WESTERN AUSTRALIA

JUSTICES AMENDMENT ACT 1989

(No. 33 of 1989)

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SCHEDULE

WESTERN AUSTRALIA

JUSTICES AMENDMENT ACT

No. 33 of 1989

AN ACT to amend the *Justices Act 1902* and to make consequential amendments to the *Bail Act 1982*, the *Children's Court of Western Australia Act (No. 2) 1988*, the *Offenders Probation and Parole Act 1963* and the *Inquiry Agents Licensing Act 1954*.

[*Assented to 22 December 1989*]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Justices Amendment Act 1989*.

Commencement

2. This Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Justices Act 1902** is referred to as the principal Act.

[**Reprinted as approved 9 November 1984 and amended by Acts Nos. 87 of 1982, 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986, 65 of 1987 and 27, 38 and 70 of 1988.*]

Section 4 amended

4. Section 4 of the principal Act is amended—

(a) by deleting the definition of "Decision" and substituting the following definition—

" "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) a committal for trial;

(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 penalty imposed or order made consequent on any such conviction, finding, committal, dismissal or determination,

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

(b) by deleting the definition of "Justices" and substituting the following definition—

" "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); ".

Section 28 repealed

5. Section 28 of the principal Act is repealed.

Section 136A amended

6. Section 136A of the principal Act is amended by repealing subsections (3) and (3a) and substituting the following subsections—

" (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. ".

Section 136B amended

7. Section 136B of the principal Act is amended, in subsection (2), by deleting "appeal or of an application for an order to review, apply to the court or Judge hearing that appeal or" and substituting the following—

" application for leave to appeal under Part VIII, apply to the court or Judge hearing that ".

Section 148 and heading repealed and a section and heading substituted

8. Section 148 of the principal Act and the heading immediately preceding that section are repealed and the following heading and section are substituted—

" *Party's access to records etc.*

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

148. (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 172 amended

9. Section 172 of the principal Act is amended—

(a) in subsection (1) by deleting ", upon a complaint made in accordance with subsection (2) of this section, ";

(b) by repealing subsection (2) and substituting the following subsections—

" (2) An order provided for by subsection (1) may be made—

(a) on a complaint made for the purposes of this section; or

(b) on the determination of a complaint of another matter if the justices are satisfied that there are grounds on which a complaint could be made for the purposes of this section.

(2a) A complaint may be made for the purposes of this section—

(a) by a police officer;

(b) by a person against whom, or against whose property, the behaviour that forms the subject-matter of the complaint was directed; or

(c) where a person referred to in paragraph (b)—

(i) is an infant, by a person acting on behalf of the infant;

(ii) is represented by a guardian, manager or administrator under a written law, by the guardian, manager or administrator. ";

(c) in subsection (5), by inserting after "under this section" the following—

" or under section 174 "; and

(d) by repealing subsection (6) and substituting the following subsection—

> " (6) Before an order is made under this section or under section 174 restraining the defendant from entering premises, the justices shall consider the need for suitable arrangements to be made whereby the defendant may take possession of personal effects or other belongings of the defendant that are in the premises. ".

Section 172A inserted

10. After section 172 of the principal Act, the following section is inserted—

Order against person other than the defendant

" 172A. (1) On the determination of a complaint referred to in subsection (2) (b) of section 172, the power of justices extends to making an order under subsection (1) of that section against a person who is a complainant (otherwise than in an official capacity) or who gives evidence in the proceedings but only if—

(a) notwithstanding subsection (4) of that section, the order is made in the presence of that person; and

(b) the person is given a reasonable opportunity of being heard.

(2) References in this Part—

(a) to "the defendant" and "a defendant" shall be read with all such changes as are necessary to give effect to subsection (1); and

(b) to an order under section 172 shall be read as references to that section as extended by this section.

(3) For the purposes of subsection (1), a person is given a reasonable opportunity of being heard if he—

(a) is notified that an order under section 172 may be made against him; and

(b) is given a reasonable opportunity to obtain legal advice and representation, to adduce evidence and to make submissions so far as he wishes to do any of those things. ".

Section 173 amended

11. Section 173 of the principal Act is amended—

(a) in subsection (2) by deleting "and detain"; and

(b) by repealing subsections (3) and (4).

Section 174 amended

12. Section 174 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

" (2) An application under subsection (1) may be made, where a party is—

(a) an infant, by a person acting on behalf of the infant; or

(b) is represented by a guardian, manager or administrator under a written law, by the guardian, manager or administrator. ".

Section 175 amended

13. Section 175 of the principal Act is amended in subsection (1) by deleting "172 (6) or 174 (2)" and substituting the following—

" 178 ".

Sections 177 and 178 inserted

14. After section 176 of the principal Act, the following sections are inserted—

Evidence

177. Evidence in proceedings under section 172, other than a hearing referred to in subsection (4) (b) of that section, may be received in the form of an affidavit sent by facsimile transmission if—

(a) the production of the original affidavit would cause a delay in determining the complaint; and

(b) it is necessary having regard to the purposes of section 172 (1) to avoid any such delay.

Service and proof of service

178. (1) Where an order—

(a) is made under section 172; or

(b) is varied or revoked under section 174,

the clerk of petty sessions shall cause a copy of the order or of the variation order or a notice of the revocation, as the case may require, to be served personally on the defendant and to be sent to the Commissioner of Police and, where the complainant is not a police officer, the complainant.

(2) Personal service of an order referred to in subsection (1) may be proved by an indorsement on a copy of the order signed by the person by whom it was served showing the day on which and the place at which service was effected.

(3) If the clerk of petty sessions is satisfied that—

(a) reasonable efforts have been made to serve an order referred to in subsection (1) personally on the defendant;

and

(b) such service has not been effected within 14 days after the making of the order or within such other period as the justices may nominate for the purposes of this subsection at the time of the making of the order,

he may in writing authorize verbal service of the order.

(4) Verbal service of an order is effected by a police officer verbally informing the defendant of—

(a) the restraints that are imposed on him by the order or the variations that are made by the variation order, as the case may require; and

(b) the place where a copy of the order or variation order may be obtained,

but it is not necessary for the information referred to in paragraph (a) to be given in the exact words of the order.

(5) An authorization of verbal service under subsection (3) does not preclude personal service of an order.

(6) Verbal service of an order or variation order shall be proved by the police officer who effected verbal service filing an affidavit showing the information that he gave to the defendant as required by subsection (4) and the time when and place at which he did so. ".

Heading to Part VIII deleted and a heading substituted

15. Part VIII of the principal Act is amended by deleting the headings—

"PART VIII.—APPEALS FROM THE DECISIONS OF JUSTICES.

Ordinary Appeal."

and substituting the following—

" PART VIII—APPEALS

Definitions ".

Sections 183 to 206I repealed and sections 183 to 206E substituted

16. Sections 183 to 206I of the principal Act are repealed and the following sections are substituted—

Definitions

" 183. 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*.

Right of appeal by leave

Right of appeal

184. (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.

Application for leave

185. (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.

Grounds

186. (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 penalty 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.

Determination of application for leave

Grant or refusal of leave

187. (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.

Ancillary orders and directions

188. (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.

Appeal against refusal of leave, etc.

189. (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.

Application and appeal may be heard together

190. (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.

Notice to other parties

191. 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.

Amendment of grounds of appeal

192. 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.

Sentence pending disposal of appeal

Judge may make order as to stay of execution

193. (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 penalty 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.

(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.

(5) The time during which a person who is subject to a sentence of imprisonment is released on bail shall not count as part of any term of imprisonment under his sentence.

General provisions as to stay of execution

194. (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) (a) After notice is received by the clerk of petty sessions that leave to appeal has been granted no warrant or order shall be issued in execution of the decision that is subject to appeal until the appeal is disposed of.

(b) Where a warrant of execution has been issued before notice is so received—

(i) if the warrant has not been executed, it shall be suspended until the appeal is disposed of;

(ii) if the warrant has been executed, any goods that have been seized but not sold and any proceeds of sale of goods seized shall be held 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* 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) A community service order under the *Offenders Probation and Parole Act 1963* shall be suspended until the appeal is disposed of.

(5) Any other penalty imposed, other than a sentence of imprisonment or a probation order under the *Offenders Probation and Parole Act 1963*, and any other order made, other than an order of forfeiture, is suspended until the appeal is disposed of.

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

Revival of sentence or order on disposition of appeal

195. 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.

Determination of Appeal

Evidence

196. (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.

Unrepresented person may present case in writing

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

Presence at appeal of party in custody

198. (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.

Powers of Court

199. (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.

Enforcement

200. (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).

Want of form

201. (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.

Notification of result of appeal to clerk of petty sessions

202. (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.

Notification relating to sentence of imprisonment

203. (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 officer 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 officer 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 officer in charge of the prison and shall be sufficient evidence of the matters stated therein.

Discontinuance and abandonment of appeal

Discontinuance of appeal

204. (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.

Dismissal for want of prosecution

205. (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.

Application for re-instatement of appeal

206. (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.

Appeal to Full Court

Appeal to Full Court

206A. (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 subsection (1) of section 193 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.

General

Retention of exhibits

206B. (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.

Time may be extended or shortened

206C. (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.

Orders for costs

206D. 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.

Enforcement of order for costs

206E. (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. ".

Sections 211, 212, 213, 214, 216, 218, 220 and 221 repealed

17. Sections 211, 212, 213, 214, 216, 218, 220 and 221 of the principal Act are repealed.

Consequential amendments to other Acts

18. The Acts referred to in the first column of the Schedule are amended in the manner set out in the second column.

References in other Acts

19. Where by any written law in force immediately before the commencement of sections 16 and 17 the provisions of the principal Act repealed by those sections are, or any such provision is, applied to proceedings under that written law, the references in that written law to such repealed provisions or provision shall have effect, so far as circumstances will allow, as if they had been amended to a reference to the provisions of sections 183 to 206E of the principal Act inserted by section 16 or the corresponding provision in those sections, as the case may require.

Transitional provisions

20. (1) In this section—

"commencement day" means the day on which sections 16 and 17 come into operation;

"former provisions" means the provisions repealed by sections 16 and 17 and rules of court applicable to those provisions;

"new provisions" means the provisions inserted in the principal Act by section 16 and rules of court applicable to those provisions.

(2) On and after the commencement day the new provisions apply for the purposes of any appeal against a decision of justices or a magistrate, including a decision in respect of which time for an appeal under the former provisions had commenced to run under those provisions, but had not expired, before the commencement day.

(3) (a) An appeal under former sections 183, 197 and 204 commenced by a person, and a referral made by a Judge under former section 206A, before the commencement day continue to be subject to the former provisions, and any further appeal that would have been available to that person under those provisions shall continue to be available to him, as if those provisions had not been repealed.

(b) For the purposes of this subsection an appeal is commenced—

(i) where former section 183 applies, when the appellant serves notice in writing under former section 184 on the clerk of petty sessions;

(ii) where former section 197 applies, when an application is filed in the Supreme Court under that section; and

(iii) where former section 204 applies, when a notice of motion by way of appeal is filed in the Supreme Court under rules of court.

SCHEDULE

[s.18]

Short title of Act	Amendment
1. *Bail Act 1982*	(1) After section 7, the following section is inserted— Bail for appeal under *Justices Act 1902* " 7A. (1) A person who is in custody may apply for bail— (a) to a Judge of the Supreme Court, where an application for leave to appeal has been made to, or has been granted by, a Judge; or (b) to the Full Court of the Supreme Court, where an appeal is made to, or an application for leave to appeal has been made to, or has been granted by, that Court, under Part VIII of the *Justices Act 1902* and the appeal is in connection with the decision by virtue of which the person is in custody. (2) Bail shall not be granted to an applicant for bail under subsection (1) until he has given notice of his application for bail to— (a) the State Crown Solicitor; or (b) the Deputy Director of Public Prosecutions (Commonwealth) in Perth, as the case may require, and that official has been given an opportunity to be heard on the application. ". (2) In section 8, after subsection (4) the following subsection is inserted— " (5) Where a person has applied for bail for an appeal as mentioned in section 7A (1), this section applies as if the consideration of bail for the appeal were a first consideration of bail for an offence. ".

Short title of Act	Amendment
	(3) In section 21, subsection (2) is repealed and the following subsection is substituted— " (2) Nothing in subsection (1) affects the right of— (a) the Attorney General to apply for leave, or be an appellant, under Part VIII of the *Justices Act 1902*; (b) the State Crown Solicitor or the Deputy Director of Public Prosecutions (Commonwealth) to receive notice and be heard under section 7A (2); or (c) the Director-General of the Department of Community Services or other officer of that Department to be present at and participate in proceedings concerning a child pursuant to section 34 of the *Children's Court of Western Australia Act (No. 2) 1988*. ". (4) Section 53 is repealed and the following section is substituted— Appeal proceedings under section 52 " 53. (1) A decision of a Judge of the Supreme Court or of the District Court under section 52 may be the subject of an appeal to the Full Court of the Supreme Court. (2) For the purposes of subsection (1), Part VIII of the *Justices Act 1902* shall apply as if a decision referred to in that subsection were a decision of justices, and with all necessary modifications including the following— (a) references to a justice or to justices shall be read as references to a Judge of the Supreme Court or of the District Court, as the case may require; (b) sections 184 and 185 shall be read as if they provided for an application to the Full Court for leave to appeal to that Court; (c) in sections 187, 188, 190, 193 and 206, references to "the Judge", "any Judge" or "a Judge in chambers" shall be read as references to the Full Court; (d) references to the clerk of petty sessions shall be read as references to the Registrar of the District Court or of the Supreme Court, as the case may require; and (e) section 187 (3) shall not apply.

Short title of Act	Amendment

(3) In subsection (1) "decision" has the meaning assigned to it by section 4 of the *Justices Act 1902*. ".

(5) In section 54, in subsection (1) (b), subparagraph (iii) is deleted and the following subparagraph is substituted—

" (iii) in a case where the defendant has been granted bail for the purposes of an appeal, the defendant has discontinued the appeal or has not prosecuted it with all due diligence. ".

(6) In the Schedule, in Part A, in clause 4—

(a) paragraphs (a), (b) and (c) are deleted and the following paragraphs are substituted—

" (a) for the determination under section 199 of the *Justices Act 1902* of an appeal under Part VIII of that Act;	A Judge of the Supreme Court; in the case of an appeal under section 189 of the *Justices Act 1902*, the Full Court;
(b) for the determination under section 206A of the *Justices Act 1902* of an appeal under that section;	A Judge of the Supreme Court; in the case where the application for leave to appeal is made to the Full Court, the Full Court; ";

and

(b) in paragraph (e), subparagraph (i) is deleted and the following subparagraph is substituted—

" (i) section 199 of the *Justices Act 1902*; or	A Judge of the Supreme Court; in a case where the appeal is heard by the Full Court or section 206A of the *Justices Act 1902* applies, the Full Court; ".

(7) In the Schedule, in Part C, clause 5 is repealed and the following clause is substituted—

Exception for bail for an appeal under the *Justices Act 1902*

" 5. Clause 4 does not apply to the bail of a person who is awaiting the disposal of appeal proceedings under Part VIII of the *Justices Act*

Short title of Act	Amendment
	1902; such a person shall be deemed for the purposes of this Part to be awaiting an appearance in court before conviction for an offence. ".
2. *Children's Court of Western Australia Act (No. 2) 1988*	(1) In section 40— (a) in subsection (5)— (i) "an appeal is instituted" is deleted and the following is substituted— " leave to appeal is granted "; and (ii) in paragraph (b) "the appeal is instituted" is deleted and the following is substituted— " leave to appeal is granted "; and (b) in subsection (6)— (i) "a notice of appeal" is deleted and the following is substituted— " an application for leave to appeal "; and (ii) "appeal shall lie" is deleted and the following is substituted— " application for leave to appeal may be made ".
	(2) Sections 41 and 42 are repealed and the following sections are substituted— Appeal against conviction etc. " 41. Subject to this Act, where the Court, when constituted so as not to consist of or include a Judge, makes a finding in any proceedings that a charge against a child is proved and proceeds to convict the child of the offence, an application for leave to appeal may be made under Part VIII of the *Justices Act 1902* and that Part shall apply, with all necessary changes and subject to section 42A, as if the finding, conviction and any penalty imposed or order made in the proceedings were a decision of justices within the meaning of that Part. Appeal against certain other orders 42. (1) Subject to this Act, where the Court, when constituted so as not to consist of or include a Judge, makes any finding, order, or other decision— (a) upon the hearing of an application to declare a child in need of care and protection under section 30 of the *Child Welfare Act 1947*;

Short title of Act	Amendment
	(b) upon the hearing of an application under section 47 of the *Child Welfare Act 1947* for the release of a child; or (c) upon the hearing of an application for cancellation of an order made under section 47A, 47B, 47C or 47D of the *Child Welfare Act 1947* in respect of a child by the Minister responsible for the administration of the *Child Welfare Act 1947* and for the release of the child, an application for leave to appeal may be made under Part VIII of the *Justices Act 1902* by— (aa) the Director-General of the Department for Community Services; (bb) the parent or guardian of the child in relation to whom the application was made; (cc) the child in relation to whom the application was made; or (dd) the person by whom the application was made, and that Part (other than paragraphs (a) and (b) of section 185 (2)) shall apply, with all necessary changes and subject to section 42A, as if the finding, order or decision were a decision of justices within the meaning of that Part. (2) Where a person has applied or is entitled to apply under subsection (1) for leave to appeal, the person may, on not less than 48 hours' notice to the Department for Community Services (if the Director-General is not the applicant), apply to a Judge for an order relating to the placement of the child pending the final disposition of the proceedings and the Judge may make such order as in the circumstances seems appropriate having regard primarily to the welfare of the child. Further provisions as to appeals 42A. For the purposes of sections 41 and 42, Part VIII of the *Justices Act 1902* shall be read as if— (a) references to the clerk of petty sessions were references to the clerk of the Court; and (b) references to "justices" or "the justices" or "any justices" were references to the court. ".

Short title of Act	Amendment
	(3) (a) In this subclause— "commencement day" means the day on which subclause (2) comes into operation; "former sections" means sections 41 and 42 repealed by subclause (2) and the relevant rules of court; "new sections" means sections 41, 42 and 42A inserted by subclause (2) and the relevant rules of court. (b) On and after the commencement day the new sections apply for the purposes of any appeal against a decision of the Court (within the meaning in those sections), including a decision in respect of which time for an appeal under the former sections had commenced to run under those sections, but had not expired, before the commencement day. (c) (i) An appeal under former section 41 or 42 commenced by a person before the commencement day continues to be subject to that section, and any further appeal that would have been available to that person shall continue to be available to him, as if that section had not been repealed. (ii) For the purposes of this paragraph an appeal is commenced when an application is filed in the Supreme Court under section 197 of the *Justices Act 1902* repealed by section 16 of this Act. ".
3. *Offenders Probation and Parole Act 1963*	In section 20, subsection (4) is repealed.
4. *Inquiry Agents Licensing Act 1954*	In section 6 (1), ", including those relating to appeal by way of order to review," is deleted.