

CRIMINAL PROCEDURE BILL 2004

EXPLANATORY MEMORANDUM

PART 1 - PRELIMINARY

This Part contains the title of the Act and the commencement provisions.

1 Short Title

Citation of the Act.

2 Commencement

Different days may be fixed by proclamation for the commencement of different provisions.

3 Interpretation

Defines terms to be used in the Act.

PART 2 – DEALING WITH ALLEGED OFFENDERS WITHOUT PROSECUTING THEM

This Part sets out an infringement notice process which can be picked up by other Acts. This addresses in part Recommendation 44 of the Law Reform Commission of Western Australia (“LRCWA”) Report, Project 55 Part II: *Report on the Courts of Petty Sessions: Constitution, Powers and Procedure*, November 1986 (“Project 55 Report”).

4 Interpretation

Defines terms to be used within Part 2 of the Act.

5 Prescribed offences and modified penalties for them

Provides that regulations under a prescribed Act may prescribe offences for which an infringement notice may be issued, and that any such regulations must prescribe modified penalties for each offence prescribed.

6 Other matters to be prescribed by prescribed Acts

Provides that regulations that prescribe an offence must also set out other matters.

7 Authorised and approved officers

Provides that approved officers are not eligible to be appointed as authorised officers and that, if requested, an authorised officer must certify that he or she is authorised to issue an infringement notice.

8 Issuing infringement notices

Provides the circumstances in which an authorised officer can issue an infringement notice.

9 Form and content of infringement notices

Sets out the form and content of infringement notices.

10 Service of infringement notices

Sets out the requirements for serving infringement notices, unless section 12(1) applies.

11 Interpretation for ss. 12 and 13

Defines terms to be used within sections 12 and 13 of the Act.

12 Vehicle offences, infringement notices for

Sets out the requirements for serving infringement notices where the identity of the alleged offender is unknown.

13 Vehicle offences, onus of responsible person

Provides that a responsible person is presumed to have committed the alleged vehicle offence unless the modified penalty is paid, or information supplied.

14 Extensions of time

Provides that an authorised officer may extend the period for an alleged offender to pay the modified penalty.

15 Withdrawal of infringement notices

Provides for the withdrawal of infringement notices by approved officers.

16 Modified penalty, effect of paying

Provides that the effect of paying the modified penalty within the set time period is that the alleged offender cannot be prosecuted for that offence (unless the notice is withdrawn), and that payment is not to be regarded as an admission.

17 Modified penalties, application of

Provides that an amount paid as a modified penalty is to be dealt with as if it were a fine under the *Sentencing Act 1995*.

PART 3 – PROSECUTIONS IN COURTS OF SUMMARY JURISDICTION

Division 1 - Preliminary

18 Interpretation

Defines terms to be used within Part 3 of the Act.

19 Application of this Part

Provides that the Part applies to and in relation to prosecutions in courts of summary jurisdiction.

Division 2 – Commencing and discontinuing a prosecution

20 Who may commence a prosecution

Provides for who may commence a prosecution. In *The Murray Report: the Review of The Criminal Code prepared for the Attorney-General* issued in June 1983 by the Hon. Justice Murray (“The Murray Report”), it was recommended that private prosecutions be abolished. After extensive consultation, it was decided to adopt that recommendation, and extend it to simple offences also.

Accordingly, prosecutions in a summary court may only be commenced by (subject to other written laws) -

- (a) one of the following acting in the course of his or her duties –
 - (i) an authorised persons, as defined,
 - (ii) the Attorney-General,
 - (iii) the Solicitor-General,
 - (iv) the State Solicitor,
 - (v) the DPP, a staff member of the DPP,
 - (vi) a police officer,

or

- (b) a person appointed under section 182 and acting in accordance with that appointment.

21 When a prosecution may be commenced

Provides for when prosecutions may be commenced. The provision is based on section 51 of the *Justices Act 1902*.

Subsection (2) addresses in part Recommendation 290 of the Law Reform Commission of Western Australia (“LRCWA”) Final Report, Project 92: *Review of the Civil and Criminal Justice System in Western Australia*, September 1999 (“Project 92 Report”).

22 Where a prosecution may be commenced

Provides for the court in which prosecutions may be commenced, and for the transfer of prosecutions commenced in a court that does not have the necessary jurisdiction. This provision is based in part on section 130 of the *Justices Act 1902*.

23 Prosecution notice, formal requirements of

Sets out the formal requirements for prosecution notices. This provision is based in part on sections 43, 44, 45 and 49 of the *Justices Act 1902* and section 593 of *The Criminal Code*. It also addresses in part Recommendation 279 of the LRCWA Project 92 Report.

24 Prosecution notice, lodgment of

Sets out how, and in what circumstances, a prosecution notice may be lodged.

25 Discontinuing a prosecution

Provides for the circumstances in which a prosecution can be discontinued, and the consequences that flow.

Division 3 – Notifying the accused of a prosecution

26 Accused’s general entitlement to prosecution notice

Sets out the accused’s right to be given a copy of the prosecution notice on request and free of charge, unless unreasonable. This provision is based in part on section 148(1)(a)(i) of the *Justices Act 1902*.

27 Accused in custody, entitlement to prosecution notice

Provides that the prosecutor must give a copy of the prosecution notice to an accused in custody as soon as practicable.

28 Accused not in custody, procedural options

Provides the procedure:

- (i) to notify an accused (other than a corporation) of the first court date on a charge when he or she is not in custody, and,
- (ii) to secure that attendance where the accused’s presence is required.

This provision is based in part on sections 52, 53, 58 and 59 of the *Justices Act 1902*.

29 Corporation, procedural options

Provides the procedure to notify an accused who is a corporation of the first court date on a charge.

30 Summons, court hearing notice or warrant, issue of

Provides the requirements for the issue of summonses, court hearing notices and warrants to the accused.

31 Warrant for accused's arrest, content etc.

Provides the form and effect of a warrant for an accused's arrest. This provision is based on section 61 of the *Justices Act 1902* (and see Rule 42 of the *Criminal Procedure Rules 2000*).

32 Summons to accused, contents and service of

Sets out the required contents of, and procedure for service of, a summons to an accused. This provision is based on sections 54, 56, 56A, 97A and 135 of the *Justices Act 1902*.

33 Court hearing notice, contents and service of

Sets out the required contents of, and procedure for service of, a court hearing notice to an accused. This provision is modeled on the sections of the *Justices Act 1902* that deal with summons, as noted above.

34 Summons etc., amendment of date if not served

Permits a prescribed court officer to amend the court date shown on a summons if the summons is not served. This provision is based on section 57A of the *Justices Act 1902*.

35 Initial disclosure by prosecutor

Sets out the material to be provided by the prosecution to the accused by way of initial disclosure in courts of summary jurisdiction. The section creates three levels of disclosure, depending on whether the prosecution notice contains one or more:

- (i) Indictable charges
- (ii) Charges of prescribed simple offences
- (iii) Charges of simple offences.

In relation to (i), the section is based in part on sections 100 and 114 of the *Justices Act 1902*.

The extension of the disclosure obligations to (ii) and (iii) addresses in part Recommendations 282 and 286 of the LRCWA Project 92 Report.

The section also gives the summary courts power to take steps to ensure that the prosecutor's obligations are fulfilled, or to deal with a failure to comply, in accordance with Recommendation 298 of the LRCWA Project 92 Report.

Division 4 – Procedure on charge of indictable offence

36 Interpretation

Defines terms to be used within Part 3, Division 4 of the Act.

37 Application of this Division

Provides that Part 3, Division 4 applies if an accused is charged in a court of summary jurisdiction with an indictable offence.

38 No appearance by a party

Provides the procedural options for the court should either party not appear. This provision is based in part on section 97A of the *Justices Act 1902* (and the dismissal option if the prosecutor fails to appear on section 140, although that section of the *Justices Act 1902* dealt with simple offences).

39 Initial procedure

Provides the initial procedure following an accused's first appearance on an indictable charge. This provision is based in part on section 98 of the *Justices Act 1902*.

The section also gives the summary courts power to take steps to ensure that the prosecutor's obligations are fulfilled, or to deal with a failure to comply, in accordance with Recommendation 298 of the LRCWA Project 92 Report.

40 Either way charges

Provides the procedure for courts of summary jurisdiction in relation to charges that are capable of being tried either on indictment or summarily. This provision is based on sections 98 and 99 of the *Justices Act 1902*.

41 Charges that are to be tried on indictment

Provides the procedure for courts of summary jurisdiction in relation to charges that are to be tried on indictment. This provision is based on sections 98, 100 and 101 of the *Justices Act 1902*.

42 Full disclosure by prosecutor

Sets out disclosure obligations following a plea of not guilty to a charge which is to be tried on indictment. The obligations are based on those presently contained in section 103 of the *Justices Act 1902* and section 611B of *The Criminal Code*.

43 Administrative committals

Provides a procedure which permits administrative committals, where the prosecution requests, and the accused consents.

44 Disclosure/committal hearing, procedure on

Provides the procedure on a disclosure/committal hearing.

The summary court must first be satisfied that the prosecution has complied with its disclosure obligations, and, if not, may take steps to ensure that the obligations are fulfilled, or to deal with a failure to comply. This is based in part on section 103 of the *Justices Act 1902*, and addresses in part Recommendation 303 of the LRCWA Project 92 Report.

Once full disclosure has occurred, the section sets out what documents must be sent to the superior court and to the relevant authorised officer.

45 Committal, prosecutor's duties after

Sets out what material the summary court prosecutor must supply to the relevant authorised officer, including a certificate of compliance.

The certificate of compliance is based on section 611B of *The Criminal Code*, and are presently completed by police officers in any event.

46 Committal for sentence after conviction, procedure on

Sets out what documents must be sent to the superior court and to the relevant authorised officer where a court of summary jurisdiction convicts an accused but sends the accused to a superior court for sentence. This provision is based in part on section 101 of the *Justices Act 1902*.

47 Committal for sentence or trial, matters to be recorded

Provides that courts of summary jurisdiction must record certain facts on the prosecution notice before an accused's matter is sent to a superior court. This provision is based in part on section 101 of the *Justices Act 1902*.

Division 5 – Procedure on charge of simple offence

48 Application of this Division

Provides that Part 3, Division 5 applies if an accused is charged in a court of summary jurisdiction with a simple offence.

49 Written plea, court to advise prosecutor

This requires the court to notify the prosecutor of a written plea as soon as practical.

50 Written plea of not guilty

Provides the procedure for a court of summary jurisdiction to deal with a written plea of not guilty from an alleged offender. This provision is based on section 136 of the *Justices Act 1902*.

51 Written plea of guilty

Provides the procedure for a court of summary jurisdiction to deal with a written plea of guilty from an accused. This provision is based on section 135 of the *Justices Act 1902*.

52 No appearance by any party and no plea received

Provides the procedure for a court of summary jurisdiction to deal with a matter when neither the prosecutor nor accused attends in court and the accused has not pleaded to the charge. This provision is based in part on section 140 of the *Justices Act 1902*.

53 No appearance by any party and but plea received

Provides the procedure for a court of summary jurisdiction to deal with a matter when neither the prosecutor nor accused attends in court but the accused has pleaded to the charge. This provision is based in part on section 140 of the *Justices Act 1902*.

54 No appearance by prosecutor

Provides the procedure for a court of summary jurisdiction to deal with a matter when the prosecutor does not attend court. This provision is based on section 134 of the *Justices Act 1902*.

55 No appearance by accused and no plea of guilty

Provides the procedure for a court of summary jurisdiction to deal with a matter when the accused does not attend court. This provision is based on sections 135 and 136AA of the *Justices Act 1902*.

56 Conviction of absent accused, sentencing procedure on

Provides the procedure for a court of summary jurisdiction to sentence a convicted accused in circumstances where the accused is not present in court.

Division 6 – Procedure for dealing summarily with any charge

57 Application of this Division

Provides that Part 3, Division 6 applies if, in a summary court, the accused is charged with an either way charge that is to be dealt with summarily or with a simple offence.

58 Appearance by both prosecutor and accused, procedure on

Provides the procedure for a court of summary jurisdiction to deal with a matter when both the prosecutor and accused are present in court. This provision is based on section 136 of the *Justices Act 1902*.

59 Initial procedure, pleading

Sets out the initial procedure for a court of summary jurisdiction to follow.

The summary court must first be satisfied that the prosecution has complied with its disclosure obligations, and, if not, may take steps to ensure that the obligations are fulfilled, or to deal with a failure to comply. This addresses in part Recommendation 298 of the LRCWA Project 92 Report.

60 Plea of not guilty, procedure on

Provides a court of summary jurisdiction with the procedure for when an accused pleads not guilty. This provision is based in part on section 136 of the *Justices Act 1902*.

The section gives the court power to impose additional disclosure obligations on either or both parties. This addresses in part Recommendations 287 and 288 of the LRCWA Project 92 Report.

61 Disclosure by prosecutor

Provides that the prosecutor must disclose certain material to the accused where an accused has pleaded not guilty to an either way charge or a charge of a listed simple offence. This provision is based on section 611B of *The Criminal Code* and section 103 of the *Justices Act 1902*.

The extension of the disclosure obligations to either way charges dealt with summarily and simple offences addresses in part Recommendation 287 of the LRCWA Project 92 Report.

62 Disclosure by accused of certain matters in certain cases

Provides that the accused must disclose certain material to the prosecutor. This provision is based on section 611C of *The Criminal Code*.

This addresses in part Recommendation 288 of the LRCWA Project 92 Report.

63 Non-disclosure, consequences of

Provides for the consequences of non-disclosure by either the accused or the prosecutor. This provision is based on section 636A of *The Criminal Code*.

This addresses in part Recommendation 298 of the LRCWA Project 92 Report.

64 Issues that may be dealt with before trial

Sets out the powers of a summary court to deal with issues prior to and during a trial. This addresses in part Recommendations 299 and 300 of the LRCWA Project 92 Report.

65 Trials, procedure on

Provides the procedure for trials in courts of summary jurisdiction. This provision is based in part on section 141 of the *Justices Act 1902*.

66 Trial on the papers

Provides that a court of summary jurisdiction can, on the accused's request, deal with a charge based on the documents lodged with the court by the prosecutor and the accused. This addresses in part Recommendation 13 of the LRCWA Project 92 Report.

67 Costs

Provides the procedure for dealing with costs at the conclusion of a prosecution. This provision is based on sections 151 and 152 of the *Justices Act 1902*.

68 Court must record its decision

Requires the court to record its decision on the prosecution notice.

69 Conviction and sentence, accused to be notified of

Provides that, as soon as practicable after a court of summary jurisdiction convicts an accused, the court must notify the accused of that fact in writing.

Division 7 – Setting aside decisions made in the absence of a party

70 Interpretation

Defines terms to be used within Part 3, Division 7 of the Act.

71 Making an application to set aside

Provides that in certain circumstances a party can apply to set aside a decision that a court of summary jurisdiction has made in his or her absence. This provision is based on section 136A of the *Justices Act 1902*.

72 Dealing with an application to set aside

Provides a court of summary jurisdiction with the procedure for dealing with applications to set aside its decisions. This provision is based on section 136A of the *Justices Act 1902*.

73 Court may set aside decision on its own initiative

Provides that a court of summary jurisdiction may decide, without an application from either party, that a decision made in a party's absence should be set aside. This provision is based in part on section 136A of the *Justices Act 1902*.

74 Effect of decisions under s. 72 or 73

Sets out the effect, of setting aside a decision, on any sentences or orders made. This provision is based on section 136A of the *Justices Act 1902*.

Division 8 – Miscellaneous

75 Adjourning charges

Sets out the court’s power to adjourn. Gives the court the power to remand an accused for a period greater than 8 days if the accused consents.

76 Staying a prosecution permanently

Sets out the court’s power to stay a prosecution permanently.

77 Video or audio link, use of when accused in custody etc.

Provides for when an accused in custody may appear in court by video or audio link. Unless the court orders otherwise, first appearances must be in person, and subsequent appearances must be by video or audio link.

78 Exceptions etc., proof of in simple offences

Provides the procedure for courts of summary jurisdiction to deal with the proof of exceptions contained in certain simple offences. This provision is based on section 72 of the *Justices Act 1902*.

79 Dismissing a charge for want of prosecution, consequences of

Clarifies the effect of the dismissal of a charge for want of prosecution, namely, that it is not a final determination.

PART 4 – PROSECUTIONS IN SUPERIOR COURTS

Division 1 – Preliminary

80 Interpretation

Defines the terms to be used in Part 4 of the Act.

When read with the section 83 below, the definition of “authorised officer” addresses in part The Murray Report recommendations in relation to section 579 of *The Criminal Code*.

81 Application of this Part

Provides that the Part applies to the prosecution of indictable offences in superior courts.

82 Court may act on its own initiative etc

Provides that a superior court can make an order without an application from either party, and that applications for orders, and the power to make orders, includes the amendment and cancellation of orders.

Division 2 – Commencing and discontinuing a prosecution

83 How a prosecution is commenced

Provides how a prosecution for an indictable offence can be commenced. This provision is based on sections 578 and 579 of *The Criminal Code*.

When read with the section 80 above, subsection (1) addresses in part The Murray Report recommendations in relation to section 579 of *The Criminal Code*.

Subsection (5) addresses in part The Murray Report recommendations in relation to section 579 of *The Criminal Code*.

84 Where a prosecution may be commenced

Provides where a prosecution for an indictable offence can be commenced. The provision incorporates elements of section 575 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to sections 575-577 of *The Criminal Code* and a proposed new section 580A of *The Criminal Code*.

85 Indictments, formal requirements and service of

Sets out the formal requirements for indictments. When read with Schedule 1, this provision incorporates elements of sections 578, 579 and 582 - 587 of *The Criminal Code*.

Subsection (4) is based on section 613 of *The Criminal Code* (and see Rule 20(5) of the *Criminal Procedure Rules 2000*).

When read with Schedule 1, this addresses in part The Murray Report recommendations in relation to sections 579, 583, 584 and 586 of *The Criminal Code*.

86 Accused not committed may be arrested etc.

Provides that a prosecutor may apply for a summons or an arrest warrant to apprehend an accused who is not in custody or on bail in respect of an indictable charge. This provision is based on section 580 of *The Criminal Code*, and addresses in part The Murray Report recommendation in relation to that section.

87 Discontinuing a prosecution

Provides the procedure for discontinuing a prosecution on indictment. This provision is based on section 581 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to that section.

Division 3 – General Matters

88 Accused’s presence, when required

Provides that court proceedings must take place in the accused’s presence unless section 139 or the *Sentencing Act* provide otherwise. This provision is based on sections 635 and 647 of *The Criminal Code* (and see Rule 9 of the *Criminal Procedure Rules 2000*).

Subsection (4) also partly addresses Law Reform Commission Recommendation 315.

89 Adjourning cases

Provides the circumstances in which a superior court can adjourn court proceedings, and the power of the court to make orders to ensure the future attendance of the accused or any other person. This provision is based on sections 610 and 611 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to these sections. (See also Rule 8 of the *Criminal Procedure Rules 2000*).

90 Staying a prosecution permanently

Provides that a superior court has the power to permanently stay proceedings, and make orders consequential to that stay order. This provision is based on Rule 25 of the *Criminal Procedure Rules 2000*.

91 Accused may be required to plead at any time

Provides that an accused may be required to plead at any time after an indictment is lodged with the court.

92 Plea of not guilty, consequences of

Provides for the procedural consequences of an accused entering a plea of not guilty. This provision is based on section 622 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to that section.

93 Plea of not guilty on account of unsoundness of mind, dealing with

Provides a procedure whereby a judge may determine the issue of unsoundness of mind in any manner the judge thinks just in specific circumstances (requires the consent of the prosecutor and no objection by the accused). This provision is based on a suggestion made in The Murray Report in relation to section 616 of *The Criminal Code*.

Division 4 – Pre-trial matters

94 Court may order prosecution to commence prosecution etc.

Provides that an accused committed to a superior court (other than after conviction) can apply to that court for an order requiring the prosecutor to act under Division 2. This provision is based on section 608 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to that section.

95 Disclosure by prosecutor

Provides that the prosecutor must disclose certain material to the accused. This provision is based on sections 611B and 745 of *The Criminal Code*. This provision addresses in part Law Reform Commission Recommendation 313.

96 Disclosure by accused of certain matters

Provides that the accused must disclose certain material to the prosecutor. This provision is based on section 611C of *The Criminal Code*.

97 Non-disclosure, consequences of

Provides for the consequences of non-disclosure by either the accused or the prosecutor. This provision is based on section 636A of *The Criminal Code*.

98 Issues that may be dealt with before trial

Sets out the powers of a superior court to deal with certain issues prior to trial. This provision is based on sections 611A and 693A of *The Criminal Code* and addresses in part Law Reform Commission Recommendation 320 (and addresses in part Recommendation 315). (See also Rules 40, 41 and 57 of the *Criminal Procedure Rules 2000*).

Division 5 – Committals for sentence

99 Unconvicted accused committed for sentence, procedure on

Sets out the procedure for dealing with an unconvicted accused who has been committed to a superior court for sentence. This provision is based on section 618 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to that section.

100 Convicted accused committed for sentence, procedure on

Sets out the procedure for dealing with a convicted accused who has been committed to a superior court for sentence.

Division 6 – Trial by jury

101 Application of this Division

Provides that Part 4, Division 6 applies to any charge that is to be tried by judge and jury.

102 When a juror is sworn

Provides for when a juror is deemed to be sworn. This provision is based on section 38 of the *Juries Act 1957*.

103 Accused to be told of right to challenge jurors

Provides that an accused is to be told of his or her right to challenge any of the jurors prior to them being sworn. This provision is based on section 626 of *The Criminal Code*.

104 Challenging jurors

Provides the procedure for challenging jurors. This provision is based on sections 38 and 39 of the *Juries Act 1957* and sections 628 and 630 of *The Criminal Code*.

105 Jurors to be sworn

Provides that each juror must be sworn or affirmed. This provision is based on section 632 of *The Criminal Code*.

106 Jury to be informed of certain matters

Provides that a jury must be informed of certain matters after they have been sworn in. This provision is based on section 632 of *The Criminal Code*.

107 Plea of guilty after jury is sworn

Provides that an accused may plead guilty after a jury has been sworn and before a verdict has been given by the jury. This provision is based on section 632A of *The Criminal Code*.

108 No case to answer, judge may acquit accused

Provides that the trial judge may acquit the accused if he or she decides that the accused has no case to answer in relation to the charge. This addresses in part The Murray Report recommendation in relation to a proposed new section 633A of *The Criminal Code*.

109 View by a jury

Provides that the trial judge may direct that the jury view a place or thing. This provision is based on section 641 of *The Criminal Code*.

110 Jury may be given records etc. to assist understanding

Provides that the trial judge may direct that the jury be given copies of any documents. This provision is based on Rule 46 of the *Criminal Procedure Rules 2000*.

111 Jury not to separate or communicate with others

Provides that the jury must not separate or communicate with others, except where permitted to do so by the trial judge. This provision is based on sections 639 and 640 of *The Criminal Code*. It addresses in part The Murray Report recommendation in relation to section 640 of *The Criminal Code*.

112 Judge to address jury before it deliberates

Provides that after closing addresses have been made by counsel, the trial judge is to instruct the jury on the law relevant to the case and can make observations on the evidence in the case if he or she thinks fit. This provision is based on section 638 of *The Criminal Code*.

113 Special verdict may be required

Provides that the trial judge may require the jury to give a verdict on a specific fact if the trial judge thinks a decision on that fact is necessary for determining the proper sentence for the accused. This provision is based on section 642 and 653 of *The Criminal Code*.

114 Jury's verdict to be unanimous except in some cases

Provides that a jury's verdict is to be unanimous except in some cases. This provision is based on section 41 of the *Juries Act 1957*.

115 Discharging a juror

Provides that a trial judge may release a juror in certain circumstances. This provision is based on sections 633 and 646 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to sections 644 and 646.

116 Discharging a jury

Provides that a trial judge may discharge a jury in certain circumstances. This provision is based on section 644 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to that section.

Division 7 – Trial by judge alone

117 Application of this Division

Provides that a reference to a person being tried by jury etc. is to be taken as including a trial taking place before a judge alone under this Division.

118 Trial by judge alone without a jury may be ordered

Provides that an accused may apply to a superior court for an order that he or she be tried by a judge without a jury. This provision is based on section 651A of *The Criminal Code* (and see Rule 27 of the *Criminal Procedure Rules 2000*) and addresses Law Reform Commission Recommendations 328 and 329 and, in part, 324, 338 and 339.

119 Law and procedure to be applied

Provides the procedure for a trial judge acting alone. This provision is based on section 651C of *The Criminal Code*.

120 Judge’s verdict and judgment

Provides the procedure for a trial judge acting alone to deliver his or her verdict and judgment. This provision is based on section 651B of *The Criminal Code*.

Division 8 – Miscellaneous

121 Sentences etc. may be stayed pending appeal

Provides that a person affected by a convicted person’s sentence may apply to the superior court for an order that the sentence be stayed, and the court may make such an order on any terms it thinks fit. This provision is based on section 694 of *The Criminal Code* (and see Rule 50 of the *Criminal Procedure Rules 2000*). It addresses in part The Murray Report recommendation in relation to section 694 of *The Criminal Code*.

122 Incapacity of judge

Provides the procedure in circumstances where a trial judge becomes incapable of continuing with the trial. This provision is based on section 645 of *The Criminal Code*, but has been extended.

123 No fees or costs

Provides that the court cannot make an order for costs against the prosecutor or the accused in indictable matters. This provision is based on section 740 of *The Criminal Code* and it addresses in part The Murray Report recommendation in relation to that section.

124 Rules of court

Provides that a superior court may make rules of court to regulate its procedures. This provision is based on section 747 of *The Criminal Code* and it addresses in part The Murray Report recommendation in relation to that section.

PART 5 – PROVISIONS APPLICABLE TO ANY PROSECUTION

Division 1- Preliminary

125 Application of this Part

Provides that Part 5 applies to any prosecution in any court.

Division 2 –Pleas and related matters

126 Pleas available to charges

Provides the different pleas that an accused can make to a charge. This provision is based on sections 616, 619, 620 and 655 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to sections 616, 654 and 655 of *The Criminal Code*. It is also based on section 138A of the *Justices Act 1902*.

127 Plea of no jurisdiction etc, dealing with

Provides the procedure for dealing with a charge where an accused enters a plea other than a plea of not guilty, guilty, or not guilty on account of unsoundness of mind. This provision is based on sections 621 and 651 of *The Criminal Code*.

128 Plea of no jurisdiction etc, consequences if upheld

Provides the consequences where a plea other than a plea of not guilty, guilty, or not guilty on account of unsoundness of mind is upheld. This provision addresses in part The Murray Report recommendations in relation to sections 654 and 655 of *The Criminal Code*.

129 Plea of guilty, procedure on

Sets out the procedure following a plea of guilty. This provision is based in part on section 617A of *The Criminal Code* and section 49 of the *Aboriginal Affairs Planning Authority Act 1972*.

Division 3 – General procedural matters

130 Mental fitness of accused to stand trial

Provides that any question about an accused's mental fitness to stand trial should be dealt with under the *Criminal Law (Mentally Impaired Accused) Act 1996*. This provision is based on section 609A of *The Criminal Code*. It is also based on section 71 of the *Justices Act 1902*.

131 Unclear charge, court may order particulars etc.

Provides that a court may order that a prosecutor give an accused further details of the charge. The provision is based on section 592 of *The Criminal Code*.

132 Amending charges etc.

Provides that a court may amend charges in a variety of circumstances. The provision is based on sections 585 and 591 of *The Criminal Code*. It is also based on sections 46 - 48 of the *Justices Act 1902*.

133 Separate trials, court may order

Provides that where an accused is charged with more than one offence or has a co-accused in relation to a charge, the court can, in certain circumstances, order the prosecutor to amend the charge, or order that the accused be tried separately from his or her co-accused, or order that the accused's multiple charges be tried separately.

This provision is based on sections 585 and 624 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to those sections.

134 Separate prosecutions may be dealt with together

Provides that where an accused is charged with multiple offences in 2 or more different prosecution notices or indictments, a court can, in certain circumstances, order that the charges be tried together. This provision is based on section 585 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to that section.

135 Venue, change of

Provides that where there is good reason to do so, a court may order that the whole or part of a case be conducted at another place in the State, and sets out the procedure on making such an order. This provision is based on elements of section 577 of *The Criminal Code*, sections 83 and 84 of the *Justices Act 1902* (and see Rules 35 and 36 of the *Criminal Procedure Rules 2000*.)

This provision addresses in part The Murray Report recommendations in relation to sections 575-577 of *The Criminal Code*.

136 Trial date court may set on application of party

Provides that an accused charged on indictment can apply to the court for an order setting his or her trial date. This addresses in part The Murray Report recommendation in relation to section 609 of *The Criminal Code*. (See also Rule 24 of the *Criminal Procedure Rules 2000*).

137 Case management powers

Provides powers to all courts for the purposes of controlling and managing its cases efficiently and expeditiously. This provision addresses Law Reform Commission Recommendations 238 and 246 and, in part, 240, 243 and 248.

138 Disclosure requirements, orders as to

Provides powers to all courts to make orders in respect of disclosure obligations, including dispensing with such requirements in particular circumstances. This provision is based on sections 611B and 611C of *The Criminal Code*, and sections 100 and 103 of the *Justices Act 1902*. This provision addresses in part Law Reform Commission Recommendation 289.

139 Accused's appearance, court's powers to compel

Provides powers to compel the accused to appear. This provision is based in part on section 635 of *The Criminal Code*.

140 Accused may be excluded from proceedings

Provides powers to exclude the accused from proceedings. This provision is based on section 635 of *The Criminal Code*.

141 Video and audio links, use of

Gives the court power to order appearances to occur by video or audio link. This provision is based on sections 635 and 647 of *The Criminal Code*.

Division 4 – Trial matters

142 Accused required to plead at start of trial

Provides that at the start of a trial, regardless of whether the accused has previously pleaded to his or her charge, the court must inform the accused of the charge in any manner the court decides is just, and require the accused to plead. This provision is based on section 612 of *The Criminal Code* (and Rule 21 of the *Criminal Procedure Rules 2000*).

143 Opening addresses

Provides that the prosecutor and accused are entitled to give an opening address about their respective cases, and that the accused has an option as to when to give that address. This provision is based on section 637 of *The Criminal Code* and addresses in part Law Reform Commission Recommendation 318.

144 Accused's entitlement to defend charges

Provides that an accused has an entitlement to defend the charges made against him or her. This provision is based on sections 634 and 636 of *The Criminal Code*. It is also based on sections 68 and 141 of the *Justices Act 1902*.

145 Closing addresses

Provides that the prosecutor and accused are entitled to give a closing address about the whole case. This provision is based on section 637 of *The Criminal Code* and addresses

in part The Murray Report recommendation in relation to that section. It also addresses in part Law Reform Commission Recommendation 319, by providing that the accused is to close last, but that the court has the power to permit the prosecutor to reply if the defence raises new material in that address.

Division 5 – Judgments and related matters

146 Acquittal on account of unsoundness of mind

Provides that a finding of not guilty on account of unsoundness of mind must be recorded.

147 Judgment, entry of

Provides that where an accused is found guilty, the court may enter a judgment of conviction. This provision is based on section 654 of *The Criminal Code* and addresses in part The Murray Report recommendation in relation to sections 654 and 655 of *The Criminal Code*.

148 Conviction, consequences of

Provides that once an accused is convicted, a court must proceed to sentence the offender or make other orders under any relevant written law. This provision is based on section 656 of *The Criminal Code* and section 150 of the *Justices Act 1902*.

149 Acquittal, consequences of

Provides that if a court acquits an accused on account of unsoundness of mind, the court must deal with the accused under the *Criminal Law (Mentally Impaired Accused) Act 1996*. In all other cases, the court must order that an acquitted accused be released from custody. This provision is based on section 652 and 653 of *The Criminal Code* and section 143 of the *Justices Act 1902*.

150 Discharge of the accused, effect of

Provides that, after discharge, an accused must not be kept in custody in relation to that charge, and that any bail or surety undertakings in relation to that charge cease to have effect. The provision also makes it clear that it does not affect any subsequent prosecution in relation to that charge.

Division 6 – Prosecutions against corporations

151 Application of this Division

Provides when Part 5, Division 4 applies.

152 Corporation may appoint representative

Provides that a corporation may appoint a person to be its representative in court proceedings. This provision is based on Rule 17 of the *Criminal Procedure Rules 2000*

and addresses in part The Murray Report recommendation in relation to proposed new sections 612A of *The Criminal Code*.

153 Representative’s functions

Sets out the powers of the corporation’s representative when acting on the corporation’s behalf in court proceedings. This provision is based on Rule 18 of the *Criminal Procedure Rules 2000* and addresses in part The Murray Report recommendation in relation to proposed new section 612A of *The Criminal Code*.

154 Pleas by or on behalf of a corporation

Provides that a plea on behalf of a corporation must be in writing. This provision is based on Rule 19 of the *Criminal Procedure Rules 2000*.

155 Compelling a representative to appear

Provides the court with powers to compel a corporation’s representative to attend the court proceedings.

Division 7 – Witnesses

156 Interpretation

Defines terms to be used within Part 5, Division 7 of the Act.

157 Privilege, claims for not prevented

Provides that Part 5, Division 7 does not prevent a person claiming privilege in respect of oral evidence to be given or a record or thing to be produced.

158 Pre-trial statements and examinations of witnesses (Sch 3)

Provides that Schedule 3 of the Act has effect.

159 Compelling a witness to attend court

Gives a prescribed court officer power to issue a witness summon or warrant to compel a person to attend court to give oral evidence or to produce a record or thing. This provision addresses in part The Murray Report recommendation in relation to proposed new section 746B and 746C of *The Criminal Code*. It is also based on sections 74, 76 and 78 of the *Justices Act 1902*.

160 Arrest warrant for witness, content of

Provides for the content of a warrant to arrest a witness, and the procedure following arrest of the witness. This provision is based on section 91 of the *Justices Act 1902* (and see Rule 34 of the *Criminal Procedure Rules 2000*).

161 Witness summons, content of

Provides the content of witness summons. It is based on sections 74 and 78 of the *Justices Act 1902* (and see Rule 30 of the *Criminal Procedure Rules 2000*).

162 Witness summons, service of

Provides the procedure for serving a witness summons on the witness. This provision addresses in part The Murray Report recommendation in relation to proposed new section 746B. It is also based on section 74 of the *Justices Act 1902* (and see Rule 31 of the *Criminal Procedure Rules 2000*).

163 Witness summons to produce material, procedure on

Provides the procedure for dealing with witness summonses to produce records or things. This provision is based on section 78 of the *Justices Act 1902* (and see Rule 33 of the *Criminal Procedure Rules 2000*).

164 Witnesses, securing further attendance of (Sch 4)

Provides that Schedule 4 of the Act has effect. It is based in part on section 83 of the *Justices Act 1902*.

165 Witness not attending, procedure on

Provides the procedure for dealing with a witness who does not appear in court in response to a summons. This provision addresses in part The Murray Report recommendation in relation to proposed new section 746C. It is also based on section 75 of the *Justices Act 1902*.

166 Witness summons, cancelling

Provides that a court may cancel a witness summons issued to a person. This provision is based on Rule 32 of the *Criminal Procedure Rules 2000*.

167 Discharging a witness

Provides that where a court discharges an accused, the court may discharge any witnesses, and the consequences that flow. This provision addresses in part The Murray Report recommendation in relation to section 581.

Division 8 – Miscellaneous

168 Criminal records, proof of

Facilitates proof of criminal records in certain circumstances.

169 Child, prosecution of in wrong court

Provides that where a court deals with a child for an offence when they had no jurisdiction to do so, the court's decision is lawful and has full force and effect unless a party to the prosecution or the Attorney General succeeds on an application to have the decision set aside. This provision is based on section 136B of the *Justices Act 1902*.

170 Exhibits, retention of etc.

Provides the procedure for the retention and return of exhibits.

171 Court to be open, publicity

Provides that all criminal proceedings are to be in open court unless a judge orders otherwise, or any law or rule of court provides otherwise. This provision is based on section 635A of *The Criminal Code* and sections 65 and 67 of the *Justices Act 1902*.

172 Representation of parties

Provides who may appear in court on behalf of a party to a prosecution. This provision is based on section 634 of *The Criminal Code* and section 68 of the *Justices Act 1902*.

PART 6 – MISCELLANEOUS

Division 1 – Court documents

173 Unauthorised documents

Provides that a person is guilty of an offence if he or she signs or lodges a court document when not authorised to do so. This provision is based on section 87 of *The Criminal Code*.

174 Presumptions as to signatures etc.

Provides that a document required to be signed under Part 4, Division 2 is presumed signed, unless proved otherwise. This provision is based on section 579 of *The Criminal Code* and section 136AA of the *Justices Act 1902*.

175 Service and proof of service

Provides that Schedule 2 has effect in relation to service. It also provides the procedure for proof of service of court documents. This provision is based on sections 56, 56A, 57 and 136 of the *Justices Act 1902*.

176 Effect of court documents

Provides the effect of court documents and presumptions as to its authenticity. This provision is based on section 136AA of the *Justices Act 1902*.

177 Warrants, effect of and procedure on

Sets out the effect of warrants, the persons required to obey them, and the procedure with respect to warrants. This provision is based on sections 37, 60, 62 and 79, 86A and 95 of the *Justices Act 1902*.

178 Defects etc. in court documents

Provides the procedure for correcting defects in court documents. This provision is based on section 590 of *The Criminal Code* and sections 46, 48 and 147 of the *Justices Act 1902*.

179 Errors in court records due to use of wrong or false name

Provides the procedure for correcting errors on the court record concerning the accused's name, address or date of birth.

Division 2 – Offences

180 Corporation and its officers, liability for offences

Sets out the persons in a corporation who may be liable if a corporation is charged with an offence under this Act, and the procedure for dealing with such offences. This provision is based on section 105 of the *Justices Act 1902*.

181 Disobeying summons, offence

Provides that a witness who disobeys a summons commits an offence, and sets out the procedure for dealing with such offenders. This provision addresses in part The Murray Report recommendation in relation to proposed new section 746C. It is also based on section 75 of the *Justices Act 1902*.

Division 3 – General

182 Appointment of people to prosecute offences.

Provides for the appointment of people to prosecute offences. This provision is based in part on section 578 of *The Criminal Code*.

183 Contempts, summary punishment of not prevented

Provides that the Act does not prevent a court from dealing with a contempt summarily. This provision is based on section 7 of Appendix B of *The Criminal Code Act 1913*.

184 Decisions by court officer, review of

Provides the procedure for review of court officers' decisions.

185 Enforcing orders to pay money, other than fines etc.

Provides the procedure for enforcing orders to pay money, other than fines. This provision is based on section 682 of *The Criminal Code* and section 155 of the *Justices Act 1902*.

186 Regulations

Provides that the Governor may make regulations in relation to this Act. This provision is based on section 96 of the *Justices Act 1902*.

SCHEDULE 1 – PROSECUTION NOTICES AND INDICTMENTS

This schedule addresses in part The Murray Report recommendations in relation to sections 583 and 584 of *The Criminal Code*.

Division 1 – Preliminary

1 Interpretation

Defines the terms to be used in Schedule 1 of the Act.

Division 2 – Contents of prosecution notices and indictments

2 General rules

Sets out the general rules in relation to the content of prosecution notices or indictments. With respect to prosecution notices, this provision is based on sections 43 - 45 of the *Justices Act*. Insofar as it deals with indictments, it is based on section 585 of *The Criminal Code* and Rule 20 of the *Criminal Procedure Rules 2000*, and addresses in part The Murray Report recommendations in relation to section 584

3 Prosecutor to be identified

Provides that the prosecutor must be identified and addresses in part The Murray Report recommendations in relation to section 584.

4 Accused to be identified

Provides that the accused must be identified.

5 Alleged offence to be described

Provides that the alleged offence must be described in enough detail to enable the accused to understand and defend the charge. This provision is based on sections 582 and 583 of *The Criminal Code*.

6 Alleging particular matters and offences

Provides the rules in relation to alleging particular matters and offences. This provision is based on sections 583 and 584 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to those sections.

7 Multiple charges and multiple accused

Provides that a prosecution notice or indictment may in certain circumstances charge one or more persons with 2 or more offences. This provision is based on sections 585 - 587 of *The Criminal Code* and addresses in part The Murray Report recommendations in relation to section 585.

8 Multiple offences may be charged as one in some cases

Provides the circumstances in which multiple offences may be charged as one. This provision is based on sections 586 of *The Criminal Code*.

Division 3 – Effect of certain charges

9 Joined charges and accused to be tried together

Provides that joined charges and joined accused must be tried together unless the court orders otherwise.

10 Charge of offence relating to property

Provides what details are sufficient to prove the ownership of property.

11 Charge of burglary, stealing or receiving

Provides the procedure in relation to charges of stealing, burglary and receiving.

SCHEDULE 2 – SERVICE OF DOCUMENTS

1 Interpretation

Defines the terms to be used in Schedule 2 of the Act.

2 Personal service of individuals

Provides the procedure for personal service of documents. This provision is based on sections 56 and 57 of the *Justices Act 1902* and addresses in part The Murray Report recommendation in relation to proposed new section 746B of *The Criminal Code*.

3 Postal service on individuals and corporations

Provides the procedure for postal service of documents. This provision is based on sections 56A and 57 of the *Justices Act 1902*.

4 Service on corporations

Provides the procedure for service of documents on corporations.

5 False service information, offence

Provides that a person who records false service information in a service certificate commits an offence.

SCHEDULE 3 – PRE-TRIAL STATEMENTS AND EXAMINATIONS OF WITNESSES

1 Interpretation

Defines the terms to be used in Schedule 3 of the Act.

2 Evidence Act 1906 not affected

Provides that the schedule is in addition to and does not limit the *Evidence Act 1906*.

3 Admissibility of dying declarations not affected

Provides that Schedule 3 of the Act does not affect the law as to the admissibility of dying declarations.

4 Witness statements, formalities of

Sets out the formal requirements of witness statements. This provision is based on section 69 of the *Justices Act 1902*.

5 Examination of witness, court may order

Provides that a prosecutor can apply to the court for an order that a witness be examined and their evidence recorded. This provision is based on section 102 of the *Justices Act 1902* but has been extended to cover all offences.

6 Examination of witness, conduct of

Provides the procedure for the examination and recording of a witness's evidence. This provision is based on section 102 of the *Justices Act 1902*, but the nature of the examination has been altered to address the issues raised in *Re Grinter; ex parte Hall* [2004] WASCA 79.

7 Witness's pre-trial evidence, use of at trial

Provides that a court may in certain circumstances admit into evidence a witness statement or a recording of a witness's evidence, and the procedure for dealing with such statements or pre-recordings in court. This provision is based on section 635B of *The Criminal Code*, sections 69, 73, 109 - 113 of the *Justices Act 1902* and sections 107

and 108 of the *Evidence Act 1906*. It also addresses in part The Murray Report recommendation in relation to section 635B of *The Criminal Code*.

SCHEDULE 4 – SECURING THE FURTHER ATTENDANCE OF WITNESSES

1 Interpretation

Defines the terms to be used in Schedule 2 of the Act.

2 Witness may be imprisoned until trial

Provides a court with power to imprison a witness until trial where necessary, and to make other orders considered necessary to ensure the witness attends court. This provision is based on sections 124 - 126 of the *Justices Act 1902*.

3 Witness undertakings, provisions about

Provides that the law in relation to witness undertakings under the Act is governed by provisions of the *Bail Act 1982*. This provision is based on section 89, 90, 124 and 125 of the *Justices Act 1902*.

4 Witness undertaking, contravention of

Provides that a witness who breaches his or her undertaking commits an offence, and that the procedure for dealing with such an offence is governed by provisions of the *Bail Act 1982*. This provision is based on section 746A of *The Criminal Code* and sections 93 and 154A of the *Justices Act 1902*.

5 Surety undertakings, application of Bail Act provisions to

Provides that Part VI of the *Bail Act 1982* applies to surety undertakings entered into as security for a witness's undertaking. This provision is based on section 746A of *The Criminal Code* and section 154A of the *Justices Act 1902*.

6 Application of other Bail Act provisions

Provides that sections 60, 62, 64 and 65 of the *Bail Act 1982* apply to witness and surety undertakings in the same way as they apply to defendant and surety undertakings for a grant of bail.