

ACTS AMENDMENT (SEXUAL ASSAULTS).

No. 74 of 1985.

AN ACT to reform the law concerning sexual assaults and for that purpose and for related purposes to amend The Criminal Code, the Evidence Act 1906, the Child Welfare Act 1947 and the District Court of Western Australia Act 1969.

[Assented to 20 November 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Sexual Assaults) Act 1985*. Short title.

No. 74.] *Acts Amendment (Sexual Assaults)*. [1985.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

PART II.—THE CRIMINAL CODE.

Interpreta-
tion.

3. In this Part, “the Code” means the Criminal Code set out in the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Act Compilation Act 1913.

Section 29
amended.

4. Section 29 of the Code is amended by deleting “A male person under the age of fourteen years is presumed to be incapable of having carnal knowledge.”.

Section 205A
repealed.

5. Section 205A of the Code is repealed.

Section 206
amended.

6. Section 206 of the Code is amended in subsection (1) by deleting “, one hundred and eighty-nine, three hundred and twenty-six, three hundred and twenty-seven, or three hundred and twenty-eight” and substituting the following—

“ or one hundred and eighty-nine ”.

Sections 314
and 315
repealed.

7. Sections 314 and 315 of the Code are repealed.

Chapter
XXXIA
inserted.

8. After section 324A of the Code, the following Chapter is inserted—

“ CHAPTER XXXIA.—SEXUAL ASSAULTS.

Indecent
assault.

324B. Any person who unlawfully and indecently assaults another person is guilty of a misdemeanour and is liable to imprisonment for 4 years.

324C. Any person who unlawfully and indecently assaults another person in circumstances of aggravation is guilty of a misdemeanour and is liable to imprisonment for 6 years.

Aggravated
indecent
assault.

324D. Any person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

Sexual
assault.

324E. Any person who sexually penetrates another person without the consent of that person and in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 20 years.

Aggravated
sexual
assault.

324F. For the purposes of this Code, "to sexually penetrate" means—

Meaning of
sexually
penetrate.

(a) to penetrate the vagina of any person or the anus of any person with—

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

(b) to manipulate any part of the body of another person so as to cause penetration of the vagina or anus of the offender by part of the other person's body;

(c) to introduce any part of the penis of a person into the mouth of another person;

- (d) to engage in cunnilingus; or
- (e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).

Meaning of consent.

324G. (1) For the purposes of this Chapter, "consent" means a consent freely and voluntarily given and, without in any way affecting or limiting the meaning otherwise attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deception or fraudulent means.

(2) A failure to offer physical resistance to a sexual assault does not of itself constitute consent to a sexual assault.

Nature of circumstances of aggravation.

324H. For the purposes of sections 324C and 324E, "circumstances of aggravation" means circumstances in which—

- (a) at or immediately before or immediately after the commission of the offence, the offender does bodily harm to any person;
- (b) the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
- (c) at or immediately before or immediately after the commission of the offence, the offender does an act which is likely seriously and substantially to degrade or humiliate the victim;
- (d) the offender is in company with another person or persons; or

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- (e) the person assaulted or sexually penetrated is under the age of 16 years or is of or above the age of 60 years.

324I. Upon a charge of any of the offences provided for in this Chapter, the wife or husband of the accused person is a competent and compellable witness. ”.

Spouse
competent
and
compellable.

9. The heading to Chapter XXXII of the Code is amended by deleting “ASSAULTS ON FEMALES:”.

Heading to
Chapter
XXXII
amended.

10. Sections 325, 326, 327 and 328 of the Code are repealed.

Sections 325,
326, 327 and
328 repealed.

11. Section 398 of the Code is amended by deleting paragraph (d) and substituting the following paragraph—

Section 398
amended.

“ (d) An attempt to commit the crime of sexual assault or aggravated sexual assault or the misdemeanour of indecent assault or aggravated indecent assault; or ”.

12. Section 596 of the Code is amended—

Section 596
amended.

(a) by deleting “rape” and substituting the following—

“ sexual assault or aggravated sexual assault ”;

(b) by deleting “he” in both places where it occurs and substituting in each place the following—

“ that person ”.

Sections
596AA,
596AB, 596AC
and 596AD
inserted.

13. After section 596A of the Code, the following sections are inserted—

Charge of
aggravated
sexual
assault.

“ 596AA. Upon an indictment charging a person with the crime of aggravated sexual assault, that person may be convicted of any of the offences of sexual assault, aggravated indecent assault or indecent assault if any such offence is established by the evidence.

Charge of
sexual
assault.

596AB. Upon an indictment charging a person with the crime of sexual assault, that person may be convicted of any of the offences of aggravated indecent assault or indecent assault if any such offence is established by the evidence.

Charge of
aggravated
indecent
assault.

596AC. Upon an indictment charging a person with the crime of aggravated indecent assault, that person may be convicted of the offence of indecent assault if that offence is established by the evidence.

Charge of
aggravated
sexual
assault by
male person.

596AD. Upon an indictment charging a male person with the crime of aggravated sexual assault or the crime of sexual assault, that person may be convicted of an offence contrary to section 181 or 182 if any such offence is established by the evidence. ”.

PART III.—EVIDENCE ACT 1906.

Principal
Act.
Reprinted as
approved
28 January
1981 and
amended by
Acts Nos. 10
and 108 of
1982.

14. In this Part, the Evidence Act 1906 is referred to as the principal Act.

15. Sections 36A and 36B of the principal Act are repealed and the following sections are substituted—

Sections 36A
and 36B
repealed and
sections 36A
to 36BE
substituted.

“ 36A. (1) In this section and in sections 36B, 36BA, 36BC, 36BD, 36BE and 36C—

Interpreta-
tion.

“complainant” in relation to proceedings for a sexual assault offence means a person upon or in respect of whom it is alleged that a sexual assault offence was committed, attempted or proposed;

“defendant” in relation to a hearing or trial, means any defendant at the hearing or trial whether or not that defendant is charged with a sexual assault offence;

“sexual assault offence” means the offence of—

- (a) indecent assault contrary to section 324B of The Criminal Code;
- (b) indecent assault in circumstances of aggravation contrary to section 324C of The Criminal Code;
- (c) sexual assault contrary to section 324D of The Criminal Code;
- (d) aggravated sexual assault contrary to section 324E of The Criminal Code;
- (e) attempting to commit any of the offences referred to in paragraphs (a) to (d);
- (f) conspiracy to commit any of the offences referred to in paragraphs (a) to (d); and

- (g) counselling or procuring the commission of any of the offences referred to in paragraphs (a) to (d).

(2) In this section and in sections 36B, 36BA and 36BC, proceedings for a sexual assault offence means proceedings in which a person stands charged with a sexual assault offence whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable on the charge to be found guilty of any other offence.

Evidence
as to sexual
reputation of
complainant.

36B. In proceedings for a sexual assault offence, evidence relating to the sexual reputation of the complainant shall not be adduced or elicited by or on behalf of a defendant.

Evidence
as to sexual
disposition of
complainant.

36BA. In proceedings for a sexual assault offence, evidence relating to the disposition of the complainant in sexual matters shall not be adduced or elicited by or on behalf of a defendant.

Evidence
as to sexual
experience of
complainant.

36BC. (1) In proceedings for a sexual assault offence, evidence relating to the sexual experiences of the complainant, being sexual experiences of any kind, at any time and with any person, not being part of the *res gestae* of the proceedings, shall not be adduced or elicited by or on behalf of a defendant unless leave of the court has first been obtained on application made in the absence of the jury (if any).

(2) The court shall not grant leave under subsection (1) unless satisfied that—

- (a) what is sought to be adduced or elicited has substantial relevance to the facts in issue; and

- (b) the probative value of the evidence that is sought to be adduced or elicited outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission.

36BD. Where on the trial of a person for a sexual assault offence or an offence under Chapter XXII of The Criminal Code evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the complainant or to suggest delay by the complainant in making any such complaint, the judge shall—

Warning by court as to lack of complaint.

- (a) give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reasons why a victim of an offence such as that alleged may hesitate in making or may refrain from making a complaint of that offence.

36BE. (1) On the trial of a person for a sexual assault offence or an offence under Chapter XXII of The Criminal Code—

No requirement for warning as to conviction on uncorroborated evidence.

- (a) the judge is not required by any rule of law or practice to give in relation to any offence of which the person is liable to be convicted on the charge for the offence a warning to the jury to the effect that it is unsafe to

convict the person on the uncorroborated evidence of the person upon whom the offence is alleged to have been committed; and

- (b) the judge shall not give a warning to the jury of the kind described in paragraph (a) unless satisfied that such a warning is justified in the circumstances.

(2) Nothing in subsection (1) affects the operation of any law that provides that a person cannot be convicted of an offence upon the uncorroborated testimony of one witness or upon the evidence of a child whose evidence is admitted under section 101. ”.

Section 36C
amended.

16. Section 36C of the principal Act is amended—

- (a) by deleting “rape offence” wherever it occurs and substituting in each case the following—

“ sexual assault offence ”;

- (b) in subsection (3), by deleting “he” wherever it occurs and substituting the following—

“ the person ”; and

- (c) in subsection (4), by deleting “woman” in the definition of “complainant” and substituting the following—

“ person ”.

Second
Schedule
amended.

17. The Second Schedule to the principal Act is amended in PART I by deleting “and Chapter XXXII” and substituting the following—

“ and Chapters XXXIA and XXXII ”.

PART IV.—CHILD WELFARE ACT 1947.

18. In this Part the Child Welfare Act 1947 is referred to as the principal Act.

Principal Act.
Reprinted as
approved
30 August
1984 and
amended by
Acts Nos. 52,
61 and 121
of 1984.

19. Section 126 of the principal Act is amended in subsection (3) by deleting “or XXXII or section 314 or 315” and substituting the following—

Section 126
amended

“ , XXXIA or XXXII ”.

20. The Fourth Schedule to the principal Act is amended in Part I by deleting—

Fourth
Schedule
amended.

“ 326 Rape.

327 Attempt to rape. ”

and substituting the following—

“ 324D Sexual assault.

324E Aggravated sexual assault. ”.

PART V.—DISTRICT COURT OF WESTERN AUSTRALIA
ACT 1969.

21. Section 42 of The District Court of Western Australia Act 1969 is amended by inserting after subsection (2) the following subsection—

Section 42
amended.
Reprinted as
approved
5 September
1980 and
amended by
Acts Nos. 118
of 1981, 7 of
1982 and 52
and 122 of
1984.

“ (2a) The Court has no jurisdiction to try an accused person charged with an offence against section 324D or 324E of The Criminal Code. ”.