

## Review of the Justices Act 1902: Appeals

### 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

Earlier, in 1973, the Commission was given a specific reference to consider and report on the procedure for appeals from Courts of Petty Sessions with a view to such appeals being simplified, and amongst other things, rendered less costly.<sup>1</sup> The Commission subsequently received this reference to comprehensively review the *Justices Act 1902* (WA) ("the Act"). It was decided that the two references be merged and that the question of appeals be dealt with as Part I of the comprehensive review of the Act.

At the time of the reference, a number of unsatisfactory features of the law and procedure for appeals from Courts of Petty Sessions had become apparent. For instance, under Part VIII of the Act there were two modes of appeal from Courts of Petty Sessions: ordinary appeals and appeals by way of an order to review. Because of the different characters of the two modes of appeal, different procedures were provided in the Act for each. In some respects the procedures coincided, but in many instances they differed, sometimes for no apparent reason. Their development along separate lines appeared largely to be the result of historical accident. It was felt that there was a need to reduce the costs of the appeal process, to simplify the right of appeal and to remove technical restrictions and other difficulties associated with the two separate procedures.

In 1976 the Commission carried out a survey of appeals instituted under Part VIII of the Act. The Commission also undertook a study of the law in other Australian jurisdictions and in England and New Zealand. In February 1977, as part of the consultative process for the entire reference, the Commission placed a press advertisement inviting preliminary submissions from interested individuals and organisations regarding practical problems experienced with the operation of the Act. A number of the submissions received related to the issue of appeals. These informed the preparation of a working paper, delivered in February 1978.

### Nature and Extent of Consultation

The working paper was circulated for comment to various individuals and organisations including the Aboriginal Legal Service of Western Australia, the Chief Justice and judges of the Supreme Court, the Law School of the University of Western Australia, the Commissioner of Police and the Law Society of Western Australia. A notice was also placed in *The West Australian* inviting comments and criticism on the paper. A number of responses were received, including submissions from the Law Society of Western Australia and several individuals. The Commission considered all submissions in preparing its final report, which was delivered to the Attorney-General in April 1979.<sup>2</sup>

### Recommendations

The Commission considered that the existing dual system of appeals was unnecessarily cumbersome and recommended that it be replaced by a single system, with an emphasis on clarity and simplicity.

<sup>1</sup> See Law Reform Commission of Western Australia, *Appeals from Courts of Petty Sessions*, Project No 48 (referred 1973, became Project No 55(I)).

<sup>2</sup> Law Reform Commission of Western Australia, *Review of the Justices Act 1902: Appeals*, Project No 55(I) (1979).

A number of other consequential recommendations were also made. A complete record of the Commission's recommendations, including detailed recommendations in respect of procedural changes required to ensure the viability of the appeals system, may be found in chapter seven of the final report.

#### Legislative or Other Action Undertaken

The Attorney-General confirmed receipt of the Commission's report during parliamentary proceedings on 6 December 1979.<sup>3</sup>

In 1989 Parliament passed the *Justices Amendment Act 1989* (WA) which substantially implemented the Commission's recommendations. Importantly, the amending Act enacted the Commission's principal recommendation to provide for a single mode of appeal.

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<sup>3</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 6 December 1979, 5900 (Mr I Medcalf, Attorney-General).