

Western Australia

Criminal Law Amendment (Homicide) Act 2008

As at 27 Jun 2008

No. 29 of 2008

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Criminal Law Amendment (Homicide) Act 2008

CONTENTS

Part 1 — Preliminary matters		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>The Criminal Code</i> amended		
Division 1 — Preliminary matters		
3.	Code amended in this Part	3
Division 2 — General amendments		
4.	Section 23 replaced by sections 23, 23A and 23B	3
Division 3 — Amendments about defences		
5.	Section 25 replaced	4
6.	Section 31 replaced by sections 31 and 32	5
7.	Section 244 amended	7
8.	Sections 248, 249 and 250 replaced by section 248	7
9.	Section 441 amended	8
Division 4 — Amendments about homicide		
10.	Sections 278, 279 and 282 replaced by section 279	9
11.	Sections 280 and 287 replaced by section 280	11
12.	Section 281 replaced	11
13.	Sections 281A and 287A repealed	11
14.	Section 284 inserted	12
Division 5 — Consequential amendments		
15.	Section 144 replaced	13
16.	Small amendments	13
17.	Sections 739 and 740 and Schedule 1 inserted	14

Schedule 1 — Transitional provisions

**Part 3 — *Sentencing Act 1995*
amended**

18.	Act amended in this Part	17
19.	Sections 90 and 91 replaced by section 90	17
20.	Section 96 replaced	18
21.	Section 107 amended	18
22.	Consequential amendments	19

**Part 4 — Various other Acts
amended**

23.	<i>Adoption Act 1994</i>	20
24.	<i>Bail Act 1982</i>	20
25.	<i>Community Protection (Offender Reporting) Act 2004</i>	20
26.	<i>Corruption and Crime Commission Act 2003</i>	21
27.	<i>Criminal Code Act 1913</i>	21
28.	<i>Criminal Investigation (Identifying People) Act 2002</i>	22
29.	<i>Criminal Law (Mentally Impaired Accused) Act 1996</i>	22
30.	<i>Criminal Procedure Act 2004</i>	22
31.	<i>District Court of Western Australia Act 1969</i>	22
32.	<i>Electoral Act 1907</i>	23
33.	<i>Evidence Act 1906</i>	23
34.	<i>Health Act 1911</i>	23
35.	<i>Interpretation Act 1984</i>	24
36.	<i>Prisons Act 1981</i>	24
37.	<i>Restraining Orders Act 1997</i>	25
38.	<i>Road Traffic Act 1974</i>	25
39.	<i>Sentence Administration Act 2003</i>	26
40.	<i>Working with Children (Criminal Record Checking) Act 2004</i>	29
41.	<i>Young Offenders Act 1994</i>	29

Western Australia

Criminal Law Amendment (Homicide) Act 2008

No. 29 of 2008

An Act to reform the law about homicide and for related purposes.

[Assented to 27 June 2008]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Criminal Law Amendment (Homicide) Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) section 25(2) — on a day fixed by proclamation, being a day that is the day, or after the day, on which the *Community Protection (Offender Reporting) Amendment Act 2008* section 11 comes into operation;
- (c) section 40(2) — on a day fixed by proclamation, being a day that is the day, or after the day, on which the *Community Protection (Offender Reporting) Amendment Act 2008* section 13(3) comes into operation;
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *The Criminal Code* amended

Division 1 — Preliminary matters

3. Code amended in this Part

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

Division 2 — General amendments

4. Section 23 replaced by sections 23, 23A and 23B

Section 23 is repealed and the following sections are inserted instead —

“

23. Intention and motive

- (1) 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.
- (2) 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.

23A. Unwilled acts and omissions

- (1) This section is subject to the provisions in Chapter XXVII relating to negligent acts and omissions.
- (2) A person is not criminally responsible for an act or omission which occurs independently of the exercise of the person's will.

23B. Accident

- (1) This section is subject to the provisions in Chapter XXVII relating to negligent acts and omissions.
- (2) A person is not criminally responsible for an event which occurs by accident.
- (3) If death or grievous bodily harm —
 - (a) is directly caused to a victim by another person's act that involves a deliberate use of force; but
 - (b) would not have occurred but for an abnormality, defect or weakness in the victim,the other person is not, for that reason alone, excused from criminal responsibility for the death or grievous bodily harm.
- (4) Subsection (3) applies —
 - (a) even if the other person did not intend or foresee the death or grievous bodily harm; and
 - (b) even if the death or grievous bodily harm was not reasonably foreseeable.

”.

Division 3 — Amendments about defences

5. Section 25 replaced

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

“

25. Emergency

- (1) This section does not apply if section 32, 246, 247 or 248 applies.

- (2) A person is not criminally responsible for an act done, or an omission made, in an emergency under subsection (3).
- (3) A person does an act or makes an omission in an emergency if —
 - (a) the person believes —
 - (i) circumstances of sudden or extraordinary emergency exist; and
 - (ii) doing the act or making the omission is a necessary response to the emergency;
 - and
 - (b) the act or omission is a reasonable response to the emergency in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.

”.

6. Section 31 replaced by sections 31 and 32

Section 31 is repealed and the following sections are inserted instead —

“

31. Lawful authority

- (1) A person is not criminally responsible for an act done, or an omission made, in any of the following circumstances —
 - (a) in execution of the law;
 - (b) in obedience to the order of a competent authority which the person is bound by law to obey, unless the order is manifestly unlawful.
- (2) Whether an order is or is not manifestly unlawful is a question of law.

32. Duress

- (1) A person is not criminally responsible for an act done, or an omission made, under duress under subsection (2).
- (2) A person does an act or makes an omission under duress if —
 - (a) the person believes —
 - (i) a threat has been made; and
 - (ii) the threat will be carried out unless an offence is committed; and
 - (iii) doing the act or making the omission is necessary to prevent the threat from being carried out;and
 - (b) the act or omission is a reasonable response to the threat in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.
- (3) Subsections (1) and (2) do not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of —
 - (a) doing an act or making an omission of the kind in fact done or made by the person under duress; or
 - (b) prosecuting an unlawful purpose in which it is reasonably foreseeable such a threat would be made.

”.

7. Section 244 amended

- (1) After section 244(1) the following subsection is inserted —

“

- (1A) Despite subsection (1), it is not lawful for the occupant to use force that is intended, or that is likely, to cause death to a home invader unless the occupant believes, on reasonable grounds, that violence is being or is likely to be used or is threatened in relation to a person by a home invader.

”.

- (2) Section 244(4) is repealed and the following subsection is inserted instead —

“

- (4) If under subsection (1)(c) it is lawful for the occupant to use a degree of force, it is lawful for another person acting in good faith in aid of the occupant to use the same degree of force to defend the occupant.

”.

8. Sections 248, 249 and 250 replaced by section 248

Sections 248, 249 and 250 are repealed and the following section is inserted instead —

“

248. Self-defence

- (1) In this section —

“**harmful act**” means an act that is an element of an offence under this Part other than Chapter XXXV.

- (2) A harmful act done by a person is lawful if the act is done in self-defence under subsection (4).

Criminal Law Amendment (Homicide) Act 2008

Part 2 The Criminal Code amended

Division 3 Amendments about defences

s. 9

- (3) If —
- (a) a person unlawfully kills another person in circumstances which, but for this section, would constitute murder; and
 - (b) the person’s act that causes the other person’s death would be an act done in self-defence under subsection (4) but for the fact that the act is not a reasonable response by the person in the circumstances as the person believes them to be,
- the person is guilty of manslaughter and not murder.
- (4) A person’s harmful act is done in self-defence if —
- (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
 - (b) the person’s harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.
- (5) A person’s harmful act is not done in self-defence if it is done to defend the person or another person from a harmful act that is lawful.
- (6) For the purposes of subsection (5), a harmful act is not lawful merely because the person doing it is not criminally responsible for it.

”.

9. Section 441 amended

- (1) Section 441 is amended as follows:
- (a) by inserting before “An Act” the subsection designation “(1)”;

- (b) by inserting before “It is immaterial” the subsection designation “(2)”;
 - (c) by repealing the third paragraph.
- (2) At the end of section 441 the following subsection is inserted —
- “
- (3) A person is not criminally responsible for an act that causes an injury to property if —
 - (a) the person believes the act is necessary to defend or protect the person, another person or property from injury that the person believes is imminent; and
 - (b) the act is a reasonable response by the person in the circumstances as the person believes them to be; and
 - (c) there are reasonable grounds for those beliefs.
- ”.

Division 4 — Amendments about homicide

10. Sections 278, 279 and 282 replaced by section 279

Sections 278, 279 and 282 are repealed and the following section is inserted instead —

“

279. Murder

- (1) If a person unlawfully kills another person and —
 - (a) the person intends to cause the death of the person killed or another person; or
 - (b) the person intends to cause a bodily injury of such a nature as to endanger, or be likely to endanger, the life of the person killed or another person; or
 - (c) the death is caused by means of an act done in the prosecution of an unlawful purpose, which

Criminal Law Amendment (Homicide) Act 2008

Part 2 The Criminal Code amended

Division 4 Amendments about homicide

s. 11

act is of such a nature as to be likely to
endanger human life,

the person is guilty of murder.

Alternative offence: s. 280, 281, 283, 284, 290 or 291
or *Road Traffic Act 1974* s. 59.

- (2) For the purposes of subsection (1)(a) and (b), it is immaterial that the person did not intend to hurt the person killed.
- (3) For the purposes of subsection (1)(c), it is immaterial that the person did not intend to hurt any person.
- (4) A person, other than a child, who is guilty of murder must be sentenced to life imprisonment unless —
 - (a) that sentence would be clearly unjust given the circumstances of the offence and the person;
and
 - (b) the person is unlikely to be a threat to the safety of the community when released from imprisonment,

in which case the person is liable to imprisonment for 20 years.

- (5) A child who is guilty of murder is liable to either —
 - (a) life imprisonment; or
 - (b) detention in a place determined from time to time by the Governor or under another written law until released by order of the Governor.
- (6) A court that does not sentence a person guilty of murder to life imprisonment must give written reasons why life imprisonment was not imposed.

”.

11. Sections 280 and 287 replaced by section 280

Sections 280 and 287 are repealed and the following section is inserted instead —

“

280. Manslaughter

If a person unlawfully kills another person under such circumstances as not to constitute murder, the person is guilty of manslaughter and is liable to imprisonment for 20 years.

Alternative offence: s. 281, 284, 290, 291 or 294 or
Road Traffic Act 1974 s. 59.

”.

12. Section 281 replaced

Section 281 is repealed and the following section is inserted instead —

“

281. Unlawful assault causing death

- (1) If a person unlawfully assaults another who dies as a direct or indirect result of the assault, the person is guilty of a crime and is liable to imprisonment for 10 years.
- (2) A person is criminally responsible under subsection (1) even if the person does not intend or foresee the death of the other person and even if the death was not reasonably foreseeable.

”.

13. Sections 281A and 287A repealed

Sections 281A and 287A are repealed.

14. Section 284 inserted

After section 283 the following section is inserted —

“

284. Culpable driving (other than of motor vehicle) causing death or grievous bodily harm

- (1) In this section —
“**conveyance**” does not include a motor vehicle;
“**drive**” a conveyance, includes to pilot an aircraft and to navigate a vessel.
- (2) For the purposes of this section a person culpably drives a conveyance if the person drives the conveyance in a manner (including at a speed) that, having regard to all the circumstances of the case, is dangerous to any person.
- (3) If —
 - (a) a person culpably drives a conveyance; and
 - (b) the conveyance is involved in an incident that directly or indirectly causes the death of, or grievous bodily harm to, another person,the person is guilty of a crime and is liable to imprisonment for —
 - (c) if death is caused, 10 years; or
 - (d) if grievous bodily harm is caused, 7 years.Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.
- (4) A court convicting a person of an offence under this section that involves the navigation of a vessel must make an order under the *Sentencing Act 1995* section 107(1) for a term of at least 2 years.

”.

Division 5 — Consequential amendments

15. Section 144 replaced

Section 144 is repealed and the following section is inserted instead —

“

144. Forcibly freeing certain offenders from custody

Any person who forcibly frees, or attempts to free, from lawful custody any person serving a sentence for, or charged with, an offence that is punishable with imprisonment for life, or for 20 years or more, is guilty of a crime and is liable to imprisonment for 20 years.

”.

16. Small amendments

- (1) Section 47(1) is amended by deleting “commit any crime punishable with strict security life imprisonment” and inserting instead —

“ kill any person ”.

- (2) Section 48(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) To commit any indictable offence other than one entailing the killing of a person;

”.

- (3) Section 125 is amended by deleting “with strict security life imprisonment, or”.

- (4) Section 134 is amended by deleting “to strict security life imprisonment or”.

- (5) Section 277 is amended by deleting “wilful murder, murder, manslaughter, or infanticide.” and inserting instead —

“ murder or manslaughter. ”.

- (6) Section 283 is amended by deleting “or, if the person commits the offence in circumstances that, had the other person died, would constitute the crime of infanticide, to imprisonment for 7 years”.

17. Sections 739 and 740 and Schedule 1 inserted

After section 738 the following is inserted —

“

739. Review of law of homicide

- (1) The Minister must carry out a review of the operation and effectiveness of the amendments to this Code and the *Sentencing Act 1995* made by the *Criminal Law Amendment (Homicide) Act 2008* as soon as is practicable after the fifth anniversary of the commencement of section 17 of that Act.
- (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

740. Transitional provisions

Schedule 1 sets out transitional provisions.

Schedule 1 — Transitional provisions

[s. 740]

1. Terms used in this Schedule

In this Schedule —

“**amendment Act**” means the *Criminal Law Amendment (Homicide) Act 2008*;

“**commencement**” means the day on which the amendment Act, other than Part 1, comes into operation.

2. Acts or omissions committed before commencement

(1) In this clause —

“**unamended Code**” means this Code as if it had not been amended by the amendment Act.

(2) Despite section 11, if a person does an act or makes an omission before commencement that is an element of or constitutes an offence under the unamended Code, then after commencement this Code applies to and in respect of the person and the act or omission as if it had not been amended by the amendment Act.

(3) Despite subclause (2) and the *Sentencing Act 1995* section 10, if —

(a) a person is convicted of murder or wilful murder under the unamended Code before commencement but is not sentenced for the offence before commencement; or

(b) a person is convicted of murder or wilful murder under the unamended Code as it applies under subclause (2),

the person must be sentenced under section 279(4) to (6) as inserted by the amendment Act as if he or she had been convicted of murder under section 279(1) as inserted by that Act.

3. Offenders serving life term at commencement

(1) If immediately before commencement a person is serving a sentence of life imprisonment for an offence other than murder or wilful murder, the person is eligible to be released on parole when he or she has served 7 years of the sentence.

(2) If immediately before commencement a person is serving a sentence of life imprisonment for murder or wilful murder in respect of which a minimum period was set under the *Sentencing Act 1995* section 90 as it was before commencement, the person must not be released before he or she has served that minimum period.

Criminal Law Amendment (Homicide) Act 2008

Part 2 The Criminal Code amended

Division 5 Consequential amendments

s. 17

- (3) If immediately before commencement a person is serving a sentence of strict security life imprisonment in respect of which a minimum period was set under the *Sentencing Act 1995* section 91(1) as it was before commencement, the person must not be released before he or she has served that minimum period.
- (4) If immediately before commencement a person is serving a sentence of strict security life imprisonment in respect of which an order was made under the *Sentencing Act 1995* section 91(3) as it was before commencement, the person must not be released on parole.
- (5) Any order for the release of a person to whom this clause applies must be made in accordance with the *Sentence Administration Act 2003* Part 3.
- (6) If immediately before commencement a person is serving a sentence of strict security life imprisonment, any order made after commencement in relation to the person in the exercise of the Royal Prerogative of Mercy is subject to the *Sentencing Act 1995* section 142 as it was immediately before commencement.
- (7) If immediately before commencement a person is serving a sentence of —
 - (a) life imprisonment imposed for murder or wilful murder; or
 - (b) strict security life imprisonment imposed for wilful murder,

then the *Sentence Administration Act 2003* sections 12A, 25 and 26 as they were immediately before commencement continue to apply to and in respect of the person.

”.

Part 3 — *Sentencing Act 1995* amended

18. Act amended in this Part

The amendments in this Part are to the *Sentencing Act 1995*.

19. Sections 90 and 91 replaced by section 90

Sections 90 and 91 are repealed and the following section is inserted instead —

“

90. Imposing life imprisonment for murder

- (1) A court that sentences an offender to life imprisonment for murder must either —
 - (a) set a minimum period of at least 10 years that the offender must serve before being eligible for release on parole; or
 - (b) order that the offender must never be released.
- (2) Any minimum period so set begins to run when the sentence of life imprisonment begins.
- (3) A court must make an order under subsection (1)(b) if it is necessary to do so in order to meet the community's interest in punishment and deterrence.
- (4) In determining whether an offence is one for which an order under subsection (1)(b) is necessary, the only matters relating to the offence that are to be taken into account are —
 - (a) the circumstances of the commission of the offence; and
 - (b) any aggravating factors.

”.

20. Section 96 replaced

Section 96 is repealed and the following section is inserted instead —

“

96. Release from life imprisonment

- (1) A prisoner serving a sentence of life imprisonment for an offence other than murder is not to be released before he or she has served 7 years of the sentence.
- (2) A prisoner serving a sentence of life imprisonment for murder in respect of which a minimum period has been set under section 90(1)(a) is not to be released before he or she has served the minimum period.
- (3) A prisoner serving a sentence of life imprisonment for murder in respect of which an order has been made under section 90(1)(b) is not to be released.
- (4) Any order for the release of a prisoner referred to in this section must be made in accordance with Part 3 of the *Sentence Administration Act 2003*.

”.

21. Section 107 amended

- (1) Section 107(1) is amended by deleting “certificate of competency, or a particular certificate of competency, under the *Western Australian Marine Act 1982*.” and inserting instead —
“ marine qualification or a particular marine qualification. ”.
- (2) Section 107(3) is amended by deleting “certificate” and inserting instead —
“ marine qualification ”.
- (3) Section 107(5) is amended by inserting in the appropriate alphabetical position —

“

“marine qualification” means a certificate of competency or any other qualification issued to a

person under the *Western Australian Marine Act 1982* in relation to navigating or operating a vessel;

”.

22. Consequential amendments

(1) Section 85(1) is amended as follows:

(a) in the definition of “fixed term” by deleting “a life term” and inserting instead —

“ life imprisonment ”;

(b) by deleting the definition of “life term”;

(c) in the definition of “term” by deleting “a life term” and inserting instead —

“ life imprisonment ”;

(d) in the definition of “term” by deleting paragraph (a) and “or” after it and inserting the following instead —

“

(a) detention under a sentence imposed under section 279(5)(b) of *The Criminal Code*; or

”.

(2) Section 88(5) is amended by deleting “a life term is to serve that term” and inserting instead —

“ life imprisonment is to serve that sentence ”.

(3) Section 142 is amended by deleting “sentenced to strict security life imprisonment” and inserting instead —

“

serving a sentence of life imprisonment in respect of which an order has been made under section 90(1)(b)

”.

Part 4 — Various other Acts amended

23. *Adoption Act 1994*

- (1) The amendment in this section is to the *Adoption Act 1994*.
- (2) Section 40(2)(e)(ii) is amended by deleting “, strict security life imprisonment”.

24. *Bail Act 1982*

- (1) The amendments in this section are to the *Bail Act 1982*.
- (2) Section 7B(2)(a) is amended by deleting “wilful murder or”.
- (3) Section 7B(4) is amended by deleting “wilful murder or”.
- (4) Section 7C(1) is amended by deleting “wilful murder or”.
- (5) Section 15(1) is amended by deleting “wilful murder or”.
- (6) Section 54A(1)(a) is amended by deleting “wilful murder or”.
- (7) Schedule 1 Part C clause 3C is amended by deleting “wilful murder or” in the 2 places where it occurs.
- (8) Schedule 2 item 1 is amended by deleting the entries relating to *The Criminal Code* sections 278, 279 and 280 and inserting instead —

“

s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death

”.

25. *Community Protection (Offender Reporting) Act 2004*

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

- (2) Schedule 1 is amended by deleting the entry relating to *The Criminal Code* section 278.
- (3) Schedule 1 is amended as follows:
 - (a) in the entry relating to *The Criminal Code* section 279, by deleting “(as read with s. 282)”;
 - (b) by deleting the entry relating to *The Criminal Code* section 281A.
- (4) Schedule 3 is amended in the entry relating to *The Criminal Code* section 279, by deleting “(as read with s. 282)”.

26. *Corruption and Crime Commission Act 2003*

- (1) The amendments in this section are to the *Corruption and Crime Commission Act 2003*.
- (2) Schedule 1 clause 1 is amended as follows:
 - (a) by deleting “s. 278”;
 - (b) by deleting “(except if the circumstances of the attempted or intended killing are such that, if it were carried out, the crime committed would be infanticide)”.

27. *Criminal Code Act 1913*

- (1) The amendment in this section is to the *Criminal Code Act 1913*.
- (2) Section 3(2) is amended by deleting “the crimes of wilful murder, and murder, and each of them:” and inserting instead —
 - “
 - include the crime that was called wilful murder under the Code as it was before the commencement of the *Criminal Law Amendment (Homicide) Act 2008*:
 - ”.

28. *Criminal Investigation (Identifying People) Act 2002*

- (1) The amendments in this section are to the *Criminal Investigation (Identifying People) Act 2002*.
- (2) Section 3(1) is amended in the definition of “serious offence” by deleting “strict security life imprisonment,” and inserting instead —
“ or includes ”.

29. *Criminal Law (Mentally Impaired Accused) Act 1996*

- (1) The amendments in this section are to the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- (2) Schedule 1 item 1 is amended by deleting the entries relating to *The Criminal Code* sections 278, 279 and 280 and inserting instead —
“

s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death

”.

30. *Criminal Procedure Act 2004*

- (1) The amendment in this section is to the *Criminal Procedure Act 2004*.
- (2) Section 114(4) is amended by deleting “wilful murder or”.

31. *District Court of Western Australia Act 1969*

- (1) The amendment in this section is to the *District Court of Western Australia Act 1969*.
- (2) Section 42(2) is amended by deleting “or strict security life imprisonment”.

32. *Electoral Act 1907*

- (1) The amendments in this section are to the *Electoral Act 1907*.
- (2) Section 18 is amended as follows:
 - (a) in paragraph (cb) by deleting “section 282(c)(iii) or (d)(ii), 653 or 693(4)” and inserting instead —
“ section 279(5)(b) ”;
 - (b) in paragraph (cc) by deleting “661 or 662” and inserting instead —
“ 282(c)(iii) or (d)(ii), 653, 661, 662 or 693(4) ”.

33. *Evidence Act 1906*

- (1) The amendments in this section are to the *Evidence Act 1906*.
- (2) The Second Schedule Part 1 is amended as follows:
 - (a) in the entry relating to section 144 by deleting “Using force to rescue a person undergoing, or liable to, strict security life imprisonment” and inserting instead —
“ Forcibly freeing certain offenders from custody ”;
 - (b) by deleting the entries relating to sections 278, 279, 280, 281 and 281A and inserting instead —
“

s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death

”.

34. *Health Act 1911*

- (1) The amendments in this section are to the *Health Act 1911*.
- (2) Section 246ZV(1) is amended by deleting “section 23” and inserting instead —
“ section 23A ”.

s. 35

- (3) Section 246ZW(1) is amended by deleting “section 23” and inserting instead —
“ section 23A ”.

35. Interpretation Act 1984

- (1) The amendments in this section are to the *Interpretation Act 1984*.
- (2) Section 5 is amended by inserting in the appropriate alphabetical position —
“
“**death**” of a person, has a meaning affected by section 13C;

- (3) After section 13B the following section is inserted —

“
13C. When death of a person occurs

For the purposes of the law of this State, a person dies when there occurs —

- (a) irreversible cessation of all function of the person’s brain; or
(b) irreversible cessation of circulation of blood in the person’s body.

36. Prisons Act 1981

- (1) The amendments in this section are to the *Prisons Act 1981*.
- (2) Section 16(6) is repealed and the following subsection is inserted instead —
“
(6) Subsection (5) does not apply in respect of a prisoner —
(a) who is serving a sentence that requires him or her to spend —

- (i) 20 years or more in custody before being eligible for parole; or
 - (ii) his or her whole life in custody;
- or
- (b) whose release is to be determined by the Governor.

”.

- (3) Section 26(2) is amended by inserting after “life imprisonment” —

“

or a sentence of life imprisonment in respect of which an order has been made under section 90(1)(b) of the *Sentencing Act 1995*

”.

37. *Restraining Orders Act 1997*

- (1) The amendment in this section is to the *Restraining Orders Act 1997*.
- (2) Section 63B(3) is amended in the definition of “violent personal offence” paragraph (a) by deleting “(other than infanticide)”.

38. *Road Traffic Act 1974*

- (1) The amendments in this section are to the *Road Traffic Act 1974*.
 - (2) Section 59(1) is amended in the summary conviction penalty by deleting “160 PU” and inserting instead —
- “ 720 PU ”.
- (3) Section 59(3)(b) is deleted and the following paragraph is inserted instead —

“

- (b) in any other circumstances, to a fine of any amount and to imprisonment for —

s. 39

- (i) 10 years, if the person has caused the death of another person; or
- (ii) 7 years, if the person has caused grievous bodily harm to another person,

”.

39. Sentence Administration Act 2003

(1) The amendments in this clause are to the *Sentence Administration Act 2003*.

(2) Section 4(2) is amended as follows:

(a) by inserting in the appropriate alphabetical position —

“

“Governor’s pleasure detainee” means —

- (a) a person in, or regarded as being in, strict or safe custody by virtue of an order made under the repealed section 282 of *The Criminal Code*; or
- (b) a person subject to a sentence of detention imposed under section 279(5)(b) of *The Criminal Code*;

”;

(b) in the definition of “prisoner” paragraph (b) by deleting “life term;” and inserting instead —

“ life imprisonment; ”;

(c) in the definition of “prisoner” by deleting paragraph (d) and inserting instead —

“

(d) a Governor’s pleasure detainee;

”.

(3) Section 11(2) is amended by deleting “person who is in, or is regarded as being in, strict custody by virtue of an order made under section 282 of *The Criminal Code*” and inserting instead —

“ Governor’s pleasure detainee ”.

- (4) Section 11(3) is amended in the definition of “Minister” by deleting “section 282” and inserting instead —

“ Chapter XXVIII ”.

- (5) Section 12(6) is amended by deleting “section 282” and inserting instead —

“ Chapter XXVIII ”.

- (6) The Table to section 12A is deleted and the following Table is inserted instead —

“

Table

Type of sentence	When report due	When subsequent reports are due
Life imprisonment for an offence other than murder	7 years after the day on which the term began or is taken to have begun	Every 3 years after that
Life imprisonment for murder where a minimum period has been set under section 90(1)(a) of the <i>Sentencing Act 1995</i>	At the end of the minimum period	Every 3 years after that
Indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that

”.

- (7) The heading to Part 3 Division 5 is amended by deleting “term”.

s. 39

- (8) Section 25(1) is repealed and the following subsections are inserted instead —

“

- (1) The Governor may make a parole order in respect of a prisoner serving life imprisonment for murder but only if —
- (a) a minimum period has been set under section 90(1)(a) of the *Sentencing Act 1995*; and
 - (b) the prisoner has served the minimum period; and
 - (c) a report has been given by the Board to the Minister under section 12 or 12A.
- (1A) The Governor may make a parole order in respect of a prisoner serving life imprisonment for an offence other than murder but only if —
- (a) the prisoner has served the period required by section 96(1) of the *Sentencing Act 1995*; and
 - (b) a report has been given by the Board to the Minister under section 12 or 12A.

”.

- (9) Section 26 is repealed.
- (10) Section 27B(1) is amended by deleting “section 282” and inserting instead —
- “ Chapter XXVIII ”.
- (11) Section 50(b) is amended by deleting “a life term” and inserting instead —
- “ life imprisonment ”.

- (12) Section 68(2) is repealed and the following subsection is inserted instead —

“

- (2) If a parole order in respect of a prisoner serving life imprisonment is suspended, the prisoner is then liable to resume serving the sentence in custody.

”.

- (13) Section 69(2) is repealed and the following subsection is inserted instead —

“

- (2) If a parole order in respect of a prisoner serving life imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the sentence in custody.

”.

40. *Working with Children (Criminal Record Checking) Act 2004*

- (1) The amendments in this section are to the *Working with Children (Criminal Record Checking) Act 2004*.
- (2) Schedule 2 is amended by deleting the entry relating to *The Criminal Code* section 278.
- (3) Schedule 2 is amended by deleting the entries relating to *The Criminal Code* sections 279, 280 and 281A and inserting instead —

“

s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death

”.

41. *Young Offenders Act 1994*

- (1) The amendments in this section are to the *Young Offenders Act 1994*.

s. 41

- (2) Section 179(6) is repealed and the following subsection is inserted instead —

“

- (6) If the detainee is a person —
- (a) who is undergoing a sentence of imprisonment for life; or
 - (b) whose release is to be determined by the Governor,

the superintendent is to give the chief executive officer notice when the detainee is removed from or returned to a detention centre under an order made under this section.

”.

- (3) Section 189(1) is repealed and the following subsection is inserted instead —

“

- (1) This section does not apply to, or in relation to, a person convicted of murder, attempt to murder or manslaughter.

”.

- (4) Schedule 1 item 1 is amended as follows:

- (a) in the entry relating to section 125, by deleting “with strict security life imprisonment, or”;
- (b) in the entry relating to section 134, by deleting “to strict security life imprisonment or”;
- (c) in the entry relating to section 144, by deleting “Forcibly rescuing offenders sentenced or liable to strict security life imprisonment” and inserting instead —
“ Forcibly freeing certain offenders from custody ”;
- (d) by deleting the entry relating to section 281A.

- (5) Schedule 2 item 1 is amended by deleting the entries relating to sections 278, 279 and 280 and inserting instead —

“

s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death

”.
