

**Criminal Law Amendment (Simple Offences)  
Bill 2004**

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**Criminal Law Amendment (Simple Offences)  
Bill 2004**

**A Bill for**

**An Act to amend —**

- *The Criminal Code;*
- *the Police Act 1892;*
- *the Public Meetings and Processions Act 1984;*
- *the Constitution Acts Amendment Act 1899,*  
and various other Acts and for related matters.

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Criminal Law Amendment (Simple Offences) Act 2004*.

### **5 2. Commencement**

- (1) Subject to subsections (4) and (5), this Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- 10 (3) For the purposes of subsection (2), each amendment in a Table to a provision of this Act or in a Schedule to this Act is to be taken to be a separate provision of this Act.
- (4) A provision of section 37 is not to come into operation if the  
15 *Criminal Code Amendment (Racial Vilification) Act 2004* has come into operation.
- (5) A provision of section 38 is not to come into operation before the day on which the *Criminal Code Amendment (Racial Vilification) Act 2004* comes into operation and, if such a provision comes into operation on that day, it comes into  
20 operation immediately after that Act comes into operation.
- (6) Despite section 2 of the *Criminal Code Amendment (Racial Vilification) Act 2004*, section 6 of that Act is not to come into operation if section 36(11) of this Act has come into operation.
- 25 (7) A provision of section 39 is not to come into operation before the day on which Part 6 of the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2004* comes into operation and, if such a provision comes into operation on that day, it comes into operation immediately after that Part comes into operation.

## **Part 2 — *The Criminal Code* amended**

### **3. *The Criminal Code* amended**

The amendments in this Part are to *The Criminal Code*\*.

5 [\* Reprint 11 as at 3 September 2004 (see the Schedule to the  
*Criminal Code Act 1913* appearing as Appendix B to the  
*Criminal Code Compilation Act 1913*.)]

### **4. Section 1 amended**

(1) Section 1(1) is amended in the definition of the term “public officer” as follows:

- 10 (a) by deleting “a person exercising authority under a written law, and includes — ” and inserting instead —  
“ any of the following — ”;
- (b) by inserting after paragraph (ac) the following paragraph —  
15 “  
(ad) a person exercising authority under a written law;  
”;
- (c) by deleting “or” after paragraph (d).

20 (2) Section 1(1) is amended by inserting in the appropriate alphabetical positions —

- “  
The term “**public place**” includes —
- 25 (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise;
- (b) a privately owned place to which the public has access with the express or implied approval of, or without interference from, the owner, occupier or person who has the control or management of the place; and  
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- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access;

5

”.

**5. Sections 63 to 67 replaced**

Sections 63 to 67 are repealed and the following sections are inserted instead —

“

10

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

Any person who takes part in an unlawful assembly is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

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

15

- (1) If 3 or more persons form an unlawful assembly, a justice or a police officer may orally order them to disperse within a time that is reasonable and that is stated in the order.

20

- (2) Any person who does not disperse in accordance with an order given under subsection (1) is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

**65. Taking part in a riot**

25

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

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.



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

- 5
- (1) If 12 or more persons are riotously assembled, a justice or a police officer may orally order them to disperse within a time that is reasonable and that is stated in the order.
- (2) Any person who does not disperse in accordance with an order given under subsection (1) is guilty of a crime.
- (3) Any person who forcibly prevents a person from giving an order under subsection (1) is guilty of a crime.
- 10
- (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
- 15
- liable to imprisonment for 10 years.

**67. Rioters causing damage**

- (1) If as a result of persons being riotously assembled any property is unlawfully destroyed or damaged, each person among those so assembled is guilty of a crime and is liable to imprisonment for 10 years.
- 20
- (2) If the property is destroyed or damaged by fire, each person is liable to imprisonment for 14 years.

”.

**6. Sections 70A and 70B inserted**

25 After section 70 the following sections are inserted —

“

**70A. Trespass**

- (1) In this section —
- “**person in authority**”, in relation to a place, means —
- 30 (a) in the case of a place owned by the Crown, or an agency or instrumentality of the

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Crown — the occupier or person having control or management of the place or a police officer; or

(b) in any other case —

5

(i) the owner, occupier or person having control or management of the place; or

(ii) a police officer acting on a request by a person referred to in subparagraph (i);

10

**“police officer”** means a person who holds an appointment under Part I, III or IIIA of the *Police Act 1892*, other than a police cadet;

**“trespass”** on a place, means —

15

(a) to enter or be in the place without the consent of the owner, occupier or person having control or management of the place;

(b) to remain in the place after being requested by a person in authority to leave the place; or

20

(c) to remain in a part of the place after being requested by a person in authority to leave that part of the place.

(2) A person who, without lawful excuse, trespasses on a place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

25

(3) In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.

**70B. Trespassers may be asked for name and address**

(1) In this section —

30

**“enclosed land”** means land that is visibly enclosed, whether by means of artificial structures alone or a combination of artificial structures and natural

features, but does not include a road on the land that is open to or used by the public;

“owner”, in relation to land, includes the occupier and a person who has the control or management of the land.

5

(2) If the owner of any enclosed land finds a person on the land who has entered the land without the owner’s consent, the owner may request the person to give the person’s name and address to the owner.

10

(3) A person who does not comply with such a request is guilty of an offence and is liable to a fine of \$500.

(4) A person who in response to such a request gives a name or address that is false is guilty of an offence and is liable to a fine of \$500.

15

”.

**7. Section 74A inserted**

After section 74 the following section is inserted in Chapter IX —

“

20

**74A. Disorderly behaviour in public**

(1) In this section —

“**behave in a disorderly manner**” includes —

(a) to use insulting, offensive or threatening language; and

25

(b) to behave in an insulting, offensive or threatening manner.

(2) A person who behaves in a disorderly manner —

(a) in a public place or in the sight or hearing of any person who is in a public place; or

30

(b) in a police station or lock-up,

is guilty of an offence and is liable to a fine of \$6 000.

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(3) A person who has the control or management of a place where food or refreshments are sold to or consumed by the public and who permits a person to behave in a disorderly manner in that place is guilty of an offence and is liable to a fine of \$4 000.

(4) It is lawful for any person to arrest without warrant any person who is, or whom the person suspects, on reasonable grounds, to be, in the course of committing an offence under this section.

**8. Section 85 amended**

Section 85 is amended by inserting after “who” —

“  
    , in the performance or discharge of the functions of his office or employment,

**9. Section 87 replaced**

Section 87 is repealed and the following section is inserted instead —

**87. Impersonating a public officer**

- (1) For the purposes of this section a person impersonates a public officer if the person —
- (a) wears what is or purports to be the uniform of a public officer; or
  - (b) represents himself or herself by word or conduct to be a public officer,
- when the person is not such a public officer.

- (2) A person who impersonates a public officer and who —
- (a) purports to do or exercise; or
  - (b) attends any place for the purposes of doing or exercising,

5

any act or power of such a public officer is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

10

- (3) For the purposes of subsection (2) it is immaterial whether the power referred to exists at law.

- (4) An allegation in a charge of an offence under this section that at the material time the accused was not a public officer, or not a public officer of the kind that the accused is alleged to have impersonated, must be taken to be proved, unless the contrary is proved.

15

”.

**10. Chapter XIV replaced**

Chapter XIV is repealed and the following chapter is inserted instead —

20

“

**Chapter XIV — Offences at elections**

**93. Interpretation**

In this Chapter —

25

“**election**” includes an election held under a written law that provides for the choice of persons to fill a public office;

“**elector**” includes any person entitled to vote in an election;

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**“electoral conduct”** means —

- (a) candidature in an election;
- (b) withdrawal of candidature from an election;
- (c) a vote, or an omission to vote, in an election;
- 5 (d) support of, or opposition to, a candidate in an election; or
- (e) an application for a postal vote in an election;

10 **“electoral officer”** means a person who is authorised to conduct or assist in conducting an election.

**94. Application of this Chapter**

This Chapter does not apply to or in respect of parliamentary or local government elections.

**95. Liability for acts of others**

- 15 (1) For the purposes of this Chapter, the act of a candidate’s authorised agent is to be taken to be the act of the candidate unless the candidate proves —
- (a) that the act was committed without the candidate’s knowledge or consent; and
  - 20 (b) that the candidate had neither directly nor indirectly authorised or approved the act.
- (2) For the purposes of this Chapter, a person is liable for an illegal act or omission committed directly or indirectly by the person, or by another person on the person’s behalf, except as provided by subsection (1).
- 25

**96. Bribery**

- (1) In this section —
- “reward”** means a reward in the form of property or any kind of advantage, benefit, consideration or recompense.
- 30

- (2) A person who —
- (a) promises, offers or suggests a reward for, or on account of, or to induce, electoral conduct or a promise of electoral conduct; or
  - (b) gives, takes or seeks a reward for, or on account of, electoral conduct or a promise of electoral conduct,
- is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- (3) The making of a declaration of public policy or a promise of public action does not give rise to an offence under this section.

**97. Undue influence**

- (1) In this section —
- “detriment”** means violence, injury, punishment, damage, loss or disadvantage.
- (2) A person who —
- (a) threatens, offers or suggests detriment for, or on account of, or to induce, electoral conduct or a promise of electoral conduct;
  - (b) uses, causes, inflicts or procures detriment for, or on account of, electoral conduct; or
  - (c) interferes with the free exercise of the franchise of an elector,
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (3) The making of a declaration of public policy or a promise of public action does not give rise to an offence under this section.

**98.        Electoral material, printing and publication of**

(1) In this section —

5            **“electoral material”** means any advertisement, article, handbill, letter, notice, pamphlet, placard or poster the purpose of which is to influence voters in an election but does not include —

- 10            (a) a newspaper advertisement announcing the holding of a meeting;
- (b) articles of apparel, lapel buttons, lapel badges, pens, pencils or balloons;
- (c) business or visiting cards that promote the candidacy of any person in an election;
- (d) letters or cards that —
  - 15            (i) bear the name and address of the sender; and
  - (ii) do not contain a representation or purported representation of a ballot paper for use in an election;

20            **“print”** includes to photocopy and to reproduce by any means;

**“publish”** electoral material, includes to distribute it and to publish it by radio, television or electronic means.

25            (2) A person who prints or publishes electoral material, or who causes electoral material to be printed or published, is guilty of an offence and is liable to a fine of \$2 000 unless there appears at the end of the material —

- 30            (a) the name and address (not being a post office box or email address) of the person who authorised the material; and
- (b) the name and address (not being a post office box or email address) of the publisher.



**99. False or defamatory statements or deceptive material, publication of**

(1) In this section —

5           **“deceptive material”** means any matter or thing that is likely to mislead or deceive an elector about how to vote or for whom to vote in an election;

**“print”** includes to photocopy and to reproduce by any means;

10           **“publish”** any material or statement, includes to distribute it and to publish it by radio, television or electronic means;

**“relevant period”** of an election, means the period beginning when nominations for the election are first officially invited and ending when the entitlement to vote in the election ceases.

          (2) If during the relevant period of an election deceptive material is published, a person who made or who authorised the publishing of the material is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

          (3) It is a defence to a charge of an offence under subsection (2) to prove the accused did not know, and could not reasonably have been expected to know, that the material was deceptive material.

25           (4) If during the relevant period of an election a false or defamatory statement in relation to the personal character or conduct of a candidate in the election is published, a person who made or who authorised the publishing of the statement is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

30           (5) It is a defence to a charge of an offence under subsection (4) to prove the accused believed the

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statement to be true and had reasonable grounds for doing so.

**100. Postal voting, offences in connection with**

A candidate in an election who —

- 5            (a) interferes with an elector while the elector is applying for a postal vote in the election;
- (b) communicates or interferes with or assists an elector in the process of completing and lodging a postal vote in the election; or
- 10            (c) takes custody of, or causes any other person other than the elector to take custody of, an envelope in which there is an elector's postal vote in the election,

15            is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**101. Polling place, offences at or near**

(1) A person who is in, or within 6 metres from an entrance to, a polling place on a polling day in an election and who —

- 20            (a) canvasses for votes in the election;
- (b) solicits the vote of an elector in the election;
- (c) attempts to induce an elector not to vote in the election; or
- 25            (d) attempts to induce an elector not to vote for a particular candidate in the election,

is guilty of an offence and is liable to a fine of \$2 000.

(2) A person who, at a polling place or at a place where the votes cast in an election are being counted —

- 30            (a) interrupts, disturbs or obstructs proceedings in the place;

- 5
- (b) disobeys the reasonable instructions of an electoral officer; or
  - (c) wilfully destroys, damages or removes a notice or other document that an electoral officer, acting within the scope of his or her authority, has displayed or caused to be displayed,
- is guilty of an offence and is liable to a fine of \$2 000.
- 10
- (3) A person who, while an elector is in a compartment or booth for the purpose of marking a ballot paper —
- (a) unlawfully enters the compartment or booth;
  - (b) unlawfully communicates with the elector; or
  - (c) unlawfully assists the elector in marking the ballot paper,
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- 15
- (4) Subsection (3) does not apply to a person who, with the permission of an electoral officer —
- (a) having been nominated by the elector to do so, assists an elector who is illiterate or who is so disabled as to be unable to vote without assistance; or
  - (b) is present to witness the person assisting the elector.
- 20

**102. Voting offences**

- 25
- (1) A person who votes in an election in the knowledge that he or she is not entitled to vote in the election is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- 30
- (2) A person who, in the knowledge that another person is not entitled to vote in the election, procures that person to vote in the election, is guilty of an offence and is

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liable to imprisonment for 12 months and a fine of \$12 000.

- 5
- (3) A person who personates an elector is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (4) A person who votes more often in an election than the person is entitled is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- 10
- (5) A person who is entitled to cast more than one vote in an election and who casts more votes in the election than the person is entitled to cast is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**103. Ballot paper and ballot box offences**

- 15
- (1) A person who —
- (a) forges a ballot paper;
  - (b) fraudulently damages or destroys a ballot paper;
  - (c) fraudulently puts a ballot paper in a ballot box; or
  - (d) wilfully and without authority destroys, takes, opens or otherwise interferes with a ballot paper or ballot box,
- 20
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- 25
- (2) A person who —
- (a) supplies a ballot paper without authority;
  - (b) is in possession of an unauthorised ballot paper;
  - (c) marks a ballot paper without authority; or

- (d) takes a ballot paper from a polling place without authority,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

5       **104.    Secrecy offences**

- (1) A person who without authority —
  - (a) looks at the ballot paper of any particular elector; or
  - (b) ascertains how any particular elector voted in an election,

10

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

15

- (2) A person who discloses the vote of any particular elector is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**105.    Electoral officer, offences by**

An electoral officer who —

- (a) attempts to influence the vote of an elector;
- (b) by any unauthorised act or omission attempts to influence the result of an election; or
- (c) discloses, except under compulsion of law, knowledge officially acquired concerning the vote of a particular elector,

20

25

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**106.    False statements in connection with an election**

- (1) A person who makes a statement that is false in a material particular —
  - (a) in a nomination to be a candidate in an election;

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- 5
- (b) in an application to be included on a list of electors in an election;
  - (c) in any other application or in any declaration, form, certificate or other document that the person completes in connection with an election; or
  - (d) in an answer to a question in connection with an election that is put by an electoral officer with authority to do so,
- 10
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (2) A person who induces another person to commit an offence under subsection (1) is also guilty of an offence under that subsection.

15       **107. Evidentiary provision**

In a prosecution for an offence under this Chapter in relation to an election, a certificate purporting to be signed by the officer responsible for conducting the election —

- 20
- (a) as to when nominations for the election were first officially invited and when the entitlement to vote in the election ceased;
  - (b) that a person named in the certificate was or was not a candidate in the election;
  - 25 (c) that a person named in the certificate was or was not an elector in the election;
  - (d) that a place was or was not a polling place for the purpose of the election;
  - 30 (e) that a day was or was not a polling day for the election; or

(f) that the election was duly held,  
is admissible without calling the officer and is proof of  
its contents in the absence of evidence to the contrary.

5 **11. Sections 136 and 137 replaced**

Sections 136 and 137 are repealed and the following section is  
inserted instead —

“

**136. Compounding or concealing offences**

- 10 (1) In this section —  
“**compound**”, in relation to an offence, includes —
- (a) to abstain from, to discontinue, and to delay,  
prosecuting the offence; and
  - (b) to withhold evidence in relation to the  
15 offence.
- (2) A person who obtains, or who seeks or agrees to  
receive, any property or benefit, pecuniary or  
otherwise, for any person, upon an agreement or  
20 understanding that the person will compound or  
conceal an offence is guilty of a crime and is liable to  
imprisonment for 7 years.

”.

**12. Section 138 replaced**

25 Section 138 is repealed and the following section is inserted  
instead —

“

**138. Advertising reward for stolen property**

- 30 (1) A person who, in any public offer of a reward for the  
return of any stolen or lost property, uses any words to  
the effect that no questions will be asked of, or that no

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---

action will be taken against, the person returning the property is guilty of an offence and is liable to a fine of \$2 000.

- 5            (2) A person who offers publicly to pay another person who may have purchased any stolen or lost property or advanced any money by way of loan on the security of any such property —
- (a) a refund of the purchase price or the money loaned; or
- 10            (b) a reward or any other sum of money for the return of any such property,
- is guilty of an offence and is liable to a fine of \$2 000.
- 15            (3) A person who prints or publishes an offer of the kind referred to in subsection (1) or (2) is guilty of an offence and is liable to a fine of \$2 000.

”.

**13.        Sections 145 and 146 replaced**

Sections 145 and 146 are repealed and the following sections are inserted instead —

20        “

**145.        Aiding a person to escape from lawful custody**

- (1) In this section —
- “**prison**” includes any place where a person is or may be held in lawful custody.
- 25            (2) A person who conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a person from that or another prison is guilty of a crime and is liable to imprisonment for 7 years.
- Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.
- 30



- (3) A person who aids a person in escaping or attempting to escape from lawful custody is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

5

**146. Escaping from lawful custody**

A person who escapes from lawful custody is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

10

”.

**14. Section 148 replaced**

Section 148 is repealed and the following section is inserted instead —

15

“

**148. Aiding an escapee**

- (1) In this section —

“aid” includes to harbour, to maintain and to employ.

- (2) A person who aids a person who is, to the person’s knowledge, a person who has escaped from lawful custody is guilty of a crime and is liable to imprisonment for 3 years.

20

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

25

”.

**15. Section 171 inserted**

After section 170 the following section is inserted —

“

**171. Creating false belief**

- (1) In this section —

30

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“**belief**” means a belief or suspicion that —

- (a) an offence has been or is about to be committed;
  - (b) human safety is or may be endangered;
  - 5 (c) human life has or may have been lost;
  - (d) property is or may be endangered;
  - (e) property has or may have been destroyed;
  - (f) there is a fire that needs to be put out,
- and that is of such a nature as would reasonably  
10 call for action by the Police Force or by  
emergency services.

(2) A person who does or omits to do any act with the  
intention of creating a false belief is guilty of a crime  
and is liable to imprisonment for 2 years.

15 Summary conviction penalty: imprisonment for  
12 months and a fine of \$12 000.

(3) A court convicting a person of an offence under this  
section may order the person to pay all or some of the  
reasonable expenses of or incidental to any action that  
20 was reasonably taken as a result of the offence,  
whether or not by the Police Force or emergency  
services.

(4) The order must specify the person or persons to whom  
the amount is to be paid.

25 (5) Part 16 of the *Sentencing Act 1995* applies to and in  
respect of an order made under subsection (3) as if it  
were a compensation order made under that Part.

”.

**16. Section 172 replaced**

Section 172 is repealed and the following section is inserted instead —

“

5       **172. Obstructing public officers**

(1) In this section —

“**obstruct**” includes to prevent, to hinder and to resist.

(2) A person who obstructs a public officer, or a person lawfully assisting a public officer, in the performance of the officer’s functions is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.

”.

15       **17. Section 186 amended**

After section 186(2) the following subsection is inserted —

“

(3) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

”.

**18. Section 190 inserted**

Before section 191 the following section is inserted —

25       “

**190. Being involved with prostitution**

(1) Any person who —

(a) keeps or manages, or acts, or assists in the management of any premises for purposes of prostitution;

30

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---

- (b) being the tenant, lessee, or occupier of any premises, permits such premises, or any part thereof, to be used for purposes of prostitution; or
- 5 (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, or collects the rent with the knowledge that such premises, or some part thereof, are or is to be used for purposes of prostitution, or is a party to the continued use of such premises, or any part thereof, for purposes of prostitution,
- 10

is guilty of a crime and is liable to imprisonment for 3 years.

15 Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

(2) For the purposes of subsection (1)(a), a person who appears, acts, or behaves as the person having control of, or the care or management of, any premises is to be taken to be keeping the premises, whether the person is or is not the real keeper.

20

(3) Any person who lives wholly or partly on earnings that the person knows are the earnings of prostitution is guilty of a crime and is liable to imprisonment for 3 years.

25

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

(4) For the purposes of subsection (3), if a person lives with, or is habitually in the company of a prostitute, and has no visible means of subsistence, the person shall, unless he or she can satisfy the court to the contrary, be taken to be living on earnings that the person knows are the earnings of prostitution.

30

”

**19. Section 191 amended and *Evidence Act 1906* consequentially amended**

(1) Section 191 is amended as follows:

- 5           (a) by inserting before “Any person” the subsection designation “(1)”;
- (b) by redesignating paragraphs (1), (2), (3), (4) and (5) respectively as paragraphs (a), (b), (c), (d) and (e).

(2) At the end of section 191 the following subsection is inserted —  
“

- 10           (2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

”.

- 15           (3) The *Evidence Act 1906* section 36A(1) is amended in paragraph (a) of the definition of “sexual offence” by deleting “or 191(1)” and inserting instead —

“ or 191(1)(a) ”.

**20. Section 192 amended**

20           (1) Section 192 is amended as follows:

- (a) by inserting before “Any person” the subsection designation “(1)”;
- (b) by redesignating paragraphs (1), (2), (3) and (4) respectively as paragraphs (a), (b), (c) and (d).

25           (2) At the end of section 192 the following subsection is inserted —  
“

- (2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

”.

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---

**21.        Sections 202, 203 and 204 replaced**

Sections 202, 203 and 204 are repealed and the following sections are inserted instead —

“

5

**202.        Obscene acts in public**

- (1) A person who does an obscene act —
- (a) in a public place or in the sight of any person who is in a public place; or
  - (b) in a police station or lock-up,

10

is guilty of a crime and is liable to imprisonment for 3 years.

Alternative offence: s. 203(1).

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

15

- (2) A person who owns, or has the control or management of, a place to which the public is admitted, whether on payment of consideration or not, and who permits a person to do an obscene act in that place is guilty of a crime and is liable to imprisonment for 3 years.

20

Alternative offence: s. 203(2).

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

25

- (3) It is a defence to a charge of an offence under this section to prove that it was for the public benefit that the act complained of should be done.
- (4) Whether the doing of any such act is or is not for the public benefit is a question of fact.

30

**203.        Indecent acts in public**

- (1) A person who does an indecent act —
- (a) in a public place or in the sight of any person who is in a public place; or

(b) in a police station or lock-up,  
is guilty of a crime and is liable to imprisonment for  
2 years.

Summary conviction penalty: imprisonment for  
9 months and a fine of \$9 000.

(2) A person who owns, or has the control or management  
of, a place to which the public is admitted, whether on  
payment of consideration or not, and who permits a  
person to do an indecent act in that place is guilty of a  
crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for  
9 months and a fine of \$9 000.

(3) It is a defence to a charge of an offence under this  
section to prove that it was for the public benefit that  
the act complained of should be done.

(4) Whether the doing of any such act is or is not for the  
public benefit is a question of fact.

**204. Indecent act with intent to offend**

A person who does an indecent act in any place with  
intent to insult or offend any person is guilty of a crime  
and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for  
12 months and a fine of \$12 000.

”.

**22. Section 206 inserted**

After section 205 the following section is inserted in  
Chapter XXII —

**206. Supplying intoxicants to people likely to abuse them**

(1) In this section —

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---

“**intoxicant**” means a drug, or a volatile or other substance, capable of intoxicating a person, but does not include liquor as defined in the *Liquor Licensing Act 1988*;

5 “**volatile substance**” means a substance that produces a vapour at room temperature.

(2) A person who sells or supplies an intoxicant to another person in circumstances where the person knows, or where it is reasonable to suspect, that that or another person will use it to become intoxicated is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

”.

15 **23. Sections 209 and 213 repealed and consequential amendment**

- (1) Sections 209 and 213 are repealed.
- (2) The heading to Chapter XXIII is amended by deleting “Nuisances:”.

20 **24. Sections 339 to 342 repealed and consequential amendment**

- (1) Sections 339, 340, 341 and 342 are repealed.
- (2) The heading to Chapter XXXIV is amended by deleting “marriage and”.

**25. Section 390A inserted**

After section 390 the following section is inserted —

25 “**390A. Unlawful use of conveyance**

- (1) In this section —
- “**conveyance**” does not include a motor vehicle;
- “**use**” a conveyance, includes —



- (a) to take the conveyance for the purpose of using it; and
  - (b) to assume control of the conveyance in any way.
- 5 (2) A person who unlawfully uses a conveyance without the consent of the owner or the person in charge of it is guilty of a crime and is liable —
- 10 (a) if during the commission of the offence, a person who is not an accomplice of the offender is in the conveyance, to imprisonment for 10 years;
  - (b) if immediately before or during or immediately after the commission of the offence, the offender —
    - 15 (i) is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
    - (ii) is in company with another person or persons; or
    - 20 (iii) does bodily harm to any person, to imprisonment for 10 years;
  - (c) in any other case, to imprisonment for 7 years.
- Summary conviction penalty in a case to which paragraph (c) applies: imprisonment for 3 years and a fine of \$36 000.
- 25

”.

**26. Section 390B repealed**

Section 390B is repealed.

**27. Heading to Chapter XLIV replaced**

30 The heading to Chapter XLIV is deleted and the following heading is inserted instead —

“  
**Chapter XLIV — Simple offences analogous to stealing**  
”

**28. Sections 428 to 435 replaced**

5                      Sections 428, 429, 430, 431, 432, 434 and 435 are repealed and  
                         the following sections are inserted instead —

“

**428. Possessing stolen or unlawfully obtained property**

- 10                      (1) A person who is in possession of any thing capable of  
                         being stolen that is reasonably suspected to be stolen or  
                         otherwise unlawfully obtained is guilty of an offence  
                         and is liable to imprisonment for 2 years and a fine of  
                         \$24 000.
- 15                      (2) It is a defence to a charge of an offence under  
                         subsection (1) to prove that at the time the accused was  
                         allegedly in possession of the thing, the accused had no  
                         reasonable grounds for suspecting that the thing was  
                         stolen or unlawfully obtained.

**429. Unlawfully using another person’s animal**

- 20                      A person who —
- (a) unlawfully uses, or unlawfully takes for the  
                         purpose of using, any animal that is the  
                         property of another person without the consent  
                         of the owner or the person in lawful possession  
25                      of the animal; or
- (b) takes any animal that is the property of another  
                         person for the purpose of secreting it or  
                         obtaining a reward for the return or pretended  
                         finding of it or for any fraudulent purpose,
- 30                      is guilty of an offence and is liable to imprisonment for  
                         2 years and a fine of \$24 000.

”

**29. Sections 439 and 440 repealed**

Sections 439 and 440 are repealed.

**30. Section 440A replaced**

Section 440A is repealed and the following section is inserted  
5 instead —

“

**440A. Unlawful use of computers**

(1) In this section —

“**computer system**” includes —

- 10 (a) a part of a computer system;  
(b) an application of a computer system;

“**password**” includes a code, or set of codes, of  
electronic impulses;

15 “**restricted-access computer system**” means a  
computer system in respect of which —

- (a) the use of a password is necessary in order to  
obtain access to information stored in the  
system or to operate the system in some  
other way; and  
20 (b) the person who is entitled to control the use  
of the system —  
(i) has withheld knowledge of the  
password, or the means of producing it,  
from all other persons; or  
25 (ii) has taken steps to restrict knowledge of  
the password, or the means of producing  
it, to a particular authorised person or  
class of authorised person;

“**use**” a computer system means —

- 30 (a) to gain access to information stored in the  
system; or

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---

- (b) to operate the system in some other way.
- (2) For the purposes of this section a person unlawfully uses a restricted-access computer system —
- 5            (a) if the person uses it when he or she is not properly authorised to do so; or
- (b) if the person, being authorised to use it, uses it other than in accordance with his or her authorisation.
- (3) A person who unlawfully uses a restricted-access computer system is guilty of a crime and is liable —
- 10            (a) if by doing so the person —
- (i) gains a benefit, pecuniary or otherwise, for any person; or
- 15            (ii) causes a detriment, pecuniary or otherwise, to any person, of a value of more than \$5 000, to imprisonment for 10 years;
- (b) if by doing so the person —
- 20            (i) gains or intends to gain a benefit, pecuniary or otherwise, for any person; or
- (ii) causes or intends to cause a detriment, pecuniary or otherwise, to any person, to imprisonment for 5 years;
- 25            (c) in any other case, to imprisonment for 2 years.
- Summary conviction penalty in a case to which paragraph (c) applies: imprisonment for 12 months and a fine of \$12 000.

”.

30    **31.    Sections 445 and 446 inserted**

After section 444 the following sections are inserted —

“

**445. Damaging property**

5 A person who unlawfully destroys or damages the property of another person without that other person’s consent is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**446. Costs of cleaning graffiti**

(1) In this section —

10 “**offender**” means a person who is guilty of an offence under section 444 or 445 where the damage consists of —

- (a) graffiti that are visible to the public; or
- (b) graffiti applied to public property;

15 “**public property**” means property owned by, vested in, or under the control or management of —

- (a) the State;
- (b) the Crown, or an agent or instrumentality of the Crown;
- (c) a body corporate established by a written law; or
- 20 (d) a local government or regional local government.

25 (2) A court convicting an offender may order the offender to pay to any person who has obliterated the graffiti, or caused it to be obliterated, a reasonable amount for doing so.

30 (3) Such an order is in addition to any penalty imposed for the offence and may be in addition to a compensation order made under Part 16 of the *Sentencing Act 1995*.

”.

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**32. Section 557 amended**

Section 557 is amended as follows:

- (a) by inserting before “Any person” the subsection designation “ (1) ”;
- 5 (b) by inserting before “explosive” in the first 2 places where it occurs —  
“ dangerous or ”;
- (c) by inserting at the foot of the first paragraph the following —  
10 “  
Summary conviction penalty: imprisonment for 3 years  
and a fine of \$36 000.  
”;
- 15 (d) by inserting before “In this section” the subsection designation “ (2) ”.

**33. Chapter LVIIA inserted**

After section 557 the following chapter is inserted —

“  
20 **Chapter LVIIA — Offences to do with preparing to  
commit offences**

**557A. Presumptions**

A person is presumed to have an intention referred to in this Chapter in relation to a thing in the person’s possession if —

- 25 (a) the person is in possession of the thing in circumstances that give rise to a reasonable suspicion that the person has the intention; and
- (b) the contrary is not proved.

**557B. Investigative powers for offences in this Chapter**

- 5 (1) It is lawful for any person to arrest without warrant any person who is, or whom the person suspects, on reasonable grounds, to be, in the course of committing an offence under this Chapter that is not an arrestable offence as defined in section 564(1).
- 10 (2) A police officer, without warrant, may —
- (a) stop, detain and search any person who the officer suspects on reasonable grounds to be committing an offence under this Chapter; and
  - (b) seize anything that the officer suspects on reasonable grounds relates to the commission of the offence.
- 15 (3) Before a police officer searches a person under subsection (2), the officer must explain to the person that it is an offence to obstruct the search.

**557C. Forfeiture**

20 A court that convicts a person of an offence under this Chapter may order that the thing giving rise to the offence be forfeited to the State.

**557D. Possessing stupefying or overpowering drug or thing**

25 A person who is in possession of a stupefying or overpowering drug or thing with the intention of using it to facilitate —

- (a) the commission of an offence; or
- (b) the flight of an offender after the commission or attempted commission of an offence,

30 is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

**557E. Possessing things to assist unlawful entry to places**

5

A person who is in possession of a thing with the intention of using it to facilitate the unlawful entry of any place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

**557F. Possessing things to assist unlawful use of conveyances**

10

A person who is in possession of a thing with the intention of using it to facilitate the unlawful use of a conveyance is guilty of an offence and is liable to a fine of \$6 000.

**557G. Possessing things for applying graffiti**

15

A person who is in possession of a thing with the intention of using it to cause damage consisting of graffiti is guilty of an offence and is liable to a fine of \$6 000.

**557H. Possessing a disguise**

20

A person who is in possession of a thing with the intention of using it as a disguise in connection with committing an offence is guilty of an offence and is liable to a fine of \$6 000.

**557I. Possessing bulletproof clothing**

25

(1) In this section —

“**bulletproof clothing**” means a protective jacket, vest, or other article of clothing, designed to resist the penetration of bullets or other missiles discharged from firearms;

“**Commissioner**” means the Commissioner of Police appointed under the *Police Act 1892*.



- (2) A person who is in possession of bulletproof clothing is guilty of an offence and is liable to a fine of \$6 000.
- (3) Subsection (2) does not apply to —
- (a) a person who —
- 5 (i) holds an appointment under Part I, III or IIIA of the *Police Act 1892*, other than a police cadet;
- (ii) is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*;
- 10 (iii) is a prison officer within the meaning of the *Prisons Act 1981*;
- (iv) is employed or appointed under an Act of the Commonwealth, another State or a Territory,
- 15 and who is lawfully in possession of bulletproof clothing in the course of duty;
- (b) a person who is in possession of bulletproof clothing in accordance with a permit given under subsection (4);
- 20 (c) a person who is in possession of bulletproof clothing in the course of and for the purpose of supplying it to a person referred to in paragraph (a) or (b) to fulfil a request
- 25 previously made for its supply.
- (4) The Commissioner, by a written permit, may permit a person or a class of persons to possess bulletproof clothing on any conditions (to be specified in the permit) that the Commissioner thinks fit.
- 30 (5) The Commissioner may at any time amend or cancel such a permit.

**557J. Declared drug traffickers, consorting by**

- (1) In this section, unless the contrary intention appears —  
“consort” includes to communicate in any manner;  
“declared drug trafficker” means a person who is  
5            declared to be a drug trafficker under  
              section 32A(1) of the *Misuse of Drugs Act 1981*.
- (2) A person who is a declared drug trafficker and who,  
having been warned by a police officer —
- 10            (a) that another person is also a declared drug  
              trafficker; and
- (b) that consorting with the other person may lead  
              to the person being charged with an offence  
              under this section,
- habitually consorts with the other person is guilty of an  
15            offence and is liable to imprisonment for 2 years and a  
              fine of \$24 000.
- (3) It is a defence to a charge of an offence under  
subsection (2) to prove that the accused person —
- 20            (a) was the spouse or de facto partner of the other  
              person; or
- (b) was a de facto child or a lineal relative (as those  
              terms are defined in section 329(1)) of the other  
              person.

**557K. Child sex offenders, offences by**

- 25            (1) In this section, unless the contrary intention appears —  
“child” means a person under 18 years of age;  
“child sex offender” means a person who has been  
convicted of —
- 30            (a) an offence under any of these chapters of this  
              Code that was committed against, in respect  
              of, or in the sight of, a child —

- 
- 5
- (i) Chapter XXII — Offences against morality;
- (ii) Chapter XXXI — Sexual offences;
- (iii) Chapter XXXIII — Offences against liberty;
- (b) an offence under Chapter XXXIIIB that was committed against or in respect of a child;
- (c) an offence under any of these repealed enactments of this Code that was committed against a child —
- 10
- (i) section 315 (Indecent assault on males);
- (ii) Chapter XXXIA — Sexual assaults;
- (iii) Chapter XXXII — Assaults on females: Abduction;
- 15
- (d) an offence under section 59 of the *Censorship Act 1996* that was committed in circumstances in which an indecent or obscene article was sold, supplied or offered to a child;
- 20
- (e) an offence under section 60 of the *Censorship Act 1996*;
- (f) an offence under section 101 of the *Censorship Act 1996* that was committed in circumstances in which —
- 25
- (i) objectionable material was transmitted or demonstrated to a child; or
- (ii) the objectionable material was child pornography;
- (g) an offence under section 102 of the *Censorship Act 1996*;
- 30
- (h) an offence committed under section 5(1), 6(1), 15, 16, 17 or 18 of the *Prostitution*

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- Act 2000* committed against or in respect of a child;
- (i) an offence under this section;
- 5 (j) an offence under the repealed section 66(11) of the *Police Act 1892* committed in the sight of a child; or
- (k) an offence against a law of a jurisdiction other than Western Australia that is substantially similar to an offence referred to in any of paragraphs (a) to (j);
- 10 **“consort”** includes to communicate in any manner.
- (2) A reference in paragraph (a) or (b) of the definition of “child sex offender” in subsection (1) to a Chapter of this Code includes a reference to the Chapter as
- 15 enacted at any time.
- (3) A reference in paragraph (c) of the definition of “child sex offender” in subsection (1) to an enactment of this Code includes a reference to the enactment as enacted at any time before it was repealed.
- 20 (4) A person who is a child sex offender and who, having been warned by a police officer —
- (a) that another person is also a child sex offender; and
- (b) that consorting with the other person may lead
- 25 to the person being charged with an offence under this section,
- habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- 30 (5) It is a defence to a charge of an offence under subsection (4) to prove that the accused person —
- (a) was the spouse or de facto partner of the other person; or

- (b) was a de facto child or a lineal relative (as those terms are defined in section 329(1)) of the other person.
- (6) A child sex offender who, without reasonable excuse, is in or near a place that is —
- (a) a school, kindergarten or child care centre; or
- (b) a public place where children are regularly present,
- and where children are at the time is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

**34. “Misdemeanour” changed to “crime”**

- (1) Each provision listed in the Table to this section is amended by deleting “misdemeanour” in each place where it occurs and in each place inserting instead —
- “ crime ”.

**Table**

s. 51(2)	s. 149	s. 363
s. 52	s. 150	s. 384
s. 53	s. 151	s. 385
s. 54	s. 173	s. 386
s. 55	s. 176	s. 387
s. 56	s. 177	s. 389
s. 75	s. 178	s. 418
s. 86(1)	s. 191	s. 421
s. 123	s. 192	s. 460
s. 128	s. 214	s. 461
s. 131	s. 291	s. 462
s. 133	s. 336	s. 510
s. 139	s. 337	s. 514

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s. 141	s. 344	s. 547
s. 142	s. 360	s. 548
s. 147	s. 361	s. 549

- (2) Section 552(1) is amended as follows:
- (a) by deleting “of —” and inserting instead —  
“ of a crime. ”;
  - (b) by deleting paragraphs (a) and (b).
- 5 (3) Section 552(2) is amended by deleting “or misdemeanour”.
- (4) Section 553(1) is amended as follows:
- (a) by deleting “of —” and inserting instead —  
“ of a crime. ”;
  - (b) by deleting paragraphs (a) and (b).
- 10 (5) Section 553(2) is amended by deleting “or misdemeanour”.
- (6) Section 558(1) is amended as follows:
- (a) by deleting “of —” and inserting instead —  
“ of a crime. ”;
  - (b) by deleting paragraphs (c) and (d).
- 15 (7) Section 558(2) is amended by deleting “or misdemeanour”.
- (8) Section 562(1) is amended as follows:
- (a) by deleting “of —” and inserting instead —  
“ of a crime. ”;
  - (b) by deleting paragraphs (a) and (b).
- 20 (9) Section 562(2) is amended by deleting “or misdemeanour”.

**35. Summary conviction penalties, changes to**

- (1) Each provision listed in the Table to this subsection is amended by deleting the summary conviction penalty at the foot of the provision and inserting instead —

“

Summary conviction penalty: imprisonment for  
12 months and a fine of \$12 000.

”.

5

**Table**

s. 56	s. 150	s. 337
s. 74	s. 214	s. 488
s. 75	s. 305(3)	s. 549
s. 81(2)	s. 305(4)	

- (2) Each provision listed in the Table to this subsection is amended by deleting the summary conviction penalty at the foot of the provision and inserting instead —

“

10

Summary conviction penalty: imprisonment for 2 years  
and a fine of \$24 000.

”.

**Table**

s. 54	s. 304(1)	s. 424
s. 55	s. 323	s. 473(1)
s. 58	s. 407	s. 512

15

- (3) Each provision listed in the Table to this subsection is amended by deleting the summary conviction penalty at the foot of the provision and inserting instead —

“

20

Summary conviction penalty: imprisonment for 3 years  
and a fine of \$36 000.

”.

**Table**

s. 68(1)	s. 318(1)	s. 324
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**s. 35**

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- (4) Each provision listed in the first column of the Table to this subsection is amended by deleting the text opposite it in the second column and inserting instead the text opposite it in the third column.

5

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert instead</b>
s. 59	or to a fine of \$8 000	and a fine of \$24 000
s. 151	\$2 000	\$6 000
s. 301	or a fine of \$12 000	and a fine of \$36 000
s. 301	or a fine of \$8 000	and a fine of \$24 000
s. 313(1)	or a fine of \$12 000	and a fine of \$36 000
s. 313(1)	or a fine of \$6 000	and a fine of \$18 000
s. 317(1)	or a fine of \$12 000	and a fine of \$36 000
s. 317(1)	or a fine of \$8 000	and a fine of \$24 000
s. 317A	or a fine of \$12 000	and a fine of \$36 000
s. 317A	or a fine of \$8 000	and a fine of \$24 000
s. 360	, and to a fine of \$4 000	and a fine of \$12 000
s. 360	\$1 000	\$4 000
s. 360	, and to a fine of \$8 000	and a fine of \$24 000
s. 360	\$2 000	\$8 000
s. 361	, and to a fine of \$8 000	and a fine of \$24 000
s. 361	\$2 000	\$8 000
s. 401(1) (in 2 places)	or a fine of \$12 000	and a fine of \$36 000
s. 401(1)	or a fine of \$8 000	and a fine of \$24 000
s. 401(2) (in 2 places)	or a fine of \$12 000	and a fine of \$36 000
s. 401(2)	or a fine of \$8 000	and a fine of \$24 000
s. 409(1)	or a fine of \$12 000	and a fine of \$36 000
s. 409(1)	or a fine of \$8 000	and a fine of \$24 000
s. 418	or to a fine of \$200	and a fine of \$12 000
s. 421	, and to a fine of \$400	and a fine of \$24 000
s. 426(2)	or a fine of \$8 000	and a fine of \$24 000



---

<b>Provision</b>	<b>Delete</b>	<b>Insert instead</b>
s. 426(3)	or a fine of \$8 000	and a fine of \$24 000
s. 426(4)	\$2 000	\$6 000
s. 427(a)	\$2 000	\$6 000
s. 436	or a fine of \$8 000	and a fine of \$24 000
s. 437	or a fine of \$8 000	and a fine of \$24 000
s. 444	or a fine of \$12 000	and a fine of \$36 000
s. 635A(5)	or a fine of \$10 000	and a fine of \$12 000

---

(5) Section 338B is amended by deleting “Imprisonment for 18 months or a fine of \$6 000.” and inserting instead —

“ imprisonment for 18 months and a fine of \$18 000. ”.

(6) Section 338C(3) is amended as follows:

5

(a) by deleting “Imprisonment for 3 years or a fine of \$12 000;” and inserting instead —

“ imprisonment for 3 years and a fine of \$36 000; ”;

(b) by deleting “Imprisonment for 18 months or a fine of \$6 000.” and inserting instead —

10

“  
imprisonment for 18 months and a fine of \$18 000.  
”.

(7) Section 338E(1) is amended as follows:

15

(a) by deleting “Imprisonment for 2 years or a fine of \$8 000;” and inserting instead —

“ imprisonment for 2 years and a fine of \$24 000; ”;

(b) by deleting “Imprisonment for 18 months or a fine of \$6 000.” and inserting instead —

20

“  
imprisonment for 18 months and a fine of \$18 000.  
”.

**s. 35**

---

(8) Section 338E(2) is amended by deleting “Penalty: Imprisonment for 12 months or a fine of \$4 000.” and inserting instead —

“

Penalty: imprisonment for 12 months and a fine of  
\$12 000.

”.

(9) Section 343A(1) is amended by deleting “on summary conviction to imprisonment for one year, or to a fine of \$1 000.” and inserting instead —

“ to imprisonment for 12 months and a fine of \$12 000. ”.

(10) Section 427 is amended as follows:

(a) by deleting “one year or a fine of \$4 000;” and inserting instead —

“ 12 months and a fine of \$12 000; ”;

(b) by deleting “or a fine of \$8 000.” and inserting instead —

“ and a fine of \$24 000. ”.

(11) Sections 474(1) and 514 are each amended by deleting the summary conviction penalty at the foot of the provision and inserting instead —

“

Summary conviction penalty: imprisonment for  
18 months and a fine of \$18 000.

”.

(12) Section 527(1) is amended by deleting “Imprisonment for 2 years or a fine of \$8 000.” and inserting instead —

“ imprisonment for 2 years and a fine of \$24 000. ”.

- (13) Section 570C is amended by deleting the penalty provision and inserting instead —

“

Penalty:

- 5                   (a) for an individual, imprisonment for  
                          12 months and a fine of \$12 000;  
                          (b) for a body corporate, a fine of \$100 000.

”.

10 **36. Amendments about alternative verdicts and *Interpretation Act 1984* consequentially amended**

- (1) After section 3(5) the following subsection is inserted —

“

- 15                   (6) A person may be convicted and punished for an  
                          offence on indictment notwithstanding that the person  
                          might have been convicted of and punished for that  
                          offence summarily.

”.

- (2) After section 10 the following Chapter is inserted —

“

20                                   **Chapter IIA — Alternative offences**

**10A. Conviction of alternative offence, when possible**

- (1) A person charged with an offence cannot be convicted  
by the court dealing with the charge of any other  
offence instead of that offence unless —  
25                   (a) the accused is charged with the other offence as  
                          an alternative to that offence; or  
                          (b) this Chapter provides otherwise.
- (2) This Chapter does not authorise the conviction of a  
30                   person of an offence if the prosecution for the offence  
                          was not commenced within the time (if any) limited by  
                          law for commencing a prosecution for the offence.

**10B. “Alternative offence”, meaning and effect of**

- 5
- (1) This section applies if a provision of this Code, or of another written law, that creates an offence (“**offence A**”) provides one or more alternative offences for offence A.
- (2) If a person is charged with an offence (“**offence A**”), whether or not on indictment, the person, instead of being convicted as charged, may be convicted of any alternative offence that is provided for offence A.
- 10
- (3) This section does not prevent —
- (a) this Code, or another written law, from providing a simple offence as an alternative offence for an indictable offence; or
- 15
- (b) a person charged in an indictment with an indictable offence from being found guilty by a jury, and convicted and punished by a superior court, for a simple offence that is an alternative offence for the indictable offence.
- (4) This section does not limit the operation of the other sections in this Chapter.
- 20

**10C. Conviction of alternative offence, consequences of**

- 25
- (1) If a person is charged with an offence and, under this Code, is convicted by a court of some other offence, the person is liable to the penalty to which the person would be liable if the person had been charged before that court with the other offence.
- (2) If a person charged in an indictment with an indictable offence is convicted of a simple offence that is an alternative offence for the indictable offence, then, for the purposes of any appeal against the conviction, the person is to be taken to have been convicted of the simple offence on indictment.
- 30

**10D. Charge of offence, alternative convictions of attempt etc.**

5 If a person is charged with committing an offence (the “**principal offence**”), the person, instead of being convicted as charged, may be convicted of —

- (a) attempting to commit;
- (b) inciting another person to commit; or
- (c) becoming an accessory after the fact to,

10 the principal offence or any alternative offence of which a person might be convicted instead of the principal offence.

**10E. Charge of attempt, alternative convictions on**

15 If a person is charged with attempting to commit an offence (the “**principal offence**”) other than an offence under section 283, the person, instead of being convicted as charged, may be convicted of —

- (a) committing the principal offence; or
- (b) committing, or attempting to commit, any alternative offence of which any person charged with the principal offence might be convicted instead of the principal offence,

20 but the person shall not be liable to a punishment greater than the greatest punishment to which the person would have been liable if convicted of attempting to commit the principal offence.

**10F. Charge of conspiracy, alternative convictions on**

30 If a person is charged with conspiring to commit an offence (the “**principal offence**”), the person, instead of being convicted as charged, may be convicted of —

- (a) committing the principal offence;
- (b) attempting to commit the principal offence; or

- (c) inciting another person to commit the principal offence,

5

but the person shall not be liable to a punishment greater than the greatest punishment to which the person would have been liable if convicted of conspiring to commit the principal offence.

**10G. Charge of procuring, alternative convictions on**

10

- (1) If a person is charged with procuring the commission of an offence (the “**principal offence**”), the person, instead of being convicted as charged, may be convicted of —

15

- (a) attempting to procure the commission of the principal offence; or
- (b) procuring the commission of, or attempting to procure the commission of, any offence of which any person charged with the principal offence might be convicted instead of the principal offence.

20

- (2) If a person (the “**accused**”) is charged with procuring another person to do an act or make an omission of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence (the “**principal offence**”), the accused, instead of being convicted as charged, may be convicted of procuring the other person to do any other act or make any other omission that is of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence of which any person charged with the principal offence might be convicted instead of the principal offence.

30

**10H. Charge of attempting to procure, alternative convictions on**

- 5 (1) If a person is charged with attempting to procure the commission of an offence (the “**principal offence**”), the person, instead of being convicted as charged, may be convicted of attempting to procure the commission of any other offence of which any person charged with the principal offence might be convicted instead of the principal offence.
- 10 (2) If a person (the “**accused**”) is charged with attempting to procure another person to do an act or make an omission of such a nature that if the act or omission had occurred an offence (the “**principal offence**”) would have been committed, the accused, instead of being convicted as charged, may be convicted of attempting to procure the other person to do any other act or make any other omission that is of such a nature that if the act or omission had occurred an offence would have been committed of such a nature that any person charged with the principal offence might be convicted of it instead of the principal offence.
- 15
- 20

**10I. Joined charges of receiving, verdicts on**

25 If 2 or more persons are charged jointly with an offence of which the receiving of any property is an element and the evidence establishes that any one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, one or more of the accused persons may be convicted of the offence or offences so established by the evidence.

30

- ”.
- (3) *The Criminal Code* is amended by inserting at the foot of, and above any summary conviction penalty in, each provision listed

in the first column of the Table to this subsection the text opposite the provision in the second column of the Table.

**Table**

<b>Provision</b>	<b>Text to be inserted</b>
s. 186(1)	Alternative offence: s. 191(1).
s. 280	Alternative offence: s. 290 or 291 or <i>Road Traffic Act 1974</i> s. 59.
s. 281A(1)	Alternative offence: s. 283, 290 or 291.
s. 283	Alternative offence: s. 292, 294, 297, 304, 305 or 317.
s. 290	Alternative offence: s. 291.
s. 292	Alternative offence: s. 301 or 317A.
s. 294	Alternative offence: s. 297, 304, 317 or 317A.
s. 294A(1)	Alternative offence: s. 68 or 451A.
s. 305(3)	Alternative offence: s. 305(4)
s. 317(1)	Alternative offence: s. 313.
s. 317A	Alternative offence: s. 313 or 317.
s. 318A	Alternative offence: s. 294A, 297, 304, 313, 317 or 317A.
s. 320(2)	Alternative offence: s. 320(4), 321(2) or (4) or 322(2) or (4).
s. 320(3)	Alternative offence: s. 320(4) or (5), 321(3), (4) or (5) or 322(3), (4) or (5).
s. 320(4)	Alternative offence: s. 321(4) or 322(4).
s. 320(5)	Alternative offence: s. 321(5) or 322(5).
s. 320(6)	Alternative offence: s. 321(6) or 322(6).
s. 321(2)	Alternative offence: s. 321(4) or 322(2) or (4).
s. 321(3)	Alternative offence: s. 321(4) or (5) or 322(3), (4) or (5).
s. 321(4)	Alternative offence: s. 322(4).
s. 321(5)	Alternative offence: s. 322(5).
s. 321(6)	Alternative offence: s. 322(6).
s. 322(2)	Alternative offence: s. 322(4).
s. 322(3)	Alternative offence: s. 322(4) or (5).
s. 324	Alternative offence: s. 321(4), 322(4) or 323.
s. 325	Alternative offence: s. 322(2) or (4), 323 or 324.



<b>Provision</b>	<b>Text to be inserted</b>
s. 326	Alternative offence: s. 321(2) or (4), 322(2) or (4), 323, 324 or 325.
s. 327	Alternative offence: s. 322(3), (4) or (5).
s. 328	Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5) or 327.
s. 329(2)	Alternative offence: s. 321(2) or (4), 322(2) or (4) or 329(4).
s. 329(3)	Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5) or 329(4) or (5).
s. 329(4)	Alternative offence: s. 321(4) or 322(4).
s. 329(5)	Alternative offence: s. 321(5) or 322(5).
s. 329(6)	Alternative offence: s. 321(6) or 322(6).
s. 330(2)	Alternative offence: s. 322(2) or (4), 323, 324, 325, 326 or 330(4).
s. 330(3)	Alternative offence: s. 322(3), 322(4), 322(5), 327, 328 or 330(4) or (5).
s. 330(4)	Alternative offence: s. 322(4), 323 or 324.
s. 330(5)	Alternative offence: s. 322(5).
s. 330(6)	Alternative offence: s. 322(6).
s. 332(2)	Alternative offence: s. 333.
s. 338A	Alternative offence: s. 338B.
s. 338E(1)	Alternative offence: s. 338E(2).
s. 379	Alternative offence: s. 424.
s. 388	Alternative offence: s. 378.
s. 392	Alternative offence: s. 68, 297, 313, 317, 317A, 378 or 393.
s. 393	Alternative offence: s. 68, 297, 313, 317 or 317A.
s. 409	Alternative offence: s. 378, 414 or 428.
s. 444	Alternative offence: s. 445.

(4) Section 191 is amended by inserting after the paragraph ending with “years.” the following paragraph —

“

Alternative offence for a charge of an offence under  
subsection (1)(a): s. 186(1).

”.

**s. 36**

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- (5) Section 279 is amended by inserting at the foot of the section —  
“  
Alternative offence: s. 280, 281A, 283, 290 or 291 or  
*Road Traffic Act 1974* s. 59.  
”
- 5
- (6) Section 297 is amended by inserting after the paragraph  
beginning with “Any person” —  
“  
Alternative offence: s. 304, 313 or 317 or *Road Traffic*  
*Act 1974* s. 59.  
”
- 10
- (7) Section 343 is amended by inserting before the paragraph  
beginning with “It is a defence” —  
“  
Alternative offence for a charge of an offence under  
paragraph (1): an offence under paragraph (2).  
”
- 15
- (8) Section 378 is amended by inserting after the paragraph  
beginning with “Any person” and before the heading  
“*Punishment in special cases*” —  
“  
Alternative offence: s. 382, 383, 388, 390A, 409, 414,  
428 or 429.  
”
- 20
- (9) Section 397 is amended by inserting before the paragraph  
beginning with “The term” —  
“  
Alternative offence: s. 338A or 338B.  
”
- 25
- (10) Section 414 is amended by inserting after the first paragraph —  
“  
Alternative offence: s. 378, 409 or 428.  
”
- 30

- (11) Chapter LXIII is repealed.
- (12) The *Interpretation Act 1984* section 5 is amended by inserting in the appropriate alphabetical position —

“

5                   **“alternative offence”**, when used in relation to an offence, has the meaning given by section 10B of *The Criminal Code*;

”.

10   **37. Chapter XI (if not amended by *Criminal Code Amendment (Racial Vilification) Act 2004*) amended**

- (1) Sections 77 and 78 are each amended by deleting the summary conviction penalty and inserting instead —

“

15                   Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

”.

- (2) Sections 79 and 80 are each amended in the summary conviction penalty by deleting “\$1 000” and inserting instead —
- “ \$4 000 ”.

- 20   (3) *The Criminal Code* is amended by inserting at the foot of, and above any summary conviction penalty in, each provision listed in the first column of the Table to this subsection the text opposite the provision in the second column of the Table.

**Table**

<b>Provision</b>	<b>Text to be inserted</b>
s. 77	Alternative offence: s. 78, 79 or 80.
s. 78	Alternative offence: s. 77, 79 or 80.
s. 79	Alternative offence: s. 80.
s. 80	Alternative offence: s. 79.

**s. 38**

---

**38.        Amendments to Code if *Criminal Code Amendment (Racial Vilification) Act 2004* comes into operation**

(1) Sections 78, 80, 80A and 80C are each amended by deleting the summary conviction penalty and inserting instead —

5

“

Summary conviction penalty: imprisonment for 2 years  
and a fine of \$24 000.

”.

(2) Sections 80B and 80D are each amended by deleting the summary conviction penalty and inserting instead —

10

“

Summary conviction penalty: imprisonment for  
12 months and a fine of \$12 000.

”.

15

(3) *The Criminal Code* is amended by inserting at the foot of, and above any summary conviction penalty in, each provision listed in the first column of the Table to this subsection the text opposite the provision in the second column of the Table.

**Table**

<b>Provision</b>	<b>Text to be inserted</b>
s. 77	Alternative offence: s. 78, 80A or 80B.
s. 78	Alternative offence: s. 80A or 80B.
s. 79	Alternative offence: s. 80, 80C or 80D.
s. 80	Alternative offence: s. 80C or 80D.
s. 80A	Alternative offence: s. 78 or 80B.
s. 80C	Alternative offence: s. 80 or 80D.

**39. Amendments to Code if *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2004* comes into operation**

- 5 (1) Section 169(1) is amended by deleting the summary conviction penalty and inserting instead —
- “
- Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.
- ”.
- 10 (2) Section 169(2) is amended by deleting the summary conviction penalty and inserting instead —
- “
- Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.
- 15 ”.
- (3) Section 170(1) is amended by deleting the summary conviction penalty and inserting instead —
- “
- 20 “ Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.
- ”.

## **Part 3 — Police Act 1892 amended**

### **Division 1 — Amendments**

#### **40. The Act amended in this Division**

The amendments in this Division are to the *Police Act 1892*\*.

5

[\* *Reprinted as at 12 January 2001.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2003, Table 1, p. 300 and  
Acts Nos. 35 and 50 of 2003 and 4 of 2004.]*

#### **41. Section 16 replaced**

10

Section 16 is repealed and the following section is inserted  
instead —

“

#### **16. Police clothing, unauthorised possession of**

(1) In this section —

15

“**police clothing**” means any article of clothing or any  
accessory that is issued to a member of the Police  
Force to be worn in the course of the member’s  
duties.

20

(2) A person who is not a member of the Police Force must  
not, without lawful excuse, be in possession of police  
clothing.

Penalty: a fine of \$9 000 and imprisonment for  
9 months.

25

(3) Subsection (2) does not apply to a person who, with the  
approval of the Commissioner, possesses police  
clothing for use in the course of his or her duties —

(a) as a supervisor of a Police and Citizens’ Youth  
Club;

(b) as a member of the Police Band; or

30

(c) as a chaplain to the Police Force.

5 (4) An allegation in a charge of an offence under this section that at the material time the accused was not a member of the Police Force or was not authorised under subsection (3) must be taken to be proved, unless the contrary is proved.

(5) In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.

”.

10 **42. Section 18 repealed**

Section 18 is repealed.

**43. Section 20 repealed**

Section 20 is repealed.

**44. Section 34 amended**

15 Section 34(1) is amended by deleting “felony” and inserting instead —

“ crime ”.

**45. Section 41 amended**

(1) Section 41(1) is amended as follows:

- 20 (a) by deleting the passage that begins with “; and if the master” and ends with “an offence”;
- (b) by deleting the penalty provision at the foot of the subsection.

(2) Section 41(7) is repealed.

25 **46. Section 42 amended**

Section 42 is amended by deleting the passage that begins with “, and may order” and ends with “not exceeding \$300”.

**47. Section 43 amended**

Section 43(1) is amended as follows:

- (a) by deleting the passage that begins with “may find conducting” and ends with “persons whom he”;
- 5 (b) by deleting the passage that begins with “, or of any evil” and ends with “for such offence”.

**48. Section 44 amended**

Section 44 is amended as follows:

- 10 (a) by deleting “, and without any warrant other than this Act, apprehend any person whom he may find behaving himself in an indecent or disorderly manner, or using profane, indecent, or obscene language, or using any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the  
15 peace”;
- (b) by deleting “and without any warrant other than this Act, apprehend any person whom he may find behaving himself in an indecent or disorderly manner, or using  
20 any such language as aforesaid or words or behaviour as aforesaid, with intent or calculated to provoke a breach of the peace;”;
- (c) by deleting the passage that begins with “; and any person” and ends with “exceeding \$300”.

**49. Section 45 amended**

- 25 Section 45 is amended by deleting the passage that begins with “any felony” and ends with “in cases” and inserting instead —  
“ any indictable offence in any case ”.



**50. Section 46 repealed**

Section 46 is repealed.

**51. Section 47 repealed**

Section 47 is repealed.

5 **52. Section 50 inserted**

After section 49 the following section is inserted —

“

**50. Suspects and others may be ordered to move on**

- 10 (1) A police officer may order a person who is in a public place, or in a vehicle, vessel or aircraft used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —
- 15 (a) is doing an act —
- (i) that involves the use of violence against a person;
- (ii) that will cause a person to use violence against another person; or
- 20 (iii) that will cause a person to fear violence will be used by a person against another person;
- (b) is just about to do an act that is likely to —
- (i) involve the use of violence against a person;
- 25 (ii) cause a person to use violence against another person; or
- (iii) cause a person to fear violence will be used by a person against another person;
- (c) is committing any other breach of the peace;

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- (d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person;
- (e) intends to commit an offence; or
- 5 (f) has just committed or is committing an offence.
- (2) A police officer giving an order under subsection (1) may in addition do either or both of the following —
- (a) order the person to go beyond a reasonable distance from a place, or the part of a place, set
- 10 by the officer;
- (b) order the person to obey the order or orders for a period set by the officer; but the period must not be longer than 24 hours.
- (3) For the purpose of giving an order under this section to
- 15 a person whose personal details (as defined in section 16 of the *Criminal Investigation (Identifying People) Act 2002*) are unknown to the officer, a police officer may request the person to give the officer any or all of the person's personal details.
- (4) If a request is made under subsection (3), section 16 of
- 20 the *Criminal Investigation (Identifying People) Act 2002* applies to and in relation to the request in the same way as it applies to a request made under subsection (2) of that section.
- (5) Any order given under this section to a person must —
- (a) be in writing in a form approved by the Commissioner of Police; and
- (b) be served on the person by giving it to the
- 30 person in person or, if the person refuses to accept it, by leaving it near the person and orally drawing his or her attention to it.

(6) A person who, without reasonable excuse, does not comply with an order given by a police officer under this section commits an offence.

Penalty: imprisonment for 12 months and a fine of \$12 000.

5

(7) This section does not prevent a police officer charging a person with an offence without having exercised a power in this section.

”.

10 **53. Section 51 amended**

Section 51 is amended by deleting the passage that begins with “, and the owner” and ends with “more than \$20”.

**54. Section 52 repealed**

Section 52 is repealed.

15 **55. Heading to Part VI deleted**

The heading to Part VI is deleted.

**56. Heading to Part VI Division 1 deleted**

The heading to Division 1 of Part VI is deleted.

**57. Sections 54 to 67A repealed**

20 Sections 54, 54A, 57, 58A, 59, 61, 63, 64, 64A, 65, 66, 67 and 67A are repealed.

**58. Section 67B repealed**

Section 67B is repealed.

**59. Section 69 repealed**

25 Section 69 is repealed.

**60. Section 71 repealed**

Section 71 is repealed.

**61. Heading inserted**

Before section 74 the following heading is inserted —

5

“

**Part VI — As to dealing with property  
connected with offences**

”.

**62. Section 74 amended**

10

Section 74 is amended by deleting “felony or misdemeanour” and inserting instead —

“ a crime ”.

**63. Sections 76A to 76I repealed**

15

Sections 76A, 76B, 76C, 76D, 76E, 76F, 76G and 76I are repealed.

**64. Sections 79A to 84 repealed**

Sections 79A, 80, 80A, 81, 82, 82A, 82B, 83 and 84 are repealed.

**65. Heading to Part VI Division 7 deleted**

20

The heading to Division 7 of Part VI is deleted.

**66. Sections 90 and 90A repealed**

Sections 90 and 90A are repealed.

**67. Section 90B amended**

25

(1) Section 90B(1) is amended by deleting “to be forfeited, under this Part,” and inserting instead —

“ seized under Part V to be forfeited ”.

(2) Section 90B(2) is amended as follows:

(a) by deleting “this Part” and inserting instead —  
“ Part V ”;

5 (b) by deleting “proceedings under this Act or is liable to  
forfeiture under this Act” and inserting instead —  
“ a prosecution or is liable to forfeiture ”.

**68. Part VII repealed**

Part VII is repealed.

10 **69. Section 122 repealed**

Section 122 is repealed.

**70. Sections 125 and 126 repealed**

Sections 125 and 126 are repealed.

**71. Sections 133 and 134 repealed**

15 Sections 133 and 134 are repealed.

**72. Second Schedule repealed**

The Second Schedule is repealed.

**Division 2 — Transitional provisions**

**73. Repealed offences may be investigated etc.**

20 Despite section 11 of *The Criminal Code* and section 10 of the  
*Sentencing Act 1995* and the repeal by Division 1 of an  
enactment of the *Police Act 1892* that creates an offence —

25 (a) an investigation or legal proceedings in respect of any  
such offence alleged to have been committed before the  
commencement of Division 1 may be commenced or  
continued; and

***Criminal Law Amendment (Simple Offences) Bill 2004***

**Part 3** Police Act 1892 amended

**Division 2** Transitional provisions

**s. 73**

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- (b) a person may be sentenced or otherwise dealt with for the alleged offence as if the enactment had not been repealed.

**Part 4 — *Public Meetings and Processions Act 1984*  
amended**

**74. Act amended by this Part**

5 The amendments in this Part are to the *Public Meetings and Processions Act 1984*\*.

[\* Reprinted as at 16 August 2002.]

**75. Long title replaced**

The long title is repealed and the following long title is inserted instead —

10 “  
**An Act to regulate the holding of public meetings and processions in streets, to provide for the maintenance of order in streets, and for related purposes.**”

15 **76. Short title amended**

Section 1 is amended by deleting “*Meetings and Processions*” and inserting instead —

“ *Order in Streets* ”.

**77. Section 4 amended**

20 Section 4(1)(a) and “and” after it are deleted and the following is inserted instead —

“  
(a) any directions given by a member of the Police Force under section 9A; and  
25 ”.

**s. 78**

---

**78. Section 9A inserted**

After section 9 the following section is inserted —

“

**9A. Maintaining order in streets**

- 5 (1) For the purposes of maintaining order in streets the  
Commissioner of Police may give instructions to any  
or all members of the Police Force as to —
- (a) regulating traffic, whether pedestrian,  
vehicular, or of any other kind, in streets;
- 10 (b) preventing or removing obstructions to any  
such traffic in streets;
- (c) maintaining order in streets.
- (2) Such an instruction is not to be given for the purpose of  
frustrating —
- 15 (a) the holding of a meeting, or the conduct of a  
procession, authorised under a permit granted  
under this Act; or
- (b) the holding or conduct of an event on a road  
closed under an order made under Part VA of  
20 the *Road Traffic Act 1974*.
- (3) A member of the Police Force acting under such an  
instruction may give reasonable directions to any  
person for the purpose of giving effect to the  
instruction.
- 25 (4) A person who, knowing of the existence of a direction  
given under subsection (3), does not comply with it  
commits an offence.  
Penalty: \$2 000.

”.

30 **79. Section 12 repealed**

Section 12 is repealed.



**Part 5 — *Constitution Acts Amendment Act 1899*  
amended**

**80. Act amended by this Part**

5 The amendments in this Part are to the *Constitution Acts Amendment Act 1899*\*.

[\* *Reprint 12 as at 3 October 2003.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2003, Table 1, p. 77 and  
Acts Nos. 35 of 2003 and 8 and 20 of 2004.]*

10 **81. Section 32 amended and saving provision**

(1) Section 32 is amended by inserting before “A person” the subsection designation “(1)”.

(2) Section 32(b) is deleted and the following paragraph is inserted instead —

15

“

(b) has been convicted of an offence for which the penalty specified by a law is or includes —

(i) imprisonment for life; or

(ii) imprisonment for a period that may exceed 5 years.

20

”.

(3) At the end of section 32 the following subsection is inserted —

“

(2) In subsection (1)(b) —

25

“**offence**” means an offence against a law of this State, the Commonwealth, another State or a Territory.

”.

**s. 81**

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(4) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —

- 5 (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of section 38(b) or 40(b) of the *Constitution Acts Amendment Act 1899*; and
- (b) is not prevented from completing his or her current term as a member,

10 by reason only of a conviction that occurred before the commencement.

(5) In subsection (4) —

**“commencement”** means the commencement of this section.

## **Part 6 — Various Acts amended**

### **82. Various Acts amended (Sch. 1)**

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

**Schedule 1 — Various Acts amended**

[s. 82]

**1. Aboriginal Affairs Planning Authority Act 1972**

s. 48	Delete “, misdemeanour”.
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**2. Anatomy Act 1930**

s. 22(1)	Delete “misdemeanour” and insert instead — “ crime ”.
s. 22(2)	Delete “misdemeanour” and insert instead — “ crime ”.

5 **3. Boxing Control Act 1987**

s. 46(2)	Delete “Section 64 of the <i>Police Act 1892</i> ” and insert instead — “ Section 73 of <i>The Criminal Code</i> ”.
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**4. Builders’ Registration Act 1939**

s. 13(1)(b)	Delete “any crime or misdemeanour” and insert instead — “ any indictable offence ”. Delete “a crime or misdemeanour” and insert instead — “ an indictable offence ”.
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**5. Community Services Act 1972**

s. 19(1)	Delete “, misdemeanour”.
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**6. Companies (Co-operative) Act 1943**

s. 132(2) s. 280(1) s. 281(3) s. 425	In each provision, delete “misdemeanour” and insert instead — “ crime ”.
s. 148(1)	Delete “misdemeanour within the meaning of <i>The Criminal Code</i> ” and insert instead — “ crime ”.

s. 226(4)	Delete “misdemeanour within the meaning of <i>The Criminal Code</i> ” and insert instead — “ crime ”.
s. 279(1)	Delete “misdemeanour within the meaning of <i>The Criminal Code</i> ” and insert instead — “ crime ”.
s. 279(2)	Delete “misdemeanour as aforesaid” and insert instead — “ crime ”. Delete “misdemeanour within the meaning of <i>The Criminal Code</i> ” and insert instead — “ crime ”. Delete “misdemeanour.” and insert instead — “ crime. ”.
s. 281(4)	Delete “misdemeanour within the meaning of <i>The Criminal Code</i> ” and insert instead — “ crime ”.

**7.            *Co-operative and Provident Societies Act 1903***

s. 48(3)	Delete “, and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanour”.
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**8.            *Corruption and Crime Commission Act 2003***

Sch. 1 cl. 2(b)	Delete “s. 65(4aa) of the <i>Police Act 1892</i> .” and insert instead — “ s. 557I of <i>The Criminal Code</i> . ”.
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**9.            *Country Towns Sewerage Act 1948***

s. 111	Delete “misdemeanour” and insert instead — “ crime ”.
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**10.          *Dental Act 1939***

s. 48	Delete “misdemeanour” and insert instead — “ crime ”.
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**Schedule 1** Various Acts amended

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**11. Energy Operators (Powers) Act 1979**

s. 74(1)	Delete “misdemeanour” and insert instead — “ crime ”.
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**12. Evidence Act 1906**

s. 100A(5)	Delete “misdemeanour” and insert instead — “ crime ”.
s. 103(2)	Delete “misdemeanour” and insert instead — “ crime ”.
Second Schedule	Repeal Part 3.

**13. Forrest Place and City Station Development Act 1985**

s. 18(1)	Delete “section 82B of the <i>Police Act 1892</i> ” and insert instead — “ section 70A of <i>The Criminal Code</i> ”.
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**14. Gaming and Wagering Commission Act 1987**

s. 32(1)	Delete “Part VI” and insert instead — “ Part V ”.
s. 32(2)	Delete “or the <i>Police Act 1892</i> ”.

5 **15. Licensed Surveyors Act 1909**

s. 21(1)(d)	Delete “misdemeanour or crime” and insert instead — “ indictable offence ”.
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**16. Life Assurance Companies Act 1889**

s. 13	Delete “misdemeanour” and insert instead — “ crime ”.
s. 54	Delete “misdemeanour” and insert instead — “ crime ”.

**17.      *Limited Partnerships Act 1909***

s. 12	Delete “misdemeanour” and insert instead — “ crime ”.
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**18.      *Liquor Licensing Act 1988***

s. 155(5)	Delete “or forfeited under Part VI” and insert instead — “ under Part V ”.
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**19.      *Medical Act 1894***

s. 17	Delete “misdemeanour” and insert instead — “ crime ”.
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**20.      *Mining Act 1978***

s. 15(1)	Delete “misdemeanour” and insert instead — “ crime ”.
s. 15(2)	Delete “misdemeanour” and insert instead — “ crime ”.

5      **21.      *Optometrists Act 1940***

s. 26(1)(c)	Delete “crime or misdemeanour within the meaning of those terms under” and insert instead — “ indictable offence within the meaning of ”.
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**22.      *Parliamentary Privileges Act 1891***

s. 14	Delete “misdemeanour” in the 3 places it occurs and in each place insert instead — “ crime ”.
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**23.      *Pharmacy Act 1964***

s. 18(3)	Delete “misdemeanour” and insert instead — “ crime ”.
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**Schedule 1** Various Acts amended

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**24. Pig Industry Compensation Act 1942**

s. 16(5)	Delete “misdemeanour” and insert instead — “ crime ”.
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**25. Prostitution Act 2000**

s. 34	Delete “Part VI” and insert instead — “ Part V ”.
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**26. Public Transport Authority Act 2003**

s. 58(2)(a)	Delete “the <i>Police Act 1892</i> section 54” and insert instead — “ <i>The Criminal Code</i> section 74A ”.
s. 58(2)(b)	Delete “the <i>Police Act 1892</i> section 66(13)” and insert instead — “ <i>The Criminal Code</i> section 70A ”.
s. 58(2)(c)	Delete “the <i>Police Act 1892</i> section 80(1)” and insert instead — “ <i>The Criminal Code</i> section 445 ”.

**27. Road Traffic Act 1974**

s. 81A	In the definition of “event” delete “ <i>Meetings and Processions</i> ” and insert instead — “ <i>Order in Streets</i> ”.
s. 81E(1)	Delete “section 52 of the <i>Police Act 1892</i> ” and insert instead — “ section 9A of the <i>Public Order in Streets Act 1984</i> ”.
s. 89	Repeal the section.

5 **28. Street Alignment Act 1844**

s. 10	Repeal the section.
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**29. Sunday Entertainments Act 1979**

Long title	Delete “, to repeal section 76H of the <i>Police Act 1892</i> ”.
s. 4	Repeal the section.



**30.      *Trustee Ordinance 1854***

s. 19	Delete “felony” and insert instead — “    an indictable offence    ”.
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**31.      *Trustees Act 1962***

s. 77(2)(c)	Delete “felony or misdemeanour” and insert instead — “    an indictable offence    ”.
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**32.      *Veterinary Preparations and Animal Feeding Stuffs Act 1976***

s. 9	After “ <i>Health Act 1911</i> ,” in both places where it occurs insert — “    and    ”. Delete “and section 94C of the <i>Police Act 1892</i> ,”. Delete “or section 94C of the <i>Police Act 1892</i> ,”.
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**33.      *Water Boards Act 1904***

s. 75	Delete “misdemeanour” and insert instead — “    crime    ”.
s. 152	Delete “misdemeanour” and insert instead — “    crime    ”.

5      **34.      *Wildlife Conservation Act 1950***

s. 20(4)	Repeal the subsection and insert instead — “  (4)    This Act does not prevent section 428 of <i>The Criminal Code</i> operating in respect of fauna or flora reasonably suspected of having been taken otherwise than as authorised by or pursuant to the provisions of this Act.  ”.
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