

Western Australia

LEGISLATIVE COUNCIL

Acts Amendment (Evidence) Bill 1999

A Bill for

An Act to amend —

- **the *Evidence Act 1906*;**
- **the *Justices Act 1902*;**
- **the *Children's Court of Western Australia Act 1988*; and**
- ***The Criminal Code*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Evidence) Act 1999*.

(b) in paragraph (c)(ii) by inserting after “Second Schedule” —

“ or under a repealed Code section ”.

(2) After section 9(5) the following subsection is inserted —

5

“

(6) In subsection (1) —

“**repealed Code section**” means a repealed section of *The Criminal Code* that, before it was repealed, enacted an offence constituted by acts or omissions that are substantially the same as the acts or omissions that constitute an offence under a section of *The Criminal Code* that is mentioned in Part 1 of the Second Schedule.

10

”.

15 **6. Sections 27A and 27B and heading inserted**

After section 27 the following heading and sections are inserted —

“

Manner of giving evidence

20

27A. Form of evidence

(1) Evidence may be given in the form of a chart, summary or other explanatory document if it appears to the court that the document would be likely to aid comprehension of other evidence that has been given or is to be given.

25

(2) Nothing in this section affects the operation of section 27B.

27B. Manner of giving voluminous or complex evidence

- 5 (1) If a court is satisfied that particular evidence that a party to a proceeding proposes to adduce is so voluminous or complex that it would be difficult to assess or comprehend it if it were adduced in narrative form, the court may direct the party to adduce the evidence in another form, including in the form of a chart, summary or other explanatory document.
- 10 (2) The direction may also —
- (a) specify the form of the evidence;
 - (b) specify the witness who is to give the evidence;
 - (c) specify how any document is to be prepared;
 - (d) contain directions to ensure that each other party is served with copies of the evidence in the form in which it is to be given and is given sufficient time to examine it;
 - (e) contain directions as to the extent (if any) to which the voluminous or complex evidence is to be adduced by the party.
- 15
- 20 (3) The opinion rule does not apply to evidence adduced in accordance with a direction under this section.
- 25 (4) In subsection (3) —
- “opinion rule”** means the common law rule that evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.
- ”.

7. Section 36A amended

- (1) Section 36A(1) is amended by inserting after the definition of “defendant” the following definition —

“

5 **“repealed Code section”** means a repealed section of
The Criminal Code that, before it was repealed,
enacted an offence constituted by acts or
omissions that are substantially the same as the
10 acts or omissions that constitute an offence under a
section or Chapter of *The Criminal Code* that is
mentioned in paragraph (a) or (b) of the definition
of “sexual offence” in this subsection.

”.

- 15 (2) Section 36A(1) is amended in the definition of “sexual offence”
as follows:

- (a) by inserting after paragraph (b) the following
paragraph —

“

20 (ba) under a repealed Code section;

”;

- (b) in paragraph (c) by deleting “or (b)” and inserting
instead —

“ , (b) or (ba) ”;

25 (c) in paragraph (d) by deleting “or (b)” and inserting
instead —

“ , (b) or (ba) ”.

8. Section 36BD amended

Section 36BD is amended by inserting after “*The Criminal Code*” —

“ (as enacted at any time) ”.

5 **9. Section 36C amended**

(1) Section 36C(1) is amended by deleting “subsection (5)” and inserting instead —

“ subsections (5) and (6) ”.

10 (2) Section 36C(2) is amended by deleting “not exceeding \$500.” and inserting instead —

“ of, in the case of an individual, \$5 000 or, in the case of a body corporate, \$25 000.

”.

15 (3) After section 36C(5) the following subsection is inserted —

“

(6) Nothing in this section prohibits the publication or broadcasting of matter identifying a complainant if —

20 (a) prior to the publication or broadcasting that complainant authorized the publication or broadcasting of the matter; and

25 (b) at the time the complainant authorized the publication or broadcasting, he or she was at least 18 years old and was not a person who, because of mental impairment (as defined in *The Criminal Code*), is incapable of making reasonable judgments in respect of the publication or broadcasting of such matters.

”.

10. Section 73A replaced

Section 73A is repealed and the following section is inserted instead —

“

5 **73A. Admissibility of reproductions (best evidence rule modified)**

- 10 (1) A document that accurately reproduces the contents of another document is admissible in evidence before a court in the same circumstances, and for the same purposes, as that other document, whether or not that other document still exists.
- 15 (2) In determining whether a particular document accurately reproduces the contents of another, a court is not bound by the rules of evidence and —
- 20 (a) may rely on its own knowledge of the nature and reliability of the processes by which the reproduction was made;
- (b) may make findings based on a certificate in the prescribed form signed by a person with knowledge and experience of the processes by which the reproduction was made;
- 25 (c) may make findings based on a certificate in the prescribed form signed by a person who has compared the contents of both documents and found them to be identical; or
- (d) may act on any other basis it considers appropriate in the circumstances.
- (3) This section applies to a reproduction made —
- (a) by an instantaneous process;

- (b) by a process in which the contents of a document are recorded by photographic, electronic or other means, and the reproduction is subsequently produced from that record;
 - 5 (c) by a process prescribed for the purposes of this section; or
 - (d) in any other way.
 - (4) If a reproduction is made by a process referred to in subsection (3)(c), the process shall be presumed to reproduce accurately the contents of the document purportedly reproduced unless the contrary is proved.
 - 10 (5) If so requested by a party to the proceedings, a court shall give reasons for determining that a document is or is not an accurate reproduction.
 - 15 (6) A person who signs a certificate for the purposes of this section knowing it to be false or misleading in any material particular commits an indictable offence and is liable on conviction to imprisonment for 7 years.
- ”.

20 **11. Various sections repealed**

The following sections are repealed:

- (a) sections 73C to 73M;
- (b) section 73P;
- (c) sections 73R, 73S and 73T;
- 25 (d) section 73V.

12. Section 73N amended

Section 73N is amended by deleting “under this Division”.

13. Section 73Q amended

Section 73Q is amended by deleting “pursuant to this Division”.

14. Section 79B amended

Section 79B is amended by inserting before the definition of “derived” the following definitions —

“

“**business**” means any business, occupation, trade or calling and includes the business of any governmental body or instrumentality and of any local government;

“**business record**” means a book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business;

”.

15. Section 79C amended

(1) After section 79C(2) the following subsections are inserted —

“

(2a) Notwithstanding subsections (1) and (2), in any proceedings where direct oral evidence of a fact or opinion would be admissible, any statement in a document and tending to establish the fact or opinion shall, on production of the document, be admissible as evidence of that fact or opinion if —

(a) the statement is, or directly or indirectly reproduces, or is derived from, a business record; and

(b) the court is satisfied that the business record is a genuine business record.

(2b) Where a statement referred to in subsection (2a) is made by a qualified person that person shall not be called as a witness unless the court orders otherwise.

”.

5 (2) Section 79C(4) is amended by deleting “(1) and (2)” and inserting instead —

“ (1), (2) and (2a) ”.

16. Section 79G repealed

Section 79G is repealed.

10 **17. Section 92A replaced**

Section 92A is repealed and the following section is inserted instead —

“

15 **92A. Application of sections 89 to 92 to Australian and foreign banks**

Sections 89, 90, 91 and 92 apply to bankers’ books, and banks and branches of banks, whether within or outside the Commonwealth.

”.

20 **Division 3 — Amendments about evidence of children and special witnesses**

18. Section 106A amended

(1) Section 106A is amended as follows:

(a) by deleting “to 106S” and substituting —

25 “ to 106T ”;

(b) by deleting the definition of “trial”.

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(2) Section 106A is amended in the definition of “video-taped recording of evidence” as follows:

(a) by deleting “or” after paragraph (a);

5

(b) by deleting the full stop after paragraph (b) and inserting instead —

“ ; or ”;

(c) by inserting the following paragraph —

“

10

(c) pursuant to section 106N(3a) or (5).

”.

19. Section 106H amended

(1) Section 106H(2) is repealed and the following subsections are inserted instead —

“

15

(2) If a relevant statement is to be admitted, evidence of the making and content of the affected child’s statement shall be given by the person to whom the affected child made the statement.

20

(2a) Subsection (1) does not affect the operation of section 106G.

(2b) A written statement by a person to whom an affected child made a relevant statement is admissible under section 69(2) of the *Justices Act 1902* if the requirements of that subsection are complied with.

25

(2c) A relevant statement recorded on video-tape is admissible to the same extent as if it were given orally in the proceeding in accordance with the usual rules and practice of the Court concerned.

”.

(2) Section 106H(3) is amended by deleting “subsection (1)” and inserting instead —

“ this section ”.

20. Section 106I amended

5 Section 106I(1) is repealed and the following subsection is inserted instead —

“

10 (1) Where a Schedule 7 proceeding has been commenced in a Court, the prosecutor may apply to a judge of that Court for an order directing —

(a) that the whole or a part of the affected child’s evidence in chief be —

(i) taken and recorded on video-tape; and

15 (ii) presented to the Court in the form of that video-taped recording,

and that the affected child be available at the proceeding to be cross-examined and re-examined; or

20 (b) that the whole of the affected child’s evidence (including cross-examination and re-examination) be —

(i) taken at a special hearing and recorded on video-tape; and

25 (ii) presented to the Court in the form of that video-taped recording,

and that the affected child not be present at the proceeding.

”.

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21. Section 106J amended

Section 106J(1)(b) is deleted and the following paragraph is inserted instead —

“

- 5 (b) the manner in which any cross-examination and any re-examination of the affected child is to be conducted in the Schedule 7 proceeding.

”.

22. Section 106K amended

- 10 (1) Section 106K(1)(a) is deleted and the following paragraph is inserted instead —

“

- 15 (a) directions, with or without conditions, as to the conduct of the special hearing, including directions as to —
- (i) whether the affected child is to be in the courtroom, or in a separate room, when the child’s evidence is being taken; and
- 20 (ii) the persons who may be present in the same room as the affected child when the child’s evidence is being taken;

”.

- (2) Section 106K(3) is repealed and the following subsection is inserted instead —

“

- 25 (3) At a special hearing ordered under subsection (1) —
- (a) the defendant —
- 30 (i) is not to be in the same room as the affected child when the child’s evidence is being taken; but

- 5 (ii) is to be capable of observing the proceedings by means of a closed circuit television system and is at all times to have the means of communicating with his or her counsel;
- (b) no person other than a person authorized by the judge under subsection (1) is to be present in the same room as the affected child when the child's evidence is being taken;
- 10 (c) subject to the control of the presiding judge, the affected child is to give his or her evidence and be cross-examined and re-examined; and
- (d) except as provided by this section, the usual rules of evidence apply.
- 15 ”.
- (3) Section 106K(4) is repealed.

23. Section 106L repealed

Section 106L is repealed.

24. Section 106M amended

- 20 Section 106M(1) and (2) are amended by deleting “trial” in the 3 places it occurs and in each place inserting instead —
- “ proceeding ”.

25. Section 106N amended

- (1) After section 106N(3) the following subsection is inserted —
- 25 “
- (3a) Where arrangements are made under subsection (2)(a) or (b) the affected child's evidence is to be recorded on video-tape.
- ”.

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(2) After section 106N(4) the following subsection is inserted —

“

(5) Where arrangements are made under subsection (4) and where the necessary facilities are available to do so, the affected child’s evidence is to be recorded on video-tape.

”

26. Section 106R amended

(1) Section 106R(4)(b) is deleted and the following paragraphs are inserted instead —

“

(b) in any proceeding for an offence, that the special witness’s evidence be —

(i) taken at a special hearing and recorded on video-tape; and

(ii) presented to the Court in the form of that video-taped recording,

and that the special witness not be present at the proceeding for the offence;

(c) in any proceeding for an offence, that an arrangement of the kind described in section 106N(2) or (4) is to be made.

”

(2) Section 106R(4a) is repealed and the following subsection is inserted instead —

“

(4a) Where an arrangement under subsection (4)(b) or (c) is directed to be made, section 106K or 106N, as the case requires, applies, with any necessary changes, as if the special witness were an affected child.

”

27. Section 106S amended

Section 106S(1) is amended by deleting “trial.” and inserting instead —

“ proceeding. ”.

5 **28. Section 106T inserted**

After section 106S the following section is inserted —

“

106T. Use of recordings etc.

- 10 (1) Evidence of an affected child recorded on video-tape under section 106J, 106K or 106N in relation to a Schedule 7 proceeding is admissible in any hearing in relation to that proceeding to the same extent as if it were given orally in the hearing in accordance with the usual rules and practice of the Court concerned.
- 15 (2) Evidence of a special witness recorded on video-tape under section 106K or 106N in relation to a proceeding is admissible in any hearing in relation to that proceeding to the same extent as if it were given orally in the hearing in accordance with the usual rules and practice of the Court concerned.
- 20 (3) A judge of a Court before which it is proposed to adduce video-taped evidence under subsection (1) or (2) in a hearing may order that the affected child or special witness, as the case may be, attend the Court for the purposes of giving further evidence in clarification of the video-taped evidence.
- 25 (4) The making of an order under subsection (3) does not prevent the making of an application under section 106I or of an order under section 106J, 106K, 106N or 106R(1)(b) in relation to the giving of the further
- 30 evidence.

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(5) In this section —

“**hearing**”, in relation to a proceeding, means —

- (a) a preliminary hearing under the *Justices Act 1902* in relation to the proceeding;
- 5 (b) the trial or hearing of the proceeding; or
- (c) a retrial or rehearing of the proceeding.

”.

29. References to “pre-trial hearing” amended

10 The provisions listed in the Table to this section are each amended by deleting “pre-trial” wherever it occurs and in each place inserting instead —

“ special ”.

Table

s. 106A	s. 106M(3)
s. 106K(5)	s. 106S(1)
s. 106M(1)	s. 106S(2)

30. Schedule 7 amended

15 Schedule 7 is amended in clause 1 as follows:

- (a) by inserting before “A proceeding” the subclause designation “(1)”;
- (b) in paragraph (a) by inserting after “Part B or C” —
“ or under a repealed Code section ”;
- 20 (c) in paragraph (c) by inserting after “Part C” —
“ or under a repealed Code section ”;

(d) at the end of clause 1 by inserting the following
subclause —

“

(2) In subclause (1) —

5 **“repealed Code section”** means a repealed section of *The*
 Criminal Code that, before it was repealed, enacted an
 offence constituted by acts or omissions that are
 substantially the same as the acts or omissions that
10 constitute an offence under a section or Chapter of *The*
 Criminal Code that is mentioned in Part B or C, as the
 case requires.

”.

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Part 3 — Justices Act 1902 amended

31. Act amended by this Part

The amendments in this Part are to the *Justices Act 1902**.

[* Reprinted as at 4 June 1997.

5 For subsequent amendments see 1998 Index to Legislation of
 Western Australia, Table 1, pp. 132-3.]

32. Section 69 replaced

Section 69 is repealed and the following section is inserted
instead —

10

“

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

- 15 (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.
- 20 (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 —
- 25 (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);
 - 5 (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);
 - 10 (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
 - 15 (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
- 20 in section 106A of the *Evidence Act 1906* —
- 25 (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,

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if —

- (c) in the case of a written statement, it complies with the conditions in subsection (4);
 - 5 (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
 - 10 (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.
- 15 (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;
 - 20 (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;
 - 25 (c) the statement purports to be signed by the person who made it; and

- 5 (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.
- 10 (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 —
- 15 (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.
- 20
- 25 (6) A statement is deemed to be tendered in evidence under this section at the time that the statement is tendered to the court.
- 30 (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.

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- 5 (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.
- 10 (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.

”.

33. Section 73 amended

- 15 (1) Section 73(2) is amended as follows:
- (a) by deleting “section 69” and inserting instead —
“ section 69(2) or (3) ”;
 - (b) in paragraph (a) by deleting “subsection (2)(a) of that section” and inserting instead —
“ section 69(2)(a) or (3)(a) ”;
 - (c) in paragraph (c) by inserting after “may,” —
20 “ unless subsection (3) or (4) applies, ”.
- (2) After section 73(2) the following subsections are inserted —
“
- 25 (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.

- 5 (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
- 10 (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).
- 15 (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,
20 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
25 video-tape as is admissible in evidence.

”.

34. Section 101A amended

Section 101A(e) is amended as follows:

- (a) by deleting “written”;

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(b) by deleting “section 69(2);” and inserting instead —

“

section 69(2) or (3) and notice of any evidence
recorded on video-tape which the prosecution
proposes to adduce;

”.

35. Section 101B amended

(1) Section 101B(1) is amended by inserting after “section
73(1),” —

“

and after any evidence recorded on video-tape is
admitted under section 106T(1) or (2) of the *Evidence
Act 1906*,

”.

(2) Section 101B(2)(b) is deleted and the following paragraph is
inserted instead —

“

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

”.

36. Section 101C amended

Section 101C is amended as follows:

(a) in paragraph (a)(ii) by deleting “section 69” and
inserting instead —

“ section 69(2) ”;

(b) by deleting “and” after paragraph (b)(ii);

(c) after paragraph (b)(ii) by inserting the following subparagraphs —

“

5 (ia) 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;

10 (ib) 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

”;

(d) in paragraphs (b)(iii) and (c), by deleting “written statements,” and inserting instead —

“ statements, or the video-tapes, if any, ”.

20 **37. Section 102 amended**

Section 102(1) is amended as follows:

- (a) in paragraph (a) by deleting “section 69” and inserting instead —
“ section 69(2) or (3) ”;
- 25 (b) by deleting “and” after paragraph (a);
- (c) by deleting the comma after paragraph (b) and inserting instead a semicolon;

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(d) by inserting after paragraph (b) the following paragraphs —

“

(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),

”.

38. Ninth Schedule amended

The Ninth Schedule is amended as follows:

(a) in the second paragraph by deleting “written”;

(b) in the second paragraph by deleting “These papers” and inserting instead —

“ The statements and any other papers ”;

(c) in the third paragraph by inserting after the last sentence the following —

“

If any electronically recorded statements of children are tendered they will be played in court.

”;

(d) in the fourth paragraph by deleting “section 69(3)” and inserting instead —

“ section 69(2) ”;

(e) in the sixth paragraph by deleting “written” in the 2 places where it occurs;

(f) in the sixth paragraph by inserting after “read” —

“ or played ”.

**Part 4 — *Children's Court of Western Australia*
Act 1988 amended**

39. Act amended by this Part

5 The amendments in this Part are to the *Children's Court of Western Australia Act 1988**.

[* Reprinted as at 23 April 1996.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 37.]

40. Section 19B amended

10 (1) Section 19B(4)(a) is deleted and the following paragraph is inserted instead —

“

- 15 (a) the court, on its own motion or on the application of the child, may direct the prosecutor —
- (i) to serve or cause to be served on the child (or the child's solicitor or counsel) and to lodge with the clerk, within such time as is specified, a copy of any statement made, in accordance with section 69 of the *Justices Act 1902*, by a person whose evidence the prosecution proposes to adduce at the hearing of the charge; and
- 20
- (ii) to afford the child (or the child's solicitor or counsel) reasonable opportunity to inspect any material exhibits that the prosecution proposes to tender at the hearing of the charge;
- 25

30

”.

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(2) After section 19B(4) the following subsections are inserted —

“

- 5 (5) If a copy of a statement of a person is served in accordance with a direction made under subsection (4)(a)(i), the original of the statement may be produced and given in evidence at the trial of the child —
- 10 (a) if it is proved to the satisfaction of the Court that the person is dead, or out of Western Australia, or so ill as not to be able to travel, although there may be a prospect of the person's recovery; or
- (b) if the person is kept out of the way by the child.
- 15 (6) If there is a prospect of the recovery of a person proved to be too ill to travel, the Court shall not be obliged to receive the statement, but may postpone the trial.

”.

Part 5 — *The Criminal Code* amended

41. Code amended by this Part

The amendments in this Part are to *The Criminal Code**.

5 [* Reprinted as at 21 April 1997 as the Schedule to the Criminal
Code Act 1913 appearing in Appendix B to the Criminal
Code Compilation Act 1913.

For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p. 63.]

42. Section 635B amended

10 Section 635B(1)(b) is deleted and the following paragraph is
inserted instead —

“

15 (b) a written statement of a person that is made, at
any time, in accordance with section 69(4) of
the *Justices Act 1902* and, if it refers to any
other document or exhibit, is accompanied by a
copy or description of the other document or
exhibit,

”.

20 **43. Section 729 amended**

(1) Section 729 is amended as follows:

- 25 (a) by inserting before “When” in the first paragraph the
subsection designation “ (1) ”;
- (b) by inserting before “When” in the second paragraph the
subsection designation “ (2) ”.

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(2) Section 729 is amended by inserting after the second paragraph the following subsections —

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- 5 (3) When an indictment is presented in a court in the circumstances referred to in subsection (1), the court may, on its own motion or on the application of the accused person, direct the Crown —
- 10 (a) to serve the accused person and to lodge with the court, within such time as is specified, a copy of any statement made, in accordance with section 69 of the *Justices Act 1902*, by a person whose evidence the Crown proposes to adduce at the trial; and
- 15 (b) to afford the accused person reasonable opportunity to inspect any material exhibits that the Crown proposes to tender at the trial.
- 20 (4) If a copy of a statement of a person is served in accordance with a direction made under subsection (3)(a), the original of the statement may be produced and given in evidence at the trial —
- 25 (a) if it is proved to the satisfaction of the court that the person is dead, or out of Western Australia, or so ill as not to be able to travel, although there may be a prospect of the person's recovery; or
- (b) if the person is kept out of the way by the accused person.

- (5) If there is a prospect of the recovery of a person proved to be too ill to travel, the court shall not be obliged to receive the statement, but may postpone the trial, discharging a jury if one has been empanelled if it thinks fit.

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