

Western Australia

**Criminal Law and Evidence Amendment
Act 2008**

As at 12 Mar 2008

No. 2 of 2008

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Criminal Law and Evidence Amendment Act 2008

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Western Australia

Criminal Law and Evidence Amendment Act 2008

No. 2 of 2008

An Act to amend —

- ***The Criminal Code*; and**
 - **the *Criminal Procedure Act 2004*; and**
 - **the *Criminal Appeals Act 2004*; and**
 - **the *Evidence Act 1906*; and**
 - **various other Acts,**
- and for related purposes.**

[Assented to 12 March 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Criminal Law and Evidence Amendment Act 2008*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — *The Criminal Code* amended

3. *The Criminal Code* amended in this Part

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

[* *Reprint 12 as at 1 June 2005 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 112 and Act No. 3 of 2006.]

4. Section 1 amended

Section 1 is amended by deleting the definition of “circumstance of aggravation”.

5. Section 297 amended

(1) Section 297 is amended as follows:

- (a) by inserting before “Any person” the subsection designation “(1)”;
- (b) by inserting before “If the offence is committed in the” the subsection designation “(2)”;
- (c) by inserting before “If the offence is committed in circumstances” the subsection designation “(3)”.

(2) At the end of section 297 the following subsection is inserted —

“

- (4) If —
 - (a) the victim of the offence is a public officer who is performing a function of his office or employment; or
 - (b) the offence is committed against a public officer on account of his being such an officer

- or his performance of a function of his office or employment; or
- (c) the victim of the offence is the driver or person operating or in charge of —
- (i) a vehicle travelling on a railway; or
 - (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*;
- or
- (d) the victim of the offence is —
- (i) an ambulance officer; or
 - (ii) a member of a FESA Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Authority of Western Australia Act 1998*); or
 - (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),
- who is performing his or her duties as such; or
- (e) the victim of the offence is a person who —
- (i) is working in a hospital; or
 - (ii) is in the course of providing a health service to the public;
- or
- (f) the victim of the offence is a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or

- (g) the victim of the offence is a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

the offender is liable to imprisonment for 14 years.

”.

6. Section 313 amended and consequential amendment to *Criminal Code Amendment (Racial Vilification) Act 2004*

- (1) Section 313(1)(a) is amended by inserting after “aggravation” —
“ or in circumstances of racial aggravation ”.
- (2) The *Criminal Code Amendment (Racial Vilification) Act 2004* section 7 is repealed.

7. Section 317 amended and consequential amendment to *Criminal Code Amendment (Racial Vilification) Act 2004*

- (1) Section 317(1)(a) is amended by inserting after “aggravation” —
“ or in circumstances of racial aggravation ”.
- (2) The *Criminal Code Amendment (Racial Vilification) Act 2004* section 8 is repealed.

8. Section 317A amended and consequential amendment to *Criminal Code Amendment (Racial Vilification) Act 2004*

- (1) Section 317A is amended as follows:
- (a) in the second paragraph designated “(a)” by inserting after “aggravation” —
“ or in circumstances of racial aggravation ”;
- (b) by redesignating the second paragraph designated “(a)” as paragraph (d);

- (c) by redesignating the second paragraph designated “(b)” as paragraph (e);
 - (d) in the summary conviction penalty paragraph (a) by deleting “paragraph (a)” and inserting instead —
“ paragraph (d) ”;
 - (e) in the summary conviction penalty paragraph (b) by deleting “paragraph (b)” and inserting instead —
“ paragraph (e) ”.
- (2) The *Criminal Code Amendment (Racial Vilification) Act 2004* section 9 is repealed.

9. Section 318 amended

Section 318(1) is amended as follows:

- (a) in paragraph (d) by inserting after “account of” —
“ his being such an officer or ”;
- (b) by inserting after paragraph (g) —
“
or
(h) assaults —
 - (i) an ambulance officer; or
 - (ii) a member of a FESA Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Authority of Western Australia Act 1998*); or
 - (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),
who is performing his or her duties as such; or(i) assaults a person who —
 - (i) is working in a hospital; or

(ii) is in the course of providing a health service to the public;

or

- (j) assaults a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or
- (k) assaults a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

”;

- (c) after each of paragraphs (d) and (e) by inserting —
“ or ”;
- (d) after paragraph (g)(i) by inserting —
“ or ”;
- (e) by deleting “is guilty of a crime, and is liable to imprisonment for 10 years.” and the summary conviction penalty and inserting instead —

“

is guilty of a crime and is liable —

- (l) if 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
- (ii) the offender is in company with another person or persons,
to imprisonment for 10 years; or
- (m) in any other case, to imprisonment for 7 years.

Summary conviction penalty: in a case to which subsection (1)(m) applies: imprisonment for 3 years and a fine of \$36 000.

”.

10. Section 321A replaced

Section 321A is repealed and the following section is inserted instead —

“

321A. Child under 16, persistent sexual conduct with

(1) In this section —

“prescribed offence” means —

- (a) an offence under section 320(2) or (4) or 321(2) or (4) or an attempt to commit such an offence; or
- (b) an offence under section 320(3) or 321(3) where the child in fact engages in sexual behaviour;

“sexual act” means an act that would constitute a prescribed offence.

- (2) For the purposes of this section a person persistently engages in sexual conduct with a child if that person does a sexual act in relation to the child on 3 or more occasions each of which is on a different day.
- (3) For the purposes of subsection (2) —
 - (a) the sexual acts need not all constitute the same prescribed offence; and
 - (b) the sexual acts need not all have occurred in this State as long as at least one of them did.
- (4) A person who persistently engages in sexual conduct with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 20 years.

- (5) A charge of an offence under subsection (4) —
 - (a) must specify the period during which it is alleged that the sexual conduct occurred; and
 - (b) need not specify the dates, or in any other way particularise the circumstances, of the sexual acts alleged to constitute the sexual conduct.
- (6) A person charged with an offence under subsection (4) may also be charged, either in the same or a separate indictment, with a prescribed offence that is alleged to have been committed in the period during which it is alleged that the sexual conduct constituting the offence under subsection (4) occurred.
- (7) An indictment containing a charge of an offence under subsection (4) must be signed by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions.
- (8) A court cannot order the prosecutor to give a person charged with an offence under subsection (4) particulars of the sexual acts alleged to constitute the offence, despite section 131 of the *Criminal Procedure Act 2004*.
- (9) It is a defence to a charge of an offence under subsection (4) to prove the accused person —
 - (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
 - (b) was not more than 3 years older than the child.
- (10) It is a defence to a charge of an offence under subsection (4) to prove the accused person was lawfully married to the child.
- (11) If in a trial by jury of a charge of an offence under subsection (4), there is evidence of sexual acts on 4 or more occasions, the jury members need not all be satisfied that the same sexual acts occurred on the same

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occasions as long as the jury is satisfied that the accused person persistently engaged in sexual conduct in the period specified.

- (12) If an accused person is found not guilty of a charge of an offence under subsection (4), he or she may nevertheless be found guilty of one or more prescribed offences committed in the period specified in the charge if the offence or offences are established by the evidence, despite section 10A.
- (13) If a person is sentenced, whether on one or more than one indictment, to —
- (a) a term of imprisonment for an offence under subsection (4); and
 - (b) a term of imprisonment for a prescribed offence committed in the period during which the offence under subsection (4) was committed,

the court must not order the terms to be served wholly or partly cumulatively.

”.

11. Section 338C amended

Section 338C(3) is amended in the summary conviction penalty as follows:

- (a) in paragraph (c) by deleting “paragraph (a)” and inserting instead —
“ subsection (3)(a) ”;
- (b) in paragraph (d) by deleting “paragraph (b)” and inserting instead —
“ subsection (3)(b) ”;
- (c) by renumbering paragraph (c) as paragraph (a);
- (d) by renumbering paragraph (d) as paragraph (b).

12. Section 338E amended

Section 338E(1) is amended in the summary conviction penalty as follows:

- (a) in paragraph (c) by deleting “paragraph (a)” and inserting instead —
“ subsection (1)(a) ”;
- (b) in paragraph (d) by deleting “paragraph (b)” and inserting instead —
“ subsection (1)(b) ”;
- (c) by renumbering paragraph (c) as paragraph (a);
- (d) by renumbering paragraph (d) as paragraph (b).

Part 3 — Criminal Procedure Act 2004 amended

13. The Act amended in this Part

The amendments in this Part are to the *Criminal Procedure Act 2004**.

[* Act No. 71 of 2004.]

14. Section 14 amended

Section 14(1) is amended by deleting “authorised” and inserting instead —

“ approved ”.

15. Section 20 amended

Section 20(3) is amended by inserting after “by” —

“ , and only by ”.

16. Section 55 amended

- (1) Section 55(2) is amended by deleting “either a summons, a court hearing notice, or an approved notice, notifying the accused of the court date,” and inserting instead —

“

a court hearing notice, or an approved notice, notifying the accused of that date and that the court may deal with the charge in the accused’s absence if the accused does not appear on that date,

”.

- (2) Section 55(3) is repealed.

- (3) Section 55(4) is amended as follows:

- (a) by deleting “an authorised investigator,” and inserting instead —

“ a person acting under section 20(3), ”;

- (b) in paragraph (a)(i) by deleting “an authorised investigator who was acting in the course of his or her duties as such;” and inserting instead —
“ a person who was acting under section 20(3); ”;
- (c) in paragraph (a)(ii) by deleting “authorised investigator” and inserting instead —
“ person ”.

17. Section 62 amended

Section 62(1) is amended in the definition of “expert evidence material” in paragraph (c) by deleting “paragraph (b)(ii);” and inserting instead —

“ paragraph (b); ”.

18. Section 69 amended

- (1) Section 69(2) is amended by inserting after “The” —
“ approved ”.
- (2) After section 69(3) the following subsection is inserted —
“
 - (4) A person who serves an approved notice under subsection (3) need not complete a service certificate in accordance with Schedule 2 clause 2, 3 or 4.”.

19. Section 75 amended

- (1) Section 75(4) is amended as follows:
 - (a) in paragraph (b) by deleting “issue any document necessary;” and inserting instead —
“
may issue a summons, court hearing notice or approved notice, as the case requires;
”;

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- (b) in paragraph (c) by inserting after “document needed” —

“

(including a document referred to in section 139 or 155)

”.

- (2) After section 75(9) the following subsection is inserted —

“

- (10) An approved notice issued to a person under this section must be served on the person in accordance with Schedule 2 clause 2, 3 or 4.

”.

20. Section 77 amended

After section 77(6) the following subsection is inserted —

“

- (7) This section does not affect the operation of the *Sentencing Act 1995* section 14A.

”.

21. Section 84 amended

Section 84(3) is amended by deleting “Perth.” and inserting instead —

“

Perth, unless the superior court concerned gives leave to lodge it at another place.

”.

22. Section 86A inserted

After section 86 the following section is inserted —

“

86A. Remitting charges to summary courts

- (1) At any time after a court of summary jurisdiction commits an accused to a superior court on a charge and before an indictment is lodged that contains the charge, the accused or the relevant authorised officer may apply to the superior court to remit the charge to the court of summary jurisdiction.
- (2) The superior court may remit the charge if it is satisfied —
 - (a) that the charge was committed to the superior court in error or before proceedings that should have occurred in the court of summary jurisdiction had been completed; or
 - (b) that for some other good reason the charge should be remitted.

”.

23. Section 98 amended

Section 98(4) is amended by deleting “subsection (2)(c)” and inserting instead —

“ subsection (2)(d) ”.

24. Section 111 replaced

Section 111 is repealed and the following section is inserted instead —

“

111. Jury not to separate or communicate with others

- (1) For the purposes of this section, a trial by jury begins when the first juror is sworn and ends when the jury

gives or is discharged from giving its verdict and includes any period when the jury is considering its verdict and any period when the trial is adjourned.

- (2) During a trial by jury —
 - (a) the jury must not separate unless permitted to do so under subsection (4)(a); and
 - (b) the jury must not leave the charge of a court officer during any adjournment of the trial, unless it has been permitted to separate under subsection (4)(a); and
 - (c) there must not be any communication between a juror and a person who is not a juror, except as permitted under subsection (4)(b).
- (3) Subsection (2)(c) does not apply to any communication between a juror and the judge or the court officer in charge of the jury, or by a party to the trial to the jury as part of the ordinary course of the trial.
- (4) Despite subsection (2), the judge —
 - (a) may permit the jury to separate during any adjournment of a trial by jury subject to any condition that the judge thinks necessary to impose in the interests of justice; and
 - (b) may permit a juror and a person who is not a juror to communicate subject to any condition that the judge thinks necessary to impose in the interests of justice.
- (5) If subsection (2) or a condition imposed under subsection (4) is contravened, the judge may discharge the jury from giving its verdict, if it is in the interests of justice to do so.
- (6) A juror who contravenes subsection (2) or a condition imposed under subsection (4) is guilty of an offence

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

- (7) A person who contravenes subsection (2)(c) or a condition imposed under subsection (4)(b) is guilty of an offence and is liable to a fine of \$12 000 or imprisonment for 12 months.

”.

25. Section 129 amended

After section 129(4) the following subsection is inserted —

“

- (5) This section does not affect a court’s power to decide the material facts of an offence on the basis of such information as it thinks fit.

”.

26. Section 133 amended

Section 133(7) is repealed and the following subsection is inserted instead —

“

- (7) If a superior court makes or refuses to make an order under subsection (3) or (4) before the day on which the accused’s trial is listed to start, the court must not start the trial unless the court is satisfied —
- (a) that no party who could commence an appeal against the order or refusal under the *Criminal Appeals Act 2004* section 26 intends to do so; or
 - (b) that —
 - (i) the time for commencing such an appeal has expired; and
 - (ii) any such appeal commenced before the time expired has been concluded.

”.

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27. Section 148 amended

Section 148 is amended by inserting after “subject to” —
“ *The Criminal Code* section 5, ”.

28. Section 169 replaced

Section 169 is repealed and the following section is inserted instead —

“

169. Prosecution determined by court without jurisdiction

- (1) In this section, unless the contrary intention appears —
“**jurisdictional error**”, in relation to a charge against a person being dealt with by a court, means an error of fact or law that is material to whether the court has jurisdiction to deal with the charge.
- (2) If a court that does not have jurisdiction to deal with a charge against a person determines the charge as a result of a jurisdictional error —
 - (a) the court’s determination has full force and effect; and
 - (b) anything done as a result of the determination is lawful.
- (3) If a court that does not have jurisdiction to deal with a charge against a person determines a charge as mentioned in subsection (2), a party to the prosecution or the Attorney General may apply to —
 - (a) that court; or
 - (b) if the determination is subject to an appeal, the court dealing with the appeal,for an order varying or setting aside the determination.

- (4) The court to which such an application is made may either —
- (a) refuse the application; or
 - (b) vary the determination and any sentence imposed or other order made as a result of the determination; or
 - (c) set aside the determination and any sentence imposed or other order made as a result of the determination and order the prosecution to be sent to and dealt with by a court that does have jurisdiction to deal with the charge against the person,
- and may make any necessary consequential orders.
- (5) If a court is dealing with an appeal in relation to the determination, subsection (4) is in addition to the court's powers on the appeal.

”.

29. Schedule 2 amended

Schedule 2 clause 2(2)(d) is amended by deleting “officer who at the time is in charge of the prison.” and inserting instead —

“

chief executive officer (as that term is defined in that section).

”.

30. Schedule 3 amended

Schedule 3 clause 5(4)(b) is amended by inserting after “from” —

“

the person in charge of investigating the alleged offence or

”.

Part 4 — *Criminal Appeals Act 2004* amended

31. The Act amended in this Part

The amendments in this Part are to the *Criminal Appeals Act 2004**.

[* *Act No. 60 of 2004.*]

32. Section 24 amended

After section 24(2)(d) the following paragraph is inserted —

“

- (da) a judgment of acquittal (other than a judgment of acquittal on account of unsoundness of mind) entered after a jury’s verdict of not guilty of a charge the statutory penalty for which is or includes imprisonment for 14 years or more or life, but only on the grounds that before or during the trial the judge made an error of fact or law in relation to the charge;

”.

33. Section 25 amended

After section 25(3)(a) the following paragraph is inserted —

“

- (aa) the acquittal if it was entered after a jury’s special verdict returned under the *Criminal Procedure Act 2004* section 113(1) on a charge the statutory penalty for which is or includes imprisonment for 14 years or more or life, but only on the grounds that before or during the trial the judge made an error of fact or law in relation to the charge;

”.

34. Section 26 amended

Section 26(5) and (6) are repealed and the following subsections are inserted instead —

“

- (5) An appeal under this section against a decision must be commenced within 7 days after the date of the decision and before the day on which the accused’s trial is listed to start.
- (6) If an appeal under this section is commenced on or after the day on which the accused’s trial is listed to start, the appeal must be dismissed.

”.

35. Section 31 amended

Section 31(2) is repealed.

36. Section 33 amended

After section 33(2) the following subsection is inserted —

“

- (2a) Even if a ground of appeal might be decided in favour of the prosecutor, the Court of Appeal may dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

”.

37. Section 34 amended

Section 34(1) is amended by deleting “court the” and inserting instead —

“ court, the ”.

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38. Section 35A inserted

After section 35 the following section is inserted in Part 3
Division 4 —

“

35A. Accused’s costs in some appeals to be paid by State

In an appeal commenced by a prosecutor under
section 24(2)(da) or 25(3)(aa), the accused’s reasonable
costs of being legally represented in the Court of
Appeal are to be paid by the State.

”.

39. Section 41 amended

Section 41(4) is repealed and the following subsection is
inserted instead —

“

- (4) The appeal court deciding an appeal that does or may
require it to impose a sentence, or to vary a sentence
imposed, on a person for an offence (whether the
appeal was commenced by the person or by the
prosecutor) —
- (a) may take into account any matter, including
any material change to the person’s
circumstances, relevant to the sentence that has
occurred between when the lower court dealt
with the person and when the appeal is heard;
but
 - (b) despite paragraph (a), must not take into
account the fact that the court’s decision may
mean that the person is again sentenced for the
offence.

”.

40. Section 51 inserted

After section 50 the following section is inserted —

“

51. Certain amendments to be reviewed

- (1) The Minister must carry out a review of the operation of the amendments made to this Act by the *Criminal Law and Evidence Amendment Act 2008* Part 4 as soon as practicable after the expiration of 5 years from the commencement of the amendments.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

”.

Part 5 — Evidence Act 1906 amended

41. The Act amended in this Part

The amendments in this Part are to the *Evidence Act 1906**.

[* *Reprint 13 as at 1 July 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 153, and Act No. 34 of 2004.]

42. Section 36BE inserted and consequential amendments

(1) After section 36BD the following section is inserted —

“

36BE. Expert evidence of child behaviour

- (1) This section applies to any proceedings for a sexual offence in respect of a complainant who was under the age of 18 years at the time of the alleged offence.
- (2) Evidence by an expert on the subject of child behaviour about any or all of the following —
 - (a) child development and behaviour generally;
 - (b) child development and behaviour in cases where children have been the victims of sexual offences,

that is relevant to the proceedings is admissible in them notwithstanding that the evidence —

- (c) relates to a fact in issue or to an ultimate issue in the proceedings; or
- (d) is a matter of common knowledge; or
- (e) is relevant only to the credibility of the complainant.

(3) If evidence described in subsection (2) is admitted in a trial by jury, this section does not affect any duty of the trial judge to warn the jury about any matter relating to the complainant’s evidence; but any such warning must be consistent with that evidence.

”.

(2) Section 36A(1) is amended by inserting after “36BD” —
“ , 36BE ”.

(3) Section 36A(2) is amended by deleting “and 36BC,” and inserting instead —
“ , 36BC and 36BE, ”.

43. Section 100A amended

After section 100A(7) the following subsection is inserted —

“

(8) This section does not apply to a person who is tendered as a witness and who has a mental impairment, as that term is defined by section 8 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

”.

44. Section 106A amended

Section 106A is amended by inserting in the appropriate alphabetical position —

“

“**mental impairment**” has the meaning given to that term by section 8 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;

”.

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45. Section 106B amended

- (1) Section 106B(1) is amended by deleting “subsection (2),” and inserting instead —

“ subsection (3), ”.

- (2) Section 106B(2) is repealed and the following subsections are inserted instead —

“

- (2) Irrespective of the person’s age, a person with a mental impairment may in any proceeding, if the person is competent under subsection (3), give evidence on oath or after making an affirmation.

- (3) A person referred to in subsection (1) or (2) is competent to take an oath or make an affirmation if in the opinion of the court or person acting judicially the person understands that —

- (a) the giving of evidence is a serious matter; and
(b) he or she in giving evidence has an obligation to tell the truth.

”.

46. Section 106C replaced

Section 106C is repealed and the following section is inserted instead —

“

106C. Child under 12 and mentally impaired witness may give unsworn evidence

A person referred to in section 106B(1) or (2) who is not competent to give evidence under section 106B(3) may give evidence without taking an oath or making an affirmation if the court or person acting judicially forms the opinion, before the evidence is given, that the

person is able to give an intelligible account of events which he or she has observed or experienced.

”.

47. Section 106F amended

Section 106F(4) is amended by deleting “misdemeanour” and inserting instead —

“ crime ”.

48. Section 106HA amended

(1) After section 106HA(1) the following subsection is inserted —

“

(1a) Section 106HB applies to a visual recording of an interview with a person with a mental impairment conducted before or after the coming into operation of section 48 of the *Criminal Law and Evidence Amendment Act 2008* if —

- (a) the interview was conducted by a person of a prescribed class who had reason to believe that the person had, or may have, suffered physical or sexual abuse; and
- (b) the manner in which the interview was conducted and recorded meets the prescribed requirements to the prescribed extent.

”.

(2) Section 106HA(2) is repealed and the following subsection is inserted instead —

“

(2) Section 106HB applies to a visual recording of an interview with a person with a mental impairment, or a child, whether or not the interview was conducted with the consent of a parent or guardian of the person or child.

”.

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- (3) Section 106HA(3) is amended by inserting after “child” —
“ , or a person with a mental impairment, ”.

49. Section 106HB amended

- (1) After section 106HB(1) the following subsection is inserted —
“

- (1a) A visually recorded interview with a person with a mental impairment is not to be admitted in the proceeding under subsection (1) unless the person is a special witness.

”.

- (2) After section 106HB(6) the following subsection is inserted —
“

- (6a) If a visually recorded interview of a witness is admitted under subsection (1), then, while the recording is played to the court, the witness must not be present in court, or be visible or audible by closed-circuit television or by means of any similar technology to anyone in the court other than, in the case of a trial by jury, the judge.

”.

- (3) After section 106HB(7) the following subsection is inserted —
“

- (8) Subsection (7)(c) does not prevent a judge from directing a jury about a breach of subsection (7)(c) by the accused or the accused’s counsel, if it is in the interests of justice to do so.

”.

50. Section 106HC amended

Section 106HC(1) is amended as follows:

(a) after paragraph (b) by inserting —

“

(ba) prescribing classes of persons for the purposes of section 106HA(1a)(a) by reference to the offices or positions held by them, or their training or experience, or any combination of those criteria; and

(bb) prescribing requirements to be met for the purposes of section 106HA(1a)(b), and the extent to which they are to be met, if section 106HB is to apply to a visual recording of an interview with a person with a mental impairment; and

”;

(b) in paragraph (c) by inserting after “child” —

“ , or a person with a mental impairment, ”;

(c) after each of paragraphs (a), (b), (c), (d), (e), (f) and (g) by inserting —

“ and ”.

51. Section 106I amended

Section 106I(2) is amended by deleting “The defendant” and inserting instead —

“ The accused ”.

52. Section 106O amended

Section 106O(2) is amended by deleting “defendant” and inserting instead —

“ accused ”.

53. Section 106R amended

- (1) Section 106R(3)(a) is amended by deleting “(as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996*)”.
- (2) After section 106R(4)(a) the following paragraph is inserted —
“
 - (b) that the person have a communicator while he or she is giving evidence;”.
- (3) After section 106R(4a) the following subsection is inserted —
“
 - (4b) Where an arrangement under subsection (4)(b) is directed to be made, section 106F applies, with any necessary changes, as if the special witness were an affected child.”.
- (4) After section 106R(7) the following subsections are inserted —
“
 - (8) If in any proceeding before a jury for a serious sexual offence a person referred to in subsection (3a) does not wish to be declared to be a special witness or declines any arrangement that may be made under subsection (4) —
 - (a) the person must not be questioned in the proceeding about the fact; and
 - (b) neither the judge, the prosecutor, the accused nor the accused’s counsel must comment on the fact to the jury.
 - (9) Subsection (8) does not prevent a judge from directing a jury about a breach of subsection (8) by the prosecutor, the accused or the accused’s counsel, if it is in the interests of justice to do so.”.

54. Section 106RA amended

- (1) Section 106RA(1) is amended by deleting “the evidence” and inserting instead —

“

the whole of the evidence (including any cross-examination and re-examination)

”.

- (2) Section 106RA(5) is repealed and the following subsection is inserted instead —

“

- (5) If an order is made under subsection (1), the order may include —

- (a) directions as to the conduct of the special hearing;
- (b) directions, with or without conditions, as to the persons, or classes of persons, who are authorised to have possession of the visual recording of the evidence;
- (c) directions and conditions as to the giving up of possession and as to the playing, copying or erasure of the recording.

”.

55. Second Schedule amended

The Second Schedule is amended in Part 1 in the item relating to “s. 321A” by deleting the description of offence and inserting instead —

“ Persistent sexual conduct with child under 16 ”.

Part 6 — Other Acts amended

56. Bail Act 1982 amended

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

[* *Reprint 5 as at 1 April 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 32 and Acts Nos. 27 and 34 of 2004 and 38 of 2005.]

- (2) Section 50C(4)(b) is amended by deleting “a defendant” and inserting instead —

“ an accused ”.

- (3) Section 50L(1) is amended by deleting “a defendant” in each place where it occurs and in each place inserting instead —

“ an accused ”.

- (4) Section 50L(1)(b) is amended by deleting “the defendant” and inserting instead —

“ the accused ”.

- (5) Section 52(4) is amended by deleting “jurisdiction.” and inserting instead —

“

jurisdiction, but —

- (a) no fees shall be charged by the Supreme Court or District Court for or in respect of any act or proceeding that relates to the prosecution; and
- (b) the Supreme Court or District Court cannot order a party to the prosecution to pay another party’s costs of or relating to the prosecution, except under section 166(2) of the *Criminal Procedure Act 2004*.

”.

- (6) Section 67(2)(b) is amended by deleting “a defendant” and inserting instead —

“ an accused ”.

57. *Children’s Court of Western Australia Act 1988* amended

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

[* *Reprint 4 as at 21 Apr 2006.*]

For subsequent amendments see Act No. 27 of 2004.]

- (2) Section 33(2) is amended by deleting “complaint” and inserting instead —

“ charge of an offence ”.

58. *Community Protection (Offender Reporting) Act 2004* amended

- (1) The amendments in this section are to the *Community Protection (Offender Reporting) Act 2004**.

[* *Act No. 72 of 2004.*]

- (2) Schedule 1 is amended in the item relating to *The Criminal Code* s. 321A by deleting the description of offence and inserting instead —

“ Persistent sexual conduct with child under 16 ”.

59. *Criminal Injuries Compensation Act 2003* amended

- (1) The amendment in this section is to the *Criminal Injuries Compensation Act 2003**.

[* *Act No. 77 of 2003.*]

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 112.]

- (2) Section 16(1)(a) is amended by inserting after “it” —
“ or the prosecution of it is discontinued ”.

60. Criminal Law (Mentally Impaired Accused) Act 1996 amended

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

[* Reprint 2 as at 12 August 2005.]

- (2) Section 11(1)(b)(ii) is amended by deleting “(including an *ex officio* indictment)”.
- (3) Section 21 is amended by deleting “defendant” in the 2 places where it occurs and in each place inserting instead —
“ accused ”.

61. Criminal Property Confiscation Act 2000 amended

- (1) The amendments in this section are to the *Criminal Property Confiscation Act 2000**.

[* Reprint 1 as at 9 December 2005.]

- (2) Section 101(2)(b) is amended by deleting “\$250 000.” and inserting instead —

“

the jurisdictional limit (within the meaning of section 6 of the *District Court of Western Australia Act 1969*).

”.

- (3) In the Glossary the definition of “dispose of” is amended in paragraph (c) by deleting “offence;” and inserting instead —

“ charge or discontinue the prosecution of it; ”.

62. Fertilizers Act 1977 amended

- (1) The amendments in this section are to the *Fertilizers Act 1977**.

[* *Reprint 1 as at 2 May 2003.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1, p. 160.]*

- (2) Section 38(1) is amended by deleting “justice or other person before whom the complaint is laid,” and inserting instead —
“ person before whom the prosecution notice is signed, ”.

63. Human Reproductive Technology Act 1991 amended

- (1) The amendments in this section are to the *Human Reproductive Technology Act 1991**.

[* *Reprint 2 as at 11 November 2005.*

For subsequent amendments see Act No. 34 of 2004.]

- (2) Section 53H(2) is amended by deleting “A defendant” and inserting instead —
“ An accused ”.

64. Juries Act 1957 amended

- (1) The amendments in this section are to the *Juries Act 1957**.

[* *Reprint 4 as at 2 September 2005.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1, p. 237 and
Act No. 34 of 2004.]*

- (2) Section 39 is amended by deleting “section 38.” and inserting instead —
“ section 104(4) of the *Criminal Procedure Act 2004.* ”.

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- (3) Section 41 is amended by deleting “or when it is considering its verdict, it is to be kept under the charge of an officer of the court” and inserting instead —

“ , it is to be kept ”.

65. Land Valuers Licensing Act 1978 amended

- (1) The amendments in this section are to the *Land Valuers Licensing Act 1978**.

[* *Reprinted as at 3 May 2002.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 245-6.]

- (2) Section 15B(2) is amended by deleting “defendant” in each place where it occurs and in each place inserting instead —

“ accused ”.

66. Licensed Surveyors Act 1909 amended

- (1) The amendments in this section are to the *Licensed Surveyors Act 1909**.

[* *Reprint 5 as at 5 May 2006.*]

- (2) Section 8C(2) is amended by deleting “defendant” in each place where it occurs and in each place inserting instead —

“ accused ”.

67. Official Prosecutions (Accused’s Costs) Act 1973 amended

- (1) The amendments in this section are to the *Official Prosecutions (Accused’s Costs) Act 1973**.

[* *Reprint 3 as at 3 February 2006.*]

- (2) The long title is amended by deleting “defendants” and inserting instead —

“ **accused persons** ”.

68. Prisoners (Interstate Transfer) Act 1983 amended

- (1) The amendments in this section are to the *Prisoners (Interstate Transfer) Act 1983**.

[* Reprinted as at 6 December 2002.

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 357.]

- (2) Section 21(2)(b) is deleted and the following paragraph is inserted instead —

“

- (b) the prosecution of the charge is discontinued.

”.

69. Prostitution Act 2000 amended

- (1) The amendments in this section are to the *Prostitution Act 2000**.

[* Reprint 1 as at 22 July 2005.

For subsequent amendments see Act No. 34 of 2004.]

- (2) Schedule 1 is amended by deleting “s. 321A(3)” under the heading “*The Criminal Code*” and inserting instead —

“ s. 321A(4) ”.

70. Sentencing Act 1995 amended

- (1) The amendment in this section is to the *Sentencing Act 1995**.

[* Reprint 4 as at 12 August 2005.

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 411-12 and Act No. 27 of 2004.]

- (2) After section 40(5) the following subsection is inserted —

“

- (5a) Except where a statutory penalty is expressly provided for a body corporate, a body corporate that is convicted

s. 71

of an offence the statutory penalty for which is or includes a minimum fine is liable to a fine of at least 5 times that minimum fine.

”.

71. *Suitors’ Fund Act 1964* amended

- (1) The amendments in this section are to the *Suitors’ Fund Act 1964**.

[* *Reprint 3 as at 22 July 2005.*]

- (2) Section 14(1) is amended as follows:

- (a) by inserting after paragraph (b) —

“

- (ba) an appeal commenced by a prosecutor under section 24(2)(da) or 25(3)(aa) of the *Criminal Appeals Act 2004* is upheld and a new trial is ordered; or

”;

- (b) after paragraph (a) by inserting —

“ or ”.

72. *Western Australian College of Teaching Act 2004* amended

- (1) The amendments in this section are to the *Western Australian College of Teaching Act 2004**.

[* *Act No. 8 of 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 495.]

- (2) Section 49(1)(c) is amended as follows:

- (a) by deleting “charge is withdrawn” and inserting instead —

“ prosecution of the charge is discontinued ”;

- (b) by deleting “, mistrial or presentation of nolle prosequi to a court;” and inserting instead —
“ or mistrial; ”.
- (3) Section 49(1)(d) is amended by deleting “, mistrial or presentation of nolle prosequi to a court.” and inserting instead —
“
or mistrial or the prosecution of the charge is discontinued.
”.
- (4) Schedule 2 is amended in the item relating to *The Criminal Code* as follows:
- (a) by deleting the rows relating to “s. 203” and “s. 204”;
- (b) by inserting in the appropriate positions —
“
- | | |
|--------|---|
| s. 187 | Facilitating sexual offences against children outside Western Australia |
| s. 202 | Obscene acts in public |
| s. 203 | Indecent acts in public |
| s. 204 | Indecent act with intent to offend |
- ”.

73. *Workers’ Compensation and Injury Management Act 1981* amended

- (1) The amendments in this section are to the *Workers’ Compensation and Injury Management Act 1981**.
[* Reprint 7 as at 3 February 2006.]
- (2) Section 175H(2)(c) is amended by deleting “have a complaint of the alleged offence heard and determined by” and inserting instead —
“ be prosecuted for the alleged offence in ”.

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74. Working with Children (Criminal Record Checking) Act 2004 amended

- (1) The amendments in this section are to the *Working with Children (Criminal Record Checking) Act 2004**.

[* *Act No. 65 of 2004.*

For subsequent amendments see Act No. 3 of 2006.]

- (2) Schedule 1 is amended in the item relating to *The Criminal Code* s. 321A by deleting the description of offence and inserting instead —

“

Persistent sexual conduct with child under 16 (if the offence includes a sexual act on at least one occasion when the child against whom the offence is committed is under 13)

”.

Part 7 — Various amending Acts amended

75. *Acts Amendment (Court of Appeal) Act 2004* amended

- (1) The amendments in this section are to the *Acts Amendment (Court of Appeal) Act 2004**.
[* *Act No. 45 of 2004.*]
- (2) Section 14 is repealed.
- (3) Schedule 1 clause 7 is amended as follows:
 - (a) by deleting “s. 37A”;
 - (b) by deleting the row relating to “Heading to Part 3 Division 4”.
- (4) Schedule 1 clauses 22 and 23 are repealed.

76. *Criminal Law Amendment (Simple Offences) Act 2004* amended

- (1) The amendment in this section is to the *Criminal Law Amendment (Simple Offences) Act 2004**.
[* *Act No. 70 of 2004.*]
- (2) Section 37 is repealed.

77. *Courts Legislation Amendment and Repeal Act 2004* amended

- (1) The amendments in this section are to the *Courts Legislation Amendment and Repeal Act 2004**.
[* *Act No. 59 of 2004.*]
- (2) Section 95 is amended in the Table to the section, in the row beginning with “s. 43(7)” by deleting “s. 243(6)”.
- (3) Section 123 is amended in the Table to the section by deleting “s. 67(2)”.

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- (4) Section 124 is amended in the Table to the section by deleting “s. 4(a)”.
- (5) Section 128 is amended in the Table to the section by deleting the row relating to “s. 20”.
- (6) Schedule 1 clause 13 is repealed.
- (7) Schedule 1 clause 46 is amended by deleting the row relating to “s. 11(2)”.
- (8) Schedule 1 clause 69 is repealed.
- (9) Schedule 1 clause 94 is amended by deleting the row relating to “s. 430(2)(a)”.
- (10) Schedule 1 clause 100 is repealed.
- (11) Schedule 1 clause 116 is amended by deleting “s. 93(1)”.
- (12) Schedule 1 clause 150 is amended by deleting the row relating to “s. 116A(4)”.
- (13) Schedule 2 clauses 1 to 42 and 44 to 51 are repealed.

78. *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* amended

- (1) The amendments in this section are to the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004**.
[* Act No. 84 of 2004.]
- (2) Section 82 is amended in Table 2 as follows:
 - (a) by deleting the row relating to the *Gas Standards Act 1972*;
 - (b) by deleting the row relating to the *Land Valuers Licensing Act 1978*;
 - (c) by deleting the row relating to the *Licensed Surveyors Act 1909*;

- (d) by deleting the row relating to the *Local Government (Miscellaneous Provisions) Act 1960*;
 - (e) by deleting the row relating to the *Travel Agents Act 1985*.
- (3) Schedule 1 clause 20 is amended by deleting the row relating to “s. 46(1)”.
 - (4) Schedule 1 clause 25 is amended by deleting the row relating to “s. 23”.
 - (5) Schedule 1 clause 27 is repealed.
 - (6) Schedule 1 clause 31 is repealed.
 - (7) Schedule 2 clause 36 is amended by deleting “s. 133A”.
 - (8) Schedule 2 clause 56 is amended by deleting the row relating to “s. 38(1)”.
 - (9) Schedule 2 clause 106 is repealed.
 - (10) Schedule 2 clause 157 is amended by deleting the row relating to “s. 175H(2)(c)”.

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