

Criminal Investigation (Consequential Provisions) Bill 2005

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Bail Act 1982</i> amended		
3.	The Act amended by this Part	3
4.	Section 6 replaced and consequential amendments	3
	6. Duty on arresting officer and others to consider bail	3
5.	Section 6A inserted	5
	6A. Whether custody justified to be considered in certain cases	5
6.	Section 12 amended	7
7.	Sections 18 and 19 repealed and consequential amendment to section 27	7
Part 3 — <i>Corruption and Crime Commission Act 2003</i> amended		
8.	The Act amended in this Part	8
9.	Section 56 repealed	8
10.	Section 101 amended	8
11.	Section 184 amended	8
12.	Section 223A inserted	9
	223A. Disposal of things seized under this Act	9
Part 4 — <i>Court Security and Custodial Services Act 1999</i> amended		
13.	The Act amended in this Part	11

Contents

14.	Section 3 amended	11
15.	Schedule 2 amended	11
	7. Power to take identifying particulars of persons in custody	11
Part 5 — <i>The Criminal Code</i> amended		
Division 1 — Amendments		
16.	<i>The Criminal Code</i> amended in this Part	13
17.	Section 70A amended	13
18.	Section 74A amended	13
19.	Section 80J inserted	13
	80J. Forfeiture of unlawful material	13
20.	Section 231 amended	13
21.	Section 232 repealed	14
22.	Sections 236 and 237 repealed	14
23.	Section 243 replaced	14
	243. Prevention of violence by mentally impaired person	14
24.	Section 473 amended	15
25.	Section 557B repealed	15
26.	Chapters LX and LXA repealed	15
27.	Chapter LXXII repealed	15
28.	Section 731 inserted	15
	731. Forfeiture etc. of property used to commit offences	15
Division 2 — Transitional provisions		
29.	Search warrants and related matters	16
Part 6 — <i>Criminal Investigation (Extra-territorial Offences) Act 1987</i> amended		
30.	The Act amended in this Part	18
31.	Long title replaced	18
32.	Headings inserted	18
Part 1 — Preliminary		
Part 2 — Search warrants		
Part 5 — Miscellaneous		
33.	Certain references to “this Act” amended	19

34.	Section 8 replaced by Parts 3 and 4	19
	Part 3 — Searching vehicles	
8.	Vehicle in WA used to commit offence outside WA	19
	Part 4 — Arrest powers	
8A.	Arrest power for foreign offence	21
	Part 7 — <i>Criminal Investigation (Identifying People) Act 2002</i> amended	
35.	The Act amended in this Part	24
36.	Section 4 amended	24
37.	Section 15 replaced	24
15.	Warrants, applying for	24
38.	Section 47 amended	26
39.	Section 83 amended	27
40.	Part 14 and Schedules 1 and 2 repealed	27
	Part 8 — <i>Criminal Procedure Act 2004</i> amended	
41.	The Act amended in this Part	28
42.	Section 30 amended	28
43.	Section 35 amended	30
44.	Section 42 amended	30
45.	Section 61 amended	30
46.	Section 95 amended	30
	Part 9 — <i>Gaming and Wagering Commission Act 1987</i> amended	
47.	The Act amended in this Part	31
48.	Section 31 amended	31
49.	Section 31A inserted	31
31A.	Powers to assist seizing things	31
50.	Section 32 amended	31
51.	Section 32A inserted	32
32A.	Disposing of seized or forfeited things	32
52.	Section 41 amended	32

**Part 10 — *Liquor Licensing Act 1988*
amended**

53.	The Act amended in this Part	33
54.	Section 113 amended	33
55.	Section 155 amended	33
56.	Section 172A inserted	33
	172A. Forfeiture	33
57.	Section 174A inserted	34
	174A. Application of <i>Criminal and Found Property Disposal Act 2005</i>	34

**Part 11 — *Maritime Archaeology
Act 1973* amended**

58.	The Act amended in this Part	35
59.	Section 11 amended	35

Part 12 — *Police Act 1892* amended

Division 1 — Amendments

60.	The Act amended in this Part	36
61.	Section 2 repealed	36
62.	Section 7 amended	36
63.	Part III replaced	36

Part III — Special constables

34.	Interpretation	36
35.	Appointing and terminating special constables	37
36.	Functions of special constables	37
37.	Special constables not in the Police Force	39
64.	Part V repealed	39
65.	Part VI repealed	39
66.	Section 123 repealed	39
67.	Section 124 repealed	39

Division 2 — Transitional provisions

68.	Existing special constables' appointments terminated	40
69.	Search warrants and related matters	40
70.	Embargo notices	40

**Part 13 — Prostitution Act 2000
amended**

71.	The Act amended in this Part	42
72.	Section 34 replaced	42
34.	Powers to assist seizing things	42

Part 14 — Various Acts amended

73.	Various Acts amended (Sch. 1)	43
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Schedule 1 — Various Acts amended

1.	<i>Betting Control Act 1954</i>	44
2.	<i>Criminal Appeals Act 2004</i>	44
3.	<i>Disposal of Uncollected Goods Act 1970</i>	44
4.	<i>Energy Operators (Powers) Act 1979</i>	44
5.	<i>Firearms Act 1973</i>	45
6.	<i>Guardianship and Administration Act 1990</i>	45
7.	<i>Industrial Relations Act 1979</i>	45
8.	<i>Interpretation Act 1984</i>	45
9.	<i>Magistrates Court Act 2004</i>	46
10.	<i>Poisons Act 1964</i>	46
11.	<i>Prisons Act 1981</i>	46
12.	<i>Public Interest Disclosure Act 2003</i>	46
13.	<i>Public Works Act 1902</i>	46
14.	<i>Unclaimed Money Act 1990</i>	47
15.	<i>Western Australian Meat Industry Authority Act 1976</i>	47
16.	<i>The Western Australian Turf Club Act 1892</i>	47

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Criminal Investigation (Consequential Provisions) Bill 2005

A Bill for

An Act to amend various Acts as a consequence of the enactment of the —

- *Criminal Investigation Act 2005*; and
- *Criminal and Found Property Disposal Act 2005*,
and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Criminal Investigation (Consequential Provisions) Act 2005*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — *Bail Act 1982* amended

3. The Act amended by this Part

The amendments in this Part are to the *Bail Act 1982**.

[* *Reprint 5 as at 1 April 2005.*]

5 **4. Section 6 replaced and consequential amendments**

- (1) Section 6 is repealed and the following section is inserted instead —

“

6. Duty on arresting officer and others to consider bail

- 10 (1) This section applies to a police officer or other person (the “**arrestor**”) who —
- (a) charges a person who is under arrest (the “**accused**”) with an offence; and
 - (b) does not release the accused unconditionally under section 141 of the *Criminal Investigation Act 2005*,
- 15 or who arrests a person under a warrant.
- (2) This section is subject to —
- (a) the exercise of the power conferred by
 - 20 (b) sections 10, 12 and 16 and clause 3A of Part C of Schedule 1.
- (3) The duties in this section shall be performed whether or
- 25 not an application for bail is made by or on behalf of the accused.

s. 4

- (4) As soon as is practicable after the accused is charged, or arrested under a warrant, as the case may be, the arrester shall either —
- 5 (a) bring the accused or cause the accused to be brought before a court; or
- (b) perform the other duties of the arrester under this section.
- (5) If the arrester has power to grant the accused bail, the arrester shall consider the accused's case for bail.
- 10 (6) If the arrester does not have power to grant the accused bail, the arrester shall, unless subsection (8), (9) or (10) applies, bring or cause the accused to be brought before an authorised police officer or a justice or, in the case of a child, any authorised officer or a justice, who shall
- 15 consider the accused's case for bail as soon as is practicable.
- (7) Even if the arrester has power to grant the accused bail, the arrester may, instead of complying with subsection (5), comply with subsection (6) as if the
- 20 arrester did not.
- (8) If under section 15 only a Judge of the Supreme Court or a Judge of the Children's Court has power to grant the accused bail, the arrester shall bring the accused or cause the accused to be brought before a Judge of the
- 25 Supreme Court or a Judge of the Children's Court, as the case requires, who shall consider the accused's case for bail as soon as is practicable.
- (9) If under section 16 only a justice has power to grant the accused bail, the arrester shall bring the accused or cause the accused to be brought before a justice, who shall consider the accused's case for bail as soon as is
- 30 practicable.

5 (10) If section 16A applies, the arrester shall bring the accused or cause the accused to be brought before a court or Judge referred to in section 16A(1), who shall consider the accused's case for bail as soon as is practicable.

”.

(2) Section 7(3)(a) is amended by deleting “section 6(3)” and inserting instead —

“ section 6(8) or (9) ”.

10 (3) Section 16(1) is amended by deleting “section 6(2)(b).” and inserting instead —

“ section 6(9). ”.

(4) Section 61(2)(b) is amended by deleting “section 6(2a).” and inserting instead —

15 “ section 6(7). ”.

5. Section 6A inserted

After section 6 the following section is inserted —

“

20 **6A. Whether custody justified to be considered in certain cases**

(1) In this section —

“**accused**” means an accused who is under arrest, other than pursuant to a warrant;

25 “**released**” means released from custody without being required to enter into, or without having entered into, a bail undertaking;

“**serious offence**” means an indictable offence the penalty specified by a written law for which is or includes imprisonment for 5 years or more or life;

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“**summary court**” means the Magistrates Court or the Children’s Court.

- 5
- (2) An authorised officer or justice who is considering an accused’s case for bail for an initial appearance in a summary court on a charge of an indictable offence that is not a serious offence may order that the accused be served with a summons under the *Criminal Procedure Act 2004*, and released, in respect of the charge unless satisfied —
- 10
- (a) that there are reasonable grounds to suspect the accused would not obey the summons if served with it; or
- (b) that not releasing the accused is justified under subsection (4) or for any other reason.
- 15
- (3) An authorised officer or justice who is considering an accused’s case for bail for an initial appearance in a summary court on a charge of a simple offence must order that the accused be served with a court hearing notice under the *Criminal Procedure Act 2004*, and released, in respect of the charge unless satisfied —
- 20
- (a) that the presence of the accused when the charge is dealt with is likely to be necessary for any reason or for sentencing purposes; or
- (b) that not releasing the accused is justified under subsection (4) or for any other reason.
- 25
- (4) Not releasing an accused is justified if there are reasonable grounds to suspect that if the accused were released —
- 30
- (a) the accused —
- (i) would commit an offence;
- (ii) would continue or repeat an offence with which he or she is charged;

(iii) would endanger another person's safety or property; or

(iv) would interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the accused or any other person;

or

(b) the accused's safety would be endangered.

(5) This section does not affect the operation of section 28 or 30 of the *Criminal Procedure Act 2004*.

”.

6. Section 12 amended

Section 12 is amended as follows:

(a) by inserting after “requires” —

“ or permits ”;

(b) by deleting “section 236 of *The Criminal Code*, section 50AA of the *Police Act 1892*” and inserting instead —

“ Part 12 of the *Criminal Investigation Act 2005* ”.

7. Sections 18 and 19 repealed and consequential amendment to section 27

(1) Sections 18 and 19 are repealed.

(2) Section 27(1) is amended by deleting “, an authorised police officer who dispenses with bail under section 18,”.

**Part 3 — Corruption and Crime Commission
Act 2003 amended**

8. The Act amended in this Part

5 The amendments in this Part are to the *Corruption and Crime
Commission Act 2003**.

[* *Reprint 1 as at 5 January 2004.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 96.]*

9. Section 56 repealed

10 Section 56 is repealed.

10. Section 101 amended

(1) After section 101(2) the following subsection is inserted —

“

15 (2a) An application for a warrant must be made in
accordance with section 12 of the *Criminal
Investigation Act 2005* which applies with any
necessary changes.

”

(2) Section 101(7) is repealed.

20 **11. Section 184 amended**

(1) Section 184(3) is repealed and the following subsections are
inserted instead —

“

25 (3) For the purposes of the *Criminal Investigation Act
2005* —

- (a) the office of authorised officer is prescribed to
be a public officer; and
- (b) a holder of that office may exercise all of the
powers of a public officer in that Act; and

- (c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer for the purposes of sections 44, 47, 97 and 132 of that Act.
- 5 (3a) In addition to the powers conferred by subsection (3), an authorised officer may exercise the powers of a police officer in section 40 of the *Criminal Investigation Act 2005*.
- 10 (3b) For the purposes of the *Criminal Investigation (Identifying People) Act 2002* —
- (a) the office of authorised officer is prescribed to be a public officer; and
- (b) a holder of that office may exercise all of the powers of a public officer in that Act; and
- 15 (c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer.
- (3c) An authorised officer has and may perform all of the functions that a police officer has and may perform under any law of the State, other than the Acts referred to in subsections (3) to (3b).
- 20
- ”.
- (2) Section 184(4) is amended by deleting “subsection (3)” and inserting instead —
- “ subsections (3) to (3c) ”.

25 **12. Section 223A inserted**

After section 223 the following section is inserted —

“

223A. Disposal of things seized under this Act

- 30 (1) The *Criminal and Found Property Disposal Act 2005* applies to and in respect of anything seized under this Act, other than a thing seized under section 75(4).

s. 12

- (2) For the purposes of the *Criminal and Found Property Disposal Act 2005* —
- (a) the Commission is a prescribed agency; and
 - (b) the Commissioner is the chief officer of the Commission.

5

”.

Part 4 — *Court Security and Custodial Services Act 1999* amended

13. The Act amended in this Part

5 The amendments in this Part are to the *Court Security and Custodial Services Act 1999**.

[* *Reprint 2 as at 9 September 2005.*]

14. Section 3 amended

Section 3 is amended in the definition of “police officer” as follows:

- 10 (a) by inserting “or” after paragraph (a);
(b) by deleting paragraph (b) and “or” after it.

15. Schedule 2 amended

Schedule 2 clause 7 is repealed and the following clause is inserted instead —

15 “

7. Power to take identifying particulars of persons in custody

(1) In this clause —

“**identifying particular**” of a person means —

- 20 (a) a print of the person’s hands (including fingers), feet (including toes) or ears;
(b) a photograph of the person (including of an identifying feature of the person);
25 (c) a measurement of any identifying feature of the person.

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- 5
- (2) In respect of a person in custody who is at a custodial place or being moved between custodial places, the power to take or cause to be taken from the person any identifying particular of the person that an authorised person suspects on reasonable grounds —
- (a) is not or may not be held by the Police Force; or
- (b) is or may be needed to verify the person’s identity with identification particulars already held by the Police Force.
- 10
- (3) Sections 49 to 51 of the *Criminal Investigation (Identifying People) Act 2002*, with any necessary changes, apply to and in respect of taking an identifying particular from a person under subclause (2) as if the person were a charged suspect.
- 15
- (4) The taking of an identifying particular under subclause (2) must be done in accordance with Part 8 of the *Criminal Investigation (Identifying People) Act 2002* which applies with any necessary changes.
- 20
- (5) Sections 67 and 69 of the *Criminal Investigation (Identifying People) Act 2002*, with any necessary changes, apply to and in respect of any identifying particular taken under this clause from a person as if the particular had been obtained under Part 7 of that Act and the person were a suspect.

”.

Part 5 — *The Criminal Code* amended

Division 1 — Amendments

16. *The Criminal Code* amended in this Part

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

5 [* Reprint 12 as at 1 June 2005 (see the Schedule to the
Criminal Code Act 1913 appearing as Appendix B to the
Criminal Code Compilation Act 1913.)]

17. Section 70A amended

10 Section 70A(1) is amended in the definition of “police officer”
by deleting “Part I, III” and inserting instead —

“ Part I ”.

18. Section 74A amended

Section 74A(4) is repealed.

19. Section 80J inserted

15 After section 80I the following section is inserted in
Chapter XI —

“

80J. Forfeiture of unlawful material

20 A court that convicts a person of an offence under
section 79, 80, 80C or 80D may make an order for the
forfeiture to the State, or the destruction or disposal, of
any written or pictorial material in respect of which the
offence was committed.

”.

20. Section 231 amended

(1) Section 231 is amended by inserting before “It is lawful” the
subsection designation “(1)”.

(2) At the end of section 231 the following subsection is inserted —

“

(2) In determining whether any process or warrant might have been executed, or any arrest made, in a less forcible manner, the following shall be taken into account —

(a) whether the person executing the process or warrant had it with him or her and produced it at the time;

(b) if it was practicable to do so at the time, whether the person making an arrest, whether with or without a warrant, gave notice of the process or warrant under which the person was acting or of the cause of the arrest.

”.

21. Section 232 repealed

Section 232 is repealed.

22. Sections 236 and 237 repealed

Sections 236 and 237 are repealed.

23. Section 243 replaced

Section 243 is repealed and the following section is inserted instead —

“

243. Prevention of violence by mentally impaired person

It is lawful for any person to use such force as is reasonably necessary in order to prevent a person whom he believes, on reasonable grounds, to be mentally impaired from doing violence to any person or property.

”.

24. Section 473 amended

After section 473(2) the following subsection is inserted —

“

(3) A court that convicts a person of an offence under this section may make an order for the forfeiture to the State, or the destruction or disposal, of any record in respect of which the offence was committed.

”

25. Section 557B repealed

Section 557B is repealed.

26. Chapters LX and LXA repealed

Chapters LX and LXA are repealed.

27. Chapter LXXII repealed

Chapter LXXII is repealed.

28. Section 731 inserted

After section 730 the following section is inserted —

“

731. Forfeiture etc. of property used to commit offences

(1) A court that convicts a person of an offence under this Code may make an order for the forfeiture to the State, or the destruction or disposal, of any thing that was used in or in connection with the commission of the offence.

(2) A court must not make an order under subsection (1) in respect of any property unless the owner or any person who claims to be the owner of it has been afforded the opportunity to show cause why the order should not be made.

”

Division 2 — Transitional provisions

29. Search warrants and related matters

(1) In this section —

5 “repeal day” means the day on which section 27 comes into operation.

(2) This section does not limit the operation of the *Interpretation Act 1984* Part V.

10 (3) If immediately before repeal day a warrant issued under *The Criminal Code* section 711 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any thing is seized under it —

(a) despite section 711 and the warrant, the thing must not be taken before a justice to be dealt with according to law; and

15 (b) the *Criminal and Found Property Disposal Act 2005* applies to and in respect of the thing.

20 (4) If immediately before repeal day a warrant issued under *The Criminal Code* section 716 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any person is found under it, then, despite section 716 and the warrant, the person must be released unless another written law provides to the contrary.

25 (5) If immediately before repeal day a person is in possession of any thing seized or taken under *The Criminal Code*, then on repeal day, subject to any order previously made in respect of the thing under *The Criminal Code* section 714, the thing is to be taken to be seized property for the purposes of the *Criminal and Found Property Disposal Act 2005* and that Act applies to and in respect of it accordingly.

30 (6) If immediately before repeal day proceedings under *The Criminal Code* section 714A in respect of any property are pending in the Magistrates Court, then section 714A operates in

respect of the property on and after repeal day despite its repeal on repeal day.

Part 6 — Criminal Investigation (Extra-territorial Offences) Act 1987 amended

30. The Act amended in this Part

5 The amendments in this Part are to the *Criminal Investigation (Extra-territorial Offences) Act 1987**.

[* Reprinted as at 23 August 2002.

For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 111.*]

31. Long title replaced

10 The long title is repealed and the following long title is inserted instead —

“

15 **An Act to provide powers to investigate in this State certain offences against the law of other places, and for related purposes.**

”

32. Headings inserted

(1) Immediately before section 1 the following heading is inserted —

20 “

Part 1 — Preliminary

”

(2) Immediately before section 3 the following heading is inserted —

25 “

Part 2 — Search warrants

”

- (3) Immediately before section 9 the following heading is inserted —

“

Part 5 — Miscellaneous

5

”.

33. Certain references to “this Act” amended

- (1) Section 3(1) and (2) are amended by deleting “this Act” in each place it occurs and in each place inserting instead —

“ this Part ”.

10

- (2) Section 4(1)(a) is amended by deleting “this Act” and inserting instead —

“ this Part ”.

- (3) Section 7(1)(a) is amended by deleting “this Act” and inserting instead —

15

“ this Part ”.

34. Section 8 replaced by Parts 3 and 4

Section 8 is repealed and the following Parts are inserted instead —

“

20

Part 3 — Searching vehicles

8. Vehicle in WA used to commit offence outside WA

- (1) In this section —

25

“**vehicle**” means any thing capable of transporting people or things by air, road, rail or water, and it does not matter how the thing is moved or propelled.

- (2) If a member of the Police Force reasonably suspects that a vehicle in this State is being or may be used for a

s. 34

journey to a place outside this State for the purpose of doing or attempting to do an act that, if it were done in this State, would be an element of an offence, he —

- 5
- (a) may stop, detain, enter and search the vehicle;
 - (b) may search any person on board; and
 - (c) while he reasonably suspects that the journey may be commenced or continued for that purpose —
 - 10 (i) may take charge of the vehicle and detain it at any place he thinks fit; or
 - (ii) may take any reasonably necessary action to prevent the vehicle from commencing or continuing its journey.
- 15 (3) Sections 18 and 19 of the *Criminal Investigation Act 2005*, with any necessary changes, apply to and in respect of the power in subsection (2)(a) to stop a vehicle.
- 20 (4) A member of the Police Force who has detained a vehicle under subsection (2)(c), or a person aggrieved by any action of such a member under subsection (2)(c), may apply to the Magistrates Court for an order under subsection (5).
- 25 (5) On such an application, the Magistrates Court may do any or all of the following —
- (a) order that the vehicle be released —
 - (i) unconditionally; or
 - (ii) on conditions imposed by the court;
 - (b) order that the vehicle be detained for a period set by the court or until the court makes a
 - 30 (c) make an order as to the payment of expenses incurred or to be incurred by the Police Force in

relation to the stopping, detaining or safe
keeping of the vehicle;

(d) make an order as to the costs of the application.

(6) An order made under subsection (5)(a)(ii) may —

- 5 (a) impose conditions that not only relate to the
release of the vehicle but also to the use that
may be made of the vehicle during a period set
by the court and specified in the order;
- 10 (b) require a person to enter into an undertaking,
with or without sureties, to comply with the
order.

(7) The amount of any expenses or costs ordered to be paid
under subsection (5) may be recovered as a judgment
debt in a court of competent jurisdiction from the
15 person ordered to pay them.

(8) For the purposes of subsection (7) a registrar of the
Magistrates Court may issue a certified copy of the
order and that order may be registered in a court of
competent jurisdiction.

20 **Part 4 — Arrest powers**

8A. Arrest power for foreign offence

- (1) In this section —
- 25 **“foreign offence”** means an offence against the law of
the Commonwealth or of a place outside this State
(whether in or outside Australia) that, if committed
in this State, would have a statutory penalty that is
or includes imprisonment for 12 months or more
or life.
- 30 (2) A member of the Police Force may arrest a person in
this State for a foreign offence if he reasonably

s. 34

suspects that the person has committed or is committing the offence.

- 5
- (3) A person arrested under subsection (2) must be taken to the Magistrates Court or, if he or she is under 18 years of age, the Children’s Court, as soon as practicable after being arrested.
- 10
- (4) The court to which the arrested person is taken may —
- (a) discharge the person from custody; or
 - (b) order that the person be kept in custody until, and brought before the court on, a date set by the court (the “**return date**”) that is not less than 7 days after the day on which the person was arrested unless before that date a warrant for the person’s arrest is executed under a law of the Commonwealth.
- 15
- (5) A court that makes an order under subsection (4)(b) may grant the person bail to appear before the court on the return date.
- 20
- (6) If the arrested person is brought or appears before the court on the return date, the court must discharge the person from custody unless the court is presented with a warrant for the person’s arrest that may be executed under a law of the Commonwealth.
- 25
- (7) If under subsection (5) the court grants the person bail and the person enters into a bail undertaking under the *Bail Act 1982*, then —
- (a) if a warrant for the person’s arrest is executed under a law of the Commonwealth before or on the date on which the person has undertaken to appear, the undertaking ceases to have effect when the warrant is executed;
 - (b) if paragraph (a) does not apply and the person does not appear in accordance with the
- 30

undertaking, the *Bail Act 1982* applies and the person may be dealt with accordingly.

- 5
- (8) For the purposes this section, the *Bail Act 1982* applies to and in respect of the arrested person as if the person had been charged with an offence against the law of this State.
- (9) Proceedings under this section form part of the criminal jurisdiction of the Magistrates Court or the Children's Court.
- 10

”.

**Part 7 — Criminal Investigation (Identifying People)
Act 2002 amended**

35. The Act amended in this Part

5 The amendments in this Part are to the *Criminal Investigation (Identifying People) Act 2002**.

[* *Act No. 6 of 2002.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 111-12
and Act No. 84 of 2004.]*

10 **36. Section 4 amended**

Section 4 is amended by deleting “, acting in good faith,”.

37. Section 15 replaced

Section 15 is repealed and the following section is inserted
instead —

15 “

15. Warrants, applying for

(1) In this section —

“**judicial officer**” means a JP or a magistrate, as the
case requires.

20 (2) A reference in this section to making an application
includes a reference to giving information in support of
the application.

25 (3) This section applies to and in respect of an application
to a judicial officer for a warrant if another section of
this Act requires the application to be made under this
section.

(4) The application must be made in person before the
judicial officer unless —

(a) the warrant is needed urgently; and

- (b) the applicant reasonably suspects that a judicial officer is not available within a reasonable distance of the applicant,

in which case —

- 5 (c) it may be made to a judicial officer by remote communication; and
- (d) the judicial officer must not grant it unless satisfied about the matters in paragraphs (a) and (b).

10 (5) The application must be made in writing unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable to send the judicial officer written material,

15 in which case —

- (c) it may be made orally; and
- (d) the judicial officer must make a written record of the application and any information given in support of it.

20 (6) The application must be made on oath unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable for the judicial officer to administer an oath to the applicant,

25 in which case —

- (c) it may be made in an unsworn form; and
 - (d) if the judicial officer issues a warrant, the applicant must as soon as practicable send the judicial officer an affidavit verifying the application and any information given in support of it.
- 30

s. 38

- 5
- (7) If on an application made by remote communication a judicial officer issues a warrant, the judicial officer must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
- (a) the judicial officer must give the applicant by remote communication any information that must be set out in the warrant;
- 10 (b) the applicant must complete a form of a warrant with the information received and give the judicial officer a copy of the form as soon as practicable after doing so; and
- (c) the judicial officer must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them
- 15 available for collection by the applicant.
- (8) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (7) has the same force and effect as the
- 20 original warrant.

”

38. Section 47 amended

- (1) Section 47 is amended in the definition of “charged suspect” by deleting “a serious offence” and inserting instead —
- 25 “ an offence ”.
- (2) Section 47 is amended by deleting the definition of “identifying particular” and inserting instead —
- 30 “**identifying particular**”, in relation to a charged suspect charged with a serious offence, means —
- (a) a print of the suspect’s hands (including fingers), feet (including toes) or ears;

- 5
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
 - (c) a measurement of any identifying feature of the suspect;
 - (d) the suspect's DNA profile;

“identifying particular”, in relation to a charged suspect charged with an offence other than a serious offence, means —

- 10
- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
 - (b) a photograph of the suspect (including of an identifying feature of the suspect);
 - (c) a measurement of any identifying feature of the suspect.
- 15

”.

39. Section 83 amended

Section 83(3)(e) is deleted and the following paragraph is inserted instead —

- 20
- (e) the court is of the opinion that the contravention arose out of a mistaken but reasonable belief as to whether a person was a protected person.

”.

25 **40. Part 14 and Schedules 1 and 2 repealed**

Part 14 and Schedules 1 and 2 are repealed.

Part 8 — Criminal Procedure Act 2004 amended

41. The Act amended in this Part

The amendments in this Part are to the *Criminal Procedure Act 2004**.

5 [* Act No. 71 of 2004.]

42. Section 30 amended

(1) Section 30(4) is repealed and the following subsections are inserted instead —

“

- 10 (4) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of an indictable offence must not issue the warrant unless satisfied —
- 15 (a) that the prosecution notice containing the charge complies with section 23; and
- (b) that there are reasonable grounds to suspect the accused committed the offence; and
- (c) that —
- 20 (i) there are reasonable grounds to suspect that, if a summons were issued in relation to the prosecution notice, the accused would avoid service of the summons or would not obey the summons; or
- 25 (ii) the issue of the warrant is justified under subsection (5).
- (4a) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of a simple offence must not issue the warrant unless satisfied —
- 30 (a) that the prosecution notice containing the charge complies with section 23; and

(b) that there are reasonable grounds to suspect the accused committed the offence; and

(c) that —

5

(i) there are reasonable grounds to suspect that if a court hearing notice were issued in relation to the prosecution notice, the accused would avoid service of the court hearing notice; or

10

(ii) the presence of the accused when the prosecution notice is dealt with is likely to be necessary for any reason or for sentencing purposes; or

15

(iii) the issue of the warrant is justified under subsection (5).

”.

(2) Section 30(5)(a) is deleted and the following paragraph is inserted instead —

“

20

(a) there are reasonable grounds to suspect that if the accused were not arrested, the accused —

(i) would commit an offence;

(ii) would continue or repeat an offence charged in the prosecution notice;

25

(iii) would endanger another person’s safety or property; or

(iv) would interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the accused or any other person;

30

”.

s. 43

43. Section 35 amended

(1) Section 35(1) is amended in the definition of “confessional material” by deleting “(within the meaning of *The Criminal Code* section 570)” and inserting instead —

5

“

(as that term is defined in the *Criminal Investigation Act 2005* section 114)

”.

(2) Section 35(3) is amended by deleting “*The Criminal Code* section 570A.” and inserting instead —

10

“ the *Criminal Investigation Act 2005* section 116. ”.

44. Section 42 amended

Section 42(4) is amended by deleting “*The Criminal Code* section 570A.” and inserting instead —

15

“ the *Criminal Investigation Act 2005* section 116. ”.

45. Section 61 amended

Section 61(4) is amended by deleting “*The Criminal Code* section 570A.” and inserting instead —

“ the *Criminal Investigation Act 2005* section 116. ”.

20

46. Section 95 amended

Section 95(4) is amended by deleting “*The Criminal Code* section 570A.” and inserting instead —

“ the *Criminal Investigation Act 2005* section 116. ”.

Part 9 — *Gaming and Wagering Commission Act 1987* amended

47. The Act amended in this Part

5 The amendments in this Part are to the *Gaming and Wagering Commission Act 1987**.

[* *Reprint 3 as at 3 September 2004.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 183.]

48. Section 31 amended

10 Section 31 is amended by deleting “and take before a justice”.

49. Section 31A inserted

After section 31 the following section is inserted —

“

31A. Powers to assist seizing things

15 Sections 145 to 149 of the *Criminal Investigation Act 2005* apply to and in respect of seizing a thing that is or may be seized under this Act or the *Betting Control Act 1954*.

”.

20 **50. Section 32 amended**

- (1) Section 32(1) is repealed.
- (2) Section 32(2) is amended by deleting “and either destroyed or dealt with in such manner as the court, then or subsequently, may approve”.

s. 51

51. Section 32A inserted

After section 32 the following section is inserted —

“

32A. Disposing of seized or forfeited things

5

(1) In this section —

“**seized thing**” means any thing that is seized under this Act or the *Betting Control Act 1954*.

10

(2) The *Criminal and Found Property Disposal Act 2005* applies to and in respect of any seized thing and any thing that is forfeited to the Crown under this Act or the *Betting Control Act 1954*.

(3) For the purposes of the *Criminal and Found Property Disposal Act 2005* —

15

(a) the Commission is a prescribed agency;

(b) the chief executive officer of the Department is the chief officer of the Commission.

”.

52. Section 41 amended

Section 41(5) is amended as follows:

20

(a) by deleting “Subject to sections 90B and 90C of the *Police Act 1892*, the” and inserting instead —

“ The ”;

25

(b) by deleting “is brought before the court or is the subject of an embargo notice under section 90B of the *Police Act 1892*” and inserting instead —

“ has been seized ”;

(c) by deleting “and either destroyed or dealt with in such other manner as the court may, then or subsequently, approve”.

Part 10 — *Liquor Licensing Act 1988* amended

53. The Act amended in this Part

The amendments in this Part are to the *Liquor Licensing Act 1988**.

5 [* Reprint 3 as at 23 April 2004.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2004, Table 1, p. 254-5.*]

54. Section 113 amended

Section 113(3) is repealed.

10 **55. Section 155 amended**

(1) Section 155(4) is amended as follows:

- (a) by deleting “, carry away and take before a justice”;
- (b) by deleting “section 113” and inserting instead —
“ this Act ”.

15 (2) Section 155(5) is repealed and the following subsection is
inserted instead —

“

20 (5) Subject to section 161, sections 145 to 149 of the
Criminal Investigation Act 2005, with any necessary
changes, apply to and in respect of seizing a thing that
is or may be seized under this Act.

”.

56. Section 172A inserted

After section 172 the following section is inserted in Part 6 —

25 “

172A. Forfeiture

- (1) If a court convicts a person of an offence under this Act
of illegally selling, supplying, consuming or storing

Part 11 — *Maritime Archaeology Act 1973* amended

58. The Act amended in this Part

The amendments in this Part are to the *Maritime Archaeology Act 1973**.

5 [* *Reprint 1 as at 3 October 2003.*
For subsequent amendments see *Western Australian
Legislation Information Tables for 2004, Table 1, p. 273.*]

59. Section 11 amended

10 (1) Section 11(1) is amended by deleting “and take the same
forthwith before a Justice to be dealt with according to law”.

(2) Section 11(2) is repealed and the following subsection is
inserted instead —

“

15 (2) The *Criminal and Found Property Disposal Act 2005*
applies to and in respect of any thing that is seized
under this section and for the purposes of that Act —

- (a) the Museum is a prescribed agency; and
- (b) the Director is the chief officer of the Museum.

”.

Part 12 — *Police Act 1892* amended

Division 1 — Amendments

60. The Act amended in this Part

The amendments in this Part are to the *Police Act 1892**.

5 [* Reprint 12 as at 1 June 2005.]

61. Section 2 repealed

Section 2 is repealed.

62. Section 7 amended

10 Section 7(1) is amended by deleting “; and such non-commissioned officers and constables shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by the common law, or by virtue of any statute law now or hereafter to be in force in the
15 said State”.

63. Part III replaced

Part III is repealed and the following Part is inserted instead —

“

Part III — Special constables

20 **34. Interpretation**

In this Part, unless the contrary intention appears —

“**Commissioner**” means the Commissioner of Police appointed under section 5;

25 “**police officer**” means a person appointed under Part I as an officer or constable of the Police Force, other than as the Commissioner;

“**special constable**” means a special constable appointed under section 35.

35. Appointing and terminating special constables

- 5
- (1) The Commissioner may appoint any person as a special constable.
- (2) The appointment of a special constable may be for such period and on such terms and conditions as the Commissioner decides.
- 10
- (3) The appointment of a special constable must not include a term that provides for the payment of any remuneration to a special constable unless the Minister has approved the term.
- (4) The Commissioner may at any time cancel the appointment of a special constable.
- 15
- (5) The appointment of a special constable, its terms and conditions and any cancellation of it must be in writing and signed by the Commissioner.
- (6) The Commissioner must issue a special constable with a certificate of his or her appointment as a special constable.
- 20
- (7) A special constable whose appointment as such ceases must return any certificate issued to him or her under subsection (6) to the Commissioner.
- Penalty: \$500.

25 **36. Functions of special constables**

- (1) Unless the document appointing a special constable says otherwise —
- 30
- (a) a special constable has all of the powers, duties and obligations that a police officer or a member of the Police Force has under any written law other than this Act; and

- (b) any authorisation, exemption or exception in any written law other than this Act that applies to a police officer or a member of the Police Force applies to a special constable,
- 5 unless that written law expressly says otherwise.
- (2) If a provision of a written law other than this Act refers to a police officer or to a member of the Police Force but does not confer a power, duty or obligation on, or create an authorisation, exemption or exception for, a
- 10 police officer or a member of the Police Force, the provision is to be taken to include a reference to a special constable, unless the contrary intention appears in the provision.
- (3) The document appointing a special constable may limit the powers, duties or obligations of the special constable or the application of any authorisation, exemption or exception to the special constable in any way the Commissioner thinks fit.
- 15
- (4) Without limiting subsection (3) or section 35(2), the document appointing a special constable may do any or all of the following —
- 20
- (a) limit the powers that the special constable may exercise;
- (b) limit when the special constable may exercise his or her powers or any of them;
- 25
- (c) limit where in the State the special constable may exercise his or her powers or any of them;
- (d) limit the circumstances in which the special constable may exercise his or her powers or any of them;
- 30
- (e) limit the offences in respect of which the special constable may exercise his or her powers or any of them;

- 5 (f) limit the purposes for which the special constable may exercise his or her powers or any of them;
- (g) limit or prohibit the possession or use of any thing that the special constable would otherwise be authorised under a written law to possess or use, despite the written law.
- 10 (5) The document appointing a special constable may require the special constable to inform the Commissioner about the exercise by the special constable of any power, or the performance of any duty or obligation, that he or she has under the appointment.

37. Special constables not in the Police Force

- 15 (1) A special constable is not a member of the Police Force of Western Australia for the purposes of this Act.
- (2) Subsection (1) does not affect the operation of section 36(1) or (2) or 136.

”.

64. Part V repealed

20 Part V is repealed.

65. Part VI repealed

Part VI is repealed.

66. Section 123 repealed

Section 123 is repealed.

25 **67. Section 124 repealed**

Section 124 is repealed.

Division 2 — Transitional provisions

68. Existing special constables' appointments terminated

- 5 (1) If immediately before the commencement of section 62 a person holds an appointment as a special constable made under the *Police Act 1892* Part III, then on the commencement of section 62 the person ceases to be a special constable.
- (2) Subsection (1) does not prevent the appointment of a person to whom it applies as a special constable under the *Police Act 1892* Part III as inserted by section 62.

10 **69. Search warrants and related matters**

- (1) In this section —
“**repeal day**” means the day on which section 64 comes into operation.
- 15 (2) This section does not limit the operation of the *Interpretation Act 1984* Part V.
- (3) If immediately before repeal day a warrant issued under the *Police Act 1892* section 70 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any thing is seized under it —
- 20 (a) despite section 70 and the warrant, the thing must not be taken before a Justice; and
- (b) the *Criminal and Found Property Disposal Act 2005* applies to and in respect of the thing.

70. Embargo notices

- 25 (1) In this section —
“**repeal day**” means the day on which section 65 comes into operation.

- 5 (2) If immediately before repeal day any property is subject to an embargo notice granted under the *Police Act 1892* section 90B, whether the property was seized under Part V of that Act or under an Act that refers to that section, then on and after repeal day sections 90B and 90C of that Act apply to and in respect of the notice as if they had not been repealed.

Part 13 — *Prostitution Act 2000* amended

71. The Act amended in this Part

The amendments in this Part are to the *Prostitution Act 2000**.

[* *Reprint 1 as at 22 July 2005.*]

5 **72. Section 34 replaced**

Section 34 is repealed and the following section is inserted instead —

“

34. Powers to assist seizing things

10

Sections 145 to 149 of the *Criminal Investigation Act 2005*, with any necessary changes, apply to and in respect of seizing a thing that is or may be seized under this Act.

”

Part 14 — Various Acts amended

73. Various Acts amended (Sch. 1)

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

cl. 1

Schedule 1 — Various Acts amended

[s. 73]

1. Betting Control Act 1954

s. 31A(3)	Delete “and take before a justice”.
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2. Criminal Appeals Act 2004

s. 6	In the definition of “decision”, insert after paragraph (h) — “ (i) a decision made under the <i>Criminal Investigation Act 2005</i> section 150; ”.
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5 **3. Disposal of Uncollected Goods Act 1970**

Schedule	Delete the column headed “Number of Act.”. Delete “ <i>Firearms and Guns Act 1931.</i> ”. Delete “ <i>Police Act 1892.</i> ”. Insert in the appropriate alphabetical positions — “ <i>Criminal and Found Property Disposal Act 2005.</i> <i>Criminal Investigation Act 2005.</i> <i>Firearms Act 1973.</i> ”.
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4. Energy Operators (Powers) Act 1979

s. 74(2)	Delete “or convey him before a justice to be dealt with” and insert instead — “ who shall deal with him ”.
s. 78	Delete “or convey him before a Justice to be dealt with” and insert instead — “ who shall deal with him ”.

5. *Firearms Act 1973*

s. 24(5)	Delete “taken before a Justice to be”.
s. 26(1)	Delete “and take”. Delete “before a Justice to be dealt with according to law”.

6. *Guardianship and Administration Act 1990*

s. 97(1)	Delete “Advocate are — ” and insert instead — “ Advocate are as follows — ”. Delete “and” after paragraph (g). Delete the full stop after paragraph (h) and insert instead a semicolon. After paragraph (h) insert the following paragraph — “ (i) any other function conferred on the Public Advocate by a written law. ”.
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7. *Industrial Relations Act 1979*

Schedule 3	In clause 2(3), insert after “officer” — “ or, in the case of a special constable, the cancellation of the constable’s appointment ”.
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8. *Interpretation Act 1984*

s. 5	Delete the definition of “police officer” and insert instead — “ “police officer” means a person appointed under Part I of the <i>Police Act 1892</i> to be a member of the Police Force of Western Australia; ”.
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cl. 9

9. Magistrates Court Act 2004

s. 11	After subsection (3), insert the following subsection — “ (3a) The Court’s criminal jurisdiction includes any jurisdiction that is conferred on the Court by a written law other than this Act and that is expressly said to form part of the Court’s criminal jurisdiction. ”
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10. Poisons Act 1964

s. 53(2)	Delete “the <i>Police Act 1892</i> , or of”.
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11. Prisons Act 1981

s. 3(1)	Amend the definition of “police officer” as follows: (a) insert “or” after paragraph (a); (b) delete paragraph (b) and “or” after it.
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12. Public Interest Disclosure Act 2003

s. 3(1)	Amend the definition of “police officer” as follows — (a) insert “or” after paragraph (a); (b) delete paragraph (b) and “or” after it.
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5 **13. Public Works Act 1902**

s. 109(3)	Delete “until he can be conveniently taken before some Justice of the Peace to be dealt with according to law.” and insert instead — “ who shall as soon as practicable take him to a police officer or arrange for a police officer to attend. ”
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