

**ACTS AMENDMENT (EVIDENCE)  
ACT 1991**

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No. 48 of 1991

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**AN ACT to amend—**

**the *Evidence Act 1906*;  
The *Criminal Code*; and  
the *Justices Act 1902*,**

**in relation to the competence and compellability of spouses to give evidence in legal proceedings and for related purposes.**

[Assented to 17 December 1991]

The Parliament of Western Australia enacts as follows:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Acts Amendment (Evidence) Act 1991*.

**Commencement**

2. This Act shall come into operation on such date as is fixed by proclamation.

**Amendments not to apply  
to certain proceedings**

3. (1) In subsection (2) “prescribed proceedings” means—

- (a) any proceedings instituted before the commencement of this Act;
- (b) any appeal arising out of, or review of, any proceedings mentioned in paragraph (a); and
- (c) any rehearing of, or new trial in respect of, any proceedings mentioned in paragraph (a).

(2) Prescribed proceedings shall be heard, dealt with and determined as if this Act had not been enacted.

**PART 2—EVIDENCE ACT 1906****Principal Act**

4. In this Part the *Evidence Act 1906*\* is referred to as the principal Act.

[\*Reprinted as at 14 August 1986 and amended by Acts Nos. 81 of 1986, 66 of 1987, 70 of 1988, 34 of 1989 and 47 of 1990.]

**Section 7 amended**

5. Section 7 of the principal Act is amended by deleting “husbands and wives” and substituting the following—

“ wives, former wives, husbands and former husbands ”.

**Section 8 amended**

6. Section 8 of the principal Act is amended in subsection (1)—
- (a) by deleting “, and the wife or husband, as the case may be, of the person so charged,”;
  - (b) by repealing paragraph (b) of the proviso; and
  - (c) in paragraph (c) of the proviso by deleting “, or of the wife or husband, as the case may be, of the person so charged”.

**Section 9 repealed and a section substituted**

7. Section 9 of the principal Act is repealed and the following section is substituted—

**Evidence of wife or husband  
of defendant in criminal cases**

- “ 9. (1) In any criminal proceeding (and at every stage of the proceeding), the wife or husband of a defendant shall, subject to this Act, be—
- (a) competent to give evidence on behalf of the prosecution, the defendant or any person being tried jointly with the defendant;
  - (b) compellable to give evidence on behalf of the defendant or any person being tried jointly with the defendant; and
  - (c) compellable to give evidence on behalf of the prosecution against the defendant or any person being tried jointly with the defendant if—
    - (i) the defendant is charged with an offence under a provision mentioned in the Second Schedule;

- (ii) the defendant is charged with attempting or conspiring to commit, or with inciting the commission of, an offence under a provision mentioned in the Second Schedule;
- (iii) the defendant is charged on the complaint of the wife or husband with an offence committed with respect to the property of the wife or husband; or
- (iv) the wife or husband is compelled, under another enactment, to give that evidence.

(2) In any criminal proceeding (and at every stage of the proceeding), a former wife or former husband of a defendant shall, subject to this Act, be competent and compellable to give evidence on behalf of the prosecution, the defendant or any person being tried jointly with the defendant.

(3) A reference in subsection (1) or (2) to a person being tried jointly with the defendant includes a reference to a person appearing with the defendant at a preliminary hearing under Part V of the *Justices Act 1902*.

(4) Nothing in this section shall operate to compel a defendant in any criminal proceeding to give evidence in the proceeding.

(5) If the wife or husband of a defendant in any criminal proceeding is called as a witness for the prosecution but is not a compellable witness for the prosecution, it is the duty of the Judge to inform the wife or husband that she or he is not compellable to give evidence on behalf of the prosecution if she or he is unwilling to do so. ”.

## **Section 10 repealed**

8. Section 10 of the principal Act is repealed.

**Section 18 amended**

9. Section 18 of the principal Act is amended—

(a) by inserting after “his wife” the following—

“ , or by him to his wife, ”; and

(b) by inserting after “her husband” the following—

“ , or by her to her husband, ”.

**Second Schedule repealed and  
a Schedule substituted**

10. The Second Schedule to the principal Act is repealed and the following Schedule is substituted—

“ Section 9

THE SECOND SCHEDULE

PART 1—OFFENCES UNDER *THE CRIMINAL CODE*

Provision	Description of offence
s. 58	Threatening a person who is to give, or has given, evidence before Parliament
s. 68	Going armed in public so as to cause fear
s. 74	Threatening violence in relation to a dwelling house
s. 98	Undue influence of an elector
s. 123	Threatening a juror or corruption of or by a juror
s. 128	Threatening a witness before a Royal Commission or public inquiry
s. 144	Using force to rescue a person undergoing, or liable to, strict security life imprisonment
s. 185	Unlawful carnal knowledge of a child under 13

- s. 186            Occupier or owner permitting a young person to be on premises for unlawful carnal knowledge
- s. 187            Unlawful carnal knowledge of a child under 16 or a male under 21
- s. 188            Unlawful carnal knowledge of a girl or woman who has a mental or intellectual incapacity
- s. 189            Indecent dealing
- s. 190            Unlawful carnal knowledge of a female under 17 by a guardian, employer, teacher or schoolmaster
- s. 191            Procuration
- s. 192 (1),  
(3) & (4)        Procuring unlawful carnal knowledge of a person by threats, intimidation or drugs
- s. 197            Incest by a male
- s. 198            Incest by an adult female
- s. 199            Attempt to procure the miscarriage of a woman
- s. 200            Attempt by a woman to procure her own miscarriage
- s. 201            Supplying any thing for use in procuring the miscarriage of a woman
- s. 278 (as  
read with  
s. 282)            Wilful murder
- s. 279 (as  
read with  
s. 282)            Murder
- s. 280 (as  
read with  
s. 287)            Manslaughter
- s. 281 (as  
read with  
s. 287)            Killing on provocation
- s. 281A (as  
read with  
s. 287A)          Infanticide

- s. 283            Attempt to murder
- s. 288            Procuring, inducing or aiding suicide
- s. 290            Killing an unborn child
- s. 292            Disabling in order to commit an indictable offence or facilitate the flight of an offender
- s. 293            Stupefying in order to commit an indictable offence or facilitate the flight of an offender
- s. 294            Acts intended to maim, disfigure or disable, do grievous bodily harm, or resist or prevent arrest
- s. 294A           Offences relating to dangerous goods on aircraft
- s. 295            Preventing or obstructing escape or rescue from a wreck
- s. 296            Intentionally endangering the safety of persons travelling on a railway
- s. 296A           Intentionally endangering the safety of persons travelling on an aircraft
- s. 297            Grievous bodily harm
- s. 298            Causing an explosion likely to endanger life
- s. 299            Attempting to cause an explosion likely to endanger life or possessing an explosive substance with intent to endanger life
- s. 300            Endangering life by unlawful administration of poison etc., with intent to injure or annoy
- s. 301 (1)        Unlawful wounding
- s. 301 (2)        Unlawful administration of poison etc., with intent to injure or annoy
- s. 302            Endangering life or health by failing to provide necessaries
- s. 303            Endangering the life or health of a servant or apprentice under 16

- s. 304           Endangering the life or health of a child under 7 by abandonment or exposure
- s. 305           Setting mantraps
- s. 306           Causing bodily harm by unlawful act or by omission to perform duty
- s. 307           Endangering the safety of persons travelling on a railway by unlawful act or omission to perform duty
- s. 308           Sending or taking an unseaworthy ship to sea
- s. 309           Endangering the safety of persons on board a steam vessel by unlawful act or omission to perform a duty relating to machinery
- s. 310           Offence by engineer where there is a contravention of section 309
- s. 313           Common assaults
- s. 317           Assaults occasioning bodily harm
- s. 318           Serious assaults
- s. 318A          Assaulting or threatening a member of the crew of an aircraft
- s. 324B          Indecent assault
- s. 324C          Aggravated indecent assault
- s. 324D          Sexual assault
- s. 324E          Aggravated sexual assault
- s. 332           Kidnapping
- s. 333           Deprivation of liberty
- s. 336           Procuring the apprehension or detention of a person not suffering from mental disorder
- s. 337           Unlawfully detaining or taking custody of a person suffering from mental disorder
- s. 338A          Threats with intent to influence



- s. 338B           Threats
- s. 338C           False statements as to the existence of threats or plans to harm persons or property
- s. 343            Child stealing
- s. 344            Desertion of a child
- s. 391 (as read with s. 393)    Robbery
- s. 394            Assault with intent to commit robbery
- s. 395            Assault with intent to steal
- s. 396            Demanding property with threats with intent to steal
- s. 397            Demanding property with threats with intent to extort or gain
- s. 399            Procuring execution, destruction etc., of documents by violence or restraint or by threats
- s. 444            Criminal damage
- s. 449            Casting away, destroying or endangering vessels
- s. 451            Obstructing or damaging railways
- s. 451A           Endangering the safe use of aircraft
- s. 451B           Unlawful interference with mechanism of aircraft
- s. 454            Causing explosion likely to do serious damage to property
- s. 455            Attempting to cause explosion likely to do serious damage to property
- s. 456            Attempts to damage or obstruct mines
- s. 457            Interfering with marine signals
- s. 458            Interfering with navigation works

PART 2—OFFENCES UNDER THE *ROAD TRAFFIC ACT 1974*

Provision	Description of offence
s. 54	Failure to stop when a vehicle is involved in an accident
s. 56	Failure to report an accident involving a vehicle whereby bodily injury is caused
s. 57	Failure of the owner etc., to identify the driver or person in charge or control of a vehicle involved in an accident
s. 59	Dangerous driving causing death or grievous bodily harm
s. 59A	Dangerous driving causing bodily harm
s. 60	Reckless driving
s. 61	Dangerous driving

PART 3—OFFENCE UNDER THE *POLICE ACT 1892*

Provision	Description of offence
s. 57	Negligent, careless or furious driving or riding

PART 4—OFFENCE UNDER THE *CHILD WELFARE ACT 1947*

Provision	Description of offence
s. 31A	Misconduct or neglect causing a child to become an offender or be in need of care and protection

PART 5—OFFENCES UNDER THE *MISUSE OF DRUGS ACT 1981*

Provision	Description of offence
s. 6 (1)	Indictable offences concerned with prohibited drugs
s. 7 (1)	Indictable offences concerned with prohibited plants
s. 18 (2)	Dealing with property to which an embargo notice relates

- s. 33 (1) Attempting, or inciting another, to commit, or becoming an accessory after the fact to, an indictable offence under section 6 (1) or 7 (1)
- s. 33 (2) Conspiring with another to commit an indictable offence under section 6 (1) or 7 (1) ”.

PART 3—THE CRIMINAL CODE

**The Code**

11. In this Part “the Code” means *The Criminal Code*\*.

[\*Reprinted as approved 13 December 1983 as the Schedule to the *Criminal Code Act 1913* appearing in Appendix B to the *Criminal Code Act Compilation Act 1913*, and amended by Acts Nos. 87 of 1982, 13, 52 and 121 of 1984, 14, 74 and 119 of 1985, 89 of 1986, 47, 74, 106 and 129 of 1987, 49 and 70 of 1988, 32 of 1989 and 33 and 101 of 1990.]

**Various sections amended or repealed**

12. (1) Section 35 of the Code is amended by deleting the following—

“ Upon the prosecution of a husband on the complaint of his wife for an offence committed with respect to her property, and upon the prosecution of a wife on the complaint of her husband for an offence committed with respect to his property, the wife or husband, as the case may be, is a competent and compellable witness. ”.

- (2) Section 185 of the Code is amended by repealing subsection (3).
- (3) Section 187 of the Code is amended by repealing subsection (5).
- (4) Section 188 of the Code is amended by repealing subsection (3).
- (5) Section 189 of the Code is amended by repealing subsection (6).

(6) Sections 190 and 197 of the Code are amended by deleting the following—

“ The wife of the accused person is a competent and compellable witness. ”.

(7) Sections 191 and 192 of the Code are amended by deleting the following—

“ The husband or wife of the accused person is a competent and compellable witness. ”.

(8) Section 198 of the Code is amended by deleting the following—

“ The husband of the accused person is a competent and compellable witness. ”.

(9) Section 324I and Chapter XXXII of the Code are repealed.

(10) Section 697 of the Code is amended in paragraph (c) by deleting “the evidence of the wife or husband of a convicted appellant” and substituting the following—

“ 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 ”.

#### PART 4—*JUSTICES ACT 1902*

### **Section 71 repealed**

13. Section 71 of the *Justices Act 1902*\* is repealed.

[\**Reprinted as approved 9 November 1984 and amended by Acts Nos. 87 of 1982, 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986, 65 of 1987, 27, 38, 49 and 70 of 1988 and 8, 61 and 101 of 1990.*]