

## JUSTICES.

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No. 22 of 1968.

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**AN ACT to amend the Justices Act, 1902-1967.**

[*Assented to 16th October, 1968.*]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Justices Act Amendment Act, 1968*. Short title and citation.

(2) In this Act the Justices Act, 1902-1967, is referred to as the principal Act. Reprinted as approved the 30th November, 1967.

(3) The principal Act as amended by this Act may be cited as the Justices Act, 1902-1968.

S. 4  
amended.

2. Section four of the principal Act is amended—
- (a) by deleting the interpretation, “Clerk of Petty Sessions”;
- (b) by adding, after the interpretation, “Keeper of a Gaol”, the following interpretation—

“Magistrate” means a Stipendiary Magistrate appointed and holding office, whether temporarily or permanently, under the Stipendiary Magistrates Act, 1957, the Interpretation Act, 1918, or the Public Service Act, 1904; ;

and

- (c) by deleting the interpretation, “Resident Magistrate”.

S. 11  
repealed.

3. Section eleven of the principal Act is repealed.

S. 12  
amended.

4. Section twelve of the principal Act is amended by deleting the words, “Police or Resident”, in line four.

S. 16  
amended.

5. Section sixteen of the principal Act is amended by deleting the words, “Police or Resident”, in line ten.

S. 19  
repealed and  
re-enacted.

6. Section nineteen of the principal Act is repealed and re-enacted with amendments, as follows—

Certain  
signatures  
to be  
*prima facie*  
authentic.

19. (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. .

7. The principal Act is amended by adding, after section twenty-five, the following section— S. 25A added.

25A. 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. . Clerks of Petty Sessions.

8. Section twenty-seven of the principal Act is amended— S. 27 amended.

(a) by adding after the section number, "27.", the subsection designation, "(1)";

(b) by adding after the word, "may", in line two, the passage, ", subject to subsection (2) of this section,"; and

(c) by adding the following subsection—

(2) Where a warrant of execution or commitment is not issued within the period of twelve 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. .

9. Section twenty-eight of the principal Act is amended by adding, after the word, "may", in line three, the passage, ", subject to section twenty-seven of this Act,". S. 28 amended.

S. 30  
amended.

10. Section thirty of the principal Act is amended—

- (a) by substituting for the words, “police or resident magistrate”, where occurring in lines three and four of the first proviso, the word, “Magistrate”, in both cases; and
- (b) by deleting the words, “Police or Resident”, in line two and, again, in lines three and four of the second proviso.

Sub-heading  
to s. 33  
amended.

11. The sub-heading immediately preceding section thirty-three of the principal Act is amended by deleting the words, “Police and Resident”.

S. 33  
amended.

12. Section thirty-three of the principal Act is amended—

- (a) by deleting the words, “Police Magistrate and every Resident”, in line one; and
- (b) by deleting the second paragraph, comprising lines seven, eight and nine.

S. 34  
amended.

13. Section thirty-four of the principal Act is amended—

- (a) by substituting for the words, “the Police or Resident Magistrate acting in such place”, in lines four and five, the words, “a Magistrate”; and
- (b) by substituting for the words, “such Police or Resident”, in line six and, again, in lines eleven and twelve, the word, “a”, in each case.

S. 40  
amended.

14. Section forty of the principal Act is amended by substituting for the words, “any Police or Resident”, in line eight, the word, “a”.

S. 56  
amended.

15. Section fifty-six of the principal Act is amended by substituting for the words, “the police or resident magistrate”, in line one of the proviso, the words, “a Magistrate”.

16. Section ninety-four A of the principal Act is amended by deleting the words, "Police or Resident", in line four. S. 94A  
amended.

17. Section one hundred and eleven of the principal Act is amended by deleting the words, "Police or Resident", in lines eighteen and nineteen. S. 111  
amended

18. Section one hundred and sixteen of the principal Act is amended by deleting the word, "with", in line three. S. 116  
amended.

19. Section one hundred and seventeen of the principal Act is amended by deleting the words, "Police or Resident", in line seven. S. 117  
amended.

20. Section one hundred and nineteen of the principal Act is amended by deleting the words, "Police or Resident", in line three. S. 119  
amended.

21. The principal Act is amended by adding, after section one hundred and twenty-one, the following section— S. 121A  
added.

121A. Where the recognisance of a person put upon his trial and admitted to bail is conditioned upon that person's appearance at the time and place of the first day of the sitting or session at which he is to be tried, the Clerk of Arraignment or, as the case may be, the Clerk of the Court of Session may, by notice served personally on that person and on his surety or sureties (if any) or by notice sent by prepaid registered post to him and to his surety or sureties (if any), each at his last known place of residence or business address, fix some other and later time for the person's appearance and the recognisance shall, thereupon, be deemed to be conditioned upon his appearance in accordance with the notice. .

Variation of  
recog-  
nisesances.

S. 133  
repealed.

22. Section one hundred and thirty-three of the principal Act is repealed and the heading immediately preceding that section is deleted.

S. 135  
repealed and  
re-enacted.

23. Section one hundred and thirty-five of the principal Act is repealed and re-enacted with amendments, as follows—

Hearings in  
the absence  
of defendant.

135. (1) Where, at the time and place appointed by the summons for the hearing and determining of a complaint of a simple offence, 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 fifty-six, fifty-six A or fifty-seven of this Act, 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 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.

(2) Where the Justices proceed to hear and determine the complaint in the absence of the defendant, then—

- (a) if the complaint is of a simple offence against—
  - (i) the Traffic Act, 1919;
  - (ii) any other Act prescribed for the purposes of this subsection; or
  - (iii) any regulation, rule, by-law or order made under an Act such as is mentioned in subparagraph (i) or (ii) of this paragraph,

the Justices may receive affidavits of evidence in support of the matters alleged in the complaint and may determine the complaint on the evidence so received; and

- (b) the Justices shall not impose a sentence of imprisonment in respect of an offence that is a matter of the complaint until the defendant is before them, in person, for which purpose they may issue their warrant.

(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. .

24. Section one hundred and thirty-six of the principal Act is repealed. S. 136  
repealed.

25. Section one hundred and thirty-six A of the principal Act is amended— S. 136A  
amended.

(a) by substituting for the words, “clerk of the court of petty sessions at”, in lines seven and eight of subsection (1), the words, “clerk of petty sessions of the court in”;  
and

(b) by deleting the words, “of the court” in line two of subsection (2) and, again, in lines one and two of subsection (4).

26. The principal Act is amended by adding, after section one hundred and thirty-six A, the following section— S. 136B  
added.

136B. (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 Proceedings  
against  
young  
persons.

under the age of eighteen 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) of this section, 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) of this section, a party to the complaint or the Minister may apply to Justices or, if the determination is the subject of an appeal or of an application for an order to review, apply to the court or Judge hearing that appeal or 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 by which it might have been heard and determined, in the first instance. .

S. 150  
amended.

27. Section one hundred and fifty of the principal Act is amended—

- (a) by adding after the section number, "150.", the subsection designation, "(1)"; and
- (b) by substituting for the passage, "Subject as aforesaid and to subsection 6 of section 167," in lines one and two of the second paragraph, the passage, "(2) Except as provided by subsection (1) of this section and by subsections (6) and (7) of section one hundred and sixty-seven of this Act,".

S. 155  
amended.

28. Section one hundred and fifty-five of the principal Act is amended by adding, after the word "may", in line three of subsection (3), the passage, ", subject to section twenty-seven of this Act,".



29. Section one hundred and fifty-eight of the principal Act is amended by adding, after the word, "may", in line six, the passage, ", subject to section twenty-seven of this Act,".

S. 158  
amended.

30. The sub-heading immediately preceding section one hundred and sixty-six of the principal Act is deleted and the sub-heading, "Punishment.", is substituted.

Sub-heading  
to s. 166  
substituted.

31. The principal Act is amended by adding, after section one hundred and sixty-six A, the following section—

S. 166B  
added.

166B. (1) Where the Justices convict a defendant and impose a punishment that is contrary to, or fail to impose a punishment in conformity with, the provisions of the Act under which the complaint is made, the Justices may, of their own motion or on the application of a party to the complaint, after giving the parties an opportunity of being heard, recall the order made in that regard and impose a punishment that is not contrary to, or that is in conformity with, those provisions.

Rectification  
of certain  
orders by  
Justices.

(2) For the purposes of this section, the term, "punishment", includes a forfeiture, disqualification and loss or suspension of a licence or privilege; and nothing in this section affects the operation of any provision of Part VIII of this Act.

32. Section one hundred and sixty-seven of the principal Act is amended—

S. 167  
amended.

(a) by substituting for the words, "three days", in line five of subsection (1), the words, "one day"; and

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

(6) Where imposing a sentence on a convicted person, the Justices,—

(a) if imposing a sentence of imprisonment, may direct that the imprisonment commence to run from the expiry of any period of imprisonment that the person may then be serving under a warrant of commitment; and

(b) if imposing a monetary penalty, or making an order for the payment of any sum of money (including costs), or doing both those things, in respect of more than one offence, and directing that the person be imprisoned on default of payment of any of them, may direct that the period of imprisonment served in respect of any one default be cumulative on that served in respect of any other.

(7) Where a person is liable to imprisonment on default of payment of a monetary penalty imposed on him or on default of payment of any other sum of money (including costs) ordered to be paid by him, the Justice issuing his warrant on default may direct that the imprisonment under the warrant commence to run from the expiry of any term or period of imprisonment that the person may then be serving. .

34. Section one hundred and eighty-four of the principal Act is amended by substituting for the words, "the Court of Petty Sessions at", in line five, the words, "petty sessions of the court in".

S. 184  
amended.

35. Section one hundred and eighty-seven of the principal Act is amended by substituting for the words, "police or resident magistrate", in lines five and six of the second proviso, the word, "Magistrate".

S. 187  
amended.

36. Section one hundred and ninety-two of the principal Act is amended by substituting for the words, "the Court from whose decision", in lines four and five, the words, "petty sessions of the court from which".

S. 192  
amended.

37. Section two hundred of the principal Act is amended by deleting the words, "Police or Resident", in line four of the proviso.

S. 200  
amended.

38. The Fourth Schedule to the principal Act is amended by deleting the words, "Police or Resident", in every case, where occurring in Forms 33, 36, 37, 38 and 39.

Fourth  
Schedule  
amended.

39. The Seventh Schedule to the principal Act is deleted.

Seventh  
Schedule  
deleted.

40. Sections twenty-four and twenty-five of the Justices Act Amendment Act, 1919, (No. 19 of 1919) are repealed.

Act No. 19  
of 1919  
amended.

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