

## **Criminal Code Amendment Bill (No. 2) 2000**

---

### CONTENTS

---

#### **Part 1 — Preliminary**

- |    |                                  |   |
|----|----------------------------------|---|
| 1. | Short title                      | 2 |
| 2. | <i>The Criminal Code</i> amended | 2 |

#### **Part 2 — Amendments about child sex tourism**

- |    |   |   |
|----|---|---|
| 3. | Section 187 inserted                                      | 3 |
| 4. | Consequential amendments to <i>Travel Agents Act 1985</i> | 3 |

#### **Part 3 — Amendments about public order**

- |     |   |    |
|-----|---|----|
| 5.  | Section 62 amended  | 6  |
| 6.  | Sections 63 to 67 replaced and consequential<br>amendments to <i>Police Act 1892</i> and <i>Justices Act 1902</i> | 7  |
| 7.  | Section 68 replaced   | 9  |
| 8.  | Section 69 amended  | 10 |
| 9.  | Section 70 amended  | 10 |
| 10. | Section 71 replaced   | 11 |
| 11. | Section 72 amended  | 11 |
| 12. | Section 73 amended  | 12 |
| 13. | Section 74 amended  | 12 |
| 14. | Sections 174 and 175 repealed   | 12 |

#### **Part 4 — Amendments about endangering life or health**

- |     |                                    |    |
|-----|------------------------------------|----|
| 15. | Section 208 amended                | 13 |
| 16. | Sections 296 and 296A repealed     | 13 |
| 17. | Sections 298, 299 and 300 repealed | 13 |
| 18. | Section 302 repealed               | 13 |
| 19. | Sections 304 replaced              | 13 |

Contents

---

|                                  |   |    |
|----------------------------------|---|----|
| 20.                              | Sections 306 to 312 repealed  | 14 |
| <b>Part 5 — Other amendments</b> |   |    |
| 21.                              | Amendments about offences to do with the property of married people | 15 |
| 22.                              | Section 81 replaced   | 15 |
| 23.                              | Amendments about masters, servants and apprentices                  | 16 |
| 24.                              | Section 283 amended   | 17 |
| 25.                              | Section 321 amended   | 17 |
| 26.                              | Section 370 amended   | 18 |
| 27.                              | Section 399A repealed   | 19 |
| 28.                              | Section 407 amended   | 19 |
| 29.                              | Heading to Chapter LXI amended                                      | 19 |
| 30.                              | Section 436 amended   | 19 |
| 31.                              | Section 635 replaced  | 19 |
| 32.                              | Section 635A amended  | 20 |

Western Australia

LEGISLATIVE COUNCIL

**Criminal Code Amendment Bill (No. 2) 2000**

**A Bill for**

**An Act to amend *The Criminal Code* and to consequentially amend the —**

- *Justices Act 1902*;
- *Police Act 1892*; and
- *Travel Agents Act 1985*.

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Criminal Code Amendment Act (No. 2) 2000*.

5 **2. The Criminal Code amended**

The amendments in this Act are to *The Criminal Code*\* unless otherwise indicated.

10 [\* Reprinted as at 2 October 1999 as the Schedule to the  
*Criminal Code Act 1913* appearing as Appendix B to the  
*Criminal Code Compilation Act 1913*.  
For subsequent amendments see 1999 Index to Legislation of  
Western Australia, Table 1, pp. 57-60 and Act No. 17 of  
2000.]

## **Part 2 — Amendments about child sex tourism**

### **3. Section 187 inserted**

After section 186 the following section is inserted —

“

5       **187. Facilitating sexual offences against children outside  
Western Australia**

(1) In this section —

“**prohibited conduct**” means —

10           (a) the doing of an act in a place outside  
Western Australia in respect of a child under  
the age of 16 years which if done in Western  
Australia would constitute an offence under  
Chapter XXXI; or

15           (b) the commission of an offence under  
Division 2 of Part IIIA of the *Crimes  
Act 1914* of the Commonwealth.

20           (2) If a person does an act, including making travel  
arrangements, or makes an omission, with the intention  
of enabling or aiding prohibited conduct by another  
person, the person is guilty of a crime and is liable to  
imprisonment for 20 years.

”.

### **4. Consequential amendments to *Travel Agents Act 1985***

25       (1) The amendments in this section are to the *Travel Agents  
Act 1985*\*.

[\* *Reprinted as at 22 April 1997.*

*For subsequent amendments see 1999 Index to Legislation of  
Western Australia, Table 1, p. 257.]*

**s. 4**

---

(2) After section 12(2)(b) the following paragraph is inserted —

“

(ba) the individual has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth;

”.

(3) Section 12(4) is amended as follows:

(a) after paragraph (g) by deleting “or”;

(b) after paragraph (h) by deleting the full stop and inserting instead —

“ ; or ”;

(c) after paragraph (h) by inserting the following paragraph —

“

(i) the body corporate, or any person referred to in paragraph (e), (g) or (h), has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth.

”.

(4) After section 21(4) the following subsection is inserted —

“

(4a) If it appears to the Chairman, whether or not as result of an objection lodged under subsection (1), that there are grounds for believing that a licensee has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth, the Chairman shall arrange for the Tribunal to hold an inquiry into the truth of the matter.

”.

(5) Section 21(6) is amended by inserting after “subsection (4)” —  
“ or (4a) ”.

(6) After section 22(1) the following subsection is inserted —  
“

5       (1a) If after holding an inquiry in relation to a licence the  
Tribunal is satisfied that the licensee has been found  
guilty of an offence under section 187 of *The Criminal  
Code* or section 50DA or 50DB of the *Crimes Act 1914*  
of the Commonwealth it —

10               (a) shall, under subsection (1)(e), disqualify the  
licensee permanently —  
                  (i) from being a licensee;  
                  (ii) from being concerned in the direction,  
15               management or conduct of the business  
of a travel agent; and  
                  (iii) from being an officer of a body  
corporate that is a licensee;

and

20               (b) may, in addition and subject to subsection (4),  
take any one or more of the other courses of  
action described in subsection (1).

”.

(7) Section 30(1) is amended as follows:

25               (a) by deleting “or” after paragraph (d);  
                  (b) by inserting after paragraph (d) the following —  
“

30               (da) has been found guilty of an offence under  
section 187 of *The Criminal Code* or  
section 50DA or 50DB of the *Crimes Act 1914*  
of the Commonwealth; or

”.

### **Part 3 — Amendments about public order**

#### **5. Section 62 amended**

Section 62 is amended as follows:

- 5 (a) in the first paragraph by inserting before “When” the subsection designation “(1)”;
- (b) in the first paragraph by deleting “, with intent to carry out some common purpose,”;
- (c) in the first paragraph by deleting “tumultuously” in the 2 places where it occurs;
- 10 (d) in the second paragraph by inserting before “It is” the subsection designation “(2)”;
- (e) in the second paragraph by deleting “with a common purpose”;
- 15 (f) in the third paragraph by inserting before “An assembly” the subsection designation “(3)”;
- (g) in the third paragraph by deleting “break and”;
- (h) in the fourth paragraph by inserting before “When” the subsection designation “(4)”;
- 20 (i) in the fourth paragraph by deleting “so tumultuous” and inserting instead —  
“ such ”.



**6. Sections 63 to 67 replaced and consequential amendments to Police Act 1892 and Justices Act 1902**

- (1) Sections 63 to 67 are repealed and the following sections are inserted instead —

5

“

**63. Taking part in an unlawful assembly**

Any person who takes part in an unlawful assembly is guilty of a simple offence and is liable to imprisonment for 2 years.

10

**64. Unlawful assembly may be ordered to disperse**

- (1) If 3 or more persons form an unlawful assembly, a justice or a police officer may orally order them to disperse.

15

- (2) If 3 or more persons who form an unlawful assembly are ordered to disperse under subsection (1), each such person who does not disperse is guilty of a crime and is liable to imprisonment for 4 years.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000.

20

- (3) If a person is charged before a court of summary jurisdiction with an offence under subsection (2), the prosecutor may request the court to deal with the charge summarily and, if that request is made, the court shall deal with the charge.

25

**65. Taking part in a riot**

- (1) Any person who takes part in a riot is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000.

**s. 6**

---

- 5 (2) If a person is charged before a court of summary jurisdiction with an offence under subsection (1), the prosecutor may request the court to deal with the charge summarily and, if that request is made, the court shall deal with the charge.

**66. Rioters may be ordered to disperse**

- 10 (1) If 12 or more persons are riotously assembled, a justice or police officer may orally order them to disperse.
- (2) If 12 or more persons who are riotously assembled are ordered to disperse under subsection (1), each such person who does not disperse is guilty of a crime.
- (3) Any person who forcibly prevents a person from giving an order under subsection (1) is guilty of a crime.
- 15 (4) If 12 or more persons are riotously assembled, each person who continues to be so assembled knowing that a person has been forcibly prevented from ordering them to disperse is guilty of a crime.
- (5) A person who is guilty of a crime under this section is liable to imprisonment for 10 years.

20 **67. Rioters causing damage**

- (1) If as a result of persons being riotously assembled any property is unlawfully destroyed or damaged, each person among those so assembled is guilty of a crime and is liable to imprisonment for 10 years.
- 25 (2) If the property is destroyed or damaged by fire, each person is liable to imprisonment for 14 years.

”.

(2) Section 54A of the *Police Act 1892*\* is repealed.

[\* *Reprinted as at 1 April 2000.*

*For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp. 194-6 and Acts Nos. 17 and 24 of 2000.]*

5

(3) Section 98 of the *Justices Act 1902*\* is amended as follows:

(a) in subsection (2) by inserting after “section” where it occurs first —

“ 64(3), 65(2) or ”;

10

(b) in subsection (3) by inserting after “section” where it occurs first —

“ 64(3), 65(2) or ”.

[\* *Reprinted as at 2 October 1999.*

*For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp. 127-30.]*

15

## **7. Section 68 replaced**

Section 68 is repealed and the following section is inserted instead —

“

20

### **68. Being armed in a way that may cause fear**

(1) A person who is or pretends to be armed with any dangerous or offensive weapon or instrument in circumstances that are likely to cause fear to any person is guilty of a crime and is liable to imprisonment for 7 years.

25

Summary conviction penalty: Imprisonment for 3 years or a fine of \$12 000.

**s. 8**

---

- (2) It is a defence to a charge under subsection (1) to prove that the accused person had lawful authority to be so armed in such circumstances.
- (3) A court that convicts a person of an offence under subsection (1) may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

”.

**8. Section 69 amended**

Section 69 is amended as follows:

- (a) in the first paragraph by inserting before “Any person” the subsection designation “(1)”;
- (b) in the first paragraph by deleting “misdemeanour” and inserting instead —
- “ crime ”;
- (c) in the first paragraph by deleting “one year” and inserting instead —
- “ 2 years ”;
- (d) by inserting at the foot of the first paragraph —

“  
Summary conviction penalty: Imprisonment for  
6 months or a fine of \$2 000.  
”;

- (e) in the second paragraph by inserting before “It is” the subsection designation “(2)”.

**9. Section 70 amended**

Section 70 is amended as follows:

- (a) by deleting “misdemeanour” and inserting instead —
- “ crime ”;

(b) by deleting “one year” and inserting instead —  
“ 2 years ”;

(c) by inserting at the foot of the section —  
“

5 Summary conviction penalty: Imprisonment for  
6 months or a fine of \$2 000.

”.

**10. Section 71 replaced**

10 Section 71 is repealed and the following section is inserted  
instead —

“

**71. Fighting in public likely to cause fear**

15 A person who in, or in view of, a public place takes  
part in a fight with another person in circumstances that  
are likely to cause fear to any person is guilty of a  
crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: Imprisonment for  
6 months or a fine of \$2 000.

”.

20 **11. Section 72 amended**

Section 72 is amended as follows:

(a) by deleting “misdemeanour” and inserting instead —  
“ crime ”;

25 (b) by deleting “3 years” and inserting instead —  
“ 2 years ”;

(c) by inserting at the foot of the section —  
“

30 Summary conviction penalty: Imprisonment for  
6 months or a fine of \$2 000.

”.

**s. 12**

---

**12. Section 73 amended**

Section 73 is amended as follows:

- (a) by deleting “misdemeanour” and inserting instead —  
“ crime ”;
- 5 (b) by deleting “one year” and inserting instead —  
“ 2 years ”;
- (c) by inserting at the foot of the section —  
“  
10 Summary conviction penalty: Imprisonment for  
6 months or a fine of \$2 000.

”.

**13. Section 74 amended**

Section 74 is amended as follows:

- (a) by deleting “misdemeanour” and inserting instead —  
15 “ crime ”;
- (b) by deleting “one year” and inserting instead —  
“ 3 years ”;
- (c) by repealing the paragraph beginning with “If the  
offence”;
- 20 (d) by inserting at the foot of the section —  
“  
Summary conviction penalty: Imprisonment for  
one year or a fine of \$4 000.

”.

25 **14. Sections 174 and 175 repealed**

Sections 174 and 175 are repealed.

**Part 4 — Amendments about endangering life  
or health**

**15. Section 208 amended**

5 Section 208 is amended by deleting “unfit for human  
consumption, or”.

**16. Sections 296 and 296A repealed**

Sections 296 and 296A are repealed.

**17. Sections 298, 299 and 300 repealed**

Sections 298, 299 and 300 are repealed.

10 **18. Section 302 repealed**

Section 302 is repealed.

**19. Section 304 replaced**

Section 304 is repealed and the following section is inserted  
instead —

15 “

**304. Acts or omissions causing bodily harm or danger**

(1) If a person omits to do any act that it is the person’s  
duty to do, or unlawfully does any act, as a result of  
which —

- 20 (a) bodily harm is caused to any person; or  
(b) the life, health or safety of any person is or is  
likely to be endangered,

the person is guilty of a crime and is liable to  
imprisonment for 5 years.

25 Summary conviction penalty: Imprisonment for 2 years  
or a fine of \$8 000.

**s. 20**

---

(2) If a person, with an intent to harm, omits to do any act that it is the person's duty to do, or does any act, as a result of which —

(a) bodily harm is caused to any person; or

5 (b) the life, health or safety of any person is or is likely to be endangered,

the person is guilty of a crime and is liable to imprisonment for 20 years.

(3) For the purposes of subsection (2) an intent to harm is an intent to do any of the following —

10 (a) unlawfully cause bodily harm to any person;

(b) unlawfully endanger the life, health or safety of, any person;

15 (c) induce any person to deliver property to another person;

(d) gain a benefit, pecuniary or otherwise, for any person;

(e) cause a detriment, pecuniary or otherwise, to any person;

20 (f) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act;

(g) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act.

”.

25 **20. Sections 306 to 312 repealed**

Sections 306 to 312 are repealed.



## Part 5 — Other amendments

### 21. Amendments about offences to do with the property of married people

- 5
- (1) Section 35 is repealed.
  - (2) Section 377 is repealed.
  - (3) Section 584(7) is repealed.

### 22. Section 81 replaced

Section 81 is repealed and the following section is inserted instead —

10

“

#### 81. Disclosing official secrets

15

- (1) In this section —

“**disclosure**”, in relation to information in a record, includes parting with possession of the record;

20

“**government contractor**” means a person who is not employed in the Public Service but who provides, or is employed in the provision of, goods or services for the purposes of —

25

- (a) the State of Western Australia;
- (b) the Public Service;
- (c) the Police Force of Western Australia;

“**information**” includes false information, opinions and reports of conversations;

30

“**official information**” means information, whether in a record or not, that comes to the knowledge of, or into the possession of, a person because the person is a public servant or government contractor;

**s. 23**

---

“**public servant**” means a person employed in the Public Service;

“**unauthorised disclosure**” means —

- 5 (a) the disclosure by a person who is a public servant or government contractor of official information that the person is under a duty not to disclose; or
- 10 (b) the disclosure by a person who has been a public servant or government contractor of official information that, were the person still a public servant or government contractor, the person would be under a duty not to disclose.
- 15 (2) A person who, without lawful authority, makes an unauthorised disclosure is guilty of a crime and is liable to imprisonment for 2 years.

”.

**23. Amendments about masters, servants and apprentices**

- 20 (1) Section 245 is amended by deleting “or in the relation of master or servant,”.
- (2) Section 257 is amended as follows:
- (a) by deleting “or master”;
- (b) by deleting “, pupil, or apprentice,” and inserting instead —
- 25 “ or pupil ”.
- (3) Section 264 is repealed.
- (4) Section 303 is repealed.
- (5) Section 372(3) is repealed.

**24. Section 283 amended**

Section 283 is amended by deleting “where the person is convicted of an offence under this section upon an indictment charging her with the crime of infanticide,” and inserting instead —

“  
if the person commits the offence in circumstances that, had the other person died, would constitute the crime of infanticide,  
”.

**25. Section 321 amended**

(1) Section 321(5) is repealed and the following subsection is inserted instead —

“  
(5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).  
”.

(2) Section 321(10) is amended by deleting “, (4) or (6)” and inserting instead —

“ or (4) ”.

(3) After section 321(10) the following subsections are inserted —

“  
(11) It is a defence to a charge under subsection (5) to prove —

(a) that the indecent act was a private conjugal act;  
or

(b) that the accused person intended the indecent act to be a private conjugal act.

**s. 26**

---

- (12) For the purposes of subsection (11) an indecent act is a private conjugal act if —
- 5 (a) it is not committed in the presence of, or viewed by, any person other than a person lawfully married to the child; and
- (b) no photograph, film, videotape or other recording is made of it other than for the exclusive and private use of the child and a person lawfully married to the child.
- 10 (13) It is a defence to a charge under subsection (6) to prove —
- (a) that the accused person was lawfully married to the child; and
- 15 (b) that the indecent recording was made for the exclusive and private use of the child and the accused person.
- ”.

**26. Section 370 amended**

- 20 (1) Section 370 is amended by inserting before the paragraph beginning “The term “**animal**”” the following paragraph —
- “
- 25 An animal being reared by aquaculture is capable of being stolen while it is in a bed, fishery or other place which is the property of any person and which is designated as being the property of or under the control or management of a person.
- ”.
- (2) Section 370 is amended by deleting the paragraph beginning “Oysters”.

**27. Section 399A repealed**

Section 399A is repealed.

**28. Section 407 amended**

Section 407 is amended by deleting “a crime” in paragraphs (a),  
5 (d) and (e) and in each place inserting instead —

“ an offence ”.

**29. Heading to Chapter LXI amended**

The heading to Chapter LXI is amended by deleting “: BAIL”.

**30. Section 436 amended**

10 Section 436 is amended by deleting paragraph (1) and inserting  
the following paragraph instead —

“

- (1) Uses, for the purpose of taking any animal being  
15 reared by aquaculture, any net or instrument  
within the limits of a bed, fishery or other place  
which is the property of any person and which is  
designated as being the property of or under the  
control or management of a person, whether any  
such animal is actually taken or not;

”.

**31. Section 635 replaced**

Section 635 is repealed and the following section is inserted  
instead —

“

**635. Accused’s presence at trial**

- (1) In this section —

“**trial**” includes proceedings under the *Sentencing  
Act 1995* or the *Young Offenders Act 1994*.

**s. 32**

---

- 5
- (2) This section applies whether an accused person is being tried alone or with others.
- (3) The trial of an accused person must take place in his or her presence unless this section or the *Sentencing Act 1995* provides otherwise.
- (4) The court may order the trial of an accused person to proceed in his or her absence if it is satisfied —
- 10 (a) that the accused person's interests will not be prejudiced by his or her absence; and
- (b) that it is necessary for the proper administration of justice that the trial proceed in the absence of the accused person.
- (5) Notwithstanding subsection (4), if an accused person conducts himself or herself in a manner that makes it impracticable to continue the proceedings in his or her presence, the court may order the accused person to be removed and the trial to proceed in his or her absence.
- 15
- (6) If an accused person absents himself or herself during the trial without leave, the court may direct a warrant to be issued to arrest the accused person and bring him or her before the court forthwith.
- 20
- (7) This section does not limit the operation of section 647 or prevent a court from taking evidence from an accused person by video link or audio link under section 121 of the *Evidence Act 1906*.
- 25

”.

**32. Section 635A amended**

- (1) Section 635A(2) is amended as follows:
- 30 (a) by deleting the full stop after paragraph (c) and inserting instead a semicolon;

(b) by inserting after paragraph (c) the following paragraph —

“

(d) make an order prohibiting or restricting the publication outside the court-room of any matter likely to lead members of the public to identify a victim of an offence with which a trial or other criminal proceeding is concerned.

”.

(2) After section 635A(4) the following subsection is inserted —

“

(4a) After a person is accused of an offence under section 338E, 396, 397, 398 or 399, no matter likely to lead members of the public to identify the victim of the offence shall be published except by leave of the court which has or may have jurisdiction to try the person for the offence.

”.

(3) Section 635A(5) is amended by inserting after “this section” —

“ , or who contravenes subsection (4a), ”.

(4) After section 635A(5) the following subsection is inserted —

“

(5a) It is a defence to a charge under subsection (5) in relation to a contravention of an order made under subsection (1)(d) or a contravention of subsection (4a) to prove —

(a) that prior to the publication of the matter the victim, in writing, authorized the publication; and

(b) that at the time the victim authorized the publication, the victim was at least 18 years of

**s. 32**

---

age and was not a person who, because of  
mental impairment, is incapable of making  
reasonable judgments in respect of the  
publication of such matter.

5

”.

- (5) Section 635A(6) is amended by inserting after “this section” —  
“ or a contravention of subsection (4a) ”.

=====