

COURTS LEGISLATION AMENDMENT AND REPEAL BILL 2003

EXPLANATORY MEMORANDUM

This Bill accompanies a legislative package that reforms the lower courts in this State, implements recommendations of the Law Reform Commission (LRC) and introduces a uniform system for enforcing the civil judgments of the Magistrates Court, District Court and Supreme Court. Other Bills included in the package are the Magistrates Courts Bill 2003, the Magistrates Courts (Civil Proceedings) Bill 2003, the Justices of the Peace Bill 2003, the Civil Judgments Enforcement Bill 2003, the Oaths, Affidavits and Statutory Declarations Bill 2003 and the Oaths, Affidavits and Statutory Declarations (Consequential Amendments) Bill 2003.

Part 1 Preliminary

This part contains the title of the Act, the relevant commencement provisions and the operation of the *Interpretation Act 1984*.

Clause 1 Short Title

Citation of the Act.

Clause 2 Commencement

Subclause 1 makes provision for Part 1 of the Act to come into operation on a day fixed by proclamation.

Subclause 2 makes provision for different days to be fixed for different provisions.

The commencement of the *Magistrates Court Act 2003* will be by proclamation, as the various Acts in the reform package, together with subsidiary legislation, will need to come into effect simultaneously.

Clause 3 Operation of *Interpretation Act 1984*

This ensures that where this Act repeals an enactment and it is re-enacted by the:

- *Civil Judgments Enforcement Act 2003*;
- *Justices of the Peace Act 2003*;
- *Magistrates Court Act 2003*; or
- *Magistrates Court (Civil Proceedings) Act 2003*;

all matters and things whatsoever which are in existence under the repealing law, are respectively in existence and continue as if the repealing law had been in operation when they respectively originated.

Part 2– Local Courts Act 1904 repealed

Division 1 Repeal

The *Local Courts Act 1904* is repealed as a direct consequence of the legislative reform package and is replaced by the *Magistrates Court Act 2003* as to constitutional provisions and the *Magistrates Court (Civil Proceedings) Act 2003* as to provisions relating to jurisdiction and civil practice and procedure.

Clause 4 Local Courts Act 1904 repealed

This clause repeals the *Local Courts Act 1904*.

Division 2 Transitional provisions

Clause 5 Interpretation

This clause defines the term “commencement” for the purposes of the Division.

Clause 6 Clerks of Local Courts

The *Local Courts Act 1904* provides for the appointment of clerks of the various Local Courts to be appointed a Clerk of the Local Court or Assistant Clerk of the Local Court. The role of a Clerk of the Local Court or Assistant Clerk of the Local Court is quasi judicial and is to facilitate the operation of the court by signing of documents, issuing the processes of the court and performing quasi-judicial functions such as taxing bills of cost and conducting pre trial hearings.

Under the provisions the *Magistrates Court Act 2003*, the role of Clerk of the Local Court or Assistant Clerk of the Local Court will be superseded by that of a registrar or a deputy registrar. This clause provides for Clerks of the Local Court or Assistant Clerks of the Local Court who have been appointed under the repealed Act to be deemed to have been appointed a registrar or deputy registrar under the *Magistrates Court Act 2003*. Clerks who are employees of the Ministry of Justice will have their appointment as a registrar incorporated into their appointment to their public service position under Part 3 of the *Public Sector Management Act 1994*. This will eliminate the requirement for a separate appointment as a registrar. The provision also applies to assistant clerks of the local court. The clause does not apply in respect to the position of Principal Registrar.

The clause is necessary for the administration of justice and to eliminate the need for reappointments.

Clause 7 Cases pending

This clause provides that at the time of commencement any proceedings that had been initiated under the repealed legislation are to be taken to be proceedings before the Magistrates Court, within its civil jurisdiction and subject to the *Magistrates Court (Civil Proceedings) Act 2003*.

The clause is necessary for the administration of justice and to eliminate the need to rehear cases.

Clause 8 Existing summonses and warrants

Subclause 1 provides that at the time of commencement, any summons or warrant that had been issued under the repealed legislation is to be taken to be a summons or warrant that had been issued by the Magistrates Court, within its civil jurisdiction and subject to the *Magistrates Court (Civil Proceedings) Act 2003*.

Subclause 2 provides that the time of commencement any summons or warrant requiring a person to attend before a Local Court is deemed to require that person to attend the Magistrates Court.

The clause is necessary for the administration of justice and to eliminate the need to recall and reissue summonses and warrants.

Clause 9 References to *Local Courts Act 1904* to be read as references to *Magistrates Court (Civil Proceedings) Act 2003*

This clause provides that any reference in a written law or other document to the *Local Courts Act 1904* is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the *Magistrates Court (Civil Proceedings) Act 2003*.

The clause is a safeguard measure and caters for any amendment that might have been overlooked when drafting the considerable number of amendments to various Acts that refer to the *Local Courts Act 1904*. It also caters for documents and forms (used and unused) that will be in existence after the establishment of the Magistrates Court. It will mean that stocks of old forms will not be wasted, but will be able to be used in the transitional period during which new forms are being printed and distributed. The clause is necessary for the good administration of justice.

Clause 10 References to ‘*Local Court*’ to be read as references to ‘*Magistrates Court*’

This clause provides that any reference in a written law or other document to a Local Court is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the Magistrates Court.

The clause is a safeguard measure and is necessary for the good administration of justice.

Clause 11 *Local Court Rules 1961* continue in operation

This clause provides that at the time of commencement, the Local Court Rules which were made under the authority of the repealed Act are to continue in operation as if they were rules of court made under the *Magistrates Court Act 2003* and may be amended or repealed by new rules made under the *Magistrates Court Act 2003*, and in accordance with the provisions of the *Magistrates Court (Civil Proceedings) Act 2003* which sets out those matters about which rules of court may be made.

The clause is necessary for the administration of justice and is a safeguard in that it provides for the continuation of existing rules of court, if necessary, until new rules of court are made.

Part 3 - Small Claims Tribunal Act 1974 Repealed

The *Small Claims Tribunal Act 1974* is repealed as a direct consequence of the legislative reform package and its provisions relating to ‘consumer/trader’ actions are included in the *Magistrates Court (Civil Proceedings) Act 2003*.

Clause 12 Act repealed

This clause repeals the *Small Claims Tribunal Act 1974*.

Clause 13 Transitional provisions

Subclauses 1-3 define the term ‘commencement’ for the purposes of this Part and also provide that matters that have not been resolved are automatically transferred to the Magistrates Court where the provisions of the *Magistrates Court (Civil Proceedings) Act 2003* will apply and orders made by the Tribunal that are enforceable are deemed to be orders of the Magistrates Court.

Subclauses 4 and 5 provide that claims relating to applications to the Sutor’s Fund that were before the Tribunal are also protected.

Subclause 6 provides that any reference in a written law or other document to the Small Claims Tribunal is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the Magistrates Court.

The clause is a safeguard measure, is necessary for the administration of justice and to eliminate the need to rehear cases.

Part 4 - Stipendiary Magistrates Act 1957 Repealed

The *Stipendiary Magistrates Act 1957* is repealed as a direct consequence of the legislative reform package and is replaced by the Magistrates Court Bill 2003 as to provisions relating to the appointment and tenure of magistrates

Clause 14 Act repealed

This clause repeals the *Stipendiary Magistrates Act 1957*.

Clause 15 Transitional provisions

All magistrates that currently hold an appointment under the *Stipendiary Magistrates Act 1957* will continue to hold office under the *Magistrates Court Act 2003*.

Subclause 3 caters for magistrates who have had their appointment extended beyond 65 years of age under the old Act. If this is the case, their appointment stands as if it had been made under the new Act.

Subclause 4 caters for registrar/magistrates of the Family Court appointed for fixed terms under the old Act. Under the new Act they remain a magistrate as long as they remain a registrar. This saves the Family Court from having to arrange fresh appointments every time a temporary appointment expires.

Subclauses 5 and 6 clarify the situation that magistrates appointed under these provisions will not have to take another oath and that seniority that existed before this Act will be maintained.

Subclause 7 provides for a continuation of the salary, superannuation and other existing and accrued rights of magistrates appointed under the repealed Act to continue.

Subclause 8 provides that any reference in a written law or other document to the term Stipendiary Magistrate is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to a magistrate.

Subclause 9 provides that any reference in a written law or other document to the term Chief Stipendiary Magistrate is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the Chief Magistrate.

The clause is necessary for the administration of justice and to eliminate the need for reappointments.

Part 5- Other Repeals

Clause 16 *Debtors Act 1871* repealed

The *Debtors Act 1871* is repealed as its provisions were antiquated and obsolete and as it has been superseded by the *Civil Judgments Enforcement Act 2003*.

Clause 17 *Foreign Judgments Act 1963* repealed

The *Foreign Judgments Act 1963* (WA) has been superseded by the *Foreign Judgments Act 1991* (Cwlth) and Crown Counsel advises that is inconsistent with the Commonwealth Act for the purposes of section 109 of the Constitution and is inoperative to that extent and should be repealed. The Chief Justice has agreed with this course of action.

Clause 18 *Magisterial Districts Act 1886* repealed

Magisterial Districts were established when this State was still a colony. Their purpose was to establish defined areas of the colony within which an appointed Resident Magistrate, Police Magistrate or Government Resident Magistrate would have authority to deal with the laws of the colony. The *Justices Act 1902* provided the Governor with the power to appoint magisterial districts for the purposes of courts of petty sessions.

With the coming into force of the *Magistrates Court Act 2003*, which is a court of state-wide jurisdiction, the concept of magisterial districts is inconsistent with the objects of the *Magistrates Court Act 2003* and becomes redundant and the *Magisterial Districts Act 1886* is to be repealed.

Clause 19 *Public Officers Act 1879 repealed*

This Act relates to the powers of Resident Magistrates, Police Magistrates and Government Resident Magistrates. This Act has no relevance to current magisterial appointments and is therefore to be repealed.

Clause 20 *Wild Cattle Nuisance Act 1871, Amendment Act 1883 repealed*

The provisions of this Act no longer have any relevance to the current laws of this State and therefore the Act is to be repealed.

Clause 21 Imperial enactments repealed

The repeal of the Imperial enactments mentioned in the clause merely removes reference to existing outdated and superfluous Imperial provisions.

Part 6 – *Justices Act 1902 amended and transitional provisions*

The *Justices Act 1902* is amended as a direct consequence of the legislative reform package and is retitled the *Criminal Procedure (Summary) Act 1902* and will contain existing and amended provisions relating to criminal practice and procedure. Constitutional and jurisdictional provisions will be removed and replaced by the Magistrates Court Bill 2003. Provisions currently relating to the appointment and management of Justices will be removed and placed in the *Justices of the Peace Act 2003*.

Division 1 Amendments

It should be borne in mind whilst reading the explanations of why certain provisions have been amended the way they have, that there is an underlying approach which is designed to transform this Act. The current Act provides the following:

- It provides for the appointment of Justices of the Peace and gives them a range of powers and functions, including the ability to sit as a court. When they sit, the mere fact of sitting to determine a matter as a court, means they constitute a court (a court of petty sessions).
- Other courts of summary jurisdiction are not catered for in this Act as they did not exist when the Act was drafted. Over the years, they have adopted the provisions of this Act and Magistrates were given the powers of a justice so that they could exercise the functions provided to justices.

The intention is to change the emphasis of the Act so that it provides courts of summary jurisdiction with a range of powers and functions, rather than the persons who constitute them. Consequently, wherever the current Act mentions “justice” it has either been replaced with “court” or “court of summary jurisdiction” or those terms have been added.

Clause 22 Act amended by this Division

This Part refers to the *Justices Act 1902*.

Clause 23 Long Title replaced

The Long Title is amended to remove any reference to Justices of the Peace as the provisions in this Act relating to the appointment of justices have been removed. The title now reflects the main purpose of the amended Act. It will provide the criminal jurisdiction and procedure for the Magistrates Court as well as procedure for other courts of summary jurisdiction.

Clause 24 Short Title amended

The Short Title of the Act is amended to *Criminal Procedure (Summary) Act 1902*.

Clause 25 Section 4 amended

Provides interpretation of various terms used throughout the Act. The section is amended by including the following definitions –

- 'agent' The term has been introduced to cater for the various persons who can represent parties to proceedings (see amendments to section 68). Due to the ability of a wider range of persons being able to represent parties the use of the term 'agent' is more accurate wherever it is used.
- 'court of summary jurisdiction' This definition has been included to recognise among other things, that other courts use this Act for procedure and is in line with the jurisdiction of the Magistrates Court as set out in Part 3 of the *Magistrates Court Act 2003*.
- 'DPP' This caters for a number of amended provisions that have been included that make numerous references to the Director of Public Prosecutions.
- 'judicial officer' The term is used in conjunction with reference to courts of summary jurisdiction and complements the structure of the *Magistrates Court Act 2003*.
- 'justice' This is a new definition, replacing the old definition and indicating the source of the appointment.
- 'magistrate' A new definition, replacing the old definition and indicating the source of magistrates' appointments.
- 'prescribed investigator' The definition is relevant since it describes those officers from the Police Force or a prescribed public authority that can commence prosecutions in the manner that will be described later in this document; that is, without the need for the initiating process (complaint/summons) to be witnessed by a magistrate, justice or registrar.
- 'prescribed public authority' This definition provides for a public authority to be prescribed by the Regulations so that an officer of that authority can commence prosecutions in the manner described above.
- 'public authority' This definition defines what will be meant in the Act by public authority namely a Minister of the Crown, a Department of the Public Service, a Local Government or a Regional Local Government, or a body,

whether incorporated or not, that is established for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State. It is not only relevant to the new procedures relating to commencing prosecutions described above but also to representation to those authorities in court: see clause 33.

- 'registrar' Recognises the new administrative regime for clerical officers under the *Magistrates Court Act 2003*.

Section 4 has also been amended to remove the definitions for:

- 'jurisdiction' The meaning is no longer appropriate given that jurisdiction is dealt with in the *Magistrates Court Act*.
- 'Minister' The definition is now not necessary (the definition in s.12 of the *Interpretation Act 1984* will apply).
- 'police officer' The definition is now not necessary (the definition in s.5 of the *Interpretation Act 1984* will apply).

Clause 26 Part II repealed

This Part is repealed as it deals with the appointment of justices. The appointment of JP's is now provided for in the *Justices of the Peace Act 2003*.

Clause 27 Part III repealed

This Part dealt generally with jurisdiction, and particularly with:

- courts of petty sessions;
- appointment of clerks of petty sessions;
- magisterial districts for the purpose of holding courts of petty sessions; powers of one justice; hearing and quorum; magistrates; and
- extent of jurisdiction; and contempt proceedings.

All these matters are:

- (i) no longer needed (eg courts of petty sessions and magisterial districts), or
- (ii) are covered in the *Magistrates Court Act 2003*, or
- (iii) are dealt with in other legislation (eg orders in respect of stolen goods which has now been placed in the *Criminal Code*) or
- (iv) are preserved in another part of this Act (eg mandamus).

Clause 28 Section 42 amended

Deals with the commencement of proceedings. The section has now been divided into two sub-sections, (1) stating that unless otherwise provided, proceedings are

commenced by making a complaint. An amendment has been made stating that it shall be a written complaint. This merely reflects the standard practice that has been exercised in courts for some considerable time. To 'make' a complaint requires it to be made before someone. Sub-section (2) has been added to clarify before whom a complaint is made or sworn.

Subsection 3 recognises that except in circumstances where a person making a complaint is a prescribed investigator, a complaint shall be witnessed by a Magistrate, Justice or Registrar. The prescribed investigator is excluded from this obligation by virtue of his membership or employment of a public authority. The provision recognises that an inordinate amount of time is spent by Police Officers and other public officers having complaints witnessed usually by Justices of the Peace as a matter of formality when there are other safeguards, such as Section 133A of the *Criminal Code*, to ensure that this process is undertaken in good faith. The provision will allow these officers, particularly Police Officers, to expeditiously issue a summons and return to their Court duties. This approach has been used for some time in Queensland and New South Wales.

Clause 29 Section 50 replaced

The section currently states that when issuing a summons in conjunction with making a complaint, the complaint does not need to be written, but can be verbal. Verbal complaints are a thing of the past and given the amendment to section 42, these words have been omitted.

Clause 30 Section 51 replaced

Currently section 51 places a limitation on when proceedings before a court of summary jurisdiction for a simple offence must be commenced. That period is 12 months and will remain. The advent of prescribed investigators being able to commence proceedings without the complaint being witnessed requires a process that ensures that it remains possible to accurately identify when a proceeding was commenced and in particular whether it was commenced within 12 months. Subsection 2 achieves this in two parts. In subsection (2)(a) the date of commencement is taken to be the day on which the complaint is signed before a Magistrate, Justice or Registrar and subsection (2)(b) deals with circumstances where a prescribed investigator initiates the prosecution and in that case the date on which the prosecution is taken to be commenced is the day on which it is lodged with the Court. In each case there is therefore a clear record of when the prosecution was commenced.

Clause 31 Sections 52 and Section 53 replaced

The first subsection of the new section is to the same effect as the current section 52. It provides the power for a Magistrate, Justice or Registrar before whom a complaint is made to issue a summons.

Subsection 2 takes account of those provisions relating to prescribed investigators and ensures that a summons issued by a prescribed investigator is of the same force and effect as a summons issued by a Magistrate, Justice or a Registrar.

Clause 32 Section 56 amended

Currently this section deals with the manner in which a summons is served and states that a magistrate or clerk can authorise service by post. The third paragraph of the section states that service by post must be as a prepaid registered letter to the person's place of residence and that a certificate by the clerk is proof of service. The certificate is proof only if the clerk has received an acknowledgment of delivery signed by the person concerned.

The third paragraph has been deleted and replaced with sub-sections (2), (3) & (4) which set out the procedure for service by post. The substantial change is to allow service by ordinary post, which reduces costs to the court and removes the ability of defendants to avoid service by not signing for delivery.

Clause 33 Section 58 amended

The first part of section 58 currently deals with the capacity of a justice to issue an arrest warrant where a complaint is made in respect to an indictable offence. That part will now be deleted and replaced with a modernised version that updates the provision without changing the tenor of the section. The provision now includes a magistrate as well as a justice.

Clause 34 Section 68 replaced

This is a new section. It comprehensively clarifies how a party may be represented in Court. It confirms that a party is personally entitled to appear or to be represented by a lawyer. It allows the Court in exceptional circumstances to give leave to a person who is not a lawyer to represent a party but with the proviso that such a person is not entitled to claim, receive or recover, directly or indirectly, money or other remuneration for doing so. In addition it allows Police Officers to appear as prosecutors and officers or employees of a public authority to do so in the course of their duty. This removes the requirement for a prosecutor who is not a lawyer to seek the leave of the Court each time he or she appears before the Court and which leave is granted as a formality.

Clause 35 Section 75 amended

The current provision deals with the procedure if a person summoned as a witness does not appear. Sub-section (1) has been re-written without changing the tenor of the provision, other than removing the penalty that can be imposed if no reasonable cause is shown for the non-appearance. The contempt provision in the *Magistrates Court Act 2003* (see section 19) caters for this. The current sub-section (2) states that a warrant issued to bring the person before the court had to state a time and place to have the person before the court. This has been changed to have the person brought before the court as soon as practicable. The reason for the change is that too often, particularly in the country, the person would be arrested and the warrant would nominate a time that coincided with the next circuit sittings. The amendment gives the

police and the court greater flexibility to bring the person before the next available court.

Clause 36 Section 79 amended

This section currently deals with the ability of the court to adjourn the hearing of an indictable offence and remand the defendant to a gaol until the hearing resumes.

Where a defendant who is in custody currently comes before the Court of Petty Sessions, currently the Court must set what is commonly referred to as a cycle date. If the defendant is undergoing a term of imprisonment this must not exceed 8 clear days unless the defendant consents to a day not later than the day on which his term of imprisonment will expire. In cases where a defendant is remanded in custody pending being dealt with by the Court, the period must not exceed 8 clear days unless the defendant consents but in that case it must not exceed 30 clear days. The result is that a remand prisoner only has the option of either returning to the Court every 8 days or on a date not exceeding 30 clear days. The defendant has no option to waive these cycle dates. The Lower Courts Committee, which reviewed reforms to legislation in the lower courts, recognised this. Under the new provision, as long as the defendant consents, the cycle date will be able to be waived. Experience has shown that most defendants in custody would prefer not to have the inconvenience of being continually returned to Court on cycle dates. The new provisions simply give them the option. The Court will have an overriding power to put in place a cycle remand for a defendant in custody if it considers this is necessary. This retains protection for defendants.

Clause 37 Section 86A replaced by sections 86A and 86B

There have been instances where the current section 86A has prevented the Court from efficiently dealing with matters. In some instances defendants in custody have been required to be transported over long distances to comply with the provision that requires a first appearance to be in person. The current provision has therefore been the source of serious resource implications in prisoner transport. Transporting prisoners to a first appearance in person has also taken up valuable Police time that could be used in more core duties. The new provision further recognises the availability and practicality of video and audio link. First appearances on a charge will continue to be in person but the court of its own initiative or on an application of a party to the proceedings will be able to order that the appearance be conducted on a video link or if a video link is not reasonably available, on an audio link. The procedure in relation to subsequent remand appearances of accused will remain the same as it is currently; that is, the appearance will be on video or audio link unless the court is satisfied that in the proper administration of justice the accused must appear in person. The section also provides for a defendant who is not in custody to appear before a Court, at the discretion of the Court, by a video or audio link. The latter provision will enable, for instance, defendants who have matters pending in Perth but who have returned to their place of employment in another part of the State pending the final hearing of a matter, to arrange with the Court to appear by video link or, in what will be exceptional circumstances, audio link.

Clause 38 Section 96 amended

This section provides that the Governor may make regulations for carrying out this Act, including prescribing the forms to be used in and the fees to be taken in courts of petty sessions and appeals and providing for procedural matters relating thereto. Subsection (2) has been added to provide flexibility and alleviate the Governor of what is a purely operational task.

Clause 39 Sections 136A amended

This clause provides for the setting aside of decisions given in default of appearance by a party. The clause changes the existing criteria for a rehearing to when the party becomes aware of the decision of the court. Elsewhere the clause is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Clause 40 Sections 151, 152 and 153 replaced

These sections currently deal with the power to award costs and will be repealed.

The current position is as follows:

Section 151

Section 151 currently states that in all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.

Section 152

Currently states that when justices, instead of convicting or making an order, dismiss the complaint, they may, by their order of dismissal, order that the complainant shall pay to the defendant such costs as to them seem just and reasonable.

Section 153

Currently states that the sum so allowed for the costs shall, in all cases, be specified in the conviction or order or order of dismissal.

All three sections have been repealed and replaced by a single section. This is the new section 151. The new section provides a more comprehensive reference for the court to use when making such orders. The provision provides consistency of the award of costs by linking all the different scenarios to similar scales. In effect, the same scale will be used for:

- official prosecutions where the defendant is acquitted and costs awarded;
- official prosecutions where the defendant is convicted and costs are awarded;
- any prosecution where the defendant is acquitted and costs awarded; and
- any prosecution where the defendant is convicted and costs awarded.

Other proceedings (not prosecutions) are also linked to any relevant determination under the *Legal Practice Act 2003*. Further flexibility has been added by allowing the

court to adjourn the question of costs, but only for good reason, and providing for the matter to be dealt with in chambers. The new section provides greater certainty to costs decisions and takes account of a number of leading decisions in this area. It aims to create fairness both in relation to the decision to award costs and the process to calculate those costs.

Clause 41 Section 160 inserted

This is a new section that addresses an area of concern in the Magistrates Courts. Difficulties have been experienced for many years by courts and police trying to assist individuals who have convictions recorded against their names for offences they did not commit. These convictions have occurred as a result of other individuals using an innocent third party's name when charged with committing an offence. The absence of a clear process for removal of the error has subjected innocent parties to a great deal of anxiety, occasioned not only by the recording of a conviction against their name, but also sometimes a number of time consuming attendances at court. There is a real danger that persons confronted with this situation will lose confidence with the system.

By way of recent example, a defendant was arrested and charged by police with an offence of stealing and subsequently with breach of bail. The defendant knowingly used her sister's identity, pleaded guilty to the charges and was duly convicted under the identity of her sister thus avoiding a conviction herself.

In the process of attempting to establish her innocence, the party whose name had been used by her offending sister, came up against considerable resistance from 'the system'.

The new section permits the court to alter the records and make ancillary orders if it thinks fit.

Clause 42 Section 183 amended

The definition of 'Court' is amended so that it means the Supreme Court. The removal of the reference to one judge and the Full Court has occurred for the reasons outlined in section 184. A definition of 'lower court registrar' has been introduced as there needs to be a distinction between them and registrars of the Supreme Court in order to avoid confusion.

Clause 43 Section 184 amended

The section currently provides that an appeal against a decision of justices can be made to the Supreme Court, but only after leave has been obtained from a single judge. The sub-section has been repealed and replaced with a provision that removes the requirement for leave. Sub-section (4) has been added to reflect among other things the unique situation that the Children's Court has when dealing with juveniles charged with indictable offences. The provisions in that particular jurisdiction include, for instance, a power in the President of the Children's Court to review certain decisions.

The principal reason for the change is that leave is rarely denied and the process of obtaining leave consumes valuable judge time. The proposal has the full support of Judges and Masters of the Supreme Court. The use of the leave process to ‘manage’ such files has now been covered by amendments to the Rules of the Supreme Court 1971 which have increased the role of registrars in this process.

The amendment to remove the leave requirement reflects recommendation 368 of the 1999 Law Reform Commission (Report No.92).

Clause 44 Section 185 replaced

The previous section 185 dealt with applications for leave and is therefore no longer required. The section has been repealed and replaced with a provision that removes the reference to obtaining leave and sets out who may appeal.

Clause 45 Section 195A inserted

The section provides that these appeals from courts of summary jurisdiction will continue to be heard mostly by a single Judge at first instance but there is capacity for any such appeal to be removed to the Full Court if sufficient cause is demonstrated.

Clause 46 Section 199 amended

This section deals with the powers of the Court and details what the Court can do at the hearing of the appeal. The addition of paragraph (ab) is necessary as this power is currently exercised when leave is obtained. Paragraph (d) is repealed and replaced with a similar provision, but re-worded to cater for all courts of summary jurisdiction. Paragraph (g) is amended to include the power to order costs of proceedings in the court of summary jurisdiction. This is recognised as a necessary power to provide to the court.

Clause 47 Section 206 amended

This section deals with the re-instatement of an appeal where the appellant fails to appear and the appeal is dismissed. Sub-section (3) states that for the purpose of reinstatement, various sections of this Act apply as if it were an application for leave. Given that application for leave no longer applies, the sub-section has been repealed and replaced with similar provisions to subsections (3) & (4) but which do not refer to the requirement to obtain leave. These are in effect a clearer statement of the law.

Clause 48 Section 206A amended

This section deals with appeals to the Full Court from decisions on appeals heard by a single Judge. There are a number of references in this section to the procedure for an application for leave from a court of summary jurisdiction. Amendments to subsection (4)(f) and the replacement of subsection (5) remove any reference to a procedure that does not now exist. It must be emphasised that with respect to appeals to the Full Court, leave is still required. This approach was supported by the 1999 Law Reform Commission (Report No.92).

Clause 49 Section 206E amended

Subsection (1) currently provides that if any costs with respect to appeals are ordered to be paid by a party and are not paid, the Registrar shall, upon application made by the party entitled to such costs, grant to them a certificate specifying the amount of such costs and certifying that such costs have not been paid. Subsection (2) states that upon production of a certificate under subsection (1) to a justice, the payment of the costs may be enforced in the same manner as is provided for enforcing the payment of costs awarded by justices, but without prejudice to any other method of enforcement.

The replacement provision refers directly to section 155, which entitles the person concerned to register the certificate as a 'payment order', which counts as a judgment in a court of competent jurisdiction. This is preferable to the current provision which would only entitle the person to use the certificate as a cause of action.

Section 206E (3) has been repealed due to the earlier repeal of the Eighth Schedule.

Clause 50 Part IX replaced

Part IX deals with the protection of Justices in the execution of their office. The current Part is repealed as provisions providing protection for 'court officers' is contained in the *Magistrates Court Act 2003*.

The replacement Part deals with miscellaneous matters and contains a single section 222.

Section 222 Effect of court documents

Has been added to provide certain presumptions designed to give certainty to documents issued by courts of summary jurisdiction. It will be useful in situations that can arise from time to time where persons affected by court orders, particularly those affected adversely, choose to challenge documents as to their validity. This provision means that courts will not have to waste time authenticating summonses, warrants and court orders. The section also preserves the authority of the courts orders and directions as reflected in the documents issued by it.

Clause 51 Other amendments

Because of the wide-ranging nature of the amendments to the *Justices Act* and the introduction of the *Magistrates Court Act 2003* there are numerous consequential amendments to sections of the *Justices Act*. These mostly replace references to 'justices', 'JP's', and 'clerk' with 'court', 'court of summary jurisdiction' and 'registrar' where applicable. Comments are also provided for the more substantial consequential amendments. These are as follows:

Section 56A

Deals with, amongst other things, the ability for a defendant to apply for a re-hearing if the summons posted to him/her does not arrive or come to their attention prior to a conviction being recorded. The provision currently allows 14 days after becoming aware of the conviction to lodge an application. This has been changed to 21 days which brings it into line with section 136A (re-hearings where a party is not present at a hearing). Not all of this section has been repealed and that which has now governed by the new sections 144, 145 and 145A.

Section 77

Deals with a witness refusing to take the oath, refusing to be examined or refusing to answer questions and provides for a penalty. It has been repealed because there is now provision in the contempt provisions of the *Magistrates Court Act 2003*.

Section 81

Allows a court of summary jurisdiction to order a defendant to be brought before the court during the period of remand. This is also known as a 'bring up'. The provision has been expanded to include magistrates, justices and registrars.

Sections 83, 84 & 85

Currently provide that (83) a defendant on an indictable charge can be remanded to another place and any depositions taken from witnesses can also be transferred to that place (84) such depositions are deemed to have been taken at the place of transfer and (85) if the defendant is convicted, the justices can order he/she pay the cost of conveyance to the place of transfer.

The provisions are archaic, outdated and unnecessary and have been repealed.

Section 111

Currently allows a justice to take a deposition from an ill person in circumstances when it is not practical to follow the procedure set out in Part IV of the Act. The amendment widens the provision to include registrar and a magistrate.

Section 186

Deals with the grounds for lodging an appeal. It has been amended by removing any reference to obtaining leave to appeal.

Sections 187, 188, 189 & 190

Deal with the determination of applications for leave to appeal to a single judge. The four sections have been repealed. This is consequential as a result of removing the need to obtain leave to appeal at first instance.

First Schedule

This has been deleted as the content was omitted pursuant to the *Reprints Act 1984*.

Second Schedule

This contains the assignment document, which is completed when a justice of the peace is appointed. This is no longer required due to the existence of the *Justices of the Peace Act 2003* and is therefore repealed.

Third Schedule

This contains the oath of allegiance and oath of office taken by justices of the peace upon appointment. This is no longer required due to the existence of the *Justices of the Peace Act 2003* and is therefore repealed.

Clause 52 Various headings deleted or replaced

This clause does nothing more than delete or replace various headings to reflect the amendments to the *Justices Act 1902*.

Division 2 Transitional provisions

Clause 53 Interpretation

This clause defines the term “commencement” for the purposes of the Division.

Clause 54 Justices of the Peace

Subclause 1 provides for Justices of the Peace who have been appointed under section 6 the *Justices Act 1902* to be deemed to have been appointed under the *Justices of the Peace Act 2003*.

Subclauses 2 and 3 provide that ex-officio Justices of the Peace such as Mayors, Shire President and members of the Executive Council of the State cease to be Justices when the *Justices of the Peace Act 2003* comes into operation. There is a grace period of 3 months during which ex-justices, who perform acts in good faith, do so without invalidating such exercise of power.

The clause is necessary for the administration of justice and to eliminate the need for reappointment.

Clause 55 Clerks of petty sessions

The *Justices Act 1902* provides for the appointment of clerks of the various courts of petty sessions to be appointed a clerk of petty sessions. The role of a clerk of petty sessions is quasi judicial and is to facilitate the operation of the court by signing of documents, issuing the processes of the court and admitting persons to bail.

Under the provisions the *Magistrates Court Act 2003*, the role of clerk of petty sessions will be superseded by that of a registrar or a deputy registrar. This clause provides for clerks of petty sessions who have been appointed under the *Justices Act 1902* to be deemed to have been appointed a registrar or deputy registrar under the *Magistrates Court Act 2003*. The clause does not apply in respect to the position of Principal Registrar. Clerks who are employees of the Ministry of Justice will have their appointment as a registrar or deputy registrar incorporated into their appointment to their public service position under Part 3 of the *Public Sector Management Act 1994*. This will eliminate the requirement for a separate appointment as a registrar or deputy registrar.

Police officers who are clerks of petty sessions will also become a deputy registrar of the Magistrates Court however their in-court powers are limited to adjourning a case when there are difficulties in otherwise constituting the court.

The clause is necessary for the administration of justice and to eliminate the need for reappointments.

Clause 56 Pending proceedings

This clause provides that at the time of commencement, any proceedings that had been initiated under the *Justices Act 1902* are to be taken to be proceedings before the Magistrates Court, within its criminal jurisdiction.

The clause is necessary for the administration of justice and to eliminate the need to rehear cases and charges.

Clause 57 Existing summonses and warrants

Subclause 1 provides that at the time of commencement any summons or warrant that had been issued under the *Justices Act 1902* is to be taken to be a summons or warrant that had been issued by the Magistrates Court, within its criminal jurisdiction and subject to the *Criminal Procedure (Summary) Act 1902*.

Subclause 2 provides that the time of commencement any summons or warrant requiring a person to attend before justices or a court of petty sessions is deemed to require that person to attend the Magistrates Court.

The clause is necessary for the administration of justice and to eliminate the need to recall and reissue summonses and warrants.

Clause 58 References to *Justices Act 1902* to be read as references to *Criminal Procedure (Summary) Act 1902*

This clause provides that any reference in a written law or other document to the *Justices Act 1902* is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the *Criminal Procedure (Summary) Act 1902*.

The clause is a safeguard measure and caters for any amendment that might have been overlooked when drafting the considerable number of amendments to various Acts that refer to the *Justices Act 1902*. It also caters for documents and forms (used and unused) that will be in existence after the establishment of the Magistrates Court. It will mean that stocks of old forms will not be wasted, but will be able to be used in the transitional period during which new forms are being printed and distributed. The clause is necessary for the good administration of justice.

Clause 59 References to ‘court of petty sessions’ to be read as references to ‘Magistrates Court’

This clause provides that any reference in a written law or other document to a court of petty sessions is to be construed, unless the contrary intention appears, as if it had been amended to be a reference to the Magistrates Court.

The clause is a safeguard measure and is necessary for the good administration of justice.

Part 7 - Children’s Court Of Western Australia Act 1988 amended

Clause 60 Act amended by this Part

This Part refers to the *Children's Court of Western Australia Act 1988*.

Clause 61 Section 3 amended

The provision adds the term 'registrar' to the list of definitions. This complements the relevant provisions in the *Magistrates Court Act 2003* relating to administrative positions. The definition provides for a specific appointment to the position of registrar of the court. The use of the term 'registrar' replaces the term 'clerk' and more appropriately signifies the status of those appointed to the position. The title 'clerk' belongs to a by-gone era.

The change in nomenclature is consistent with the recommendation contained in the Court Services report of 1997 titled "*Amalgamation of Courts of Summary Jurisdiction*" though the issue of whether registrars at the summary level should be qualified was left open.

Queensland is the only State or Territory that retains the position of Clerk of Courts as the sole reference to senior court officers. Tasmania and the Northern Territory have provision for registrars and clerks of court in their relevant legislation and NSW, Victoria, South Australia and the ACT use the title 'registrar'.

In NSW the use of the title does not imply that a registrar will be legally qualified and it is not contemplated in this proposal that registrars in the summary jurisdiction will be legally qualified.

Clause 62 Section 4 replaced

Section 4 currently states that the provisions of the *Justices Act 1902*, with such modifications as are necessary, apply to the Children's Court in respect to its criminal jurisdiction. The Children's Court has always used the *Justices Act 1902* (now renamed to be the *Criminal Procedure (Summary) Act 1902*) for its procedure when dealing with criminal matters, despite having the power under sections 37 & 38 of the *Children's Court of Western Australia Act 1988* for the President to dictate practice and procedure or to make their own rules relating to practice and procedure.

As a result of this provision the court will use the practices and procedures of the *Criminal Procedure (Summary) Act 1902* unless the particular issue is covered by the *Children's Court Act of Western Australia 1988* or rules made under that Act.

The section now also adopts certain provisions from the *Magistrates Court Act 2003* to the court and its officers. This includes the replacement of the prerogative writs with a general supervisory jurisdiction of the Supreme Court. It also imports certain necessary powers such as the power to administer oaths, correct accidental errors, and the power to cancel court process if there is good cause to do so.

Clause 63 Section 6A inserted

Protection of magistrates being sued for acting outside their jurisdiction was covered by Part IX of the *Justices Act 1902* which is now to be repealed. This clause replaces

the repealed provision by way of a separate and specific provision to protect Children's Court magistrates and any other person constituting the Children's Court.

This clause provides protection to judges, magistrates or JPs constituting the Court by providing they have the same immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

Clause 64 Section 10 replaced

Section 10 currently links the appointment criteria for magistrates of the Children's Court with that of stipendiary magistrates under the *Stipendiary Magistrates Act 1957*. The replacement section is necessary as the *Stipendiary Magistrates Act 1957* is to be repealed and it now reflects that the appointment criteria for magistrates is derived from the *Magistrates Court Act 2003*.

Clause 65 Section 11 repealed

This section deals with the appointment of members by the Governor. The office of member of the Children's Court is to be discontinued. In future, appointments as a JP will automatically include the power to sit in a Children's Court subject to the relevant provisions of the *Children's Court of Western Australia Act 1988*.

Clause 66 Section 12 amended

Amendments here replace references to *Stipendiary Magistrates Act 1957* with *Magistrates Court Act 2003*. This is a necessary consequential amendment and essentially means that a magistrate who has taken an oath or affirmation pursuant to the *Magistrates Court Act* will not need to take a new oath or affirmation if appointed to the Children's Court.

Clause 67 Section 13 replaced

Clause 67 replaces section 13 which deals with the sittings of the court.

Section 13. Where and when the Court operates

Subsections 1 to 5 provide for the continuation of the established country and regional court sittings by accommodating the Court sitting at and having registries at various locations throughout the State.

Subsection 2 provides that the President is able to decide the times at which the Court will sit at places where there is a registry.

Public notification of decisions made under the provisions of this clause is to be given in such a manner as the President decides. Traditionally such notices have been placed in the Government Gazette. This practice is likely to continue, however subsection 3 gives flexibility and allows for more appropriate options of advertising, such as community newspapers or on the Internet, given that the Gazette has a limited readership.

Despite the nomination of certain places to have registries and sittings of the Court, subclause 4 allows the Court to be convened at any place and time thus

accommodating, for example, the circumstances when the Court is convened at a hospital to take the evidence of a patient, adjourns to the scene of a crime or convenes to a place more convenient to the parties. The Minister must approve any exercise of the Court's jurisdiction outside the State.

Subclause 6 restricts acting magistrates of this State, who are appointed magistrates in South Australia and the Northern Territory, from exercising jurisdiction outside of the geographical area for which they may perform magisterial functions.

Clause 68 Section 16 replaced

Amendments here replace references to 'clerks of petty sessions' with registrars of the Magistrates Court. The section provides that a registrar of the Children's Court is also a registrar of the Magistrates Court and vice versa. As previously stated the new nomenclature is consistent with changes to the administrative structure of the Magistrates Court.

Clause 69 Section 19 amended

This clause amends section 19 which provides for the criminal jurisdiction of the Court.

Subclause 1 confirms that the Court is to have exclusive jurisdiction to hear and determine offences committed by a child subject to the *Young Offenders Act 1994* and the *Sentencing Act 1995*.

Subclause 2 has been included to state that when exercising its criminal jurisdiction, the Court is a court of summary jurisdiction. This is a term that is used extensively throughout the *Criminal Procedure (Summary) Act 1902*, which will be a source of much of the procedure of the Children's Court.

Clause 70 Section 19B amended

This will ensure that the disclosure provisions applicable in the superior courts apply to the trial of those indictable matters in the Children's Court which, if the child were an adult, could not have been tried summarily.

Subsection 19B(4)(c) ensures that in a trial of the nature referred to in the preceding paragraph the Court may exercise powers that would be available to the court as if the court were trying an adult.

Subsection 19B(4)(d) recognises that if a trial of the nature referred to in the first paragraph above is tried by a magistrate or the President of the Children's Court the consequences of conviction will be the same.

Clause 71 Section 32 replaced

Section 32 which deals with representation in the court is repealed and replaced with a section that provides for section 68 of the *Criminal Procedure (Summary) Act 1902* to apply. Refer to Clause 34 of this Bill.

Clause 72 Section 51A inserted

Subsection 1 defines the term “court record”.

Subsection 2 recognises that other written laws may impact on this section.

Subsection 3 caters for criminal proceedings before the court and limits access to records of the court and documents produced in sentencing proceedings to a list of persons having a legitimate interest and need to know. These nominated people have a right to the records and include the parties to the proceedings, the Commissioner of Police, the Director of Public Prosecutions, the CEO of the Department administering the *Young Offenders Act 1994*, the Chief Assessor appointed under the *Criminal Injuries Compensation Act 1985*, persons authorised by the above and a person prescribed by regulations

Subsection 4 caters for non-criminal proceedings and provides that a party may inspect or obtain a copy of as of right.

Subsection 5 provides that the court may give leave to a person not prescribed in subsections 2 and 3 to inspect or obtain a copy.

Subsection 6 provides the court may give leave to any person to inspect or obtain a copy of a thing (other than a document) on which information is stored such as a photograph, tape or disc.

Subsection 7 provides that the court may give leave to any person to listen to or view a tape recording of proceedings.

Subsection 8 provides that the court may impose conditions including the limitation of use and publicity of the records.

Subclause 9 provides for finality of decisions made under this section.

Subclause 10 provides that fees may be prescribed, by regulation, for obtaining, inspecting or listening to court records.

The clause complements other provisions in the Act that limit the disclosure of convictions and the reporting of the procedures of the court and is necessary for the good administration of justice and the protection of children.

Clause 73 Section 53 replaced

This clause stipulates those matters upon which regulations may be made by the Governor, with respect to fees in the Court’s jurisdiction.

The clause also provides that Court fees are to be credited to the Consolidated Fund.

Clause 74 Other amendments

This clause contains a number of amendments to various sections of the *Children’s Court of Western Australia Act 1988* removing references to members, the *Justices Act 1902* and courts of petty sessions etc. Where appropriate the clause also replaces

references to the *Justices Act 1902* with references to the *Criminal Procedure (Summary) Act 1902*. It also replaces references to ‘clerk’ with the new title ‘registrar’. The amendments in this clause are in table form and work progressively through the Act as a form of housekeeping exercise.

Part 8 – Coroner’s Act 1996 amended

Clause 75 Act amended

This Part refers to the *Coroners Act 1996*.

Clause 76 Section 12 replaced and transitional provision

This clause makes provision for the new title of Registrar, which is being adopted in the Magistrates Court, in lieu of the title of “Clerk” and also provides for the continuation of existing appointments

The clause is necessary for the good administration of justice.

Clause 77 Other amendments

The wording of various sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act* and amendments to the *Justices Act 1902* with consequent changes in terminology.

Part 9 – The Criminal Code amended

Clause 78 The Criminal Code amended by this Part

This Part refers to *The Criminal Code*

Clause 79 Section 607B inserted

The inclusion of this section will provide a court of summary jurisdiction that is trying an indictable offence that is triable summarily with the option of convicting of an alternative offence that would have been available had the trial been conducted in a superior court.

Clause 80 Sections 714A inserted

The inclusion of section 714A provides the Magistrates Court with the ability to order the disposal of seized property after cases have been concluded, or when no offender has been identified. The provision caters for situations where certainty of ownership is difficult to establish. The Court can still make an order based on what information is available so that police do not have retain property indefinitely. The provision replaces section 40 of the *Justices Act 1902*, which is to be repealed.

Clause 81 Sections 746B inserted

The inclusion of section 746B provides for the civil procedure for the recovery of judgment debts to apply in respect of certain monetary orders made by Supreme Court and District Court. The provision excludes fines which are recovered by way of procedures prescribed by the *Fines Penalties and Infringement Notices Enforcement*

Act 1994 and compensation payments where procedures are prescribed under the *Sentencing Act 1995*.

The clause addresses a deficiency in currently available procedures and is for the good administration of justice

Clause 82 Other amendments

The definitions in section 1 of –

- “court of summary jurisdiction;
- “indictment;
- “summarily”; and
- “summary conviction”

have been amended to reflect the meaning and intention of the terms more simply, accurately and completely.

Where appropriate the clause also replaces references to the *Justices Act 1902* with references to the *Criminal Procedure (Summary) Act 1902*.

Other changes are made to –

- reflect that the court previously known as the court of petty sessions will now be a court of summary jurisdiction
- reflect that the court will now be constituted as a court of summary jurisdiction in its own right rather than a court constituted among others, by justices. A JP or more than one JP will still be able to constitute the court but this will be as a result of provisions of the *Magistrates Court Act 2003* rather than a right of office and
- reflect the exclusive jurisdiction of the Children’s Court.

Part 10– District Court of Western Australia Act 1969 amended

Clause 83 Act amended by this Part

This Part refers to the *District Court of Western Australia Act 169*.

Clause 84 Jurisdiction of the Court increased

As a consequence of the increase in the monetary jurisdictional limit of the Magistrates Court to \$50,000 it is necessary to review the monetary jurisdictional limit of the District Court, which is currently \$250,000 although the District Court exercises an unlimited jurisdiction with respect to personal injury matters. The monetary jurisdictional limits of both the Local Court and the District Court were last increased in 1992 when the Local Court increased to \$25,000 and the District Court to \$250,000. Jurisdictional comparisons with other states vary significantly. The District Court of New South Wales has a monetary jurisdictional limit of \$750,000, the Victorian County Court and Queensland have upper jurisdictional limits of \$250,000 but have wider jurisdictions as to subject matter and in South Australia the District Court has, with a few exceptions, the same jurisdiction as the Supreme Court.

To ensure that jurisdictional proportionality is maintained this clause amends the *District Court of Western Australia Act 1969* to provide an increase in the monetary jurisdictional limit to \$500,000, rising to \$750,000 in 5 years time.

The jurisdictional limit for an action for ejectment to recover possession of any land has been increased from an annual rental value of \$125,000 to \$250,000 rising to \$375,000 in 5 years time.

Clause 85 Section 74 replaced

The West Australian Law Reform Commission recommend that the powers of the Supreme and District Courts to transfer actions to and from Local Courts should be widened. New section 74 provides that the District Court may remit a matter to the Magistrates Court and the section has been drafted to bring it into line with the *Magistrates Court (Civil Proceedings) Act 2003*.

Clause 86 Section 89A replaced

Section 89A deals with the Governor's powers to make regulations dealing with fees and poundage. This new section is essentially the same but now reflects that the *Civil Judgments Enforcement Act 2003* will deal with poundage and post judgment matters.

Clause 87 Other amendments

Section 5 has been amended to substitute reference to the *Criminal Procedure (Summary) Act 1902*. Reference to sections 39 and 115 of the *Justices Act 1902* are no longer relevant as jurisdictional issues are now contained in the *Magistrates Court Act 2003*.

Sections 73 and 75 are repealed as they were inconsistent with the new section 74 inserted by clause 83.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Part 11 – Evidence Act 1906 amended

Clause 88 Act amended by this Part

This Part refers to the *Evidence Act 1906*.

Clause 89 Section 25A inserted

This section provides that when an accused person is conducting his own defence the court may make a range of orders designed to avoid face to face contact in the court between the accused person and a witness during cross examination. If the court thinks it appropriate it can order either the accused person or the witness be held in a room outside the court where they can be connected to the proceedings by video link. If video link is unavailable they can be separated by screens, one-way glass or other devices that prevents the witness from seeing the accused but allows the accused person, the judge and jury to see the witness.

The section also provides for the court to make an order that questions from the accused person to a witness must be relayed through the judge or a person approved by the judge.

The section also provides that if these procedures are adopted the judge is to advise the jury that they are of a routine nature in cross examination and the jury should not draw any inference as to the accused persons guilt from the use of the procedure.

These procedures are in addition to existing procedures prescribed by the *Evidence Act 1906* with respect to child witnesses and are designed to facilitate the administration of justice especially in circumstances where a witness could be intimidated by coming into face to face contact with the accused person and have to answer questions posed by the accused person during cross examination. .

Clause 90 Section 96 replaced

Section 96 replicates the old provision but is re-drafted for ease of referral and substitutes references to ‘local court’ and ‘stipendiary magistrate’ with Magistrates Court.

Clause 91 Other amendments

Section 11(3) & 12(5) are replaced with similar provisions but exclude reference to the *Justices Act 1902* and members of the Children’s Court.

Sections 107 and 108 are repealed because their content is superseded by the *Criminal Procedure (Summary) Act 1902*.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 200* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Part 12– Family Court Act 1997 amended

Clause 92 Act amended by this Part

This Part refers to the *Family Court Act 1997*.

Clause 93 Section 5 amended

This clause adds a definition of Family Law Magistrate recognising that the Principal Registrar and Registrars of the Family Court are also appointed as magistrates under the *Magistrates Court Act 2003*

Clause 94 Section 26 amended

This clause clarifies existing section 26 by reference to the *Magistrates Court Act 2003* and by providing that the Principal Registrar of the Family Court is the senior magistrate of that Court.

The clause also provides that a Family Law Magistrate may constitute the Magistrates Court at a place in or out side the metropolitan region.

Clause 95 Section 43 amended

Section 43 deals with the transfer of proceedings from courts of summary jurisdiction to the Family Court. The amendment proposed by this clause merely rewords the existing sub section dealing with property proceedings exceeding \$300,000 between parties in a de facto relationship to reflect the coming into operation of the *Magistrates Court Act 2003*.

Clause 96 Section 43A amended

Section 43A also deals with the transfer of proceedings from courts of summary jurisdiction to the Family Court. The amendment proposed by this clause merely rewords the existing sub section dealing with property proceedings exceeding \$20,000 between parties to reflect the coming into operation of the *Magistrates Court Act 2003*.

Clause 97 Other amendments

Section 29 directs that the Marshall shall serve and execute all writs etc. directed to the Marshall by various courts. Section 29(1)(a) is amended by replacing the single reference to a court of summary jurisdiction (this covered all the different courts of petty sessions throughout the State) constituted by a registrar/magistrate with reference to -

- the Magistrates Court exercising non-federal jurisdiction (the single court statewide) and
- a court of summary jurisdiction exercising federal jurisdiction (this compliments the enabling provision in the Family Law Act and is consistent with amendments to section 38 & 39 of this Act).

Section 38 has been re-worded. It still refers to a court of summary jurisdiction, but does not qualify it to be one that is 'constituted by a magistrate, including the Principal Registrar or a Registrar who is also a magistrate'. It has been determined, and the Family Court has agreed, that the additional wording adds nothing to the provision given that the court must be constituted by a magistrate as per s. 39(1)(d) of the *Judiciary Act 1903* (Cwlth).

Section 38 also now states that a court that is invested with federal jurisdiction is a court of summary jurisdiction for the purposes of the Family Law Act. This statement is necessary as the Magistrates Court is only stated as being a court of summary jurisdiction in relation to its criminal jurisdiction.

Section 39 allows for a court of summary jurisdiction to exercise the non-federal jurisdiction of the Family Court of WA (other than its functions under the *Adoptions Act 1994*). There are a number of courts of summary jurisdiction in this State, so the section has been re-written so as to stipulate that it is only the Magistrates Court that can exercise the non-federal jurisdiction of the Family Court of WA.

Section 42 has been repealed as it provides a definition of ‘court of summary jurisdiction’ as referred to in s 39. Section 39 now only refers to the Magistrates Court.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* and the amendment to and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Part 13 – Fines Penalties and Infringement Notices Enforcement Act 1994 amended

Clause 98 Act amended in this Part

This Part refers to the *Fines Penalties and Infringement Notices Enforcement Act 1994*

Clause 99 Section 21 amended

Sub clauses 1 and 2 reflect the amendment to and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 21(6) deals with procedure when either the alleged offender or the prosecuting authority elects to have a matter dealt with by a court. The section has been repealed and replaced with a provision that more accurately reflects the procedure involved.

Clause 100 Section 63 amended

This section is amended by inserting definitions of the terms “dwelling”, “mobile home”, “personal property”, “place”, “saleable and “vehicle” to maintain consistency with the provisions of the *Civil Judgments Enforcement Act 2003*.

Clause 101 Section 70 replaced by sections 70 and 70A to 70E.

This clause inserts new sections that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 70 Determining an offender’s interest in property

Unlike normal sales where a purchaser buys an entire asset or property and prior encumbrances are discharged at settlement, the Sheriff can only sell the interest that the offender has in the property. In the case of real property, for example, the Sheriff estimates a value and deducts from that estimation the value of all other interests which could be of the nature of registered caveats and mortgages along with priority charges such as outstanding land tax and water rates. The offender’s interest, which the Sheriff actually offers for sale, is the estimated total property value less the value of other registered interests and charges on the property.

The following simple example provides an explanation:

Value of property under seizure (House and Land)	= \$250,000
Less encumbrances	Bank Mortgage = \$180,000
	Water rates = \$ 500
	Land tax = \$ 500 = <u>\$181,000</u>
Offender’s interest	= \$ 69,000

In this example the Sheriff offers the offender’s interest for sale and would expect bids in the vicinity of \$69,000. To obtain a clear title a successful purchaser would then have to pay out the encumbrances.

The above principle also holds for personal property.

Subsection 1 provides definitions of “interest” and “public authority” for the purpose of the section.

Subsections 2 and 3 allow the Sheriff to request information relating to the interests of other persons in order that he may establish the value of their interests and thus determine the offender’s interest.

Subsection 4 provides that the Sheriff can request necessary information from a public authority.

Subsection 5 provides that it is a contempt of court for a person, other than a public authority, to refuse the Sheriff’s request for information.

Apart from the obvious requirement to enable the Sheriff to determine a debtor’s interest, the purpose of the section is to legitimate the Sheriff’s current practice of requesting necessary information from financial institutions and persons. The *Privacy Act 1988* (Cwlth) prevents disclosure of this necessary information unless expressly authorised by a law of a State.

Section 70A Personal property to be sold in preference to real property

Subsection 1 provides that an offender’s land can only be sold if the Sheriff is of a view that there is insufficient personal property to satisfy the judgment debt

Subsection 2 states that the previous subsection does not prevent real and personal property being sold at the same time.

The purpose of the clause is to make the sale of land a “last resort” and the section is similar to current section 88 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*, which is replaced.

Section 70B Only sufficient property to be sold

This section places an obligation upon the Sheriff not to oversell.

The section recognises existing practices and is similar to existing provisions contained in section 83 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*, which is replaced.

Section 70C Seized property, Sheriff to determine fair value of

This section complements the common law requirement for the Sheriff to sell for a fair and reasonable price by requiring the Sheriff to determine a fair value for the offender’s saleable interest in the seized property irrespective of whether it is personal or real property. The section also provides that the Sheriff may request information from the offender to assist in reaching a determination or engage a valuer or the like.

The section is similar to existing provisions contained in sections 81 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*, which is replaced.

Section 70D Interest of others

This section provides a procedure for the Sheriff to sell the interest of other persons when goods are seized that are jointly owned with another person or subject to an interest such as a right of lien. The section also provides a procedure for the Sheriff to sell the interest of other persons when real property under seizure is jointly owned or owned in common with another person or subject to an interest.

The section also provides for the consent of the interested party to be obtained and for prior agreement to be reached on how the proceeds of the sale and expenses are to be divided.

The section recognises existing practices and is similar to existing provisions contained in section 82 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*, which is to be replaced and in Order 82 Rule 3(2) of the Rules of the Supreme Court.

Section 70E Sale to be advertised

Subsections 1 and 2 provide that, with the exception of perishable property, there is an obligation on the Sheriff to advertise a sale of seized real and personal property. The subsections also provide that with the exception of perishable property a sale of real or personal property must not be made within 7 days of the sale advertisement unless the judgment debtor consents.

The purpose of the subsections is to allow the offender an opportunity to pay out the enforcement order and thus render the sale unnecessary. The provision is similar to one contained in section 120 of the *Supreme Court Act 1935* and Order 25 Rule 17 of the Local Court Rules 1961.

Subsection 3 provides that a sale of perishable goods does not require advertising and this allows the perishable goods to be taken to an auction house for the first available sale.

This subsection recognises existing practices and is similar to existing provisions contained in section 84 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*, which is to be repealed.

Clause 102 Sections 71, 72 and 73 replaced by section 71.

This clause replaces existing sections with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 71 Warrant of execution, effect of

Subsection 1 defines the term “saleable interest” in respect of personal property.

Subsections 2 and 3 stipulate that a warrant applies in relation to any legal or equitable interest that the debtor has in any personal property. It also provides that this applies irrespective of whether the interest is held jointly or in common with others.

This is necessary as it stipulates what actually can be seized and sold and reflects the current law that is found in sections 118 and 138 of the *Supreme Court Act 1935*.

Subsection 3 replicates the existing provision in section 73(2), which is to be replaced and is necessary for the good administration of justice. A similar provision is found in section 116 of the proposed *Civil Judgments Enforcement Act 2003*.

Subsection 4 protects a bona-fide purchaser of property under seizure who had no knowledge that the Sheriff was in receipt of a property (seizure and sale) order. The subclause is modelled on similar provisions contained in section 125 of the *Supreme Court Act 1935* (WA).

Clause 103 Section 74 replaced.

This clause replaces an existing section with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 74 Seizing personal property, powers enabling

Subsection 1 allows the Sheriff to use whatever force and assistance that is reasonably necessary when exercising the power of entry to locate the personal property of a debtor or a record of the title to property. The subsection allows the Sheriff to seize and remove such property or record if he finds it, print out or make copies of records, remove computers for no more than 7 days, operate a computer or require a person who has custody of the computer, record or property to provide copies or operate the computer. The subsection also requires the Sheriff to secure and safeguard the seized property or record.

Subsection 2 makes a differentiation between places that are a dwelling and other places such as commercial properties, factories and garages. The subsection states that the powers of entry can be exercised in respect of a non-dwelling at any time of the day and night and consent is not required. With a dwelling though the Sheriff must seek consent of the occupier or owner to enter the dwelling.

Subsection 3 overrides subsection 2 by providing that, with respect to a dwelling, if the owner's consent is not given or the Sheriff cannot locate the occupier or owner then the Sheriff may utilise the powers of forcible entry detailed in subclause 1 without the necessary consent.

Subsection 4 provides for a penalty of 12 months imprisonment for any person who has custody or control of a computer, record or property who disobeys a direction to print out or make a copy of a record or to operate a computer.

This section is modelled on current section 7 of the *Enforcement of Judgments Act 1991* (SA) and section 74 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*.

Clause 104 Section 75 replaced.

This clause replaces an existing section with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 75 Property that cannot be seized and sold.

This section stipulates that certain property, such as property held in trust, wearing apparel and household property of a kind described by the regulations and property that is used by the offender to earn a living cannot be seized and sold.

The section is necessary to ensure a degree of protection for the debtor and is similar to existing provisions contained in section 118 of the *Supreme Court Act 1935*, section 126 of the *Local Courts Act 1904* and existing section 75 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*.

Clause 105 Section 81 replaced.

This clause replaces an existing section with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and*

Infringement Notices Enforcement Act 1994 and the Civil Judgments Enforcement Act 2003.

Section 81 Custody of seized property

This section requires the Sheriff to exercise custody as he sees fit. This could include removal to storage, appointing a “keeper” or some other form of security or allowing “walking possession” by leaving the goods with the offender or another person and appointing that person as custodian.

Subsection 2 provides that providing the offender consents, the Sheriff can exercise “walking possession” by leaving the seized goods with the offender who must agree to certain obligations that include safekeeping, not moving the goods or giving custody to another person without the Sheriff’s prior consent.

The section also provides that if the Sheriff appoints a custodian it is not to be taken that the Sheriff has abandoned the goods. The section also requires that seized business records may only be retained by the Sheriff for no longer than 7 days and that stipulation does not apply to cheques and the like which have been seized.

The section is necessary for the good management of the enforcement system, replicates existing procedures and is similar to existing provisions contained in existing section 79 of the *Fines Penalties and Infringement Notices Enforcement Act 1994* which is to be repealed.

Clause 106 Section 88 replaced.

This clause replaces an existing section with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 88 Warrant, effect of

Subsection 1 defines the term “saleable interest”.

Subsection 2 provides that a warrant extends to land, in which the offender has an interest, irrespective of whether it is registered or not under the *Transfer of Land Act 1893* and entitles the Sheriff to sell the offender’s interest in the land.

This provision reflects current practice and is similar to existing provisions contained in section 119 of the *Supreme Court Act 1935 (WA)*.

Subsection 3 provides that the Sheriff can seize or sell the offender’s interest even if that interest is held jointly or in common with another or others.

This provision reflects current practice and is similar to existing provisions contained in section 138 of the *Supreme Court Act 1935 (WA)*.

Subsection 4 also reflects current practice and requires the registration of the warrant against the title under the *Transfer of Land Act 1893* as a prerequisite to the Sheriff selling the debtors interest in any land.

Subsection 5 protects a bona-fide purchaser of real property under seizure who had no knowledge that the Sheriff was in receipt of a warrant and that, where the land is not under the operation of the *Transfer of Land Act 1893*, the warrant had not been registered under the *Registration of Deeds Act 1856*. The subclause is modelled on similar provisions contained in section 125 of the *Supreme Court Act 1935* (WA).

Subsection 6 complements the previous subsection by providing that subsection 5 does not apply to land that is under the operation of the *Transfer of Land Act 1893*.

Clause 107 Section 91 replaced by sections 91, 91A and 91B.

This clause replaces an existing section with sections that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 91 Power of entry

Subsections 1 and 2 allow the Sheriff to enter land subject to an order of the court for the purpose of performing his functions under the Act and to use whatever force is reasonably necessary. The Sheriff may also take prospective purchasers onto the property and conduct the sale on the property.

Subsection 3 makes a differentiation between places that are a dwelling and other places such as commercial properties, factories and garages. The subsection states that the powers of entry can be exercised in respect of a non-dwelling at any time of the day and night and consent is not required. With a dwelling though the Sheriff must seek consent of the occupier or owner to enter the dwelling.

Subsection 4 overrides subsection 3 by providing that, with respect to a dwelling, if the owner's consent is not given or the Sheriff cannot locate the owner or occupier then the Sheriff may utilise the powers of forcible entry detailed in subsections 1 and 2 without consent.

The section is modelled on section 7 of the *Enforcement of Judgments Act 1991* (SA) and existing section 74 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*.

Section 91A Offender may be permitted to sell or mortgage real property.

Whilst the Sheriff is only empowered to sell the offender's interest in land, this section provides, that with the Sheriff's approval, the offender may sell the land itself or mortgage the land and pay the proceeds towards satisfaction of the fine or penalty.

Subsection 1 provides that if a warrant has been registered against the land that the Sheriff may permit the offender to sell or mortgage the land.

Subsection 2 states the details and information that must be set out in the Sheriff's permit and subsection 3 provides for conditions to be included in the permit.

Subsection 4 precludes the Sheriff from selling the property whilst the permit is in force.

Subsection 5 provides a mechanism for the payment of deposits, sale proceeds or mortgage proceeds to the Sheriff. The subsection also provides that any deposits or monies paid to the Sheriff extinguishes any liability of the purchaser or mortgagee to pay the offender. The Sheriff's consent is needed to register any mortgage or transfer arising from the mortgage or sale of the real property.

This section implements a recommendation of the 1995 LRC Report and is similar to provisions contained in section 112 of the *New South Wales District Court Act 1973*.

Section 91B Place and manner of sale

Subsection 1 provides that a sale of real property can be on the property or any other place. All sales must be by public auction and the property is to be sold for a fair value.

Subsections 2 – 4 provide an entitlement for the offender to be heard and for the court to make orders for alternative means of sale if a public auction is unsuccessful:

- A sale by private agreement instead of public auction;
- A sale by public tender instead of public auction; and
- A sale for less than a fair price.

The subsections also provide for the court to impose terms and to make any necessary ancillary or consequential orders.

Subsection 5 allows the court to set a reserve price if it orders an alternative means of sale.

The section is similar to existing provisions contained in sections 120 and 124 of the *Supreme Court Act 1935* (WA) and existing section 85 of the *Fines Penalties and Infringement Notices Enforcement Act 1994*.

Clause 108 Section 98 replaced.

This clause replaces an existing section with one that will achieve consistency between the execution practices of the Sheriff under the *Fines Penalties and Infringement Notices Enforcement Act 1994* and the *Civil Judgments Enforcement Act 2003*.

Section 98 Sheriff exempt from some licensing requirements

Subsection 1 provides that the Sheriff or any delegate may sell property seized under the Bill without holding any licence that is required by the law

Subsection 2 provides that the Sheriff is not precluded from engaging an auctioneer or a real estate agent to sell property.

This section primarily relates to an auctioneer's licence and is similar to section 162 of the *Supreme Court Act 1935* (WA).

Clause 109 Other amendments

Section 22(4)(c)(ii) deals with notification to the relevant court when a prosecuting authority withdraws proceedings. In effect, the provision remains unchanged other than replacing the reference to 'the relevant clerk of petty sessions' with 'Magistrates Court'.

Section 89(1) is amended to clarify its intent and to maintain consistency of language with the corresponding section in the *Civil Judgments Enforcement Act 2003*.

Sections 92 and 95 are amended to be consistent with new procedures contained in the *Civil Judgments Enforcement Act 2003*.

Section 101(2) deals with the ability for a court to set aside a licence suspension. Currently, this provision states that an application must be made in accordance with regulations under the *Justices Act 1902*. Because this is a civil matter, the provision has been amended to state that the application is made according to rules of court.

Section 101A(3) also deals with the ability for a court to set aside a licence suspension, albeit under different circumstances. The reason for the amendment is the same.

Various other sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Part 14 – Industrial Relations Act 1979 amended

Clause 110 Act amended in this Part

This Part refers to the *Industrial Relations Act 1979*.

Clause 111 Section 81D amended

This amendment to section 81D merely reflects the change in title in the Magistrates Courts from "clerk" to "registrar" and reference of the powers of the clerk of the industrial magistrates court is now to the *Magistrates Court (Civil Proceedings) Act 2003* and the *Criminal Procedure (Summary) Act 1902*.

Clause 112 Section 81F inserted

Section 81F is a new section providing access to the Court's records. It is similar to corresponding sections contained in the *Magistrates Court Act 2003*. The new

section also contains provision to make regulations prescribing fees for accessing documents.

Clause 113 Sections 88 and 89 replaced

Section 88 provides that an order of the Western Australian Industrial Appeal Court may be enforced against the property of a person against whom an order has been made. Subsection 3 protects certain property from seizure by reference to the *Local Courts Act 1904*.

Section 89 provides that the Sheriff, bailiffs and police officers are officers of the Western Australian Industrial Appeal Court.

The *Civil Judgments Enforcement Act 2003* introduces a uniform scheme for the enforcement of civil judgments and in the interest of having but one scheme this clause replaces section 88 by deleting it in its entirety and substituting a provision that will state that judgments, orders and directions of the Western Australian Industrial Appeal Court can be enforced by lodging a certified copy of the order and an accompanying affidavit stating the extent of compliance with the Supreme Court and that when lodged the order is to be taken to be a judgment of the Supreme Court.

Section 89 is to be repealed as a consequence of the *Civil Judgments Enforcement Act 2003*. There is no similar provision in the *District Court of Western Australia Act 1969* or the proposed *Magistrates Court Act 2003* and since the coming into force of the *Court Security and Custodial Services Act 1999* there is no obligation upon the Sheriff to provide in-court orderly or security type services" to any court. In effect the *Civil Judgments Enforcement Act 2003* picks up the current provisions of sections 89(1) and (3) and section 89(2) is superfluous.

Clause 114 Other amendments

Section 81CA(7a) has been added to give the Industrial Magistrates Court power to deal with contempt. Until now, a magistrate constituting the Court was able to deal with contempt by utilising section 41 of the *Justices Act 1902*. That section has been repealed and a general provision applying to all matters that come before the Magistrates Court has been included in the *Magistrates Court Act 2003*.

Section 83D (2) has been replaced with a similar provision, but re-worded to refer to the *Criminal Procedure (Summary) Act 1902* instead of *Justices Act 1902*.

Section 83D(3) has been amended to reflect the exclusive jurisdiction of the Children's Court when dealing with offenders who are children.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Part 15- Mining Act 1978 amended

Clause 115 Act amended in this Part

This Part refers to the *Mining Act 1978*.

Clause 116 Section 133 replaced

Section 133 deals with the hearing of offences against this Act. The provision is superfluous, other than stating that matters are to be dealt with by a magistrate, as it is covered by section 67 of the *Interpretation Act 1984*

Clause 117 Sections 140 and 141 replaced

Section 140 provides that an order of the Warden's Court may be enforced by way of a warrant of execution against the property of a person against whom an order has been made.

Section 141 provides that the Warden's Court may also issue a warrant of possession to recover land, a mining tenement, minerals or chattels.

The *Civil Judgments Enforcement Act 2003* introduces a uniform scheme for the enforcement of civil judgments and in the interest of having but one scheme this clause replaces sections 140 and 141 and substitutes a provision that will state that judgments, orders and directions of the Warden's Court can be enforced by lodging a certified copy of the order and an accompanying affidavit stating the extent of compliance with a court of competent jurisdiction (Magistrates, District or Supreme depending on the amount of the Order) and that when lodged the order is to be taken to be a judgment of the court and may be enforced accordingly.

Clause 118 Other amendments

Section 127(3) of the *Mining Act 1978* will be repealed as under the *Civil Judgments Enforcement Act 2003* the Sheriff will become responsible for the enforcement of all court orders and the role of bailiff of a Local Court will be abolished. There is no similar provision to section 127(3) of the *Mining Act 1987* in the *District Court of Western Australia Act 1969* or the *Magistrates Court Act 2003* and since the coming into force of the *Court Security and Custodial Services Act 1999* there is no obligation upon the Sheriff to provide in-court orderly or security type services" to any court.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Civil Judgments Enforcement Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Part 16- Residential Tenancies Act 1987 amended

The amendments in this Part relate to amendments to the *Residential Tenancies Act 1987*.

Clause 119 Act amended in this Part

This Part refers to the *Residential Tenancies Act 1987*.

Clause 120 Section 3 amended

The definitions of ‘clerk’, ‘magistrate sitting in the Small Disputes Division’ and ‘other jurisdiction’ have been removed.

1. The term ‘clerk’ refers to the clerk of a local court. Local courts will no longer exist once the Magistrates Court is established. The term ‘clerk’ is currently used in section 12A and section 19. Both sections are to be amended and the term ‘clerk’ will not be used. Where there is a reference to a ‘registrar of the Magistrates Court’, it will state that in full so no interpretation is required.
2. The term ‘magistrate sitting in the Small Disputes Division’ refers to a magistrate sitting in the Small Disputes Division of a local court. This will be replaced with either the ‘Magistrates Court’ or ‘competent court’.
3. The term ‘other jurisdiction’ refers to the general provisions of a local court. The term is currently used in sections 20(k) and (l), both of which are being amended to delete the expression.

A definition of ‘competent court’ is included. The definition relates to any court that can hear applications under this Act and includes the Magistrates Court. It broadens the current provision so that it caters for other jurisdictions if the proceedings are beyond the capacity of the Magistrates Court.

Clause 121 Sections 12, 12A and 13 replaced

As to section 12

Current - Section 12 confers jurisdiction to hear and determine all matters that are the subject of an application under the Act (except monetary claims that exceed the prescribed amount) on a magistrate sitting in the Small Disputes Division of a Local Court. Applications regarding bond monies are an exception and can exceed the prescribed amount.

Section 12(4) states all monetary claims exceeding the prescribed amount are not to be heard by a magistrate sitting in the Small Disputes Division of a Local Court, unless the parties consent.

Section 12(5) states that a court competent to hear such claims shall do so subject to the following provisions -

- the court determines the claim subject to the practice and procedure applicable to the court;
- other than the previous dot point, the claim is subject to this Act; and
- if the plaintiff is successful and recovers less than the prescribed amount, he/she will not recover costs unless there were reasonable grounds for the plaintiff to believe their claim was valid.

The section also defines ‘the prescribed amount’ as \$3 000 or such other amount as prescribed.

Proposed - Section 12 defines ‘prescribed dispute’ and ‘prescribed amount’. ‘Prescribed dispute’ is any matter that can be dealt with by the court other than a claim for an amount over the ‘prescribed amount’. It replicates what is currently described in sub sections 12(1) and (2). ‘Prescribed amount’ replaces the current definition and increases the amount to \$10 000. This brings the limit of matters under this Act that can be dealt with by the Court into line with the limit of other matters that the Court will be able to deal with under its minor cases procedure on or after the 1 January 2009.

As to section 12A

Current - Section 12A states that the clerk may exercise the jurisdiction of a magistrate in the Small Disputes Division of a local court in respect to matters of a prescribed class. That provision remains, albeit the reference is now to the Magistrates Court, and is now located in section 13A(2).

Proposed - Section 12A gives the Magistrates Court exclusive jurisdiction to hear prescribed disputes and links them to the minor cases procedure of the Court. This amendment removes the necessity throughout the Act to continually refer to ‘the Court using its minor cases procedure’.

As to section 13

Current - Section 13 states that proceedings must be started at the local court nearest to where the premises are located or, by consent, any other local court. That provision remains, albeit the reference is now to the Magistrates Court, and it is now located in section 13A(3).

Proposed - Section 13 contains the provisions that were previously contained in section 12(4) and (5).

Section 13A provides that in dealing with this jurisdiction, the court is to be constituted by a magistrate but a registrar may exercise the court's jurisdiction when the application is one within a prescribed class of applications, when the parties consent or if one of the parties does not appear.

Clause 122 Various references changed

This clause replaces reference to ‘magistrate sitting in the Small Disputes Division’, ‘he’ and ‘magistrate’ with ‘competent court’, ‘it’ and ‘court’. This is in line with the general movement of substituting references to a person with references to a court.

Clause 123 Other amendments

Throughout the Act, the various references to ‘local court’, ‘magistrate sitting in the Small Disputes Division’, ‘he’ and ‘magistrate’ are replaced with ‘competent court’, ‘it’ and ‘court’. This is in line with the general movement of substituting references to a person with references to a court. Where appropriate reference to the *Magistrates Court (Civil Proceedings) Act 2003* and reference to minor cases (a term which replaces small disputes) is used in place of reference to ‘Small Disputes Divisions of local courts’.

Section 16(2) is amended to reflect the new uniform procedures for the enforcement of judgments contained in *the Civil Judgments Enforcement Act 2003*.

Section 21 is repealed and replaced with a similar provision, stating that a competent court is not be bound by the rules of evidence and is to inform itself as it thinks fit. Once again, the only difference here is to remove the reference to a magistrate and replace it with a reference to a court.

Section 26 is amended to reflect the new provisions relating to the Supreme Court's powers to supervise the Magistrates Court contained in section 36 of the *Magistrates Court Act 2003*.

Schedule 1, Part D, sub-clause 8(8) is repealed as it refers to the limitation in section 12(4). Section 12 has been repealed and the replacement provision refers to a 'prescribed dispute', which in effect replicates the current provision and allows the court to deal with any application to deal with the disposal of a bond, irrespective of the amount.

Part 17- Restraining Orders Act 1997

The amendments in this Part relate to amendments to the *Restraining Orders Act 1997*.

Clause 124 Act amended in this Part

This Part refers to the *Restraining Orders Act 1997*.

Clause 125 References to "clerk" changed

This clause does nothing more than change reference to the title "clerk:" to "registrar" as a consequence of new titles adopted in the *Magistrates Court Act 2003*..

Clause 126 Other amendments

Various sections are amended to reflect the change in title from "clerk" to "registrar" occasioned by the coming into operation of the *Magistrates Court Act 2003*.

Section 10 deals with the preparation and service of restraining orders. Subsection (2) deals with telephone restraining orders. The amendment to paragraph (d) and the amendment to section 10(3) not only replace the reference to a court of petty sessions with the Magistrates Court, but alter the procedure slightly. Currently, sub-section (2) states that when an authorised person prepares a telephone restraining order in accordance with the instructions of the authorised magistrate, a copy of the order is delivered to the Children's Court, if the respondent is a child, or to the court of petty sessions where the authorised magistrate is based. Sub-section (3) states that the order is then registered and delivered to the magistrate who made the order.

The procedure has been changed because only magistrates appointed under the provisions of the *Magistrates Court Act 2003* are authorised magistrates and therefore Children's Court magistrates are unable to grant telephone restraining orders. It is preferable, in that case, that the orders be delivered in the first instance to the

Magistrates Court irrespective of who the respondent is. Once registered, a copy is then sent to the Children Court if the respondent is a child.

Section 17(2) states that ‘Chief Stipendiary Magistrate’ has the same meaning as it has in the *Stipendiary Magistrates Act 1957*. As that Act is to be repealed the provision is meaningless and is also repealed.

Section 63 provides for the making of restraining orders during other proceedings. The section sets out the various proceedings during which a court can make a restraining order. The section also states that a judicial officer considering bail is considered to be a ‘court’. Subsection (6) has been included to clarify the situation when a justice of the peace considers bail at a lock-up, or some other place outside the court system.

Section 64 deals with appeals in respect to decisions made regarding restraining orders. Sub-section (2) states that appeals are made to the Supreme Court in accordance with Part VIII of the *Justices Act 1902*.

The provision has been repealed and replaced with a provision that reflects the civil nature of such proceedings. The reason for the change is that currently, restraining orders are made in courts of petty sessions, and until the *Restraining Orders Act 1997* was introduced, were made pursuant to provisions contained in the *Justices Act 1902*. It is because of this that appeals are made to the Supreme Court despite the fact that the proceedings do not involve an offence and require the civil standard of proof to obtain an order (i.e. on the balance of probability, not beyond reasonable doubt). The amendment rectifies the anomaly and provides that the appeal procedure for civil matters prescribed by the *Magistrates Court (Civil Proceedings) Act 2003* will apply and appeals will now be heard by the District Court as will all civil matters dealt with by the Magistrates Court.

Section 64(6b) has been added to cater for the situation where a justice of the peace makes an order of restraint when considering bail at a lock-up, or some other place outside the court system, and the person charged is convicted and appeals both the restraining order and the conviction. This provision provides that both appeals are dealt with in the same court.

Section 72 deals with practice and procedure. Sub-section (1)(a) states that if a restraining order is being heard in a court of petty sessions, the *Justices Act 1902* applies. The amendment reflects the fact that restraining orders will now be dealt with as a civil matter and provides that the practice and procedure for civil matters prescribed by the *Magistrates Court (Civil Proceedings) Act 2003* will apply.

Section 72(2) refers to section 65 of the *Justices Act 1902* and states that it applies to the hearing of restraining orders. Section 65 (which provided for courts to be open to the public unless ordered otherwise) has now been repealed. This sub-section therefore is not necessary. A general provision regarding public hearings in the Magistrates Court is included in the *Magistrates Court Act 2003*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Part 18- Supreme Court Act 1935 amended

The amendments in this Part relate to amendments to the *Supreme Court Act 1935*.

Clause 127 Act amended in this Part

This Part refers to the *Supreme Court Act 1935*.

Clause 128 Section 17 inserted

The West Australian Law Reform Commission recommend that the powers of the Supreme and District Courts to transfer actions to and from Local Courts should be widened. New section 17 provides that the Supreme Court may remit a matter to the District Court or the Magistrates Court and the section has been drafted to make it consistent with the *Magistrates Court (Civil Proceedings) Act 2003*.

Clause 129 Section 171 replaced

Section 171 deals with the Governor's powers to make regulations dealing with fees and poundage. This new section is essentially the same but now reflects that the *Civil Judgments Enforcement Act 2003* will deal with poundage and post judgment matters.

Clause 130 Other amendments

Section 20 deals with the appellate jurisdiction of the Supreme Court. It states that subject to the provisions of various Acts, it can hear appeals from any court. This amendment updates the provision to properly reflect the courts from which an appeal lies to the Supreme Court.

Section 32 allows courts to order the payment of pre-judgment interest in respect to any proceedings for the recovery of monies. Subsection (3) states that this section applies to proceedings in local courts, except where the amount of judgment does not exceed \$750. This paragraph has been removed and a specific provision has been included in the *Magistrates Court (Civil Proceedings) Act 2003* which provides for pre-judgment interest.

The reason for this change is that now, reference to interest in respect to civil proceedings in the Magistrates Court will be contained in the Act that provides the procedure, rather than obscurely contained in separate legislation. The removal of sub-section (3) will also mean that interest can be applied to any amount, not just amounts in excess of \$750. (Research has failed to ascertain the initial rationale behind precluding amounts of less than \$750).

Section 35 is repealed as it has been replaced with a similar provision in the *Civil Judgments Enforcement Act 2003*.

Section 58(1) (h) states that the Full Court has jurisdiction to hear and determine appeals by way of order to review under the *Justices Act 1902*, if made returnable before the Supreme Court sitting as the Full Court; and an appeal from the refusal of a Judge to grant an order to review. The amendment reflects the change in procedure prescribed by the *Criminal Procedure (Summary) Act 1902*.

Section 58(1)(i) states that the Full Court has jurisdiction to hear and determine appeals from Local Courts. The replacement provision reflects the civil jurisdiction of the new Court.

Part VIII of the Act (sections 117 to 146) along with sections 157, 159,160,162,163 and 164 deal with enforcing the judgments of the Supreme Court in its civil jurisdiction. These sections have been repealed and similar provisions reflecting the new uniform procedures for the enforcement of judgments are contained in *the Civil Judgments Enforcement Act 2003*.

Sections 165 and 167 are amended to reflect the new uniform procedures for the enforcement of judgments contained in *the Civil Judgments Enforcement Act 2003*.

Section 176 states that an affidavit for use in any cause or matter before a court can be sworn or executed before certain persons. Among those, is a justice of the peace. The amendment removes the reference to justices appointed for a particular district, as the *Justices of the Peace Act 2003* will provide that all appointments are for the State.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and *the Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*.

Part 19- Workers Compensation and Rehabilitation Act 1981 amended

The amendments in this Part relate to amendments to the *Workers Compensation and Rehabilitation Act 1981*.

Clause 131 Act amended in this Part

This Part refers to the *Workers Compensation and Rehabilitation Act 1981*.

Clause 132 Section 120 inserted

Section 120 is a new section providing access to the Court's records. It is similar to corresponding sections contained in the *Magistrates Court Act 2003*. The new section also contains provision to make regulations prescribing fees for accessing documents.

Clause 133 Part IIIA Division 6 replaced

Part IIIA Division 6 contains 3 sections.

Section 84ZZ provides a power to make regulations relating to enforcement.

Section 84ZZA provides that an order of a compensation magistrates court may be enforced against the property of a person against whom an order has been made. This section also protects certain property from seizure by reference to the *Local Courts Act 1904*.

Section 84ZZB provides that the Sheriff, bailiffs and police officers are officers of the compensation magistrates

The *Civil Judgments Enforcement Act 2003* introduces a uniform scheme for the enforcement of civil judgments and In the interest of having but one scheme this clause replaces sections 84ZZ and 84ZZA and substitutes a provision that will state that judgments, orders and directions of the compensation magistrates court can be enforced by lodging a certified copy of the order and an accompanying affidavit stating the extent of compliance with a court of competent jurisdiction (Magistrates, District or Supreme Courts depending on the amount of the Order) and that when lodged the order is to be taken to be a judgment of the court and may be enforced accordingly.

Section 84ZZB is to be repealed as a consequence of the *Civil Judgments Enforcement Act 2003*. There is no similar provision in the *District Court of Western Australia Act 1969* or the proposed *Magistrates Court Act 2003* and since the coming into force of the *Court Security and Custodial Services Act 1999* there is no obligation upon the Sheriff to provide "in -court orderly or security type services" to any court. In effect the *Civil Judgments Enforcement Act 2003* picks up the current provisions of the entire Division 6.

Clause 134 Section 176 amended

This clause stipulates those matters upon which regulations may be made by the Governor, with respect to fees in the compensation magistrates court.

Clause 135 Other amendments

Section 113(6) states that in this section the term “Chief Stipendiary Magistrate”~ has the meaning given by the *Stipendiary Magistrates Act 1957*. In view of amendments to sections 113(2) and 113(4) the definition is superfluous.

Section 114(3) states that the clerk of a compensation magistrate's court has in relation to that court like powers to those of a clerk of petty sessions acting under the *Justices Act 1902* in relation to the court of petty sessions to which the clerk is attached. The amendment merely changes the references to cater for the Magistrates Court.

The inclusion of section 115(2a) has been added to give the compensation magistrate's court power to deal with contempt. Up until now, a magistrate constituting the Court was able to deal with contempt by utilising section 41 of the *Justices Act 1902*. That section has been repealed and a general provision applying to all matters that come before the Magistrates Court has been included in the *Magistrates Court Act 2003*.

Section 179 is amended to reflect the new uniform procedures for the enforcement of judgments contained in *the Civil Judgments Enforcement Act 2003*.

Section 188A has been amended to reflect the exclusive jurisdiction of the Children's Court when dealing with offences committed by children.

Section 188A(2) states that Part VIII of the *Justices Act 1902* applies to matters referred to in subsection (1). The replacement subsection does not change the substance but refers to the appeal provisions contained in *the Criminal Procedure (Summary) Act 1902*.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and *the Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Part 20- Amendments to Acts about land

Division 1- Registration of Deeds Act 1856 amended

Clause 136 Act amended in this Division

This Part refers to the *Registration of Deeds Act 1856*.

Clause 137 Section 1 replaced

The replacement section makes it clear that this Act does not apply to interests in land under the *Transfer of Land Act 1893* that are not registrable under that Act.

Clause 138 Other amendments

This clause merely updates terminology by changing reference to the Supreme Court.

Division 2- Transfer of Land Act 1893 amended

Clause 139 Act amended in this Division

This Part refers to the *Transfer of Land Act 1893*.

Clause 140 Section 133 replaced

Section 133 is being repealed and new provisions inserted to:

- complement the *Civil Judgments Enforcement Act 2003*;
- give effect, where appropriate, to recommendations of the 2001 Law Reform Commission Report on Writs and Warrants of Execution; and
- update processes.

The new section 133 contains eighteen subsections that are described as follows:

Section 133(1)

This subsection defines the following terms for the purposes of section 133:

“lodged” – Because of the expanded definition of “register” in this section, “lodged” in this section refers to lodgement for registration and also for effect to be given to a document. For example, a survivorship application is not registered, but is lodged. The application is given effect by the removal of the name of a deceased joint tenant as a registered proprietor of the interest from the Register, leaving the survivors as the registered proprietors of that interest.

“property (seizure and sale) order” – this term replaces reference to writs of fieri facias in the current section 133.

“register” – See the note on “lodged”.

“sale period” – this term extends the current period by which land is bound under section 133 from four months to six months and any extension by court order.

The Law Reform Commission considered that the four-month period should be extended because, amongst other things:

- sometimes it can take the Sheriff more than four months to ascertain what is owing to other encumbrance holders, advertise the land for auction and, if sold, finalise the sale; and
- another party (other than the judgment debtor or creditor) may obtain an interim injunction restraining the sale of the land.

Although the Law Reform Commission recommended that the period be extended to eight months, it is considered that in the normal course of events six months would be adequate for a creditor bona fide acting with proper diligence to be able to deal with the issues raised by the Commission and for the interest to be sold and transferred.

In those unusual cases, where that proves not to be the case, provision is made in subsection 13 to obtain an extension of the binding period.

It is considered that, unless there are circumstances that justify an extension of the period, it is unreasonable to fetter the title of the judgment debtor or to delay a sale for the benefit of another judgment creditor for more than six months so as to benefit a judgment creditor who does not act with due diligence.

“saleable interest” – This term specifies the interests in land that can be sold to satisfy a property (seizure and sale) order by reference to the *Civil Judgments Enforcement Act 2003*.

“Sheriff’s dealing” – refers to a transfer by the Sheriff.

Section 133(2)

This subsection enables a judgment creditor to have a property (seizure and sale) order registered against interests in land registered under the *Transfer of Land Act 1893*.

Section 133(3)

This subsection provides for an application to register a property (seizure and sale) order on the Transfer of Land Act Register. That is more in accord with other Transfer of Land Act processes than the current process which provides for lodgement of a copy of the writ of fieri facias accompanied by a statement as to the property to be affected.

Section 133(4)

This subsection sets out pre-conditions for registration of the order, including that the order must not previously have been registered.

Section 133(5)

This subsection provides that a registered order continues in effect, subject to the terms of any suspension order or until discharged.

Section 133(6)

This subsection provides that until registration of a property (seizure and sale) order, it is not valid as against a purchaser of a registered saleable interest for valuable consideration.

Section 133(7)

This subsection provides that a transfer by the Sheriff will prevail over an unregistered interest, unless a caveat to protect that interest has been lodged:

- before the application to register the order; or
- with the consent of the Sheriff, after the application to register the order.

The lodgement of a caveat, with the consent of the Sheriff before a Sheriff’s dealing is registered, enables the Sheriff’s dealing to be registered subject to a caveat protecting an interest admitted under section 84(1) of the *Civil Judgments Enforcement Act 2003* or held by a court to be valid in interpleader proceedings.

A caveat lodged without the Sheriff's consent would be removed if a Sheriff's dealing is lodged during the sale period.

Section 133(8)

This subsection provides that instruments affecting the saleable interest can only be registered during the sale period with the consent of the Sheriff. This subsection specifically excludes an instrument made under the *Land Administration Act 1997* by the Minister in relation to Crown land.

The principal examples of instruments for which the Sheriff's consent would be required are transfers, leases and mortgages.

"Instruments" as defined in section 4 of the *Transfer of Land Act 1893* has a limited meaning and would not apply to, amongst other things, applications (for example, survivorship or transmission applications) and property (seizure and sale) orders. That is, documents, that generally speaking give effect to events and changes in the debtors' saleable interest, outside the control of the judgment debtor, could be processed without the consent of the Sheriff.

Although the Sheriff's consent would be necessary for sales by mortgagees of mortgagor judgment debtors' interests in land in exercise of powers under the mortgage, it is expected that such consent would normally be given. The judgment debtors' saleable interest would be subject to the mortgagees' prior rights, including the right to sell on default under the mortgage.

This provision provides a mechanism for an interest admitted under section 84(1) of the *Civil Judgments Enforcement Act 2003* or held by a court to be valid in interpleader proceedings, if able to be given effect by a registrable document to be registered before a Sheriff's dealing (subject to that interest) is registered.

Section 133(9)

This subsection provides that while a property (seizure and sale) order is registered against a judgment debtors' saleable interest, a transfer by the Sheriff must be registered. Such a transfer will be subject to any instrument registered or caveat lodged with the permission of the Sheriff.

Section 133(10)

This subsection enables a transfer by the Sheriff to be registered without production of any duplicate certificate or document.

Section 133(11)

This subsection sets out the effect of registration of a transfer by the Sheriff as to those prior unregistered interests that are not protected by caveat and have not been admitted by the judgment creditor or recognised by a court in interpleader proceedings.

Section 133(12)

This subsection sets out the circumstances in which the Registrar must register a discharge of an order.

Section 133(13)

This subsection enables the court issuing the order to extend the binding of the interest for up to six months.

It is anticipated that in the normal course of events, the saleable interest will be able to be sold and transferred within six months, if the judgment creditor bona fide acts with proper diligence to have the debt satisfied using the process provided by section 133 and the *Civil Judgments (Enforcement) Act 2003*.

This subsection is intended to provide for those cases where, for reasons noted in the Research Paper accompanying the Law Reform Commission's Report, it is not possible to transfer the interest within the binding period.

Section 133(14)

This subsection requires the application to extend the binding of the interest to be served on the judgment debtor, unless the court orders otherwise.

Section 133(15)

This subsection requires that the Sheriff's written permission is to be lodged with or endorsed on those documents consented to by the Sheriff.

Section 133(16)

This subsection provides that the extension order must be served on the Registrar before the previous binding period expires. This ensures that persons dealing with registrable interests under the *Transfer of Land Act 1893* can rely on the state of the Register at the relevant times.

Section 133(17)

This subsection places an obligation on the Registrar to register an order made under subsection 16.

Section 133(18)

This subsection provides that more than one extension order may be made. See the comments on subsection 13.

Clause 141 Section 138 amended

This section is amended to make it easier to read and to enable a judgment creditor to summon a caveator to show cause why a caveat that has priority to and may detract from the value of a saleable interest should not be removed.

Clause 142 Other amendments

Various other amendments are made as follows:

Section 4(1)

The definition of Sheriff is amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 78

This section is amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 90

This section is repealed as it is not necessary due to the changes to section 133. (Law Reform Commission Recommendation 10.)

Section 116

This section is to be amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 119

This section is to be amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 136K(4)

This is a necessary consequential amendment as a result of amendment of section 138.

Section 138B(1)

This is consistent with, and for the same reasons as, the proposed amendment to section 138. It enables a judgment creditor to have a notice sent to a caveator that affects a saleable interest that unless an order extending the operation of the caveat is served on the Registrar, within 21 days after service of the notice, the caveat will lapse.

Section 138D(1)(d)

This is a consequential amendment as a result of the proposed change to section 138B(1).

Section 141A

This proposed amendment is consistent with the proposed amendments to section 138, 136K(4), 138B(1) and 138D(1)(d). It enables the removal of a caveat where the interest protected by the caveat has ceased to exist.

Section 149

This section is to be amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 150

This section is to be amended to accord with the *Civil Judgments Enforcement Act 2003*.

Section 185

The section is repealed as the process set out in this section is rarely, if ever, used and does not accord with modern practices. It is intended that section 133(11) set out all the circumstances for registration of the discharge of an order provided in the *Transfer of Land Act 1893*.

Section 192

This amendment to terms is to accord with the *Civil Judgments Enforcement Act 2003*.

Section 214(2)

This amendment reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*.

Section 239(1)(h)

This section is to be amended to accord with the *Civil Judgments Enforcement Act 2003*.

Part 21 - Amendments to other Acts

Clause 143 Various Acts amended

This clause refers to Schedule 1.

Part 22 –Transitional provisions about enforcing judgments

This Part contains transitional provisions about unsatisfied judgments, unexecuted processes and pending proceedings, and the appointments of existing bailiffs. This Part is necessary for the smooth transition of business already before the courts and to obviate the need to reissue processes and to make new appointments. The Part is necessary for the good administration of justice.

Division 1 – Provisions about enforcing judgments

Clause 144 Interpretation

This clause defines the terms “commencement”, “court fee” and “enforcement process” for the purposes of this Part.

Clause 145 Judgments not satisfied before commencement

This clause provides for existing judgments to remain in force and to be capable of being enforced by the new provisions of the *Civil Judgments Enforcement Act 2003*. If enforcement proceedings have been commenced the clause provides for the following clause (clause 142) to have effect.

Clause 146 Pending proceedings to enforce a judgment

Subclause 1 provides for the continuation of enforcement proceedings initiated before the commencement of the *Civil Judgments Enforcement Act 2003*. It provides that a proceeding may continue under the law in force before commencement of the *Civil Judgments Enforcement Act 2003* or the proceedings can be commenced afresh.

Subclause 2 provides that if proceedings under the old law are continued the old enforcement processes are not available but the court may make an order substantially the same as it could have done prior to the *Civil Judgments Enforcement Act 2003* coming into operation.

Subclause 3 provides that the existing procedures of examination in aid of execution and the judgment summons hearing are to be taken to be a means inquiry under the *Civil Judgments Enforcement Act 2003*.

Subclause 4 allows the issue of writs and warrants in respect of proceedings continued under the old law.

Subclause 5 provides that if a party has discontinued proceedings and commenced afresh under the *Civil Judgments Enforcement Act 2003* in respect of an existing process these applications shall not attract a further application fee.

Clause 147 Pending process to enforce a judgment

Subclause 1 provides for the continuation of enforcement processes initiated before the commencement of the *Civil Judgments Enforcement Act 2003*. It provides that the process continues under the old law until it would cease under that law, if it is superseded by an enforcement process issued under the *Civil Judgments Enforcement Act 2003* or the expiry of 12 months from commencement, whichever happens first. Subclause 1 therefore provides for the continuation of existing enforcement processes and for the serving, executing or otherwise dealing with the process

Subclause 2 provides for transitional arrangements with respect to writs of fieri facias (and warrants of execution) having effect with respect to proceedings under section 133 of the *Transfer of Land Act 1893*.

Subclause 3 provides that if an enforcement process issued under the repealed law is unexecuted it may be replaced with a new process under the *Civil Judgments Enforcement Act 2003*. Subclause 4 provides these applications shall not attract a further application fee.

Subclause 5 provides that an order made under subclause 3 has the effect of cancelling the process it replaces but assumes the same priority of the process it replaces.

Clause 148 Existing bailiffs and their assistants, termination of appointment etc.

Section 156 of the *Supreme Court Act 1935* provides for its processes to be executed by the Sheriff. Section 30 of the *District Court of Western Australia Act 1969* provides for its processes to be executed by the District Court Bailiff. The Sheriff,

who is a public officer, combines both roles and the Sheriff's Office is set up to provide the necessary administrative support. The Sheriff therefore ensures consistency of practice in enforcement of superior court judgments.

In contrast with the position of the superior courts there are 35 Local Courts throughout the State issuing some 25,000 enforcement processes annually to 124 Local Court bailiffs. These Local Courts and bailiffs are independent of each other which results in inconsistent interpretations and procedures.

The *Civil Judgments Enforcement Act 2003* brings into effect the recommendations of a 1996 Law Reform Commission Report and a 1997 Court Services Report that both recommended the introduction of legislation to create a unified civil judgment enforcement where the Sheriff would assume responsibility for all courts.

Currently civilians are appointed Local Court bailiffs within the Perth Metropolitan Region and major country towns. Police officers perform the duties of bailiff in smaller and the more remote country centres. In respect of District and Supreme Court matters the Sheriff currently utilises the services of police and civilians in all regional and country centres by appointing them either Sheriff's Officers or Assistant District Court Bailiffs, as the case requires.

The *Civil Judgments Enforcement Act 2003* continues the existing system as the Sheriff will appoint persons who are civilian contractors (as well as police officers, who act in a private capacity as a bailiff and not as a police officer) as his bailiffs under the new system proposed by this Bill.

Historically these functions have been successfully and efficiently performed by civilians and recognition of this fact was pivotal to recommendation 71 contained in the 1997 Court Services Report. Recommendation 71 was that under the unified system the Sheriff should adopt the role of service regulator and coordinator and the role of service provider should be outsourced. The West Australian bailiff system (which is essentially private) is rated as the most effective in Australia and the civilian bailiffs all meet the criteria to be classified as small businesses and therefore enjoy a level of Government support.

This clause supports the abovementioned findings and complies with National Competition Policy requirements as in subclause 1 it provides for the abolition of appointments of bailiff for the District Court and the Local Court.

Subclause 2 makes provision for transitional arrangements for a civilian bailiff by providing that person is entitled to be appointed a bailiff under the *Civil Judgments Enforcement Act 2003* for a term of two years from the commencement of the Act. At the expiration of 2 years appointed civilian bailiffs will have to reapply for their positions in a competitive process.

Subclause 3 makes provision for transitional arrangements for a bailiff who is a police officer by providing that on commencement that person is to be taken to have been appointed a bailiff under the *Civil Judgments Enforcement Act 2003*.

Division 2 – General

Clause 149 Transitional regulations

This clause provides for the Governor to make transitional regulations if needed.

The purpose of the clause is to cater for any unseen requirement that may arise in the event that an issue has not been sufficiently covered by this Bill.

Schedule 1 – Amendments to various Acts

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Schedule 1 contains items 1 to 175 that represent amendments to 175 Acts as a consequence of the establishment of the Magistrates Court and the introduction of a new uniform system of enforcing civil judgments. Most amendments are minor. They represent the replacement of -

- references to ‘courts of petty sessions’ and ‘local courts’ with Magistrates Court;
- references to ‘*Justices Act 1902*’ with ‘*Criminal Procedure (Summary) Act 1902*’;
- references to ‘*Local Courts Act 1904*’ with ‘*Magistrates Court (Civil Proceedings) Act 2003*’ and/or the ‘*Civil Judgments Enforcement Act 2003*’.
- references to ‘2 justices’, ‘justice(s)’, ‘magistrate’ or ‘stipendiary magistrate’ with ‘Magistrates Court’, ‘court’, ‘court of competent jurisdiction’ or ‘court of summary jurisdiction’;
- various combinations of all these terms; and
- references to “bailiff” with “sheriff”.

The consequential amendments have affected a large number of old Acts that have not been reviewed for a long time. Many anomalies and out of date provisions have been unearthed during the exercise. The following are a few examples –

- The repeal in a number of pieces of legislation of a provision that states how offences are to be dealt with. Section 67 of the *Interpretation Act 1984* now caters for all legislation.
- Some re-drafting to modernise provisions without altering their intent. In these cases, whole sections or sub-sections have been repealed and replaced.
- The removal of provisions that no longer apply or are anachronisms.

Some amendments however go a little further. They either repeal certain sections or sub-sections without replacing them with similar provisions, or amend procedure that will alter the way the Magistrates Court will deal with certain matters that come before it.

Item 1 *Aboriginal Communities Act 1979*

Section 11 deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 2 *Administration Act 1903*

The wording of section 54(1) is amended to reflect the replacement of Local Courts with the Magistrates Court.

Item 3 *Agricultural Practices (Disputes) Act 1995*

Subsection 13(4) deals with the enforcement of orders for costs made under the Act by registering the order with a Local Court. As Local Courts will be abolished the subsection is replaced with a provision of similar intent that provides for registration of a certified copy of the order with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Item 4 *Agricultural and Related Resources Protection Act 1976*

Section 93(1) is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 102 deals with proceedings for offences. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*. The replacement provision continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 5 *Agricultural Protection Board Act 1950*

Section 30 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 6 *Animal Welfare Act 2002*

The wording of the various sections is amended to reflect the replacement of Local Courts with the Magistrates Court.

Item 7 *Art Gallery Act 1959*

Section 27 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 8 *Artificial Breeding of Stock Act 1965*

Section 27 is amended to reflect the change in title from “Clerk” to “registrar”, as a consequence of the *Magistrates Court Act 2003*.

Item 9 *Auction Sales Act 1973*

Section 20 is repealed as it is superfluous. The Act states, where necessary, that a magistrate, the Magistrates Court or a registrar of the Magistrates Court can do certain things. An anomaly was created as matters under this act were previously dealt with procedurally by the *Justices Act 1902* even though they were not of a criminal nature. Matters under this Act will now be dealt with in the civil jurisdiction of the Magistrates Court.

Section 35(3) is repealed (see 67 of the *Interpretation Act 1984*) and replaced with a statement that a complaint must be made within two years.

Other amendments to the Act reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 10 *Bail Act 1982*

Throughout this Act references to ‘members of the Children’s Court’ have been removed. As previously stated, Justices of the Peace will be empowered to perform all the functions previously performed by members.

Section 7A(1) has been repealed and replaced with an identical provision, reworded to clarify the intent of the provision.

Section 53 has been repealed and replaced with a provision that provides a right of appeal and further provides that the appeal provisions of the *Criminal Procedure (Summary) Act 1902* apply. This Bill includes amendments to that Act that govern the procedure for appeals and removes the necessity for leave and replaces it with a right of appeal from decisions of the Magistrates Court.

Schedule 1, Part A clause 1 is amended to remove the reference to members of the Children’s Court.

Other amendments to the Act reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 11 *Betting Control Act 1954*

Section 28A relates to the issue of search warrants. The amendment to sub-section (2) merely reflects current procedure once a person is arrested.

Apart from changes to terms and names proposed section 30A continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Other amendments to the Act reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 12 *Bills of Sale Act 1899*

These amendments are necessary due to the repeal of the *Magisterial Districts Act 1886*. The reference in section 10 to a magisterial district is replaced with a reference to a similar area covered by local government districts.

Item 13 *Bread Act 1982*

Proposed section 15 changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 14 *Builders Registration Act 1939*

Subsection 44(2) deals with the enforcement of monetary orders made under the Act by registering the order with a Local Court. As Local Courts will be abolished the subsection is replaced with a provision of similar intent that provides for registration of a certified copy of the order with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Item 15 *Bush Fires Act 1954*

Sections 56 and 58 are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 59(1) deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 16 *Business Names Act 1952*

The amendment merely reflects that the Magistrates Court will exercise both civil and criminal jurisdiction and there is no need to differentiate between them for the purpose of the Act.

Item 17 *Cattle Industry Compensation Act 1965*

Proposed section 37(2) changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Section 43 deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 18 *Censorship Act 1996*

Section 117 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 19 ***Census Act 1891***

The amendment to section 10 merely rectifies an omission to clarify the intent of the Act.

Section 14 deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 20 ***Charitable Collections Act 1946***

Section 18 deals with the procedure for recovering penalties and is to be repealed. The first paragraph of the provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 21 ***Chicken Meat Industry Act 1977***

Subsection 18(3) deals with the enforcement of determinations made under the Act by registering the order with the Supreme Court. The subsection is amended by deleting reference to the Supreme Court and by adding subsections 4 and 5 that provide for registration of a certified copy of the determination with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Proposed section 23 changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 22 ***Child Welfare Act 1949***

Various sections are amended to reflect the change in title from “Clerk” to “registrar”, as a consequence of the *Magistrates Court Act 2003*.

Item 23 ***Coal Industry Tribunal of Western Australia Act 1992***

Subsection 17(3) deals with the enforcement of orders for costs made under the Act by registering the order with a Local Court. As Local Courts will be abolished the subsection is replaced with a provision of similar intent that provides for registration of a certified copy of the order with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Item 24 ***Coal Miners Welfare Act 1947***

Section 24 deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 25 ***Companies (Co-operative) Act 1943***

Various sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 26 *Competition Policy Reform (Western Australia) Act 1996*

Various sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 27 *Conservation and Land Management Act 1984*

Section 108 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 113 is repealed and re-enacted without reference to the procedure for recovering penalties which is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 28 *Conspiracy and Protection of Property Act 1900*

Section 9 deals with the procedure for recovering penalties and is to be repealed. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Section 10 relates to appeal provisions that are no longer relevant and is to be repealed as appeal procedures are now covered by the *Criminal Procedure (Summary) Act 1902*.

Item 29 *Constitution Acts Amendment Act 1899*

Schedule V is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology as well as the abolition of members of the Children's Court and the position of a Referee appointed under the *Small Claims Tribunal Act 1974*.

Item 30 *Contaminated Sites Act 2003*

Section 85 (1) is repealed (see 67 of the *Interpretation Act 1984*) and replaced with a statement that a complaint must be made within two years. As the *Criminal Procedure (Summary) Act 1902* only provides that complaints can be made within 12 months, it is necessary to make special provision here.

Item 31 *Control of Vehicles (Off-road areas) Act 1978*

Section 38 deals with the appointment of authorised officers and their powers. Sub sections 38(15) & (16) deal with procedure to be followed when a vehicle is seized by an authorised officer.

Sub sections 38(15) & (16) are to be repealed and replaced with procedures which allow an authorised officer to detain a vehicle until registration or ownership is established without having to go before a justice to obtain an order, a procedure that is difficult and considered unnecessary. A safeguard is included allowing a person claiming ownership to apply to the Magistrates Court for an order releasing the vehicle.

Sections 40 and 42 are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology as well as the abolition of members of the Children's Court.

Item 32 ***Co-operative and Provident Societies Act 1903***

Section 36 deals with the enforcement of decisions made in respect of disputes heard under rules of a registered society or a court. The decisions are enforceable by an order of a local court or court of summary jurisdiction. The provision also provides penalties for non-compliance as if it were an offence.

Section 36 has been replaced with a provision that removes the penalty for non-compliance. The Magistrates Court has its own powers to deal with non-compliance of orders which would conflict with this provision if it were to remain as is. The new provision also provides for registration of a certified copy of the order with the Magistrates Court and for the order to become a judgment of that court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

The wording of various other sections is amended to reflect the replacement of Local Courts with the Magistrates Court and the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 33 ***Country Areas Water Supply Act 1947***

Various sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

The wording of section 116 is amended to reflect the replacement of Local Courts with the Magistrates Court and also to make specific reference to the Children's Court as well as the Magistrates Court.

Item 34 ***Country Towns Sewerage Act 1948***

The wording of section 79 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

The wording of section 114 is amended to reflect the replacement of Local Courts with the Magistrates Court and also to make specific reference to the Children's Court as well as the Magistrates Court.

Item 35 ***Court Security and Custodial Services Act 1999***

Section 3 is amended to reflect that the Sheriff is responsible for the execution of civil warrants with the coming into force of the *Civil Judgments Enforcement Act 2003*.

Sections 24 and 25 are amended by redefining the terms "court officer and "justice officer" to remove the existing reference to bailiffs, assistant bailiffs and the bailiff of the District Court which positions will be abolished as a consequence of the *Civil Judgments Enforcement Act 2003*. All these positions are captured under the existing provision which refers to "officers of the Sheriff".

Item 36 ***Credit Act 1984***

The wording of section 6 is amended to reflect the replacement of Local Courts with the Magistrates Court.

Item 37 ***Credit (Administration) Act 1984***

Section 50 deals with legal proceedings under this Act. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*, other than stating that the court must be constituted by a magistrate.

Item 38 ***Cremation Act 1929***

Section 14 deals with those persons authorized to forbid a cremation. The substitution of the term “stipendiary magistrate” with “coroner” reflects the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology as well as recognizing that this is more appropriately a coronial function.

Item 39 ***Criminal Investigation (Extra-territorial) Offences Act 1987***

Section 4 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 40 ***Criminal Law (Mentally Impaired Defendants) Act 1996***

Section 3 has been amended to delete definitions of ‘magistrate’ and ‘superior court’. The definitions are no longer required as the term ‘magistrate’ is to be replaced with ‘court’ used throughout the Act.

Various other sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 41 ***Criminal Property Confiscation Act 2000***

Section 101 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

The Act refers to the current jurisdictional limit of Local Courts, which is \$25,000 and is replaced with a clause that refers to the civil jurisdictional limits of the Magistrates Court. This will avoid the need to amend the Act if and when the jurisdictional limits of Magistrates Courts change in the future.

Subsection 101(5) is amended by rewording to better reflect the earlier changes to the section.

Item 42 ***Dampier to Bunbury Pipeline Act 1997***

Section 38 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 43 *Debt Collectors Licensing Act 1964*

Section 4 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology.

Item 44 *Dental Prosthetists Act 1985*

Section 27(2) relates to the hearing of offences under the Act. It is repealed and replaced with a similar provision, except that it now refers to a court of summary jurisdiction instead of a court of petty sessions, which was limiting. Now a hearing can go before a Children's Court if applicable, or any other court that might be established to hear such matters.

The new provision changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 45 *Director of Public Prosecutions Act 1991*

Sections 11 and 21 are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 46 *Disability Services Act 1993*

Section 54 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 47 *Disposal of Uncollected Goods Act 1970*

Section 4 is amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 32 deals with the procedure to be adopted in relation to the service of applications. It is repealed and replaced with a similar provision except, instead of linking the procedure with criminal matters, the procedure is linked to the procedure for civil matters that will come before the Court pursuant to the *Magistrates Court (Civil Proceedings) Act 2003*.

Section 33 is superfluous as it states how the court shall deal with the matter who it can call to give evidence. As these types of applications will now be dealt with under civil jurisdiction, all these matters are covered in rules of court.

Item 48 *Distress for Rent Abolition Act 1936*

Section 6 gives a landlord the right to terminate a tenancy where seven days rent is owing and commence proceedings for eviction pursuant to the *Criminal Procedure (Summary) Act 1902*. It also states that the section has effect subject to the *Residential Tenancies Act 1987*. The Magistrates Court will now have jurisdiction over actions for possession of land as part of the Court's general civil jurisdiction prescribed in the *Magistrates Court (Civil Proceedings Act) 2003*. The retention of

section 6 would perpetuate an anomalous and confusing situation in the area of recovery of possession of land and it is to be repealed.

Item 49 *Dividing Fences Act 1961*

Sections 9(1), 11(4), 11(5), 13(5) and 15(5) are amended by substituting ‘application’ for ‘complaint’. Dividing fence applications are a civil matter and will be dealt with under the civil jurisdiction of the Magistrates Courts.

Various other sections are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology and the abolition of the term “a court of petty sessions”.

Item 50 *Dog Act 1976*

The wording of section 39 is amended to reflect the replacement of Local Courts with the Magistrates Court.

Subsection 44(1) deals with prosecuting offences under the Act. The subsection is repealed as it is now superfluous (see s. 67 of *Interpretation Act 1984*).

Item 51 *Electoral Act 1907*

Sections 49 and 90 are amended to reflect the amendment and re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 52 *Electricity Act 1945*

Section 36(3) deals with the recovery of amounts lost by the misuse of electricity. Despite the reference to petty sessions in this sub-section, it is a civil matter and is therefore a matter for a ‘competent court’ giving the provision flexibility depending on the amount to be recovered.

Section 45 deals with the assessment of compensation or damages. Like the previous provision, this is a civil matter that a ‘competent court’ would determine.

Section 49 has been re-worded after consideration by the Office of Energy and Parliamentary Counsel. In effect, the provision provides for a penalty to be imposed against persons who use or allow electricity to be used contrary to a contract. The penalty is currently fixed by the Co-ordinator. The amendment simplifies the situation making it an offence that will now be dealt with by the Magistrates Court.

Section 53 deals with the recovery of forfeitures and penalties and the manner for commencing proceedings for offences. The provision is superfluous because of section 67 of the *Interpretation Act 1984* other than stipulating that complaints for an offence must be commenced within 2 years.

Item 53 *Employment Agents Act 1976*

Section 28 deals with the manner for commencing proceedings. The provision is superfluous because of section 67 of the *Interpretation Act 1984* other than stipulating that complaints for an offence must be commenced within 2 years.

Item 54 *Energy Coordination Act 1994*

Section 11 ZQC (3) will be inserted by clause 31 of the Energy Legislation Amendment Bill 2003 and is to be repealed as a consequence of this legislative package.

Item 55 *Energy Operators (Powers) Act 1979*

Sections 82 and 84 are amended to reflect the repeal of the Local Courts Act 1904 and its replacement with the Magistrates Court Act 2003, the Magistrates Court (Civil Proceedings) Act 2003 and the Civil Judgments Enforcement Act 2003 with consequent changes in terminology. The sections are also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*.

Section 85 deals with the manner for commencing proceedings for offences. The provision is superfluous because of section 67 of the *Interpretation Act 1984* other than stipulating what time limits there are for making complaints.

Item 56 *Environmental Protection Act 1979*

Sections 92 and 114A are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology. The section is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Section 114A is amended to over-ride the provisions of the *Criminal Procedure (Summary) Act 1902* that provides that prosecutions can only be made within 12 months of the time the complaint arose.

Item 57 *Equal Opportunity Act 1984*

Sections 66ZN is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 58 *Fair Trading Act 1987*

The amendment to section 70 changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 59 *Fertilizers Act 1977*

Section 38 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 60 *Finance Brokers Control Act 1975*

Section 93 is amended to reflect the repeal amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*.

Item 61 *Financial Transactions Reports Act 1995*

Section 11 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 62 ***Fire Brigade Act 1942***

Section 33A deals with the power of the Chief Officer of the Fire Brigade to close a public building for 48 hours if he considers it unsafe. Subsection (7) allows that period to be extended. The amendment changes the emphasis to an application to the Magistrates Court, not to the magistrate. The provision does, however, state that the Court is to be constituted by a magistrate. Subsection (10) deals with the rescinding of an order.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 63 ***Firearms Act 1973***

Section 17 of the Act deals with those persons who may be granted a temporary permit to possess a firearm or ammunition and includes a bailiff when possession is required to allow disposal of the firearm or ammunition. The amendment merely replaces the term “bailiff” with “Sheriff or deputy sheriff” as a consequence of the coming into force of the *Civil Judgments Enforcement Act 2003*

Item 64 ***Fish Resources Management Act 1994***

Section 201 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 65 ***Fuel, Energy and Power Resources Act 1972***

Section 61 deals with the hearing of offences. The amendment changes the provision so that offences are dealt with by a court of summary jurisdiction, which caters for juvenile offenders as well as adults.

The amendment to section 61 changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 66 ***Gaming Commission Act 1987***

Section 34 deals with the hearing of complaints. The amendment changes the provision so that complaints are dealt with by a court of summary jurisdiction which caters for juvenile offenders as well as adults.

The amendment to section 34 changes terms and names but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Section 52 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 67 *Gas Standards Act 1972*

Section 14(2) deals with commencing proceedings for offences and the time limit for commencing proceedings (two years). The provision is covered by section 67 of the *Interpretation Act 1984*, but it is necessary to over-ride the *Criminal Procedure (Summary) Act 1902* that provides that complaints must be made within 12 months of the time the complaint arose.

Item 68 *Gold Corporation Act 1947*

Section 73 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 69 *Government Railways Act 1904*

Section 51 deals with offences committed by employees whilst on duty. Currently the provision gives power to other employees to ‘seize and detain’ the alleged offender and take the offender before two justices. The amendment reflects the current practice of taking an offending employee before a police officer in lieu of Justices and has been agreed upon by the WA Govt Railways Commission.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 70 *Guardianship and Administration Act 1904*

Section 97 deals with the functions of the Public Advocate. The amendment corrects an omission in the section by requiring the Public Advocate to investigate any matter referred to him by a court.

Item 71 *Hairdressers Registration Act 1946*

Section 19(3) deals with the method of appeal against a conviction under this Act. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 72 *Health Act 1911*

Section 3(1) is amended to remove the definition of a magistrate. This is no longer required as references to ‘magistrate’ have been changed to ‘court’ throughout the Act.

Section 205 relates to animals suspected of being diseased being seized by medical officers for inspection. Currently, the provision allows the owner of the animal to complain to justices and have them make a determination regarding the future of the animal. Because this is a civil matter, the term ‘complain’ has been replaced with ‘apply’, and the application is now made to the court rather than to justices. The substitution of ‘application’ for ‘complaint’ is also made.

Section 205(4) states that any two justices can hear the complaint. This provision is no longer required and is repealed.

Section 205(7) the words ‘of the seizure, or seizure and carrying away’ are omitted as they are superfluous given that the heading of this section states that that is what the provision relates to.

Section 256(2) deals with the procedure for imposing and recovering penalties. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*. It also states that expenses can be recovered in a summary manner before two justices. This has been changed in line with the general thrust throughout this Bill of transferring the power to deal with such matters to the court.

Section 294 relates to persons who have communicable tuberculosis. Sections 294(3) & (4) deal with procedure for applying to the court for orders admitting and keeping persons who have communicable tuberculosis in a hospital undergoing treatment. Both sub-sections have been repealed and replaced with similar provisions substituting references to ‘complaints’ with ‘applications’ and ‘provisions under the *Justices Act 1902*’ with ‘rules of court of the Magistrates Court’. The existing powers to exclude persons from the hearing are included in the new subsection 4.

Section 307 relates to persons with venereal disease that is likely to be transmitted being detained for treatment. Section 307(4) allows persons so detained to apply to a “resident or police magistrate in the district” to be examined by 2 medical practitioners to determine if they are still diseased. This provision needs amending as the positions of ‘resident or police magistrates’ and magisterial districts are abolished by this legislative package.

Section 362(1) is repealed as it deals with commencing proceedings for offences and the recovery of penalties. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

The wording of various other sections is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology. The wording of various other sections is also amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 73 *Heritage of Western Australia Act 1990*

Section 66 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*

Item 74 *Hire Purchase Act 1959*

Various sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 75 *Home Buildings Contracts Act 1991*

The long title is amended by deleting reference to the *Small Claims Tribunal Act 1974* which is repealed and replaced with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003*.

Item 76 *Income Tax Assessment Act 1937*

Section 225 deals with commencing proceedings for offences and the time limit for commencing proceedings (three years). The provision is covered by section 67 of the *Interpretation Act 1984*, but it is necessary to over-ride the provisions of the *Criminal Procedure (Summary) Act 1902* that provides that complaints must be made within 12 months of the time the complaint arose. The provision also changes terms and names but otherwise continues existing procedure by stating that prosecutions are to be heard by a magistrate.

Item 77 *Interpretation Act 1984*

Section 5 is amended by deleting definitions of ‘Local Court’ & ‘petty sessions court-house’ because they will cease to exist.

Because courts of petty sessions will no longer exist, the definition of ‘court of summary jurisdiction’ or ‘court of petty sessions’ has been changed to remove reference to courts of petty sessions. The replaced provision defines ‘court of summary jurisdiction’ as either the Children’s Court of the Magistrates Court.

The definition of justice has been changed to more accurately reflect the various terms that are used throughout legislation when referring to a Justice of the Peace. It has also been changed to refer to the *Justices of the Peace Act 2003*, which is where provisions are located for the appointment of justices.

Section 67 relates to offences and how to deal with them. It directs the reader to either the *Criminal Procedure (Summary) Act 1902* or *The Criminal Code* depending on whether the offence is simple or indictable. The *Children’s Court of Western Australia Act 1988* provides for a variation of procedure when children are involved. This has always been the case, but amendments to the relevant sections of the *Children’s Court of Western Australia Act 1988*, proposed in this Bill, has made it necessary to add sub-section (5).

Item 78 *Juries Act 1957*

Section 3 is amended to replace the definition of Sheriff with a new definition that is worded in plainer language.

The Second Schedule is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and the *Local Courts Act 1904* and their replacement with the *Magistrates Court Act 2003* and the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology.

Item 79 *The Kalgoorlie Boulder Racing Clubs Act 1904*

The amendments to sections 19, 22 and 23 merely modernise the language and remove anachronisms.

Item 80 *Land Administration Act 1997*

Section 267 deals with commencing proceedings for offences and the time limit for commencing proceedings (ten years). The provision is covered by section 67 of the *Interpretation Act 1984*, but it is necessary to over-ride the provisions of the *Criminal Procedure (Summary) Act 1902* that provides that complaints must be made within 12 months of the time the complaint arose. The provision also states that prosecutions for a continuing offence can be commenced at any time during the continuation of the offence.

Item 81 *Land Boundaries Act 1841*

Section 7 deals with the offence of ‘injuring or defacing land marks’ and provides penalties. For some reason, the penalties are still stated in pounds. The amendment converts the penalties to dollars and removes the procedure for dealing with offences.

Item 82 *Land Drainage Act 1925*

Section 104 provides that that unpaid rates can be recovered by complaint of an officer of the Corporation authorised by the Water Corporation before any 2 justices. As this is a civil matter the method of recovery is inappropriate. Following National Competition Policy recommendations, section 104 of the *Land Drainage Act 1925* is to be included in Schedule 2 (a list of sections from various Acts) of the *Water Services Coordination Act 1995* so that section 104 would apply to other water service providers. The proposed change to section 104 now provides that debts due to the Water Corporation are to be recovered in the same fashion as any other debt by initiating recovery action in a court of competent jurisdiction.

Section 158 states how penalties can be recovered. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 83 *Land Valuers Licensing Act 1978*

Section 35 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 84 *Legal Practice Act 2003*

Amendment to section 123 merely clarifies the intent of the Act and section 210 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 85 *Legal Representation of Infants Act 1977*

This Act relates to the representation of infants in legal proceedings and the amendment extends its provisions to the civil jurisdiction of the Magistrates Court.

Item 86 *Library Board of Western Australia Act 1951*

Section 12 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 87 *Lights (Navigation Protection) Act 1938*

Section 7 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 88 *Limitation Act 1935*

Section 4 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 89 *Liquor Licensing Act 1988*

Subsection 143(3) deals with the enforcement of orders for costs made under the Act by registering the order with the District Court. The subsection is replaced with a provision of similar intent that provides for registration of a certified copy of the order with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Section 169 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 90 *Litter Act 1979*

Section 27A is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 91 *Local Government Act 1995*

Section 9.29 currently defines proceedings with respect to a local court or a court of petty sessions. This is amended by making reference instead to the Magistrates Court, the Children's Court or the State Administrative Tribunal.

Item 92 *Local Government (Miscellaneous Provisions) Act 1960*

Section 430 is amended to reflect the coming into force of the *Civil Judgments Enforcement Act 2003*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 93 *Marketing of Potatoes Act 1946*

Section 40 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 94 *Medical Act 1894*

Section 23 states that sections A, E, F, G and H of the Second Schedule to the *Interpretation Act 1918* are to be incorporated into this Act. Reference to sections A, E and F have been deleted because they are no longer relevant.

Item 95 *Metropolitan Region Town Planning Scheme Act 1959*

Subsection 26(3) deals with the enforcement of orders for costs of repairs made under the Act by registering the order with a Local Court. As Local Courts will be abolished the subsection is replaced with a provision of similar intent that provides for registration of a certified copy of the order with a court of competent jurisdiction (which can be the Magistrates Court, District Court or Supreme Court) and for the order to become a judgment of that competent court and to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Item 96 *Metropolitan Water Supply, Sewerage and Drainage Act 1909*

Section 109 is amended to clarify the intent that the recovery of charges is a civil matter and the use of the word “complaint” is inappropriate as it is a term associated with criminal jurisdictions.

Sections 118–124 and the Tenth, Eleventh and Twelfth Schedules relate to a procedure whereby in respect of any land, any moneys due for water charges or interest thereon that have been unpaid for 5 years or longer, the Water Corporation may send to the Clerk of the Local Court held nearest to the land, a certificate of the total amount of moneys due and in arrears. The sections then provide for the Clerk of the Local Court to issue a warrant of execution against the land of the person in arrears of rate, for the land to be sold and for a transfer to be registered in favour of the purchaser.

Not only were the procedures unusual in that at no stage did a court consider the matter and determine whether a debt was due and a judgment should be awarded but a National Competition Policy Review recommended the sections be repealed as they gave preferential treatment. Cabinet has approved the repeal of these sections but the repeal is being effected by this Bill as otherwise the sections would have needed amendment to reflect the replacement of Local Courts with the Magistrates Court and to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

A new heading of “Memorials against land” is inserted before section 124A to clarify the intent of the following section.

Item 97 *Mines Safety and Inspection Act 1994*

Section 31 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 98 ***Minimum Conditions of Employment Act 1993***

Section 46(2) deals with appeals from decisions of an industrial magistrates court. The amendment does not change the provision in any way, but has merely been re-drafted.

Item 99 ***Misuse of Drugs Act 1981***

Section 3 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 100 ***Motor Vehicle Dealers Act 1973***

The wording of various sections is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 101 ***Motor Vehicle Repairers Act 2003***

The wording of various sections is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 102 ***Motor Vehicle (Third Party Insurance) Act 1943***

The wording of section 16 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 103 ***Museum Act 1969***

Section 50 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 104 ***Native Title (State Provisions) Act 1999***

Section 5.4(4) is amended to clarify the intent of the section by reference to the Magistrates Court and its jurisdictional limit.

Item 105 ***The Newspaper Libel and Registration Act 1884***

Section 17 defines a court of summary jurisdiction and details how fines and penalties can be recovered. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Item 106 ***Occupational Safety and Health Act 1984***

Section 51C deals with the jurisdiction of safety and health magistrates. Sub-section (6) has been added to give those magistrates similar powers with respect to contempt and other matters that are exercised by magistrates under the *Magistrates Court Act 2003*. Amendments to the section now also provide that provisions in the *Magistrates*

Court Act 2003 relating to the Supreme Court's supervisory power and the availability of the prerogative writs also applies to safety and health magistrates. The section has also been amended to recognise the exclusive jurisdiction of the Children's Court.

Section 51E is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Section 52 is amended to reflect the exclusive jurisdiction of the Children's Court when dealing with defendants who are children.

Section 54B deals with appeals. Subsection (1) has been replicated, but re-worded to clarify the provisions.

Item 107 Occupational Therapists Registration Act 1980

Section 42 deals with legal proceedings in respect to offences against this Act. Subsection 2 states that a court of petty sessions shall hear the matter. The amendment to subsection 2 deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 108 Official Prosecutions (Defendant's Costs) Act 1973

Subsection 4(1) is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 109 Parks and Reserves Act 1895

Section 13 is repealed and replaced. The purpose of section 13 is to provide for proceedings for offences under this Act and gives protection to persons acting under the authority of the Act. It achieves that by reference to the incorporation of parts of the schedule to *The Shortening Ordinance 1853*, which makes such provision. The provision is now covered, in part, by section 67 of the *Interpretation Act 1984*. The protection aspect is covered in the replacement provision. The Department of Land Information is aware of the proposed change and is in agreement.

Item 110 Parliamentary Commissioner Act 1971

Section 13(1) states that all departments and authorities are, subject to sub-section (2), subject to the provisions of the Act. Sub-section (2)(g) precludes the Children's Court, or a judge, magistrate or member of the Children's Court. This provision needs to be re-written given that 'members' are replaced with justices of the peace and the new Court needs to be excluded from the provisions of the Act in line with all other courts. The replacement paragraph (g) makes provision for the Magistrates Court and the various persons that can constitute the Court. New paragraph (ga) replaces the reference to member with justice of the peace and includes acting judges. Paragraph (k) is deleted as it refers to stipendiary magistrates. Magistrates are covered under (g).

Item 111 *Parole Orders (Transfer) Act 1984*

Section 9 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 112 *The Partnership Act 1895*

Section 28 which deals with enforcing judgments against a partnership is repealed and is replaced with a similar provision in the *Civil Judgments Enforcement Act 2003*.

Item 113 *Pawnbrokers and Second Hand Dealers Act 1994*

Currently, section 85(1) allows a person who alleges that goods in the possession of a pawnbroker or second-hand dealer are stolen to apply to a justice of the peace for a warrant or summons to have them and the goods brought before a court of petty sessions. The re-wording of this section changes the procedure to one of a civil matter by replacing ‘complaint’ with ‘application’ and replacing the justice of the peace with the Court and the court of petty sessions with the Magistrates Court.

Section 85(2) sets out the type of orders the court can make after the summons or warrant has been issued. It has been re-worded to expand the provision and make it clear as to under what circumstances the Court can make such orders.

Section 87(1) states that the *Justices Act 1902* provides the procedure in respect to Sections 85 & 86 (86 relates to goods seized by Police where there are competing claims in respect to ownership and the Police apply to the court for an order). Because both matters are civil matters, the procedure will now be pursuant to the *Magistrates Court (Civil Proceedings) Act 2003*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 114 *Petroleum Act 1967*

Section 17 provides for compensation to be paid to the owner or occupier of private land for the right of a licensee to occupy that land. Subsection (4) provides that if the parties are unable to agree on the amount of compensation, they can apply to have the court make a determination. The amendment does not change the context of the provision in any way, other than to replace ‘Local Court’ with ‘Magistrates Court’ and re-word the provision to for ease of understanding.

The wording of various other sections is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 115 *Petroleum Products Pricing Act 1963*

The *Civil Judgments Enforcement Act 2003* introduces a uniform scheme for the enforcement of civil judgments and in the interest of having but one scheme this clause replaces section 22G(4) by deleting it in its entirety and substituting a provision that will state that an order of the Commissioner can be enforced by lodging a certified copy of the order and an accompanying affidavit stating the extent of

compliance with a court of competent jurisdiction and that when lodged the order is to be taken to be a judgment of that court.

The wording of sections 23 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* and with consequent changes in terminology.

Item 116 Petroleum Safety Act 1963

Section 35 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 117 Pharmacy Act 1964

Section 43 deals with offences under this Act. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 118 Podiatrists Registration Act 1984

Section 41 deals with legal proceedings under this Act. The amendment to subsection 2 deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 119 Poisons Act 1964

Section 57 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 120 Police Act 1892

This Act makes reference to Justices constantly throughout its provisions. Many minor amendments are made to remove those references and to replace them either with the Court, or where the intention is that a magistrate only is to deal with such matters, a magistrate. Justices will constitute the Court when and where required in circumstances to be prescribed by rules of court.

Amendments with respect to sections 12,13,15,16,18,20,31,64,67 and 83 refer to provisions regarding offences. The various references to Justices are all preceded by the words ‘upon conviction’ and go on to stipulate a penalty. The reference to Justices is superfluous and given the general thrust throughout this exercise of transferring the power to deal with such matters to the court, is inappropriate.

Section 41(1) deals with Police seizing stolen property from on board a ship. Any person who obstructs the officer commits an offence. A passage of the provision has been re-worded to simplify the provision without changing the context or the penalty.

Section 41(5) states that costs or expenses ordered under sub-section (3) can be recovered in the same way as moneys ordered to be paid by Justices on conviction. The subsection is repealed as this is contrary to current practice as it is a civil debt and must be pursued as such.

Section 41(7) deals with Police stopping a ship from sailing if they believe the ship is likely to be used for illegal purposes. Any person who obstructs the officer commits an offence. A passage of the provision has been re-worded to simplify the provision without changing the context or the penalty.

Section 49 has been amended to remove the reference to bail, as all matters relating to bail are now contained in the *Bail Act 1982*.

Section 50 relates to the offence of refusing to give a name and address. A passage of the provision has been re-worded to simplify the provision without changing the context or the penalty.

Section 64 deals with the offence of fight promotion. It has been amended to remove the ability to order the defendant to find a surety to keep the peace as such sentencing matters are now dealt with in the *Sentencing Act 1995*.

Section 65(1) deals with the offence of a person having no visible means of support. The provision has been re-worded for simplification without changing the context or the penalty.

Section 68 provides that Police can apply to Justices that convict a person of various offences to order that any monies found in his possession can be used to defray the costs of transporting the offender to prison and keeping his animals fed. If there are insufficient funds, his cattle can be sold to raise additional funds. This provision is obsolete and has been removed (with consent of the Western Australia Police Service) except for the final sentence of the section, which allows the Police to enter and search the premises and property of the suspect. Police advise that this part of the provision is still required as a like provision does not exist elsewhere in this Act or any other Act.

Section 72 relates to stolen goods that are in the possession of a pawnbroker or second hand dealer. It sets out the procedure for bringing the broker or dealer before the Court and ordering the return of the property to the owner. Section 73 deals with establishing the rightful owner. Both sections are obsolete as adequate provisions are contained in the *Pawnbrokers and Second Hand Dealers Act 1994*.

Section 78 provides that a person who claims entitlement to property that is in the possession of another person can complain to a Justice. The Justice can summon the person complained of and inquire into the matter to determine ownership and make any appropriate orders. This is an obsolete civil provision that is out of place in this Act. Adequate provisions are contained under the general civil jurisdiction of the Magistrates Court as prescribed by the *Magistrates Court (Civil Proceedings) Act 2003*.

Section 100 provides that any inhabitant of a city or town can complain to any two Justices that a privy, pigsty or other matter or thing is a nuisance. The Justices can investigate and make orders to remedy or remove the nuisance. Any person neglecting the orders can be fined. This is another obsolete civil provision which is out of place in this Act.

Section 121 provides that any person wishing to blast a rock or tree within the limits of a town must give notice to the Chairman of the council or a stipendiary magistrate. A notice will then be issued giving directions for the time the blast can take place. A person not complying with the direction can be fined. This is another obsolete civil provision which is out of place in this Act.

Section 127 deals with procedure for committing defendants to a superior court. The provision is obsolete as all such procedure is provided for in the *Criminal Procedure (Summary) Act 1902*.

Section 128 provides that upon hearing a complaint, if a Justice considers there were no grounds for making the complaint, an order can be made requiring the informant to pay compensation to the person complained of for loss of time and expenses. The informer can also be imprisoned for up to 6 months, except if he/she is a police officer. The provision is obsolete as all such procedure is provided for in the *Criminal Procedure (Summary) Act 1902*.

Item 121 Pollution of Water by Oil and Noxious Substances Act 1987

Section 31 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 122 Poultry Industry (Trust Fund) Act 1948

Section 26 deals with the proceedings for offences. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 123 Prisoners (Interstate Transfer) Act 1983

Various sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 124 Prisons Act 1981

Section 3 is amended by deleting the definition of 'magistrate'. The definition is no longer necessary as it is a defined term in the *Magistrates Court Act 2003*.

Section 21 provides that when a prisoner is required to attend court on a charge, other than the charge for which he/she is in custody, certain persons are authorised to order the delivery of the prisoner to the court in question. The amendment replaces two justices with an officer of the court, making the process more convenient and workable. Justices are not always available and a court officer is usually the person arranging court sittings and is therefore the logical person to make such an order.

Section 22 provides that when a prisoner is required to attend any judicial proceeding, inquest or Royal Commission, certain persons are authorised to order the delivery of the prisoner to that judicial proceeding. The amendment replaces two justices with an officer of the court for the same reasons as above and also includes the State Coroner amongst the list of authorised judicial officers.

Section 23 provides that when a prisoner is entitled to be present at a criminal appeal, either as the appellant or for any other reason, certain persons are authorised to order the delivery of the prisoner to the place where the Court of Criminal Appeal is to sit. The amendment replaces two justices with a registrar of the Magistrates Court for the same reasons as above. The reason that this amendment specifies a registrar of the Magistrates Court whereas the previous two provisions have a more general description and cater for various courts, is that this provision deals with criminal appeals which emanate from the Magistrates Court.

Section 73 provides that when a charge of an aggravated prison offence is referred to a visiting justice, he/she may direct that the superintendent lay a complaint of an aggravated prison offence, or deal with the offence as a minor prison offence. Crown Solicitor's advice has been obtained regarding this provision, and it has been determined that if a complaint is laid, then the matter should be dealt with as if it was dealt with by the Court. The lack of procedure for such a situation appears to have pre-existed for a long time. The inclusion of sub-section (2) addresses the oversight.

Section 74 deals with the hearing of prison offences. Sub-section (2) states that when hearing an aggravated offence, the magistrate or 2 justices can direct that the it take place in open court. Given the previous amendment, this replacement sub-section is more appropriate.

Section 79(1) sets out the way a magistrate or justices are to hear an aggravated offence. The amendment is necessary given the amendment to section 73.

Section 112 which deals with committals to prison under the provisions of the *Debtors Act 1871* is repealed as that Part of the *Debtors Act 1871* has been repealed

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 125 Professional Standards Act 1997

Section 54 deals with proceedings in respect to offences against this Act. The amendment deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 126 Prostitution Act 2000

Various sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 127 Protective Custody Act 2000

The wording of various sections is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 128 *Psychologists Registration Act 1976*

Section 55 deals with legal proceedings. Subsection (2) states that a court of petty sessions shall hear the matter. The amendment to subsection (2) deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 129 *Public Notaries Act 1979*

Section 3 is amended by changing the meaning of ‘district’ from a current magisterial district under the *Magisterial Districts Act 1886* to a district as determined by rules of court. Section 17 allows Judges of the Supreme Court to make rules generally for carrying this Act into effect. The change is necessary due to the repeal of the *Magisterial Districts Act 1886*.

Item 130 *Public Trustee Act 1941*

Section 37 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 131 *Public Works Act 1902*

Section 121 deals with the procedure for imposing and recovering penalties. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 132 *Radiation Safety Act 1975*

Section 51 deals with proceedings in respect to offences against this Act. Subsection (2) is superfluous as it is covered by section 67 of the *Interpretation Act 1984*. The amendment deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 133 *Rail Safety Act 1988*

Section 56 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 134 *Real Estate and Business Agents Act 1978*

Various sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 135 *Restraint of Debtors Act 1984*

Sections 6 and 22 are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 136 *Road Traffic Act 1974*

Section 76 deals with applications for extraordinary licences. Sub-section (2)(b) currently states where an application can be made depending on where the disqualification was imposed. The replacement provision and the additional provision, (2)(c), contain the same information and make the same provisions as the

current (2)(b) but have been re-written in a more simple, easy to understand format. References to courts of petty sessions have been replaced with court of summary jurisdiction and Magistrates Court. The provision also now contains a specific reference to the Children's Court whereas previously it was only implied.

76(2a) has been added. The proviso that applications under sub-section (1) shall be heard by a magistrate is contained in the current subsection (2)(b). It has been moved to a specific subsection as a preferred method of drafting.

Section 76 (8)(b) has been replaced with a similar provision which reflects changing the term "courts of petty sessions with the Magistrates Court and Children's Court.

Section 76(10)(a) stated that an application made to a superior court is to be made in accordance with their rules. This is stating the obvious and the provision is superfluous.

Section 76(10)(b) states that an application made under this section (76) to a court of petty sessions is to be made in accordance with regulations made under the *Justices Act 1902*. The replacement paragraph refers to rules of court of the Magistrates Court and the Children's Court. The Children's Court currently adopt regulations under the *Justices Act 1902* for their procedure. The President of the Children's Court is aware of this amendment and has indicated that the Court may need to develop its own rules.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 137 The Sale of Goods Act 1995

Section 26 is repealed as it is superfluous with the coming into operation of the *Civil Judgments Enforcement Act 2003*.

Item 138 Sale of Land Act 1995

Section 7 is amended to reflect the repeal of the *Local Courts Act 1904* and the enforcement provisions of the *Supreme Court Act 1935* and their replacement with the *Civil Judgments Enforcement Act 2003* with consequent changes in terminology.

Item 139 Security and Related Activities (Control) Act 1996

Section 70 is amended to reflect the change in title from "clerk" to "registrar" brought about by the *Magistrates Court Act 2003*.

Item 140 Sentencing Act 1995

Section 3(3) states that this Act does not apply to acts of contempt in certain circumstances. The contempt provisions refer to the *Justices Act 1902* which has been amended and the *Local Courts Act 1904* which has been repealed. The amendment refers to the general contempt provision contained in the *Magistrates Court Act 2003*. The inclusion of the contempt provision contained in the *Children's Court of Western Australia Act 1988* rectifies an oversight.

Section 119 provides that if the amount payable under a compensation order is not paid within 28 days after the date of the order, it may be recovered as a judgment debt in a court of competent jurisdiction and the victim is not required to pay fees for a certified copy of a compensation order and the copy may be registered (without payment of a fee) as a judgment in a court of competent jurisdiction. The section is amended to be consistent with like amendments to other Acts and able to be enforced in accordance with the provisions of the *Civil Judgments Enforcement Act 2003*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 141 *Settlement Agents Act 1981*

Section 85 is amended to reflect the change in title to “registrar” brought about by the *Magistrates Court Act 2003*.

Section 121 is amended to reflect the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902*.

Item 142 *Soil and Land Conservation Act 1945*

Section 44(2) deals with proceedings for offences. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 143 *Spear-guns Control Act 1955*

Section 7 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 144 *Spent Convictions Act 1988*

Section 3 is amended to reflect the repeal of the *Justices Act 1902* and its replacement with the *Justices of the Peace Act 2003*.

Item 145 *State Administrative Tribunal Act 2003 [Bill 213-1]*

Section 84 is amended reflect the repeal of Part VII of the *Supreme Court Act 1935* and its replacement with a similar provision in the *Civil Judgments Enforcement Act 2003*.

Section 115 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 146 *Stock (Identification and Movement) Act 1970*

Section 60 deals with offences against this Act. Sub-section (2) states that a court of petty sessions shall hear the matter. The amendment deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 147 *Strata Titles Act 1985*

Section 15 is amended reflect the repeal of Part VII of the *Supreme Court Act 1935* and the *Local Courts Act 1904* and their replacement with the *Civil Judgments Enforcement Act 2003* and consequent changes in terminology.

Item 148 *Street Alignment Act 1844*

Section 9 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Section 16 deals with appeals and states that a person aggrieved by a conviction can under this Act appeal to the next Court of Quarter Sessions. The provision is obsolete and superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 149 *Street Collection (Regulation) Act 1940*

Section 9 deals with proceedings in respect to offences against this Act. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 150 *Suitors Fund Act 1964*

Section 3 contains definitions. The definition of ‘appeal’ is by reference to an order to review granted under the *Justices Act 1902*. This has been amended to reflect the new appeal provisions contained in the *Criminal Procedure (Summary) Act 1902*.

The definition of ‘court’ states that it includes a Small Claims Tribunal constituted under the *Small Claims Tribunal Act 1974*. This is no longer required as the *Small Claims Tribunal Act 1974* is to be repealed. Small Claims applications will be dealt with in the court system as part of the minor cases procedure contained in the *Magistrates Court (Civil Proceedings) Act 2003*.

Section 5 deals with the Suitors Fund fee to taken by courts when they issue writs, summonses etc. Currently, a fee is taken upon the entry of a plaint in the Local Court (other actions commenced do not attract a fee) and upon the issue of any summons to a defendant in a court of petty sessions (other courts of summary jurisdiction do not collect the fee)

The replacement provision extends the capability of the Magistrates Court to collect such fees in respect to all actions commenced in its civil jurisdiction. It also requires that all summonses to defendants attract the fee where the procedure of the *Criminal Procedure (Summary) Act 1902* is used. This will result in additional revenue being collected as courts of summary jurisdiction other than the Magistrates Court use that Act for procedural purposes. The rationale for this change is that claims on the Fund can be made in respect to any matter before any court of summary jurisdiction.

Section 6 requires the departmental head to advise the Treasury every quarter of the total number of processes issued out of various courts that attracted the fee. The change removes reference to local courts and petty sessions and replaces them with the Magistrates Court and includes the Children Court. The Children Court has been included as it is deemed to be a court of summary jurisdiction.

Item 151 *Surveillance Devices Act 1998*

The wording of the sections 3 and 23 is amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 152 *Timber Industry Regulations Act 1926*

Section 15 deals with the examination and inquiry as to the cause of an accident. Subsection (5) states that for the purposes of any inquiry under this section, a stipendiary magistrate or industrial magistrate's court shall have all the powers of a court of petty sessions under *Justices Act 1902* as to summoning witnesses and taking evidence. The amendment removes the reference to a stipendiary magistrate (industrial magistrates courts are established in Perth, Bunbury, Kalgoorlie and Geraldton which is considered sufficient for the purposes of conducting inquiries) and replaces reference to the *Justices Act 1902* with the *Criminal Procedure (Summary) Act 1902*.

Various other sections are amended to reflect the repeal of the *Stipendiary Magistrates Act 1957* and its replacement with the *Magistrates Court Act 2003* with consequent changes in terminology.

Item 153 *Travel Agents Act 1844*

Section 55 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 154 *University of Western Australia Act 1911*

Section 16A provides that the Senate, in the name and on behalf of the University, may make by-laws for the purpose of protecting the lands of the University. Subsection (9) states a complaint for a breach of a by-law by a person who is enrolled as a student of the University may be (a) dealt with as a disciplinary matter by the University or (b) dealt with pursuant to section 16D. (Section 16D provides for matters to be dealt with summarily within a time limit of six months). The amendment replaces the provision, removing the reference to 16D (which is repealed) and stating the matter can be dealt with as a simple offence. It also removes the reference to the *Justices Act 1902* as it is superfluous given that section 67 of the *Interpretation Act 1984* sets out how simple offences are heard.

Item 155 *Veterinary Preparations and Animal Feeding Stuffs Act 1976*

Section 64 deals with offences under this Act. The amendment deletes reference to a court of petty sessions but otherwise continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 156 *Vexatious Proceedings Restriction Act 2000*

Section 6 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003*. It also reflects amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 157 *Warehousemen’s Liens Act 1952*

Section 10 deals with the disposition by a warehouseman of the proceeds of a sale. Sub-section (2) states that where there is a surplus and there are conflicting claims to the surplus, it shall be paid into the local court nearest to the premises of the warehouseman. The amendment to (b) replicates the current paragraph, other than referring to the Magistrates Court, but has been re-worded.

Various other sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 158 *Water Boards Act 1904*

Section 34 will be amended by deleting “any 2 Justices of the Peace may hear and determine the matter in a summary way, and” and inserting – “the Magistrates Court”.

Section 102 will be amended by deleting “, by complaint before two Justices of the Peace, or”.

These amendments are necessary to accommodate the repeal of the *Stipendiary Magistrates Act 1957* (WA) and the *Local Courts Act 1904* (WA) and their replacement with the proposed *Magistrates Court Act 2003*, *Civil Judgments Enforcement Act 2003* and *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Sections 108 – 109 and the Seventh Eighth and Tenth Schedules relate to a procedure whereby in respect of any land, any moneys due for water charges or interest thereon that have been unpaid for 3 years or longer, the Water Board may petition a magistrate of a Local Court to order the issue of a warrant of execution against the land of the person in arrears of rates, for the land to be sold and for a transfer to be registered in favour of the purchaser.

Not only were the procedures unusual in that at no stage did a court consider the matter and determine whether a debt was due and a judgment should be awarded but the retention of these procedures would result in these provisions being inconsistent with comparable provisions in the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*. The sections are being repealed and replaced with the equivalent of section 124A of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

This means that rates and charges under the *Water Boards Act 1904* (WA) will be recoverable by court action (section 102) and will be assisted by a power to prohibit dealings in land.

Various sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003*, the *Magistrates Court (Civil Proceedings) Act 2003* and the *Civil Judgments Enforcement Act 2003*. It also reflects amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 159 *Waterways Conservation Act 1976*

Section 71(1) deals with offences against this Act. The provision is superfluous other than stating that the court must be constituted by a magistrate.

Section 71(4) deals the procedure for hearing offences and the time limit for commencing proceedings (two years). The provision is covered by section 67 of the *Interpretation Act 1984*, but it is necessary to over-ride the provisions of the *Criminal Procedure (Summary) Act 1902* that provides that complaints must be made within 12 months of the time the complaint arose.

Item 160 *Weapons Act 1999*

Various sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 161 *Weights and Measures Act 1915*

Section 40 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 162 *Welfare and Assistance Act 1961*

Section 14 states that actions for recovery of advances pursuant to the provisions of this Act may be taken by the Minister at any time notwithstanding the provisions of section 51 of the *Justices Act 1902*. Section 51 limits the time for commencing proceedings to two years. The provision is deleted as the proceedings are of the nature of a civil matter and the existing provision is no longer relevant.

Various other sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003*, the *Civil Judgments Enforcement Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 163 *Western Australian Marine Act 1982*

Section 104 deals with the establishment of Courts of Marine Inquiry. It states that jurisdiction is conferred upon such Local Courts as may be proclaimed by the Governor for the purpose to hear and determine inquiries, investigations, appeals and references under this Act according to and under the *Local Courts Act 1904* (so far as it is applicable) and of this Act.

The replacement section changes the concept of Courts of Marine Inquiry in that rather than invest the jurisdiction on certain courts (this was possible before as each local court was an individual court) the Governor, may by proclamation, establish a Court of Marine Inquiry at locations where and when they may be needed.

Section 105 gives all local court magistrates the authority to sit as a Court of Marine Inquiry (obviously this can only occur at locations the Governor has nominated) together with 2 assessors appointed under this Act. The proposed change will allow the Chief Magistrate to nominate the magistrates who will constitute the Court. The changes are designed to retain the 'status quo' but are necessary due to the different

structure of the Magistrates Court. The Department of Transport is aware of and has agreed to the proposed changes.

Section 107 states that all officers of local courts proclaimed for the purposes of this Act under section 104 shall act as officers of Courts of Marine Inquiry. The change merely substitutes the Magistrates Court for local courts.

Section 108 is amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* with consequent changes in terminology.

Item 164 Western Australian Trotting Association Act 1946

Section 9 is amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 165 Wheat Products (Prices Fixation) Act 1938

Section 19(2) deals with contravening the Act and the imposition of penalties. Sub-section (2) states that any penalty is recoverable in a summary manner before a stipendiary or police magistrate. The amendment deletes reference to “stipendiary” or “police” but continues the existing state of affairs by providing only a magistrate may constitute a court to hear charges under this Act.

Item 166 White Phosphorus Matches Prohibition Act 1912

Section 14 deals with the procedure for imposing and recovering penalties. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 167 The Wild Cattle Nuisance Act 1871

Section 9 states that all licensed persons (licensed to destroy wild cattle) shall every three months make a return to the Resident Magistrate of their respective Districts, and to the policeman stationed nearest to the abode of such licensed persons, of all animals destroyed by them, any portion or portions of which may have been appropriated or used by the person destroying the same. The section provides for a penalty for non-compliance. The changes replace the resident magistrate with the Magistrates Court and insert the penalty at the end of the section. The penalty has been altered by removing the imprisonment option.

Section 11 states a complaint made regarding alleged misconduct of a licensed person can be heard by the resident magistrate. The changes replace the references to magistrates and justices with the Magistrates Court.

Various other sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* as well as reflecting amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 168 *Wildlife Conservation Act 1950*

Section 26(2) deals with proceedings for offences against this Act. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Various other sections are amended to reflect amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.

Item 169 *Workmen's Wages Act 1898*

The definition of 'court' in section 2 has been altered slightly. It currently states that it means the Court in which any proceeding may be taken under this Act, and includes the Judge of any such court; and a Warden, and any two or more justices of the peace. The new definition does not include justices of the peace. This is a specialised area and justices would not have the expertise to deal with such matters.

Section 24 deals with the procedure for recovering penalties. The provision is superfluous as it is covered by section 67 of the *Interpretation Act 1984*.

Item 170 *Young Offenders Act 1994*

Section 3 is amended to reflect the new title of "registrar of the court" instead of "clerk of the court" adopted by the *Children's Court of Western Australia Act 1988*.

Section 56(4) provides a person to whom payment is to be made under this section may recover any amount in arrear by obtaining from the clerk of the court a certificate given by the clerk as to the amount due under the order to the person and not paid, and upon the filing of the certificate in the office of a Clerk of a Local Court, the certificate is deemed to be a judgment that requires payment of money duly made by a Local Court and payment may be enforced accordingly. This has been replaced with a provision that applies section 119 of the *Sentencing Act 1995* (see Schedule 1 Item 143)

The removal of references to 'members' in sections 166 & 169 is because the office of 'member' of the Children's Court is to be discontinued. In future, appointments as a justice of the peace will automatically include the power to sit in a Children's Court.

Various other sections are amended to reflect the repeal of the *Local Courts Act 1904* and its replacement with the *Magistrates Court Act 2003* and the *Magistrates Court (Civil Proceedings) Act 2003* as well as amendments to and the re-titling of the *Justices Act 1902* to the *Criminal Procedure (Summary) Act 1902* with consequent changes in terminology.