defendant (signed or unsigned by the defendant); or

(iii) the substance of anything said by the defendant to a member of the Police Force that is material to the charge,

in the possession of the prosecution; and

(f) notice of any tape or videotape recording of conversations between the defendant and a person in authority in the possession of the prosecution.

(2) If, on the application of the prosecution, the justices are satisfied that at that stage of the proceedings —

(a) the prosecution is unable to comply with subsection (1); or

(b) it is not practicable for the prosecution to prepare a statement of the material facts,

the justices may order that compliance with subsection (1) by the prosecution be dispensed with.

[Section 100 inserted by No. 53 of 1992 s. 25.]

[Heading repealed by No. 53 of 1992 s. 25.]

101. Expedited committal if defendant pleads guilty

(1) Following the service by the prosecution of the material referred to in section 100(1), the justices shall —

(a) tell the defendant he or she is not required to plead to the charge; and

(b) give the defendant the opportunity to plead to the charge.

(2) If the defendant pleads guilty to the charge, the justices shall, without convicting the defendant, commit the defendant to a court of competent jurisdiction for sentence.

(3) If the defendant is committed for sentence under subsection (2), the justices shall, as soon as possible after the committal, transmit to the Attorney General, or some other person duly

appointed to present indictments, the complaint and the material filed by the prosecution under section 100(1).

[Section 101 inserted by No. 53 of 1992 s. 25.]

101A. If no expedited committal, defendant to be served with statements

If —

(a) an order is made under section 100(2);

(b) under section 101 the defendant —

(i) pleads not guilty to the charge;

(ii) does not plead; or

(iii) enters any other plea other than a plea of guilty;

or

(c) the complaint is remitted under section 618(3) of *The Criminal Code*,

the justices shall —

(d) address the defendant in the form of words prescribed in the Ninth Schedule, or in words to the like effect;

(e) direct the prosecutor to serve or cause to be served on the defendant, and filed with the clerk of petty sessions, at least 4 days before the hearing is to be resumed, a copy of the statement of each person which the prosecution proposes to tender in evidence or to be used in evidence under section 69(2) or (3) and notice of any evidence recorded on video-tape which the prosecution proposes to adduce;

(f) give or cause to be given to the defendant a copy of the Ninth Schedule suitably adapted to the circumstances of the charge against the defendant; and

(g) adjourn the proceedings.

[Section 101A inserted by No. 53 of 1992 s. 25; amended by No. 71 of 2000 s. 34.]

101B. Defendant to elect for or against preliminary hearing

(1) On the resumption of the proceedings adjourned under section 101A(g) and after the depositions of the witnesses, if any, called by the prosecution have been taken in accordance with section 73(1), and after any evidence recorded on video-tape is admitted under section 106T(1) or (2) of the *Evidence Act 1906*, the defendant shall be required by the justices to elect whether or not to have a preliminary hearing.

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

(a) stands mute or does not answer directly to the question putting him to his election; or

(b) objects to any written statement being tendered under section 69(2).

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

[Section 101B inserted by No. 33 of 1976 s. 6; amended by No. 81 of 1986 s. 10; No. 53 of 1992 s. 26; No. 71 of 2000 s. 35.]

101C. Proceedings where no preliminary hearing

Where the defendant elects not to have a preliminary hearing —

(a) a defendant —

(i) shall not cross-examine any witnesses before the justices;

(ii) shall not give or tender before the justices any evidence other than written statements tendered under section 69(2); and

(iii) shall not submit to the justices that there is insufficient evidence before them to put him on his trial for the offence;

(b) the justices —

(i) shall require the defendant to plead to the charge;

(ii) shall require that all written statements that are, under section 69, to be tendered to them to be used in evidence shall be so tendered and shall receive and sign those statements, which shall not be read in court;

(iia) shall require that all electronically recorded statements that are, under section 69(3), to be tendered to them to be used in evidence shall be so tendered and shall receive the statements, which shall not be played in court;

(iib) shall require that any video-tape of evidence that is, under section 106T of the *Evidence Act 1906*, to be admitted shall be tendered and shall receive the video-tape which shall not be played in court; and

(iii) shall, without any consideration of the contents of the depositions, if any, or the statements, or the video-tapes, if any, forthwith commit the defendant for trial or sentence, as the case requires;

and

(c) a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public the contents, or any part thereof, of the depositions, if any, or the statements, or the video-tapes, if any, or attempts to do so, before those contents or part thereof, as the case may be, are, at the trial or sentencing of the defendant, admitted as evidence, or stated aloud under section 617A of *The Criminal Code*, commits a contempt of the Supreme Court and is punishable accordingly by that court.

[Section 101C inserted by No. 33 of 1976 s. 6; amended by No. 53 of 1992 s. 27; No. 71 of 2000 s. 36.]

101D. Justices may restrict publication of evidence in preliminary hearing

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

[Section 101D inserted by No. 33 of 1976 s. 6.]

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

Without affecting any other liability of any person under section 101C or 101D or otherwise, a company or other body corporate is liable to any punishment or penalty for any offence under either of those sections as if it were a private person so far as the punishment or penalty is enforceable against a company or body corporate; and if any director, manager, secretary, or officer of a company or any member of the managing body of a body corporate commits, or knowingly authorises or permits, an offence under either of those sections he is liable to the punishment or penalty for the offence.

[Section 101E inserted by No. 33 of 1976 s. 6.]

101F. Saving

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

[Section 101F inserted by No. 33 of 1976 s. 6.]

102. Statement of defendant

(1) On a preliminary hearing, the justices —

(a) shall examine all the witnesses called by the prosecution or called under section 73(2)(c) in respect of written statements tendered in evidence by the prosecution under section 69(2) or (3);

(b) shall read aloud, or cause to be read aloud, the parts of written statements tendered in evidence by the prosecution that are required to be so read under section 73(2)(a);

(c) shall cause to be played the parts of electronically recorded statements that are required to be so played under section 73(4)(b); and

(d) shall cause to be played the parts of any video-tape that are required to be so played under section 73(5)(b),

and thereupon the justices or one of the justices shall say to the defendant these words or words to the like effect —

"

Having been informed of the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing [or "will be recorded" as the case may be], and may be given in evidence against you upon your trial.

".

(2) Whatever the defendant says in answer to the question required under subsection (1) shall be —

(a) reduced to writing; or

(b) recorded by means of sound-recording apparatus in the manner prescribed [4].

(3) A statement of the defendant reduced to writing under subsection (2)(a) shall be —

(a) read over to the defendant;

(b) signed by the justices before whom the statement was given;

(c) signed by the defendant, if he so desires;

(d) kept with the depositions of the witnesses; and

(e) transmitted with the depositions of the witnesses to the proper officer as provided by this Act.

(4) Where a recording made under subsection (2)(b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of the recording.

(5) Sections 73A and regulations made under section 73(1c) apply *mutatis mutandis* to and in relation to recordings made under this section.

[Section 102 inserted by No. 81 of 1986 s. 11; amended by No. 71 of 2000 s. 37.]

103. Defendant's statement may be put in evidence at trial

(1) Upon the trial of a defendant, any statement made by him when he is required to plead to the charge under section 101C(b)(i) or when he is asked the question required under section 102(1), if —

(a) the statement was reduced to writing and purports to be signed by the justice or justices by or before whom it purports to have been taken; or

(b) the statement was recorded under section 102(2)(b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

may, if necessary and subject to subsection (2), be given in evidence against the defendant without further proof thereof.

(2) A statement referred to in —

(a) subsection (1)(a) shall not be given in evidence against the defendant without further proof thereof if it is proved that it was not in fact signed by the justice or justices by whom it purports to be signed;

(b) subsection (1)(b) shall not be given in evidence against the defendant without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a statement intended to be given in evidence against a defendant is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial of the defendant, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation.

[Section 103 inserted by No. 81 of 1986 s. 12.]

104. Saving

Nothing herein contained shall prevent the prosecutor in any case from giving, in evidence, any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against such person.

105. Evidence for the defence

(1) After addressing the defendant as required by section 102 and after taking the statement, if any, of the defendant, the justices or one of the justices shall ask the defendant whether he desires to give evidence or call any witnesses, or to tender any written statements under section 69.

(2) If the defendant gives evidence or calls any witnesses or any witnesses are called under section 73(2)(c) in respect of written statements tendered in evidence by the defendant under section 69, the justices shall, in the presence of the defendant, take the statement on oath, both examination and cross-examination, of the defendant or of the witnesses so called who know anything relating to the facts and circumstances of

the case or anything tending to prove the innocence of the defendant.

(3) If the defendant tenders any written statements in evidence under section 69 the justices shall read aloud, or cause to be read aloud, the parts of those written statements that are required to be so read under section 73(2)(a).

[Section 105 inserted by No. 33 of 1976 s. 9.]

106. Discharge of defendant

When, on a preliminary hearing, all the evidence offered upon the part of the prosecution against a person charged with an indictable offence, as such, has been heard, if the justices then present are of opinion that it is not sufficient to put the defendant upon his trial for any indictable offence, the justices shall forthwith order the defendant, if he is in custody, to be discharged as to the complaint then under inquiry.

[Section 106 amended by No. 33 of 1976 s. 10.]

107. Committal of defendant

If the defendant elects not to have a preliminary hearing and pleads not guilty or if, on a preliminary hearing in the opinion of the justices, the evidence is sufficient to put the defendant upon his trial for an indictable offence, then they shall order him to be committed to take his trial for the offence before some court of competent jurisdiction.

[Section 107 amended by No. 33 of 1976 s. 11; No. 87 of 1982 s. 13; No. 53 of 1992 s. 28.]

108. Committal for sentence

If on a preliminary hearing the defendant pleads guilty to the charge in answer to the question asked under section 102(1), the justices shall, without convicting the defendant, commit the defendant to a court of competent jurisdiction for sentence.

[Section 108 inserted by No. 53 of 1992 s. 29.]

109. Depositions of persons dead or absent

(1) When a person has been charged before justices with an indictable offence, as such, and has been committed for trial, then if, upon the subsequent trial of the person so charged, it is proved that any person whose deposition has been taken in accordance with section 73 at the hearing of such charge is dead, or out of the State, or so ill as not to be able to travel and if —

(a) the deposition was reduced to writing under section 73(1)(a) and purports to be signed by the justices by or before whom it purports to have been taken; or

(b) the deposition was recorded under section 73(1)(b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

the deposition may, subject to subsection (2), be read as evidence on the trial without further proof thereof.

(2) A deposition referred to in —

(a) subsection (1)(a) shall not be read as evidence on the trial without further proof thereof if it is proved that it was not in fact signed by the justices by or before whom it purports to be signed;

(b) subsection (1)(b) shall not be read as evidence on the trial without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a deposition intended to be read as evidence on a trial is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation.

[Section 109 inserted by No. 81 of 1986 s. 13.]

110. Power to take statements of witnesses dangerously ill

If a person dangerously ill and unable to travel is believed to be able to give material and important information relating to an indictable offence, or to a person accused thereof, and it is desirable, in the interests of truth and justice, that means should be provided for perpetuating such testimony and rendering the same available in the event of the death of the person giving the same, the proceedings described in the next section may take place.

111. How statements to be taken

Whenever it is made to appear to the satisfaction of any justice that any such person is dangerously ill and not likely to recover from such illness, and that it is not practicable for any justice to take a deposition, in accordance with the provisions of Part IV, of such person, the justice may take, in writing, the statement on oath or affirmation of such person, and the justice shall thereupon subscribe the same, and add thereto a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and if the same relates to any indictable offence for which any accused person is already committed, shall transmit the same with the said addition to the proper officer of the court for trial at which the accused person has been committed; and in all other cases he shall transmit the same to the magistrate for the district in which he has taken the same, who shall preserve the same and file it of record.

[Section 111 amended by No. 22 of 1968 s. 17; No. 87 of 1982 s. 14.]

112. Depositions, when admissible, in evidence

A statement taken as described in sections 110 and 111 may be read in evidence either for or against the accused upon his trial, if the person who made the same is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, without further proof

thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the same, unless it is proved that any of the requisitions of the Act were not complied with.

113. Prisoner to be present when statement taken

Whenever a prisoner in actual custody has served or received notice of an intention to take a statement as mentioned in sections 110 and 111, a judge or the justice by whom the prisoner was committed, or the visiting justices of the prison in which he is confined may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner or cause him to be conveyed accordingly and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison.

[Heading repealed by No. 53 of 1992 s. 31.]

114. Prosecution may change statement of facts

If under section 100(1) the prosecution serves the defendant with a statement of the material facts relevant to the charge, the prosecution may serve the defendant with an amended statement —

(a) at any time before the defendant is given the opportunity to plead under section 101;

(b) if the defendant has pleaded guilty under section 101 and been committed for sentence — at any time before the defendant is called on to plead before the court to which he or she has been committed for sentence.

[Section 114 inserted by No. 53 of 1992 s. 30.]

*[**115-122.** Repealed by No. 87 of 1982 s. 16.]*

Warrant of deliverance

123. Defendant may be granted bail or kept in custody

On committing the defendant for sentence or trial under this Part, the justices may —

(a) grant the defendant bail under the *Bail Act 1982*; or

(b) by their warrant, order the defendant to be kept in custody,

until the sittings of the court before which the defendant is committed.

[Section 123 inserted by No. 53 of 1992 s. 31.]

Witnesses where committal for trial

124. Recognizance of witnesses, etc.

The justices before whom any witnesses are examined may bind every such witness by recognizance, in such sum as they may think fit, to appear at the court at which the defendant is to be tried, then and there to give evidence against or for the defendant, and shall so bind over all witnesses called for the prosecution if so required by the defendant.

125. Signatures of justices; notice to witnesses

Every such recognizance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the justices before whom it is acknowledged; and a notice thereof, signed by the justices, shall at the same time be given to every person bound thereby.

126. Justices may commit refractory witness

If a witness refuses to enter into such recognizance, the justices may, by warrant, commit him to gaol, there to be safely kept until after the trial of the defendant, unless in the meantime such witness duly enters into such recognizance before a justice.

Provided that, if afterwards, from want of sufficient evidence in that behalf or other cause, the justices before whom the defendant has been brought do not commit him or admit him to bail for the offence with which he is charged, or if the Attorney General or person appointed to present indictments declines to file an information against the defendant for the offence, any justice, upon being duly informed of the fact, may, by his order in that behalf, order and direct the keeper of the gaol where such witness is in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly as to that warrant.

Transmission of depositions, etc.

127. On committal, complaint etc. to be sent to Attorney General

If the defendant is committed for sentence under section 101C or 108, or for trial under section 101C or 107, the justices shall, as soon as possible after the committal, transmit to the Attorney General, or some other person duly appointed to present indictments, the complaint and all statements, depositions, exhibits and recognizances other than any statement of the material facts served under section 100(1) or 114.

[Section 127 inserted by No. 53 of 1992 s. 32.]

128. Duty of Attorney General

The Attorney General, and the person appointed to present indictments shall, respectively, after such transmission and before the day of trial, have and be subject to the same duties and liabilities in respect of the said several documents upon a *certiorari* directed to them respectively, or upon a rule or order directed to them in lieu of that writ, as the justices would have had and been subject to upon a *certiorari* to them if such documents had not been so transmitted.

129. Authority of judge

The Attorney General and the person appointed to present indictments in a district respectively, and any officer prosecuting for the Attorney General shall, at any time after the opening of the court at the sittings or sessions at which the trial is to be held, or the sentence passed, deliver the said documents, or any of them, to the proper officer of the court, if and when the presiding judge so directs.

Recommittal

130. Recommittal in case of error

If in any case a defendant is committed to take his trial or for sentence before a court which has not jurisdiction to try the case or pass sentence upon him, or before which he ought not to be committed to take his trial, or for sentence, or the judge whereof is by reason of interest or otherwise incapacitated from trying the case or passing sentence, the committing justices or any other justices may, at any time before the time appointed for holding such court, direct the defendant and the warrant of commitment, if any, to be brought before them and may, upon production of the depositions and without further evidence, cancel the warrant of commitment, and may commit the defendant afresh to take his trial, or for sentence, before another and the proper court; or if the defendant is brought before the court at the time appointed for holding the same, the court may, notwithstanding such defect of

jurisdiction or incapacity, remand him to take his trial, or for sentence, before another and the proper court.

When a fresh commitment or remand has been so made, the same or any other justices, or such court, may bind the witnesses by fresh recognizance to appear and give evidence at the court to which the defendant is so committed or remanded, and for that purpose may summon and compel the attendance of the witnesses before the justices or the court in the manner hereinbefore provided for compelling the attendance of witnesses to give evidence.

Every direction of justices to bring a defendant before them under this section shall be reduced into writing and signed and have effect as a warrant, and shall be obeyed and carried into effect by all constables, gaolers, and other persons to whom it is directed, according to its tenor.

[Section 130 amended by No. 19 of 1919 s. 9; No. 87 of 1982 s. 17.]

*[**131, 132.** Repealed by No. 119 of 1985 s. 31.]*

*[**133.** Repealed by No. 22 of 1968 s. 22.]*

Part VI — Proceedings in case of simple offences and other matters

Complainant's default

134. Dismissal or adjournment in absence of complainant

Subject to section 136, if, upon the day and at the time and place appointed by the summons for hearing and determining a complaint of a simple offence or other matter, the defendant attends voluntarily in obedience to the summons, or is brought before the justices by virtue of a warrant, and the complainant (having had notice of such day, time, and place) does not appear by himself, his counsel, or solicitor, the justices shall dismiss the complaint, unless for some reason they think proper to adjourn the hearing of the same to some other day, in which case they may adjourn the hearing accordingly, upon such terms as they think fit, and may commit the defendant in the meantime for his appearance at the time and place to which the hearing is so adjourned.

[Section 134 amended by No. 19 of 1919 s. 4; No. 120 of 1981 s. 5; No. 87 of 1982 s. 18.]

Defendant's default

135. Absence of defendant: defendant may notify plea of guilty

(1) Subject to section 136, if, at the time and place appointed by a summons for the hearing and determining of a complaint of a simple offence that is not an indictable offence, the defendant does not appear when called and due service of that summons, within a reasonable time before that appointed for his appearance, is proved as provided by section 56, 56A or 57, the justices may —

(a) proceed to hear and determine the complaint to which that summons relates, in the absence of the defendant; or

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

(i) a summons and, if it is not obeyed, their warrant; or

(ii) their warrant,

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

but if the defendant has by written notification notified the clerk of petty sessions that he wishes to plead guilty to the charge the justices shall, subject to subsection (1a), proceed to hear and determine the complaint as though the defendant were present and pleaded guilty thereto.

(1a) Where a defendant has notified the clerk of petty sessions that he wishes to plead guilty to a charge in the manner referred to in subsection (1) and by further notification received by the clerk before the hearing the defendant or his solicitor intimates to the clerk that the defendant wishes to withdraw the plea then, if the defendant does not appear when called and due service of the summons, within a reasonable time before that appointed for his appearance, is proved as provided by section 56, 56A or 57, the justices may —

(a) proceed to hear and determine the complaint in the absence of the defendant; or

(b) adjourn the hearing of the complaint and may issue their warrant to apprehend the defendant and to bring him before justices to answer the complaint and to be further dealt with according to law.

(1b) For the purposes of this section any notification signed or purporting to be signed by the defendant or by the solicitor of the defendant on his behalf shall be receivable in evidence and shall, unless the contrary is proved, be deemed to have been signed by the defendant or by the solicitor of the defendant on his behalf, as the case requires.

(1c) A summons issued under subsection (1)(b)(i) may be served by post on the defendant.

[(2) and (2a) repealed]

(3) Where a person is apprehended under a warrant issued pursuant to this section, he shall be detained in safe custody, until he can be brought before justices at a time and place of which the complainant has had due notice.

[Section 135 inserted by No. 22 of 1968 s. 23; amended by No. 48 of 1971 s. 3; No. 6 of 1979 s. 4; No. 120 of 1981 s. 4; No. 33 of 1991 s. 5; No. 78 of 1995 s. 61; No. 36 of 1996 s. 38; No. 10 of 1999 s. 6.]

136. Defendant may notify plea of not guilty

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

(a) state —

(i) that he wishes to plead not guilty to that charge; and

(ii) the address for service on him of notices;

and

(b) write his signature,

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

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

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

(a) that clerk of petty sessions or an officer authorised by him in writing for the purpose shall forthwith notify the complainant concerned of that receipt;

(b) it shall not be necessary for the defendant or the complainant or for the witnesses, if any, or the solicitor or counsel, if any, of the defendant or the complainant to appear before the court of petty sessions at that time;

(c) that complaint shall not be heard at that time; and

(d) the justices shall fix a time and place for the hearing and determining of that complaint.

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

(a) appear at that time before the court of petty sessions concerned; and

(b) consent to the hearing and determining of that complaint at that time,

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

(4) The clerk of petty sessions referred to in subsection (2) or an officer authorised by him in writing for the purpose shall, as soon as the justices have fixed under that subsection a time and place for the hearing and determining of the complaint concerned —

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

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

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

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

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

(5) The justices hearing the complaint concerned at the time and place fixed under subsection (2) —

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

(b) may, if the defendant does not appear at that time and place when called and due service of notice referred to in paragraph (a) is proved —

(i) proceed to hear and determine that complaint in the absence of the defendant; or

(ii) adjourn the hearing of that complaint and may issue their warrant to apprehend the defendant and to bring him before justices to answer that complaint and to be dealt with further according to law.

(6) In this section —

"officer" means officer of the court of petty sessions by which the defendant is dealt with under this section.

[Section 136 inserted by No. 120 of 1981 s. 7; amended by No. 78 of 1995 s. 61.]

136AA. Absence of defendant: Court may convict

(1) If —

(a) a complaint has been made or sworn by a person who is a public officer acting in the course of the officer's duties; and

(b) the court, under section 135(1)(a), 135(1a)(a) or 136(5)(b)(i), proceeds to hear and determine the complaint in the absence of the defendant,

the court in doing so may take as proved any allegation in the summons served on the defendant in relation to the complaint.

(2) For the purposes of this section, if a complaint is made or sworn by a person who in the complaint purports to be a public officer, it shall be presumed, in the absence of evidence to the contrary —

(a) that the person is such an officer;

(b) that the complaint was made or sworn by the person acting in the course of his or her duties as such an officer; and

(c) that the person had the authority to make or swear the complaint.

(3) In this section —

"public officer" has the same definition as in section 1 of *The Criminal Code*.

[Section 136AA inserted by No. 10 of 1999 s. 7.]

Decisions given in default of appearance of any party may be set aside

136A. Decisions given in default of appearance of any party may be set aside

(1) Where, after the coming into operation of the *Justices Act Amendment Act 1957* [1], a decision is given by justices pursuant to jurisdiction conferred on them by this Act, but in default of

appearance by the complainant or by the defendant, the party who did not appear may, within 21 days next after the giving of the decision, or within such further period as the court may direct, serve on the clerk of petty sessions of the court in which the decision was given, notice in writing of his intention to apply to the court to set the decision aside, and of the grounds of the application.

(2) On service of the notice referred to in subsection (1) and payment by the applicant of such fee, if any, as is required by or under this Act to be paid, the clerk of petty sessions shall appoint a time and place for the hearing of the application by the court of petty sessions and shall in writing notify the applicant of the time and place.

(3) The applicant shall, within the prescribed time, or, if no time is prescribed, within 3 days after the day on which he serves notice under subsection (1) enter into a recognizance before a court of petty sessions conditioned —

(a) to appear before the court to which the application is made;

(b) to submit to the judgment of that court; and

(c) to pay such costs as that court may award.

(3a) A recognizance referred to in subsection (3) shall be in such sum as the court thinks fit and the court shall where it is constituted by a justice or justices, and may in any other case, in addition require either —

(a) that there be a surety or sureties approved by it; or

(b) that the applicant deposit a sum of money with the clerk of petty sessions by way of security,

for the compliance by the applicant with the conditions of his recognizance.

(3b) On a recognizance being given under subsection (3) execution shall be stayed until the application is disposed of or the court of petty sessions otherwise orders, and the applicant, if then in

custody for non-payment of any sum of money, shall be released upon presentation of the recognizance to the person by whom he is held in custody.

(4) At the time and place appointed by the clerk of petty sessions for the hearing of the application, the court of petty sessions shall, if the applicant does not appear, strike out the application and, if he does appear, proceed to hear the application and may —

(a) refuse the application to set aside the decision; or

(b) adjourn the hearing of the application to a time and place appointed by the court, and direct that the applicant give to the other party written notice of the time and place so appointed by the court and that the other party may, if he thinks fit, then and there appear to oppose the application, and the court may at the time and place appointed by the court set aside the decision in respect of which the application is made on such terms as the court thinks fit, or the court may refuse to set aside the decision; and

(c) in any case, make such order as to costs as the court thinks fit.

(5) If the court to which the application to set aside the decision is made, refuses the application pursuant to subsection (4)(a), or refuses to set aside the decision pursuant to subsection (4)(b), and if the appellant was released from custody on recognizance pending the decision of the application, the court may order the return of the applicant to custody according to the decision in respect of which the application was made.

(5a) If justices set aside the decision, any licence suspension order made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of any fine imposed by the decision is to be taken as having been cancelled as at the time the application under subsection (1) was made.

(6) The provisions of this section are in addition to, and not in derogation of, any of the provisions of Part VIII, which latter provisions, if applicable in the circumstances of the case, may be applied in respect of a decision of justices in respect of an application made under this section.

[Section 136A inserted by No. 9 of 1957 s. 3; amended by No. 22 of 1968 s. 25; No. 17 of 1972 s. 10; No. 87 of 1982 s. 19; No. 69 of 1984 s. 5; No. 33 of 1989 s. 6; No. 92 of 1994 s. 20.]

136B. Proceedings against children

(1) Notwithstanding the provisions of any other Act, where the justices proceed to hear and determine a complaint against a person who is, or at the material time was, under the age of 18 years, in the belief that the person is, or at the material time was, of or over that age, the proceedings are not on that account invalidated, the determination shall, subject to subsection (2), be and remain of full force and effect and anything done pursuant to the determination is lawful.

(2) Where the justices make a determination such as is mentioned in subsection (1), a party to the complaint or the Minister may apply to justices, or if the determination is the subject of an application for leave to appeal under Part VIII, apply to the court or Judge hearing that application for an order setting aside the determination; and the justices, court or Judge shall, if satisfied that the application is well founded, set aside the determination, remit any penalty that may have been imposed and transmit the complaint for hearing and determination to the Children's Court.

[Section 136B inserted by No. 22 of 1968 s. 26; amended by No. 49 of 1988 s. 52; No. 33 of 1989 s. 7.]

Hearing

137. Appearance of both parties

(1) If both the defendant and the complainant appear —

(a) personally; or

(b) by counsel or solicitor,

then the justices may, subject to section 136 and this section, proceed to hear and determine the complaint.

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

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

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

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

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

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

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

(c) pleads not guilty to that charge,

the justices shall not proceed to hear and determine that complaint at the time referred to in paragraph (a) unless the complainant consents thereto.

[Section 137 inserted by No. 120 of 1981 s. 8.]

138. Proceedings at the hearing on defendant's confession

When the defendant is present at the hearing, the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him; and if he has no cause to show, then the justices present at the hearing may convict him, or make an order against him accordingly.

138A. Defendants who will not or do not plead

(1) If a defendant, on being called on to plead to a complaint, will not or does not —

(a) plead in a manner provided in section 138; or

(b) answer directly to the complaint,

the justices shall enter a plea of not guilty on behalf of the defendant unless the defendant is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

(2) A plea so entered has the same effect as if it had been actually pleaded.

[Section 138A inserted by No. 69 of 1996 s. 50.]

139. Where defendant does not admit the case

But if he does not admit the truth of the complaint, then the justices shall proceed to hear the complainant and his witnesses, and also the defendant and his witnesses, and also such witnesses as the complainant may examine in reply, if the defendant has given any evidence other than as to his general character; and the justices, having heard the evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant or dismiss the complaint, as justice may require.

140. Non-appearance of party or parties at adjourned hearing

If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor, the justices then present may proceed to such hearing or further hearing as if such party or parties were present; or if the complainant does not appear the justices may dismiss the complaint with or without costs.

Practice

141. Practice as to examination etc. of witnesses

The practice before justices upon the hearing of a complaint of a simple offence or other matter shall, in respect of the examination and cross-examination of witnesses be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law. But the complainant, his counsel, or solicitor shall not, without the leave of the justices, be entitled to make any observations in reply upon the evidence given by the defendant; nor shall the defendant, his counsel, or solicitor without such leave be entitled to make any observations in reply upon any evidence given by the complainant in reply.

[Section 141 amended by No. 19 of 1919 s. 4.]

Dismissal

142. Dismissal of complaint

If the justices dismiss a complaint, they may, if required so to do, and if they think fit, make an order of dismissal, and give the defendant a certificate thereof, which certificate shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same person.

143. Acquittal on account of unsoundness of mind

(1) If on the hearing of a complaint for an offence the question arises whether the defendant was not criminally responsible for an act or omission on account of unsoundness of mind, the justices shall, if they find the defendant not guilty, make a special finding as to —

(a) whether they found the person not guilty on account of unsoundness of mind at the time of the act or omission; and

(b) if they so acquitted the person, the offence the person was acquitted of.

(2) If justices find a defendant not guilty on account of unsoundness of mind the defendant is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 143 inserted by No. 69 of 1996 s. 51.]

*[**144.** Repealed by No. 92 of 1994 s. 20.]*

*[**145.** Repealed by No. 78 of 1995 s. 61.]*

146. Formal record of conviction not necessary, except for special purposes

(1) It shall not be necessary for justices formally to draw up a conviction or order or any other record of a decision, except on summary conviction for an indictable offence, unless the same is required by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeas corpus* or other writ from the Supreme Court.

(2) Notwithstanding subsection (1) justices shall record their reasons for a decision if required to do so under the *Sentencing Act 1995*.

[Section 146 amended by No. 27 of 1988 s. 6; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61.]

No certiorari

147. No *certiorari*

No conviction or order shall be quashed for want of form, or be removed by *certiorari* or otherwise into the Supreme Court, and no warrant of commitment on a conviction shall be held void by reason of any formal defect therein; provided it is therein alleged that the party had been duly convicted, and there is a good and valid conviction to sustain it.

Party's access to records etc.

[Heading inserted by No. 33 of 1989 s. 8.]

148. Party's right to have copies of records and view exhibits

(1) Where a conviction or order is made, or a complaint is dismissed by justices, any party interested therein is entitled on request —

(a) to receive a copy of —

(i) the complaint;

(ii) the record of proceedings made or caused to be made by the justices;

(iii) any statement of the defendant's convictions that is tendered in the proceedings; and

(iv) the conviction or order,

from the officer who has custody thereof, subject to payment of an amount calculated in such manner as is prescribed by regulations; and

(b) to view any exhibit in the proceedings that is in the possession of an officer of a court and that is not reasonably capable of being copied, at a time and place appointed by that officer.

(2) In subsection (1)(a)(ii) **"the record of proceedings"** means a record of the evidence and proceedings however made whether —

(a) taken personally by the justices;

(b) recorded in any manner by a clerk or typist; or

(c) transcribed from a sound recording,

and includes any record of the reasons for the decision, and a copy of any exhibit that is reasonably capable of being copied.

(3) Nothing in this section shall be read as requiring that in any proceedings —

(a) justices make available any note made for their own purposes and not in discharge of a duty to record; or

(b) a record be made of any address to the court in the proceedings.

[Section 148 inserted by No. 33 of 1989 s. 8.]

*[**149 and heading.** Repealed by No. 78 of 1995 s. 61.]*

150. Sentence

If justices convict a person, whether after a plea of guilty or otherwise, the justices may sentence and make other orders in respect of the offender under the *Sentencing Act 1995*.

[Section 150 inserted by No. 78 of 1995 s. 61.]

*[**150A.** Repealed by No. 78 of 1995 s. 61.]*

Costs

151. Costs on conviction or order

In all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.

152. Costs on dismissal

When justices, instead of convicting or making an order, dismiss the complaint, they may, by their order of dismissal, order that the complainant shall pay to the defendant such costs as to them seem just and reasonable.

153. Costs to be specified in the conviction or order

The sum so allowed for the costs shall, in all cases, be specified in the conviction or order or order of dismissal.

*[**154.** Repealed by No. 92 of 1994 s. 20.]*

Enforcement of recognizances

154A. Enforcing recognizances

(1) If a person bound by —

(a) a recognizance to appear before a court of petty sessions;

(b) a recognizance entered into pursuant to an order made under a written law by a magistrate or a justice; or

(c) a recognizance entered into in respect of any matter cognizable by a court of summary jurisdiction,

fails in any condition of the recognizance, justices may, on the application of the Crown and on the production of the recognizance, order that the recognizance be forfeited and that any person bound by the recognizance (including any surety) pay the amount that he or she is so bound to pay to the Crown.

(2) The amount to be paid must be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(3) Subsection (2) does not prejudice the recovery of the amount as a civil debt due to the Crown.

[Section 154A inserted by No. 78 of 1995 s. 59.]

Enforcing orders to pay money

[Heading inserted by No. 92 of 1994 s. 18.]

155. Enforcing the payment of money, other than fines etc.

(1) In this section —

"payment order" means an order requiring a person to pay money, other than —

(a) a fine as defined in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

(b) compensation to be paid under a compensation order made under Part 16 of the *Sentencing Act 1995*; or

(c) the sum to be paid on the forfeiture of a recognizance under section 154A.

(2) This section applies where justices make a payment order.

(3) If the money is not paid within 28 days after the date of a payment order, the money may be recovered as a judgment debt in a court of competent jurisdiction.

(4) For the purposes of subsection (3), a clerk of petty sessions may issue a certified copy of a payment order and that copy may be registered as a judgment in a court of competent jurisdiction.

(5) Subsection (3) does not prejudice the recovery of the money by means expressly provided by a written law.

[Section 155 inserted by No. 78 of 1995 s. 60.]

*[**155A-155D.** Repealed by No. 109 of 1965 s. 4.]*

*[**156-158.** Repealed by No. 92 of 1994 s. 18.]*

Enforcing other orders

[Heading inserted by No. 92 of 1994 s. 19.]

159. Imprisonment may be ordered

(1) If justices make an order for the doing of an act, other than an order requiring the payment of money or an order under Part VII, they may direct that if the defendant contravenes the order, the defendant is to be imprisoned for a period set by the justices.

(2) If a defendant contravenes an order made under subsection (1), the justices who made the order, or another justice, may issue a warrant of commitment accordingly.

[Section 159 inserted by No. 92 of 1994 s. 19.]

*[**160-165A and headings.** Repealed by No. 92 of 1994 s. 19.]*

*[**166 and heading, 166A, 166B.** Repealed by No. 78 of 1995 s. 61.]*

*[**167, 168 and heading**. Repealed by No. 92 of 1994 s. 20.]*

*[**169.** Repealed by No. 22 of 1968 s. 33.]*

*[**170 and heading, 171.** Repealed by No. 78 of 1995 s. 61.]*

[Parts VIAA, VIBA and VIA repealed by No. 92 of 1994 s. 20.]

[Parts VII and VIIA repealed by No. 19 of 1997 s. 80(2).]

Part VIII — Appeals

Definitions

[Headings inserted by No. 33 of 1989 s. 15.]

183. Definitions

In this Part unless the contrary intention appears —

"clerk of petty sessions" means the clerk of petty sessions at the place of sitting at which the decision subject to appeal was given;

"Court" means the Supreme Court constituted by one Judge and, where the Full Court has jurisdiction under this Part, includes the Full Court;

"Full Court" has the meaning assigned to it by section 4 of the *Supreme Court Act 1935*;

"legal practitioner" means a practitioner within the meaning of the *Legal Practitioners Act 1893*;

"Registrar" has the meaning assigned to it by section 4 of the *Supreme Court Act 1935*.

[Section 183 inserted by No. 33 of 1989 s. 16.]

Right of appeal by leave

[Heading inserted by No. 33 of 1989 s. 16.]

184. Right of appeal

(1) Subject to any other Act —

(a) an appeal lies to the Court, by leave as provided in this Part, from a decision of justices; but

(b) otherwise there is no appeal from such a decision.

(2) A decision that is declared by an Act to be final may not be the subject of an appeal under this Part.

(3) A decision by justices to commit a defendant for trial may not be the subject of an appeal under this Part.

[Section 184 inserted by No. 33 of 1989 s. 16; amended by No. 36 of 1996 s. 39.]

185. Application for leave

(1) An application for leave to appeal may be made to a Judge in chambers or in Court.

(2) The application may be made by —

(a) any person who is aggrieved by the decision; or

(b) the Attorney General,

or by each of them, and shall be made *ex parte* unless the Judge orders that the application be served on any person.

(3) One application for leave to appeal may be made in respect of 2 or more decisions given at the same hearing, and the appeals for which leave is granted on any such application shall be consolidated unless, or except to the extent that, the Court otherwise orders.

[Section 185 inserted by No. 33 of 1989 s. 16.]

186. Grounds

(1) An application for leave to appeal may only be made on a ground or grounds coming within the following —

(a) that the justices —

(i) made an error of law or fact, or of both law and fact;

(ii) acted without or in excess of jurisdiction;

(iii) imposed a sentence that was inadequate or excessive;

(b) that there is some other reason that is sufficient to justify a review of the decision.

(2) An application may be made for leave to appeal against a decision notwithstanding that the decision was made following a plea of guilty or an admission of the truth of any matter.

[Section 186 inserted by No. 33 of 1989 s. 16; amended by No. 78 of 1995 s. 61.]

Determination of application for leave

[Heading inserted by No. 33 of 1989 s. 16.]

187. Grant or refusal of leave

(1) The Judge shall grant leave to appeal unless he considers that the appeal is frivolous or vexatious or that the grounds of appeal advanced do not disclose an arguable case.

(2) Where an application for leave to appeal against a decision is made by the Attorney General and by another person, the Judge may determine both applications at the same time.

(3) An order granting leave to appeal shall specify that the appeal is to be heard by either —

(a) the Court constituted by one Judge; or

(b) the Full Court.

(4) An order granting leave to appeal shall show the ground or grounds of the appeal and, subject to section 192, the appeal shall not be heard or determined on any ground that is not shown in the order.

(5) In determining an application for leave to appeal the Judge may inform himself in such manner as he thinks fit.

[Section 187 inserted by No. 33 of 1989 s. 16.]

188. Ancillary orders and directions

(1) Where leave to appeal is granted —

(a) the Judge who makes the order granting leave shall include in the order a time within which the appeal shall

be entered for hearing, and may include in the order such directions and further orders as he thinks fit for the purpose of facilitating the hearing or disposition of the appeal;

(b) any Judge may subsequently give any direction or make any further order of the kind referred to in paragraph (a), or may vary or revoke any previous direction or order under this section.

(2) Where leave to appeal against a decision is granted to the Attorney General and to another person, an order may be made under subsection (1) directing that the appeals shall be heard together.

[Section 188 inserted by No. 33 of 1989 s. 16.]

189. Appeal against refusal of leave, etc.

(1) An appeal lies to the Full Court against the refusal of a Judge —

(a) to grant leave to appeal; or

(b) to grant leave to appeal on any ground specified in section 186.

(2) Section 193 applies, with all necessary changes, where the Full Court grants leave to appeal under this section as if references in that section to "the Judge" and "any Judge" were references to the Full Court.

[Section 189 inserted by No. 33 of 1989 s. 16.]

190. Application for leave and appeal may be heard together

(1) Where an application for leave to appeal is granted, the appeal may be determined at the same time as the application if —

(a) it is in the interests of justice to do so; and

(b) sufficient notice that the appeal may be so determined has been given to such persons as, in the opinion of the Judge or Court, ought to have such notice.

(2) Subsection (1) applies to a Judge acting under section 187 or the Full Court hearing an appeal under section 189.

[Section 190 inserted by No. 33 of 1989 s. 16.]

191. Notice to other parties

Except where section 190 applies, the appellant shall give notice of the appeal to —

(a) the other party or other parties to the proceedings before the justices; and

(b) any other person to whom the Judge may direct that notice be given.

[Section 191 inserted by No. 33 of 1989 s. 16.]

192. Amendment of grounds of appeal

The Court may, on such terms and conditions as it thinks fit —

(a) on application made by the appellant before the hearing of the appeal; or

(b) on the hearing of the appeal,

amend or add to, or grant leave to the appellant to amend or add to, the grounds of the appeal.

[Section 192 inserted by No. 33 of 1989 s. 16.]

Sentence pending disposal of appeal

[Heading inserted by No. 33 of 1989 s. 16.]

193. Judge may make order as to stay of execution

(1) On granting leave to appeal, the Judge may make any order that he thinks fit touching the stay or continuation in effect of any sentence imposed or order made by the justices, or of any statutory consequence of the decision that is subject to appeal.

(2) Any Judge may subsequently make any order of the kind referred to in subsection (1) or may vary or revoke any previous order under this section.

(3) The provisions of an order under this section have effect notwithstanding anything in section 194.

(3a) If leave to appeal is granted in respect of a decision involving or giving rise to the imposition of a fine (as defined in section 28(1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*), an order under this section is not to be made.

(4) Notwithstanding subsections (1) and (2), where an appellant or respondent is in custody, his sentence of imprisonment shall not be stayed unless he is granted bail under the *Bail Act 1982* and he shall not be released from custody until he becomes entitled to be released under that Act.

[Section 193 inserted by No. 33 of 1989 s. 16; amended by No. 78 of 1995 s. 61; No. 8 of 1996 s. 11.]

194. General provisions as to stay of execution

(1) Subject to any order under section 193, the provisions of subsections (2), (3), (4) and (5) have effect on the granting of leave to appeal.

(2) After notice is received by the clerk of petty sessions that leave to appeal has been granted in respect of a decision, no warrant or order to enforce the decision shall be issued, and no action to enforce the decision shall be taken, under this Act until the appeal is disposed of.

(3) (a) Any disqualification from holding or obtaining a licence to drive a vehicle under the *Road Traffic Act 1974*, or under Part 15 of the *Sentencing Act 1995*, in respect of a conviction that is the subject of an appeal is suspended until the appeal is disposed of.

(b) Any period during which the disqualification is so suspended shall not be taken into account in determining the period of the disqualification.

(4) Subject to subsection (5) and section 101B of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, any sentence imposed, or any other order made, under the *Sentencing Act 1995*, the *Young Offenders Act 1994*, or any other law, is suspended until the appeal is disposed of.

(5) Subsection (4) does not apply to —

(a) a sentence of imprisonment, whether or not it is suspended under Part 11 or is indefinite imprisonment imposed under Part 14, of the *Sentencing Act 1995*;

(b) a sentence of detention under the *Young Offenders Act 1994*; and

(c) an order of forfeiture.

(6) In this section **"disposed of "** means determined, dismissed or discontinued.

[Section 194 inserted by No. 33 of 1989 s. 16; amended by No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 8 of 1996 s. 12; No. 29 of 1998 s. 9.]

195. Revival of sentence or order on disposition of appeal

Upon the determination, dismissal or discontinuance of an appeal, any thing the doing or operation of which is suspended under section 193 or 194 has effect, but subject to any order of the Court.

[Section 195 inserted by No. 33 of 1989 s. 16.]

Determination of appeal

[Heading inserted by No. 33 of 1989 s. 16.]

196. Evidence

(1) The Court shall determine the appeal —

(a) on the material that was before the justices; and

(b) on such further evidence either oral or by affidavit as the Court thinks fit to receive.

(2) For the purposes of subsection (1) the Court may ascertain what material was before the justices on such evidence, statement or record of what occurred before the justices as the Court considers sufficient.

[Section 196 inserted by No. 33 of 1989 s. 16.]

197. Unrepresented person may present case in writing

A party to an appeal who is not represented by a legal practitioner is entitled to present his case in writing instead of orally.

[Section 197 inserted by No. 33 of 1989 s. 16.]

198. Presence at appeal of party in custody

(1) At the hearing of, or at any proceedings relating to, an appeal, a party to the appeal who is in custody is entitled —

(a) to be present if he is not represented by a legal practitioner; or

(b) if he is so represented, to be present if the Court so orders.

(2) Where it appears to the person for the time being in charge of any prison that a person in his custody is entitled to be present at any proceedings referred to in subsection (1) he shall cause that person to be taken to the Court.

[Section 198 inserted by No. 33 of 1989 s. 16.]

199. Powers of Court

(1) Upon the hearing of an appeal, the Court may do one or more of the following —

(a) dismiss the appeal, or set aside, quash or vary the decision of the justices and any order made or thing done as a result of the decision;

(b) dismiss the appeal notwithstanding that any point raised on the appeal might be decided in favour of the

appellant, if it considers that no substantial miscarriage of justice has occurred;

(c) substitute a decision that ought to have been made by the justices;

(d) remit the case for rehearing by justices or specified justices or a magistrate or a specified magistrate, with or without any direction to him or them;

(e) refer the case for hearing and determination by the Full Court;

(f) exercise any power that the Court may exercise on an application for *certiorari*, *mandamus*, prohibition or *habeas corpus*;

(g) make such other order as it thinks fit, including an order as to costs.

(2) Nothing in subsection (1) shall affect the powers of the Court under section 136B(2).

(3) The Court is not required to set aside, quash or vary a decision of any justices because the justices omitted to make any necessary finding if the facts or evidence —

(a) in substance support the decision; or

(b) justify the finding,

and the Court may instead under subsection (1) either vary the decision or substitute another decision for it.

(4) The Court may also vary the decision of justices or substitute another decision for it where, in a conviction, there is some excess which may, consistently with the merits of the case, be corrected.

(5) Upon the hearing of an appeal against sentence the Court may have regard to whether or not the appellant or a convicted person has failed wholly or partly to fulfil an undertaking to assist law enforcement authorities that caused the sentencing court to reduce the sentence that it would otherwise have passed.

[Section 199 inserted by No. 33 of 1989 s. 16; amended by No. 29 of 1998 s. 10.]

200. Enforcement

(1) The decision of the Court, or the decision of the justices as varied by the Court, other than a decision under section 199(1)(d), (e) or (f), shall take effect as if it were the decision of the justices, and may be enforced accordingly.

(2) Upon the determination, dismissal or discontinuance of an appeal, any warrant or other process that was suspended under section 193 or 194 has effect, subject to any order of the Court.

(3) Nothing in subsection (2) limits the operation of section 203(3).

(4) If the appeal is dismissed by the Court, any justice may, subject to section 27, issue any warrant that may be necessary to enforce or give effect to the decision.

(5) The Court may issue any warrant or process that may be necessary to give effect to its decision.

(6) Justices or a magistrate may take all such steps as are necessary to give effect to any decision of the Court of a kind mentioned in section 199(1)(d).

[Section 200 inserted by No. 33 of 1989 s. 16.]

201. Want of form

(1) Notwithstanding anything in section 186, no decision of, or proceedings before, any justices, nor any document in such proceedings, shall be held to be bad for want of form.

(2) Without limiting subsection (1), a person may not appeal against a decision on the ground that there was no complaint or summons, or any amendment thereof, if he was present at the hearing at which the decision was made and did not then make an objection on that ground.

[Section 201 inserted by No. 33 of 1989 s. 16.]

202. Notification of result of appeal to clerk of petty sessions

(1) The Registrar shall send a memorandum of the determination of the Court on an appeal, or of the dismissal of an appeal under section 205, to the clerk of petty sessions.

(2) A copy of the memorandum shall be entered in the records of the clerk of petty sessions and shall be sufficient evidence of the matters stated therein.

[Section 202 inserted by No. 33 of 1989 s. 16.]

203. Notification relating to sentence of imprisonment

(1) Where the Court in determining an appeal —

(a) quashes a sentence of imprisonment;

(b) varies a sentence of imprisonment, or amends a conviction in respect of which a sentence of imprisonment was imposed; or

(c) confirms a sentence of imprisonment,

the Registrar shall send to the person in charge of the prison in which the person sentenced is in custody, or if he is at liberty on bail would be in custody, a memorandum setting out the result of the appeal.

(2) Where the Court has quashed a sentence of imprisonment imposed on a person and has not imposed another sentence of imprisonment on him, he shall be released by the person in charge of the prison on receipt of a memorandum under subsection (1) unless the person is required to be in custody for some other matter.

(3) Where subsection (1)(b) applies, the warrant of the justices has effect as if it were amended in accordance with the memorandum.

(4) A copy of the memorandum shall be entered in the records of the person in charge of the prison and shall be sufficient evidence of the matters stated therein.

[Section 203 inserted by No. 33 of 1989 s. 16; amended by No. 47 of 1999 s. 20.]

Discontinuance and abandonment of appeal

[Heading inserted by No. 33 of 1989 s. 16.]

204. Discontinuance of appeal

(1) An appellant may at any time discontinue an appeal by giving notice of discontinuance to the Court and serving a copy of the notice on the other parties to the appeal and on the clerk of petty sessions.

(2) A party on whom a notice of discontinuance is served may within 60 days after service apply to the Court for an order as to costs or as to any other matter relating to the discontinued appeal, and the Court may make such order as to costs or otherwise as it thinks fit.

(3) The Court may issue any warrant that may be necessary as a result of the discontinuance of the appeal.

[Section 204 inserted by No. 33 of 1989 s. 16.]

205. Dismissal for want of prosecution

(1) If the appellant is in default in entering the appeal for hearing within the required time or taking any necessary step in connection therewith, the Attorney General or any party to the appeal may apply to the Court by summons served on the appellant for an order dismissing the appeal.

(2) If the appellant does not appear, either personally or by a legal practitioner, at the hearing of the appeal, or if the Court is satisfied on an application under subsection (1) that the appellant is in default as mentioned in that subsection, the Court may do one or more of the following —

(a) dismiss the appeal;

(b) require the appellant to take any specified step within a specified time, and dismiss the appeal if he fails to comply with that requirement;

(c) require the appellant to pay costs;

(d) make such other order as the Court thinks fit.

(3) The Court may issue any warrant that may be necessary as a result of the dismissal of the appeal.

(4) An application by way of summons under subsection (1) may be heard and determined in the absence of the appellant if it is proved that he was served with the summons.

[Section 205 inserted by No. 33 of 1989 s. 16.]

206. Application for re-instatement of appeal

(1) Where an appeal is dismissed under section 205 in the absence of the appellant, he may apply to a Judge in chambers for an order re-instating the appeal.

(2) The Judge shall make an order re-instating the appeal only if he is satisfied that there was reasonable cause for the failure of the applicant to appear at the hearing of the appeal or the application under section 205(1), as the case may be.

(3) Sections 190, 191, 193, 194 and 195 shall with all necessary changes apply —

(a) to an application for, or order of, re-instatement under this section; and

(b) upon the making of the application or order,

as if they were respectively an application for leave to appeal and an order granting leave to appeal.

[Section 206 inserted by No. 33 of 1989 s. 16.]

Appeal to Full Court

[Heading inserted by No. 33 of 1989 s. 16.]

206A. Appeal to Full Court

(1) Subject to any other Act, an appeal lies to the Full Court, by leave as provided in this section, from a decision under section 199, 205 or 206C of the Court constituted by one Judge.

(2) An application for leave to appeal may be made by —

(a) a party to an appeal; or

(b) the Attorney General.

(3) The application may be made —

(a) in chambers or in court, to the Judge who constituted the Court; or

(b) to the Full Court.

(4) Subject to this section, the provisions of this Part (other than section 186) and the relevant rules of court apply, with all necessary changes, to —

(a) an application for, and an order granting, leave under this section;

(b) proceedings relating to the application and the appeal;

(c) the discontinuance, failure to prosecute, or re-instatement of the appeal;

(d) the disposition of the appeal; and

(e) the consequences thereof,

as if they were respectively —

(f) an application for leave under section 185 and an order granting leave to appeal under section 187;

(g) proceedings relating to such an application and appeal;

(h) the discontinuance, failure to prosecute or re-instatement of such an appeal;

(i) the disposition of such an appeal; and

(j) the consequences thereof.

(5) Without limiting subsection (4), in the application of section 193(1) to a grant of leave to appeal under this section, the reference in that subsection to "the justices" shall be read as a reference to "the Court".

(6) In subsection (2) **"party to an appeal"** includes, where an application has been made under section 206C to extend or shorten the time allowed under rules of court for filing an appeal under this Part, a person who is aggrieved by a decision on that application.

[Section 206A inserted by No. 33 of 1989 s. 16.]

General

[Heading inserted by No. 33 of 1989 s. 16.]

206B. Retention of exhibits

(1) Any exhibit in proceedings before —

(a) justices; or

(b) the Court in respect of an appeal for which leave is granted under section 187,

shall, unless otherwise ordered by the Court, be retained by the clerk of petty sessions or the Registrar, as the case may require, for not less than 31 days after the day on which any decision is given in those proceedings.

(2) Where a notice is received by the clerk of petty sessions that leave to appeal has been granted in respect of any decision, he shall continue to retain any exhibit until he is required to send the exhibit to the Court for the purposes of the appeal or until the appeal is determined, dismissed or discontinued.

(3) If an appeal is brought under section 189 or an application for leave to appeal is made under section 206A, the Registrar shall

continue to retain any exhibit until the matter is determined, dismissed or discontinued.

(4) In addition to the requirements of subsections (1), (2) and (3) the clerk of petty sessions or the Registrar, as the case may require, shall, unless otherwise ordered by the Court, retain any exhibit until the time allowed for filing any appeal under section 189 or application under section 206A has expired.

(5) Notwithstanding anything in this section, a justice, the clerk of petty sessions or the Registrar may —

(a) hand over any exhibit to a person who in his opinion is entitled to custody of it if he considers that —

(i) it is dangerous, impracticable or inconvenient for it to be retained under this section; or

(ii) it is necessary for that person to have the use of the exhibit;

(b) otherwise dispose of any exhibit that comes within paragraph (a)(i) but that is not handed over to a person under paragraph (a);

(c) require a person as a condition of any delivery to him under paragraph (a) to give an undertaking in writing to the clerk or the Registrar as to the care, maintenance and custody of the exhibit and its re-delivery to the clerk or to the Court.

(6) A person who, without reasonable excuse, fails to carry out an undertaking given to the clerk of petty sessions or the Registrar commits a contempt of the Supreme Court.

[Section 206B inserted by No. 33 of 1989 s. 16.]

206C. Time may be extended or shortened

(1) The Court may, on such terms as it thinks fit, extend or shorten the time allowed under this Part or by rules of court for doing any act.

(2) An application under subsection (1) shall be made *ex parte* unless it is ordered that the application be served on any person.

[Section 206C inserted by No. 33 of 1989 s. 16.]

206D. Orders for costs

Where the Attorney General is an appellant and costs are ordered to be paid by him to another person, such costs are not recoverable from the Attorney General; but the Registrar shall give to that person a certificate sealed with the seal of the Court showing the amount of such costs and the person may recover the amount shown in the certificate as a debt due by the Crown.

[Section 206D inserted by No. 33 of 1989 s. 16.]

206E. Enforcement of order for costs

(1) Subject to subsection (3), if any costs ordered under this Part to be paid by a party are not paid, the Registrar shall, upon application made by the party entitled to such costs, grant to him a certificate specifying the amount of such costs and certifying that such costs have not been paid.

(2) Upon production of a certificate under subsection (1) to a justice, the payment of the costs may be enforced in the same manner as is provided for enforcing the payment of costs awarded by justices, but without prejudice to any other method of enforcement.

(3) Where an application for leave to appeal or an appeal relates wholly or partly to an order made by justices for the payment of money on account of any of the matters specified in the Eighth Schedule, an order for payment of costs in connection with the application or the appeal shall not be enforceable under this section.

[Section 206E inserted by No. 33 of 1989 s. 16.]

*[**206F-206I.** Repealed by No. 33 of 1989 s. 16.]*

Habeas corpus

207. Control of Supreme Court over summary convictions

No person brought before the Supreme Court, or a Judge thereof, on *habeas corpus* shall be discharged from custody by reason of any defect or error in a warrant of commitment of any justices exercising a summary jurisdiction, unless such justices, or one of them, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for such discharge. Such notice shall require them to transmit or cause to be transmitted to the Court or Judge the conviction or order, if any, on which the commitment was founded, together with the depositions and complaint, if any, intended to be relied on in support of such conviction or order, or certified copies thereof.

208. Amendment

If any such conviction or order, complaint, and depositions, or certified copies, are so transmitted, and the offence charged or intended to be charged thereby appears to have been established, and the judgment of the justices thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the justices, the Court or Judge shall allow the warrant of commitment, and the conviction or order, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to his former custody.

209. Notice dispensed with

The notice hereby prescribed may be given either before or after the issue of the writ of *habeas corpus*: Provided that when the copies of the conviction or order and depositions are produced at the time of applying for the writ, the Court or Judge may dispense with such notice.

*[**210.** Repealed by No. 87 of 1982 s. 26.]*

*[**211-214.** Repealed by No. 33 of 1989 s. 17.]*

Service of notices

215. Service by or upon solicitor acting for party

Where a party acts or is represented by a solicitor, any document, notice, or proceeding required under this Part to be served by or upon such party may be served by or upon such solicitor, and service of any such document, notice, or proceeding upon such solicitor or delivery of the same at his office or sending the same to him properly addressed by post prepaid shall be deemed to be good service upon the party whom such solicitor represents, or for whom he acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered.

[Section 215 inserted by No. 19 of 1919 s. 22-3.]

*[**216.** Repealed by No. 33 of 1989 s. 17.]*

*[**217.** Repealed by No. 87 of 1982 s. 28.]*

*[**218.** Repealed by No. 33 of 1989 s. 17.]*

Costs

219. No order for costs to be made against justices or police officers

No costs shall be allowed against any justice or police officer in respect or by reason of any appeal under this Act, or of any proceeding in the Supreme Court in its control over summary convictions.

Provided that where, on an appeal brought by a police officer, the decision appealed against is confirmed, or, if not confirmed, has involved, in the opinion of the Court or Judge hearing the appeal, a point of law of exceptional public importance, costs may be allowed to the respondent. Such costs shall not be recoverable from the police officer, but the Registrar of the

Supreme Court shall, in any case where costs are so allowed, give to the respondent a certificate sealed with the seal of the Supreme Court showing the amount of such costs, and, on production of the certificate to the Treasurer, the respondent shall be paid such amount which shall be charged to the Consolidated Fund.

[Section 219 amended by No. 29 of 1948 s. 12; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

*[**220, 221.** Repealed by No. 33 of 1989 s. 17.]*

Part IX — Protection of justices in the execution of their office

Where action lies against justices

222. Justice sued for act not within his jurisdiction

No action shall be maintainable against any justice for any act done under any conviction or order made or warrant issued by a justice in any matter of which by law he has not jurisdiction or in which he has exceeded his jurisdiction until after the conviction or order has been quashed or set aside upon appeal.

Nor shall any such action be maintainable for anything done under any such warrant which was issued by the justice to procure the appearance of the person charged, and which has been followed by a conviction or order in the same matter, until after such conviction or order has been so quashed or set aside.

If such last-mentioned warrant has not been followed by a conviction or order, or if it is a warrant upon a complaint of an alleged indictable offence, then if a summons issued previously to the warrant being issued, and such summons was served upon the person charged either personally or by leaving the same for him with some person at his last known place of abode, and he did not appear according to the exigency of the summons, in such case no action shall be maintainable against the justice for anything done under such warrant.

223. Warrant by one justice upon an order of another

When a conviction or order is made by one or more justice or justices, and a warrant of commitment is granted thereon by some other justice *bona fide* and without collusion, no action shall be maintainable against the justice who granted such warrant, by reason of any defect in the conviction or order, or for any want of jurisdiction in the justice or justices who made

the same, but the action (if any) shall be brought against the justice or justices who made the conviction or order.

[Section 223 amended by No. 92 of 1994 s. 20.]

224. No action for acts done under order of Supreme Court

When a justice does an act in obedience to an order of the Supreme Court or a Judge thereof, no action shall be maintainable against him for obeying such order and doing the act thereby required.

225. No action where proceeding confirmed on appeal

When a warrant of commitment is granted by a justice upon a conviction or order which either before or after the granting of the warrant is confirmed upon appeal, no action shall be maintainable against the justice who granted such warrant for anything done under it by reason of any defect in such conviction or order.

[Section 225 amended by No. 92 of 1994 s. 20.]

226. Proceedings may be stayed or set aside

If an action is brought against a justice which by this Act is declared to be not maintainable, a Judge of the court in which the action is brought, upon application of the defendant and upon affidavit of the facts, may set aside or stay the proceedings in such action with or without costs.

*[**227-229.** Repealed by No. 73 of 1954 s. 5.]*

Statement of claim and plaint

230. Liability of justices

In an action against a justice for any act done by him in the execution of his duty as such justice, it must be expressly alleged in the statement of claim or plaint that the act was done maliciously and without reasonable and probable cause, and if

such allegations are denied, and at the trial of the action the plaintiff fails to prove them, judgment shall be given for the defendant with costs.

*[**231.** Repealed by No. 73 of 1954 s. 5]*

Damages

232. Damages against a justice where guilt or liability of plaintiff if proved

When the plaintiff in an action against a justice is entitled to recover, and he proves the levying or payment of any penalty or sum of money under a conviction or order as parcel of the damages which he seeks to recover, or proves that he was imprisoned under such conviction or order, and seeks to recover damages in respect of such levying or payment or imprisonment, then, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and, in case of imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum which he was so ordered to pay, he shall not be entitled to recover the amount of the penalty or sum so levied or paid, or any sum beyond the sum of one cent as damages for such imprisonment, or any costs of suit whatsoever.

[Section 232 amended by No. 113 of 1965 s. 4(1).]

Part X — Maintenance and destruction of court records

[Heading inserted by No. 17 of 1972 s. 16.]

233. Interpretation

In this Part —

"charge sheet" means book or document containing, in relation to a complaint, an official record of —

(a) the name of the defendant;

(b) the particulars of the offence with which the defendant was charged; and

(c) the determination of the complaint,

whether or not that book or document also contains any other matter relating to the complaint;

"court record" means official record of any proceedings in any court of petty sessions and includes any document filed in the court, or in the custody of the court, in relation to the proceedings;

"document", **"negative"** and **"reproduction"** have the same respective meanings as they have in and for the purposes of sections 73A to 73V, inclusive, of the *Evidence Act 1906*;

"official record" includes —

(a) any document, book, plan, paper, photograph or parchment; or

(b) any material (other than material referred to in paragraph (a)) or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them,

made or received by a court of petty sessions or person acting judicially under this Act.

[Section 233 inserted by No. 17 of 1972 s. 16; amended by No. 124 of 1982 s. 2.]

233A. Application of Part X

This Part shall not be construed so as to derogate in any way from the *Library Board of Western Australia Act 1951*.

[Section 233A inserted by No. 124 of 1982 s. 3.]

234. Negatives of court records

A negative of a court record may be made at any time to be held by or on behalf of the court.

[Section 234 inserted by No. 17 of 1972 s. 16.]

235. Destruction of court records generally

Subject to sections 233A, 236 and 236A, a court record —

(a) which is a charge sheet may be destroyed after the expiration of 53 years; or

(b) which is not a charge sheet may be destroyed after the expiration of 15 years,

from the time when it became such a court record.

[Section 235 inserted by No. 124 of 1982 s. 4.]

236. Destruction of court records when negatives held

Subject to sections 233A and 236A —

(a) a court record may, if a negative thereof is held by or on behalf of the court of petty sessions concerned, be destroyed at any time after the expiration of 3 years from the time when it became a court record; and

(b) a negative referred to in paragraph (a) shall be held by or on behalf of the court of petty sessions concerned until —

(i) in the case of a negative of a charge sheet, the expiration of 53 years from the time when the charge sheet; or

(ii) in the case of a negative of a court record which is not a charge sheet, the expiration of 15 years from the time when that court record,

became a court record.

[Section 236 inserted by No. 124 of 1982 s. 4.]

236A. Preservation orders

(1) A clerk of petty sessions may, of his own motion or on the application of the complainant or defendant or any other person interested in any proceedings in the court of petty sessions concerned, which proceedings have not yet been completed —

(a) order in writing that all or any of the court records relating to those proceedings be preserved from destruction for a period of one year; and

(b) from time to time renew in writing for a period of one year an order made under this subsection.

(2) A person shall not destroy a court record to which an order made or renewed under subsection (1) relates while that order is in force.

Penalty: $100.

[Section 236A inserted by No. 124 of 1982 s. 4.]

237. Evidentiary provision

For the purposes of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the court, the negative is deemed to be the court record and shall be treated as such by any court of petty sessions, and any other court, without any enquiry as to whether or not the court record has been destroyed.

[Section 237 inserted by No. 17 of 1972 s. 16.]

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

Second Schedule

[s. 6]

Elizabeth the Second, by the Grace of God, etc.

To A.B. . . . of . . .

C.D. . . . of . . .

etc.

First Assignment. — Know ye, that We have assigned you, and each and every of you, to be Our justices to keep Our peace in [the . . . magisterial district in] Our State of Western Australia [and its dependencies], either alone or with any one or more of Our justices that hereafter shall be appointed in Our said State and its dependencies [or the said district], and to keep and to cause to be kept all laws, for the preservation of the peace, and for the quiet rule and good government of Our people, in Our said State and its dependencies [or the said district] according to the form and effect of the same, and to punish all persons offending against them, or any of them, in the said State and its dependencies [or the said district], as by the said laws is provided, and to cause to come before you all persons within Our said State and its dependencies [or the said district] who use threats to any of Our people, to find security for keeping the peace or for their good behaviour towards Us and Our people: And if they refuse to find such security, then to cause them to be safely kept until they find such security:

Second Assignment. — We have also assigned you, and each and every of you, either alone or with any one or more of such justices to be appointed as aforesaid, to inquire the truth concerning all manner of crimes, misdemeanours, and offences, concerning which Our Justices of the Peace may lawfully or ought to inquire, by whomsoever and in what manner soever done, perpetrated, or attempted in Our said State and its dependencies [or the said district]: And upon all complaints before you to issue such process against the persons charged until they are taken or surrender themselves, as may by law be issued.

Third Assignment. — We have also assigned you, and each and every of you, either alone or with any one or more of such justices to be appointed as aforesaid, to have, exercise, and discharge all other the powers, authorities, and duties which under or by virtue of any law of Our Realm or of Our said State belong or appertain to the office of Justices of the Peace in or for Our said State.

And therefore We command you and each and every of you that you diligently apply yourselves to keep and cause to be kept the peace and all laws of Our Realm and of Our said State, and that at certain days and places duly appointed for these purposes, you make inquiries into the premises and hear and determine all and singular the matters aforesaid, and perform and fulfil the duties aforesaid, doing therein what is just according to the laws of Our Realm and of Our said State: And we command Our sheriff and other officers of Our said State to aid you by all lawful means in the performance and due execution of the premises.

In testimony whereof, We have caused these Our Letters to be made Patent, and the seal of Our said State to be hereunto affixed.

Witness Our Trusty and Well-beloved, etc., etc., etc., Governor, etc., at . . . this day of . . . 20 .

[Second Schedule amended by No. 73 of 1994 s. 4.]

Third Schedule

[S. 16]

Oath of allegiance

I, A.B., do *sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia and Her other Realms and Territories. So help me God!

Oath of office

I, A.B., do *sincerely promise and swear that as a Justice of the Peace I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the laws and statutes of the Realm and of this State to the best of my knowledge and ability, without fear, favour, or affection. So help me God!

* In the case of an affirmation in lieu of oath, substitute "solemnly and sincerely promise and affirm" for "sincerely promise and swear". Omit, in the case of affirmation in lieu of oath.

[Fourth and Fifth Schedules repealed by No. 53 of 1992 s. 17(3) and (4).]

[Sixth Schedule repealed by No. 53 of 1992 s. 24.]

[Seventh Schedule repealed by No. 22 of 1968 s. 39.]

[Eighth Schedule repealed by No. 92 of 1994 s. 20.]

Ninth Schedule

[S. 101A]

[Parts A and B deleted by No. 53 of 1992 s. 33.]

[Heading to former Part C deleted by No. 53 of 1992 s. 33.]

For the purposes of section 101A(1) the prescribed words are —

The hearing is going to be adjourned to enable the prosecution to make available to you copies of statements of its witnesses. With these you will be given a copy or description of any documents or other exhibits intended to be produced by the prosecution at your trial. The statements and any other papers will be served on you or your solicitor at least 4 days before the resumption of the hearing. When the hearing is resumed the prosecution may call witnesses to give oral evidence. If it does, that evidence will be recorded in depositions and you will be provided with copies, and given an opportunity to consider them. You will then be asked to elect whether or not you require a preliminary hearing.

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

You yourself will not be required to say anything or give evidence at the preliminary hearing, though you may do so but whatever you say will be taken down in writing and may be given in evidence at your trial. You may also call witnesses to give oral evidence and, if the conditions mentioned in section 69(2) of the *Justices Act 1902* are complied with, you may tender written statements in evidence. Such parts of those statements as are admissible in evidence shall be read aloud.

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

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

The hearing will now be adjourned for . . . days.

Remand/Bail.

[Ninth Schedule inserted by No. 33 of 1976 s. 16; amended by No. 53 of 1992 s. 33; No. 71 of 2000 s. 38.]

Notes

[1] This reprint is a compilation as at 8 October 2001 of the *Justices Act 1902* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Justices Act 1902	11 of 1902	18 Nov 1902	1 Jan 1903 (see s. 3)
Amending Regulations in *Gazette* 9 Oct 1914 p. 4140			9 Oct 1914
Justices Act Amendment Act 1919	19 of 1919	28 Oct 1919	28 Oct 1919
Justices Act Amendment Act 1920	28 of 1920	31 Dec 1920	31 Dec 1920
Reprint of the *Justices Act 1902* in Appendix to Session Volume 1920 (includes amendments listed above)			
Justices Act Amendment Act 1926	34 of 1926	8 Dec 1926	8 Dec 1926
Reprint of the *Justices Act 1902* in Appendix to Session Volume 1927 (includes amendments listed above)			
Justices Act Amendment Act 1932	26 of 1932	15 Dec 1932	15 Dec 1932
Limitation Act 1935 Second Sch.	35 of 1935 (as amended by No. 73 of 1954 s. 8)	7 Jan 1936	Relevant amendments (see Second Sch. [6]) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and *Gazette* 18 Feb 1955 p. 343)
Justices Act Amendment Act 1936	11 of 1936	3 Dec 1936	3 Dec 1936
Reprint of the *Justices Act 1902* in Appendix to Session Volume 1936 (includes amendments listed above)			
Amending Regulations in *Gazette* 24 Dec 1937 p. 2183			24 Dec 1937
Justices Act Amendment Act 1942	14 of 1942	26 Nov 1942	26 Nov 1942
Amending Regulations in *Gazette* 17 Sep 1948 p. 2097-8			17 Sep 1948

Short title	Number and year	Assent	Commencement
Justices Act Amendment Act 1948	29 of 1948	9 Dec 1948	9 Dec 1948
Amending Regulations in *Gazette* 26 Aug 1949 p. 2147-8			26 Aug 1949
Justices Act Amendment Act 1957	9 of 1957	29 Aug 1957	25 Oct 1957 (see s. 2 and *Gazette* 25 Oct 1957 p. 2965)
Reprint of the *Justices Act 1902* approved 1 Dec 1958 in Volume 13 of Reprinted Acts (includes amendments listed above)			
Justices Act Amendment Act 1959	7 of 1959	7 Sep 1959	7 Sep 1959
Justices Act Amendment Act 1961	29 of 1961	11 Jun 1962	11 Jun 1962
Justices Act Amendment Act 1962 [7]	24 of 1962	4 Oct 1962	1 Dec 1962 (see s. 2 and *Gazette* 30 Nov 1962 p. 3833)
Justices Act Amendment Act 1964	10 of 1964	2 Oct 1964	2 Oct 1964
Justices Act Amendment Act (No. 2) 1964	77 of 1964	14 Dec 1964	14 Dec 1964
Justices Act Amendment Act 1965	83 of 1965	7 Dec 1965	1 May 1966 (see s. 2 and *Gazette* 4 Mar 1966 p. 589)
Married Persons and Children (Summary Relief) Act 1965 s. 4	109 of 1965 (Erratum in *Gazette* 4 Mar 1966 p. 589)	17 Dec 1965	1 Mar 1966 (see s. 2 and *Gazette* 25 Feb 1966 p. 550)
Decimal Currency Act 1965	113 of 1965 (as amended by Order in Council in *Gazette* 13 Dec 1991 p. 6177)	21 Dec 1965	Relevant amendment (see First Sch.) took effect on 13 Dec 1991 (see s. 2 and *Gazette* 13 Dec 1991 p. 6177)
Justices Act Amendment Act 1967	24 of 1967	27 Oct 1967	27 Oct 1967
Reprint of the *Justices Act 1902* approved 30 Nov 1967 in Volume 21 of Reprinted Acts (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
Justices Act Amendment Act 1968	22 of 1968	16 Oct 1968	16 Oct 1968
Justices Act Amendment Act 1971	48 of 1971	10 Dec 1971	10 Dec 1971
Justices Act Amendment Act 1972	17 of 1972	26 May 1972	1 Jul 1972 (see s. 2 and *Gazette* 30 Jun 1972 p. 2098)
Reprint of the *Justices Act 1902* approved 17 Nov 1972 (includes amendments listed above)			
Metric Conversion Act 1972	94 of 1972	4 Dec 1972	Relevant amendments (see Second Sch. [8]) took effect on 1 Jan 1974 (see s. 4(2) and *Gazette* 2 Nov 1973 p. 4108)
Justices Act Amendment Act 1975	72 of 1975	7 Nov 1975	1 Dec 1976 (see s. 2 and *Gazette* 12 Nov 1976 p. 4265)
Justices Act Amendment Act 1976	33 of 1976	9 Jun 1976	3 Sep 1976 (see s. 2 and *Gazette* 3 Sep 1976 p. 3271)
Justices Act Amendment Act (No. 2) 1976	119 of 1976	1 Dec 1976	1 Dec 1976
Justices Act Amendment Act 1977	41 of 1977	7 Nov 1977	7 Nov 1977
Reprint of the *Justices Act 1902* approved 30 Nov 1977 (includes amendments listed above)			
Justices Act Amendment Act 1979	6 of 1979	17 May 1979	s. 3 deemed operative: 7 Nov 1977 (see s. 2(1)); balance: 7 Dec 1979 (see s. 2(2) and *Gazette* 7 Dec 1979 p. 3770)
Acts Amendment (Master, Supreme Court) Act 1979 Pt. VII	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and *Gazette* 8 Feb 1980 p. 383)
Justices Amendment Act 1980	67 of 1980	26 Nov 1980	24 Dec 1980 (see s. 2)
Justices Amendment Act 1981	120 of 1981	14 Dec 1981	1 Sep 1982 (see s. 2 and *Gazette* 13 Aug 1982 p. 3105)

Short title	Number and year	Assent	Commencement
Acts Amendment (Criminal Penalties and Procedures) Act 1982 Pt. IV	20 of 1982	27 May 1982	27 May 1982
Acts Amendment (Bail) Act 1982 Pt. II	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and *Gazette* 27 Jan 1989 p. 263)
Justices Amendment Act 1982	124 of 1982	10 Dec 1982	10 Dec 1982
Justices Amendment Act (No. 2) 1982	125 of 1982	10 Dec 1982	20 May 1983 (see s. 2 and *Gazette* 20 May 1983 p. 1521)
Justices Amendment Act 1984	44 of 1984	5 Sep 1984	3 Oct 1984
Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. VII	52 of 1984	5 Sep 1984	3 Oct 1984
Reprint of the *Justices Act 1902* approved 9 Nov 1984 (includes amendments listed above except those in the *Acts Amendment (Bail) Act 1982*)			
Acts Amendment (Court Fees) Act 1984 Pt. I	69 of 1984	26 Nov 1984	28 Jun 1985 (see s. 2 and *Gazette* 28 Jun 1985 p. 2291)
Justices Amendment Act 1985	15 of 1985	28 Mar 1985	25 Apr 1985
Criminal Law Amendment Act 1985 Pt. III	119 of 1985	17 Dec 1985	1 Sep 1986 (see s. 2 and *Gazette* 8 Aug 1986 p. 2815)
Acts Amendment (Penalties for Contempt of Court) Act 1986 Pt. IV	71 of 1986	4 Dec 1986	4 Dec 1986 (see s. 2)
Acts Amendment (Recording of Depositions) Act 1986 Pt. IV	81 of 1986	9 Dec 1986	1 Aug 1987 (see s. 2 and *Gazette* 10 Jul 1987 p. 2607)
Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. VI	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and *Gazette* 12 Feb 1988 p. 397)

Short title	Number and year	Assent	Commencement
Justices Amendment Act 1988	27 of 1988	3 Nov 1988	s. 10-14: 1 Dec 1988 (see s. 2(2)); balance: 1 Jan 1989 (see s. 2(1) and *Gazette* 16 Dec 1988 p. 4865)
Acts Amendment (Community Corrections Centres) Act 1988 Pt. 3	38 of 1988	24 Nov 1988	1 Mar 1989 (see s. 2 and *Gazette* 24 Feb 1989 p. 505)
Acts Amendment (Children's Court) Act 1988 Pt. 6	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and *Gazette* 24 Nov 1989 p. 4327)
Criminal Law Amendment Act 1988 Pt. 8	70 of 1988	15 Dec 1988	1 Feb 1989 (see s. 2 and *Gazette* 20 Jan 1989 p. 110)
Justices Amendment Act 1989	33 of 1989	22 Dec 1989	1 Jun 1991 (see s. 2 and *Gazette* 17 May 1991 p. 2455)
Justices Amendment Act 1990	8 of 1990	16 Jul 1990	16 Jul 1990 (see s. 2)
Community Corrections Legislation Amendment Act 1990 Pt. 4	61 of 1990	17 Dec 1990	3 Apr 1991 (see s. 2 and *Gazette* 22 Mar 1991 p. 1209)
Criminal Law Amendment Act 1990 Pt. 5	101 of 1990	20 Dec 1990	14 Feb 1991 (see s. 2(1))
Justices Amendment Act 1991	33 of 1991	4 Dec 1991	s. 5: 4 Dec 1991 (see s. 2(1)); balance: 13 Mar 1992 (see s. 2(2) and *Gazette* 13 Mar 1992 p. 1181)
Acts Amendment (Evidence) Act 1991 Pt. 4 [9]	48 of 1991	17 Dec 1991	31 Mar 1992 (see s. 2 and *Gazette* 24 Mar 1992 p. 1317)
Reprint of the *Justices Act 1902* as at 1 Apr 1992 (includes amendments listed above)			
Road Traffic Amendment Act 1992 s. 15	13 of 1992	16 Jun 1992	16 Jun 1993 (see s. 2)
Acts Amendment (Sexual Offences) Act 1992 Pt. 6	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and *Gazette* 28 Jul 1992 p. 3671)
Acts Amendment (Evidence of Children and Others) Act 1992 Pt. 3 [10]	36 of 1992	22 Sep 1992	16 Nov 1992 (see s. 2 and *Gazette* 6 Nov 1992 p. 5415)

Short title	Number and year	Assent	Commencement
Criminal Law Amendment Act (No. 2) 1992 Pt. 5 and s. 16(1) and (4)	51 of 1992	9 Dec 1992	6 Jan 1993
Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992 Pt. 4	53 of 1992	9 Dec 1992	s. 14-16, and 24-33: 1 Mar 1993 (see s. 2(1) and *Gazette* 26 Jan 1993 p. 823); s. 17: 25 Sep 1999 (see s. 2(1) and *Gazette* 24 Sep 1999 p. 4651); s. 18-23 not proclaimed [11]
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see s. 2(1))
Acts Amendment (Ministry of Justice) Act 1993 Pt. 12 [12]	31 of 1993	15 Dec 1993	Deemed operative 1 Jul 1993 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
Justices Amendment Act 1994	77 of 1994	13 Dec 1994	1 Apr 1995 (see s. 2 and *Gazette* 31 Mar 1995 p. 1149)
Criminal Law Amendment Act 1994 s. 13(5)	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2)
Pawnbrokers and Second-hand Dealers Act 1994 s. 100	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and *Gazette* 29 Mar 1996 p. 1495)
Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 9	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2 and *Gazette* 30 Dec 1994 p. 7211)
Reprint of the *Justices Act 1902* as at 21 Jun 1995 (includes amendments listed above except those in the *Pawnbrokers and Second-hand Dealers Act 1994*)			
Sentencing (Consequential Provisions) Act 1995 Pt. 43 [13]	78 of 1995 (amended by No. 10 of 1998 s. 64)	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)

Short title	Number and year	Assent	Commencement
Fines, Penalties and Infringement Notices Enforcement Amendment Act 1996 Pt. 3	8 of 1996	28 May 1996	6 Jul 1996 (see s. 2 and *Gazette* 5 Jul 1996 p. 3215)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Criminal Law Amendment Act 1996 Pt. 4	36 of 1996	10 Oct 1996	s. 33 and 35-58: 10 Oct 1996 (see s. 2(1)); s. 34 and 39: 1 Jan 1997 (see s. 2(2) and *Gazette* 27 Dec 1996 p. 7153)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Firearms Amendment Act 1996 s. 51	59 of 1996	11 Nov 1996	6 Dec 1996 (see s. 3(1) and *Gazette* 6 Dec 1996 p. 6699)
Mental Health (Consequential Provisions) Act 1996 Pt. 11	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the *Justices Act 1902* as at 4 Jun 1997 (includes amendments listed above except those in the *Mental Health (Consequential Provisions) Act 1996*)			
Restraining Orders Act 1997 s. 80 [14]	19 of 1997	28 Aug 1997	15 Sep 1997 (see s. 2 and *Gazette* 12 Sep 1997 p. 5149)
Sunday Observance Laws Amendment and Repeal Act 1997 s. 5	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1997 s. 77	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
Criminal Law Amendment Act (No. 2) 1998 Pt. 4	29 of 1998	6 Jul 1998	3 Aug 1998
Acts Amendment (Video and Audio Links) Act 1998 Pt. 4	48 of 1998	19 Nov 1998	18 Jan 1999 (see s. 2 and *Gazette* 15 Jan 1999 p. 109)

Short title	Number and year	Assent	Commencement
Acts Amendment (Criminal Procedure) Act 1999 Pt. 3	10 of 1999	5 May 1999	1 Oct 1999 (see s. 2 and *Gazette* 17 Sep 1999 p. 4557)
Reprint of the *Justices Act 1902* as at 2 Oct 1999 (includes amendments listed above)			
Court Security and Custodial Services (Consequential Provisions) Act 1999 s. 16-20 [15]	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and *Gazette* 17 Dec 1999 p. 6175-6)
Acts Amendment (Evidence) Act 2000 Pt. 3	71 of 2000	6 Dec 2000	3 Jan 2001

[1a] On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnote referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
State Records (Consequential Provisions) Act 2000 Pt. 5 [16]	53 of 2000	28 Nov 2000	To be proclaimed (see s. 2)

[2] Under the *Public Sector Management Act 1994* s. 112(1) a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

[3] Magisterial districts proclaimed in *Gazette* 8 Nov 1940 p.1981-6.

[4] See the *Justices (Recording of Depositions) Regulations 1987*.

[5] Repealed by the *Crown Suits Act 1947* s. 2.

[6] The Second Schedule of the *Limitation Act 1935* was inserted by No. 73 of 1954 s. 8.

[7] Repealed by the *Married Persons and Children (Summary Relief) Act 1965*.

[8] The Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973* s. 4.

9 The *Acts Amendment (Evidence) Act 1991* s. 3 reads:

"

3. Amendments not to apply to certain proceedings

(1) In subsection (2) **"prescribed proceedings"** means —

(a) any proceedings instituted before the commencement of this Act;

(b) any appeal arising out of, or review of, any proceedings mentioned in paragraph (a); and

(c) any rehearing of, or new trial in respect of, any proceedings mentioned in paragraph (a).

(2) Prescribed proceedings shall be heard, dealt with and determined as if this Act had not been enacted.

".

10 The *Acts Amendment (Evidence of Children and Others) Act 1992* s. 13 reads:

"

13. Transitional provisions

(1) The following proceedings are determined as if this Act had not come into operation —

(a) a proceeding on an existing complaint and an indictment arising therefrom and any appeal in respect of any such proceeding;

(b) a proceeding on an existing indictment under section 579 of *The Criminal Code* and any appeal in respect of any such proceeding;

(c) any other proceeding within the meaning in section 106A of the principal Act that is an existing proceeding.

(2) In subsection (1) **"existing"** in relation to a complaint or indictment means made or presented before the day on which this Act comes into operation, and in relation to any other proceeding means commenced before that day.

".

11 The *Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992* s. 18-23 were not proclaimed and were repealed by the *Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994* s. 3.

12 The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 reads:

“

Part 19 X Savings and transitional

68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

”.

13 The *Sentencing (Consequential Provisions) Act 1995* s. 62 (as amended by the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 64(1)) reads:

“

62. Transitional Provisions

(1) In this section **“commencement”** means the commencement of the *Sentencing Act 1995*.

(2) If immediately before commencement a person is bound by a recognizance to which section 154A of the principal Act applies but to which that section as re-enacted by section 59 would not apply on and after commencement, then on and after commencement section 154A of the principal Act as it was immediately before commencement continues to apply to that person in respect of the recognizance.

[Section 62 amended by No. 10 of 1998 s. 64(1).]

”.

[14] The *Restraining Orders Act 1997* s. 80(3) reads:

“

(3) Notwithstanding subsection (1), Parts VII and VIIA of the *Justices Act 1902* are taken to remain in force to the extent necessary for the purposes of Part 9.

”.

[15] The amendment in the *Court Security and Custodial Services (Consequential Provisions) Act 1999* s. 21 is not included because the Schedule it sought to amend had been repealed by the *Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992* s. 17(3) before the amendment purported to come into operation.

[16] On the date as at which this reprint was prepared, the *State Records (Consequential Provisions) Act 2000* Pt. 5 had not come into operation. It reads:

“

Part 5 — *Justices Act 1902*

11. Part X repealed

Part X of the *Justices Act 1902* is 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)
charge	4
charge of an indictable offence	4
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Court	183
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gaol	4
hearing	4
indictable offence	4
indictment	4
information	4
information and complaint	4
jurisdiction	4
justices	4
keeper of a gaol	4
legal practitioner	183
magistrate	4
matter	4
Minister	4
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oath	4
officer	136(6)
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party to an appeal	206A(6)
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Defined Terms

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