

Police Amendment Bill 1998

CLAUSE NOTES

Part 1 Preliminary

CLAUSE 1.

Short title

1. This Act may be cited as the Police Amendment Act 1998.

EXPLANATION

Self explanatory.

CLAUSE 2.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

EXPLANATION

Self explanatory.

Part 2 - *Police Act 1892* amended

CLAUSE 3.

The Act amended by this Part

3. The amendments in this Part are to the *Police Act 1892**.

[* Reprinted as at 31 January 1997. For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 182-4.]

EXPLANATION

Self explanatory.

CLAUSE 4.

Section 65 amended

4. (1) After section 65(1) the following paragraph is inserted —

“

(2) Every person who has in his possession any thing with the intention of using it to cause damage consisting of graffiti.

“

(2) Section 65 is amended by inserting at the end of the section the following paragraph —

“

A person is presumed to have had the intention referred to in paragraph (2) if —

(a) the person had possession of the thing in circumstances that give reasonable grounds for suspecting that the person had the intention; and

(b) the contrary is not proved.

“

EXPLANATION

This clause creates the offence of possession of a graffiti implement with intent.

To avoid the need to prove a person's intent, which is extremely difficult, this clause provides a presumption of intent. This presumption applies only when persons are found in possession of graffiti implements in circumstances that would give rise to a reasonable suspicion that the person had that intent. The clause provides for the rebuttal of this presumption where an accused provides evidence of a lawful excuse.

CLAUSE 5.

Section 67B inserted

5. After section 67A the following section is inserted —

“

67B. Search and seizure on reasonable suspicion

A police officer or constable may without warrant—

- (a) stop, detain and search any person who the officer or constable suspects on reasonable grounds to be committing an offence under section 65, 66 or 67; and
- (b) seize any thing that the officer or constable suspects on reasonable grounds relates to the commission of the offence.

“

EXPLANATION

This clause provides the power for a police officer to stop, detain and search a person who is suspected to be carrying a thing with the intention of using it to cause damage consisting of graffiti and seize anything found relating to the offence. It should be noted that this power will also apply to other offences under section 65, 66 or 67 of the Police Act so as to avoid creating an anomaly in the legislation.

CLAUSE 6.

Section 76 amended

6. (1) Section 76 is amended as follows by inserting after the section designation "76." the subsection designation "(1)".

(2) After section 76(1) the following subsection is inserted —

“

(2) Despite subsection (1), if —

(a) possession of the goods or chattels is unlawful; or

(b) the Commissioner of Police is satisfied that the goods or chattels are valueless,

the Commissioner may dispose of the goods or chattels in such manner as the Commissioner thinks fit.

“

EXPLANATION

A new subsection is created which enables the Commissioner of Police to dispose of seized articles that are unlawful or valueless other than by way of auction under s.76(1).

Part 3 - *Young Offenders Act 1994* amended

CLAUSE 7.

The Act amended by this Part

7. The amendments in this Part are to the *Young Offenders Act 1994**.

[* Reprinted as at 26 November 1996. For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 259.]

EXPLANATION

Self explanatory.

CLAUSE 8.

Section 23A amended

8. Section 23A(2) is amended as follows:

(a) by deleting the full stop at the end of paragraph (g) and substituting the following —

" ; and "

(b) after paragraph (g) by inserting —

"

(h) a description of any thing seized by the police officer in relation to the offence.

"

EXPLANATION

This clause adds a requirement for police officers to list items seized on the caution notice given to juveniles.

CLAUSE 9.

Section 23B inserted

9. After section 23A the following section is inserted —

“

23B. Police officer may retain a thing relating to an offence

(1) If a police officer —

(a) under a written law, seizes from a young person a thing relating to an offence; and

(b) gives a caution to the young person for the offence,

the police officer may retain the thing or release it to an appropriate person.

(2) A police officer who retains a thing under subsection (1) must, after 48 hours after giving the caution, make the thing available for collection by an appropriate person, unless the thing can be retained under any other law.

(3) In this section —

"appropriate person", in relation to a thing seized from a young person, means a person who —

(a) owns the thing, is authorized by the owner to possess it or, if the young person is the owner, is a responsible adult in relation to the young person; and

(b) is not prohibited by law from possessing the thing.

“

EXPLANATION

This clause inserts a new section which empowers police to seize and retain items related to an offence from young offenders who are being dealt with by way of caution.

Subclause (2) creates a requirement for items retained under this section to be made available for collection, by an appropriate person, after 48 hours.

Subclause (3) provides a definition of appropriate person.

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Miscellaneous offences

65. Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding \$500 or to imprisonment for any term not exceeding 6 calendar months —

- (1) Every person having no visible lawful means of support or insufficient lawful means of support, who being thereto required by any Justice, or who having been duly summoned for such purpose, or brought before any Justice, shall not give a good account of his means of support to the satisfaction of such Justice.
- [(2) *deleted*]
- (3) Every person wandering abroad, or from house to house, or placing himself in any public place, street, highway, court, or passage to beg or gather alms, or causing, or procuring, or encouraging any person to do so, or begging or gathering alms in any other place and not quitting such place whenever thereto bidden or requested.
- (4) Every person found in possession of any weapon or instrument or thing capable of being used for the purpose of disguise, who being thereto required, shall not give a good account of his means of support, and assign a valid and satisfactory reason for such possession.
- (4a) Every person who, without lawful excuse, carries or has on or about his person or in his possession any rifle, gun, pistol, sword, dagger, knife, sharpened chain, club, bludgeon or truncheon, or any other article made or adapted for use for causing injury to the person, or intended by him for such use by him.

(4aa) Every person who, not being an exempt person, has in his possession any protective jacket, vest, or other article of apparel designed to resist the penetration of a projectile discharged from a firearm; and in this paragraph "**exempt person**" means —

- (a) a person who is a member of —
 - (i) the Police Force of this State (which for the purposes of this paragraph includes a police cadet and a person appointed under section 35A or 38A of this Act);
 - (ii) the Police Force of the Commonwealth; or
 - (iii) the armed forces of the Crown,

and has any such jacket, vest, or article in his possession in the course of his duties;

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- (b) a person who has any such jacket, vest, or article in his possession pursuant to, and in accordance with the conditions, if any, specified in, the written permission of the Commissioner of Police (which permission the Commissioner of Police is hereby authorized to give and which conditions the Commissioner of Police is hereby authorized to impose); or
 - (c) a person who has any such jacket, vest, or article in his possession in the course of and for the purpose of supplying or delivering it to any person referred to in subparagraph (a) or (b) to fulfil an order previously made for such supply and delivery.
- (4b) Every person who, without lawful excuse, carries or has in his possession any jumper leads, silver paper, wire hooks, cutting implements or other implement or device to facilitate the unlawful driving or use of a motor vehicle.
- (5) Every person having in his possession, without lawful excuse, the proof of which excuse shall be on such person, any deleterious drug.
- [(6) *repealed*]
- (7) The occupier of any house which shall be frequented by reputed thieves, prostitutes, or persons who have no visible means of support.
- (8) Every common prostitute wandering in the public streets or highways, or being in any thoroughfare or place of public resort, and behaving in a riotous or indecent manner.
- (9) Every person who habitually consorts with reputed criminals or known prostitutes or persons who have been convicted of having no visible lawful means of support.

Every such weapon, instrument, and thing shall, on conviction of the offender, become forfeited to the Crown.

[Section 65 amended by No. 8 of 1955 s.2; No. 20 of 1956 s.2; No. 7 of 1972 s.3; No. 41 of 1974 s.3; No. 91 of 1975 s.31; No. 30 of 1983 s.4; No. 35 of 1989 s.8; No. 51 of 1992 s.16 (1).]

Subsequent offences against s.65, other miscellaneous offences

66. Every person who shall commit any of the next following offences shall on summary conviction be liable to a fine not exceeding \$1 000 or to imprisonment for any term not exceeding 12 calendar months —

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- (1) Every person committing an offence against section 65, having been previously convicted of an offence against that section.
- (2) Every person imposing or endeavouring to impose upon any charitable institution or private individual, by any false or fraudulent representation, either verbally or in writing, with a view to obtain money or any other benefit or advantage.
- (2a) Any person who, by wilfully making any false statement or representation —
 - (a) as to any sum or sums of money being his own personal property then in his possession or power; or
 - (b) as to any property real or personal then owned by him; or
 - (c) as to any sum of money then receivable by him by way of income, gift, or allowance; or
 - (d) as to any sum of money received by him as salary or wages over any period; or
 - (e) as to any employment in which he was engaged over any period; or
 - (f) as to any sustenance relief received by him over any period; or
 - (g) as to the number of persons then dependent on his earnings; or
 - (h) as to the financial position of persons then dependent on his earnings,

obtains or attempts to obtain under any scheme for the relief of unemployed destitute or indigent persons any work or employment or any benefit in money or money's worth either for himself or for any other person.
- (2b) Any person continuing to receive or attempting to receive any such work, employment, or benefit after he shall to his knowledge have become disentitled to receive the same.
- (3) Every person pretending to tell fortunes, or using any subtle craft, means, or device, to deceive and impose upon any person.
- (4) Every person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person), any picklock, key, crow, jack, bit, or other implement of housebreaking or any explosive substance.

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- (5) Every person exposing to view in any street, road, thoroughfare, highway, or public place, or who shall expose or cause to be exposed in any window, or other part of any shop or other building situate in any public place, or highway, or who shall offer for sale or attempt to dispose of any obscene print, picture, drawing, or representation.
- [(6) *repealed*]
- (7) Every person apprehended for an offence against section 65, and violently resisting any constable or other officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended.
- (8) Every person being found in or upon any place, stable, or outhouse for any unlawful purpose.
- (9) Every person wandering about or lodging in any outhouse, deserted or unoccupied building, or in the open air, or in any vehicle, not having any visible lawful means of support, and not giving a good account of himself.
- (10) Every person leaving without lawful means of support his or her wife or husband, and any parent wilfully refusing or neglecting to maintain either wholly or in part his or her child.
- (11) Any person wilfully and obscenely exposing his person in any street or public place, or in the view thereof, or in any place of public resort.
- (12) Any person fraudulently manufacturing or aiding in the manufacture of any spurious or mixed metal or substance, and any person fraudulently selling or fraudulently offering for sale, as unmanufactured gold, or as gold in its natural state, any metal or mixed or adulterated metal or other substance, whether partly composed of gold or not.
- (13) Any person who is or has been, without lawful excuse, in or upon any premises or the curtilage, whether enclosed or fenced or not, of any premises.

And each such picklock, key, crow, jack, bit, and other implement of housebreaking, and any such explosive substance, shall, on conviction of the offender, become forfeited to the Crown.

[Section 66 amended by No. 19 of 1933 s.2; No. 29 of 1962 s.2; No. 7 of 1967 s.2; No. 91 of 1975 s.32; No. 108 of 1982 s.6; No. 51 of 1992 s.16(1).]

Escaping legal custody, subsequent offences against s.66, obstructing licence holders

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67. Every person who shall commit any of the next following offences shall, on conviction before 2 or more Justices, be liable to a fine not exceeding \$1 500 or to imprisonment for any term not exceeding 18 calendar months —

- (1) Every person who shall break or escape out of any legal custody.
- (2) Every person committing any offence against section 66, having been previously convicted of an offence against that section.
- (3) Every person apprehended for an offence against section 66, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended.
- (4) Every person who, without lawful authority and with intent —
 - (a) to compel another person to abstain from carrying on any activity which pursuant to any law of the State or of the Commonwealth that person is by virtue of a licence, permit or authorization issued thereunder empowered to do; or
 - (b) to prevent such an activity being carried on; or
 - (c) to obstruct any such activity,

manifests that intention by doing any act in relation to that other person, the property of that other person or the activity so empowered, or by failing or omitting to do any act in relation thereto which he is lawfully required to do.

Provided that nothing shall prevent such offender being committed to the nearest gaol, there to remain until the next Sessions of The District Court of Western Australia to be held in the district wherein or nearest to which the said offence shall be committed.

Provided further that it shall be a defence to a charge of an offence contrary to paragraph (4) to show that the intention was manifested in the course of a *bona fide* trade dispute between an employer and workmen engaged in the activity so empowered, and that the act, failure or omission complained of was committed by a person who was a party to that dispute.

[Section 67 amended by No. 91 of 1975 s.33; No. 6 of 1978 s.12; No. 51 of 1992 s.16(1).]