

Criminal Code Amendment Bill 2003

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	<i>The Criminal Code</i> amended	2
Part 2 — Amendments about child sex tourism		
4.	Section 187 inserted	3
5.	<i>Sentence Administration Act 2003</i> consequentially amended	3
6.	<i>Travel Agents Act 1985</i> consequentially amended	4
Part 3 — Amendments about public order		
7.	Section 62 amended	7
8.	Sections 63 to 67 replaced and <i>Police Act 1892</i> consequentially amended	7
9.	Section 68 replaced	9
10.	Section 69 amended	10
11.	Section 70 amended	10
12.	Section 71 replaced	11
13.	Section 72 amended	11
14.	Section 73 amended	11
15.	Section 74 amended	12
16.	Sections 174 and 175 repealed	12
Part 4 — Amendment about infanticide		
17.	Section 283 amended	13

**Part 5 — Amendments about
endangering life or health**

18.	Section 208 repealed	14
19.	Sections 296 and 296A repealed	14
20.	Sections 298, 299 and 300 repealed	14
21.	Section 302 repealed	14
22.	Sections 304 to 312 replaced by sections 304 and 305	14
23.	Section 306 inserted	16
24.	Section 595B inserted	18
25.	Other Acts consequentially amended	18

**Part 6 — Amendments about sexual
servitude**

26.	Sections 331A, 331B, 331C and 331D inserted	19
27.	Other Acts consequentially amended	21

**Part 7 — Amendments about the
summary trial of indictable
offences**

Division 1 — *The Criminal Code* amended

28.	Section 1 amended	22
29.	Section 3 replaced	22
30.	Section 5 replaced	23
31.	Section 360 amended	25
32.	Section 361 amended	26
33.	Section 369 amended	26
34.	Section 426 amended	26
35.	Section 426A repealed	27
36.	Section 427 replaced	27
37.	Section 433 repealed	28
38.	Section 444 replaced	28
39.	Chapter XLVII repealed	28
40.	Section 552 replaced	29
41.	Section 553 replaced	30
42.	Sections 554 and 555 repealed	31
43.	Section 558 replaced	31
44.	Section 559 repealed	32
45.	Section 562 replaced	32
46.	Section 563 repealed	33

47.	Heading to Chapter LXI amended	33
48.	Section 572 repealed	33
49.	Section 574 repealed	33
50.	Section 618 amended	33
51.	Section 673 repealed	33
	Division 2 — <i>Justices Act 1902</i> consequentially amended	
52.	The Act amended by this Division	34
53.	Section 97B amended	34
54.	Sections 98, 99 and 100 replaced	34
55.	Section 101 amended	37
56.	Section 101A amended	37
57.	Section 107 inserted	37
58.	Section 137 amended	38
	Division 3 — Consequential amendments	
59.	Other Acts consequentially amended	38
	Part 8 — Other amendments	
60.	Section 81 replaced	39
61.	Section 215 inserted	40
62.	Amendments about masters etc. and consequential amendment to the <i>Evidence Act 1906</i>	41
63.	Section 321 amended	41
64.	Section 354 amended	42
65.	Section 370 amended	43
66.	Section 399A repealed	43
67.	Section 401 amended	43
68.	Section 407 amended	44
69.	Section 414 amended	44
70.	Sections 436 and 437 replaced	45
71.	Section 570B amended	46
72.	Heading to Chapter LXI amended	46
73.	Section 584 amended	46
74.	Section 596 amended	47
75.	Section 599 amended	47
76.	Section 635 replaced	47
77.	Section 635A amended	48

**Schedule 1 — Amendments
consequential on Part 5**

1.	<i>Bail Act 1982</i> amended	50
2.	<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> amended	50
3.	<i>Evidence Act 1906</i> amended	51
4.	<i>Young Offenders Act 1994</i> amended	51

**Schedule 2 — Amendments
consequential on Part 6**

1.	<i>Bail Act 1982</i> amended	53
2.	<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> amended	53
3.	<i>Evidence Act 1906</i> amended	54
4.	<i>Young Offenders Act 1994</i> amended	54

**Schedule 3 — Amendments
consequential on Part 7**

1.	<i>Bail Act 1982</i> amended	56
2.	<i>Biological Control Act 1986</i> amended	56
3.	<i>Bush Fires Act 1954</i> amended	57
4.	<i>Children's Court of Western Australia Act 1988</i> amended	57
5.	<i>Companies (Co-operative) Act 1943</i> amended	59
6.	<i>Coroners Act 1996</i> amended	60
7.	<i>Court Security and Custodial Services Act 1999</i> amended	61
8.	<i>Criminal Code Act 1913</i> amended	61
9.	<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> amended	62
10.	<i>Electoral Act 1907</i> amended	62
11.	<i>Evidence Act 1906</i> amended	62
12.	<i>Fair Trading Act 1987</i> amended	63
13.	<i>Family Court Act 1997</i> amended and consequential amendment to <i>Sentencing Legislation Amendment and Repeal Act 2003</i>	63
14.	<i>Firearms Act 1973</i> amended	64
15.	<i>Gold Corporation Act 1987</i> amended	64
16.	<i>Guardianship and Administration Act 1990</i> amended	65

17.	<i>Interpretation Act 1984</i> amended	67
18.	<i>Misuse of Drugs Act 1981</i> amended	67
19.	<i>National Crime Authority (State Provisions) Act 1985</i> amended	71
20.	<i>Offshore Minerals Act 2003</i> amended	72
21.	<i>Petroleum Act 1967</i> amended	72
22.	<i>Petroleum Pipelines Act 1969</i> amended	73
23.	<i>Petroleum (Submerged Lands) Act 1982</i> amended	73
24.	<i>Port Authorities Act 1999</i> amended	74
25.	<i>Prostitution Act 2000</i> amended	74
26.	<i>Road Traffic Act 1974</i> amended	74
27.	<i>Securities Industry Act 1975</i> amended	75
28.	<i>Statutory Corporations (Liability of Directors) Act</i> <i>1996</i> amended	76
29.	<i>Western Australian Marine (Sea Dumping) Act 1981</i> amended	76
30.	<i>Witness Protection (Western Australia) Act 1996</i> amended	77

Western Australia

LEGISLATIVE ASSEMBLY

(As divided by the Assembly)

(As amended during consideration in detail)

Criminal Code Amendment Bill 2003

A Bill for

An Act to amend *The Criminal Code* and to consequentially amend various other Acts.

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 2003*.

5 **2. Commencement**

This Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

3. *The Criminal Code* amended

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

[* *Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).*]

Part 2 — Amendments about child sex tourism

4. 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 Part IIIA Division 2 of the *Crimes Act 1914* of the Commonwealth.

(2) A person —

20 (a) who does any act for the purpose of enabling or aiding another person;

 (b) who aids another person; or

 (c) who counsels or procures another person,

to engage in prohibited conduct is guilty of a crime and is liable to imprisonment for 20 years.

”.

25 **5. Sentence Administration Act 2003 consequentially amended**

(1) The amendments in this section are to the *Sentence Administration Act 2003**.

[*Act No. 49 of 2003.]

s. 6

(2) Schedule 2 is amended as follows —

(a) by deleting “chapters” and inserting instead —

“ provisions ”;

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

“

(i) Section 187 — Facilitating sexual offences against children outside Western Australia.

”.

10 **6. *Travel Agents Act 1985* consequentially amended**

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

[* *Reprinted as at 22 April 1997.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 388.]

(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 —

“

- 5 (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.

”.

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

“

- 15 (4a) If it appears to the Chairman, whether or not as a 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.

20

”.

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

“ or (4a) ”.

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

“

- 25 (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 —

30

- (a) shall, under subsection (1)(e), disqualify the licensee permanently —
(i) from being a licensee;

s. 6

- 5
- (ii) from being concerned in the direction, 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
- (c) may, in addition and subject to subsection (4), take any one or more of the other courses of action described in subsection (1).
- 10
- (7) Section 30(1) is amended as follows: ”.
- (a) by deleting “or” after paragraph (d);
 - (b) by inserting after paragraph (d) the following paragraph —
- 15
- “
- (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
- 20
- ”.

Part 3 — Amendments about public order

7. 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 ”.

8. Sections 63 to 67 replaced and *Police Act 1892* consequentially amended

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

“

63. Taking part in an unlawful assembly

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

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.

5 (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 in accordance with the order is guilty of a crime and is liable to imprisonment for 3 years.

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

65. Taking part in a riot

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

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

66. Rioters may be ordered to disperse

(1) If 12 or more persons are riotously assembled, a justice or police officer may orally order them to disperse.

20 (2) If 12 or more persons who are riotously assembled are ordered to disperse under subsection (1), each such person who does not disperse in accordance with the order is guilty of a crime.

25 (3) Any person who forcibly prevents a person from giving an order under subsection (1) is guilty of a crime.

(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.

67. Rioters causing damage

- 5 (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.
- (2) If the property is destroyed or damaged by fire, each person is liable to imprisonment for 14 years.
- 10 ”.

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

[* *Reprinted as at 12 January 2001.*

For subsequent amendments see Act No. 6 of 2002.]

9. Section 68 replaced

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

“

68. Being armed in a way that may cause fear

- 20 (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.

- (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.

s. 10

- (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.

5

”.

10. Section 69 amended

Section 69 is amended as follows:

- (a) in the first paragraph by inserting before “Any person” the subsection designation “(1)”;
- 10 (b) in the first paragraph by deleting “misdemeanour” and inserting instead —
“ crime ”;
- (c) in the first paragraph by deleting “one year” and inserting instead —
- 15 “ 2 years ”;
- (d) by inserting at the foot of the first paragraph —
“
Summary conviction penalty: \$6 000.
- 20 (e) in the second paragraph by inserting before “It is” the subsection designation “(2)”.

”;

11. Section 70 amended

Section 70 is amended as follows:

- (a) by deleting “misdemeanour” and inserting instead —
- 25 “ crime ”;
- (b) by deleting “one year” and inserting instead —
“ 2 years ”;
- (c) by inserting at the foot of the section —
“
Summary conviction penalty: \$6 000.
- 30

”.

12. Section 71 replaced

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

“

5 **71. Fighting in public causing fear**

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.

10 Summary conviction penalty: \$6 000.

”.

13. Section 72 amended

Section 72 is amended as follows:

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

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

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

20 “
Summary conviction penalty: \$6 000.

”.

14. Section 73 amended

Section 73 is amended as follows:

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

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

s. 15

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

“

Summary conviction penalty: \$6 000.

”.

5 **15. Section 74 amended**

Section 74 is amended as follows:

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

“ crime ”;

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

10 “ 3 years ”;

(c) by deleting the paragraph beginning with “If the offence”;

(d) by inserting at the foot of the section —

“

15 Summary conviction penalty: imprisonment for one year or a fine of \$4 000.

”.

16. Sections 174 and 175 repealed

Sections 174 and 175 are repealed.

Part 4 — Amendment about infanticide

17. Section 283 amended

5 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 —

“

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

”.

**Part 5 — Amendments about endangering life
or health**

18. Section 208 repealed

Section 208 is repealed.

5 **19. Sections 296 and 296A repealed**

Sections 296 and 296A are repealed.

20. Sections 298, 299 and 300 repealed

Sections 298, 299 and 300 are repealed.

21. Section 302 repealed

10 Section 302 is repealed.

22. Sections 304 to 312 replaced by sections 304 and 305

Sections 304 to 312 are repealed and the following sections are 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.

(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

(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 —

(a) unlawfully cause bodily harm to any person;

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

(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;

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

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

305. Setting dangerous things for people

(1) In this section —

“dangerous thing” means any article, device, substance, or thing, that by reason of its nature (whether chemical, electrical, electronic, mechanical, or otherwise), situation, operation or condition, may endanger the life, health or safety of a person (whether a particular person or not);

s. 23

“set” includes construct and place.

- (2) For the purposes of subsections (3) and (4), a person wilfully sets a dangerous thing if the person sets the thing —
- 5 (a) intending that the thing will kill or cause grievous bodily harm to a person; or
- (b) knowing or believing that the thing is likely to kill or cause grievous bodily harm to a person.
- (3) A person who wilfully sets a dangerous thing is guilty of a crime and is liable to imprisonment for 3 years.
- 10 Summary conviction penalty: imprisonment for one year or a fine of \$4 000.
- (4) A person who, knowing that a dangerous thing has been wilfully set by another person, does not take
- 15 reasonable measures to make the thing harmless is guilty of a crime and is liable to imprisonment for 3 years.
- Summary conviction penalty: imprisonment for one year or a fine of \$4 000.
- (5) A person is not criminally responsible under this section for an act or omission in respect of a dangerous thing set at night in a dwelling for the protection of the occupants of the dwelling.

”.

25 **23. Section 306 inserted**

Before section 313 the following section is inserted in Chapter XXIX —

“

306. Female genital mutilation

- 30 (1) In this section —
- “child” means a person under the age of 18 years;

“female genital mutilation” means —

- 5
- (a) the excision or mutilation of the whole or a part of the clitoris, the labia minora, the labia majora, or any other part of the female genital organs;
- (b) infibulation or any procedure that involves the sealing or suturing together of the labia minora or the labia majora; or
- 10 (c) any procedure to narrow or close the vaginal opening,
- but does not include —
- (d) a reassignment procedure within the meaning of the *Gender Reassignment Act 2000* carried out on a person’s genitals by a medical practitioner within the meaning of the *Health Act 1911*; or
- 15 (e) a medical procedure carried out for proper medical purposes.
- 20 (2) A person who performs female genital mutilation on another person is guilty of a crime and is liable to imprisonment for 10 years.
- (3) It is not a defence to a charge under subsection (2) that the other person, or a parent or guardian of the other person, consented to the mutilation.
- 25 (4) A person who takes a child from Western Australia, or arranges for a child to be taken from Western Australia, with the intention of having the child subjected to female genital mutilation is guilty of a crime and is liable to imprisonment for 10 years.
- 30 (5) In proceedings for an offence under subsection (4), proof that —
- (a) the accused person took a child, or arranged for a child to be taken from Western Australia; and

s. 24

(b) the child, while out of Western Australia, was subjected to female genital mutilation,

5 is proof, in the absence of evidence to the contrary, that the accused person took the child, or arranged for the child to be taken, from Western Australia, as the case may be, with the intention of having the child subjected to female genital mutilation.

”.

24. Section 595B inserted

10 After section 595A the following section is inserted —

“

595B. Setting dangerous things for people: alternative verdict

15 Upon an indictment charging a person with a crime under section 305(3), the person may be convicted of a crime under section 305(4) if that crime is established by the evidence.

”.

25. Other Acts consequentially amended

20 Schedule 1 has effect.

Part 6 — Amendments about sexual servitude

26. Sections 331A, 331B, 331C and 331D inserted

After section 331 the following sections are inserted in
Chapter XXXI —

5

“

331A. Interpretation for s. 331B to 331D

In sections 331B to 331D —

“**child**” means a person under the age of 18 years;

10

“**commercial sexual service**” means the commercial
use or display of the body of the person providing
the service for the sexual arousal or sexual
gratification of others;

“**incapable person**” has the meaning given by
section 330(1);

15

“**threat**” has the meaning given by section 338.

331B. Sexual servitude

A person who compels another person to provide or to
continue to provide a commercial sexual service is
guilty of a crime and is liable —

20

- (a) if the other person is a child or an incapable
person, to imprisonment for 20 years; or
- (b) otherwise, to imprisonment for 14 years.

331C. Conducting business involving sexual servitude

(1) In this section —

25

“**conducting a business**” includes —

- (a) taking part in the management of the
business;
- (b) exercising control or direction over the
business; and

(c) providing finance for the business.

(2) A person who conducts a business that involves any other person being compelled to provide or to continue to provide a commercial sexual service is guilty of a crime and is liable —

- (a) if the other person is a child or an incapable person, to imprisonment for 20 years; or
- (b) otherwise, to imprisonment for 14 years.

331D. Deceptive recruiting for commercial sexual services

A person who —

- (a) offers another person (the “**victim**”) employment or some other form of engagement to provide personal services;
- (b) at the time of making the offer knows —

- (i) that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a commercial sexual service; and

- (ii) that the continuation of the employment or engagement, or the victim’s advancement in the employment or engagement, will be dependent on the victim’s preparedness to provide a commercial sexual service;

and

- (c) does not disclose that knowledge to the victim at the time of making the offer,

is guilty of a crime and is liable —

- (d) if the victim is a child or an incapable person, to imprisonment for 20 years; or

(e) otherwise, to imprisonment for 7 years.

”.

27. Other Acts consequentially amended

Schedule 2 has effect.

Part 7 — Amendments about the summary trial of indictable offences

Division 1 — *The Criminal Code* amended

28. Section 1 amended

5 Section 1(1) is amended by deleting the definition of the term
“indictable offence”.

29. Section 3 replaced

Section 3 is repealed and the following section is inserted
instead —

10 “

3. Indictable offences, general provisions as to

(1) This section applies to offences in this Code and in any
other written law.

15

(2) An indictable offence is triable only on indictment,
unless this Code or another written law expressly
provides otherwise.

20

(3) A prosecution for an indictable offence, whether or not
it may be tried summarily, may be commenced at any
time, unless this Code or another written law expressly
provides otherwise.

(4) Section 51 of the *Justices Act 1902* does not apply to a
complaint of an indictable offence, unless another
written law expressly provides otherwise.

25

(5) If a person is convicted by a court of petty sessions of
an indictable offence, the conviction is to be regarded
as being a conviction of a simple offence only.

”.

30. Section 5 replaced

Section 5 is repealed and the following section is inserted instead —

“

- 5 **5. “Summary conviction penalty”, meaning and effect**
- (1) This section applies if —
- (a) a provision of this Code, or another written law, provides a summary conviction penalty for an indictable offence; and
- 10 (b) a person (the “**defendant**”) is charged before a court of petty sessions (the “**court**”) with committing the indictable offence in circumstances where the summary conviction penalty applies to the offence (the “**charge**”).
- 15 (2) Despite section 3(2), the court is to try the charge summarily unless —
- (a) on an application made by the prosecutor or the defendant before the defendant pleads to the charge, the court decides under subsection (3) that the charge is to be tried on indictment; or
- 20 (b) this Code or another written law expressly provides to the contrary.
- (3) The court may decide the charge is to be tried on indictment if and only if it considers —
- 25 (a) that the circumstances in which the offence was allegedly committed are so serious that, if the defendant were convicted of the offence, the court would not be able to adequately punish the defendant;
- 30 (b) that the charge forms part of a course of conduct during which other offences were allegedly committed by the defendant and the

Criminal Code Amendment Bill 2003

Part 7 Amendments about the summary trial of indictable offences

Division 1 The Criminal Code amended

s. 30

- defendant is to be tried on indictment for one or more of those other offences;
- (c) that a co-accused of the defendant is to be tried on indictment;
- 5 (d) that the charge forms part of a course of conduct during which other offences were allegedly committed by the defendant and others and the defendant or one of the others is to be tried on indictment for one or more of those other offences; or
- 10 (e) that the interests of justice require that the charge be dealt with on indictment.
- (4) For the purposes of making a decision under subsection (3) the court —
- 15 (a) may require the prosecutor to provide any information the court needs and may hear submissions from both the prosecutor and the defendant; and
- (b) may adjourn the proceedings.
- 20 (5) If under subsection (3) the court decides that the charge is to be tried on indictment the court shall —
- (a) give reasons for the decision; and
- (b) deal with the defendant in accordance with Part V of the *Justices Act 1902*.
- 25 (6) A decision cannot be made under subsection (3) after the defendant has pleaded to the charge.
- (7) A decision made under subsection (3) is final and cannot be appealed.
- 30 (8) If the court convicts the defendant of the offence charged (whether after a plea of guilty or otherwise), the defendant is liable to the summary conviction

penalty provided for the offence, unless the court commits the defendant for sentence.

(9) If the court —

(a) convicts the defendant of the offence charged (whether after a plea of guilty or otherwise); and

(b) considers that any sentence the court could impose on the defendant for the offence would not be commensurate with the seriousness of the offence,

the court may commit the defendant to a court of competent jurisdiction for sentence.

(10) A defendant who is committed for sentence under subsection (9) is liable to the penalty with which the offence is punishable on indictment.

(11) For the purposes of this section and of any summary trial of the charge, the court must be constituted by a magistrate alone, or if there is no magistrate and the defendant consents, by 2 justices.

”.

31. Section 360 amended

Section 360 is amended as follows:

(a) in the first paragraph by deleting “\$600” and inserting instead —

“ \$4 000 ”;

(b) by inserting at the foot of the first paragraph —

“

Summary conviction penalty: a fine of \$1 000.

”;

Criminal Code Amendment Bill 2003

Part 7 Amendments about the summary trial of indictable offences

Division 1 The Criminal Code amended

s. 32

(c) in the second paragraph by deleting “\$1 000” and inserting instead —

“ \$8 000 ”;

(d) by inserting at the foot of the second paragraph —

5

“

Summary conviction penalty: \$2 000.

”.

32. Section 361 amended

Section 361 is amended as follows:

10

(a) by deleting “\$1 000” and inserting instead —

“ \$8 000 ”;

(b) by inserting at the foot of the section —

“

Summary conviction penalty: \$2 000.

15

”.

33. Section 369 amended

Section 369 is amended by deleting the first paragraph.

34. Section 426 amended

20

Section 426(2), (2a), (3) and (4) are repealed and the following subsections are inserted instead —

“

25

(2) Summary conviction penalty: for an offence to which this subsection applies where the value of the property in question does not exceed \$10 000, unless subsection (4) applies — imprisonment for 2 years or a fine of \$8 000.

(3) Summary conviction penalty: for an offence —

(a) under section 378 or 414; or

- (b) of attempting to commit, or inciting another person to commit, an offence under section 378 or 414,

5 where the property in question is a motor vehicle, unless subsection (4) applies — imprisonment for 2 years or a fine of \$8 000.

- (4) Summary conviction penalty: for an offence —
 - (a) under section 378, 382, 383, 388 or 414; or
 - (b) of attempting to commit, or inciting another person to commit, an offence under section 378, 382, 383, 388 or 414,

10

where the value of the property in question does not exceed \$1 000 — a fine of \$2 000.

”.

15 **35. Section 426A repealed**

Section 426A is repealed.

36. Section 427 replaced

Section 427 is repealed and the following section is inserted instead —

20

“

427. Summary conviction penalty for certain offences of a fraudulent nature

Summary conviction penalty: for an offence under section 381, 384, 385, 386, 387, 389 or 390 —

25

- (a) if the offence is punishable on indictment with imprisonment for one year or less — a fine of \$2 000;
- (b) if the offence is punishable on indictment with imprisonment for over one year but not more

Criminal Code Amendment Bill 2003

Part 7 Amendments about the summary trial of indictable offences

Division 1 The Criminal Code amended

s. 37

than 2 years — imprisonment for one year or a fine of \$4 000;

- (c) if the offence is punishable on indictment with imprisonment for more than 2 years — imprisonment for 2 years or a fine of \$8 000.

5

”.

37. Section 433 repealed

Section 433 is repealed.

38. Section 444 replaced

10

Section 444 is repealed and the following section is inserted instead —

“

444. Criminal damage

15

Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime and is liable —

- (a) if the property is destroyed or damaged by fire, to imprisonment for 14 years; or
(b) in any other case, to imprisonment for 10 years.

20

Summary conviction penalty: for an offence where —

- (a) the property is not destroyed or damaged by fire; and
(b) the amount of the injury done does not exceed \$25 000,

25

imprisonment for 3 years or a fine of \$12 000.

”.

39. Chapter XLVII repealed

Chapter XLVII is repealed.

40. Section 552 replaced

Section 552 is repealed and the following section is inserted instead —

“

5

552. Attempts to commit indictable offences

- (1) Any person who attempts to commit an indictable offence (the “**principal offence**”) is guilty of —
- (a) a crime if the principal offence is a crime; or
 - (b) a misdemeanour if the principal offence is a misdemeanour.

10

- (2) A person guilty of a crime or misdemeanour under subsection (1) is liable —
- (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
 - (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

15

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

20

- (a) the penalty with which the principal offence is punishable on summary conviction; or
- (b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

25

- (3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

”.

41. Section 553 replaced

Section 553 is repealed and the following section is inserted instead —

“

5 **553. Incitement to commit indictable offences**

(1) Any person who, intending that an indictable offence (the “**principal offence**”) be committed, incites another person to commit the principal offence, is guilty of —

- 10 (a) a crime if the principal offence is a crime; or
(b) a misdemeanour if the principal offence is a misdemeanour.

(2) A person guilty of a crime or misdemeanour under subsection (1) is liable —

- 15 (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
(b) in any other case — to half of the penalty with which the principal offence is punishable on
20 indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

- 25 (a) the penalty with which the principal offence is punishable on summary conviction; or
(b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

30 (3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

”

42. Sections 554 and 555 repealed

Sections 554 and 555 are repealed.

43. Section 558 replaced

Section 558 is repealed and the following section is inserted
instead —

5

“

558. Conspiracy to commit indictable offences

(1) Any person who conspires with another person —

10

(a) to commit an indictable offence (the “**principal offence**”); or

15

(b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be an indictable offence (the “**principal offence**”) and which is an offence under the laws in force in the place where it is proposed to be done or made,

is guilty of —

20

(c) a crime if the principal offence is a crime; or

(d) a misdemeanour if the principal offence is a misdemeanour.

(2) A person guilty of a crime or misdemeanour under subsection (1) is liable —

25

(a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;

(b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily — the penalty with which the principal offence is punishable on summary conviction.

- 5 (3) Without limiting subsection (1), the application of subsection (1) extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.

10

”.

44. Section 559 repealed

Section 559 is repealed.

45. Section 562 replaced

Section 562 is repealed and the following section is inserted instead —

15

“

562. Accessories after the fact to indictable offences

20

- (1) Any person who becomes an accessory after the fact to an indictable offence (the “**principal offence**”) is guilty of —

- (a) a crime if the principal offence is a crime; or
- (b) a misdemeanour if the principal offence is a misdemeanour.

25

- (2) A person guilty of a crime or misdemeanour under subsection (1) is liable —

- (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
- (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

30

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

- 5
- (a) the penalty with which the principal offence is punishable on summary conviction; or
 - (b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

”.

10 **46. Section 563 repealed**

Section 563 is repealed.

47. Heading to Chapter LXI amended

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

15 **48. Section 572 repealed**

Section 572 is repealed.

49. Section 574 repealed

Section 574 is repealed.

50. Section 618 amended

20 Section 618(3) is amended by deleting “section 100(1)” and inserting instead —

“ section 100(3) ”.

51. Section 673 repealed

Section 673 is repealed.

Division 2 — Justices Act 1902 consequentially amended

52. The Act amended by this Division

The amendments in this Division are to the *Justices Act 1902**.

[* *Reprinted as at 8 October 2001.*

5 *For subsequent amendments see Acts Nos. 53 of 2000 and
27 of 2002.]*

53. Section 97B amended

Section 97B is amended as follows:

10 (a) by deleting the full stop after the definition of “contempt
offence” and inserting a semicolon instead;

(b) by inserting the following definition —

“

15 “**either way charge**” means a charge of an indictable
offence that, by virtue of section 5 of *The Criminal
Code*, or another written law, may be tried either
on indictment or summarily.

”.

54. Sections 98, 99 and 100 replaced

20 Sections 98, 99 and 100 are repealed and the following sections
are inserted instead —

“

98. Procedure on first appearance

When the defendant appears for the first time before
the justices on the charge, the justices shall —

25 (a) read the charge to the defendant; and

(b) if necessary, explain to the defendant the
meaning of the charge,

and then —

- (c) if the charge is an either way charge — proceed in accordance with section 99; or
- 5 (d) if the charge must be dealt with on indictment — proceed in accordance with section 100.

99. Either way charges

- (1) This section applies if the charge is an either way charge.
- 10 (2) If section 5 of *The Criminal Code* applies to the charge, the justices must give the prosecutor and the defendant an opportunity to apply under that section for the charge to be tried on indictment.
- 15 (3) Unless the justices decide that the charge is to be tried on indictment, the justices shall deal with the charge summarily either —
 - (a) subject to subsection (5), on the day the defendant appears for the first time; or
 - (b) on another day.
- 20 (4) If the justices decide that the charge is to be tried on indictment, the justices shall proceed in accordance with section 100.
- 25 (5) If, in relation to a charge referred to in subsection (3), the defendant, having been served with a summons for the charge —
 - (a) appears at the time and place appointed by the summons; and
 - (b) pleads not guilty to the charge,

the justices shall not proceed to hear and determine the charge at the time referred to in paragraph (a) unless the prosecutor consents to them doing so.
- 30

100. Charges that are to be tried on indictment

- (1) This section applies if —
- (a) the charge must be tried on indictment; or
 - (b) the justices have decided that the charge, being an either way charge, is to be tried on indictment.
- (2) The justices shall —
- (a) tell the defendant that he or she is not required to plead to the charge;
 - (b) cause the defendant to be given a notice in the prescribed form explaining the procedures in this Part; and
 - (c) adjourn the complaint.
- (3) As soon as practicable after the complaint is adjourned, the prosecution shall, unless an order is made under subsection (4), file with the clerk of petty sessions and serve on the defendant —
- (a) a statement of the material facts relevant to the charge;
 - (b) a copy of —
 - (i) any statement signed by the defendant;
 - (ii) any record of interview with the defendant (signed or unsigned by the defendant),that is in the possession of the prosecution;
 - (c) notice of any tape or videotape recording of conversations between the defendant and a person in authority that is in the possession of the prosecution; and
 - (d) if the defendant said anything to a member of the Police Force that is material to the charge, a written version of the substance of what was said.

(4) If, on the application of the prosecution, the justices are satisfied that at that stage of proceedings —

(a) the prosecution is unable to comply with subsection (1); or

5 (b) it is not practicable for the prosecution to prepare a statement of the material facts,

the justices may order that compliance with subsection (3) by the prosecution be dispensed with.

”.

10 **55. Section 101 amended**

Section 101(1) is amended by deleting “section 100(1)” and inserting instead —

“ section 100(3) ”.

56. Section 101A amended

15 Section 101A(a) is amended by deleting “section 100(2)” and inserting instead —

“ section 100(4) ”.

57. Section 107 inserted

After section 106 the following section is inserted —

20 “

107. Committal for sentence, matters to be recorded

(1) Upon committing a defendant to a court of competent jurisdiction for sentence the justices must record the following matters on the complaint —

25 (a) the defendant’s plea before the justices;

(b) if the justices convicted the defendant, the fact that they did so;

(c) the date of the committal.

Criminal Code Amendment Bill 2003

Part 7 Amendments about the summary trial of indictable offences

Division 3 Consequential amendments

s. 58

- (2) A copy of a complaint certified as a true copy by a clerk of petty sessions is, in the absence of evidence to the contrary, evidence of its contents and of any matter recorded on it in accordance with subsection (1).

5

”.

58. Section 137 amended

Section 137(3) is repealed.

Division 3 — Consequential amendments

59. Other Acts consequentially amended

10

Schedule 3 has effect.

Part 8 — Other amendments

60. Section 81 replaced

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

5

“

81. Disclosing official secrets

(1) In this section —

“**disclosure**” includes —

- 10
- (a) any publication or communication; and
 - (b) in relation to information in a record, parting with possession of the record;

15

“**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 —

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

20

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

“**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;

25

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

“**unauthorised disclosure**” means —

30

- (a) the disclosure by a person who is a public servant or government contractor of official information in circumstances where the

s. 61

person is under a duty not to make the disclosure; or

- (b) the disclosure by a person who has been a public servant or government contractor of official information in circumstances where, were the person still a public servant or government contractor, the person would be under a duty not to make the disclosure.

- (2) A person who, without lawful authority, makes an unauthorised disclosure is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for one year or a fine of \$4 000.

”.

61. Section 215 inserted

After section 214 the following section is inserted —

“

215. Interfering with corpse to hinder inquiry

- (1) In this section a person interferes with the corpse of a person if he or she —

- (a) conceals the corpse, whether by burying or destroying it or otherwise; or
(b) damages or mutilates or otherwise interferes with the corpse.

- (2) Any person who, without lawful justification or excuse, the proof of which lies on him or her, interferes with the corpse of a person with intent to prevent or prejudice any investigation into the circumstances surrounding the death of the person is guilty of a crime and is liable to imprisonment for 10 years.

”.

62. Amendments about masters etc. and consequential amendment to the *Evidence Act 1906*

- (1) Section 245 is amended by deleting “or in the relation of master or servant,”.
- 5 (2) Section 257 is amended as follows:
- (a) by deleting “or master”;
- (b) by deleting “, pupil, or apprentice,” and inserting instead —
- “ or pupil ”.
- 10 (3) Section 264 is repealed.
- (4) Section 303 is repealed.
- (5) Section 372(3) is repealed.
- (6) The *Evidence Act 1906** Second Schedule Part 1 is amended by deleting the entry relating to an offence under section 303 of
- 15 *The Criminal Code*.

[* Reprinted as at 4 January 2001.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002.]

63. Section 321 amended

- 20 (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
- 25 the punishment in subsection (8).
- ”.
- (2) Section 321(10) is amended by deleting “, (4) or (6)” and inserting instead —
- “ or (4) ”.

s. 64

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

“

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

5

(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.

(12) For the purposes of subsection (11) an indecent act is a private conjugal act if —

10

(a) it is not committed in the presence of, or viewed by, any person other than a person lawfully married to the child; and

15

(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.

(13) It is a defence to a charge under subsection (6) to prove —

20

(a) that the accused person was lawfully married to the child; and

(b) that the indecent recording was made for the exclusive and private use of the child and the accused person.

25

”.

64. Section 354 amended

After section 354(4) the following paragraph is inserted —

“

30

(4a) To publish in good faith, for the information of the public, a fair report of the public proceedings of any Royal Commission established under the law of the Commonwealth or a State or Territory

of the Commonwealth, or by or under the authority of Her Majesty, or of the Governor in Council of the Commonwealth, the Governor in Council of any State of the Commonwealth, or the Administrator in Council of any Territory of the Commonwealth;

”.

65. Section 370 amended

- (1) Section 370 is amended by inserting before the paragraph beginning “The term “**animal**” ” the following paragraph —

“

Animals, which are the property of any person, are capable of being stolen while they are being reared by aquaculture in a place that is the property of, or under the control of, any person.

”.

- (2) Section 370 is amended in the definition of the term “animal” by inserting after “mankind” —

“ and any living aquatic organism ”.

- (3) Section 370 is amended by deleting the paragraph beginning “Oysters”.

66. Section 399A repealed

Section 399A is repealed.

67. Section 401 amended

- (1) Section 401(1) is amended by deleting the summary conviction penalty and inserting instead —

“

Summary conviction penalty:

- (a) in a case to which paragraph (a) applies where the only circumstance of aggravation is that the offender is in company with another person or other persons — imprisonment for 3 years or a fine of \$12 000;

s. 68

- (b) in a case to which paragraph (b) applies —
imprisonment for 3 years or a fine of
\$12 000; or
- 5 (c) in a case to which paragraph (c) applies —
imprisonment for 2 years or a fine of \$8 000. ”.
- (2) Section 401(2) is amended by deleting the summary conviction
penalty and inserting instead —
- “
- 10 Summary conviction penalty (subject to subsection (3)):
- (a) in a case to which paragraph (a) applies where
the only circumstance of aggravation is that the
offender is in company with another person or
other persons — imprisonment for 3 years or a
15 fine of \$12 000;
- (b) in a case to which paragraph (b) applies —
imprisonment for 3 years or a fine of
\$12 000; or
- 20 (c) in a case to which paragraph (c) applies —
imprisonment for 2 years or a fine of \$8 000. ”.

68. Section 407 amended

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

25 “ an offence ”.

69. Section 414 amended

Section 414 is amended by deleting the second paragraph and
inserting the following paragraph instead —

- “
- 30 The offender is liable —
- (a) if the court is satisfied as to the act by means of
which the property was obtained, to the penalty

provided for the offence constituted by that act,
or to imprisonment for 14 years, whichever is
the lesser;

(b) otherwise, to imprisonment for 14 years.

5

”.

70. Sections 436 and 437 replaced

Sections 436 and 437 are repealed and the following sections
are inserted instead —

“

10

436. Unlawful fishing

Any person who unlawfully uses any article or
substance for the purpose of taking any aquatic
organism that is being reared by aquaculture in a place
that is the property of, or under the control of, any
person is guilty of a simple offence and is liable to
imprisonment for 2 years or a fine of \$8 000.

15

437. Unlawfully taking fish etc.

Any person who unlawfully takes or destroys, or
attempts to take or destroy, any aquatic organism that
is —

20

(a) being reared by aquaculture in a place that is
the property of, or under the control of, any
person; or

(b) in any water that is private property or in which
there is a private right of fishery,

25

is guilty of a simple offence and is liable to
imprisonment for 2 years or a fine of \$8 000.

”.

s. 71

71. Section 570B amended

(1) Section 570B(1) is amended in the definition of “authorised person” as follows:

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

“

(ca) a legal practitioner acting for or representing the State;

”;

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

“

(dc) a coroner or a person acting at the direction of a coroner;

”.

(2) After section 570B(3)(a) the following paragraph is inserted —

“

(ab) the videotape is played for purposes connected with proceedings before a coroner;

”.

(3) Section 570B(5) is amended by deleting “(d), (da), (db)” and inserting instead —

“ (ca), (d), (da), (db), (dc) ”.

72. Heading to Chapter LXI amended

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

73. Section 584 amended

After section 584(6) the following subsection is inserted —

“

(6a) If any property is co-owned by a body of persons with a collective name, it is sufficient in an indictment in

which it is necessary to mention the owners of the property to use the collective name without naming any one of the persons.

”.

5 **74. Section 596 amended**

Section 596 is amended in the Table Column 1 by deleting “322(4)”.

75. Section 599 amended

(1) Section 599(1) is amended by inserting after “those sections” —
10 “ or under section 69 of the *Police Act 1892* ”.

(2) Section 599(2) is amended by inserting after “those sections” —
“ or under section 69 of the *Police Act 1892* ”.

76. Section 635 replaced

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

“

635. Accused’s presence at proceedings

(1) In this section —
20 “**proceedings**” includes proceedings under section 611A, at trial, and under the *Bail Act 1982*, the *Evidence Act 1906*, the *Sentencing Act 1995* or the *Young Offenders Act 1994*.

(2) This section applies whether an accused person is being tried alone or with others.

25 (3) Proceedings that relate to an accused person must take place in his or her presence unless this section or the *Sentencing Act 1995* provides otherwise.

s. 77

- 5
- (4) The court may order proceedings that relate to an accused person to proceed in his or her absence if it is satisfied —
- (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 proceedings proceed in the absence of the accused person.
- 10
- (5) Notwithstanding subsection (4), if an accused person conducts himself or herself in a manner that makes it impracticable to continue proceedings in his or her presence, the court may order the accused person to be removed and the proceedings to proceed in his or her absence.
- 15
- (6) If an accused person absents himself or herself during proceedings 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) Nothing in this section prevents a court from taking evidence from an accused person by video link or audio link under section 121 of the *Evidence Act 1906*.

”.

77. Section 635A amended

- 25
- (1) Section 635A(2) is amended as follows:
- (a) by deleting the full stop after paragraph (c) and inserting instead a semicolon;
- (b) by inserting after paragraph (c) the following paragraph —
- “
- 30
- (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(2) the following subsection is inserted —

5

“

(2a) An order under subsection (1)(d) does not prohibit the publication of matter identifying a victim if —

(a) the victim consents to the publication of the matter before it is published; and

10

(b) at the time of consenting to the publication, the victim has reached 18 years of age and is not a person who, because of mental impairment, is incapable of making reasonable judgments in respect of the publication of such matter.

15

”.

Schedule 1 — Amendments consequential on Part 5

[s. 25]

1. Bail Act 1982 amended

(1) The amendments in this clause are to the *Bail Act 1982**.

5 [* Reprinted as at 27 August 1999.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 27 and Acts Nos. 6 and 27 of 2002.]

(2) Schedule 2 item 1 is amended as follows:

10 (a) by deleting the entries relating to offences under sections 296,
296A, 298 and 299 of *The Criminal Code*;

(b) by inserting after the entry relating to section 301 of *The
Criminal Code* the following entry —

“

s. 304(2) Acts or omissions, with intent to
harm, causing bodily harm or danger

”.

15 **2. Criminal Law (Mentally Impaired Defendants) Act 1996 amended**

(1) The amendments in this clause are to the *Criminal Law (Mentally
Impaired Defendants) Act 1996**.

[* Reprinted as at 21 June 2002.
For subsequent amendments see Act No. 27 of 2002.]

20 (2) Schedule 1 item 1 is amended as follows:

(a) by deleting the entries relating to offences under sections 296,
296A, 298 and 299 of *The Criminal Code*;

(b) by inserting after the entry relating to section 301 of *The
Criminal Code* the following entry —

25 “

s. 304(2) Acts or omissions, with intent to
harm, causing bodily harm or danger

”.

3. Evidence Act 1906 amended

- (1) The amendments in this clause are to the *Evidence Act 1906**.

[* Reprinted as at 4 January 2001.

For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002.]

- (2) The Second Schedule Part 1 is amended by deleting the entries relating to offences under sections 296, 296A, 298, 299, 300, 302, 304, 305, 306, 307, 308, 309 and 310 of *The Criminal Code*.

- (3) The Second Schedule Part 1 is amended by inserting before the entry relating to section 313 of *The Criminal Code* the following entries —

“

s. 304 Acts or omissions causing bodily harm or
danger

s. 305 Setting dangerous things for people

”.

- (4) Schedule 7 Part C is amended by deleting the entries relating to sections 298, 299, 300, 302, 304 and 306.

- (5) Schedule 7 Part C is amended by inserting after the entry relating to section 301 the following entry —

“

304 Acts or omissions causing bodily harm or
danger

”.

4. Young Offenders Act 1994 amended

- (1) The amendments in this clause are to the *Young Offenders Act 1994**.

[* Reprinted as at 8 December 2000.

For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 423.]

Schedule 1 Amendments consequential on Part 5

- (2) Schedule 1 item 1 is amended by deleting the entries relating to offences under sections 300, 305 and 306 of *The Criminal Code* and inserting instead the following entries —

“

s. 304(2) Acts or omissions, with intent to harm,
causing bodily harm or danger

s. 305 Setting dangerous things for people, if
injury to a person is actually caused

5

”.

- (3) Schedule 2 item 1 is amended as follows:

(a) by deleting the entries relating to offences under sections 296, 296A, 298 and 299 of *The Criminal Code*;

(b) by inserting after the entry relating to section 301 of *The Criminal Code* the following entry —

10

“

s. 304(2) Acts or omissions, with intent to
harm, causing bodily harm or danger

”.

Schedule 2 — Amendments consequential on Part 6

[s. 27]

1. Bail Act 1982 amended

(1) The amendments in this clause are to the *Bail Act 1982**.

5 [* Reprinted as at 27 August 1999.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 27 and Acts Nos. 6 and 27 of 2002.]

(2) Schedule 2 item 1 is amended by inserting after the entry relating to
section 326 of *The Criminal Code* the following entries —

- 10 “
- | | |
|---------|--|
| s. 331B | Sexual servitude |
| s. 331C | Conducting business involving sexual
servitude |
| s. 331D | Deceptive recruiting for commercial
sexual services |
- ”.

2. Criminal Law (Mentally Impaired Defendants) Act 1996 amended

(1) The amendments in this clause are to the *Criminal Law (Mentally
Impaired Defendants) Act 1996**.

15 [* Reprinted as at 21 June 2002.
For subsequent amendments see Act No. 27 of 2002.]

(2) Schedule 1 item 1 is amended by inserting after the entry relating to
section 330 of *The Criminal Code* the following entries —

- 20 “
- | | |
|---------|--|
| s. 331B | Sexual servitude |
| s. 331C | Conducting business involving sexual
servitude |
| s. 331D | Deceptive recruiting for commercial
sexual services |
- ”.

3. Evidence Act 1906 amended

(1) The amendments in this clause are to the *Evidence Act 1906**.

[* Reprinted as at 4 January 2001.

For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002.]

(2) The Second Schedule Part 1 is amended by inserting after the entry relating to section 330 of *The Criminal Code* the following entries —

“

- | | |
|---------|---|
| s. 331B | Sexual servitude |
| s. 331C | Conducting business involving sexual servitude |
| s. 331D | Deceptive recruiting for commercial sexual services |

”.

4. Young Offenders Act 1994 amended

(1) The amendments in this clause are to the *Young Offenders Act 1994**.

[* Reprinted as at 8 December 2000.

For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 423.]

(2) Schedule 1 item 1 is amended by inserting after the entry relating to section 330(3) of *The Criminal Code* the following entries —

“

- | | |
|---------|---|
| s. 331B | Sexual servitude |
| s. 331C | Conducting business involving sexual servitude |
| s. 331D | Deceptive recruiting for commercial sexual services |

”.

(3) Schedule 2 item 1 is amended by inserting after the entry relating to section 326 of *The Criminal Code* the following entries —

“

- | | |
|---------|------------------|
| s. 331B | Sexual servitude |
|---------|------------------|

- s. 331C Conducting business involving sexual servitude
- s. 331D Deceptive recruiting for commercial sexual services

”.

Schedule 3 — Amendments consequential on Part 7

[s. 59]

1. Bail Act 1982 amended

(1) The amendments in this clause are to the *Bail Act 1982**.

5 [* Reprinted as at 27 August 1999.
For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 27 and Acts Nos. 6 and 27 of 2002.]

(2) Section 20(3)(a) is deleted and the following paragraph is inserted
instead —

10

“

(a) if the offence is one that may be tried on
indictment, before a court decides that it is to
be tried on indictment;

”.

15

2. Biological Control Act 1986 amended

(1) The amendments in this clause are to the *Biological Control
Act 1986**.

20

[* Act No. 106 of 1986.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 33.]

(2) Section 45(2) is amended as follows:

(a) by deleting “an indictable offence” and inserting instead —

“ a crime ”;

(b) by inserting at the foot of the section —

25

“

Summary conviction penalty: imprisonment for one
year.

”.

(3) Section 45(3) and (4) are repealed.

3. Bush Fires Act 1954 amended

- (1) The amendments in this clause are to the *Bush Fires Act 1954**.

[* Reprinted as at 20 January 1997.

For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 41 and Act No. 38 of 2002.]

- (2) Section 32 is amended by deleting “an indictable offence” and inserting instead —

“ a crime ”.

4. Children’s Court of Western Australia Act 1988 amended

- (1) The amendments in this clause are to the *Children’s Court of Western Australia Act 1988**.

[* Reprinted as at 25 August 2000.

For subsequent amendments see Western Australian Legislation
Information Tables for 2002, Table 1, p. 54.]

- (2) Section 19B(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

- (1) If a child is charged with an indictable offence and —

(a) the circumstances of the alleged offence are such that, if an adult were charged with it, it must be tried on indictment; or

(b) the circumstances of the alleged offence are such that —

(i) if an adult were charged with it, it could, by virtue of section 5 of *The Criminal Code*, or another written law, be tried either on indictment or summarily; and

(ii) the Court, having complied with section 99(2) of the *Justices Act 1902*, decides that it is to be tried on indictment,

the child may elect to be tried on indictment by the Supreme Court or the District Court (as the case requires), and the Court shall so inform the child.

- 5 (2) If a child is charged with an indictable offence and the circumstances of the alleged offence are such that the child is not entitled to make an election under subsection (1), the Court shall, subject to the provisions referred to in section 19(1), hear and determine the charge summarily.
- 10 (3) If a child makes an election under subsection (1) —
- (a) the Court, under Part V of the *Justices Act 1902*, shall deal with the charge, commit the child to the Supreme Court or the District Court (as the case requires) and exercise the jurisdiction and powers conferred on justices; and
- (b) the *Justices Act 1902* applies,
- 15 as if the charge were one that must be tried on indictment.
- 20 (3) Section 19B(4) is amended by deleting “, and the charge, if an adult were similarly charged before a court of petty sessions, could not be dealt with summarily”.
- (4) Section 19C(1) is repealed and the following subsection is inserted instead —
- “
- 25 (1) Notwithstanding section 19B, if —
- (a) the Court is satisfied —
- 30 (i) that a person who has reached 18 years of age (the “**adult**”) is charged with the same indictable offence as a child or with an indictable offence arising from the same acts, omissions, or circumstances as are alleged against a child charged with an indictable offence; and
- ”.

(ii) that the adult is to be tried on indictment for the offence;

and

(b) the Court is for any reason of the opinion that it is appropriate that the child be dealt with on indictment jointly with the adult,

then —

(c) the Court, under Part V of the *Justices Act 1902*, shall deal with the charge, commit the child to the court where the adult is to be tried and exercise the jurisdiction and powers conferred on justices; and

(d) the *Justices Act 1902* applies,

as if the charge were one that must be tried on indictment.

”.

(5) Section 19C(3) is amended as follows:

(a) by deleting “subsection (1)(d)” and inserting instead —
“ subsection (1) ”;

(b) by deleting “section 19B(3) or (4)” and inserting instead —
“ section 19B(2) or (4) ”.

5. Companies (Co-operative) Act 1943 amended

(1) The amendments in this clause are to the *Companies (Co-operative) Act 1943**.

[* Reprinted as at 14 January 2000.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 60 and Gazette 28 June 2002 p. 3052-4.]

(2) Section 280(1) is amended as follows:

(a) by deleting “liable on conviction on indictment to imprisonment for a term not exceeding one year, or on

Schedule 3 Amendments consequential on Part 7

- summary conviction to imprisonment for a term not exceeding 6 months.” and inserting instead —
- “
- 5 guilty of a misdemeanour and liable to imprisonment for one year. ”;
- (b) by inserting at the foot of the subsection —
- “
- 10 Summary conviction penalty: \$6 000. ”.
- (3) Section 281(3) is amended by deleting “liable on conviction on indictment to imprisonment for a term not exceeding one year.” and inserting instead —
- “
- 15 guilty of a misdemeanour and liable to imprisonment for one year. ”.
- (4) Section 425 is amended as follows:
- (a) by deleting the passage beginning with “and be liable on summary conviction” and ending with “*The Criminal Code*”;
- 20 (b) by inserting at the foot of the section —
- “
- Summary conviction penalty: \$6 000. ”.
- 25 **6. Coroners Act 1996 amended**
- (1) The amendments in this clause are to the *Coroners Act 1996**.
- [* *Reprinted as at 3 August 2001.*
For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 77.]

- (2) Section 46A is repealed and the following section is inserted instead —

“

46A. Disobeying coroner

5 A person who does not obey a summons, order, or direction of a coroner issued or given under section 46(1) is guilty of a crime and is liable to imprisonment for 5 years and to a fine of \$100 000.

10 Summary conviction penalty: imprisonment for 2 years and a fine of \$40 000.

”.

7. Court Security and Custodial Services Act 1999 amended

- (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999**.

15 [* Reprinted as at 13 July 2001.]

- (2) Section 90(1) is amended by inserting at the foot of the subsection —

“

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

20

”.

- (3) Section 90(3) is repealed.

8. Criminal Code Act 1913 amended

- (1) The amendment in this clause is to the *Criminal Code Act 1913**.

25 [* Reprint 10 as at 7 February 2003 (see Appendix B to the Criminal Code Act Compilation Act 1913).]

- (2) Section 4 is amended by deleting “indictable”.

9. Criminal Law (Mentally Impaired Defendants) Act 1996 amended

- (1) The amendments in this clause are to the *Criminal Law (Mentally Impaired Defendants) Act 1996**.

[* Reprinted as at 21 June 2002.

For subsequent amendments see Act No. 27 of 2002.]

- (2) Section 17 is repealed and the following section is inserted instead —

“

17. Procedure for indictable offences

- (1) This section applies if the defendant is charged with an indictable offence —

- (a) that must be dealt with on indictment; or
(b) that, under section 5 of *The Criminal Code* or under another written law, the magistrate decides is to be dealt with on indictment.

- (2) Despite the fact that the defendant is mentally unfit to stand trial, the procedure in Part V of the *Justices Act 1902* is to be followed and the defendant, while not mentally fit, is presumed to plead not guilty to the charge.

”.

10. Electoral Act 1907 amended

- (1) The amendments in this clause are to the *Electoral Act 1907**.

[* Reprinted as at 15 December 2000.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 109.]

- (2) Sections 204 and 205 are each amended by deleting “indictable offences” and inserting instead —

“ crimes ”.

11. Evidence Act 1906 amended

- (1) The amendments in this clause are to the *Evidence Act 1906**.

[* Reprinted as at 4 January 2001.
For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002.]

- 5 (2) Section 106F(4) is amended by deleting “an indictable offence” and
inserting instead —
“ a misdemeanour ”.

12. Fair Trading Act 1987 amended

- (1) The amendments in this clause are to the *Fair Trading Act 1987**.

[* Reprinted as at 16 November 2001.]

- 10 (2) Section 69(1) is amended as follows:
(a) by deleting “an indictable offence which, subject to section
71, the defendant may elect to have dealt with summarily.”
and inserting instead —
“ a crime. ”;
15 (b) by inserting at the foot of the subsection —
“
Summary conviction penalty: the lesser of a fine of
\$6 000 or the maximum penalty provided by this
Act for the offence.
20 ”.

- (3) Section 69(2) is amended by deleting “and section 71(1)”.

- (4) Section 71 is repealed.

**13. Family Court Act 1997 amended and consequential amendment to
Sentencing Legislation Amendment and Repeal Act 2003**

- 25 (1) The amendments in this clause are to the *Family Court Act 1997**
except where otherwise indicated.

[* Act No. 40 of 1997.
For subsequent amendments see Western Australian Legislation
Information Tables for 2002, Table 1, p. 130-1.]

- (2) Section 243(5) is amended as follows —
- (a) by deleting “an indictable offence” and inserting instead —
“ a crime ”;
 - (b) by inserting at the foot of the subsection —

5

“

Summary conviction penalty:

- (a) in the case of a body corporate, a fine of \$5 500;
- (b) in any other case, a fine of \$2 750.

10

”.

- (3) Section 243(6) is repealed.
- (4) If this clause comes into operation before the *Sentencing Legislation Amendment and Repeal Act 2003* section 60 comes into operation, that section is repealed.

15 **14. *Firearms Act 1973* amended**

- (1) The amendments in this clause are to the *Firearms Act 1973**.

[* *Reprinted as at 11 August 2000.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 139.]

20

- (2) Sections 6(3), 7(2), 19(4), 23(3) and 23(5) are each amended by deleting “an indictable offence” and inserting instead —

“ a crime ”.

- (3) Section 23D is repealed.

15. *Gold Corporation Act 1987* amended

25

- (1) The amendments in this clause are to the *Gold Corporation Act 1987**.

[* *Reprinted as at 2 January 2001.*]

(2) Section 71(1) is amended as follows:

(a) in paragraph (b) by deleting “an indictable offence” and inserting instead —

“ a crime ”;

5 (b) by inserting at the foot of the subsection —

“

Summary conviction penalty: in a case to which paragraph (b) of the above penalty provision refers — imprisonment for 2 years or a fine of \$10 000.

10

”.

(3) Section 72(1) is amended as follows:

(a) by deleting “an indictable offence” and inserting instead —

“ a crime ”;

15 (b) by inserting at the foot of the subsection —

“

Summary conviction penalty: imprisonment for 2 years or a fine of \$10 000.

20

”.

(4) Section 73(1) and (2) are repealed.

16. *Guardianship and Administration Act 1990* amended

(1) The amendments in this clause are to the *Guardianship and Administration Act 1990**.

[* *Reprinted as at 22 November 2002.*]

Schedule 3 Amendments consequential on Part 7

- (2) Schedule 1 Part B clause 12(1) and (2) are repealed and the following subclauses are inserted instead —

“

- 5 (1) A person who publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies —
- 10 (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c) a witness in the proceedings,
- 15 is guilty of a crime and is liable —
- (d) in the case of a body corporate, to a fine of \$10 000;
- (e) in any other case, to imprisonment for one year or a fine of \$5 000.
- Summary conviction penalty:
- 20 (a) for a body corporate, a fine of \$5 000;
- (b) for an individual, a fine of \$2 500.
- (2) A person who, except as permitted by regulations, publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the Board), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the Board is guilty of a crime and is liable —
- 25 (a) in the case of a body corporate, to a fine of \$10 000;
- (b) in any other case, to imprisonment for one year or a fine of \$5 000.
- Summary conviction penalty:
- 30 (a) for a body corporate, a fine of \$5 000;

(b) for an individual, a fine of \$2 500.

”

(3) Schedule 1 Part B clause 12(4), (5) and (6) are repealed.

17. Interpretation Act 1984 amended

5 (1) The amendments in this clause are to the *Interpretation Act 1984**.

[* Reprinted as at 1 January 1999.

*For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 180 and Act No. 3 of 2002.]*

10 (2) Section 5 is amended by inserting in the appropriate alphabetical
positions the following definitions —

“

“**indictable offence**” has the meaning given by
section 67;

“**simple offence**” has the meaning given by section 67;

15 “**summary conviction penalty**”, when used in relation
to an indictable offence, has the effect provided for
by section 5 of *The Criminal Code*;

”

(3) After section 67(1) the following subsection is inserted —

20 “

(1a) An offence designated as a crime or as a misdemeanour
is an indictable offence.

”

18. Misuse of Drugs Act 1981 amended

25 (1) The amendments in this clause are to the *Misuse of Drugs Act 1981**.

[* Reprinted as at 11 January 2002.]

(2) Section 3(1) is amended by deleting the definitions of “indictable
offence” and “offence”.

Schedule 3 Amendments consequential on Part 7

- (3) Each of the sections in the Table to this subclause is amended —
- (a) by deleting “an indictable offence” in each place where it occurs and in each place inserting instead —
“ a crime ”;
 - 5 (b) by deleting “that indictable offence” in each place where it occurs and in each place inserting instead —
“ that crime ”; and
 - (c) by deleting “the indictable offence” in each place where it occurs and in each place inserting instead —
10 “ the crime ”,
- as the case requires.

Table

s. 6	s. 32A(3) in the definition of “external serious drug offence”
s. 7	s. 33
s. 10	s. 34

- (4) If this Act comes into operation before the *Cannabis Control Act 2003* comes into operation, section 9 of the *Misuse of Drugs Act 1981* is repealed and the following section is inserted instead —

“

9. Summary trial of some indictable offences

- (1) If a person is charged before a court of summary jurisdiction with —
- 20 (a) an offence under section 6(1) in respect of a quantity of a prohibited drug referred to in Schedule III that is less than the quantity specified in that Schedule in relation to that prohibited drug; or
 - 25 (b) an offence under section 7(1) in respect of a number of prohibited plants of a particular species or genus referred to in Schedule IV that

is less than the number specified in that
Schedule in relation to that species or genus,

then, except in a case where the person is charged with
conspiring to commit the offence, the summary
conviction penalty for the offence is that set out in
section 34(2)(b).

- (2) A court of summary jurisdiction that tries a person
summarily for a charge of an offence referred to in
subsection (1) must be constituted by a magistrate
sitting alone.
- (3) If a person charged before a court of summary
jurisdiction with an offence that may be dealt with
summarily under subsection (1) is, under section 5 of
The Criminal Code, committed for trial or sentence in
respect of the offence, the court to which the defendant
is committed may deal with the charge despite —
- (a) the quantity of the prohibited drug to which the
charge relates being less than the quantity
specified in Schedule III in relation to that
prohibited drug; or
 - (b) the number of prohibited plants of a particular
species or genus to which the charge relates
being less than the number specified in
Schedule IV in relation to that species or genus.

”.

- (5) If this Act comes into operation after the *Cannabis Control Act 2003* comes into operation, section 9 of the *Misuse of Drugs Act 1981* is repealed and the following section is inserted instead —

“

5 **9. Summary trial of some indictable offences**

- (1) If a person is charged before a court of summary jurisdiction with —

- 10 (a) an offence under section 6(1) in respect of a quantity of a prohibited drug referred to in Schedule III that is less than the quantity specified in that Schedule in relation to that prohibited drug;
- 15 (b) an offence under section 7(1) in respect of a number of prohibited plants of a particular species or genus referred to in Schedule IV that is less than the number specified in that Schedule in relation to that species or genus; or
- (c) an offence under section 7A(1),

20 then, except in a case where the person is charged with conspiring to commit the offence, the summary conviction penalty for the offence is that set out in section 34(2)(b).

- 25 (2) A court of summary jurisdiction that tries a person summarily for a charge of an offence referred to in subsection (1) must be constituted by a magistrate sitting alone.

- 5 (3) If a person charged before a court of summary jurisdiction with an offence that may be dealt with summarily under subsection (1) is, under section 5 of *The Criminal Code*, committed for trial or sentence in respect of the offence, the court to which the defendant is committed may deal with the charge despite —
- 10 (a) the quantity of the prohibited drug to which the charge relates being less than the quantity specified in Schedule III in relation to that prohibited drug; or
- 15 (b) the number of prohibited plants of a particular species or genus to which the charge relates being less than the number specified in Schedule IV in relation to that species or genus. ”.
- (6) Section 32A(3) is amended in the definition of “serious drug offence” by deleting “indictable offence” and inserting instead —
- “ a crime ”.

19. National Crime Authority (State Provisions) Act 1985 amended

- 20 (1) The amendments in this clause are to the *National Crime Authority (State Provisions) Act 1985**.

[* *Act No. 4 of 1985.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 255.]

- 25 (2) Section 23(2) is amended as follows:
- (a) by deleting “an indictable offence and, subject to this section, is punishable, upon conviction,” and inserting instead —
- “ a crime and is punishable ”;
- (b) by inserting at the foot of the subsection —
- 30 “
- Summary conviction penalty: imprisonment for one year or a fine of \$2 000.
- ”.

- (3) Section 23(3) and (4) are repealed.

20. Offshore Minerals Act 2003 amended

- (1) The amendments in this clause are to the *Offshore Minerals Act 2003**.

5 [* Act No. 10 of 2003.]

- (2) Section 404(3) is amended by inserting at the foot of the subsection —

“

10 Summary conviction penalty: imprisonment for 2 years
or a fine of \$10 000 or both.

”.

- (3) Section 404(4) and (5) are repealed.

21. Petroleum Act 1967 amended

- (1) The amendments in this clause are to the *Petroleum Act 1967**.

15 [* Reprinted as at 14 January 2000.

*For subsequent amendments see 2001 Index to Legislation of
Western Australia, Table 1, p. 280.]*

- (2) Section 122 is repealed and the following section is inserted instead —

“

20 **122. Crimes and other offences**

- (1) If the penalty provided for an offence under this Act is
or includes imprisonment, the offence is a crime.

25 (2) The summary conviction penalty for an offence
referred to in subsection (1) is imprisonment for
2 years or a fine of \$10 000 or both.

- (3) Unless the contrary intention appears, an offence under
this Act, other than a crime, is punishable summarily.

”.

22. Petroleum Pipelines Act 1969 amended

- (1) The amendments in this clause are to the *Petroleum Pipelines Act 1969**.

[* Reprinted as at 12 May 2000.

5 For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 281.]

- (2) Section 66B is repealed and the following section is inserted instead —

“

10 **66B. Crimes and other offences**

- (1) If the penalty provided for an offence under this Act is or includes imprisonment, the offence is a crime.
- (2) Summary conviction penalty: for an offence referred to in subsection (1) — imprisonment for 2 years or a fine of \$10 000 or both.
- 15
- (3) Unless the contrary intention appears, an offence under this Act, other than a crime, is punishable summarily.

”.

23. Petroleum (Submerged Lands) Act 1982 amended

- 20 (1) The amendments in this clause are to the *Petroleum (Submerged Lands) Act 1982**.

[* Reprinted as at 6 August 1999.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 283.]

- 25 (2) Section 133 is repealed and the following section is inserted instead —

“

133. Crimes and other offences

- 30 (1) If the penalty provided for an offence under this Act is or includes imprisonment, the offence is a crime.

(2) Summary conviction penalty: for an offence referred to in subsection (1) — imprisonment for 2 years or a fine of \$10 000 or both.

5 (3) Unless the contrary intention appears, an offence under this Act, other than a crime, is punishable summarily.

”

24. Port Authorities Act 1999 amended

(1) The amendments in this clause are to the *Port Authorities Act 1999**.

[* *Act No. 22 of 1999.*

10 *For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 295 and Act No. 20 of 2002 and Gazette 4 March 2003 p. 711-22.]*

(2) Schedule 3 clause 2(1) is amended as follows:

- 15 (a) in the definition of “officer” by deleting the semicolon after paragraph (b) and inserting a full stop instead;
- (b) by deleting the definition of “summary conviction penalty”.

25. Prostitution Act 2000 amended

(1) The amendment in this clause is to the *Prostitution Act 2000**.

[* *Act No. 17 of 2000.*

20 *For subsequent amendments see Act No. 9 of 2002.]*

(2) Section 60 is repealed.

26. Road Traffic Act 1974 amended

(1) The amendments in this clause are to the *Road Traffic Act 1974**.

[* *Reprinted as at 19 October 2001.*

25 *For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 329 and Acts Nos. 4, 5 and 7 of 2002 and Gazette 17 May 2002 p. 2558-60.]*

- (2) Section 59(1) is amended by deleting “an indictable offence which may, subject to subsection (1a), at the election of the person charged, be dealt with summarily.” and inserting instead —

“

5 a crime and is liable to the penalty in subsection (3).

Summary conviction penalty: imprisonment for
18 months or a fine of 160PU and in any event the
court convicting the person shall order that he be
disqualified from holding or obtaining a driver’s
10 licence for a period of not less than 2 years.

”.

- (3) Section 59(1a) and (1b) are repealed.

- (4) Section 59(3) is amended as follows:

(a) by inserting after “person convicted” —

15 “ on indictment ”;

(b) in paragraph (a) by deleting “if convicted upon indictment and, at the time of the offence,” and inserting instead —

“ if at the time of the offence ”;

(c) by deleting paragraphs (aa) and (b) and inserting the
20 following paragraphs instead —

“

(b) in any other circumstances, to imprisonment for
4 years or a fine of 400PU,

”.

25 **27. Securities Industry Act 1975 amended**

- (1) The amendments in this clause are to the *Securities Industry Act 1975**.

[* *Act No. 99 of 1975.*]

- (2) Section 113 is amended by deleting “an indictable offence” and
30 inserting instead —

“ a crime ”.

28. Statutory Corporations (Liability of Directors) Act 1996 amended

- (1) The amendments in this clause are to the *Statutory Corporations (Liability of Directors) Act 1996**.

[* Reprinted as at 10 August 2001.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 359 and Acts Nos. 25 of 2001 and 30 of 2002.]

- (2) Section 7 is amended as follows:

- (a) in the definition of “director” by deleting the semicolon after paragraph (c) and inserting a full stop instead;
- (b) by deleting the definition of “summary conviction penalty”.

29. Western Australian Marine (Sea Dumping) Act 1981 amended

- (1) The amendments in this clause are to the *Western Australian Marine (Sea Dumping) Act 1981**.

[* Act No. 111 of 1981.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 411.]

- (2) Section 31 is repealed and the following section is inserted instead —

“

31. Crimes

- (1) An offence against section 5, 6, 7, 9, 12(5) or 29(1) is a crime.
- (2) Summary conviction penalty: for an offence against section 5, 6, 7, 9 or 12(5) —
- (a) for a body corporate, a fine of \$5 000;
- (b) for an individual, a fine of \$2 000.
- (3) Summary conviction penalty: for an offence against section 29(1) —
- (a) for a body corporate, a fine of \$5 000;

- (b) for an individual, imprisonment for one year or a fine of \$2 000 or both.

”.

30. *Witness Protection (Western Australia) Act 1996* amended

- 5 (1) The amendment in this clause is to the *Witness Protection (Western Australia) Act 1996**.

[* *Act No. 11 of 1996.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 419.]

- 10 (2) Section 3(1) is amended by deleting the definition of “Summary Conviction Penalty”.

=====