



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 72**

**Retention Of Court Records**

**WORKING PAPER**

**MARCH 1979**

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

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## **PREFACE**

The Law Reform Commission has been asked to review the law relating to the retention of records of Courts of Petty Sessions and Local Courts.

The Commission having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms (with reasons where appropriate) on individual issues raised in the working paper, on the paper as a whole or on any other aspect coming within the terms of reference, are invited. The Commission requests that they be submitted by 15 June 1979.

A notice has been placed in *The West Australian* inviting anyone interested to obtain a copy of the working paper and to submit comments.

The research material on which the working paper is based is at the offices of the Commission and will be made available there on request.

## CHAPTER 1 - TERMS OF REFERENCE

1.1 The Commission has been asked to review both the *Justices Act 1902*<sup>1</sup> and the *Local Courts Act 1904*.<sup>2</sup>

1.2 As the State Intermediate Records Repository is nearing the stage where it will be unable to accept any further records of Courts of Petty Sessions and Local Courts, the Attorney General has asked the Commission to give priority to the question of the retention of records of those courts with a view to separate consideration being given to implementation of the recommendations of the Commission in advance of its recommendations on the principal references.

1.3 This working paper is only concerned with considering the length of time and the manner in which the records should be stored. It is not concerned with the privacy aspects of the storage of records or with whether a person's criminal record should be expunged after a certain length of time.<sup>3</sup>

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<sup>1</sup> The Commission has already issued a working paper dealing with appeals from Courts of Petty Sessions: Project No. 55, *Review of the Justices Act 1902; Part I - Appeals* (February 1978).

<sup>2</sup> The Commission has issued a working paper dealing with the recovery of small debts in Local Courts: Project No. 63, *Small Debts Court* (July 1978).

<sup>3</sup> The Commission has a project on *Privacy* (Project No. 65) .One matter which the Commission is required to consider under that project is whether :

"...a person's criminal record should be expunged after a stipulated time, and if so, in what circumstances and under what conditions, and as to whether the same should revive in the event of such person sustaining a further conviction".

## CHAPTER 2 - PRESENT LAW AND PRACTICE

### Courts of Petty Sessions

2.1 Courts of Petty Sessions have jurisdiction to hear charges relating to criminal matters which may be heard in a summary way<sup>1</sup> and to hold a preliminary hearing into a charge involving an indictable offence. Courts of Petty Sessions also have jurisdiction to hear some proceedings of an administrative nature. For example, a Court of Petty Sessions may sit as a licensing tribunal under a number of Acts.<sup>2</sup>

2.2 The Crown Law Department has carried out a survey of the files created at the Perth Court of Petty Sessions at Beaufort Street in 1976.<sup>3</sup> That survey disclosed that 29,956 files were created during that year. It was estimated that the defendant pleaded guilty in seventy-five to eighty percent of these matters. In these cases the files were only of two or three pages containing the complaint and a copy of the summons, proof of service of the summons, recognisances,<sup>4</sup> satisfied warrants or unserved processes.

2.3 Where a case is defended the file is naturally larger and may contain the complaint, a copy of the summons, proof of service of the summons, the magistrate's notes of evidence (these may be either handwritten or typed), exhibits,<sup>5</sup> transcripts of evidence, satisfied warrants or unserved processes.

2.4 The usual practice at the Perth Court of Petty Sessions is for files relating to proceedings (whether defended or not) to be retained for a period of two to three years after which time they are transferred to the State Intermediate Records Repository. In view of the fact that a large number of new files are created each year, the provision of adequate storage space is considered to be a major problem.

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<sup>1</sup> For example, charges relating to traffic matters, road maintenance contributions, parking matters and the *Health Act*.

<sup>2</sup> *Inquiry Agents Licensing Act 1954*, s.4, *Employment Agents Act 1976*, s.22, *Marine Stores Act 1902*, s.9.

<sup>3</sup> This Court usually deals with proceedings commenced by summons. It also deals with those cases in which a person has been arrested and who, having not pleaded guilty at the Court at East Perth, is remanded to the Beaufort Street Court.

<sup>4</sup> For example, where a defendant has been required to enter into a good behaviour bond under s.178 of the *Justices Act 1902*.

<sup>5</sup> For example, photographs, diagrams or other objects. Most exhibits are returned to the complainant when the case is completed.

2.5 In 1972 Part X of the *Justices Act 1902* was enacted<sup>6</sup> in an attempt to alleviate the storage problem arising from the large quantity of records of Courts of Petty Sessions. That Part enables records of Courts of Petty Sessions to be microfilmed and destroyed, and for the microfilm or records which have not been microfilmed to be destroyed after fifty-three years.<sup>7</sup>

2.6 Under Part X of the *Justices Act 1902*<sup>8</sup> a "court record"<sup>9</sup> may be destroyed only after the expiration of fifty-three years from the time it became a record.<sup>10</sup> A negative<sup>11</sup> of a court record may be made at any time and held by or on behalf of the court.<sup>12</sup> If such a negative is made, the court record may be destroyed after the expiration of three years from the time it became such a record. The negative must then be held until the expiration of the fifty-three year period.<sup>13</sup>

2.7 Where a negative of a court record has been made, the negative is deemed to be the court record for the purpose of any of the laws relating to the admissibility of evidence without otherwise affecting those laws. As such the negative must be treated as a court record by any court without any enquiry as to whether or not the original court record has been destroyed.<sup>14</sup>

2.8 At present, Part X of the *Justices Act 1902* is not being used extensively to microfilm records of Courts of Petty Sessions; the only document on the court record which is being microfilmed is the complaint,<sup>15</sup> which after being filed in the court is referred to as the "charge sheet". No attempt has been made to microfilm other documents comprising the court record because the method of filing documents means that the charge sheet and the other documents referred to in paragraphs 2.2 and 2.3 above are filed separately. The cost of

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<sup>6</sup> *Justices Act Amendment Act 1972.*

<sup>7</sup> It appears that the Part must be read together with the State's archival legislation: see paragraphs 2.14 to 2.16 below.

<sup>8</sup> Part X of the *Justices Act 1902* is reproduced in the Appendix to this paper.

<sup>9</sup> A "court record" means an "official record of any proceedings in any Court of Petty Sessions and includes any document filed in the Court, or in the custody of the Court, in relation to proceedings" : *Justices Act 1902*, s.233. There is no definition of "official record": see paragraph 4.15 below.

<sup>10</sup> *Justices Act 1902*, s.235.

<sup>11</sup> A "negative" in relation to a document means "...a transparent negative photograph used or intended to be used as a medium for reproducing the contents of that document and includes any transparent photograph made from surface contact with the original negative photograph" : *Justices Act 1902*, s.233 and s.73A of the *Evidence Act 1906*.

<sup>12</sup> *Justices Act 1902*, s.234.

<sup>13</sup> *Ibid.*, s.236

<sup>14</sup> *Ibid.*, s.237.

<sup>15</sup> *Ibid.*, Fourth Schedule, form 3.

checking and collating these separate documents means that the cost of microfilming the complete file is prohibitive.

## **Local Courts**

2.9 In the Local Court a separate file is maintained for each action which is commenced,<sup>16</sup> and for other proceedings, such as the licensing of debt collectors and appeals from decisions of bodies such as the Builders' Registration Board of Western Australia. These files are usually sent to the State Intermediate Records Repository from the Perth Local Court after an action has been completed.<sup>17</sup>

2.10 A Local Court file may contain the following documents: plaint, proof of service, notice of defence, reply, counter-claim, court orders, notes of evidence and exhibits.

2.11 Apart from the files for each plaint or action, the clerk of the Local Court is required to maintain a minute book "the Plaint, Record and Minute Book of the Local Court" in which is noted the plaints, summonses, judgments, executions, fines and other proceedings of the Court.<sup>18</sup>

2.12 There is no provision for the destruction or microfilming of Local Court files as there is in the case of files of Courts of Petty Sessions.<sup>19</sup> However, it would appear to be possible to destroy the records of Local Courts under the State's archival legislation referred to in paragraphs 2.14 to 2.16 below.

## **Recording of Evidence Act 1975**

2.13 The Recording of *Evidence Act 1975*<sup>20</sup> makes provision for the recording of legal proceedings (including those in Courts of Petty Sessions and Local Courts) by a shorthand reporter or a mechanical device (such as a tape recorder) and a recorder. The record which is made (called the "master-record") cannot be destroyed within the time allowed for instituting

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<sup>16</sup> In 1977, 39,806 actions were commenced in the Perth Local Court.

<sup>17</sup> The oldest file still in action was commenced in 1961. It is considered to be exceptional for a file to have been in action for so long.

<sup>18</sup> *Local Courts Act 1904*, s.15.

<sup>19</sup> See paragraphs 2.5 to 2.8 above.

<sup>20</sup> At 31 December 1978 this Act had not been proclaimed.

an appeal, and where an appeal is instituted, until the appeal is finally determined or otherwise terminated.<sup>21</sup> In any event, the master record must not be destroyed within twelve months of the making of it.<sup>22</sup>

### Archival legislation

2.14 Under the *Library Board of Western Australia Act 1951* the Library Board of Western Australia is vested with the custody and control of all State archives.<sup>23</sup> Amongst the documents which may be classified as a State archive are documents made or received by any court or person acting judicially.<sup>24</sup>

2.15 The officer in charge of a public office may destroy or dispose of any public record or class of public record in his custody or under his control if -

- (i) the destruction or disposal is in accordance with a Retention and Disposal Schedule authorised by the Board; or
- (ii) the Board has informed him that it does not require the record or class of record to be transferred to it for inclusion among the State archives.<sup>25</sup>

2.16 This legislation, apart from providing a means by which records of Local Courts may be destroyed, imposes a limitation on the operation of Part X of the *Justices Act 1902*. It appears that Part X must be read with the archival legislation because s.30(5) of the *Library Board of Western Australia Act 1951* provides:

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<sup>21</sup> *Recording of Evidence Act 1975*, s.9(1).

<sup>22</sup> Ibid. It may be desirable to retain tapes of proceedings in Courts of Petty Sessions and Local Courts for the same period that documents on the court file are kept: see paragraphs 4.13 and 4.16 below where the Commission suggests that the records should be retained for fifteen years. However, this would create its own storage problems. It would also mean that tapes could not be erased and reused for a lengthy period of time.

<sup>23</sup> *Library Board of Western Australia Act 1951*, s.22. A "State archive" is a "...non-current public record which has been selected for preservation under the provisions of this Act" : *ibid.* , s.3. A "non-current public record" is "...any public record that has ceased to be in current use in the public office in which it was originally made or received, or in the public office in whose custody it has been placed after being so made or received": *ibid.*

<sup>24</sup> See the definitions of "public record" and "public office" in s.3 of the *Library Board of Western Australia Act 1951*. The definition of "public record" includes "...any record made or received by a court or person acting judicially in Western Australia", and "public office" includes "...any department, branch or office of the Government of Western Australia".

<sup>25</sup> *Library Board of Western Australia Act 1951*, s.30(2).

"Public records in the custody, or under the control, of a public office shall not be destroyed or disposed of otherwise than in accordance with this Act."

As a result, it would appear that a record of a Court of Petty Sessions cannot be destroyed after a negative of it has been made (or the negative itself, after the expiration of fifty-three years), unless the destruction is in accordance with a Retention and Disposal Schedule or the Library Board has indicated that it does not require that the record be transferred to it for inclusion among the State archives. The law on this matter is not entirely clear and it would be desirable to clarify it.<sup>26</sup>

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<sup>26</sup> The difficulty in interpretation arises because the archival legislation, which is of general application, was enacted in 1974, two years after the legislature dealt specifically with records of Courts of Petty Sessions by enacting Part X of the *Justices Act 1902*. Where a provision dealing specifically with a particular topic conflicts with a later Act which deals generally with the same topic the presumption is that the special provision can be read as a proviso to the general provision (*Goodwin v Phillips* (1908) 7 CLR 1 at 14). However, before such an approach can be taken it is necessary to show that there is an irreconcilable conflict between the provisions; that the provisions cannot stand together (*Fonteo v Morando Bros. Pty. Ltd.* [1971] VR 658 at 662). If the Acts can be read together it is not necessary to read one as subject to the other. This is the approach which has been taken in this paragraph. The presumption referred to above can be rebutted (see *R. v Industrial Appeals Court and the Fire Fighters Board; Ex parte The Metropolitan Fire Brigades Board* [1959] VR 345 at 350) and the general provision may derogate from the specific provision; it may even repeal it.

## CHAPTER 3 - THE LAW AND PRACTICE ELSEWHERE

### Introduction

3.1 None of the other States of Australia has legislation similar to Part X of the *Justices Act 1902*. Generally, the retention or destruction of records of lower courts is governed by practice or administrative direction. Most of the other States do, however, have some form of archival legislation.

### SOUTH AUSTRALIA

#### Court of summary jurisdiction<sup>1</sup>

3.2 There is no statutory provision relating to the retention, destruction or copying of records of courts of summary jurisdiction. As a result of an administrative direction, all files are kept for twenty-five years. After the elapse of that time, files relating to minor matters, such as drunkenness and traffic offences, are destroyed. Those files which are not destroyed after twenty-five years are retained for a further fifteen years, after the elapse of which time they are transferred to the State Archives.<sup>2</sup>

#### Local Courts

3.3 As local courts are courts of record, files, the plaint and record books, and minute books are kept in perpetuity.

### TASMANIA

3.4 In Tasmania the records of all inferior courts are retained indefinitely by the Archives Office.<sup>3</sup> The timing of the transfer from the courts to the Archives Office depends on the space available in the individual courts.

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<sup>1</sup> These have a jurisdiction similar to that of Courts of Petty Sessions in Western Australia.

<sup>2</sup> This is required by s.31 of the *Libraries and Institutes Act 1939* (SA).

<sup>3</sup> This office was established by the *Archives Act 1965* (Tas).

## NEW SOUTH WALES

3.5 The New South Wales Minister of Justice has determined that certain court records must be retained permanently, including the Small Debts Registers and Civil Claims Abstracts, Execution and Attachment Books and Australian Registers of Judgments for Small Debts and Civil Claims matters.

3.6 In the case of certain other records of Courts of Petty Sessions,<sup>4</sup> the Minister of Justice has determined the period of time that each type of record must be retained before a record within that class is considered to be no longer in current use. After the expiration of this period of time the court seeks approval from the Archives Authority to destroy the records. Depending on its determination the records are either destroyed or forwarded to it. The Minister has approved the destruction of the following records after the time specified -

<b>Record</b>	<b>Time</b>
Court Depositions and Charge and Summons books	12 years
Bench Sheet (the Courts Adjudication Sheet and record of payments made by defendants)	12 years
Small debt and civil claims files	14 years

The Minister has approved of the destruction of tape recordings of court proceedings after twelve months. This authority has not been acted upon.

## QUEENSLAND

3.7 In Queensland the policy of the Department of Justice is to retain court records for a minimum period of fifteen years from the date of the last dealing on the file.<sup>5</sup> After the elapse of this period of time inferior court records may be destroyed once notice is given to the State Librarian under s.21(3)(i) and (ii) of the *Libraries Act 1943*. Many records are in fact acquired by the State Librarian for permanent preservation.

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<sup>4</sup> Courts of Petty Sessions exercise an inferior civil and criminal jurisdiction.

<sup>5</sup> This is in fact the minimum time that records must be kept under s.21(3)(iii) of the *Libraries Act 1943*.

## **VICTORIA**

3.8 In Victoria the court registers<sup>6</sup> of Magistrates' Courts<sup>7</sup> are retained permanently. These registers are retained by the Court while they are likely to be required by it. They are then stored under the control of the Victorian Keeper of Public Records.<sup>8</sup> The Commission understands that the Keeper of Public Records is considering microfilming court registers which are stored by him.

3.9 Court files (containing documents relating to actions and other proceedings) are stored at the Court until they are over fifteen years old. They may then be destroyed.<sup>9</sup>

## **AUSTRALIAN CAPITAL TERRITORY**

3.10 There is no statutory provision relating to the retention, destruction or copying of the records of the Court of Petty Sessions,<sup>10</sup> and records are retained indefinitely. The Commission understands that consideration is being given to making provision for the destruction of those records after the expiration of a specific period of time.

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<sup>6</sup> These contain the formal written record of the minutes or memoranda of court decisions. They also contain notations as to administrative action taken consequent upon a court decision.

<sup>7</sup> In Victoria, Magistrates' Courts exercise both civil and criminal jurisdiction. The civil jurisdiction is similar to that exercised by Local Courts in Western Australia and the criminal jurisdiction is similar to that exercised by Courts of Petty Sessions in Western Australia.

<sup>8</sup> The Keeper of Public Records is appointed pursuant to s.6 of the *Public Records Act 1973*.

<sup>9</sup> Certain files, such as those relating to maintenance proceedings may not be destroyed.

<sup>10</sup> The Court of Petty Sessions has both civil and criminal jurisdiction.

## CHAPTER 4 - DISCUSSION

### Introduction

4.1 The retention of records of Courts of Petty Sessions and Local Courts is difficult because the Intermediate Records Repository is nearing the stage where it will be unable to accept any further records. The retention of these records is also expensive.

4.2 The Commission understands that the records presently take up the following shelf space at the repository -

Courts of Petty Sessions	1,308 feet
Local Courts	<u>3,288</u> feet
	<u>4,596</u> feet

It has been estimated that the cost of keeping these records is approximately \$2 per linear foot per annum. The annual cost of keeping the records is therefore approximately \$9,192.

4.3 The records of Courts of Petty Sessions and Local Courts also tax the resources of the existing facilities, and the question arises whether it is necessary to retain these records indefinitely or for a lengthy period of time.

### Records of Courts of Petty Sessions

4.4 At present, records, whether or not they have been microfilmed must be kept for fifty-three years.<sup>1</sup> As a person cannot be charged with an offence in a Court of Petty Sessions unless he is an adult (i.e. eighteen years), a record of a court proceeding in which he was involved would not be destroyed before he was at least seventy-one years. Seventy-one years is approximately the life expectancy of an eighteen year old male in Australia and this fact appears to have provided the basis for the selection of the period of fifty-three years.<sup>2</sup>

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<sup>1</sup> But see paragraph 2.16 above where the relation of Part X of the *Justices Act* to the archival legislation is discussed.

<sup>2</sup> It is somewhat obscure, however: see W.A. Parl. Deb. (1972) Vol. 193 at 440.

4.5 The selection of such a period seems to have been aimed at ensuring that a court record is available for most, if not all, of the life of a person, because such a record may be required in a subsequent proceeding to prove that the person had previously been convicted or acquitted.

4.6 The purposes for which it may be necessary to retain a record are discussed more fully below. Briefly they are -

1. to prove a conviction;
2. to prove an acquittal;
3. for the purposes of an appeal;
4. for the purposes of an application for a rehearing under s.56A of the *Justices Act 1902*; and
5. as evidence or for the examination or cross-examination of witnesses in other proceedings (either civil or criminal).

4.7 So far as the proof of acquittal is concerned, it is not necessary to retain a record for a lengthy period of time as, generally, a proceeding in a Court of Petty Sessions must be commenced within six months of the date on which the matter arose.<sup>3</sup>

4.8 Where it is necessary to prove a conviction in a later proceeding (e.g. to assist the court in determining the sentence or penalty to be imposed) it should be borne in mind that the offences tried in a Court of Petty Sessions are of a relatively minor nature and it may be unnecessary to keep a record of such a conviction for a long period of time. Moreover, as the period of time since the conviction increases the fact that a person has been convicted for an offence is likely to become increasingly irrelevant in fixing the sentence or penalty for a subsequent offence.

4.9 The period for which records of Courts of Petty Sessions are required for the purpose of appeals is also limited. In the case of ordinary appeals, the appeal must be instituted within seven days, and in the case of appeals by way of an order to review, the appeal must be

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<sup>3</sup> *Justices Act 1902*, s.51.

instituted within two months.<sup>4</sup> These times may, however, be enlarged by a judge of the Supreme Court.<sup>5</sup>

4.10 Another circumstance in which it is desirable to retain a record is where a person has been convicted, in his absence, after a summons has been served by post under s.56A(1) of the *Justices Act 1902*. In such a case, if the summons did not come to his notice prior to his being convicted, the defendant might apply for a rehearing of the case within fourteen days of becoming aware of the conviction. Although most people are aware of such a conviction shortly after it is made (because the prosecution endeavours to enforce the order of the court), there are a number of cases each year when this is not so. The defendant may, however, be found eventually, for example, if he commits another offence or applies for a passport. He may dispute the conviction and the details on the file will be important.

4.11 Evidence that a person has been convicted on a charge arising out of the same incident as that on which a civil claim is based cannot be admitted in the civil proceeding to show that he was guilty of the conduct constituting the offence with which he was charged.<sup>6</sup> However, proof of the conviction or documents on the court's file may be admissible for other purposes in civil proceedings. One such circumstance is where evidence of a conviction is admissible as evidence of the convicted person's bad reputation for the purpose of mitigating damages.<sup>7</sup> A document on the file, such as a transcript of evidence of a witness, may also be admissible under s.21 of the *Evidence Act 1906* to prove that a witness had made a previous inconsistent statement or more generally under s.79C of that Act.

4.12 The period for which it would be necessary to keep a record of a Court of Petty Sessions to ensure that it would be available for a proceeding in a civil court is difficult to assess. Even though the *Limitation Act 1935* provides that certain proceedings must be commenced within certain times,<sup>8</sup> the time within which a particular proceeding must be commenced can vary because the time may be extended by special circumstances. One such

<sup>4</sup> Ibid., ss.184 and 197(1). The Commission is at present carrying out a review of the law relating to appeals from Courts of Petty Sessions: see the working paper on Project No. 55, *Review of the Justices Act 1902; Part I - Appeals* (February 1978). Even if the procedure relating to appeals is changed as a result of that review there would still be a limit on the time for instituting appeals.

<sup>5</sup> Ibid., s.206B.

<sup>6</sup> *Hollington v Hewthorn and Co. Ltd.* [1943] 2 All ER 35. See also the report of the Commission's predecessor, the Law Reform Committee on Project No. 20: *Evidence of Criminal Convictions in Civil Proceedings* (1972).

<sup>7</sup> See *Goody v Odhams Press Ltd.* [1966] 3 All ER 369.

<sup>8</sup> For example, an action founded on tort must be commenced within six years: *Limitation Act 1935*, s.38(1)(c)(vi).

circumstance is where the person having the cause of action is insane. In this case, the limitation period does not commence until he is sane.<sup>9</sup>

4.13 At present, it is the Commission's view that the records of Courts of Petty Sessions (other than the "charge sheet") need only be retained for a period of fifteen years from the date of the decision in order reasonably to fulfil the purposes for which they may subsequently be required. It is the Commission's view that the charge sheet, which contains the charge and the final decision should be retained indefinitely.

4.14 The Commission would welcome comment on the length of time records of Courts of Petty Sessions should be retained, whether in microfilmed form or not.

4.15 There is an anomaly in Part X of the *Justices Act 1902* at present. Section 233 provides that "official record" has the same meaning in Part X as it has in the division of the *Evidence Act 1906* relating to the reproduction of documents. However, "official record" is not defined in that division. It would be necessary to provide such a definition in Part X. Perhaps it could be defined as including:

"any document, book, plan, paper, parchment or other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them and photographs made or received by a court or person acting judicially under the Act".

### **Records of Local Courts**

4.16 As with records of Courts of Petty Sessions, the time within which it would be necessary to retain records of Local Courts will be affected by the fact that they may be required as evidence in other proceedings.<sup>10</sup> At present, the Commission considers that a period of fifteen years from the date the proceedings were completed is an adequate time to retain these records, except for the *Plaint, Record and Minute Book*<sup>11</sup> which should be retained indefinitely. The Commission would welcome comment.

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<sup>9</sup> *Limitation Act 1935*, s.40

<sup>10</sup> See paragraphs 4.11 and 4.12 above

<sup>11</sup> See paragraph 2.11 above.

4.17 It is the Commission's tentative view that the use of microfilming is an acceptable means of retaining Local Court records. Whether it is desirable to do so from a financial point of view is not within the purview of the Commission's inquiry.<sup>12</sup> If the records are kept for only fifteen years it may not be desirable. It may, however, be desirable to microfilm the Minute Book, which the Commission has suggested should be retained indefinitely.

4.18 Although practical difficulties have been encountered with Part X of the *Justices Act 1902* which prevent its full utilisation at present, it is the Commission's tentative view that it forms a satisfactory basis for providing for the microfilming of records of Local Courts. It should be noted that the practical difficulties which have prevented the full utilisation of Part X do not apply to records of Local Courts because the documents filed relating to a proceeding are kept on the file for that proceeding. The Commission welcomes comment on whether provision should be made for the microfilming of records of Local Courts.

4.19 As with records of Courts of Petty Sessions, the Commission would welcome comment on the length of time which records of Local Courts should be retained, whether in microfilmed form or not.

### **Relation to archival legislation**

4.20 At present it appears that Part X of the *Justices Act 1902* must be read together with the States' archival legislation.<sup>13</sup> It would seem to be desirable to retain this position (while clarifying it), and if specific provision is made for the retention and destruction of records of Local Courts, to make such a provision subject to the archival legislation.

### **Summary of issues**

4.21 The Commission welcomes comment (with reasons where appropriate) on any matter arising out of this paper, and in particular on the following -

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<sup>12</sup> The Commission has not been able to obtain a comparison of the cost of the present storage methods and storage by microfilm. It has, however, been informed that the cost of microfilming on roll film loaded in a cassette is approximately \$27.00 per cassette. Each cassette can be used to record between 2,200 and 2,400 pages, which would be equivalent to, at least, approximately one foot of files. As the cost of the existing method of storage is approximately \$2.00 per foot, the initial cost of microfilming would be recovered in approximately fourteen years. That is, if the records are retained longer than fourteen years, it would appear to be cheaper to microfilm them. There would also be the cost of storing the cassettes, though this would be significantly less expensive than the present method of storing documents.

<sup>13</sup> See paragraph 2.16 above.

1. Should it be possible to destroy records of Courts of Petty Sessions (other than the "charge sheet") after fifteen years from the date of the decision?  
(paragraphs 4.6 to 4.13)
2. Should the charge sheet be retained indefinitely?  
(paragraph 4.13)
3. Should it be possible to destroy records of Local Courts (other than the Plaintiff, Record and Minute Book of the Local Court) after fifteen years from the date the proceedings were completed?  
(paragraph 4.16)
4. Should the Plaintiff, Record and Minute Book of the Local Court be retained indefinitely?  
(paragraph 4.16)
5. Should provision be made for the microfilming of records of Local Courts?  
(paragraph 4.17 and 4.18)

**APPENDIX**  
**PART X OF THE JUSTICES ACT 1902**

Part X Added by No.17 of 1972, s.16.	PART X - MAINTENANCE AND DESTRUCTION OF COURT RECORDS
Interpretation Added by No. 17 of 1972, s.16.	233. In this Part –  "court record" means official record of any proceedings in any Court of Petty Sessions and includes any document filed in the Court, or in the custody of the Court, in relation to the proceedings; and  "document", "official record", "negative", and "reproduction" have the same respective meanings as they have in and for the purposes of the <i>Division of the Evidence Act, 1906</i> relating to the reproduction of documents.
Negatives of court records Added by No.17 of 1972, s.16.	234. A negative of a court record may be made at any time to be held by or on behalf of the Court.
Destruction of court records generally. Added by No.17 of 1972, s.16.	235. A court record may, in any case, be destroyed after the expiration of fifty-three years from the time it; became such a record.
Destruction of court records where negatives held. Added by No.17 of 1972, s.16.	236. A court record may be destroyed at any time after the expiration of three years from the time it became such a record if a negative of it is held by or on behalf of the Court but in that case the negative shall be so held until the expiration of fifty-three years from the time the court record became such a record.
Evidentiary provision. Added by No.17 of 1972, s.16.	237. For the purposes of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the Court, the negative is deemed to be the court record and shall be treated as such by any Court of Petty Sessions, and any other Court, without any enquiry as to whether or not the court record has been destroyed.