



Western Australia

The Criminal Code

Reprinted as at 9 February 2001

Western Australia

Criminal Code Act Compilation Act 1913

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Western Australia

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Criminal Code Act Compilation Act 1913

An Act to enact a compilation of the *Criminal Code Act 1902*, with its amendments and portion of the *Secret Commissions Act 1905*, and for other related purposes.

Preamble

Whereas the Legislative Council and Legislative Assembly on 22 December 1911, directed the compilation with its amendments of the *Criminal Code Act 1902*; and a compilation of the said Act and the Acts amending the same was duly made in accordance with the *Statutes Compilation Act* (as amended): And whereas it is desirable to repeal the Acts so compiled: And whereas in order to carry out the purposes of the *Criminal Code Amendment Act 1913*, it is desirable to include in the compilation the further amendments authorised to be so included by that Act, and also the provisions of the *Secret Commissions Act 1905* (except section 19 thereof), and to repeal the last-mentioned Act and the portions of the *Criminal Code Amendment Act 1913*, containing the said further amendments: And whereas the Acts and the parts of an Act which it is desirable to repeal are set out in the Appendix A; and the compiled Act set out in Appendix B is a true compilation of the Acts and parts of Acts so directed to be compiled or authorised to be included in the compilation as aforesaid, and it is desirable to give such compilation the force of law. Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:

1. Short title and commencement

This Act may be cited as the *Criminal Code Act Compilation Act 1913*¹, and shall come into operation on 1 January 1914.

2. Repeal

The Acts and parts of an Act set out in Appendix “A” are hereby repealed, and the compiled Act set forth in Appendix “B” is hereby enacted under the title of the *Criminal Code Act 1913*.

3. Matters and things originated under repealed Acts to enure for the purposes of the compiled Act

- (1) All offices, appointments, regulations, rules, convictions, sentences, judgments, orders, registers, records, certificates, and instruments, and generally all acts of authority, which originated or were operative or subsisting under any enactment repealed by this Act and hereby re-enacted with or without modification, and which are subsisting or in force on or immediately prior to the commencement of the compiled Act shall, subject to that Act, enure for the purposes thereof as fully and effectually as if they had originated under the corresponding provisions of that Act, and accordingly shall, where necessary, be deemed to have so originated.
- (2) All offences committed against and all pending matters and proceedings commenced under any such enactment may be prosecuted, continued, and completed under and subject to the provisions of the compiled Act.

Appendix A

Appendix A
Acts and Parts of Act Repealed.

1 and 2 Edw. VII No. 14 — *The Criminal Code Act 1902*

2 Edw. VII No. 29 — *The Criminal Code Amendment Act 1902*

No. 13 of 1905 — *The Secret Commissions Act 1905*

No. 31 of 1906 — *The Criminal Code Amendment Act 1906*

No. 28 of 1911 — *The Criminal Code Amendment Act 1911*

No. 52 of 1911 — *The Criminal Code Amendment Act 1911*

Sections 2 to 29 (both inclusive) of Act No. 15 of 1913 —
The Criminal Code Amendment Act 1913

Appendix B

An Act to establish a Code of Criminal Law.

Preamble

Whereas it is desirable to declare and consolidate the Criminal Law: Be it enacted and declared by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:

1. Short Title

This Act may be cited as the *Criminal Code Act 1913*¹.

2. Establishment of *The Criminal Code*

The provisions contained in the Code of Criminal Law set forth in the Schedule to this Act, and hereinafter called "**the Code**", shall be the law of Western Australia with respect to the several matters therein dealt with.

The said Code may be cited as "*The Criminal Code*".

3. Construction of statutes, statutory rules, and other instruments

The following rules shall, unless the context otherwise indicates, apply with respect to the construction of statutes, statutory rules, local laws, by-laws, and other instruments, that is to say —

- (1) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term "felony" is used, or reference is made to an offence by the name of felony, it shall be taken that reference is intended to an

Appendix B

offence which is a crime under the provisions of the Code:

- (2) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term “murder” is used, it shall be taken that reference is intended to the crimes of wilful murder, and murder, and each of them:
- (3) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term “larceny” is used, it shall be taken that reference is intended to the crime of stealing:
- (4) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, reference is made to any offence by any specific name, it shall be taken that reference is intended to the offence which, under the provisions of the Code, is constituted by the Act or omission that would heretofore have constituted the offence referred to:
- (5) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, reference is made to any of the statutory provisions hereby repealed, it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

[Section 3 amended by No. 14 of 1996 s.4; No. 57 of 1997 s.45.]

4. Provisions of Code exclusive, with certain exceptions

No person shall be liable to be tried or punished in Western Australia as for an indictable offence, except under the express provisions of the Code, or some other statute law of Western Australia, or under the express provisions of some statute of the Commonwealth of Australia, or of the United Kingdom which is expressly applied to Western Australia, or which is in force in all parts of His Majesty’s dominions not expressly excepted from its operation, or which authorises the trial and punishment in Western Australia of offenders who have, at places not in

Western Australia, committed offences against the laws of the Commonwealth of Australia or of the United Kingdom.

5. Civil remedies and saving

When, by the Code, any Act is declared to be lawful, no action can be brought in respect thereof.

Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed; nor shall the omission from the Code of any penal provision in respect of any Act or omission, which before the time of the coming into operation of the Code constituted an actionable wrong, affect any right of action in respect thereof.

[6. *Repealed by No. 78 of 1995 s.22.*]

7. Contempt of court

Nothing in this Act or in the Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as “contempt of court”; but so that a person cannot be so punished, and also punished under the provisions of the Code for the same Act or omission.

[8. *Repealed by No. 13 of 1984 s.9.*]

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Part I — Introductory

Interpretation: Application: General principles

Chapter I — Interpretation

1. Definitions

(1) In this Code, unless the context otherwise indicates —

The term “**aircraft**” includes any machine that can derive support in the atmosphere from the reactions of the air;

The term “**assault**” has the definition provided in section 222;

The term “**Attorney General**” includes where there is a vacancy in the office of Attorney General the person appointed by the Governor to be Minister for Justice;

The term “**bodily harm**” means any bodily injury which interferes with health or comfort;

The term “**bribe**” means any property or benefit of any kind, whether pecuniary or otherwise, sought, offered, promised, agreed upon, given or obtained for the person being or to be bribed or any other person, in respect of any act done or to be done, or any omission made or to be made, or any favour or disfavour shown or to be shown, in relation to the performance or discharge of the functions of any office or employment, or the affairs or business of a principal;

The term “**child**” means —

- (a) any boy or girl under the age of 18 years; and
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years;

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The term “**circumstance of aggravation**” means and includes any circumstance by reason whereof an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance;

The terms “**clerk**” and “**servant**” include any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, although temporarily only, or although employed also by other persons than the person alleged to be his employer, or although employed to pay as well as receive money, and any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although he has no authority from his employer to receive money or other property on his account;

The term “**company**” means an incorporated company;

The term “**conveyance**” means a vehicle, vessel or aircraft made, adapted, used, or intended to be used for the carriage of persons or goods;

The term “**criminally responsible**” means liable to punishment as for an offence; and the term “**criminal responsibility**” means liability to punishment as for an offence;

The term “**damage**”, in relation to animate property, includes injure;

The term “**damage**” in relation to a record means to deal with the record so that —

- (a) information recorded or stored upon the record is obliterated or rendered illegible or irrecoverable; or
- (b) it can not convey a meaning in a visible or recoverable form;

The term “**destroy**”, in relation to animate property, means kill;

The term “**District Court**” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;

The term “**dwelling**” means any building, structure, tent, vehicle or vessel, or part of any building, structure, tent, vehicle or vessel, that is ordinarily used for human habitation, and it is immaterial that it is from time to time uninhabited;

The term “**explosive substance**” includes a gaseous substance in such a state of compression as to be capable of explosion;

The term “**forge**” in relation to a record means to make, alter or deal with the record so that the whole of it or a material part of it —

- (a) purports to be what in fact it is not;
- (b) purports to be made by a person who did not make it; or
- (c) purports to be made by authority of a person who did not give that authority;

The term “**grievous bodily harm**” means any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health;

The term “**incites**” includes solicits and endeavours to persuade;

The term “**indictable offence**” means an offence a complaint of which is, unless otherwise expressly stated by the Code, triable only by jury;

The term “**indictment**” means a written charge preferred against an accused person in order to his trial before some court other than justices exercising summary jurisdiction;

The term “**liable**”, used alone, means liable on conviction upon indictment;

The term “**member of the crew**” in relation to an aircraft means a person having duties or functions on board the aircraft;

The term “**mental illness**” means an underlying pathological infirmity of the mind, whether of short or long duration and

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whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

The term “**mental impairment**” means intellectual disability, mental illness, brain damage or senility;

The term “**money**” includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money;

The term “**motor vehicle**” has the same meaning as it has in the *Road Traffic Act 1974*;

The term “**night**” or “**night-time**” means the interval between 9 p.m. and 6 a.m.;

The term “**obtains**” includes obtains possession and, in relation to land, includes occupies or acquires the capacity to occupy;

The term “**person**” and “**owner**” and other like terms, when used with reference to property, include corporations of all kinds, and any other associations of persons capable of owning property: They also, when so used, include Her Majesty;

The term “**person employed in the Public Service**” includes members of the defence force and police officers, and persons employed to execute any process of a court of justice, and persons employed by the Commissioner of Railways;

The term “**possession**” includes having under control in any manner whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing or property in question;

The term “**property**” includes real and personal property and everything, animate or inanimate, capable of being the subject of ownership;

The term “**public officer**” means a person exercising authority under a written law, and includes —

- (a) a police officer;
- (aa) a Minister of the Crown;
- (ab) a Parliamentary Secretary appointed under section 44A of the *Constitution Acts Amendment Act 1899*;
- (ac) a member of either House of Parliament;
- (b) a person authorised under a written law to execute or serve any process of a court or tribunal;
- (c) a public service officer or employee within the meaning of the *Public Sector Management Act 1994*;
- (ca) a person who holds a permit to do high-level security work as defined in the *Court Security and Custodial Services Act 1999*;
- (cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981*;
- (d) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; or
- (e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not;

The term “**railway**” includes every kind of way on which vehicles are borne upon a rail or rails, whatever may be the means of propulsion;

The term “**receives**” includes obtains possession and, in relation to land, includes occupies or acquires the capacity to occupy;

The term “**record**” means any thing or process —

- (a) upon or by which information is recorded or stored; or

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- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form, whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

The terms “**registered brand**” and “**registered mark**” mean respectively a brand or mark which is registered under the authority of the laws relating to brands;

The term “**serious disease**” means a disease of such a nature as to —

- (a) endanger, or be likely to endanger, life; or
(b) cause, or be likely to cause, permanent injury to health;

The term “**ship**” includes every kind of vessel used in navigation not propelled by oars;

The term “**summarily**” means before a court of petty sessions;

The term “**summary conviction**” means conviction before a court of petty sessions;

The term “**thing sent by post**” includes any letter, newspaper, packet, parcel, or other thing, authorised by law to be transmitted by post, which has been posted or received at a post office for delivery or transmission by post, and which is in course of transmission by post, and any movable receptacle which contains any such thing, and which is in course of transmission by post;

The term “**utter**” in relation to a forged record means use or deal with the record knowing that the record is forged;

The term “**valuable security**” includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

The term “**vehicle**” includes any thing made, adapted or intended to be propelled or drawn on wheels, tracks or rails by any means;

The term “**vessel**” includes a ship, a boat, and every other kind of vessel used in navigation.

- (2) For the purposes of this Code —
- (a) a flight of an aircraft shall be taken to commence —
 - (i) at the time of the closing of the external door of the aircraft last to be closed before the aircraft first moves for the purpose of taking off from any place; or
 - (ii) if subparagraph (i) is not applicable, at the time at which the aircraft first moves for the purpose of taking off from any place;

and

 - (b) a flight of an aircraft shall be taken to end —
 - (i) at the time of the opening of the external door of the aircraft first to be opened after the aircraft comes to rest after its next landing after the commencement of the flight; or
 - (ii) if subparagraph (i) is not applicable, at the time at which the aircraft comes to rest after its next landing after the commencement of the flight, or, if the aircraft is destroyed, or the flight is abandoned, before either subparagraph (i) or subparagraph (ii) becomes applicable, at the time at which the aircraft is destroyed or the flight is abandoned, as the case may be.
- (3) Nothing in this Code empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the *Bail Act 1982*.

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- (4) In this Code, unless the context otherwise indicates —
- (a) a reference to causing or doing bodily harm to a person includes a reference to causing a person to have a disease which interferes with health or comfort;
 - (b) a reference to intending to cause or intending to do bodily harm to a person includes a reference to intending to cause a person to have a disease which interferes with health or comfort;
 - (c) a reference to causing or doing grievous bodily harm to a person includes a reference to causing a person to have a serious disease; and
 - (d) a reference to intending to cause or intending to do grievous bodily harm to a person includes a reference to intending to cause a person to have a serious disease.

[Section 1 amended by No. 55 of 1953 s.2; No. 53 of 1964 s.2; No. 21 of 1972 s.3; No. 38 of 1977 s.3; No. 87 of 1982 s.30; No. 119 of 1985 s.4; No. 106 of 1987 s.4; No. 70 of 1988 ss.4, 19(2) and 31; No. 101 of 1990 s.4; No. 37 of 1991 s.16; No. 14 of 1992 s.4(1); No. 51 of 1992 s.3; No. 32 of 1994 s.10; No. 14 of 1996 s.4; No. 34 of 1996 s.4; No. 36 of 1996 s.4; No. 69 of 1996 s.6; No. 43 of 1999 s.20; No. 47 of 1999 s.10.]

2. “Offence”, definition of

An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence.

3. Offences, types of

Offences are of 3 kinds, namely, crimes, misdemeanours, and simple offences.

Crimes and misdemeanours are indictable offences.

Where for any indictable offence offenders may be punished summarily any court of petty sessions before which a person charged with the offence or which deals with the charge or

examines the person charged, or commits him for trial shall be constituted by a magistrate alone, or if there is no magistrate available and the person consents, by 2 justices.

A person guilty of a simple offence may be summarily convicted by 2 justices in petty sessions.

An offence not otherwise designated is a simple offence.

[Section 3 amended by No. 21 of 1972 s.4.]

4. “Attempts to commit offences”, definition of

When a person, intending to commit an offence, begins to put his intention into execution by doing an act that is more than merely preparatory to the commission of the offence but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.

The same facts may constitute one offence and an attempt to commit another offence.

[Section 4 amended by No. 106 of 1987 s.5.]

5. “Summary conviction penalty”, meaning of

The words “**Summary conviction penalty**” appearing after a provision of this Code mean that where a person is charged before a court of petty sessions with an offence under that provision and the court, having regard to the nature and particulars of the offence, and to such particulars of the

circumstances relating to the charge and the antecedents of the person charged as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and the person is liable on summary conviction to the penalty set out after the words “Summary conviction penalty”.

[Section 5 inserted by No. 70 of 1988 s.5.]

6. “Carnal knowledge” and “carnal connection”, meaning of

When the term “**carnal knowledge**” or the term “**carnal connection**” is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.

Penetration includes penetration of the anus of a female or male person.

[Section 6 amended by No. 32 of 1989 s.4.]

Chapter II — Parties to offence

7. Principal offenders

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;

- (d) Any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

8. Offences committed in prosecution of common purpose

- (1) When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.
- (2) A person is not deemed under subsection (1) to have committed the offence if, before the commission of the offence, the person —
- (a) withdrew from the prosecution of the unlawful purpose;
 - (b) by words or conduct, communicated the withdrawal to each other person with whom the common intention to prosecute the unlawful purpose was formed; and
 - (c) having so withdrawn, took all reasonable steps to prevent the commission of the offence.

[Section 8 amended by No. 89 of 1986 s.4.]

9. Counselled offences, mode of execution immaterial

When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled, or in a different way, provided in either case that the acts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

10. Accessories after the fact

- (1) A person who, knowing that another person has committed an offence, receives or assists that other person in order to enable that other person to escape punishment is said to become an accessory after the fact to the offence.
- (2) A person does not become an accessory after the fact to an offence committed by the person's spouse by receiving or assisting that spouse.

[Section 10 inserted by No. 89 of 1986 s.5.]

Chapter III — Application of criminal law

11. Effect of changes in law

A person cannot be punished for doing or omitting to do an act, unless the act or omission constituted an offence under the law in force when it occurred, nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

[Section 11 amended by No. 78 of 1995 s.26.]

12. Territorial application of the criminal law

- (1) An offence under this Code or any other law of Western Australia is committed if —
 - (a) all elements necessary to constitute the offence exist; and
 - (b) at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia.
- (2) Without limiting the general operation of subsection (1), that subsection applies even if the only thing that occurs in Western Australia is an event, circumstance or state of affairs caused by an act or omission that occurs outside Western Australia.
- (3) This section does not apply to an offence if —
 - (a) the law under which the offence is created explicitly or by necessary implication makes the place of commission an element of the offence; or
 - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the need for a territorial nexus between Western Australia and an element of the offence.

[Section 12 inserted by No. 36 of 1996 s.5(1) ².]

13. Offences aided, counselled or procured by persons out of Western Australia

When an offence under this Code or any other law of Western Australia is committed, section 7 of this Code applies to a person even if all the acts or omissions of the person in —

- (a) enabling or aiding another person to commit the offence;
- (b) aiding another person in committing the offence; or

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- (c) counselling or procuring another person to commit the offence,

occurred outside Western Australia.

[Section 13 inserted by No. 36 of 1996 s.5(1)².]

14. Offences procured in Western Australia to be committed out of Western Australia

Any person who, while in Western Australia, procures another to do an act or make an omission at a place not in Western Australia of such a nature that, if he had himself done the act or made the omission in Western Australia, he would have been guilty of an offence, and that, if he had himself done the act or made the omission, he would have been guilty of an offence under the laws in force in the place where the act or omission is done or made, is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Western Australia, but so that the punishment does not exceed that which he would have incurred under the laws in force in the place where the act was done or the omission was made, if he had himself done the act or made the omission.

[Section 14 amended by No. 36 of 1996 s.6(1)³.]

[14A. Repealed by No. 101 of 1990 s.5.]

15. Defence force not exempt from Code

Members of the defence force are subject to the special laws relating to that force, but are not exempt from the provisions of this Code.

[Section 15 amended by No. 101 of 1990 s.6.]

[16. Repealed by No. 78 of 1995 s.26.]

17. Former conviction or acquittal a defence

It is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted upon an indictment or complaint on which he might have been convicted of the offence with which he is charged, or has already been convicted or acquitted of an offence of which he might be convicted upon the indictment or complaint on which he is charged.

[Section 17 amended by No. 101 of 1990 s.7.]

[Chapter IV (ss. 17A, 17B, 17C, 17D, 18, 19, 19A, 19B, 20, 21, 21A) repealed by No. 78 of 1995 s.26.]

Chapter V — Criminal responsibility

22. Ignorance of law, bona fide claim of right

Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by an offender is expressly declared to be an element of the offence.

But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud.

23. Accident etc., intention, motive

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

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Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

24. Mistake of fact

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

25. Extraordinary emergencies

Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

26. Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

27. Insanity

A person is not criminally responsible for an act or omission on account of unsoundness of mind if at the time of doing the act or making the omission he is in such a state of mental impairment

as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.

A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

[Section 27 amended by No. 69 of 1996 s.7.]

28. Intoxication

The provisions of the last preceding section apply to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his part by drugs or intoxicating liquor, or by any other means.

They do not apply to the case of a person who has intentionally caused himself to become intoxicated or stupefied, whether in order to afford excuse for the commission of an offence or not.

When an intention to cause a specific result is an element of an offence, intoxication whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

29. Immature age

A person under the age of 10 years is not criminally responsible for any act or omission.

A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

[Section 29 amended by No. 74 of 1985 s.4; No. 49 of 1988 s.44.]

30. Judicial officers

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority, or although he is bound to do the act omitted to be done.

31. Justification and excuse: Compulsion

A person is not criminally responsible for an act or omission if he does or omits to do the act under any of the following circumstances, that is to say —

- (1) In execution of the law;
- (2) In obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful;
- (3) When the act is reasonably necessary in order to resist actual and unlawful violence threatened to him, or to another person in his presence;
- (4) When he does or omits to do the act in order to save himself from immediate death or grievous bodily harm threatened to be inflicted upon him by some person actually present and in a position to execute the threats, and believing himself to be unable otherwise to escape the carrying of the threats into execution;

But this protection does not extend to an act or omission which would constitute an offence punishable with strict security life imprisonment, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has, by entering into an unlawful association or conspiracy, rendered himself liable to have such threats made to him.

Whether an order is or is not manifestly unlawful is a question of law.

[Section 31 amended by No. 52 of 1984 s.7.]

32. Compulsion of husband

A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband.

But a married woman is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to do or omit to do, and which is done or omitted to be done in his presence, except in the case of an act or omission which would constitute an offence punishable with strict security life imprisonment, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, in which case the presence of her husband is immaterial.

[Section 32 amended by No. 52 of 1984 s.8.]

[33. Repealed by No. 106 of 1987 s.6.]

34. Offences by partners and members of companies with respect to partnership or corporate property

A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if he were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if he were not such member.

35. Liability of husband and wife for offences committed by either with respect to the other's property

When a husband and wife are living together neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other, except in the

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case of an act or omission of which an intention to injure or defraud some other person is an element, and except in the case of an act done by either of them when leaving or deserting, or when about to leave or desert, the other.

Subject to the foregoing provisions a husband and wife are, each of them, criminally responsible for any act done by him or her with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife.

But neither of them can institute criminal proceedings against the other while they are living together.

In this section the term “**property**”, used with respect to a wife, means her separate property.

[Section 35 amended by No. 48 of 1991 s.12(1).]

36. Application of Chapter V

The provisions of this chapter apply to all persons charged with any offence against the statute law of Western Australia.

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[Chapter VI (ss. 37-43) repealed by No. 70 of 1988 s.8(1).]

Chapter VII — Sedition

44. “Seditious intention”, definition of

An intention to effect any of the following purposes, that is to say —

- (a) To bring the Sovereign into hatred or contempt;
- (b) To excite disaffection against the Sovereign, or the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or against either House of Parliament of the United Kingdom, of the Commonwealth of Australia, or of Western Australia, or against the administration of justice;
- (c) To excite Her Majesty’s subjects to attempt to procure the alteration of any matter in the State as by law established otherwise than by lawful means;
- (d) To raise discontent or disaffection amongst Her Majesty’s subjects;
- (e) To promote feelings of ill-will and enmity between different classes of Her Majesty’s subjects;

is a seditious intention, unless it is justified by the provisions of the next following section.

45. Innocent intentions

It is lawful for any person —

- (a) To endeavour in good faith to show that the Sovereign has been mistaken in any of Her counsels;

- (b) To point out in good faith errors or defects in the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects;
- (c) To excite in good faith Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the State as by law established; or
- (d) To point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of Her Majesty's subjects.

46. "Seditious enterprises", etc., definitions of

A seditious enterprise is an enterprise which is undertaken in order to the carrying out of a seditious intention.

Seditious words are words expressive of a seditious intention.

The term "**seditious writing**" includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

47. Unlawful oaths to commit crimes punishable with strict security life imprisonment

Any person who —

- (1) Administers or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any crime punishable with strict security life imprisonment; or
- (2) Takes any such oath or engagement, not being compelled to do so; or

- (3) Attempts to induce any person to take any such oath or engagement;

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

[Section 47 amended by No. 118 of 1981 s.4; No. 52 of 1984 s.10; No. 51 of 1992 s.16(2).]

48. Other unlawful oaths to commit offences

Any person who —

- (1) Administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following, that is to say —
- (a) To engage in any seditious enterprise;
 - (b) To commit any indictable offence not punishable with strict security life imprisonment;
 - (c) To disturb the public peace;
 - (d) To be of any association, society, or confederacy formed for the purpose of doing any such act as aforesaid;
 - (e) To obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
 - (f) Not to inform or give evidence against any associate, confederate, or other person;
 - (g) Not to reveal or discover any unlawful association, society, or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement;

or

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- (2) Takes any such oath or engagement, not being compelled to do so; or
- (3) Attempts to induce any person to take any such oath or engagement;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 48 amended by No. 52 of 1984 s.11; No. 70 of 1988 s.8(2); No. 51 of 1992 s.16(2).]

49. Compulsion, how far a defence

A person who takes any such oath or engagement as is mentioned in the 2 last preceding sections cannot set up as a defence that he was compelled to do so, unless within 14 days after taking it, or, if he is prevented by actual force or sickness, within 14 days after the termination of such prevention, he declares by information on oath before some member of the Executive Council or justice of the peace, or, if he is on actual service in Her Majesty's forces by sea or land, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

[50. Repealed by No. 70 of 1988 s.8(1).]

51. Unlawful military activities

- (1) Any person who —
 - (a) In contravention of the directions of a proclamation by the Governor in Council in that behalf trains or drills any other person to the use of arms or the practice of military exercise, movements, or evolutions; or
 - (b) Is present at any meeting or assembly of persons held in contravention of the directions of any such proclamation, for the purpose of there training or drilling

any other person to the use of arms or the practice of military exercise, movements, or evolutions;

is guilty of a crime, and is liable to imprisonment for 7 years.

- (2) Any person who, at any meeting or assembly held in contravention of the directions of a proclamation of the Governor in Council in that behalf, is trained or drilled to the use of arms or the practice of military exercise, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.
- (3) A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

[Section 51 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

52. Sedition

Any person who —

- (1) Conspires with any person to carry into execution a seditious enterprise; or
- (2) Advisedly publishes any seditious words or writing;

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

If he has been previously convicted of any such offence he is guilty of a crime, and is liable to imprisonment for 7 years.

A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

[Section 52 amended by No. 70 of 1988 s.31; No. 51 of 1992 s.16(2).]

53. Defamation of foreign princes

Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to expose to hatred or contempt in the estimation of the people of any foreign state any prince or person exercising sovereign authority over that state, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

Chapter VIII — Offences against the executive and legislative power

54. Interference with Governor or Ministers

Any person who —

- (1) Does any act calculated to interfere with the free exercise by the Governor of the duties or authority of his office; or
- (2) Does any act calculated to interfere with the free exercise by a member of the Executive Council of the duties or authority of his office as a member of the Executive Council or as a Minister of State;

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

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

[Section 54 amended by No. 70 of 1988 s.9; No. 82 of 1994 s.12.]

55. Interference with the legislature

Any person who, by force or fraud, interferes or attempts to interfere with the free exercise by either House of Parliament of their authority, or with the free exercise by any member of either House of his duties or authority as such member or as a member of a committee of either House, or of a joint committee

of both Houses, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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

[Section 55 amended by No. 70 of 1988 s.9; No. 82 of 1994 s.12.]

56. Disturbing Parliament

Any person who —

- (1) Does any act calculated to disturb either House of Parliament while in session; or
- (2) Commits any disorderly conduct in the immediate view and presence of either House of Parliament while in session, calculated and tending to interrupt its proceedings or to impair the respect due to its authority;

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

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

[Section 56 amended by No. 70 of 1988 s.10.]

57. False evidence before Parliament

Any person who in the course of an examination before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 57 amended by No. 119 of 1985 s.30; No. 70 of 1988 s.31; No. 51 of 1992 s.16(2).]

58. Threatening witness before Parliament

Any person who —

- (1) Threatens to do any injury, or cause any detriment of any kind to another with intent to prevent or hinder that other person from giving evidence before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses; or
- (2) Threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure any other person for having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

is guilty of a crime, and is liable, on conviction, to imprisonment for 5 years.

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

[Section 58 amended by No. 70 of 1988 s.11; No. 51 of 1992 s.16(2); No. 82 of 1994 s.12.]

59. Witnesses refusing to attend or give evidence before Parliament

Any person who —

- (1) Being duly summoned to attend as a witness or to produce any book, document, or other thing, in his possession, before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses, authorised to summon witnesses or to call for the production of such things, refuses or neglects without lawful excuse to attend pursuant to the summons or to produce anything which he is summoned to produce, and which is relevant and proper to be produced; or
- (2) Being present before either House of Parliament, or before a committee of either House, or before a joint

committee of both Houses, authorised to summon witnesses, refuses to answer any lawful and relevant question;

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

[Section 59 amended by No. 70 of 1988 s.12; No. 82 of 1994 s.12.]

60. Member of Parliament receiving bribes

Any person who, being a member of either House of Parliament, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind, whether pecuniary or otherwise, for himself or any other person upon any understanding that his vote, opinion, judgment, or action, in the House of which he is a member, or in any committee thereof, or in any joint committee of both Houses, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 60 amended by 119 of 1985 s.30; No. 70 of 1988 s.13; No. 51 of 1992 s.16(2).]

61. Bribery of member of Parliament

Any person who, —

- (1) In order to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any question or matter arising in the House of which he is a member or in any committee thereof, or in any joint committee of both Houses, or in order to induce him to absent himself from the House or from any such committee, gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind, whether pecuniary or otherwise, to, upon, or for such member, or to, upon, or for, any other person; or

- (2) Attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any such question or matter, or to induce him to so absent himself;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 61 amended by No. 119 of 1985 s.30; No. 70 of 1988 s.14; No. 51 of 1992 s.16(2).]

Chapter IX — Unlawful assemblies: Breaches of the peace

62. “Unlawful assembly”, “riot” and “riotously assembled”, definitions of

When 3 or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner as to cause persons in the neighbourhood to fear, on reasonable grounds, that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

An assembly of 3 or more persons who assemble for the purpose of protecting the house of any one of them against persons threatening to break and enter the house in order to commit an indictable offence therein is not an unlawful assembly.

When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

63. Penalty for unlawful assembly

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

64. Penalty for rioting

Any person who takes part in a riot is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 64 amended by No. 51 of 1992 s.16(2).]

65. Rioters remaining after proclamation ordering them to disperse

Whenever any persons, to the number of 12 or more, are riotously assembled together, it is the duty of some one of the following persons, that is to say, the sheriff or under sheriff, or a justice of the peace, or, if the assembly is in a local government district, the mayor or president of the local government, to go amongst them, or as near as he can safely come to them, and to command or cause to be commanded with a loud voice that silence be kept while the proclamation next hereinafter mentioned is made, and then openly and with a loud voice to make proclamation, or cause proclamation to be made, in these words or to the like effect:

Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, or they will be guilty of a crime, and will be liable to be imprisoned for 14 years. God save the Queen!

Any person who wilfully and knowingly, and by force, opposes, obstructs, or hurts, any person who goes to make, or begins to make, any such proclamation, and thereby prevents the proclamation from being made, is guilty of a crime.

Any persons who, being so assembled, continue together to the number of 12 or more, and do not disperse themselves within the space of an hour after the making of the proclamation, are guilty of a crime.

When the making of the proclamation is prevented, any persons who, being so assembled, and to whom the proclamation would or ought to have been made if the making thereof had not been so prevented, and who, knowing of such prevention, continue together to the number of 12 or more, and do not disperse themselves within the space of an hour after the time of such prevention, are guilty of a crime.

Any person who commits any of the crimes defined in this section is liable to imprisonment for 14 years.

A prosecution for any of the crimes defined in this section must be begun within a year after the crime is committed.

[Section 65 amended by No. 51 of 1992 s.16(1) and (2); No. 14 of 1996 s.4.]

66. Rioters demolishing buildings, etc.

Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy —

- (a) Any building whatever; or
- (b) Any machinery whatever, whether fixed or movable; or
- (c) Any structure used in farming land, or in carrying on any trade or manufacture, or in conducting the business of a mine; or
- (d) Any bridge, wagon-way, or trunk, for conveying materials from a mine;

are guilty of a crime; and each of them is liable to imprisonment for 14 years.

[Section 66 amended by No. 51 of 1992 s.16(2).]

67. Rioters damaging buildings, etc.

Any persons who, being riotously assembled together unlawfully damage any of the things in the last preceding

72. Challenge to fight a duel

Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour, and liable to imprisonment for 3 years.

[Section 72 amended by No. 51 of 1992 s.16(2).]

73. Prize fight

Any person who fights in a prize fight or subscribes to or promotes a prize fight, is guilty of a misdemeanour, and is liable to imprisonment for one year.

74. Threatening violence

Any person who —

- (1) With intent to intimidate or annoy any person, threatens to enter or damage a dwelling; or
- (2) With intent to alarm any person in a dwelling, discharges loaded firearms or commits any other breach of the peace;

is guilty of a misdemeanour, and is liable to imprisonment for one year.

If the offence is committed in the night the offender is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 74 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.7.]

Chapter X — Offences against political liberty

75. Interfering with political liberty

Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any

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- (c) intends hatred of any racial group to be created, promoted or increased by the publication, distribution or display of the material,

is guilty of a crime and is liable to imprisonment for 2 years.

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

[Section 77 inserted by No. 33 of 1990 s.3.]

78. Publication, etc., of material to incite racial hatred

Any person who —

- (a) publishes, distributes or displays written or pictorial material that is threatening or abusive; and
- (b) intends hatred of any racial group to be created, promoted or increased by the publication, distribution or display of the material,

is guilty of a crime and is liable to imprisonment for 2 years.

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

[Section 78 inserted by No. 33 of 1990 s.3.]

79. Possession of material for display to harass a racial group

If —

- (a) any person possesses written or pictorial material that is threatening or abusive; and
- (b) that person intends the material to be displayed whether by that person or another person; and
- (c) that person intends any racial group to be harassed by the display of the material,

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Part III — Offences against the administration of law and justice and against public authority

Chapter XII — Disclosing official secrets

81. Disclosure of official secrets

- (1) Any person who, being employed in the Public Service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.
- (2) Any person who, having been employed in the Public Service, publishes or communicates any fact which came to his knowledge by virtue of his office and which it was at the time when he ceased to be so employed his duty to keep secret, or any document which came to his possession by virtue of his office and which it was at the time when he ceased to be so employed his duty to keep secret, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.
- (3) Subsection (2) does not apply where the person publishes or communicates any fact or document referred to in that subsection in circumstances in which the publication or communication would not constitute an offence against subsection (1) if, at the time of the publication or communication, the person were still employed in the Public Service.

[Section 81 amended by No. 34 of 1996 s.5.]

Chapter XIII — Corruption and abuse of office

[Heading inserted by No. 70 of 1988 s.16.]

82. Bribery of public officer

Any public officer who obtains, or who seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.

[Section 82 inserted by No. 70 of 1988 s.16.]

83. Corruption

Any public officer who, without lawful authority or a reasonable excuse —

- (a) acts upon any knowledge or information obtained by reason of his office or employment;
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or
- (c) acts corruptly in the performance or discharge of the functions of his office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 3 years.

[Section 83 inserted by No. 70 of 1988 s.16.]

84. Application of section 121 to judicial corruption not affected

In sections 82 and 83 “**public officer**” does not include the holder of a judicial office within the meaning of section 121.

[Section 84 inserted by No. 70 of 1988 s.16.]

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85. Falsification of records by public officer

Any public officer who corruptly —

- (a) makes any false entry in any record;
- (b) omits to make any entry in any record;
- (c) gives any certificate or information which is false in a material particular;
- (d) by act or omission falsifies, destroys, alters or damages any record;
- (e) furnishes a return relating to any property or remuneration which is false in a material particular; or
- (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,

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

[Section 85 inserted by No. 70 of 1988 s.16.]

86. Administering extra judicial oaths

- (1) Any person who administers an oath or takes a declaration or affirmation without having lawful authority so to do is guilty of a misdemeanour and is liable to imprisonment for 2 years.
- (2) This section does not apply to an oath, declaration or affirmation administered or taken —
 - (a) as authorised or required by law of; or
 - (b) for purposes lawful in,

another country, State or Territory.

[Section 86 inserted by No. 70 of 1988 s.16.]

87. Personating public officer

Any person who —

- (a) personates a public officer on an occasion when the latter is required to do any act or attend in any place by virtue of his office or employment; or

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The term “**elector**” includes any person entitled to vote at an election;

The term “**ballot-box**” includes any receptacle in which voting papers are put before being counted at an election;

The term “**polling-booth**” includes any room or place in which voting at an election is conducted or in which the votes are counted.

94. Personation

Any person who votes or attempts to vote in the name of another person at an election, whether the name is that of a person living or dead or of a fictitious person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

[Section 94 amended by No. 51 of 1992 s.16(2).]

95. Double voting

Any person who, being an elector, votes or attempts to vote at an election oftener than he is entitled to vote at the election is guilty of an offence, and is liable to imprisonment for 6 months.

[Section 95 amended by No. 51 of 1992 s.16(2).]

96. Recording excessive number of votes

Any person who, being an elector, records at an election a larger number of votes than he is entitled to is guilty of an offence, and liable to imprisonment for 12 months, or to a fine of \$4 000.

[Section 96 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2); No. 78 of 1995 s.147.]

97. Corrupt practices

Any person who —

- (1) Corruptly, before, during, or after an election, provides, or pays, in whole or part, the expense of providing any food, drink, or lodging to or for any person on account

of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at the election in the capacity of an elector; or

- (2) Being an elector, corruptly receives any food, drink, or lodging on account of any such act or omission;

is guilty of an offence, and is liable to imprisonment for 6 months, or to a fine of \$100.

[Section 97 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

98. Undue influence

Any person who —

- (1) Uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind, to an elector in order to induce him to vote or refrain from voting at an election, or on account of his having voted or refrained from voting at an election; or
- (2) By force or fraud prevents or obstructs the free exercise of the franchise by an elector, or by any such means compels or induces an elector to vote or refrain from voting at an election;

is guilty of a misdemeanour, and is liable to imprisonment for 9 months, or to a fine of \$200.

[Section 98 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

99. Bribery

Any person who —

- (1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person any property or benefit of any kind on account of anything already done or omitted to be done,

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or to be afterwards done or omitted to be done, by an elector at an election in the capacity of an elector or on account of any person acting or joining in a procession during an election, or in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election; or

- (2) Being an elector, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him at an election, in the capacity of an elector; or
- (3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or
- (4) Advances or pays any money to or to the use of any other person with the intent that such money shall be applied for any of the purposes hereinbefore in this section mentioned, or in discharge or repayment of money wholly or in part applied for any such purpose; or
- (5) Corruptly transfers or pays any property or money to any person for the purpose of enabling that person to be registered as an elector, and thereby of influencing the vote of that person at a future election; or
- (6) Is privy to any such transfer or payment as last-mentioned which is made for his benefit;

is guilty of a misdemeanour, and is liable to imprisonment for 9 months, or to a fine of \$200.

[Section 99 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

100. Illegal practices by candidates

Any person who, being a candidate at an election —

- (1) Convenes or holds a meeting of his committee in a house licensed for the sale of fermented or spirituous liquors;
- (2) Personally solicits the vote of any elector on polling-day; or
- (3) Attends at any meeting of electors held for electoral purposes on polling day;

is guilty of an offence and is liable to a fine of \$600.

[Section 100 amended by No 113 of 1965 s.8(1); No. 78 of 1995 s.147.]

101. Illegal practices

Any person who —

- (1) Being prohibited by law from voting at an election, and knowing that he is so prohibited, votes at the election; or
- (2) Procures any person who is, and whom he knows to be prohibited from voting at an election to vote at the election; or
- (3) Before or during an election, and for the purpose of promoting or procuring the choice of any candidate at the election, knowingly publishes a false statement of the withdrawal of another candidate at the election; or
- (4) Before or during an election, and for the purpose of affecting the return of a candidate at the election, knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate; or
- (5) Being a candidate at an election, withdraws from being a candidate in consideration of a payment or promise of payment; or

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- (6) Being a candidate or the agent of a candidate at an election, corruptly procures any other person to withdraw from being a candidate at the election in consideration of any payment or promise of payment;

is guilty of a misdemeanour, and is liable to imprisonment for 9 months, or to a fine of \$200.

[Section 101 amended by No. 113 of 1965 s.8(1).]

102. Other illegal practices

Any person who —

- (1) Knowingly provides money for any payment which is contrary to any law relating to elections, or for replacing any money which has been expended in any such payment, and which is not allowed by law to be an exception; or
- (2) Prints, publishes, or posts any bill, placard, or poster, which has reference to an election, and which does not bear on the face of it the name and address of the printer and publisher; or
- (3) Hires or uses for a committee room at an election —
- (a) Any part of a house licensed for the sale of fermented or spirituous liquors; or
- (b) Any part of any premises where any intoxicating liquor is sold or supplied to members of a club, society, or association, which is not a permanent political club; unless, in either case, it is a part which has a separate entrance, and has no direct communication with any part of the premises in which intoxicating liquor is sold, and is a part ordinarily let for the purpose of chambers or offices or for holding public meetings or arbitrations;

or

- (4) Knowing that the same are intended to be used as a committee room at an election, lets any part of any such premises, not being such a part as aforesaid, for such use; or
- (5) Provides any cab, carriage, or other conveyance to carry an elector to a polling place with the view to influence the vote of the elector;

is guilty of an offence, and is liable, on summary conviction, to a fine of \$50.

[Section 102 amended by No. 113 of 1965 s.8(1).]

103. Corrupt and illegal practices: Time for commencing prosecution

A prosecution for any of the offences hereinbefore defined in this chapter must be begun within one year after the offence is committed.

The service or execution of process on or against the alleged offender is deemed to be the commencement of the prosecution, unless such service or execution is prevented by some act on his part, in which case the issue of the process is deemed to be the commencement of the proceeding.

104. Interference at elections

Any person who —

- (1) Intrudes into a polling-booth, not being lawfully entitled to be in it; or
- (2) Wilfully interrupts, obstructs, or disturbs any proceedings at an election;

is guilty of an offence, and is liable to a fine of \$1 000.

[Section 104 amended by No. 113 of 1965 s.8(1); No. 119 of 1985 s.30; No. 51 of 1992 s.16(2); No. 78 of 1995 s.147.]

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105. Ballot-paper offences

Any person, who, having received a ballot-paper from the presiding officer at an election —

- (a) Wilfully makes on the ballot-paper any mark or writing not expressly authorised by law; or
- (b) Wilfully fails to fold up the ballot-paper in such a manner as to conceal the names of the candidates; or
- (c) Wilfully fails to deposit the ballot-paper in the ballot-box in the presence of the presiding officer;

is guilty of an offence, and is liable to imprisonment for 6 months or to a fine of \$50.

[Section 105 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

106. Other polling place offences

Any person who —

- (1) Takes or attempts to take a ballot-paper out of a polling-booth; or
- (2) Whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, wilfully intrudes into the compartment;

is guilty of an offence, and is liable to imprisonment for 6 months.

[Section 106 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

107. Stuffing ballot-boxes

Any person who places, or is privy to placing, in a ballot-box a ballot-paper which has not been lawfully handed to and marked by an elector is guilty of a misdemeanour and is liable to imprisonment for one year.

[Section 107 amended by No. 51 of 1992 s.16(2).]

108. Offences by presiding officers at elections

Any person who, being a presiding officer at an election, and whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, unlawfully and wilfully allows any other person to be in the compartment, is guilty of an offence, and is liable to imprisonment for 6 months.

If an elector satisfies the presiding officer that he is so blind as to be unable to vote without assistance, it is lawful for the presiding officer to permit any person named and described by the elector to accompany him into the voting compartment, and to mark, fold, and deliver his voting paper for him.

[Section 108 amended by No. 51 of 1992 s.16(2).]

109. False answers to questions at elections

Any person who, at an election —

- (1) Wilfully makes a false answer to any question which is lawfully put to him by the presiding officer, and which he is required by law to answer; or
- (2) Being lawfully required to make a declaration before voting, wilfully makes a false declaration;

is guilty of a misdemeanour, and is liable to imprisonment for one year.

[Section 109 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

110. Interfering with secrecy at elections

Any person who —

- (1) At or after an election, knowingly and wilfully, and without the lawful command of some competent court or tribunal, unfastens the fold upon a ballot-paper within which the number of an elector is written, and which fold has been made under the authority of the law; or

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- (2) Being a person required by law to discharge duties at an election, at which the voting is by ballot, attempts to ascertain or discover, or aids in ascertaining or discovering, the candidate for whom the vote of any person is given at the election, except in the case of a person voting openly; or
- (3) Having, in the exercise of his office at an election, obtained knowledge or the means of knowledge of the candidate for whom any person has voted at the election, discloses or aids in disclosing such knowledge otherwise than in answer to a question put in the course of proceedings before some competent court or tribunal; or
- (4) Being a person required by law to discharge duties at an election, places upon a ballot-paper any mark or writing not authorised by law;

is guilty of an offence, and is liable to imprisonment for 6 months.

[Section 110 amended by No. 51 of 1992 s.16(2).]

111. Breaking seal of packets used at elections

Any person who knowingly and wilfully, and without the lawful command of some competent court or tribunal, opens or breaks the seal of a sealed parcel which has been sealed up under the provisions of the laws relating to elections, is guilty of an offence, and is liable to imprisonment for 6 months.

[Section 111 amended by No. 51 of 1992 s.16(2).]

112. Offences at elections when voting is by post

Any person who at any election at which the voting is by post —

- (1) Knowing that he is not entitled to vote at the election, signs his name as a voter to a voting-paper; or
- (2) Signs the name of another person to a voting-paper; or

- (3) Attests the signature to a voting-paper of any person who is, to his knowledge, not entitled to vote by means of such voting-paper;

is guilty of a misdemeanour, and is liable to imprisonment for 9 months or to a fine of \$200.

[Section 112 amended by No. 113 of 1965 s.8(1).]

113. False claims

Any person who —

- (1) Makes, in a claim to be inserted in a list of electors, any statement which is, to his knowledge, false in any material particular; or
- (2) Makes, orally or in writing, to a court or tribunal having jurisdiction to deal with the claims of persons to be registered as electors or as persons claiming to be electors, a statement relating to the qualification of any person as an elector which is, to his knowledge, false in any material particular;

is guilty of a misdemeanour, and is liable to imprisonment for one year.

[Section 113 amended by No. 70 of 1988 s.31; No. 51 of 1992 s.16(2).]

114. Attesting claims, etc., without inquiry

Any person who attests a claim, application for transfer, change of qualification, or other document requiring to be attested without satisfying himself by inquiry of the claimant or otherwise that the particulars are true, is guilty of an offence, and is liable to a fine of \$40.

[Section 114 amended by No. 113 of 1965 s.8(1).]

115. Acts of agents

The acts of authorised agents of candidates are, in matters connected with elections, deemed to be the acts of their

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principals, unless it be proved that such acts were committed without their knowledge or consent, and that they had neither directly nor indirectly sanctioned, countenanced, nor approved of the same in any way.

116. Liability for indirect acts

Every person is liable for an illegal practice committed directly or indirectly by himself, or by any other person on his behalf, except as mentioned in the last preceding section.

117. Certificate of returning officer

On any prosecution under this chapter, the certificate of the returning officer that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, is conclusive evidence of the matter stated.

118. This chapter not to apply to Parliamentary or local government elections

Nothing in this chapter shall apply to Parliamentary or local government elections.

[Section 118 amended by No. 73 of 1994 s.4.]

[Chapter XV (s. 119) repealed by No. 70 of 1988 s.17.]

Chapter XVI — Offences relating to the administration of justice

120. “Judicial proceeding”, definition of

In this chapter the term “**judicial proceeding**” includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be taken on oath.

121. Judicial corruption

Any person who —

- (1) Being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon, or for any person holding a judicial office, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office;

is guilty of a crime, and is liable to imprisonment for 14 years.

The term “**holder of a judicial office**” in this section includes an arbitrator or umpire and any member of any board or court of conciliation or arbitration; but in the case of an offence committed by or with respect to any such person, the longest term of imprisonment is 7 years.

A prosecution for an offence under paragraph (1) can not be begun except —

- (a) by a public officer acting in the course of his duties; or
- (b) by or with the consent of the Attorney General.

[Section 121 amended by No. 119 of 1985 s.30; No. 101 of 1990 s.8; No. 51 of 1992 s.16(2); No. 73 of 1994 s.4.]

122. Official corruption not judicial but relating to offences

Any person who —

- (1) Being a justice not acting judicially, or being a person employed in the Public Service in any capacity not judicial, for the prosecution or detention or punishment

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of offenders, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him, with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or

- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any such person, or to, upon, or for any other person, any property or benefit of any kind, on account of any such act or omission on the part of the justice or other person so employed;

is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 122 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2); No. 73 of 1994 s.4.]

123. Corrupting or threatening jurors

Any person who —

- (1) Attempts by threats or intimidation of any kind, or by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding, whether he has been sworn as a juror or not; or
- (2) Threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceeding; or
- (3) Accepts any benefit or promise of benefit on account of anything to be done by him as a juror in any judicial proceeding, whether he has been sworn as a juror or not,

or on account of anything already done by him as a juror in any judicial proceeding;

is guilty of a misdemeanour, and is liable to imprisonment for 5 years.

[Section 123 amended by No. 101 of 1990 s.9; No. 51 of 1992 s.16(2).]

124. Perjury

Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime which is called perjury.

It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used.

It is immaterial whether the false testimony is given orally or in writing.

It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

[Section 124 amended by No. 119 of 1985 s.30.]

125. Penalty for perjury

Any person who commits perjury is liable to imprisonment for 14 years.

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If the offender commits the crime in order to procure the conviction of another person for a crime punishable with strict security life imprisonment, or with imprisonment for life, he is liable to imprisonment for life.

[Section 125 amended by No. 52 of 1984 s.14; No. 51 of 1992 s.16(2).]

[126. Repealed by No. 70 of 1988 s.31.]

127. False evidence before a Royal Commission

Any person who, in the course of an examination before a Royal Commission, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 127 amended by No. 119 of 1985 s.30; No. 70 of 1988 s.31; No. 51 of 1992 s.16(2).]

128. Threatening witness before Royal Commission, etc.

Any person who —

- (1) Threatens to do any injury, or cause any detriment of any kind to another, with intent to prevent or hinder that other person from giving evidence before any Royal Commission or on other public inquiry; or
- (2) Threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure any other person for having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 128 amended by No. 51 of 1992 s.16(2).]

129. Fabricating evidence

Any person who, with intent to mislead any tribunal in any judicial proceeding —

- (1) Fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
- (2) Knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 129 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

130. Corruption of witnesses

Any person who —

- (1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for any person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or
- (2) Attempts by any other means to induce a person called or to be called as a witness in any judicial proceeding to give false testimony or to withhold true testimony; or
- (3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that any person shall, as a witness in any judicial proceeding, give false testimony or withhold true testimony,

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 130 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

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131. Deceiving witnesses

Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 131 amended by No. 51 of 1992 s.16(2).]

132. Destroying evidence

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 132 amended by No. 51 of 1992 s.16(2).]

133. Preventing witnesses from attending

Any person who wilfully prevents or attempts to prevent any person who has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to the subpoena or summons, is guilty of a misdemeanour, and is liable to imprisonment for one year.

133A. Making false complaint

Any person who knowingly makes or swears a complaint under the *Justices Act 1902* which, in any material particular, is to his knowledge false, is guilty of a crime and is liable to imprisonment for 7 years.

[Section 133A inserted by No. 10 of 1999 s.3.]

134. Conspiracy to bring false accusation

Any person who conspires with another to charge any person or cause any person to be charged with any offence, whether alleged to have been committed in Western Australia, or elsewhere, knowing that such person is innocent of the alleged offence, or not believing him to be guilty of the alleged offence, is guilty of a crime.

If the offence is such that a person convicted of it is liable to be sentenced to strict security life imprisonment or to imprisonment for life, the offender is liable to imprisonment for 20 years.

If the offence is such that a person convicted of it is liable to be sentenced to imprisonment, but for a term less than life, the offender is liable to imprisonment for 14 years.

In any other case the offender is liable to imprisonment for 7 years.

[Section 134 amended by No. 118 of 1981 s.5; No. 52 of 1984 s.15; No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

135. Conspiring to defeat justice

Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 135 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

136. Compounding or concealing crimes

Any person who asks, receives, or obtains, or agrees, or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that he will compound or conceal a crime, or will abstain from, discontinue, or delay, a prosecution for a crime, or

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will withhold any evidence thereof, is guilty of an indictable offence.

If the crime is such that a person convicted of it is liable to be sentenced to strict security life imprisonment or imprisonment for life, the offender is guilty of a crime and is liable to imprisonment for 7 years.

In any other case the offender is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 136 amended by No. 52 of 1984 s.16; No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

137. Compounding penal actions

Any person who, having brought, or under pretence of bringing, an action against another person upon a penal statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour, and is liable to imprisonment for one year.

138. Advertising a reward for the return of stolen property, etc.

Any person who —

- (1) Publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked or that the person producing such property will not be seized or molested; or
- (2) Publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

(3) Prints or publishes any such offer;

is guilty of an offence, and is liable on summary conviction to a fine of \$100.

[Section 138 amended by No. 113 of 1965 s.8(1).]

139. Justices acting when personally interested

Any person who —

[(1) deleted]

(2) Being a justice, wilfully and perversely exercises jurisdiction in any matter in which he has a personal interest;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 139 amended by No. 87 of 1982 s.31; No. 73 of 1994 s.4.]

[140. Repealed by No. 87 of 1982 s.32.]

141. Bringing fictitious action on penal statute

Any person who, in the name of a fictitious plaintiff, or in the name of a real person, but without his authority, brings an action against another person upon a penal statute for the recovery of a penalty for any offence committed or alleged to have been committed by him, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

142. Inserting advertisement without authority of court

Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the *Government Gazette*, or in any newspaper an advertisement purporting to be published under the authority of any court or tribunal, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 142 amended by No. 51 of 1992 s.16(2).]

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143. Attempting to pervert justice

Any person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 143 inserted by No. 106 of 1987 s.26.]

Chapter XVII — Escapes: Rescues: Obstructing officers of courts

144. Forcibly rescuing offenders sentenced or liable to strict security life imprisonment

Any person who by force rescues or attempts to rescue from lawful custody an offender who is undergoing a sentence of strict security life imprisonment, or a person committed to prison on a charge of a crime punishable with strict security life imprisonment, is guilty of a crime, and is liable to imprisonment for life.

[Section 144 amended by No. 52 of 1984 s.17; No. 51 of 1992 s.16(2).]

145. Aiding prisoners to escape

Any person who —

- (1) Aids a prisoner in escaping or attempting to escape from lawful custody; or
- (2) Conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 145 amended by No. 51 of 1992 s.16(2).]

146. Escape by prisoner

Any person who, being a prisoner in lawful custody under sentence after conviction for an indictable offence, escapes from

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

The offender may be tried, convicted, and punished, notwithstanding that at the time of his apprehension or trial the term of his original sentence has expired.

[Section 146 amended by No. 51 of 1992 s.16(2).]

147. Permitting escape

Any person who, being an officer of a prison or police officer, and being charged for the time being, with the custody of a prisoner or a person under arrest upon a charge of an offence, wilfully permits him to escape from custody, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 147 amended by No. 51 of 1992 s.16(2).]

148. Harbours escaped prisoners

Any person who harbours, maintains, or employs a person who is, to his knowledge, an offender under sentence of such a kind as to involve deprivation of liberty, and illegally at large, is guilty of a misdemeanour, and is liable to imprisonment for 2 years, or to a fine of \$400.

[Section 148 amended by No. 113 of 1965 s.8(1).]

149. Rescuing, permitting escape of or concealing a person subject to any law relating to mental disorder

Any person who —

- (a) rescues, or wilfully permits the escape of, a person who is in custody, or is detained, pursuant to the *Mental Health Act 1996* or any law relating to mental impairment; or
- (b) conceals a person who —
 - (i) is rescued or escapes from that custody or detention; or

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- (ii) is absent without leave, within the meaning of the *Mental Health Act 1996* or any law relating to mental impairment,

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

[Section 149 inserted by No. 35 of 1962 s.3; amended by No. 51 of 1992 s.16(2); No. 69 of 1996 s.8.]

150. Removing, etc., property under lawful seizure

Any person who, when any property has been attached or taken under the process or authority of any court of justice, knowingly, and with intent to hinder or defeat the attachment, or process, receives, removes, retains, conceals, or disposes of such property, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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

[Section 150 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.8.]

151. Obstructing officers of courts of justice

Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court of justice is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

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

[Section 151 amended by No. 113 of 1965 s.8(1); No. 21 of 1972 s.6; No. 51 of 1992 s.16(2); No. 36 of 1996 s.9.]

[Chapter XVIII (ss. 152-166) repealed by No. 70 of 1988 s.18.]

[Chapter XIX (s. 167) repealed by No. 70 of 1988 s.19(1).]

Chapter XX — Miscellaneous offences against public authority

[168. *Repealed by No. 52 of 1984 s.18.*]

169. False statements in statements required to be under oath or solemn declaration

Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction which may by law be substituted for an oath, or is required to verify it by solemn declaration or affirmation, makes a statement touching such matter which, in any material particular, is to his knowledge false, and verifies it on oath or under such other sanction or by solemn declaration or affirmation, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 169 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

170. False declarations and statements

Any person who, on any occasion on which he is permitted or required by law to make a statement or declaration before any person authorised by law to permit it to be made before him, makes a statement or declaration before that person which, in any material particular, is to his knowledge false, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 170 amended by No. 51 of 1992 s.16(2).]

[171. *Repealed by No. 70 of 1988 s.31.*]

172. Resisting public officers

Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any statute, or obstructs or resists any person while engaged in the discharge or attempted

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discharge of any duty imposed on him by any statute, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: Imprisonment for 18 months or a fine of \$6 000.

[Section 172 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.10.]

173. Refusal by public officer to perform duty

Any person who, being employed in the Public Service, or as an officer of any court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his duty to do by virtue of his employment, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 173 amended by No. 73 of 1994 s.4.]

174. Neglect of officers to suppress riot

Any person who, being a sheriff, under sheriff, justice, mayor, or police officer, and having notice that there is a riot in his neighbourhood, without reasonable excuse omits to do his duty in suppressing such riot, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

175. Neglect to aid in suppressing riot

Any person who, having reasonable notice that he is required to assist any sheriff, under sheriff, justice, mayor, or police officer in suppressing a riot, without reasonable excuse omits to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year.

176. Neglect to aid in arresting offenders

Any person who, having reasonable notice that he is required to assist any sheriff, under sheriff, justice, mayor, or police officer, in arresting any person, or in preserving the peace, without reasonable excuse omits to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year.

177. Disobedience to statute law

Any person who, without lawful excuse, the proof of which lies on him, does any act which he is, by the provisions of any public statute in force in Western Australia, forbidden to do or omits to do any act which he is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against him for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

178. Disobedience to lawful order issued by statutory authority

Any person who, without lawful excuse, the proof of which lies on him, disobeys any lawful order issued by any court of justice, or by any person authorised by any public statute in force in Western Australia to make the order, is guilty of a misdemeanour, unless some mode of proceeding against him for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

Part IV — Acts injurious to the public in general

[Chapter XXI (ss. 179, 180) repealed by No. 70 of 1988 s.20.]

Chapter XXII — Offences against morality^{4,5}

181. Carnal knowledge of animal

Any person who has carnal knowledge of an animal is guilty of a crime and is liable to imprisonment for 7 years.

[Section 181 inserted by No. 32 of 1989 s.5.]

[182. Repealed by No. 106 of 1987 s.14(5).]

[183. Repealed by No. 32 of 1989 s.6.]

184. Indecent practices between males in public

Any male person who in public commits any acts of gross indecency with another male person or procures another male person to commit in public any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person in public is guilty of a crime and is liable to imprisonment for 3 years.

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

[Section 184 inserted by No. 32 of 1989 s.7; amended by No. 36 of 1996 s.11.]

[185. Repealed by No. 14 of 1992 s.6(2)⁴.]

186. Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge

- (1) Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control of

any premises, induces or knowingly permits any person of such age as in this section is mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any man, whether a particular man or not is guilty of a crime, and;

- (a) if the person is a girl under the age of 16 years or a male under the age of 21 years, is liable to imprisonment for two years; and
 - (b) if the person is under the age of 13 years, is liable to imprisonment for 20 years.
- (2) It is a defence to a charge to any of offences defined in this section prove that the accused person believed, on reasonable grounds, that in the case of a girl, that she was of or above the age of 16 years, and in the case of a male, that he was of or above the age of 21 years.

[Section 186 inserted by No. 32 of 1989 s.9.]

[187, 188, 189, 190. Repealed by No. 14 of 1992 s.6(2)⁴.]

191. Procuring person to be prostitute etc.

Any person who —

- (1) Procures a girl or woman who is under the age of 21 years, and is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (2) Procures a woman or girl to become a common prostitute either in Western Australia or elsewhere; or
- (3) Procures a woman or girl to leave Western Australia, with intent that she may become an inmate of a brothel, elsewhere; or
- (4) Procures a woman or girl to leave her usual place of abode in Western Australia, such place not being a brothel, with intent that she may, for the purposes of

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prostitution, become an inmate of a brothel, either in Western Australia or elsewhere; or

- (5) Procures a man or boy for any of the above purposes;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 191 amended by No. 70 of 1988 s.31; No. 32 of 1989 s.12; No. 48 of 1991 s.12(7); No. 51 of 1992 s.16(2).]

192. Procuring person to have unlawful carnal knowledge by threats, fraud, or administering drugs

Any person who —

- (1) By threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (2) By any false pretence procures a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (3) Administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; or
- (4) Does any of the foregoing acts with respect to a man or boy;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 192 amended by No. 70 of 1988 s.31; No. 32 of 1989 s.13; No. 48 of 1991 s.12(7); No. 51 of 1992 s.16(2).]

[193, 194. Repealed by No. 101 of 1990 s.10.]

[195. Repealed by No. 17 of 2000 s.64]

[196, 197, 198. Repealed by No. 14 of 1992 s.6(2)⁴.]

199. Abortion

- (1) It is unlawful to perform an abortion unless —
 - (a) the abortion is performed by a medical practitioner in good faith and with reasonable care and skill; and
 - (b) the performance of the abortion is justified under section 334 of the *Health Act 1911*.
- (2) A person who unlawfully performs an abortion is guilty of an offence.
Penalty: \$50 000.
- (3) Subject to section 259, if a person who is not a medical practitioner performs an abortion that person is guilty of a crime and is liable to imprisonment for 5 years.
- (4) In this section —
“**medical practitioner**” has the same meaning as it has in the *Health Act 1911*.
- (5) A reference in this section to performing an abortion includes a reference to —
 - (a) attempting to perform an abortion; and
 - (b) doing any act with intent to procure an abortion, whether or not the woman concerned is pregnant.

[Section 199 inserted by No. 15 of 1998 s.4.]

[200, 201. Repealed by No. 15 of 1998 s.4.]

202. Consent no defence

It is no defence to any charge defined in section 186, 191 or 192, 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.

[Section 202 inserted by No. 32 of 1989 s.17; amended by No. 14 of 1992 s.6(3).]

203. Indecent acts

Any person who —

- (1) Wilfully and without lawful excuse does any indecent act in any place to which the public are permitted to have access, whether on payment of a charge for admission or not; or
- (2) Wilfully does any 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 one year or a fine of \$4 000.

[Section 203 amended by No. 32 of 1989 s.18; No. 51 of 1992 s.16(2); No. 36 of 1996 s.12.]

204. Indecent shows or performances

Any person who knowingly, and without lawful justification or excuse, —

[(1) and (2) deleted]

- (3) Publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

It is a defence to a charge of any of the offences defined in this section to prove that it was for the public benefit that the act complained of should be done.

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

[Section 204 amended by No. 51 of 1992 s.16(2); No. 40 of 1996 s.152.]

204A. Showing offensive material to children under 16

(1) In this section, unless the contrary intention appears —

“**material**” includes —

- (a) an object;
- (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;
- (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape, or other medium;
- (d) a hologram;

“**offensive material**” means material that —

- (a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;
- (b) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of 16 years in a manner that is likely to cause offence to a reasonable adult;
- (c) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal; or
- (d) promotes, incites, or instructs in matters of crime or violence,

and includes —

- (e) a publication, within the meaning of the *Censorship Act 1996*, that has been classified as refused or classified as restricted under Part 2 of that Act;

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- (f) a film, within the meaning of the *Censorship Act 1996*, that has been classified as RC or X under Part 3 of that Act; and
 - (g) a computer game, within the meaning of the *Censorship Act 1996*, that has been classified as RC under Part 3 of that Act.
- (2) A person who, with intent to commit a crime, shows offensive material to a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 5 years.
- (3) Upon an indictment charging a person with an offence under subsection (2), a certificate issued under an Act referred to in the definition of “offensive material” in subsection (1) as to the status of any material under that Act is, in the absence of evidence to the contrary, proof of the matters in the certificate.
- (4) It is a defence to a charge under subsection (2) to prove the accused believed on reasonable grounds that the child was of or over the age of 16 years.

[Section 204A inserted by No. 14 of 1992 s.5; amended by No. 40 of 1996 s.152.]

205. Ignorance of age no defence

Except as otherwise expressly stated, it is immaterial, in the case of any of the offences defined in this chapter committed with respect to a person or child under the specified age, that the accused person did not know that the person or child was under that age, or believed that he or she was not under that age.

[Section 205 inserted by No. 32 of 1989 s.19.]

[205A. Repealed by No. 74 of 1985 s.5.]

[206. Repealed by No. 14 of 1992 s.6(2)⁴.]

Chapter XXIII — Nuisances: Misconduct relating to corpses

[207. Repealed by No. 70 of 1988 s.23.]

208. Poisoning water-holes

Any person who —

- (a) Without lawful justification or excuse, places in any water-hole or other place containing water of which he is the owner or lawful occupier; or
- (b) Without the leave of the Minister for Lands first had and obtained, places in any water-hole or other place containing water situated on unoccupied Crown land; or
- (c) Places in any water-hole or other place containing water on any private land, of which such person is not the owner or lawful occupier —

any poisonous or noxious matter in any quantity sufficient to render such water unfit for human consumption, or unfit for consumption by cattle, horses, camels, sheep, or other animals, is guilty of a misdemeanour and liable to imprisonment for 2 years; or he may be summarily convicted, in which case he is liable to imprisonment for 6 months.

On any prosecution under this section the onus lies on the accused person to prove all facts negated in the complaint or indictment.

[Section 208 amended by No. 21 of 1972 s.6; No. 51 of 1992 s.16(2).]

209. Bawdy houses

Any person who keeps a house, room, set of rooms, or place of any kind whatever for purposes of prostitution, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 209 amended by No. 51 of 1992 s.16(2).]

[210, 211. Repealed by No. 108 of 1982 s.27.]

[212. Repealed by No. 74 of 1987 s.64.]

213. Acting as keeper of bawdy houses

Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in section 209, is to be taken to be the keeper thereof, whether he is or is not the real keeper.

[Section 213 amended by No. 70 of 1988 s.24.]

214. Misconduct with regard to corpses

Any person who, without lawful justification or excuse, the proof of which lies on him —

- (1) Neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or
- (2) Improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

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

[Section 214 amended by No. 70 of 1988 s.25; No. 51 of 1992 s.16(2).]

[Chapter XXIV (ss. 215-219) repealed by No. 70 of 1988 s.26.]

[Chapter XXV (ss. 220, 221) repealed by No. 101 of 1990 s.11.]

Part V — Offences against the person and relating to marriage and parental rights and duties and against the reputation of individuals

Chapter XXVI — Assaults and violence to the person generally: Justification and excuse

222. “Assault”, definition of

A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

The term “**applies force**” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

223. Assaults unlawful

An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

224. Execution of sentence

It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a court to execute or give effect to that sentence.

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225. Execution of process

It is lawful for a person who is charged by law with the duty of executing the lawful process of a court, and who is required to arrest or detain another person under such process, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the terms of the process.

226. Execution of warrants

It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by any court or justice or other person having jurisdiction to issue it, and who is required to arrest or detain another person under such warrant, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the directions of the warrant.

227. Erroneous sentence or process or warrant

If the sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass such a sentence, or to issue such process, or if the warrant was issued by a court or justice or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the court or justice or person had or had not authority to pass the sentence or issue the process or warrant in the particular case; unless the person executing the same knows that the sentence or process or warrant was in fact passed or issued without authority.

228. Sentence or process or warrant without jurisdiction

A person who executes or assists in executing any sentence, process, or warrant which purports to be passed or issued by a court, justice, or other person, and who would be justified, under the provisions of the 4 last preceding sections, in executing the same if it had been passed or issued by a court, justice, or person

having authority to pass or issue it, is not criminally responsible for any act done in such execution, notwithstanding that the court, justice, or person had no authority to pass the sentence or issue the process or warrant, if in such execution he acted in good faith and in the belief that the sentence, process, or warrant was that of a court, justice, or other person having such authority.

229. Arrest of wrong person

A person who, being duly authorised to execute a warrant to arrest one person, arrests another person, believing in good faith and on reasonable grounds that the person arrested is the person named in the warrant, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

Any person who lawfully assists in making such an arrest, believing that the person arrested is the person named in the warrant, or who, being required by the warrant to receive and detain the person named in it, receives and detains the person so arrested, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

230. Irregular process or warrant

When any process or warrant is bad in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is good in law, acts in the execution of the process or warrant, is not criminally responsible for anything done in such execution to any greater extent than if the process or warrant were good in law.

231. Force used in executing process or in arrest

It is lawful for a person who is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest, and for any person lawfully assisting him, to use such force as

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may be reasonably necessary to overcome any force used in resisting such execution or arrest.

232. Duty of persons arresting

It is the duty of a person executing any process or warrant to have it with him, and to produce it if required.

It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which he is acting or of the cause of the arrest.

A failure to fulfill either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

233. Preventing escape from arrest

- (1) When any person is proceeding lawfully to arrest, with or without warrant, another person, and the person sought to be arrested takes to flight, or appears to be about to take to flight, in order to avoid arrest, it is lawful for the person seeking to make the arrest, and for any person lawfully assisting that person, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested.
- (2) Subsection (1) does not authorise the use of force that is intended or is likely to cause death or grievous bodily harm unless —
 - (a) the person who uses that force is a police officer or a person assisting a police officer;
 - (b) the person sought to be arrested is reasonably suspected of having committed an offence punishable with imprisonment for life; and
 - (c) the person sought to be arrested is called on to surrender before that force is used.

[Section 233 inserted by No. 119 of 1985 s.6.]

[234. *Repealed by No. 119 of 1985 s.7.*]

235. Preventing escape or rescue after arrest

- (1) When any person has lawfully arrested another person for any offence, it is lawful for him to use such force as may be reasonably necessary to prevent the escape or rescue of the person arrested.
- (2) Subsection (1) does not authorise the use of force that is intended or is likely to cause death or grievous bodily harm unless the offence referred to in that subsection is punishable with imprisonment for 14 years or upwards, with or without any other punishment.

[Section 235 inserted by No. 119 of 1985 s.8.]

236. Accused person in custody, examination of, samples from

When a person is in lawful custody upon a charge of committing any offence, it is lawful for a police officer to search his person, and to take from him anything found upon his person, and to use such force as is reasonably necessary for that purpose.

When a person is in lawful custody upon a charge of committing any offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, it is lawful for a legally qualified medical practitioner, acting at the request of a police officer, and for any person acting in good faith in aid of, and under the direction of, the medical practitioner, to make such an examination of the person of the person so in custody as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

When a person is in lawful custody upon a charge of committing any offence of such a nature and alleged to have been

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committed under such circumstances that there are reasonable grounds for believing that a sample of the person's blood, hair (from any part of the body), nails or saliva, or of any matter on the person's body or obtainable by a buccal swab, will afford evidence as to the commission of the offence, it is lawful for —

- (a) a legally qualified medical practitioner; or
- (b) a nurse as defined in the *Nurses Act 1992*,

acting at the request of a police officer, and for any person acting in good faith in aid of, and under the direction of, the person acting at the request of the police officer, to take the sample from the person so in custody and to use such force as is reasonably necessary for that purpose.

Where —

- (a) a person is found not guilty of an offence in respect of which a sample has been taken under this section; and
- (b) the person requests that the sample and any genetic information arising from the taking of the sample be destroyed,

the sample and any genetic information arising from the taking of the sample is to be destroyed in his presence after the time for an appeal from the finding has expired or an appeal from the finding has been resolved in his favour.

[Section 236 amended by No. 38 of 1998 s.3.]

237. Preventing a breach of the peace

It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer.

[Section 237 amended by No. 119 of 1985 s.9.]

238. Suppression of riot

It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from its continuance.

239. Riot may be suppressed by justices and police officers

It is lawful for a justice to use or order to be used, and for a police officer to use, such force as he believes, on reasonable grounds, to be necessary in order to suppress a riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

240. Suppression of riot by person acting under lawful orders

It is lawful for any person acting in good faith in obedience to orders, not manifestly unlawful, given by a justice for the suppression of a riot, to use such force as he believes, on reasonable grounds, to be necessary for carrying such orders into effect.

Whether any particular order so given is or is not manifestly unlawful is a question of law.

241. Suppression of riot by person acting without order in case of emergency

When any person, whether subject to military law or not, believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a justice, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary for the suppression of the riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

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242. Suppression of riot by military personnel

It is lawful for a person who is bound by military law to obey the lawful commands of his superior officer to obey any command given him by his superior officer in order to the suppression of a riot, unless the command is manifestly unlawful.

Whether any particular command is or is not manifestly unlawful is a question of law.

243. Prevention of offences: Prevention of violence by mentally impaired persons

It is lawful for any person to use such force as is reasonably necessary in order to prevent the commission of an offence; or in order to prevent any act from being done as to which he believes, on reasonable grounds, that it would, if done, amount to an offence; or in order to prevent a person whom he believes, on reasonable grounds, to be mentally impaired from doing violence to any person or property.

[Section 243 amended by No. 36 of 1996 s.13; No. 69 of 1996 s.9.]

244. Defence against home invasion

- (1) It is lawful for a person (“**the occupant**”) who is in peaceable possession of a dwelling to use any force or do anything else that the occupant believes, on reasonable grounds, to be necessary —
 - (a) to prevent a home invader from wrongfully entering the dwelling or an associated place;
 - (b) to cause a home invader who is wrongfully in the dwelling or on or in an associated place to leave the dwelling or place;

- (c) to make effectual defence against violence used or threatened in relation to a person by a home invader who is —
 - (i) attempting to wrongfully enter the dwelling or an associated place; or
 - (ii) wrongfully in the dwelling or on or in an associated place;or
 - (d) to prevent a home invader from committing, or make a home invader stop committing, an offence in the dwelling or on or in an associated place.
- (2) A person is a “**home invader**” for the purposes of subsection (1) if the occupant believes, on reasonable grounds, that the person —
- (a) intends to commit an offence; or
 - (b) is committing or has committed an offence,
- in the dwelling or on or in an associated place.
- (3) The authorisation conferred by subsection (1)(a), (b) or (d) extends to a person assisting the occupant or acting by the occupant’s authority.
- (4) Section 250 applies to the authorisation conferred by subsection (1)(c).
- (5) This section has effect even if the conduct it authorises would not otherwise be authorised under this Chapter.
- (6) In this section —
- “**associated place**” means —
- (a) any place that is used exclusively in connection with, or for purposes ancillary to, the occupation of the dwelling; and

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- (b) if the dwelling is one of 2 or more dwellings in one building or group of buildings, a place that occupants of the dwellings use in common with one another;

“offence” means an offence in addition to any wrongful entry;

“place” means any land, building or structure, or a part of any land, building or structure.

[Section 244 inserted by No. 45 of 2000 s.4.]

245. “Provocation”, meaning of

The term **“provocation”** used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self control, and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another, to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

246. Defence of provocation

A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous bodily harm.

Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

247. Prevention of repetition of insult

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

248. Self-defence against unprovoked assault

When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for him to use any

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such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

249. Self-defence against provoked assault

When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first began the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

250. Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first-mentioned person.

251. Defence of movable property against trespassers

It is lawful for any person who is in peaceable possession of any movable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the

taking of such property by a trespasser, or in order to retake it from a trespasser, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the trespasser.

[Section 251 amended by No. 37 of 1991 s.8.]

252. Defence of movable property with claim of right

When a person is in peaceable possession of any movable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, provided that he does not do bodily harm to such other person.

253. Defence of movable property without claim of right

When a person who is entitled by law to the possession of movable property attempts to take it from a person who is in possession of the property, but who neither claims right to it nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use such force as is reasonably necessary in order to obtain possession of the property; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person in possession.

[Section 253 amended by No. 37 of 1991 s.9.]

254. Defence of property against trespassers: Removal of disorderly persons

- (1) For the purposes of this section and section 255, the term “**place**” means any land, building, structure, tent, or conveyance, or a part of any land, building, structure, tent, or conveyance.

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- (2) It is lawful for a person (“**the occupant**”) who is in peaceable possession of any place, or who is entitled to the control or management of any place, to use such force as is reasonably necessary —
- (a) to prevent a person from wrongfully entering the place;
 - (b) to remove a person who wrongfully remains on or in the place; or
 - (c) to remove a person behaving in a disorderly manner on or in the place;

provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person.

- (3) The authorisation conferred by subsection (2), as limited by the proviso to that subsection, extends to a person acting by the occupant’s authority except that if that person’s duties as an employee consist of or include any of the matters referred to in subsection (2)(a), (b) or (c) that person is not authorised to use force that is intended, or is likely, to cause bodily harm.

[Section 254 inserted by No. 37 of 1991 s.10.]

255. Defence of possession of a place with claim of right

When a person is in peaceable possession of any place with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the place, provided that he does not do bodily harm to such person.

[Section 255 amended by No. 37 of 1991 s.11.]

256. Exercise of right-of-way or easement

When a person who is lawfully entitled to enter upon land for the exercise of a right-of-way or other easement or profit enters upon the land for the purpose of exercising such right-of-way, easement, or profit, after notice that his right to use such way or easement or to take such profit is disputed by the person in

possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he does not do him bodily harm.

257. Discipline of children

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care, such force as is reasonable under the circumstances.

258. Discipline on ship or aircraft

It is lawful for the master or other person in command of —

- (a) a vessel on a voyage; or
- (b) an aircraft on a flight;

and for any person acting under his instructions to use, for the purpose of maintaining good order and discipline on board the vessel or aircraft, such force as he believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances.

[Section 258 inserted by No. 53 of 1964 s.3.]

259. Surgical and medical treatment

A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment —

- (a) to another person for that other person's benefit; or

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(b) to an unborn child for the preservation of the mother's life,

if the administration of the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

[Section 259 inserted by No. 15 of 1998 s.5.]

259A. Inoculation procedures

A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a procedure that involves causing a person to have a disease, if that procedure is performed for inoculation purposes.

[Section 259A inserted by No. 51 of 1992 s.4.]

260. Excessive force

In any case in which the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.

261. Consent to death immaterial

Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.

Chapter XXVII — Duties relating to the preservation of human life

262. Duty to provide necessaries

It is the duty of every person having charge of another who is unable by reason of age, sickness, mental impairment, detention, or any other cause, to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or

unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

[Section 262 amended by No. 69 of 1996 s.10.]

263. Duty of head of family

It is the duty of every person who, as head of a family, has the charge of a child under the age of 16 years, being a member of his household, to provide the necessaries of life for such child, and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty whether the child is helpless or not.

264. Duty of masters

It is the duty of every person who, as a master or mistress, has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of 16 years to provide the same; and he or she is held to have caused any consequences which result to the life or health of the servant or apprentice by reason of any omission to perform that duty.

265. Duty of persons doing dangerous acts

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

266. Duty of persons in charge of dangerous things

It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health

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of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

267. Duty to do certain acts

When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

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268. Killing of a human being unlawful

It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

269. When a child becomes a human being

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

270. “Kill”, definition of

Any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

[Section 270 amended by No. 37 of 1991 s.5.]

271. Death by acts done at childbirth

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child.

272. Causing death by threats

A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.

273. Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

274. When injury or death might be prevented by proper precaution

When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

275. Injuries causing death in consequence of subsequent treatment

When a person does grievous bodily harm to another and such other person has recourse to surgical or medical treatment, and death results either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment; provided that the treatment was reasonably proper under the circumstances, and was applied in good faith.

[276. *Repealed by No. 37 of 1991 s.6⁶.*]

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277. Unlawful homicide

Any person who unlawfully kills another is guilty of a crime which, according to the circumstances of the case, may be wilful murder, murder, manslaughter, or infanticide.

[Section 277 inserted by No. 21 of 1972 s.9; amended by No. 58 of 1974 s.4; No. 89 of 1986 s.6.]

278. “Wilful murder”, definition of

Except as hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder.

279. “Murder”, definition of

Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say —

- (1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
- (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
- (3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
- (4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
- (5) If death is caused by wilfully stopping the breath of any person for either of such purposes;

is guilty of murder.

In the first case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the second case it is immaterial that the offender did not intend to hurt any person.

In the 3 last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

280. “Manslaughter”, definition of

A person who unlawfully kills another under such circumstances as not to constitute wilful murder or murder is guilty of manslaughter.

281. Killing on provocation

When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute wilful murder or murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only.

281A. “Infanticide”, definition of

- (1) When a woman or girl who unlawfully kills her child under circumstances which, but for this section, would constitute wilful murder or murder, does the act which causes death when the balance of her mind is disturbed because she is not fully recovered from the effect of giving birth to the child or because of the effect of lactation consequent upon the birth of the child, she is guilty of infanticide only.
- (2) In this section “**child**” means a child under the age of 12 months.

[Section 281A inserted by No. 89 of 1986 s.7.]

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282. Penalty for wilful murder and murder

A person, other than a child, who commits the crime —

- (a) of wilful murder is liable to a mandatory punishment of —
 - (i) strict security life imprisonment; or
 - (ii) life imprisonment;
- (b) of murder is liable to a mandatory punishment of life imprisonment,

and a child who commits the crime —

- (c) of wilful murder is liable to a punishment of —
 - (i) strict security life imprisonment; or
 - (ii) life imprisonment; or
 - (iii) an order that the child be detained in strict custody until the Governor's pleasure is known and, thereafter, in safe custody in such place or places as the Governor may, from time to time, direct;
- (d) of murder is liable to a punishment of —
 - (i) life imprisonment; or
 - (ii) an order that the child be detained in strict custody until the Governor's pleasure is known and, thereafter, in safe custody in such place or places as the Governor may, from time to time, direct.

[Section 282 inserted by No. 70 of 1988 s.27; amended by No. 14 of 1992 s.4(2).]

283. Attempt to murder

Any person who —

- (1) Attempts unlawfully to kill another; or
- (2) With intent unlawfully to kill another does any act, or omits to do any act which it is his duty to do, such act or

omission being of such a nature as to be likely to endanger human life;

is guilty of a crime, and is liable to imprisonment for life or, where the person is convicted of an offence under this section upon an indictment charging her with the crime of infanticide, to imprisonment for 7 years.

[Section 283 amended by No. 106 of 1987 s.7; No. 51 of 1992 s.16(2).]

[284. Repealed by No. 106 of 1987 s.14(5).]

[285. Repealed by No. 101 of 1990 s.12.]

[286. Repealed by No. 106 of 1987 s.14(5).]

287. Penalty for manslaughter

Any person who commits the crime of manslaughter is liable to imprisonment for 20 years.

[Section 287 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

287A. Penalty for infanticide

Any person who commits the crime of infanticide is liable to imprisonment for 7 years.

[Section 287A inserted by No. 89 of 1986 s.8.]

288. Aiding suicide

Any person who —

- (1) Procures another to kill himself; or
- (2) Counsels another to kill himself and thereby induces him to do so; or
- (3) Aids another in killing himself;

is guilty of a crime, and is liable to imprisonment for life.

[Section 288 amended by No. 51 of 1992 s.16(2).]

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[289. *Repealed by No. 21 of 1972 s.10.*]

290. Killing unborn child

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.

[Section 290 amended by No. 51 of 1992 s.16(2).]

291. Concealing the birth of children

Any person who, when a woman is delivered of a child endeavours, by any secret disposition of the dead body of the child, to conceal its birth, whether the child died before, at, or after its birth, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 291 amended by No. 51 of 1992 s.16(2).]

[291A. *Repealed by No. 58 of 1974 s.5.*]

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292. Disabling in order to commit indictable offence, etc.

Any person who, by means of violence of any kind and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 292 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(1) and (2).]

293. Stupefying in order to commit indictable offence

Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 293 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

294. Acts intended to cause grievous bodily harm or prevent arrest

Any person who, with intent to maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person —

- (1) Unlawfully wounds or does any grievous bodily harm to any person by any means whatever; or
- (2) Unlawfully attempts in any manner to strike any person with any kind of projectile; or
- (3) Unlawfully causes any explosive substance to explode; or
- (4) Sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (5) Causes any such substance or thing to be taken or received by any person; or
- (6) Puts any corrosive fluid or any destructive or explosive substance in any place; or
- (7) Unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person; or

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- (8) does any act that is likely to result in a person having a serious disease;

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

[Section 294 amended by No. 118 of 1981 s.4; No. 51 of 1992 ss.5 and 16(2).]

294A. Dangerous goods on aircraft

- (1) Subject to this section, any person who —

- (a) carries or places dangerous goods on board an aircraft;
- (b) delivers dangerous goods to another person for the purpose of those goods being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft,

is guilty of a crime and is liable to imprisonment for 7 years.

- (2) It is a defence to a charge of any offence defined in subsection (1) to prove that —

- (a) the act constituting the offence was consented to by the owner or operator of the aircraft with knowledge by him of the nature of the goods concerned; or
- (b) the act was done by authority or permission of or under a law of the Commonwealth or of the State.

- (3) In this section, “**dangerous goods**” means —

- (a) firearms, ammunition, weapons and explosive substances; and
- (b) substances or things that, by reason of their nature or condition, may endanger the safety of an aircraft or of a person on board an aircraft.

[Section 294A inserted by No. 53 of 1964 s.4; amended by No. 51 of 1992 s.16(2).]

295. Preventing escape from wreck

Any person who unlawfully —

- (1) Prevents or obstructs any person who is on board of or is escaping from a vessel which is in distress or wrecked or cast ashore, in his endeavours to save his life; or
- (2) Obstructs any person in his endeavours to save the life of any person so situated;

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

[Section 295 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

296. Intentionally endangering safety of persons travelling by railway

Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not —

- (1) Deals with the railway, or with anything whatever, upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or
- (2) Shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (3) By any omission to do any act which it is his duty to do causes the safety of any such person to be endangered;

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

[Section 296 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

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296A. Intentionally endangering safety of persons travelling by aircraft

Any person who, with intent to injure or to endanger the safety of any person whilst he is on board an aircraft, whether a particular person or not —

- (a) deals with the aircraft or with anything whatever upon or near the aircraft or with anything either directly or indirectly connected with the navigation, control or operation of the aircraft in such a manner as to endanger the safety of any such person; or
- (b) by any omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

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

[Section 296A inserted by No. 53 of 1964 s.5; amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

297. Grievous bodily harm

Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 10 years.

If the offence is committed in the course of conduct that, under section 371 or 371A, constitutes the stealing of a motor vehicle, the offender is liable to imprisonment for 14 years.

[Section 297 amended by No. 1 of 1992 s.4; No. 51 of 1992 s.16(2); No. 29 of 1998 s.3.]

298. Causing explosion likely to endanger life

Any person who wilfully and unlawfully causes by any explosive substance an explosion likely to endanger the life of any person, whether any injury to any person is actually caused or not, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 298 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

299. Attempting to cause explosion likely to endanger life

Any person who wilfully and unlawfully —

- (1) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Western Australia of a nature likely to endanger the life of any person; or
- (2) Makes or has in his possession or under his control, any explosive substance with intent by means thereof to endanger the life of any person in Western Australia; or
- (3) Puts any explosive substance in any place whatever with intent to do any bodily harm to any person;

whether any explosion does or does not take place, and whether any injury to any person is actually caused or not, is guilty of a crime; and is liable to imprisonment for 14 years, and forfeiture of the explosive substance.

The term “**explosive substance**” in this section includes any materials for making any explosive substance; also, any apparatus, machine, implement or materials, used or intended to be used or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also, any part of any such apparatus, machine, or implement.

[Section 299 amended by No. 51 of 1992 s.16(2).]

300. Maliciously administering poison with intent to harm

Any person who unlawfully, and with intent to injure or annoy another, causes any poison or other noxious thing to be administered to or taken by any person, and thereby endangers his life, or does him some grievous bodily harm, is guilty of a crime and is liable to imprisonment for 14 years.

[Section 300 amended by No. 51 of 1992 s.16(2).]

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301. Wounding and similar acts

Any person who —

- (1) Unlawfully wounds another; or
- (2) Unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to or taken by any person;

is guilty of a misdemeanour, and is liable to imprisonment for 5 years.

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

[Section 301 amended by No. 51 of 1992 s.16(2); No. 82 of 1994 s.6.]

302. Failure to supply necessities

Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 302 amended by No. 51 of 1992 s.16(2).]

303. Endangering life or health of apprentices or servants

Any person who, being charged as a master or mistress with the duty of providing necessary food, clothing, or lodging for a servant or apprentice under the age of 16 years, unlawfully fails to perform that duty, or in any other manner does any bodily harm or causes any bodily harm to be done to such servant or apprentice, whereby, in either case, the life of such servant or apprentice is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 303 amended by No. 51 of 1992 s.16(2).]

304. Endangering life of children by exposure

Any person who unlawfully abandons or exposes a child under the age of 7 years, whereby the life of such child is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 304 amended by No. 51 of 1992 s.16(2).]

305. Setting mantraps

Any person who sets or places any spring-gun, mantrap, or other engine calculated to destroy human life or to inflict grievous bodily harm, or causes any such thing to be set or placed in any place with the intent that it may kill or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, or sets or places any such thing in any such place and in any such manner that it is likely to cause any such result, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Any person who knowingly permits any such spring-gun, mantrap, or other engine, which has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result, to continue so set or placed in any place which is then in or afterwards comes into his possession or occupation, is deemed to have set and placed the gun, trap, or engine with the intent aforesaid.

This section does not make it unlawful to set any gin or trap such as is usually set for the purpose of destroying vermin; or to set any spring-gun, mantrap, or engine, at night in a dwelling for the protection of the dwelling.

[Section 305 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.15.]

306. Unlawful acts causing bodily harm

Any person who unlawfully does any act or omits to do any act which it is his duty to do, by which act or omission bodily harm

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is actually caused to any person, is guilty of a crime, and is liable to imprisonment for 5 years.

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

[Section 306 amended by No. 51 of 1992 s.6.]

307. Endangering safety of persons travelling by railway

Any person who, by any unlawful act, or by any omission to do any act which it is his duty to do, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 307 amended by No. 51 of 1992 s.16(2).]

308. Sending or taking unseaworthy ships to sea

Any person who —

- (1) Sends or attempts to send a ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered; or
- (2) Being a master of a British ship, knowingly takes or attempts to take the ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered;

is guilty of a crime, and is liable to imprisonment for 14 years.

It is a defence to a charge of any of the offences defined in this section to prove that the going of the ship to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable.

It is a defence to a charge of either of the offences firstly defined in this section to show that the accused person used all reasonable means to ensure the ship being sent to sea in a seaworthy state.

[Section 308 amended by No. 51 of 1992 s.16(2).]

309. Endangering steamships by tampering with machinery

Any person who, being a person having actual control over a steam vessel, or over any part of the machinery of a steam vessel, does any act or makes any omission or is privy to any act or omission with respect to the machinery of the vessel, whereby, to his knowledge, the safety of any person on board the vessel is or is likely to be endangered, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 309 amended by No. 51 of 1992 s.16(2).]

310. The like by engineers

Any person who is engineer, or one of the engineers, in charge of the machinery of a steam vessel at any time when any act is done or omitted to be done by any other person with respect to the machinery of the vessel, whereby the safety of any person on board the vessel is or is likely to be endangered, is guilty of an offence, and is liable on summary conviction to a fine of \$200.

It is a defence to a charge of the offence defined in this section to prove that the act or omission was done or made without the knowledge of the accused person, and without any neglect or default on his part.

[Section 310 amended by No. 113 of 1965 s.8(1).]

311. Evading laws as to equipment of ships and shipping dangerous goods

Any person who —

- (1) Being a person having actual control over a vessel on board of which any article has been placed with his knowledge or consent in order to the obtaining of permission or authority to leave a port, removes or allows the removal of such article from the vessel after such permission or authority has been obtained; or

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- (2) Knowingly sends by any vessel, or carries in any vessel, any explosive substance, or any acid or other thing of a dangerous or destructive nature, under a false description of the substance, or thing, or with a false description of the sender thereof;

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

[Section 311 amended by No. 51 of 1992 s.16(2).]

312. Landing explosives

Any person who —

- (1) Being charged by law with any duty respecting the landing or delivery of any explosive substance, or of any acid or other thing of a dangerous or destructive nature, from any vessel, fails to perform that duty; or
- (2) Being concerned in the landing of any such substance or thing from any vessel, violates the provisions of the laws relating to such landing;

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

This section does not apply to gunpowder the property of Her Majesty while it is under the control of an officer of Her Majesty's army or navy, or ordnance, or of the defence force of the Commonwealth of Australia.

[Section 312 amended by No. 51 of 1992 s.16(2).]

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313. Common assaults

- (1) Any person who unlawfully assaults another is guilty of a simple offence and is liable to imprisonment for 18 months or a fine of \$6 000.

- (2) A prosecution for an offence under subsection (1) may be commenced at any time.

[Section 313 inserted by No. 106 of 1987 s.15.]

[314, 315. Repealed by No. 74 of 1985 s.7.]

[316. Repealed by No. 119 of 1985 s.11.]

317. Assaults occasioning bodily harm

- (1) Any person who unlawfully assaults another and thereby does that other person bodily harm is guilty of a crime, and is liable to imprisonment for 5 years.

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

[(2) repealed]

[Section 317 inserted by No. 119 of 1985 s.12; amended by No. 106 of 1987 s.24⁷; No. 70 of 1988 s.28; No. 82 of 1994 s.12.]

317A. Assaults with intent

Any person who —

- (a) assaults another with intent to commit or facilitate the commission of a crime;
- (b) assaults another with intent to do grievous bodily harm to any person; or
- (c) assaults another with intent to resist or prevent the lawful arrest or detention of any person,

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

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

[Section 317A inserted by No. 82 of 1994 s.7.]

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318. Serious assaults

(1) Any person who —

[(a), (b) and (c) deleted]

- (d) assaults a public officer who is performing a function of his office or employment or on account of his performance of such a function;
- (e) assaults any person who is performing a function of a public nature conferred on him by law or on account of his performance of such a function;
- (f) assaults any person who is acting in aid of a public officer or other person referred to in paragraph (d) or (e) or on account of his having so acted; or
- (g) assaults the driver or person operating or in charge of —
 - (i) a vehicle travelling on a railway;
 - (ii) a ferry; or
 - (iii) a passenger vehicle as defined in paragraph (a) of the definition of “passenger vehicle” in section 5(1) of the *Road Traffic Act 1974*;

is guilty of a crime, and is liable to imprisonment for 10 years.

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

[(2) repealed]

[Section 318 inserted by No. 119 of 1985 s.13; amended by No 106 of 1987 s.24; No. 70 of 1988 s.29; No. 82 of 1994 s.8.]

318A. Assaults on members of crew of aircraft

Any person who, while on board an aircraft unlawfully assaults a member of the crew of the aircraft or threatens with violence a member of the crew of the aircraft so as to interfere with the performance by the member of his functions or duties connected with the operation of the aircraft or so as to lessen his ability to

perform those functions or duties, is guilty of a crime and is liable to imprisonment for 14 years.

[Section 318A inserted by No. 53 of 1964 s.6; amended by No. 51 of 1992 s.16(2).]

Chapter XXXI — Sexual offences⁴

[Heading inserted by No. 14 of 1992 s.6(1).]

319. Interpretation

(1) In this chapter —

“circumstances of aggravation” means circumstances in which —

- (a) at or immediately before or immediately after the commission of the offence —
 - (i) the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
 - (ii) the offender is in company with another person or persons;
 - (iii) the offender does bodily harm to any person;
 - (iv) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
 - (v) the offender threatens to kill the victim;

or

- (b) the victim is —
 - (i) of or over the age of 13 years and under the age of 16 years; or
 - (ii) of or over the age of 60 years;

“deals with” includes doing any act which, if done without consent, would constitute an assault;

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“indecent act” means an indecent act which is —

- (a) committed in the presence of or viewed by any person; or
- (b) photographed, videotaped, or recorded in any manner;

“to indecently record” means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording);

“to sexually penetrate” means —

- (a) to penetrate the vagina (which term includes the *labia majora*), the anus, or the urethra of any person with —
 - (i) any part of the body of another person; or
 - (ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes;
- (b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the *labia majora*), the anus, or the urethra of the offender by part of the other person’s body;
- (c) to introduce any part of the penis of a person into the mouth of another person;
- (d) to engage in cunnilingus or fellatio; or
- (e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).

(2) For the purposes of this chapter —

- (a) **“consent”** means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means;

- (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act;
 - (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.
- (3) For the purposes of this chapter, a reference to a person indecently dealing with a child or an incapable person includes a reference to the person —
- (a) procuring or permitting the child or incapable person to deal indecently with the person;
 - (b) procuring the child or incapable person to deal indecently with another person; or
 - (c) committing an indecent act in the presence of the child or incapable person.
- (4) For the purposes of this chapter, a person is said to engage in sexual behaviour if the person —
- (a) sexually penetrates any person;
 - (b) has carnal knowledge of an animal; or
 - (c) penetrates the person's own vagina (which term includes the *labia majora*), anus, or urethra with any object or any part of the person's body for other than proper medical purposes.

[Section 319 inserted by No. 14 of 1992 s.6(1).]

320. Child under 13: Sexual offences against

- (1) In this section “**child**” means a child under the age of 13 years.
- (2) A person who sexually penetrates a child is guilty of a crime and is liable to imprisonment for 20 years.
- (3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 20 years.

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- (4) A person who indecently deals with a child is guilty of a crime and is liable to imprisonment for 10 years.
- (5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to imprisonment for 10 years.
- (6) A person who indecently records a child is guilty of a crime and is liable to imprisonment for 10 years.

[Section 320 inserted by No. 14 of 1992 s.6(1).]

321. Child of or over 13 and under 16: Sexual offences against

- (1) In this section, “**child**” means a child of or over the age of 13 years and under the age of 16 years.
- (2) A person who sexually penetrates a child is guilty of a crime and is liable to the punishment in subsection (7).
- (3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).
- (4) A person who indecently deals with a child is guilty of a crime and is liable to the punishment in subsection (8).
- (5) A person who procures, incites, or encourages a child to do an indecent act, other than an indecent act that is committed in the presence of or viewed by the spouse of that child, is guilty of a crime and is liable to the punishment in subsection (8).
- (6) A person who indecently records a child is guilty of a crime and is liable to the punishment in subsection (8).
- (7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
 - (a) 14 years;
 - (b) where the child is under the care, supervision, or authority of the offender, 20 years; or

- (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 7 years.
- (8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —
 - (a) 7 years;
 - (b) where the child is under the care, supervision, or authority of the offender, 10 years; or
 - (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 4 years.
- (9) It is a defence to a charge under this section to prove the accused person believed on reasonable grounds that the child was of or over the age of 16 years.
- (10) It is a defence to a charge under subsection (2), (3), (4) or (6) to prove the accused person was lawfully married to the child.

[Section 321 inserted by No. 14 of 1992 s.6(1).]

321A. Child under 16: Sexual relationship with

- (1) For the purposes of this section a person has a sexual relationship with a child under the age of 16 years if that person, on 3 or more occasions each of which is on a different day, does an act in relation to the child which would constitute a prescribed offence.
- (2) In subsection (1) the act referred to need not be the same act, or constitute the same offence on each of the 3 or more occasions.
- (3) A person who has a sexual relationship with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 20 years.
- (4) An indictment under subsection (3) shall specify the period during which it is alleged that the sexual relationship occurred

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and the accused shall not be charged in the same indictment with any other offence under this chapter alleged to have been committed against the child during that period.

- (5) In proceedings on an indictment charging an offence under subsection (3) it is not necessary to specify the dates, or in any other way to particularize the circumstances, of the alleged acts.
- (6) An indictment for an offence under this section is to be signed by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions.
- (7) It is a defence to a charge under subsection (3) to prove the accused person believed on reasonable grounds that the child was of or over the age of 16 years.
- (8) It is a defence to a charge under subsection (3) to prove the accused person was lawfully married to the child.
- (9) Upon an indictment charging a person with an offence under subsection (3), if the jury is not satisfied the accused person is guilty of that offence, the accused person may be convicted of one or more prescribed offences if the offence or offences are established by the evidence.
- (10) If a person has been tried and convicted or acquitted on an indictment alleging the commission of an offence under subsection (3), that fact is a defence to any charge of an offence under this chapter alleged to have been committed against the same child during the period when it was alleged the sexual relationship with the child occurred.
- (11) In this section, “**prescribed offence**” means —
 - (a) an offence under section 320(2) or (4) or 321(2) or (4);
or
 - (b) an offence under section 320(3) or 321(3) where the child in fact engages in sexual behaviour.

[Section 321A inserted by No. 14 of 1992 s.6(1).]

322. Child of or over 16: Sexual offences against by person in authority etc.

- (1) In this section “**child**” means a child of or over the age of 16 years.
- (2) A person who sexually penetrates a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 10 years.
- (3) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 10 years.
- (4) A person who indecently deals with a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.
- (5) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to do an indecent act is guilty of a crime and is liable to imprisonment for 5 years.
- (6) A person who indecently records a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.
- (7) It is a defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years.
- (8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.

[Section 322 inserted by No. 14 of 1992 s.6(1).]

322A. Juvenile male: Offences against

- (1) In this section “**juvenile male**” means a male person of or over the age of 16 years and under the age of 21 years.

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- (2) A male person who sexually penetrates a juvenile male or who procures or permits a juvenile male to sexually penetrate him is guilty of a crime and is liable to imprisonment for 5 years.
Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000.
- (3) A male person who indecently deals with a juvenile male or who procures a juvenile male to indecently deal with him or another male or who permits a juvenile male to indecently deal with him is guilty of a crime and is liable to imprisonment for 4 years.
Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000.
- (4) It is a defence to a charge under this section to prove the accused person believed on reasonable grounds that the juvenile male was of or over the age of 21 years.

[Section 322A inserted by No. 14 of 1992 s.6(1); amended by No. 36 of 1996 s.16.]

323. Indecent assault

A person who unlawfully and indecently assaults another person is guilty of a crime and liable to imprisonment for 5 years.

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

[Section 323 inserted by No. 14 of 1992 s.6(1); amended by No. 36 of 1996 s.17.]

324. Aggravated indecent assault

A person who unlawfully and indecently assaults another person in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 7 years.

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

[Section 324 inserted by No. 14 of 1992 s.6(1); amended by No. 36 of 1996 s.18.]

325. Sexual penetration without consent

A person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

[Section 325 inserted by No. 14 of 1992 s.6(1).]

326. Aggravated sexual penetration without consent

A person who sexually penetrates another person without the consent of that person in circumstances of aggravation is guilty of a crime and liable to imprisonment for 20 years.

[Section 326 inserted by No. 14 of 1992 s.6(1).]

327. Sexual coercion

A person who compels another person to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 14 years.

[Section 327 inserted by No. 14 of 1992 s.6(1).]

328. Aggravated sexual coercion

A person who compels another person to engage in sexual behaviour in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 20 years.

[Section 328 inserted by No. 14 of 1992 s.6(1).]

329. Relatives and the like: Sexual offences by

(1) In this section —

“**de facto child**” means a step-child of the offender or a child or step-child of a person (whether or not of the same sex as the offender) who lives with the offender as if they are married;

“**lineal relative**” means a person who is a lineal ancestor, lineal descendant, brother, or sister, whether the relationship is of the whole blood or half-blood, whether or not the relationship

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is traced through, or to, a person whose parents were not married to each other at the time of the person's birth, or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.

- (2) A person who sexually penetrates a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (9).
- (3) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (9).
- (4) A person who indecently deals with a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).
- (5) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (10).
- (6) A person who indecently records a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).
- (7) A person who sexually penetrates a person of or over the age of 18 years who the offender knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.
- (8) A person of or over the age of 18 years who consents to being sexually penetrated by a person who he or she knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.
- (9) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
 - (a) where the child is under the age of 16 years, 20 years; or
 - (b) where the child is of or over the age of 16 years, 10 years.

- (10) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —
- (a) where the child is under the age of 16 years, 10 years; or
 - (b) where the child is of or over the age of 16 years, 5 years.
- (11) On a charge under this section it shall be presumed in the absence of evidence to the contrary —
- (a) that the accused knew that he or she was related (whether lineally or as otherwise referred to in this section) to the other person; and
 - (b) that people who are reputed to be related to each other in a particular way (whether lineally or as otherwise referred to in this section) are in fact related in that way.

[Section 329 inserted by No. 14 of 1992 s.6(1).]

330. Incapable person: Sexual offences against

- (1) In this section a reference to an incapable person is a reference to a person who is so mentally impaired as to be incapable —
- (a) of understanding the nature of the act the subject of the charge against the accused person; or
 - (b) of guarding himself or herself against sexual exploitation.
- (2) A person who sexually penetrates a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (7).
- (3) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).
- (4) A person who indecently deals with a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).

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- (5) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).
- (6) A person who indecently records a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).
- (7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
- (a) 14 years; or
 - (b) where the incapable person is under the care, supervision, or authority of the offender, 20 years.
- (8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —
- (a) 7 years; or
 - (b) where the incapable person is under the care, supervision, or authority of the offender, 10 years.
- (9) It is a defence to a charge under this section to prove the accused person was lawfully married to the incapable person.

[Section 330 inserted by No. 14 of 1992 s.6(1); amended by No. 69 of 1996 s.11.]

331. Ignorance of age no defence

It is no defence to a charge of a crime under section 320 or 329 in respect of which the age of the victim is relevant that the accused person did not know the age of the victim or believed the victim was of or over that age.

[Section 331 inserted by No. 14 of 1992 s.6(1).]

[Chapter XXXIA repealed by No. 14 of 1992 s.6(4)⁴.]

[Chapter XXXII repealed by No. 48 of 1991 s.12(9).]

Chapter XXXIII — Offences against liberty

332. Kidnapping

- (1) For the purposes of this section and section 333, a person who deprives another person of personal liberty —
- (a) by taking the other person away or enticing the other person away;
 - (b) by confining or detaining the other person in any place; or
 - (c) in any other manner,
- is said to detain that other person.
- (2) Any person who detains another person with intent to —
- (a) gain a benefit, pecuniary or otherwise, for any person;
 - (b) cause a detriment, pecuniary or otherwise, to any person;
 - (c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or
 - (d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act,
- by a threat, or by a demand, or by a threat and a demand, is guilty of a crime and is liable to imprisonment for 20 years.
- (3) In proceedings for an offence against this section it is not necessary to allege or prove that a threat or demand was actually made.
- (4) In this section “**threat**” means a threat to kill, injure, endanger or cause harm or detriment to any person.

[Section 332 inserted by No. 101 of 1990 s.14.]

333. Deprivation of liberty

Any person who unlawfully detains another person is guilty of a crime and is liable to imprisonment for 10 years.

[Section 333 inserted by No. 101 of 1990 s.14.]

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[334, 335. Repealed by No. 101 of 1990 s.15.]

336. Procuring apprehension or detention of persons not suffering from mental illness or impairment

Any person who, by the production of a false certificate or other document, knowingly and wilfully, procures any person, not suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, to be apprehended or detained, pursuant to that Act or any law relating to mental impairment, upon insufficient or unreasonable grounds, is guilty of a misdemeanour and is liable to imprisonment for 3 years.

[Section 336 inserted by No. 69 of 1996 s.12.]

337. Unlawful detention or custody of persons who are mentally ill or impaired

Any person who detains, or assumes the custody of, a person suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, contrary to that Act or any law relating to mental impairment, is guilty of a misdemeanour and is liable to imprisonment for 2 years.

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

[Section 337 inserted by No. 69 of 1996 s.13.]

Chapter XXXIII A — Threats

[Heading inserted by No. 101 of 1990 s.17.]

338. “Threat”, definition of

In this chapter a reference to a threat is a reference to a statement or behaviour that expressly constitutes, or may reasonably be regarded as constituting, a threat to —

- (a) kill, injure, endanger or harm any person, whether a particular person or not;

- (b) destroy, damage, endanger or harm any property, whether particular property or not;
- (c) take or exercise control of a building, structure or conveyance by force or violence; or
- (d) cause a detriment of any kind to any person, whether a particular person or not.

[Section 338 inserted by No. 101 of 1990 s.17.]

338A. Threats with intent to influence

Any person who makes a threat with intent to —

- (a) gain a benefit, pecuniary or otherwise, for any person;
- (b) cause a detriment, pecuniary or otherwise, to any person;
- (c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or
- (d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act,

is guilty of a crime and is liable —

- (e) where the threat is to kill a person, to imprisonment for 10 years;
- (f) in any other case, to imprisonment for 7 years.

[Section 338A inserted by No. 101 of 1990 s.17.]

338B. Threats

Any person who makes a threat to unlawfully do anything mentioned in section 338(a), (b), (c) or (d) is guilty of a crime and is liable —

- (a) where the threat is to kill a person, to imprisonment for 7 years;
- (b) in any other case, to imprisonment for 3 years.

Summary conviction penalty in a case to which paragraph (b) applies: Imprisonment for 18 months or a fine of \$6 000.

[Section 338B inserted by No. 101 of 1990 s.17.]

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338C. False statements as to the existence of threats or plans to harm persons or property

Any person who makes a statement or conveys information which that person knows to be false and which expressly indicates, or may reasonably be construed as indicating —

- (a) that a threat to unlawfully do anything mentioned in section 338(a), (b), (c) or (d) has been made; or
- (b) that there has been, is, or is to be an intention, proposal, plan or conspiracy to unlawfully do anything mentioned in section 338(a), (b), (c) or (d),

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

Summary conviction penalty: Imprisonment for 18 months or a fine of \$6 000.

[Section 338C inserted by No. 101 of 1990 s.17.]

Chapter XXXIII B — Stalking

[Heading inserted by No. 38 of 1998 s.4.]

338D. Interpretation

(1) In this chapter —

“circumstances of aggravation” means circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
- (b) the conduct of the offender in committing the offence constituted a breach of —
 - (i) an order made or registered under the *Restraining Orders Act 1997* or to which that Act applies; or
 - (ii) a condition on which bail has been granted to the offender;

“intimidate”, in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;
- (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act;
- (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing;

“pursue”, in relation to a person, includes —

- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
- (b) to repeatedly follow the person;
- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;
- (e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

(2) For the purpose of deciding whether an accused person has pursued another person —

- (a) the accused is not to be regarded as having communicated with or followed that person on a particular occasion if it is proved by or on behalf of the accused that on that occasion the accused did not intend to communicate with or follow that person;
- (b) an act by the accused on a particular occasion is not to be taken into account for the purpose of deciding whether the accused watched or beset a place where that person lived, worked or happened to be, or the approaches to such a place, if it is proved by or on

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behalf of the accused that on that occasion the accused did not know it was such a place.

[Section 338D inserted by No. 38 of 1998 s.4(1).]

338E. Stalking

- (1) A person who pursues another person with intent to intimidate that person or a third person, is guilty of a crime and is liable —
- (a) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; and
 - (b) in any other case, to imprisonment for 3 years.

Summary conviction penalty:

- (c) in a case to which paragraph (a) applies: Imprisonment for 2 years or a fine of \$8 000;
 - (d) in a case to which paragraph (b) applies: Imprisonment for 18 months or a fine of \$6 000.
- (2) A person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is guilty of a simple offence.
- Penalty: Imprisonment for 12 months or a fine of \$4 000.
- (3) It is a defence to a charge under this section to prove that the accused person acted with lawful authority.

[Section 338E inserted by No. 38 of 1998 s.4(1).]

Chapter XXXIV — Offences relating to marriage and parental rights and duties

339. Bigamy

Any person who —

- (1) Being married, goes through the form of marriage with any other person during the life of his or her wife or husband;

- (2) Goes through the form of marriage with any person whom he or she knows to be married;

is guilty of a crime, and is liable to imprisonment for 7 years.

It is a defence to a charge of either of the offences defined in this section to prove that at the time of committing the alleged offence the wife or husband of the person already married had been continually absent from him or her for the space of 7 years then last past, unless it is shown that the accused person knew that such wife or husband was living within that time.

[Section 339 amended by No. 51 of 1992 s.16(2).]

340. Unlawful celebration of marriage

Any person who —

- (1) Not being a person authorised by law to celebrate marriages, celebrates or professes or attempts to celebrate a marriage; or
- (2) Celebrates, or attempts or professes to celebrate, the marriage of any person who, to his knowledge, is under the age of 21 years, and is not a widower or widow, without the written consent of some person authorised by law to give such consent, or with a written consent which, to his knowledge, is not given by a person authorised by law to give it; or
- (3) Knowingly and wilfully celebrates, or attempts or professes to celebrate, any marriage contrary to the provisions of the laws relating to the solemnization of marriage; or
- (4) Celebrates, or attempts or professes to celebrate, any marriage in any case in which any provision of those laws has not been complied with, knowing that it has not been complied with; or
- (5) Induces, or attempts to induce, any person to celebrate the marriage of any person who is to the knowledge of

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the offender under the age of 21 years, and is not a widower or widow, without such consent as aforesaid, or with a consent which, to his knowledge, is not given by a person authorised by law to give it, or to celebrate any marriage contrary to or without compliance with the laws relating to the solemnization of marriage; or

- (6) Marries a person who is, to his or her knowledge, under the age of 21 years, and is not a widow or widower, without such consent as aforesaid, or with a consent which, to his or her knowledge, is not given by a person authorised by law to give it; or
- (7) Issues any certificate required by law to be issued by the Registrar of Births, Deaths and Marriages, contrary to the provisions of the law relating to the solemnization of marriage;

is guilty of a misdemeanour, and is liable to imprisonment for 5 years, and to a fine of \$1 000.

It is a defence to a charge of the offence defined in paragraph (1) if the person charged, being a minister of religion, was not duly registered as a minister authorised to celebrate marriages by reason of accident or inadvertence.

[Section 340 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(1); No. 40 of 1998 s.10.]

341. Celebration of marriage by minister unregistered by inadvertence

Any minister of religion whose name, designation, religious denomination, and usual place of residence, by accident or inadvertence, have not been, and do not continue to be duly registered as a minister authorised to celebrate marriages, and who celebrates a marriage, is guilty of an offence, and is liable on summary conviction to a fine of \$40.

[Section 341 amended by No. 113 of 1965 s.8(1).]

342. Unqualified persons procuring registration as persons qualified to celebrate marriages

Any person who, not being a person entitled to be registered under the laws relating to the solemnization of marriage, as a person authorised to celebrate marriages, and knowing that he is not such a person, procures his name to be registered as a person so entitled, is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to a fine of \$400.

[Section 342 amended by No. 113 of 1965 s.8(1).]

343. Child stealing

Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of 16 years, of the possession of such child, or with intent to steal any article upon or about the person of any such child —

- (1) Forcibly or fraudulently takes or entices away, or detains the child; or
- (2) Receives or harbours the child, knowing it to have been so taken or enticed away or detained;

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

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

[Section 343 amended by No. 25 of 1960 s.3; No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

343A. Publication of report of child-stealing unlawful unless approved

- (1) Any person who —
 - (a) prints or publishes any report of an offence committed or alleged to have been committed under section 343 of this Code in any newspaper or other periodical, radio broadcast or telecast; or

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- (b) so prints or so publishes any matter that has reference to the commission of the offence or the allegation that the offence has been committed; or
- (c) transmits any such report or matter to any person for the purpose of it being so printed or so published,

before the expiration of 7 days from the date on which the offence was committed or alleged to have been committed or before the child in respect of whom the offence was committed or alleged to have been committed, is returned to the parent, guardian, or other person who has the lawful care or charge of the child, whichever event first happens, without the report or matter being first approved by the Commissioner of Police of the State is guilty of an offence and is liable on summary conviction to imprisonment for one year, or to a fine of \$1 000.

- (2) In this section the term “**periodical**” includes any review, magazine, or other writing or print published periodically.
- (3) A prosecution for any of the offences defined in this section shall not be commenced unless authorised by the Attorney General in writing.

[Section 343A inserted by No. 25 of 1960 s.4; amended by No. 113 of 1965 s.8; No. 73 of 1994 s.4.]

344. Desertion of children under 16

Any person who, being the parent of a child under the age of 16 years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a misdemeanour, and is liable to imprisonment for one year.

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345. “Periodical”, definition of

In this chapter the term “**periodical**” includes any newspaper, review, magazine, or other writing or print published periodically.

346. “Defamatory matter”, definition of

Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.

An imputation may be expressed either directly or by insinuation or irony.

347. Questions of fact and law

The question whether any matter is or is not defamatory is a question of fact.

The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.

348. “Defame”, definition of

Any person who, by spoken words or audible sounds, or by words intended to be read either by sight or touch, or by signs, signals, gestures, or visible representations, publishes any defamatory imputation concerning any person is said to defame that person.

349. “Publication”, definition of

Publication is, in the case of spoken words, or audible sounds, the speaking of such words or making of such sounds in the presence and hearing of any other person than the person defamed, and in the case of signs, signals, or gestures, the making of such signs, signals, or gestures, so as to be seen or felt by, or otherwise come to the knowledge of, any person other than the person defamed, and, in the case of other defamatory matter, the exhibiting of it in public, or causing it to be read or

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seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by any other person than the person defamed.

350. Publication of defamatory matter prima facie unlawful

It is unlawful to publish defamatory matter unless such publication is protected, or justified, or excused by law.

351. Absolute protection: Privilege of Parliament

- (1) A member of either House of Parliament does not incur any liability as for defamation by the publication of any defamatory matter in the course of a speech made by him in Parliament.
- (2) A person who presents a petition to either House of Parliament does not incur any liability as for defamation by the publication to that House of Parliament of any defamatory matter contained in the petition.
- (3) A person does not incur any liability as for defamation by publishing, by order or under the authority of either House of Parliament, a paper containing defamatory matter.

352. Absolute protection: Privileges of judges, witnesses and others in courts of justice

A person does not incur any liability as for defamation by publishing, in the course of a proceeding held before or under the authority of any court of justice, or in the course of an inquiry made under the authority of a statute, or under the authority of Her Majesty, or of the Governor in Council, or of either House of Parliament, any defamatory matter.

353. Absolute protection: Reports of official inquiries

A person appointed under the authority of a statute, or by or under the authority of Her Majesty, or of the Governor in Council, to hold any inquiry, does not incur any liability as for defamation by publishing any defamatory matter in an official report made by him of the result of such inquiry.

354. Protection: Reports of matters of public interest

It is lawful —

- (1) To publish in good faith, for the information of the public, a fair report of the proceedings of a House of the Parliament or Legislature of the Commonwealth or any State or Territory of the Commonwealth, or of a committee or joint committee of any such House or Houses;
- (2) To publish in good faith, for the information of the public, a copy of, or an extract from or abstract of, any paper published by order or under the authority of a House of the Parliament or Legislature of the Commonwealth or a State or Territory of the Commonwealth;
- (3) To publish in good faith, for the information of the public, a fair report of the public proceedings of any court of justice of the Commonwealth or a State or Territory of the Commonwealth, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings which are not final, the publication has been prohibited by the court, or unless the matter published is blasphemous or obscene;
- (4) To publish in good faith, for the information of the public, a fair report of any inquiry held under the authority of a statute or ordinance of the Commonwealth or a State or Territory of the Commonwealth, or by or under the authority of Her Majesty, or of the Governor in Council of the Commonwealth, the Governor in Council of any State of the Commonwealth, or the Administrator in Council of any Territory of the Commonwealth;
- (5) To publish in good faith, for the information of the public, at the request of any Government department, officer of State, or police officer, any notice or report

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issued by such department or officer for the information of the public;

- (6) To publish in good faith, for the information of the public, a fair report of the proceedings of any local government, regional local government, council of a local government or regional local government, board, or body of trustees or other persons duly constituted under the provisions of any statute, for the discharge of public functions, so far as the matter published relates to matters of public concern;
- (7) To publish in good faith, for the information of the public, a fair report of the proceedings of any public meeting so far as the matter published relates to matters of public concern.

A publication is said to be made in good faith, for the information of the public, if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

The term “**public meeting**” means and includes any meeting lawfully held for a lawful purpose and for the furtherance or discussion in good faith of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith if the proprietor, publisher, or editor, has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

[Section 354 amended by No. 38 of 1977 s.2; No. 107 of 1979 s.2; No. 14 of 1996 s.4.]

355. Protection: Fair comment

It is lawful —

- (1) To publish a fair comment respecting any of the matters with respect to which the publication of a fair report in good faith, for the information of the public, is by the last preceding section declared to be lawful;
- (2) To publish a fair comment respecting the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct;
- (3) To publish a fair comment respecting the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct;
- (4) To publish a fair comment respecting the merits of any case, civil or criminal, which has been decided by any court of justice, or respecting the conduct of any person as a judge, party, witness, counsel, solicitor, or officer of the court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct;
- (5) To publish a fair comment respecting any published book or other literary production, or respecting the character of the author, so far as his character appears by such book or production;
- (6) To publish a fair comment respecting any composition or work of art, or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited;
- (7) To publish a fair comment respecting any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the

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entertainment or sports, or the manner of conducting the same;

- (8) To publish a fair comment respecting any communication made to the public on any subject.

Whether the comment is or is not fair is a question of fact. If it is not fair, and is defamatory, the publication of it is unlawful.

356. Protection: Truth

It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made.

357. Qualified protection: Excuse

It is a lawful excuse for the publication of defamatory matter —

- (1) If the publication is made in good faith by a person having over another any lawful authority in the course of a censure passed by him on the conduct of that other in matters to which such lawful authority relates;
- (2) If the publication is made in good faith for the purpose of seeking remedy or redress for some private or public wrong or grievance, from a person who has, or whom the person making the publication believes, on reasonable grounds to have, authority over the person defamed with respect to the subject matter of such wrong or grievance;
- (3) If the publication is made in good faith for the protection of the interests of the person making the publication, or of some other person, or for the public good;
- (4) If the publication is made in good faith in answer to an inquiry made of the person making the publication, relating to some subject as to which the person by whom or on whose behalf the inquiry is made has, or is believed, on reasonable grounds, by the person making the publication to have, an interest in knowing the truth;

- (5) If the publication is made in good faith for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has or is believed, on reasonable grounds, by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances;
- (6) If the publication is made in good faith on the invitation or challenge of the person defamed;
- (7) If the publication is made in good faith in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person;
- (8) If the publication is made in good faith in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit, and if, so far as the defamatory matter consists of comment, the comment is fair.

For the purpose of this section, a publication is said to be made in good faith if the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter; if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion, and if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

358. Good faith

When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.

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359. Relevancy and public benefit questions of fact

Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are questions of fact.

360. Unlawful publication of defamatory matter

Any person who unlawfully publishes any defamatory matter concerning another is guilty of a misdemeanour, and is liable to imprisonment for 12 months, and to a fine of \$600.

If the offender knows the defamatory matter to be false, he is liable to imprisonment for 2 years, and to a fine of \$1 000.

[Section 360 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

361. Defamation of members of Parliament by strangers

Any person who, not being a member of either House of Parliament, unlawfully publishes any false or scandalous defamatory matter touching the conduct of any member or members of either House of Parliament as such member or members, is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to a fine of \$1 000.

[Section 361 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

362. Defence in case of defamation by words, sounds, signs, signals, or gestures

In any case other than that of words intended to be read, it is a defence to a prosecution for publishing defamatory matter to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby.

363. Publishing or threatening to publish defamatory matter with intent to extort money

Any person who publishes, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publication of any defamatory matter concerning another with intent to extort any property from such person or any other person, or with intent to induce any person to give or confer or procure, or to attempt to procure, to, upon, or for, any person any property or benefit of any kind, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 363 amended by No. 51 of 1992 s.16(2).]

364. Liability of proprietor, publisher, and editor of periodicals

Upon a charge against a proprietor, publisher, or editor of a periodical, of the unlawful publication in the periodical of defamatory matter, it is a defence to prove that the matter complained of was inserted in the periodical without his knowledge and without negligence on his part.

General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert therein what in his discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the proprietor or publisher or editor, when giving such general authority, meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued such general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical.

365. Protection of innocent sellers of periodicals

A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling any number or part of a periodical containing the defamatory

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matter, unless he knows that such number or part contains the defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical.

366. Protection of innocent sellers of books

A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling a book, pamphlet, print, or writing, or other thing not forming part of a periodical, although it contains the defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein.

367. Protection of employers

An employer is not responsible as for the unlawful publication of defamatory matter merely by reason of the sale by his servant of a book, pamphlet, print, writing, or other thing, whether a periodical or not, containing the defamatory matter, unless it is proved that he authorised the sale, knowing that the book, pamphlet, print, writing, or other thing contained the defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently contained in that periodical.

368. Prosecution of newspapers to be by sanction of a Judge after notice

A criminal prosecution cannot be begun before justices against the proprietor, or publisher, or editor, or any person responsible for the publication of any periodical, for the unlawful publication of any defamatory matter contained therein, without the order of the Supreme Court or a Judge thereof, made after notice to the person accused, and after that person has had an opportunity of being heard in opposition to the application for the order.

369. Summary trial in trivial cases of defamation

Where a person is charged before a court of petty sessions with unlawful publication of defamatory matter and the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, consider that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and he is liable on summary conviction to a fine of \$100.

If a charge has been dealt with summarily and dismissed, the court of petty sessions must, if required so to do, deliver to the person charged a copy certified by the court of the order of said dismissal; and such dismissal is of the same effect as an acquittal on a trial after indictment or information for the same offence.

[Section 369 amended by No. 113 of 1965 s.8(1); No. 21 of 1972 s.16.]

Part VI — Offences relating to property and contracts

Division 1 — Stealing and like offences

Chapter XXXVI — Stealing

370. Things capable of being stolen

Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen; but tame pigeons are not capable of being stolen except while they are in a pigeon-house or on their owner's land.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Western Australia, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Western Australia which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape and that its owner can take possession of it at pleasure.

The term “**animal**” includes any living creature other than mankind.

Oysters and oyster brood are capable of being stolen while in oyster beds, layings, or fisheries, which are the property of any person, and which are sufficiently marked out, or are known by general repute as his property.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

371. “Stealing”, definition of

- (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.
- (2) A person who takes anything capable of being stolen or converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say —
 - (a) An intent to permanently deprive the owner of the thing or property of it or any part of it;
 - (b) An intent to permanently deprive any person who has any special property in the thing or property of such special property;
 - (c) An intent to use the thing or property as a pledge or security;
 - (d) An intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
 - (e) An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

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- (f) In the case of money, an intent to use it at the will of the person who takes or converts it although he may intend to afterwards repay the amount to the owner.

The term “**special property**” includes any charge or lien upon the thing or property in question, and any right arising from or dependent upon holding possession of the thing or property in question, whether by the person entitled to such right or by some other person for his benefit.

- (3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.
- (4) In the case of conversion, it is immaterial whether the property converted is taken for the purpose of conversion or whether it is at the time of the conversion in the possession, control or management of the person who converts it. It is also immaterial that the person who converts the property is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of the property.
- (5) When the property converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the property does not know who is the owner, and believes, on reasonable grounds, that the owner cannot be discovered.
- (6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.
- (7) In this section, “**property**” includes any description of real and personal property, money, debts, bank credits, and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and also includes not only such property as has been originally in the possession or in the control of any person but also any property in which or for which it has been

converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

[Section 371 amended by No. 20 of 1954 s.2.]

371A. Special case: Motor vehicles

- (1) A person who unlawfully —
- (a) uses a motor vehicle; or
 - (b) takes a motor vehicle for the purposes of using it; or
 - (c) drives or otherwise assumes control of a motor vehicle,

without the consent of the owner or the person in charge of that motor vehicle, is said to steal that motor vehicle.

- (2) This section has effect in addition to section 371 and does not prevent section 371 from applying to motor vehicles.

[Section 371A inserted by No. 37 of 1991 s.17.]

372. Special cases

- (1) When a wild animal in the enjoyment of its natural liberty has been killed by any person, the taking of the dead body of the animal by that person, or by any person acting under his orders, before it has been reduced into actual possession by the owner of the land on which the animal was killed or on which it died, is not deemed to be stealing.
- (2) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be stealing.

- (3) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be stealing.

373. Funds, etc., held under direction

When a person receives, either alone or jointly with another person, any money or valuable security, or a power of attorney for the sale, mortgage, pledge, or other disposition, of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received, until the direction has been complied with:

Provided that if the person receiving the money, security, or power of attorney, and the person from whom he receives it ordinarily deal with each other on such terms that in the absence of any special direction all money paid to the former on account of the latter would be properly treated as an item in a debtor and creditor account between them, the former cannot be charged with stealing the money or any such proceeds unless the direction is in writing.

374. Funds, etc., received by agents for sale

When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the

property, and anything so received in exchange for it are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

375. Money received for another

When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

376. Stealing by persons having an interest in the thing stolen

When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to stealing, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein; or that he is lessee of the thing; or that he himself is one of 2 or more joint owners of the thing; or that he is a director or officer of a corporation or company or society who are the owners of it.

377. Husband and wife

A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be stealing if they were not married, is deemed to have stolen the thing, and may be charged with stealing it.

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

Punishment in special cases

- (1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for 10 years.
- (2) If the thing stolen is a motor vehicle and the offender —
 - (a) wilfully drives the motor vehicle in a manner that constitutes an offence under section 60 of the *Road Traffic Act 1974* (i.e. the offence known as reckless driving); or
 - (b) drives the motor vehicle in a manner that constitutes an offence under section 61 of the *Road Traffic Act 1974* (i.e. the offence known as dangerous driving),the offender is liable to imprisonment for 8 years.

[(3), (4) repealed]

- (4a) If the thing stolen is an aircraft the offender is liable to imprisonment for 10 years.
- (5) If the offence is committed under any of the circumstances following, that is to say —
 - (a) If the thing is stolen from the person of another;
 - (b) If the thing is stolen in a dwelling, and its value exceeds \$10 000, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling;
 - (c) If the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;

- (d) If the thing is stolen from a vessel which is in distress or wrecked or stranded;
- (e) If the thing is stolen from a public office in which it is deposited or kept;
- (f) If the offender, in order to commit the offence, opens any locked room, box, or other receptacle by means of a key or other instrument;

the offender is liable to imprisonment for 14 years.

- (6) If the offender is a person employed in the Public Service, and the thing stolen is the property of Her Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for 10 years.
- (7) If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for 10 years.
- (8) If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for 10 years.
- (9) If the thing stolen is any of the things following, that is to say —
 - (a) Property which has been received by the offender with a power of attorney for the disposition thereof;
 - (b) Money received by the offender with a direction that the same should be applied to any purpose or paid to any person specified in the direction;
 - (c) The whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
 - (d) The whole or part of the proceeds arising from any disposition of any property which have been received by

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the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment for 10 years.

[(10), (11) repealed]

- (12) If the offender, before committing the offence, had been convicted upon indictment of any of the indictable offences, defined in this division of this Part of this Code, or had been twice previously summarily convicted of an offence punishable on summary conviction under this division of this Part of this Code, whether each of the convictions was in respect of an offence of the same character or not, he is liable to imprisonment for 10 years.

[Section 378 amended by No. 53 of 1964 s.7; No. 113 of 1965 s.8(1); No. 1 of 1969 s.2; No. 106 of 1987 s.24; No. 101 of 1990 s.18; No. 1 of 1992 s.5; No. 51 of 1992 s.16(2); No. 36 of 1996 s.20.]

[378A. Repealed by No. 101 of 1990 s.19.]

Chapter XXXVII — Offences analogous to stealing

379. Concealing registers

Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 379 amended by No. 51 of 1992 s.16(2).]

380. Concealing wills

Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 380 amended by No. 51 of 1992 s.16(2).]

381. Concealing deeds

Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 381 amended by No. 51 of 1992 s.16(2).]

382. Killing animals with intent to steal

Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if he had stolen the animal.

383. Severing with intent to steal

Any person who makes anything movable with intent to steal it is guilty of a crime, and is liable to the same punishment as if he had stolen the thing after it became movable.

384. Using registered brands with criminal intention

Any person who, with intent to facilitate the commission of a crime, brands or marks any animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 384 amended by No. 51 of 1992 s.16(2).]

385. Fraudulently dealing with minerals in mines

Any person who takes, conceals, or otherwise disposes of any ore of any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 385 amended by No. 51 of 1992 s.16(2).]

386. Concealing royalty

Any person who, being the holder of any lease issued under any Act relating to mining —

- (a) By any device or contrivance defrauds, or attempts to defraud, any person of any royalty or money payable under any such lease; or
- (b) Conceals or makes a false statement as to any produce of the mine with intent to defraud;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 386 amended by No. 51 of 1992 s.16(2).]

387. Removing guano without licence

Any person who collects or removes guano on or from any part of the territorial dominions of Western Australia without lawful authority is guilty of a misdemeanour, and is liable to imprisonment for one year.

[Section 387 amended by No. 51 of 1992 s.16(2).]

388. Bringing stolen goods into Western Australia

Any person who, having at any place, not in Western Australia, obtained any property by any act which, if it had been done in Western Australia, would have constituted the crime of stealing, and which is an offence under the laws in force in the place where it was done, brings such property into Western Australia,

or has it in his possession in Western Australia, is guilty of a crime, and is liable to the same punishment as if he had stolen it in Western Australia; but so that the punishment does not exceed that which would be incurred for the same act under the laws in force in the place where the act by which he obtained the property was done.

389. Fraudulent disposition of mortgaged goods

Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee and with intent to defraud, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Any person (being such a mortgagor as aforesaid) who shall destroy, break, injure, kill, or otherwise damage any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or anywise impair the security, is guilty of a misdemeanour and liable to imprisonment for 2 years.

The term “**mortgaged goods**” includes any goods and chattels of any kind, and any live animals, and any progeny of any animals and any fixtures, and any crops or produce of the earth, whether growing or severed, which are subject for the time being to the provisions of any written instrument by which a valid charge or lien is created upon them by way of security for any debt or obligation.

The consent of the mortgagee may be either express or implied from the nature of the property mortgaged.

The shearing of sheep, and the sale and disposal of the wool in the ordinary course of business before default is made and possession taken, or demand for payment made, under the instrument by which the charge or lien is created is not an offence under this section.

[Section 389 amended by No. 51 of 1992 s.16(2).]

390. Fraudulent appropriation of electricity etc.

Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus, or substance, the property of another person, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 390 amended by No. 51 of 1992 s.16(2).]

[390A. Repealed by No. 37 of 1991 s.18.]

390B. Unauthorised use of aircraft

Any person who unlawfully takes or exercises control, whether direct or through another person, of an aircraft is guilty of a crime and is liable to imprisonment for 7 years but if —

- (a) another person not being an accomplice of the offender is on board the aircraft at the time the offender so takes or exercises control of the aircraft, the offender is liable to imprisonment for 14 years;
- (b) the offender at or immediately before or immediately after the time he so takes or exercises such control of the aircraft —
 - (i) uses or threatens to use actual violence to any person or persons in order to so take or exercise control of the aircraft or to prevent or overcome resistance to such control being taken or exercised; or
 - (ii) is armed with any dangerous or offensive weapon or instrument; or
 - (iii) is in company with one or more other person or persons; or

if the offender so takes or exercises such control by any fraudulent representation, trick or device, he is liable to imprisonment for 20 years.

[Section 390B inserted by No. 53 of 1964 s.8; amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

Chapter XXXVIII — Stealing with violence: Extortion by threats

391. “Robbery”, definition of

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of robbery.

392. “Loaded arms”, definition of

Any arm which is loaded in the barrel or chamber with any explosive substance, and with any solid substance, capable of being projected, is deemed to be loaded arms, although an attempt to discharge the same may fail from want of proper appliances or from any other cause.

393. Penalty for robbery

Any person who commits the crime of robbery is liable to imprisonment for 14 years.

If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, he is liable to imprisonment for life.

If the offender is in company with one or more other person or persons, or if at or immediately before or immediately after the time of the robbery, he wounds or uses any other personal violence to any person, he is liable to imprisonment for 20 years.

[Section 393 amended by No. 118 of 1981 s.6; No. 77 of 1983 s.2; No. 51 of 1992 ss.16(1) and (2).]

394. Assault with intent to commit robbery

Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to

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any person or property in order to obtain the thing intended to be stolen or to prevent or overcome resistance to its being stolen, is guilty of a crime, and is liable to imprisonment for 10 years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, he is liable to imprisonment for 14 years.

If the offender is armed with any kind of loaded arms, and at or immediately before or immediately after the time of the assault he wounds any person by discharging the loaded arms, he is liable to imprisonment for life.

[Section 394 amended by No. 101 of 1990 s.21; No. 51 of 1992 ss.16(1) and (2).]

[395. Repealed by No. 36 of 1996 s.21.]

396. Demanding property with threats with intent to steal

Any person who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to him, either by the offender or by any other person, if the demand is not complied with, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 396 amended by No. 51 of 1992 s.16(2).]

397. Demanding property with threats with intent to extort or gain

Any person who, with intent to extort or gain anything from any person, —

- (1) Knowing the contents of the writing, causes any person to receive any writing demanding anything from, or that anything be procured to be done or omitted to be done by any person, without reasonable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with; or

- (2) Orally demands anything from, or that anything be procured to be done or omitted to be done by, any person, without reasonable cause, with threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with,

is guilty of a crime, and is liable to imprisonment for 14 years.

The term “**writing**” includes any gramophone record, wire, tape, or other thing by which words or sounds are recorded and from which they are capable of being reproduced.

[Section 397 inserted by No. 1 of 1969 s.3; amended by No. 51 of 1992 s.16(2).]

398. Attempts at extortion by threats

Any person who, with intent to extort or gain anything from any person —

- (1) Accuses or threatens to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any indictable offence; or
- (2) Threatens that any person shall be accused by any other person of any indictable offence or of any such act; or
- (3) Knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid;

is guilty of a crime.

If the accusation or threat of accusation is of —

- (a) An offence for which the punishment of imprisonment for life may be inflicted; or

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- (b) An offence under Chapter XXII or XXXI, or an attempt to commit such an offence; or
- (c) An assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or
- [(d) deleted]*
- (e) A solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid;

the offender is liable to imprisonment for 20 years.

In any other case the offender is liable to imprisonment for 14 years.

It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

[Section 398 amended by No. 118 of 1981 s.4; No. 52 of 1984 s.21; No. 74 of 1985 s.11; No. 101 of 1990 s.22; No. 14 of 1992 s.6(6); No. 51 of 1992 s.16(2).]

399. Procuring execution of deeds, etc., by threats

Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of an indictable offence, compels or induces any person —

- (a) To execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or

- (b) To write, impress, or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security;

is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 399 amended by No. 51 of 1992 s.16(2).]

399A. Court may restrict publication of certain proceedings

- (1) Subject to subsection (2) a court may by order restrict or prohibit the printing or publication of any particulars or account of proceedings in the court under section 396, 397, 398 or 399 of this Code.
- (2) An order made under subsection (1) in respect of proceedings shall not prohibit or restrict the printing or publication of —
 - (a) the name, address and occupation of the person charged;
 - (b) the nature (but not the particulars) of the charge;
 - (c) the name or names of a member or members of the court, at any stage of the proceedings, and of counsel and solicitors;
 - (d) submissions made on any point of law, at any stage of the proceedings, and the decision of the court on any such submission; and
 - (e) the result of a hearing and the final outcome of the proceedings.
- (3) Any person who prints or publishes or causes to be printed or published any particulars or account of proceedings in contravention of an order made under subsection (1) is guilty of a contempt of the Supreme Court and is punishable accordingly by the Supreme Court.

[Section 399A inserted by No. 89 of 1986 s.9.]

Chapter XXXIX — Offences in or in respect of buildings etc.

[Heading inserted by No. 37 of 1991 s.12.]

400. Definitions

(1) In this chapter —

“circumstances of aggravation” means circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence the offender —
 - (i) is or pretends to be armed with a dangerous or offensive weapon or instrument;
 - (ii) is or pretends to be in possession of an explosive substance;
 - (iii) is in company with another person or other persons;
 - (iv) does bodily harm to any person;
 - (v) threatens to kill or injure any person; or
 - (vi) detains any person (within the meaning of section 332(1));

or

- (b) immediately before the commission of the offence the offender knew or ought to have known that there was another person (other than a co-offender) in the place;

“place” means a building, structure, tent, or conveyance, or a part of a building, structure, tent, or conveyance, and includes —

- (a) a conveyance that at the time of an offence is immovable; or
- (b) a place that is from time to time uninhabited or empty of property.

- (2) For the purposes of this chapter a person enters or is in a place as soon as —
- (a) any part of the person's body; or
 - (b) any part of anything in the person's possession or under the person's control,
- is in the place.
- (3) For the purposes of this chapter a person is a repeat offender if it is proved to the satisfaction of the court that the offender —
- (a) committed and was convicted of a relevant offence committed in respect of a place ordinarily used for human habitation; and
 - (b) subsequent to that conviction again committed and was convicted of a relevant offence committed in respect of such a place,
- and it does not matter that the sequence described in paragraphs (a) and (b) has occurred more than once.
- (4) For the purposes of subsection (3) —
- (a) a relevant offence is an offence against this chapter (as enacted at any time) other than an offence against section 407;
 - (b) a conviction includes a finding or admission of guilt that led to a punishment being imposed on the offender, or an order being made in respect of the offender, whether or not a conviction was recorded; and
 - (c) a conviction that has been set aside or quashed is to be disregarded.

[Section 400 inserted by No. 37 of 1991 s.13; amended by No. 60 of 1996 s.4⁷; No. 29 of 1998 s.6.]

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Ch. XXXIX Offences in or in respect of buildings etc.

s. 401

401. Burglary

- (1) A person who enters or is in the place of another person, without that other person's consent, with intent to commit an offence in that place is guilty of a crime and is liable —
- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
 - (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
 - (c) in any other case, to imprisonment for 14 years.

Summary conviction penalty for an offence to which paragraph (b) or (c) applies:

- (a) in a case to which paragraph (b) applies: imprisonment for 3 years or a fine of \$12 000; or
- (b) in a case to which paragraph (c) applies: imprisonment for 2 years or a fine of \$8 000.

- (2) A person who commits an offence in the place of another person, when in that place without that other person's consent, is guilty of a crime and is liable —
- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
 - (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
 - (c) in any other case, to imprisonment for 14 years.

Summary conviction penalty for an offence to which paragraph (b) or (c) applies (subject to subsection (3)):

- (a) in a case to which paragraph (b) applies: imprisonment for 3 years or a fine of \$12 000; or
- (b) in a case to which paragraph (c) applies: imprisonment for 2 years or a fine of \$8 000.

- (3) If the offence committed in the place is an offence against property and the value of the property is more than \$10 000 the offence is not to be dealt with summarily.
- (4) If a person convicted of an offence against subsection (1) or (2) committed in respect of a place ordinarily used for human habitation was a repeat offender at the time of committing that offence, the court sentencing the person shall sentence the offender —
- (a) to at least 12 months imprisonment notwithstanding any other written law; or
 - (b) if the offender is a young person (as defined in the *Young Offenders Act 1994*) either to at least 12 months imprisonment or to a term of at least 12 months detention (as defined in that Act), as the court thinks fit, notwithstanding section 46(5a) of that Act.
- (5) A court shall not suspend a term of imprisonment imposed under subsection (4).
- (6) Subsection (4)(b) does not prevent a court from making a direction under section 118(4) of the *Young Offenders Act 1994* or a special order under Division 9 of Part 7 of that Act.

[Section 401 inserted by No. 60 of 1996 s.5⁸.]

[402, 403, 404. Repealed by No. 37 of 1991 s.13.]

[405, 406. Repealed by No. 1 of 1969 s.7.]

407. Persons found armed, etc., with intent to commit crime

Any person who is found under any of the circumstances following, that is to say —

- (a) Being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to enter a place, and to commit a crime therein;

[(b) deleted]

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Ch. XL Fraud

s. 409

- (c) Having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;
- (d) Having in his possession by day any such instrument with intent to commit a crime; or
- (e) Having his face masked or blackened or being otherwise disguised, with intent to commit a crime;

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

If the offender has been previously convicted of a crime relating to property, he is liable to imprisonment for 7 years.

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

[Section 407 amended by No. 37 of 1991 s.13(2); No. 51 of 1992 s.16(2).]

[407A. Repealed by No. 106 of 1987 s.17.]

Chapter XL — Fraud

[Heading inserted by No. 101 of 1990 s.24.]

[408. Repealed by No. 101 of 1990 s.24.]

409. Fraud

- (1) Any person who, with intent to defraud, by deceit or any fraudulent means —
 - (a) obtains property from any person;
 - (b) induces any person to deliver property to another person;
 - (c) gains a benefit, pecuniary or otherwise, for any person;
 - (d) causes a detriment, pecuniary or otherwise, to any person;
 - (e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or

- (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,

is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty (subject to subsection (2)):

Imprisonment for 2 years or a fine of \$8 000.

- (2) If the value of —
 - (a) property obtained or delivered; or
 - (b) a benefit gained or a detriment caused;

is more than \$10 000 the charge is not to be dealt with summarily.

- (3) It is immaterial that the accused person intended to give value for the property obtained or delivered, or the benefit gained, or the detriment caused.

[Section 409 inserted by No. 101 of 1990 s.24; amended by No. 36 of 1996 s.23.]

[410, 411, 412, 413. Repealed by No. 101 of 1990 s.24.]

Chapter XLI — Receiving property stolen or fraudulently obtained and like offences

414. Receiving stolen property, etc.

Any person who receives any property which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a crime.

The offender is liable to —

- (a) the greatest punishment provided for the kind of offence by means of which the property was obtained; or

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Ch. XLI Receiving property stolen or fraudulently obtained and like offences

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(b) imprisonment for 14 years,

whichever is the lesser.

For the purpose of proving the receiving of anything, it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession, or has aided in concealing it or disposing of it.

In this section “**property**” as well as having the same meaning as that expression has in section 1 of this Code, includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which it has been converted or exchanged and anything acquired by the conversion or exchange whether immediately or otherwise.

[Section 414 amended by No. 20 of 1954 s.3; No. 51 of 1992 s.10; No. 73 of 1994 s.4.]

415. Receiving after change of ownership

When a thing has been obtained by means of any act constituting an indictable offence, or by means of an act done at a place not in Western Australia, which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, and another person has acquired a lawful title to it, a subsequent receiving of the thing is not an offence although the receiver knows that the thing had previously been so obtained.

416. Taking reward for recovery of property obtained by means of indictable offences

Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything which has been obtained by means of any act constituting an indictable offence, or by means of any

act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of a crime, and is liable to imprisonment for 7 years.

[Section 416 amended by No. 51 of 1992 s.16(2).]

Chapter XLII — Frauds by trustees and officers of companies and corporations: False accounting

[417. Repealed by No. 101 of 1990 s.25.]

418. False statement relating to companies

Any person who signs any memorandum of association, or any statement, abstract, or document, required by any Act or law relating to companies, containing any particulars false to the knowledge of such person, is guilty of a misdemeanour, and is liable to imprisonment for one year or to a fine of \$200.

[Section 418 amended by No. 113 of 1965 s.8(1); No. 10 of 1982 s.28; No. 51 of 1992 s.16(2).]

419. Fraud by company directors, etc. as to accounts

Any person who —

- (1) Being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

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- (2) Being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say —
- (a) Destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account, which belongs to the corporation or company, or any entry in any such book, document, or account or is privy to any such act; or
 - (b) Makes or is privy to making any false entry in any such book, document, or account; or
 - (c) Omits or is privy to omitting any material particular from any such book, document, or account;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 419 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

420. False statements by officials of companies

Any person who, being a promoter, director, officer, or auditor of a corporation or company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating, or publishing any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say —

- (a) To deceive or defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;
- (b) To induce any person, whether a particular person or not, to become a member of, or to intrust or advance any property to the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 420 amended by No. 119 of 1985 s.30; No. 51 of 1992 s.16(2).]

421. False statements by officials of companies with intent to affect price of shares

Any person who, being a director, officer, or agent of a company having its share capital listed for dealings on any stock exchange in Western Australia or elsewhere, wilfully makes or is privy to making in any prospectus, return, report, certificate, account, statement of operations, or prospectus, or other document, any statement relating to the business of the company false in any material particular, knowing it to be false with intent to produce or give or having a tendency to produce or give to the stock or shares of the company a greater or less market value than such stock or shares possess, is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to a fine of \$400.

[Section 421 amended by No. 113 of 1965 s.8(1); No. 101 of 1990 s.26; No. 51 of 1992 s.16(2).]

422. Defence

It is a defence to a charge of any of the offences hereinbefore in this chapter defined to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court of justice in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court of justice, disclosed on oath the act alleged to constitute the offence.

A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court, on the ground that his doing so might tend to show that he had committed any such offence.

[423. Repealed by No. 101 of 1990 s.25.]

424. Fraudulent falsification of records

Any person who with intent to defraud —

- (a) makes a false entry in any record;
- (b) omits to make an entry in any record;

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s. 426

- (c) gives any certificate or information which is false in a material particular;
- (d) by act or omission falsifies, destroys, alters or damages any record; or
- (e) knowingly produces or makes use of any record which is false in a material particular,

is guilty of a crime and is liable to imprisonment for 7 years.

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

[Section 424 inserted by No. 101 of 1990 s.27.]

[425. Repealed by No. 101 of 1990 s.28.]

Chapter XLIII — Summary conviction for stealing and like indictable offences

[Heading amended by No. 106 of 1987 s.18; No. 37 of 1991 s.13(3).]

426. Summary trial of stealing and like offences

- (1) Subsection (2) applies to the following indictable offences —
 - (a) an offence under section 378, 382, 383 or 388 in respect of which the greatest term of imprisonment to which an offender convicted of the offence is liable does not exceed 7 years;
 - (b) an offence under section 378 to which item (5)(a), (6), or (7) of that section applies;
 - [(c) deleted]*
 - (d) attempting to commit, or inciting another person to commit any of the offences mentioned in paragraph (a) or (b);
 - (e) receiving anything that has been obtained by means of an indictable offence of such a nature, or committed under such circumstances, that the offender who committed the indictable offence might be summarily convicted under this Code.

- (2) If a person is charged before a court of petty sessions with an offence to which this subsection applies and —
- (a) the value of the property in question does not exceed \$10 000; or
 - (b) whatever may be the value of the property in question, the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily,

the charge may be dealt with summarily at the election of the person charged, and, subject to subsection (4), the person is liable on summary conviction to imprisonment for 2 years or to a fine of \$8 000.

- (2a) If —
- (a) a person is charged before a court of petty sessions with an offence under section 378 or 414, or with attempting to commit, or inciting another person to commit, an offence under section 378 or 414; and
 - (b) the property in question is a motor vehicle,

the prosecutor may request the court to deal with the charge summarily and, if that request is made, the court shall deal with the charge and, subject to subsection (4), the person is liable on summary conviction to imprisonment for 2 years or to a fine of \$8 000.

- (3) If —
- (a) a person is charged before a court of petty sessions with an offence under section 378, 382, 383, 388 or 414, or with attempting to commit, or inciting another person to commit, an offence under section 378, 382, 383, 388 or 414; and

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- (b) the value of the property in question does not exceed \$1 000,

the prosecutor may request the court to deal with the charge summarily and, if that request is made, the court shall deal with the charge.

- (4) If —

- (a) a person is charged before a court of petty sessions with an offence under section 378, 382, 383, 388 or 414 or with attempting to commit, or inciting another person to commit, an offence under section 378, 382, 383, 388 or 414; and
- (b) the value of the property in question does not exceed \$1 000; and
- (c) the charge is dealt with summarily under subsection (2), (2a) or (3),

the person charged is liable on summary conviction to imprisonment for 6 months or to a fine of \$2 000.

[Section 426 inserted by No. 106 of 1987 s.19; amended by No. 101 of 1990 s.29; No. 37 of 1991 s.19; No. 36 of 1996 s.24.]

426A. Summary trial of certain offences of a fraudulent nature

- (1) If a person is charged before a court of petty sessions with —
 - [(a) deleted]*
 - (b) an offence under section 381, 384, 385, 386, 387, 389, or 390,

and the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and, subject to subsections (3) and (4), the person is liable on summary conviction to imprisonment for 2 years, or to a fine of \$8 000.

[(2) repealed]

- (3) If the greatest term of imprisonment to which an offender convicted on indictment of an offence mentioned in subsection (1) is liable does not exceed one year the person charged is liable upon summary conviction to imprisonment for 6 months, or to a fine of \$2 000.
- (4) If the greatest term of imprisonment to which an offender convicted on indictment of an offence mentioned in subsection (1) is liable does not exceed 2 years the person charged is liable upon summary conviction to imprisonment for 12 months or to a fine of \$4 000.

[Section 426A inserted by No. 106 of 1987 s.19; amended by No. 101 of 1990 s.30; No. 37 of 1991 s.13(2).]

427. Summary procedure

- (1) A court of petty sessions shall abstain from dealing with a charge to which section 426(2)(a) applies if it is of the opinion that, for any reason, the charge is a fit subject for prosecution by indictment.
- (2) Where a court of petty sessions convicts a person on a charge dealt with summarily under section 426 or 426A and it is of the opinion that, for any reason, the sentence that it is empowered by this chapter to pass on the convicted person is inadequate, the court may, in lieu of passing sentence, commit the convicted person for sentence.
- (3) This section does not apply if the prosecutor has requested the court to deal with the charge summarily under section 426(2a) or (3).

[Section 427 inserted by No. 101 of 1990 s.31; amended by No. 37 of 1991 ss.13(2) and 20.]

[427A. Repealed by No. 101 of 1990 s.32.]

Chapter XLIV — Offences analogous to stealing punishable on summary conviction

428. Unlawfully using animals

Any person who unlawfully uses or takes for the purpose of using, a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, without the consent of the owner, or of the person in lawful possession thereof, and any person who takes any such animal, for the purpose of secreting the same, or obtaining a reward for the restoration or pretended finding thereof or for any fraudulent purpose, is guilty of an offence, and is liable on summary conviction to imprisonment for one year, or to a fine of \$100 for every animal so used or taken.

[Section 428 amended by No. 113 of 1965 s.8(1); No. 51 of 1992 s.16(2).]

429. Suspicion of stealing animals

When any horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, is suspected, on reasonable grounds, to have been stolen, any person in whose possession or custody the skin or carcass, or any part of the skin or carcass, of the animal so suspected to have been stolen is found, is guilty of an offence, unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to imprisonment for 6 months or to a fine of \$500.

It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the thing in question.

[Section 429 amended by No. 1 of 1969 s.11; No. 51 of 1992 s.16(2).]

430. Illegal branding

Any person, who knowing that he is not the owner of an animal, brands or marks it, or knowingly permits it to be branded or marked, is guilty of an offence, and is liable on summary conviction to imprisonment for 6 months or to a fine of \$500.

[Section 430 amended by No. 1 of 1969 s.12; No. 51 of 1992 s.16(2).]

431. Defacing brands

Any person who —

- (1) Alters, defaces, or otherwise renders undistinguishable, any registered brand or registered mark upon an animal;
or
- (2) Knowingly permits any such act to be done by any person over whom he has control;

is guilty of an offence, and is liable on summary conviction to imprisonment for 6 months or to a fine of \$500.

[Section 431 amended by No. 1 of 1969 s.13; No. 51 of 1992 s.16(2).]

432. No limitation period for ss. 429, 430 and 431

The offences defined by sections 429, 430 and 431 of this Code may be prosecuted summarily, notwithstanding that the proceedings are not commenced within 6 months after the commission of the offence.

[Section 432 inserted by No. 1 of 1969 s.14.]

433. Accused may be committed for trial on indictment

If the court of petty sessions before whom any person is brought, charged with any of the offences hereinbefore in this chapter defined, is of opinion that there ought to be a prosecution for an indictable offence, the court may abstain

from dealing with the case summarily, and commit the defendant to take his trial for the indictable offence.

[Section 433 amended by No. 21 of 1972 s.22.]

434. Unlawful possession of shipwrecked goods

Any person in whose possession or on whose premises anything which belongs to a vessel in distress, or wrecked, or stranded, is found, and which is suspected, on reasonable grounds, to have been unlawfully taken from the vessel, is guilty of an offence unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to imprisonment for 6 months, or to a fine of an amount equal to the value of the thing so found, and \$40 in addition.

It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the thing in question.

[Section 434 amended by No. 113 of 1965 s.8(1); No. 119 of 1985 s.16; No. 51 of 1992 s.16(2).]

435. Offering shipwrecked goods for sale

Any person who offers or exposes for sale anything which is suspected, on reasonable grounds, to have been unlawfully taken from a vessel in distress, or wrecked, or stranded, is guilty of an offence unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to imprisonment for 6 months, or to a fine of an amount equal to the value of the thing in question, and \$40 in addition.

Any person employed in the Public Service may seize any such thing so offered for sale.

It is a defence to a charge of either of the offences defined in this section to prove that the accused person came lawfully by the thing in question.

[Section 435 amended by No. 113 of 1965 s.8(1); No. 119 of 1985 s.17; No. 51 of 1992 s.16(2).]

436. Unlawfully dredging for oysters

Any person who unlawfully and otherwise than in the course of catching or fishing for floating fish with a net or other instrument adapted for taking floating fish only —

- (1) Uses, for the purpose of taking oysters or oyster brood, any net or other instrument within the limits of an oyster bed, laying, or fishery, which is the property of any other person, and which is sufficiently marked out, or is known by general repute as his property, whether any oysters or oyster brood are actually taken or not; or
- (2) Drags upon the ground or soil of any such fishery with any net or instrument;

is guilty of an offence, and is liable on summary conviction to a fine of \$1 000.

[Section 436 amended by No. 51 of 1992 s.16(2); No. 78 of 1995 s.147.]

437. Unlawfully taking fish

Any person who unlawfully takes or destroys, or attempts to take or destroy, any fish (which term includes crustacean) in any water which is private property, or in which there is a private right of fishery, is guilty of an offence, and is liable on summary conviction to imprisonment for 2 years or a fine of \$8 000.

[Section 437 amended by No. 113 of 1965 s.8(1); No. 36 of 1996 s.25.]

[438. Repealed by No. 119 of 1985 s.18.]

439. Warrant in first instance

A justice may issue a warrant in the first instance for the arrest of any person charged with any of the offences defined in this chapter.

440. Effect of summary conviction and of civil proceedings

A person who has been summarily convicted of any of the offences defined in this chapter, except those defined in the first 4 sections thereof, and who has paid the fine or sum, adjudged to be paid under the conviction, together with the costs, if any, or has suffered the imprisonment adjudged for non-payment thereof, or has suffered the imprisonment adjudged in the first instance, or has received the Royal mercy, or has been discharged without punishment upon making satisfaction to the person aggrieved, or whose sentence has been conditionally suspended, is not liable to any civil proceedings for the same cause at the suit of the person on whose complaint he was convicted.

If civil proceedings have been taken against any person in respect of any act done by him which is an offence under any of the provisions of this chapter, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken.

Chapter XLIVA — Unauthorised use of computer systems

[Heading inserted by No. 101 of 1990 s.33.]

440A. Unlawful operation of a computer system

- (1) In this section —
- (a) “**system**” means a computer system or a part or application of a computer system;
 - (b) a system is a restricted-access system if —
 - (i) the use of a particular code, or set of codes, of electronic impulses is necessary in order to obtain access to information stored in the system or operate the system in some other way; and

- (ii) the person who is entitled to control the use of the system has withheld knowledge of the code, or set of codes, or the means of producing it, from all other persons, or has taken steps to restrict knowledge of the code or set of codes, or the means of producing it, to a particular authorised person or class of authorised persons.
- (2) A person who without proper authorisation —
 - (a) gains access to information stored in a restricted-access system; or
 - (b) operates a restricted-access system in some other way,is guilty of an offence and is liable to imprisonment for one year or a fine of \$4 000.
- (3) A prosecution for an offence under subsection (2) may be commenced at any time.

[Section 440A inserted by No. 101 of 1990 s.33.]

Division II — Injuries to property

Chapter XLV — Definitions

441. Unlawful acts

An act which causes injury to the property of another, and which is done without his consent, is unlawful unless it is authorised, or justified, or excused by law.

It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it.

A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, or any other person, or any property from injury, which he believes, on reasonable grounds, to be imminent.

442. Acts done with intent to defraud

When an act which causes injury to property, and which would be otherwise lawful, is done with intent to defraud any person, it is unlawful.

When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender himself.

443. “Wilfully destroy or damage”, definition of

Where a person does an act or omits to do an act —

- (a) intending to destroy or damage property; or
- (b) knowing or believing that the act or omission is likely to result in the destruction of or damage to property,

and the act or omission results in the destruction of or damage to property, the person is regarded for the purposes of this division as having wilfully destroyed or damaged property.

[Section 443 inserted by No. 101 of 1990 s.34.]

Chapter XLVI — Offences

444. Criminal damage

- (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime and is liable, if no other punishment is provided, to imprisonment for 10 years.
- (2) If the property is destroyed or damaged by fire, the offender is liable to imprisonment for 14 years.

[Section 444 inserted by No. 101 of 1990 s.35.]

[445, 446, 447. Repealed by No. 101 of 1990 s.35.]

[448. Repealed by No. 106 of 1987 s.14(5).]

449. Casting away ships

Any person who —

- (1) Wilfully and unlawfully casts away or destroys any vessel, whether complete or not; or
- (2) Wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
- (3) With intent to bring a vessel into danger interferes with any light, beacon, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or exhibits any false light or signal;

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

[Section 449 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

[450. Repealed by No. 106 of 1987 s.14(5).]

451. Obstructing and injuring railways

Any person who unlawfully, and with intent to obstruct the use of a railway or to injure any property upon a railway —

- (1) Deals with the railway or with anything whatever on or near the railway in such a manner as to endanger the free and safe use of the railway; or
- (2) Unlawfully shows any light or signal, or deals with any existing light or signal upon or near the railway; or
- (3) By any omission to do any act which it is his duty to do causes the free and safe use of the railway to be endangered;

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

[Section 451 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

451A. Endangering the safe use of an aircraft

- (1) Any person who with intent to prejudice the safe use of an aircraft or to injure any property on board an aircraft —
- (a) deals with the aircraft or with anything whatever on board or near the aircraft or with anything whatever either directly or indirectly connected with the navigation, control or operation of the aircraft in such a manner as to endanger the free and safe use of the aircraft; or
 - (b) by any omission to do any act that it is his duty to do causes the free and safe use of the aircraft to be endangered,

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

- (2) Any person who while on board an aircraft does any act or makes any omission whereby to his knowledge the safety of the aircraft is or is likely to be endangered is guilty of a crime and is liable to imprisonment for 7 years.

[Section 451A inserted by No. 53 of 1964 s.9; amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

451B. Unlawful interference with mechanism of aircraft

Any person who unlawfully interferes with the mechanism or parts of any aircraft is guilty of a crime and is liable to imprisonment for 5 years.

[Section 451B inserted by No. 41 of 1972 s.5; amended by No. 51 of 1992 s.16(2).]

[452, 453. Repealed by No. 101 of 1990 s.36.]

454. Causing explosion likely to do serious injury to property

Any person who wilfully and unlawfully causes by any explosive substance, an explosion of a nature likely to cause serious injury to property, whether any injury to property has

been actually caused or not, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 454 amended by No. 118 of 1981 s.4; No. 51 of 1992 s.16(2).]

455. Attempting to cause explosion likely to do serious injury to property

Any person who wilfully and unlawfully —

- (1) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Western Australia of a nature likely to cause serious injury to property; or
- (2) Makes or has in his possession or under his control, any explosive substance with intent by means thereof to cause serious injury to property in Western Australia, or to enable any other person by means thereof to cause serious injury to property in Western Australia; or
- (3) Puts any explosive substance in any place whatever with intent to destroy or damage any property,

whether any explosion does or does not take place, and whether any injury to property has been actually caused or not, is guilty of a crime, and is liable to imprisonment for 14 years, and to forfeiture of the explosive substance.

The term “**explosive substance**” in this section includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials, used or intended to be used or adapted for causing or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

[Section 455 amended by No. 51 of 1992 s.16(2).]

456. Attempts to injure mines

Any person who, with intent to injure a mine or to obstruct the working of a mine —

- (1) Unlawfully, and otherwise than by an act done underground in the course of working an adjoining mine, —
 - (a) Causes water to run into the mine or into any subterranean passage communicating with the mine; or
 - (b) Obstructs any shaft or passage of the mine;or
- (2) Unlawfully obstructs the working of any machine, appliance, or apparatus, appertaining to or used with the mine, whether the thing in question is completed or not; or
- (3) Unlawfully, and with intent to render it useless, injures or unfastens a rope, chain, or tackle, of whatever material which is used in the mine or upon any way or work appertaining to or used with the mine;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 456 amended by No. 51 of 1992 s.16(2).]

457. Interfering with marine signals

Any person who wilfully and unlawfully removes, defaces, or renders invisible, any light, beacon, buoy, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or unlawfully attempts to remove, deface, or render invisible, any such thing, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 457 amended by No. 51 of 1992 s.16(2).]

458. Interfering with navigation works

Any person who —

- (1) Wilfully and unlawfully removes or disturbs any fixed object or materials used for securing a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or for securing any work which appertains to a port, harbour, dock, canal, aqueduct, reservoir, or inland water, or which is used for purposes of navigation, or lading or unlading goods; or
- (2) Unlawfully does any act with intent to obstruct the carrying on, completion, or maintenance, of the navigation of a navigable river or canal, and thereby obstructs such carrying on, completion or maintenance;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 458 amended by No. 51 of 1992 s.16(2).]

459. Communicating infectious diseases to animals

Any person who wilfully and unlawfully causes or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 459 amended by No. 51 of 1992 s.16(2).]

460. Travelling with infected animals

Any person who causes any four-footed animal which is infected with an infectious disease to travel, or, being the owner or one of 2 or more joint owners of any four-footed animal which is infected with an infectious disease, permits or connives at the travelling of any such animal, contrary to the provisions of any statute relating to infected animals of that kind, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

461. Removing boundary marks

Any person who, wilfully and unlawfully and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

[Section 461 amended by No. 51 of 1992 s.16(2).]

462. Obstructing railways

Any person who, by any unlawful act, or by any intentional omission to do any act which it is his duty to do, causes any engine or vehicle in use upon a railway to be obstructed in its passage on the railway, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 462 amended by No. 51 of 1992 s.16(2).]

[463, 463A, 463B. Repealed by No. 101 of 1990 s.37.]

[464. Repealed by No. 119 of 1985 s.19.]

Chapter XLVII — Summary conviction for certain offences

465. Summary trial of criminal damage

- (1) This section applies to the indictable offence of wilfully and unlawfully destroying or damaging any property other than by fire.
- (2) If a person is charged before a court of petty sessions with an offence to which this section applies and —
 - (a) the amount of the injury done does not exceed \$10 000;
or
 - (b) the amount of the injury done does not exceed \$25 000 and the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may

require from the prosecutor, considers that the charge can be adequately dealt with summarily,

the charge may be dealt with summarily at the election of the person charged, and the person is liable on summary conviction to imprisonment for 3 years or to a fine of \$12 000.

[Section 465 inserted by No. 106 of 1987 s.21; amended by No. 101 of 1990 s.38; No. 36 of 1996 s.26.]

466. Summary procedure

The provisions of section 427 of this Code in respect of indictable offences referred to in section 426(1) of this Code apply, with such modifications as are necessary, in respect of an indictable offence referred to in section 465(1) of this Code.

[Section 466 inserted by No. 21 of 1972 s.24; amended by No. 101 of 1990 s.39.]

[467. Repealed by No. 78 of 1995 s.26.]

[468. Repealed by No. 1 of 1969 s.16.]

Division III — Forgery and like offences: Personation

[Chapter XLVIII (ss. 469-472) repealed by No. 101 of 1990 s.40.]

Chapter XLIX — Forgery and uttering

[Heading inserted by No. 101 of 1990 s.41.]

473. Forgery and uttering

- (1) Any person who with intent to defraud —
- (a) forges a record; or
 - (b) utters a forged record,

is guilty of a crime and is liable to imprisonment for 7 years.

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

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- (2) It is immaterial that the record is incomplete or that it is not, or does not purport to be, binding in law.

[Section 473 inserted by No. 101 of 1990 s.41.]

474. Preparation for forgery etc.

- (1) Any person who makes, adapts or knowingly has possession of any thing under such circumstances as to give rise to a reasonable suspicion that it has been, or is being, made, adapted or possessed for a purpose that is unlawful under section 473 is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: Imprisonment for 18 months or a fine of \$6 000.

- (2) If a person is convicted of an offence under this section the court may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

[Section 474 inserted by No. 29 of 1998 s.4.]

Chapter L — False representations as to status

[Heading inserted by No. 101 of 1990 s.41.]

488. Procuring or claiming unauthorised status

Any person who —

- (a) by any false representation procures any authority authorised by any written law to issue certificates testifying that the holders thereof are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself or any other person such a certificate;
- (b) falsely represents to any person that he has obtained such a certificate;
- (c) by any false representation procures himself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a

person entitled to any right or privilege, or to enjoy any rank or status; or

- (d) falsely advertises or publishes himself as having obtained such a certificate, or as having been so registered,

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

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

[Section 488 inserted by No. 101 of 1990 s.41.]

[Chapters LI, LII repealed by No. 101 of 1990 s.42.]

Chapter LIII — Personation

510. Personation in general

Any person who, with intent to defraud any person, falsely represents himself to be some other person living or dead, is guilty of an offence which unless otherwise stated, is a misdemeanour; and he is liable to imprisonment for 3 years.

If the representation is that the offender is a person entitled by will or operation of law to any specific property, and he commits the offence with intent to obtain such property, or possession thereof, he is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 510 amended by No. 51 of 1992 s.16(2).]

511. Personation of owner of shares

Any person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share certificate or coupon issued under any Act or law relating to companies, and thereby obtains, or endeavours to obtain any such share or interest, or share certificate or coupon or receives or endeavours to receive any money due to any such owner, as if the offender

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were the true and lawful owner, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 511 amended by No. 118 of 1981 s.4; No. 10 of 1982 s.28; No. 51 of 1992 s.16(2).]

512. Falsely acknowledging deeds, recognizances, etc.

Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of a deed or other instrument, is guilty of a crime, and is liable to imprisonment for 7 years.

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

[Section 512 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.27.]

513. Personation of a person named in a certificate

Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind, and is liable to the same punishment as if he had forged the document.

514. Lending certificate for personation

Any person who, being a person to whom any document has been issued by lawful authority, whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to

exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Summary conviction penalty: Imprisonment for 18 months or a fine of \$6 000.

[Section 514 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.28.]

Division IV — Offences connected with trade and breach of contract, and corruption of agents, trustees, and others

Chapter LIV — Fraudulent debtors

[515-526. Repealed by No. 51 of 1992 s.11.]

527. Fraudulent dealing by judgment debtors

- (1) Any person who, with intent to defraud the person's creditors or any of them, conceals or removes any property —
- (a) before a judgment or order for payment of money is obtained against the person; or
 - (b) while a judgment or order for payment of money obtained against the person remains unsatisfied,

is guilty of a crime, and is liable to imprisonment for 7 years.

Summary conviction penalty (subject to subsection (2)):
Imprisonment for 2 years or a fine of \$8 000.

- (2) If the value of the property concealed or removed is more than \$10 000 the charge is not to be dealt with summarily.

[Section 527 inserted by No. 51 of 1992 s.12; amended by No. 36 of 1996 s.29.]

[528. Repealed by No. 51 of 1992 s.11.]

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Chapter LV — Corruption of agents, trustees, and others in whom confidence is reposed

529. Receipt or solicitation of secret commission by an agent

If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration —

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a crime.

[Section 529 amended by No. 101 of 1990 s.43.]

530. Gift or offer of secret commission to an agent

If any person corruptly gives or offers to any agent any valuable consideration —

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show or forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a crime.

[Section 530 amended by No. 101 of 1990 s.43.]

531. Secret gifts to parent, wife, child, partner, etc., of agent deemed gifts to agent

- (1) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.
- (2) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

532. Giving to agent false or misleading receipt or account

If, with intent to deceive or defraud the principal, any person gives to any agent, or if any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested and which —

- (a) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or
- (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed,

he shall be guilty of a crime.

[Section 532 amended by No. 101 of 1990 s.43.]

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Ch. LV Corruption of agents, trustees, and others in whom confidence is reposed

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533. Gift or receipt of secret commission in return for advice given

Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised —

- (a) to enter into a contract with any third person; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a crime, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

[Section 533 amended by No. 101 of 1990 s.43.]

534. Offer or solicitation of secret commission in return for advice given

Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised —

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised,

shall be a crime, but this section shall not apply when such first-mentioned person is the agent of the person offering or solicited.

[Section 534 amended by No. 101 of 1990 s.43.]

535. Secret commission to trustee in return for substituted appointment

If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate, or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee he shall be guilty of a crime.

[Section 535 amended by No. 101 of 1990 s.43.]

536. Aiding and abetting offences within or outside Western Australia

Any person who, being within Western Australia, knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to —

- (a) doing any act or thing in contravention of this chapter;
- (b) doing any act or thing outside Western Australia, or partly within and partly outside Western Australia, which if done within Western Australia, would be in contravention of this chapter;

shall be guilty of a crime.

[Section 536 amended by No. 101 of 1990 s.43.]

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537. Liability of directors, etc., acting without authority

Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this chapter shall be guilty of a crime.

[Section 537 amended by No. 101 of 1990 s.43.]

538. Penalty for Chapter LV offences

Any person, on conviction of a crime under any of the provisions of this chapter, shall —

- (a) be liable, in the case of a corporation, to a fine of \$250 000 and in any other case to imprisonment for 7 years; and
- (b) in addition, be liable to be ordered to pay to such person, and in such manner as the court directs, the amount or value, according to the estimation of the court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as a judgment of the court.

[Section 538 amended by No. 113 of 1965 s.8(1); No. 101 of 1990 ss.43 and 44.]

539. Court may order withdrawal of trifling or technical cases

Upon the trial of a person for any offence under this chapter, if it appears to the court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the court may, if it think fit, make the order mentioned in the last preceding section.

540. Protection of witness giving answers criminating himself

A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this chapter on the ground that the answer thereto may criminate or tend to criminate him:

Provided that —

- (a) a witness who, in the judgment of the court or justices, answers truly all questions which he is required by the court or justices to answer shall be entitled to receive a certificate from the court or justices stating that such witness has so answered; and
- (b) an answer by a person to a question put by or before the court or justices in any proceeding under this chapter shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding civil or criminal admissible in evidence against him.

541. Stay of proceedings against such witness

When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court or justices having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the 2 cases, stay the proceedings.

542. Custom of itself no defence

In any prosecution under this chapter it shall not amount to a defence to show that any such valuable consideration as is mentioned in this chapter is customary in any trade or calling.

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543. Burden of proof that gift not secret commission

For the purposes of this chapter, where it is shown that any valuable consideration has been received or solicited by an agent from or given or offered to any agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this chapter shall be on the accused.

[544. *Repealed by No. 101 of 1990 s.45.*]

[545. *Repealed by No. 101 of 1990 s.46.*]

546. Interpretation of this chapter

In the construction of this chapter, the following provisions shall apply —

- (1) The word “**agent**” shall include any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, manager or other officer or member of committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this chapter:
- (2) The word “**principal**” shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act:

- (3) The word “**trustee**” shall include trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, committee of the estate of an insane person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person:
- (4) The words “**valuable consideration**” shall include any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, deduction, or percentage, bonus, or discount, or any forbearance to demand any money or money’s worth or valuable thing; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration:
- (5) The words “**valuable consideration**”, when used in connection with the offer thereof, shall include any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration:
- (6) The words “**valuable consideration**”, when used in connection with the receipt thereof, shall include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of valuable consideration:
- (7) The word “**contract**” shall include contract of sale or of employment or any other contract whatever:
- (8) Any act or thing prohibited by this chapter is prohibited whether done directly or indirectly by the person mentioned or by or through any other person:
- (9) The words “**solicit any valuable consideration**”, and “**valuable consideration solicited**”, and words to the like effect shall be construed with the following direction, namely: — That every agent who shall divert, obstruct, or interfere with the proper course of business or manufacture, or shall impede or obstruct, or shall fail

to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent:

- (10) The words “**person having business relations with the principal**” shall include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and shall also include any agent of such corporation or other person:
- (11) The words “**in relation to his principal’s affairs or business**” shall imply the additional words “whether within the scope of his authority or course of his employment as agent or not”: and
- (12) The words “**advice given**” and words to the like effect shall include every report, certificate, statement, and suggestion intended to influence the person to whom the same may be made or given, and every influence exercised by one person over another.

Chapter LVI — Other offences

547. Concealment by officers of companies on reduction of capital

Any person who, being a director or officer of a joint stock company, the capital of which is proposed to be reduced —

- (1) Conceals the name of any creditor of the company who is entitled to object to the proposed reduction; or

- (2) Knowingly misrepresents the nature or amount of the debt or claim of any creditor of the company; or
- (3) Is privy to any such concealment or misrepresentation as aforesaid;

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

[Section 547 amended by No. 51 of 1992 s.16(2).]

548. Falsification of books of companies

Any person who, being a director, officer, or contributory of a company which is in course of being wound up, under the provisions of the laws relating to companies, does any of the following acts with intent to deceive or defraud, or to cause or enable another person to deceive or defraud, that is to say —

- (1) Conceals, destroys, alters, mutilates, or falsifies any book, document, valuable security, or account relating to the affairs of the company, or any entry in any such book, document, or account, or is privy to any such act; or
- (2) Makes or is privy to making any false entry in any book, document, or account, belonging to the company;

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[Section 548 amended by No. 10 of 1982 s.28; No. 51 of 1992 s.16(2).]

549. Mixing uncertified with certified articles

When a mark has been attached to any article, or a certificate has been given with respect to any article, under the authority of any statute, for the purpose of denoting the quality of the article, or the fact that it has been examined or approved by or under the authority of some public body or public officer, any person who mixes with the article so marked or certified any other article

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which has not been so examined or approved, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

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

[Section 549 amended by No. 51 of 1992 s.16(2); No. 36 of 1996 s.30.]

[550, 551. Repealed by No. 82 of 1994 s.9(2).]

**Part VII — Preparation to commit offences:
Conspiracy: Accessories after the fact**

Chapter LVII — Attempts and preparation to commit offences

552. Attempts to commit indictable offences

Any person who attempts to commit an indictable offence is guilty of an indictable offence.

[Section 552 inserted by No. 106 of 1987 s.8.]

553. Incitement to commit indictable offences

Any person who, intending that an indictable offence be committed, incites another person to commit the offence, is guilty of an indictable offence.

[Section 553 inserted by No. 106 of 1987 s.8.]

554. Penalty for attempts and incitement

Unless another punishment is provided, the punishment to which a person is liable for an offence under section 552 or 553 of attempting to commit, or inciting another person to commit, an indictable offence is —

- (a) where that indictable offence is punishable by imprisonment for life — imprisonment for 14 years;
- (b) in any other case — a punishment equal to one-half of the greatest punishment to which a person convicted of that indictable offence is liable.

[Section 554 inserted by No. 106 of 1987 s.8.]

555. Summary trial of attempt or incitement charges

- (1) Without limiting section 426, where a person is charged before a court of petty sessions with an offence under section 552 or 553 of attempting to commit, or inciting another person to commit, a prescribed offence and the court, having regard to the nature and

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particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged.

- (2) The punishment to which a person is liable on being convicted summarily of attempting to commit, or inciting another person to commit, a prescribed offence is —
- (a) the punishment to which a person convicted summarily of that prescribed offence is liable; or
 - (b) a punishment equal to one-half of the greatest punishment to which a person convicted upon indictment of that prescribed offence is liable,

whichever is the lesser.

- (3) In subsections (1) and (2) “**prescribed offence**” means an indictable offence a charge of which may be dealt with summarily.

[Section 555 inserted by No. 106 of 1987 s.8.]

555A. Attempts and incitement to commit simple offences under this Code

- (1) Any person who attempts to commit a simple offence under this Code is guilty of a simple offence and is liable to the punishment to which a person convicted of the first-mentioned offence is liable.
- (2) Any person who, intending that a simple offence under this Code be committed, incites another person to commit the offence, is guilty of a simple offence and is liable to the punishment to which a person convicted of the first-mentioned offence is liable.

- (3) A prosecution for an offence under subsection (1) or (2) may be commenced at any time if the offence alleged to have been attempted or incited is one for which prosecutions may be commenced at any time.

[Section 555A inserted by No. 101 of 1990 s.47.]

556. Attempts to procure commission of criminal acts

Any person who attempts to procure another to do any act or make any omission, whether in Western Australia or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed under the laws of Western Australia, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Western Australia.

Provided that if the act or omission is proposed to be done or made at a place not in Western Australia, the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

Provided also, that in the last-mentioned case, a prosecution cannot be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

557. Making or possession of explosives under suspicious circumstances

Any person who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his

control for a lawful object, unless he can show that he made it, or had it in his possession or under his control for a lawful purpose, is guilty of a crime, and is liable to imprisonment for 14 years, and forfeiture of the explosive substance.

In this section “**explosive substance**” includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

[Section 557 amended by No. 51 of 1992 s.16(2).]

Chapter LVIII — Conspiracy

558. Conspiracies to commit indictable offences

- (1) Any person who conspires with another person —
 - (a) to commit any indictable offence; or
 - (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be an indictable offence and which is an offence under the laws in force in the place where it is proposed to be done or made,

is guilty of an indictable offence.

- (2) The punishment to which a person is liable for an offence under subsection (1) of conspiring with another person to commit an indictable offence, or to do any act or make any omission which if done or made in Western Australia would be an indictable offence, is —
 - (a) where that indictable offence is punishable by imprisonment for 14 years or more than 14 years — imprisonment for 14 years;

- (b) in any other case — a punishment equal to the greatest punishment to which a person convicted of that indictable offence is liable.
- (3) Without limiting subsections (1) and (2), the application of those subsections extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.

[Section 558 inserted by No. 106 of 1987 s.9.]

559. Summary trial of charges of conspiracy to commit indictable offences

- (1) Where a person is charged before a court of petty sessions with an offence under section 558(1) of conspiring to commit a prescribed offence, or to do any act or make any omission which, if done or made in Western Australia, would be a prescribed offence, and the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and that person is liable on summary conviction to the punishment to which a person convicted summarily of that prescribed offence is liable.
- (2) In subsection (1) “**prescribed offence**” means an indictable offence a charge of which may be dealt with summarily.

[Section 559 inserted by No. 106 of 1987 s.9.]

560. Conspiracies to commit simple offences

- (1) Any person who conspires with another person —
 - (a) to commit any simple offence; or
 - (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be a simple offence and which is an offence under

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the laws in force in the place where it is proposed to be done or made,

is guilty of a simple offence and is liable to a punishment equal to the greatest punishment to which a person convicted of the offence referred to in paragraph (a) or (b) is liable.

- (2) Without limiting subsection (1) the application of that subsection extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.
- (3) A prosecution for an offence under subsection (1) may be commenced at any time.

[Section 560 inserted by No. 106 of 1987 s.9.]

[561. Repealed by No. 106 of 1987 s.10.]

Chapter LIX — Accessories after the fact and property laundering

[Heading amended by No. 15 of 1992 s.10.]

562. Accessories after the fact to indictable offences

- (1) Any person who becomes an accessory after the fact to an indictable offence is guilty of an indictable offence.
- (2) The punishment to which a person is liable for an offence under subsection (1) of becoming an accessory after the fact to an indictable offence is —
 - (a) where that indictable offence is punishable by imprisonment for life — imprisonment for 14 years;
 - (b) in any other case — a punishment equal to one-half of the greatest punishment to which a person convicted of that indictable offence is liable.

[Section 562 inserted by No. 106 of 1987 s.11.]

563. Summary trial of charge of becoming an accessory after the fact

- (1) Where a person is charged before a court of petty sessions with an offence under section 562 of becoming an accessory after the fact to a prescribed offence and the court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged.
- (2) The punishment to which a person is liable on being convicted summarily of becoming an accessory after the fact to a prescribed offence is —
 - (a) the punishment to which a person convicted summarily of that prescribed offence is liable; or
 - (b) a punishment equal to one-half of the greatest punishment to which a person convicted on indictment of that prescribed offence is liable,whichever is the lesser.
- (3) In subsections (1) and (2) “**prescribed offence**” means an indictable offence a charge of which may be dealt with summarily.

[Section 563 inserted by No. 106 of 1987 s.11.]

563A. Property laundering

- (1) A person who —
 - (a) in Western Australia engages, directly or indirectly, in a transaction that involves; or
 - (b) brings into Western Australia, or in Western Australia receives, possesses, conceals, disposes of or deals with,any money or other property that is the proceeds of a major offence is guilty of a crime and is liable to imprisonment for 20 years.

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- (2) It is a defence in proceedings for a crime under subsection (1) —
- (a) to prove that the defendant —
 - (i) did not know; and
 - (ii) did not believe or suspect; and
 - (iii) did not have reasonable grounds to believe or suspect,that the relevant money or other property was the proceeds of an offence; or
 - (b) to prove that the defendant engaged in the act or omission alleged to constitute that crime in order to assist the enforcement of a law of the Commonwealth or of a State or Territory.

- (3) In this section —

“major offence” means —

- (a) indictable offence; or
- (b) act or omission that occurred outside Western Australia and would, if it had occurred inside Western Australia, have constituted an indictable offence;

“proceeds”, in relation to an offence or a major offence, means money or other property that is derived or realized, directly or indirectly, by any person from the commission of the offence or major offence, as the case requires;

“transaction” includes the receiving or making of a gift.

[Section 563A inserted by No. 15 of 1992 s.11.]

Part VIII — Procedure

Chapter LX — Arrest

564. Arrest without warrant generally

- (1) In this section “**arrestable offence**” means an offence punishable with imprisonment, with or without any other punishment.
- (2) It is lawful for any person to arrest without warrant any person who is, or whom he suspects, on reasonable grounds, to be, in the course of committing an arrestable offence.
- (3) Where an arrestable offence has been committed, it is lawful for any person to arrest without warrant any person who has committed the offence or whom he suspects, on reasonable grounds, to have committed the offence.
- (4) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, it is lawful for the police officer to arrest without warrant any person whom the police officer suspects, on reasonable grounds, to have committed the offence.
- (5) Where it is lawful under this section for a police officer to arrest a person, it is lawful for the police officer, for the purpose of effecting the arrest, to enter upon any place where the person is or where the police officer suspects, on reasonable grounds, the person may be.
- (6) Where any person is called upon by a person whom he believes, on reasonable grounds, to be a police officer to assist in effecting the arrest under this section of a third person, it is lawful for the first person to assist the second person in effecting the arrest unless the first person knows —
 - (a) that the third person has not committed an arrestable offence; or

- (b) that there are no reasonable grounds for suspecting that the third person has committed an arrestable offence.

[Section 564 inserted by No. 119 of 1985 s.20.]

[565. Repealed by No. 119 of 1985 s.21.]

565A. Arrest of persons offending on aircraft or vessel

- (1) The person in command of an aircraft or vessel, or any person authorised by him, may, on board the aircraft or vessel with such assistance as is necessary, arrest without warrant, a person whom he finds committing, or reasonably suspects of having committed, or of having attempted to commit an offence on or in relation to or affecting the use of the aircraft or vessel, and the person in command or the person authorised by him may hold the person so arrested in custody until he can be brought before a justice to be dealt with according to law.
- (2) The person in charge of an aircraft or vessel may, where he considers it necessary so to do in order to prevent an offence on or in relation to or affecting the use of an aircraft or vessel or to avoid danger to the safety of the aircraft or vessel or of persons on board the aircraft or vessel, with such assistance as he thinks necessary —
- (a) place a person who is on board the aircraft or vessel under restraint or in custody; and
- (b) if the aircraft or vessel is not in the course of a flight or voyage, remove a person from the aircraft or vessel.

[Section 565A inserted by No. 53 of 1964 s.12; amended by No. 119 of 1985 s.22.]

[566, 567. Repealed by No. 119 of 1985 s.23.]

568. Arrest during flight

It is lawful for any person to arrest without warrant any other person whom he believes, on reasonable grounds, to have committed an offence, and to be escaping from, and to be

freshly pursued by some person whom, on reasonable grounds, he believes to have authority to arrest him for that offence.

569. Arrest of persons offering stolen property for sale, etc.

It is lawful for any person to arrest without warrant any person who offers to sell, pawn or deliver any property to him, if the first person has reasonable grounds to suspect that the property has been acquired by means of the commission of an offence.

[Section 569 inserted by No. 119 of 1985 s.24.]

Chapter LXA — Videotaped interviews

[Heading inserted by No. 53 of 1992 s.5.]

570. Interpretation

(1) In this Part, unless the contrary intention appears —

“Anti-Corruption Commission official” means an officer of the Commission, a seconded officer, service provider, or a special investigator, within the meaning of section 3(1) of the *Anti-Corruption Commission Act 1988*;

“interview” means an interview with a suspect by —

- (a) a member of the Police Force; or
- (b) an Anti-Corruption Commission official;

“lawyer” means a certificated practitioner under the *Legal Practitioners Act 1893*;

“Parliamentary Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971* and includes an Acting Commissioner, Deputy Commissioner or officer of the Commissioner, within the meaning of section 4 of that Act;

“suspect” means a person suspected of having committed an offence;

“videotape” means any videotape on which is recorded an interview, whether or not it is the videotape on which the interview was originally recorded.

- (2) In this Part, a reference to part of a videotape includes a reference to the visible part and to the audible part of the recording on the videotape.

[Section 570 inserted by No. 53 of 1992 s.5; amended by No. 35 of 1999 s.3.]

570A. Videotape of interview to be made available to the accused

- (1) If an interview is videotaped and the suspect is charged with an offence to which the interview relates, a videotape of the interview shall be made available to the suspect or the suspect’s lawyer within 14 days after the suspect is so charged or, if that is not practicable, as soon as possible after that period.
- (2) No person is entitled to a transcript of an interview that is videotaped, or any part of such an interview; and a court shall not order that such a transcript be prepared unless satisfied that —
- (a) words spoken in the interview cannot be understood satisfactorily; and
 - (b) it is practicable to prepare such a transcript.

[Section 570A inserted by No. 53 of 1992 s.5.]

570B. Possession etc. of videotapes of interviews restricted

- (1) In this section —
- “authorised person”** means —
- (a) the suspect or the suspect’s lawyer;
 - (b) a member of the Police Force acting in the course of duty;
 - (c) a person authorised for the purposes of this chapter by the Commissioner of Police;

- (d) the Director of Public Prosecutions or a person acting under the authority of the Director;
 - (da) a member of the Anti-Corruption Commission or an Anti-Corruption Commission official;
 - (db) the Parliamentary Commissioner;
 - (e) a person acting at the direction of a court;
 - (f) a person prescribed to be an authorised person.
- (2) A person, other than an authorised person, who has in his or her possession a videotape commits an offence.
- (3) A person who plays a videotape to another person commits an offence except when —
 - (a) the videotape is played for purposes connected with the prosecution or defence of, or legal proceedings relating to, a charge to which the interview relates;
 - (b) the videotape is played under a direction of a court under section 570F; or
 - (c) the videotape is played under section 570H.
- (3a) Subsection (3) does not apply to —
 - (a) a member of the Police Force;
 - (b) an Anti-Corruption Commission official; or
 - (c) the Parliamentary Commissioner,when acting in the course of duty.
- (4) A person, other than a member of the Police Force acting in the course of duty or an Anti-Corruption Commission official acting in the course of duty, who supplies, or offers to supply, a videotape to another who is not an authorised person commits an offence.
- (5) A person, other than a person referred to in paragraph (b), (c), (d), (da), (db) or (e) of the definition of “authorised person”, who copies any part of a videotape, or who permits another

person to make a copy of any part of a videotape, commits an offence.

- (6) A person who erases a videotape commits an offence, except when the person is acting under —
- (a) a direction under section 570F; or
 - (b) an authorisation under section 570G(3) or 570GA(3).
- (7) A person who commits an offence under this section is liable to a fine of \$5 000.

[Section 570B inserted by No. 53 of 1992 s.5; amended by No. 35 of 1999 s.4.]

570C. Broadcast of interviews prohibited

A person shall not broadcast a videotape or any part of a videotape unless the broadcast is made under a direction of a court under section 570F.

Penalty: Imprisonment for 12 months or to a fine of \$100 000 or both.

[Section 570C inserted by No. 53 of 1992 s.5.]

570D. Accused's admissions in serious cases inadmissible unless videotaped

- (1) In this section —

“admission” means an admission made by a suspect to a member of the Police Force or an Anti-Corruption Commission official, whether the admission is by spoken words or by acts or otherwise;

“serious offence” means an indictable offence of such a nature that, if a person over the age of 18 years is charged with it, it can not be dealt with summarily and in the case of a person under the age of 18 years includes any indictable offence for which the person has been detained.

- (2) On the trial of an accused person for a serious offence, evidence of any admission by the accused person shall not be admissible unless —
- (a) the evidence is a videotape on which is a recording of the admission; or
 - (b) the prosecution proves, on the balance of probabilities, that there is a reasonable excuse for there not being a recording on videotape of the admission; or
 - (c) the court is satisfied that there are exceptional circumstances which, in the interests of justice, justify the admission of the evidence.
- (3) Subsection (2) does not apply to an admission by an accused person made before there were reasonable grounds to suspect that he or she had committed the offence.
- (4) For the purposes of subsection (2), “**reasonable excuse**” includes the following —
- (a) The admission was made when it was not practicable to videotape it.
 - (b) Equipment to videotape the interview could not be obtained while it was reasonable to detain the accused person.
 - (c) The accused person did not consent to the interview being videotaped.
 - (d) The equipment used to videotape the interview malfunctioned.

[Section 570D inserted by No. 53 of 1992 s.5; amended by No. 35 of 1999 s.5.]

570E. Jury to be able to play videotape

If a videotape is admitted as evidence in a trial, the jury is entitled to play the videotape during its deliberations.

[Section 570E inserted by No. 53 of 1992 s.5.]

570F. Court may give directions about videotapes

The Supreme Court or, if the accused person is or was committed to the District Court, the District Court may give directions (with or without conditions) as to the supply, copying, editing, erasure, playing, or broadcast of a videotape.

[Section 570F inserted by No. 53 of 1992 s.5.]

570G. Videotapes to be retained by police

- (1) If an interview is videotaped, the Commissioner of Police shall ensure that a videotape of the interview is kept in safe custody for at least 5 years.
- (2) If the Supreme Court is satisfied there is good cause for keeping a videotape for more than 5 years, it may order the Commissioner of Police to keep a videotape of an interview for such additional period as the Court thinks fit.
- (3) Subject to subsection (1), the Commissioner of Police may, in writing, authorise a person to erase videotapes.
- (4) In this section —

“**interview**” means an interview with a suspect by a member of the Police Force.

[Section 570G inserted by No. 53 of 1992 s.5; amended by No. 35 of 1999 s.6.]

570GA. Videotapes to be retained by the Anti-Corruption Commission

- (1) If an interview is videotaped, the Anti-Corruption Commission shall ensure that a videotape of the interview is kept in safe custody for at least 5 years.
- (2) If the Supreme Court is satisfied there is good cause for keeping a videotape of an interview for more than 5 years, it may order the Anti-Corruption Commission to keep a videotape of the interview for such additional period as the Court thinks fit.

(3) Subject to subsection (1), the Anti-Corruption Commission may, in writing, authorise a person to erase videotapes of interviews.

(4) In this section —
“interview” means an interview with a suspect by an Anti-Corruption Commission official.

[Section 570GA inserted by No. 35 of 1999 s.7.]

570H. Videotapes may be played for teaching purposes

(1) A videotape may be played to prescribed persons for the purposes of instruction if —

- (a) the suspect has been convicted of a charge to which the interview relates;
- (b) all legal proceedings in relation to the subject matter of the interview have been concluded; and
- (c) all reasonable measures are taken to prevent the identification of the suspect from the videotape when it is played.

(2) For the purposes of subsection (1), **“prescribed persons”** means —

- (a) any member of the Police Force or any person training to become a member;
- (b) any practitioner (as defined in the *Legal Practitioners Act 1893*) or any person studying to become a practitioner;
- (ba) an Anti-Corruption Commission official;
- (c) any person prescribed for the purposes of this section.

[Section 570H inserted by No. 53 of 1992 s.5; amended by No. 35 of 1999 s.8.]

Chapter LXI — Jurisdiction: Preliminary proceedings: Bail

571. Jurisdiction

The jurisdiction of courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution and jurisdiction of those courts respectively.

572. Preliminary proceeding on charges of indictable offences

The practice and procedure relating to the examination and committal for trial of persons charged with indictable offences are set forth in the laws relating to justices of the peace, their powers and authorities.

[573. *Repealed by No. 87 of 1982 s.32.*]

574. Summary convictions: Time

- (1) Subject to subsection (4), the procedure upon the prosecution of offenders in order to their summary conviction, and for enforcing summary convictions and orders made by a court of petty sessions upon such prosecutions, is set forth in the laws relating to justices of the peace, their powers and authorities.
- (2) A prosecution for a simple offence, must, unless otherwise expressly provided, be begun within 12 months after the offence is committed.
- (3) (a) In this subsection —

“offence” means an indictable offence, whether committed before or after the coming into operation of the *Criminal Code Amendment Act 1956*¹, and punishable on summary conviction.
- (b) Except as provided otherwise by paragraph (c), a prosecution for an offence may be commenced at any time.
- (c) Where a limitation of time is expressly prescribed, whether before or after the coming into operation of the

*Criminal Code Amendment Act 1956*¹, for the commencement of a prosecution of an offence, a prosecution for the offence must be commenced, subject to paragraph (d), within that limitation.

- (d) The limitation of 12 months prescribed by section 51 of the *Justices Act 1902*, does not apply in the case of a prosecution for an offence according to the meaning given to the expression, offence, by paragraph (a).
- (4) Where a person is charged before a court of petty sessions with an indictable offence and the charge is one that may, at his election, be dealt with summarily, or with a simple offence for which he may, at his election, be prosecuted on indictment —
- (a) before he is asked to show cause why he should not be convicted, the court is required to explain to him that he is entitled to be tried by a judge with or without a jury, and is not obliged to make any defence before the court, unless he elects to have the charge dealt with summarily, and to ask him to make his election; and
- (b) if he elects to have the charge dealt with summarily, the court is required to reduce the charge to writing and to read it to him, and then to ask him whether he is guilty or not guilty of the offence; and if he says he is guilty the court is to convict him of the offence, but if he says he is not guilty the court is required to determine the charge summarily.

[Section 574 amended by No. 11 of 1956 s.2; No. 21 of 1972 s.29; No. 53 of 1992 s.6; No. 82 of 1994 s.16.]

575. Place of trial

- (1) A person charged with committing an offence may be tried in any jurisdiction within which any act or omission or event which is an element of the offence takes place.

- (2) A person charged with stealing any property may also be tried in any jurisdiction within which he has the stolen property in his possession.
- (3) A person charged with stealing anything while employed in the Public Service may also be tried in any jurisdiction within which he is arrested or is in custody.
- (4) A person charged with an offence which involves the receiving of any property by him may also be tried in any jurisdiction within which he has the property in his possession.
- (5) A person charged with forging anything, or with uttering anything, may also be tried in any jurisdiction within which he is arrested or is in custody.
- (6) A person who is charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may also be tried in any jurisdiction within which the principal offender might be tried.
- (7) A person who is charged with an offence committed out of Western Australia, and who may lawfully be tried in Western Australia, may be tried in any jurisdiction within which he is arrested or is in custody.

[Section 575 amended by No. 101 of 1990 s.48.]

576. Persons brought before wrong court

If, on the trial of a person charged with any offence before any court, it appears that he is not properly triable before that court under any of the provisions of the last preceding section, he is not by reason thereof entitled to be acquitted, but the court may, at the request of the accused person, discharge the jury from giving a verdict, and direct that he be tried before some proper court, and may remand him for trial accordingly.

If he does not make such request, the trial is to proceed, and the verdict and judgment have the same effect in all respects as if

the court had originally had jurisdiction to try the accused person.

This section does not affect the right of an accused person to plead to the jurisdiction of the court.

577. Change of place of trial

When a person has been committed for trial for an indictable offence at a court held at any place the Supreme Court or a Judge thereof may, on the application of the Crown or, upon good cause shown, of the accused person, order that the trial shall be held at some other place, either before the same court or before some other court of competent jurisdiction, at a time to be named in the order.

When an indictment has been presented against any person in the Supreme Court, District Court or a Circuit Court, the court may, on the application of the Crown, or, upon good cause shown, of the accused person, order that the trial shall be held at some place other than that named in the margin of the indictment and at a time to be named in the order.

When an order is made under the provisions of this section, the consequences are the same in all respects, and with regard to all persons as if the accused person had been committed for trial at the place named in the order and at the sittings named therein.

The recognizances of any persons who are bound to attend as witnesses are deemed to be enlarged to that time and place accordingly.

Notice of such time and place must be given to the persons bound by the recognizances, otherwise their recognizances cannot be forfeited.

[Section 577 amended by No. 55 of 1953 s.9; No. 38 of 1977 s.3; No. 87 of 1982 s.33.]

Chapter LXII — Indictments

578. Nature of indictments

When a person charged with an indictable offence has been committed for trial, and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document which is called an indictment.

The indictment is to be signed and presented to the court by the Attorney General or some other person appointed in that behalf by the Governor.

579. Ex officio indictments

The Attorney General may present an indictment in any court of criminal jurisdiction against any person for any indictable offence, whether the accused person has been committed for trial or not and thereupon subject to section 580 of this Code the accused shall be dealt with in all respects and the indictment and proceedings upon it are subject to the same procedure as if the accused person had been committed for trial in respect of the indictable offence alleged by the indictment to have been committed by him.

An officer appointed by the Governor to present indictments in any court of criminal jurisdiction may present an indictment in that court against any person for any indictable offence within the jurisdiction of the court, whether the accused person has been committed for trial or not.

All courts and judges exercising jurisdiction with regard to indictable offences shall take judicial notice of the signature of the Attorney General and all past Attorneys General, and of his and their authority to sign and present indictments; and all indictments presented which purport to be signed by an officer or person duly appointed to prosecute shall be deemed to be duly signed and presented, excepting always any such indictment in regard to which it shall be proved that the same was not in fact signed by the officer or person whose signature it

purports to bear, or that the officer or person signing the same was not in fact authorised or appointed to sign such indictment.

With regard to any person who has been committed for trial in respect of an indictable offence alleged to have been committed by him, the Attorney General and, if otherwise acting within the scope of their authority, all officers and persons authorised to sign and present indictments may present indictments against such person for any indictable offences which the Attorney General or such officers or persons shall consider to be prima facie disclosed by the evidence, irrespective of whether the said offences are mentioned in the commitment for trial or not:

Provided always that in the case of any person committed for sentence, if indictments presented against such person allege any offences not mentioned in the commitment for sentence, the accused person may, without the leave of any court or person, plead not guilty to having committed any offences not mentioned in the commitment for sentence, and thereupon shall be tried or dealt with in all respects as if he had been committed for trial and not for sentence.

[Section 579 amended by No. 20 of 1954 s.5; No. 35 of 1976 s.4; No. 73 of 1994 s.4.]

580. Arrest of person charged in ex officio indictment

When an indictment has been presented against a person who is not in custody, and has not been committed for trial or held to bail to attend to be tried upon the charge set forth in the indictment, a judge or the chairman of the court in which the indictment is presented may issue a warrant under his hand to arrest the accused person and bring him before a justice of the peace; and the justice before whom he is brought may commit him to prison until he can be tried on the indictment.

[Section 580 amended by No. 87 of 1982 s.34.]

581. *Nolle prosequi*

The Attorney General may inform any court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in the court.

An officer appointed by the Governor to present indictments in any court of criminal jurisdiction may inform that court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in that court.

When such information is given to the court the accused person is to be discharged from any further proceedings upon that indictment.

582. **Form of indictment**

An indictment is to be intituled with the name of the court in which it is presented, and must, subject to the provisions hereinafter contained, set forth the offence with which the accused person is charged in such a manner and with such particulars as to the alleged time and place of committing the offence, and as to the person, if any, alleged to be aggrieved, and as to the property, if any, in question, as may be necessary to inform the accused person of the nature of the charge.

It is sufficient to describe an offence in the words of this Code or of the statute defining it.

Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative or the doing or the omission to do any act in any one of any different capacities or with any one of any different intentions or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions or other matters stated in the alternative in the enactment may be stated in the alternative in the statement of the offence in the indictment charging the offence:

Provided that the court may at any stage of the proceedings amend the statement if it appears to the court to be so framed as to be embarrassing.

The place of trial is to be named in the margin of the indictment.

[Section 582 amended by No. 32 of 1918 s.17; No. 20 of 1982 s.5.]

583. General rules applicable to indictments

The following rules are applicable to all indictments —

- (1) Any document or other thing may be described by any name or designation by which it is usually known, and any document may be described by its purport without setting out a copy or facsimile of the whole or part of it;
- (2) A trade mark may be described by that name, and any other mark may be described in any way which will indicate its nature, without setting out a copy or facsimile of it;
- (3) It is not necessary to set forth the value of anything mentioned in an indictment unless the value is an essential element of the offence;
- (4) It is not necessary to set forth the means or instrument by which any act is done, unless the means or instrument are an essential element of the offence;
- (5) It is not necessary to set forth any particulars as to any person or thing which need not be proved nor any other matter which need not be proved.

584. Particular indictments

[(1) repealed]

- (2) In an indictment for an offence which relates to taking or administering an oath or engagement, or to giving false testimony, or to making a false statement, or solemn declaration or otherwise, or to procuring the giving of false testimony or the

making of a false statement, it is not necessary to set forth the words of the oath or engagement or testimony or statement, but it is sufficient to set forth the purport thereof, or so much of the purport as is material.

- (3) In an indictment for an offence which relates to giving false testimony, or procuring or attempting to procure the giving of false testimony, it is not necessary to allege the jurisdiction of the court or tribunal before which the false testimony was given, or intended or proposed to be given.
- (4) In an indictment for an offence committed with respect to the Postmaster General's Department, or to the revenue of that department, or to anything sent by post or telegraph, or to anything under the control of the Postmaster General, any property of which the ownership must be alleged, may be alleged to be the property of the Postmaster General.

And in any such case the Postmaster General may be described by that term alone, without mentioning his name or using any other addition or description.

- (5) In an indictment in which it is necessary to mention money, such money may be described simply as money, without specifying any particular form of money.

Such an averment, so far as regards the description of the property, will be sustained by proof that the offender obtained or dealt with any coin or anything which is included in the term "money", or any portion of the value of either, in such a manner as to constitute the offence, although such coin or thing was delivered to him in order that some part of the value thereof should be returned to the person who delivered the same or to some other person, and has been returned accordingly.

- (6) In an indictment in which it is necessary to mention any co-owners of property it is sufficient to name one of such persons, adding the words "and another" or "and others", as the

case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

- (7) In an indictment against a man for an offence committed by him with respect to his wife's separate property, the property may be alleged to be the property of the wife.
- (8) In an indictment for an offence relating to any property of a company which is authorised to sue and be sued in the name of a public officer, the property may be alleged to be the property of the public officer.
- (9) In an indictment for an offence relating to any property which by any statute is to be deemed to be the property of any officer of any institution, the property in question may be alleged to be the property of the officer of the institution for the time being by his name of office.
- (10) In an indictment for an offence relating to a testamentary instrument, it is not necessary to allege that the instrument is the property of any person.
- (11) In an indictment for an offence relating to anything fixed in a square or street, or in a place dedicated to public use or ornament, or to anything in or taken from a public office, it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.
- (12) In an indictment for an offence relating to a document which is evidence of title to land or an estate in land, the document may be described as being evidence of the title of the person or some one of the persons having an estate in the land to which the document relates, the land or some part thereof being described in some manner sufficient to identify it.
- (13) In an indictment for stealing a chattel or fixture let to the offender, the chattel or fixture may be described as the property of the person who actually let it to hire.

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- (14) In an indictment against a person employed in the Public Service for an offence committed with respect to anything which came into his possession by virtue of his employment, the thing in question may be described as the property of Her Majesty.
- (15) In an indictment for an offence respecting any property, if it is uncertain to which of 2 or more persons the property belonged at the time when the offence was committed, the property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them; and the indictment will be sustained, so far as regards the allegation of ownership, upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.
- (16) In an indictment for the offence of obtaining or procuring the delivery of anything capable of being stolen by a false pretence and with intent to defraud, or of obtaining any property by means of a fraudulent trick or device, or of inducing by means of any such trick or device the payment or delivery of any money or goods, or of attempting to commit, or to procure the commission of any such offence, it is not necessary to mention the owner of the property in question.
- (17) In an indictment for an offence which involves any fraud or fraudulent pretence or trick or device, it is not necessary to set forth the details of the fraud or pretence or trick or device.
- (18) In an indictment for an offence relating to a bankrupt it is not necessary to set forth any debt, act of bankruptcy, adjudication, or other proceeding in any court, or any order, warrant, or document, made or issued by or out of, or by the authority of any court.

[Section 584 amended by No. 70 of 1988 s.8(3).]

585. Indictment to contain one matter of charge only

Except as hereinafter stated, an indictment must charge one offence only, and not 2 or more offences:

Provided that when several distinct indictable offences form or are a part of a series of offences of the same or a similar character or when several distinct indictable offences are alleged to be constituted by the same acts or omissions, or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such distinct offences may be joined in the same indictment against the same person.

In any such case the several statements of the offences may be made in the same form as in other cases, without any allegation of connection between the offences.

But, if in any such case it appears to the court that the accused person is likely to be prejudiced by such joinder, the court may require the prosecutor to elect upon which of the several charges he will proceed, or may direct that the trial of the accused person upon each or any of the charges shall be had separately.

[Section 585 amended by No. 20 of 1954 s.6; No. 20 of 1982 s.6.]

586. Cases in which several charges may be joined

- (1) In an indictment against a person for stealing any property the accused person may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of —
 - (a) any number of specific sums of money; or
 - (b) any number of specific articles or items of property,the taking or conversion of which extended over any space of time.

[(2), (3) repealed]

- (4) Charges of stealing any property and of receiving the same property, or any part thereof, knowing it to have been stolen, may be joined in the same indictment, and the accused person may, according to the evidence, be convicted either of stealing the property or of receiving it, or any part of it, knowing it to have been stolen.

When such an indictment is preferred against 2 or more persons, all or any of the accused persons may, according to the evidence, be convicted either of stealing the property, or of receiving it, or any part of it, knowing it to have been stolen; or, according to the evidence, one or more of them may be convicted of stealing the property, and the other or others of them of receiving it, or any part of it, knowing it to have been stolen.

If the jury finds specially that the accused person or, where the indictment is preferred against 2 or more persons, that all or any of the accused persons either stole the property or received it knowing it to be stolen, but is unable to say which of those offences was committed by the accused person or accused persons, as the case may be, the accused person is not or the accused persons are not, by reason of that finding, entitled to be acquitted, but the court shall enter a conviction of the offence for which the lesser punishment is provided.

- (4a) In an indictment against a person alleging an offence under section 401(2), where the offence alleged to have been committed is stealing any property, the accused person may also be charged with receiving the same property or any part thereof knowing it to have been stolen; and the accused person may, according to the evidence, be convicted of either of the offences charged.
- (4b) When an indictment of the kind referred to in subsection (4a) is preferred against 2 or more persons, all or any of the accused persons may, according to the evidence, be convicted either of the charge under section 401(2) or of the charge of receiving, or

according to the evidence, one or more of them may be convicted of the charge under section 401(2) and the other or others of them of the charge of receiving.

- (5) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or of being accessories after the fact, to the same offence, although at different times, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of a crime or misdemeanour, or by means of an act which, if it had been done in Western Australia, would be a crime or misdemeanour, and which is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment, and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment, or is not amenable to justice.

[(6) *repealed*]

- (7) Any number of persons charged with committing different or separate offences may be charged in the same indictment and tried together if the offences arise substantially out of the same or closely related facts.

[Section 586 amended by No. 55 of 1953 s.10; No. 20 of 1954 s.7; No. 1 of 1969 s.17; No. 21 of 1972 s.30; No. 20 of 1982 s.7; No. 37 of 1991 s.14; No. 29 of 1998 s.6.]

587. Accessories

A person who counsels or procures another person to commit an offence, or who aids another person in committing an offence, or who becomes an accessory after the fact to an offence, may be charged in the same indictment with the principal offender, and may be tried with him or separately, or may be indicted and tried separately, whether the principal offender has or has not been convicted, or is or is not amenable to justice.

588. Statement of previous conviction

In an indictment for an offence charged to have been committed after a conviction for any offence, it is sufficient, after charging the subsequent offence, to state the substance and effect of the indictment or complaint, and the conviction, for the previous offence, and the time and place of such conviction.

[589. Repealed by No. 32 of 1918 s.23.]

590. Formal defects

An indictment is not open to objection by reason of the designation of any person by a name of office or other descriptive appellation instead of by his proper name, nor for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence, nor for stating imperfectly the time at which the offence was committed, nor for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.

Every objection to an indictment for any defect apparent on its face must be taken by motion to quash the indictment before the jury is sworn, and not afterwards; and the court upon such motion may, unless it considers that the accused person will be prejudiced thereby in his defence, order the indictment to be amended, so far as is necessary, on such terms, if any, as to postponing the trial or otherwise as the court may think reasonable. The indictment is thereupon to be amended in accordance with the order of the court.

591. Amendment of indictments

If, on the trial of a person charged with an indictable offence, there appears to be a variance between the indictment and the evidence, or it appears that any words that ought to have been inserted in the indictment have been omitted, or that any words that ought to have been omitted have been inserted, the court

shall unless it considers that the variance, omission, or insertion, is material to the merits of the case, and that the accused person will be prejudiced thereby in his defence on the merits, order the indictment to be amended, so far as it is necessary, on such terms, if any, as to postponing the trial, and directing it to be had before the same jury or another jury, as the court may think reasonable.

The indictment is thereupon to be amended in accordance with the order of the court.

When an indictment has been amended, the trial is to proceed, at the appointed time, upon the amended indictment, and the same consequences ensue, in all respects and as to all persons, as if the indictment had been originally in its amended form.

If it becomes necessary to draw up a formal record in any case in which an amendment has been made, the record is to be drawn up setting out the indictment as amended, and without taking any notice of the fact of the amendment having been made.

592. Particulars

The court may, in any case, if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment, and may adjourn the trial for the purpose of such delivery.

593. Chapter LXII applies to complaints for indictable offences

The provisions of this chapter relating to indictments apply to complaints preferred against offenders upon their trial before a court of petty sessions in order to their summary conviction of an indictable offence.

[Section 593 amended by No. 21 of 1972 s.31.]

Chapter LXIII — Effect of indictment

594. Person may be convicted for offence other than that charged

Except as hereinafter stated, upon an indictment charging a person with an offence he may be convicted of any indictable or simple offence under this Code, or any other indictable offence, which is established by the evidence, and which is an element or would be involved in the commission of the offence charged in the indictment.

[Section 594 inserted by No. 32 of 1918 s.18; amended by No. 106 of 1987 s.22]

595. Wilful murder, murder, etc.; alternative verdicts

Upon an indictment charging a person with the crime of wilful murder, murder, manslaughter or infanticide, the person charged may be convicted of an offence mentioned opposite that crime in the Table if that offence is established by the evidence.

Table

Wilful murder	Murder, manslaughter, infanticide or an offence under section 283, 290, or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Murder	Manslaughter, infanticide or an offence under section 290 or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Manslaughter	An offence under section 290 or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Infanticide	An offence under section 283, 290, or 291 of this Code.

[Section 595 inserted by No. 106 of 1987 s.12.]

595A. Grievous bodily harm; alternative verdict

Upon an indictment charging a person with the crime of doing grievous bodily harm to another, he may be convicted of an

offence under section 59 of the *Road Traffic Act 1974*, if that offence is established by the evidence.

[Section 595A inserted by No. 58 of 1974 s.7.]

596. Charges of sexual offences; alternative verdicts

Upon an indictment charging a person with a crime under a section in Column 1 of the Table to this section, the person may be convicted of a crime under a section opposite that section in Column 2 if that crime is established by the evidence.

Table	
<u>Column 1</u> (section)	<u>Column 2</u> (section)
320(2)	320(4), 321(2), 321(4), 322(2), 322(4), 322A(2), 322A(3).
320(3)	320(4), 320(5), 321(3), 321(4), 321(5), 322(3), 322(4), 322(5), 322A(2), 322A(3).
320(4)	321(4), 322(4), 322A(3).
320(5)	321(5), 322(5).
320(6)	321(6), 322(6).
321(2)	321(4), 322(2), 322(4), 322A(2), 322A(3).
321(3)	321(4), 321(5), 322(3), 322(4), 322(5), 322A(2), 322A(3).
321(4)	322(4), 322A(3).
321(5)	322(5).
321(6)	322(6).
322(2)	322(4), 322A(2), 322A(3).

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<u>Column 1</u> (section)	<u>Column 2</u> (section)
322(3)	322(4), 322(5), 322A(2), 322A(3).
322(4)	322A(3).
324	321(4), 322(4), 322A(3), 323.
325	322(2), 322(4), 322A(2), 322A(3), 323, 324.
326	321(2), 321(4), 322(2), 322(4), 322A(2), 322A(3), 323, 324, 325.
327	322(3), 322(4), 322(5), 322A(2), 322A(3).
328	321(3), 321(4), 321(5), 322(3), 322(4), 322(5), 322A(2), 322A(3), 327.
329(2)	321(2), 321(4), 322(2), 322(4), 322A(2), 322A(3), 329(4).
329(3)	321(3), 321(4), 321(5), 322(3), 322(4), 322(5), 322A(2), 322A(3), 329(4), 329(5).
329(4)	321(4), 322(4), 322A(3).
329(5)	321(5), 322(5).
329(6)	321(6), 322(6).
330(2)	322(2), 322(4), 322A(2), 322A(3), 323, 324, 325, 326, 330(4).

<u>Column 1</u> (section)	<u>Column 2</u> (section)
330(3)	322(3), 322(4), 322(5), 322A(2), 322A(3), 327, 328, 330(4), 330(5).
330(4)	322(4), 322A(3), 323, 324.
330(5)	322(5).
330(6)	322(6).

[Section 596 inserted by No. 14 of 1992 s.7.]

[596A, 596AA, 596AB, 596AC. Repealed by No. 14 of 1992 s.7.]

[596AD. Repealed by No. 32 of 1989 s.22.]

597. Charge of causing specific result, etc.; alternative verdicts

Upon an indictment charging a person with an offence of which the causing of some specific result is an element, he may be convicted of any offence which is established by the evidence, and of which an intent to cause that result, or a result of a similar but less injurious nature, is an element.

Upon an indictment charging a person with an offence of which an intent to cause some specific result is an element, he may be convicted of an offence which is established by the evidence and of which the unlawful causing of that result is an element.

597A. Incitement to racial hatred etc.; alternative verdicts

- (1) Upon an indictment charging a person with an offence under section 77 or 78 the person may be convicted of an offence under the other of those sections or under section 79 or 80.
- (2) Upon an indictment charging a person with an offence under section 79 or 80 the person may be convicted of an offence under the other of those sections.

[Section 597A inserted by No. 33 of 1990 s.4.]

598. Kidnapping; alternative verdict

Upon an indictment charging a person with an offence under section 332 the person may be convicted of an offence under section 333.

[Section 598 inserted by No. 101 of 1990 s.49.]

598A. Making threats with intent; alternative verdict

Upon an indictment charging a person with an offence under section 338A the person may be convicted of an offence under section 338B.

[Section 598A inserted by No. 101 of 1990 s.49.]

598AA. Stalking; alternative verdict

- (1) Upon an indictment charging a person with an offence under section 338E(1) the person may be convicted of a simple offence under section 338E(2).
- (2) Where a charge under section 338E(1) is dealt with summarily the person charged may be convicted summarily of an offence under section 338E(2).

[Section 598AA inserted by No. 38 of 1998 s.5.]

598B. Burglary; alternative verdict

Upon an indictment charging a person with an offence under section 401(2) the person may be convicted of an offence under section 401(1).

[Section 598B inserted by No. 37 of 1991 s.15.]

599. Stealing, fraud or receiving; alternative verdicts

- (1) Upon an indictment charging a person with an offence under section 378, 409 or 414 the person may be convicted of an offence under another of those sections if that other offence is established by the evidence.

- (2) Where a charge of an offence under section 378, 409 or 414 is dealt with summarily the person charged may be convicted summarily of an offence under another of those sections if that other offence is established by the evidence.

[Section 599 inserted by No. 101 of 1990 s.50.]

599A. Principal offence; alternative verdict of attempt or incitement

Upon an indictment charging a person with committing any offence, he may be convicted of attempting to commit, or of inciting another person to commit, that offence or any other offence of which he might be convicted on the indictment.

[Section 599A inserted by No. 106 of 1987 s.13.]

599B. Charge of attempt; alternative verdicts

Upon an indictment charging a person with attempting to commit any offence (in this section called the “**principal offence**”), he may be convicted —

- (a) of committing the principal offence; or
- (b) of committing, or attempting to commit, any other offence of which he might have been convicted if the indictment had charged him with committing the principal offence,

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

[Section 599B inserted by No. 106 of 1987 s.13.]

599C. Charge of conspiracy; alternative verdicts

Upon an indictment charging a person with conspiring to commit an offence (in this section called the “**principal offence**”), he may be convicted —

- (a) of committing the principal offence;

- (b) of attempting to commit the principal offence; or
- (c) of inciting another person to commit the principal offence,

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

[Section 599C inserted by No. 106 of 1987 s.13.]

599D. Principal offence; alternative verdict of being accessory after the fact

Upon an indictment charging a person with committing an offence, he may be convicted of becoming an accessory after the fact to that offence.

[Section 599D inserted by No. 106 of 1987 s.13.]

600. Charge of procuring, etc.; alternative verdicts

Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of procuring the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

Upon an indictment charging a person with procuring another to do an act or make an omission of such a nature that if the accused person had himself done the act or made the omission he would have been guilty of an offence, he may be convicted of procuring that other person to do any other act or make any other omission which is established by the evidence, and which is of such a nature that if the accused person had himself done that act or made that omission he would have been guilty of an offence, such last-named offence being itself of such a nature that a person may be convicted of it upon an indictment

charging him with committing the offence of which the accused person would have been guilty if he had himself done the act or made the omission which he is alleged to have procured to be done or made.

601. Charge of attempting to procure, etc.; alternative verdicts

Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

Upon an indictment charging a person with attempting to procure the commission of any offence, he may be convicted of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.

Upon an indictment charging a person with attempting to procure another to do an act or make an omission of such a nature that if the act had been done or the omission had been made an offence would thereby have been committed, he may be convicted of attempting to procure that other person to do any other act or make any other omission of such a nature that if the act had been done or the omission had been made an offence would thereby have been committed, such last-mentioned offence being itself of such a nature that a person may be convicted of it upon an indictment charging him with doing the act or making the omission which the accused person is alleged in the indictment to have attempted to procure that other person to do or make.

[Section 601 amended by No. 106 of 1987 s.14(6).]

602. When evidence shows offence of similar nature

If, on the trial of a person charged with an indictable offence, the evidence establishes that he is guilty of another indictable offence of such a nature that upon an indictment charging him with it he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.

A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence, unless the court before which the trial is had thinks fit to discharge the jury from giving any verdict, and to direct the accused person to be indicted for that offence; in which case he may be dealt with in all respects as if he had not been put upon his trial for the offence with which he is actually charged.

[Section 602 amended by No. 55 of 1953 s.11.]

602A. Conviction on indictment of offence that might have been tried summarily

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

[Section 602A inserted by No. 106 of 1987 s.23.]

603. Punishment where alternative verdict

A person convicted under any of the foregoing provisions of this chapter is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

604. Indictable charge re elections; alternative verdicts

If, on the trial of a person charged with an indictable offence relating to elections, the evidence establishes that he is not guilty of the offence charged, but is guilty of an offence relating

to elections and punishable on summary conviction, he may be convicted of such last-mentioned offence, and is liable to the same punishment as if he had been summarily convicted of that offence.

605. Summary charge re elections not to be dismissed where evidence shows indictable offence

If, on the trial of a person charged with an offence relating to elections and punishable on summary conviction, the evidence establishes that he is guilty of an indictable offence relating to elections, he is not entitled to have the charge dismissed if the evidence also establishes that he did any act or acts such as to constitute the offence with which he is actually charged.

606. Stealing animals; alternative verdicts

If, on the trial of a person charged with stealing a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, the evidence establishes that he is not guilty of the offence charged, but is guilty of any of the offences following, that is to say —

- (a) Unlawfully using, or taking for the purpose of using the animal without the consent of the owner, or of the person in lawful possession thereof;
- (b) Branding or marking the animal, or knowingly permitting it to be branded or marked, with his registered brand or registered mark, knowing that he is not the owner of the animal;
- (c) Altering or defacing, or otherwise rendering undistinguishable, any registered brand or registered mark upon the animal;
- (d) Knowingly permitting any such act as last aforesaid to be done by any person over whom he has control;

he may be convicted of the offence so established by the evidence, and is liable to the same punishment as if he had been summarily convicted of that offence.

607. Persons charged jointly with receiving; verdicts

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

607A. Saving of provisions as to time

Nothing in this chapter shall be deemed to authorise the conviction of any person of any offence on any prosecution which has not been commenced within the time (if any) limited by law for the commencement of a prosecution for such offence.

[Section 607A inserted by No. 32 of 1918 s.20.]

Chapter LXIV — Trial: Adjournment: Pleas: Practice

608. Right to be tried

A person committed for trial before any court for an indictable offence may make application in open court at any time during the first sittings of the court held after his committal to be brought to his trial.

Any person committed as aforesaid, who has made such an application to be brought to his trial, and who is not brought to trial at the second sittings after his committal for trial, is entitled to be discharged.

[Section 608 amended by No. 87 of 1982 s.35.]

609. Accelerating trial of persons not under committal

When an indictment is presented in any court against any person who has not been committed for trial or held to bail upon the charge set forth in the indictment, and the accused person is not

brought to trial within a year after the indictment is presented, the court may, upon the application of the accused person, or any of the accused persons, if more than one, authorise him to bring on the trial, and he may bring on the trial accordingly, unless in the meantime the court is informed that the Crown will not further proceed upon the indictment.

609A. Mental fitness to stand trial

If a person is committed for trial before a court for an indictable offence, any question about the person's mental fitness to stand trial is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 609A inserted by No. 69 of 1996 s.14.]

610. Adjournment of trial

The court before which an indictment is presented may, in any case, if it thinks fit, adjourn the trial of the accused person.

A trial may be adjourned at any period of the trial, whether a jury has or has not been sworn, and whether evidence has or has not been given.

611. On adjournment of trial accused may be remanded to a later sitting or another court

When the trial of a person charged with an offence on indictment is adjourned, the court may direct the trial to be held either at a later sitting of the same court, or before some other court of competent jurisdiction, and may remand the accused person accordingly, and may enlarge the recognizances of the witnesses.

In any such case, the indictment and other proceedings are to be transmitted to the proper officer of the court to which the accused person is so remanded, and that court has the same jurisdiction to try him as if he had been originally committed to be tried before it; and the witnesses are bound to attend to give

evidence at the time and place to which the trial is adjourned, without entering into any fresh recognizances for that purpose, in the same manner as if they had respectively been originally bound by their recognizances to attend and give evidence at the time and place to which the trial is adjourned.

[Section 611 amended by No. 87 of 1982 s.36.]

611A. Matters may be dealt with before trial

- (1) Before an indictment has been presented to a court against a person committed to the court for trial or after an indictment (including an ex officio indictment) has been presented to a court against a person and before a jury is sworn, the court may —
 - (a) determine any question of law or procedure if it considers it is convenient to do so to facilitate the preparation for, or the conduct of, the trial, or is otherwise desirable;
 - (b) determine any question of fact which in a trial may be determined lawfully by a judge alone without a jury;
 - (c) permit the person committed or indicted to make admissions under section 32 of the *Evidence Act 1906*, notwithstanding that the person's trial has not begun.
- (2) The judge constituting the court which deals with any matter under subsection (1) need not be the judge who constitutes the court when the trial of the person committed or indicted takes place before a jury.
- (3) Any proceedings under subsection (1) occurring before the trial of the person committed or indicted has begun are to be taken as being part of the trial.
- (4) The powers in subsection (1)(a) and (b) may be exercised where a person has been committed to a court for sentence.

[Section 611A inserted by No. 37 of 1991 s.7.]

612. Accused person to be called upon to plead to indictment

At the time appointed for the trial of an accused person he is to be informed in open court of the offence with which he is charged, as set forth in the indictment, and is to be called upon to plead to the indictment, and to say whether he is guilty or not guilty of the charge.

The trial is deemed to begin when he is so called upon.

613. Delivery of copy of indictment

When an indictment is presented against any person, the court is required, upon his application, to order a copy of the indictment to be delivered to him without fee.

614. Motion to quash indictment

The accused person may, before pleading, apply to the court to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge, or that it is formally defective.

Upon such motion the court may quash the indictment, or may order it to be amended in such manner as the court thinks just, or may refuse the motion.

615. Misnomer

If the accused person says that he is wrongly named in the indictment, the court shall, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

616. Pleas

If the accused person does not apply to quash the indictment, he must either plead to it or demur to it on the ground that it does not disclose any offence cognizable by the court. If he pleads, he may plead either —

- (1) That he is guilty of the offence charged in the indictment, or, with the consent of the Crown, of any

other offence of which he might be convicted upon the indictment;

- (2) That he is not guilty;
- (3) That he has already been convicted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been convicted of an offence of which he might be convicted upon the indictment;
- (4) That he has already been acquitted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been acquitted upon indictment of an offence of which he might be convicted upon the indictment;
- (5) That he has already been tried and convicted or acquitted of an offence committed or alleged to be committed under such circumstances that he cannot, under the provisions of this Code, be tried for the offence charged in the indictment;
- (6) That he has received the Royal pardon for the offence charged in the indictment; or
- (7) That the court has no jurisdiction to try him for the offence.

Two or more pleas may be pleaded together, except that the plea of guilty cannot be pleaded with any other plea to the same charge.

An accused person may plead and demur together.

617. Defence of truth of defamatory matter to be specially pleaded

A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true, and that it was for the public benefit that the publication should be made, must plead that matter specially, and may plead it with any other plea, except the plea of guilty.

617A. Recital of facts by Crown

When a person has, under the *Justices Act 1902*, been committed for trial or sentence without a preliminary hearing and has pleaded guilty of the offence charged in the indictment or of any other offence of which he might be convicted on the indictment, before the court passes sentence on him the material facts of the case shall be stated aloud to the court by the Crown.

[Section 617A inserted by No. 35 of 1976 s.5.]

618. Unconvicted persons committed for sentence

- (1) This section applies when a person (“**the accused person**”) has been committed by a court of petty sessions for sentence for an offence but has not been summarily convicted of the offence.
- (2) The accused person is to be called on to plead to the indictment in the same manner as other persons and may plead any of the pleas listed in section 616.
- (3) If —
 - (a) the accused person was committed for sentence under section 101 of the *Justices Act 1902* and pleads not guilty to the indictment; and
 - (b) the court is satisfied that before the court of petty sessions the accused person pleaded, or otherwise duly admitted, that he or she was guilty of the offence charged in the indictment,

the court shall, despite the plea of not guilty, direct that a plea of guilty be entered unless the court is satisfied the facts stated by the Crown under section 617A are materially different to those disclosed by the material served by the prosecution under section 100(1) or 114(a) of the *Justices Act 1902*; in which case the court shall —

- (c) with the consent of the accused person, discharge the committal and remit the complaint to the court of petty sessions to be dealt with according to law; or

- (d) enter the plea of not guilty and deal with the accused person according to law,

but otherwise the court shall enter the plea of not guilty and deal with the accused person according to law.

- (4) If —

- (a) the accused person was committed for sentence under an enactment other than section 101 of the *Justices Act 1902* and pleads not guilty to the indictment; and
- (b) the court is satisfied that before the court of petty sessions the accused person pleaded, or otherwise duly admitted, that he or she was guilty of the offence charged in the indictment,

the court shall, despite the plea of not guilty, direct that a plea of guilty be entered; but otherwise shall enter the plea of not guilty and deal with the accused person according to law.

- (5) If the accused person pleads guilty to the indictment and the court, after an examination of any depositions of witnesses and any statements tendered in evidence under section 69 of the *Justices Act 1902*, is satisfied that the accused person has not in fact committed the offence charged in the indictment, or any other offence of which the accused person might be convicted upon the indictment, the court shall, despite the plea of guilty, direct that a plea of not guilty be entered and deal with the accused person according to law.
- (6) A plea directed to be entered by a court under this section has the same effect as if it had been actually pleaded.

[Section 618 inserted by No. 53 of 1992 s.7.]

619. Accused persons who will not or do not plead

- (1) If an accused person, on being called on to plead to an indictment, will not or does not —
 - (a) plead in a manner provided in this Code; or

(b) answer directly to the indictment,

the court shall enter a plea of not guilty on behalf of the person unless the person is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

- (2) A plea so entered has the same effect as if it had been actually pleaded.

[Section 619 inserted by No. 69 of 1996 s.15.]

620. Plea of autrefois convict or autrefois acquit

In a plea that the accused person has already been convicted or acquitted, it is sufficient to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment, or of the other offence of which he alleges that he has been convicted or acquitted, and, in the latter case, to describe the offence by any term by which it is commonly known.

621. Trial on plea to the jurisdiction

Upon a plea to the jurisdiction of the court, the court is to proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not, and may ascertain the fact by the verdict of a jury or otherwise.

622. Trial by jury

If the accused person pleads any plea or pleas other than the plea of guilty, or a plea to the jurisdiction of the court, he is by such plea, without any further form, deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury, and, subject to Chapter LXIVA, those issues are triable accordingly.

[Section 622 amended by No. 82 of 1994 s.16.]

623. Demurrer

When an accused person demurs only and does not plead any plea, the court is to proceed to hear and determine the matter forthwith. If the demurrer is overruled, he is to be called upon to plead to the indictment.

When an accused person pleads and demurs together, it is in the discretion of the court whether the plea or demurrer shall be first disposed of.

No joinder in demurrer is necessary.

Upon the hearing of a demurrer, the court may allow the demurrer or may order the indictment to be amended in such manner as the court thinks just, or may overrule the demurrer.

624. Separate trials

When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons, or any of them, shall be had separately from the trial of the other or others of them, and for that purpose may, if a jury has been sworn, discharge the jury from giving a verdict as to any of the accused persons.

625. Juries

The law respecting the qualifications of jurors and the summoning of jurors to attend for the trial of persons charged with indictable offences, and the challenges allowed to such persons, is set forth in the laws relating to juries and jurors.

626. Accused person to be informed of his right of challenge

When an accused person has demanded to be tried by a jury, the proper officer of the court is to inform him in open court that the persons whose names are to be called are the jurors to be sworn

for his trial, and is further to inform him that if he desires to challenge any of them he must do so before they are sworn.

627. Challenge to array

If the accused person desires to object to the whole panel of jurors, he must do so before any juror is sworn for his trial.

628. Challenges to individual jurors for cause

The Crown or the accused person may object to a particular juror on either of the following grounds, that is to say —

- (1) That the juror is not qualified by law to act as a juror;
- (2) That the juror is not indifferent as between the Crown and the accused person.

Such objections are in addition to any peremptory challenges to which the Crown or the accused person is by law entitled.

[629. Repealed by No. 50 of 1957 s.2.]

630. Ascertainment of facts as to challenge

If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge, the fact shall be tried by the jurors already sworn, if more than one, or, if one juror only has been sworn, by such juror together with some indifferent person chosen by the court from the panel of jurors, or, if no juror has been sworn, by 2 indifferent persons chosen by the court from such panel. The persons so appointed are to be sworn to try the cause for challenge, and their decision on the fact is final and conclusive.

If the persons so appointed cannot agree, the court may discharge them from giving a decision, and may appoint 2 other persons to try the fact, to be chosen as in the case when no juror has been sworn.

[631. Repealed by No. 69 of 1996 s.16¹⁰.]

632. Jury to be sworn and informed of charge

The jury are to be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

When the jury have been sworn, the proper officer of the court is to inform them of the charge set forth in the indictment, and of their duty as jurors upon the trial.

632A. Plea of guilty after jury have been sworn

At any time after the jury have been sworn and before they have given their verdict, the accused person may plead that he is guilty of the offence charged in the indictment, or, with the consent of the Crown, of another offence of which he might be convicted on the indictment.

If such a plea is pleaded the court shall discharge the jury.

[Section 632A inserted by No. 82 of 1994 s.10.]

633. Discharge of juror by court

If, after a juror has been sworn, it appears to the court from his own statement that he is not indifferent as between the Crown and the accused person, or that for any other reason he ought not to be allowed or required to act as a juror on the trial, the court may, without discharging the whole of the jury, discharge that particular juror, and direct another juror to be sworn in his place.

634. Defence by counsel

Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined and cross-examined by his counsel.

The term “**counsel**” includes any person entitled to audience as an advocate.

635. Presence of accused

The trial must take place in the presence of the accused person, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which case the court may order him to be removed, and may direct the trial to proceed in his absence.

Provided that the court may, in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks fit.

If the accused person absents himself during the trial without leave, the court may direct a warrant to be issued to arrest him and bring him before the court forthwith.

Nothing in this section prevents a court from taking evidence from an accused person by video link or audio link under section 121 of the *Evidence Act 1906*.

In this section “**trial**” includes proceedings under the *Sentencing Act 1995*.

[Section 635 amended by No. 78 of 1995 s.26; No. 48 of 1998 s.5.]

635A. Court to be open: Publicity

- (1) Unless expressly provided otherwise, the court-room or place of hearing where a trial or other criminal proceeding is conducted is an open and public court to which all persons may have access so far as is practicable.
- (2) If satisfied that it is necessary for the proper administration of justice to do so, a court may —
 - (a) order any or all persons or any class of persons to be excluded from the court-room or place of hearing during the whole or any part of the trial or other criminal proceeding;

- (b) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings;
 - (c) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings except in accordance with directions by the court.
- (3) On an application by the prosecution or an accused person a court may order any person who may be called as a witness in the trial or other criminal proceeding to leave the court-room or place of hearing and to remain outside and beyond the hearing of the court until called to give evidence.
- (4) Counsel or a solicitor engaged in the trial or other criminal proceeding shall not be excluded from the court-room or place of hearing under this section.
- (5) A person who contravenes or fails to comply with an order made under this section commits an offence punishable —
 - (a) by the Supreme Court as for contempt; or
 - (b) after summary conviction, by imprisonment for 12 months or a fine of \$10 000.
- (6) Only the Attorney General or a person on his behalf may take proceedings for a contravention of or a failure to comply with an order made under this section.

[Section 635A inserted by No. 14 of 1992 s.8.]

635B. Depositions and statements produced at trial

- (1) At the trial of an accused person —
 - (a) a deposition of a witness; and
 - (b) a written statement of a person that is made, at any time, in accordance with section 69(4) of the *Justices Act 1902* and, if it refers to any other document or

exhibit, is accompanied by a copy or description of the other document or exhibit,

is admissible as evidence to the like extent as oral evidence to the like effect if all the parties consent and the trial judge is satisfied that the presence of such witness is not necessary in the interests of justice.

- (2) So much of any deposition or statement as is to be admitted in evidence by virtue of subsection (1) shall be read aloud in court.

[Section 635B inserted by No. 35 of 1976 s.6; amended by No. 71 of 2000 s.42 .]

636. Evidence in defence

At the close of the evidence for the prosecution the proper officer of the court is required to ask the accused person whether he intends to adduce evidence in his defence.

636A. Notice of alibi

- (1) Where, on a trial on indictment, an accused person adduces evidence in support of an alibi without having given the prescribed details of the alibi to the prosecution not later than 10 days before the date appointed for the commencement of the trial, the court shall, on application being made by the prosecution for an adjournment of the trial, —
- (a) adjourn the trial for such period as the judge considers sufficient to enable the prosecution to complete a proper investigation of the alibi; or
 - (b) if, in the circumstances, the judge thinks fit, adjourn the trial and discharge the jury.
- (2) Where the prescribed details of an alibi have been given not later than 10 days before the date appointed for the commencement of a trial on indictment, nothing in subsection (1) limits or otherwise affects the discretion of the court to adjourn the trial if the judge considers that, in the

circumstances, the prosecution has not had sufficient time to complete a proper investigation of the alibi, or for any other reason.

- (3) On the resumption of a trial on indictment that has been adjourned to enable the prosecution to investigate an alibi, evidence in support of which has been adduced by an accused person, the prosecution —

- (a) may require any person, including an accused person, who has given evidence to the court in support of the alibi to be recalled as a witness and may cross-examine or further cross-examine any such person; and
- (b) may adduce evidence in rebuttal of the evidence so adduced.

- (4) In this section —

“evidence in support of an alibi” means evidence tending to show that an accused person was not present when an offence in the indictment is alleged to have been committed or an act or omission material to that offence is alleged to have occurred;

“prescribed details”, in relation to an alibi, means —

- (a) details of the nature of the alibi; and
- (b) details of the name and address of each person called to give evidence in support of the alibi, or other information sufficient to enable each such person to be located.

[Section 636A inserted by No. 20 of 1982 s.9.]

637. Speeches by counsel

Before any evidence is given at the trial of an accused person the counsel for the Crown is entitled to address the jury for the purpose of opening the evidence intended to be adduced for the prosecution.

If the accused person or any of the accused persons, if more than one, is defended by counsel, and if such counsel or any of such counsel says that he does not intend to adduce evidence, the counsel for the Crown is entitled to address the jury a second time for the purpose of summing up the evidence already given against such accused person or persons for whom evidence is not intended to be adduced.

At the close of the evidence for the prosecution the accused person, and each of the accused persons, if more than one, may by himself or his counsel address the jury for the purpose of opening the evidence, if any, intended to be adduced for the defence, and after the whole of the evidence is given may again address the jury upon the whole case.

Where the only witness to the facts of the case called by the defence is the accused person, he shall be called as a witness immediately after the close of the evidence for the prosecution.

If evidence is adduced for an accused person, the counsel for the Crown is entitled to reply.

If evidence is adduced for one or more of several accused persons, but not for all of them, the counsel for the Crown is entitled to reply with respect to the person or persons by whom evidence is so adduced, but not with respect to the other or others of them.

Provided that the Attorney General is entitled to reply in all cases, whether evidence is adduced by any accused person or not.

In this section the expression, “**Attorney General**” does not include Minister for Justice.

[Section 637 amended by No. 55 of 1953 s.12.]

638. Summing up

After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury, it is the duty of the court to instruct the jury as to the law applicable to the case, with such observations upon the evidence as the court thinks fit to make.

After the court has instructed the jury they are to consider their verdict.

639. Jury not to separate

Except as hereinafter stated, after the jury have been sworn and the charge has been stated to them by the proper officer, they must not separate until they have given their verdict or are discharged by the court.

And no person except the officer of the court who has charge of them is to be allowed to speak to or communicate with any of them without the leave of the court until they are discharged.

Provided that on the trial of a person charged with any indictable offence the court may, in its discretion, permit the jury to separate before considering their verdict for such period during any adjournment of the trial as the court may think fit.

If any person disobeys the directions of this section he may be punished summarily as for contempt of court.

The validity of the proceedings is not affected by any such disobedience, but, if the fact is discovered before the verdict is given, the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury, and may direct that a fresh jury be sworn during the same sittings of the court, or may adjourn the trial.

[Section 639 amended by No. 28 of 1961 s.4; No. 20 of 1982 s.10.]

640. Confinement of jury

While the jury are kept together, and until they have given their verdict, they are to be kept, during any adjournment of the court, and while they are considering their verdict, in some private place under the charge of an officer of the court, and are to be provided with necessary fire and lights and with such reasonable refreshment, if any, as the court may allow.

641. View by jury

The court may in any case, if it thinks fit, direct that the jury shall view any place or thing which the court thinks it desirable that they should see, and may give any necessary directions for that purpose.

The validity of the proceedings is not affected by disobedience to any such directions, but, if the fact is discovered before the verdict is given, the court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury, and may direct that a fresh jury be sworn during the same sittings of the court, or may adjourn the trial.

[Section 641 amended by No. 55 of 1953 s.13.]

642. Special verdict

In any case in which it appears to the court that the question whether an accused person ought or ought not to be convicted of an offence may depend upon some specific fact, or that the proper punishment to be awarded upon conviction may depend upon some specific fact, the court may require the jury to find that fact specially.

643. General verdict on charge of defamation

Notwithstanding the provisions of the last preceding section, the jury, on the trial of a person charged with the unlawful publication of defamatory matter, may give a general verdict of

guilty or not guilty upon the whole matter in issue in like manner as in other cases.

644. Discharge of jury

When the trial of an accused person is adjourned after the jury have been sworn, the court may discharge the jury.

If the jury cannot agree as to the verdict to be given, or if any emergency arises of such a nature as to render it, in the opinion of the court, necessary or highly expedient for the ends of justice to do so, the court may, in its discretion, discharge the jury without giving a verdict, and may direct that a fresh jury be sworn during the same sittings of the court, or may adjourn the trial.

Such an exercise of discretion is not subject to review by any court.

645. Incapacity of judge

- (1) If the presiding judge becomes incapable of proceeding with the trial or directing the discharge of the jury, it is the duty of some officer of the court to discharge the jury.
- (2) In any such case the accused person shall remain in custody until he can be brought before another judge who may remand him in custody to appear for a new trial.

[Section 645 amended by No. 87 of 1982 s.37.]

646. Incapacity of juror

If at any time during the trial a juror dies, or becomes, in the opinion of the court, incapable of continuing to act as a juror, the court may, in its discretion, discharge the jury under the provisions hereinbefore contained, or may, if it thinks fit, at the request of the accused person, and with the consent of the Crown, discharge the juror, if any, so becoming incapable, and direct that the trial shall proceed with the remaining jurors. In

any such case the verdict of the remaining jurors, not being less than 10, shall have the same effect as if all the jurors had continued present.

[Section 646 amended by No. 55 of 1953 s.14.]

647. Video link may be used

- (1) If —
- (a) a person is committed for trial or sentence before any court for an indictable offence;
 - (b) the person is in custody, whether in relation to the offence or not; and
 - (c) a video link or other device exists whereby, at the same time, the court in one place can see and hear the person in another place and vice versa,

the court may, instead of ordering that the person be brought personally before the court, order that the person be brought before the video link or other device.

- (2) The court may make an order under subsection (1) on its own initiative or on the application of a party to the proceeding.

[Section 647 inserted by No. 48 of 1998 s.6.]

648. Procedure on charge of an offence committed after previous conviction

The proceedings upon an indictment for committing an offence after a previous conviction or convictions are required to be as follows, that is to say —

- (1) The accused person is, in the first instance, to be called upon to plead to so much only of the indictment as charges the subsequent offence;
- (2) If he pleads any plea which raises an issue to be tried by a jury, the jury are to be charged in the first instance to inquire concerning the subsequent offence only;

- (3) If he pleads guilty, or if upon trial he is convicted of the subsequent offence, he is then, and not before, to be asked whether he had been previously convicted as alleged in the indictment;
- (4) If he answers that he had been so previously convicted, the court may proceed to pass sentence upon him accordingly;
- (5) If he denies that he had been so previously convicted, or will not answer directly to the question, the jury are then to be charged to inquire concerning the previous conviction or convictions; and in that case it is not necessary that the jury should be sworn afresh, but the oath already taken by them is deemed to extend to such last-mentioned inquiry.

[649. *Repealed by No. 32 of 1918 s.23.*]

650. Procedure and evidence to be as on charge of an offence

A charge in an indictment of having been previously convicted shall, for all purposes of procedure and evidence, be deemed a charge of having committed an offence.

[Section 650 amended by No. 29 of 1998 s.6.]

651. Further pleas

When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he is to be called upon to plead afresh, and if those issues have been tried by a jury, the court may direct the issues raised by any fresh plea to be tried by the same jury or by another jury. If the court directs them to be tried by the same jury, it is not necessary that the jury should be sworn afresh; but the oath already taken by them is to be deemed to extend to the trial of such fresh issues.

Chapter LXIVA — Trial by judge alone

[Heading inserted by No. 82 of 1994 s.14.]

651A. Trial by judge alone without a jury

- (1) In this section “**election**” means an election under subsection (2).
- (2) Subject to this section, where an accused person committed for trial before any court for an indictable offence elects to be tried by a judge alone, the trial is to proceed without a jury.
- (3) An election is to be made in open court in accordance with rules of court.
- (4) An election can be made —
 - (a) before an indictment has been presented to a court against the accused person; or
 - (b) at any stage after an indictment (including an ex officio indictment) has been presented to a court against the accused person but before the identity of the trial judge is known to the accused person.
- (5) An election does not have effect unless the Crown consents to the trial proceeding without a jury.
- (6) Where 2 or more accused persons are jointly charged, an election made by one accused person does not have effect unless each other accused person also makes an election.
- (7) Where an accused person is charged with 2 or more offences, an election does not have effect unless it is made in respect of both or all of the offences.
- (8) An accused person who elects to be tried by a judge alone cannot subsequently elect to be tried by a jury.

[Section 651A inserted by No. 82 of 1994 s.14.]

651B. Judge's verdict and findings

- (1) In a trial by a judge alone under this chapter the judge may make any findings or give any verdict that could have been made or given by the jury if the trial had been held before a jury, and any finding by or verdict of the judge has, for all purposes, the same effect as a finding by or verdict of a jury.
- (2) A judgment in any trial by a judge alone under this chapter is to include the principles of law applied by the judge and the findings of fact on which the judge relied, but the validity of the judgment is not affected by any failure of the judge to comply with this subsection.

[Section 651B inserted by No. 82 of 1994 s.14.]

651C. Law, practice and procedure relating to jury trials to apply to trials without juries

- (1) A court before which an accused person has elected to be tried by judge alone under this chapter can exercise any power that it could have exercised if the election had not been made. The powers conferred by section 611A can be exercised to the extent provided by rules of court.
- (2) In a trial by a judge alone under this chapter the judge is to apply, so far as is practicable, the same principles of law, practice and procedure as would be applied in a trial before a jury.
- (3) If any written or other law —
 - (a) requires a warning, information or instruction to be given to a jury in certain circumstances; or
 - (b) prohibits a warning from being given to a jury in certain circumstances,

the judge in a trial by judge alone under this chapter is to take the requirement or prohibition into account if those circumstances arise in the course of the trial.

- (4) The provisions of this Code or any other written law relating to trials before a jury apply to a trial by a judge alone under this chapter with any modifications that are prescribed by rules of court and any other modifications that may be necessary.
- (5) Without limiting subsection (4), a reference in this Code or any other written law to a person being tried or triable by or before a jury, or to the trial of a person taking place before a jury, is, unless the context otherwise requires, to be read as including a reference to a person being tried or triable by a judge alone, or to the trial of a person taking place before a judge alone, under this chapter.

[Section 651C inserted by No. 82 of 1994 s.14.]

Chapter LXV — Verdict: Judgment

652. Acquittal: consequences

Subject to section 653, if a jury finds an accused person not guilty of an offence, or gives any other verdict that shows that the person is not liable to punishment for the offence, the person is entitled to be discharged in relation to that offence.

[Section 652 inserted by No. 69 of 1996 s.17¹⁰.]

653. Acquittal on account of unsoundness of mind

- (1) If on the trial on indictment of an accused person the question arises whether the person was not criminally responsible for an act or omission on account of unsoundness of mind, the jury are required, if they find the person not guilty, to return a special verdict as to —
 - (a) whether they found the person not guilty on account of unsoundness of mind at the time of the act or omission; and
 - (b) if they so acquitted the person, the offence the person was acquitted of.

- (2) If a jury finds an accused not guilty on account of unsoundness of mind the person is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 653 inserted by No. 69 of 1996 s.18.]

654. Convicted person to be called on to show cause

When an accused person pleads that he is guilty of any offence, and when, upon trial, an accused person is convicted of any offence, the proper officer is required to ask him whether he has anything to say why sentence should not be passed upon him: But an omission to do so does not invalidate the judgment.

655. Arrest of judgment

A person convicted of an indictable offence, whether on his plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

Upon the hearing of the motion, the court may allow any such amendments of the indictment as it might have allowed before verdict.

The court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Court of Criminal Appeal.

[Section 655 amended by No. 55 of 1953 s.15.]

656. Sentence

If a motion to arrest the judgment is not made or is dismissed, the court may sentence and make other orders in respect of the offender under the *Sentencing Act 1995*.

[Section 656 inserted by No. 78 of 1995 s.26.]

[656A. Repealed by No. 78 of 1995 s.26.]

[657, 658. Repealed by No. 52 of 1984 s.23.]

[659. Repealed by No. 51 of 1992 s.16(4).]

660. Police supervision

- (1) When any person is convicted upon an indictment of a crime, after a previous conviction of a crime, the court may, in addition to any other punishment, direct that such person be subject to the supervision of the police for 2 years, or for such less period as the court may direct, commencing immediately after the expiration of the sentence passed on him for the last of such crimes.
- (2) Any person subject to the supervision of the police, who is at large in Western Australia, is required to notify his place of residence to the police officer in charge of the police district where he resides, and whenever he changes his residence within the same district to notify such change to the police officer in charge of the district, and whenever he is about to leave the police district to notify his intention to the police officer in charge of the district, stating the place to which he is going, and, if required, and so far as is practicable, his address at that place, and whenever he arrives in any police district to forthwith notify his place of residence to the police officer in charge of such last-mentioned district.
- (3) Any person failing to comply with the requirements of this section is guilty of an offence, and is liable on summary conviction to imprisonment for one year.

It is a defence to a charge of an offence defined in this section to prove that the accused person, being on a journey, tarried no longer in the place in which he is charged with failing to notify his place of residence than was reasonably necessary, or that otherwise he did his best to act in conformity with the law.

[Section 660 amended by No. 51 of 1992 s.16(2).]

[661, 662, 663, 664, 665, 666. Repealed by No. 78 of 1995 s.26⁹.]

[667. Repealed by No. 21 of 1963 s.4.]

[668. Repealed by No. 21 of 1963 s.5.]

[668A. Repealed by No. 58 of 1974 s.8.]

[669. Repealed by No. 78 of 1995 s.26.]

[669A. Repealed by No. 63 of 1963 s.17.]

[670. Repealed by No. 51 of 1992 s.16(4).]

[671, 672. Repealed by No. 119 of 1985 s.27.]

673. Effect of summary conviction for indictable offences

When a person has been summarily convicted of an indictable offence, the conviction is to be deemed a conviction of a simple offence only, and not of an indictable offence.

Chapter LXVI — Costs

674. Costs of prosecution in certain cases

When a person is convicted on indictment of any indictable offence relating to the person of any person, the court, on the application of the person aggrieved by the offence, may, in addition to any sentence which is passed upon the offender, adjudge him to pay to the person aggrieved his costs of prosecution, together with a sum by way of compensation for any loss of time suffered by him by reason of the offence of which the offender is convicted.

An order for the payment of such costs, or of any sum so awarded by way of compensation, may be enforced in the same manner as a judgment of the court given in an action.

If any money was found on the person of the offender on his arrest, the court may order it to be applied towards the payment of any money so ordered to be paid by him.

When an order is made under the provisions of this section for the payment of money by way of compensation to an aggrieved person, the offender is not liable to any civil proceedings for the same cause at the suit of that person.

675. Costs in cases of defamation

- (1) In the case of a prosecution of any person on the complaint of a private prosecutor on a charge of the unlawful publication of defamatory matter, if the accused person is indicted and acquitted he is entitled to recover from the prosecutor his costs of defence, unless the court otherwise orders.
- (2) In the case of a prosecution of any person on the complaint of a private prosecutor on a charge of the unlawful publication of defamatory matter, if the accused person pleads that the defamatory matter was true, and that it was for the public benefit that the publication should be made, then, if that issue is found for the Crown, the prosecutor is entitled to recover from the accused person the costs sustained by him by reason of such plea, unless the court otherwise orders.

676. Taxation

Costs of a prosecution or defence must be taxed by the proper officer of the court in which the indictment is presented.

If the indictment is presented in a Circuit Court, the costs must be taxed by the proper officer of the Supreme Court.

The term “**costs of prosecution**” includes costs incurred by the person aggrieved in order to the committal of the offender, and costs incurred by him with the consent of the Crown for the purposes of the trial.

The term “**costs of defence**” includes costs incurred by the accused person both before and after his committal.

[Section 676 amended by No. 55 of 1953 s.17; No. 38 of 1977 s.3.]

677. Enforcement of judgment of Circuit Court

When an order is made by a Circuit Court under the provisions of this chapter, it may be recorded in the Supreme Court, and may then be enforced in the same manner as a judgment of that Court given in an action.

[Section 677 amended by No. 55 of 1953 s.18; No. 38 of 1977 s.3.]

Chapter LXVII — Execution of sentence

[678. Repealed by No. 52 of 1984 s.26.]

[679. Repealed by No. 78 of 1995 s.26.]

[680. Repealed by No. 51 of 1992 s.16(4).]

681. Levy of fine and costs on conviction for defamation

When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing, the prosecutor may levy the fine, if any, and costs out of any property of the offender in like manner as in civil actions, and also out of the whole of the types, presses, or printing materials, which, at the time when the offence was committed, belonged to any person to whom any types, presses, or printing materials, used in printing such defamatory matter, belonged at the time when the offence was committed, to whomsoever the same may belong at the time of the levy.

682. Enforcing the payment of money, other than fines etc.

- (1) In this section —
“**payment order**” means an order requiring a person to pay money, other than —
- (a) a fine as defined in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
 - (b) compensation to be paid under a compensation order made under Part 16 of the *Sentencing Act 1995*; or
 - (c) the amount to be paid on the forfeiture of a recognizance under section 746A.
- (2) This section applies where the Supreme Court or the District Court makes a payment order in connection with a criminal cause or matter.
- (3) A court that makes a payment order may also make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the money to be paid were a fine imposed on the person.
- (4) If a court does not make an order under section 59 of the *Sentencing Act 1995* and if the money is not paid within 28 days after the date of a payment order, the money may be recovered as a judgment debt in a court of competent jurisdiction.
- (5) For the purposes of subsection (4), a Registrar of the court may issue a certified copy of a payment order and that copy may be registered as a judgment in a court of competent jurisdiction.
- (6) Subsection (4) does not prejudice the recovery of the money by means expressly provided by a written law.

[Section 682 inserted by No. 78 of 1995 s.24.]

[682A. Repealed by No. 92 of 1994 s.11.]

Chapter LXVIII — Effect of conviction as regards prisoners' property

683. Forfeitures abolished

Forfeitures, escheats, attainders and corruptions of blood on account of crime or conviction stand abolished.

684. Appointment, powers and duties of curator of prisoner's estate

- (1) Whilst any person heretofore or hereafter sentenced to a term of imprisonment or detention exceeding 12 months or to detention during the Governor's pleasure is under and subject to such sentence the court may, on the application of the chief executive officer of the department of the Government principally assisting the Minister administering the *Prisons Act 1981* with the administration of that Act, appoint a curator of such prisoner's estate, and may at any time remove such curator, and, if deemed expedient, appoint another person in his place.
- (2) Subject to any order or direction of the court, the prisoner's real and personal estate shall vest in the curator, and such vesting shall be deemed a transmission within the meaning of the *Transfer of Land Act 1893*, and may be registered under that Act accordingly, subject to such and the like conditions as apply in the case of transmissions of the land of a deceased person; provided that nothing herein shall affect the prisoner's right to dispose of his estate whilst there is no curator thereof.
- (3) The curator shall have power —
 - (a) to pay and discharge out of the said estate all such debts and liabilities as are justly payable out of the same;
 - (b) to make and pay out of the said estate all such allowances for the support or maintenance of any wife or child or reputed wife or child of the prisoner or of any other relative or reputed relative of such prisoner dependent upon him for support or for the benefit of the

prisoner himself if and while he shall be lawfully at large under any licence, as to such curator shall seem fit;

- (c) to manage the said estate and take such steps and do such things for the preservation and advantage thereof (including the carrying on of any business) as shall be approved by the court;
- (d) to lease, sell or otherwise dispose of any part of the said estate whenever he shall judge it expedient so to do;
- (e) to sue or defend any action on behalf of the prisoner;
- (f) to exercise such powers in respect of the said estate as an administrator may exercise in respect of the estate of his intestate:

Provided that no real estate shall be leased for a longer term than one year or sold or mortgaged except pursuant to an order of the court.

- (4) The court may require any curator to give security or may make any appointment subject to security being given, and may impose any such conditions, restrictions and limitations on the appointment as may appear expedient, and may allow the curator such remuneration as shall be just.
- (5) Notwithstanding anything herein no property acquired by a prisoner whilst he shall be lawfully at large under any licence shall vest in any curator, but such prisoner shall be entitled thereto without interference.
- (6) A curator shall be entitled at any time to apply to the court for advice and directions as to the performance of his duties and the exercise of his powers, and any person may summon the curator before the court to show cause why he should not do or submit to any act, matter, or thing in his character as such curator, and the court may make such order as shall be just.
- (7) In this chapter the word “**court**” means the Supreme Court or any Judge thereof, and the word “**prisoner**” includes any person under and subject to such sentence as aforesaid though he be not

in actual custody, and the provisions of this chapter shall extend to any person who is undergoing or subject to a term of imprisonment by way of commuted sentence as if he had been originally sentenced to such term.

[Section 684 amended by No. 47 of 1987 s.25; No. 70 of 1988 s.32.]

685. Vesting of property on death, bankruptcy, or liberation of prisoner

When any person for whose estate a curator has been appointed under this chapter shall die or be made bankrupt or shall cease to be a prisoner the powers, authorities, and discretions of any curator of his estate shall cease, and the estate and all accretions thereto shall, subject and without prejudice to the administration and application thereof under and according to this chapter, vest in the person who would be entitled thereto if no curator had been appointed:

Provided that the curator may do such things as may be necessary for the care and preservation of the estate or any part thereof until it can be handed over to the person entitled thereto.

686. Curator to account

A curator shall be accountable to the person entitled to the estate that was vested in him in the same manner in which a trustee is accountable to his cestui que trust, without prejudice, however, to the administration and application of the estate under this chapter, and on his authority coming to an end the curator shall pass his accounts before a Registrar of the Supreme Court in manner to be prescribed by rules which the Judges of the Supreme Court or a majority of them are hereby empowered to make:

Provided that a curator shall not be answerable to any person for any property which shall not actually have come to his hands by

virtue of this chapter nor for any loss or damage which may happen through any mere omission or nonfeasance on his part.

[Section 686 amended by No. 67 of 1979 s.78.]

Chapter LXIX — Appeal

[Heading amended by No. 78 of 1995 s.26.]

687. Court of Criminal Appeal

- (1) The Full Court (as defined by section 57 of the *Supreme Court Act 1935*) shall, subject as hereinafter provided have jurisdiction to hear and determine appeals under this chapter, and the expression Court of Criminal Appeal in this Code shall mean the said Full Court.
- (2) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the court hearing the case.
- (3) The Court of Criminal Appeal shall, for the purposes of and subject to the provisions of this chapter, have full power to determine, in accordance with this chapter, any questions necessary to be determined for the purpose of doing justice in the case before the Court.
- (4) Rules of court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.
- (5) The Principal Registrar of the Supreme Court shall be Registrar of the Court of Criminal Appeal.
- (6) It shall be no objection to a Judge taking part in the determination of any question that he presided at the trial of the appellant or that the appeal is against his own decision.
- (7) Appeals under this chapter shall be heard and determined before an uneven number of Judges.

[Section 687 amended by No. 55 of 1953 s.20; No. 67 of 1979 s.79.]

688. Right of appeal in criminal cases

- (1) A person convicted on indictment may appeal to the Court of Criminal Appeal —
 - (a) against his conviction on any ground of appeal which involves a question of law alone; and
 - (b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal.
- (1a) A person convicted on indictment or convicted by a court of summary jurisdiction and committed for sentence may appeal to the Court of Criminal Appeal —
 - (a) against a sentence of indefinite imprisonment passed under Part 14 of the *Sentencing Act 1995*; and
 - (b) with the leave of the Court of Criminal Appeal, against any other sentence passed upon him, unless the sentence is one fixed by law.
- (2) An appeal may be made to the Court of Criminal Appeal on the part of the prosecution —
 - (a) against any decision allowing a demurrer to an indictment or arresting judgment on an indictment or quashing an indictment or staying or adjourning proceedings on an indictment; or
 - (b) against any verdict of acquittal on an indictment and any judgment founded thereon when such verdict has been found by direction of the judge or other authority entitled to give directions on law to the jury at the trial; or

- (ba) against any verdict of acquittal given by a judge alone under Chapter LXIVA and any judgment founded on that verdict —
 - (i) on any ground of appeal which involves a question of law alone; or
 - (ii) with the leave of the Court of Criminal Appeal or upon the certificate of the judge that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact;

or

- (c) against any judgment (including any verdict on which the same is founded) given on a plea to the jurisdiction of a court to try an accused person for an offence alleged in an indictment; or
- (d) against any punishment imposed or order made in respect of a person convicted on indictment or convicted by a court of summary jurisdiction and committed for sentence.

[Section 688 amended by No. 32 of 1918 s.30; No. 20 of 1954 s.8; No. 49 of 1975 s.3; No. 62 of 1976 s.2; No. 116 of 1981 s.9; No. 82 of 1994 ss.11 and 15; No. 78 of 1995 s.26.]

689. Determination of appeals in ordinary cases

- (1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal, if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

- (2) Subject to the appeal provisions of this chapter the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or order a new trial.
- (3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict or which may lawfully be passed for the offence of which the appellant or an accused person stands convicted (whether more or less severe) in substitution therefor as they think ought to have been passed and in any other case shall dismiss the appeal.
- (4) On an appeal against sentence the Court of Criminal Appeal may have regard to whether or not the appellant or a convicted person has failed wholly or partly to fulfil an undertaking to assist law enforcement authorities that caused the sentencing court to reduce the sentence that it would otherwise have passed.

[Section 689 amended by No. 20 of 1954 s.9; No. 29 of 1998 s.5.]

690. How other appeals disposed of

- (1) On any appeal against a decision allowing a demurrer, quashing an indictment, or arresting judgment the Court may affirm, reverse, or modify the decision, and give any judgment and make any order which ought to have been given or made in the first instance, and exercise any powers of amendment or any other powers and direct any step to be taken which ought to have been exercised or taken in the first instance.

- (2) If an order arresting judgment is reversed, the Court is to direct that judgment be pronounced upon the offender, and he is to be ordered to appear, at such time and place as the Court may direct, to receive judgment, and any justice or the Registrar may, for the purpose of securing such appearance, issue his warrant for the arrest and detention of the offender.
- (3) On any appeal against an acquittal by direction or on an appeal against any judgment given on a plea to the jurisdiction, the Court, if it allows the appeal, may reverse any judgment, decision, or verdict, the correctness of which was in question in the appeal, and may order a new trial or that the accused shall stand his trial, as the case may require.

[Section 690 amended by No. 87 of 1982 s.39.]

691. Court may give directions as to new trial

- (1) When the Court orders a new trial or that any person do stand his trial or be called upon to plead to an indictment, or when there is or may be any issue to be tried in consequence of the Court's decision, the Court may fix the time and place of the trial, and may give such directions with regard thereto as may appear necessary.
- (2) Any justice or the Registrar may, with a view to securing such person's appearance at and during the trial, issue his warrant for the arrest and detention of the person to be tried or directed to be called upon to plead, and such person may be admitted to bail by order of the Court of Criminal Appeal or of the court before which he is being or to be tried, which order may be made at any time.

692. Appeal by person acquitted on the ground of insanity

When a person charged on indictment has been acquitted on account of unsoundness of mind, he shall have the like right of appeal as if he had been convicted, and the verdict shall for the purposes of the appeal be deemed to be a verdict convicting the

accused with a declaration of his unsoundness of mind added, and the Court shall deal with the appeal accordingly:

Provided that if the appeal be allowed, the Court shall either order an unqualified verdict and judgment of acquittal to be entered or order a new trial.

693. Powers of Court in special cases

- (1) Where the Court of Criminal Appeal —
- (a) allows an appeal against the conviction of an appellant for an offence; or
 - (b) passes a sentence in substitution for the sentence passed on an appellant on his conviction for an offence,

and, at the time when the Court allows the appeal or passes the sentence, as the case may be, the appellant is undergoing, or under sentence to undergo, a sentence passed for another offence of which he was convicted on or after the occasion on which he was convicted of the first-mentioned offence, the Court may pass such sentence in substitution for the sentence passed for that other offence as they think proper, and as may be warranted in law for that other offence, or may give directions as to when the sentence passed for that other offence takes effect which may include a direction that the sentence is to be regarded as having taken effect at a time that precedes the making of the direction.

- (1a) Where the sentence passed for an offence ceases to have effect in circumstances other than those set out in subsection (1) and, at the time when the sentence ceases to have effect, the offender is undergoing, or under sentence to undergo, a sentence passed for another offence of which he was convicted on or after the occasion on which he was convicted of the first-mentioned offence, the Court of Criminal Appeal may, on the application of the Attorney General, exercise powers in relation to the sentence passed for that other offence similar to those set out in subsection (1).

- (2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence not being a sentence of greater severity.
- (3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.
- (4) If it appears to the Court that a convicted appellant ought to have been found not guilty on account of unsoundness of mind, they may quash the conviction and direct a judgment and verdict of acquittal on account of unsoundness of mind to be entered.
- (5) If a judgment and verdict of acquittal on account of unsoundness of mind is so entered the appellant is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 693 amended by No. 20 of 1982 s.12; No. 51 of 1992 s.13; No. 73 of 1994 s.4; No. 69 of 1996 s.19.]

693A. References of points of law to Court of Criminal Appeal

- (1) Where a person has been tried on indictment, the Attorney General may, within 60 days of the judgment of the court before which the person was tried, request the judge before whom the

person was tried to refer to the Court of Criminal Appeal any question of law which arose at the trial.

- (2) The question shall be referred by the judge before whom the person was tried to the Court of Criminal Appeal, together with a statement of the circumstances out of which the question arose, or such further or other statement as the Court of Criminal Appeal may require, and the Court of Criminal Appeal shall, in accordance with this section, consider the question and give its opinion on it.
- (3) The determination by the Court of Criminal Appeal of any question referred to it under this section shall not in any way affect or invalidate any verdict or decision given at the trial at which the question arose.
- (4) Any person charged at the trial or affected by the decision is entitled to be heard before the Court of Criminal Appeal upon the determination of the question referred, and if it appears that that person does not propose to be represented upon the determination of the question, the Attorney General shall instruct counsel to argue the question referred before the Court of Criminal Appeal on behalf of that person, and the reasonable costs of legal representation of any person heard before the Court of Criminal Appeal as provided in this subsection shall be paid by the Crown.
- (5) There shall not be published —
 - (a) any report of any request made pursuant to subsection (1); or
 - (b) any report of proceedings under this section which discloses the name or identity of the person charged at the trial or affected by the decision given at the trial,

and any publication in contravention of this subsection shall be punishable as a contempt of the Court.

[Section 693A inserted by No. 49 of 1975 s.4.]

694. Re-vesting and restitution of property on conviction

The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provisions of section 24(1) of *The Sale of Goods Act 1895*, as to the re-vesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended —

- (a) in any case until the expiration of 10 days after the date of the conviction; and
- (b) in cases where notice of appeal or leave to appeal is given within 10 days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

- (2) The Court of Criminal Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and if varied shall take effect as so varied.

[Section 694 amended by No. 78 of 1995 s.26.]

695. Time for appealing

- (1) Where a person convicted desires to appeal under this chapter to the Court of Criminal Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal, or notice of his

application for leave to appeal, in such manner as may be directed by rules of court, within 21 days, of the date of conviction. Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Court.

In other cases notice of appeal must be given within 21 days after the pronouncement, finding, or making of the judgment, verdict, order, or decision complained of.

The time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Criminal Appeal, and such extension may be ordered although the application for the same is not made until after the expiration of the time appointed.

[(2) repealed]

[Section 695 amended by No. 49 of 1975 s.5; No. 52 of 1984 s.28; No. 78 of 1995 s.26.]

696. Judge's notes and report to be furnished on appeal

The judge or chairman of any court before whom a person is convicted shall, in the case of an appeal under this chapter against the conviction or against the sentence, or in the case of an application for leave to appeal under this chapter, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and in all cases of an appeal against sentence, and in any other case if he thinks it desirable in the interests of justice to do so, or if required by the Court of Criminal Appeal, shall also furnish to the Registrar in accordance with the rules of court a report giving his opinion upon the case or upon any point arising in the case.

697. Supplemental powers of Court of Criminal Appeal

For the purposes of this chapter, the Court of Criminal Appeal may, if they think it necessary or expedient in the interests of justice —

- (a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case; and
- (b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the Court or before any officer of the Court or justice of the peace or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (c) if they think fit receive the evidence, if tendered, of any witness (including a convicted appellant) who is a competent but not compellable witness:

Provided that where the wife or husband of a convicted appellant would not have been a compellable witness for the prosecution at the trial her or his evidence shall not be received, except on behalf of the appellant, unless she or he has been first informed by the Court that she or he is not compellable to give evidence if she or he is unwilling to do so.

- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act

upon the report of any such commissioner so far as they think fit to adopt it; and

- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

[Section 697 amended by No. 48 of 1991 s.12(10); No. 73 of 1994 s.4.]

[698. Repealed by No. 101 of 1990 s.52.]

699. Right of appellant or respondent under section 688 to be present

- (1) Subject to any order to the contrary made by the Court of Criminal Appeal, a convicted appellant or a respondent to an appeal made pursuant to section 688(2)(d) of this Code, notwithstanding that he is in custody, shall be entitled to be present if he desires it on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Court gives him leave to be present.

- (2) The power of the Court to pass any sentence under this chapter may be exercised notwithstanding that the appellant or respondent is for any reason not present.

[Section 699 amended by No. 49 of 1975 s.7.]

700. Treatment of appellant in custody

- (1) A convicted appellant who is not admitted to bail shall, pending the determination of his appeal or of his application for leave to appeal, be treated in accordance with the special regulations for the time being applicable to prisoners unconvicted of crime during the period of their detention for safe custody only.

[(2) repealed]

[Section 700 amended by No. 87 of 1982 s.40.]

701. Duties of Registrar with respect to notices of appeal, etc.

- (1) The Registrar shall take all necessary steps for obtaining a hearing under this chapter of any appeals or applications, notice of which is given to him under this chapter, and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the court before which any convicted appellant or applicant was tried, which appear necessary for the proper determination of the appeal or application.
- (2) If it appears to the Registrar that any notice of an appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court for summary determination, and where the case is so referred, the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

- (3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled to or may be authorised to appeal under this chapter, shall be kept in the custody of the court of trial in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.
- (4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this chapter to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal, or to make any application under this chapter, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.
- (5) The Registrar shall report to the Court or some Judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel or counsel only ought to be assigned to an appellant under the powers given to the Court by this chapter.

702. Powers which may be exercised by a single Judge

The powers of the Court of Criminal Appeal under this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any Judge of the Supreme Court in the same manner as they may be exercised by the Court of Criminal Appeal, and subject to the same provisions; but if the Judge refuses an application on the part of the appellant to exercise any such power in his favour, the

appellant shall be entitled to have the application determined by the Court of Criminal Appeal as duly constituted for the hearing and determination of appeals under this chapter.

[Section 702 amended by No. 101 of 1990 s.53.]

703. Definitions

In the provisions of this Code relating to appeals to the Court of Criminal Appeal, unless the context otherwise requires —

The expression “**convicted appellant**” includes a person who has been convicted, or who has been acquitted on account of unsoundness of mind, and who desires to appeal or to obtain the leave of the said Court to appeal under this chapter, and has given notice of appeal or of his application for leave to appeal within the time or extended time limited by or pursuant to this chapter for that purpose; and

The expression “**sentence**” means a sentence under the *Sentencing Act 1995* and includes —

- (a) any other order under that Act; and
- (b) an order for the forfeiture or disposal of any property or thing.

The expression “**judge who tried him**”, used in relation to any convicted appellant, means the judge or chairman of the court from the conviction before which such appellant desires to appeal.

[Section 703 amended by No. 119 of 1985 s.28; No. 129 of 1987 s.36; No. 70 of 1988 s.33; No. 78 of 1995 s.26.]

704. Writs of error and motions for new trials in criminal cases abolished

Proceedings in error in cases to which any of the preceding provisions of this chapter apply and any powers or practice which may now exist in the Supreme Court in respect of motions for new trials or the granting thereof in such cases other than such as are provided for in this chapter are hereby abolished.

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[705, 706. Repealed by No. 78 of 1995 s.26.]

[706A. Repealed by No. 91 of 1965 s.9.]

[707. Repealed by No. 78 of 1995 s.26.]

[Chapters LXX (s. 708) and LXXI (ss. 709-710) repealed by No. 91 of 1965 s.10.]

Chapter LXXII — Seizure and detention of property connected with offences: Custody of women unlawfully detained for immoral purposes: Restitution of property unlawfully acquired

711. Search warrant

If it appears to a justice, on complaint made on oath, that there are reasonable grounds for suspecting that there is in any house, vessel, vehicle, aircraft, or place —

- (a) Anything with respect to which any offence has been or is suspected, on reasonable grounds, to have been committed; or
- (b) Anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence; or
- (c) Anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence;

he may issue his warrant directing a police officer or police officers named therein, or all police officers, to search such house, vessel, vehicle, aircraft, or place, and to seize any such thing if found, and to take it before a justice to be dealt with according to law.

Any such warrant is to be executed by day, unless the justice, by the warrant, specially authorises it to be executed by night, in which case it may be so executed.

Where it appears on the complaint that an offence involving the safety of an aircraft has been, is being or may be committed on board or in relation to the aircraft, the justice may direct in his warrant that any person on board the aircraft or any person who is about to board the aircraft may be searched.

A female person shall not be searched under the authority of a warrant issued under this section, except by a female person.

[Section 711 amended by No. 32 of 1918 s.32; No. 53 of 1964 s.13.]

711A. Search of aircraft

- (1) If it appears to the person in command of an aircraft that there are reasonable grounds for suspecting that an offence involving the safety of the aircraft has been, is being or may be committed on board or in relation to the aircraft, he may, with such assistance as is necessary, search or cause to be searched —
- (a) the aircraft and any person, luggage or freight on board the aircraft; and
 - (b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft,

and seize —

- (c) anything, whether animate, or inanimate and whether living or dead as to which there are reasonable grounds for believing that it will of itself or by or on scientific examination, afford evidence as to the commission of any offence; or
- (d) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

and take it before a justice to be dealt with according to law.

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- (2) A female person shall not be searched under subsection (1) except by a female person.

[Section 711A inserted by No. 53 of 1964 s.14.]

712. Property found on offenders on arrest

When, on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to be committed is found in his possession, the person arresting him may take such property before a justice to be dealt with according to law.

[713. Repealed by No. 70 of 1988 s.8(1).]

714. Seized property to be taken before justice: Disposal of such property

When anything is seized or taken under the provisions of this Code, the person seizing or taking it is required forthwith to carry it before a justice.

The justice may cause the thing so seized or taken to be detained in such custody as he may direct, taking reasonable care for its preservation, until the conclusion of any investigation that may be held with respect to it; and if any person is committed for trial for any offence committed with respect to the thing so seized or taken, or committed under such circumstances that the thing so seized or taken is likely to afford evidence at the trial, he may cause it to be further detained in like manner for the purpose of being produced in evidence at such trial.

If no person is so committed, the justice is required to direct that the thing be returned to the person from whom it was taken, unless he is authorised or required by law to dispose of it otherwise.

If the thing so seized or taken is anything forged, or is of such a nature that a person who has it in his possession without lawful

authority or excuse is guilty of an offence, then if any person is committed for trial for any offence committed with respect to it, or committed under such circumstances as aforesaid and is convicted, the court before which he is convicted, or, in any other case, any justice may cause it to be defaced or destroyed.

If the thing so seized or taken is of such a nature that a person who has it in his possession, knowing its nature and without lawful authority or excuse, is guilty of an offence, then, as soon as it appears that it will not be required, or further required, in evidence against the person who had it in his possession, it is to be delivered to the Treasurer, or some person authorised by him to receive it.

[Section 714 amended by No. 101 of 1990 s.54.]

715. Explosives, power to transport

If the thing seized or taken is an explosive substance found in a vessel or vehicle, the person acting in the execution of the warrant may for 24 hours after seizure, and for such longer time as is necessary for the purpose of removal to a safe place of deposit, use the vessel or the vehicle, with the tackle and furniture thereof, or the beasts and accoutrements belonging thereto, as the case may be, paying afterwards to the owner of the vessel or vehicle a sufficient recompense for its use, which is to be assessed by the justice or justices before whom the suspected offender is brought, and, in case of non-payment, immediately after such assessment, may be recovered before 2 justices in a summary way.

716. Women detained for immoral purposes, warrant to search for

If it appears to a justice, on complaint made on oath by a parent, relative, or guardian of a woman or girl, or any other person, who in the opinion of the justice is acting in good faith in the interests of a woman or girl, that there is reasonable cause to

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suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within his jurisdiction, he may issue a warrant directed to a police officer, and authorising him to search for such woman or girl, and, when found, to take her to and detain her in a place of safety until she can be brought before a justice; and the justice before whom she is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as the circumstances may permit and require.

The justice issuing the warrant may, by the same or any other warrant, direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before a justice, and may direct proceedings to be taken for punishing him according to law.

A woman or girl is deemed to be unlawfully detained for immoral purposes if she —

- (a) Is under the age of 17 years; or
- (b) Being of or over the age of 17 years, and under the age of 18 years, is so detained against her will, or against the will of her father or mother, or of any other person who has the lawful care or charge of her; or
- (c) Being of or above the age of 18 years, is so detained against her will;

and, in either case, is detained by any person in order to her being unlawfully carnally known by any man, whether a particular man or not.

A person authorised by warrant under this section to search for a woman or girl may enter, and if need be, by force, any house or other place specified in the warrant, and may remove the woman or girl therefrom.

The warrant must be executed by the police officer mentioned in it, who must, unless the justice otherwise directs, be

accompanied by the parent, relative, guardian, or other person by whom the complaint is made, if such person so desires.

[716A, 717, 717A, 718, 719. Repealed by No. 78 of 1995 s.26.]

**Chapter LXXIII — Information by private persons for
indictable offences: Ex officio indictments**

720. Information by leave of the Supreme Court by private prosecutors

Any person may, by leave of the Supreme Court, present an information against any other person for any indictable offence not punishable with strict security life imprisonment, alleged to have been committed by such other person.

An information presented by leave of the Court is to be signed by the person on whose application the leave is granted, or some other person appointed by the Court in that behalf, and filed in the Supreme Court.

The person who signs the information is called the prosecutor.

The information is to be intituled “The Queen on the prosecution of the prosecutor (naming him) against the accused person” (naming him), and must state that the prosecutor informs the Court by leave of the Court.

Except as otherwise expressly provided, the information and the proceedings upon it are subject to the same rules and incidents in all respects as an indictment presented by the Attorney General and the proceedings upon such an indictment as hereinbefore set forth.

[Section 720 amended by No. 52 of 1984 s.29.]

721. Security to be given by prosecutor for costs of defence

Before the information is presented, the prosecutor is to be required to give security in such amounts and in such manner as the Court on giving leave to present the information may direct,

that he will prosecute the information without delay, and will pay to the accused person such costs incurred by him in respect of his defence to the charge as the Court may order him to pay.

722. Service of information

An office copy of the information is to be served upon the accused person, upon which copy there must be indorsed a summons, under the hand of the Registrar and seal of the Court, requiring him to plead to the information within the same time after service within which he would be required to file a defence after service of a writ in a civil action.

[Section 722 amended by No. 20 of 1954 s.10.]

723. Plea

- (1) The accused person is required within the time so limited to file his plea in writing in the Supreme Court, and to deliver a copy thereof forthwith to the prosecutor.
- (2) The plea in writing shall contain an address for service of notices and other documents required to be served on the accused person.

[Section 723 amended by No. 20 of 1954 s.11.]

724. Default of plea

If the accused person does not plead to the information according to the exigency of the summons indorsed on the copy served on him, the prosecutor may serve him with a notice to the effect that, unless he pleads or demurs within 8 days, a plea of not guilty will be filed in his name. Upon filing an affidavit setting forth the service of the information and of such notice, and of default of pleading in accordance with the exigency of the notice, the prosecutor may cause a plea of not guilty to be filed for the accused person, and thereupon the same proceedings may be had as if the accused person had filed a plea of not guilty.

Or, in the case of a misdemeanour, judgment of conviction may, by leave of the Court or a Judge, be entered against him for want of a plea.

But the Court or a Judge may, either before or after the time so prescribed, allow further time for the accused person to plead or demur to the information.

725. Time and place of trial

When the accused person pleads any plea, or when a plea of not guilty is filed for him by the prosecutor, either party may apply to a Judge to appoint the time and place of trial, of which notice is to be given to the accused person.

726. Effect of judgment for prosecutor on demurrer

If the accused person demurs only, and does not plead any plea, and judgment is given against him on demurrer, he is required to plead to the information within such time as the Court or a Judge may allow. If he makes default in doing so, the same proceedings may be taken as if he had made default in pleading in the first instance.

727. Effect of judgment by default

If judgment of conviction is entered against the accused person for want of a plea, he is required to attend to receive the judgment of the Court at a time and place to be appointed by a Judge. If he does not so attend, any justice may issue his warrant to arrest him and bring him before the Court to receive judgment.

728. Costs of defence

In either of the following cases, that is to say —

- (1) If the accused person pleads to the information, and is not brought to trial within a year after filing his plea; or
- (2) If the Attorney General informs the Court that he will not further proceed on the information; or

(3) If the accused person is acquitted upon trial;

the Court, or the Judge before whom the trial, if any, is had, may award costs to the accused person.

729. Practice to be applied on ex officio information

- (1) When an indictment is presented in any court of criminal jurisdiction by the Attorney General against any person who has not been committed for trial for the offence charged in the indictment, subject to section 580 of this Code, the accused person shall be dealt with in all respects and the indictment and the proceedings upon it are subject to the same procedure as if the accused person had been committed for trial for the offence charged in the indictment.
- (2) When the indictment is presented in any court other than the Supreme Court, the foregoing provisions of this chapter shall be read and construed with reference thereto as if such court were mentioned in such provisions in lieu of the Supreme Court and as if in lieu of an officer of the Supreme Court the corresponding officer of such other court were mentioned. For the purposes of this section a Judge of the District Court shall be deemed to correspond to a Judge of the Supreme Court and the Registrar of the District Court to the Registrar of the Supreme Court.
- (3) When an indictment is presented in a court in the circumstances referred to in subsection (1), the court may, on its own motion or on the application of the accused person, direct the Crown —
 - (a) to serve the accused person and to lodge with the court, within such time as is specified, a copy of any statement made, in accordance with section 69 of the *Justices Act 1902*, by a person whose evidence the Crown proposes to adduce at the trial; and
 - (b) to afford the accused person reasonable opportunity to inspect any material exhibits that the Crown proposes to tender at the trial.

- (4) If a copy of a statement of a person is served in accordance with a direction made under subsection (3)(a), the original of the statement may be produced and given in evidence at the trial —
- (a) if it is proved to the satisfaction of the court that the person is dead, or out of Western Australia, or so ill as not to be able to travel, although there may be a prospect of the person's recovery; or
 - (b) if the person is kept out of the way by the accused person.
- (5) If there is a prospect of the recovery of a person proved to be too ill to travel, the court shall not be obliged to receive the statement, but may postpone the trial, discharging a jury if one has been empanelled if it thinks fit.

[Section 729 amended by No. 55 of 1953 s.22; No. 20 of 1954 s.12; No. 38 of 1977 s.3; No. 73 of 1994 s.4; No. 71 of 2000 s.43.]

Chapter LXXIV — Miscellaneous provisions

[730. Repealed by No. 70 of 1988 s.8(1).]

731. Court may direct certain persons to be prosecuted for perjury

If it appears to any court that any person has been guilty of perjury in any testimony given before it, the court may commit him to take his trial for such perjury before any court of competent jurisdiction in the same manner as if he had been charged before a justice with the same perjury, and sufficient evidence had been given against him.

A person so committed may be admitted to bail in the same manner as if he had been committed for trial by a justice.

The court may require any person to enter into a recognizance conditioned to appear and give evidence at the trial of a person so directed to be prosecuted.

In this section the term “**court**” includes any person before whom a writ of inquiry is executed, but does not include justices in petty sessions.

732. Committal of fraudulent debtors

If, on the examination of any person whose affairs are in course of administration under the provisions of the laws relating to bankrupt debtors before a court which has jurisdiction to examine him in the course of such administration, it appears to the court that he has been guilty of any of the offences defined in Chapter LIV, the court may commit him to take his trial for such offence before some court of competent jurisdiction, or may hold him to bail to appear before a justice to answer any charge that may be brought against him for any such offence.

A person so committed may be admitted to bail in the same manner as if he had been committed for trial by a justice.

733. Staying prosecution for publication of Parliamentary paper

A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in any paper published by him, or by his servant, by order or under the authority of either House of Parliament, may at any stage of the proceedings apply to the Supreme Court or a Judge thereof, or to the court in which the proceedings are pending, for an order staying the prosecution, first giving 24 hours’ notice of his intention so to do to the prosecutor; and upon production to the court or Judge of a certificate under the hand of the President or Clerk of the Legislative Council, or Speaker or Clerk of the Legislative Assembly, as the case may be, stating that the paper in respect of which the prosecution is instituted was published by the defendant, or by his servant, by order or under the authority of the Council or Assembly, together with an affidavit verifying such certificate, the court or Judge is required immediately to stay the prosecution, and may order the prosecutor to pay to the defendant his costs of defence.

A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in a copy of, or an extract from or abstract of, any such paper, may, at any stage of the proceedings, apply to the Supreme Court or a Judge thereof, or to the court in which the proceedings are pending, for an order, staying the prosecution; and upon production to the court or Judge of an original of such paper, together with such a certificate as aforesaid, and an affidavit verifying the same, the court or Judge is required to stay the prosecution, and may order the prosecutor to pay to the defendant his costs of defence.

[734. *Repealed by No. 101 of 1990 s.55.*]

[735. *Repealed by No. 55 of 1963 s.5.*]

[736. *Repealed by No. 14 of 1992 s.9.*]

737. Saving of civil remedies

Except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

738. Incriminating answers and discovery

No person shall in any civil or criminal proceeding be excused from answering any question put either *viva voce* or by interrogatory or from making any discovery of documents on the ground that the answer or discovery may criminate or tend to criminate him in respect of any offence against Chapter XXXV or Chapter LV:

Provided that his answer shall not be admissible in evidence against him in any criminal proceedings other than a prosecution for perjury.

739. Limitation of proceedings arising out of arrest or seizure

A prosecution against any person for anything done in pursuance of any of the provisions of this Code with respect to the arrest of offenders or the seizure of goods must be commenced within 6 months after the fact committed, and not otherwise.

[Section 739 amended by No. 55 of 1953 s.24; No. 35 of 1935 s.48A (as amended by No. 73 of 1954 s.5).]

740. No court fees in criminal cases

No fees can be taken in any court of criminal jurisdiction or before any justice from any person who is charged with an indictable offence for any proceeding had or taken in the court or before the justice with respect to the charge.

741. Court may order payment of witnesses for defence

The Attorney General may, in his discretion, order payment of the expenses of any witnesses bound by recognizance to appear on behalf of an accused person as if such witness were bound over on behalf of the prosecution, and any such payment is deemed to be part of the expenses of the prosecution.

742. Magistrates may act alone

Any stipendiary magistrate may exercise alone any jurisdiction conferred by this Code on 2 justices in petty sessions.

743. Jurisdiction of one justice in certain circumstances

Any one justice may exercise the jurisdiction of 2 justices under this Code whenever no other justice usually residing in the district can be found at the time within a distance of 16 kilometres; provided that the justice, on any conviction, certifies, in writing, that no other justice can be found within 16 kilometres.

A certificate under this section is conclusive evidence of the facts stated.

[Section 743 amended by No. 55 of 1953 s.25; No. 94 of 1972 s.4 (as amended by No. 19 of 1973); No. 51 of 1992 s.16(1).]

744. Powers of Attorney General may be delegated to Solicitor General or Crown Solicitor

In the case of the absence of the Attorney General or of his inability to perform the duties of his office, or of a vacancy in the office, the Solicitor General or the Crown Solicitor may exercise, perform, and discharge all the powers, duties, and functions which the Attorney General is required or able to perform or discharge under the provisions of this Code, and the warrant of the Governor directing the Solicitor General or the Crown Solicitor to exercise, perform, and discharge such powers, duties, and functions is conclusive evidence of the absence or inability of the Attorney General, or of a vacancy in the office, as the case may be.

745. Copies of depositions to be allowed to persons committed for trial

Any person who is committed for trial or held to bail for any indictable offence is entitled to have on demand, from the person who has the lawful custody thereof, copies of the depositions of the witnesses on whose depositions he has been so committed or held to bail.

Provided that, if the demand is not made before the day appointed for the commencement of the sittings of the court at which the trial of the person on whose behalf the demand is made is to take place, he is not entitled to have any such copy unless the judge is of opinion that the copy may be made and delivered without delay or inconvenience to the trial.

The court may postpone a trial on account of the accused person not having previously had a copy of the depositions.

746. Inspection of depositions at trial

Any person who is tried for any offence is entitled, at the time of his trial, to inspect without fee all depositions or copies of depositions which have been taken against him and returned into the court before which the trial is had.

746A. Enforcing recognizances

- (1) If a person bound by a recognizance to appear before the Supreme Court or the District Court fails in any condition of the recognizance, that court may, on the application of the prosecution and on the production of the recognizance, order that the recognizance be forfeited and that any person bound by the recognizance (including any surety) pay the amount that he or she is so bound to pay to the Crown.
- (2) A court that makes orders under subsection (1) may also make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the amount to be paid were a fine imposed on the person concerned.
- (3) If a court does not make an order under section 59 of the *Sentencing Act 1995*, the amount to be paid must be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (4) Subsection (3) does not prejudice the recovery of the amount as a civil debt due to the Crown.

[Section 746A inserted by No. 78 of 1995 s.25⁹.]

747. Rules and forms of criminal proceedings

The Judges of the Supreme Court, or a majority of them, may make general rules prescribing forms of complaint, summonses, depositions, indictments, judgments, records, convictions, warrants, recognizances, and other proceedings, to be used in any court, or before justices in respect of any offences; and

every form so prescribed is to be deemed sufficient for the purpose, and sufficiently to state the offence or matter for or in respect of which it is prescribed to be used.

The Judges, or a majority of them, may also make general rules not inconsistent with the provisions of this Code, regulating the proceedings upon the trial of persons charged with indictable offences, and the proceedings upon informations presented by leave of the Court, and the procedure and practice relative to appeals to the Court of Criminal Appeal.

Rules so made for the regulation of the procedure and practice relative to such appeals may make provision with respect to any matter for which provision is to be made under Chapter LXIX by rules of court or which it may be necessary or convenient to prescribe for any of the purposes of that chapter or for the efficient conduct of any proceeding thereunder, and may regulate generally the practice and procedure under that chapter; and the officers of any court before whom an appellant has been convicted, and the governor or other officers of any prison or other officer having the custody of an appellant, and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with those rules may be enforced by order of the Court of Criminal Appeal.

The Judges or a majority of them may also, subject to this Code, make general rules for regulating the practice and procedure of the said Court in its criminal jurisdiction.

[748. Repealed by No. 32 of 1918 s.34.]

[Schedule 1 repealed by No. 78 of 1995 s.26.]



Notes

¹ This is a compilation as at 9 February 2001 of the *Criminal Code Act Compilation Act 1913* and the *Criminal Code Act 1913* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Act Compilation Act 1913</i>	28 of 1913	30 December 1913	1 January 1914 (see section 1)	<i>The Criminal Code</i> is the Schedule to the <i>Criminal Code Act 1913</i> which is Appendix B to the <i>Criminal Code Act Compilation Act 1913</i>
<i>Criminal Code Amendment Act 1918</i>	32 of 1918	24 December 1918	24 December 1918	
<i>Criminal Code (Chapter XXXVII) Amendment Act 1932</i>	51 of 1932	30 December 1932	30 December 1932	
<i>Limitation Act 1935</i> , Schedule 2 (Inserted by the <i>Limitation Act Amendment Act 1954</i> (No 73 of 1954 section 8))	35 of 1935	7 January 1936	The relevant amendments as set out in the Second Schedule took effect on 1 March 1955 (see section 2 of No. 73 of 1954 and <i>Gazette</i> 18 February 1955 p.343)	
<i>Criminal Code Amendment Act 1942</i>	15 of 1942	26 November 1942	26 November 1942	
<i>Criminal Code Amendment Act 1945</i>	40 of 1945	30 January 1946	30 January 1946	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment Act 1952</i>	27 of 1952	28 November 1952	28 November 1952	
<i>Criminal Code Amendment Act 1953</i>	55 of 1953	9 January 1954	9 January 1954	
<i>Criminal Code Amendment Act 1954</i>	20 of 1954	28 September 1954	28 September 1954	
<i>Betting Control Act 1954</i> , section 5	63 of 1954	30 December 1954	Proclaimed 1 August 1955 (see section 2(1) and <i>Gazette</i> 29 July 1955 p.1767)	
<i>Criminal Code Amendment Act 1956</i>	11 of 1956	11 October 1956	11 October 1956	
<i>Criminal Code Amendment Act (No. 2) 1956</i>	43 of 1956	18 December 1956	18 December 1956	
<i>Traffic Act Amendment Act (No. 3) 1956</i> , section 25(2)	74 of 1956	14 January 1957	14 January 1957	
<i>Juries Act 1957</i> , section 2	50 of 1957	9 December 1957	Proclaimed 1 July 1960 (see section 2 and <i>Gazette</i> 6 March 1959 p.539)	
<i>Criminal Code Amendment Act 1960</i>	25 of 1960	21 October 1960	21 October 1960	
<i>Criminal Code Amendment Act 1961</i>	28 of 1961	Reserved for Royal Assent 31 October 1961. Assented to 23 May 1962	Proclaimed 29 June 1962 (see <i>Interpretation Act 1918</i> section 8 and <i>Gazette</i> 29 June 1962 p.1657)	

The Criminal Code

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment Act 1962</i>	35 of 1962	29 October 1962	Proclaimed 1 July 1966 (see section 2 and <i>Gazette</i> 11 March 1966 p.701)	Section 8 repealed by No. 63 of 1963 section 17
<i>Criminal Code Amendment Act 1963</i>	21 of 1963	13 November 1963	Proclaimed 1 January 1965 (see section 2 and <i>Gazette</i> 11 December 1964 p.3995)	
<i>Criminal Code Amendment Act (No. 2) 1963</i>	55 of 1963	17 December 1963	Proclaimed 1 July 1964 (see section 2 and <i>Gazette</i> 26 June 1964 p.2525)	
<i>Convicted Inebriates' Rehabilitation Act 1963, section 17</i>	63 of 1963	18 December 1963	Proclaimed 1 July 1966 (see section 2 and <i>Gazette</i> 11 March 1966 p.702)	
<i>Traffic Act Amendment Act (No. 3) 1963, section 8</i>	74 of 1963	19 December 1963	Proclaimed 1 March 1964 (see section 2 and <i>Gazette</i> 28 February 1964 p.906)	
<i>Criminal Code Amendment Act 1964</i>	53 of 1964	30 November 1964	30 November 1964	
<i>Criminal Code Amendment Act 1965</i>	91 of 1965	8 December 1965	8 December 1965	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4-9: 14 February 1966 (see section 2(2)); balance on assent	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment Act 1966</i>	89 of 1966	12 December 1966	12 December 1966	
<i>Criminal Code Amendment Act 1969</i>	1 of 1969	21 April 1969	21 April 1969	
<i>Criminal Code Amendment Act 1972</i>	21 of 1972	26 May 1972	Proclaimed 1 July 1972 (see section 2 and <i>Gazette</i> 30 June 1972 p.2097)	
<i>Criminal Code Amendment Act (No. 2) 1972</i>	41 of 1972	16 June 1972	Proclaimed 1 July 1972 (see section 2 and <i>Gazette</i> 30 June 1972 p.2098)	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Second Schedule took effect on 1 January 1974 (see section 4(2) and <i>Gazette</i> 2 November 1973 p.4109)	The Second Schedule was inserted by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973)
<i>Acts Amendment (Road Traffic) Act 1974, Part I</i>	58 of 1974	3 December 1974	Proclaimed 29 August 1975 (see section 2 and <i>Gazette</i> 29 August 1975 p.3085)	
<i>Criminal Code Amendment Act 1975</i>	49 of 1975	18 September 1975	18 September 1975	
<i>Criminal Code Amendment Act 1976</i>	35 of 1976	9 June 1976	Proclaimed 3 September 1976 (see section 2 and <i>Gazette</i> 3 September 1976 p.3271)	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment Act (No. 2) 1976</i>	62 of 1976	16 September 1976	16 September 1976	Section 3: validation
<i>Criminal Code Amendment Act (No. 3) 1976</i>	133 of 1976	9 December 1976	9 December 1976	
<i>Criminal Code Amendment Act 1977</i>	38 of 1977	7 November 1977	7 November 1977	
<i>Criminal Code Amendment Act (No. 3) 1977</i>	71 of 1977	28 November 1977	28 November 1977	
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part XVIII</i>	67 of 1979	21 November 1979	Proclaimed 11 February 1980 (see section 2 and <i>Gazette</i> 8 February 1980 p.383)	
<i>Criminal Code Amendment Act 1979</i>	68 of 1979	21 November 1979	21 November 1979	
<i>Criminal Code Amendment Act (No. 2) 1979</i>	107 of 1979	17 December 1979	17 December 1979	
<i>Acts Amendment (Strict Security Life Imprisonment) Act 1980, Part I</i>	96 of 1980	9 December 1980	9 December 1980	
<i>Acts Amendment (Lotto) Act 1981, Part II</i>	103 of 1981	2 December 1981	Proclaimed 18 December 1981 (see section 2 and <i>Gazette</i> 18 December 1981 p.5163)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Prisons) Act 1981, Part I</i>	116 of 1981	14 December 1981	Proclaimed 1 August 1982 (see section 2 and <i>Gazette</i> 23 July 1982 p.2841)	
<i>Acts Amendment (Jurisdiction of Courts) Act 1981, Part I</i>	118 of 1981	14 December 1981	Proclaimed 1 February 1982 (see section 2 and <i>Gazette</i> 22 January 1982 p.175)	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2(1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Acts Amendment (Criminal Penalties and Procedure) Act 1982, Part II</i>	20 of 1982	27 May 1982	27 May 1982	
<i>Acts Amendment (Bail) Act 1982, Part III</i>	87 of 1982	17 November 1982	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	
<i>Acts Amendment (Betting and Gaming) Act 1982, Part III</i>	108 of 1982	7 December 1982	Proclaimed 31 December 1982 (see section 2 and <i>Gazette</i> 31 December 1982 p.4968)	
<i>Acts Amendment (Trade Promotion Lotteries) Act 1983, Part II</i>	21 of 1983	22 November 1983	22 November 1983	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment Act 1983</i>	77 of 1983	22 December 1983	22 December 1983	
<i>Reprints Act 1984, section 9(2)</i>	13 of 1984	31 May 1984	Proclaimed 1 February 1985 (see section 2 and <i>Gazette</i> 11 January 1985 p.175)	
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part I</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Acts Amendment (Department for Community Services) Act 1984, Part XI</i>	121 of 1984	19 December 1984	1 January 1985 (see section 2 and <i>Gazette</i> 28 December 1984 p.4197)	
<i>Artificial Conception Act 1985, section 8</i>	14 of 1985	12 April 1985	Proclaimed 1 July 1985 (see section 2 and <i>Gazette</i> 28 June 1985 p.2291)	
<i>Acts Amendment (Sexual Assaults) Act 1985, Part II</i>	74 of 1985	20 November 1985	Proclaimed 1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	
<i>Criminal Law Amendment Act 1985, Part II</i>	119 of 1985	17 December 1985	1 September 1986 (see section 2 and <i>Gazette</i> 8 August 1986 p.2815)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Law Amendment Act 1986, Part II</i>	89 of 1986	10 December 1986	Proclaimed sections 3-9: 14 March 1988 (see section 2 and <i>Gazette</i> 11 March 1988 p.781); sections 11 and 12: 1 January 1989 (see section 2 and <i>Gazette</i> 2 December 1988 p.4781)	Section 10 repealed by No. 106 of 1987 section 14(7)
<i>Acts Amendment (Corrective Services) Act 1987, Part V</i>	47 of 1987	3 October 1987	Proclaimed 11 December 1987 (see section 2 and <i>Gazette</i> 11 December 1987 p.4363)	
<i>Acts Amendment and Repeal (Gaming) Act 1987, Part IX</i>	74 of 1987	26 November 1987	Proclaimed 2 May 1988 (see section 2 and <i>Gazette</i> 29 April 1988 p.1292)	
<i>Criminal Code Amendment Act (No. 2) 1987</i>	106 of 1987	16 December 1987	Proclaimed 14 March 1988 (see section 2 and <i>Gazette</i> 11 March 1988 p.781)	Savings: section 25
<i>Acts Amendment (Imprisonment and Parole) Act 1987, Part IV</i>	129 of 1987	21 January 1988	Proclaimed 15 June 1988 (see section 2 and <i>Gazette</i> 20 May 1988 p.1664)	
<i>Acts Amendment (Children's Court) Act 1988, Part 4</i>	49 of 1988	22 December 1988	Proclaimed 1 December 1989 (see section 2 and <i>Gazette</i> 24 November 1989 p.4327)	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Law Amendment Act 1988, Part 2</i>	70 of 1988	15 December 1988	Sections 3, 32 and 33: 15 December 1988 (see section 2(3)); Balance proclaimed 1 February 1989 (see section 2 and <i>Gazette</i> 20 January 1989 p.110)	Section 50 ¹²
<i>Law Reform (Decriminalization of Sodomy) Act 1989, Part 1</i>	32 of 1989	19 December 1989	Proclaimed 23 March 1990 (see section 2 and <i>Gazette</i> 23 March 1990 p.1469)	Part 2 ⁵
<i>Criminal Code Amendment (Racist harassment and incitement to racial hatred) Act 1990</i>	33 of 1990	9 October 1990	6 November 1990	
<i>Criminal Law Amendment Act 1990, Part 2</i>	101 of 1990	20 December 1990	Part 2 (other than section 51): 14 February 1991 (see section 2(1)); section 51: 20 December 1990 (see section 2(2))	
<i>Criminal Law Amendment Act 1991</i>	37 of 1991	12 December 1991	Act (other than sections 4 and 7 and Parts 4 and 5): 12 December 1991 (see section 2(1)); sections 4 and 7 and Parts 4 and 5 proclaimed 10 February 1992 (see section 2(2) and <i>Gazette</i> 31 January 1992 p.477)	Section 6: transitional ⁶

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Evidence) Act 1991, Part 3</i>	48 of 1991	17 December 1991	Proclaimed 31 March 1992 (see section 2 and <i>Gazette</i> 24 March 1992 p.1317)	Section 3: transitional
<i>Criminal Law Amendment Act 1992, Part 2</i>	1 of 1992	7 February 1992	9 March 1992 (see section 2)	
<i>Acts Amendment (Sexual Offences) Act 1992, Part 2</i>	14 of 1992	17 June 1992	Proclaimed 1 August 1992 (see section 2 and <i>Gazette</i> 28 July 1992 p.3671)	Section 6(7): transitional and saving ⁴
<i>Acts Amendment (Confiscation of Criminal Profits) Act 1992, Part 3</i>	15 of 1992	16 June 1992	16 June 1992 (see section 2)	
<i>Criminal Law Amendment Act (No. 2) 1992</i>	51 of 1992	9 December 1992	6 January 1993	
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992, Part 2</i>	53 of 1992	9 December 1992	Sections 3, 4, 6 and 7 proclaimed 1 March 1993 (see section 2 and <i>Gazette</i> 26 January 1993 p.823); section 5 proclaimed 4 November 1996 (see <i>Gazette</i> 25 October 1996 p.5631)	
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 6</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993 (see section 2)	Section 68: savings section 69: transitional

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994 (see section 2)	
<i>Criminal Law Amendment Act 1994, Parts 2-4</i>	82 of 1994	23 December 1994	20 January 1995 (see section 2(2))	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 5</i>	92 of 1994	23 December 1994	1 January 1995 (see section 2(1) and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Sentencing (Consequential Provisions) Act 1995, Parts 19, 20 and section 147</i>	78 of 1995	16 January 1996	Proclaimed 4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	Section 27: transitional ⁹
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Criminal Code Amendment Act 1996</i>	34 of 1996	27 September 1996	27 September 1996 (see section 2)	
<i>Criminal Law Amendment Act 1996, Part 2</i>	36 of 1996	10 October 1996	10 October 1996 (see section 2)	Section 5(2): transitional ² section 6(2): transitional ³

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Censorship Act 1996</i> , section 152(1) and (2)	40 of 1996	10 October 1996	Proclaimed 5 November 1996 (see section 2 and <i>Gazette</i> 5 November 1996 p.5845)	
<i>Criminal Code Amendment Act (No. 2) 1996</i>	60 of 1996	11 November 1996	Proclaimed 14 November 1996 (see section 2 and <i>Gazette</i> 13 November 1996 p.6439)	Section 4(3): savings ⁷ section 6: review ⁸
<i>Mental Health (Consequential Provisions) Act 1996</i> , Part 4	69 of 1996	13 November 1996	13 November 1997 (see section 2)	Section 20: transitional ¹⁰ ; section 73 ¹¹
<i>Restraining Orders Act 1997</i> , section 83	19 of 1997	28 August 1997	Proclaimed 15 September 1997 (see section 2 and <i>Gazette</i> 12 September 1997 p.5149)	
<i>Sunday Observance Laws Amendment and Repeal Act 1997</i> , section 5	49 of 1997	10 December 1997	10 December 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 45	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Acts Amendment (Abortion) Act 1998</i> , Part 2	15 of 1998	26 May 1998	26 May 1998 (see section 2)	
<i>Criminal Law Amendment Act (No. 2) 1998</i> , Part 2	29 of 1998	6 July 1998	3 August 1998	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Law Amendment Act (No. 1) 1998, Part 2</i>	38 of 1998	25 September 1998	23 October 1998	
<i>Acts Repeal and Amendment (Births, Deaths and Marriages) Act 1998, section 10</i>	40 of 1998	30 October 1998	14 April 1999 (see section 2 and <i>Gazette</i> 9 April 1999 p.1433)	
<i>Acts Amendment (Video and Audio Links) Act 1998, Part 2</i>	48 of 1998	19 November 1998	Proclaimed 18 January 1999 (see section 2 and <i>Gazette</i> 15 January 1999 p.109)	
<i>Acts Amendment (Criminal Procedure) Act 1999, Part 2</i>	10 of 1999	5 May 1999	Proclaimed 1 October 1999 (see section 2 and <i>Gazette</i> 17 September 1999 p.4557)	
<i>Criminal Code Amendment Act 1999</i>	35 of 1999	18 October 1999	15 November 1999	
<i>Prisons Amendment Act 1999, section 20</i>	43 of 1999	8 December 1999	18 December 1999 (see section 2(2) and <i>Gazette</i> 17 December 1999 p.6175)	
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999, Part 5</i>	47 of 1999	8 December 1999	Proclaimed 18 December 1999 (see section 2 and <i>Gazette</i> 17 December 1999 pp.6175-6)	
<i>Prostitution Act 2000, section 64</i>	17 of 2000	22 June 2000	Proclaimed 29 July 2000 (see section 2 and <i>Gazette</i> 28 July 2000 p. 3987)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Code Amendment (Home Invasion) Act 2000</i>	45 of 2000	17 November 2000	17 November 2000 (see section 2)	
<i>Acts Amendment (Evidence) Act 2000, Part 5</i>	71 of 2000	6 December 2000	3 January 2001	

² The *Criminal Law Amendment Act 1996* (No. 36 of 1996) s. 5(2) reads as follows —

“

- (2) Sections 12 and 13 of the Code as enacted by this section apply to acts, omissions, events, circumstances and states of affairs that occurred before the commencement of this section as well as to those that occur after that commencement.

”.

³ The *Criminal Law Amendment Act 1996* (No. 36 of 1996) s. 6(2) reads as follows —

“

- (2) Section 14 of the Code as amended by this section applies to acts and omissions that occurred before the commencement of this section as well as to those that occur after that commencement.

”.

⁴ The *Acts Amendment (Sexual Offences) Act 1992* (No. 14 of 1992) Schedule 1 (s. 6(7)) reads as follows —

“

Schedule 1

Transitional and saving

1. References to Chapter XXII of *The Criminal Code*

Unless the context requires otherwise, a reference in a written law enacted before this Act comes into operation to Chapter XXII of *The Criminal Code* is to be taken as including a reference to sections 320, 321, 322, 322A, 329 and 330 of *The Criminal Code* (as amended by this Act).

2. References to repealed sections of *The Criminal Code*

Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to a section of *The Criminal Code* repealed by section 6(2) of this Act is to be taken as a reference to the section or sections in Chapter XXXI of *The Criminal Code* (as amended by this Act) that correspond to the repealed section.

3. References to Chapter XXXIA of *The Criminal Code*

Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to Chapter XXXIA of *The Criminal Code* (repealed by section 6(4) of this Act) is to be taken as a reference to sections 323, 324, 325 and 326 of *The Criminal Code* (as amended by this Act).

4. References to sections 324B to 324H of *The Criminal Code*

Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to section 324B, 324C, 324D, 324E, 324F, 324G or 324H of *The Criminal Code* (repealed by section 6(4) of this Act) is to be taken as a reference to the section in Chapter XXXI of *The Criminal Code* (as amended by this Act) that corresponds to the repealed section.

⁵ The *Law Reform (Decriminalization of Sodomy) Act 1989* (No. 32 of 1989) Part 2 reads as follows —

Part 2 — Proselytising unlawful

23. It shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement or promotion of homosexual behaviour shall not be capable of being a public purpose.
24. It shall be unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution.

⁶ The *Criminal Law Amendment Act 1991* (No. 37 of 1991) s. 6(3) and (4) read as follows —

- (3) Notwithstanding subsection (1), section 276 of the Code continues to apply in relation to —
- (a) any death that occurred before the commencement of this section; and

- (b) any death that occurs after the commencement of this section if the relevant day was not less than a year and a day before the commencement of this section.
- (4) In subsection (3)(b) “**relevant day**” means —
 - (a) the day on which the last unlawful act contributing to the cause of death was done; or
 - (b) when the cause of death is an omission to observe or perform a duty, the day on which the omission ceased; or
 - (c) when the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

⁷ The *Criminal Code Amendment Act (No. 2) 1996* (No. 60 of 1996) s. 4(3) reads as follows —

- (3) To avoid doubt it is declared that section 400(3) of *The Criminal Code* as enacted by this Act applies in respect of offences committed at any time and to convictions recorded at any time.

⁸ The *Criminal Code Amendment Act (No. 2) 1996* (No. 60 of 1996) s. 6 reads as follows —

6. Review

- (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of section 401 of the Code as soon as practicable after the expiration of 4 years from its commencement.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 5 years after the commencement of section 401 of the Code.

⁹ The *Sentencing (Consequential Provisions) Act 1995* (No. 78 of 1995) s. 27 reads as follows —

27. Transitional provisions

- (1) In this section, “**commencement**” means the commencement of the *Sentencing Act 1995*.
- (2) If immediately before commencement a person is subject to an indeterminate sentence to which section 665 of the Code applies,

then on and after commencement that section continues to operate in respect of the person, despite its repeal.

- (3) If immediately before commencement a person is subject to a direction under section 666 of the Code, then on and after commencement that section continues to operate in respect of that person, despite its repeal.
- (4) If immediately before commencement a person is bound by a recognizance to which section 746A of the Code applies but to which that section as re-enacted by section 24 would not apply on and after commencement, then on and after commencement —
 - (a) section 746A(1) of the Code as it was immediately before commencement continues to operate in respect of that person in respect of the recognizance; and
 - (b) section 746A(2), (3) and (4) as re-enacted apply to and in respect of any order made under section 746A(1) as it was immediately before commencement.

”.

¹⁰ The *Mental Health (Consequential Provisions) Act 1996* (No. 69 of 1996) s. 20 reads as follows —

“

20. Transitional provision

If immediately before the commencement of the *Mental Health Act 1996* a person —

- (a) is in custody under an order made under section 631 or 652 of the Code; and
- (b) is not in an approved hospital because of —
 - (i) a direction made under section 47(1)(b) of the *Mental Health Act 1962*; or
 - (ii) an order made by the Governor under section 48 of that Act,

on that commencement the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

”.

¹¹ The *Mental Health (Consequential Provisions) Act 1996* s. 73 repealed the *Mental Health Act 1981* (No. 51 of 1981) which had not been proclaimed. As a result the *Acts Amendment (Mental Health) Act 1981* (No. 52 of 1981) will never come into operation.

- ¹² The *Criminal Law Amendment Act 1988* (No. 70 of 1988) s. 50 deletes Schedule 2 item 8 of the *Acts Amendment (Public Service) Act 1987* which had purported to amend *The Criminal Code* s. 384(1). Item 8 was ineffective and never took effect.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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circumstances of aggravation	319(1), 338D(1), 400(1)
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mental impairment.....	1(1)
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