

## Courts of Petty Sessions: Constitution, Powers and Procedure

### Terms of Reference

In 1974 the Commission received a general reference to review the *Justices Act 1902* (WA), which regulates the procedure of the Courts of Petty Sessions.

### Background of Reference

For a number of years, the Commission had been examining this reference alongside its corresponding review of the *Local Courts Act 1904* (WA) and the *Local Court Rules 1961* (WA).<sup>1</sup> These parallel references constituted a comprehensive review of the inferior courts system in Western Australia. Because of its size, this reference was divided into three parts. In Part II of the reference, the Commission examined the role of Justices of the Peace, the constitution, powers and procedures of the Courts of Petty Sessions, orders to keep the peace and the position of unrepresented defendants.

As part of the research for this reference the Commission carried out a study of the relevant law in other Australian jurisdictions and in England and New Zealand. This research informed the preparation of a discussion paper which was issued in June 1984. The Commission also drafted a questionnaire, which was distributed with the discussion paper in order to stimulate public comment on these issues.

### Nature and Extent of Consultation

The Commission received a large number of responses to the discussion paper. Various organisations and individuals made written submissions and completed the questionnaire. Responses were received from members of the magistracy, Clerks of Petty Sessions, the Aboriginal Legal Service, the Criminal Lawyers Association, the Legal Aid Commission of Western Australia, branches of the Justices Association, government departments and members of the public. Following the publication of the discussion paper, representatives from the Commission attended meetings of branches of the Royal Association of Justices of Western Australia at Albany, Geraldton, Gnowangerup, Narrogin, Pinjarra and Stirling to discuss issues raised in the paper. As well as making oral submissions during these consultations, a large number of Justices of the Peace responded with written submissions. In total, the Commission received over 100 written submissions. These comments and submissions were analysed and taken into account by the Commission in formulating its recommendations. The final report, containing the Commission's recommendations, was delivered in November 1986.<sup>2</sup>

### Recommendations

The Commission made 114 recommendations. In particular, the Commission recommended that Courts of Petty Sessions and Local Courts should be merged and that the rules relating to Justices of the Peace and the procedure in Courts of Petty Sessions should be reformed along specified lines. The principal recommendations were that:

- A statutory body should be established to regulate the appointment, selection, distribution, training and performance of Justices of the Peace.
- Courts of Petty Sessions and Local Courts should be merged to create a single court of general inferior jurisdiction with the following divisions:
  - (a) an Offences Division;
  - (b) a Civil Division;

<sup>1</sup> See Law Reform Commission of Western Australia, *Local Courts: Jurisdiction, Procedure and Administration*, Project No 16 (I) (1988).

<sup>2</sup> Law Reform Commission of Western Australia, *Courts of Petty Sessions: Constitution, Powers and Procedure*, Project No 55(II) (1986).

- (c) a Small Debts Division;
  - (d) an Administrative Law Division; and
  - (e) a Family Law Division.<sup>3</sup>
- The procedure for dealing with offences tried summarily should be reformed so that:
    - (a) complaints are in writing and contain the necessary particulars for giving reasonable information regarding the nature of the charge;
    - (b) pre-trial hearings may be held at the discretion of the court;
    - (c) the court has power to exclude people from the courtroom only where it is necessary in the interests of justice; and
    - (d) a simple procedure by way of application on notice to the other party is introduced to deal with applications to the court.
  - The system for committal proceedings should be altered so that:
    - (a) defendants are allowed to plead guilty at an early stage of the proceedings, subject to certain safeguards;
    - (b) committal proceedings are held in open court, subject to the power of the presiding officer to exclude members of the public where it is necessary in the interests of justice; and
    - (c) the presiding officer has a discretion to award costs to the defendant where he or she is not committed for trial.
  - There should be changes to the provisions relating to restraining orders to ensure that:
    - (a) any person having the care or charge of another person may apply for a restraining order for the protection of that person; and
    - (b) the court has the power to award costs at the hearing on the return of a summons to show cause why an ex parte order should not be confirmed.
  - Changes should be made to improve the position of unrepresented defendants so that:
    - (a) before proceeding to impose a sentence on an unrepresented defendant who has pleaded guilty, the court must ensure that the plea is unequivocal; and
    - (b) the training of justices includes instructions on the measures which they should adopt to ensure that unrepresented defendants are dealt with fairly.

The Commission also made a number of other consequential recommendations. A complete outline of all the recommendations may be found in chapter 11 of the Commission's final report.

#### Legislative or Other Action Undertaken

The Attorney-General acknowledged receipt of the final report during parliamentary proceedings on 27 October 1987.<sup>4</sup> In 1991 Parliament addressed a number of the Commission's more minor recommendations by enactment of the *Miscellaneous Repeals Act 1991* (WA). This Act repealed a number of Imperial statutes relating to Justices of the Peace as recommended by the Commission.

The Commission's primary recommendations were considered in a 1997 Ministry of Justice report on the Amalgamation of Courts of Summary Jurisdiction.<sup>5</sup> The Ministry of Justice report analysed the current structure and jurisdiction of the lower courts, examined the Commission's recommendations and considered the situation in other Australian jurisdictions where similar legislation has been enacted. This report

<sup>3</sup> An identical recommendation was made by the Commission in its review of the Local Court; see above n 1.

<sup>4</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 27 October 1987, 5041 (Mr JM Berinson, Attorney-General).

<sup>5</sup> Ministry of Justice Court Services, *Amalgamation of Courts of Summary Jurisdiction Report*, February 1997.

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recognised the widespread support for a proposed merger of Local Courts and Courts of Petty Sessions and contained proposals for the introduction of legislation to implement the Commission's recommendations.

### Currency of Recommendations

Generally, the Commission's recommendations remain current. Since delivery of the final report in 1986, however, some aspects of the Commission's recommendations have become redundant through the enactment of contrary legislation.<sup>6</sup> Others have been superseded by recommendations in more recent Commission reports; for instance, the 1999 *Review of the Criminal and Civil Justice System in Western Australia* ("Project No 92").<sup>7</sup> This review reaffirmed the need for a thorough overhaul of the *Justices Act 1902* (WA). Importantly, the Commission restated its recommendation for a merger of the Courts of Petty Sessions and Local Courts to form a single court of general inferior jurisdiction.

Since the Commission's 1986 report the Ministry of Justice has continued to acknowledge the importance of these reforms and has been progressing the implementation of legislative changes. The Courts Services Division at the Ministry (now Department of Justice) is currently preparing a Cabinet submission for approval to draft a Magistrates' Court Bill with proclamation anticipated for 2003. The Ministry of Justice has indicated that this legislation will be drafted with the specific aim of incorporating as many of the Commission's Project No 92 recommendations as possible. Recently, the Department of Justice initiated the establishment of a steering committee, comprised of key stakeholders, to oversee the development of the Bill and to examine and consider how to incorporate and implement the Commission's recommendations

### Action Required

The Commission's recommendation for the merger of Courts of Petty Sessions and Local Courts could be effectively implemented through the introduction of the proposed Magistrates' Court Bill. Further consideration may need to be given to the possibility of reforming the procedure, administration and powers of Courts of Petty Sessions within the context of the Commission's more recent recommendations in Project No 92.

### Priority – High

This assessment is influenced by the continuing need for substantial reform of the criminal justice system. The need for reform was reaffirmed by the Commission in its comprehensive review of the criminal and civil justice system and has been further endorsed by the Department of Justice. The Government has indicated that reform of the criminal justice system, according to the recommendations of the Commission in Project No 92, should be given high priority status. This assessment is also influenced by the need for efficiency and consistency in the inferior court system and the fact that a combined inferior court already operates successfully in most other Australian jurisdictions.

<sup>6</sup> For instance the provisions in the *Justices Act 1902* (WA) relating to the preventative jurisdiction of the Courts of Petty Sessions and s145 which provided for the payment of a fine to the victim of an assault have since been repealed.

<sup>7</sup> Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System in Western Australia* Project No 92 (1999).