

ACTS AMENDMENT (CRIMINAL PROCEDURE) BILL 1998

A BILL FOR

An Act to amend –

- *The Criminal Code*; and
- *The Justices Act 1902*,

And various other Acts as a consequence.

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	PART 1 – PRELIMINARY	
	1. Short title This Act may be cited as the <i>Acts Amendment (Criminal Procedure) Act 1998</i>	Short title of Act
	2. Commencement This Act comes into operation on such day as is fixed by proclamation.	The commencement of the Act is on proclamation. This is needed so that forms can be amended and printed and court staff and officials informed and trained accordingly.

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	PART 2 – THE CRIMINAL CODE	
	<p>3. Section 133A inserted</p> <p>After section 133 of <i>The Criminal Code</i>* the following section is inserted –</p> <p>“133A. Making false complaint</p> <p>Any person who knowingly makes or swears a complaint under the <i>Justices Act 1902</i> which, in any material particular, is to his knowledge false, is guilty of a crime and is liable to imprisonment for 7 years.”</p> <p>[*Reprinted as at 21 April 1997 as the Schedule to the <i>Criminal Code Act 1913</i> appearing in Appendix B to the <i>Criminal Code Compilation Act 1913</i>. For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 56-58, and Acts Nos 15 and 29 of 1998.]</p>	<p>Currently there is no provision for the prosecution of complainants who knowingly make or swear a complaint, which is to the knowledge of the complainant false. The inclusion of this section is advisable given that a complaint may, without any evidence being adduced by the complainant or anyone else, result in a conviction. This is despite the fact that it can only occur on complaints made or sworn by public officers.</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	<p>PART 3 – JUSTICES ACT 1902</p> <p>4. The Act amended by this Part</p> <p>The amendments in this Part are to <i>the Justices Act 1902</i>.*</p> <p>[*Reprinted as at 4 June 1997. For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 120-2 and Act 29 of 1998.]</p>	<p>The various amendments are amendments to the <i>Justices Act 1902</i>.</p>
<p>54. A summons issued under this Act shall-</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d) in the case of a summons for a simple offence that is not an indictable offence-</p> <p>(i) require the defendant, subject to sections 135 and 136, to appear at a time and place appointed by that summons, before such justices as shall then there, to be dealt with according to law; and</p> <p>(ii) advise the defendant of the procedures which may be followed under sections 135 and 136 in the circumstances described in those sections.</p>	<p>5. Section 54 amended</p> <p>Section 54(d)(ii) is amended by deleting “and 136” and inserting instead –</p> <p>“ ,136 and 136AA”</p>	<p>Section 54(d)(ii) requires that a person summoned for a simple offence that is not an indictable offence be advised of the procedures which may be followed in sections 135 and 136.</p> <p>These procedures relate to those occasions where a defendant does not appear in answer to the summons, the provision to plead guilty or not guilty by endorsement and the procedures that can occur in each of those instances.</p> <p>In addition to the existing provisions the proposed amendment requires the defendant to be advised that if he/she fails to appear in answer to the summons, the court may take as proved any allegation in the summons served in relation to the complaint</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
<p>135</p> <p>(2) Where justices proceed to hear and determine the complaint in the absence of the defendant, then-</p> <p>(a) if the complaint is of a simple offence against-</p> <p>(i) the <i>Road Traffic Act 1974</i>;</p> <p>(ii) any enactment prescribed for the purposes of this subparagraph;</p> <p>(iii) any subsidiary legislation made under the <i>Road Traffic Act 1974</i> or under an enactment prescribed for the purposes of subparagraph (ii); or</p> <p>(iv) any subsidiary legislation made under an enactment prescribed for the purposes of this subparagraph,</p> <p>[(b) deleted]</p> <p>(2a) For the purposes of subsection (2) an affidavit may be taken by, and made and sworn before, any magistrate, justice, clerk of petty sessions appointed under section 25A, or commissioner for taking affidavits appointed under section 175 of the <i>Supreme Court Act 1935</i>.</p>	<p>6. Section 135 amended</p> <p>(1) Section 135(2) is repealed.</p> <p>(2) Section 135(2a) is repealed.</p>	<p>Section 135(2) provides authority for justices to receive affidavits of evidence in support of the matters alleged in the complaint and may determine the complaint on the evidence so received. The complaint must be of a simple offence against the <i>Road Traffic Act 1974</i>, any enactment prescribed, any subsidiary legislation made under the <i>Road Traffic Act 1974</i> or under any enactment prescribed or any subsidiary legislation made under an enactment for the purposes of this subparagraph.</p> <p>Section 135(2a) provides whom an affidavit may be taken by, made and sworn before for the purposes of section 135(2).</p> <p>These provisions are being deleted because the introduction of section 136AA will mean that the use of affidavit evidence will no longer be necessary in the cases covered by section 135(2).</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	<p>7. Section 136AA inserted</p> <p>After section 136 the following section is inserted –</p> <p>“136AA. Absence of defendant: court may convict</p> <p>(1) If–</p> <p>(a) a complaint has been made or sworn by a person who is a public officer, acting in the course of the officer’s duties; and</p> <p>(b) the court, under section 135(1)(a), 135(1a)(a) or 136(5)(b)(i), proceeds to hear and determine the complaint in the absence of the defendant, the court in doing so may take as proved any allegation in the summons served on the defendant in relation to the complaint.</p> <p>(2) For the purposes of this section, if a complaint is made or sworn by a person who in the complaint purports to be a public officer, it shall be presumed, in the absence of evidence to the contrary –</p>	<p>Existing legislation enables the court, in the absence of the defendant, to proceed and hear and determine simple offences that are not indictable offences by taking evidence from witnesses or in prescribed circumstances receiving affidavit evidence.</p> <p>The insertion of section 136AA will enable the court to convict a defendant by taking as proved any allegation in the summons if,</p> <ul style="list-style-type: none"> • the summons is for a simple offence and not an indictable offence • the summons has been served on the defendant in accordance with the Act, • the complaint has been made by a public officer acting in the course of his duties, and • the defendant fails to appear, either in person or in writing, to answer the summons.

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
<p>The term “public officer” means a person exercising authority under a written law, and includes-</p> <p>(a) a police officer;</p> <p>(aa) a Minister of the Crown;</p> <p>(ab) a Parliamentary Secretary appointed under section 44A of the <i>Constitution Acts Amendment Act 1899</i>;</p> <p>(ac) a member of either House of Parliament;</p> <p>(a) a person authorised under a written law to execute or serve any process of a court or tribunal;</p> <p>(b) a public service officer or employee within the meaning of the <i>Public Sector Management Act 1994</i>;</p> <p>(c) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; or</p> <p>(d) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not;</p>	<p>(a) that the person is such an officer;</p> <p>(b) that the complaint was made or sworn by the person acting in the course of his or her duties as such an officer; and</p> <p>(c) that the person had the authority to make or swear the complaint.</p> <p>(2) In this section – “public officer” has the same definition as in section 1 of <i>The Criminal Code</i>.</p>	<p>This provision allows the court to take as proved, in the absence of any contrary evidence, that the complainant is a public officer, was acting in the course of his duties and that he had authority to make or swear the complaint.</p> <p>This provision defines “public officer” consistent with <i>The Criminal Code</i>.</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	PART 4 – OTHER ACTS AMENDED	
	<p data-bbox="779 379 1391 443">8. <i>Explosives and Dangerous Goods Act 1961</i></p> <p data-bbox="779 491 1391 561">Sections 61A and 61B of <i>the Explosives and Dangerous Goods Act 1961</i> are repealed..</p>	<p data-bbox="1420 379 2024 673">Section 61A and 61B provides the procedure for complaints duly served by summons for offences under the Act. The sections also require the service of affidavits of evidence in support of the matters alleged in the complaint and a copy in the prescribed form a document setting out particulars of the alleged prior convictions.</p> <p data-bbox="1420 715 2024 890">These provisions are being deleted because the introduction of section 136AA will mean that the use of affidavit evidence will no longer be necessary in the cases covered by section 135(2).</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	<p>9. <i>Taxi Act 1994</i></p> <p>Sections 34 and 35 of the <i>Taxi Act 1994</i> are repealed.</p>	<p>Section 34 and 35 provides the procedure for complaints duly served by summons for offences under the Act. The sections also require the service of affidavits of evidence in support of the matters alleged in the complaint and a copy in the prescribed form a document setting out particulars of the alleged prior convictions.</p> <p>These provisions are being deleted because the introduction of section 136AA will mean that the use of affidavit evidence will no longer be necessary in the cases covered by section 135(2).</p>
	<p>10. <i>Transport Co-ordination Act 1966</i></p> <p>Sections 56A and 56B of the Transport Co-ordination Act 1966 are repealed.</p>	<p>Section 56A and 56B provides the procedure for complaints duly served by summons for offences under the Act. The sections also require the service of affidavits of evidence in support of the matters alleged in the complaint and a copy in the prescribed form a document setting out particulars of the alleged prior convictions.</p> <p>These provisions are being deleted because the introduction of section 136AA will mean that the use of affidavit evidence will no longer be necessary in the cases covered by section 135(2).</p>