

WESTERN AUSTRALIA

JUSTICES AMENDMENT ACT

No. 27 of 1988

AN ACT to amend the *Justices Act 1902*.

[Assented to 3 November 1988]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Justices Amendment Act 1988*.

Commencement

2. (1) The provisions of this Act, other than sections 10 to 14, shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) Sections 10 to 14 shall come into operation on the 28th day after the day on which this Act receives the Royal Assent.

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. 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986 and 65 of 1987.]

Section 1 repealed and a section substituted

4. Section 1 of the principal Act is repealed and the following section is substituted—

Short title

“ 1. This Act may be cited as the *Justices Act 1902*. ”.

Section 144 amended

5. Section 144 of the principal Act is amended—

(a) by inserting after the section designation “144.” the subsection designation “(1) ”;

(b) by deleting “(1)”, “(2)”, and “(3)” and substituting, respectively, the following—

“ (a) ”, “ (b) ”, and “ (c) ”;

(c) by inserting before “When”, in the second place where it occurs, the subsection designation “(2)”;

(d) by inserting before “The” the subsection designation “(3)”;

(e) by inserting at the end of the section the following subsection—

“ (4) Where the person liable to pay a sum or costs requests the justices to allow time under subsection (1) (a) or to make a direction under subsection (1) (b) or (c), and the justices refuse the request, they shall record in writing their reasons for the refusal. ”.

Section 146 amended

6. Section 146 of the principal Act is amended—

(a) by inserting after the section designation “146.” the subsection designation “(1)”; and

(b) by inserting the following subsection—

“ (2) Notwithstanding subsection (1) justices shall record their reasons for a decision if required to do so under section 144 (4) or 150A. ”.

Section 150A inserted

7. After section 150 of the principal Act the following section is inserted—

Reasons for imprisonment to be stated

“ 150A. When justices, upon a conviction, adjudge the defendant to be imprisoned, they shall record in writing their reasons for adjudging the defendant to be imprisoned. ”.

Section 166 amended

8. Section 166 of the principal Act is amended by deleting “five hundred dollars” and substituting the following—

“ \$1 000 ”.

Section 167 amended

9. Section 167 of the principal Act is amended—

(a) in subsection (1) by deleting “rate of one day for every twenty dollars payable and also for any fractional part of twenty dollars payable” and substituting the following—

“ prescribed rate ”; and

(b) by inserting after subsection (1) the following subsection—

“ (1a) Unless another rate is prescribed by regulation the prescribed rate for the purposes of subsection (1) is the rate of one day for every \$25 payable and also for any fractional part of \$25 payable. ”.

Part VIBA inserted

10. Before Part VIA of the principal Act the following Part is inserted—

“ **PART VIBA—REGISTRATION AND ENFORCEMENT OF
INFRINGEMENT NOTICES**

Interpretation

171BA. (1) In this Part—

“alleged offence” means the offence to which the infringement notice concerned relates;

“alleged offender” means the person to whom the infringement notice concerned was issued;

“courtesy letter” means a courtesy letter under this Part;

“enforcement order” means an order under section 171BF;

“infringement notice” means a notice issued to a person under a written law, other than this Part, in respect of an offence that is alleged to have been committed offering the alleged offender an opportunity, by paying an amount as specified in the notice, to have the matter dealt with out of court;

“modified penalty” means the amount of money specified in the infringement notice concerned as being the penalty for the alleged offence;

“principal enactment” means the enactment under which the infringement notice concerned was issued;

“Registrar” means the Registrar of the Court;

“the Court” means the court of petty sessions declared to be the Court for the purposes of this Part.

(2) For the purposes of this Part an infringement notice is taken to have been issued to a person notwithstanding that, under the principal enactment concerned, the infringement notice is expressed to be given to, or served upon, that person, or another like expression is used.

Disapplication of Part to young persons

171BB. The powers conferred by this Part are not exercisable in respect of a person who has not attained the age of 18 years.

INREP Court and Registrar

171BC. (1) The Minister may, by order published in the *Gazette*—

- (a) declare a court of petty sessions specified in the order to be the Court for the purposes of this Part;
- (b) declare an officer of the Department of the Public Service principally assisting the Minister with the administration of this Act to be the Registrar of the Court.

(2) The Registrar is an officer of the Court, and the functions of the Court under this Part shall be performed by the Registrar.

Courtesy letter

171BD. (1) Where—

- (a) an infringement notice has been issued under an enactment prescribed for the purposes of this section;
- (b) the infringement notice has not been withdrawn as provided for by the principal enactment; and
- (c) the modified penalty has not been paid in accordance with the infringement notice and the principal enactment and the time for such payment has elapsed,

a person prescribed for the purposes of this subsection in respect of the principal enactment may serve upon the alleged offender a courtesy letter in accordance with subsection (2).

(2) A courtesy letter shall identify the infringement notice to which it relates and the alleged offence in respect of which the infringement notice was issued and shall contain a statement to the effect that—

- (a) if it is not wished to have a complaint of the alleged offence heard and determined by a court the amount of money specified in the courtesy letter to be for the time being outstanding should be paid within the time so specified to a person so specified;
- (b) if it is wished to have a complaint of the alleged offence heard and determined by a court, notice in writing to that effect must, within the time specified under paragraph (a), be given as specified in the courtesy letter; and
- (c) if neither payment is made as specified in paragraph (a) nor notice is given as mentioned in paragraph (b), payment of the amount specified in the letter and further costs will be enforceable under this Part,

and shall include such other information, if any, as the regulations may require.

(3) In a courtesy letter—

- (a) the amount of money specified in the letter to be for the time being outstanding shall be the total of the modified penalty and the prescribed amount by way of costs connected with the sending of the letter;
- (b) the time specified in the letter as being the time within which payment may be made shall be not less than 28 days after the day on which the letter is served upon the alleged offender; and
- (c) the persons specified in the letter as persons to whom payment may be made shall be persons prescribed for the purposes of this paragraph in respect of the principal enactment.

Enforcement certificate

171BE. (1) Where, in accordance with this Part, a courtesy letter has been served on an alleged offender and the time for payment specified under section 171BD (2) (a) has elapsed, unless—

- (a) the amount of money specified in the letter has been paid to a person so specified (whether or not before the time for payment so specified had elapsed); or
- (b) the alleged offender has, whether or not within the time specified in the letter, given notice in writing as specified in the letter to the effect that he wishes to have a complaint of the alleged offence heard and determined by a court,

a person prescribed for the purposes of this section in respect of the principal enactment may sign, and upon payment of the prescribed lodging fee, lodge with the Registrar, a certificate in accordance with subsection (3) accompanied by a prescribed means of conveying such information contained in the certificate as is prescribed.

(2) A person shall not be prescribed for the purposes of this section in respect of a principal enactment unless he is a person who could make complaints of offences under that enactment.

(3) A certificate under subsection (1) shall identify the alleged offender to whom, and the alleged offence to which, it relates and shall state that—

- (a) on a date specified in the certificate an infringement notice was, in accordance with the principal enactment, issued to the alleged offender in respect of the alleged offence;
- (b) on a date specified in the certificate a courtesy letter was, in accordance with this Part, served on the alleged offender;
- (c) the date on which the courtesy letter was served on the alleged offender was after the time for payment of the penalty in accordance with the infringement notice had elapsed; and

(d) as at the date of the lodging of the certificate—

- (i) the time specified in the courtesy letter as the time within which payment may be made of the amount specified to be for the time being outstanding has elapsed;
- (ii) the amount specified in the courtesy letter to be for the time being outstanding has not been paid;
- (iii) notice in writing to the effect that the alleged offender wishes to have a complaint of the alleged offence heard and determined by a court has not been given to a person specified for that purpose in the courtesy letter;
- (iv) proceedings other than under this Part have not been commenced in respect of the alleged offence; and
- (v) proceedings under this Part in respect of the alleged offence have not been withdrawn under section 171BL.

(4) Where a limit is imposed by law on the time within which court proceedings for an alleged offence can be commenced, a certificate shall not be lodged under subsection (1) in respect of the alleged offence after the time so limited has expired.

(5) Upon a certificate having been lodged under subsection (1) in respect of an infringement notice, the amount for the time being outstanding shall be the amount outstanding before the certificate was lodged together with—

- (a) the amount of the lodging fee referred to in subsection (1); and
- (b) the prescribed amount by way of costs, other than the lodging fee mentioned in paragraph (a), that are connected with preparation and lodging of the certificate,

and thereafter payment of the amount for the time being outstanding shall not be accepted other than by or on behalf of the Registrar.

(6) The Registrar shall cause a certificate lodged in accordance with this section to be registered in a register kept by him, in such form as he considers appropriate, for the purposes of this Part.

(7) Where a certificate is lodged under subsection (1) in respect of an alleged offence, proceedings other than under this Part shall not, except under section 171BK (3), be commenced in respect of the alleged offence unless proceedings under this Part are withdrawn under section 171BL.

(8) A certificate lodged under subsection (1) may relate to more than one infringement notice and where a certificate relates to more than one infringement notice—

- (a) the lodging fee prescribed under subregulation (1) and the amount by way of costs prescribed under subregulation (5) are each payable in respect of each infringement notice, and the amount for the time being outstanding under each infringement notice shall be increased under paragraphs (a) and (b) of subsection (5) by the amounts referred to in those paragraphs that were paid in respect of that infringement notice;
- (b) the reference in section 171BK (3) to a copy of the certificate shall be read as if it were a reference to an extract of so much of the certificate as is relevant to the alleged offence concerned; and
- (c) section 171BL (3) (a) applies in respect of the certificate only in so far as the certificate relates to the alleged offence concerned.

Enforcement orders

171BF. (1) Where a certificate is lodged in accordance with section 171BE the Court shall order that the alleged offender pay to the Registrar the amount for the time being outstanding within such time after notice of the order is served as is specified in the order and that in default of such payment—

- (a) where the alleged offender is a natural person, a warrant be issued under section 171BI for the imprisonment of the alleged offender;
- (b) where the alleged offender is not a natural person, a warrant be issued under section 171BI for execution against the property of the alleged offender.

(2) The time for payment specified in an order under subsection (1) shall be such time, being not less than 7 days, after notice of the order is served as is prescribed by regulations.

Notice of enforcement order

171BG. (1) Upon the making of an enforcement order the Registrar shall cause a notice to be served on the alleged offender identifying the infringement notice to which the order relates and the alleged offence in respect of which the infringement notice was issued and informing the alleged offender that—

- (a) an order has been made under this Part for the payment by the alleged offender of the amount ordered to be paid;
- (b) within the time specified in the notice—
 - (i) payment of the amount ordered to be paid must be made as specified in the notice; or
 - (ii) if it is wished to have a complaint of the alleged offence heard and determined by a court, an election to that effect must be made under section 171BK; and
- (c) unless an election is made as mentioned in paragraph (b) (ii), failure to make payment as mentioned in paragraph (b) (i) will result in the issue of a warrant under this Part.

(2) The Registrar shall, upon the making of an enforcement order, notify the person who lodged the certificate of the making of the enforcement order and the day on which it was made.

Application for time to pay

171BH. (1) Upon an application made to the Court after the making of an enforcement order but before the execution of a warrant issued under section 171BI as a result of the enforcement order, the Court may order that—

- (a) the time within which payment is required by the enforcement order to be made is extended; or
- (b) payment may be made by instalments,

as specified in the order under this section but, where a warrant has already issued under section 171BI, the amount to be paid shall be the amount specified in the warrant, and the enforcement order shall have effect as varied under this section.

(2) Where an enforcement order is varied under subsection (1)—

- (a) the Registrar shall cause notice of the variation to be served on the alleged offender; and
- (b) if a warrant has issued under section 171BI, the Registrar shall forthwith notify the Commissioner of Police of the variation and the warrant shall not be executed unless there is default in making payment in accordance with the order as so varied.

Issue of warrant

171BI. (1) Where under section 171BG notice of an enforcement order has been served on a person and, the time specified in the order having elapsed, neither payment as specified in the order (within the time required by the order or thereafter) nor an election under section 171BK has been made, the Registrar shall—

- (a) where the alleged offender is a natural person, issue a warrant of commitment against the alleged offender;
- (b) where the alleged offender is not a natural person, issue a warrant of execution against the property of the alleged offender.

(2) Upon a warrant being issued under subsection (1) the amount for the time being outstanding shall be the amount that was outstanding before the warrant was issued together with the amount of the execution fee prescribed by regulations but the period of imprisonment to be inserted in the warrant shall be calculated in accordance with sections 158 and 167 on the basis of the amount outstanding before adding the execution fee.

(3) A warrant of commitment issued under subsection (1) (a) shall be in the prescribed form and section 167 shall apply, with such modifications as are necessary, to a warrant issued under this section.

(4) Before a warrant issued under subsection (1) is executed the alleged offender shall be given a notice in the prescribed form to the effect that, if the making of the enforcement order had not previously come to his notice, he may so inform the person having the warrant and, where the person having the warrant is satisfied

that the making of the enforcement order had not previously come to the notice of the alleged offender, the warrant shall not be executed unless—

- (a) 7 days have elapsed since notice was given under this subsection and the alleged offender has neither—

- (i) paid the amount outstanding under this Part;
- (ii) made an application under section 171BH; nor
- (iii) elected under section 171BK to have a complaint of the alleged offence heard and determined by a court;

or

- (b) the alleged offender agrees to the warrant being executed before that time elapses.

(5) A warrant issued under subsection (1) shall not be executed against a person if the amount for non-payment of which the warrant is issued has been paid in full.

(6) A warrant of execution issued under subsection (1) (b) shall be in the prescribed form.

(7) A warrant under this section shall be directed to all police officers and, subject to subsection (4), effect shall be given to a warrant under this section as if it were a warrant issued by a justice but the warrant ceases to have effect when 5 years elapses after the warrant was issued.

Effect of proceedings under this Part

171BJ. (1) Where—

- (a) payment is made of the amount outstanding under this Part in respect of an infringement notice and proceedings under this Part have not been withdrawn; or

- (b) a warrant under this Part is executed,

no proceedings shall be brought or penalty shall be imposed that could not be brought or imposed if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(2) Without limiting subsection (4), the making of an enforcement order does not constitute a conviction in respect of an alleged offence except that if section 102 of the *Road Traffic Act 1974* is prescribed for the purposes of section 171BD and the alleged offence is one that is prescribed for the purposes of section 103 of the *Road Traffic Act 1974*—

- (a) payment before an enforcement order is made of the amount outstanding under this Part; or
- (b) the making of an enforcement order,

constitutes a conviction in respect of the alleged offence for the purposes of section 103 of that Act.

(3) Payment of the amount outstanding under this Part in respect of an alleged offence shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal, arising out of the occurrence by reason of which the infringement notice was issued, except where or to the extent that the principal enactment provides that payment of the modified penalty under the principal enactment would be regarded as an admission.

(4) Where the alleged offence to which an infringement notice relates is constituted by failure to do an act or thing, section 71 (1) or (2), as the case requires, of the *Interpretation Act 1984*, or any provision of another written law substantially to the like effect, shall operate as if—

- (a) payment before an enforcement order is made of the amount outstanding under this Part; or
- (b) the making of an enforcement order,

were, for the purposes of that provision, a conviction of the alleged offender for the alleged offence and the conviction were on the day on which the payment was made or the enforcement order was made, as the case may be.

Election for court hearing

171BK. (1) An alleged offender may, notwithstanding any other provision of this Part, at any time that is—

- (a) after the making of an enforcement order in respect of an infringement notice; but
- (b) before either the amount outstanding under this Part has been paid or a warrant under this Part has been executed,

elect in writing given to the Registrar to have a complaint of the alleged offence heard and determined by a court.

(2) Where an alleged offender elects to have a complaint of the alleged offence heard and determined by a court—

(a) any order or warrant issued under this Part ceases to have effect; and

(b) the Registrar shall—

(i) refer the matter to a court of petty sessions;

(ii) notify the alleged offender and the person who lodged the relevant certificate under section 171BE (1) that the matter has been so referred; and

(iii) if a warrant has been issued under this Part, forthwith notify the Commissioner of Police that the warrant has ceased to have effect.

(3) Where under subsection (2) a matter is referred to a court of petty sessions, the Registrar shall forward to the clerk of that court a copy of the certificate under section 171BE relating to the alleged offence and proceedings in respect of the alleged offence are thereby commenced, and the provisions of this Act other than this Part apply in respect of the matter, as if a complaint of the alleged offence had, on the day when the certificate was lodged under section 171BE (1), been made as mentioned in section 50 before the clerk of petty sessions by the person who gave the certificate.

Withdrawal of proceedings under this Part

171BL. (1) Where a courtesy letter has been served under this Part in respect of an infringement notice but a warrant under this Part has not been executed in respect of the alleged offence and the matter has not been dealt with by a court other than under this Part, a person prescribed for the purposes of this subsection in respect of the principal enactment may, whether or not payment has been made of the amount for the time being outstanding, withdraw proceedings under this Part in respect of the alleged offence.

(2) Proceedings are withdrawn under subsection (1) by—

- (a) serving on the alleged offender notice of withdrawal of proceedings under this Part in the prescribed form and refunding any amount paid under this Part by the alleged offender in respect of the alleged offence; and
- (b) where a certificate has been given under section 171BE in respect of the alleged offence, giving to the Registrar a copy of the notice mentioned in paragraph (a).

(3) Where proceedings are withdrawn under this section—

- (a) any certificate, enforcement order or warrant under this Part in respect of the alleged offence ceases to have effect;
- (b) if court proceedings have been commenced under section 171BK (3), those proceedings are, by operation of this section, discontinued; and
- (c) the Registrar shall—
 - (i) if court proceedings have been commenced under section 171BK(3), forthwith notify the clerk of the court in which the matter is proceeding that those proceedings are discontinued;
 - (ii) if a warrant has been issued under this Part in respect of the alleged offence, forthwith notify the Commissioner of Police that the warrant has ceased to have effect.

Foreign languages

171BM. Regulations may provide that a courtesy letter, notice of the making or variation of an enforcement order, notice that a warrant of commitment has been issued under this Part, or notice of withdrawal of proceedings under this Part, is not served as required by this Part unless it includes on its reverse side a statement in each of the languages prescribed at the time of service—

- (a) to the effect that it should not be ignored and, if it is not understood, an interpretation and explanation should be obtained and advice should be sought;
- (b) specifying at least one source from which advice may be sought.

Section 172 amended

11. Section 172 of the principal Act is amended by repealing subsection (4) and substituting the following subsections—

“ (4) An order under this section may be made in the absence of the defendant and notwithstanding that he was not summoned to appear at the hearing of the complaint, but in that case—

(a) the justices shall summon the defendant to appear at a time and place appointed by the summons before such justices as shall then be there to show cause why the order should not be confirmed;

(b) the order shall not be effective after the conclusion of the hearing to which the defendant is summoned unless—

(i) the defendant does not appear at that hearing in obedience to the summons; or

(ii) the justices, having considered the evidence of the complainant and any evidence of the defendant or other person, confirm the order.

(4a) The power to confirm the order conferred by subsection (4) (b) (ii) includes the power to do so subject to variation of the terms of the order, but until the variation comes into force under section 175, the original order shall continue in force. ”.

Section 173 amended

12. Section 173 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) Subject to sections 175 and 176, a person who contravenes or fails to comply with an order made under section 172 commits an offence.

Penalty: \$1 000 or 6 months imprisonment. ”.

Section 174 amended

13. Section 174 of the principal Act is amended in subsection (2) by deleting “order as so varied” and substituting the following—

“ variation order ”.

Sections 175 and 176 inserted

14. After section 174 of the principal Act, the following sections are inserted—

Time when order becomes effective

“ 175. (1) If an order under this Part imposing restraints on a defendant or a variation of such an order is made in the presence of the defendant it comes into force for the purposes of section 173 (1) as from the time when it is made, but otherwise such an order or variation comes into force as from the time when a copy of the order or the variation order is served on him under section 172 (6) or 174 (2).

(2) A revocation of an order under this Part has effect for the purposes of section 173 (1) as from the time when it is made.

Expiry of order

176. An order made under this Part after the commencement of section 14 of the *Justices Amendment Act 1988* imposing restraints on a defendant ceases to have effect—

- (a) at the expiration of one year after the day on which the order, or any variation thereof, came into force; or
- (b) on such day as the justices may specify or provide for in the order or in a variation order,

but nothing in this section prevents the making of a fresh order against the defendant. ”.
